

CASE NO. 08-3249
Death Penalty Case

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

STANLEY JALOWIEC,
Appellant,

v.

MARGARET BRADSHAW, Warden,
Appellee.

On Appeal From the United State District Court
For the Northern District of Ohio

WARDEN'S APPENDIX
VOLUME 15 of 17, Pages 6325-6798

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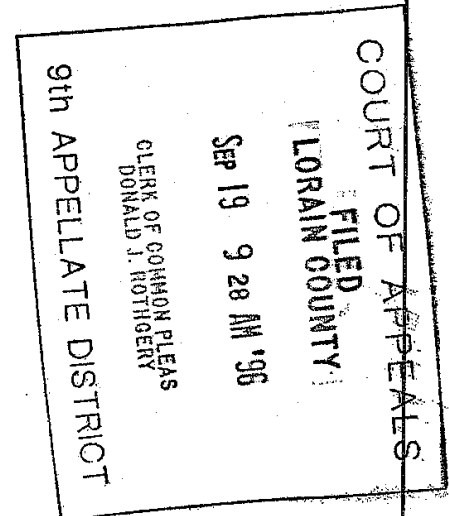
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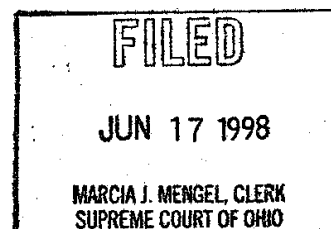
No. 95 CRO 46840

The State of Ohio, Plaintiff,

vs. Stanley E. Jalowiec, Defendant.

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

98-1074



1 MORNING SESSION, TUESDAY, MARCH 19, 1996

2 (Whereupon, the following proceedings
3 occurred out of the hearing of the jury.)

4 THE COURT: We are here for the
5 purpose of instructions, okay?

6 And let's go -- first of all, I think without
7 any question pull testimony of accomplice, okay,
8 pull that out at this point, because there was
9 none.

10 Now, in the first part, any problem with
11 that?

12 MR. GRUNDA: No.

13 THE COURT: Burden of proof,
14 any problem?

15 MR. GRUNDA: No, your Honor.

16 THE COURT: Reasonable doubt,
17 any problem with that?

18 MR. GRUNDA: No.

19 THE COURT: Evidence, and I
20 think you have submitted something on that line.
21 Mr. Grunda, and in conversation with you earlier,
22 you had indicated -- and correct me if I am wrong
23 -- that the difference between my instruction and
24 your instruction -- basically they are the same
25 -- but you give an example of what circumstantial

1 evidence is, what that may be, and what is your
2 example?

3 I give mine, which I don't normally give.

4 MR. GRUNDA: Your Honor, for
5 the record I did file proposed jury instructions
6 regarding evidence.

7 What I did put in was an example that if
8 you woke in the morning and you saw snow on the
9 ground, circumstantial evidence is that it snowed
10 earlier, or, if you were to see footprints in the
11 snow, that is circumstantial evidence that
12 somebody walked there, but not necessarily the
13 defendant.

14 In any event, all I am doing is indicating
15 to you those were the examples that I had given
16 and one other thing that I put in there that was
17 a little different from yours is how the jury
18 would deal with guilt inferences of circumstantial
19 evidence and basically that just said that if they
20 had equal inferences it has to be resolved in
21 favor of the Defendant.

22 I basically indicate that to you in my
23 instructions, but the example of circumstantial
24 evidence that I have given and normally do not
25 give is that you are sitting in your living room

1 and you hear a thump on the porch.

2 You get up and see a newspaper on the porch
3 and you look down the road and see the newspaper
4 boy going down the road. Even though you didn't
5 see him do that, it is reasonable to assume that
6 he delivered the paper.

7 I have used that example in the past. Now,
8 I don't normally give an example.

9 MR. ROSENBAUM: I would say that
10 your instruction is exactly what the modern law is
11 and should be given as it is.

12 THE COURT: Straight out of OJI.
13 I will deny those two requests that you had.

14 If I were to give an example, I will give
15 mine before yours. I am not going to give an
16 example nor am I going to include the one
17 paragraph on the equally consistent at this
18 point and exceptions to you on that area.

19 MR. GRUNDA: Thank you, your
20 Honor.

21 THE COURT: Next one is
22 credibility.

23 Any problem?

24 MR. GRUNDA: Your Honor, the
25 only problem is the very last paragraph which

1 talks about if the defendant chooses to testify,
2 same rules of evidence apply.

3 Since he didn't testify, I don't think that
4 is necessary.

5 THE COURT: What I do is, I
6 have my one instruction which governs both ways.
7 At this stage of the game I have no problem
8 eliminating that. I have no problem in
9 eliminating that last paragraph.

10 I normally have drawn my instructions to
11 use the same for a person who does take the
12 stand and for one who does not.

13 MR. GRUNDA: Well, the paragraph
14 before it talks about a defendant not testifying.
15 I don't want to confuse them.

16 THE COURT: I don't know that it
17 ever caused any confusion. I will take out that
18 last paragraph.

19 MR. GRUNDA: Thank you.

20 THE COURT: Expert witnesses.

21 Any problem?

22 MR. GRUNDA: No problem.

23 THE COURT: Testimony of law
24 enforcement officers, no problem?

25 MR. GRUNDA: No.

1 THE COURT: Complicity?
2 MR. CLEARY: For the record,
3 your Honor, I would object to the complicity
4 instruction mainly because while it goes on to
5 define accomplice, aid and abet, it does not
6 include any definition of what a principal
7 offender is in here nor is there a separate
8 instruction regarding what a principal
9 offender is.

10 THE COURT: Mr. Rosenbaum,
11 what say you, sir?

12 MR. ROSENBAUM: I say if they
13 want that definition, they can submit one.

14 THE COURT: I am sure I can
15 draw one up on that if that is your concern.

16 MR. CLEARY: Yes, your Honor.

17 THE COURT: I might have a
18 separate one.

19 MR. CLEARY: A separate one is
20 fine, your Honor.

21 THE COURT: Any problem with
22 that?

23 MR. ROSENBAUM: No.

24 THE COURT: Very well. No
25 problem with venue?

1 Anything else on the complicity thing?

2 MR. CLEARY: No, your Honor.

3 THE COURT: Venue is
4 boilerplate.

5 Count No. One, Aggravated Murder.

6 Any problem?

7 I know you don't like it, but any problem
8 with it?

9 MR. GRUNDA: Well, I concur
10 with that. I don't like it, but it states what
11 the law is.

12 THE COURT: Yes.

13 Findings and verdict -- that is kind of an
14 instructional thing. If you do this, you must
15 do that. That is near the end.

16 MR. GRUNDA: Your Honor, before
17 we get to that, I would -- I want to clarify the
18 record.

19 I had the opportunity to talk to Mr. Jalowiec
20 last night. I discussed the possibility with him
21 of asking for a lesser included offense. He does
22 not want one.

23 THE COURT: Lesser included of
24 what?

25 MR. GRUNDA: Lesser included of

1 murder.

2 THE COURT: I had some
3 difficulty with that, Mr. Grunda.

4 Normally I would have included it, whether
5 you requested it or not, but I think in this
6 instance we have some difficulty with venue.

7 MR. GRUNDA: I want the record
8 to reflect I did talk to him about it and he is
9 instructing me not to ask for it; is that
10 correct?

11 THE DEFENDANT: That is correct.

12 THE COURT: I am not giving
13 it at this point. It is either all or nothing.

14 MR. GRUNDA: Right, that is
15 exactly what Mr. Jalowiec indicated to me last
16 night.

17 Right, Mr. Jalowiec?

18 THE DEFENDANT: Yes, sir.

19 MR. GRUNDA: Thank you.

20 THE COURT: Specification No.

21 One, any problem with that?

22 MR. GRUNDA: No.

23 THE COURT: Specification No.

24 Two, he was a governmental witness.

25 You may not like it, but that is the law

1 there, too. I think I understand why you don't
2 like it.

3 MR. GRUNDA: My objection to it
4 -- I mean, One, I understand that is a correct
5 statement of the law, but I think it is confusing
6 to the jury, but I would object to No. Two because
7 there was no testimony or anything about that,
8 that he was killed in retaliation for his
9 testifying in a criminal proceeding. He never
10 did testify.

11 THE COURT: Mr. Lally?

12 MR. GRUNDA: Right.

13 THE COURT: No question.

14 MR. GRUNDA: That is what I mean,
15 One and Two -- I don't think Two even applies.

16 THE COURT: Mr. Rosenbaum, do
17 you care to respond to that?

18 MR. ROSENBAUM: No.

19 THE COURT: There was testimony
20 that he was -- that both of the Smiths were going
21 to trial and that he was a confidential informant
22 for those particular trials at this point and he
23 never got an opportunity to go.

24 I think the inference is there without any
25 question and I think it is proper, Mr. Grunda and

1 Mr. Cleary, and your exceptions are granted to
2 what you are saying at this point.

3 MR. GRUNDA: Thank you, your
4 Honor.

5 THE COURT: Note taking, any
6 problem with that?

7 MR. GRUNDA: No.

8 THE COURT: Closing
9 instructions, any problem with that?

10 MR. GRUNDA: No.

11 THE COURT: Now, so we all
12 understand each other --

13 MR. CLEARY: Your Honor, I
14 would like to object to the form of the verdict
15 form.

16 THE COURT: We are not there
17 yet.

18 The closing instructions, which at that time
19 we select the alternate and who they are at that
20 point. The alternates are going to be instructed
21 that they can stay in and about the courthouse,
22 go about their business, but they are not to say
23 anything about this case because of the fact --
24 just not say anything about this case and I will
25 instruct Barbara to talk to them, not talk -- I

1 don't want to do it in front of the jury -- they
2 will be called back if and when we need the
3 mitigation.

4 MR. GRUNDA: How do you do it
5 normally?

6 THE COURT: We will just invite
7 the 14 people back for the mitigation, including
8 the two alternates.

9 MR. GRUNDA: I know, but my
10 question is, how are you going to determine who
11 the two alternates are?

12 THE COURT: Normally I have a
13 deck of cards. We will put additional cards in
14 and pull them.

15 MR. GRUNDA: Okay.

16 THE COURT: Out of the same
17 deck.

18 MR. GRUNDA: Okay.

19 THE COURT: Now, Mr. Cleary,
20 you were talking about the verdict forms?

21 MR. CLEARY: I missed one here
22 as well.

23 I would like to request that the Court add
24 an instruction regarding factors to consider in
25 evaluating testimony of eyewitnesses. It is a

1 standard thing. There is a lot of eyewitness
2 testimony in this trial.

3 THE COURT: But I have it in
4 the credibility section.

5 MR. CLEARY: Okay.

6 THE COURT: As to what they
7 are to consider.

8 You are talking eyewitnesses, maybe I
9 misunderstood you, sir.

10 MR. CLEARY: Yes, sir.

11 THE COURT: No, I don't have
12 anything really in there about eyewitnesses at
13 this point.

14 Mr. Rosenbaum, what say you?

15 MR. ROSENBAUM: You don't have to
16 give that, your Honor. If you want to, I have
17 no objection.

18 MR. CLEARY: We are requesting
19 it, your Honor.

20 THE COURT: Can you get it?
21 John, maybe you should look at it.

22 MR. CLEARY: In regards to the
23 verdict forms, the verdict forms, the way they
24 are set up, are confusing. I would request,
25 your Honor, that the verdict forms include all

1 the elements so they match the instructions.

2 THE COURT: No, sir.

3 Absolutely not. They look at them with
4 the instructions. They are here.

5 MR. ROSENBAUM: I object to this
6 verdict form regarding the matter of age. I
7 don't know why that is in there.

8 THE COURT: Let's wait till
9 John gets here and he will tell us. We did it
10 with Raymond at this point, too. I think it
11 was in there.

12 MR. ROSENBAUM: It is up to the
13 defense to raise the matter of age and if they
14 don't, it is not an issue in the trial.

15 THE COURT: All right.
16 John, why is the question of age included
17 in the verdict form?

18 MR. KEYS: Well, because I
19 think sometimes we have 19 year olds that go
20 to trial and at the time of the commission of
21 the offense --

22 THE COURT: That hasn't been
23 raised by the defense.

24 MR. KEYS: Well, we can maybe
25 remove that.

1 MR. GRUNDA: I thought the State
2 said it the other way.

3 MR. ROSENBAUM: 2929.02.3 puts the
4 burden on the defendant to raise the matter of
5 age. It has not been raised in this trial. I
6 don't want to return a verdict saying that he is
7 under 18.

8 It is not an issue and I do not want to have
9 the burden of proving he is 18 and it was never
10 an issue in trial.

11 THE COURT: What say you, sir?

12 MR. GRUNDA: Could I see the
13 statute?

14 THE COURT: This is my proposed
15 instruction for eyewitness testimony. Some things
16 you may consider in weighing the testimony of
17 eyewitnesses are, one, the capacity of the
18 witness, that is, the age, intelligence, defective
19 senses, if any, and the opportunity of the witness
20 to observe.

21 Number two, the witness' degree of attention
22 at the time he observed the event.

23 Number three, the accuracy of a prior
24 description of the event, if any, given by the
25 witness.

1 Number four, the interval of time between
2 the event and the description of the event.

3 Number five, all surrounding circumstances
4 under which the witness has observed the event
5 or given a description of the event.

6 MR. CLEARY: We would request
7 that that be included, your Honor.

8 THE COURT: Okay. I need
9 principal and then we will put it in where we
10 think it is appropriate at this point.

11 Make out one paragraph and make up the
12 eyewitness.

13 Anything further at this point?

14 MR. ROSENBAUM: Yes, the verdict
15 on the 18 year old.

16 MR. GRUNDA: Your Honor, I had
17 an opportunity to read that statute and it is as
18 Mr. Rosenbaum said.

19 THE COURT: Let's eliminate
20 that section on finding of an 18 year old.

21 MR. GRUNDA: We didn't raise it,
22 it is not an issue in here. I know what that is
23 for, if they bound over someone under the age of
24 18.

25 MR. KEYS: There is a reference

1 in Count One. We have to redo that.

2 THE COURT: All right, because
3 it talks about age. Exceptions where there have
4 been objections and the Court will be issuing you
5 new pages to fill in on your instructions at this
6 point.

7 MR. GRUNDA: Okay.

8 THE COURT: All right,
9 gentlemen.

10 We will be calling in the jury at this point
11 unless anybody has anything further.

12 MR. GRUNDA: Your Honor, the
13 only thing I would put on the record is that I
14 did request, since last night redoing the matter,
15 how long my closing may take and I indicated to
16 you that it may take longer than allotted, which
17 is the 45 minutes.

18 THE COURT: And I said, fine,
19 if you are not too repetitive. When you have used
20 your time, you can request additional time and I
21 will probably grant it at this point and also, Mr.
22 Rosenbaum, I know you won't need it, sir.

23 MR. ROSENBAUM: I hope not.

24 THE COURT: Whatever additional
25 time he is granted, you may have it also at this

1 point.

2 MR. GRUNDA: I wanted to clarify
3 that for the record.

4 THE COURT: No problem.

5 (Whereupon, the jury was returned to the
6 courtroom and the following proceedings occurred.)

7 THE COURT: What we are going
8 to be doing is closing arguments, ladies and
9 gentlemen.

10 Now, you have heard me say it before and I
11 will say it to you again, closing arguments are
12 not evidence. They are merely statements of
13 counsel designed to assist you, but that is all
14 that they are, nothing more, nothing less.

15 The prosecution will proceed first because
16 of the burden of proof being on the prosecution
17 and because of the burden of proof being on the
18 prosecution, they have the right to rebut
19 whatever closing argument the Defendant may be
20 giving in this instance.

21 I have allocated 45 minutes of time to each
22 side for their closing arguments. This morning
23 I have discussed that, in the event they are not
24 completed, they could ask for additional time.
25 Whether the Court would grant it would depend on

1 the circumstances, but more than likely, it would
2 do so.

3 Mr. Rosenbaum, you may proceed with your
4 closing.

5
6
7 INITIAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE
8 STATE OF OHIO

9 BY MR. ROSENBAUM:

10 Good morning, ladies and gentlemen.

11 THE JURORS: Good morning.

12 MR. ROSENBAUM: In a conspiracy
13 trial like this I start out with the quote, and
14 I am not sure where I got it, but it goes like
15 this: "The birth of a conspiracy conceived in
16 Hell is seldom witnessed by angels."

17 What do you mean by that, why do you think
18 it is important when you go about -- or if
19 someone goes about trying to carry out a
20 conspiracy to commit a crime, especially the
21 heinous crime like Aggravated Murder, who are
22 you going to select to help you?

23 Are you going to go to a church, are you
24 going to find upstanding citizens, will someone
25 try the Rotary or Lions Club?

1 Probably not. You are going to seek out
2 people who you feel are capable of not caring
3 enough that they will do this and have the lack
4 of heart or decency to pull it off. Those are
5 the kind of people that, if the State is going
6 to illustrate a conspiracy and bring you proof
7 of what happened and people that have knowledge,
8 that you must understand that the State is stuck
9 with those.

10 Those are the kind of people that the
11 Defendant selected, not the State, to be involved
12 in this and bound the State to call some of these
13 people to the stand because they have knowledge
14 of the crime.

15 They were chosen by the Defendant and his
16 co-conspirators to participate. They were the
17 ones that were solicited.

18 Now, why is that important?

19 Well, you have heard evidence put on by the
20 State that is uncontradicted. There was no
21 evidence called refuting what the State said --

22 MR. GRUNDA: Objection.

23 MR. ROSENBAUM: (Continuing) -- or
24 produced as evidence.

25 MR. GRUNDA: We don't have to do

1 that.

2 THE COURT: And you may say that
3 in your closing, Mr. Grunda.

4 MR. ROSENBAUM: And he doesn't have
5 to. He is right. He chose not to, so you are
6 bound by the evidence the State gave you unless
7 they can persuade you that the State's people
8 should not be believed and I anticipate that that
9 is exactly what is going to happen.

10 The only way for him to escape his misdeed
11 is for them to convince you that these people are
12 crackheads, some of the State's witnesses are
13 felons or their testimony was purchased.

14 Now, you can conclude for yourselves,
15 independent of anything that anyone has to argue
16 to you who should be believed and who should not
17 be believed.

18 If you take the facts that you know are not
19 disputed and see if they corroborate the State's
20 witnesses, that they will undoubtedly argue are
21 not believable, and I ask you to consider this,
22 remember the State does not get to choose its
23 witnesses that were involved in this conspiracy.

24 They were chosen by the Defendant, Danny
25 Smith and Raymond Smith and I ask you to consider

1 that it just might be fair for you to think that
2 whatever defense counsel says about some of the
3 State's witnesses might actually be a reflection
4 on the Defendant.

5 In other words, if they stand up and argue
6 that the State's witnesses are such and such or
7 so and so, crackheads, should not be believed,
8 it might be fair for you to take that same
9 standard and measure the Defendant by it.

10 It is undisputed that he knew the people
11 he chose to borrow their car, they drink
12 together, they did drugs together, and they
13 planned and carried out the conspiracy to
14 commit the homicide together.

15 The State is not arguing that the
16 witnesses are less than decent people or
17 unsavory characters. They are, they are the
18 kind of people that would be involved and
19 chosen or solicited by the Defendant and
20 his kind to participate in such a dastardly
21 deed.

22 Now, I also suggest to you it might be
23 fair to measure both sides by the same
24 standards and that there are principals
25 involved in assessing credibility that should

1 apply equally and logically to all witnesses
2 if they are valid and one example of this I
3 would like you to consider from the start,
4 which I considered just astonishing, and I
5 want you to recall that Mr. Cleary made it
6 very clear in opening that it would be up
7 to the State and probably for you to hold
8 the State to the requirement that they show
9 that the Defendant was more than just there,
10 more than just a bystander.

11 We all agree that is fair, right?

12 If he was just there while somebody else
13 did this, he should not be charged and that is
14 what he argued to you in opening and you may
15 recall that, but consider now what he says
16 about Michael.

17 They want you to discredit Michael Smith,
18 the son of two co-Defendants because he put them
19 there with other people. He was the one actually
20 there and knows exactly what Stanley did, so they
21 are going to want to discredit him. They are
22 going to want to say that his testimony was
23 purchased.

24 First of all, bear in mind the uncontradicted
25 testimony is that these Indictments were returned

1 before Detective Leiby interviewed Michael Smith.
2 More importantly here, Michael got a walk, Michael
3 didn't get charged. He is the only one that
4 didn't get charged and by that, they are inferring
5 to you that maybe we got Michael to say these
6 things by not charging him.

7 How does that compare with what he told you
8 in opening statements?

9 He tells you in opening that someone who was
10 just a bystander should not be charged and the
11 State has to prove more than that to get a
12 conviction.

13 Well, he is right and Michael was a
14 bystander, so you are going to -- through his own
15 standard as to what is required, and he was right
16 in opening, that he has to be more than just there
17 before we can convict him and that is proper, that
18 is fair, and that is all he was by his standard.

19 Michael did not get a walk, Michael did not
20 deserve to be charged and if he were charged and
21 forced to be coming before 12 people like
22 yourselves, what evidence would I give to you
23 that said Michael Smith deserves to suffer life
24 or the death penalty for being there?

25 I have none, so it is unfair for Mr. Cleary

1 or anyone else to suggest that Michael got a break
2 to purchase his testimony when we all know by his
3 own standard that Michael should not have been
4 charged in the first place.

5 Now, is there some sort of sliding scale of
6 justice that should change when we are viewing
7 the State's witnesses as opposed to anyone else?

8 I think not and I think you know that there
9 are standards that should apply to everyone so I
10 also want to point out there is no testimony or
11 no argument that Linda Altpater's testimony was
12 secured by anyone and the same for Sharon Hopkins.

13 Now, Michael -- the State feels it proved its
14 case without Michael, but he was a very important
15 witness. Michael Smith was there.

16 Now, think about what Michael says and think
17 about what is supported by uncontradicted facts
18 or other testimony that will lead you to conclude
19 that what he says to you is absolutely true.

20 Michael tells you he and everybody else in
21 that car were doing crack. You have the coroner's
22 report that verifies the victim did crack.

23 Michael tells you that Raymond Smith had a
24 gun. We know the victim was shot. There was a
25 shell found there.

1 There is a bullet lodged through his tongue
2 in the back of his throat and you have pieces,
3 parts of a gun that fell apart like Michael says.
4 He got out of the car -- Michael says Raymond
5 Smith got out of the car with the victim, one
6 on one, with a gun, with a gun.

7 He had the upper hand. Whether something
8 happened to the gun or not, there was only one
9 shot fired, there was a round recovered that
10 had not been fired.

11 Michael is probably telling the truth about
12 something going wrong with the gun. He needs
13 help. He asked them both to get out of the car.
14 Michael does not get out of the car, but who
15 volunteers, the Defendant.

16 Michael tells you that the Defendant got
17 out of the car to aid Raymond Smith in finishing
18 off Ron Lally after he had been shot. He tells
19 you that you could hear blows landing and then
20 the Defendant drove the car three times into the
21 victim and then abandoned him there to freeze to
22 death.

23 What evidence do you have that tells you
24 that what Michael says about that is true?

25 You have the gunshot wound photograph that

1 demonstrates that. You have the pictures of the
2 separate blows to the head, of which there were
3 at least 11. You have the coroner's testimony
4 that the injuries are consistent with someone
5 backing a car into him and him being stomped.

6 You have a photograph that shows that there
7 are three separate areas of blood where this
8 happened, that there are tire tracks in the
9 blood and that Ron Lally's body was obviously
10 moved from these areas by something, which all
11 confirms what Michael has to tell you about
12 the Defendant driving the car.

13 Michael Smith tells you that Raymond Smith
14 -- he had a knife and Stanley produced one. You
15 have the coroner's testimony coupled with these
16 photographs that someone attempted to slit Ron
17 Lally's throat in a further effort to
18 assassinate him.

19 These things all tell you that what Michael
20 was telling you is actually what happened.

21 You also have Terry Hopkins' testimony that
22 the next morning this Defendant said they stomped
23 him and ran the car into him, which is also
24 consistent with the photographs and Michael's
25 testimony.

1 You have testimony that Michael said they
2 tried to put the Defendant into the car -- or
3 the victim in the car after they killed him.
4 You have the trunk liner. You have the blood
5 test that shows that the blood is the same type
6 and genetic markers and the odds of that are
7 four in 100,000.

8 You also have the recovered knife that
9 supports what Michael has to tell you.

10 Now, Michael tells you that Raymond Smith
11 and the Defendant ultimately beat, ran over and
12 let Ron Lally freeze to death. You have many
13 things to corroborate that.

14 You have Raymond Smith and the Defendant
15 returning the car at 5:30 in the morning. You
16 have the car washed in a very unusual
17 circumstance and what may be the coldest
18 day of the year.

19 You have the blood on that car. You have
20 Homoki seeing this person, appearing with Danny
21 Smith, and the threatening of the victim in
22 advance of the homicide being carried out.

23 You have Terry Hopkins' testimony that both
24 Raymond Smith and this Defendant admitted doing
25 it the next day and you have Carl Hartman's

1 testimony that Danny Smith said that his dad,
2 Raymond Smith, and this Defendant would carry
3 the threat out.

4 He no longer needed to recruit Carl Hartman
5 after he refused. You have Michael Smith telling
6 you what car it happened in. You have Sharon
7 Hopkins' testimony regarding that.

8 Again, you have the trunk liner, you have
9 the returning of the car and Brian's testimony
10 the next day. You have all these things to
11 corroborate what he tells you is true.

12 You have Sharon Hopkins being present in
13 the elaborate plan that put the Defendant,
14 Raymond Smith and Michael Smith with the victim
15 in this case the early morning hours of January
16 19th, 1994, somewhere way out on Middle Avenue.

17 You have Michael Smith telling you that
18 Raymond Smith made a call. You have Brian
19 Howington telling you that sometime during that
20 same time interval the Defendant received a page
21 and then he elected to leave and needed the car
22 and took the victim with him.

23 You have Michael telling you that the motive
24 was, in fact, to silence Ron Lally's testimony
25 because he was a witness. We know he was a

1 witness from everybody's testimony.

2 You have the Court document. You heard the
3 two police officers. You have the tape of the
4 drug buy. You have the fact that this
5 assassination was carried out on the day of
6 Danny and Raymond Smith's jury trials.

7 Michael Smith tells you that there was a
8 plan -- or his testimony led up and shows you
9 -- he couldn't say it directly -- there had to
10 be a plan, could not be a coincidence.

11 They were out at 2:30 in the morning, out
12 Middle Avenue, all timed perfectly, happened to
13 be in the same spot with this Defendant arriving
14 with the vehicle to carry out this plan.

15 You have Lynne's testimony that confirms that
16 Michael is accurate about this. She is one of the
17 two witnesses that the defense, when questioning,
18 not even hedged, were there any types of promises
19 or anything offered and she said that Danny tried
20 to get something to knock the victim out and then
21 wanted poison.

22 You have Brian -- I am sorry -- you have Carl
23 Hartman being asked to do it and you have Terry
24 being asked to do it, all showing planning that
25 this was something that they worked on for a

1 period of time.

2 You have threats to Sandy Williams saying
3 that this would happen if he persisted. You have
4 the threat carried out by Danny Smith with the
5 Defendant there and witnessed by Patrolman Homoki.

6 What you have here is a set of facts that so
7 dovetail that we know what Michael is telling us
8 is true. You know what Sharon is telling you is
9 true.

10 You know that the people who said they were
11 recruited about the conspiracy to do it, but
12 refused, and later were told that their plan,
13 and Raymond Smith would carry it out, and I don't
14 have any doubt that these people were involved in
15 a controlled and calculated conspiracy to silence
16 the testimony of a witness so that Danny Smith and
17 Raymond Smith could continue their drug dealings
18 to support everybody's drug habit.

19 Raymond Smith and this Defendant were driven
20 by their addiction to crack. They could not let
21 the big empire fall apart. They cannot have
22 people turning State's evidence and setting them
23 up.

24 If you are a drug dealer that can appreciate
25 that, you are instantly out of business. These

1 people embarked about a course of conduct in a
2 plan to get that victim high on crack cocaine
3 with someone that he did not immediately
4 recognize, the Defendant, as being a threat, to
5 get him out of town or something went wrong, take
6 care of him, hold him at gunpoint to get him in
7 to Cleveland where they could brutally and
8 savagely do him in on the day he was to testify
9 against Raymond Smith and Danny Smith.

10 This man sits before you as a principal
11 where he actually provided some of the weapons
12 used, actually ran him over with the car and if
13 you recall Dr. Raff's testimony, that would have
14 been sufficient in and of itself to kill the
15 victim.

16 The gunshot did not do it, the wound did
17 not do it, the stomping, running him over with
18 the car and the abandonment of Ronald Lally,
19 to let him die of exposure, are acts that he
20 committed with his own hands.

21 He is responsible for committing them,
22 having the gun as well, but he did the things,
23 he participated in them directly that led to
24 the brutal and savage death and I believe that
25 the evidence requires that you find him guilty

1 of Aggravated Murder.

2 Thank you.

3 THE COURT: Mr. Grunda?

4 MR. GRUNDA: Thank you, your
5 Honor.

6
7
8 CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE DEFENDANT
9 BY MR. GRUNDA:

10 On behalf of myself, Mr. Cleary and Mr.
11 Jalowiec, I thank you for your attention
12 throughout the trial. We appreciate it because
13 it is very serious.

14 Now, as the Prosecutor said in his opening,
15 what he was going to prove to you and what he is
16 indicating now, is this a carefully orchestrated
17 plan or scheme?

18 If you have something that is equally not,
19 that is not proof beyond a reasonable doubt.

20 One thing I thought of while I was sitting
21 there, if this is such a well orchestrated plan,
22 why is Michael there?

23 You see, it doesn't fit. How does all of a
24 sudden he become a part of the plan and nothing
25 happened to him?

1 How did he just happen to be there and be
2 involved in this well orchestrated plan?

3 Why would you fake a guy had nothing to do
4 with it, then, so something is wrong with the
5 well orchestrated plan -- but before I get into
6 this too much, let's take and step back a minute,
7 okay, let's talk about how this all started, what
8 you agreed to do and what is really going on here.

9 First, remember when we went through the
10 voir dire you were asked can you be a fair and
11 impartial juror and you all said yes and you
12 agreed to do that. You agreed that outside
13 influences weren't going to do anything in here.

14 Maybe I didn't get a haircut, all those
15 outside influences are not going to bother you.
16 You remember that you agreed to that.

17 You also agreed that being a fair and
18 impartial juror you weren't going to be
19 influenced by any highly inflammatory remarks,
20 prejudicial remarks, things to get you influenced
21 in that way because it is not backed up by any
22 fact and the more descriptive words they use
23 like that shows how weak their case is.

24 I hope that you are not going to be
25 influenced by words like brutally and savagely,

1 cold and calculated, dastardly deeds,
2 assassinated. I thought that was about a
3 President. It is not.

4 And again, these are words that they are
5 using to try to influence you not to make a
6 decision on the facts, but to try to get such
7 an emotion, because of the type of offense,
8 to have you find him guilty without it being
9 backed up.

10 Mr. Rosenbaum showed you pictures. They
11 are gruesome. I told you that before, that they
12 were going to be that way and I asked you not to
13 be influenced by that to the point that you are
14 not making a decision based on facts and I give
15 the Prosecutor credit because he is very good
16 at doing that, but I am asking you not to be
17 influenced by that because you wouldn't be the
18 juror that you promised, which is fair and
19 impartial.

20 So, please, I would ask you, let's be
21 deliberate. You look at the letter of the law
22 and apply the facts, not the emotions.

23 One of the other things we talked about,
24 proof of innocence. You all remember that. I
25 gave you the speeding ticket example.

1 Remember, Stan has that presumption of
2 innocence throughout this trial. They have
3 not taken that away. The Prosecutor has the
4 burden of proof. He agrees to that.

5 He has to prove every element beyond a
6 reasonable doubt. Any element that he does not
7 prove to that degree -- and you agreed not to
8 lower it for him -- your duty, whether you like
9 it or not is to return a verdict of not guilty
10 because he has the burden of proof, okay?

11 And you remember the example I gave you
12 there. You are at work, something comes up
13 missing while you are at work and you are in
14 that area. Just because somebody accuses you
15 doesn't mean that you did it. You don't have
16 to prove you didn't do it.

17 Just like the Prosecutor has to prove in
18 this case every element beyond a reasonable
19 doubt. And you have to remember, when we are
20 talking about proof beyond a reasonable doubt,
21 this is very, very important and significant,
22 because if you have, and you look at it and
23 you think, well, they said this and there is
24 an equal and opposite counterpoint, that is
25 not proof beyond a reasonable doubt.

1 Even if they meet the civil standard,
2 preponderance of the evidence, that is still
3 not proof beyond a reasonable doubt and you
4 all agreed that you wouldn't return a verdict
5 for guilty unless proof beyond a reasonable
6 doubt is there.

7 You agreed to that standard.

8 Now, let's look at the elements and what
9 we are dealing with. Not emotional matters,
10 not pictures to get you upset, but look at what
11 elements we have and how the testimony applies.

12 First, we have purposely. Was there a
13 specific intent to cause a certain result?

14 That is purposely and you will hear the
15 Judge give you instructions on that and he is
16 going to tell you that you get to weigh into
17 that the absence of a motive in here, but
18 really, what motive does Stan have to do with
19 the Smith family problem?

20 There was no evidence offered of any drug
21 dealings between them. There was no evidence
22 offered of any drug empire. There is none of
23 that.

24 The other element we have to deal with is
25 prior calculation and design. Prior calculation

1 and design, not and/or design, and that really
2 deals with a definite reason process and these
3 are the letters of the law that the Judge will
4 instruct you on and I ask you to follow.

5 Was it a mental plan, a studied, structured
6 plan?

7 That is the level you have to hold them to.
8 He has to prove that to you beyond a reasonable
9 doubt and you are not to fill in the gaps for
10 him. He has to prove them to you.

11 Was it studied by a method and means that
12 is all part of this prior calculation and design?

13 It is not there. The Judge will tell you
14 if it is a spur of the moment, that is not prior
15 calculation and design. It is not part of the
16 study, plan and scheme. They didn't prove that.

17 It is your duty to return a verdict of not
18 guilty.

19 They have to show you that and what they
20 are trying to say is Stan caused the death of
21 Ron Lally. Even if you believe their best
22 evidence, Michael Smith -- and I don't -- but
23 even if you do, there is no evidence that Stan
24 even touched the gun or had it, did any of it,
25 but they have to prove beyond a reasonable doubt.

1 he caused that death.

2 No evidence of it.

3 Then we also have to talk about venue,
4 important element. Say in Lorain County -- this
5 didn't happen in Lorain County, this happened in
6 Cuyahoga County, which is Cleveland, that is not
7 part of the element because if you believe what
8 the Prosecutor says, in Michael's story the plan
9 was never to kill anybody.

10 The plan was to take him to Cleveland and
11 put him on a bus. No plan started here, venue is
12 not correct. If something happened in Cleveland,
13 it doesn't meet that, because it says in Lorain
14 County.

15 Your duty, like it or not, is to return a
16 verdict of not guilty.

17 Now, what will happen is, they back up from
18 saying he is the principal offender and that he
19 did it and say it is complicity. He aided and
20 abetted, but you still have -- in complicity you
21 have to be aware, aware -- totally aware of the
22 design and purpose of the principal.

23 So, in other words, if they were going to
24 take him and all he heard was a conversation about
25 going to Cleveland and putting Ron Lally on the

1 bus and Raymond Smith in his own mind all of a
2 sudden changes it and decided he is going to do
3 something improper, that doesn't mean Stan is
4 aware of anything and he had to be totally aware
5 to be in complicity.

6 It is not there.

7 When you look at aid, is there anything to
8 show he aids?

9 He never handled the gun, no testimony of
10 that. Where is the assistance?

11 Where is the threat, where is the
12 encouragement?

13 Did you hear any testimony regarding that
14 through the whole thing?

15 Nothing, nothing said in the car by Stan.
16 He didn't say anything. How is that encouraging
17 and inciting?

18 How is that -- because the guy has the gun
19 telling him and ordering him around -- how is
20 that encouraging that person when he is ordering
21 you around?

22 They have not met any of the elements of the
23 burden.

24 Now, I have a problem here because this is
25 my only opportunity to talk on behalf of Stan and

1 the Prosecutor will get another chance and I won't
2 have anything to rebut what he is saying or bring
3 up things that maybe he says differently than I do
4 and testimony that you heard differently, and I am
5 asking you, when you go in there, since I don't
6 have a chance, bring up the other factors, because
7 it is not right to totally dismiss them when they
8 exist and I know you took notes.

9 Bring up those things on his behalf. You
10 know why, because every time you look at it and he
11 says one thing, there is a counterpoint to it and
12 every time you get them equal, that is not proof
13 beyond a reasonable doubt.

14 Reminds me of the old 60-minute show, point,
15 counterpoint. Every time he said yes, they said
16 no. Valid reason either way and not proof beyond
17 a reasonable doubt because they are equal.

18 Use your common sense. He is asking you to
19 fill in the gaps that he left by not putting in
20 testimony. You are not supposed to do his job
21 because last night when I was looking at it and
22 kind of doing a basic overview, some of the very
23 things that I thought were important and critical
24 in going through this, if this was so bad and Stan
25 was so involved -- Brian Howington and Corinne

1 Fike testified they saw him afterwards.

2 You know, I thought, well, if this is
3 the case, how come he didn't have any blood
4 on him?

5 How come there is no injuries to him?

6 Why didn't he have any torn clothing?

7 You know, to make sure I even asked the
8 Court Reporter, Mr. Masterson, to go through
9 that testimony of those two people. Nothing
10 there about blood, injuries or torn clothing.

11 How could you miss that if you saw him
12 right after?

13 Why are there no fingerprints?

14 The coroner testified there is no stomp
15 marks and they would have seen that.

16 Why are there no tire mark injuries if he
17 ran him over?

18 How come there is no crushed ribs?

19 As he wants you to believe, all of these
20 are why questions that are unanswered. That
21 was necessary proof. He needs to prove to you
22 beyond a reasonable doubt and every time you
23 get a why, that is doubt.

24 No blood on him. There was no testimony
25 even about blood in the car on the driver's area

1 where he was supposedly at. Nothing there either.

2 Where did that go?

3 You know you can't miss it, but it is not
4 there. No injuries, no torn clothing, no crushing
5 marks, no tire marks on the guy. No stomping
6 marks. No fingerprints.

7 There is eight right there that have been
8 unanswered. That is doubt, but, see, he doesn't
9 want you to look at that. He would rather use
10 descriptive words to get your emotion going and
11 say, we have to do something here and I am
12 asking you not to do it.

13 He didn't do his job. The evidence is not
14 there.

15 He agrees and what he told you and what
16 the Judge is going to tell you, a person is not
17 guilty for presence, just being there doesn't
18 make you guilty and he agrees with that. It is
19 not enough, associating with a person or knowing
20 a person may be guilty, it is not enough.

21 The Judge will tell you that those things
22 are not enough coincidence to happen.

23 Now, let's go through the time line, because
24 when the Prosecutor gave you his opening remarks,
25 he told you he is going to prove all these things

1 to you beyond a reasonable doubt, beyond a
2 reasonable doubt. He is going to prove it.

3 I wrote it down. The first thing that he
4 talked about in the way the testimony went, if
5 you recall, the first day they had a lot of
6 people and I don't refute some of the things he
7 said because the first day was all testimony
8 about Danny Smith. Nobody ever mentioned Stan.

9 All of the things he is talking about,
10 poison and all these things, nobody mentioned
11 Stan. There is no testimony whatsoever by
12 anybody that there was a drug enterprise, a drug
13 business. They were in cahoots. None of that.
14 No evidence of it, but he wants you to believe
15 that because it makes the story better, fills
16 in the gaps. It is not there.

17 Start with Ron Lally going to the police
18 and he signs the CI agreement and if you look
19 at that, it is quite specific as to who he knew
20 and what he was going to do. You don't see
21 Stan's name in here anywhere. That is not
22 mentioned either and none of the people that
23 testified ever said there was any drugs.

24 No name of Stan and no names of Smith, but
25 he is going to clean up his life after he does

1 the one deal for Detective Leiby on the Smiths.
2 Then he diverts right back into the drug world.
3 Okay.

4 Now, what they did show because of that
5 were two cases, one against Raymond Smith, one
6 against Danny Smith. There is no Stan Jalowiec
7 in there anywhere. Stan is not mentioned.
8 Stan wasn't there. Stan is not a part of this.

9 And, the other thing that is in here, if
10 you look, the Indictment is for less than
11 minimum bulk amount, small amount. The guy
12 would get probation.

13 What are they talking about, killing
14 somebody?

15 Doesn't make sense, but the important
16 thing is, you don't hear -- Stan's name is
17 not in the Indictment. He has nothing to do
18 with it. That is the testimony.

19 Now, it goes a little longer. He goes
20 into the time line, then he talks about an
21 incident with Homoki. Remember, that happened
22 at Mr. Hero, but what I see is important.

23 Now the prosecution is turning and twisting
24 something here, because what we have here,
25 looking at a situation, I could put a glass of

1 water down half full.

2 Are you going to say half full or half
3 empty?

4 Same situation. You are looking at it
5 two different ways, right?

6 Well, you look at the think that Homoki
7 talked about. You are at this point. They
8 don't show that they were together. There
9 was no testimony that Stan was with Danny.
10 All that Homoki testified to was when he was
11 pulling up, Stan is already across the street
12 by the muffler shop, okay?

13 Well, they didn't show they were together
14 and I ask you, if you don't want to be involved
15 with whatever the problem, what do you do, do
16 you leave?

17 If you don't want to be involved in it, you
18 leave. If you are involved in it, you stay.

19 What did he do, he left, he didn't want to
20 be involved in it. It is illogical to assume
21 otherwise. He is not involved and leaves, no
22 testimony to that whatsoever.

23 Additionally, was there any testimony that
24 Stan even knew that the Smiths were charged?
25 No.

1 Was there any testimony that he even knew
2 when the trial was? No.

3 Gaps they didn't fill in. They want you to
4 fill them in, but they didn't, and that is their
5 job.

6 He talks about this big conspiracy, carefully
7 orchestrated plan, okay, and he talked about it
8 and what it is supposed to be is, you know, he
9 picks him up in the car. You look at what is
10 going on. There is no animosity with Stan and
11 Ron.

12 He is partying with Brian Howington later
13 on. They go over and they went to bars. Brian
14 said they went to Power Slams and you hear all
15 the other testimony of the people.

16 Brian said he didn't go with Hopkins and all
17 the other people, yet Hopkins said they went there
18 and then went to Razzles. In any event, they go
19 over Ron's house, nothing unusual, no animosity,
20 no problems, nobody arguing, no threats, no
21 nothing.

22 Ron comes back with him so you have the
23 three of them, Brian Howington and Ron and Stan
24 over Fike's house. There is no problems, no
25 mention of anything. They shoot pool, do more

1 drugs, no problems.

2 He gets a call to go. Now, here is where
3 the Prosecutor is looking at it differently,
4 half empty, half full. It is cold out. A guy
5 calls and asks for a ride. It is freezing.

6 Are you going to say no, stay out there
7 and freeze?

8 So you go, pick up the guy. What is
9 important about the whole thing?

10 I asked Brian, did you know Ron, and he
11 said no. He basically indicated he couldn't
12 stay there because he didn't know him. It
13 wasn't Stan's idea, that is Brian telling him,
14 "I don't know this guy, you can't leave him
15 here," so he goes with Stan.

16 Now, I don't know. There is no evidence
17 to show that Stan knew what the Smiths were
18 doing. There is no evidence to show that Stan
19 was at Mom's and he knew about anything.
20 There is no evidence to that, nothing.

21 All he does is pick up a guy because it is
22 freezing cold outside and the other guy said,
23 "you can't keep your buddy here, take him with
24 you," so he goes over there and they pick him
25 up.

1 If this is such a well orchestrated plan,
2 how come he happens to land at Mom's and how
3 come Michael goes along with the plan if he is
4 not part of it, or is it Michael is a part of
5 it, but when he sees three other people
6 indicted, he doesn't want to get involved
7 because he sees the noose around his neck.

8 So he says, well, everybody else did
9 this to get him off the hook. Is this a
10 mere coincidence that Michael shows up?

11 Michael's story doesn't jibe with
12 Sharon's. Sharon said they stopped the car.
13 She is the furthest one away. She leans
14 across and says something and Michael said
15 nobody stopped the car, so their stories
16 don't jibe either.

17 If you do believe Michael, what did he
18 say?

19 They were leaving, there was no threat
20 to kill anybody. They were taking him to
21 Cleveland to put him on a bus. If there
22 was a plan, that is the plan. That is the
23 plan that started in Lorain County, to be
24 put on a bus there.

25 There is no testimony of anything other

1 than that. That is it.

2 Maybe Raymond pulled the gun. We do know
3 the gun is put away. The point is made, you
4 are going to a bus, the guy agrees okay, fine.
5 They stop, buy beer, drink the beer, and they
6 smoke crack all the way into Cleveland. Still,
7 the plan from Lorain into Cleveland is to get
8 on a bus.

9 If you believe it, that is all there is.
10 Nobody is threatening anybody in the car.
11 There is no testimony of that. None. You
12 can't fill in the gaps. You can't say they
13 are there.

14 They rode around to get him crack, to go to
15 the bus. There is no showing that anybody knew
16 anything else. Raymond is the one orchestrating
17 the thing, not Stan.

18 There is no testimony Stan is orchestrating
19 anything, he is the man in charge, none. No
20 evidence of it, none whatsoever. Then things
21 take a turn for the worst because Raymond orders
22 them to do things.

23 Now, the Prosecutor is asking you to do this
24 both ways. You heard Detective Leiby when he
25 testified. He is the man of influence. The

1 three people that he wanted in jail are in jail.
2 The three people he wanted out because of this
3 case are out.

4 Why are they out?

5 Because they said there was going to be this
6 fear for them, something might happen to them in
7 the jail. Well, that applies to Stan, too. If
8 you are in a car with the guy ordering you around,
9 he has the fear factor, too. You can't say that
10 doesn't apply to him.

11 Either eat, Prosecutor can't have the cake
12 and eat it, too.

13 Then we get down to the cemetery. Michael
14 says he is in the car, Stan is in the car. What
15 happens outside, we don't know. Really, we don't
16 know because there is no evidence that anybody
17 saw anything, zero.

18 Michael says he was in the car. He didn't
19 see it, but could -- incidentally, he is there,
20 not part of this well orchestrated plan -- well,
21 I want you to look at Michael a minute.

22 You have blood family members there versus
23 Stan. No evidence of any dealings with Raymond.
24 They are trying to say he is with Danny, but
25 there is no blood, there is no family

1 relationship there. There is nothing.

2 You know, it is his father that is asking
3 for help in doing it. I thought -- well, the
4 thing that really amazed me about Michael, he
5 has a lot of psychological problems before any
6 of this that he admitted to. Four times he is
7 in the psychiatric hospital before this, but
8 he said, "It was on my conscience so bad I had
9 to come forward."

10 Somehow that didn't fit because if it is
11 so bad and you are so traumatized by it, why
12 do you go home and go to sleep?

13 You know, then he said he had nightmares.
14 I thought, why do you have nightmares if you
15 didn't see anything?

16 The other thing that amused me is, he sat
17 up there and said all this totally emotionless,
18 nothing. Well, how does that fit with it, so
19 upset and it bothers you so much, and you have
20 to come clean, no tears, no nothing up there,
21 nothing, or is it that really it is family and
22 he is the one outside doing whatever because he
23 knows this, because he was saying stomped.

24 How does he know that if he didn't see it?

25 If he wasn't outside, but he said it was

1 him doing it, and he knows, because they are
2 coming to get him because they have the three
3 others to get everything off him. That is to
4 me more plausible, at least you have a family
5 motive going on there.

6 We have no connection with Stanley.
7 Otherwise, what is the trauma if you don't even
8 see anything?

9 Then the Prosecutor says they did it here.
10 We have that half empty, half full argument,
11 okay?

12 If you were outside in that hall and saw
13 two people fighting and all of you came in to
14 report to one of the deputies and you said to
15 them, "Hey, they were fighting," that doesn't
16 mean when you say "they" that you are part of
17 the "they."

18 The Prosecutor says when Stan says, "They
19 did it," that he means he is part of it and I
20 am saying again, we have this half empty, half
21 full situation. He wants it to be that way.
22 It helps his story. Doesn't necessarily mean
23 that "they" meaning somebody else, not you
24 being a part of it.

25 He is still under apprehension like Leiby

1 says and everybody else, if he had nothing to do
2 with it and was there, but saw him do that, any
3 reasonable human being would be in fear. I am
4 not going to go running around telling police
5 both ways.

6 Let's look at all the testimony because I
7 went through it. You know, Ashley is the first
8 one that testified. Stan had nothing to do with
9 the Smiths' charges or deals, whatever.

10 Again, we know it is a small amount of
11 drugs, small drug deal at that time and only one
12 of them, Sandra Williams, Mr. Lally's girlfriend,
13 she admitted he stole from her, but again, no
14 testimony from her about Stan Jalowiec, nothing.

15 Then Homoki, the things that I noticed in
16 his testimony is his description and size of Ron
17 are different from the coroner's because he said
18 Ron is smaller than the coroner, but the big
19 thing is, where was Stan?

20 He wasn't helping or being a part of it.
21 He was across the street, he didn't want nothing
22 to do with it, which is the logical thing to do,
23 you leave, okay?

24 It was nothing that the officer even felt
25 to go over and ask him for a report, because

1 they didn't feel it was necessary or he was a
2 part of it. No proof that he was with Danny.

3 Lynne Altpater testified, had a lot of
4 stuff to say against Danny, but not Stan.
5 She never mentioned Stan once.

6 Carl Hartman -- now again we are going
7 to start getting into people testifying against
8 him who are either drunk, like Terry Hopkins
9 who had 12 beers plus a couple shots of whiskey
10 and are high on crack, and their testimony was
11 somehow orchestrated, bought and paid for,
12 whatever, because Detective Leiby, when they
13 talked to him recently, if he doesn't get what
14 he wants or how, he is asking the questions so
15 they kind of pick up where they need to here.

16 They get out of jail. He admits that
17 because he got the people out he wanted, but
18 again, through their questioning several times,
19 they pick up on how they are supposed to answer.

20 And the third thing is, anything that
21 doesn't deal with what Leiby wants or the
22 prosecution wants, they can't remember -- and
23 before I get into this, let's look at an
24 example, because I know the Judge is going to
25 tell you, when you judge credibility you have

1 to look at it in the most important of your own
2 affairs, okay?

3 So when we start getting into the rest of
4 these people, do you really believe them when
5 they testify?

6 Say they were to tell you that you needed
7 heart surgery, something threatening your life,
8 you need heart surgery and this is the person you
9 are relying on to tell you that.

10 Because it is a serious affair for you, and
11 more importantly that after they tell you that and
12 you believe it, what you are going to let them do
13 is, before they do the operation, drink 12 beers
14 and a couple shots of 151 or smoke a bunch of
15 crack because it will lighten your awareness,
16 so you just put that in perspective.

17 Are you going to believe those people in
18 the most important of your affairs where they are
19 going to operate on you and you might not live?

20 That is what we are talking about now. We
21 look at Carl. He is convicted of violence. He
22 doesn't want to be in jail. Leiby gets him out.
23 First time he says something not what Leiby wants,
24 so he gets picked up again, gets out, so the story
25 gets around to the way it was supposed to be.

1 He didn't know Stan. He didn't tell him,
2 like he was the guy offered the BMW and \$5,000.
3 That is more motive than anything about Stan.
4 They didn't say anything about him. They can't
5 connect him with anybody or say anything like
6 that.

7 Then you look at Terry Hopkins, this guy
8 really fits all three. He is drunk at the time.
9 His testimony is bought and paid for by him
10 getting out of jail on super shock probation
11 and anything that is not for the Prosecutor
12 he can't remember.

13 Again, remember, he is sitting in jail
14 on attempted aggravated burglary, attempted
15 felonious assault, domestic violence and
16 criminal damaging. He wants out. He is
17 going to say whatever. He is going to talk
18 to them.

19 First, I will get out of jail if I keep
20 telling the right things, but Terry remembers
21 the reverse.

22 He refers him over to Carl Hartman because
23 in the offer he really didn't believe it, but
24 what is important about him, he said that he,
25 being Terry, Tammy, Danny, Sharon and Misty,

1 went to Razzles because when we get to this
2 later, it doesn't jibe with what everybody
3 else is saying.

4 Again, he had the 12 beers, double shots
5 of 151, his perception can't be too good. He
6 is real drunk, okay, he says he went to Mom's,
7 but you will remember later that the sister
8 said he didn't, he wasn't there.

9 How could he know he was there?

10 He admitted he was drunk. Everybody was
11 relaxed, having a good time, no problems. He
12 didn't think anything that Danny said was
13 anything serious. He didn't even go to the
14 police because it wasn't.

15 Then when it is not what they want, then
16 he can't remember what she said, but he did
17 admit to giving a statement to Leiby, getting
18 out on probation after he did that.

19 We are not sure if he gave a statement
20 first and now he is doing all of the testifying
21 after he was out and he wants to stay out.

22 Now, before we get into the specifics,
23 look at what Sharon said. Sharon Hopkins'
24 story doesn't jibe with Danny and they are
25 supposed to be together.

1 This is what they testified to. Sharon
2 is drunk, too. She said she was with Danny,
3 Tammy, Terry, Misty, and she said Pops, which
4 is Raymond Smith and Stan Jalowiec.

5 Well, that is not consistent with what
6 Terry said. They know they have to say certain
7 things to help certain stories, but now we have
8 two extra people, you know, and she is the one
9 that was out drunk, went to Mom's and she said
10 that her brother wasn't there, he went home.

11 She is the one out partying while nobody
12 is home watching the kid and she is the one that
13 said when they dropped people off in the car,
14 she got out of the car, yelled across the car
15 to see if his brother was in there, but remember,
16 Michael says that never happened, so again, we
17 have a problem with that.

18 The other thing is with Tammy's testimony,
19 it is entirely consistent and very, very critical
20 and I am sure you got this, that Terry said that,
21 you know, after this incident and Danny came back,
22 he was so appalled by it, he couldn't stay there,
23 but Sharon says the exact opposite.

24 He went to Danny's. She expected Terry to
25 come right back. That is what she said. She

1 expected him to come back, but his story is a
2 little better and helped Leiby and the police
3 when he said, "I was so appalled by this I
4 couldn't stay there."

5 Terry said that wasn't the case at all,
6 said he was going over to Danny's and coming
7 right back. If anybody is involved in Danny's
8 deal, why isn't it the guy that lived with him
9 and there was no testimony that Stan was even
10 over there.

11 We have two people saying totally different
12 things here.

13 Then we have Brian Howington. Biggest
14 thing that I remember about Brian is what he
15 didn't say, no blood stains, no blood in the
16 car, no torn clothing, the eight "nos" I talked
17 to you about before.

18 How could he miss that?

19 But anyhow, it is not there. You can't
20 fill it in. He was offered immunity. Even
21 though it is only in part, he is getting the
22 benefit. He said he was with Stan all night,
23 never saw him with a gun, never was
24 orchestrating everybody around.

25 He is the one that said, "You can't leave

1 Ron here," when Stan was going to go. He said
2 that Stan wasn't forcing him to go. Brian is
3 the one that says, "Don't leave him here, I
4 don't know this guy," and there was no threats
5 of anybody killing him and he was with him all
6 night.

7 He said he went out drinking but they went
8 to Power Slams and parked in front of them.
9 That differs from what Sharon said because she
10 said they went with him and were at Razzles.
11 That doesn't fit either.

12 And, again, the whole night no talk of any
13 Ron Lally. Again, they partied, smoked crack,
14 they went to the bars, then over to Ron's house.
15 The four of them were together because they said
16 they were with Ron's roommate.

17 Nobody testified to any threats. Ron went
18 back with them, smoked more crack until he is
19 going to leave. Then Brian tells him, "You have
20 to take him with you."

21 THE COURT: Mr. Grunda, you have
22 five minutes right now.

23 MR. GRUNDA: Then we have some of
24 the other people, a replacement of front tires.
25 Remember that if he backed over somebody, why do

1 you replace the front tires. That doesn't make
2 sense, okay?

3 There is no evidence of any mold or any
4 matching of any tires. Again, when you look
5 at Fike, she saw no blood either and she was
6 there. Nothing on him, no injuries, no
7 nothing. All she said, it was cold.

8 I didn't get to go through all of this.
9 but again, you know all the people and what
10 they were saying. What I am trying to tell
11 you is, there is very inconsistent statements.

12 The question with Michael is that he is
13 the only person that wasn't charged with murder.
14 He said in the testimony that he was surprised
15 by the whole thing, so there wouldn't be a plan.
16 If there was a plan, the plan was to put him on
17 a bus and get him out of town.

18 He never saw Stan touch Ron Lally. He never
19 heard Stan threaten him. There was no proceedings
20 against Stan. He didn't see anything there. No
21 plan was discussed in the car. Stan drove where
22 he was supposed to go, never had the gun, okay?

23 But what is really important, too, with some
24 of this and what you have to look at are -- look
25 at the coroner's report, coroner's verdict and

1 the trace evidence because in the trace evidence
2 you are going to find certain things from page 5
3 through 8 because they checked this car.

4 You have pictures of the car up on the lift.
5 They checked the car. If you buy into this thing
6 that he ran him over, it is not substantiated by
7 the evidence. No material of significance
8 reported, checked the bumper area, no paint
9 smears noted on the victim's body from the
10 stabilizer bars.

11 Hairs are not consistent with the victim's.
12 Just keep reading it. This is the report.
13 There is no evidence. This is not my evidence,
14 this is what they are saying is beyond a
15 reasonable doubt.

16 They checked the underneath, the fibers of
17 the coat that were around, not consistent with
18 his jacket, no hairs or fibers found underneath
19 the car. They did every one of those tests.
20 No material significance.

21 Rear tires, nothing of significance. How
22 could they not find the blood there?

23 Tires weren't changed. Why is it not there,
24 why go through it all?

25 Now, in the verdict there is no markings,

1 no mention of any stomping. They would have
2 seen the marks, no trace that the car ran him
3 over, but what this case is about is exactly
4 what happened.

5 Remember, the last page, trace evidence
6 report that talked about cocaine that was
7 there?

8 That was not attached. Do you remember
9 that it wasn't attached?

10 Now, was that deceitful, was there a plan
11 not to have that brought in front of you, was
12 that done by prior calculation and design so I
13 didn't see it, you didn't see it, I didn't get
14 to ask about it?

15 Was it or is that just a coincidence?

16 I didn't make a big deal about it. I
17 didn't say there was a plan or a purpose to keep
18 that from me because that is not how the system
19 works. Do that like I did. You know I didn't
20 say that that was wrong because it is equally
21 consistent that even though it might be wrong,
22 it is not wrong.

23 That is all that you have in this case
24 because everything saying one thing is equally
25 consistent with another.

1 THE COURT: Mr. Grunda, you
2 have one minute.

3 MR. GRUNDA: I didn't say that
4 because of that act, that he is guilty and he
5 has to prove himself innocent, but that is what
6 they are trying to do here. That is not right.

7 The burden of proof is the other way. That
8 is why I didn't make a big deal out of it.
9 Marked it, stapled it to the report, but that
10 is what this whole case is about.

11 You look at it, same examples I have been
12 giving you the whole time. Is the glass half
13 empty or half full?

14 Do you give the guy the benefit of the
15 doubt, just like the Prosecutor got the benefit
16 of the doubt when he didn't attach this. To do
17 it any other way is improper and wrong.

18 Since I am out of time --

19 THE COURT: You may request
20 additional time. Five minutes.

21 MR. GRUNDA: Thank you, your
22 Honor.

23 We have all these things going on. Just
24 like that back page and how it went and how it
25 worked, because that is how this is supposed to

1 work.

2 When you start looking at all these things
3 that are in here, the holes that are left, the
4 reasons that people did this, they didn't prove
5 this beyond a reasonable doubt, because you have
6 to look at the absolute letter of the law here.

7 You may not make it, but you have to apply
8 the facts to it. I know the Prosecutor wants
9 to get you upset, show you the gory pictures,
10 get your emotions going. You have to find
11 somebody guilty.

12 If he does that, I want time out, step
13 back, because that is not the way it works.
14 That is what the Judge is going to tell you,
15 doesn't work that way. You are not to be
16 swayed by emotion or prejudice.

17 Look at the evidence. You know there
18 is a coroner's report that substantiates the
19 fact that he was smoking crack the whole time,
20 partying. There is no problems. There is no
21 plan. There is no harm.

22 Stan didn't even have a motive. Look at
23 the trace evidence report. This is it, folks.
24 They are supposed to prove this to you beyond
25 a reasonable doubt. You look at page 5 through

1 12. There is nothing there linking that car
2 to anything they are saying.

3 Running him over, nothing of that and also
4 consistent with what the coroner said. Look at
5 what they didn't do. You know, no blood on Stan,
6 no blood on the driver's seat area, nothing.

7 You know, I even had the Court Reporter
8 check these. No fingerprints, no stomping marks,
9 no tire marks on the body, no dragging marks on
10 the body. That is doubt and he is entitled to
11 the benefit of the doubt.

12 Think about really whose motive it is. He
13 has no motive for any of this. Michael does.

14 How does he fall into this well orchestrated
15 plan?

16 It is not there. It is just not there.

17 Now, bottom line with all this stuff, what
18 the Prosecutor wants you to do, because they will
19 show you the photos, use the nice words brutality
20 and dastardly deeds to get you going.

21 I am asking you to take your time, look at
22 the letter of the law, note all the
23 inconsistencies I have gone over with you.

24 There are inconsistencies.

25 Look at the reasons why those people said

1 what they did. High at the time on drugs or
2 alcohol, testimony bought and paid for because
3 they are not in jail or they can't remember
4 certain things, only things they want.

5 The Judge will instruct you that there is
6 no guilt by association. He is going to instruct
7 you there is no guilt by presence. He happened
8 to be there. They are trying to stick him with
9 this and that is wrong. It is not proper and
10 the Judge will tell you that.

11 Remember the things I told you about
12 supposedly credible witnesses, bought and paid
13 for testimony when you come down to it. Apply
14 the letter of the law, remember all the
15 inconsistencies and I am going to ask you on
16 behalf of Mr. Cleary, myself and Mr. Jalowiec
17 to do the right thing and proper legal thing
18 and that is to return a verdict of not guilty,
19 not guilty, because they have not shown the
20 evidence, every single element beyond a
21 reasonable doubt, and please don't let them
22 get by with a standard less than every element
23 beyond a reasonable doubt because then our
24 system of justice does not work.

25 I ask you for the proper verdict of not

1 guilty.

2 Thank you.

3 (Whereupon, a short recess was had.)

4 (Whereupon, the jury was returned to the
5 courtroom and the following proceedings occurred.)

6 THE COURT: Mr. Rosenbaum?

7
8
9 FINAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE STATE
10 OF OHIO

11 BY MR. ROSENBAUM:

12 You all took an oath at the beginning of
13 the case to be deciding the case on the evidence.
14 The Judge is going to define for you what evidence
15 is.

16 Evidence is the stuff that is given to you
17 from the stand, the exhibits or the Judge tells
18 you is a fact. It is not speculation. You are
19 not free to speculate that he may have been
20 scared to death of Raymond Smith if no one
21 testified that that is how he looked, that is
22 how it was or no questions asked on that issue
23 to create doubt.

24 You are bound by the evidence as you
25 determine it to be, but you cannot just start

1 asking questions that weren't answered and go
2 off and decide this on speculation. That is
3 not what we are about.

4 If that was the case, we would not have
5 taken any evidence. It is all -- all of the
6 testimony is beyond a reasonable doubt, not
7 mere possible doubt, as the Judge is going to
8 instruct you.

9 As Mr. Grunda touched on, it has to do
10 with the most important of your own affairs
11 and Mr. Grunda brought up an analogy that is
12 often used in Court.

13 One of those is an operation and he asked
14 if you would like to have any of these crackheads
15 the State produced as witnesses here performing
16 open heart surgery on you and the answer is
17 pretty obvious, no, nobody would.

18 But is that what we are here about?

19 Let me ask you to consider another example.
20 Say you had a child kidnapped, that would be a
21 pretty important affair to you, and you want that
22 child back.

23 Now, Detective Leiby is assigned to the case,
24 Detective Leiby now has a choice, is he going to
25 get your kid back and solve the crime and go to

1 trial?

2 Well, if he goes to trial and he doesn't get
3 good witnesses, the defense is going to make an
4 argument to you that now these people shouldn't
5 be performing heart surgery.

6 Do you want Detective Leiby to go to the
7 hospital and get shold of a doctor and ask him
8 if he knows where your child is?

9 Do you want him to get down to whatever hell
10 hole this dirtball lives in and find a crackhead
11 who knows this moron and find out who stole your
12 child?

13 So, again, as I tell you, we are faced with
14 sometimes cutting deals with violent people to
15 get better deals or to get more violent people,
16 we are faced with using the people that this ilk
17 chose to hang around with.

18 So, to say we have not called our forensic
19 surgeon may be a little unreasonable and you
20 might want to consider that and the fact that
21 people do crack or hang around with people or
22 are prone to kill people and maybe consulted by
23 him and his kind to carry out these dastardly,
24 heinous, rotten deeds does not mean that they
25 are dead, are no good by definition and maybe

1 you should do what I have asked in real life,
2 that they are, in fact, crackheads, that that
3 fact alone may or may not reflect upon a
4 defendant.

5 But you should look carefully to see if it
6 is corroborated so that it precludes a reasonable
7 doubt and, as I argued to you before, everything
8 that Michael told you is supported by either
9 someone else who may or may not be a crackhead
10 or an alcoholic or by a coroner.

11 Even though one thing I would like to clear
12 up is, Mr. Grunda said there is no jail, this is
13 only a Felony Three, it is probationable. Read
14 Raymond Smith's Indictment and you will find that
15 he has a prior offense alleging that and there is
16 no testimony as to whether or not he is eligible
17 for probation, but you might want to conclude
18 that he was looking at something more than his
19 first offense.

20 You may also want to consider the fact, as
21 I alluded to before, you cannot survive as a drug
22 trafficker no matter what scale if your client
23 can go to the police and there would be no
24 consequences for turning you in.

25 If that is the case, Detective Leiby can

1 wire up another crackhead. The only thing that
2 keeps you going is fear and retaliation and that
3 motivation may be consistent to why Stanley
4 Jalowiec wanted to help his source, his friend
5 and his supplier by participating in keeping
6 this drug empire going by killing a witness.

7 MR. GRUNDA: Your Honor, I
8 would object to that.

9 There was no testimony about source. It
10 is not in evidence.

11 THE COURT: Ladies and
12 gentlemen, you will use your collective
13 recollection as to what the testimony may
14 have been in that matter and the objection
15 is overruled.

16 MR. ROSENBAUM: Now, Mr. Grunda
17 suggests to you that Michael did not see Ron
18 Lally run over. That may be. There is no
19 testimony of that or that you should not
20 conclude that.

21 Well, you will read what evidence is. If
22 you look at this picture you are going to know
23 that what Michael told you happened, happened.
24 You can see the three spots of blood. You can
25 see the tire tracks where the wheels are when he

1 repeatedly rammed three times Ron Lally's body.

2 You will see that he is shoved away. You
3 can see the blood drippings. You can see the car
4 tracks in it.

5 For him to say that no one saw this -- and
6 maybe there is doubt -- I think it is an unfair
7 statement. These pictures tell you what this man
8 did alone is enough right here in this incident to
9 kill him and for him to say that the coroner says
10 that there is no evidence that he was struck by a
11 car is absolutely unfair and a misrepresentation.

12 The coroner's testimony was that you don't
13 often get specific tire imprints that lead you to
14 positively conclude that the person was struck
15 with a car, but that these generic injuries are
16 consistent with being struck by a car three times
17 and being stomped, as this man said to Terry
18 Hopkins the next day or that same day, the next
19 morning.

20 Now, the State has presented you a case that
21 is largely uncontradicted. For Mr. Grunda to say
22 there is no evidence of purpose in this case,
23 what you have, this man who is run over or run
24 into, his throat is cut, he is shot in the mouth,
25 stomped at least 11 times in the head and to say

1 there is no evidence that they intended to kill
2 him, I think is unfair and it is reaching at
3 best.

4 Now, to say that there is no prior
5 calculation and design, what you have heard
6 testimony about the efforts that this man made
7 to get the victim out south of town so that
8 Michael Smith and Raymond Smith could get into
9 that car and take him over to do what they did,
10 defies logic.

11 The efforts that Danny Smith made to
12 threaten and to hire people to carry this plan
13 out and then say that, "My dad and Stanley," as
14 Michael says did, "We will take care of it,"
15 shows there was planning for a period of months
16 and that this was kicked around actually until
17 they finalized it.

18 To say there is no evidence of venue in
19 Lorain County is to conclude that this was an
20 accident, all these people ended up out in the
21 winter at 2:30, 3:30 in the morning on one of
22 the coldest days in history is a little
23 ridiculous.

24 Likewise, to say that they did not intend
25 to get him to Cleveland, that that was not all

1 part and parcel of one plan, is unsupported by
2 the evidence and to also claim that, well, maybe
3 the plan was just to put him on a bus is defied
4 by what actually happened here.

5 The uncontradicted testimony is that the
6 victim said, "Yes, I will go, I will get out of
7 town," but did they give him that chance?

8 No, they shot him in the mouth, they cut
9 his throat, they stomped his head and ran the
10 car into him three times.

11 He agreed to go to the bus. He was ready.
12 Why didn't he get on a bus -- because they didn't
13 -- they took him to the cemetery to finish him
14 off.

15 Now, the car is cleaned up in the middle of
16 the night. Joann Fike did not say there was no
17 blood on them or that they weren't injured. She
18 was not asked that question. She did say she
19 questioned what happened in the car and why is
20 the blood in the car and the Defendant provided
21 an explanation that they were in a fight and
22 that is how it happened.

23 There was testimony on the first day of this
24 trial linking him to this crime. Patrolman Homoki
25 testified, Carl Hartman testified, Sharon Hopkins

1 testified and Terry Hopkins testified, all on the
2 first day, and they all mentioned the Defendant
3 by name as having some part in this crime.

4 Now, to postulate or speculate that Raymond
5 Smith just needed a ride to get home in the cold
6 and that he was merely provided a ride and the
7 victim was along defies logic.

8 It is directly contradictory to the testimony
9 that you have heard, but to claim that a man is in
10 the middle of the road so he needs to be picked up
11 where there is no phone is a little ridiculous
12 when we all know that he called Stanley from
13 Mom's Open Kitchen.

14 What Attorney Grunda is postulating to you
15 is that Raymond needed a ride home so he elected
16 to meet him in the woods and not get picked up
17 downtown in the restaurant. I need not say any
18 more about that.

19 Now, Mr. Grunda asked you to carefully
20 consider the trace evidence report from the
21 Cuyahoga County Coroner's Office and he
22 correctly pointed out on pages 5 through 12
23 that there was no trace evidence found
24 underneath this car.

25 Well, what a surprise. Trace evidence

1 is, in fact, evidence that there is a trace
2 of and obviously it can be easily lost. The
3 car was impounded on December 4th of 1994,
4 nearly a year later, eleven months.

5 Does it surprise you that there is no
6 blood on the undercarriage of this car, no hair
7 after the tires are changed, after it has been
8 driven throughout the winter, through a summer,
9 through the fall and into another winter?

10 I think not. The part of the report that
11 he does not refer to deals with the blood that
12 was found in the exhibits you have before you,
13 through the trunk liner, and shows that Ron
14 Lally's blood was still there as trace
15 evidence where it was out of the weather.

16 Mr. Grunda would also like to have you
17 speculate that the State somehow tried to
18 conceal the toxicology report which is
19 restapled to this. You can see for
20 yourselves how many times this document has
21 been stapled, fell apart at the table.

22 He somehow would like to infer to you
23 that the State did not want you to see this,
24 but you will recall from my first argument
25 that I argued that one of the things that

1 supports Michael Smith's testimony is, they
2 all did crack and this is the report that
3 proves that the victim did do crack, so the
4 State already argued this in its opening.

5 We intended for you to have it. The
6 fact that the document fell apart, I do not
7 think that that is a plot on behalf of law
8 enforcement.

9 MR. GRUNDA: I never implied
10 that. I said just the opposite, I only used
11 it as an analogy, indicated it was done and
12 properly done.

13 MR. ROSENBAUM: There was no
14 point in mentioning it. It was there.

15 THE COURT: Think what you
16 may on this, ladies and gentlemen.

17 MR. ROSENBAUM: Now, he would
18 also have the State not using accurate words
19 to describe these things, but these pictures,
20 especially that photograph there of the tire
21 print, shows what went on here.

22 They document what Michael, Terry Hopkins,
23 Brian Howington, Carl Hartman and Linda Altpater
24 have to tell you, 100%, an assassination as it
25 specifies in the Indictment that you will be

1 asked to consider. It was done with the express
2 purpose of preventing the testimony on the day
3 that the victim was to go to trial against his
4 associates, against the person he met.

5 This was a plan. You cannot even remotely
6 think it was a coincidence that everybody ended
7 up out on Middle Avenue on one of the coldest
8 nights in history, that this was not a plan.

9 Now, Mr. Grunda is correct when he says
10 Michael Smith was not aware of the plan and I
11 believe him. However, there is plenty of
12 testimony for you to consider when you rethink
13 that Michael Smith said his father expected him
14 to get out and chastised him for not getting
15 out to help the father and brother.

16 They thought blood was thicker than water.
17 They were wrong, underestimated Michael.

18 Unfortunately for Ron Lally he was not
19 underestimated, he was ready, willing and able
20 to provide the knife to help with the stomping,
21 run him over with the car and abandon him to
22 freeze to death so that the government witness
23 could not make the stand.

24 Wanted to help his friend promote this way
25 of lawless drug abusing existence. They took a

1 life. He is guilty as a principal of the planned
2 assassination with prior calculation and design
3 of Ronald Lally and these photographs demonstrate
4 his handiwork and they are gruesome, but your job
5 is not to disregard them because they are, your
6 job is to not overreact because they are gruesome,
7 as it is not to underreact in an effort to be
8 overly fair to the Defendant.

9 The evidence is uncontradicted and it points
10 to his guilt.

11 THE COURT: Now, ladies and
12 gentlemen, you may stand a little if you wish
13 before I do the instructions.
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1 Thereupon, the Court charged the jury as
2 follows:

3 Members of the Jury: You have heard the
4 evidence, and the arguments of counsel. It is
5 my duty to instruct you on the law which applies
6 in this case.

7 The Court and the jury have separate
8 functions: You decide the disputed facts, and
9 the Court provides the instructions of law.

10 It is your sworn duty to accept these
11 instructions and to apply the law as it is given
12 to you. You are not permitted to change the law,
13 nor to apply your own conception of what the law
14 should be.

15 A criminal case begins with the filing of an
16 Indictment. The Indictment informs the Defendant
17 that the Defendant has been charged with a crime.
18 The fact that it was filed may not be considered
19 for any purpose.

20 The plea of not guilty is a denial of the
21 charge or charges, and puts in issue all the
22 essential elements of any crimes charged.

23 The Defendant is presumed innocent until
24 guilt is established beyond a reasonable doubt.

25 The Defendant must be acquitted unless the

1 State produces evidence which convinces you,
2 beyond a reasonable doubt, of every essential
3 element of the crime which is charged in the
4 Indictment.

5 Reasonable doubt is present when, after you
6 have carefully considered and compared all the
7 evidence, you cannot say you are firmly convinced
8 of the truth of the charge.

9 Reasonable doubt is a doubt based on reason
10 and common sense. Reasonable doubt is not mere
11 possible doubt, because everything relating to
12 human affairs, or depending on moral evidence,
13 is open to some possible or imaginary doubt.

14 Proof beyond a reasonable doubt is proof of
15 such character that an ordinary person would be
16 willing to rely and act upon it in the most
17 important of their own affairs.

18 If after a full and impartial consideration
19 of all the evidence, you are firmly convinced of
20 the truth of the charge, the State has proven its
21 case beyond a reasonable doubt. If you are not
22 firmly convinced of the truth of the charge, you
23 must find the Defendant not guilty.

24 Evidence is all the testimony received from
25 the witnesses, the exhibits admitted during the

1 trial, any facts agreed to by counsel, and any
2 facts which the Court requires you to accept as
3 true.

4 Evidence may be direct, or circumstantial,
5 or both.

6 "Direct evidence" is the testimony given by
7 a witness who has seen or heard the facts to
8 which he or she testifies. It includes exhibits
9 admitted into evidence during the trial.

10 "Circumstantial evidence" is the proof of
11 facts or circumstances by direct evidence, from
12 which you may reasonably infer other related or
13 connected facts which naturally and logically
14 follow, according to the common experience of
15 mankind. Suppose you are sitting in your living
16 room and you hear a thump at the door, you go to
17 the door and see your newspaper on the porch and
18 your paper boy walking down the street, even
19 though you didn't see him place the paper there,
20 you can infer that's how the paper got there.

21 To infer, or to make an inference, is to
22 reach a reasonable conclusion or deduction of
23 fact which you may, but are not required to,
24 make from other facts which you find have been
25 established by direct evidence. Whether an

1 inference is made rests entirely with you.

2 Direct evidence and circumstantial evidence
3 are of equal weight or probative value.

4 The evidence does not include the Indictment,
5 or the opening statements and closing arguments
6 of counsel.

7 The opening statements and closing arguments
8 of counsel are designed to assist you. They are
9 not evidence.

10 Statements or answers that were stricken
11 by the Court, or which you were instructed to
12 disregard, are not evidence, and must be treated
13 as though you never heard them.

14 You must not speculate as to why the Court
15 sustained the objection to any question, or what
16 the answer to such question might have been. You
17 must not draw any inference, or speculate on the
18 truth of any suggestion included in a question
19 that was not answered.

20 You are the sole judges of the facts, the
21 credibility of the witnesses, and the weight of
22 the evidence.

23 To weigh the evidence, you must consider
24 the credibility of the witnesses. You will
25 apply the tests of truthfulness which you apply

1 in your daily lives.

2 These tests include:

3 The appearance of each witness upon
4 the stand;

5 Their manner of testifying;

6 The reasonableness of their testimony;

7 The opportunity they had to see, hear
8 and know the things concerning which
9 they testified;

10 Their accuracy of memory;

11 Frankness, or lack of it;

12 Intelligence;

13 Interest and bias, if any;

14 Together with all the facts and
15 circumstances surrounding the testimony.

16 Applying these tests, you will assign to the
17 testimony of each witness such weight as you deem
18 proper.

19 You are not required to believe the testimony
20 of any witness, simply because he or she was under
21 oath. You may believe, or disbelieve, all or any
22 part of the testimony of any witness.

23 It is your province to determine what
24 testimony is worthy of belief, and what testimony
25 is not worthy of belief.

1 It is not necessary that a defendant take
2 the witness stand in his or her defense. The
3 Defendant has a constitutional right not to
4 testify.

5 The fact that a defendant does not testify
6 must not be considered for any purpose in
7 determining his or her guilt or innocence.

8 Some things you may consider, in weighing
9 the testimony of eyewitnesses are:

10 1. The capacity of the witness; that is,
11 the age, intelligence, defective senses, if any,
12 and the opportunity of the witness to observe.

13 2. The witness' degree of attention at
14 the time he observed the event.

15 3. The accuracy of a prior description of
16 the event, if any, given by the witness.

17 4. The interval of time between the event
18 and the description of the event.

19 5. All surrounding circumstances under
20 which the witness has observed the event, or
21 given a description of the event.

22 Generally, a witness may not express an
23 opinion. However, one who follows a profession
24 or special line of work is permitted to express
25 his or her opinion, because of their education,

1 knowledge, and experience. The purpose of such
2 testimony is to assist you in arriving at a just
3 verdict.

4 As with other witnesses, upon you alone rests
5 the duty of deciding what weight should be given
6 to the testimony of an expert. In determining
7 its weight, you may take into consideration the
8 expert's skill, experience, knowledge, veracity,
9 familiarity with the facts of this case, and the
10 usual rules for testing credibility and for
11 determining the weight to be given to testimony.

12 You will give no greater or lesser
13 consideration to the testimony of a law
14 enforcement officer, solely because of the fact
15 that the witness is a law enforcement officer.

16 The testimony of a law enforcement officer
17 is to be weighed by the same rules governing
18 credibility that apply to other witnesses.

19 A "principal" is a person who commits a
20 crime, and in a case where two or more persons
21 are present during the commission of a crime,
22 the principal may be regarded as the chief
23 actor or perpetrator.

24 When two or more persons have a common
25 purpose to commit a crime, and one does one

1 part and a second person performs another,
2 those acting together are equally guilty of
3 the crime, and each may be considered as
4 principal offenders.

5 The mere association with one who
6 perpetrates an unlawful act does not render
7 a person a participant in a crime, so long
8 as the acts of such person are entirely
9 innocent.

10 Under Ohio law, a person who aids or abets
11 another person in the commission of a crime can
12 be charged either as a principal offender or in
13 terms of complicity.

14 In this case, the Defendant is charged as a
15 principal offender.

16 One who is an "accomplice," or in complicity,
17 may be regarded as if he or she is the principal
18 offender, and an accomplice is considered just as
19 guilty as the principal offender, as if he or she
20 personally performed every act constituting the
21 offense.

22 To "aid" means to help, to assist, or to
23 strengthen another.

24 To "abet" means to encourage, to counsel,
25 to incite, or to assist another.

1 Before one can be found guilty of an offense,
2 on the basis of his or her complicity, it must be
3 proven that the one in complicity was aware of
4 the design or purpose of the principal offender,
5 and shared in the knowledge held by the principal.

6 When two or more persons have a common
7 purpose to commit a crime, and one person does
8 one part, and a second or other persons do
9 another part, those acting together are equally
10 guilty of the crime.

11 A person cannot be found guilty of an
12 offense, on the basis of his or her complicity,
13 unless the offense was actually committed.

14 "Venue" means that the offense charged,
15 or any element or elements of the offense, took
16 place in Lorain County, Ohio.

17 In this case there is a single count in the
18 Indictment, which I will refer to as Count One.

19 In Count One of the Indictment the Defendant,
20 Stanley E. Jalowiec, is charged with Aggravated
21 Murder, with specifications.

22 Aggravated Murder is purposely causing the
23 death of another person, with prior calculation
24 and design.

25 Before you can find the Defendant guilty of

1 the offense of Aggravated Murder, as charged in
2 Count One, you must find, by proof beyond a
3 reasonable doubt, that

- 4 1) On or about January 19, 1994,
- 5 2) The Defendant, Stanley E. Jalowiec,
- 6 3) Did purposely, and with prior
7 calculation and design,
- 8 4) Cause the death of another person,
9 Ronald Lally, and
- 10 5) Venue: In Lorain County, Ohio.

11 A person acts "purposely" when it is his or
12 her specific intention to cause a certain result.

13 "Purpose" is a decision of the mind to do an
14 act, with a conscious objective of producing a
15 specific result, or engaging in specific conduct.

16 To do an act purposely is to do it
17 intentionally, and not accidentally. Purpose
18 and intent mean the same thing.

19 The purpose with which a person does an act,
20 or brings about a result, is known only to himself
21 or herself, unless the person expresses it to
22 others, or indicates it by their conduct.

23 The purpose with which a person does an act
24 or brings about a result is determined from the
25 manner in which it is done, the means or weapon

1 used, and all the other facts and circumstances
2 in evidence.

3 The proof of an offender's motive is not
4 required. The presence or absence of motive is
5 one of the circumstances bearing upon "purpose."

6 If a wound is inflicted upon a person with a
7 deadly weapon, in a manner calculated to destroy
8 life or inflict great bodily harm, the purpose to
9 cause death may be inferred from the use of the
10 weapon.

11 No person can be found guilty of aggravated
12 murder unless he or she specifically intended to
13 cause the death of another person.

14 "Prior calculation and design" means that
15 the purpose to cause the death was reached by
16 a definite process of reasoning, in advance of
17 the homicide, which process of reasoning must
18 have included a mental plan involving studied
19 consideration of the method and means with
20 which to cause the death of another person.

21 To constitute "prior calculation," there
22 must have been sufficient time and opportunity
23 for the planning of the act of homicide, and
24 the circumstances surrounding the homicide must
25 show a scheme designed to carry out the

1 calculated decision to cause the death.

2 No definite period of time must elapse,
3 and no particular amount of consideration must
4 be given, but acting on the spur of the moment,
5 or after momentary consideration of the purpose
6 to cause the death, is not sufficient.

7 "Cause" is an essential element of the
8 offense charged in Count One.

9 "Cause" is an act, or a failure to act,
10 which in the natural and continuous sequence
11 directly produces the death, and without which
12 it would not have occurred.

13 "Cause" occurs when the death is the natural
14 and foreseeable result of the act, or the failure
15 to act.

16 The Defendant's responsibility is not limited
17 to the immediate or most obvious result of the
18 Defendant's act, or failure to act.

19 The Defendant is also responsible for the
20 natural and foreseeable consequences or results
21 that follow, in the ordinary course of events,
22 from the act or failure to act.

23 There may be more than one cause for an
24 event. However, if a Defendant's act or failure
25 to act was one cause, the existence of other

1 causes is not a defense.

2 If you find that the State proved, beyond a
3 reasonable doubt, all of the essential elements
4 of Aggravated Murder as charged in Count One,
5 then your verdict must be that the Defendant is
6 guilty, according to your findings.

7 If you find that the State failed to prove,
8 beyond a reasonable doubt, any one of the
9 essential elements of Aggravated Murder as
10 charged in Count One, then your verdict must
11 be that the Defendant is not guilty, according
12 to your findings.

13 If you find that the Defendant is guilty
14 of Aggravated Murder as charged in Count One,
15 it is your duty to continue your deliberations
16 and decide additional factual questions, which
17 we call specifications.

18 In Specification One to Count One, the
19 Defendant is charged with having a firearm on
20 or about his person or under his control, while
21 committing the felony offense of Aggravated
22 Murder that is charged in Count One.

23 Before you can find the Defendant guilty
24 of Specification One, you must find, by proof
25 beyond a reasonable doubt, that

- 1) On or about January 19, 1994,
- 2) The Defendant, Stanley E. Jalowiec,
- 3) Had a firearm, other than an automatic
firearm or a firearm equipped with a
firearm muffler or silencer, to wit:
a firearm,
- 4) On or about his person, or under his
control,
- 5) While committing the felony enumerated
in Count One of the Indictment, to wit:
Aggravated Murder, and
- 6) Venue: In Lorain County, Ohio.

Under Ohio law, in any case where two or more persons have an operable firearm during the commission of a felony offense, a firearm specification is applicable to both the offender who actually carried the firearm and to any other unarmed accomplice.

If you find the Defendant is guilty of Count One, Aggravated Murder, then you may find the Defendant guilty of Specification One, if you find that this Defendant did not carry a firearm but find that an accomplice did carry a firearm during the commission of the offense charged in Count One.

1 "Firearm" means any deadly weapon capable of
2 expelling or propelling one or more projectiles,
3 by the action of an explosive or combustible
4 propellant.

5 "Firearm" includes an unloaded firearm, and
6 any firearm which is inoperable but which can be
7 readily rendered operable.

8 "Deadly weapon" means any instrument,
9 device, or thing which has two characteristics.

10 The first characteristic is that it is
11 capable of inflicting or causing death.

12 The second characteristic is in the
13 alternative:

- 14 1) Either the instrument, device, or
15 thing was designed, or specially
16 adapted for use as a weapon, such
17 as a gun, knife, or billy club, or
- 18 2) It was possessed, carried, or used
19 in this case as a weapon.

20 These are questions of fact for you, the
21 jury, to determine.

22 "On or about his person" means the firearm
23 was either carried on the Defendant's person,
24 or was concealed ready at hand.

25 "Ready at hand" or "under his control"

1 means so near to the Defendant's person as to
2 be conveniently accessible, and within the
3 Defendant's immediate reach.

4 You are instructed that, as a matter of
5 law, the crime of Aggravated Murder is a
6 felony offense.

7 If your verdict is guilty of Aggravated
8 Murder, you will return a verdict on
9 Specification One, and you will make your
10 finding on the separate verdict form that
11 the Court will provide to you, and return
12 a verdict of guilty, or not guilty, in
13 accordance with these instructions.

14 If your verdict is not guilty, as to
15 Aggravated Murder, then you will not consider
16 Specification One to Count One, and you will
17 not complete the additional verdict form.

18 If your verdict is that the Defendant
19 is guilty of Aggravated Murder as charged in
20 Count One, it is your duty to deliberate
21 further and determine Specification Two.

22 If your verdict is not guilty, as to
23 Aggravated Murder, then you will not consider
24 or decide this separate question.

25 Before you can find the Defendant guilty

1 of Specification Two, you must find, by proof
2 beyond a reasonable doubt, that

- 3 1) Ronald Lally was a witness to a
4 criminal offense, and was purposely
5 killed to prevent his testifying in
6 any criminal proceeding, and
7 the aggravated murder of Ronald Lally
8 was not committed during the
9 commission, the attempted commission,
10 or flight immediately after the
11 commission or attempted commission
12 of the offense to which Ronald Lally
13 was a witness,
14 or

- 15 2) Ronald Lally was a witness to an
16 offense and was purposely killed in
17 retaliation for his testifying in any
18 criminal proceeding.

19 There are two possible findings that can be
20 made that would require you to return a verdict
21 of guilty, as to Specification Two.

22 The first possibility requires that you find
23 Ronald Lally was purposely killed to prevent his
24 testifying in any criminal proceeding. At the
25 same time, you must find that the aggravated

1 murder of Ronald Lally was not committed during
2 the commission, or attempted commission, or in
3 the flight after the commission, or attempted
4 commission, of the offense to which Lally was a
5 witness.

6 The second possibility requires that you
7 find Ronald Lally was a witness to a criminal
8 offense, and he was purposely killed in
9 retaliation for his testifying in any criminal
10 proceeding.

11 In the first instance, the Specification
12 charges that Ronald Lally was killed to prevent
13 his testifying. In the second instance, the
14 Specification charges that Ronald Lally was
15 killed in retaliation for his testimony.

16 Before you can find the Defendant guilty
17 of Specification Two, you must find that Ronald
18 Lally was purposely killed to prevent his
19 testimony, or in retaliation because of his
20 testimony, or you may find both. If you find
21 either or both, by proof beyond a reasonable
22 doubt, then your verdict must be that the
23 Defendant is guilty of Specification Two.

24 The Court has already defined for you the
25 legal terms "purposely" and "cause," and you

1 shall refer to the previous instructions with
2 respect to those terms.

3 If the State fails to prove that Ronald
4 Lally was killed to prevent his testimony, and
5 fails to prove that he was killed in retaliation
6 for his testimony, then your verdict must be that
7 the Defendant is not guilty of Specification Two.

8 You will return your verdict as to
9 Specification Two on the separate verdict form
10 that I will provide to you.

11 If your verdict is not guilty, as to
12 Aggravated Murder as charged in Count One, then
13 you will not consider Specification Two, and you
14 will not complete the additional verdict form.

15 During the trial I have permitted the taking
16 of notes by those jurors who chose to do so. You
17 may take your notes with you to the jury room and
18 use them during your deliberations if you wish.

19 As I told you at the beginning of this trial,
20 your notes are only intended to be an aid to your
21 memory, and should not take precedence over your
22 own independent recollection.

23 Those jurors who have not taken notes should
24 rely on their own memory of the evidence, and
25 should not be influenced by the fact that another

1 juror has taken notes, since the notes are only
2 for the notetaker's own personal use in assisting
3 his or her memory of the evidence.

4 At the end of your deliberations, please tear
5 out any notes from your notebook, and give them to
6 the foreperson.

7 The Bailiff will collect your notebooks and
8 pencils and the foreperson will give the notes to
9 the Court.

10 I will destroy your notes after the trial and
11 no one, including myself, will look at them.

12 The Court will be providing you with verdict
13 forms, which forms are self-explanatory. You will
14 use the forms in this case in accordance with the
15 law as I have given it to you.

16 In your deliberations you may not discuss or
17 consider the subject of punishment. Your duty
18 is confined to the determination of guilt or
19 innocence. The duty to determine punishment
20 is placed, by law, upon the Court.

21 You must not be influenced by any
22 consideration of sympathy or prejudice. It is
23 your duty to carefully weigh the evidence, to
24 decide all disputed questions of fact, to apply
25 the instructions of the Court to your findings.

1 and to render your verdict accordingly. In
2 fulfilling your duty, your efforts must be to
3 arrive at a just verdict.

4 Consider all the evidence, and make your
5 findings with intelligence and impartiality,
6 and without bias, sympathy, or prejudice, so
7 that the State of Ohio and the Defendant will
8 feel that their case was fairly and impartially
9 tried.

10 If during the course of the trial the Court
11 said or did anything which you consider an
12 indication of the Court's view on the facts, you
13 are instructed to disregard it because it is you,
14 the Jury, who determines the facts.

15 Your initial conduct upon entering the jury
16 room is a matter of importance. It is not wise
17 to immediately express a determination to insist
18 upon a certain verdict, because if your sense of
19 pride is aroused, you may hesitate to change your
20 position, even if you decide you are wrong.

21 Consult with one another, consider each
22 other's views, and deliberate with the objective
23 of reaching an agreement, if you can do so
24 without disturbing your individual judgment.

25 Each of you must decide this case for

1 yourself, but you should do so only after a
2 discussion and consideration of the case with
3 your fellow jurors. Do not hesitate to change
4 an opinion if convinced that it is wrong.

5 However, you should not surrender honest
6 convictions in order to be congenial, or to
7 reach a verdict solely because of the opinion
8 of other jurors.

9 The Court will place in your possession
10 the verdict forms, exhibits and the written
11 charge. The foreperson will retain possession
12 of these records, including the verdict forms,
13 and return them to the courtroom. Until your
14 verdict is announced in open Court, you are not
15 to disclose to anyone else the status of your
16 deliberations, or the nature of your verdict.

17 After you retire, first select a foreperson,
18 so that your deliberations may be conducted in an
19 orderly manner. The foreperson will see that each
20 juror has the opportunity to discuss the case and
21 cast his or her vote. Otherwise, the authority of
22 the foreperson is the same as any other juror.

23 When all twelve, and I repeat, all twelve
24 jurors, agree on a verdict, complete the verdict
25 forms in ink or ball point, and all of you sign

1 said verdict forms. You will then notify the
2 Court by using the buzzer on the wall in the
3 jury room.

4 On behalf of the public and the parties, the
5 Court expresses appreciation for your service in
6 performing this important public function.

7 After your verdict is returned, you may
8 discuss this case with anyone, but you are not
9 required to do so.

10 Whether you discuss this case with counsel,
11 or anyone else after you are discharged, is a
12 matter of your own free choice.

13 The alternate jurors who were selected to
14 serve, in the event of any misfortune to a member
15 of the panel, you are instructed that you will
16 not retire with the jury into the jury room for
17 deliberations. You may remain in and about the
18 courthouse if you so desire, or you may retire
19 from the courthouse and go about your business.
20 You are not to discuss this case, or tell anyone
21 how you would have voted, until after the jury
22 has returned a verdict. The Court appreciates
23 your attendance in this case.

24 The Bailiff will now take the jurors, the
25 verdict forms, the exhibits and the written

1 instructions of law to the jury room.

2 The alternate jurors. I would like the two
3 of you to remain in the courtroom, to talk to you
4 for a short period of time after the jury retires
5 at this point.

6 Anything further?

7 MR. ROSENBAUM: I have nothing.

8 MR. GRUNDA: No, your Honor.

9 THE COURT: Very well.

10 Madam Bailiff, you will take the jurors and
11 the verdict forms and the instructions of law to
12 the jury room along with the exhibits.

13 Now, the two alternates, do you have clothes
14 in the jury room?

15 Please do not start your deliberations or
16 anything else. These two people will be coming
17 in as soon as I have had the opportunity to
18 discuss the matter with them.

19 (Whereupon, the 12 jurors were escorted to
20 the jury room by the Bailiff.)

21 (Whereupon, the following proceedings
22 occurred in the courtroom with the two alternates.)

23 THE COURT: Ladies and
24 gentlemen, the possibility remains that there
25 could be a mitigation phase to this particular

1 case, okay, the second phase of it.

2 As a result of that you are not released
3 from your oath of office at this stage of the
4 game to discuss this case any further because
5 chances are you could participate in the
6 mitigation.

7 You will be invited back at a date to be
8 determined later on in the event it is necessary
9 to go into the second phase of this jury, so you
10 are not through with the trial yet.

11 You are still members of the panel, but not
12 deliberating under the first phase. You may not
13 deliberate on the second phase. It is a
14 possibility that you could, so do not discuss
15 this matter in any way, shape or form and the
16 instructions will be the same to your other
17 fellow jurors, depending on what verdict may
18 be reached.

19 You are excused at this point.

20 (Whereupon, the alternates were excused from
21 the courtroom.)

22 MR. GRUNDA: For the record, I
23 would ask to have the record reflect whether or
24 not Mr. Jalowiec is satisfied with the services
25 that were provided on his behalf by not only

1 myself, but Mr. Cleary?

2 THE DEFENDANT: Yes.

3 THE COURT: Thank you, Mr.

4 Jalowiec.

5 Do you need to have further discussions with
6 your client?

7 If not, the Defendant can be returned to the
8 jail.

9 (Whereupon, the jury was returned to the
10 courtroom at 5:15 p.m. and the following proceedings
11 occurred.)

12 THE COURT: Ladies and
13 gentlemen, by the clock on the courtroom wall it
14 is now 5:17. You have been at it since about
15 9:30 this morning and it has been a good day,
16 long day, difficult day probably at this point
17 and I have chosen to release you this evening
18 from the courtroom rather than directly from
19 the jury room and to indicate to you that, of
20 course, you will be sequestered.

21 That means you are going to be locked up
22 and we will be going to the Holiday Inn and that
23 we have made arrangements for each one of you.
24 We have made arrangements for meals.

25 We have made arrangements for your comfort

1 other than telephone calls. You are not going
2 to be able to make any phone calls. The desk
3 will cut off the phones so there will be no
4 possibility of making any calls and, more
5 importantly, any calls coming in to you at
6 this point.

7 I say to you, as I said over the weekend,
8 relax this evening. You have had a trying day.
9 You still have trying times ahead of you at this
10 point without any question, so relax as much as
11 possible and enjoy your evening as much as you
12 can.

13 At this point Mrs. Ward and Mr. Masterson
14 will be there for you in the event you need
15 anything and we will have security on the floors
16 for you at this point.

17 We have gotten a little experienced in the
18 past couple of years so I think we have this
19 pretty down pat at this point and I am going to
20 discharge you here with the admonition of please,
21 please, please, now that you are away from the
22 courthouse and your jury room, do not conduct
23 any deliberations whatsoever while you are gone.

24 At this point do not commence any
25 deliberations until you return tomorrow morning

1 to your jury room. Do not read anything about
2 this and I have not seen any newspapers here
3 today and I don't know what, if anything, has
4 been in there at this point.

5 I take it back, I saw this morning a Journal
6 and there was a little blurb in it this morning
7 and there was a blurb in your paper, too, the
8 Plain Dealer.

9 At this point, ladies and gentlemen, have a
10 relaxing evening. Do not discuss or let anybody
11 read to you. Don't read anything about it and
12 I just say to you, relax, have as pleasant an
13 evening as you can and we will bring you back
14 tomorrow morning by 9:00 a.m.

15 Now, when you get back, you go directly to
16 your jury room. We will take care of whatever
17 signing up we need to do and we will see to it
18 that you get your twelve bucks tomorrow.

19 At this point that will be your instructions.
20 Do not commence your deliberations until all
21 twelve of you are there.

22 Anything further from counsel?

23 MR. ROSENBAUM: No, sir.

24 MR. GRUNDA: No, your Honor.

25 MR. CLEARY: No, your Honor.

1 THE COURT: We have done this,
2 ladies and gentlemen, without the presence of the
3 Defendant and I would like the record to indicate
4 that and any objections as far as that goes?

5 MR. CLEARY: No.

6 THE COURT: If we were to bring
7 the Defendant back, it would take a little longer
8 to get him here and rather than do that, we'll
9 just dismiss you at this point without him being
10 here.

11 MR. CLEARY: No objection.

12 THE COURT: You may take charge
13 of the jury and have a pleasant evening. We will
14 see you in the morning at nine o'clock.

15 (Whereupon, the jurors in the above-entitled
16 matter were taken to the Holiday Inn for their
17 overnight recess to be returned to the courthouse on
18 Wednesday, March 20, 1996, commencing at 9:00 a.m.)
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1 MORNING SESSION, WEDNESDAY, MARCH 20, 1996

2 (Whereupon, the jury was returned to the
3 courtroom and the following proceedings occurred.)

4 THE COURT: Ladies and
5 gentlemen, please be seated. Good morning.

6 THE JURORS: Good morning, your
7 Honor.

8 THE COURT: Ladies and
9 gentlemen, before I call for the verdict there
10 are a couple of explanations.

11 Seated at the counsel table this morning
12 you will see Mrs. Lisa Locke-Graves, the young
13 lady in the red jacket. She is here in place
14 of Mr. Rosenbaum. Mr. Rosenbaum had to be in
15 the Ohio Supreme Court in Columbus this morning
16 to argue a case and Mrs. Locke-Graves is here
17 to receive the verdict at this point.

18 Now, ladies and gentlemen, have you reached
19 a verdict?

20 THE FOREPERSON: Yes, your Honor.

21 THE COURT: Will you hand the
22 verdict to the Bailiff?

23 Very well. Mr. Grunda, Mr. Jalowiec -- do
24 you want to stand with your client if you would,
25 please.

1 State of Ohio versus Stanley E. Jalowiec,
2 Case No. 95 CRO 45840, Verdict Count No. One,
3 Aggravated Murder.

4 We, the jury, find the Defendant, Stanley
5 E. Jalowiec, is guilty of Aggravated Murder as
6 charged in Count One of the Indictment. Dated
7 March 20, 1996; signed by twelve jurors.

8 State of Ohio versus Stanley Jalowiec,
9 Verdict Specification One to Count One,
10 Aggravated Murder.

11 If your verdict is guilty of Aggravated
12 Murder, you shall return a verdict for
13 Specification One. If your verdict is not
14 guilty, you shall not consider the
15 specification.

16 We, the jury, find that the Defendant,
17 Stanley E. Jalowiec, is guilty of Specification
18 One, and find that during the commission of the
19 offense of Aggravated Murder, the Defendant had
20 a firearm on or about his person or under his
21 control. Dated March 20, 1996, and signed by
22 twelve jurors.

23 Verdict, Specification Two to Count One,
24 Aggravated Murder. If your verdict is guilty
25 of Aggravated Murder, complete this additional

1 verdict form.

2 We, the jury, find that the Defendant,
3 Stanley E. Jalowiec, is guilty of Specification
4 Two to Aggravated Murder, Count One, and find
5 that Ronald Lally was killed either to prevent
6 his testimony or in retaliation for his
7 testimony in any criminal proceedings.

8 Dated March 20, 1996, and signed by 12
9 jurors.

10 Anything further from counsel?

11 MR. GRUNDA: No, your Honor.

12 MR. CLEARY: No.

13 MRS. LOCKE-GRAVES: Nothing from the
14 State.

15 THE COURT: Very well.

16 Please be seated at this point.

17 Ladies and gentlemen of the jury, jury duty
18 is very difficult. I think you have found that
19 to be true. Jury duty is a civic duty that we
20 owe to our citizenship.

21 At this point, ladies and gentlemen, this
22 case is not over. There is now phase two that
23 has to be done which you folks participate in
24 also and that is called the mitigation at this
25 point and that is where the sentence is

1 determined or at least considered.

2 Ladies and gentlemen, the Court recognizes
3 there is some difficulty and this is why it is
4 going through this exercise with you here this
5 morning.

6 Tentatively we have set the 9th of April,
7 1996, at 8:30 a.m. as the date that we would
8 be considering the mitigation phase in this
9 particular case.

10 Now, I know I am throwing a date at you
11 right off the bat and sometimes, you know, it
12 just doesn't register. The 9th of April, ladies
13 and gentlemen, is on a Tuesday morning. It is
14 the second week in April and I am told that that
15 could be vacation as far as kids are concerned
16 for Easter.

17 Does that create any kind of a problem with
18 anybody sitting on the jury at this point,
19 meaning that you cannot do it?

20 I know that you would like to be home with
21 your family during this period of time and so on
22 and I understand that somebody planned a vacation.
23 If somebody planned a vacation or anything of that
24 nature, that is understandable also at this point
25 and something -- if that be the case, something

1 further would have to be done as far as the case
2 is concerned because you sacrificed enough by
3 acting as a juror, sacrificing time from your
4 family members, which is a little difficult.

5 You will also have the two alternates.
6 They will be back. They will be invited back on
7 that date also, so that at this point we can set
8 the mitigation phase of this trial for the 9th of
9 April, 1996, at 8:30 in the morning.

10 A JUROR: What if I can't
11 find anybody for my children when it gets closer
12 to the date?

13 THE COURT: I think that is
14 why we have 14 people, that is why we have two
15 alternates at this point. Obviously the ideal
16 thing is to keep everybody intact if at all
17 possible and this is what we will strive for.

18 Make every effort to do so and I recognize
19 there are some problems involved with that, but
20 as of right now, unless we hear anything
21 differently, and it is really drastic, the
22 mitigation case will be on the 9th of April at
23 8:30 and you will be getting further notices.

24 Please appear at 8:15, the regular time,
25 sign in and go right to the jury room at that

1 point, okay?

2 Now, ladies and gentlemen, may I say to
3 you that this case is not over. You are still
4 a member of an organized jury panel.

5 The admonitions that I have given you in
6 the past regarding this case still apply. This
7 is going to be difficult, without any question,
8 but, ladies and gentlemen, the admonitions I
9 have been giving you about reading anything
10 about it -- and I know you are anxious to do
11 it -- please do not let anybody read it to you.

12 Do not read anything or listen to anything
13 on the television. Please do not do that. It
14 is very important.

15 This happens because now throughout these
16 proceedings it has been very, very serious and
17 it gets much more so as we proceed in this
18 matter, so, please, ladies and gentlemen, so
19 that everybody can say that this has been a fair
20 and impartial jury, do not educate yourselves on
21 what has transpired and do not do any further
22 discussing it with your family or anybody.

23 Do not discuss it amongst yourselves. The
24 admonitions have been given to the alternates
25 also so they know and this was done out of

1 your hearing.

2 Mr Grunda, you raised your hand, sir?

3 MR. GRUNDA: I thought it was
4 the Court's policy to poll the jurors, but I
5 would request that.

6 THE COURT: You would like
7 to have them polled?

8 MR. GRUNDA: Yes.

9 THE COURT: Three times or
10 one would be sufficient?

11 MR. GRUNDA: One for each one.

12 (Whereupon, the Court asked each juror
13 respectively on each count if these were their
14 verdicts and all responded in the affirmative.)

15 THE COURT: Ladies and
16 gentlemen, at this point I will excuse you
17 and, Deputy, please allow the jury to remove
18 themselves from the courtroom. No one is to
19 clear the courtroom until after the jury is
20 cleared and I say it is okay.

21 (Whereupon, the trial in the above-entitled
22 matter was adjourned to reconvene on April 8, 1996, at
23 8:30 a.m. for the mitigation hearing.)

24 * * *

25 HEARING CONCLUDED.

C E R T I F I C A T E

The State of Ohio,)
County of Lorain.) SS:

I, Thomas B. Masterson, Official Court Reporter of
the Court of Common Pleas, Lorain County, Ohio, do hereby
certify that this is a correct transcript of the proceedings
in this case.

I further certify that this is a complete
transcript of the testimony.

IN TESTIMONY WHEREOF, I have hereunto subscribed
my name this 19th day of September, 1996.


Thomas B. Masterson
Notary Public, State of Ohio
Lorain County Courthouse
Elyria, Ohio 44035
My Commission Expires 10-10-96

COURT OF APPEALS
LORAIN COUNTY

96 CA006445

1

The State of Ohio SEP 19 9 28 AM '96

County of Lorain)

CLERK OF COMMON PLEAS
DONALD J. ROTHGERY
IN THE COURT OF COMMON PLEAS

ENTERED

The State of Ohio,)

9th APPELLATE DISTRICT

Plaintiff,)

vs.)

NO. 95CR046840

Stanley E. Jalowiec,)

Defendant.)

* * *

COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON TUESDAY, THE 9TH DAY OF APRIL,
1996, BEFORE THE HONORABLE KOSMA J. GLAVAS, PRESIDING
JUDGE OF SAID COURT; IN RE: DEFENDANT'S MITIGATION
HEARING FOLLOWING A VERDICT OF GUILTY.

* * *

Mitigation volume 1

APPEARANCES:

Appearing on behalf of the State of Ohio:

Gregory A. White,

Lorain County Prosecuting Attorney, by

Jonathan A. Rosenbaum,

Assistant County Prosecuting Attorney.

Appearing on behalf of the Defendant:

Joseph C. Grunda, Esq. and

Edward Cleary, Esq.

* * *

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

98-1074

FILED

JUN 17 1998

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

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Note: * P/M indicates exhibit was
previously marked

P R O C E E D I N G S

(Whereupon, the Court took the bench and the following proceedings occurred.)

* * *

WHEREUPON, COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.

* * *

THE COURT: Mr. Rosenbaum, Mr. Cleary and Mr. Grunda, the Court intends to admit into evidence as its own exhibit the Court's Exhibit 1 which is the seating chart which you have in front of you, the reason for that being that I need to take attendance and I am going to do it by number and not name and it is going to coincide with the seating chart so that the Court of Appeals will have it.

Any objections from anybody?

MR. ROSENBAUM: None.

MR. GRUNDA: No.

THE COURT: It shall be admitted.

* * *

WHEREUPON, COURT'S EXHIBIT 1 WAS ADMITTED INTO EVIDENCE.

* * *

1 MR. ROSENBAUM: Before the jury
2 comes back, I would like to have the record
3 reflect that the transcript of the deposition
4 was a part of this case, it was available for
5 the Court's consideration, it was taken in this
6 case and that would be of Michael Smith long in
7 advance of the trial and the Court was aware of
8 that.

9 MR. CLEARY: Are you intending
10 to introduce it?

11 THE COURT: Just a record for
12 the Court of Appeals.

13 MR. ROSENBAUM: It was a record in
14 this case and the Court has it available.

15 THE COURT: As I understand it,
16 a record for the Court of Appeals, not to the
17 jury, absolutely not to the jury.

18 MR. ROSENBAUM: No.

19 MR. GRUNDA: As long as it
20 doesn't go, because it was not mentioned, marked
21 or used in this case.

22 THE COURT: So be it.
23 Deputy, once proceedings get started, there
24 is nobody to come in here, they are admitted when
25 the break occurs, when they can be entered without

1 any distractions.

2 At this point for the record I will say
3 this, that the last group of jurors have been
4 complaining about people coming in and out
5 because it has been very distractive to them,
6 so, therefore, that is the rule. This is a
7 public courtroom, they are entitled to be here
8 when it starts and when it is permissible to
9 be admitted.

10 Mr. Grunda, Mr. Cleary, have you received
11 copies of the Court's ruling on your latest
12 batch of motions?

13 MR. GRUNDA: No.

14 (Whereupon, the jury was returned to the
15 courtroom and the following proceedings occurred.)

16 THE COURT: Good morning, ladies
17 and gentlemen. Nice to see you all again. I hope
18 you all had a very nice holiday. I hope you all
19 have rested and are here with renewed vigor to
20 proceed with the final determination of this case.

21 Members of the jury, on March 20th, 1996,
22 within the first phase of this case, State of Ohio
23 versus Stanley E. Jalowiec, Case No. 95CRO46840,
24 those proceedings were the completion of what we
25 term the guilt phase of this case.

1 In those proceedings you determined that the
2 Defendant, Stanley E. Jalowiec, was guilty of one
3 count of the Indictment and also guilty of two
4 specifications that were charged.

5 The second phase of this case is known as the
6 penalty phase and it is also referred to as the
7 mitigation phase.

8 Before I proceed any further I want the
9 record to reflect that all the jurors that
10 returned the verdict in the guilt phase of this
11 case are present. In addition, the two alternate
12 jurors have also returned and when I read your
13 number, please indicate by voice that you are
14 present. Your number will correspond with your
15 name on the seating chart that was prepared on
16 March 12, 1996.

17 Juror No. 1?

18 THE JUROR: Present.

19 THE COURT: Juror No. 2?

20 THE JUROR: Present.

21 THE COURT: Juror No. 3?

22 THE JUROR: Present.

23 THE COURT: Juror No. 4?

24 THE JUROR: Present.

25 THE COURT: No. 5, alternate?

1 THE JUROR: Present.
2 THE COURT: Juror No. 6?
3 THE JUROR: Present.
4 THE COURT: Seven?
5 THE JUROR: Present.
6 THE COURT: Eight?
7 THE JUROR: Present.
8 THE COURT: Nine?
9 THE JUROR: Present.
10 THE COURT: Ten, the alternate?
11 THE JUROR: Present.
12 THE COURT: No. 11?
13 THE JUROR: Present.
14 THE COURT: No. 12?
15 THE JUROR: Present.
16 THE COURT: No. 13?
17 THE JUROR: Present.
18 THE COURT: And No. 14?
19 THE JUROR: Present.
20 THE COURT: The Court makes a
21 determination that all jurors are present and
22 accounted for.
23 Back in March, ladies and gentlemen, in the
24 guilt phase of the case you found the Defendant
25 guilty of the Aggravated Murder of Ronald Lally.

1 having determined that the killing of the victim
2 was done with prior calculation and design.

3 You found the Defendant guilty of the two
4 specifications that were charged.

5 In finding the Defendant guilty of
6 Specification Two you have determined that the
7 Defendant was guilty of what we refer to as an
8 aggravating circumstance.

9 In Specification Two, after having found the
10 Defendant was 18 years of age or older at the time
11 the offense was committed, you found the Defendant
12 guilty by proof beyond a reasonable doubt of the
13 following specification; that Ron Lally was a
14 witness to a criminal offense and was purposely
15 killed to prevent his testifying in any criminal
16 proceedings and the Aggravated Murder of Ron
17 Lally was not committed during the commission or
18 attempted commission or flight immediately after
19 the commission or the attempted commission of
20 the offense to which Ron Lally was a witness.

21 In other words, in finding the Defendant
22 guilty of Specification Two, you determined that
23 Ron Lally was killed to prevent his testimony as
24 a witness in a criminal proceeding.

25 Throughout the trial you have been

1 instructed not to read or listen to any media
2 reports concerning this case. This ruling
3 remains in effect.

4 You are also instructed not to discuss this
5 case with anyone or permit anyone to discuss
6 this case with you until such time as the case
7 is concluded and that rule also remains in effect.

8 If any of you have been exposed to any media
9 reports or discussions concerning this case,
10 I instruct you that you must put aside and
11 disregard any such report or discussion and you
12 will determine this case based only on what is
13 presented in this courtroom, including the
14 presentation of any evidence, the arguments of
15 counsel and the instructions of law delivered
16 by the Court.

17 At this point, ladies and gentlemen, I am
18 going to ask you certain questions as a group.
19 You will raise your hand if your answer to the
20 question would be yes or if there is some matter
21 which requires further explanation and discussion.

22 The first question is, have any of you been
23 exposed to nonmedia communication, conversation
24 or contact regarding this case since the last
25 time that I saw you?

1 (No response.)

2 THE COURT: I take it by your
3 silence, and I take it by your not raising your
4 hand, that you have not.

5 The second question is this. Have any of
6 you been exposed to media coverage regarding
7 this case since the last time I saw you?

8 (No response.)

9 THE COURT: You have not read
10 anything in the newspapers?

11 THE JURORS: No.

12 THE COURT: Nobody listened to
13 it on the radio or anything of that nature?

14 (No response.)

15 THE COURT: Again, I take it
16 by your silence that you have not.

17 Ladies and gentlemen, in this mitigation
18 phase of the case the Defendant will have the
19 opportunity to offer evidence of mitigating
20 factors and will be permitted to argue the
21 weight to be given to any evidence offered
22 in mitigation.

23 The Defendant has no burden in this
24 proceedings other than to offer some evidence
25 in mitigation and the Defendant is generally

1 not limited in the mitigation evidence he
2 chooses to present.

3 The State of Ohio has the burden of
4 proving by proof beyond a reasonable doubt
5 that the aggravated circumstances set forth
6 in Specification Two outweighs the factors
7 presented in mitigation.

8 The State of Ohio is limited in its
9 evidence to the aggravated circumstances in
10 Count Two. That is that the victim was killed
11 to prevent his testifying in a criminal
12 proceedings.

13 The State of Ohio may also present
14 rebuttal evidence after the Defendant concludes
15 his presentation of evidence. The State will
16 also have the opportunity to argue that the
17 aggravating circumstances in this case
18 outweigh any mitigating factors.

19 Procedurally this phase of the case will
20 be slightly different from the guilt phase of
21 the case. In this phase of the case the
22 Defendant will have the right to take the
23 stand and he can elect to make a statement
24 that is not under oath.

25 If the Defendant takes the stand, which

1 is not under oath, the State of Ohio will not
2 have the right to cross-examine the Defendant
3 which is a right under Ohio law.

4 Following the presentation of evidence and
5 the arguments of counsel I will give you further
6 instructions. After giving you the instructions,
7 it will be your duty to deliberate and make a
8 recommendation to the Court of the sentence
9 which should be imposed in this case pursuant
10 to law.

11 Mr. Rosenbaum, you may proceed with your
12 opening statement in this matter and shortly
13 thereafter followed by the defense opening
14 statement.

15 MR. ROSENBAUM: Thank you, your
16 Honor.

17
18
19 OPENING STATEMENT TO THE JURY ON BEHALF OF THE STATE OF OHIO

20 BY MR. ROSENBAUM:

21 I will briefly, for the record, incorporate
22 the evidence that is relevant to the nature and
23 circumstances of the aggravating circumstances
24 the Court has enumerated to the jury and I would
25 like to argue to the jury that this is the moment

1 that all those questions that we asked you
2 beforehand applies, whether you could impose a
3 death penalty if the law and the evidence required
4 it, whether you will not consider the fact solely
5 that he is young by itself without bringing into
6 the death penalty the law that the Judge will
7 give you.

8 As I have indicated to you in some of the
9 questions asked or other people have as well,
10 there are guidelines for you.

11 You have a duty here as well and the question
12 I think can be put to you, if you find that the
13 State has convinced you beyond a reasonable doubt
14 that the aggravating circumstances in this crime
15 that make him eligible for the death penalty
16 outweigh the mitigating evidence that they may
17 put on, it is your duty to impose the death
18 penalty and that is the question.

19 You will have some guidelines. It is the
20 State's position, and I will be very brief here,
21 that whatever they have to offer you today fails,
22 then you reconsider the nature and circumstances
23 of this murder that pertain to the aggravating
24 circumstances.

25 In other words, you are not here to consider,

1 well, the guy was a witness. You can also
2 consider nature and circumstances of this crime
3 that pertain to that aggravating circumstances
4 and those include the hideous and violent cold
5 and calculated way that they accomplished their
6 purpose of taking out a government witness.

7 And I submit to you briefly now, no matter
8 how many people he puts before you or whatever
9 he chooses to say, at one point in his life he
10 might have led a normal life or there were
11 normal parts of his life.

12 He has outdone that and by bringing you
13 proof of what he has done, which you will see
14 again, is violent, cold, calculated acts,
15 that he is deserving of the death penalty
16 and no other, and I think you will find, based
17 upon the law and the evidence, it will be your
18 duty to return that verdict for what he has
19 done.

20 Thank you.

21 THE COURT:

Mr. Cleary?

22 MR. CLEARY:

Thank you, your

23 Honor.
24
25

1 OPENING STATEMENT TO THE JURY ON BEHALF OF THE DEFENDANT

2 BY MR. CLEARY:

3 Good morning. It has been a number of weeks
4 since we have been here and I am sure some of this
5 has been on your mind as it has co-counsel here
6 and Mr. Jalowiec himself. We went through quite
7 a trial there and I think all of you were paying
8 attention.

9 As Mr. Rosenbaum said, the case started off
10 talking -- we did before that other trial, this
11 is what all of that was about and what you are
12 here basically to decide is whether or not you
13 feel that this man should live or die, he should
14 be put to death, should be killed, strapped into
15 an electric chair and have the switch thrown.

16 This man -- I would ask you to look at him,
17 all right, take a good look at him, because that
18 is the issue that you are dealing with, all
19 right?

20 Not whether he goes free, because the State
21 is going to punish him for this crime, all right,
22 but between the choices of whether he is spared
23 his life, locked up or whether he is put to death,
24 whether he is killed, that is what we are dealing
25 with here.

1 Now, we lawyers tend to speak in terms of
2 plaintiff, defendant, the State, the prosecution,
3 all right?

4 In many respects it is a way to not have to
5 know the parties' names, we just know the players
6 and it is dehumanizing. Sometimes maybe we forget
7 that we are dealing with human beings. You are
8 not thought of as Juror No. 4 or Juror No. 1,
9 each of you has a lifetime that you bring into
10 that chair, as does Stanley Jalowiec, and what we
11 are going to do here today, hopefully, is try to
12 remove some of this dehumanization that the State
13 or the prosecution has applied to Stanley
14 Jalowiec.

15 He is a man with a mother and a father like
16 you and I. We want you to get to know him a
17 little bit before you decide whether you think he
18 should be killed.

19 Now, these are the issues that we are dealing
20 with, all right, life behind bars or death. It is
21 not less than that.

22 Now, we went through a trial and there are a
23 couple of concerns I had because of this trial,
24 all right?

25 We asked the witnesses a lot of questions.

1 We tried -- the investigator tried to pull things
2 out here. What I am asking you is, that obviously
3 Mr. Grunda and I were hoping for a different
4 result here, okay, at the trial stage or what they
5 call the guilt phase, but I am asking you, because
6 we may have been aggressive or we were looking for
7 a different result, and because you saw things
8 differently, I am asking you not to take any of
9 this out.

10 I want you to keep an open mind, all right?

11 Each stage has its necessary requirements,
12 all right, during the guilt phase we fought to
13 try to prove the man not guilty. You had a
14 different view and we believe in the jury
15 system, all right?

16 So, please, do not think this is predecided
17 because you have determined guilt. You have a
18 further duty here.

19 We are -- basically the bottom line of this
20 is we are going to allow you to meet Stan, Stanley
21 Jalowiec, not the Defendant, and we are going to
22 ask you to spare his life. That is what we are
23 here for. That is what we are going to do and we
24 ask you to keep an open mind and listen and don't
25 let this person become something dehumanized,

1 realize he is a human being and it is a human
2 being's life we are talking about.

3 Thank you very much.

4 THE COURT: The Court would like
5 to say that the reason for taking the role of the
6 jury by numbers was not in any way, shape or form
7 designed to dehumanize anything, but it is to keep
8 from overly exposing the identity of the jurors at
9 this point.

10 MR. CLEARY: Nor was it intended
11 that way, your Honor.

12 THE COURT: The Court felt that
13 it needed an explanation on that matter at this
14 point.

15 MR. ROSENBAUM: Your Honor, as I
16 previously stated, and the Court acknowledged,
17 the defense has the burden of going forward. We
18 would incorporate by reference all the matters
19 and circumstances of the trial that pertain to
20 the circumstances of killing a government witness
21 and at this time stand by the past evidence.

22 THE COURT: So be it.

23 Mr. Grunda or Mr. Cleary?

24 MR. ROSENBAUM: We have a separation
25 of witnesses here, right?

1 Did we during the last trial?

2 I think that would still apply.

3 THE COURT: If not, you are
4 making a motion and the Court will grant that
5 motion.

6 All those who expect to testify in this phase
7 of this case and are in the courtroom will have to
8 leave the courtroom unless they are seated at
9 counsel table. If there is anybody, you will have
10 to leave at this time and the separation goes
11 further that if, after you have testified and you
12 are back out of the room, you are not to reveal
13 to anybody else what the testimony was or what
14 went on in the courtroom at that time.

15 I will leave it up to the individual counsel
16 as I do not know who the witnesses might be.

17 MR. GRUNDA: Your Honor, may we
18 approach the bench?

19 THE COURT: Surely.

20 (Whereupon, the following proceedings
21 occurred at the bench out of the hearing of the jury.)

22 MR. GRUNDA: We are not sure if
23 they are going to be witnesses or not.

24 THE COURT: If they are in the
25 courtroom they will not be witnesses.

1 MR. GRUNDA: If they are in here?

2 THE COURT: If you have any
3 doubt, you better tell them to leave.

4 MR. GRUNDA: Okay. Thank you.

5 Can I have a moment to tell them that?

6 THE COURT: Of course.

7 (Whereupon, the following proceedings
8 occurred back in the hearing of the jury.)

9 THE COURT: Mr. Grunda, you may
10 proceed with the first witness.

11 MR. GRUNDA: Do you want to wait
12 for Mr. Cleary or not?

13 THE COURT: No.

14 MR. GRUNDA: Mr. Jalowiec, your
15 Honor.

16 THE COURT: Very well.

17 MR. GRUNDA: He wishes to give an
18 unsworn statement.

19 THE COURT: That is his right.

20 Mr. Jalowiec, you have been here for the
21 routine. Make yourself as comfortable as
22 possible, speak into that microphone and adjust
23 it any way that you need.

24 THE DEFENDANT: All right.

25 MR. GRUNDA: Your Honor, if it

1 is not a problem with the Court, I know he is
2 nervous and all, I told him to write things down
3 so he wouldn't forget. If that is not a problem.

4 THE COURT: That is fine.

5 MR. GRUNDA: Thank you, your
6 Honor.

7 I don't intend to ask him questions because
8 he has a statement.

9 THE COURT: Is it going to be a
10 statement?

11 MR. GRUNDA: Yes, and no
12 questions.

13 THE COURT: We will play it by
14 ear, Mr. Grunda. The Court is not going to
15 prevent you from asking questions.

16 MR. GRUNDA: I thought he was
17 going to give a statement. If there was things
18 he left out or I thought was necessary, I will
19 follow it up.

20 THE COURT: Proceed, Mr.
21 Jalowiec.

1 UNSWORN STATEMENT BY THE DEFENDANT, STANLEY E. JALOWIEC

2 Good morning, ladies and gentlemen of the
3 jury.

4 First of all, I would like to introduce
5 myself. My name is Stanley Jalowiec.

6 I was born August 17th, 1970. I was born
7 in Elyria Memorial Hospital. My mother's name
8 is Sarah Jalowiec, my father's name is Ed
9 Jalowiec.

10 I have one brother and two sisters. I
11 grew up in Grafton --

12 MR. GRUNDA: Who did you live
13 with in Grafton?

14 THE DEFENDANT: My mother and
15 father.

16 MR. GRUNDA: How long did you
17 live in Grafton?

18 THE DEFENDANT: Well, till I was
19 about 16. I went to --

20 MR. GRUNDA: Give the ladies and
21 gentlemen of the jury an idea of your educational
22 background if you grew up in Grafton.

23 THE DEFENDANT: I went to East
24 Carlisle. I was in first grade, I got held back
25 because I had a learning disability. I had

1 dyslexia and I had to do it all over again. I
2 went from kindergarten to fifth grade without
3 missing a day of school.

4 I had perfect attendance. My mom got an
5 award for perfect attendance. All her kids, my
6 brother and sisters went to school without missing
7 a day of school for so long and, you know, the
8 reason why I missed my first day of school was
9 because I had my knees got swollen up real big
10 and I was not able to walk because of my knees
11 and I had went to the hospital and they drained
12 16 fluid ounces out of my knees and I was
13 diagnosed with rheumatoid arthritis.

14 MR. GRUNDA: How old were you
15 then?

16 THE DEFENDANT: Probably 12, 13.

17 You know, I begged the doctors to let me go
18 to school because I wanted to go to school because
19 I wanted to be a veterinarian and I knew I had to
20 go to school in order to be a veterinarian and so
21 then, you know, they wouldn't let me go to school
22 and I mean, I was hurt because I wanted to go to
23 school.

24 I had to do it. I mean, I just -- I mean
25 for five years I didn't miss a day and felt real

1 bad and I went to -- after that I went to Midview
2 Middle School till about seventh grade and then
3 from there I went to Edison and I went there from
4 seventh to like eight or nine and after I went
5 there, I went to Elyria West and I was there for
6 around nine months or so.

7 And, you know, then after that I went back
8 to Edison and then I went there for like four or
9 five months and then I went to Elyria High, but
10 I had problems, you know, when I got to Elyria
11 High I had problems doing the school work.

12 I couldn't write continuously because of my
13 arthritis and I wasn't able to do the school work
14 so I quit and then I went to -- I got a job at my
15 grandfather's golf course and, you know, I had to
16 ride my ten speed from Elyria all the way to
17 Grafton out on 57 where the golf course was.

18 But that tended to cause a problem because
19 of my arthritis being in my knees and stuff. I
20 wasn't able to ride that far every day in the
21 morning with the damp weather. My arthritis
22 would swell up, I would wake up in the mornings
23 real stiff so it tended to cause a problem for
24 me to work and I worked for a limousine service
25 since I was 16 washing cars.

1 And, you know, washing the cars and
2 vacuuming them out and preparing them for, you
3 know, the things they were supposed to do and
4 from there -- I stayed there for a little while
5 and then I met this girl and she had a son and
6 I got with her and we, you know, I don't have
7 any kids and she had kids and she wasn't with
8 the father so we got together.

9 We got an apartment.

10 MR. GRUNDA: What was her name?

11 THE DEFENDANT: Jackie Chaffin,
12 built a father and son relationship with the
13 son, but he knew I wasn't his father and he
14 never called me dad. He called me Buddy
15 because I was like his big buddy for him.

16 And, you know, we got along real good and
17 I took care of him and things, but I worked at
18 a tree service. I tried working at a tree
19 service but that didn't work because of all the
20 heavy labor in my hand and things -- I couldn't
21 do the work because I would wake up in the
22 mornings real stiff and it tended to cause a
23 problem.

24 So then I tried construction companies.
25 That didn't work because of the excess lifting

1 and so forth, the damp weather, that caused my
2 knees to swell up and my hands to swell up.

3 My shoulders would be real stiff and from,
4 you know, I tried working at Convenient Food
5 Mart but I worked in the meat department and I
6 wasn't able to because of the cold conditions.

7 My hands would again swell up, you know,
8 and it just wouldn't work because of the
9 conditions, so, you know, I went to the
10 Cleveland Clinic several times for this but
11 this rheumatoid arthritis, the doctor said it
12 was diagnosed the worst kind of arthritis to
13 have, there was nothing that they could really
14 do.

15 So, I figured well, I couldn't work, so
16 my girlfriend, she thought, well since you
17 can't work, maybe you can stay home with
18 Derrick and take care of Derrick while she
19 worked, so we tried that.

20 It worked out pretty good so, you know,
21 she would go to work at four o'clock. You
22 know, I would clean the house up, you know, me
23 and Derrick would go walk the dog. We would
24 walk Duke. I would get him on his little
25 motorcycle. We would walk from Fuller Road

1 to downtown, then down to Cascade Park, fly
2 the kites with him at the stadium.

3 I would get him something to eat, come
4 home, get him in the shower, sit down and
5 watch TV, put him to bed. When she came home
6 she had dinner on the table. I mean, we just
7 -- everything was going good.

8 Then something happened one Christmastime
9 and we ended up breaking up and I didn't --
10 when we broke up I didn't see her for six months
11 and then between that six months she had told me
12 that she was pregnant, she wanted to get back
13 together, but something happened that her
14 ex-boyfriend had did some things and she was
15 scared of him.

16 He didn't want her to get with me because
17 she was afraid of him, so I didn't see her for
18 another six months and when she had the baby,
19 she decided that she wanted to be with me and
20 I wanted to be with her, so we had got back
21 together and I got back with her.

22 We got an apartment and at the time I
23 needed a job because now she had had a baby
24 and I had to do something because I had the
25 responsibility of two children now so I was

1 with a friend and he said that he knew a place
2 where I could work and I was -- I said, okay.

3 We went, checked it out and it was at a
4 bar, it was a bartending job, but the only
5 problem was that it was a gay bar and I
6 figured, well, you know, I needed the money
7 so I will do it, you know.

8 So I worked at the bar for several months
9 and then, you know, that worked good and her
10 parents got a loan from the bank and they had
11 bought a trailer for us and we moved into the
12 trailer and in between our separation I had
13 lived here and there.

14 I did jobs for my grandparents, my uncles
15 and things and when we moved to the trailer we
16 found out that the little baby that she had
17 just had was deaf and we had to take the baby
18 to therapy twice a week and he had to go to
19 physical therapy twice a week and speech
20 therapy twice a week so I had to quit the
21 job because I had to take him to Westlake
22 every -- twice a week.

23 So, you know, I had no other choice, so
24 we took him and then that is when I met a man
25 out at the hospital, in between taking him

1 there, and the man had had surgery on his
2 knees.

3 It was hard for him to bend over and do
4 things and so forth and, you know, I had
5 talked to him and told him that I do odd jobs,
6 you know, like for the lawn, washed cars and
7 floors, or whatever, anything, you know, to
8 support my family.

9 MR. GRUNDA: What is this
10 person's name?

11 THE DEFENDANT: Raymond Pasterczyk.
12 He is like, okay, I could use you, you could come
13 to my house. He lives out in Rocky River, has a
14 nice -- the back yard is nothing but plants and
15 flowers and things and I would churn the flower
16 bed and I would wash his cars and one time I
17 painted his garage and I would clean the garage
18 out.

19 You know, I hosted for his parties because
20 he would have parties and I would be the waiter
21 for his parties for his family gatherings and
22 things.

23 I cut his grass and swept his driveway and
24 the walkways and put up his Christmas lights,
25 you know. Everything was going good because I

1 had money coming in and, you know, I was
2 spending time with my family.

3 I tried working with my father one time,
4 but it was all the way out in New York and I
5 really couldn't be away from my family because
6 I had to be in New York and my family was here,
7 really didn't have no money so, you know, I had
8 to hitchhike home because Jackie really couldn't,
9 you know, handle it because we had no money and
10 so forth so I hitchhiked home.

11 That is when I met Danny Smith and it was
12 in like the end of '92, the beginning of '93,
13 and Danny, I knew him when I was around 16 or
14 so, but I really didn't, it was just hi, hello,
15 how are you, what are you doing, see you later.

16 It was that time I met him through his
17 cousin, Kevin. We really didn't hang out or
18 nothing. It was just I would see you, hello,
19 how are you doing and that is it and he told
20 me when I ran into him, he told me that his
21 mom kicked him out, he didn't have no place
22 to stay.

23 And I was like, well, if you want, I know
24 how it is to be homeless because I was homeless
25 before, so I said, well, come on, you can stay

1 at my house a couple days until you can find
2 another place.

3 But a few days ended down into a week and
4 a few weeks ended up to be a month or so and he
5 brought all of his friends around and, you know,
6 caused a problem because here we are in a trailer
7 home and there is -- you can't have a lot of
8 people coming in and out and I was in the process
9 of trying to buy my own limousine to start my own
10 limousine service.

11 But, whenever, you know, he kept coming and
12 bringing his friends and stuff and we ended up
13 getting kicked out, so my girlfriend, Jackie, she
14 went to her father's and we ended up breaking up
15 and I lived here and there between then and, you
16 know, I had still worked at the bar.

17 You know, I was doing odd jobs and things
18 just to keep money in my pocket to eat and now
19 get me a place to stay. I would stay at my
20 friend's house several times, more than several
21 times, a lot, and then that is basically where
22 we are at today and I mean Danny -- I mean,
23 Danny caught some drug cases, you know, I
24 didn't catch no drug cases.

25 His father got some drug cases and that

1 was in '93, okay. Detective Leiby testified
2 that Ron was a police informant and he had
3 came to the Elyria Police Department because
4 he was a crack addict and because he had
5 problems doing drugs and that was June 7th,
6 '93, and he wanted to sign him up as a police
7 informant.

8 Now, you seen the police informant papers
9 and my name wasn't on it. Danny Smith's name
10 wasn't on it nor was Raymond Smith, which
11 Detective Leiby testified that Ron wanted to
12 specifically buy from Danny Smith and, you
13 know, but yet his name still wasn't on the
14 paper and I don't understand why the names
15 weren't on the paper if he wanted to buy from
16 him.

17 I mean, that would have been -- wouldn't
18 that be one of his names on the associates'
19 list was Danny Smith, being that he went and
20 bought from Danny Smith and that buy was took
21 on June 7th, '93, okay.

22 September 1st, '93, Danny Smith was picked
23 up for drug charges and he had got out on bond
24 and went about his business.

25 Now, according to the testimony, seven days

1 after Danny had been picked up, charged and got
2 out on bond, he was supposed to have made some
3 threats on Ron's girlfriend, Sandra Williams,
4 and you heard testimony to that as to the fact
5 that September 7th, '93, that Danny Smith had
6 made threats to her concerning his parents, his
7 mother and father's trailer, or what not, and
8 then it would be a shame if something happened
9 to Ron, you know.

10 Well, we have two problems there. Danny
11 said I wasn't there and Sandy Williams said she
12 doesn't know me and she never met me and yet,
13 what does that have to do with me, if Danny
14 went and threatened her?

15 What does that have to do with me?

16 It has nothing to do with me. I didn't
17 catch no drug cases. I wouldn't have no reason
18 to threaten her or Ron. I will get to the other
19 problem in a few minutes.

20 Now, okay, after that you heard testimony
21 of Officer Homoki being called on a disturbance
22 call and that was on September 15th, '93. Danny
23 Smith was supposed to have threatened Lally at
24 Mr. Hero's.

25 Mr. Homoki testified that Ron came to the

1 car in a hurriedly fashion and stated that he
2 had been involved in some cocaine and had been
3 arrested for the same and that he had agreed to
4 work his charges off, you know, and that he had
5 made several controlled buys wearing wires and
6 he had bought some drugs from these individuals
7 who threatened to kill him.

8 Now, after Ron told Mr. Homoki that, he
9 said that he went to Danny Smith and said that
10 Danny Smith stated that that punk ass bitch is
11 going to get his and Mr. Homoki said he asked
12 Danny if he was threatening and he said he
13 doesn't have to threaten him and that he was
14 going to get his, okay.

15 Now, we have several problems with this
16 because Homoki testified that Ron said he wore
17 a wire to work his charges off. Yet Detective
18 Leiby testified that he came to the department
19 because he was a crack addict and he had drug
20 problems.

21 Well, that doesn't mix. If he busted
22 people because he was a crack addict and had
23 problems, that is one thing, but if he had
24 caught charges and had to work the charges
25 off, then that wouldn't jibe with what

1 Detective Leiby said.

2 They are inconsistent and that is what
3 Homoki said. He said that he worked his
4 charges off in order, you know, to get a
5 lesser sentence or whatever or drop the
6 charges or, who knows, but there is another
7 thing which you know that doesn't add up.

8 We will get into that as soon as I get
9 to the other dates.

10 Now, I have already showed that, you
11 know, this one incident with Sandra Williams,
12 which happened September 7th, there is another
13 incident I think eight days later.

14 September 7th, seven days after Danny
15 got picked up, he got picked up the first of
16 September, seven days later he was supposedly,
17 according to testimony, went and threatened
18 Sandra Williams, okay.

19 Now then, eight days after that the
20 incident, September 15th happened according to
21 Homoki.

22 Now, what really don't add up is Danny
23 didn't get his indictment until October 1st,
24 '93, and he didn't have his arraignment until
25 October 6th, '93, and this is where we tend

1 to have a problem because the prosecution said
2 that Ron and Sandra was threatened because
3 Danny had heard the buy tape and that is what
4 they testified to, that Danny threatened them
5 because they had heard the buy tape.

6 But yet, if he was busted in September, he
7 got picked up September, he wouldn't have heard
8 the tape until after he was indicted, until
9 after the arraignment, which would put it exact,
10 he didn't hear the tape until October or November,
11 October 22nd, somewhere in between there, so why
12 would Danny, not hearing the tape, not knowing
13 that Ron was the one that busted him, or Ron
14 was the one that sets him up, why would Danny
15 threaten him?

16 It doesn't make sense but yet the
17 prosecution said that is why they were threatened.

18 He couldn't of, because he didn't hear the
19 tape until around October and I have the docket
20 sheet that says he was indicted 9-1-93 and he
21 didn't get his indictment until 10-1-93, so if
22 he didn't get the indictment until the first of
23 October, then he wouldn't have heard the buy
24 tape until after -- until the State filed for
25 discovery, which was 10-20-93, so that doesn't

1 add up.

2 They are saying that he heard the buy tape
3 and what doesn't make sense is, how could he
4 hear the tape if he didn't have it yet?

5 How could he have known, why would he
6 threaten him if he didn't hear the tape?

7 Now, after that supposedly happened, John
8 Homoki, even though if it did happen, if it
9 didn't happen, John Homoki testified that I
10 was walking away from the situation, I didn't
11 have nothing to do with threats, no evidence
12 of me having anything to do with it, no
13 evidence of me having any drug transactions
14 with Ron Lally, period, and so this brings us
15 to -- he is set for trial and the trial was
16 set for January 19th, okay.

17 Now, there was was a death, I understand
18 that there was a death, and we can't get
19 around that fact that there was a death. We
20 have photos, we have a body. They said he
21 was killed for his testimony.

22 His testimony wasn't to testify against
23 me, his testimony didn't have nothing to do
24 with me. Me and Ron were friends. I mean,
25 why would I kill a friend for somebody else

1 that had nothing to do with me?

2 Now, Raymond Smith is not related to me.
3 Danny Smith is not related to me. Michael
4 Smith is not related to me. So why would I
5 do something for them?

6 I mean, they claim that I had a crack
7 problem. I had no crack problem. I have
8 done drugs, yes. I am not going to deny that
9 fact that I do drugs, but I didn't have a
10 crack problem.

11 Now, the body was found in Cleveland,
12 okay?

13 They didn't identify the body, according
14 to testimony, for a week and a half, two weeks
15 later, okay. Now that led to the Cleveland
16 Police Department, okay.

17 They identified the body. That brought
18 Detective Leiby in the whole picture.

19 Now, in March I had to go to Court and
20 Detective Leiby caught me driving under
21 suspension, my license were suspended. I was
22 driving, he caught me, and he pulled up and
23 he said, "Danny, are you going to go to Court
24 in the morning?"

25 I said, "Yes."

1 Then he asked me about my driver's license
2 and I told him, "I don't have my driver's
3 license," and he says, "Well, we will talk
4 about this tomorrow morning at Court."

5 So I said, "Okay, I will talk, okay,"
6 thought that I was going to be arrested for
7 driving under suspension, so I went to Court
8 the next morning and Mr. Cleary was out there
9 talking to Detective Leiby and Mr. Cleary
10 pulled me to the side and said, "You know
11 Detective Leiby would like to talk to you
12 about a homicide."

13 He said that, "He wanted to talk to you
14 about a driving under suspension," so I said,
15 "Okay, I will talk to him," you know, so
16 Detective Leiby came to me and told me -- he
17 said, "Look," he said, "all you have to do
18 is come down to the police department and
19 talk with me and I won't charge you with
20 driving under suspension, you won't have no
21 charge, I will forget it."

22 I said, "Okay, that is a fair deal, I
23 will come and talk to you if that is what
24 you want me to do," so I went to the police
25 department and, you know, we talked about Ron

1 Lally and he asked me if I knew anything about
2 it.

3 I told him, "No," and he asked me if I
4 knew if Danny Smith had anything to do with it.
5 I told him, "No, Danny doesn't seem the type to
6 do something like that, Danny is a playful guy,
7 he jokes around a lot," and then he asked me
8 about Raymond Smith.

9 And I told him, "I don't know a Raymond
10 because I don't, I don't know Raymond, I know
11 him as Danny's father, I didn't hang out with
12 him, we didn't have no type of friendship
13 connection or anything like that."

14 And then after that, you know, that is when
15 I found out that Danny had caught six more drug
16 cases.

17 As a result of Danny's six drug cases,
18 Danny had talked to Detective Leiby several
19 times supposedly and that is when his father
20 came in the picture and after his father had
21 came into the picture, you know he talked to
22 Detective Leiby and so forth about this.

23 And then after that Detective Leiby said
24 he talked to Danny and after Danny talked to
25 Detective Leiby, then Raymond talked to

1 Detective Leiby and then we were indicted and
2 here is why I don't understand how I was even
3 involved in this.

4 For one, I have no drug cases pending.
5 I don't even have no criminal convictions as
6 an adult.

7 Now, they indicted us. We were indicted.
8 Our pictures were all in the newspaper, we were
9 all in the newspapers and that was in March of
10 '95.

11 Well, we were indicted, we were charged.
12 It was in the papers. Mike Smith comes in the
13 picture and makes a statement or whatever and
14 now he is a State's witness.

15 Michael Smith said he was there, said he
16 was present, said that he didn't do nothing,
17 he didn't see nothing, didn't have nothing to
18 do with it, but yet said I had something to
19 do with it, but then again, why would I do
20 anything?

21 Why would I have anything to do with it?

22 I mean, I had no reason to kill that man.
23 He didn't bust me. He didn't buy no drugs
24 from me. I mean, that is not my family. I
25 mean, wouldn't it be a lot easier for family

1 to do something like this than me?

2 They are black. I am white. I mean,
3 it doesn't make sense. And, you know, I had
4 read newspaper articles and stuff, you know,
5 since I have been incarcerated and things.

6 I cut a newspaper article out of the
7 Plain Dealer here and it says there is over
8 1,000 wrongful convictions of serious crimes
9 and there is five reasons why there is all
10 of these wrongful convictions.

11 One reason is because of perjury of a
12 witness, negligence of criminal justice
13 officials, coerced confessions, forensic
14 errors and over zealousness by police and
15 prosecutors to solve a case.

16 Now, it says more than 200 cases the
17 research found police and prosecutors
18 completely tainted evidence, altered
19 evidence or lied about facts of the case
20 and that is what I am saying the detective
21 had done.

22 I had nothing to do with this.
23 Detective Leiby specifically set me up and
24 he made some comments in the newspaper, to
25 the Chronicle, and one of the comments was

1 that it was impossible for him to get 15
2 people to lie against us.

3 Well, it is impossible, okay, I agree
4 with that, but yet every witness that got
5 up on the stand and testified had a
6 different story, said I was three
7 different places.

8 I mean, Michael Smith said that beer
9 was bought at 3:30 in the morning but yet
10 you can't buy beer after one o'clock.

11 He also testified that all four of us
12 were drinking. Yet there was no alcohol
13 in Ron Lally's system according to the
14 coroner.

15 Now, you jurors made the decision and
16 I understand that and I ask that you look
17 at the evidence and consider the possibility
18 of Detective Leiby talking Michael into
19 testifying and saying that I was the one
20 that did it instead of him.

21 I mean, here he is in a bind. He is
22 desperate and he is going to say and do
23 whatever he has to do in order to protect
24 himself and that brings me to another comment
25 that Detective Leiby made in the papers that

1 people got to keep in mind, desperate people
2 say and do desperate things.

3 I am asking you to keep that in mind when
4 you are deliberating whether I am going to live
5 or I am going to die and, you know, Terry
6 Hopkins was desperate. He had 25 years
7 hanging over his head.

8 I mean, Carl Hartman, he had five years
9 hanging over his head. Mike Smith, that is his
10 family, he had -- he should be here saying this
11 speech, not me, and I ask that you spare my
12 life, give me a chance to, you know, reform
13 myself from these people.

14 I had nothing to do with this and I mean,
15 I have been picked up by police on a bicycle.
16 They took my bicycle. I mean, they just took
17 it, impounded it, for no lights, no lights,
18 and no registration.

19 I have been picked up for jaywalking. I
20 mean, you know, all I ask that you consider
21 when you do decide whether if I am going to
22 live or I am going to die and ask that you
23 keep in mind that there are possibilities
24 that I really didn't have nothing to do with
25 this, that it was a family thing and I am not

1 part of the Smith family.

2 I am a Jalowiec. I am part of the
3 Jalowiec family and I ask that you keep that
4 in consideration.

5 THE COURT: Anything further,
6 sir?

7 THE DEFENDANT: No, sir. Thank you.

8 THE COURT: Mr. Grunda?

9 MR. GRUNDA: May I approach, your
10 Honor?

11 THE COURT: Sure.

12 (Whereupon, the following proceedings
13 occurred at the bench out of the hearing of the jury.)

14 MR. GRUNDA: With that, I am not
15 sure how the Court was going to proceed. If the
16 Court feels that I have not opened the door for
17 rebuttal by the prosecution, then that is all we
18 would present on behalf of mitigation.

19 If they do, then I think I have to do
20 something else.

21 THE COURT: I think if you put
22 on something that the Prosecutor is entitled to
23 some rebuttal.

24 MR. ROSENBAUM: I intend to rebut
25 the hell out of that.

1 THE COURT: In all honesty, it
2 is open for rebuttal.

3 MR. ROSENBAUM: He talked about
4 the sequence of events with Danny and Raymond.
5 He talked about not having drug cases and he
6 talked about what everybody was --

7 MR. GRUNDA: The only thing,
8 your Honor, is, he already incorporated
9 everything, so I don't know that that is
10 rebuttal.

11 THE COURT: This man made
12 statements that I think he is entitled to rebut.
13 He can't go beyond that.

14 MR. ROSENBAUM: I can do two things.
15 I can offer any and all evidence that pertains to
16 the nature and circumstances of the aggravating
17 circumstances, which is what I did by
18 incorporation, and I can rebut anything he says
19 and I have a lot to rebut if you want to make
20 your decision.

21 THE COURT: Before you make a
22 determination and decision on it, I think that
23 Mr. Rosenbaum is entitled to rebuttal. If you
24 rest at this point, we can take a short recess.
25 You think about it.

1 MR. GRUNDA: Well, in response
2 to what he said regarding when he was talking
3 about the charges, he said he had no prior
4 criminal convictions as an adult and he said he
5 didn't have any drug charges at the time, so I
6 don't want to get into a big contest as to what
7 it was, but I guess the other part of it is, in
8 my mind this is what I need to know, is how the
9 Court feels about the character, because he
10 didn't really put it in.

11 THE COURT: All I am saying is
12 that Mr. Rosenbaum has the right to rebut some of
13 the statements made by this individual. He has
14 that right.

15 MR. ROSENBAUM: So everybody knows
16 where everybody is coming from, if you think that
17 that testimony about how he took in the other kids
18 and tried to have jobs had nothing to do with the
19 character, then I don't know what it was relevant
20 for.

21 MR. CLEARY: Factual matters.

22 MR. GRUNDA: Doesn't have
23 anything to do with his character. That is what
24 I wanted to know.

25 THE COURT: I think he is

1 entitled to rebut at this stage.

2 MR. GRUNDA: If we can have a
3 short recess.

4 THE COURT: Very well.

5 (Whereupon, the following proceedings
6 occurred back in the hearing of the jury.)

7 THE COURT: Ladies and
8 gentlemen, with the clock on the courthouse
9 wall, it is five after ten. We have been going
10 at it just a little over an hour. Let's take
11 our regular recess this morning of about ten
12 or 15 minutes.

13 The admonitions that I have given you in
14 the past, do not discuss this case amongst
15 yourselves, do not let anyone discuss it with
16 you, do not read anything about it still apply
17 and with that, we will take a short recess.

18 (Whereupon, a short recess was had.)

19 (Whereupon, the following proceedings
20 occurred out of the hearing of the jury.)

21 THE COURT: Mr. Cleary, you
22 indicated to the Court in the hallway that you
23 wanted something for the record at this point?

24 MR. CLEARY: Yes, your Honor.
25 Your Honor, it is the belief of the defense

1 that the prosecution will try to impeach Mr.
2 Jalowiec's testimony or rebut his testimony using
3 some other acts evidence, namely four other cases
4 which are presently pending in Common Pleas Court.

5 I think that these cases, if allowed in,
6 would be prejudicial to my client and would have
7 no probative value for the jury here.

8 Now, my client's testimony might have opened
9 the door for information from the State in regard
10 to the drug case. However, there are two other
11 cases or three other cases, two of which involve
12 some level of violence which we think would
13 prejudice the jury greatly and we were very
14 careful with Mr. Jalowiec to make sure that he
15 didn't get into anything which would require the
16 introduction of the cases for rebuttal and feel
17 that the door has not been opened in any way
18 for the other acts evidence.

19 We, therefore, request the Court to issue
20 an order prohibiting the prosecution from
21 eliciting any testimony or putting on any
22 testimony in regard to any of these cases and
23 again argue perhaps the door was opened in
24 regards to the drug case, but not in regard
25 to these other cases.

1 THE COURT:

Mr. Rosenbaum?

2 MR. ROSENBAUM:

Your Honor, the

3 State does intend to offer evidence concerning
4 not only two drug cases, but also an arson and
5 two felonious assaults.

6 We believe that the felonious assaults are,
7 indeed, relevant to one, to counteract his claims
8 that he is somewhat disabled due to arthritis.
9 He is quite capable of manhandling people.

10 We also believe by putting on evidence that
11 he cares for his boys, he is their buddy, he walks
12 them to the park in their little tractor, that he
13 portrayed himself to the jury as a kind person and
14 as a result of that, we feel that the criminal
15 misdeeds, especially the violence, is relevant to
16 rebut that claim and they have, indeed, opened
17 the door.

18 MR. CLEARY:

Your Honor, the

19 statute talks about prior criminal convictions.

20 THE COURT:

Well, the statute

21 says evidence of other crimes, wrongs or acts is
22 not admissible to prove the character of a person
23 in order to show that he acted in conformity
24 therewith.

25 It may, however, be admissible for other

1 purposes such as proof of motive, opportunity,
2 intent, preparation, plan, knowledge, identity
3 or absence of mistake or accident.

4 That is 404(B), as in boy.

5 MR. CLEARY: None of which would
6 be applicable in this case, your Honor.

7 THE COURT: Talks about acts.

8 MR. CLEARY: But the proof of
9 motive, intent, opportunity, preparation,
10 knowledge, identity or absence of mistake, if you
11 bring up acts under this rule, all of the things
12 that Mr. Rosenbaum talked about fit under these
13 other requirements and specifically, your Honor,
14 nothing that he talked about here would be
15 impeached by the existence of these cases where
16 there is no conviction.

17 He is innocent until proven guilty of these
18 things. Right now they are prejudicial,
19 introduced for the intent to inflame and it can
20 be only prejudicial to this whole trial in this
21 matter, your Honor, to allow these nonconviction
22 allegations at this point.

23 There are indictments filed, but that is it.

24 Now, again, the drug case he may have opened
25 the door for, but these other cases, arson and

1 two felonious assaults, your Honor, these can do
2 -- there is nothing my client said to indicate
3 that would require the introduction of these
4 things for rebuttal purposes.

5 THE COURT: Mr. Rosenbaum?

6 MR. ROSENBAUM: Your Honor, I do
7 not agree with Mr. Cleary's analysis concerning
8 the rule.

9 His ability or opportunity to perform these
-10 crimes has directly been called into question by
11 his arthritic condition, but the State did not
12 intend to offer evidence pursuant to 404(B).
13 The State's theory would be more consistent with
14 404(A), but it is broader than that.

15 It is rebuttal evidence to rebut a claim
16 of his. It is rebuttal evidence. He portrayed
17 himself as a caring individual who wanted to
18 work, but could not, and cares for these kids
19 and I think since he has chosen to put that
20 trait into evidence, it is not a 404(B) or
21 404(A) problem as much as it is straight out
22 rebuttal of an issue that he chose to put in
23 effect and not in the case in chief.

24 It is rebuttal evidence.

25 MR. CLEARY: Your Honor, the

1 evidence, in order to be admissible, other acts
2 evidence, must be relevant to a fact in issue.

3 Now, the fact that a crime is alleged to
4 have been committed does not show that Stanley
5 Jalowiec was able to work. The fact that an
6 indictment was filed does not show that Stanley
7 Jalowiec does not care for his children.

8 These are the facts in issue and to bring
9 these other parts in do not apply and, by the
10 way, your Honor, when the rule was quoted back
11 to you, it is not ability or opportunity or
12 intent, it is motive, opportunity or intent
13 under 404(B).

14 Ability is not one of the things listed.

15 MR. ROSENBAUM: Opportunity, your
16 Honor -- ability has to do with opportunity and
17 we are talking about 404(A).

18 THE COURT: And the exceptions
19 there, too, character of the accused.

20 MR. ROSENBAUM: Right, and he has
21 offered evidence of a person's character traits.
22 He offered it and I can rebut that.

23 THE COURT: Offered by an
24 accused or by the prosecution to rebut the same
25 is admissible. That is what the rule says.

1 MR. CLEARY: Then let him
2 introduce evidence --

3 THE COURT: Evidence of a
4 pertinent trait of his character offered by an
5 accused or by the prosecution to rebut the same
6 is admissible.

7 MR. GRUNDA: Your Honor, may I
8 speak or can I tell him?

9 THE COURT: Sure, you may
10 advise.

11 MR. CLEARY: Again, your Honor,
12 I will emphasize that he is saying that, well,
13 this guy said he did something in his life that
14 allows the flood gates to open on any rumored
15 crime that may have been committed.

16 THE COURT: I don't think so.
17 I think that you ought to take that up -- I think
18 you ought to take that up with the people that
19 made the rule.

20 MR. CLEARY: I don't think the
21 rule permits it.

22 MR. ROSENBAUM: I intend to bring
23 evidence in that is admissible with people of
24 direct knowledge that he has done this to.

25 MR. CLEARY: He intends to try

1 the other case.

2 THE COURT: Who brought it up?

3 MR. CLEARY: No one.

4 MR. ROSENBAUM: The point of having
5 a bifurcated death penalty trial is that evidence
6 that may not be admissible in a guilt phase is
7 relevant to what type of punishment should be
8 brought in this case.

9 That is why there is two parts. Some of this
10 could not be brought in the guilt phase, but they
11 have opened the door to make it relevant in the
12 penalty phase.

13 MR. CLEARY: I guess, your Honor,
14 if he says he couldn't work, that doesn't mean
15 that that opens the door for him to bring in
16 evidence of arson.

17 If he says that he cared for a child, that
18 doesn't automatically allow them to bring in
19 evidence regarding felonious assault.

20 THE COURT: Let's read this rule
21 word by word and it is 404(A).

22 "Character evidence generally. Evidence of
23 a person's character or a trait of his
24 character is not admissible for the purpose
25 of proving that he acted in conformity

1 therewith on a particular occasion, subject
2 to the following exceptions:

3 "(1) Character of accused. Evidence of
4 a pertinent trait of his character offered
5 by an accused or by the prosecution to rebut
6 the same is admissible," is admissible.

7 MR. CLEARY: I fail to understand
8 what the pertinent trait of his character is that
9 we are talking about.

10 THE COURT: He is a great guy.

11 MR. CLEARY: He never said that.

12 THE COURT: What did he say,
13 couldn't work, wanted to work, he has water of the
14 knees, he can't work, he tried to, couldn't, he
15 worked at the golf course for the grandfather.

16 MR. CLEARY: Every single point
17 of this could be rebutted, your Honor, but not
18 with this. There is a rebuttal of these things.

19 THE COURT: He didn't work.

20 MR. CLEARY: They can rebut that.

21 THE COURT: I have no reason to
22 doubt he did that.

23 MR. CLEARY: If they brought in
24 evidence that he watched kids, that would be
25 relevant to this.

1 THE COURT: Now, I think if you
2 can bring in the walking, you can bring in the
3 other part.

4 Overruled. Exceptions.

5 MR. CLEARY: Thank you, your
6 Honor.

7 Your Honor, I will object as they bring
8 them up, too.

9 THE COURT: You have your
10 exceptions. I will give you a continuing
11 exception at this point, rather than interrupt
12 the testimony.

13 MR. CLEARY: Your Honor, okay.

14 I would object to once again any evidence
15 to rebut first of all character traits of the
16 Defendant which we say that he did not testify
17 to and specifically state that the materials
18 which they intend to try in this courtroom,
19 which they failed to try in other courtrooms,
20 is not relevant.

21 THE COURT: The fact that you
22 are bringing this up at this point before
23 anything has been done indicates that you feel
24 that it is a possibility.

25 MR. CLEARY: It is possible.

1 your Honor.

2 THE COURT: What the prosecution
3 wants to do?

4 MR. CLEARY: Right. They have
5 stated for the record that is what they intend to
6 do.

7 THE COURT: But this was after
8 you brought up the motion.

9 MR. CLEARY: Right.

10 THE COURT: The Court's ruling
11 is the same.

12 Overruled.

13 MR. CLEARY: I was preserving the
14 continuing objection.

15 THE COURT: And you have
16 already.

17 MR. CLEARY: Okay.

18 THE COURT: Bring them in, Barb.

19 MR. GRUNDA: Your Honor, in light
20 of the ruling would it be possible for us to put
21 Mr. Jalowiec back on?

22 THE COURT: He is finished now
23 at this point.

24 You want to question him, is that what you
25 want to do?

1 MR. GRUNDA: Well, our
2 understanding is now different than it was.

3 THE COURT: No, it is not
4 different. You came up to me before we took the
5 recess and you said if I were not to allow Mr.
6 Rosenbaum to rebut, you are done.

7 MR. GRUNDA: Right, you are now
8 allowing him to rebut.

9 THE COURT: And I said to you
10 at that time that Mr. Rosenbaum is going to be
11 able to rebut.

12 By the nature of the fact that you put
13 something on, he has a rebuttal. Whether he
14 chooses to go with it, is up to him, but he has
15 a rebuttal and I told you that he would have a
16 rebuttal and now what do you want?

17 You want to put him on and cross-examine
18 him?

19 MR. GRUNDA: No, I was going
20 to ask him to testify about what Mr. Rosenbaum
21 is going to say. He can talk about his other
22 cases.

23 THE COURT: Fine, I will be
24 over liberal and I will permit him to come back
25 on at this point. Yes.

1 MR. GRUNDA: Thank you, your
2 Honor.

3 THE COURT: Yes, but I think
4 you ought to make up your mind ahead of time and
5 know what direction you are heading.

6 MR. GRUNDA: We were, but based
7 on what happened now we have to change directions.

8 THE COURT: That is all I am
9 saying.

10 Bring them back in.

11 (Whereupon, the jury was returned to the
12 courtroom and the following proceedings occurred.)

13 THE COURT: Good morning again,
14 ladies and gentlemen.

15 Ladies and gentlemen of the jury, the defense
16 has indicated to the Court that it would like to
17 have the Defendant please resume the stand and
18 continue with his testimony, with further
19 testimony at this time, which the Court has
20 consented to be done.

21 Mr. Jalowiec, you come back to the stand.
22 You are still not under oath and you can continue
23 to make certain statements. No repetition, but
24 additional statements.

25 THE DEFENDANT: Okay.

1 MR. GRUNDA: In light of what
2 the Judge ruled during our recess, there was
3 issues brought up.

4 You indicated that you had no prior criminal
5 convictions, felony convictions as an adult?

6 THE DEFENDANT: Correct.

7 MR. GRUNDA: But you indicated
8 that there were -- subsequent to this charge you
9 received several other charges?

10 THE DEFENDANT: Yes, I did.

11 MR. GRUNDA: And you didn't tell
12 the jury about those.

13 Could you explain to them what charges they
14 were, when you got them?

15 THE DEFENDANT: Okay.

16 MR. GRUNDA: So they know.

17 THE DEFENDANT: Right. Okay.

18 Well, remember when I said I went to Court
19 and Detective Leiby had talked to me about this
20 driving under suspension?

21 Well, see, the reason why I was going to
22 Court was for a felonious assault, but, see,
23 the felonious assault had happened January 20th,
24 '94, and I am just accused of this.

25 I am taking it to trial. I mean, there is

1 five guys supposed to have been beat up downtown
2 Elyria. One guy sued me and the other guy pressed
3 criminal charges against me, but I mean, I had
4 nothing to do with it.

5 There was five guys knocked out, laying on
6 the ground. I mean, two guys that came out of
7 the bar and had done it and I stayed there to
8 tell the police what happened, but yet what I
9 don't understand is, I mean, I was the only one
10 charged, nobody else was charged in this alleged
11 felonious assault.

12 And, you know, that is why I had to go to
13 Court.

14 Now, the whole thing started inside the
15 Warehouse Lounge and I mean, it was a friend's
16 birthday, my sister's friend's birthday, and we
17 were downtown having a good time and I think
18 there was three or four guys had, you know, had
19 tried to act as bouncers and, you know, told me
20 to shut up.

21 And, you know, quit yelling and, you know,
22 we were just having a good time and I had asked
23 the bouncers -- I said, "Is this guy a bouncer
24 or anything," and he said, "No, he doesn't work
25 here or anything."

1 I said, "Okay," because I explained to them
2 what was going on and what it was, these guys were
3 trying to pick a fight with me, but I wasn't there
4 to cause any problems, I was there to have a good
5 time.

6 I don't go to the bars to cause any problem
7 and so, you know, we continued to have a good time
8 but then one of the guys had approached me and he
9 had grabbed me and tried to wrestle with me and
10 the bouncers came and broke it up, but yet the
11 bouncers told them to leave because they knew I
12 didn't have anything to do with it.

13 They are the ones that approached me and
14 tried to assault me. So after that I had told
15 the bouncers -- he was like, "Don't worry about
16 it, continue to have a good time."

17 So, last call was called. The people that
18 had started the trouble came back with a few
19 other people and they came by the back of the
20 bar and we had seen them and they had exchanged
21 words to me and my party and, you know, we just
22 ignored them because the bouncers, they wouldn't
23 let them back past the hallway there.

24 So it was time to go home and we went out
25 the front door, okay. Now, the people, the other

1 people, the people that were causing the problems,
2 went out the back door and as I was walking across
3 the street to go to Mom's Open Kitchen, I heard
4 someone yelling so I turned around and I seen
5 five people, you know, walking and talking.

6 I am going to kick your ass, I am going to
7 do this, I am going to do that. And, you know,
8 there was five people. I am walking across the
9 street with my sister and a few of her girlfriends
10 and one of the girls had jumped in their way and
11 said like, "You are not going to do nothing,
12 leave him alone."

13 And at that time two guys were coming out of
14 Razzle's Pub and one of the guys had pushed the
15 girl down and as I looked towards Razzle's,
16 someone punched me in the face and I was like
17 this. (Indicating)

18 I couldn't see because it was just a blur
19 and when I came too, the two guys that came out
20 of the bar ran up on them because the one girl
21 that was pushed down was one of the guy's --
22 was her ex-boyfriend and he had seen it and,
23 you know, they beat these guys up.

24 So, you know, my nose was bleeding. When
25 I shook it off, I mean, a couple guys are laying

1 on the ground and, you know, I didn't have nothing
2 to do with it.

3 I stayed there and waited for the police and
4 when the police had came, you know, I told them
5 what happened. I told them that I had been
6 punched in the face. When I shook it off, I
7 mean, that is what I found, they were laying
8 on the ground and I had been sued by the one.

9 The other guy pressed criminal charges.

10 Now, I didn't get the indictment until --
11 the indictment was May 10th -- not May 10th, I
12 am sorry -- the indictment was filed May 17th
13 and I have been -- they have not took me to
14 trial for this.

15 I have been waiting to go to trial for
16 two years, since January, '94, but yet they
17 kept continuing it and so forth and, I mean,
18 there was five people and yet I am the only
19 one charged.

20 Why am I the only one charged?

21 I can't beat five people up. I can't
22 beat three people up at one time, you know,
23 so I mean, that is when I was charged and I
24 believe the only reason why I was charged
25 was because of this homicide.

1 They figured, "Well, we will charge him
2 with this and he will talk, he will tell on
3 this and that," but yet that is why I was
4 charged with this and then after that, in
5 April, I caught a drug abuse, drug
6 paraphernalia.

7 Now, that charge was because -- the person
8 that I was with was getting high and he had
9 gave me his crack pipe because he had a family,
10 had a job and I really didn't want him to, you
11 know, get in trouble because, you know, he had
12 a family to support and at the time I really,
13 you know, I didn't have no family to support,
14 you know.

15 So then again, here is where you know I
16 was charged, which now I understand and why I
17 was charged for that one and that is what
18 happened.

19 After that, well, you know, I had a lawsuit
20 which I can't afford counsel so I really couldn't
21 get counsel for it and I knew I had nothing to do
22 with it, I knew I didn't do nothing, but yet the
23 guy still sued me and they pursued it and I tried
24 to go through the appeals court but I am not an
25 attorney so I really didn't follow the statutes

1 to the right limit.

2 And, you know, that is that.

3 After that I caught -- I was charged with
4 aggravated drug trafficking. I don't know,
5 really know, what this is all about, but, you
6 know, the first case was nolle and then they
7 charged me with other cases and this, again, I
8 believe that all these charges that were brought
9 against me were all a result to this homicide
10 in order for me to do what Terry Hopkins done.

11 You know, get up here and testify, you
12 know, say whatever Detective Leiby wanted me to
13 say, agree with Detective Leiby and that is why
14 I believe that I was charged with these charges,
15 so that Detective Leiby would -- you know, be
16 subject to, you know, what Michael Smith done,
17 what Terry Hopkins done, what Carl Hartman has
18 done, and after that, now all of these charges
19 on every piece of paper basically that I have
20 got through the Courts and through other things
21 such as my felonious assault.

22 It says at the bottom of one of the police
23 reports, it says follow-up investigation will
24 be conducted by Detective Leiby.

25 Well, okay, that is that. I mean, again I

1 don't know much about this drug case that I have.
2 All I can figure is, I am pretty sure Detective
3 Leiby had something to do with them, okay?

4 Now, after that it came -- '95 I was charged
5 with these other things. I still wasn't brought
6 to trial on the felonious assault, but yet it is
7 a year later and I am still not having been
8 brought to trial on them and I don't understand
9 why.

10 I feel that the reason they kept holding
11 these is because, "Well, we will hold them until
12 we can find out what is going on and if we don't
13 get a conviction on the murder, then we will try
14 and get him on some of these."

15 So, in '95 I had got an apartment out in
16 Cleveland and I had came into town to spend some
17 time with my father and, okay, at that time I
18 met my brothers, no my sister, and I went to
19 Sam's Lanes.

20 We were shooting pool. I met a friend and
21 his wife down at Sam's. We were shooting pool
22 and, you know, we were drinking and stuff and
23 there was a lady at the end of the bar and, you
24 know, she was a very nice looking, attractive
25 lady and I made a comment that, "You are a

1 pretty young lady, can I buy you a drink?"

2 And she was like, "No, my boyfriend
3 wouldn't appreciate it," and she pointed
4 her boyfriend out. I said, "That is
5 understandable, I just thought that, you
6 know, I would try and talk to you."

7 So then her boyfriend came and she must
8 have told her boyfriend and her boyfriend
9 said something to me and I said, "There was
10 no offense, I was just giving her a compliment,"
11 and he is like, "Well, she is with me," and
12 this and that, so shut your mouth and this
13 and that.

14 And I am like, "I just made a comment,
15 there was no offense taken by it, I didn't know
16 she was with you," and he kept, you know, kept
17 swearing and trying to downgrade me and
18 disrespect me and I was like -- like, "There
19 is no trouble, I just tried to give her a
20 compliment," and him and his friend started
21 creating a big commotion over nothing.

22 And next thing you know, her boyfriend
23 grabbed me by the throat and I didn't want
24 to cause any problems, so I just let him and
25 I passed out. I mean, he grabbed me by the

1 throat and just choked me and I passed out
2 and when I came too, my sister and my father
3 were, you know, "Are you okay, are you okay?"

4 I am like, "Yeah," I didn't know what
5 happened, so then we had got thrown out of the
6 bar and me and my sister and her boyfriend went
7 outside, you know, to leave and as we went
8 outside, they came outside after we went outside
9 and then, okay, yes, and then they came out and
10 had got their car and they were still, you know,
11 saying now a bunch of stuff and things so they
12 left.

13 So, we was like, well, let's see if we can
14 get back in here. They are gone, the problem
15 is resolved. Let's see if we can get back in,
16 so me and my sister tried to get back in and
17 her boyfriend stayed out in the car because he
18 was drunk, so we went back in the bar and we
19 were there probably around 15, maybe 20, minutes,
20 give or take a few, and came back out because
21 they wouldn't let us back in.

22 I tried to explain to the barmaid I didn't
23 do nothing, all I did was comment that she was
24 an attractive woman and I wanted to buy her a
25 drink, so then I went and we got -- they told

1 us we couldn't stay, so we went back to the car.

2 And at that time my sister's boyfriend was
3 passed out so my sister got in the car and we
4 drove to downtown Elyria. I tried to go into
5 the Warehouse, but because of the incident that
6 happened there they wouldn't let us in.

7 So then I went -- and we went to Depot Three
8 and we were there from like 2:30 and I went out
9 after the bar closed, I went out and was standing
10 on the sidewalk and some guy waves a friend and
11 he knew this lady that was walking by and I
12 thought he wanted to talk to her and I tried to
13 tap her on the shoulder and say, "Hey, he wants
14 you."

15 But her boyfriend turned around and thought
16 that I was trying to do something and he tried to
17 throw a swing at me and the police pulled up so I
18 talked to the police and asked, you know, I was
19 like, "I didn't do nothing."

20 They were like, "We seen that you didn't have
21 nothing to do with it."

22 They ran his name in. He was okay. They let
23 him go. They ran my name in. They let me go but
24 like two minutes later they are like, "Stan."

25 I was like, "What?"

1 They are like, "Somebody is downtown pressing
2 a charge against you."

3 I said, "Pressing charges against me," and he
4 said, "Yeah." I was like, "For what?"

5 He is like, "I don't know." He is like,
6 "Come on, let's go and find out."

7 They didn't handcuff me. Now, they didn't
8 do anything. They said, "Get in the car." I
9 went to the police department and at the time I
10 was questioned about a menacing and I was like,
11 "I didn't menace nobody, I didn't have nothing
12 to do with that."

13 So after that they started talking about
14 an arson. I am like, "Arson?"

15 I am like, "What are you talking about?"

16 And then I guess they said the guy that had
17 choked me, I guess his Tracker had caught on fire
18 and I was in the bar the whole time from the time
19 I left Sam's, went to Depot Three, and was there
20 with my sister and I was picked up walking out
21 of Depot Three.

22 So then they took me to the police department
23 and they questioned me, talked to the fire
24 marshall and they released me. I had no charges
25 pending except I got a ticket for menacing and I

1 had to go to Court on the 2nd for that because --
2 this was January 28th, 1994, and I had to go to
3 Court -- no, it was '95, I am sorry, so I had to
4 go to Court.

5 I went to Court, you know, and I talked to
6 the fire marshall and the fire marshall said that
7 you know that he was just investigating an arson
8 and I had a pair of gloves. He smelled my gloves.
9 The fire marshall talked to my father earlier and
10 said the guys were drunk, they could have dropped
11 a cigarette in the Tracker.

12 We don't know, never thought nothing of it
13 after that and I was charged with arson March
14 17th, '95.

15 Now, I still yet have not been to trial for
16 these yet. I have not, you know, haven't been
17 convicted of none of this stuff, and, I mean,
18 that is what is going on and you know, according
19 to the police report of this arson, the guy just
20 strongly believes that I was the one that did it
21 because we got into a little argument at Sam's
22 Lanes.

23 And, you know, I had did a little
24 investigating and the barmaid, she had made a
25 statement that she saw someone by the car, but

1 didn't, you know, didn't know who it was and the
2 fact that I had did a little investigating and
3 the bartender, the way that the bar is set up,
4 the bar is back here and the -- there was a
5 window right here. (Indicating)

6 The Tracker was parked to the far south
7 lot and that would be this way. There is only
8 one window and there is no way that she would
9 have been able to see if it was parked to the
10 south. The window is here and the bar is here
11 and if the Tracker is parked far to the south,
12 it would be way over here or over here.
13 (Indicating)

14 Now, I mean, I don't understand why I was
15 charged except for the fact that Detective Leiby
16 wanted me to do the same thing that Mike Smith
17 done, do the same thing that Terry Hopkins has
18 done and the other people that testified, you
19 know, and I am asking you not to take these
20 alleged crimes and let them enter your
21 consideration.

22 They are only alleged. There is no
23 conviction and there again I ask that you not
24 consider them as part of your deliberations
25 in giving me the life sentence or the death

1 sentence.

2 I am not convicted of those. There is
3 no proof that I done them. I am not convicted
4 of them yet and I still ask you to spare my
5 life, even though these charges are here and
6 I am awaiting trial and I am taking them to
7 trial, and that is it.

8 THE COURT: Anything further?

9 MR. GRUNDA: No.

10 THE COURT: Mr. Jalowiec?

11 THE DEFENDANT: No. Thank you.

12 THE COURT: All right, you may
13 step down.

14 (Whereupon, the Defendant resumed his seat at
15 the trial table.)

16 THE COURT: Next witness,
17 please, Mr. Grunda or Mr. Cleary?

18 * * *

19 WHEREUPON, DEFENDANT'S MITIGATION EXHIBITS B
20 AND C WERE MARKED FOR IDENTIFICATION.

21 * * *

1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called RAY PASTERCZYK as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF RAY PASTERCZYK

7 BY MR. GRUNDA:

8 Q Would you state your name for the ladies and gentlemen
9 of the jury?

10 A Ray Pasterczyk.

11 Q Tell them where you live?

12 A 3234 Golden Gate Avenue, Rocky River.

13 Q How long have you lived there?

14 A Thirty-seven years.

15 Q You know Stanley, don't you?

16 A Yes, I do.

17 Q Can you tell the ladies and gentlemen of the jury when
18 you met him, the circumstances that you met him?

19 A Approximately four years ago I had both my knees
20 replaced, total implants, and I was going through therapy
21 at St. John's where the surgery was performed.

22 Q Where is St. John's at?

23 A Westshore in Westlake and I was going to therapy three
24 days a week because I was on crutches and then on a walker
25 and that is how I ran into Stan because he was taking his

1 lady friend's young son, Cody. The lady he was staying
2 with was Jackie, here in Elyria.

3 Q Did you know them before that?

4 A No.

5 Q Had you ever met him or her before?

6 A No.

7 Q So, the first time you met them was at the hospital?

8 A At the hospital.

9 Q In the therapy section?

10 A Correct.

11 Q What happened when you first met him?

12 A We started conversation and just came out that he saw
13 that I was on a walker and crutches at times and he was
14 asking if I needed any assistance doing jobs and so forth
15 and I said, "Well, I could use somebody to take care of
16 things, wash the cars and do house cleaning at home and
17 so forth," and that is how it all started. He did things
18 at home for me.

19 Q You are saying he was there helping the child in that
20 part of rehabilitation?

21 A Right.

22 Q And he brought up working for you?

23 A Right, right.

24 Q What happened then?

25 In other words, did you hire him, did he work for you?

1 A He came out to the house and did things for me. Like
2 I say, he did some yard work.

3 Q Explain to them what kind of things you would have him
4 do?

5 A Wash the kitchen floors, the living room floors, and I
6 had him clean out the garage, couldn't use the fireplace in
7 the basement any longer so I had branches and wood in the
8 garage and I had him take those out, put them in the cars
9 and take them to the city refuse dump.

10 Behind the garage I cleaned that out -- or he did. I
11 was telling him what to do and he did all -- it was light
12 things and he did some cleaning for me, that polish you
13 put on the paneling in the rec room walls and things of
14 that nature and he also, like '94, he was a waiter at
15 one of my patio parties I had.

16 I had a party for my brother and sister-in-law and
17 my sister. My brother came up from Florida, who is a
18 retired medical man. I had about 65 people at the
19 outdoor patio party in August and I had Stan be the
20 waiter. I had it catered and he did the walking around
21 with the food on the tray and things of that nature.

22 That is what he did for me.

23 Q Handing you what has been marked for identification
24 as Defendant's Exhibit B, can you identify that, is that
25 a picture?

1 A It is a picture -- my sister took these photos and that
2 is Stanley, myself, Ron Bring and Mrs. Bring.

3 Q Handing you what has been marked for identification as
4 Defendant's Exhibit B, that is the picture that you were
5 explaining?

6 A Right.

7 Q That he was a waiter at?

8 A Right.

9 Q You are in the picture?

10 A I am in the blue shirt.

11 Q Handing you what has been marked for identification as
12 Defendant's Exhibit C, first is that a picture?

13 A Right, that is my back yard.

14 Q Can you identify that?

15 A First lady on the left is my sister, her mother-in-
16 law, Mrs. Bass, Stanley, nephew, Raymond Bass, from New
17 Jersey, and these two ladies are friends of my sister I
18 invited to attend the party also.

19 THE COURT: May I see the
20 last one, please?

21 Actually it is Exhibit C.

22 Thank you.

23 Q I am sorry. Do those accurately describe the scene
24 that they represent?

25 A Exactly.

1 Q That is the party that you were talking about?

2 A Correct.

3 Q Now, through the entire time that Stan was working
4 for you and doing odd jobs and what not for you, through
5 your rehabilitation process, did you have any problems
6 with him?

7 A No, perfectly normal person.

8 Q Okay.

9 A No violence. I could trust him. I didn't worry about
10 anything disappearing out of the house while he was doing
11 his work because I couldn't run around and watch him. I
12 said, "Do this," and he would vacuum and dust.

13 I was alone at home and I like to keep everything neat
14 and he did a good job for me. I had no problems.

15 Q Did he also help you during the holidays, like
16 Christmas?

17 A Right, right. Helped me put up lights, at one time my
18 outdoor lights and a couple times, if the snow was around,
19 moved the snow out. I can't pinpoint every little detail
20 he did.

21 I would come out and pick him up. I could drive, but
22 I couldn't do the things that I normally do. I couldn't
23 kneel, to bend my legs and things like that.

24 Q So, in other words, all the household work that you
25 couldn't do because of your knee injury replacement, that

1 is what you had Mr. Jalowiec do?

2 A Right, exactly. Stan did a good job for me.

3 MR. GRUNDA: Nothing further.

4 MR. ROSENBAUM: No questions.

5 THE COURT: You may step
6 down.

7 THE WITNESS: Thank you.

8 (Witness excused.)

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1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called JACKIE CHAFFIN as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF JACKIE CHAFFIN

7 BY MR. GRUNDA:

8 Q Can you tell the ladies and gentlemen of the jury your
9 full name and your address?

10 A Jackie Chaffin, 151 Lexington Avenue, Elyria, Ohio.

11 Q And you know Stan Jalowiec, correct?

12 A Correct.

13 Q And you lived with him?

14 A Right.

15 Q Two different periods of time, correct?

16 A Total of four years.

17 Q Let's go back to the beginning, if you could, explain
18 to the ladies and gentlemen of the jury first how you met
19 Stan?

20 A The first time?

21 Q Right, from the very beginning, first time you met him.

22 Q I had a friend, a mutual friend of Stanley's, and he
23 would come over to their house and I would go over there and
24 he started talking to my son. At the time he was two years
25 old.

1 Q Who is your son and what is his date of birth?

2 A Derrick Thompson, [REDACTED] and at the time my son was
3 two years old and they got along good together and things
4 like that.

5 Q This is at your friends' house?

6 A Right, and that is how we met.

7 Q And your relationship progressed from there?

8 A Correct.

9 Q Did you start dating?

10 A After a month or so passed.

11 Q Okay. How did your relationship develop?

12 A I don't understand the question.

13 Q After you went out with him, he ended up moving in
14 with you?

15 A Yeah, after a period of time.

16 Q About how long?

17 A Oh --

18 Q Do you recall?

19 A No.

20 Q Would it be fair to say you got together with him?

21 A Right.

22 Q You had the opportunity then to see him.

23 Could you tell the ladies and gentlemen of the jury
24 about his physical condition or arthritis or things that
25 you noticed about that?

1 A Well, I know that it was hard for Stanley to work and
2 he did things for my grandfather at the time my grandfather
3 was alive and I lived with my grandfather and he would come
4 over there and he would pick apples and do things like that.

5 He would often complain that his arms would hurt and
6 things like that. He had a hard time working because every
7 time he would get something going, strenuous work, he would
8 hurt and he would be in bed for a couple days afterwards.

9 Q And you would have to help him through those periods?

10 A Of course.

11 Q Did this happen on many occasions?

12 A It happened the whole time we were together.

13 Q And how long a period was that?

14 A Four years.

15 Q Okay. What was his relationship then with your son?

16 A It was his best friend, my son calls him Buddy. It
17 was his buddy. He knew he had a father, never called him
18 dad or anything, but Stan was his best friend and still is.

19 Q He never mistreated him or did anything like that with
20 him?

21 A Never.

22 Q They had a good relationship?

23 A Yeah, they still have a good relationship, even when we
24 weren't together anymore, he still came and seen the kid,
25 brought him presents, brought him cards.

1 Q You had a second child, is that correct?

2 A Right.

3 Q When was that, what is the child's name?

4 A That was in '91, December, '91. His name is Cody and
5 Stanley and I were broke up for a year. There was a year
6 we split up and we got back together when my son was born.

7 He was in the hospital when Stanley called me to ask
8 me how I was doing and things because my son had a stroke
9 when he was born and as a result he is deaf and he has a
10 heart problem.

11 Q Then after that you and Stan got back together then?

12 A Right.

13 Q So there was a period that you stopped seeing him for
14 a year?

15 A Right.

16 Q And you only had the one child?

17 A Right.

18 Q Stan is not the father of Cody?

19 A No, he is not.

20 Q But that is how your relationship again started up?

21 A Right. We still were on speaking terms, but, you
22 know, Cody wasn't his son and he was concerned about his
23 condition and he would come to the hospital and see him
24 and things like that and we ended up back together.

25 Q And then, after you ended up back together, what was

1 your relationship then?

2 A It was a good relationship. He helped me with Cody
3 because he required a lot of medical attention. He had
4 to go through speech therapy, physical therapy, a number
5 of different things and Stanley helped me with all that
6 because it was overwhelming for one person to try to do
7 it all.

8 He would take Cody to therapy. He would babysit the
9 older boy.

10 Q Taking care of both of them?

11 A Well, I would take the baby, he would stay with the
12 older one.

13 Q At that time you were working?

14 A Yes.

15 Q And then he would stay with the kids, maintain the
16 household?

17 A Yeah, he would clean the house and cook the dinners
18 and take care of the kids. We lived down the street from
19 the football field. He would take the kids down to watch
20 football games and things like that.

21 Q Did you ever have any problems in the relationship?

22 A We had problems, like anybody else, but never had
23 any drastic problems. Our biggest problem was me being
24 jealous, everybody liked Stan, he had a lot of friends
25 and I was jealous of that.

1 Q No problems of physical abuse or anything like that?

2 A No, never.

3 Q He was allowed with the children, both children?

4 A He is great with my children.

5 Q Do both of the children still like him?

6 A Yeah. You could bring them in this room today and
7 they would run right to him.

8 Q Ma'am, can you tell the ladies and gentlemen of the
9 jury then how it happened now since you don't have a
10 continuing relationship with Stan?

11 A Well, we still speak. He still calls the kids on
12 holidays or whatever. They still talk. When the kids
13 see him, they get excited. He would go with my kids to
14 see their father on weekends. He even went to the
15 father's house and visited there with them as well.

16 There is no problem, because he is good to them.

17 Q There was no problem with the children's birth or
18 natural father with Stan either?

19 A No, he has no problem with Stan.

20 Q Did you have an opportunity to see Stanley around the
21 sight of blood?

22 A Yeah, there was an incident a few years ago when he
23 was not getting along with my oldest son's father. I
24 couldn't tell you the reason, he just, you know, was
25 jealous of Stan because my little boy talked to Stan

1 more than his dad.

2 Q Which son?

3 A My oldest son, Derrick. He loved Stan more than
4 anybody else and his dad was jealous of it and his dad is
5 an alcoholic, was an alcoholic, and he had been drinking
6 and he came to the house and he tried to start trouble and
7 he ended up -- and my other son's father, they were both
8 there -- they both tried to start a fight and jumped Stan
9 at the same time and he ended up -- everybody ended up
10 fighting.

11 He ended up getting his lip -- he got hit in the mouth
12 -- my son's father got hit in the mouth and Stanley took
13 him to the emergency room and tried to get him help there.
14 That is when they became friends after that happened and
15 the mouth got busted open.

16 Stan fainted and Stan ended up being put in the
17 hospital because he fainted at the sight of blood.

18 Q The incident that originally happened between the
19 two children's fathers, okay, Stan didn't initiate that
20 incident with them, did he?

21 A No, Stan was in the house and I was talking to them
22 at the door and they came right into my house. They had
23 both been drinking, came right in the house and then they
24 started fighting.

25 Q And in spite of that, Stanley took him to the hospital?

1 A He took him to the hospital and he was trying to find
2 out what was it all about, what initiated the whole
3 incident. Stan saved my son's father more than once.

4 Q And at the hospital, he passed out?

5 A He passed out at the hospital. It may be on record.
6 I couldn't tell you, but he passed out when he saw the blood
7 and he had to get stitches and all that.

8 Q And then Stan ended up in the hospital?

9 A Yes, Stan ended up there and he had to wait on Stan.
10 He had to be brought back with smelling salts and they
11 brought him back for awhile because they were concerned.

12 MR. GRUNDA: No other questions.

13

14

15

16 CROSS-EXAMINATION OF JACKIE CHAFFIN

17 BY MR. ROSENBAUM:

18 Q Were you at the hospital?

19 A Yes, I was.

20 Q So you went along with this?

21 A Yes, I did.

22 Q And you are saying under oath today that Stanley
23 Jalowiec sees any blood and he faints?

24 A I can't say that every time he sees blood he faints,
25 but that time he did.

- 1 Q What caused him to faint?
- 2 A He looked at his mouth and he just fainted. He said
- 3 he got dizzy and fainted.
- 4 Q How do you know that is what he saw?
- 5 A Because I was there and saw him go back in the room
- 6 with him when he got the stitches in his mouth. Stan went
- 7 back with him.
- 8 Q So you didn't see Stanley faint, you weren't in the
- 9 room?
- 10 A No, but I was told that Stanley fainted and I went
- 11 back in the room.
- 12 Q So you can't know what caused Stan to faint, can you?
- 13 A Yes, I know that the nurse told me he couldn't handle
- 14 being in the room.
- 15 Q Now, the nurse told you that?
- 16 A Right.
- 17 Q Let me ask you this.
- 18 Stanley has very bad knees, right?
- 19 A Yes.
- 20 Q That prevented him from working?
- 21 A According to him, yes.
- 22 Q So, you know of no proof of that either?
- 23 A I don't have proof of it, but I know that he was in
- 24 a lot of pain a lot of times.
- 25 Q When he picked these apples, did he need a ladder?

- 1 A I don't recall.
- 2 Q How big was the tree there?
- 3 A There is a number of trees in the yard.
- 4 Q Did he pick all the apples?
- 5 A No, he didn't pick all the apples. He would pick
- 6 apples.
- 7 Q So you don't know if he picked them off the ground
- 8 or climbed the ladder?
- 9 A I didn't watch him.
- 10 Q Can he climb a ladder?
- 11 A I wouldn't know.
- 12 Q If someone were to say that Stanley climbed ladders,
- 13 routinely put up Christmas lights, would that be true or
- 14 false?
- 15 A I wouldn't know.
- 16 Q So, you lived with this guy on and off over four years?
- 17 A Uh-huh.
- 18 Q And you really can't tell the jury whether or not he
- 19 has the physical strength to climb a ladder or not?
- 20 A Depends on the situation. I mean, there is times when
- 21 Stanley felt well. There is times when he didn't.
- 22 Q Can you tell them if he can climb a ladder or not?
- 23 A He probably could.
- 24 Q Do you understand my question?
- 25 Do you know if he can climb a ladder?

1 A No, I don't.

2 Q So, the answer is, "No, Mr. Rosenbaum, I cannot tell
3 the jury if he can climb a ladder or not."

4 When was the last time he lived with you?

5 A It would be probably in '93 or '94, I can't recall
6 exactly.

7 Q Which is it?

8 A I couldn't tell you. I don't remember exactly.

9 Q What part of the year did he live with you?

10 A I know it was in the summer, it was summertime.

11 Q Where did he live?

12 A He didn't live -- we both left, we left the house.

13 Q Why?

14 A Because of financial situations.

15 Q What house was that?

16 A That was the trailer we lived in.

17 Q If someone said he got thrown out because Danny Smith
18 was over there, would that be true?

19 A He didn't get thrown out, we both left.

20 Q If someone were to have testified because of Danny
21 Smith and his friends coming over there and staying there,
22 he had to leave the trailer, he got thrown out, would that
23 be false?

24 A It would be false.

25 Q Did Danny Smith live with you?

- 1 A Danny Smith came to my house before, but he didn't live
2 there.
- 3 Q Did he stay there overnight?
- 4 A He stayed there overnight with his girlfriend.
- 5 Q For how long?
- 6 A It would depend. He would stay for two days and then
7 he would leave for a week.
- 8 Q If someone said days turned to weeks which turned into
9 months, would that be false?
- 10 A He didn't stay no month.
- 11 Q Would you please describe Danny's relationship with
12 Stanley?
- 13 A I wouldn't know Danny and Stanley's relationship
14 because I didn't really talk to Danny that much.
- 15 Q He stays in your house for a period of two days and
16 you never talked to him?
- 17 A Right, he was in and out a lot. He didn't have
18 anywhere to stay. That is the reason he stayed there.
- 19 Q But you never spoke to him?
- 20 A I spoke to him, but I never talked to him about his
21 relationship with Stanley.
- 22 Q Stanley good friends with him?
- 23 A I don't know.
- 24 Q Stanley tell you he was friends with him?
- 25 A No, he never told me. Stanley felt sorry for a lot

1 of people, he was friends with a lot of people.

2 Q How many people came to stay with you?

3 A The first time we were together there was a girl down
4 the street that stayed with us. His brother had stayed
5 with us. A few people stayed with us.

6 Q Did anybody come to stay at your house with the
7 regularity of Danny Smith?

8 A I don't understand the question.

9 Q Danny came a lot, right, stayed for two days?

10 A He came in and out.

11 Q Did anybody come as much as Danny?

12 A Yes.

13 Q Who?

14 A His brother stayed there a lot. Casandra, the girl I
15 mentioned earlier.

16 Q So, is it fair to say that Danny Smith was treated
17 just like Stanley's brother?

18 A No.

19 Q Well, he got to stay at your house as much?

20 A He didn't stay at the house as much.

21 Q The brother stayed more?

22 A Yeah.

23 Q Could Stanley walk from Fuller Road to Cascade Park
24 and back with no trouble?

25 A I don't know where Stanley walked to because we had

1 a relationship that I didn't ask him everywhere that he
2 went all day long.

3 Q Did he ever go somewhere all day long with your son?

4 A Yeah, he went with my son.

5 Q All day long?

6 A I was at work.

7 Q Did you ask where they went?

8 A I asked. From time to time I would say, "What did you
9 do today?"

10 I know that they would go to the park. I know that
11 they would go to the football field. I know that they would
12 fly kites.

13 Q Did they fly kites at Cascade Park and walk from Fuller
14 Road to the park?

15 If someone testified that Stanley would take your son
16 all the way to Cascade Park and back, would that be true?

17 A I am not sure what they did.

18 Q Did he have a job while he lived with you?

19 A Yes.

20 Q What job?

21 A He worked at the golf course..

22 Q For how long?

23 A I couldn't tell you. He worked off and on there for
24 his grandfather, so it was not -- it was not an all the
25 time thing, but inconsistent job.

1 He worked for a man Ray I never met washing cars and
2 things he would tell me about.

3 Q For how long?

4 A It was off and on after the second time we were
5 together, so I would say two years I know of.

6 Q Anything else?

7 Did he have a steady job that he went to every day?

8 A No.

9 Q Now, I take it then that for some reason at that
10 particular time the fathers of both of your sons got mad
11 at Stanley, rushed in your house and attacked him through
12 no fault of his own?

13 A Exactly.

14 Q Does that kind of thing happen at your house a lot?

15 A No, it doesn't happen a lot. I would say that that
16 is the reason I wasn't with my son's father.

17 Q Both of them?

18 A Well, they are both trouble.

19 Q Do you attract trouble?

20 A I don't think so.

21 MR. GRUNDA: Objection.

22 THE COURT: Sustained.

23 Q Stanley wasn't trouble, was he?

24 A He never caused trouble for me.

25 Q So, you are saying that these two guys at the same

1 time, for some unknown reason, forced their way into your
2 house and attacked Stanley for no reason?

3 A I don't know the reason.

4 Q There could have been a reason, you just don't know?

5 A My opinion is jealousy.

6 Q Could there have been a reason that you don't know?

7 A I couldn't tell you that. I don't know. Stan never
8 did anything to either one of their fathers.

9 Q That you know of?

10 A If he would have, they would have told me.

11 Q Did you ever ask them why they did that?

12 A If they were here, they would tell the same thing.

13 I don't know, I was drunk.

14 Q You were drunk?

15 A No, that is their excuse.

16 Q So, it is their fault this happened?

17 A Yes.

18 Q Any other people that you know of during the time
19 that you were with Stanley that it was their fault that
20 they got into a fight with him?

21 A I don't know any other people he fought with.

22 MR. ROSENBAUM: I have no other
23 questions, your Honor.

24 THE COURT: Mr. Grunda?

25

REDIRECT EXAMINATION OF JACKIE CHAFFIN

BY MR. GRUNDA:

Q Jackie, the Prosecutor was trying to pin you down on certain questions.

Would it be fair to say that you are just trying to testify to what you know and what you saw?

A That is all I can say.

Q So, when he was asking you about climbing a ladder and all, you didn't want to answer him because you didn't see him?

A I don't exactly know.

Q You didn't want to say something because you didn't see it?

A Yes.

Q Would it also be fair to say that since you lived with Stan, some days he is good, some days he is bad with arthritis, some days he could have climbed a ladder, some days he couldn't, depending on the arthritis?

A Right, but had he climbed a ladder, I know he would have been hurting pretty bad the next couple days.

Q All you know is, I guess that you don't know because you never saw him?

A I don't know exactly.

Q And you don't want to give a misimpression to the jurors, right?

1 A Right.

2 Q When the Prosecutor asked you about Danny staying
3 there, all you know is he stayed a few days on different
4 occasions?

5 A Right.

6 Q It could have been in one month and another month,
7 you just don't recall?

8 A Right. I feel that he is saying that he stayed there
9 all the time and he didn't.

10 Q Just in different periods?

11 A Right.

12 Q Different weeks or different months?

13 A Right.

14 Q So, the way the Prosecutor was trying to convey it
15 was not how you were trying to convey it?

16 A No.

17 Q When he asked you about the things that Stan did with
18 your children when you were at work, because he was with
19 them all day, you weren't there, right?

20 A Right, so I couldn't tell you exactly where they went
21 and what they did. I know I trusted him enough with my
22 kids that I didn't question it.

23 Q So, it wasn't that you weren't trying to answer the
24 Prosecutor's questions, you didn't want to answer something
25 that you weren't there to see?

1 A I don't know the answer to that.

2 Q Right. Okay. Bottom line is, you don't have any
3 problems with Stanley and he was good with your kids,
4 right?

5 A Right.

6 MR. GRUNDA: No other questions.

7 THE COURT: Mr. Rosenbaum?

8 MR. ROSENBAUM: No, sir.

9 THE COURT: Thank you, Ma'am,
10 you may step down.

11 (Witness excused.)

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1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called NANCY MORRISON as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF NANCY MORRISON

7 BY MR. GRUNDA:

8 Q Can you tell the ladies and gentlemen of the jury your
9 full name and address?

10 A My name is Nancy Morrison, 15 Chestnut Street,
11 Apartment 101, Elyria.

12 Q And you do know Stanley Jalowiec?

13 A Yes, I have know Stan for about eight years.

14 Q You are friends with him and the family?

15 A Yes, I am.

16 Q And you have had the opportunity to be at their
17 residence on many occasions?

18 A Yes.

19 Q Including but not limited to the holidays?

20 A Right.

21 Q Now, during the period of the eight years that you
22 knew Stan, can you give the ladies and gentlemen an idea
23 of your contact with Stan and how he was, how he acted?

24 A Well, he came to dinner on family dinners, family
25 gatherings, played with his nieces and nephews. He

1 loved kids.

2 Q How many nieces and nephews in the family?

3 A There is four or five.

4 Q And you had occasion to see him.

5 What holidays did you see him?

6 A Christmas, most every holiday I was there.

7 Q You never saw him mistreating the children?

8 A No.

9 Q Were they just the typical family getting together
10 with family interaction?

11 A Right.

12 Q Would that be a fair statement?

13 A Right.

14 Q Did you ever have a problem with Stan?

15 A Never, he always has been courteous to me, nice.

16 I remember a little stray dog he picked up and carried

17 it around with him all the time, fed it, took care of

18 it.

19 Q Does he still have it?

20 A I think his grandfather has it.

21 Q Did you ever see him associating with Raymond Smith
22 or Daniel Smith?

23 A No, I have not. I don't know the people.

24 MR. GRUNDA: No other questions.

25

CROSS-EXAMINATION OF NANCY MORRISON

BY MR. ROSENBAUM:

Q How often a year would you see Mr. Jalowiec?

A Most of the holidays I was at their house.

Q Answer my question more specifically if you can.

How many times a year would you see him?

A Six.

Q Would you see him any other time in between?

A Yes, I have.

Q Where?

A I would take him home from his mom's house.

Q So, the six times a year you would take him home?

A Not every day. If he needed a ride, I would.

Q From the holidays, right, or any other time?

A Right.

Q What I am driving at, were there other times?

A Sure.

Q Describe them, other than the six?

A Well, I would visit over there and if he was there and he needed a ride, I would take him home.

Q How often would that happen?

A Several times.

Q During the eight years?

A Yes.

Q So, you are talking about, you have seen him seven

1 or eight times a year, probably?

2 A Maybe more than that.

3 Q Maybe even less, right?

4 A No, I saw him a lot.

5 Q Did you see him drunk?

6 A No.

7 Q Have you seen him at bars?

8 A No.

9 Q Do you see him do crack cocaine?

10 A No.

11 Q Does he drink?

12 A No.

13 Q Does he sell drugs with Danny Smith?

14 A I never seen him do it.

15 Q Do you know?

16 A No.

17 Q There is a vast aspect of his life that you know
18 absolutely nothing about?

19 MR. GRUNDA: I am going to
20 object.

21 He is putting an improper impression in
22 front of the jury.

23 THE COURT: She may answer
24 yes or no.

25 Q Is there a large part of his life that you know nothing

- 1 about?
- 2 A No, not that I know of.
- 3 Q If you don't know of it, you don't know about it?
- 4 A No.
- 5 Q So, you know all about his life?
- 6 A No.
- 7 Q So, there is a large part that you don't know about?
- 8 A All I know is when Stan was around me, he was on his
- 9 best behavior.
- 10 Q Do you know that he sells drugs?
- 11 A No, I don't.
- 12 Q Do you know if he sells drugs?
- 13 A No.
- 14 Q Do you know if he beats people up?
- 15 A No.
- 16 Q Do you know if he sets cars on fire?
- 17 A No.
- 18 Q So, if he does all these things outside of the family
- 19 home and on his best behavior, you don't know him very
- 20 well, do you?
- 21 A I know him very well, I think.
- 22 Q Do you know if he does that?
- 23 A No, I don't.
- 24 Q Did you say he didn't do it?
- 25 A I don't know.

1 Q How can you know him very well?

2 A I do.

3 Q I am asking you if there are other parts of Stan
4 Jalowiec that you know nothing about?

5 A There could be, I don't know.

6 MR. ROSENBAUM: I have no other
7 questions.

8 THE COURT: Mr. Grunda?

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12 REDIRECT EXAMINATION OF NANCY MORRISON

13 BY MR. GRUNDA:

14 Q The Prosecutor asked you to speculate about a lot
15 of things?

16 A Right.

17 Q You answered from what you knew personally?

18 A Right.

19 Q Now, not guessing, speculating or assuming, right?

20 A No.

21 Q But you know Stan, you do know that he was never
22 convicted of any of these things that the Prosecutor
23 talked about, selling drugs, doing drugs?

24 A No.

25 Q No, you don't know?

1 A I do know.

2 Q That he was not convicted of anything like the
3 Prosecutor was alleging?

4 A Right.

5 MR. GRUNDA: Nothing
6 further.

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10 RECROSS-EXAMINATION OF NANCY MORRISON

11 BY MR. ROSENBAUM:

12 Q Do you know what he has been convicted of?

13 A No, I don't.

14 Q Then how do you know he hasn't been convicted of
15 those things?

16 A (No response.)

17 MR. ROSENBAUM: That is what I
18 thought.

19 Nothing further.

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23 REDIRECT EXAMINATION OF NANCY MORRISON

24 BY MR. GRUNDA:

25 Q To clear up some confusion, you know he has been

1 convicted in this case?

2 A Yes.

3 MR. ROSENBAUM: Ask her instead
4 of leading.

5 I object.

6 THE COURT: Sustained.

7 Q To clear up any confusion, can you say what you
8 know he was convicted of, what you know he is not
9 convicted of?

10 A I only know that he has been convicted of this case
11 because I have been here.

12 Q So, when you said you didn't know before, you were
13 talking about --

14 MR. ROSENBAUM: Objection to
15 leading questions.

16 THE COURT: You are leading.
17 What do you know about?

18 Ask your question that way. You don't
19 want to ask it the other way.

20 Q Were you ever in Court before on any other occasions?

21 A No.

22 Q Regarding Stanley?

23 A No.

24 Q Were you aware of any other incidences besides this
25 one?

1 A No, I was not.

2 MR. GRUNDA: No other questions.

3 MR. ROSENBAUM: I have no other
4 questions.

5 THE COURT: You may step
6 down.

7 Thank you.

8 (Witness excused.)

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1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called EDWARD JALOWIEC, SR. as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF EDWARD JALOWIEC, SR.

7 BY MR. CLEARY:

8 Q Can you hear me all right, Mr. Jalowiec?

9 A Yeah.

10 Q If you ever can't hear me, ask me to repeat myself,
11 okay?

12 A No, I don't hear you too good. Get up here closer
13 to me. I ain't going to bite you.

14 Q Can you hear me all right from over here?

15 A Yes.

16 Q Could you state your name to the jury here, please?

17 A Spell it?

18 THE COURT: State it.

19 A Edward Jalowiec, Sr. Everybody else knows me by Pinky.

20 Q How old are you, sir?

21 A Seventy-nine.

22 Q And you have lived in Elyria most of those years?

23 A All but two weeks when I was first born.

24 Q How many grandchildren do you have?

25 A Four or five, I guess.

1 Q Five. How does Stan fit in there?

2 Is he the oldest, youngest?

3 A Who?

4 Q Stan?

5 A Stan. He is -- let's see, I think the oldest one.

6 He is the first one.

7 Q Could you tell -- and talk to the jury, Mr. Jalowiec?

8 Would you tell them your relationship with Stan and
9 just tell us something about growing up with you?

10 A Well, when we started in the golf course business over
11 there in Brentwood and he lived in a house over there and
12 he was out there working with us, out on the course, that
13 is the way they was paying their rent off.

14 They used to pick up the range balls and stuff like
15 that. I don't know, that has been what, 20 years ago, so
16 that is about all that I know about him and he had worked
17 there.

18 Q Stan was picking up golf balls 20 years ago?

19 A Yes, that was -- we started that golf course 20 years
20 ago, but we didn't put the range in until a couple years
21 -- three or four years later we put the driving range in
22 and that is what they used to do.

23 His sister and Stanley would pick up the golf balls.

24 Q How old was Stanley at the time he picked up the golf
25 balls, if you know, Mr. Jalowiec?

1 A Well, he was going to school.
2 Q Ten, 15, somewhere in that vicinity?
3 A No, no.
4 Q Older or younger?
5 A He was a lot younger.
6 Q Did he live with you?
7 A No, no. He never lived with us.
8 Q Sir, you pretty much watched him grow up?
9 A Right.
10 Q How would you describe your relationship with him?
11 A Well, whenever they would come over to the house
12 there, because I have pigeons, he used to help me clean
13 out the coop and do stuff around there.
14 Q Pigeons and other animals?
15 A No, he did have some at the farm house he had where
16 they got some little mallards and I was taking care of
17 their mallard ducks over there and he would turn them
18 loose and take them up to the number three hole and turn
19 them loose and they would fly back to him over there.
20 Q Now, you were telling me stories, sir, about some
21 little critters that dig out there in the golf course?
22 A That was on the 13th hole. We was taking some dirt
23 away off the thing over there and these little chipmunks,
24 they had a nest.
25 We didn't know it, so we was pulling the dirt away

1 and I was going to get rid of them because those chipmunks,
2 they make holes in the ground and all that, so he goes and
3 digs them up, picks them up in his hand and gets the nest
4 and he digs a hole on the other side there and put them in
5 there.

6 He said, "The mom will find them." He wouldn't go
7 hunting with us. He wouldn't kill a thing, so he saved
8 these animals.

9 Q They are pests for you?

10 A Well, they ain't no good. All they do is get
11 underneath your sidewalk and stuff, but then we had a cat
12 come over there and the old cat, he would sit there every
13 evening. You would see her going down that path to go
14 there. She got rid of those chipmunks.

15 Q Sir, when Stan was over working for you, did you
16 know anything about any medical problems that he might
17 have had?

18 A Well, he was -- later he used to complain that he
19 couldn't do anything because of his arthritis. I know
20 what it is because the wife has got it and I am stuck
21 with that stuff.

22 Q You are struck with it, that you have it?

23 A No, I never had it, but then she gets mad because
24 she can't do the work and I have to do it. That is what
25 makes me mad.

1 Q That is what you mean by being stuck with it?

2 Did you get mad at Stan for that at all?

3 A No, I didn't get mad at him with that. After he got
4 older and he got a job, we went and bought him his clothes
5 and stuff and put him to work, but I know even before that
6 they took him to the Cleveland Clinic to get tested for
7 this because he is complaining he has arthritis in his
8 hand and he couldn't do the work.

9 So then the doctor, I guess down there, he told us,
10 this doctor down here was giving him the wrong stuff so
11 that is the way it was. He had different jobs, but he
12 just couldn't do nothing with it because his hands would
13 swell up and stuff and he couldn't do the work, so what
14 are you going to do.

15 Q And did you help him out financially from time to
16 time?

17 A Yes, I put him to work around the house then and he
18 helped us with this other stuff and he helped us put a
19 fence up over there and stuff like that.

20 Q How often would you help him out?

21 A Well, whenever he needed a little bit of money,
22 needed a little work she couldn't do, we would put him
23 out there where he could work a day or two. Then we
24 would help him out for his work.

25 Q Mr. Jalowiec, do you love your grandson?

1 A Oh, yes.

2 Q Sir, you have been here every day for trial, correct?

3 A That is correct.

4 Q And is there anything that you would like to say to
5 the jury?

6 A Well, I hope they spare his life. That is all.

7 MR. CLEARY: No further
8 questions.

9 THE COURT: Mr. Rosenbaum?

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13 CROSS-EXAMINATION OF EDWARD JALOWIEC, SR.

14 BY MR. ROSENBAUM:

15 Q Mr. Jalowiec, how many times have you been asked to
16 post Stanley's bail?

17 A Quite a few times.

18 Q And for what period of time, for how long have you
19 been doing that?

20 A It has been probably four or five years, a little
21 bit each year, or something like that.

22 THE COURT: Cost you a lot
23 of money, hasn't it?

24 THE WITNESS: Quite a bit.

25 Q Do you know if he does crack cocaine?

1 A What?

2 Q Do you know if he does drugs?

3 A No, I don't know anything about that kind of stuff.
4 I wonder what that stuff looks like myself. I never
5 seen it.

6 Q My question is, do you know if Stanley does drugs?

7 A No, sir, I never seen him. I don't know what it
8 even looks like.

9 Q Have you had to post bond on drug charges for Stanley?

10 A Not that I know of.

11 Q Well, are there times that you posted bond that you
12 are not sure what he is charged with?

13 A Not offhand.

14 Q Do you understand my question, sir?

15 THE COURT: He may not have
16 heard you, Mr. Rosenbaum.

17 Q Did you not hear me?

18 Do you know what charges you are posting the bond
19 for every time or do you just post the bond?

20 A Most of the time we knew what we gave the bond for.

21 Q But not all the time?

22 A Well, I never knew of posting any bond for drugs
23 on him.

24 Q What did you post bond for, what charges?

25 A Well, they picked him up for riding his bike without

- 1 a license, jaywalking.
- 2 Q You don't post bond for jaywalking.
- 3 A I had to get him out.
- 4 Q You are saying you had to post a bond for jaywalking?
- 5 A Yes, sir.
- 6 Q What else?
- 7 A Jaywalking and then they had him for that -- I guess,
- 8 Chris' place over there, supposed to have something going
- 9 with him.
- 10 Q Is that where the truck burned up?
- 11 That is where the truck burned up?
- 12 A Yeah, that is what they had him up there for.
- 13 Q What else?
- 14 A Then I guess at the Warehouse deal or something over
- 15 there.
- 16 Q What was that about?
- 17 A Well, I guess where he was supposed to have beat
- 18 somebody up.
- 19 Q How many times in all do you think you have had to
- 20 bail him out?
- 21 A Well, a bunch of that little stuff is what it was,
- 22 a lot of it.
- 23 Q Has he been a disappointment to you?
- 24 A No, I tried my best to keep him straight.
- 25 Q Did you hear me?

1 A Yes.

2 Q You are not disappointed with the way he turned out?

3 MR. CLEARY: Asked and answered,
4 your Honor.

5 THE COURT: I don't know that
6 he has. I will give him one more shot.

7 Proceed.

8 Q Are you disappointed with the way Stanley has turned
9 out?

10 A No.

11 THE COURT: Okay.

12 Q Does he hold a steady job?

13 A He couldn't work because of his hands.

14 Q Do you think he could find another job if he wanted
15 to that he could work at?

16 A No, we found him quite a few jobs.

17 Q And he didn't hold them, did he?

18 A He couldn't. If you can't do nothing with your hands,
19 what are you going to do?

20 Q Do you know how many handicapped people are employed?

21 A Not that I know of.

22 Q So, it doesn't disappoint you that he doesn't have a
23 steady job?

24 A No.

25 Q Does it disappoint you that you have had to spend all

1 that money bailing him out of jail?

2 A No, I would have to pay it to the government.

3 Q So, you are glad that you had to bail him out?

4 A I will do the best for him.

5 Q You still have to pay taxes on the money that you
6 use to bail him out, don't you?

7 A Yes.

8 Q So, you paid the money to the government anyways
9 and paid a bail bondsman, correct?

10 A No, the bail bondsman never took any money from
11 me.

12 Q How do you post the bond then?

13 A Well, I got money, that is why.

14 Q So you posted it on your own?

15 A That is correct.

16 Q Did you ever put your house up for him?

17 A Yeah, I put two houses up.

18 Q And that does not disappoint you?

19 A No.

20 MR. ROSENBAUM: I have no
21 other questions, your Honor.

22 THE COURT: Mr. Cleary?
23
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25

REDIRECT EXAMINATION OF EDWARD JALOWIEC, SR.

BY MR. CLEARY:

Q They never took your house did they, Mr. Jalowiec?

A No.

Q All you are spending money on, anything you might have put up or deposited with the Court, was returned?

A Yes, it was.

Q And with all of these fines and what not, the jaywalking and riding a bike without a license, were those fines or bail, if you recall?

A I don't know what they call them. I have never been in this predicament before.

MR. CLEARY: No further questions.

MR. ROSENBAUM: I have no other questions.

THE COURT: Thank you, sir, you may step down.

THE WITNESS: Okay.

(Witness excused.)

* * *

THE COURT: Ladies and gentlemen, it is noon so it is time we take our afternoon recess for lunch.

We will reconvene at 1:15 to proceed with

1 the further presentation of evidence in this
2 matter.

3 The admonitions I have given you in the
4 past about discussing this matter amongst
5 yourselves, letting anyone discuss it with
6 you, reading anything about it, letting anyone
7 read anything to you about it, please do not
8 do so at this point and, with that, we will
9 take our noon recess.

10 (Whereupon, a luncheon recess was had.)
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AFTERNOON SESSION, TUESDAY, APRIL 9, 1996

(Whereupon, the jury was returned to the courtroom at 1:30 and the following proceedings occurred.)

THE COURT: Good afternoon, ladies and gentlemen. I hope you all had a good lunch.

Ladies and gentlemen, as you recall when we broke for lunch we had just finished the examination and cross-examination of one of the Defendant's witnesses in chief and we are now ready to proceed with the examination of this witness.

Now, young lady, make yourself as comfortable as you can. Please adjust that microphone so that you can speak directly into it, okay, and speak up.

THE WITNESS: Okay.

1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called TAMMY JALOWIEC as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF TAMMY JALOWIEC

7 BY MR. GRUNDA:

8 Q Would you tell the ladies and gentlemen of the jury
9 your full name and where you live?

10 A Tammy Jalowiec. I live on 1216 Middle Avenue.

11 Q And are you related to Stan?

12 A Yes, that is my brother.

13 Q And how old are you?

14 A Twenty-four.

15 Q And how much older is he than you?

16 A Thirteen months.

17 Q Can you describe to the ladies and gentlemen of
18 the jury your brother/sister relationship?

19 A We have a good relationship. We have never had
20 any problems whatsoever.

21 Q Do you go out together?

22 A Yeah.

23 Q Do things together?

24 A Yes, all the time.

25 Q There has been some testimony regarding a couple

1 incidences, one that happened at Sam's.

2 First, do you know what Sam's is?

3 A Yes, I do, it is a bowling alley.

4 Q Did you have occasion to be there with your brother?

5 A Yes, several times.

6 Q On one occasion was there an incident that later
7 resulted in a charge against him with arson?

8 A Yes.

9 Q You are familiar with that?

10 A Yes, I am.

11 Q Were you there?

12 A Yes, I was.

13 Q Who else was there?

14 A My boyfriend, Shane, my dad was there.

15 Q What is your father's name?

16 A Eddie Jalowiec.

17 Q Anybody else?

18 A I think we had a couple other friends with us, but
19 it has been awhile.

20 Q Okay.

21 A I am not sure.

22 Q Were you with Stan the prior night?

23 A Yes, I was.

24 Q Was he ever at a point where he was not with you
25 that night?

1 A No. Whenever the night was over, he went back to
2 my mom's and I went home.

3 Q That incident that night, you are aware that he
4 got charged with arson?

5 A Yes, I am.

6 Q And did you ever see him go near a vehicle or start
7 the vehicle on fire?

8 A No.

9 Q He never did that?

10 A No, he didn't.

11 Q Okay. There was another occasion where he was charged
12 with a felonious assault, okay?

13 Are you familiar with that situation?

14 A Yes, I am.

15 Q Who was present?

16 A One of my friend's birthdays, Lois Thompson, Cindy
17 Cross was with us. That is awhile, too. There was a
18 group of friends.

19 Q What were your plans that evening?

20 A To celebrate Lois' birthday.

21 Q And Stan was with you?

22 A Yes, he was.

23 Q And basically what happened?

24 Not throughout the whole night, but right down to
25 the incident?

1 A Right down to the incident itself?

2 Q Basically what happened right before it?

3 I don't want to hear about the whole night.

4 A Right before it, my brother was approached by Tim

5 Schull and some of his friends and they said that they

6 didn't like him, that they were going to kick his ass.

7 Q You were there, present?

8 A I was standing right next to him.

9 Q What happened then?

10 A I believe one of them punched my brother in the bar

11 and they got kicked out for doing that.

12 Q Then what happened later?

13 A We didn't see them. I think they came back in

14 through the bar and then to let Stan know that they did

15 not leave and they were going to pursue the fight and

16 they left the bar and they went out the back door of

17 the bar.

18 When it was time to leave we went out the front door.

19 Q Now, you stayed with your friends and Stan?

20 A Yeah, I stayed there with my brother and friends.

21 Q And he didn't initiate the incident?

22 A No, they started it.

23 Q So, you are going out of the front door.

24 This is after they had left?

25 A Right.

1 Q What happened then?

2 A As soon as we got out of the front door they were
3 all standing across the street. They started moving
4 towards us. The bar had already closed. We were
5 standing there.

6 Tim Schull came up and busted my brother in the
7 nose.

8 Q Do you know who he is?

9 A I know who he is.

10 Q Did Stan initiate that?

11 A No, he didn't. Stan was standing there and we were
12 just, you know, talking and everybody was getting ready
13 to go home and he got busted in the nose.

14 Q What happened to Stan then?

15 A He like dropped.

16 Q Did he fight back?

17 A No, he didn't.

18 Q Then what happened after that?

19 A We were standing in between Razzle's and I believe
20 the Warehouse and then there was like five guys came out
21 of Razzle's and jumped on every single one of the guys
22 that were there fighting.

23 Q Do you know who any of those people were?

24 A I know all of them.

25 Q Who was that?

1 A Terry Hopkins, George Lee, Preston, Darron and I
2 believe Terry Hopkins' friend, but I don't know his
3 name.

4 Q Stan didn't help those five other people?

5 A No, it happened so quick that as soon as the guys
6 came out they all just started beating up on all these
7 guys.

8 Q But Stan wasn't involved with that?

9 A No, he was still standing up against the wall trying
10 to get himself together from just getting pounded in the
11 face.

12 Q And then, as the end result of that, Stan was the
13 only one that got charged with anything?

14 A Right, and my brother and I went over to the police.
15 I am looking around. I got knocked down from the guys
16 going toward all the other guys, hitting them, and I
17 talked to the police officer along with Stan.

18 Q You didn't try to leave?

19 A Right.

20 Q Have something done for you?

21 A We stayed there. There was a bunch there and the
22 other guys ran through Razzle's Bar and I mean, of course,
23 I have seen them since, I know who they are, but nobody
24 stayed there except for me and my brother and I think
25 Cindy Cross, she stayed there with us, but the cops told

1 us to go home and we told them that we wanted to file a
2 report.

3 Q Then what happened?

4 A Then we went home.

5 Q Okay. As a result of it and you being able -- or your
6 brother being able to press charges -- in fact, charges
7 were pressed against him?

8 A Charges were pressed against him and he didn't even
9 hit anybody.

10 Q Okay. Now, when you were growing up as a child with
11 Stan, you lived together with your brother and father,
12 correct?

13 A Yes.

14 Q You were aware of a medical condition he had?

15 A Yes, he has arthritis.

16 Q You are aware of that?

17 A Oh, yeah.

18 Q Would it be fair to say that you had to live with
19 him through that?

20 A Yeah.

21 Q What things did you notice about him with his hands
22 that you could convey to the jurors?

23 A There was lots of stuff that he couldn't do that we
24 were doing just growing up. Whenever we would ride our
25 bikes and stuff, from his knees, and his knees would get

1 swollen up to where he had to stop riding the bike because
2 he couldn't do it because of his knees.

3 His hands would get swollen up when we lived on a
4 golf course and we would also try to help out with the
5 golf course, working on the golf course and he couldn't
6 do as much as we could.

7 Q But it would be fair to say this was not his condition
8 every day?

9 A No.

10 Q In other words, some days he was better?

11 A Some days he was fine, but then other days he wasn't.

12 Q So, it depended on day to day?

13 A Yeah.

14 Q All right. Do you understand the nature of what this
15 proceeding is about?

16 A Yes.

17 Q You are here, subpoenaed today, right?

18 A Right.

19 Q You are not just saying all these things just for your
20 brother, are you?

21 A No.

22 Q You are aware that you are under subpoena, you have to
23 tell the truth?

24 A Yes, and I am telling the truth.

25 Q All right. Do you have anything you would like the

1 jurors to know regarding the fate of your brother?

2 A I just want to say that I have seen my brother walk
3 away from a lot of fights, from people trying to start
4 fights with him and I see him with my daughter and I
5 just know -- I don't see how he could have done this
6 for one thing.

7 I just want to ask you, please, don't sentence him
8 to death. I know it is not right.

9 MR. GRUNDA: No other questions.

10

11

12

13 CROSS-EXAMINATION OF TAMMY JALOWIEC

14 BY MR. ROSENBAUM:

15 Q You are saying that your brother, Stanley, is
16 incapable of stomping someone, running them over with
17 a car and cutting their throat?

18 A He is not capable of that.

19 Q How is it that you know that?

20 A Because I have seen him walk away from fights. He
21 does not have the heart to do something like that.

22 Q Is it possible there is a side of your brother that
23 you don't know?

24 A No, because me and my brother are very close and I
25 think I would have seen that side.

- 1 Q Does he sell crack cocaine?
- 2 A No.
- 3 Q How do you know that?
- 4 A I have spent a lot of time with my brother. I have
- 5 a five year old. He has been in her life since she was
- 6 born. If my brother was doing that, I think I would know.
- 7 Q So, you know all the bad things he does then, if he
- 8 does them?
- 9 A What do you mean?
- 10 Q If he were selling crack?
- 11 A If he were to be selling crack cocaine, I would know
- 12 it.
- 13 Q And if he were burning up cars, you would know about
- 14 that?
- 15 A Yes.
- 16 Q And if he were the kind of person that could kick
- 17 someone's brains out, break somebody's jar, cut their
- 18 throat, run them over with a car, you would know that?
- 19 A I know that he couldn't do that.
- 20 Q And how much time -- how many days a week are you
- 21 with him?
- 22 A A lot. I don't know exactly how many days.
- 23 Q Do you see him every day?
- 24 A Yes, for awhile I did.
- 25 Q When did you see him every day?

- 1 A He used to live with me.
- 2 Q When was that?
- 3 A I don't know. It has been a long time.
- 4 Q Did he live with you in '94?
- 5 A Yes, he did live at my house.
- 6 Q What part of '94 did he live in your house?
- 7 A I really couldn't tell you.
- 8 Q How about '93?
- 9 A Probably at some time, yeah.
- 10 Q When did he live with the Chaffin woman?
- 11 A Whenever I would be working or something, he would
- 12 take care of my daughter and she would stay at his house.
- 13 Q How many days a week?
- 14 A Every day that I went to work.
- 15 Q When was he watching the Chaffin lady's children?
- 16 A I think they have not been together for a little
- 17 longer than '94.
- 18 Q When did he live with you?
- 19 A I am not sure exactly when he lived with me.
- 20 Q So, you are not sure?
- 21 A If I asked him to come and stay, I have to pay my
- 22 bills, I can't afford a babysitter, and he would do that
- 23 for me. I don't know the dates.
- 24 Q At no time did he sell crack cocaine when he wasn't
- 25 with you?

1 A No, I don't believe he did.

2 Q Did he hang out with Danny Smith?

3 A I have seen him at the bars or whenever I have seen

4 Danny Smith there.

5 Q How about Raymond Smith?

6 A A couple times I have seen him with Raymond Smith.

7 Q Raymond Smith was present both times that these people

8 started fights with him and he got arrested for it, wasn't

9 he?

10 A I believe Raymond Smith was there. The felonious

11 assault, we saw him inside the bar.

12 Q He was fighting with Stanley, wasn't he?

13 A Raymond Smith was fighting with him?

14 Q He wasn't in the melee in the street?

15 A He was standing outside the bar.

16 Q Raymond?

17 A Right.

18 Q He wasn't involved?

19 A He was not involved in the fight.

20 Q When did Danny live with Stanley?

21 A I don't know.

22 Q How often did Danny stay with Stanley in his house

23 or his trailer?

24 A I couldn't tell you that. I don't know. I didn't

25 live there.

1 Q So, if Danny had someone staying at his house you
2 weren't close enough to his life to know that?

3 A If Danny did?

4 Q If Stanley had someone living with him in his house,
5 you weren't close enough to Stanley to know that?

6 A Yeah, I remember when Danny and his girlfriend stayed
7 there.

8 Q When was that?

9 A I don't know when, exactly the date.

10 Q How long?

11 A I don't know.

12 Q How many times?

13 A I really couldn't tell you how many days or when they
14 were there.

15 Q What year?

16 Now, the night that you described this truck that
17 caught fire, do you remember that night at Sam's?

18 A Uh-huh.

19 Q And you said that Danny stayed with you until you
20 guys went home?

21 THE COURT: You said Danny
22 again.

23 Q Stanley stayed with you until you went home?

24 A Yes, he did.

25 Q If your boyfriend gave a statement to the police

1 that he drove Stanley to Chris' place because that is
2 where the owner of the truck went, your boyfriend would
3 be lying?

4 A Yes, because he didn't even drive, he was too drunk
5 to drive.

6 Q So, he lied to Detective Leiby when he said he took
7 your brother to Chris' place and left him there because
8 that is where they were going to?

9 A If that is what he said, he lied.

10 Q We are talking about -- what is your boyfriend's name?

11 A He is not my boyfriend any longer.

12 Q What is his name?

13 A Shane Thompson.

14 Q Now, you also described what you called a felonious
15 assault?

16 A Uh-huh.

17 Q What was the date of that?

18 A That was January 29th because that was my friend's
19 birthday.

20 Q And the evening before --

21 A Or the 27th, January 27th.

22 Q Did it spill over into the 28th?

23 A Yes, because it was after the bars closed.

24 Q Now, which fight are you talking about that happened
25 that night?

- 1 A Only fight that I was aware of that happened.
- 2 Q Could there have been another one?
- 3 A There could have been a lot of fights that night.
- 4 Q You go home so you are talking about a fight between
- 5 Mr. Rowland, Mr. Schull and Stanley was involved in it,
- 6 correct?
- 7 A Yeah, and there was, I think, three other people, too.
- 8 Q And then later on that night were you present when
- 9 Jeffrey Hicks got his jaw broken by your brother?
- 10 A That all happened in the same fight. There was five
- 11 of them. That all happened at the same time.
- 12 Q So you were present for all of that?
- 13 A I was, yes.
- 14 Q What time of the evening was that?
- 15 A After the bar closed. I don't know.
- 16 Q After 2:30?
- 17 A Right, after the bars closed. They were waiting for
- 18 us to come out of the bar because the bar was closing.
- 19 Q And none of that was Stanley's fight?
- 20 A No, it was not Stanley's fight.
- 21 Q He was a victim of circumstances?
- 22 He was just as he was the night he got choked?
- 23 A Yes, that man choked him to where my brother passed
- 24 out.
- 25 Q And your brother then went to Chris' to follow them

1 over there?

2 A No, I drove the car.

3 Q You drove the car to Chris'?

4 A I drove the car uptown -- to downtown Elyria. We
5 went into the Warehouse. They told my brother he was
6 not allowed in there. We left the Warehouse.

7 Q Why was that?

8 A Why was that?

9 Q Yeah.

10 A Because he was barred from there. I don't know
11 why he was barred.

12 Q You have no idea?

13 A I have no idea.

14 Q That couldn't have been his fault?

15 A Well, if he got charged with it, then now that was
16 most likely his fault. They got barred.

17 Q What if he got barred from it because two guys --

18 A I have been barred from a bar before.

19 Q For what?

20 A Drinking and getting loud.

21 Q Have you ever broken anybody's jaw?

22 A No, I have never broken anybody's jaw before.

23 Q So, if Stanley was barred from the Warehouse because
24 of that fight, that wouldn't be his fault?

25 A He was not barred from the Warehouse because of a

1 fight that I know of.

2 Q So, if he just testified to that, he was lying?

3 A I just told you, I didn't know why he was barred.

4 MR. GRUNDA: Objection.

5 A (Continuing) -- I don't understand what you are
6 talking about.

7 THE COURT: Ma'am, if you
8 don't understand, say it. Don't give an
9 answer.

10 THE WITNESS: Well, he --

11 THE COURT: Just listen to
12 me right now.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Rosenbaum,
15 ask your question again, please.

16 Q Stanley said he was barred from the Warehouse because
17 of the fight incident, he would be lying then, correct?

18 A No, if he said he was barred from a fight, then he was
19 barred from a fight. I don't know why he got barred.

20 Q So, they wrongfully blamed him for that because you
21 said none of that fight was his fault, right?

22 MR. GRUNDA: Objection.

23 She said she didn't know.

24 THE COURT: Sustained.

25 Q But the fight wasn't his fault, was it?

1 A The fight happened outside the bar.
2 Q Had nothing to do with what went on inside?
3 A Talking about two totally different nights.
4 The fight itself --
5 Q The fight at the Warehouse that got him barred from
6 the bar, that started inside?
7 MR. GRUNDA: Objection.
8 A I don't know. I don't know.
9 THE COURT: She said she
10 didn't know what he got barred for.
11 Q You were inside, weren't you?
12 A All right.
13 Q Were you inside the bar that night?
14 A The night the fight happened?
15 Q Yes, the 28th, 27th?
16 A Yes, but you were asking me after we left Sam's
17 where did we go.
18 Q You tried to go back down there and you were
19 barred because of it, right?
20 A We went back into Sam's. I thought you were
21 talking about the Warehouse.
22 Q What happened then, the night of Sam's when you
23 tried to go back downtown?
24 A We went back into the bar to get back into Sam's,
25 okay, before we went uptown. I asked --

1 Q Did you get back into Sam's?

2 A No, they would not let us back in.

3 Now, I understand when the guy choked him and he got
4 passed out, they told everybody to leave that was involved.
5 We went outside. The guys were still standing out there.

6 I made my brother go back in the bar to see if we could
7 stay there so there wouldn't be another fight.

8 Q And they said no?

9 A They said no.

10 Q Then you went downtown. You went to the Warehouse?

11 A Right.

12 Q And you got in there?

13 A Right.

14 Q What happened after that?

15 A We went to Depot.

16 Q Anyplace else?

17 A We might have, but I am not sure.

18 Q What happened to Stanley that night, was he with you
19 the whole night?

20 A We were in Depot. We stayed in Depot for awhile and
21 he left and I think went to my mom's.

22 Q Do you know?

23 A No. I think he went to my mom's.

24 Q Do you know?

25 A Do I know?

1 He said he was going to my mom's.

2 Q Do you know?

3 A No, I do not know.

4 Q There is nothing wrong with saying, "I don't
5 know."

6 A Well, I don't know where he went.

7 THE COURT: Thank you.

8 Q When was your brother a dancer in a bar?

9 A I don't know.

10 Q You have no idea that he did that?

11 A I have no idea, no.

12 Q Did you ever know that he worked in a gay bar?

13 A No, I did not.

14 Q So if he said he did, that would be another aspect
15 of his life that you know nothing about?

16 A Well, if he did, then I would know.

17 Q So, that is another aspect of his life that you
18 know nothing about?

19 A Yes.

20 MR. ROSENBAUM: I have no other
21 questions, your Honor.

22 THE COURT: Mr. Grunda?
23
24
25

REDIRECT EXAMINATION OF TAMMY JALOWIEC

BY MR. GRUNDA:

Q Ma'am, just to clear up a few things because I got totally confused on some of the questioning about the dates, we are talking about two different incidences?

A Right.

Q The incident that happened at Sam's --

MR. ROSENBAUM: Your Honor,
this is rather important. I ask that he
not suggest the answers.

THE COURT: I agree.

Sustained. No leading.

Q What charges resulted from the incident at Sam's?

A The charges that they were saying that he did?

Q Yes.

A The arson.

Q That incident took place on one whole night?

A Right.

Q Do you recall the date?

A The date -- I think it was -- no, I know it was in January. It must have been like a year to that date from the felonious assault.

Q And then the felonious assault, when was that?

A That was on January 27th, which went into the

1 28th, because it was morning.

2 Q But the confusion came in after Sam's, you went
3 downtown?

4 A Right. That is why I got messed up. They said
5 he was barred from the Warehouse.

6 Q What I am saying, the downtown incident, after
7 Sam's, had nothing to do with the felonious assault?

8 A No, that was a totally different night.

9 Q Even though they were both downtown Elyria?

10 A It was a year apart.

11 Q That is what I was trying to clarify.

12 Same incident, different times?

13 A Yeah.

14 Q Now, Mr. Rosenbaum asked you about the possible
15 statement your boyfriend at the time, Shane Thompson,
16 indicated.

17 Can you describe to the jurors his condition that
18 night or how the course of the events at Sam's took
19 place?

20 A Well, he couldn't -- he could walk, like out of
21 Sam's. He wanted to drive and I wouldn't let him
22 because he was too drunk and he passed out before
23 we got out of the parking lot at Sam's.

24 Q So, you don't know if he did or didn't give a
25 statement?

1 A I don't know anything about a statement. I have
2 not talked to him.

3 Q Did any officers come and ask you for your version
4 or for you to give a statement?

5 A Nobody has gotten ahold of me whatsoever dealing
6 with that case.

7 Q How about the other case, the felonious assault?

8 A Nobody, no.

9 Q You were there?

10 A I was there.

11 Q But you weren't --

12 A But I was not asked.

13 Q Now, again, back to the incident at Sam's, you
14 talked about your boyfriend.

15 How long had you been dating?

16 A We didn't date long at all. I broke up with him
17 and I think we only dated for less than a month.

18 Q Okay. When did you break up with him?

19 A I think a couple of days after this. Yeah, not
20 very long after this happened. I am not sure what day
21 it was.

22 Q And he might have made this statement after you
23 had broke up with him?

24 A I don't know.

25 Q And you no longer wanted anything to do with him?

1 A Right.

2 Q Would it be fair to say that his attitude towards
3 you wasn't too pleasant at that point?

4 A It wasn't pleasant at all.

5 Q He was rather upset with you?

6 A Yes, he was.

7 Q And the other thing the Prosecutor asked you about,
8 he was asking you about where Stan went after this
9 incident?

10 A Right.

11 Q And you indicated he went to his mother's house, but
12 you really didn't know?

13 A Right.

14 Q Would it be fair to say that is what Stan indicated?

15 A Right.

16 Q But you didn't drive him?

17 A No, she lived across the street at the time.

18 Q So, that was his intention, to go home?

19 A I felt he was going across the street to his
20 mom's.

21 Q So, it wasn't you were trying to hide or
22 deceive?

23 A No, I didn't have to take him to his mom's
24 because of the fact that she lived across the
25 street.

1 Q That is what his intentions were told to you,
2 so that is what you thought?

3 A Right.

4 MR. GRUNDA: No other
5 questions.

6 MR. ROSENBAUM: I have no other
7 questions.

8 THE COURT: Thank you, Ma'am,
9 you may step down.

10 (Witness excused.)

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1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called EDWARD JALOWIEC as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF EDWARD JALOWIEC

7 BY MR. CLEARY:

8 Q Please state your name and occupation, sir?

9 A Edward Jalowiec and I am a construction worker.

10 Q Are you employed seasonally?

11 A Seasonally.

12 Q And how long have you been doing this kind of work?

13 A I got two years with this construction company and
14 four years with IPC and they are out of business now.

15 Q Now, sir, you are the father of Stanley, correct?

16 A Yes, I am.

17 Q And the son of Pinky?

18 A Yes.

19 Q Would you describe your relationship with your son,
20 Stanley, to the jury, please?

21 A We got along real good. Seventeen years I lived
22 there and he would do anything I would say. Get him up
23 at six o'clock in the morning. He would pick up range
24 balls, no problem.

25 When I was out of state and I would come home, we

1 would go out, got along real good.

2 Q Now, sir, you and your wife, Stan's mother, divorced
3 when he was a teenager?

4 A Right.

5 Q And then you moved out of state, right?

6 A Right.

7 Q Now, you would describe your present relationship with
8 Stan -- do you go out with him at all?

9 A Yeah, like I will go out and shoot pool, go here, go
10 there.

11 Q And, in fact, sir, was there a night that you were out
12 that an event occurred at Sam's?

13 A Yes, there was.

14 Q Would you describe for the jury, please, the events of
15 that evening, just the events relating to that?

16 A We were shooting pool and there was an argument
17 started. This guy came up and grabbed Stan. Stan tried
18 to get away from him.

19 I don't know what was going on and he choked Stan.
20 Stan went down and the barmaid come over and made the
21 other people leave and the kids were getting ready to
22 leave and I told them they weren't leaving until the
23 other people were gone. I don't want no trouble.

24 They said they were going downtown and an hour later
25 this guy comes and gets all over me where my boy went and

1 torched his car.

2 I said, "Now, wait a minute," I just says, "What are
3 you talking about," and he says, "He will be sorry."

4 So I called up the fire marshall and the fire marshall
5 went and told me he believed it was a cigarette and that is
6 the last time I heard about it.

7 Q When you said you were there with the kids, with what
8 kids?

9 A Stanley and the daughter, Tammy.

10 Q And these are the same people that came running back
11 in later?

12 A He was not the guy that had ahold of Stanley.

13 Q He was not?

14 A No.

15 Q Can you tell us something about Stan's medical
16 condition while growing up?

17 A He got arthritis real bad because I got him a couple
18 jobs with his hands. He couldn't do the work in
19 construction.

20 Q The same type of construction work that you do?

21 A I am doing now.

22 Q So, what happened as a result of this, you keep trying
23 to find work for him?

24 A Trying to find work, then he started working out at
25 the golf course.

1 Q Sir, you understand the nature of the proceedings here,
2 we are here for today, correct?

3 A Yes.

4 Q Now, you love your son, correct?

5 A Yes, I do.

6 Q Is there anything you would like to say to this jury
7 regarding your son, Stan?

8 A Well, I can't see how he could have done this because
9 I do a lot of hunting and he wouldn't even shoot a rabbit
10 and that is the truth.

11 MR. CLEARY: No further
12 questions.

13 Thank you, your Honor.

14 THE COURT: Mr. Rosenbaum?

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18 CROSS-EXAMINATION OF EDWARD JALOWIEC

19 BY MR. ROSENBAUM:

20 Q How many fights do you know of that Stanley has been
21 in?

22 A I don't know of any fights.

23 Q Well --

24 A Well, the one, that scrape, but he didn't do any
25 swinging.

1 Q So, he lost?

2 A He went down. The guy had him around the neck.

3 Q So, he lost?

4 A Yeah.

5 Q And that night then, this car, this Geo Tracker, goes
6 up in flames.

7 Can you tell us why, if the fire marshall thought it
8 was caused by a cigarette, that he arrested Stanley for
9 it?

10 A I didn't know he got arrested.

11 Q So you didn't know enough about Stanley to know that
12 he got arrested for it or not, correct?

13 THE COURT: Ask the question
14 again, Mr. Rosenbaum.

15 Q You didn't know enough about Stan to know that he got
16 charged with the arson, whether he did it or not, right?

17 A He couldn't have done it.

18 Q Do you know he got charged?

19 A Yeah.

20 Q I thought you said you didn't know he even got charged?

21 A Wait a minute.

22 Q Didn't you just say you didn't know he got charged with
23 it?

24 A No, I don't think I said that.

25 Q Now, you are saying you do know?

1 A I just heard about it.
2 Q Did you hear he got charged?
3 A I heard that from Sam.
4 Q Now, Stanley gets choked to unconsciousness, right?
5 A Yes.
6 Q And, of course, it is not his fault, right?
7 A I believe it was the other two guys.
8 Q And he goes where after having a bad night out
9 drinking where he gets choked unconscious?
10 A They said they are going downtown.
11 Q And your fatherly advice was --
12 A If they were going downtown, they went downtown.
13 Q You didn't say, "No, go to the police"?
14 A No.
15 Q You didn't say, "Don't you think you had enough for
16 one night, why don't you call it an evening?"
17 A I might have said that.
18 Q But you don't recall it?
19 A I don't recall.
20 Q The fact of the matter is that in your family it is
21 nothing to be in a barroom brawl, whether you cause it or
22 not, and then go look for another bar to go drinking some
23 more in, fight?
24 A I have never been in a fight in a bar, so I don't
25 see how you can put it in the family.

1 Q Do you know what your family does?
2 A Yeah.
3 Q How is that?
4 A My daughter works, my other boy works.
5 Q When did you move out of state?
6 A I have been back here two years. I have been gone
7 four years.
8 Q So, the whole time relevant to the matter pertaining
9 to this trial and all the other charges, you were out of
10 state, right?
11 A Yes.
12 Q How often did you see Stan during that time?
13 A The year I lived in PA I come home every weekend.
14 Q Where did you stay?
15 A In an apartment.
16 Q Whose?
17 A We rented one.
18 Q Who is "we"?
19 A My friend Deter --
20 Q Deter who?
21 A Deter Priest.
22 Q What is the address?
23 A In PA, I don't know.
24 Q The apartment?
25 A I am living with my dad now.

1 Q You said you came back every weekend and stayed in
2 an apartment.

3 Did I misunderstand you?

4 A I have been here for two years.

5 Q There is a time that you were out of state?

6 A Right, right.

7 Q That is when all this stuff happened.

8 Now, I asked you how often you saw your family
9 while you were out of state and what did you say?

10 A I came home once a week.

11 Q And you stayed where, where did you stay?

12 A At my folks'.

13 Q I thought you said you rented an apartment?

14 A That is in PA.

15 Q So you stayed with your parents?

16 A Right.

17 Q Every weekend you know what your family does?

18 A Yes.

19 Q So you know that Stanley is out getting in fights
20 and getting arrested on a regular basis?

21 A How could he be getting in fights if he was with
22 me?

23 Q So Stanley was not in any of these barroom fights
24 that your daughter said she saw?

25 A I don't go all the time with him.

1 Q How can he get in the fights with her when he was
2 with you?

3 A That is the only fight I know about.

4 Q So, you don't know what he is doing?

5 If your daughter says he was in fights, where three
6 or four people got knocked unconscious --

7 A I don't know anything about it.

8 Q So, you really don't know what he does while he is
9 out and about at bars, do you?

10 A No.

11 Q So, you can't testify if he is the kind of person
12 that could do this or not since you don't know what he
13 is out there doing when you are not around, do you?

14 MR. CLEARY: Objection.

15 That is for the jury to decide, your Honor.

16 THE COURT: Overruled.

17 A Repeat that again?

18 Q If you don't know he is out getting in fights, you
19 don't know what kind of guy he is, do you?

20 A I know what kind of guy he is.

21 Q What kind of guy is he?

22 A All right with my books.

23 Q Your book permits a guy to get in a lot of barroom
24 fights?

25 A No.

1 Q So, if he is in the barroom fights, then he is not
2 all right, is he?

3 THE COURT: Ladies and
4 gentlemen, I am going to have to stop at this
5 point. I heard this once and I am looking
6 right at you, young lady, any more of that or
7 anybody else, I am going to clear the courtroom.

8 Do you hear me?

9 In fact, I should clear it now.

10 Proceed, Mr. Rosenbaum.

11 Q He is good, all right, in your book if he goes out and
12 gets in fight after fight in bars and keeps on drinking and
13 keeps on arguing?

14 A I can see having arguments, but not fighting.

15 Q Do you understand my question?

16 A Yes.

17 Q Will you answer it?

18 MR. GRUNDA: Objection.

19 He did answer it.

20 THE COURT: No, he didn't.

21 I can see arguments, but not fighting.

22 The question is fights.

23 Q My question to you is, he is good if he keeps going
24 out and getting in fights?

25 A No.

1 Q So, if Stanley is doing that, he is not all right in
2 your book then, is he?

3 A I would say he is all right in my book.

4 Q If Stanley is all right, he is not all right in your
5 book?

6 A Yeah.

7 Q It is okay if Stanley does it, just not somebody else?

8 A No.

9 Q If he is doing that, he can't be all right in your
10 book, can he?

11 A He shouldn't be doing it. If he is doing it, I can't
12 say if he was doing it.

13 Q Do you know if he does crack?

14 A I have never seen him.

15 Q Do you know if he does it?

16 A I do not know.

17 Q Is it possible for a parent to know if his child is
18 on drugs, whether he sees it or not, if he is around
19 enough?

20 A I believe so.

21 Q And you don't know your son is on drugs or not, do
22 you?

23 A I never seen him do it.

24 Q Now, will you answer my question?

25 Do you know if he is on drugs or not?

1 A No, I don't.

2 Q Do you know he sells drugs?

3 A No, I don't.

4 Q There are jobs at the golf course that he could do
5 even if he has arthritis?

6 A Yeah.

7 Q He didn't do one of those jobs, did he?

8 A I don't know, I wasn't there.

9 MR. ROSENBAUM: I have no other
10 questions.

11 THE COURT: Mr. Cleary?

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15 REDIRECT EXAMINATION OF EDWARD JALOWIEC

16 BY MR. CLEARY:

17 Q Mr. Jalowiec, I think we need to clarify here some
18 of the things that Mr. Rosenbaum was asking.

19 Sir, when he was asking you about whether it is all
20 right if a guy goes out and gets into all these fights,
21 you didn't have a number in mind or anything, did you, as
22 to what he was talking about?

23 A No.

24 Q So, if I told you that all these fights that he was
25 referring to was one other fight, then --

1 A Then he was probably talking about the one at Sam's.

2 Q Okay. Did you know about one other fight than the
3 one at Sam's?

4 A No.

5 Q The fact that you didn't see, you are not here to
6 testify as to any kind of speculation or anything, right,
7 you are here to testify as to what you saw?

8 A Right.

9 Q And you told the jury honestly what you saw?

10 A That is what I saw happen.

11 Q And you don't pretend to have any knowledge beyond
12 that, right?

13 A No.

14 Q Sir, you wouldn't necessarily know that Stan was
15 charged with the arson if it took place after he was
16 arrested for this and was in the county jail, would you?

17 A No.

18 Q Or if all these arrests took place after the arrest
19 for this, you wouldn't know about it?

20 A No.

21 Q And he wasn't living with you at the time?

22 A No.

23 Q That these may or may not have happened?

24 A Correct.

25 Q Now, you found out about them later, you weren't a

1 witness to any arrest or anything like that?

2 A No, I wasn't.

3 Q You are aware that he is not convicted of any felony,
4 correct?

5 A Correct.

6 MR. CLEARY: No further
7 questions.

8 MR. ROSENBAUM: I have nothing
9 further.

10 THE COURT: You may step down,
11 sir.

12 (Witness excused.)

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1 Thereupon, the Defendant, in order to further
2 maintain the issues on his part to be maintained,
3 called SARAH JALOWIEC as a witness and, after being
4 first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF SARAH JALOWIEC

7 BY MR. GRUNDA:

8 Q Ma'am, could you tell the ladies and gentlemen of the
9 jury your full name and where you reside?

10 A Sarah Jalowiec. I reside at 119 Cascade Street in
11 Elyria.

12 Q Can you speak up a little, Ma'am?

13 I know you are nervous, but we need to hear right.

14 A Very nervous.

15 Q Are you the mother of Stan?

16 A I am Stanley's mother, yes.

17 Q Can you tell them when he was born?

18 A August 17th, 1970.

19 Q So it would make him 25 now?

20 A Right, he is 25.

21 Q Where was he born?

22 A Elyria Memorial Hospital.

23 Q Who is his father?

24 A Right over there, Edward Jalowiec. (Indicating)

25 Q The gentleman that previously testified?

1 A Right.

2 Q Okay. And how long were you married to Edward?

3 A We were married almost 17 years.

4 Q And you had other children?

5 A Yes.

6 Q How many other children?

7 A I have three other kids, me and Eddie only had two,

8 though.

9 Q All right. And the two children you had with Eddie

10 were Stan --

11 A Tammy and Neal.

12 Q And Tammy previously testified?

13 A Right.

14 Q And the three of you, the three children, you and

15 he had lived together?

16 A Right.

17 Q And what city was that in?

18 A Elyria and Grafton. Grafton and Elyria is the only

19 place we ever lived.

20 THE COURT: Do you need some

21 water?

22 THE WITNESS: Yes.

23 THE COURT: Please continue.

24 THE WITNESS: Thank you, your

25 Honor.

1 Q When you lived in Grafton, was that with Pinky
2 Jalowiec?

3 A No, we lived in our own house. We did not live with
4 his dad.

5 Q But his dad had the golf course?

6 A Right. His dad was part ownership in the golf course.

7 Q Can you describe to the ladies and gentlemen of the
8 jury about Stan in his youth and growing up?

9 A Stanley always had been a fun loving kid. He loved
10 animals. He would bring home stray cats like most other
11 little boys.

12 He wanted to bring home all the stray things. That
13 is the way Stanley was.

14 Q Okay. Did he have any medical conditions when he was
15 growing up?

16 A When he was, I think, fifth or sixth grade, his knees
17 was swelled up three times the size of a normal knee and I
18 had to keep taking him back to the doctors, to the clinic.
19 They said he had juvenile rheumatoid arthritis.

20 Q What hospital were you taking him to?

21 A Cleveland Clinic and he went to the orthopedic doctors
22 here in Elyria on Fourth Street.

23 Q You indicated that happened when he was in fifth grade?

24 A Fifth or sixth grade, yes.

25 Q How was his attendance in school up and to that point?

1 A Terrific attendance. He had perfect attendance all the
2 way up to the time that the leg swelled up and they put him
3 in the hospital. He wanted me to carry him out of the
4 hospital to go to school so he wouldn't mess up the perfect
5 attendance.

6 Q How did the condition develop in his hands and knees?

7 A They had hurt. He would have to get up every morning,
8 stretch and, you know, try to get his legs moving.

9 Q How often and how long did the treatments go with him
10 at the hospital or clinic?

11 A I really don't know how long. It was over a period of
12 years, you know, two years, three years. I don't know.

13 Q Would it be fair to say you took him as often --

14 A As often as the doctors told me to take him. They
15 told him to take five aspirins a day. That was it.

16 Q And you physically observed him throughout his youth
17 and growing up with this condition?

18 A Yes, I did.

19 Q Okay. Do you know how he has been lately, in the last
20 few years, medically?

21 Does he still suffer?

22 A Yeah. When he would come to my house or something he
23 would still be doing the same thing he was doing. Then he
24 would complain of his knees hurting or they would swell,
25 specifically when they would get cold. His knees and

1 stuff would swell up.

2 Q Okay. How did that affect him in his employment?

3 A He couldn't hold down a job because, I mean, if you
4 are not at work every day, you can't keep a job unless
5 you are there all the time.

6 Q Did this condition also affect his hands?

7 A Yes, his hands, all his joints.

8 Q So, even light duty work would have an effect on
9 him, that would affect his hands?

10 A Yes.

11 Q Now, you are aware of some of the problems that
12 your son has had, correct?

13 A I would hope so.

14 Q Do you know that he has been charged with several
15 things?

16 A Yes, he has been charged with several things.

17 Q He has not been convicted?

18 A He has not been convicted, no.

19 Q Other than what we are here for?

20 Any other things he has not been convicted of,
21 right?

22 A Driving offenses.

23 Q Okay. But there has been allegations and testimony
24 about charges of arson and felonious assault and so
25 forth?

- 1 A Well, I think those charges are -- never mind.
- 2 Q What I am asking, Ma'am, do you know if he has been
- 3 convicted of anything?
- 4 A No, he has not been convicted of them.
- 5 Q Okay. You were aware that he was living with Jackie
- 6 Chaffin?
- 7 A Yes.
- 8 Q Did you have an opportunity to see him around her
- 9 children?
- 10 A Plenty of time.
- 11 Q Can you describe to the jury what would happen?
- 12 A He loves those kids as much as if they were his.
- 13 If they were here, they would tell you themselves.
- 14 Q He would be over there with them at holidays?
- 15 A That is right.
- 16 Q Is that how you would observe him with them?
- 17 A It is like it was his own kids.
- 18 Q How often would you see these children?
- 19 A As often as I see my own grandkids, all the time.
- 20 It wasn't no different.
- 21 Q And at that time you didn't think it would be
- 22 important every day he brought him over, you would write
- 23 it down?
- 24 A No, I still don't.
- 25 Q You just know they were there?

1 A I know they were there, right.

2 Q How is he around his nieces and nephews?

3 A I told you. He is a fun loving kid. He loves kids.
4 He loves people.

5 Q Never had any problems with him?

6 A No.

7 Q Around your house, that you observed?

8 A No.

9 Q It wouldn't be fair to ask you about things that
10 happened outside of your presence because you wouldn't
11 know, you would be guessing, right?

12 A Right.

13 Q Now, Ma'am, do you have anything that you would like
14 to convey to the jury regarding the outcome of your son
15 here?

16 A I just don't want you to kill my son and to me, that
17 is -- only God has the right to do that.

18 MR. GRUNDA: No other questions.

19 THE COURT: Mr. Rosenbaum?

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23 CROSS-EXAMINATION OF SARAH JALOWIEC

24 BY MR. ROSENBAUM:

25 Q Who had the right to kill Ron Lally?

- 1 A I do not believe my son killed him.
- 2 Q Who had the right to kill him?
- 3 A God is the only one that has the right to do it.
- 4 Q So, you think -- you looked at me and made it clear
- 5 that you thought very little --
- 6 A I think the charges are not true.
- 7 Q My point is, they are as wishy-washy as the Aggravated
- 8 Murder?
- 9 A I do not think that is wishy-washy.
- 10 Q The evidence in this case is, and he is innocent of
- 11 the charge?
- 12 A I didn't hear any evidence.
- 13 Q You didn't sit through the trial?
- 14 A Yes.
- 15 Q What you are saying --
- 16 A I am not saying the jury is wrong either. They had
- 17 to make up their minds just like everybody else. I am
- 18 saying I do not believe it.
- 19 Q So, if the same quantity of evidence was out there
- 20 regarding the other charges, some jury might disagree
- 21 with you as well?
- 22 A I think everybody has a right to make up their own
- 23 minds.
- 24 Q But you know that your son could not have done this?
- 25 A That is right.

1 Q And that is because -- tell us why again?

2 A Because I know my son, I know he doesn't have it in
3 him to do it.

4 Q Because he is good with children like they were his
5 own?

6 A Right.

7 Q Loves animals?

8 A Right. He loves life. I can't see him taking it.

9 Q And when was the last time -- let me ask you this.
10 You don't think that your testimony could be biased
11 because you are his mother, do you?

12 A I wouldn't convict anybody on what I heard. I am
13 sorry, no, I wouldn't.

14 Q And I take it you don't know your son has a crack
15 problem?

16 A I have heard allegations of that, yes.

17 Q So, you recognize that he might be a crack cocaine
18 addict?

19 A No, I don't think my son is a crack cocaine addict.

20 Q Just has a crack problem?

21 A I don't know that.

22 Q But you have heard allegations of that?

23 A Yes.

24 Q As a responsible mother who loves her son, tell the
25 Court and jury what you did to get to the bottom of that?

1 A I didn't know that until all this came out, so how
2 could I get to the bottom of it?

3 Q All of the charges you had with your son that leads
4 you to believe that he could not have done this heinous
5 crime, you didn't know that he has done drugs?

6 A He has never done drugs in front of me. No, I didn't
7 know he was doing crack.

8 Q So, is it fair to say that you don't know everything
9 about your son?

10 A I don't think anybody knows everything about anybody.

11 Q So you don't know if he did crack.

12 How many nights a week did your son go out and drink?

13 A My son didn't live with me, how would I know that?

14 Q You have no idea if he is an alcoholic?

15 A I think only a doctor could tell you if he is an
16 alcoholic.

17 Q Someone that knows their son couldn't tell if your
18 son is an alcoholic if they are with you, like you say?

19 A I don't understand what you mean. I wasn't with him
20 24 hours a day.

21 Q Aren't you telling them now enough about him that he
22 couldn't have done this?

23 A No, he couldn't have done this.

24 Q And that is based upon what you know?

25 A I know my son drinks.

1 Q Did you understand what I just asked you?

2 A What did you say?

3 Q Aren't you telling them, based on the contacts that
4 you have with your son, that he couldn't have done this?

5 A Right.

6 Q Don't you think it is fair for me to ask you questions
7 about what you know and don't know about your son?

8 A You are only --

9 Q Answer my question.

10 A Yes.

11 Q So, you will answer these questions?

12 A I am answering the best I can.

13 Q If you don't know your son does drugs, and you don't
14 know your son might be an alcoholic, maybe you don't know
15 if your son is an aggravated murderer?

16 A I know my son is not an aggravated murderer.

17 Q And that is based on the same indications?

18 A Based on 25 years worth of contact, yes.

19 Q That doesn't tell you if he is addicted to crack,
20 does it?

21 A No.

22 Q Or if he is an alcoholic?

23 A No, it doesn't.

24 Q Right. Now, aren't there plenty of jobs at the golf
25 course that somebody with arthritis in the hands could do?

- 1 A He did work at the golf course.
- 2 Q Full time?
- 3 A There is no full-time work. It is only summertime.
- 4 Q So, he worked there every summer?
- 5 A Not every summer.
- 6 Q He worked there every day of every summer?
- 7 A No, he didn't.
- 8 Q Right. How long was he employed at the gay bar?
- 9 A I have no idea.
- 10 Q Do you know he worked at a gay bar?
- 11 A Yes, I do.
- 12 Q What did he do?
- 13 A He danced. I guess I know my son better than you.
- 14 Q And this poor kid with arthritis was a go-go dancer
- 15 by trade?
- 16 A Not by trade.
- 17 Q How did that help his knees, jumping up and down on
- 18 the bar?
- 19 MR. GRUNDA: Objection.
- 20 A He had good days and bad days.
- 21 THE COURT: Sustained.
- 22 Q How many days did he miss in high school?
- 23 Don't you think it is important to know that?
- 24 A He missed a lot of days in high school.
- 25 Q You didn't tell them that, you said that he had

1 perfect attendance?

2 A He had perfect attendance until sixth grade.

3 Q And you didn't say anything about afterwards?

4 A He didn't ask me about afterwards.

5 Q And I don't suppose it would be fair to tell the
6 people that he dropped out of high school?

7 A Yes, he dropped out of high school.

8 Q You forgot to say that?

9 A Didn't ask it.

10 MR. GRUNDA: Objection.

11 It is not what she forgot.

12 THE COURT: Sustained.

13 Next question, please.

14 Q Well, is his high school attendance closer to the
15 time he is alleged to have committed these crimes or grade
16 school?

17 I think we both know the answer to that.

18 Why don't you tell us?

19 A His high school.

20 Q And that is the attendance that you didn't bring up?

21 A I was not asked to bring it up.

22 Q He is not the same person that he was in grade school
23 when he did all these things, is he?

24 A I suppose he is, if your life is formed from the time
25 you are five or six. That is what they say is your

1 informative years.

2 Q You are an avid reader on child rearing?

3 A No.

4 Q You read Dr. Spock?

5 A Right.

6 Q What was the name of his book?

7 A That has been years ago. I am sorry, I don't remember
8 it.

9 Q I see.

10 A I remember the author.

11 Q How many times has the co-owner of the golf course had
12 to bail your son out of trouble?

13 A I guess you would have to ask him. I don't know.

14 Q You have no idea of how many times your son has been
15 in trouble?

16 A I know he has done it, but I don't know how many times.
17 I don't sit down and count them.

18 Q But you know --

19 A I know he had trouble.

20 Q And all those times that he was in trouble, it is not
21 his fault?

22 A No, that is not true.

23 Q Some of them are his fault?

24 A Yes, some of them are.

25 Q Which ones?

1 A Which ones?
2 When he is DUI.
3 Q Nothing else?
4 A Driving without a license.
5 Q Just the minor ones?
6 A I am not saying that actually. I think he told
7 me about a drug paraphernalia. That is his fault.
8 Q So he is responsible for that?
9 A I really believe so, yes.
10 Q How about the selling of drugs?
11 A I don't know that he did sell drugs.
12 Q So, he didn't discuss that with you?
13 A I never heard that he was charged with that.
14 Q Has he been charged with selling drugs as he sits
15 there?
16 Tell these people.
17 A As far as I know, he is charged with drug
18 paraphernalia.
19 Is that right, I don't know what you call them.
20 Q I want you to tell these people --
21 A Arson.
22 Q What else?
23 A And assault.
24 Q Anything else?
25 A I don't know if there is anything else or not. I

1 am telling you what I am trying to remember, kind of
2 nervous for me to be up here trying to remember.

3 MR. ROSENBAUM: No other
4 questions.

5 THE COURT: Mr. Grunda?
6
7
8

9 REDIRECT EXAMINATION OF SARAH JALOWIEC

10 BY MR. GRUNDA:

11 Q Ma'am, I am sorry to have subjected that to you because
12 I failed to ask you a question.

13 I asked you a question about your son, Stan, up until
14 the fifth grade?

15 A Right.

16 Q And then we got sidetracked into medical conditions.

17 MR. ROSENBAUM: Your Honor, if he
18 would like to testify, that is fine.

19 THE COURT: Put a question,
20 please.

21 Q Would it be fair to say I didn't ask you anything
22 further about schooling, right?

23 A Right.

24 Q Or Stan's attendance at school after the fifth grade,
25 right?

- 1 A Right.
- 2 Q It wasn't you were trying to hide it?
- 3 A No, I wasn't.
- 4 Q Just I forgot to ask you?
- 5 A Right.
- 6 Q Okay. And you do admit and agree that his attendance
- 7 was different after having medical problems?
- 8 A Right, it was like he gave up once he missed. At
- 9 first he just, you know, that really disappointed him
- 10 when he couldn't keep going to school because he said
- 11 he wanted to go all the way through school without
- 12 missing.
- 13 Q So you noticed a marked difference in him?
- 14 A Yes.
- 15 Q His attitude, his desire?
- 16 A Yes.
- 17 Q And you don't deny the fact that after that, as you
- 18 indicated, his attendance got worse?
- 19 A Right.
- 20 Q And also what happened to him regarding taking into
- 21 account his medical condition with him graduating?
- 22 A I don't understand what you mean. I think that is
- 23 why he didn't keep going to school.
- 24 Q Okay. And the Prosecutor brings up many allegations,
- 25 innuendos, talks about other charges, but again, they are

1 just allegations.

2 Were there any convictions of felonies regarding your
3 son, Stan?

4 A No, not that I know of, no.

5 Q So, people can allege a lot of things, but it may not
6 be true?

7 A Stanley got accused of a lot of things that wasn't
8 true.

9 Q Do you feel that the innuendos that are going on here
10 and putting him in bad light because of charges, having the
11 opportunity to go to trial, it is not true.

12 Do you agree with that?

13 A Yeah, I think it is not right, yes.

14 Q You do admit of the times that he did wrong for the
15 DUIs and that?

16 A That is right.

17 Q Okay. Do you take offense to the prosecution's
18 characterization of it through innuendo and allegations
19 without convictions?

20 A Yes, I do.

21 MR. GRUNDA: No other
22 questions.
23
24
25

RECROSS-EXAMINATION OF SARAH JALOWIEC

BY MR. ROSENBAUM:

Q You took offense at the fact that we brought murder charges against your son, didn't you?

A Actually it wasn't the fact that you --

Q Did you?

You can answer the question directly.

A No, I didn't.

Q That is okay then. Thank you.

REDIRECT EXAMINATION OF SARAH JALOWIEC

BY MR. GRUNDA:

Q Ma'am, now I will give you the opportunity that the Prosecutor wouldn't give you because he doesn't want the jurors to hear. Would you please --

THE COURT: Mr. Grunda, you will refrain from making speeches at this point. You will ask your questions.

Do you understand that?

MR. GRUNDA: Yes, sir.

THE COURT: Ladies and gentlemen, you will disregard the remarks made by Mr. Grunda. Proceed.

Q Could you finish the answer to the Prosecutor's

1 question, Ma'am?

2 A The offense I take was how I found out that the charges
3 were made. You know, how I found out. Got off work,
4 stopped at a Sunshine Farms, heard a man behind me bragging
5 that my son was going to fry and he was going to see to it.

6 Do you want to know who that man was?

7 Q Who is that man?

8 A That man was Detective Leiby. I never seen him before.
9 He was talking to a black guy telling him that he was going
10 to make sure my son fried.

11 Q And where and when was that?

12 A Sunshine Farms on West River, March 9th, '85.

13 MR. GRUNDA: No other questions.

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: You may step down,
17 Ma'am.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 * * *

21 MR. GRUNDA: Your Honor, we
22 have no other witnesses, but I need to --

23 THE COURT: You will rest
24 subject to the exhibits?

25 MR. GRUNDA: Yes.

1 THE COURT: Ladies and
2 gentlemen, it is now -- Mr. Rosenbaum, does
3 the State plan rebuttal testimony?

4 MR. ROSENBAUM: Yes.

5 THE COURT: Ladies and
6 gentlemen, it is now by the wall clock almost
7 20 minutes to three. It is time that we take
8 our recess at this point.

9 The admonitions I have given you about
10 discussing this matter amongst yourselves,
11 letting anyone discuss it with you, letting
12 anybody talk about it still apply.

13 Do not read anything about it and with
14 that, we will take our afternoon recess.

15 (Whereupon, a short recess was had.)

16 (Whereupon, the following proceedings
17 occurred out of the hearing of the jury.)

18 THE COURT: What say you on
19 the two exhibits?

20 MR. ROSENBAUM: No objection.

21 THE COURT: Anything else at
22 this point?

23 MR. GRUNDA: No, your Honor,
24 we will rest.

25 THE COURT: When we resume you

1 will start your rebuttal, Mr. Rosenbaum.

2 MR. ROSENBAUM: Fine.

3 * * *

4 WHEREUPON, DEFENDANT'S MITIGATION EXHIBITS
5 B AND C, PHOTOGRAPHS, HERETOFORE MARKED FOR
6 IDENTIFICATION, WERE ADMITTED WITHOUT OBJECTION.

7 * * *

8 (Whereupon, the jury was returned to the
9 courtroom and the following proceedings occurred.)

10 THE COURT: Good afternoon,
11 ladies and gentlemen.

12 Ladies and gentlemen, I forgot to tell you
13 when we took our recess, Mr. Grunda indicated
14 to the Court that that was his last witness.

15 At this point, Mr. Grunda, do you officially
16 rest?

17 MR. GRUNDA: Yes, your Honor.

18 * * *

19 DEFENDANT RESTED.

20 * * *

21 THE COURT: Very well.
22 Mr. Rosenbaum, any rebuttal for the State?

23 MR. ROSENBAUM: Yes, your Honor.

24 THE COURT: Please call
25 your first witness.

COURT OF APPEALS

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Volume 2 - mitigation hearing

No. 95 CRO 46840

The State of Ohio, Plaintiff,

vs. Stanley E. Jalowiec, Defendant.

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

98-1074

FILED

JUN 17 1998

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

REBUTTAL TESTIMONY

Thereupon, the State of Ohio, in order to further maintain the issues on its part to be maintained, called DENNIS CAVANAUGH as a rebuttal witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DENNIS CAVANAUGH

BY MR. ROSENBAUM:

Q Will you state your name, please?

A Dennis Cavanaugh.

Q Spell the last name?

A C-A-V-A-N-A-U-G-H.

Q Are you employed, sir?

A Lorain County Sheriff's Department as Captain.

Q And how long have you served Lorain County in the Sheriff's Department?

A Twenty-three years.

Q And how long have you held the rank of Captain?

A Approximately ten years.

Q Are you currently assigned to any particular unit or division of the Sheriff's Department?

A Yes, sir. I am a Director of the Lorain County Drug Task Force.

Q How long have you held that position?

A Six years.

1 Q As a result of your position with the Lorain County
2 Drug Task Force, do you know if your agency launched an
3 investigation into a person by the name of Stan Jalowiec?

4 A That is correct.

5 Q Will you tell the Court and jury what efforts or
6 steps you took to do that?

7 A We made two controlled drug purchases from him on
8 September 28th and also October 6th of '94.

9 Q Will you tell the Court and jury what you mean by
10 controlled drug purchase?

11 A We had an informant that we used, one of my agents,
12 and we actually made controlled drug buys of crack cocaine
13 from Mr. Jalowiec on two occasions, \$40 each, two rocks.

14 Q By rocks, you mean what?

15 A Crack cocaine and that is unit dosage of crack cocaine.

16 Q And were these buys made under the supervision of your
17 unit?

18 A Yes, that is correct. It was under one of our case
19 officers, one of the detectives witnessed one himself and
20 that was monitored by electronic device.

21 MR. GRUNDA: Your Honor, I am
22 going to object to all of this.

23 Again, there is no conviction and that is
24 what the State talks about.

25 THE COURT: Under 804(A),

1 Evidence Rule 804, it is permissible.

2 I will overrule it and grant you a
3 continuing objection on these points.

4 MR. GRUNDA: Thank you, your
5 Honor.

6 I would also have a continuing objection
7 to him with hearsay talking about what other
8 officers said.

9 THE COURT: Very well.

10 MR. GRUNDA: Well, I am going
11 to object. He was saying what the officer said.

12 THE COURT: Ladies and
13 gentlemen, you disregard that last statement by
14 the officer.

15 Continue, Mr. Rosenbaum.

16 Q Did your agent witness one of the controlled buys?

17 A That is correct.

18 Q Was the other buy tape recorded?

19 A That is correct.

20 Q By the same agent?

21 A Yes, sir.

22 Q Now, is this informant you were using, does he expect
23 any consideration for his services?

24 A Yes, sir, we had actually made three buys from him
25 previously of marijuana and that case was presented to your

1 office for consideration and this informant is actually
2 making other buys, not with this Defendant, but with others.

3 Q And his name is what?

4 A Scott Bohac.

5 MR. ROSENBAUM: I have no other
6 questions of this witness.

7 THE COURT: Mr. Grunda or Mr.
8 Cleary?
9

10
11
12 CROSS-EXAMINATION OF DENNIS CAVANAUGH

13 BY MR. GRUNDA:

14 Q Now, Officer, you had this Scott Bohac, he is basically
15 working off his charges?

16 A That is correct.

17 Q So, as soon as you had something on him, you sent him
18 out to do something to get somebody else?

19 A That is correct.

20 Q And you are the one that indicated that he should do
21 this against Stanley?

22 A There was a multitude of tactics and he was being
23 handled by one of the case officers, yes.

24 Q And was he targeted by Detective Leiby?

25 A No, sir, he was not.

1 Q But Bohac didn't come in with this, you guys targeted
2 Stanley?

3 A No, sir, we did not target Stanley, we arrested Bohac,
4 Bohac -- there were several people targeted from that point,
5 but that was from our office.

6 Q And you target people and sent these people in to do
7 these things?

8 A Correct.

9 Q You, yourself, weren't there making the buy?

10 A No, sir, I did not make the buy.

11 Q You weren't there, present, when the buy was allegedly
12 made?

13 A I was on the second one. I was not right in the
14 vicinity, but I was in the general vicinity, yes.

15 Q I am talking about right there to witness the
16 transaction?

17 A I did not witness the transaction, no.

18 Q You did not witness it?

19 A No.

20 Q So, again, you didn't see anything with your own
21 eyes?

22 A That is correct.

23 Q You weren't there to hear it with your own ears?

24 A No, sir.

25 Q Now, you are an officer and sworn to uphold the

1 Constitution, correct?

2 A That is correct.

3 Q And the laws of the State of Ohio, correct?

4 A Correct.

5 Q And you are here talking about an allegation, correct?

6 A Allegation specifically, sir, I don't understand what
7 you are saying.

8 Q It is a charge?

9 A That is correct.

10 Q There is no conviction of this?

11 A No, there is not.

12 Q And you do agree that a person under the Constitution
13 you have sworn to uphold is presumed innocent, right?

14 A That is correct.

15 Q Has a right to a fair and impartial jury?

16 A That is correct.

17 Q And the prosecution has to prove each one of these
18 elements beyond a reasonable doubt, right?

19 A Correct.

20 Q In this case that has not been done?

21 A It has not come to jury trial, no, sir.

22 Q Okay. In these allegations where there is no
23 conviction here, when did you make this arrest?

24 When was the arrest made?

25 A I am not sure, I am not sure when the indictment

1 was served on him. He was not arrested at the time of
2 the purchase. We present those charges to the Grand
3 Jury and an Indictment was obtained and I can't tell
4 you when the warrant was executed.

5 Q It was after the murder charge, wasn't it?

6 A I believe it was, I am not sure of the exact date.

7 Q But to the best of your knowledge it was after the
8 murder charge?

9 A Yes.

10 MR. GRUNDA: No other
11 questions.

12 MR. ROSENBAUM: I have no other
13 questions.

14 THE COURT: Thank you, you
15 may step down.

16 (Witness excused.)

17 * * *

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called SCOTT BOHAC as a rebuttal witness
4 and, after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF SCOTT BOHAC

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Scott Bohac.

10 Q Spell the last name?

11 A B-O-H-A-C.

12 Q How many Ts in Scott?

13 A Two.

14 Q Do you know the person seated under my right hand?

15 (Indicating)

16 A Yeah, Stan Jalowiec.

17 Q How do you know him?

18 A I purchased drugs from him.

19 Q Did you know him before that?

20 A Not really, just a little.

21 Q Had you seen him around?

22 A I met him through a friend.

23 Q When was that?

24 A September, '94.

25 Q Did there ever come a time when you, yourself, got

1 in trouble for selling drugs?

2 A Yes.

3 Q And did you agree to turn State's evidence and
4 cooperate with the Drug Task Force as an informant?

5 A Yes.

6 Q As a result of that, did you make drug buys from
7 the Defendant in this case?

8 A Yes.

9 Q Can you tell the Grand Jury when?

10 THE COURT: Sir, the jury,
11 not the Grand Jury.

12 A September 28th, '94, and on October 6th, '94.

13 Q And did you do this in cooperation with a drug agent?

14 A Yes.

15 Q What was the name of the agent running your case?

16 A Don Barker.

17 Q How much drugs did you buy on each occasion?

18 A Forty Dollars worth of crack.

19 Q What would this look like?

20 A Two rocks.

21 Q Two pieces of crack cocaine?

22 A Exactly.

23 Q You bought that yourself personally from Stan Jalowiec?

24 A Yes, sir.

25 MR. ROSENBAUM: No other questions.

1 THE COURT: Mr. Grunda or Mr.
2 Cleary?
3 MR. CLEARY: Your Honor, we are
4 preserving the continuing objection.
5 THE COURT: You have that, Mr.
6 Cleary.
7 MR. CLEARY: Thank you.
8
9

10 CROSS-EXAMINATION OF SCOTT BOHAC

11 BY MR. CLEARY:
12 Q Mr. Bohac, how many cases did you agree to make
13 purchases for?
14 A There was no set number.
15 Q But you, yourself, are getting out at three?
16 A Three what?
17 A Three cases?
18 A I am not exactly sure what I am getting out of.
19 There wasn't nothing put in writing or nothing.
20 Q Are you sure?
21 To date has anything been dismissed?
22 A No, sir.
23 Q Has any case been brought against you?
24 A No, sir.
25 Q So, are you still performing these services for

1 the Drug Task Force?

2 A If they ask me to.

3 Q Have you recently?

4 A No, sir.

5 Q Okay. Are you -- when was the last time you did?

6 A The end of '94.

7 Q During the same time period?

8 A Exactly.

9 Q And you have no criminal record, sir?

10 A Yes, I do.

11 Q What might that be?

12 A Trafficking in marijuana ten years ago.

13 Q And was that a felony or misdemeanor?

14 A Felony.

15 Q Was that worked down?

16 A No, sir.

17 Q Now, how many people have you turned in or bought

18 drugs from for the purpose of arrest since you first

19 found yourself in a jam?

20 A Three.

21 Q Have you testified in any of them?

22 A No.

23 Q Have you ever been called to Court to testify for Stan

24 Jalowiec?

25 A No.

1 Q To your knowledge this has never been brought to trial
2 or anything?

3 A No.

4 Q Were you ever subpoenaed to municipal court to testify
5 in a preliminary hearing?

6 A No, sir.

7 Q So, to date have you given any written statements
8 regarding this matter?

9 A No, sir.

10 Q So, to date there is no written record anywhere of you
11 having performed services, correct?

12 MR. ROSENBAUM: Objection.

13 He can't answer that.

14 THE COURT: You may answer that,
15 sir, if you know and if you don't know, you don't
16 know.

17 A Well, there would be records because --

18 THE COURT: Do you know?

19 Not whether there should or could be.

20 Do you know?

21 THE WITNESS: Well, what I have
22 done would have been with --

23 Q I am interested in whether you gave and signed a
24 statement personally in regards to this case?

25 A Yes, whenever I did the buy.

1 Q Were you alone when you made the buy?
2 A No, sir.
3 Q You were with somebody?
4 A Right.
5 Q And who would that be?
6 A Agent Barker.
7 Q He was physically with you in the room?
8 A No.
9 Q So, you were alone?
10 A Well, I was wired.
11 Q Was he in view of you, do you know?
12 A On one of the buys, yes.
13 Q You were wired?
14 A He was in view, yes.
15 Q And saw the transaction?
16 A Uh-huh.
17 Q Now, you understand, sir, this trial is not for
18 what you allegedly witnessed here?
19 A Uh-huh.
20 Q This is something completely different?
21 A Right.
22 Q Was this part of your plan to get out of jail?
23 A No, sir.
24 MR. ROSENBAUM: Objection, your
25 Honor.

THE COURT: Sustained.

Mr. Cleary, you can ask that question better, too.

Q This was not part of your deal?

A No, sir.

Q But you were asked to come here and testify?

A Yes.

Q And was there any request of you refusing to testify?

A No.

Q Now, you were told to be here and here you are?

A Exactly.

Q Sir, who set up Stan as target for your buy?

A Who set him up?

I offered him.

Q You offered him?

A Uh-huh.

Q You went and offered his name and they then gave you money, right?

A Right.

Q And to your knowledge did anyone see you do this drug deal with Stan Jalowiec, either one of them see you?

A See me, no.

Q It was strictly audio?

A One was audio and one was -- the agent was watching out a trailer window.

1 Q Did he see it?

2 A I didn't have a tape on because Stan showed up too
3 quick.

4 Q One was audio and the other one is not on the tape?

5 A Right. It was witnessed by him through a window he
6 was looking out of and heard us.

7 Q He is looking and heard you?

8 A Right.

9 Q Did he see you?

10 A Yes.

11 Q And that was Barker, right?

12 A Right.

13 Q But he weren't present, he was looking out a window?

14 A Exactly. This took place outside.

15 Q How do you know what he saw?

16 A Well, he searched me before I seen him. I come back
17 with drugs.

18 Q So, he saw you leave and he saw you come back?

19 A Right.

20 Q Okay.

21 MR. CLEARY: No further
22 questions.

23 MR. ROSENBAUM: No other questions.

24 THE COURT: You may step down.

25 (Witness excused.)

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called SCOTT SARGENT as a rebuttal witness
4 and, after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF SCOTT SARGENT

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Scott Sargent.

10 Q Spell the last and first name for the Reporter, please?

11 A S-C-O-T-T; S-A-R-G-E-N-T.

12 Q Are you employed?

13 A Yes.

14 Q Can you tell the Court and jury what you do for a
15 living, please?

16 A I am a Police Officer for the City of Elyria.

17 Q How long have you served the city as a Police Officer?

18 A Ten years.

19 Q Are you currently assigned to a particular unit or
20 division of the police department?

21 A Yes, sir, I am.

22 Q Will you tell the Court and jury what unit or division
23 that is, please?

24 A I work for the Detective Bureau.

25 Q And how long have you been a detective?

1 A Since September.

2 Q Could you tell the Court and jury what your duties,
3 assignment was, on April 23rd of '94?

4 A I was a member of the Neighborhood Impact Unit.

5 Q What are the duties of that unit, sir?

6 A To patrol the high crime and high drug areas.

7 Q What was your shift?

8 A I believe we were four to twelve at that time.

9 Q Did you have contact with the person seated under
10 my right hand, sir? (Indicating)

11 A Yes, I did.

12 Q And do you know his name?

13 A Stanley Jalowiec.

14 Q Will you describe the contact you had with him on
15 that date and time, sir?

16 A On the date in question, I believe it was April 23rd
17 of '94, I heard a patrol call out with a traffic stop on
18 Seventh Street. When the name came back, it was on a Joann
19 Fike and I was familiar with that name as I have stopped
20 her in the Bell Avenue area, which is a high drug area,
21 which was my primary patrol area.

22 I knew through past dealings that she was involved in
23 drugs and possibly this was a drug stop and the two patrol
24 officers might miss some narcotics, so I went to the area.

25 When I pulled up and saw Stanley seated in the driver's

1 seat, talked to the patrol person, they told me what they
2 had with the stop and I asked if they had patted him down
3 for their safety.

4 They said no. I asked him to step from the car. When
5 I started to conduct a protective pat down, a crack cocaine
6 pipe fell out of his leg on the ground.

7 Q Do you recall if there was anyone else with him?

8 A There was another male.

9 Q Did you seize the pipe, sir?

10 A Yes.

11 Q Did you have it tested?

12 A The patrol officers were standing next to me at the
13 time. They seized it and placed it in evidence.

14 MR. ROSENBAUM: I have no other
15 questions, your Honor.

16

17

18

19 CROSS-EXAMINATION OF SCOTT SARGENT

20 BY MR. GRUNDA:

21 Q People were in the car?

22 A Yes.

23 Q You weren't called to the scene, were you?

24 A No.

25 Q You just went on your own?

1 A Yes.

2 Q And there was already two patrol officers there,
3 correct?

4 A Yes.

5 Q But even in spite of the fact that the two other
6 officers had the situation totally under control, you
7 got involved in it, correct?

8 A Whether it was under control or not, I don't know.
9 I did respond.

10 Q When you drove up they had already stopped the car,
11 right?

12 A Yes.

13 Q There wasn't any problems or altercations going on?

14 A No.

15 Q There didn't indicate to you to be any problems going
16 on from the people in the car and the officers that already
17 stopped them, did there?

18 A No.

19 Q It would be fair to say at that point the situation
20 looked well under control?

21 A Not necessarily, no.

22 Q Are you saying that the two fellow officers that
23 already stopped him weren't capable of performing their
24 duties in carrying this out without your assistance?

25 A That is not what I said.

1 Q So you do agree they could have carried on there
2 without your assistance?

3 A Maybe in a traffic enforcement, yes.

4 Q Nothing to that point had indicated to them that
5 there was any drug involvement, right?

6 A Only in the reports where it indicates that Stanley
7 and the other male attempted to switch seats to make it
8 appear that the other male was driving and they were
9 both reaching down into the seats as to hide something.

10 Q Stan's name was never mentioned, right?

11 A Over what?

12 Q The radio?

13 A No.

14 Q You only heard a call on Joann Fike?

15 A Yes.

16 Q And because of your experience with her name you
17 raced to the scene because you wanted to get other drug
18 buys?

19 A I didn't race anywhere.

20 Q You went over there, didn't you?

21 A Yes.

22 Q You weren't the one called?

23 A Drug enforcement was part of my job at the time.

24 Q Speaking of drug enforcement, Officer, isn't it true
25 you have been convicted of lying under oath before?

1 MR. ROSENBAUM: Objection, your
2 Honor.
3 A No, sir.
4 THE COURT: Sustained.
5 MR. GRUNDA: Your Honor, I
6 believe I am allowed to ask that under 609(A)(3).
7 THE COURT: No, you are not at
8 this point.
9 MR. GRUNDA: It goes directly
10 to it.
11 THE COURT: Sustained.
12 MR. GRUNDA: If I might, your
13 Honor, I want to proffer this into the record.
14 MR. ROSENBAUM: At a later time,
15 please.
16 THE COURT: I will give you
17 the opportunity to do that.
18 Proceed.
19 Q When you got there they had already been stopped by
20 the other officers, right?
21 A Yes.
22 Q You didn't observe who was driving the car, right?
23 A I observed him seated behind the wheel.
24 Q I didn't ask you that.
25 Did you observe who was driving the car?

1 A No.

2 Q When you got there, the car was stopped?

3 A Yes.

4 Q So you didn't see who drove it, what street it was
5 going down, how fast it was going?

6 You didn't see anything?

7 A No.

8 Q Only afterwards you got into this?

9 A Yes.

10 MR. GRUNDA: No other questions.

11

12

13

14 REDIRECT EXAMINATION OF SCOTT SARGENT

15 BY MR. ROSENBAUM:

16 Q Do you routinely assist your fellow officers in similar
17 situations?

18 A Yes.

19 Q As a senior patrol officer is it normal for you to show
20 up on the scene with two less experienced officers?

21 A Yes.

22 Q Were these two far less experienced than you at the
23 time?

24 A Yes.

25 Q And you found the crack pipe on this man, the

1 Defendant?

2 A Yes.

3 MR. ROSENBAUM: I have no other
4 questions.

5

6

7

8 RECROSS-EXAMINATION OF SCOTT SARGENT

9 BY MR. GRUNDA:

10 Q I thought you said it fell out when you got him out of
11 the car?

12 A Yes, fell out of his pant leg.

13 Q Were you watching his pant leg?

14 A I was patting him down at the time.

15 Q Two officers couldn't do that?

16 A They had not done that at the time, no.

17 Q Who were the officers?

18 A Matt Eichenlaub and Judy Quinn.

19 MR. GRUNDA: No other questions.

20 MR. ROSENBAUM: Nothing.

21 (Witness excused.)

22 * * *

23

24

25

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called JEFF HICKS as a rebuttal witness
4 and, after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF JEFF HICKS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Jeff Hicks.

10 Q Spell the first and last name for the Reporter, please?

11 A J-E-F-F; H-I-C-K-S.

12 Q Are you employed, sir?

13 A Yes, I am.

14 Q Will you tell the Court and jury what you do for a
15 living?

16 A I work for Malls Way Equipment Company.

17 Q What do you do for them?

18 A I build wreckers, boom trucks --

19 Q Are you a little nervous here?

20 A Yes.

21 Q Relax.

22 A And I build cement trucks.

23 Q Do you know the Defendant who is seated under my right
24 hand? (Indicating)

25 A Yes, I do.

1 Q How is it that you know him, sir?

2 A He is the one that took a baseball bat to my face.

3 Q Did you know him prior to that?

4 A No.

5 Q Can you tell the Court and jury when that happened?

6 A It happened the night of the 27th, 1994.

7 Q What month?

8 A It was January.

9 Q Where did this happen at?

10 A South side, the Warehouse.

11 Q What is the Warehouse?

12 A It is a bar downtown here.

13 Q In downtown Elyria?

14 A Yes.

15 Q Can you tell the Court and jury briefly what happened?

16 A There was an altercation in the bar. Me and about
17 five other guys were sitting at the bar and one of my
18 buddies come up to me and said that he wasn't a real big
19 guy, he said there was no problem.

20 MR. GRUNDA: Objection.

21 THE COURT: Sustained.

22 A He said there was a problem and I turned around to see
23 what the problem was and immediately was jumped upon by
24 Stan's buddy which was a guy that they call Pops.

25 Q Did you know this guy?

1 A I do now.

2 Q What did you learn Pops real name to be?

3 A I can't think of his name right now, but he was

4 indicted last month.

5 Q So, Pops was there and then what happened?

6 A They broke up the fight.

7 Q Who is "they"?

8 A The bouncers at the bar.

9 Q Inside the bar?

10 A Yes.

11 Q Then what happened?

12 A Then they sent us both directions in the bar. I

13 went back to where we were sitting. I figured it was

14 over with and they went back to their area and that is

15 basically it.

16 Q Did anything happen later on?

17 A Yeah.

18 Q What was that?

19 A We decided to all go out at the same time, about

20 midnight.

21 Q "We" is who, your group of friends?

22 A Right, and we walked out the door. They sent us out

23 the back door because they knew they went out the front

24 and we came around -- we took two corners coming around

25 the building and the second corner, Stan was out in the

1 street yelling, "Come on, come on."

2 Q Why did you go that way?

3 A That is where my car was.

4 Q So, you actually went around to the front of the bar?

5 A Yes, right, and the one guy that was with me, he came
6 out and said, "I am not afraid of you, Stan," and I turned
7 to look and immediately got hit.

8 Q What was the guy's name that said he wasn't afraid of
9 Stan?

10 A His name is Tim.

11 Q Tim Hough.

12 Q You got hit by whom?

13 A By Stan.

14 Q Do you know with what?

15 A Originally he hit me with a bat, first, or some type
16 of club.

17 Q Then what happened?

18 A After I got knocked out with the blow from the club,
19 I was told by a friend later on that he was also kicking
20 me in the face.

21 MR. GRUNDA: Objection.

22 THE COURT: Sustained.

23 You cannot tell us what someone stated.

24 Q What was the name of this person that said something
25 to you?

- 1 A Her name is Deanna.
- 2 Q So then what happened, were you out cold?
- 3 A Yes.
- 4 Q Did you sustain any injuries as a result of being hit
- 5 with this bat other than being knocked out?
- 6 A Yes.
- 7 Q Describe the injuries for the Court and jury, please?
- 8 A I broke bones all down the side of my face here on the
- 9 side and I had to go to the hospital and they tied my jaw
- 10 together with wires and told me I would be okay and I went
- 11 home.
- 12 Q Were you okay?
- 13 A No.
- 14 Q What happened?
- 15 A It became infected and I came close to death from it.
- 16 Q Did you have to go back to the hospital?
- 17 A Yes.
- 18 Q For how long?
- 19 A Approximately three months.
- 20 Q Did you sustain medical bills as a result of Mr.
- 21 Jalowiec hitting you?
- 22 A Yes, I did.
- 23 Q In what amount, if you know?
- 24 A It was close to \$20,000.
- 25 Q Did you see Mr. Jalowiec injure anyone else before

1 you were rendered unconscious?

2 A No.

3 MR. ROSENBAUM: No other questions,
4 your Honor.

5 THE COURT: Mr. Grunda or Mr.
6 Cleary?

7

8

9

10 CROSS-EXAMINATION OF JEFF HICKS

11 BY MR. GRUNDA:

12 Q Sir, you indicated this incident started at the
13 Warehouse, correct?

14 A Yes.

15 Q You were drinking there, right?

16 A Yes.

17 Q How much did you have to drink that evening?

18 A A couple beers.

19 Q How long were you there?

20 A Approximately an hour, hour and a half, two hours.

21 Q You were going there with the intent to drink?

22 A Not so much intent to drink, just to see some of
23 the guys.

24 Q You had been there to drink before?

25 A Yes, I have been there before.

- 1 Q You have been drunk before there?
- 2 A No, I have never been drunk there before.
- 3 Q Never?
- 4 A Never.
- 5 Q But at other places then, if you are saying not there?
- 6 A No.
- 7 Q You are saying in your whole life you have never been
- 8 drunk?
- 9 A No.
- 10 Q But you do admit you frequent bars often, right?
- 11 A No.
- 12 Q And you don't go down there to drink?
- 13 A Not always, also to dance sometimes.
- 14 Q This particular night, you said when you were down
- 15 there you were jumped right in the bar?
- 16 A Yes.
- 17 Q Stan didn't do that, did he?
- 18 A No.
- 19 Q He had nothing to do with that at all, did he?
- 20 He didn't touch you, did he?
- 21 A Well, he provoked it because --
- 22 Q Listen to my question.
- 23 A Okay.
- 24 Q Did he touch you?
- 25 A No.

- 1 Q Did he lay a hand on you?
- 2 A No.
- 3 Q Or anyone else in your group?
- 4 A Yes, I think he did.
- 5 Q You don't know though?
- 6 It would be fair to say after this altercation that
- 7 you had, not with Stan, but with the other person, you
- 8 got upset, right?
- 9 A Because it was more than just a scuffle. I wasn't
- 10 really upset, upset, you know.
- 11 Q But it had to be upsetting that bouncers came over
- 12 and told you to stop, right?
- 13 A Sure.
- 14 Q Even though the bouncers broke it up, you went back
- 15 to the bar area and continued to drink, right?
- 16 A I came back and sat down and just talked about it.
- 17 Q You say you went out the front door at some other
- 18 point.
- 19 That is when the bar closed, do you know?
- 20 A We went out the rear door.
- 21 Q You went out the rear door?
- 22 A Yes, they sent them out the front door.
- 23 Q They sent them out the front door?
- 24 A Yes.
- 25 Q So you two guys wouldn't be together?

- 1 A Yes.
- 2 Q Then you walked around from going out the rear door
- 3 to the front where they went out, right?
- 4 A Yes.
- 5 Q So you were going where they were?
- 6 A I was going to my vehicle.
- 7 Q You were going where they were?
- 8 A To my vehicle.
- 9 Q Now, they went out the front door, right?
- 10 A Correct.
- 11 Q Do you understand my question?
- 12 A Yes.
- 13 Q You knew they went out the front door, right?
- 14 A Yes.
- 15 Q And you went out the back door?
- 16 A It was over.
- 17 Q Listen to the question, answer it.
- 18 You went out the back door, right?
- 19 A Yes. We went out as a group.
- 20 Q Did you bother to stay at the back door for any
- 21 length of time?
- 22 A No, I wanted to go home.
- 23 Q So, rather than waiting there to make sure they
- 24 left the area, you go right around the front to where
- 25 you knew they were at?

1 A I didn't know they were up there.

2 Q You saw them go out the front door?

3 A They left five or ten minutes before we did.

4 Q And rather than you waiting at the back door to make

5 sure they cleared, you went around the front, didn't you?

6 A We gave them time to clear, I thought.

7 Q You didn't wait at all at the back door?

8 A No, we proceeded to our vehicle.

9 Q You went right around to the front where you saw them

10 go out, right?

11 A I didn't know where they went after that.

12 Q You saw them go out the front door?

13 A As far as I knew, they could have been out at the rear

14 door.

15 Q But you know they weren't, because they weren't there

16 when you walked out, right?

17 A No.

18 Q They weren't there, were they?

19 A No.

20 Q And you didn't bother to wait to make sure they

21 cleared?

22 A No.

23 Q And you were already pumped up from having the

24 bouncers break up your altercation in the bar with Stan?

25 A I wouldn't say pumped up. It was more of a scuffle.

1 Q And you are saying this was around midnight?
2 A Yes.
3 Q You know after this incident the police were called?
4 A Correct, after the incident.
5 Q Outside, in front?
6 A Only thing I knew was, I was waking up.
7 Q And you figured you were hurt so badly they should
8 have taken your name down, right?
9 A There was no police there when I woke up.
10 Q Is there any reason that your name wouldn't be
11 mentioned in the police report?
12 MR. ROSENBAUM: Objection.
13 THE COURT: I don't know if
14 he has that knowledge. He may answer it, but
15 I don't know that it is within his knowledge.
16 A I don't think that I remember much of anything after
17 I got hit in the face with a baseball bat.
18 Q Who were you with that night?
19 A I was with two friends.
20 Q What is their names?
21 A Toby and Tim.
22 Q What are their last names?
23 A Toby's -- I don't know his last name, just a friend
24 from school, and Tim, I think his last name is Hough.
25 Q You go out with two guys you don't know their last

1 names?

2 A Friends from school, we didn't go out as a group, I
3 met them there, just as friends that I went to school with.

4 Q Friends that you don't even know their last names?

5 A Yes.

6 Q But you were leaving together?

7 A Yeah, after what happened in the bar, sure.

8 Q Do you know if any of their names are Schull or Roland?

9 A Roland, I believe to be his last name.

10 Q That reminds you now, right?

11 A Yes.

12 Q How about Shull?

13 Was that the other guy's name?

14 A Yes, that is his name, too.

15 * * *

16 WHEREUPON, DEFENDANT'S EXHIBIT M-D WAS MARKED
17 FOR IDENTIFICATION.

18 * * *

19 Q Sir, handing you Defendant's Exhibit M-D, can you look
20 at that?

21 A Okay.

22 Q Is it a police report?

23 A Yes, it is.

24 Q On the top does it indicate the date?

25 A Yes.

1 Q What is the date?

2 A 1-28.

3 Q And that is the date you are talking about, right?

4 A Yes.

5 Q What is the time that this incident supposedly
6 happened?

7 A Two o'clock.

8 Q Two o'clock in the morning, right?

9 A Yeah.

10 Q So it is not like you said at twelve o'clock, right?

11 MR. ROSENBAUM: Your Honor, I
12 object.

13 Counsel ought to cross-examine him with the
14 police report that pertains to the incident. The
15 date of that report is February 2nd from the other
16 victim.

17 THE COURT: I would have to
18 sustain that one at this point.

19 MR. ROSENBAUM: Here is the one you
20 want.

21 MR. GRUNDA: This is the incident
22 date?

23 THE COURT: Don't ask me about
24 it.

25 The objection was there and I sustained it.

1 MR. GRUNDA: I can ask about
2 this one?
3 MR. ROSENBAUM: It is not his
4 report.
5 THE COURT: How can he answer
6 anything about what is not his report?
7 MR. ROSENBAUM: Here is his report.
8 Q What I have handed you, sir -- which is identified as
9 an incident report from the same date?
10 MR. ROSENBAUM: Objection.
11 THE COURT: Incident, right.
12 MR. ROSENBAUM: He is not the
13 keeper of that record, he can't authenticate it.
14 MR. GRUNDA: It is
15 self-authenticating.
16 MR. ROSENBAUM: It is not.
17 MR. GRUNDA: It is. It is kept
18 in the course of their business.
19 THE COURT: You will address
20 the Court and not each other at this point.
21 Come forward.
22 (Whereupon, the following proceedings
23 occurred at the bench out of the hearing of the jury.)
24 MR. GRUNDA: It is either 1, 2,
25 3 or 4, because it is kept in the course of the

1 business.

2 MR. ROSENBAUM: It is not 1, 2, 3
3 or 4, it is a hearsay exception. It must be
4 authenticated by the custodian of the records
5 under 801 or 3.

6 MR. GRUNDA: That is like saying
7 the report is false then.

8 MR. ROSENBAUM: The report is not
9 false because he cannot identify it. It is not
10 his report.

11 THE COURT: You plan to do what
12 with that report?

13 MR. GRUNDA: Only question I had,
14 to get him to identify the date and he is not in
15 there.

16 MR. ROSENBAUM: It is not his
17 report. This is his report.

18 MR. GRUNDA: He can ask him that.
19 I am asking him this.

20 THE COURT: You ask him what the
21 date says on that report.

22 MR. ROSENBAUM: He can't
23 authenticate this here.

24 THE COURT: Then if he can't, he
25 can say it.

1 MR. ROSENBAUM: But you are going
2 to force him to read it and that will give the
3 appearance he cannot authenticate the police
4 report.

5 THE COURT: And it will not be
6 read.

7 MR. ROSENBAUM: He can't even say
8 the date is accurate.

9 THE COURT: If he can identify
10 that report, he can. If he can't, he can't.

11 MR. GRUNDA: That is what I was
12 trying to get into.

13 MR. ROSENBAUM: He wants to say that
14 his name is not on this. It is not on that, it is
15 on this. (Indicating)

16 MR. CLEARY: I thought that one
17 didn't exist.

18 (Whereupon, the following proceedings
19 occurred back in the hearing of the jury.)

20 BY MR. GRUNDA:

21 Q Handing you Defendant's Exhibit M-D, have you seen that
22 before?

23 MR. ROSENBAUM: Objection.

24 THE COURT: Overruled at this
25 point.

1 Have you seen that document before?

2 THE WITNESS: Before when?

3 THE COURT: Just before.

4 Q Before today?

5 A No, not before today, no.

6 Q You described an incident that happened on January
7 28th of '94, right?

8 That is the date you said this incident happened,
9 right?

10 A It happened between the 27th and the 28th, at midnight
11 it turned the 28th.

12 Q And the incident involved you and your two buddies,
13 right?

14 A Yes.

15 Q Mr. Schull and Mr. --

16 THE COURT: Hold it, Mr. Grunda.

17 Ladies, out. Deputy, get them out. They are
18 barred from the courtroom.

19 Proceed, Mr. Grunda.

20 MR. GRUNDA: Thank you, your

21 Honor.

22 Q Getting back to this talking about an incident that
23 happened the 27th involving you, Mr. Schull and Mr. Roland,
24 right?

25 A Yes.

1 Q Even though you didn't remember their last names,
2 right?

3 A Yeah.

4 Q Okay. Did you go down to the police right after this
5 incident and make a report?

6 A Following day or so. I can't remember offhand. It
7 has been two years.

8 Q You didn't go down with them, did you?

9 A No, because I didn't know where they lived or how to
10 get ahold of them or what their status was at the time.

11 Q And you said you went to the hospital?

12 A Yes, I did.

13 Q That was right after this?

14 A Yes, that next morning.

15 Q And you received treatment from the hospital, correct?

16 A Yes.

17 Q I assume they gave you good treatment?

18 A Yeah.

19 Q And then when they released you that same day, right,
20 they released you that same day?

21 A I think I went in one day and came out the next.

22 Q When they released you, they gave you instructions as
23 to what you were to do and how to treat yourself and take
24 care of yourself afterwards?

25 A Right.

1 Q Okay. And in that instructions on your release they
2 also indicated to watch and take care of yourself so you
3 didn't get infection, right?

4 A It didn't say anything about infection.

5 Q It didn't say anything on the release papers that
6 you were to watch that?

7 A It said watch for swelling, but it was swelled up
8 already and he said it would go down in a few days.

9 Q And you are saying that the hospital document that
10 you got didn't indicate that you should watch for any
11 type of infection or report or do anything about it?

12 A It stated swelling should start decreasing.

13 Q Did you follow up this treatment with your family
14 doctor a couple days after you got out of the hospital?

15 A I believe the next time I seen the doctor was on
16 probably three to four days after I had been released
17 the first time. It had swelled to the size of a softball.

18 Q Now, at the hospital did you give them a report of
19 this incident?

20 A No.

21 Q You didn't give them anything?

22 A No.

23 Q So, no police were brought down there to see who
24 assaulted you or anything, right?

25 A No, at the time I was more concerned about my life

1 and my face.

2 Q And under that concern you didn't bother to call
3 the police officers to get a report to help you do
4 that, did you?

5 A No, I didn't.

6 Q So, you go to the hospital with this injury, you
7 don't call the police, you don't ask the hospital to
8 call them.

9 What did you tell them happened?

10 A I told them that I wasn't sure what happened now
11 because probably still confused and delirious getting
12 hit like that.

13 Q Only afterwards when somebody else tells you what
14 happens, you bother to pursue this through the police
15 department, right?

16 A Yes.

17 Q Because you didn't do anything at that time by
18 yourself in the hospital, right?

19 A No.

20 Q Only after you conferred with these other people
21 and they tell you what to do, you go to the police and
22 make a report, right?

23 A You better believe it.

24 Q Was the person that told you about this -- I believe
25 you said Deanne?

1 A Deanna.

2 Q What is her last name?

3 A Again, I am not sure.

4 Q You don't know?

5 A No.

6 Q She wasn't there with you, you didn't go out with her

7 that night, did you?

8 A No.

9 Q Only afterwards she is telling you this and upon her

10 telling you, you act on this, right, and go to the police?

11 A Yes.

12 Q You didn't think it important enough to do it that

13 night in the hospital?

14 A Again, I said I was -- I don't remember too much at

15 all. I was under extreme stress.

16 Q And you didn't do it the next day when they released

17 you from the hospital, did you?

18 A I am not sure.

19 Q The reason is, Stan really didn't do it, you only did

20 that and said that after this Deanna told you that?

21 A Repeat your question, please.

22 Q The only reason you went later down to the police and

23 said Stan did it is because you were told by Deanna he did

24 it, not that he really did it?

25 A That is not true.

1 Q You didn't bother to tell them that night, right?

2 A I knew.

3 Q Did you tell the police that night?

4 A That night, no.

5 Q Did you tell them the next day?

6 A The reason why I didn't tell them --

7 Q Did you tell them the next day?

8 A No.

9 Q Did you tell any hospital people that night?

10 A I am sure I told them something, but I can't remember
11 what I told them at the time.

12 Q The only time you brought up Stan's name is after
13 Deanna tells you, right?

14 A No.

15 MR. GRUNDA: No other questions.

16

17

18

19 REDIRECT EXAMINATION OF JEFF HICKS

20 BY MR. ROSENBAUM:

21 Q You never brought up Stan's name, did you?

22 Did you know the name of the person that knocked you
23 out that night?

24 A No.

25 Q What did you know him by?

1 A I knew him by -- oh, God, what did they call him.
2 Q Was it Stock?
3 A Stock.
4 Q When did you go to the police?
5 A After learning -- I knew coming out of the bar that
6 he was there, calling us out in the street and after that,
7 I don't remember anything.
8 Q Do you remember getting knocked out?
9 A Right.
10 Q Do you know from your own memory who knocked you out?
11 A No, I don't.
12 Q And do you know now the name of the person that called
13 you out then?
14 A Yes.
15 Q What was it?
16 A Stock.
17 Q But you didn't know his real name?
18 A No, I didn't.
19 Q Did you go to the police?
20 A Yes.
21 Q What day?
22 Was that the same day, the next day, the day after?
23 A I am not for sure. I would have to look on the
24 report.
25 Q Was it when you were released from the hospital?

- 1 A Probably.
- 2 Q How long were you in the hospital for?
- 3 A The first was either a day or two and released.
- 4 Q On your release did you go to the hospital?
- 5 A After I was released from the hospital did I go
- 6 back?
- 7 Q Did you go to the police station, not the
- 8 hospital?
- 9 A Yes, yes.
- 10 Q What condition was your jaw upon your release?
- 11 A Out to here. (Indicating)
- 12 Q Could you talk?
- 13 A Not good.
- 14 Q Is it fair to say within several days of your
- 15 first release from the hospital you went to the police
- 16 station?
- 17 A Yes.
- 18 Q Now, what information, if any, did you learn from
- 19 Deanna about who did this to you?
- 20 MR. GRUNDA: Objection.
- 21 THE COURT: Can't tell us
- 22 what she said.
- 23 MR. ROSENBAUM: I thought Mr.
- 24 Grunda brought this up, your Honor.
- 25 THE COURT: It is on

1 cross-examination.

2 Mr. Grunda, you did bring up conversations
3 between them.

4 MR. GRUNDA: All I brought up
5 was the fact that he had talked to her.

6 THE COURT: Didn't do anything
7 until he talked to her.

8 Sustained.

9 Q What, if anything, did you learn from Deanna?

10 A Deanna told me --

11 Q Not what she said, what information did you gather?

12 A I gathered that Stan was the guy that hit me with a
13 baseball bat.

14 Q And then did you later have an opportunity to go to
15 the police station and view anyone?

16 A Yes.

17 Q And how long after your release was that?

18 MR. GRUNDA: Objection.

19 Beyond the cross-examination, nothing
20 brought up about that.

21 THE COURT: You cross-examined
22 him as to whether he went to the police station
23 and what have you.

24 MR. GRUNDA: Now he is talking
25 about viewing photos.

1 THE COURT: Still at the
2 police station.

3 Overruled.

4 Q When were you provided an opportunity to go to the
5 police station and see someone?

6 A After I got out of the hospital.

7 Q Do you know how many days it was?

8 A I am not sure.

9 Q Was it the same day that you went to report the
10 incident or did the police call you at a later time?

11 A They called me at a later time because they needed
12 to find this Stock guy and I didn't have a name, so they
13 wanted me to meet them at the police station to confirm
14 his identity from seeing him.

15 Q Is that person you identified at a later date in the
16 courtroom today?

17 A Yes, he is.

18 Q Is it the Defendant, Stan Jalowiec?

19 A Yes.

20 MR. ROSENBAUM: No other questions.

21 THE COURT: Mr. Grunda?

22 MR. GRUNDA: Thank you, your

23 Honor.
24
25

RECROSS-EXAMINATION OF JEFF HICKS

BY MR. GRUNDA:

Q Originally, first time you testified when Mr. Rosenbaum asked the question, you indicated that Stan said, "Come on, come on."

You didn't use the name Stock then, did you?

A I guess I did not.

Q Now, you said Stan.

A Okay.

Q Now you are saying you didn't find out his name was Stan until sometime after, right?

A Right.

Q By you using the name Stan when he called out, you didn't know him by Stan?

A I do now.

Q But not then?

A No.

Q So, it would be more accurate to say a guy named Stock was calling me out?

A Okay.

Q And you agree when he was calling you out to go over there and get into this fight with him, didn't you?

A No.

Q You didn't turn around and walk away, did you?

A Wish I would have now.

1 Q I asked you, sir, did you turn around and walk away?

2 A Yes, I was walking to my vehicle.

3 Q Did you bother to turn around to go back in the
4 building, the same door you came out of?

5 A No.

6 Q Did you bother to walk away from the scene and go
7 back in the other door of the building to call the police
8 so that you wouldn't get into an altercation?

9 A I didn't feel there was going to be an altercation
10 coming out of the bar.

11 Q After a person is calling you out, you are saying
12 you don't feel there was going to be an altercation?

13 A They broke it up in the bar.

14 Q The question was, sir, after you are outside and you
15 say this person is calling you out --

16 A He wasn't calling me out, he was calling Tim out to
17 the street, "Come on, come on."

18 Q I thought you said Stan was calling for you?

19 A No, he was calling Tim.

20 Q Nothing to do with you at all?

21 A Right.

22 Q Since it was your friend, you didn't bother to go
23 to the bar to call the police so nothing would happen
24 to your friend, did you?

25 A It was a matter of --

1 Q Did you go back in the bar and do that?

2 A State the question again.

3 Q When he called out to your friend, did you go back
4 into the bar to call the police so there wouldn't be an
5 altercation?

6 A No.

7 Q And it would be fair, sir, that your friend didn't
8 turn around, he was going right out there to fight when
9 they were getting called out?

10 A I can't comment on his reasoning, no.

11 Q He didn't turn around and walk away, did he?

12 A No.

13 Q You said to Mr. Rosenbaum, and you correct me if I
14 am wrong, your own memory, your own memory, you don't
15 know who knocked you out, is that a correct statement?

16 A That is correct.

17 Q That you don't know who knocked you out?

18 A That is correct.

19 MR. GRUNDA: No other questions.

20 MR. ROSENBAUM: I have no other
21 questions.

22 THE COURT: Thank you, sir,
23 you may step down.

24 (Witness excused.)

25 * * *

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called DEANNA BUTLER as a rebuttal witness
4 and, after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF DEANNA BUTLER

7 BY MR. ROSENBAUM:

8 Q State your name, please, Ma'am?

9 A Deanna Butler.

10 Q Will you spell the first and last name?

11 A D-E-A-N-N-A; B-U-T-L-E-R.

12 Q Are you employed, Ma'am?

13 A Yes, I am.

14 Q Can you tell the Court and jury where you work?

15 A It is an accounts payable office.

16 Q Do you recognize the person seated under my right
17 hand? (Indicating)

18 A Yes, I do.

19 Q What is his name?

20 A Stan Jalowiec.

21 Q How is it that you know him?

22 A Just seeing him around.

23 Q Around where?

24 A Like at the bars.

25 Q Downtown Elyria?

1 A Yes.

2 Q Do you know Jeff Hicks?

3 A Yes, I do.

4 Q Were you with Jeff Hicks the night he was injured?

5 A No, I was not.

6 Q Did you later learn who injured Jeff Hicks?

7 A Yes, I did.

8 Q How is it that you came into that knowledge?

9 A I think it was a day or two later.

10 Q Can you tell the Court and jury when, approximately,

11 this was, as best you can recall?

12 A It was the end of January.

13 Q Of what year?

14 A Ninety-four.

15 Q And will you tell the Court and jury the circumstances

16 under which you gained this knowledge?

17 MR. GRUNDA: Objection.

18 She is not there.

19 MR. CLEARY: Objection.

20 MR. ROSENBAUM: She is not where?

21 MR. GRUNDA: She didn't see it.

22 How could she describe it?

23 This is hearsay.

24 THE COURT: The circumstances

25 upon which you got this knowledge, how is it that

1 you got this knowledge?

2 MR. GRUNDA: Anything she would
3 say I would object to as hearsay.

4 THE COURT: At this point no
5 conversation or anything else. You may answer.

6 MR. ROSENBAUM: I beg to differ.
7 If the Court would allow us a moment.

8 THE COURT: She may answer.

9 MR. ROSENBAUM: Thank you.

10 A Repeat the question, please.

11 Q You have said you learned about Jeff Hicks, right?

12 A Yes.

13 Q And you said you learned a couple days later?

14 A Right.

15 Q Now, tell the Court and jury how you got this
16 knowledge?

17 A Because Jeff's cousin called me and asked me to
18 come over.

19 THE COURT: Not anything
20 that anybody said.

21 Q Did you learn who hurt Jeff?

22 THE COURT: You personally.

23 Did you learn, personal knowledge, who
24 did it?

25 THE WITNESS: Yes.

- 1 Q When and where did you get that personal knowledge?
- 2 A The same night that Jeff spoke to me, I was at a bar
- 3 and Stanley happened to be standing next to me.
- 4 Q What bar?
- 5 A Warehouse.
- 6 Q And Stanley would be the Defendant?
- 7 A Correct.
- 8 Q And he was standing next to you?
- 9 A Correct.
- 10 Q What were you doing in the bar?
- 11 A Looking for a seat.
- 12 Q And you heard Stanley Jalowiec say something?
- 13 A Yes.
- 14 Q What did you hear Stanley Jalowiec say?
- 15 A First I didn't realize what he was talking about.
- 16 I heard him laughing with his friends, laughing about
- 17 how he got away with it and he was bragging with his
- 18 feet, how he kicked him and laughing and having a good
- 19 time about it.
- 20 Q Was he bragging?
- 21 A Yes.
- 22 Q About what?
- 23 A About kicking Jeff in the face.
- 24 Q And you heard him say that?
- 25 A Yes.

1 Q And this was two days after Jeff was hurt?

2 A Yes.

3 Q And you had learned that Jeff was injured that same
4 day?

5 A Yes.

6 Q This is the man that you heard bragging about kicking
7 Jeff in the face?

8 A Yes.

9 Q Was he up or down when he kicked him?

10 A He was down.

11 MR. ROSENBAUM: I have no other
12 questions, your Honor.

13 THE COURT: Mr. Cleary or Mr.
14 Grunda?

15

16

17

18 CROSS-EXAMINATION OF DEANNA BUTLER

19 BY MR. CLEARY:

20 Q You were not present when any of this happened, right?

21 A Right.

22 Q And you had a conversation on the phone with Jeff?

23 A With his cousin, he couldn't talk.

24 Q Was his cousin present?

25 A During the incident?

1 Q Yes.

2 A I don't know, I never asked.

3 Q Now, you are aware that -- at any time during your

4 conversation was there an indication that the parties

5 knew who had done this to them?

6 A Yes.

7 Q They knew?

8 A Yes.

9 Q Jeff knew?

10 A Yes.

11 Q But he has testified -- did he give a name to you?

12 A A nickname.

13 Q And you knew what that meant?

14 A I knew who he was talking about, yes.

15 Q So, when you went to the bar that day, it wasn't

16 like an occasional walk-by, guess what I did incident

17 overheard type of thing, correct?

18 A It was not --

19 Q Casual, that is what you said?

20 A Right. I was just walking in.

21 Q Do you want to leave this jury with the impression

22 that you just happened to bump into Stan that night and

23 overhear all this, you know, this bragging and carousing

24 and all this?

25 A Correct.

- 1 Q That is what happened to you?
- 2 A Yes.
- 3 Q Even though your cousin just told you on the phone
- 4 that a guy that you knew to be Stan Jalowiec had supposedly
- 5 done something to him, it was all a big coincidence that
- 6 you overheard all of this conversation?
- 7 A Correct.
- 8 Q You didn't see him at the bar, go over and just hang
- 9 out or start talking or anything like that?
- 10 A No.
- 11 Q And did Mr. Jalowiec in these statements give the name
- 12 of the participants that were supposedly injured?
- 13 A No, he didn't.
- 14 Q So, he didn't say he had kicked Jeff in the face or
- 15 head or anything like that?
- 16 A He didn't say Jeff's name, no.
- 17 Q Nobody's name, did he?
- 18 A Correct.
- 19 Q But he said he had gotten away with it?
- 20 A Yes.
- 21 Q And you knew what he was talking about?
- 22 A Yes, I did.
- 23 Q Because of your coincidental conversations held
- 24 with your cousin a little while beforehand?
- 25 A Correct.

1 Q How long beforehand?

2 A It was the same day.

3 Q Now, if I were to tell you that Jeff could not testify
4 to being kicked, but instead was hit with a baseball bat,
5 would that be inconsistent with what your testimony just
6 was?

7 A I guess.

8 Q And, in fact, if what happened to him -- then what you
9 claim to have overheard Mr. Jalowiec state -- just wouldn't
10 apply to this case at all, correct?

11 A At the time I was told -- when I had this conversation
12 with Steve, he said he was kicked and Stanley was motioning
13 with his foot that he kicked somebody.

14 Q Now, you saw his?

15 A He was demonstrating it.

16 Q Now, Jeff didn't testify that he was kicked up here?

17 A I don't know. I wasn't here.

18 Q He said he was hit with a baseball bat, all right?

19 Did you get any baseball swinging-type things in
20 your visit to the bar with Stan?

21 A I didn't really stick around after I seen what he
22 was doing.

23 Q So, you didn't see any, you know, swinging of a bat
24 or anything like that, you saw kicking?

25 A Correct.

1 Q Even though the alleged victim of this event just
2 testified that he doesn't know about being kicked, he was
3 hit with a baseball bat, all right?

4 You have a completely different thing than what that
5 testimony was, you heard something completely different?

6 A Correct.

7 Q You weren't there, correct?

8 A Correct.

9 Q You don't know who he was talking about, correct?

10 A I thought I had an idea.

11 Q But you don't know, do you?

12 A I was pretty sure.

13 Q You were pretty sure?

14 A Jeff says he really doesn't remember.

15 Q You thought you had an idea, you are pretty sure?

16 A I know what I seen.

17 Q But you don't know, do you?

18 A I know what I seen.

19 Q Do you or don't you know?

20 A Yes, I know.

21 Q You have that personal knowledge?

22 A I know what he was demonstrating what happened.

23 Q You didn't see him?

24 A I didn't see it, wasn't there.

25 MR. CLEARY: Thank you. Nothing

1 further.

2
3
4
5 REDIRECT EXAMINATION OF DEANNA BUTLER

6 BY MR. ROSENBAUM:

7 Q If Jeff was struck with a ball bat and fell down
8 and then kicked, what you saw the Defendant doing is
9 not inconsistent with what happened, is it?

10 A Correct.

11 MR. GRUNDA: Objection.
12 Speculative.

13 THE COURT: Sustained.

14 MR. ROSENBAUM: It is no more
15 speculative than him asking her, your Honor,
16 if it is inconsistent or not.

17 THE COURT: She testified as
18 to what she saw and that is it.

19 MR. ROSENBAUM: And she cannot
20 testify to whether it is consistent with Jeff
21 or not?

22 THE COURT: No.

23 Q Did you tell the police about what you saw?

24 A Yes, I did.

25 Q Thereafter did Jeff go down to identify Stock?

1 A Correct.

2 Q Who you knew to be Stanley Jalowiec?

3 A Correct.

4 Q Was the Defendant alone when all this happened?

5 A No, there was two, I think, guys with him the night
6 that I seen him demonstrating what he did.

7 Q And would you describe these guys?

8 A I am pretty sure they were black males.

9 MR. ROSENBAUM: No other questions.

10

11

12

13 RECROSS-EXAMINATION OF DEANNA BUTLER

14 BY MR. CLEARY:

15 Q You don't know who they were, do you?

16 A No, I don't.

17 Q When you went down to the police station, what kind
18 of ID setup did they have?

19 A I am sorry?

20 Q When you took Jeff down to identify Jalowiec, you
21 had already told Jeff who it was, right?

22 A You lost me.

23 Q You were just asked, correct, that you went down
24 with Jeff to the police station to identify Stanley?

25 A I didn't identify him, no.

1 Q You didn't identify him?
2 A No.
3 Q Jeff did?
4 A I don't think Stanley was there at the time.
5 Q So, you just reported him by name?
6 A I didn't report him at all. This incident with
7 me didn't happen -- this was the day of it.
8 Q So, when you went down, nobody knew?
9 A No.
10 Q Didn't come up with a name.
11 When did you go to the police station -- that was
12 the day he got out of the hospital?
13 A The day his cousin called me and asked me to come
14 over because Jeff's mouth was swollen up. When I went
15 over there, I told Jeff it would be a good idea to go
16 to the police station and I took him personally to
17 report the incident.
18 Q Was it later that night that you saw Stan in the
19 bar?
20 A Correct. I was not looking for him. Some friends
21 of mine took me out for my birthday.
22 Q So, you went to the police station first, then out?
23 A Yes, but I never seen Stanley that day.
24 Q That night though?
25 A Right.

1 MR. CLEARY: No further
2 questions.s

3 MR. ROSENBAUM: Nothing further.

4 THE COURT: You may step down.

5 (Witness excused.)

6 * * *

7 THE COURT: Ladies and
8 gentlemen, it is 25 minutes after four. The
9 case is not completed. There is more evidence
10 to be presented.

11 Therefore, sequestration is not necessary
12 under the circumstances because you have not
13 started your deliberations.

14 I will send you all home and ask you to come
15 back tomorrow morning at 8:15, be here at 8:15,
16 to get started at 8:30 at this point and we will
17 be able to complete this matter.

18 The admonitions that I have given you in
19 the past about not discussing this case amongst
20 yourselves, don't let anybody discuss it with
21 you, do not let anybody read about this case to
22 you at this point, and with those admonitions,
23 we will take our evening recess.

24 The shuttle is waiting for you.

25 (Whereupon, the jury was excused for the

1 evening adjournment.)

2 (Whereupon, the following proffer occurred
3 out of the hearing of the jury.)

4 MR. GRUNDA: Your Honor, at the
5 time of questioning Scott Sargent, your Honor, I
6 wish to pursue a line of questioning regarding
7 alleged dishonesty or false statements which
8 directly go to the credibility or believability
9 of him by the jurors under 609(A)(3).

10 The rule states:

11 "Notwithstanding Evidence Rule 403(A) but
12 subject to Evidence Rule 403(B), evidence
13 that any witness, including an accused,
14 has been convicted of a crime is admissible
15 if the crime involved dishonesty or false
16 statement, regardless of the punishment and
17 whether based upon state or federal statute
18 or local ordinance."

19 I wanted to pursue that line of questioning
20 because Scott Sargent did, in fact, give false
21 statements under oath during -- it was in a
22 suppression hearing.

23 THE COURT: You don't have to
24 go into it for the record. You may, but the
25 Court is aware of that situation. That record

1 is also expunged.

2 MR. ROSENBAUM: Right.

3 MR. GRUNDA: It doesn't matter
4 because it is still allowed. It doesn't say if
5 it has been expunged they can't bring it up. I
6 am allowed to ask questions because it deals with
7 dishonesty and a false statement and I think that
8 was necessary for the jurors to hear, that he had
9 lied under oath before, because it dealt directly
10 with his credibility.

11 This rule has nothing to do with it being
12 expunged or not.

13 THE COURT: Have you read the
14 expungement statute?

15 MR. GRUNDA: No. I read this
16 one.

17 THE COURT: There are
18 exceptions, there are indications as to when
19 that would not be applicable and that is not
20 one of them.

21 Go ahead, Mr. Grunda, continue on. At
22 this point I will allow you to make your record.

23 MR. GRUNDA: Thank you.

24 Again, the evidence that needed to be invoked
25 from him, whether or not it was expunged or not,

1 was regarding --

2 THE COURT: Do you have any
3 authority about whether or not it was expunged?

4 MR. GRUNDA: I don't know that
5 it was expunged.

6 THE COURT: I am telling you
7 that it was. I was the Judge that signed the
8 expungement. It happened in my Court.

9 MR. GRUNDA: For the record,
10 my objection to the line of questioning I wanted
11 to pursue was his making a false statement.

12 THE COURT: And the Court gave
13 you this opportunity to proffer.

14 MR. ROSENBAUM: I have nothing to
15 add, your Honor.

16 THE COURT: Anything further?

17 MR. GRUNDA: No.

18 THE COURT: Thank you.

19 See you tomorrow morning. ~

20 (Whereupon, the trial in the above-entitled
21 matter was adjourned to reconvene on Wednesday, April
22 10, 1986, at 8:30 a.m.)

23 * * *

24

25

1 MORNING SESSION, WEDNESDAY, APRIL 10, 1996

2 (Whereupon, the Court resumed the bench and
3 the following proceedings occurred.)

4 THE COURT: Those of you in
5 the audience at this point, yesterday this Court
6 ejected five people, I believe, including the
7 mother of the Defendant.

8 The reason for that is that this Court
9 received word from one of the jurors that these
10 people were carrying on to the point where it
11 was disturbing and the jurors were losing
12 concentration.

13 There was no choice in this matter, as far
14 as the Court is concerned. They were told and
15 all of you in the courtroom know that they were
16 told about it.

17 I have relented on one individual and that
18 is the mother of the Defendant and I will and
19 have permitted her to come back into the
20 courtroom. I want to say that I have some
21 feelings and I understand what is happening.

22 I have to concern myself with the welfare
23 and the ability of my jurors to be able to
24 receive all the information possible so that
25 they can make the type of decision necessary

1 that is required in this case.

2 Any disturbances by anyone in the future
3 will end up in being barred and banned from
4 this courtroom immediately upon that
5 happening.

6 Do we understand each other?

7 (No response.)

8 THE COURT: The reason
9 for this, ladies and gentlemen, is so that
10 the Defendant may get a complete and total
11 fair trial.

12 The disturbance of the jurors takes
13 away from that, so if you don't want your
14 loved one to get a fair trial, act up.

15 That is all I can say.

16 Anything further from counsel?

17 MR. ROSENBAUM: I have
18 nothing.

19 MR. GRUNDA: No, your
20 Honor.

21 THE COURT: Very well.

22 Bring in the jury, please.

23 (Whereupon, the jury was returned to
24 the courtroom and the following proceedings
25 occurred.)

1 THE COURT: Ladies and
2 gentlemen, as you recall when we adjourned
3 last evening we had just finished the
4 examination, direct examination and
5 cross-examination of one of the State's
6 rebuttal witnesses and we are now ready to
7 proceed with further testimony on rebuttal
8 by the State.

9 Mr. Rosenbaum, your next witness,
10 please.
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1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called KENNETH ROLAND as a rebuttal
4 witness and, after being first duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION OF KENNETH ROLAND

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Kenneth Roland.

10 Q Spell the last name?

11 A R-O-L-A-N-D.

12 Q Are you presently employed, sir?

13 A Yes.

14 Q Will you tell the Court and jury what you do for
15 a living?

16 A I am an exterminator for Orkin.

17 Q How long have you done that, sir?

18 A Roughly six months.

19 Q Do you recognize the man that is seated under my
20 right hand? (Indicating)

21 A Yes.

22 Q What is his name?

23 A Stan Jalowiec.

24 Q How do you know him?

25 A Just from the incident of the night all this occurred.

1 Q When you say that, what incident are you talking
2 about?

3 A The incident that I got jumped coming out of the
4 Warehouse.

5 Q When was that?

6 A January 28th, '94.

7 Q Were you injured in that?

8 A Yes.

9 Q Will you tell the Court and jury how you were
10 injured?

11 A My palate was split all the way down my throat.
12 My tongue was bit off. I lost two teeth, fractures
13 in my jaw and pretty severe concussion.

14 Q Were you in the hospital?

15 A Yes, three days.

16 Q Did you sustain medical bills?

17 A Yes.

18 Q Do you know what value?

19 A Roughly ten grand.

20 Q Will you tell the Court and jury what time on the
21 28th that this began?

22 A Well, it started inside the Warehouse, probably
23 before midnight.

24 Q So that would be the 27th?

25 A Right.

1 Q And describe what happened?

2 A I was with my friend, Tim Schull, Jeff Hicks, Alva
3 Esterly, Paul Stang and myself and Stan came up to us
4 and he was pretty loud the whole night, jumping up and
5 down, waving his hands in the air and came up to Alva,
6 which I suspect was his cousin, because he came up and
7 started harassing Alva.

8 He approached all of us, Tim being before me, and
9 Tim pretty much told him to stay out of our face and
10 Stan said, "All right," and he came up to me and said,
11 "Whatever happens, you are not involved."

12 MR. GRUNDA: Objection.

13 THE COURT: Hold it, hold it.

14 MR. GRUNDA: This is hearsay.

15 THE COURT: In front of the

16 Defendant it is not.

17 Q The Defendant is saying this?

18 A Yes.

19 Q Who is saying, "Whatever happens, stay out of it"?

20 A That was Stan. He was -- came up to me and said,
21 "Whatever happens, you are not involved."

22 I said, "I don't want to be involved, I am here to
23 have a good time," and he even shook my hand and the night
24 went on and we were told by the bouncer to stay on separate
25 sides of the dance club.

1 Well, Stan passed us up and him and Tim started having
2 a verbal dispute again and then we were told to go out the
3 back door and they were told to go out the front door.

4 Well, unfortunately we were parked around the front of
5 the building and as we were coming around the front of the
6 building, we observed Stan in the front again, being loud,
7 yelling at the whole world, "Whoever wants a piece of me,
8 do it now."

9 As we came around the front of the building, we were
10 surrounded and Tim was smacked over the head and when I seen
11 that, I tried to help him and I was clubbed. I was knocked
12 unconscious.

13 Q And you were laying down?

14 A Yes.

15 Q Do you know what happened, if anything, to you while
16 you were laying down?

17 A As I was falling down I was getting kicked and punched.

18 Q Do you know what happened to Tim when he was lying
19 down?

20 A Tim was unconscious when I went down.

21 Q Was he left alone as soon as he was unconscious?

22 A Yes, he was pretty much left alone after he was down.
23 I mean, when he was going down, it was the same idea with
24 me, getting beat down.

25 MR. ROSENBAUM: I have no other

1 questions, your Honor.

2 THE COURT:

Mr. Grunda or Mr.

3 Cleary, you may cross.

4
5
6
7 CROSS-EXAMINATION OF KENNETH ROLAND

8 BY MR. CLEARY:

9 Q Good morning, sir.

10 A Good morning.

11 Q Now, sir, was there any physical contact or anything
12 at the Warehouse itself?

13 A No.

14 Q Just a lot of verbal jostling?

15 A Pretty much.

16 Q Nothing that would indicate to you any kind of major
17 fight was going to happen?

18 A Well, the guy he was with, I believe Raymond Augustus,
19 Pops, and Jeff started pushing each other and I jumped in
20 between that.

21 I pushed Raymond away. I said, "Hey, man, it is over,
22 forget it," because the bouncers grabbed Jeff, pulled Jeff
23 off.

24 Q But Stan --

25 A Stan was lost in all of the clutter inside. I didn't

1 even see Stan inside.

2 Q He never touched anybody?

3 A Not inside of the building, no.

4 Q You were sent out separate doors, is that right?

5 A After the incident with Stan and Tim, yes.

6 Q So, you were sent out separate doors and your quote

7 was, "Unfortunately our car was parked around front"?

8 A Right.

9 Q How long did it take you to walk around front?

10 A I don't know, roughly a minute, a minute and a half.

11 Q You went straight around the building, right?

12 A Yes.

13 Q Isn't that like you are circling the block, aren't you?

14 A No, the back door is directly behind. We walked out

15 the building to the left, walked around the front of the

16 building.

17 Q Revco, next door, or the drug store next door?

18 A I don't recall. I don't usually go around there.

19 Q Is it two or three buildings from the end of the block?

20 A Could have been.

21 Q In order to get from there in a half minute, you would

22 have to hurry around there?

23 A No.

24 Q You put it this way.

25 You said as you were walking around you could hear

1 Stan, which means you heard him before you turned the
2 corner?

3 A Yes.

4 Q Would that be correct?

5 A Yes.

6 Q So, you already heard this guy before you went around
7 the corner, you and your four other, three buddies?

8 A It was four, three, four.

9 Q Four, right?

10 A Right.

11 Q Included you, I guess?

12 A Four, yes.

13 Q Well, you referred to Tim --

14 A I said me, Tim, Paul Stang, Alva's cousin, and Jeff
15 Hicks.

16 Q So you heard this guy before you and your buddies went
17 around the corner?

18 A Well, how big is the corner?

19 If he is yelling, yeah, I heard him.

20 Q But nobody said, "There is trouble brewing," maybe or
21 anything like that?

22 A Who would have thought there was trouble when there
23 was five of us and Stan was around yelling by himself?

24 I said, as we went around the corner, we were pretty
25 much surrounded.

1 Q How far was Stan when you went around the corner, how
2 far away was he?
3 A Roughly ten feet.
4 Q Okay.
5 A This was in '94.
6 Q So, your memory is not as good as it could be in
7 regards to these events?
8 A As good as it should be.
9 Q Now, you stated that, I believe, Jeff or Tim was hit
10 by a beer bottle?
11 A Yes.
12 Q Sir, did you see a baseball bat anywhere?
13 A Did I see it?
14 Q Yes.
15 A When it was in my face.
16 Q Did you see one -- okay, was Stan holding it?
17 A Stan was the last face I seen.
18 Q But you didn't see --
19 A When I turned around and the bat is in my face, I
20 mean, like I said, Stan is the last person I have seen.
21 Who else could have done it?
22 Q You did see him do it?
23 A Correct.
24 Q Okay. You are making a presumption here, correct?
25 A Ninety-nine point five.

1 Q Sir, you are making a presumption, correct?

2 A I am saying Stan was the last person I seen.

3 Q Sir, sir, sir, excuse me.

4 The question to you is, you are making an assumption,
5 correct?

6 That can be answered yes or no.

7 MR. ROSENBAUM: I would ask that
8 he define presumption.

9 Q You didn't see him do it?

10 A Did I see him do it?

11 Q Right.

12 A No.

13 MR. CLEARY: No further
14 questions.

15

16

17

18 REDIRECT EXAMINATION OF KENNETH ROLAND

19 BY MR. ROSENBAUM:

20 Q How many people were with Stan, do you know?

21 A Definite number, no. I would say roughly ten.

22 MR. ROSENBAUM: I have no other
23 questions.

24

25

RECROSS-EXAMINATION OF KENNETH ROLAND

BY MR. CLEARY:

Q Ten people inside the bar?

A No.

Q Outside?

A Inside the bar I would say there was four.

Q So, within the course of about the 30 seconds you went outside, went around the building, six people magically appeared out of nowhere?

A How would I know that?

Q You don't, sir.

THE COURT:

Rephrase the

question because I don't think there is any magic involved in this case.

Q You saw him with four people inside.

How many people were inside?

A I said four.

Q Okay. Now, you go outside and now there is ten, correct?

A Yes.

Q All right. Was there enough time for him to go get somebody?

A Like I said, how would I know?

THE COURT:

The answer is --

Q It was enough time to go get somebody?

1 A Yes.

2 Q Where?

3 A Maybe, like I said, maybe they were inside the
4 Warehouse, I don't know.

5 THE COURT: Do you know where?

6 THE WITNESS: All I know is, there
7 were ten people outside when I got out there.

8 Q You were expecting -- you and your group were expecting
9 four people when you went around the corner?

10 A We weren't expecting anyone.

11 Q Even though you heard him out there, you weren't
12 expecting anyone?

13 A No.

14 Q And you weren't looking for trouble at all?

15 A No.

16 MR. CLEARY: No further
17 questions.

18 MR. ROSENBAUM: I have no other
19 questions.

20 THE COURT: Thank you, sir.
21 You may step down.

22 (Witness excused.)

23 * * *

24

25

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, recalled ALAN LEIBY as a rebuttal witness
4 and, after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF ALAN LEIBY

7 BY MR. ROSENBAUM:

8 Q Again, state your name, please, for the record?

9 A Alan Leiby, L-E-I-B-Y, first name Alan.

10 Q I take it you are still a Police Officer and this is
11 still your case?

12 A Yes.

13 Q You were in the courtroom when Mrs. Jalowiec attributed
14 some statements to you?

15 A That is correct.

16 Q Is there any truth to that?

17 A No.

18 Q Do you deny making that statement?

19 A I do.

20 Q You were also in the courtroom when Stanley Jalowiec,
21 the Defendant in this case, offered an explanation as to
22 how these witnesses came into being and whether or not
23 you wanted some of the other Defendants to turn State's
24 witnesses?

25 A That is correct.

1 Q Did you ever offer anything or intend to offer anything
2 or, to your knowledge, did anyone on behalf of the State of
3 Ohio offer any considerations to Raymond Smith?

4 A No.

5 Q And the same could be said of Stan Jalowiec?

6 A That is correct.

7 Q Did we ever offer anything officially to Danny Smith?

8 A No, sir.

9 Q Did his lawyers come to us asking for something?

10 A They did.

11 Q Now, Danny also, I believe -- the Defendant also
12 related a chain of events as to how you got the information
13 in this case or how his name was provided?

14 A That is correct.

15 Q Was his rendition of what happened accurate?

16 A No, sir.

17 Q Would you describe for the Court and jury at this phase
18 of the trial how is it that you came to learn that he was
19 really involved in this?

20 A Raymond Smith told me on the telephone.

21 Q Would you back up and describe the series of events
22 that occurred as to how you cracked this case or what
23 happened?

24 A Yes, sir.

25 Danny Smith had been busted again, had been arrested

1 again on six counts of Drug Trafficking.

2 He apparently felt that he could make some kind of deal
3 on those six charges. He contacted me. He offered to wear
4 a wire to discuss with his father the homicide and he
5 initially indicated to me that his father would come and
6 talk to me if we would give him consideration for his
7 charges.

8 He was told if his father came forward and was
9 truthful, "I will give that information to Mr. Rosenbaum
10 and he could make a decision."

11 Q Did you eventually speak to his father?

12 A Correct.

13 Q Did you speak to Danny again?

14 A Several times.

15 Q Would you describe what happened?

16 A Raymond Smith came in and gave us a taped statement.
17 He talked to myself, Detective Beaman and Hussain from the
18 Cleveland Police Department.

19 Raymond Smith admitted to being in the cemetery,
20 admitted to being in a fight with Ron Lally, but reversed
21 the positions, indicating that Mr. Lally kidnapped him and
22 took him to Cleveland.

23 At the end of that conversation I pointed out to him
24 that I felt we weren't being truthful. He was released
25 and it was probably a couple weeks before I heard from

1 Danny again.

2 Danny wanted some kind of deal on his drug charges
3 and at that point I told him that I wasn't going to deal
4 with anybody anymore, I wasn't going to talk to anybody
5 anymore until somebody said something truthful and that
6 I wouldn't talk to Raymond anymore until he gave me the
7 name of the person that was in the cemetery with him
8 when Ron Lally was killed.

9 I received a phone call -- I believe it was two days
10 later -- I may be off a little on the time frame which
11 Raymond told me it was Stan.

12 Q Stan being --

13 A Stan Jalowiec.

14 Q And that would be the third person there?

15 A That is correct.

16 Q Did you tape that conversation?

17 A I did.

18 Q I am going to place before you what has been marked
19 for identification as State's Exhibit 11-A.

20 Would you identify that tape?

21 A This is a tape dated 7-5-95 in my handwriting. I
22 have Raymond Smith's name written down on the side of
23 this tape -- you handed me the wrong one, Jon.

24 Q Okay. Well, while you got it, what is that?

25 A This is the taped statement of Raymond when he came

1 in and talked to myself and Detective Beaman and Hussain
2 on 7-5-95.

3 Q Is that a true and accurate copy of that conversation?

4 A Absolutely.

5 Q Can you identify 11-B?

6 A 11-B is also in my handwriting dated 1-11-95 on the
7 back. On the label I wrote it is Stan, to indicate to me
8 what the conversation concerns on the tape itself. It is
9 dated 1-11-95 and it has Raymond Smith's name on Side "A."

10 Q Is that a true and accurate copy of the conversation
11 you had with Raymond Smith on that date and time when he
12 identified the Defendant as the third person?

13 A It is.

14 Q At any time did Raymond Smith indicate that any of
15 his sons were there?

16 A No, sir.

17 Q Did you later learn, after the arrest of people, that
18 there was another Smith there?

19 A That is correct.

20 Q That would be whom?

21 A Michael Smith.

22 Q How is it that you got that?

23 A Specifically throughout the investigation Michael's
24 name started coming up. I was able to confirm that when
25 I was able to interview Michael at the Cleveland Police

1 Department. He made contact with me.

2 Q He came forward on his own?

3 A That is correct. He made contact with me.

4 MR. ROSENBAUM: Nothing further.

5 THE COURT: Mr. Grunda or Mr.

6 Cleary?

7 MR. GRUNDA: Thank you, your

8 Honor.

9 If I could have one second, please?

10 THE COURT: Surely.

11

12

13

14 CROSS-EXAMINATION OF ALAN LEIBY

15 BY MR. GRUNDA:

16 Q Detective Leiby, you had the benefit of sitting through
17 both phases of the trial and hearing everybody, correct?

18 A Yes, sir.

19 Q Now, when you talked about -- you said there were no
20 offers officially regarding this to either Raymond Smith or
21 Danny Smith?

22 That implies there is unofficial offers going on?

23 MR. ROSENBAUM: I object.

24 That wasn't the question. That term was
25 used regarding Danny Smith.

1 THE COURT: I believe it was
2 nothing about Raymond at that point.

3 Q Then I will take Raymond out of it.

4 No offers officially to Danny Smith, so there are
5 unofficial offers that you, as a Police Officer, make?

6 A The only thing I am authorized to make or say to a
7 defendant, if he provides me with giving information, I
8 can take that to the Prosecutor's Office and have the
9 Prosecutor consider it.

10 Other than that, there is no other offer.

11 Q So, that is the unofficial offer?

12 A That is the official or unofficial, that is what I
13 am permitted or authorized to tell people.

14 Q You are saying that you made no offers to them or
15 to Danny?

16 A The offer that I just expressed to you is the offer
17 that Danny heard from me.

18 Q Even though Danny was the one seeking you out,
19 trying to get out of trouble himself?

20 A Yes, sir.

21 Q By doing that, he is willing to throw in any other
22 person to get out of the problem himself?

23 A That was basically the gist of it.

24 Q Whether they had anything to do with this or not?

25 A That is probably a fair statement.

1 Q Because he didn't bother to tell you about his
2 brother, Michael, being there?

3 A Right, he did not.

4 Q Just like Raymond didn't bother to tell you about
5 Michael, right?

6 A I don't believe he did.

7 Q We do know from what you just testified to that you
8 talked to Raymond Smith, correct?

9 A Yes, sir.

10 Q And we know from what you just said that he wasn't
11 exactly truthful either?

12 A That is correct.

13 Q Because the whole first conversation you had with
14 him, which I believe was July 4th of '94 --

15 A I am not exactly sure of the date. If that is what
16 you have, that is correct.

17 Q I thought that is what it was.

18 A First conversation was July 5th on that tape. July
19 5th.

20 Q Okay. July 5th is the first time you talked to him,
21 right?

22 A It is the first taped statement I took. I believe it
23 is the first time I talked to him. I don't remember
24 talking to him prior to that, Mr. Grunda.

25 Q And he wasn't, in your explanation, truthful?

1 A That is correct.

2 Q So, I guess you can consider you felt he was lying to
3 you?

4 A For the most part, yes.

5 Q Then you talked to him again on January 11th?

6 A Yes, sir.

7 Q And in that statement, you initiated that with him,
8 you had the word out for him to talk to you?

9 A Right. I had told him I wouldn't talk to him any
10 further until he told me who was with him in the cemetery.

11 Q And he at no time admitted Michael was there?

12 A No.

13 Q In any statement, first or second, admitted to Michael
14 being present?

15 A Not that I remember, no.

16 Q Michael Smith is his blood relative?

17 A That is his son, correct.

18 Q Stan is not related to Raymond in any way, shape or
19 form?

20 A That is correct.

21 Q Or the Smith family?

22 A That is correct, no blood relative.

23 Q On the second statement, after the word was put out
24 for him to talk to you, that was not a face-to-face
25 conversation?

- 1 A No, that was a telephone conversation.
- 2 Q So you don't know where Raymond was before this?
- 3 A I don't know.
- 4 Q Well, you don't know if he was on any type of
- 5 medication?
- 6 A No, sir, it was a telephone conversation.
- 7 Q You don't know if he was taking any illegal drugs?
- 8 A No, sir.
- 9 Q Or prescribed drugs?
- 10 A No, sir.
- 11 Q Or had been drinking?
- 12 A I do not know what his state was, you are correct.
- 13 Q Okay. And you don't know what he attempted to gain
- 14 from telling you these things?
- 15 A I assume that he was hoping to gain something for
- 16 his son, Danny.
- 17 Q But he might have been trying to get something for
- 18 Danny or maybe for himself?
- 19 A That is quite possible.
- 20 Q Actually, he didn't even tell you it was Stan Jalowiec?
- 21 A That is correct. He said it is Stan.
- 22 Q And there are a lot of people named Stan?
- 23 A Stan Jalowiec is the only one I knew affiliated with
- 24 this group.
- 25 Q The question was, there is a lot of people named Stan?

1 A Obviously.

2 Q And then we get to the next thing which is, you
3 immediately take it as Stan Jalowiec?

4 A That is correct.

5 Q And you, being the investigating officer in this, you
6 are basically just -- you have decided it was him and that
7 was it?

8 A No, I investigated it and, based on the facts that I
9 learned, Stanley was indicted.

10 Q Yeah, but what I am saying is, the only evidence you
11 had was Raymond saying that he is trying to get some
12 benefit for his son, which you just indicated?

13 He gives you the name of a person named Stan with no
14 last name, right?

15 A Correct.

16 Q And then you immediately say, "It is Stan Jalowiec"?

17 A No, sir.

18 Q You didn't investigate any other Stan?

19 A No, sir, there were several other witnesses.

20 Q Not investigating any other Stan, he had no other
21 charges before that, did he?

22 A Before the taped conversation with Raymond?

23 Q Yeah.

24 A I don't know of the charges even before or after that.
25 I would have to check.

1 Q Fair to say that all this came afterwards because you
2 decided it was Stan Jalowiec?

3 A That is incorrect.

4 Q We do know that even though Raymond is giving you
5 similar disinformation by not being truthful as to who was
6 in the car, meaning Michael, nothing was ever done to
7 Michael, correct?

8 A Michael was never indicted, that is correct. He is a
9 witness in this case.

10 Q In your conversations in investigating this case,
11 isn't it true that you didn't believe Michael Smith?

12 A No, I believed Michael Smith's very first statement
13 he gave me. I believed him.

14 Q But isn't it true, Officer, that during your
15 investigation you talked to Danny Smith first?

16 A That is correct.

17 Q Danny is coming to you and trying to get some benefits
18 for himself?

19 A Yes, sir.

20 Q Okay. And that, when he got that drug case, you
21 questioned him, right?

22 A Yes, sir.

23 Q And you knew he was doing drugs?

24 A Yes, sir.

25 Q And then isn't it true that Danny told you that when

1 you were talking to Danny about this and going through your
2 investigation?

3 A Yes, sir.

4 Q Then you started talking to Michael?

5 A Michael didn't come into the picture until after the
6 indictment. It was some time after the investigation was
7 pretty well wrapped up.

8 Q And then you were afraid though, at that time, that
9 Michael might do something to these witnesses?

10 A Not that I remember.

11 Q Michael is the son of Raymond, right?

12 A That is correct.

13 Q Michael was there in the cemetery, right?

14 A That is correct.

15 Q Michael, being the blood relative and part of the
16 family, then seeing that the investigation is closing
17 in on the father and his brother, you don't think that
18 Michael had any incentive to help his family?

19 A No, sir.

20 Q Do you recall in your conversation with Danny that
21 you indicated that Michael called and stated, "You
22 arrested the wrong guy"?

23 A That was in the drug -- initial drug case that brought
24 all the rest of this to come to pass. Approximately one
25 week after we arrested Danny on the very beginning drug

1 charge, Michael called me on the telephone and attempted
2 to persuade me that it was not his brother that sold the
3 drugs to us.

4 Q That is the way you took it?

5 A That is what he told me.

6 Q So, you do then, Michael was involved in the Smith
7 drug transaction?

8 A I am sure he was selling drugs with him.

9 Q But isn't it true that through that, Michael implied
10 to you that he was going to do something to the victim here?

11 A That is absolutely not true.

12 Q Well, you recall the taped conversation you had with
13 Danny April 28, '94?

14 A You will have to refresh my memory. I can't recall
15 all the conversations, no.

16 Q April 28, '94, time 10:50 p.m., location was Elyria
17 Police Department. You had an interview between yourself --

18 A Yes, sir --

19 Q (Continuing) -- Medders --

20 A And Danny Smith, yes.

21 Q You recall having that, right?

22 A Yes.

23 Q Then the transcript, on page 11, "Why do you think he
24 did that?"

25 And your answer was, "He was angry and I didn't believe

1 him and he implied that he might do something."

2 A May I see that?

3 Q Yeah, you can see that.

4 A At this point we were talking about -- myself and Danny
5 Smith were talking about Michael's suicide attempt and he
6 was unstable because of the suicide attempt and I did ask
7 the question and he was angry.

8 I didn't believe him. He implied he might do
9 something.

10 "Do you think he might do it to keep your dad out of
11 jail?"

12 I couldn't see Michael doing something like that.

13 Q So, you first stated you didn't believe him and then
14 you implied that he might do something?

15 A I asked his brother if his brother thought he might
16 do something.

17 Q At that point you didn't believe him either, right?

18 A Didn't believe Danny or Michael?

19 Q Well, either one of them?

20 A I had not had any contact with Michael at that point.

21 Q So, you didn't believe Danny then?

22 A No.

23 Q Now, we know in the first taped statement from Raymond
24 Smith there was no mention of Stan Jalowiec?

25 A That is correct.

1 Q And then we know in the second taped statement in
2 January, '85, again Jalowiec's name is not mentioned, only
3 Stan?

4 A That was not a taped statement. It was a telephone
5 conversation I recorded, but you are correct, he only said,
6 "It is Stan."

7 Q And then I asked you if you recalled any other cases
8 that were pending at that time?

9 A That is correct.

10 Q And you don't recall any at that point?

11 A No, sir.

12 Q But you do recall and you have been through the prior
13 proceedings so you did hear some testimony regarding other
14 drug cases?

15 A Yes, sir.

16 Q Were you involved in those?

17 A No, sir, not at all.

18 Q As they indicated, they came after this charge?

19 A I was not involved in the drug trafficking case at
20 all. I can't tell you the date on it.

21 Q Well, Detective Cavanaugh --

22 A Captain Cavanaugh --

23 Q (Continuing) -- he indicated that?

24 A Yes, sir.

25 Q He wouldn't have any reason not to be truthful?

- 1 A I have no personal knowledge of that.
- 2 Q And then the other cases, the alleged felonious assault
- 3 and the alleged arson, those came after also?
- 4 A Yes, sir.
- 5 Q As did the jaywalking and the bicycle?
- 6 A I don't remember the jaywalking or the bicycle or the
- 7 DUIs or DUSs.
- 8 Q There was no testimony of DUI?
- 9 A I can't give you specific dates on minor misdemeanor
- 10 citations. I am sorry.
- 11 Q On how many of those cases were you the investigating
- 12 officer?
- 13 A On any felony cases I would have been assigned by the
- 14 Lieutenant.
- 15 Q All of these other cases you were involved in?
- 16 A Any of the felony cases, yes.
- 17 Q Isn't it true that you felt that that would be good
- 18 leverage against him in this case?
- 19 A Not necessarily.
- 20 Q Certainly would help you, wouldn't it?
- 21 A That was not my idea at the time.
- 22 Q But it certainly has an impact on these people, don't
- 23 you think?
- 24 A I am sure it does.
- 25 Q And that is the whole point of it?

1 A No, Mr. Grunda, it is not.

2 Q Officer, you know as an Officer you took an oath to
3 uphold the Constitution?

4 A Yes, sir.

5 Q And part of that Constitution deals with the person's
6 rights?

7 A That is correct.

8 Q He has a right to be presumed innocent?

9 A Correct.

10 Q And isn't it true, by you bringing out all these other
11 allegations, that has a negative impact?

12 A Yes, sir, that is a fair statement.

13 Q And you do agree he has not been found guilty on any of
14 them?

15 A Other than the Aggravated Murder, no, sir.

16 Q You will agree that a person is entitled to a fair and
17 impartial trial on those cases?

18 A That is obvious.

19 Q And again, he hasn't been tried on those?

20 A No, sir.

21 Q You do agree to the impact negatively it would have
22 against him, negatively, without the benefit of a fair
23 trial?

24 A I am not sure I understand the whole question there.
25 Does it show unfavorably towards him?

1 Q Yes.

2 A Yes, it does. The facts that we have presented,
3 yes, show unfavorable towards Stanley.

4 Q It goes actually backwards of the way the entire
5 justice system is designed, that you agreed to uphold,
6 because when you do the case, you have the burden of
7 going forward first and proving all of the elements
8 beyond a reasonable doubt?

9 A Yes, sir.

10 Q And in this case we had to go first and you chose
11 to go last?

12 A That is between the attorneys, sir. I am a Police
13 Officer, I don't have any control over that.

14 Q But you do agree that it is the exact opposite of
15 the way the system is designed to work?

16 A Obviously the system works.

17 Q In a trial on those cases, right?

18 A No, I think the system is designed for you to go
19 first in the penalty phase.

20 Q I am talking about on those cases where there is
21 mere allegations, indictments, no convictions yet on
22 those cases, you guys, the prosecution, State of Ohio,
23 would have to go first?

24 A If we were doing a trial on that charge?

25 Q Yes.

1 A Yes, sir.

2 MR. GRUNDA: No other questions.

3

4

5

6

REDIRECT EXAMINATION OF ALAN LEIBY

7

BY MR. ROSENBAUM:

8

Q Is eyewitness testimony mere allegations?

9

A No, sir.

10

Q Does the Defendant enjoy some of the safeguards of
11 a trial at this proceeding?

12

A Yes.

13

Q Do the lawyers have the cross-examination of the
14 witnesses?

15

A Yes.

16

Q Is the Judge here to rule on admissible evidence?

17

A Yes.

18

Q Are the Constitutional safeguards in place in this
19 courthouse at this time?

20

A Yes.

21

Q Were what he calls the other acts or the mere
22 allegations even relevant until the Defendant took the
23 stand and stated that he loves animals and he hates
24 blood, he is a great guy and he likes kids?

25

A No, sir.

1 Q Is it unfair that the jury should have this information
2 when he represents to be other than what he is?

3 A It is very important.

4 Q Now, just for the record, I would like to hand you an
5 indictment from the Task Force Drug case.

6 Does it bear a stamp from the Clerk of Courts?

7 A Yes, sir.

8 Q And what is the date that that Indictment was filed?

9 A December 7th, '94.

10 Q And is that long before anybody was indicted for
11 Aggravated Murder in this case?

12 A Yes, sir.

13 MR. ROSENBAUM: I have no other
14 questions, your Honor.

15 THE COURT: Mr. Grunda?

16

17

18

19 RECROSS-EXAMINATION OF ALAN LEIBY

20 BY MR. GRUNDA:

21 Q Officer Leiby, the date of the Indictment, that is when
22 it was filed with the Clerk?

23 A Yes, sir.

24 Q Now, it is true that that was not served on him or him
25 given notice of this until after indicted on the murder

1 case, right?

2 A I couldn't answer that for sure. I believe it was
3 served on him after, but I don't know that to be a fact.

4 Q So, again you might have given a little bit
5 misimpression to the jury by giving that date, when you
6 guys ran it through the Grand Jury and what have you?

7 A You mean the Task Force of what I am not a part of?

8 A I am referring to you as being part of the State.

9 A Okay. Just so we are clear on that.

10 Q I will rephrase that.

11 As part of the State then, it is true that that date,
12 when you filed it, could give the misimpression because he
13 was not served until after?

14 A That is the date it was presented and filed with the
15 court system.

16 Q And you do agree that many times a person is not
17 served in close proximity to the date?

18 A Most of the time he is not served in close proximity
19 to the date it was filed. We generally let it set a
20 couple months to cover the informant.

21 Q And that probably happened here and that is why he
22 didn't get it here until he was indicted on the murder?

23 A I don't have firsthand knowledge. I can only say
24 probably.

25 Q Okay. Again, when Mr. Rosenbaum asked you about

1 certain testimony and safeguards, again what happened
2 here is not totally the way the trial goes.

3 Would that be a fair statement?

4 MR. ROSENBAUM: Objection.

5 THE COURT: I don't know that
6 this witness is in a position to even answer
7 that, Mr. Grunda.

8 Sustained.

9 Q Well, you would agree that in those cases there may
10 or may not be more testimony?

11 A Yes, I would agree with that.

12 Q In the normal course of this trial, as you indicated,
13 the State of Ohio has the burden of going forward first,
14 proving every element beyond a reasonable doubt?

15 A That is correct.

16 Q And then the Defendant, who has this allegation against
17 him would have the right to then bring in witnesses?

18 A Correct.

19 Q And as I indicated in this proceedings, it doesn't
20 happen that way, right?

21 A I believe you could have presented witnesses.

22 Q But that is my point, okay, that normally you have to
23 go first and prove everything and now in this case you are
24 forcing the other person to go first trying to guess what
25 you are doing?

1 MR. ROSENBAUM: I object.

2 THE COURT: It has been covered.

3 You are way beyond the scope of the redirect at
4 this point.

5 MR. GRUNDA: Okay.

6 Q Now, he asked you about putting in these other cases
7 because there was conduct regarding his manner in which he
8 dealt with children and animals?

9 A Yes, sir.

10 Q Now, in all the things that you brought in afterwards,
11 basically these other cases, with the drug case, the arson
12 case, alleged felonious assault --

13 A Yes --

14 Q (Continuing) -- none of those cases dealt with any
15 abuse to children, right?

16 A No, it was abuse to adults, that is correct.

17 Q And none of them had to deal with or do have anything
18 to do with abuse to animals?

19 A No, there were no animals involved to my knowledge.

20 MR. ROSENBAUM: If he is conceding
21 that that testimony is irrelevant, I will agree
22 and ask that it be stricken.

23 If it has no impact in this case, then why
24 did we hear it?

25 THE COURT: Proceed, Mr. Grunda.

1 MR. GRUNDA: Thank you, your
2 Honor.

3 Q So, what you brought in to rebut this didn't directly
4 attack what he was talking about, agree?

5 MR. ROSENBAUM: Same objection,
6 your Honor.

7 THE COURT: Let's get to it,
8 Mr. Grunda.

9 Well, yes and no, let's get to the
10 questioning. I have been very liberal with
11 your questioning and don't take advantage of
12 it.

13 Let's get going.

14 Q You do agree that the obligations that are in these
15 other indictments are not related to the items that he
16 had brought out?

17 MR. ROSENBAUM: Objection.

18 A No, I disagree.

19 THE COURT: Overruled.

20 Q None of those specifically dealt with issues
21 regarding children or animals?

22 MR. ROSENBAUM: Objection.

23 THE COURT: You may answer
24 that, Mr. Leiby, yes or no.

25 A No.

1 MR. GRUNDA: No other questions.

2 MR. ROSENBAUM: I have no other
3 questions.

4 THE COURT: Thank you, Mr.
5 Leiby, you may step down.

6 (Witness excused.)

7 * * *

8 THE COURT: Next witness, Mr.
9 Rosenbaum.

10 MR. ROSENBAUM: I have no other
11 witnesses.

12 Tender my exhibits.

13 THE COURT: Ladies and
14 gentlemen, not quite an hour, but almost at
15 this point. Let's take a short recess because
16 there is some housework that needs to be done.

17 We will bring you back in as quickly as
18 we can because we are almost wound up for you
19 to start deliberations, but it is a good time
20 for us to take our recess for the morning.

21 The admonitions that I have given you in
22 the past about not discussing this case still
23 apply and with that, we will take a very short
24 recess.

25 (Whereupon, a short recess was had.)

1 (Whereupon, the following proceedings
2 occurred out of the hearing of the jury.)

3 THE COURT: Mr. Rosenbaum,
4 what are the exhibits?

5 MR. ROSENBAUM: Those two tapes,
6 your Honor.

7 THE COURT: We have 11-A and
8 11-B.

9 MR. ROSENBAUM: I used the same
10 numbers from the first trial.

11 THE COURT: All right. Fine
12 at this point.

13 Mr. Grunda, what say you?

14 MR. GRUNDA: Nothing, I am not
15 objecting.

16 THE COURT: They shall be
17 admitted.

18 * * *

19 WHEREUPON, STATE'S EXHIBITS 11-A AND 11-B,
20 HERETOFORE MARKED FOR IDENTIFICATION, WERE OFFERED AND
21 ADMITTED INTO EVIDENCE.

22 * * *

23 Mr. Grunda, I think you had an item that you were
24 trying to present. It was not identified.

25 What do you want done with that officially?

1 MR. GRUNDA: I will withdraw it.

2 THE COURT: Very well.

3 * * *

4 WHEREUPON, DEFENDANT'S MITIGATION EXHIBIT
5 M-D, HERETOFORE MARKED FOR IDENTIFICATION, WAS
6 WITHDRAWN.

7 * * *

8 THE COURT: Anything further?

9 MR. ROSENBAUM: I have nothing
10 further.

11 MR. CLEARY: Are we going to --
12 we just need to preserve our continuing objection.

13 THE COURT: For what, to what,
14 sir?

15 MR. CLEARY: If we are going to
16 move to closings and then to --

17 THE COURT: What are you
18 preserving?

19 MR. CLEARY: Your Honor, I am
20 requesting a corrective jury instruction to
21 preserve the instruction that the jury should
22 not consider.

23 THE COURT: Do you have one,
24 sir?

25 MR. CLEARY: I can have one for

1 you if you would like.

2 THE COURT: You better get it

3 to me.

4 MR. CLEARY: Your Honor, I am

5 presuming that you are going to overrule the

6 objection once again.

7 THE COURT: You are presuming

8 wrongly, sir. When it comes to instructions,

9 you better submit it to me if you want it to be

10 considered.

11 MR. CLEARY: Certainly.

12 THE COURT: You are presuming

13 wrongly on that, sir.

14 MR. CLEARY: Your Honor, my

15 request was that the jury be instructed to --

16 THE COURT: And I am asking you

17 if you submitted an instruction of that nature?

18 MR. CLEARY: No, sir, I have not.

19 THE COURT: Will you submit one

20 if you want it to be considered?

21 MR. CLEARY: Certainly.

22 THE COURT: Very well, sir.

23 You are not going to throw it on the Court

24 all the way.

25 MR. CLEARY: I was going to

1 inform as to what it was.

2 THE COURT: Submit it to me.
3 That is enough.

4 Anything else?

5 MR. ROSENBAUM: I was thinking about
6 one thing they wanted to bring out that Detective
7 Sargent had an expunged false statement case
8 conviction.

9 Although I believe the Court's ruling was
10 accurate, I have no objection to a stipulation to
11 that effect, especially in light of the fact that
12 that was the one incident that Stanley said that
13 he probably was guilty of on his direct
14 examination.

15 To avoid any appellate issue, if they desire
16 a stipulation on his conviction, we don't have a
17 problem with that.

18 THE COURT: At this point -- I
19 think at this point I think that Detective Sargent
20 answered the question as no. I think that may be
21 in the record at this point and because of the
22 nature that it was expunged --

23 MR. ROSENBAUM: And I believe that
24 was correct, based upon the question, "Do you have
25 a conviction," and maybe they should have said,

1 have you ever lied under oath before, to avoid
2 an appellate issue in this case.

3 In light of the fact that Stanley admitted
4 to possessing that crack pipe, the State does
5 not object if the Defendant wants an instruction
6 outlining that his answer was correct, but this
7 did happen and it was expunged.

8 If they don't want that, that is their
9 choice.

10 MR. GRUNDA: Your Honor, the
11 problem with that coming in now is that it has no
12 impact and it is very stale to the jury because
13 that is why I proffered it in.

14 Not only did I want to ask that question and
15 follow a continuing line of questioning which it
16 would have been, "Did you ever lie or give false
17 testimony under oath," taking out the part of
18 conviction, but that was not --

19 MR. ROSENBAUM: He cannot preserve
20 a record in a proffer that he hasn't laid in
21 Court.

22 THE COURT: You could have asked
23 that. The only thing that was objected to was the
24 question, "Have you ever been convicted," period.

25 MR. GRUNDA: I know. Then I was

1 cut off.

2 THE COURT: You were cut off
3 because of that question, "Have you ever lied
4 under oath?"

5 You could have asked and not come up with a
6 conviction question.

7 MR. ROSENBAUM: To be honest with
8 you, I am not personally aware whether that was
9 proper or not.

10 The next question, I was trying to do some
11 research on it last night, I couldn't ascertain
12 that, but that question was never asked and he
13 cannot rewrite the record through a proffer.

14 I am not concerned with that and if he
15 desires this instruction or stipulation, the
16 State is willing to entertain it if the Court
17 will permit it.

18 THE COURT: I am going to let
19 it sit the way it is. We will take our chances
20 as far as an appellate issue is concerned because
21 I think the ruling was proper as far as it went
22 and I gave Mr. Grunda the opportunity to proffer
23 and the Court of Appeals can act accordingly.

24 Anything further?

25 MR. GRUNDA: Forty-five minutes

1 for closing, your Honor?

2 THE COURT: Too much.

3 MR. GRUNDA: We are dealing with
4 a man's life.

5 THE COURT: I understand that,
6 but you had 45 minutes on a six-day trial. That
7 is what you requested at that time. It is not
8 going to be a complete rehash.

9 These people have already made their decision
10 as to guilt or innocence.

11 MR. GRUNDA: I know. Now we are
12 talking about the penalty phase, your Honor.

13 THE COURT: Forty-five minutes,
14 all right, I will give you 45 minutes at this
15 point.

16 MR. ROSENBAUM: That is more than
17 enough.

18 THE COURT: Okay.
19 How do you want to split yours?

20 I told you last night that I would permit
21 you -- how do you want it split?

22 You are not getting a second more than 45
23 minutes.

24 How do you want it split?

25 MR. GRUNDA: I am going to go

1 first, your Honor.

2 THE COURT: How much time --
3 whatever you don't use, then Mr. Cleary can have.

4 MR. CLEARY: Whatever he doesn't
5 use, I will use, or if he finishes early, I will
6 use what I need.

7 THE COURT: Very well.

8 Bring the jury back in.

9 (Whereupon, the jury was returned to the
10 courtroom and the following proceedings occurred.)

11 THE COURT: Ladies and
12 gentlemen, the housework that needed to be done
13 has been done and we are now ready to proceed
14 with the next phase of this matter and that is,
15 closing arguments by counsel.

16 Each counsel has -- each side has been
17 awarded a maximum of 45 minutes for their
18 closing arguments.

19 Mr. Rosenbaum may, because the burden is
20 upon him, may choose to split his argument as
21 to direct and rebuttal and I am permitting
22 defense counsel to pass the closing arguments
23 between themselves and, Mr. Grunda, you are
24 going to go first?

25 MR. GRUNDA: Yes, your Honor.

1 THE COURT: And whatever time
2 he does not use, Mr. Cleary will be able to use
3 if he desires at this point.

4 Mr. Rosenbaum, you may proceed with your
5 closing.

6 MR. ROSENBAUM: Thank you, your
7 Honor.

8 * * *

9
10
11 INITIAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE
12 STATE OF OHIO
13 BY MR. ROSENBAUM:

14 As you are well aware by now, this is what
15 is called the penalty phase. Some people refer
16 to it as the mitigation phase and I think that
17 is what the Judge chose to call it and the
18 instructions will read, but I think it is more
19 accurate to call it the penalty phase because
20 mitigation focuses only on the Defendant.

21 You have also heard Mr. Cleary argue that
22 sometimes trials dehumanize people by referring
23 to them as the defendant or the state, or the
24 plaintiff. Let's not forget in this case there
25 was a victim and he was a human being also, so

1 let's just not focus solely on mitigation.

2 Let's bear in mind there is one issue in
3 this case and that is, does the aggravated
4 circumstances outweigh the mitigating factors
5 beyond a reasonable doubt.

6 If it does, you will read in the instructions
7 that it is your duty -- in other words, the word
8 "shall" is used -- if you find that the
9 aggravating circumstances outweigh the mitigating
10 factors beyond a reasonable doubt, you shall, you
11 must, impose the death penalty.

12 That is the law and that goes right back to
13 when we first met you and I asked you, there are
14 principles to be upheld in trials, that more
15 people get the same instructions, to use the same
16 beyond a reasonable doubt, stick to measure these
17 things.

18 You are bound by that law.

19 Now, what is the aggravating circumstances
20 in this case?

21 This is a murder with prior calculation and
22 design. All murders with prior calculation and
23 design do not render the defendant eligible for
24 the death penalty. There have to be certain
25 circumstances to be proved and found by you to

1 get to this phase.

2 The aggravating circumstances you found at
3 the guilt phase was that Ron Lally was killed
4 to silence his testimony as a government witness
5 and we all know that it was done on the morning
6 of the trial that Raymond Smith and Danny Smith
7 were facing.

8 That is not a coincidence. We know that it
9 was a planned, calculated assassination of a
10 witness. That is the aggravating circumstances.

11 Now, you are entitled to consider the nature
12 and circumstances of that. It is really kind of
13 confusing, but you are not able to entirely
14 consider everything that was brought forth in
15 the guilt phase, but you can consider the nature
16 and circumstances of the aggravating
17 circumstances.

18 In other words, how did they kill a
19 government witness and I think you will find
20 that is very instrumental in deciding whether
21 or not this person is, as he represents himself
22 to be in this penalty phase.

23 In other words, is he really afraid of
24 blood?

25 Would he harm somebody or do anything

1 like that?

2 Before I get to that, I want to emphasize
3 that it is not the words that he killed a
4 witness, it is the nature and circumstances of
5 what he did, much of which has been proven to
6 you in the prior trial and as you heard, I
7 incorporated by reference and you are not to
8 forget that, you are to consider that.

9 You will see that in your instructions.
10 In other words, I am asking you not to forget
11 the facts of this intricate plan that the three
12 of them, Danny Smith, Raymond Smith and this
13 Defendant, concocted to pull this off and
14 silence this witness and remember, there is
15 one person who was close enough or was not
16 close enough or identified with Raymond Smith
17 and Danny Smith to get Ron Lally into that car
18 and he sits right here.

19 Joann Fike's car, which you heard about
20 in this phase, too, remember he was stopped by
21 Detective Sargent when he was a patrolman, then
22 in Joann Fike's car with a crack pipe.

23 He borrowed this car, he was the one that
24 had the pager that went off, that he went and
25 set the whole chain of events up so that the

1 victim would be out on Middle Avenue so he could
2 be abducted in the car that he was driving, at
3 gunpoint.

4 And let's not forget his hand in silencing
5 his testimony by taking the life that he had,
6 whether the gun fell apart after Ron Lally was
7 shot in the mouth. There was a call for help,
8 and one person made a statement, to get out of
9 the car, Michael Smith did not.

10 This person got out. He helped him stomp
11 him into the ground much like he does on Broad
12 Street here, too, as people are going down to
13 be unconscious, he stomped him into the ground,
14 he stomped him and then he wasn't happy with that,
15 he went and got a knife from the car at Raymond
16 Smith's request.

17 The throat was slit and not being satisfied
18 with this, he takes it upon himself to back the
19 car into Ron Lally and take his life and you have
20 graphic depictions of this man's handiwork.

21 This was a human being. He had a life. He
22 elected to take this life and participate in a
23 conscious scheme to silence that life so that
24 their dope selling empire, as small or as large
25 as it might have been, was able to continue.

1 Now, that is the aggravating circumstances
2 and the circumstances surrounding that, they took
3 the life of a government witness and that also
4 should speak of what kind of person he is.

5 These three people had the gall to buck the
6 entire court system. Even though they were caught
7 by the law, they weren't satisfied with that.
8 They knew without the testimony of Ron Lally that
9 Danny and Raymond Smith could not continue, could
10 not be convicted, so they continued the drug
11 empire that he participated in, that he sold
12 drugs to, for or through.

13 As you heard from Captain Cavanaugh and his
14 informant, they made the plan, "Hey, we know we
15 got to the witness, we are home free, we are
16 above the law."

17 They tried to threaten Ron Lally, his
18 girlfriend and family. When that didn't work,
19 they tried to hire other people to silence him.
20 When that didn't work, they handle the job
21 themselves, and you will see quite thoroughly.

22 Now, what did they offer in mitigation to
23 contrast or weigh against this aggravating
24 circumstance to convince you that they are not
25 -- or he is not a lawless, vicious human being

1 that thinks he can defeat the system through
2 murder?

3 He offers you testimony of family members
4 who say basically, never had a job his entire
5 life, but that is not his fault because he has
6 arthritis, yet unfortunately for them, they have
7 to admit that he was employed as a go-go dancer
8 in a male bar, or they give you instances to
9 justify his kindness with children, that he walks
10 from Fuller Road, he climbs ladders, he picks
11 apples, he does labor for the friends, so they
12 try to get over the hurdle that he never held a
13 job, even though there are jobs for people that
14 have arthritis.

15 There are jobs that he could do at the golf
16 course, but he didn't do it. Because of the
17 arthritis he decided there is no more point in
18 going to school. He couldn't have perfect
19 attendance.

20 The State could not bring up these things
21 until he made the statement about being a
22 different kind of person than he is. The State
23 offered you testimony of three people who he
24 rendered unconscious and when you are kicking
25 people and hitting them in the head with bottles

1 and ball bats, it is a wonder one of those three
2 didn't die from a concussion and your brain
3 swells, that is the end of your life, but they
4 didn't.

5 He broke two of their jaws, put them in the
6 hospital for long periods of time.

7 Now, the testimony between the three may not
8 be the same. This was two years ago, but that is
9 to be expected.

10 What did they tell you?

11 One, he is afraid and faints at the sight of
12 blood. Come on, if you want a piece of me, here
13 I am.

14 In addition to those three things, you heard
15 testimony about a little incident where the two
16 fathers of his girlfriend's children decided
17 simply while they were drunk to get him up and
18 he got himself in a position where somebody chokes
19 his lights out at Sam's and for some strange
20 reason, that guy's car burns up later that night.

21 What does this tell you about him?

22 When his father takes the stand and he knows
23 about the Sam's claims, does his father say, what
24 is wrong with you people, stop drinking, go home,
25 you have had enough for one night?

1 What does this tell you about him and his
2 character?

3 Really, it is nothing for this man to get
4 in a fight, either seriously hurt someone else
5 or become involved in danger of being hurt
6 himself and what does he do, goes to the next
7 bar. He is not barred from that. He goes in.
8 If he can't go in, he goes and finds another
9 one. That is his life.

10 This is a man that is afraid and faints at
11 the sight of blood, goes from one bar fight to
12 another.

13 How many times do you have to be choked and
14 unconscious before you realize maybe I better
15 find something else to do in the evening, but he
16 takes all this in stride and I think that that
17 gives you some insight into his character, that
18 he is not the person that likes animals and likes
19 kids.

20 He has a very vicious side, that he is or
21 was a crack addict, used crack cocaine. These
22 are the things that you really know about him
23 despite his family members and they probably
24 do like him and he probably treats the family
25 members and friends differently than he does

1 the other people out in the drug world or in
2 the social life.

3 But it is your duty at this time to think
4 about the evidence the State brought you regarding
5 the aggravated circumstances of the calculated
6 killing of a government witness. To put himself
7 above the law, he wouldn't even submit to the law
8 once he is caught, he tries to outdo it by
9 violence.

10 What does that tell you about him and whether
11 he should live or what is the appropriate penalty?

12 He was able to bring a handful of family
13 people in who gave you a very small portion of his
14 life, either had to admit they did not know what
15 he was doing or straight out, just lied that he
16 is not that kind of person.

17 That stuff could not outbalance or does not
18 preclude killing of a government witness from
19 outweighing beyond a reasonable doubt these
20 mitigating factors. That is the point. That
21 is the best he could do.

22 They brought in what they had. You know,
23 you didn't see one doctor record of arthritis.
24 He could have worked, he could have held a job.
25 He had every opportunity to do that. He didn't

1 do it.

2 Granted, he may play with kids, he was able
3 to establish a relationship with one girl on and
4 off for a period of four years.

5 Does that even remotely balance the
6 controlled bloody assassination of a government
7 witness?

8 There is only one penalty that is appropriate
9 here, ladies and gentlemen, and it is your duty to
10 impose it. If you find that the aggravating
11 circumstances of killing a government witness
12 outweighs what they have offered in mitigation
13 and it does, I asked you all to look at him and
14 to realize that he was young and I asked you if
15 you could impose a death penalty if you thought
16 the law and the evidence required it.

17 Well, the law and the evidence requires it
18 now and it will be your duty after very short
19 instructions are given you by the Court, it will
20 be very clear that you shall impose the death
21 penalty if the killing of a government witness
22 outweighs by proof beyond a reasonable doubt what
23 you have heard in mitigation on his behalf and it
24 does.

25 THE COURT:

Thank you, Mr.

1 Rosenbaum.

2 Mr. Grunda?

3
4
5 INITIAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE
6 DEFENDANT

7 BY MR. GRUNDA:

8 When we initially started this many weeks
9 ago, okay, this is what we talked about, getting
10 the cart before the horse.

11 Now, we are here and without any guidance
12 you are trying to figure out, how does it all fit
13 and the Judge is going to give you some detailed
14 instructions, but I want to basically lay out the
15 line within the parameters of the law and what is
16 supposed to be looked at and the evidence that
17 was offered for your determination.

18 In this particular phase, as the Prosecutor
19 indicated, there is an aggravating circumstance
20 weighed against the mitigating factors. One
21 aggravating circumstance is that there was the
22 killing of, as he indicated, a government
23 witness.

24 Now, not a witness against Stan, okay,
25 because the charges were against Raymond and

1 Danny, not Stanley, okay, but that is the
2 aggravating circumstance.

3 Now, that is weighed against, and the
4 Judge will give you other factors provided by
5 law, and one is, whether it is unlikely that
6 the offense would have been committed but for
7 the fact that the offender was under duress,
8 coercion or strong provocation.

9 That is a factor you must consider. That
10 is your duty and you accepted that and again,
11 when you look at that, it gets into the nature
12 and circumstances of the offense.

13 Again, Stan didn't have the gun, Raymond
14 had the gun. Raymond was calling all the shots
15 of what to do and how to do it. The person
16 acting with the gun and seeing what he is doing
17 is something else that has impact, affects the
18 criteria of under strong duress or provocation,
19 so that is one factor you must accept.

20 The second is not if the offender -- we
21 know Stan is a man of 25 years old, his birthday
22 was [REDACTED] That is something you
23 have to consider, the youth of the Defendant.

24 The third one is the offender lacked a
25 significant history of prior criminal convictions.

1 Now, I guess there is always a problem
2 between lawyers and lay people and it kind of
3 gets lumped together. We deal with words and
4 terminology and we deal with what it says.

5 What is "convictions"?

6 Not allegations, not charges, convictions,
7 and through our Constitution, which we agreed to
8 uphold and hold precious, a person is not guilty
9 until convicted.

10 Even as Detective Leiby indicated, you may
11 get the wrong impression, because when you are
12 talking about allegations, not going through a
13 process we are entitled to, which is a fair and
14 impartial trial, all the witnesses are up there
15 and for that case, okay, that is where I worry
16 about you getting the negative impression from
17 the charge where he hasn't had the opportunity
18 to defend himself within the confines of the
19 law and the Constitution.

20 But you see, this mitigating factor that
21 you have to consider doesn't say criminal
22 allegations, criminal charges, it says prior
23 criminal convictions, okay, and we know at
24 this point Stan does not have any prior
25 criminal convictions.

1 There is no evidence of that. The fact
2 is just the opposite, it is not there. So I
3 ask you, when you consider that one, which you
4 have to, the Judge will tell you, look at it
5 not as a conviction, but an allegation because
6 it kind of fits in with the whole other part of
7 the prosecution's theory, because he again uses
8 inflammatory words to heighten your emotion.

9 He needs that for you, to get to where he
10 wants you to go by using, you know, lawless
11 and vicious conduct, stomping, cold blooded
12 assassination, very descriptive adjectives used
13 to bring out those emotions and feelings rather
14 than looking at the facts and the law as the
15 Judge gives it to you.

16 He needs to do that to boost up his case.
17 He talked about a dope selling empire, but there
18 was no testimony about that. All the allegations
19 and everybody that came in here, none of them
20 said there was any dope selling empire, nobody
21 said they were connected with selling drugs.

22 They might have different charges, but there
23 is no testimony that there is any dope selling
24 empire and the other thing is, there was no -- he
25 keeps saying that this person was stomped, you

1 know, and the fact is, the testimony that we heard
2 in the rebuttal, Mr. Hicks and Roland, neither one
3 of them indicated they were stomped.

4 Might have been hit with something, you have
5 different versions of it, but nobody said they
6 were stomped and, in fact, Dr. Raaf, who was the
7 Doctor that did the autopsy and the Prosecutor's
8 witness, indicated there was no stomping that was
9 there.

10 I questioned her. There was no stomping, but
11 again, you need that adjective to arouse your
12 emotion, but again, there was no evidence of that,
13 but he keeps saying that.

14 Now, you get into the other problem with, as
15 I indicated, the negative impact of the other
16 charges because we have to deal with that. They
17 talked about the felonious assault. They talked
18 about the arson.

19 The testimony was the exact opposite, he
20 didn't do it, he wasn't there.

21 The thing that I find a little bit peculiar
22 is, he was saying you can't have all these
23 coincidences for Stan, yet that is what they
24 are using with the person of Deanna Butler who
25 happened to be there to hear certain things that

1 Stan said. Coincidences do happen.

2 If you get it one way, you should be able
3 to get it the other way. Another factor you have
4 to consider is the offender was a participant in
5 the offense, but not the principal offender.

6 We know the principal offender in this case
7 is Raymond Smith. He is the one that shot him,
8 not Stan. Stan didn't shoot him. Raymond shot
9 him and that is the principal offender here.

10 Raymond Smith is the one that has the case
11 against him, not Stan. Raymond Smith is the one
12 that shot this guy, that is how all this happened.
13 Raymond Smith is the principal offender. If
14 anybody did anything to this guy to fit within
15 the descriptive adjective the Prosecutor uses,
16 it is Raymond Smith, not Stan.

17 But in any event, it says principal offender.

18 You also can consider the degree of the
19 offender's degree of participation in the offense
20 and the degree of participation in the act that
21 led to the killing. Most you have is Stan drove
22 the car. There is some issue as to that.

23 Mr. Leiby agreed that this being the Smith
24 family, everyone was trying to get their own
25 little benefit and put people in and out,

1 throwing the blame out and, again, Stan, all he
2 did was drive a car.

3 The guy had a gun, ordered him around. The
4 other part is, there was no testimony, as the
5 Doctor indicated, that they drove over him. Mr.
6 Leiby, he wasn't there. The trace evidence
7 report shows there was nothing, no grease, no
8 oil, no rubber. They did the tapings, no hair
9 fibers or hairs from the coat, but that they
10 need to get you hyped up.

11 But it is not within the facts, so really,
12 you look into the facts and circumstances within
13 those particular confines.

14 The Smith family is the one that has the
15 charge. Stan doesn't have any, nor was there
16 any testimony that he was involved in some kind
17 of drug empire.

18 Raymond Smith is the one that shot him,
19 okay?

20 He says that Stan got out and cut him, but
21 there was no evidence of that. They want you to
22 believe that, but there was no evidence to prove
23 that and then they want you to believe he ran
24 him over, but again, that is not the evidence.

25 So, the best you have is a guy holding a

1 gun telling him what to do. If he got out of
2 the car, that is it, but there is no evidence
3 to show he did anything.

4 The other witnesses didn't put anything
5 on him, but again, the nature of this and the
6 circumstances involve the Smith family, not
7 Stan, not the degree they want you to believe
8 and you also must consider other factors and
9 we put those on, medical condition, arthritis,
10 some days good, some days bad, some days you
11 can do things, some days you can't.

12 You don't need medical testimony.

13 Everybody else testified to it. There is
14 no rebutting it. Didn't hear no rebutting
15 witness saying it wasn't there. You can consider
16 residual doubt. Those are maybe the factors that
17 shall keep creeping up and that fits into this
18 because again, the Prosecutor gave you a time
19 line of how things happened and if you recall,
20 he gave you a time line that said September 15th
21 they had the incident at Mr. Hero where Stan
22 wasn't there and Homoki wrote the report up a
23 year later.

24 Walking away, didn't have anything to do
25 with it, but when you look in the actual court

1 record, because they said this was done, the
2 incident there happens just because he had
3 heard the tape, but if you look at the court
4 record, it doesn't fit because the record that
5 is file stamped October 20th, which is almost
6 a month afterwards, is where they indicate
7 that the State has a tape for them to listen
8 to.

9 So this is a month afterwards, but it
10 all keeps fitting in there because some of it
11 doesn't make sense. You have Detective Leiby
12 being the chief investigator on this, hearing
13 the name Stan alone with no last name, didn't
14 bother to investigate any further or ask the
15 question of Raymond Smith, "Who do you mean
16 by Stan?"

17 Jumped to the conclusion it is Stan and
18 there we go. He decided he is going to be the
19 judge and jury and here we are, but again, Stan
20 doesn't have the motive. It is a Smith family
21 deal and they have not offered any evidence to
22 show he is involved in any drug selling empire.

23 Now, Mr. Cleary is going to take it from
24 here. I wanted to let you know that there is
25 one aggravating circumstance which Mr. Lally

1 was the informant and we have six mitigating
2 factors that you must consider by law, so we
3 have the six against one that have to be
4 considered on behalf of Stan and I am asking
5 you to consider those because you are supposed
6 to and I am asking you, after considering them,
7 and I believe they outweigh -- in other words,
8 these six mitigating factors outweigh the
9 aggravating factors and I am asking you, when
10 you return a decision on that, that it would
11 be one of the life sentences and I will ask
12 you not to get wound up, try not to get
13 inflamed and get wound up and very emotional
14 about this and lose sight of the facts.

15 I am asking you to return a verdict for
16 a life sentence.

17 Mr. Cleary will talk to you now.

18 THE COURT: Thank you, Mr.
19 Grunda.

20
21
22 FINAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE
23 DEFENDANT

24 BY MR. CLEARY:

25 Hello again.

1 We are getting very close to the end of
2 all this and you are looking at a decision
3 that I don't think that I would want to have
4 to make. Nothing in my life has prepared me,
5 to my knowledge, to be in a position where I
6 could plead for a man's life.

7 I just can't imagine having to make the
8 decision that you will have to make.

9 What we are looking at here is a vicious
10 crime, a vicious crime has been committed and
11 I believe in the jury system as does Mr. Grunda.
12 That is why we are here and you folks have found
13 my client guilty of committing that crime.

14 Now, what I am asking you to do is, even
15 though he committed that crime, even though you
16 found him guilty, I am asking you to take the
17 worst case scenario and still, in your hearts
18 and minds, say that this young man does not
19 deserve to die.

20 Now, the State outlined methodology for you
21 to reach this conclusion, all right, and lawyers
22 dress things up in a lot of fancy words, but the
23 bottom line here is, he is being punished, he is
24 looking at a life sentence as the least that can
25 happen, the least.

1 Now, the question is, and this is what it
2 boils down to, all right, do we, as the people
3 and the State, kill him for this crime?

4 Do we kill him? All right.

5 Now, we can boil this down to a couple of
6 different things. Do two wrongs make a right
7 or is it back to an eye for an eye?

8 If we are to kill this man, we are saying
9 an eye for an eye, all right?

10 We decided whether a person's life has any
11 redeeming value at all, whether the existence of
12 life itself can be a redeeming value.

13 Ron Lally did not deserve to die, no one
14 deserves to be killed by another. Neither does
15 he.

16 We bring people up here, family members,
17 and it is almost made out to be some sort of
18 perversion, to be loved by a family member, a
19 mother's love is tainted. How dare you, how
20 dare you love your son, how dare you find good
21 in this man, you have no right.

22 This person has a family, has a grandfather,
23 has a father, sister. They are all already being
24 punished as well. They are looking at a sibling
25 or son going to prison for the rest of his life

1 or sitting on death row before a switch is pulled.
2 They are part of this.

3 Now, if there is a way to trade his life for
4 Ron Lally's now, then it might be worth
5 considering. If there is a way by killing him
6 we do give life back, then it might be worth it.
7 You might want to think about it, but all we are
8 doing is extinguishing another life.

9 We are not making anything any better here.
10 How are we making things better?

11 We are committing an act of revenge and is
12 that what we are here for?

13 Are we here for revenge?

14 Now, Mr. Rosenbaum is going to get up here
15 in a few minutes and by the time he is through,
16 I am going to ask you to hold onto something
17 that Mr. Grunda or I say because what is going
18 to happen here is that your anger is going to
19 be aroused and it is a lot easier to make
20 somebody angry than it is to make them care
21 for you.

22 It is a lot easier. I could and probably
23 have ticked somebody off here very quickly, all
24 right, but it takes time to like someone and if
25 you feel anger rising as you sit here or before

1 you walk out of here, then you are being
2 manipulated, because it has to be -- you
3 have to justify in your mind.

4 You have to say to yourselves, 30 years
5 to life locked up behind bars with someone
6 telling you when to go eat or when to leave
7 or never be out with the freedom to walk down
8 the street again, you have to tell yourself
9 that that is not enough, it is not enough.

10 Would it be enough for you?

11 Does the threat of 30 years behind bars,
12 would it be enough for you?

13 Does that threat horrify you if you had
14 to face that yourself?

15 It is easy to disassociate yourself. You
16 almost have to mentally disassociate yourself
17 from the perpetrator of a crime because you
18 don't want to be like that guy, but he is and
19 will be punished. The quickest he could get
20 out with a minimum sentence would be 23 years
21 and this man of 25 years old will be 48, all
22 right?

23 That is a long time to think about going
24 for a ride with somebody.

25 Now, the things that Mr. Grunda spoke

1 about, there are a couple things that you have
2 to consider here, all right. He did say Stan
3 -- when he said Raymond was calling the shots
4 -- he is also saying Raymond is making the
5 shots, he is the guy that shot this person.
6 He never had a gun, all right?

7 And though he has never admitted to even
8 being in the car, all right, deciding that he
9 was guilty, you folks put him there.

10 You decided that he put himself there.
11 You may also consider the fact that maybe
12 Raymond was calling the shots with him, too,
13 that if somebody gets in the car with you
14 and he has a gun and he tells you to drive
15 somewhere, that you just do it.

16 In deciding whether or not to put Stan
17 Jalowiec here to death you have to do so
18 beyond a reasonable doubt. You have to
19 know beyond a reasonable doubt that this
20 is what must be done.

21 If there is ever a time in your life to
22 consider any doubt that you may have, to
23 consider any residual doubt, this is the
24 time to do it, not later, not when you are
25 second guessing yourself down the road, but

1 when you are in the deliberation room.

2 Don't let anyone -- the Court will
3 instruct you how to do this, but don't feel
4 like you have to all vote only one thing
5 before considering another. You can look
6 at one thing, then another before any
7 agreement is reached.

8 You know, I don't think anybody cares
9 much for any preacher that is not their own,
10 so I have done my best to try to keep
11 religion out of this, but I keep coming
12 back around to it and I keep looking at my
13 own belief system and I look at my kids and
14 I try to put myself in the picture of Stan's
15 parents here and I look at my daughter and I
16 think to myself, no matter what she did, I
17 would love her, no matter how bad it was,
18 you know.

19 Because this is just the way it is, you
20 know, and I wonder what would possibly happen
21 between now and her adulthood or my son's --
22 he is a young man now and really, I just
23 wouldn't care, I would need to stand by them
24 and do whatever I could to help because I am
25 their father and I love them.

1 These are the positions that Stan's family
2 is in. Don't let this be perceived into
3 something that you don't really know your kid,
4 you don't love your kid. Consider your own
5 children and how you would feel if they were
6 in this position and you were wanting to help
7 them.

8 They are worthy of life whether or not you
9 would, under the same circumstances, be able to
10 sit back and think, you know, 30 years in prison
11 is not enough.

12 Look around and look in our hearts and again,
13 I try to keep religion out of this, but our first
14 recorded murder was Cain killed his brother Abel
15 and God did not strike Cain down.

16 He banished him for life, a merciful God
17 banished him for life and all I am asking you to
18 be is merciful and spare -- look at him, please,
19 and spare this man's life. Do not let anger take
20 control.

21 Think about 20 years, 30 years to life.
22 Think about what you would do. You think about
23 having your children in some kind of a situation
24 and think about mercy and God and what he did and
25 try to emulate that.

1 Thank you all very much.

2 THE COURT: Mr. Rosenbaum, you
3 may rebut.
4
5

6 FINAL CLOSING ARGUMENT TO THE JURY ON BEHALF OF THE STATE OF
7 OHIO
8 BY MR. ROSENBAUM:

9 I didn't know that we were in church and
10 without attempting to sound sacrilegious, this
11 is not a religious issue. There are many
12 religious books or societies which would cut
13 his head off instantly for what he did, but we
14 are not about that either, and they believe
15 that their duty requires that.

16 Nor is this about revenge. Mr. Cleary
17 would like you to believe that the law that our
18 system or government has created, if it results
19 in the death of his client, is now revenge. He
20 says it is a wrong and two wrongs do not make a
21 right.

22 He compares it to an eye for an eye. This
23 is not an eye for an eye society either. Not
24 every precalculated murderer gets the death
25 penalty, so it is not an eye for an eye and

1 it is not revenge and to liken the imposition
2 of our justice system and our laws as to
3 revenge, cheapens it and it is not a part
4 of your function today.

5 He goes on and on to tell you not to be
6 that. He may anger you to make an informal
7 decision. He calls it mercy. In the same
8 token, he asks you to place yourselves in
9 the position of having your child sit there.

10 Well, what does that do to the State,
11 what does that do to the victim and his
12 children?

13 It is just as wrong for you to approach
14 this case, go in there if that would be enough.
15 If it is your kid sitting here, how would you
16 feel if you were Ron Lally's brother, child or
17 girlfriend?

18 You are to be impartial, you cannot have
19 that love, it is wrong for you to put yourselves
20 in the position of that side of the table or this
21 side. You are called upon today to enforce the
22 law, to uphold principles.

23 If our system of justice through the
24 legislative process and the people and all the
25 things that make this country what it is different

1 from all those other countries requires his death,
2 then that is your duty and it is not wrong under
3 the circumstances.

4 Not a wrong. It is not revenge and not an
5 eye for an eye.

6 Now, the aggravating circumstances which
7 makes this a death eligibility case is that he,
8 along with Danny Smith and Raymond Smith, elected
9 to kill a government witness.

10 They have taken among themselves to conclude
11 that we know how trials work, we know about the
12 presumption of innocence and we know that if the
13 State cannot meet its burden of proof, that we are
14 going to walk, so how are we going to manipulate
15 the system?

16 We are going to silence the witness that is
17 necessary so that that jury trying those cases on
18 January the 19th, '94, would not hear the
19 government's informant, would not hear the person
20 that made the face-to-face buy and the State would
21 not overcome the Constitutional protection
22 required and they attempted to manipulate the jury
23 system and by doing that, that is what makes this
24 a capital case, makes him eligible for the death
25 penalty.

1 He has done that. The Legislature sets out
2 eight things that allows enough to require the
3 death sentence. It should come to no surprise
4 that making the decision to defeat the criminal
5 justice system and the State of Ohio -- we will
6 kill a witness, snuff out his life, to go on with
7 our ways and continue to violate the law which
8 apparently he likes to do on a daily basis.

9 We concede, he has no prior convictions.
10 The evidence offered regarding the other crimes
11 was offered to refute the character that he puts
12 in evidence when he puts on his family, when he
13 took the stand himself and tried to describe
14 himself as someone that loves animals and
15 children.

16 There is another side to that coin. It
17 is your right to hear it and it is my duty to
18 produce it. We do not represent he has prior
19 convictions, but we say that you have evidence
20 that was subjected to cross-examination and
21 enjoys the protection of a courthouse.

22 He met the accusers face to face and you
23 heard what they have to say and they gave you
24 a drastic different picture.

25 I can see that a mother and father should

1 love their child no matter what. I do not
2 concede that enables them to come to Court and
3 tell only a part of the facts and when they were
4 cross-examined on relevant issues, I expected
5 it, but it does not make it right.

6 Pointing that out does not prevent their
7 love. As we all know, you have a duty to do
8 independent of anybody's parents or families,
9 whether it be the victim's or the Defendant's.

10 He is a principal in this crime. The
11 gunshot did not kill anyone. You heard the
12 testimony of the Doctor who took out a tongue,
13 went through the tongue, lodged in the throat
14 by the spine, not fatal.

15 The knifing, although gruesome, did not
16 kill anyone. It was superficial, did not even
17 penetrate the muscles in the throat to get to
18 the veins or arteries.

19 The coroner's testimony is uncontradicted,
20 that multiple blows to his head and body killed
21 him coupled with exposure.

22 Stanley participated in these multiple blows
23 just as he did on Broad Street. His injuries were
24 consistent with the car being backed into him and
25 being stomped in the head as Michael describes it.

1 The pictures verify this.

2 Stanley is a principal in those acts. He
3 is the only one driving that car and more
4 importantly, Stanley is the one that could get
5 Ron Lally to where he needed to be so this plan
6 would go into motion.

7 Stanley is linked with the Smith family.
8 Stanley had more contact with the Smiths than he
9 had with his family in that portion of his life.
10 Indeed, Danny Smith and his girlfriend were living
11 with him for a period of months that resulted in
12 his eviction from the trailer.

13 He is out with him at the bars engaging in
14 fights. We know he sells drugs and there was
15 testimony, I believe in the trial, and it is up
16 to you, that he sold drugs for the Smiths. That
17 is his business. That is what he chose to do,
18 that and fighting.

19 He chose to perpetuate his lifestyle by
20 manipulating the justice system, taking advantage
21 of the huddles against the Smiths by killing a
22 necessary witness.

23 The only reference made to Ron Lally's
24 parents in this trial was from Sandra Williams
25 wherein Danny Smith went over to her house and

1 threatened his parents. He attempted to threaten
2 the witness, saying he knew where they lived.

3 There is only one group of people that try
4 to manipulate our way of life. We are a society
5 of laws, not of religions, not of moral codes that
6 are not written.

7 We are a society of laws and the law in this
8 State says, when you are cold hearted enough to
9 calculate and plan the death of another human
10 being to silence his testimony, to defeat the
11 system which affects us all, you are death
12 eligible and he is there now.

13 The question is, does that heinous act
14 outweigh the mitigation you have heard today?

15 Granted his mother loves him. Granted he
16 might have been kind to children. Granted at
17 one time in his life, maybe today, he likes
18 animals.

19 Does that outweigh what he attempted to do
20 and if it does not outweigh beyond a reasonable
21 doubt the aggravating circumstances of silencing
22 a government witness, your duty is clear and it
23 is not up to you to say, do you really think it
24 is necessary or can you live with it, that is
25 wrong.

1 This is the time to apply the law that our
2 officials have decreed in our State decided and
3 say what you have done, what he has done, you
4 must suffer the death penalty unless the
5 mitigation is sufficient enough so that that
6 heinous act does not sway it beyond a reasonable
7 doubt and in this case it is willfully short.

8 THE COURT: Thank you, Mr.
9 Rosenbaum.

10 Ladies and gentlemen, I am going to return
11 you to the jury room for a very short period of
12 time. There is something that has to be
13 determined between counsel and the Court, that
14 little bit of housework that I keep talking
15 about before we can proceed with the next step.

16 I anticipate this to be extremely short
17 and the admonitions that I have given you about
18 discussing this matter, especially now, apply.

19 I will give you your instructions. That
20 is all that is left at this point.

21 Do not discuss this case, do not let anyone
22 talk to you, don't talk to anyone, don't read or
23 let anybody read about this to you.

24 (Whereupon, a short recess was had.)

25 (Whereupon, the following proceedings

1 occurred out of the hearing of the jury.)

2 MR. GRUNDA: The only thing,
3 instead of using guilt phase, can we use
4 mitigation?

5 THE COURT: Same way, it is
6 used interchangeably.

7 MR. GRUNDA: I was trying to
8 be consistent.

9 THE COURT: Let's be
10 inconsistent once.

11 (Whereupon, the jury was returned to the
12 courtroom and the following proceedings occurred.)

13 THE COURT: Good morning
14 again, ladies and gentlemen. I told you it
15 would be short.

16 Whereupon, the Court charged the jury as
17 follows:

18 Ladies and Gentlemen of the Jury, we have
19 gotten to the point in the mitigation phase in
20 which you have heard all of the evidence. You
21 have heard the arguments of counsel and now you
22 are going to have an opportunity to hear my
23 instructions dealing with this phase of the
24 proceedings. It is going to be your
25 responsibility at this point to decide which

1 sentence to recomend to the Court regarding the
2 alternative charges of Aggravated Murder with
3 the specification.

4 I have used the word recommend many times
5 and the attorneys have used it, and I want to
6 make sure that you understand that you are not
7 to construe that word to diminish your
8 responsibility in this matter. It is an
9 awesome task, and the fact thadt the word
10 recommend is used should not be considered by
11 you to lessen your task.

12 There are three sentences that you are to
13 consider in this case and those sentences, when
14 you consider them, should be based upon the facts
15 as you will find them. The three sentences are:
16 One, a sentence of death; Two, a life sentence
17 with parole eligibility after the Defendant has
18 served a full 20 years in prison; or Three, a
19 life senence with parole eligibility after the
20 Defendant has served a full 30 years in prison.

21 In making your decision you are to consider
22 all of the evidence that you heard in the penalty
23 stage and in the mitigation or guilt stage. You
24 are to consider the arguments of counsel and are
25 to consider the instructions that I give you now,

1 and also the instructions that I gave you at the
2 trial stage.

3 The previous instructions included
4 instructions on the weight of the evidence.
5 Direct and circumstantial evidence, and evidence
6 that, where applicable, was to be used. You
7 should also remember that you are the sole judges
8 of the facts, the credibility of the witnesses
9 and the weight of the evidence.

10 I further want to remind you that you are not
11 permitted to consider sympathy or prejudice toward
12 any party, witness or attorney.

13 Now, you are now going to proceed to weigh
14 the aggravating circumstances which you have
15 already found against the mitigating factors which
16 you will consider and find.

17 The aggravating circumstances which you have
18 already found are the following: (1) That the
19 victim was killed to prevent his testimony in a
20 criminal proceeding.

21 Weighing against the aggravating
22 circumstances will be the mitigating factors
23 which include, but are not limited to, the nature
24 and circumstances of the offense, and the history,
25 character and background of the Defendant.

1 You shall also consider all of the following
2 mitigating factors:

- 3 1) Whether the victim of the offense
4 induced or facilitated it;
- 5 2) Whether it is unlikely that the offense
6 would have been committed, but for the
7 fact that the offender was under duress,
8 coercion, or strong provocation;
- 9 3) Whether at the time of committing the
10 offense, the Defendant, because of a
11 mental disease or defect, lacked
12 substantial capacity to appreciate the
13 criminality of his conduct or to conform
14 his conduct to the requirements of law;
- 15 4) The age of the Defendant;
- 16 5) The Defendant's lack of a significant
17 history of prior criminal convictions
18 and delinquency adjudications;
- 19 6) If the Defendant was a participant in
20 the offense but not the principal
21 offender, the degree of the Defendant's
22 participation in the offense, and the
23 degree of the Defendant's participation
24 in the acts that led to the death of
25 the victim, and

1 7) Any other factors that are relevant to
2 the issue of whether the Defendant
3 should be sentenced to death.

4 The Prosecutor has the burden to prove,
5 beyond a reasonable doubt, that the aggravating
6 circumstances which the Defendant was found guilty
7 of outweighs the factors in mitigation of imposing
8 the death sentence.

9 "To outweigh" means to weigh more than, to
10 be more important than.

11 The existence of mitigating factors does
12 not preclude or prevent the death sentence if the
13 aggravating circumstances outweighs the mitigating
14 factors.

15 Even though I have defined reasonable doubt
16 for you in the trial stage, I am going to define
17 it for you again as it applies to this stage of
18 the proceedings, and the definition is a little
19 bit different.

20 Reasonable doubt is present when, after you
21 have carefully considered and compared all of the
22 evidence, you cannot say you are firmly convinced
23 that the aggravating circumstances outweighs the
24 mitigating factors which include the nature of
25 the offense and the history and character and

1 background of the Defendant. Reasonable doubt
2 is a doubt based on reason and common sense.
3 Reasonable doubt is not mere possible doubt
4 because everything related to human affairs or
5 depending on moral evidence is open to some
6 possible or imaginary doubt. Proof beyond a
7 reasonable doubt is proof of such character
8 that an ordinary person would be willing to
9 rely and act upon it in the most important of
10 his or her own affairs.

11 You should recommend the sentence of death
12 if you unanimously, that is, all twelve of you,
13 find by proof beyond a reasonable doubt, that the
14 aggravating circumstances outweigh the mitigating
15 factors.

16 If you do not so find, you shall unanimously
17 (all twelve) recommend either a life sentence with
18 parole eligibility after serving twenty years of
19 imprisonment, or a life sentence with parole
20 eligibility after serving thirty years of
21 imprisonment.

22 Verdict forms with these three options will
23 be furnished to you.

24 Now, during your deliberations you must
25 consult with one another. You are to consider

1 each other's views and deliberate with the
2 objective of reaching an agreement if you can
3 do so without disturbing your own individual
4 judgment. Each of you must decide this case
5 for yourself, but you should do so after a
6 consideration and discussion of the case with
7 your fellow jurors.

8 Do not hesitate to change an opinion or
9 position if you later find that that position
10 was wrong. However, you should not change your
11 convictions in order to be congenial or to reach
12 a verdict solely based upon the opinions of your
13 fellow jurors.

14 Now, when you have reached a verdict, you
15 are to notify the Court and you are to do that
16 by using the buzzer in your jury room.

17 Remember that you are not to have any
18 discussions or consideration of the case while
19 you are separated from the other jurors. The
20 only time you are to talk about it or consider
21 it is when all 12 jurors are in the jury room
22 and all the verdict forms and the instructions
23 are there with you.

24 You are going to have a copy of the
25 instructions that I have just read to you in

1 the jury room along with all of the exhibits
2 from the prior trial and the instructions that
3 you had in the prior proceedings, so you will
4 have that all back with you.

5 Remember, if somebody is in the restroom
6 during your deliberation process, stop your
7 deliberations and wait for that person to
8 return before you consider the deliberations.

9 When you have selected the appropriate
10 verdict, get that verdict form, sign the
11 verdict form, and also notify us.

12 Now, I need to know from the attorneys,
13 are there any additions, corrections or
14 deletions to the charge?

15 Appearing that the instructions are in
16 order, let me ask the 12 regular jurors -- we
17 have to decide whether to dismiss the alternate
18 jurors -- whether the 12 regular jurors are able
19 to proceed at this point in time. Anyone not
20 able to proceed?

21 Okay. As with the last time, you are going
22 to be excused and this time you are permanently
23 excused, so we hope that everyone is okay
24 throughout the entire deliberation process.

25 You are further admonished that you are not

1 to discuss the case or verdict with anyone until
2 you have heard a verdict has been reached. Once
3 you have heard a verdict has been reached, you
4 are going to be free to discuss it or not with
5 anyone you want. You are also able to read
6 anything about the case that you would like to
7 read at this point in time.

8 On behalf of all of us, we want to thank
9 you very much. It is not easy to be an alternate
10 juror and not being a part of the process. It
11 is a very difficult task. I can tell you it is
12 important that you are to be with us. We all can
13 breathe a sigh of relief to know that you are here
14 in case anyone is ill, and I am glad that didn't
15 happen to the regular jurors. So on behalf of
16 all of us, thank you.

17 Evidence was received about the commission
18 of crimes, other than the offense with which the
19 Defendant is charged in this trial.

20 That evidence was received only for a limited
21 purpose.

22 If you find that the evidence of other crimes
23 are true, and that the Defendant committed them,
24 you may consider that evidence only for the
25 purpose of deciding whether it proves:

- 1 (a) the absence of mistake or accident,
2 or
3 (b) evidence of a pertinent trait of the
4 Defendant's character.

5 That evidence cannot be considered for any
6 other purpose.

7 At this point the 12 jurors can go back in
8 the jury room and commence your deliberations.
9 We will get the verdict forms to you along with
10 the instructions.

11 Any other corrections, additions or
12 deletions?

13 MR. ROSENBAUM: I have nothing,
14 your Honor.

15 MR. GRUNDA: No, your Honor.

16 MR. CLEARY: No, your Honor.

17 THE COURT: Thank you.

18 Are all 12 ready to proceed at this point?

19 THE JURORS: Yes.

20 (Whereupon, the jury was escorted to the jury
21 room to commence their deliberations.)

22 (Whereupon, the jury was returned to the
23 courtroom and the following proceedings occurred.)

24 THE COURT: Ladies and
25 gentlemen, have you reached a verdict?

1 THE FOREPERSON: We have, yes.

2 THE COURT: Would you hand

3 that verdict to the Bailiff?

4 State of Ohio versus Stanley E. Jalowiec,
5 Case No. 95CRO46840, jury recommendation.

6 We, the jury, do hereby find that the
7 aggravating circumstances that the Defendant,
8 Stanley E. Jalowiec, was found guilty of
9 committing in this case is sufficient to
10 outweigh any mitigating factors presented
11 by proof beyond a reasonable doubt.

12 We therefor recommend that the sentence
13 of death be imposed upon this Defendant.

14 Dated April 10, 1996, and signed by
15 twelve jurors.

16 Mr. Rosenbaum, anything further?

17 MR. ROSENBAUM: No, sir.

18 THE COURT: Mr. Grunda or

19 Mr. Cleary?

20 MR. GRUNDA: Poll, your Honor.

21 (Whereupon, each of the twelve jurors were
22 asked individually if this was their verdict and
23 they all responded in the affirmative.)

24 THE COURT: Anything further?

25 MR. GRUNDA: Only appeal rights.

1 THE COURT: At this stage, at
2 this point, ladies and gentlemen, the Court
3 wishes to express its appreciation for a very,
4 very difficult task. You can see that the jury
5 duty is not an easy task and you can see that it
6 is very serious business.

7 The Court wishes to thank you for performing
8 this duty and, ladies and gentlemen, let me say
9 to you that the jury system works and it works
10 because, not of me or defense counsel or the
11 prosecution, it works because of people like you
12 who recognize their duties and perform them, no
13 matter how difficult they might be and with that,
14 ladies and gentlemen, you are hereby discharged.

15 (Whereupon, the jurors were excused and
16 escorted from the courtroom.)

17 (Whereupon, the following proceedings
18 occurred after the jury was excused.)

19 THE COURT: Mr. Grunda, Mr.
20 Cleary, Mr. Jalowiec, do you want to come forward,
21 please?

22 Is there anything that any of you or all of
23 you may want to say to the Court before the Court
24 indicates what its decision will be in this
25 matter?

1 Mr. Grunda, whomever wants to go first is
2 fine with me.

3 MR. GRUNDA: Well, your Honor,
4 as the Court is well aware, this is only a
5 recommendation from the jury.

6 THE COURT: Absolutely.

7 MR. GRUNDA: I would ask the
8 Court to maybe view this with their own eyes,
9 not just with what the jurors view. There may
10 be other issues the Court would have seen and
11 might have impacted to the Court, not so much
12 in an emotional vein, that they may have taken
13 it in.

14 He is a young man 25 years old. He still
15 has a lot of life in him and I would ask the
16 Court to maybe go against -- I know it is unusual
17 -- but go against what the jury recommendation in
18 this case is and again, I know the Court has said
19 before in the previous cases regarding Raymond
20 Smith, that he was the executioner in this and
21 I think there is some difference in the actual
22 participation.

23 I understand the law and how they are coupled
24 together in actual circumstances and who had the
25 gun and who really had the cause where they would

1 have benefited from this, which were the Smiths,
2 not Mr. Jalowiec.

3 I think there is a distinction there and I
4 would ask the Court to consider that in sparing
5 him.

6 THE COURT: Mr. Cleary?

7 MR. CLEARY: Simply request for
8 mercy, your Honor, on behalf of my client. He
9 is a young man.

10 Should the Court decide to impose the next
11 level sentence, it would be 33 years before he
12 would even be considered for parole and as the
13 Court well knows, he may not get it at that, but
14 certainly could spend the rest of his life behind
15 bars.

16 In light of his relative youth and on behalf
17 of his family as well, we would request that the
18 Court not follow the recommendation of the jury
19 and enter a life sentence.

20 THE COURT: Thank you, Mr.
21 Cleary.

22 Mr. Jalowiec, do you want to say anything
23 before the Court passes sentence in this matter?

24 THE DEFENDANT: I would just ask
25 that you make the right decision. I don't really

1 know what to say.

2 THE COURT: Thank you, sir.

3 Mr. Rosenbaum, anything that the State wants
4 to say?

5 MR. ROSENBAUM: Your Honor, briefly.
6 I think the Court is well aware of its duties, the
7 aggravated circumstances of what happened here,
8 killing of a government witness to escape criminal
9 prosecution for his drug dealing friends vastly
10 outweighs the mitigation he put on and I feel it
11 is the Court's independent job to weigh that and
12 come to the same conclusion, but on a -- I don't
13 want to say a favor -- a more appropriate note
14 seems to me that somebody else was begging for
15 their life and I think you should show him the
16 same mercy that he showed, which is none.

17 THE COURT: Well, gentlemen,
18 the Court has had a considerable amount of time
19 to think about this case.

20 I believe the guilt phase of this case was
21 concluded on the 20th of March, somewhere in that
22 vicinity, and the Court has had since that time
23 to think about this day here today.

24 I don't mind saying to anybody and to
25 everybody that this Court has spent some sleepless

1 nights considering what the decision would be in
2 this case or could be in this case.

3 When the punishment or mitigation phase of
4 this trial started yesterday, this Court had not
5 made up its mind in any way. This Court has
6 purposely not done any investigating or any
7 checking into this particular case other than
8 what it knew because of the Raymond Smith case
9 about it, did not do anything further.

10 Besides this, I wanted to hear the evidence
11 presented by the prosecution and by defense
12 counsel for the first time. As everybody else
13 heard it for the first time, I heard it for the
14 first time.

15 Getting hit in the head with a baseball bat
16 is not a very nice thing to do. That started me
17 on the road to making my decision. Not only one
18 person, but two people. The pattern was there.

19 I heard the evidence, I heard testimony of
20 Michael Smith. I heard what went on. I heard
21 about the kicking. I saw the pictures, I heard
22 the coroner's report, the doctor's report and
23 the doctor's testimony.

24 This man deserved to live, Mr. Jalowiec,
25 deserved to live, not to be executed the way he

1 was and your hand played a role in his execution
2 and in connection to what you said, the Court did
3 not single Mr. Smith out as being the executioner.

4 The Court did say that what he did was an
5 execution. This Court feels exactly the same way
6 with your client. He executed Mr. Lally. He
7 helped execute Mr. Lally.

8 The evidence was that he stomped him. The
9 evidence was that he tried to run him over. The
10 evidence was that he left him there and he was a
11 part of it on the coldest day that Cleveland ever
12 registered.

13 They left him there half naked and if the
14 other matters didn't kill him, the weather did,
15 the weather did.

16 I do not feel that anybody that would do that
17 to another human being deserves any mercy.

18 Therefore, this Court will confirm the
19 recommendation of the jury and sentence you to
20 death with the execution -- with the sentence to
21 be executed one year from today, April the 10th
22 -- April the 19th, 1997.

23 Now, Mr. Jalowiec, it becomes my duty to
24 inform you, sir, that you have been convicted of
25 a very serious crime. It is further my duty to

1 inform you, sir, that you have the right to appeal
2 this decision, the right to appeal this decision,
3 okay?

4 You have the right to and if you do not have
5 funds to hire counsel, counsel will be appointed
6 for you to effectuate this appeal.

7 If you do not have funds to pay the cost of
8 the documents necessary for the appeal, the
9 documents will be provided to you free of charge.

10 If you are unable to pay the cost for this
11 appeal, the cost will be paid for you by the
12 State.

13 You have the right to have a notice of appeal
14 timely filed within the proper time for yourself
15 and timely filed in your behalf.

16 Sir, is it your intention to appeal this
17 decision?

18 THE DEFENDANT: Of course.

19 THE COURT: Do you have funds
20 to hire an attorney?

21 THE DEFENDANT: No, sir.

22 THE COURT: Then the Court
23 will be appointing you -- Mr. Grunda and Mr.
24 Cleary, are you both eligible for appeals in
25 the State of Ohio in this matter as appointed

1 counsel?

2 MR. GRUNDA: Your Honor, I
3 don't believe I am on the appeal list. I know
4 I am on the trial list.

5 MR. CLEARY: Same here, your
6 Honor.

7 THE COURT: Then the Court
8 will be finding somebody on the appeal level
9 and will be appointing somebody for you as an
10 appellate attorney in this case.

11 Deputy, you may now take charge of this
12 individual. You may -- you may -- I am not
13 saying you have to, but you may allow a short
14 period of time for visitation with the family
15 after you have cleared the courtroom.

16 THE DEPUTY: Okay, your Honor.

17 THE COURT: We stand adjourned.

18 * * *

19 HEARING CONCLUDED.

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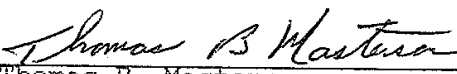
C E R T I F I C A T E

The State of Ohio,)
County of Lorain.) SS:

I, Thomas B. Masterson, Official Court Reporter of
the Court of Common Pleas, Lorain County, Ohio, do hereby
certify that this is a correct transcript of the mitigation
proceedings in this case.

I further certify that this is a complete
transcript of the testimony.

IN TESTIMONY WHEREOF, I have hereunto subscribed
my name this 19th day of September, 1996.


Thomas B. Masterson
Notary Public, State of Ohio
Lorain County Courthouse
Elyria, Ohio 44035
My Commission Expires 10-10-96