

1 THE COURT: Okay. Let's get going.
2 I think kind of where we left off yesterday was
3 Commonwealth finished closing and we were going to
4 charge and then we kind of found out new
5 information, in terms of the law, in terms of duty
6 to retreat. Because the Court determined that the
7 exhibit that the Commonwealth sought to use didn't
8 have the up-to-date law. We found out that wasn't
9 the case --

10 MR. McGOVERN: That is the case, Your
11 Honor.

12 THE COURT: -- it's not the case.
13 There is a duty to retreat. In fact, it was in the
14 very instruction --

15 MR. McGOVERN: Your Honor, I gave
16 Your Honor --

17 THE COURT: Excuse me. Don't
18 interrupt me. I'm talking. That's how it works.
19 Nobody talks around here when I talk.

20 MR. McGOVERN: Excuse me, Your Honor.

21 THE COURT: -- the very instruction
22 that was given to the Commonwealth counsel, and the
23 Court was able to do some more research.

24 A case -- Pennsylvania Supreme Court
25 2012 Commonwealth v. Sepulveda. To prevail on



1 justification defense, there must be evidence that
2 the defendant reasonably believed that he was in
3 imminent danger of death or serious bodily injury
4 and was necessary to use deadly force against the
5 victim to prevent such harm; that the defendant was
6 free from fault in provoking the difficulty with
7 which cumulating in slain -- this was a homicide
8 case -- and that the defendant did not violate any
9 duty to retreat.

10 And then it refers to Commonwealth v.
11 Samuel, a 1991 case, and Commonwealth v. Harris,
12 1997 case.

13 And then it says, Commonwealth
14 sustains it's burden of disproving such an offense
15 if it proves any of the following: That the
16 slayer -- this again is in a homicide context -- was
17 not free from fault in provoking or continuing
18 difficulty resulting in a slaying and that the
19 slayer did not reasonably believed that he was in
20 imminent danger of death or great bodily injury and
21 was necessary to kill in order to save himself.
22 That slain violated a duty to retreat and to avoid
23 danger.

24 And there's reference to Commonwealth
25 v. Burns, which is a 1980 case. And I believe --

1 where's that instruction? I think that was 501?

2 MS. HEARD: It was -- yes, 501.

3 THE COURT: Because there was a
4 little bit of a mix up when I was putting together
5 the instructions. I think 501 and 502 got merged
6 and the duty to retreat may have got deleted
7 inadvertently.

8 But there is a duty to retreat and
9 the Court determined that the castle doctrine
10 doesn't apply in that case -- in this case. The
11 Court made that finding.

12 The duty to retreat doesn't exist in
13 a case where the castle doctrine is successfully
14 revoked because there is no duty to retreat if
15 there's been justifications based on defending the
16 home, pertinents of the home or vehicle. And that's
17 the castle document.

18 I already determined that the castle
19 doctrine does not apply and there's no duty to
20 retreat in this case.

21 Now, can you find that 501? Did you
22 find it?

23 MS. HEARD: I may have misplaced it.

24 THE COURT: All right. So you know,
25 obviously I'll give defense time to respond and the

1 Commonwealth time to respond.

2 Here it is. Here's the five -- and
3 this is the suggestive criminal jury instruction
4 section 9.501.

5 Here, I'll let you read it. This is
6 your copy. You can pull out the language and, of
7 course, I'll let the defense respond.

8 MR. McGOVERN: That's the case law
9 that I gave to the Court and Commonwealth on Friday.

10 THE COURT: Right.

11 Pull that out of there. Go ahead.

12 MS. HEARD: You want me to --

13 THE COURT: Yes.

14 MS. HEARD: Yes, Your Honor.

15 Specifically, it states that the rule for
16 justification when deadly force was used if, Number
17 one, if the Commonwealth proves to you beyond a
18 reasonable doubt that the defendant used deadly
19 force, then to prove that such force was not
20 justifiable in this case. It must prove one of the
21 following elements beyond a reasonable doubt.

22 A, that the defendant did not
23 reasonably believe that he was in immediate danger
24 of serious -- excuse me -- immediate danger of death
25 or serious bodily injury at the time he used that

1 force. And his believe that it was necessary for
2 him to use deadly force to protect himself was
3 unreasonable.

4 Put another way, the Commonwealth
5 must prove either that the defendant did not,
6 actually, believe that he was in danger of death or
7 serious bodily injury such that he needed to use
8 deadly force to defend himself at that moment or
9 that while the defendant, actually, believed he
10 needed to use such force, his belief was
11 unreasonable in light of all the circumstances known
12 to him. That's number one.

13 Then, Number two, that in the same
14 encounter with the victim, the defendant engaged in
15 conduct that demonstrated his intent to cause death
16 or serious bodily injury; and two, by that conduct,
17 he provoked the use of force against him.

18 The conduct by the defendant must be
19 of such a nature that it shows his conscious object
20 to cause death or serious bodily injury to the
21 alleged victim.

22 Conduct that is not in such a manner
23 does not constitute the kind of provocation which
24 the Commonwealth may rely to prove its case.

25 If you find beyond a reasonable doubt

1 that the defendants acts were of such a nature, you
2 must ask whether it provoked the similar use of
3 force against him.

4 In this assessment, the conduct by
5 the defendant may be the initial provocation of the
6 fight or it may be an act that continues it or
7 escalates it.

(8 However, even if the defendant was
9 the initial aggressor to involving the use of deadly
10 force, if he thereafter withdraws in good faith,
11 making it clear that his intentions are further
12 peaceable and the alleged victim pursues him and
13 renews the fight, he does not forfeit his right to
(14 claim justifiable self-defense.

15 If, on the other hand, you find
16 beyond a reasonable doubt that the defendant
17 provoked the use of force against him by engaging in
18 context that he intended to cause death or serious
19 bodily injury to the alleged victim, you may find
20 that his conduct was not justified.

21 And the third thing, that the
22 defendant knew that he could avoid the necessity of
23 using deadly force with complete safety by; number
24 one, retreating, but he or she failed to do so.

25 However, the defendant is not

1 obligated to retreat from his own dwelling; that is,
2 any building or structure or moveable or temporary
3 or portion thereof including a doorway that is in
4 place, for the time being, of the defendant's home
5 or place of lodging, unless he's the initial
6 aggressor of the incident.

7 Or however the defendant is not
8 obligated to retreat by his or her place of work,
9 unless he is attacked there by someone the defendant
10 knows who also works at the same place.

11 Or surrendering possession of a thing
12 to a person asserting a claim of right and failing
13 to do so, or complying with the demand that he
14 abstained from any action he has no duty to make and
15 failing to do so.

16 THE COURT: All right. So
17 accordingly --

18 MS. HEARD: So accordingly, Your
19 Honor, there is a duty to retreat, as I was
20 attempting to argue in my closing.

21 THE COURT: All right.

22 MR. McGOVERN: Your Honor, that was
23 the old law, that's why it's wrong, and that's why
24 the new law is what I'm going to point out to the
25 Court, and which I'm going to ask the Court to give

1 to this jury, because it's the law of the
2 Commonwealth of Pennsylvania in April of 2015. It's
3 been the law of the Commonwealth of Pennsylvania
4 since August of 2011.

5 THE COURT: That's the castle
6 doctrine.

7 MR. McGOVERN: That's the
8 stand-own-ground law.

9 Your Honor, for years, Pennsylvania
10 has had the castle doctrine, which was recently
11 amended around 2011 to include stand-your-ground.

12 Many know the castle doctrine, use of
13 deadly force to defend your home against an
14 intruder, but in 2011, Governor Tom Corbett expanded
15 version of this including a stand-your-ground
16 provision.

17 Your Honor, I'm going to ask that
18 this packet of documents, which I provided to the
19 Court this morning be marked as Defense Exhibit --
20 whatever the number is -- as part of the record.
21 Because if the Court, I submit, does not charge the
22 jury these instructions, I'm going to ask Your Honor
23 for a mistrial.

24 Your Honor, the reason I point out
25 the stand-your-ground law is --

1 THE COURT: D-20, I believe.

2 MR. McGOVERN: -- because it's the
3 law of our state. And Your Honor -- and I invite
4 the Court to consult with Judge Minehart, Judge
5 Ehrlich, Judge Sheila Woods-Skipper before charging
6 this jury because, I submit, Your Honor, after all
7 the hard work that's been going into this, if these
8 instructions aren't given to this jury, I think
9 we're going to be back here trying again, unless
10 this jury has the wisdom to acquit on all charges.

11 Your Honor, under the new law, a
12 person in any lawful place outside his home --
13 repeat -- "outside his home." Under the law has no
14 duty to retreat and has the right to stand his
15 ground and use force, including deadly force, if he
16 believes it is immediately necessary to do so, to
17 protect himself against death, serious bodily
18 injury, kidnapping, sexual intercourse by force or
19 threat, 18 Consolidated Statute 505 (b)23, which is
20 included in that packet for Your Honor which I
21 provided to you and your staff this morning.

22 I, actually, went to your chambers
23 earlier this morning before 9 o'clock, but I was
24 directed to provide it to you in the courtroom,
25 which I did.

1 THE COURT: Clearly, not appropriate.

2 MR. McGOVERN: Well, Your Honor, be
3 that as it may, this is such a critical issue. This
4 is the heart of the defense, is the use of deadly
5 force and self-defense. It could not be more
6 serious for both sides, but I ask that the fair law
7 of this land be given to this jury.

8 I referenced, which I provided the
9 Court 18 Pennsylvania Consolidated Statute 505, use
10 of force in self-protection, and I direct the
11 Court's attention to section -- on page 2, 2.3,
12 which I tabbed and highlighted, and I'll read that
13 verbatim.

14 It says, 2.3, An actor who is not
15 engaged in a criminal activity, who is not in a
16 legal possession of a firearm and who is attacked in
17 any place where the actor would have a duty to
18 retreat, under paragraph two, sub two, has no duty
19 to retreat and has the right to stand his ground and
20 use force, including deadly force, if the actor has
21 a right to be in the place he was attack; two, the
22 actor believes it is immediately necessary to do so
23 to protect himself against death, serious bodily
24 injury, kidnapping or sexual intercourse by force or
25 threat; and the person against whom the force is

1 used, displays, or otherwise uses a firearm or
2 replica of a firearm, as defined in 42 Section 9712;
3 or any other weapon readily or apparently capable of
4 lethal use.

5 That includes other case law, case
6 Louis Soto, which I provided to the Court earlier,
7 that fist and feet can also be deadly weapons,
8 especially with someone who is skilled at either
9 boxing, jiu-jitsu or the martial arts.

10 Your Honor, I submit that 18
11 Pennsylvania Section 505 (b) 23 and Pennsylvania
12 standard jury instruction 9.501A, page three,
13 Section 3, which I also provided to the Court and is
14 part of this exhibit and tabbed -- make it clear
15 that there is no duty to retreat when an actor,
16 quote, has a right to be in a place where he was
17 attacked. I've also supplied a copy of the news
18 article that discusses the specifics of that law.

19 THE COURT: Let me ask you one
20 question.

21 MR. McGOVERN: Okay.

22 THE COURT: The date of last revision
23 May 2012, and this is Section 9.501A, 2012. You're
24 saying this is the most up-to-date jury instruction
25 concerning justification? Is that what you're

1 saying?

2 MR. McGOVERN: That is correct, Your
3 Honor. Yes, Your Honor. That's the law right now
4 today.

5 THE COURT: All right.

6 MR. McGOVERN: And if I could pick up
7 and respond to the Commonwealth. I provided plain
8 copies of these documents, Your Honor. Commonwealth
9 versus Williams is a case I supplied also; that may
10 be helpful as well. That's 91 A.3rd 240
11 Pennsylvania Superior Court 2014.

12 In Williams, the Superior Court
13 discussed whether the defendant had a duty to
14 retreat. In discussion in the duty to retreat,
15 there's a footnote which states that because the
16 shooting occurred prior to August 29, 2011,
17 Pennsylvania stand-your-own-ground law did not
18 apply. But by placing this footnote, the Court
19 clearly demonstrated, there would be no duty to
20 retreat under the current stand your own ground law.

21 THE COURT: All right. Because the
22 cases we looked at, they all had the vehicles and
23 home.

24 But when you -- do you have this
25 packet?

1 MS. HEARD: No. I'm sorry. What is
2 it?

3 THE COURT: Did you give her the
4 packet?

5 MR. McGOVERN: Your Honor, I have an
6 extra -- I have provided the law to the Commonwealth
7 whenever I can, even when it's used against me in
8 correctly, as a misstatement of the law.

9 THE COURT: All right. Let's look at
10 some of this language on this front page here of the
11 Section 9.501A, 2012. The date of last revision
12 made 21st.

13 It goes on -- and I'm in the one,
14 two --

15 MS. HEARD: Where are you, Your
16 Honor?

17 MR. FEINMAN: Your Honor --

18 THE COURT: -- see the Section
19 9.501A, which he's saying, date of last revision May
20 2012.

21 MR. FEINMAN: Which paragraph are we
22 referring to?

23 THE COURT: 2A -- in making this
24 determination. Do you see?

25 MR. FEINMAN: Yes, yes. Go ahead.

1 THE COURT: In making this
2 determination, you must understand that the law
3 presumes the defendant to be reasonably believed
4 that deadly force is immediately necessary to
5 protect themselves against death, serious bodily
6 injury kidnapping, or sexual intercourse compelled
7 by force or threat if both of the following
8 conditions exist.

9 The person against whom the force is
10 used, is in the process of unlawfully and forcefully
11 entering, or has unlawfully and forcefully entered
12 in and is present within a dwelling, residence, or
13 occupied vehicle; or the person against whom the
14 force is used or is attempting to unlawfully and
15 forcefully remove another against that other
16 person's will from the dwelling, residence, or
17 occupied vehicle.

18 And the defendant knows or is reason
19 to believe that the unlawful and forceful entry or
20 act is occurring or has occurred.

21 Do you see that?

22 MS. HEARD: Yes.

23 THE COURT: So if -- if both of the
24 conditions exist, and the cases that you've provided
25 and looked at, somebody was either being pulled from

1 a vehicle, I believe, or involved a residence.
2 There was no case that I have that you provided in
3 which someone was out on a public street. It's
4 either in a vehicle, I think it was.

5 MR. McGOVERN: Your Honor, the
6 standard jury instruction, which is part of the
7 exhibit, which I provided you today --

8 THE COURT: I just read from it.

9 MR. McGOVERN: -- I'm asking you, you
10 looked at 9.501A, Your Honor.

11 THE COURT: Right.

12 MR. McGOVERN: Your Honor, if you
13 would look -- I ask the Court to look at page 3 --
14 and by the way, I printed these out from Westlaw
15 last night at 9:32 p.m. So it couldn't be more up
16 to date, Your Honor.

17 If you would look at page 3 of that
18 standard charge, Your Honor. This, I submit, is the
19 heart of the matter.

20 It says -- on page 3 sub 3, which is
21 about third of the way up from the bottom. I have
22 it highlighted there, I believe, in your packet
23 that's before you.

24 It says, A defendant is not obligated
25 to retreat from the place where he or she is

1 attacked if; A, the defendant has a right to be in
2 that place, such as, here, a city street; B, the
3 defendant is not at that time engaged in criminal
4 activity, means conduct that is a misdemeanor or
5 felony that is not justifiable under the crimes
6 code. And is related to the confrontation between
7 an actor and the person against whom the force is
8 used; C, the defendant is not, at that time,
9 illegally in possession of firearm. Clearly, not
10 here; D, the defendant immediately believed that it
11 was necessary for him or her to protect himself or
12 herself against death or serious bodily injury or
13 kidnapping or sexual intercourse compelled by force
14 or threat; and E, the person against whom the
15 defendant uses force displays or otherwise use of a
16 firearm or any weapon readily or apparently capable
17 of lethal use.

18 There's nothing here, Your Honor,
19 about a house or car. If the Court is referring --

20 THE COURT: Well, the case that you
21 presented, the person was being pulled out of the
22 car.

23 MR. MCGOVERN: -- all right. Your
24 Honor, this is law. I'm asking -- this is the --

25 THE COURT: I know. But did you

1 hear -- the case that you gave me --

2 MR. McGOVERN: I apologize if I
3 mislead with that case.

4 But this clearly indicates it has
5 nothing to do with a house or car. Nothing to do.
6 A public street or public highway is absolutely
7 permissible, and there's no duty to retreat.

8 So the present law in Pennsylvania, I
9 submit, is that there is no duty to retreat. Stand
10 own ground is applicable to any situation after
11 August 29, 2011, and to give other instructions to
12 this jury that include duty to retreat or to not
13 give stand-own-ground law is irreversible error.

14 MR. FEINMAN: Your Honor, if I may.
15 I'll incorporate all my arguments, all
16 Mr. McGovern's arguments into mine. I would point
17 out to Your Honor -- I'll bring you to the attention
18 under 501A, subparagraph C, which is what
19 Mr. McGovern is referencing under C little three
20 I's.

21 The defendant is not obligated to
22 retreat from the place where he or she was attack
23 if; A, the defendant has the right to be in that
24 place. There is absolutely no reference that that
25 place is a home, a car. All it says is that the

1 defendant has a right to be in that place. Public
2 street is a place. The defendants have a right to
3 be in that place.

4 THE COURT: I hear that, but it's
5 interesting that the only case law that I have been
6 present with was someone pulled from a car.

7 MR. FEINMAN: Despite that, there's
8 the note that clearly says, There is no duty to
9 retreat in a public place.

10 THE COURT: I see it.

11 MR. FEINMAN: The fact that that case
12 happened to be an instance where there is a vehicle
13 involved. They, specifically, referenced the law
14 saying a place where they're lawfully allowed.

15 MR. McGOVERN: Your Honor, if I may.
16 I mentioned Soto. I ask that this be included in
17 the exhibit. I gave a copy to the Commonwealth, my
18 cocounsel.

19 THE COURT: Okay.

20 MR. McGOVERN: This is Commonwealth
21 versus Leonard Soto, and it's 441 Pennsylvania
22 Superior Court 241. It's a 1995 decision.

23 THE COURT: So that was pre all of
24 this. Okay.

25 MR. McGOVERN: Yes, Your Honor, but

1 it's still good law, and I invite the Court or the
2 Commonwealth to find contrary authority. I'm going
3 to pass this up and ask that it be included in the
4 exhibit.

5 It states, Your Honor, Evidence
6 indicating the decedent was unarmed does not require
7 a pro se finding of unreasonable belief. An
8 individual does not need a weapon to inflict death
9 or serious bodily injury upon another person. There
10 are countless ways to use one's natural weapons,
11 such as hands and feet, to seriously -- to really
12 injure or kill.

13 Thus, it may be entirely reasonable
14 to fear death or serious bodily injury at the hands
15 of an unarmed attacker.

16 Upon the circumstances, it may also
17 be entirely reasonable for the defendant to believe
18 that he must use deadly force to save himself from
19 such danger.

20 THE COURT: All right. Commonwealth.

21 MS. HEARD: Yes, Your Honor. To
22 respond and I'm not going to belabor the point, if
23 you look at the use of force in self-protection
24 Section 505, and if you go to the section where it
25 says, Limitation on justifying --

1 THE COURT: What page are you?

2 MS. HEARD: -- first page, Your
3 Honor. It's Section B. It says, Limitations on
4 justifying necessity of use of force. It says, the
5 use of force --

6 THE COURT: Okay. I'm not seeing
7 where you are.

8 MS. HEARD: -- I apologize, Your
9 Honor.

10 THE COURT: You're on page 1?

11 MS. HEARD: Yes, I'm on page. It
12 should "B" in bold. It says, Limitation in
13 justifying necessity of use of force. The first "A"
14 is use of force justifiable for the protection of
15 the person.

16 THE COURT: Are you on -- oh, you're
17 on 505?

18 MS. HEARD: Yes.

19 THE COURT: All right. Okay. I see
20 the header. Go ahead.

21 MS. HEARD: Yes, Your Honor. The
22 first -- limitation is -- it says, Number one, the
23 use of force is not justifiable under this section
24 to resist an arrest which the actor knows is being
25 made by the peace officer, although the arrest is

1 unlawful, or to resist force used by the occupier or
2 possessor of property or by another person on his
3 behalf where the actor knows that the person using
4 the force is doing so under a claim of right to
5 protect property, except that this limitation shall
6 not apply and -- Your Honor, I'll skip that part
7 because I'm getting to the relevant part.

8 Number 2, the use of deadly force is
9 not justifiable under this section unless the actor
10 believes that such force is necessary to protect
11 himself from death, serious bodily injury,
12 kidnapping or sexual intercourse compelled by force
13 or threat.

14 Nor is it justifiable if, number one,
15 the actor with the intent of causing death or
16 serious bodily injury provoked the use of force
17 against himself and same encounter; or two, the
18 actor knows that he can avoid the necessity of using
19 such force by completely -- with complete safety by
20 retreating, except that the actor is not obliged to
21 retreat from his dwelling or place of work, unless
22 he was the initial aggressor or is assailed in his
23 place of work by another person whose place of work
24 the actor knows it be.

25 THE COURT: The duty to retreat is

1 still there.

2 MS. HEARD: Your Honor, you have to
3 read --

4 MR. MCGOVERN: Your Honor, that's the
5 old law.

6 THE COURT: Don't interrupt her.
7 This is not the old law. This is
8 505. Isn't that the one that --

9 MS. HEARD: Yes, what counsel --

10 THE COURT: Well, I think what he's
11 pointing to is revised May 2012.

12 MS. HEARD: Correct. But you have to
13 read this in completion. You can't take bits and
14 pieces of the castle doctrine or of something
15 referring to something, dealing with protecting
16 yourself in your property or your car and then
17 applying it. You have to view everything in
18 totality.

19 THE COURT: But I think what the
20 argument in defense is, it doesn't have to be the
21 castle doctrine. It doesn't have to be the car or
22 the house.

23 MS. HEARD: That is --

24 MR. MCGOVERN: It's the
25 stand-own-ground law. That's the law.

1 THE COURT: Will you please stop
2 interrupting?

3 MS. HEARD: That is their argument.

4 THE COURT: That's what he's saying.

5 MS. HEARD: That's what he's saying.

6 But what I'm saying, Your Honor, is what they're
7 doing is they're taking piecemeal pieces of the
8 castle doctrine and piecemeal pieces of 505 that,
9 you know, would be beneficial to their case and not
10 taking in its entirety. You have to take it in its
11 entirety, just like Your Honor has to take the
12 entirety of the self-defense doctrine of 9.501. You
13 have to take that in the entirety.

14 You don't get to just pick and choose
15 pieces when it suits you. And that's what they're
16 attempting to doing, because every time you refer
17 back to that situation, it starts talking about a
18 dwelling, a residence, or occupied vehicle.

19 THE COURT: Except for that section
20 that was...

21 MR. McGOVERN: The new law that
22 changed all that.

23 MR. FEINMAN: May I, Your Honor?

24 MS. HEARD: No. But Your Honor, that
25 is apart of it. That is apart of it. You see what

1 I'm saying? They're taking a section saying 2.1,
2 2.2, and 2.3, but neglecting to mention what's
3 already under -- that comes under that. That's what
4 happening here. You have to --

5 MR. FEINMAN: Your Honor, if I may?

6 MS. HEARD: -- read that -- I'm
7 sorry. I'm still talking.

8 MR. FEINMAN: Your Honor, if I may
9 direct the Court's attention --

10 MS. HEARD: I'm still talking.

11 MR. FEINMAN: My apologies.

12 THE COURT: Stop interrupting her.
13 Go ahead.

14 MS. HEARD: Yes, Your Honor.

15 You have to take that in its
16 entirety. It's 2. Then it's 2.1. Then it's 2.2.
17 Then it's 2.3. You can't go to 2.3 without getting
18 to 2 first. And what they're attempting to do is go
19 straight to 2.3 and ignoring 2.

20 THE COURT: Well, even in the 9.501A,
21 which is the newly revised instruction. In the
22 front there it has that part there that I read that
23 refers to the house and car.

24 MS. HEARD: All of it does.

25 THE COURT: But then you go to the

1 section on page 3 that says -- so it's kind of in
2 the front. It says -- but it's the same -- it's
3 supposed to be the revised section.

4 MS. HEARD: But it still talks about
5 the dwelling, the residence, the house, because that
6 is in section 2. That is in section 2. Then it
7 goes to 2.1.

8 THE COURT: Yeah; because it says --
9 even in the section that defense has read from --
10 and I'm at this page 3. All right. Exceptions to
11 duty to retreat. Defendants are not obligated to
12 retreat from a dwelling, unless he was the initial
13 aggressor; not obligated to retreat from place of
14 work, unless he was initial aggressor or attack at
15 his or her place of work by another person the actor
16 knows to be.

17 But then this 3 -- triple "I"
18 Section, defendant is not obligated to retreat from
19 the place where he or she is attacked if the
20 defendant has a right to be in that place.

21 So I guess the argument is 3A, B, C,
22 D, E are new exceptions, I guess, you can say, to
23 the duty to retreat.

24 MR. MCGOVERN: Your Honor, that's
25 exactly it. If I could just say one thing. It will

1 take me 30 seconds to say this.

2 THE COURT: And I think that's what
3 the argument is. I'm not saying that I'm accepting.

4 MS. HEARD: I understand what the
5 argument is.

6 THE COURT: That's what -- because
7 all through -- but then in the front of the
8 section -- this is same section where everything is
9 supposed to be new -- it refers to the laws we know,
10 the unlawful entering the house, the car, the
11 dwelling.

12 Then you have this -- triple "I" and
13 then A, B, C, D, E. And it's under, However there's
14 certain exceptions. So the question is and/or. I
15 guess that's what has to be considered.

16 I think the best thing to do rather
17 than batting back and forth. Why don't we take a
18 break here and look at it before we go further.

19 MR. McGOVERN: Your Honor, if I could
20 just have one 30-second response. What I want to
21 say is this, the commentary, which is in the Court's
22 packet, which is the last part of the packet. And I
23 want to put this on the record.

24 Under the new law, a person in any
25 lawful place that's under the new law, any person in

1 any lawful place outside his home, quote, has no
2 duty to retreat and has the right to stand his
3 ground and use force, including deadly force if he
4 believes it is immediately necessary to do so, to
5 protect himself against death, serious bodily
6 injury, kidnapping or sexual intercourse by force or
7 threat. 18 Pennsylvania consolidated statutes 505
8 (b) 2.3.

9 Commentary is accurate when it says,
10 prosecutors don't like the law, but it's the law of
11 Pennsylvania. That's as simple as that.

12 THE COURT: We're not -- no more.

13 MR. FEINMAN: Your Honor, if I may --

14 THE COURT: I'm going to take it
15 under consideration.

16 MR. FEINMAN: I understand, but if I
17 may, Your Honor. I've had two minutes where as a
18 half an hour discussion between other counsel, and I
19 want to point out one important factor.

20 Your Honor was right on point where
21 you were just referencing where it has single,
22 double, triple "I" there. Because the legislature
23 clearly determined that it needed to specify, and it
24 did.

25 In fact, under the first "I," on page

1 3 where it says, However, there are certain
2 exceptions to the duty to retreat. And I quote,
3 "I", a defendant is not obligated to retreat from
4 his or her dwelling unless he or she was the initial
5 aggressor. They, specifically, identify his or her
6 dwelling right in that one.

7 And then they said there was another
8 exception. The second section is double "I."

9 A defendant is not obligated to
10 retreat from his or her place of work unless either
11 he or she was the initial aggressor or is attacked
12 in his or her place of work by another whose place
13 of work the actor knows it to be. That's the
14 second.

15 They said, that's not enough. They
16 went on and added a third one and the third one they
17 said -- triple "I." Defendant is not obligated to
18 retreat from a place where he or she is attacked
19 if -- and now, they set the criteria and "A",
20 specifically, says if the defendant has a right to
21 be in that place.

22 The legislature saw fit to
23 distinguish between a home, a place of work, or any
24 other place that they're lawfully permitted to be.

25 And that's what we have here. They

1 were lawfully on city street. They're permitted to
2 be there.

3 Consequently, this section, clearly,
4 under the new statutory language. Requires a
5 charge. There's no duty to retreat.

6 Thank you.

7 MS. HEARD: I don't know if you want
8 me to say anything or...?

9 THE COURT: I think we'll just take a
10 brief break. We'll take a look at it and come back.

11 (Whereupon, there was a brief recess
12 in the proceeding.)

13 THE COURT: All right. After
14 exhausted research as well as consultation with
15 homicide judges, 18 had asserted the language --
16 it's not exactly accurate that there is no duty to
17 retreat, but there are added carve outs from the
18 duty to retreat under 3 Triple "I", which we had
19 read.

20 So what I did was include those. You
21 see on 18, it talks about a claim of right and then
22 you see, However there's exception to duty to
23 retreat, not obligated to retreat from dwelling, not
24 obligated to retreat from place of work.

25 And then the new language, Not

1 obligated to retreat from place where he's attacked
2 or assist in other duty, so defendants rather be in
3 that place, not engaged in criminal activity,
4 illegally possession of firearm protect against
5 death or serious bodily injury or person against
6 whom defendant uses force displays otherwise or uses
7 a firearm or any weapon readily or apparently
8 capable of lethal force.

9 We just incorporated that new
10 language. And it's my understanding that is the law
11 that is a carve out -- that's an additional carve
12 out of the duty to retreat in addition to the
13 vehicle, the home, pertinents of the home, and work.
14 It's not to say -- it's for the jury to decide,
15 however, if the defendants acted reasonably, which
16 was argued to the jury.

17 That doesn't go out of the window,
18 but the stating of the law is that that section has
19 to be included in -- that section was intended
20 apparently as further carve out of the duty to
21 retreat.

22 MR. FEINMAN: Your Honor, if I may, I
23 looked at the language, and I would just point out
24 to Your Honor, under E, the very last line on page
25 on page 18. It references, Apparently capable of

1 legal (sic) force. I think it should not say legal
2 force. It should say legal use. There's a subtle
3 distinction between the two words.

4 THE COURT: Can you pull the statute,
5 please?

6 MR. FEINMAN: I'm going by what's
7 right there. It says, By legal use.

8 THE COURT: Legal force?

9 MR. McGOVERN: Lethal.

10 MR. FEINMAN: Lethal force and
11 instead it should say lethal use.

12 THE COURT: Capable of lethal use of
13 force?

14 MR. FEINMAN: No, no. The
15 statutory -- the charge itself says lethal use
16 but -- opposed to lethal force.

17 THE COURT: Where's that section --

18 MR. McGOVERN: Your Honor, that's
19 505 --

20 THE COURT: Not this. The new part
21 that they --

22 MR. FEINMAN: That's it there, Your
23 Honor. That's what I was referencing earlier.

24 THE COURT: Yeah, can you hand me
25 the --

1 MR. McGOVERN: 505, use of force.

2 That's page --

3 MR. FEINMAN: That's a copy. That's
4 a copy of it, Your Honor. And it's just that very
5 last --

6 THE COURT: Oh, instead of force, it
7 should be use?

8 MR. FEINMAN: Yes.

9 THE COURT: Oh, oh.

10 MR. FEINMAN: It's a typo.

11 THE COURT: It's a typo. Okay. All
12 right.

13 MR. FEINMAN: That's the only reason
14 why I brought that to the Court's attention.

15 THE COURT: Okay. So you can just
16 correct that.

17 MR. FEINMAN: And I did that here.

18 THE COURT: So language will indicate
19 lethal use.

20 And my understanding is that is the
21 state law that it is now in Pennsylvania, but that's
22 not -- that doesn't exempt unreasonableness and
23 that's already been argued so I think we're up to
24 date in terms of instructions at this point. Okay.
25 Has everybody reviewed that?

1 MR. McGOVERN: Yes, Your Honor.

2 THE COURT: And the correction has
3 been made to force -- use -- excuse me.

4 MR. McGOVERN: Your Honor, may I move
5 to a different objection?

6 THE COURT: Sure.

7 MR. McGOVERN: Your Honor, I'm asking
8 that the Commonwealth's poster board that was placed
9 before the jury during closing argument be marked as
10 an exhibit and be maintained by the Court for trial
11 record.

12 Your Honor, the reason being --
13 first, I would ask that it be marked as an exhibit,
14 Court exhibit, Commonwealth exhibit, defense,
15 however.

16 Your Honor, this -- I believe the
17 record is going to reflect that this poster board,
18 there's two sides. This side here was, I think,
19 decided was placed up. Headline is "deadly force"
20 in large black printed letters.

21 I submit, Your Honor, this board that
22 was placed before the jury was a complete
23 misstatement of the law. Not only was it erroneous
24 and misleading, but it was contrary to Pennsylvania
25 law. And could -- and goes to the heart of the

1 self-defense and use of deadly force --

2 THE COURT: All right. I understand.

3 MR. McGOVERN: And what I'm going to
4 say is, Your Honor --

5 THE COURT: I understand.

6 Mr. McGovern, we can't go on all day. I understand.

7 MR. McGOVERN: Okay. Very good.

8 -- this was up before the jury. I
9 observed the jury taking notes. And Your Honor, I'm
10 asking the Court to issue a cautionary instruction
11 to the jury to disregard any of the Commonwealth's
12 argument with regard to use of deadly force and
13 self-defense in its closing. And I'm asking this to
14 be maintained as part of the record.

15 MS. HEARD: First of all, they can't
16 take notes during closing. Second of all, the board
17 should have been allowed to be left up there in the
18 first place. There is nothing wrong with that
19 board. That is, essentially, an abbreviation that
20 is, essentially, my argument with respect to what
21 that law stands for.

22 Counsel's issue with it was the duty
23 to retreat. That's why we stopped my whole closing
24 in the middle of it and said, there's no duty
25 retreat. She's misstating the law, and I wasn't. I

1 was not.

2 There's nothing wrong with that
3 board, so there should not be any type of -- if you
4 want to mark it as a exhibit, that's fine. But
5 quite frankly, it had to be put down because counsel
6 was incorrect. And quite frankly, Your Honor made a
7 mistake. And so, Your Honor, there's nothing wrong
8 with that board.

9 MR. MCGOVERN: Your Honor, if I may
10 respond. Your Honor, that board is irreversible
11 error --

12 THE COURT: Mr. McGovern, I got it.
13 I understand.

14 MR. MCGOVERN: -- and I ask the Court
15 to give a cautionary instruction.

16 THE COURT: I understand what you're
17 saying.

18 MR. MCGOVERN: I'm asking for --

19 THE COURT: Do you wish to add
20 anything before I make my ruling on this?

21 MR. FEINMAN: Your Honor, I'm joining
22 fully in the argument, and if I may, Your Honor, the
23 front part of the board reflects, Deadly force and
24 then it goes on in bold black ink talking about one,
25 two, and three. And in bold, three says, Duty to

1 retreat. At the bottom, it's justifiable only if
2 all and all -- and only --

3 THE COURT: I can read, Mr. Feinman.
4 I can read.

5 MR. FEINMAN: I understand --

6 THE COURT: I can read.

7 MR. FEINMAN: -- excuse me, Your
8 Honor. I understand the Court can read. I'm making
9 a record because when you read the transcript, it
10 won't say it.

11 THE COURT: All right. Justified if
12 only all three are met. I got it.

13 MR. FEINMAN: And the words, "Only,"
14 "if," "all" are in three bold underlines and then it
15 says, three are met, they are double underlined and
16 double explanation mark. Your Honor, so the record
17 is accurate. That's why I state this.

18 THE COURT: All right. I understand.

19 Let me just clarify. The
20 Pennsylvania law did not abolish the duty to
21 retreat. That's not what the new section does.
22 What it does, there still is a duty to retreat in
23 Pennsylvania. So it's not accurate to say that
24 there's no duty to retreat. That's not what the new
25 law did. In fact, I read from it earlier today.

1 There's a 2012 Supreme Court, which goes into duty
2 to retreat. There's a duty to retreat.

3 What the new law did was, add further
4 instructions to the duty to retreat. It did not
5 abolish the duty to retreat. So that's very
6 different. It's not accurate to say --
7 Mr. McGovern, no. We got a jury back there. I'm
8 not going to go all day with you. If you want to
9 preserve your record, so be it. But the case must
10 go on.

11 MR. MCGOVERN: I ask for a cautionary
12 instruction.

13 THE COURT: I'm not going to give a
14 cautionary instruction.

15 MR. MCGOVERN: I move for a mistrial.

16 THE COURT: Denied.

17 MR. FEINMAN: I join in the motion.

18 THE COURT: Denied.

19 The duty to retreat -- the law is
20 clear. The duty to retreat exists. It was not
21 abolished in Pennsylvania. That is not what the new
22 law did.

23 The castle doctrine didn't abolish
24 the duty to retreat, which has been a law for a
25 while in the Pennsylvania, the new -- if you want to

1 use the colloquial stand-your-ground law, if you
2 want to use that.

3 2012 did not abolish the duty to
4 retreat. What it did do was, add further exceptions
5 to the duty to retreat. That's very different. So
6 it's perfectly okay for her to put there, Duty to
7 retreat, because it still exists. And it's still
8 for the jury to decide factually whether or not, you
9 know, based on the facts that the -- whether the
10 defendants acted reasonable. And they qualify for
11 the exception. That's still in the purview of the
12 jury to figure that all out.

13 It did not abolish reasonableness of
14 a defendant's belief that concerning self-defense.
15 It did not abolish the duty to retreat.

16 So I am not going to give a
17 cautionary instruction. I'm not going to do that.
18 It's not necessary, because it's still the law in
19 Pennsylvania.

20 But what I did do, based on further
21 research is add the appropriate exemption language
22 that, you know, further goes into what the
23 exceptions to the duty to retreat are and that's all
24 what the new law did. Just added further laundry
25 list, if you will, to exceptions to the duty to

1 retreat. It did not abolish duty to retreat. It
2 did not.

3 MR. McGOVERN: Well, I take exception
4 to the Court's ruling and I move for mistrial.

5 THE COURT: Denied.

6 MR. McGOVERN: I asked that -- what
7 exhibit is this marked?

8 THE COURT: I don't know if it's
9 20 -- if you want to mark --

10 MR. McGOVERN: I ask that it be
11 marked and I ask that court personnel take it into
12 custody and make it part of the record. Reserve it.

13 THE COURT: Well, if it's your
14 record, if it's your exhibit, then that's the proper
15 things to do with exhibits. That's your exhibit.
16 I'm not giving limiting instruction and I'm not
17 granting any motion for mistrial.

18 MR. McGOVERN: Your Honor, my next
19 point would be on your charge on attempt murder,
20 Your Honor, the proposed instruction on attempt
21 murder, Your Honor. I ask that the Court give the
22 standard jury instruction on murder and attempt. I
23 submit, Your Honor, that the -- pretty much every
24 Common Pleas court judge, especially homicide unit,
25 when they have a murder charge, they give the

1 standard jury instruction on murder, which is --
2 talks about malice, hardness of heart, the state of
3 mind because --

4 THE COURT: Oh, the standard --

5 MR. McGOVERN: -- murder charge.

6 And Your Honor, I submit that your
7 charges, proposed charges, do not -- are not
8 standard jury instruction language and they're
9 paraphrases. They paraphrase them.

10 THE COURT: It's verbatim.

11 MR. McGOVERN: Okay. It isn't for
12 murder.

13 THE COURT: Well, murder isn't in
14 here. So you're saying add the instruction for
15 murder? All right.

16 MR. McGOVERN: Criminal attempt and
17 the underlying attempt is murder. So the jury must
18 receive the standard jury instruction as to murder
19 and the elements of murder; otherwise, they're not
20 being advised on what the charges are against Lonnie
21 and Gregory Spector.

22 THE COURT: Well, that makes sense.

23 MR. McGOVERN: It's Black Letter Law,
24 Your Honor. So I submit that it needs to be added.

25 And also, Your Honor, I'm requesting

1 a cautionary instruction with regard to -- I know
2 you had a stipulation with regard to Olena Sirko;
3 however, Your Honor, I'm asking the Court to
4 instruct the jury that Olena Sirko, when the
5 Commonwealth said that she never -- that she
6 testified at the preliminary hearing, I'm going to
7 kill you, that Olena Sirko never testified that at
8 the preliminary hearing or trial.

9 THE COURT: I put that in the
10 stipulation.

11 MR. McGOVERN: Well, it says the
12 preliminary hearing, but it leads begging the
13 question of whether he ever testified to it.

14 THE COURT: Well, no. You're going
15 beyond what was said. What the misstatement was.
16 The misstatement had to do with the preliminary
17 hearing.

18 MR. McGOVERN: And my final point,
19 Your Honor, there is no stipulation with regard --
20 which we agreed to -- with regard to the medical
21 records of Gregory Spector from 7/23, 7/24, 7/25.

22 THE COURT: Well, it was never...

23 MR. McGOVERN: Yes. They were added
24 to the list of stipulations which we had copied --
25 Eddie was kind enough to copy it, and it didn't make

1 it to the final cut.

2 THE COURT: It's not in there?

3 MR. FEINMAN: Your Honor, while
4 that's be looking at, if I may address, and the
5 Court's attention to stipulations of fact on page
6 10, number two, where it references Olena Sirko did
7 not testify at the preliminary hearing on October
8 11, 2013 that Sardor Bolyganov said please don't
9 shoot me. I believe that's what the Court is
10 referencing that you've incorporated and covered
11 that; however, I believe that it should say after
12 that -- it says, And that Defendant Gregory Spector.
13 It should say, Or that Defendant Gregory Spector
14 said I'm going to kill you. I think that would be
15 the appropriate verbiage there.

16 THE COURT: It could be --

17 MS. HEARD: I don't know.

18 THE COURT: All right. So the
19 medical records language, that didn't get in there?
20 So we'll add that language as nine.

21 MR. McGOVERN: Thank you, Your Honor.

22 Is there anything else?

23 MR. McGOVERN: No thank you, Judge.

24 MR. FEINMAN: Your Honor, if I could
25 just have a moment?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- - -

(Whereupon, a document was marked,
for identification purposes, Exhibit
D-20.)

- - -

MR. FEINMAN: And Your Honor, just
for Your Honor's notes on page 5, I know we
addressed it yesterday, but it still seemed to pick
up the typographical error. The fifth line down it
starts with, Remember that the two or -- I believe
it should say, Two or more, as opposed to, Two or
are.

THE COURT: Which section are you?

MR. FEINMAN: Conflicting testimony
line number 5, it starts off with capital, Remember
that two -- I believe it should say, More instead
of, Are. I know the other typographic had been
corrected, but I didn't see this one being correct
and I just wanted to alert you.

THE COURT: That's just picky.

MR. FEINMAN: Well -- just so it's
clear when it's being read.

THE COURT: Yeah, I always say...
Anything substantive?

MR. FEINMAN: No.

1 THE COURT: Standard attempted
2 charge. When you go to homicide, criminal homicide,
3 and print that out, you can't just attach that to
4 this, because it depends on the grading of the
5 homicide, the level of the homicide.

6 This is what the language here is the
7 attempted murder charge. The step, the act
8 constitutes a substantial step toward the commission
9 of the killing of the defendant intended to bring
10 about. That's the standard language in the
11 attempted murder charge.

12 In the homicide charge, it goes into
13 the different levels. Murder three, murder two,
14 murder of the first-degree, killing with malice,
15 murder in the second degree, a felony murder of the
16 third degree, malice.

17 So this is the standard attempted
18 murder charge. That's what this is. And that's the
19 language that's in here. So you can't just tack on
20 a murder charge. Because it's one, two, three. So
21 this is the charge. This is the attempted murder
22 charge. It's the standard language.

23 MR. McGOVERN: Your Honor, may I
24 respond?

25 THE COURT: Yes.

1 MR. McGOVERN: Thank you, Your Honor.
2 Your Honor, I spent from 1980 to almost 1996 in the
3 Philadelphia DA's office primarily prosecuting
4 murder cases.

5 THE COURT: Right.

6 MR. McGOVERN: Section 2502 of
7 Pennsylvania Crime Codes 18 Pennsylvania
8 consolidated statute 2502 defines murder.

9 As the Court's pointed out, in the
10 scores of homicides and attempted murder cases I
11 tried, I don't believe I ever heard a court not
12 instruct a jury for a defendant accused of attempted
13 murder of murder. Because my understanding is that
14 the inchoate crime under chapter nine attempt is
15 defined in that; However, the inchoate crime is
16 charged is attached and codefendant on the charge of
17 murder regardless of whether it's murder of the
18 first, second, or third.

19 THE COURT: I understand what you're
20 saying, but attempted murder is it's own charge, and
21 it's different than homicide, which is graded as
22 murder one, two, and three, which have distinctive
23 elements and distinctive proves that's different.

24 Attempted murder is it's own charge.
25 Attempt murder. It's not attempted murder one, two,

1 three. So you can't just add a definition of
2 murder, because they're are different levels of
3 murder. I understand what you're saying.

4 MR. MCGOVERN: The final point I'd
5 make is, it is the type of intent for murder is
6 specific intent that deals with a --

7 THE COURT: It's the specific intent
8 to kill.

9 MR. MCGOVERN: -- with wanton,
10 malice, and a mind regardless of social duties, a
11 mind that is totally in apposite to the preservation
12 of life and, specifically, to the taking of life.
13 And this is the type of specific intent that I
14 submit the jury needs to be instructed on if they're
15 going to consider validly, fairly, and based on the
16 law, murder, attempted murder of my client and his
17 codefendant.

18 THE COURT: All right. Commonwealth.

19 MS. HEARD: Yes, Your Honor.

20 My understanding is that what is
21 supposed to be read to the jury is attempted murder
22 and first degree murder. That is my understanding.
23 It's attempted murder. When we're talking about
24 first degree murder. So first degree murder part
25 should be read in; should be part of the jury

1 instruction in addition to the attempted murder.

2 THE COURT: So it should say, Thus,
3 for the murder of the first degree, a killing is
4 with malice if the perpetrator attempted to kill --
5 so you have to add just the definition of
6 first-degree murder.

7 MS. HEARD: Correct. We do need the
8 first-degree murder charge in the jury instruction.
9 That's my understanding.

10 THE COURT: Definition of first
11 degree is willful, deliberate, and premeditated.

12 MR. McGOVERN: And I would just add
13 that the intent as -- of that first-degree murder
14 charge also is an element of that offense and it
15 must be an instruction.

16 MR. FEINMAN: And Your Honor, I
17 believe that all counsel is in agreement that that
18 should be a charge that should be read to the jury.

19 THE COURT: For first-degree murder?

20 MR. FEINMAN: Correct. And I believe
21 it would be appropriate to read that prior to the
22 attempted murder instruction in proper sequence.

23 THE COURT: All right. So we will
24 add the definition of first-degree murder and
25 malice?

1 MR. McGOVERN: Yes, Your Honor.

2 THE COURT: And add that and read
3 that before...

4 MR. FEINMAN: And Your Honor, if I
5 may, I'm also looking, and I do not see any
6 reference in the charge regarding the attempted
7 receiving stolen property.

8 THE COURT: So what we'll do is, I
9 talked to homicide. They do it either way. Court's
10 use just the attempted murder charge, but if you're
11 saying it's the practice, we'll just adopt the
12 practice in including the first-degree murder.
13 That's fine. We certainly -- we have not done
14 that -- plenty of attempted murder cases that don't
15 do that. It's both ways. Attempted murder charge
16 speaks to the specific intent to kill. But to
17 further clarify, you know, we'll certainly add that,
18 the definition of first-degree murder and malice.

19 I think you mentioned something
20 else -- oh, attempted receiving stolen property.

21 THE COURT: Is there anything else?

22 MR. McGOVERN: No, Your Honor.

23 MR. FEINMAN: No, Your Honor.

24 MS. HEARD: No, Your Honor.

25 (A discussion was held of the

1 record.)

2 THE COURT: Once we're finished
3 everything, we'll explain how the process of, you
4 know, how the process works and the doors.

5 So is there anything else on the
6 charges as we get everything finalized?

7 MR. McGOVERN: I think that's it.

8 THE COURT: Last call.

9 MR. FEINMAN: For the record, I
10 concur with it.

11 MR. McGOVERN: Thank you, for your
12 patience with me, Judge.

13 THE COURT: Well, as you said
14 everybody wants to get it right. I think that's one
15 thing we can agree with. We want the law to be
16 right and want the jurors to have the best tools so
17 that they can make the decision. That's why we're
18 taking all this is time to make sure this is right.
19 And then they decide the facts. So we'll have it
20 right. And it's up to them to decide the facts. So
21 it's not a problem.

22 While he's doing some editing, this
23 would be a good time if somebody does need to take a
24 comfort break.

25 THE COURT OFFICER: Ladies and

1 gentlemen if anyone needs to take a comfort break,
2 please do it now. Once we start the charge, the
3 doors will be locked and nobody will be able to
4 leave or come in. Thank you.

5 (Whereupon, there was a brief break
6 in the proceeding.)

7 THE COURT: I think it makes sense
8 for them to eat lunch. And we can go over this one
9 more time. I think we caught everything, but let's
10 just maybe through lunch go through it again and
11 come back and then we can -- I'd rather do it this
12 way than, you know, try to rush through the charge
13 and then there's an issue and then we end up -- so
14 that should incorporate everything, but if you want
15 to go through it. Otherwise, they have to sit as I
16 go through the charge for 40 minutes while their
17 lunch sits here. That's the alternative.

18 MS. HEARD: Understand.

19 THE COURT: So why don't we go
20 through it and let them have their lunch when their
21 lunch comes. It should be here momentarily. And
22 it's about five of. So let them have their lunch
23 and tell them we'll give them the charge after
24 lunch. There's more to it than, shall we say, we
25 anticipated. But they'll have their lunch and then

1 do the charge after lunch. I think that makes
2 sense.

3 MR. McGOVERN: Your Honor, on page
4 10, Number 2 -- Your Honor, on the second line it
5 should be, "Or that."

6 THE COURT: Or that. Oh, yeah.
7 Well, we can just put, "Or that." I think we were
8 so hung up on...

9 MR. McGOVERN: That's fine. Thank
10 you.

11 THE COURT: All right.

12 Now, on page 20 for the attempted
13 theft charges, to keep from having to repeat attempt
14 over -- the elements over and over again, what we
15 did was, we defined attempt ant then defined the
16 separate elements of RSP an theft by taking.

17 MR. McGOVERN: Your Honor, more
18 importantly, I would point out -- I would submit
19 that on page 13, the definition of malice is not
20 given. They refer -- in attempt murder says, Where
21 malice, as I'm using has a special meaning, does not
22 mean hatred, spite, or ill will. Malice is a true
23 way referring to any of the three different mental
24 states to the law in regards as being bad enough to
25 make a killing murder. But then it doesn't define

1 malice.

2 The standard charge defines malice
3 as --

4 THE COURT: Well, this is our
5 standard charge. All this is standard charge stuff.
6 It's not stuff I made up. It's standard charge.

7 MR. McGOVERN: I expect -- oh, is
8 says malice is a shorthand way but it doesn't say
9 what malice is.

10 THE COURT: It does say it. A
11 killing is with malice if the perpetrator acts with
12 first and intent to kill when a killing is willful,
13 deliberate or premeditated. That's malice.

14 MR. McGOVERN: All right. Maybe I'm
15 just thinking of other language that talks about
16 hardness of heart, wanton disregard for the value of
17 human life and the --

18 THE COURT: This is standard
19 instruction for first degree.

20 MR. McGOVERN: Good enough. I might
21 be clogging the record with that.

22 THE COURT: Yeah. It defines it.
23 Malice -- it has intent and then we go down and
24 defines intent to kill. So all of that is defined.

25 The person has specific intent to

1 kill. It defines fully formed intent. Malice,
2 killing a person who has specific intend to kill
3 without lawful justification or excuse; killing with
4 specific intent to kill, willful deliberate,
5 premeditated.

6 MR. McGOVERN: I see that. Thank
7 you, Your Honor.

8 THE COURT: So everything's in there.

9 As I said with the theft, rather than
10 to repeat attempt three times, what we did was, if
11 you want to take a look at that, on pages 20 and 21,
12 theft by taking and theft by receiving stolen
13 property is defined and rather than sitting and
14 reading attempt over twice, that's how we chose to
15 resolve it. Take a look at it.

16 MS. HEARD: I think it's fine, Judge.

17 THE COURT: I think that should
18 handle it.

19 MR. McGOVERN: Thank you, Your Honor.

20 THE COURT: If you want eat lunch and
21 look at it again. The jurors are going to be
22 enjoying their lunch and then we'll get to this
23 after. That makes sense.

24 All right. Well, you all want to
25 snap the whip.

1 THE COURT: All right.

2 (Whereupon, there was a lunch break.)

3 (Jury enters the courtroom at 1:53

4 p.m.)

5 (Defendants are present together with

6 counsel.)

7 THE COURT: All right. Members of
8 the jury, first I want to thank you for your
9 patiences. And now that all of the evidence has
10 been presented and counsel for both sides made there
11 closing arguments, it becomes my duty to instruct
12 you in the law for which you will apply the facts as
13 you find them in reaching your verdict.

14 In doing this, I'm going to be
15 reading from a written charge as almost all judges
16 do to make certain that what I'm telling you is in
17 accordance with the law and is standard in uniform.

18 I advise you of that because it's a
19 very typical and understandable tendency not to pay
20 attention to anybody from reading from anything.

21 I am not able, as the attorneys are,
22 to present interesting arguments without reading
23 because I'm not able to do because it is very
24 important that the law that I know instruct you
25 about is accurate and is in accordance with the law

1 of this Commonwealth.

2 I give you this as a warning as I ask
3 you to pay attention, even though I'll be reading to
4 you, and I think you can do that and you can pay
5 attention if you understand what I'm going to say to
6 you for about probably the next half-hour to 40
7 minutes -- hopefully a little less -- provide you
8 with the tools that you will need to make a decision
9 in this case.

10 If you think of it in those terms, I
11 think you will understand the importance of what I'm
12 about to say and the necessity for you to pay
13 attention to what I'm about to say.

14 As I said, you will apply only the
15 law in which I instruct you. You will not apply any
16 of the law which any of you know or think you know.
17 If you wish instructions in the law addition to
18 those given to you by me, or if you wish
19 clarification of those instructions, then you may,
20 through your foreman or forelady, send the
21 appropriate request.

22 As I mentioned to you at the outset,
23 it is my responsibility to decide all questions of
24 law and you must accept follow my rulings and
25 instructions on matter of law.

1 I am not, however, the judge of the
2 facts. It is not for me to decide what are the true
3 facts concerning the charges against the defendants.
4 You, the jury, are the sole and only judges of
5 facts. It is your responsibility to weigh the
6 evidence and based on that evidence and the logical
7 inferences which flow from that evidence, to find
8 the facts, to apply the rules of law which I give
9 you to the facts as you find them and then to decide
10 whether the defendants have been proven guilty of
11 any of the charges.

12 In determining the facts, you are not
13 to consider or concern yourself with anything other
14 than the evidence which has been presented in court
15 during this trial. You are not to rely on what ifs
16 or guesses on any matters which are not in evidence.

17 Disregard any evidence that you do
18 not to believe true or credible. Your findings of
19 the facts should not be based on empathy prejudice
20 nor which attorney you like better. In my
21 instructions to you, I may -- but if I do it at all,
22 it would only be to a very limited extent -- I may
23 refer to some particular evidence. I certainly
24 don't propose to refer all of the evidence, but will
25 lead this to your recollection.

1 As I said, it is your recollection
2 and your recollection alone that governs. You are
3 not bound by my recollection nor by the recollection
4 of counsel in there arguments to you. Nor are you
5 to conclude any evidence, which I called to your
6 attention or which counsel has called to your
7 attention, is the only evidence which you should
8 consider.

9 It is your responsibility to consider
10 all of the evidence, if you believe material, in
11 deliberating upon your verdict.

12 During your deliberations, you must
13 not communicate with or provide any information to
14 anyone by any means about this case. You may not
15 use any electronic devise or media such as the
16 telephone, cell phone, smart phone, Blackberry, or
17 computer, Internet, any Internet service, any text
18 or instant messaging service, any Internet chat room
19 blog or website, such as Facebook, Linkin, Youtube
20 or twitter to communicate to anyone any information
21 about this case or to conduct any research about
22 this case until I accept your verdict. In other
23 words, you cannot talk to anyone on the phone,
24 correspond with anyone, or electronically
25 communicate with anyone about the case.

1 You can only discuss this case in the
2 jury room, with your fellow jurors during your
3 deliberations. I expect you to inform me as soon as
4 you become aware of another juror's violation of
5 these instructions.

6 You may not use these electronic
7 means to investigate because it is important that
8 you decide this case based solely on the evidence
9 presented in this courtroom.

10 Information on the Internet or
11 available through social media might be wrong,
12 incomplete or inaccurate. You are only permitted to
13 discuss the case with your fellow jurors during
14 deliberations because they have seen and heard the
15 same evidence that you have.

16 And our judicial system, it is
17 important that you are not influenced by anything or
18 anyone outside of this courtroom. Otherwise, your
19 decision may be based on information known only by
20 you and not your fellow jurors or the parties in
21 this case. This would unfairly and adversely impact
22 the judicial process.

23 Presumption of innocence: A
24 fundamental principal of our system of criminal law
25 is that a defendant is presumed to be innocent. The

1 mere fact that the defendants were arrested and
2 charged with crimes, it is not evidence of their
3 guilt.

4 Further, a defendant is presumed to
5 remain innocent throughout the trial unless and
6 until you conclude, based upon careful and impartial
7 consideration of your evidence, that the
8 Commonwealth has proven the defendants guilty beyond
9 a reasonable doubt of the charges made against them.

10 The defendant does not have to prove
11 he is not guilty. He is not required to present
12 evidence or to prove anything in his own defense.

13 Instead, it is the Commonwealth that
14 has the burden of proving each and every element of
15 the crimes charged and that the defendants are
16 defendants are guilty of those crimes beyond a
17 reasonable doubt.

18 If the evidence presented fails to
19 meet the Commonwealth's burden, then your verdict
20 must be not guilty.

21 On the other hand, if the
22 Commonwealth has presented evidence beyond a
23 reasonable doubt that the defendant is guilty of the
24 crimes charged, then your verdict should be guilty.

25 Reasonable doubt. Although the

1 Commonwealth has the burden of proving that the
2 defendant is guilty, this does not mean that the
3 Commonwealth must prove its case beyond all doubt,
4 nor must it demonstrate the complete impossibility
5 of evidence.

6 A reasonable doubt means doubt that
7 would cause a reasonably careful person and sensible
8 person to pause, hesitate or refrain from acting
9 upon a matter in the highest importance in his or
10 her own affairs or to his or her own interest. A
11 reasonable doubt must fairly arise out of the
12 evidence that was presented or out of the lack of
13 evidence presented with respect to some element of
14 each of the crimes charged.

15 A reasonable doubt must be a real
16 doubt. It may not been an imagined one, nor may it
17 be doubt manufactured to avoid carrying out an
18 unpleasant duty.

19 So to summarize, the defendants are
20 assumed to be innocent unless you find that the
21 Commonwealth has proven their guilt beyond a
22 reasonable doubt. Again, the defendants are not
23 required to present evidence or to prove anything in
24 their own defense. The burden is on the
25 Commonwealth.

1 Weight of testimony. You must
2 consider and weigh the testimony of each witness and
3 give it such weight as in your judgment it is fairly
4 entitled to receive. The matter of the credibility
5 of a witness, that is, whether his or her testimony
6 is believable and accurate in whole or in part is
7 for your determination alone.

8 I will mention some of the factors
9 which might bear on that determination. Whether or
10 not the witness has any interest in the outcome of
11 the case, or has friendship or animosity toward
12 other persons concerned in the case, the behavior of
13 the witness on the witness stand, his or her
14 demeanor, his or her manner of testifying, and
15 whether he or she shows any bias or prejudice which
16 might color his or her testimony. The accuracy of
17 his or her memory and recollection, his or her
18 ability and opportunity to acquire knowledge of or
19 to observe the matters concerning which he or she
20 testifies. The consistent or inconsistency of his
21 or her testimony as well as his reasonableness or
22 unreasonableness in light of all the evidence in the
23 case.

24 False in one and false in all. If
25 you conclude that one of the witnesses testified

1 falsely and did so intentionally about any factors
2 which is necessary to your decision in this case,
3 then for that reason alone, you may, if you wish,
4 disregard everything that witness said.

5 However, you are not required to
6 disregard everything that the witness said for this
7 reason. It is entirely possible that the witness
8 testified and intentionally so in one respect, but
9 truthfully about everything else.

10 If you find that to be the situation,
11 then you may accept that part in his or her
12 testimony which you find to be truthful and which
13 you believe, then you may reject that part which you
14 find to be false and not worthy of belief.

15 Inflicting testimony. If you find
16 that there are conflicts in the testimony, you the
17 juror have the duty of deciding which testimony to
18 believe. You should first try to reconcile, that
19 is, fit together any conflicts in the testimony, if
20 you can fairly do so.

21 Discrepancies in and conflicts
22 between the testimony of different witnesses may or
23 may not cause you to disbelieve some or all of their
24 testimony. Remember, if two or more persons
25 witnessing an incident may see or hear it happen

1 differently.

2 Also, it is not uncommon for a
3 witness to be innocently mistaken in his or her
4 recollection of how something happened. If you
5 cannot reconcile a conflict in the testimony, it is
6 up to you to decide which testimony, if any, to
7 believe and which to reject as not true or
8 inaccurate.

9 In making this decision, consider
10 whether the conflicts involve a matter of importance
11 to your decision in this case, or merely some
12 unimportant detail and whether the conflict is
13 brought about by an innocent mistake or by
14 intentional falsehood. You should also keep in mind
15 the other factors already discussed which go into
16 deciding whether or not to believe a particular
17 witness.

18 In deciding which of conflicting
19 testimony to believe, you should not necessarily be
20 swayed by the number of witnesses on either side.
21 You should consider whether the witnesses appear to
22 be biased or unbiased. Whether they are interested
23 or disinterested persons, and you should consider
24 all other factors which go to the reliability of
25 their testimony.

1 The important thing is the quality of
2 the testimony of each witness. You should also
3 consider the extent to which conflicting testimony
4 is supported by other evidence.

5 Direct and circumstantial evidence.
6 Evidence may be of two types in a criminal case. On
7 the one hand, there is direct evidence, which is
8 testimony by a witness from his or her own personal
9 knowledge, such as something he or she saw or heard
10 himself or herself.

11 The other type is circumstantial
12 evidence, which is testimony about facts which point
13 to the existence of other facts which are in
14 question. Whether or not circumstantial evidence is
15 proof of other facts in question depends in part on
16 the application of common sense and human
17 experience.

18 In deciding whether or not to accept
19 circumstantial evidence as proof of the facts in
20 question, you must be satisfied first, that the
21 testimony of the witness who is presenting the
22 circumstantial evidence is truthful and accurate,
23 and second, that the existence of the facts the
24 witness testifies to leads to the conclusion that
25 the facts in question also happened.

1 In a good way, I'm going to explain
2 direct and circumstantial evidence. One of your
3 favor topics: snow.

4 If you're driving in the snow and you
5 see the snow. It's coming down on your windshield.
6 You have the windshield wipers on. You have the
7 defrost on. You're going throw it. You're leaving
8 in it. You're trying to drive in it. It's direct
9 evidence that it's snowing, because you're
10 experiencing it directly.

11 And example of circumstantial
12 evidence would be, let's say, it's clear day. You
13 drive home, park. No snow. It's clear. You get up
14 the next morning and there's snow everywhere.

15 Well, it's circumstantial evidence
16 that at some time during the night, it snowed. You
17 weren't driving in the snow like you were before in
18 your direct experience. But there's circumstantial
19 evidence to infer that sometime during the night it
20 snowed, because you see snow on the car, on the
21 ground, on your steps.

22 And that's the way of understanding
23 the difference between direct and circumstantial
24 evidence.

25 Credible of witnesses, generally. As

1 judges of the facts you are sole judges of the
2 credibility of the witnesses and their testimony.
3 This means you must judge the truthfulness and
4 accuracy of each witness's testimony and decide
5 whether to believe all or part or none of that
6 testimony.

7 The following are some of the factors
8 that you may and should consider when judging
9 credibility and deciding whether or not to believe
10 testimony. Was the witness able to see, hear or
11 know the things about which or she testified? How
12 well could the witness remember and describe the
13 things about which he or she testified? Was the
14 able of the witness to see, hear, know, remember or
15 describe those things affected by youth, old age, or
16 by any physical, mental or intellectual deficiency?
17 Did the witness testify in a convincing manner? Did
18 he or she look at and speak while testifying? How
19 did he or she look at and speak while testifying?
20 Was his or her testimony uncertain, confused,
21 self-contradictory or evasive? Did the witness have
22 any interest in the outcome of the case? Bias,
23 prejudice or other motive that might affect his or
24 her testimony? How well does the testimony of the
25 witness square with the other evidence in the case,

1 including the testimony of other witnesses? Was it
2 contradicted or supported by the other testimony in
3 evidence? Does it make sense?

4 If you believe some part of the
5 testimony of a witness to be inaccurate, consider
6 whether the inaccuracy casts doubt upon the rest of
7 his or her testimony. This may depend on whether he
8 or she has been inaccurate on an important matter or
9 a minor detail and on any possible explanation.

10 For example, did the witness make an
11 honest mistake or simple forget or did he or she
12 deliberately falsify.

13 While you're judging the credibility
14 of each witness, you are likely to be judging the
15 credibility of other witnesses or evidence. If
16 there is a real irreconcilable conflict, it is up to
17 you to decide which, if any, conflicting testimony
18 or evidence to believe.

19 As sole judges of credibility and
20 fact, you the jurors are responsibility to give the
21 testimony of every witness and all the other
22 evidence whatever credibility and weight you think
23 it deserves.

24 Defendants failure to testify, no
25 adverse inference. It is entirely up to the

1 defendant in every criminal trial whether or not to
2 testify. In this case, the defendant, Lonnie
3 Spector, chose not to testify. He has an absolute
4 right founded in the Constitution to remain silent.
5 You must not draw any inference of guilt or any
6 other inference adverse to the defendant from the
7 fact that he did not testify did.

8 Credibility of the defendant as
9 witness. Also in this case, Defendant Gregory
10 Spector took the stand as a witness. In considering
11 Gregory Spector's testimony, you are to follow the
12 general instructions I gave you for judging the
13 credibility of any witness.

14 You should not disbelieve the
15 defendant's testimony merely because he is the
16 defendant.

17 In weighing his testimony however,
18 you may consider the fact that he has a vital
19 interest in the outcome of this trial. You may take
20 the defendant's interest into account just as you
21 would you the interest of any other witness along
22 with all other facts and circumstances bearing on
23 credibility in making up your mind what weight his
24 testimony deserves.

25 Defendant's character reputation.

1 The defense offered evidence tending to prove that
2 the defendants are persons of good character. I'm
3 speaking of the defense witnesses who testified that
4 the defendants have a good reputation for being a
5 law-abiding, peaceful, nonviolent individuals.

6 The law recognizes that a person of
7 good character is not likely to commit a crime that
8 is contrary to that person's nature. Evidence of
9 good character may by itself raise a reasonable
10 doubt of guilt and require a verdict of not guilty.
11 You must weigh and consider the evidence of good
12 character along with the other evidence in the case.

13 If on all the evidence, you have a
14 reasonable doubt of the defendant's guilt, you must
15 find him not guilty. However, if, on all the
16 evidence, you are satisfied beyond a reasonable
17 doubt that the defendants are guilty, you should
18 find them guilty.

19 Experted testimony. I permitted Dr.
20 Richard Lopez to testify as a expert witness. An
21 expert witness is a person who has special knowledge
22 or skill in some science, art, profession,
23 occupation or subject that the witness acquired by
24 training, education, or experience.

25 Because an expert has "special," that

1 is, out-of-the-ordinary knowledge or skill, he or
2 she may be able to supply jurors with specialized
3 information, explanations, and opinion that would
4 help them decide the case.

5 Regular witnesses are bound by two
6 limitations that do not apply by an expert. First,
7 regular witnesses can only testify about things that
8 they personally perceived, things that they saw and
9 heard themselves; and second, regular witnesses are
10 not allowed to express opinions about matters that
11 require special knowledge or skill. By contrast, an
12 expert is allowed to express an opinion about a
13 matter that's within the area of his or her
14 expertise.

15 Furthermore, while an expert may base
16 an opinion on things personally perceived he or she may
17 also base an opinion on factual information learned
18 from other sources. If an expert witness bases an
19 opinion on things not personally perceived, he or
20 she can describe the information on which he or she
21 relies and identify its source when explaining the
22 opinion.

23 Remember, you jurors are the sole
24 judges of the credibility and weight of all
25 testimony. The fact that the lawyers and I may have

1 referred to certain witnesses as experts and that
2 the witnesses may have special knowledge or skill,
3 does not mean that their testimony and opinions are
4 right.

5 When you are determining the
6 credibility and weight of an expert's testimony and
7 opinions, consider all the factors that I described
8 earlier that are relevant when evaluating the
9 testimony of any witness. You should also consider
10 all other things bearing on credibility and weight
11 including the training, education, experience, and
12 ability of each expert. The factual information on
13 which he or she based an opinion, the source and
14 reliability of that information, and the
15 reasonableness of any explanation he or she gave to
16 support the opinion.

17 Number of witnesses. You should not
18 decide this case on the basis on which side
19 presented the greater number of witnesses or the
20 greater amount of evidence. Instead, you should
21 decide which witnesses to believe and which evidence
22 to accept on the basis of whether or not the
23 testimony or evidence is believable.

24 In deciding which of several
25 witnesses to believe, it is proper for you to

1 consider whether or not the testimony of each
2 witness is supported by other evidence in the case.
3 However, you should recognize that it is entirely
4 possible for a single witness to give truthful and
5 accurate testimony and that his or her testimony may
6 be believed, even though a greater number or
7 witnesses of apparently equal liability contradicted
8 him or her. The question for you to decide, based
9 on all the considerations I have been discussing
10 with you is not which side produced the most
11 evidence, but instead which evidence you believe.

12 Arguments of counsel. The speeches
13 of counsel are not part of the evidence. You should
14 not consider them as such. However, in deciding the
15 case, you should carefully consider the evidence in
16 light of the various reasons and arguments each
17 lawyer presented.

18 It is the right and duty of each
19 lawyer to discuss the evidence in a matter that is
20 the most favorable to decide he or she represents.

21 You should be guided by each lawyer's
22 arguments to the extent they are supported by the
23 evidence and insofar as they aid you in applying
24 your own reason and common sense. However, you're
25 not required to accept the arguments of either

1 lawyer. It is for you and you alone to decide the
2 case based on the evidence as it was presented from
3 the witness stand and in accordance with the
4 instructions I am now giving you.

5 Stipulations of fact. Previously I
6 told you that statements made by counsel are not
7 evidence and they are not binding on you.

8 There are exceptions to this. When
9 the Assistant District Attorney and defense counsel
10 stipulate, that is, when they agree that a certain
11 fact is true, their stipulation is evidence of that
12 fact. You should regard the stipulated fact as
13 proven.

14 The following stipulations have been
15 presented at this trial. One, that Exhibit C-53,
16 the medical records from Aria Torresdale for Sardor
17 Bolyganov are a fair and true representation of his
18 medical treatment from July 21, 2013 to his release;
19 two, Olena Sirko did not testify at the preliminary
20 hearing on October 11, 2013 that Sardor Bolyganov
21 said, please don't shoot me or that Defendant
22 Gregory Spector said, I'm going to kill you; three,
23 Dr. Richard Lopez is currently employed at Jefferson
24 Hospital and is an expert in the field of trauma and
25 emergency surgery; four, that exhibit C-48-B, an

1 investigation report, indicates that fingerprint
2 lift Number 4 from inside the vehicle, a Chrysler
3 300, and Number 7, left index finger comparison were
4 positive and identified to Lonnie Spector.

5 The comparisons were analyzed and
6 compared by Police Officer Steven Berardi and
7 Officer Raytik; five, that exhibited C-49-B,
8 investigation report, indicates that fingerprint
9 lift Number 5 from an Arizona iced tea can and
10 fingerprint lift Number 4 right ring finger were
11 positive and identified to Sardor Bolyaganov; Six,
12 concerning Exhibit C-60, the ballistics report; A,
13 if called to testify, Police Officer Ronald Weitman
14 of the Firearms Identification Unit would state the
15 firearm on Property Receipt 3103799 and received by
16 Officer Ernest Green from Lonnie Spector is a Taurus
17 International revolver. It's a maximum capacity of
18 five. It was test fired and deemed operable; B,
19 Officer Weitman would further testify that he test
20 fired .9 millimeter Glock recovered from Gregory
21 Spector. He would further testify that this firearm
22 on Property Receipt 3103800 which was received by
23 Police Officer Timothy Taylor is a semiautomatic
24 Glock. The maximum capacity is ten plus one. It
25 was Fired and deemed operable; C, Police Officer

1 Weitman would also testify that the fire cartridge
2 casings on Property Receipt 9015565 recovered by
3 Police Officer Steven Berardi from 734 Kentwood
4 Street in Philadelphia were fired from the
5 semiautomatic Glock that was recovered from Gregory
6 Spector; seven, that Exhibit D-18, the medical
7 records from Aria Torresdale for Lonnie Spector are
8 fair and true representation of his medical
9 treatment on July 21, 2013; eight, that Exhibit
10 D-17, the medical records from Rothman institute of
11 Lonnie Spector are a fair and true representation of
12 his medical treatment.

13 And nine, that Exhibit D-8, medical
14 records St. Mary's Hospital for Gregory Spector from
15 July 23, 2013 and July 24, 2013 and St. Mary's
16 Surgical Center preop exam from July 25, 2013 and
17 surgery from Dr. Hammer from August 1, 2013 are a
18 fair and true representation of his medical
19 treatment.

20 Now, we'll review the charges in this
21 case.

22 Conspiracy basic instruction: The
23 defendants are charged with conspiracy to commit
24 attempted murder, aggravated assault, simple assault
25 recklessly endangering another person, robbery,

1 possession of instrument of crime, attempted theft,
2 and attempted receiving stolen property.

3 In Pennsylvania, joining in a conspiracy
4 or creating a conspiracy is itself a crime, even if
5 the crime the people are planning is not carried
6 out. The members of a conspiracy are still
7 responsible for the distinct crime of conspiracy.
8 In general terms, a conspiracy is an agreement
9 between two or more persons to commit a crime.

10 A conspiracy exist once two conditions are
11 met. There is an agreement when one of the members
12 then commits some act to help achieve the goal of
13 the conspiracy. I will now explain each of those
14 elements in greater detail.

15 The first element of conspiracy is an
16 agreement. It can be stated in words or unspoken,
17 but acknowledged. But it must be an agreement in a
18 sense that two or more people have come to an
19 understanding that they agreed to act together to
20 commit a crime or crimes. Their agreement does not
21 have to cover the details of how the crime would be
22 committed, nor does it have to call for all of them
23 to participate in actually committing the crime.

24 They can agree that one of them will do
25 the job. What is necessary is that parties do

1 agree, in other words, do come to a firm common
2 understanding that a crime will be committed.

3 All of the agreement itself is in essence
4 of the conspiracy, and the defendant can not be
5 convicted of conspiracy unless he or she or a fellow
6 conspirator does something more, an overt act in
7 furtherance of the conspiracy. The overt act is an
8 act by any member of the conspiracy that would serve
9 to further the goal of the conspiracy. The overt
10 act can be criminal or noncriminal in itself as long
11 as it is design to put the conspiratorial agreement
12 into effect.

13 This is to show that the parties have a
14 firm agreement and are not just thinking or talking
15 about committing a crime. The overt act show that
16 the conspiracy has reached the action stage. If a
17 conspirator actually commits or attempts to commit
18 the agreed crime, that obviously would be an overt
19 act in furtherance of the conspiracy. But a small
20 act or step that is much more preliminary and a lot
21 less significant can satisfy the overt act
22 requirement.

23 The Commonwealth may prove a conspiracy by
24 direct evidence or by circumstantial evidence.
25 People who conspire, often do their conspiring

1 secretly and try to cover up afterwards.

2 In many conspiracy trials, circumstantial
3 evidence is the best or only evidence of the
4 questions of whether there was an agreement, that
5 is, common understanding, and whether the
6 conspirators shared the intent to promote or
7 facilitate committing the object crime.

8 Thus, you may, if you think improper,
9 infer that there was a conspiracy from the
10 relationship conduct in acts of the defendant in his
11 or her alleged coconspirators and the circumstance
12 surrounding their activities. However, the evidence
13 of this must support your conclusion beyond a
14 reasonable doubt.

15 A defendant cannot be convicted because he
16 or she was present with others or even because he or
17 she knew what the others were planned or were doing.
18 They must be prove of an agreement between the
19 defendant and another person or persons to form or
20 continue a conspiracy.

21 To be proved guilty of being a
22 conspirator, the defendant must have intended to act
23 jointly with the other charged -- with the other
24 charge -- the others charged. It must have indented
25 that the crimes alleged ought to be the goal of the

1 conspiracy would be committed.

2 Attempted murder: The defendants, Gregory
3 Spector and Lonnie Spector, have been charged with
4 attempted murder. Before defining this crime, I
5 will tell you about malice, which is an element of
6 murder, but not of manslaughter. A person who kills
7 must act with malice to be guilty of any degree of
8 murder. The word "malice" as I am using it has a
9 special legal meaning. It does not mean simply
10 hatred, spite or ill will.

11 Malice is a shorthand way of referring to
12 any of the three different mental states that the
13 law regard as being bad enough to make a killing
14 murder.

15 Thus, for the murder of the first degree,
16 a killing is with malice if the perpetrator acts
17 with first, an intent to kill and the killing is
18 willful, deliberate, and premeditated.

19 To find the defendants guilty of this
20 offense, you must find that the following three
21 elements been proven beyond a reasonable doubt.

22 First, that the defendant, Gregory
23 Spector, did a certain act, that is, he fired a
24 handgun at the complainant, Sardor Bolyganov;
25 second, that the time of this alleged act, the

1 defendants, Gregory Spector and Lonnie Spector, had
2 the specific intent to kill Sardor Bolyganov. That
3 is, they had a fully formed intent to kill and they
4 were conscious of their own intention.

5 A person has a specific intent to kill if
6 he or she has a fully formed intent to kill and is
7 conscious of his or her own intention.

8 As my earlier definition of malice
9 indicates, a killing by a person who has specific
10 intent to kill is a killing with malice provided
11 that it is also without any lawful justification or
12 excuse. Stated differently, a killing is with
13 specific intent to kill if it is willful, deliberate
14 and premeditated. A specific intent to kill
15 including the premeditation needed for first-degree
16 murder does not require planning or previous thought
17 of any particular length of time. It can occur
18 quickly. All that is necessary is that there be
19 time enough so that defendant can and does fully
20 form an intent to kill and is conscious of that
21 intention.

22 When deciding whether the defendants had
23 specific intent to kill, you should consider all of
24 the evidence regarding words and conduct and
25 intending circumstances that may show state of mind.

1 If you believe that the defendant
2 intentionally used a deadly weapon on a vital part
3 of the victim's body, you may regard that as an item
4 of circumstantial evidence from which you may, if
5 you chose, infer that the defendant had the specific
6 intent to kill.

7 And third, that the act constituting a
8 substantial step toward the commission of the
9 killing the defendants intended to bring about. Let
10 me explain the meaning of a substantial step.

11 A person cannot be guilty of an attempt to
12 commit a crime unless he or she does an act that
13 constitutes a substantial step toward the commission
14 of that crime. An act is a substantial step if it
15 is a major step toward commission of the crime and
16 also strongly corroborates the jury's belief that
17 the person at the time he or she did the act, had a
18 firm intent to commit that crime.

19 And act can be a substantial step, even
20 though other steps would have to be taken before the
21 crime could be carried out.

22 If you are satisfied that the three
23 elements of attempted murder had been proven beyond
24 a reasonable doubt, then you should find the
25 defendant's guilty. Otherwise, you must find the

1 defendants not guilty of this crime.

2 Aggravated assault, causing serious bodily
3 injury: The defendants, Gregory Spector and Lonnie
4 Spector, have been charged with aggravated assault.
5 To find the defendants guilty of this offense, you
6 must find that each of the following elements have
7 been proven beyond a reasonable doubt.

8 First, that the defendant, Gregory
9 Spector, caused serious bodily injury to Sardor
10 Bolyganov. Serious bodily injury is serious bodily
11 injury that creates a substantial risk of death or
12 that causes serious permanent disfigurement or
13 protracted loss or impairment of the function of any
14 bodily member or organ.

15 And second, the defendants acted
16 intentionally, knowingly or recklessly under the
17 circumstances, manifesting extreme indifference to
18 the value of human life. A person acts
19 intentionally with respect to serious bodily injury
20 when it is his or her conscious object or purpose to
21 cause such injury.

22 A person acts knowingly with respect to
23 serious bodily injury when he or she is aware that
24 it is practically certain that his or her conduct
25 would cause such a result.

1 A person acts recklessly with respect to
2 serious bodily injury when he or she consciously
3 disregards the substantial and the unjustifiable
4 risk that serious bodily injury will result from his
5 or her conduct.

6 The risk must be of such a nature and
7 degree that considering the nature and intent of the
8 defendants conduct and the circumstances known to
9 him or her, its disregard involved a gross deviation
10 from the standard of conduct that a reasonable
11 person would observe in the defendants situation.
12 It is shown by the kind of reckless conduct from
13 which a life-threatening injury is almost certain to
14 occur.

15 Simple assault: The defendants, Gregory
16 Spector and Lonnie Spector have been charged with
17 simple assault.

18 To find the defendants guilty of this
19 offense, you must find that all of the following
20 elements have been proven beyond a reasonable doubt.

21 First, that the defendant, Gregory
22 Spector, caused bodily injury to Sardor Bolyganov.
23 Bodily injury means impairment of physical condition
24 or substantial pain; and second, that the
25 defendant's conduct in this regard was intentional,

1 knowing or reckless.

2 A person acts intentionally with respect
3 to bodily injury when it is his or her conscious
4 object or purpose to cause such injury.

5 A person acts knowingly with respect to
6 bodily injury when he or she is aware that it is
7 practically certain that his or her conduct would
8 cause such an result.

9 A person acts recklessly with respect to
10 bodily injury when he or she consciously disregards
11 a substantial and unjustifiable risk at bodily
12 injury will resulted from his or her conduct. The
13 risk must be of such a nature and degree that
14 considering the nature and intent of the defendant's
15 conduct in the circumstances known to him or her,
16 its disregard involves a gross deviation from the
17 standard of conduct that a reasonable person would
18 observe in the defendant's situation.

19 .Recklessly endangering another person:
20 Only the defendant, Gregory Spector, has been
21 charged with recklessly endangering another person.
22 To find the defendant guilty of this offense, you
23 must find that the defendant recklessly did
24 something that placed or may have placed Sardor
25 Bolyganov in danger of death or serious bodily

1 injury.

2 A person acts recklessly with respect to
3 serious bodily injury when he or she consciously
4 ignores a great and unjustifiable risk that what he
5 or she is doing will cause another person to be
6 seriously injured. The risk must be so serious that
7 considering what a defendant did and what his or her
8 intentions were that he or she acted in a way that
9 would amount to a gross deviation from a standard of
10 conduct that a reasonable person in his or her
11 situation would have followed.

12 If, after considering all of the evidence,
13 you find that the Commonwealth has established
14 beyond a reasonable doubt that the defendant's
15 reckless action placed Sardor Bolyganov in danger of
16 death or serious injury, you should find the
17 defendant recklessly endangering another person;
18 otherwise you must find the defendant not guilty.

19 Justification use of deadly force and
20 self-defense: The defendants have raised the issue
21 of whether Gregory Spector acted in self-defense
22 and/or in defense of Lonnie Spector -- and/or in
23 defense of defendant of Lonnie Spector when he shot
24 Sardor Bolyganov. Self-defense is called
25 justification in the law of Pennsylvania. If the

1 defendants action were justified, you cannot find
2 them guilty beyond a reasonable doubt of attempted
3 murder, aggravated assault, simple assault and
4 recklessly endangering another person. The issue,
5 having been raised, it's the Commonwealth's burden
6 to prove beyond a reasonable doubt that the
7 defendants did not act in justifiable self-defense
8 of themselves or another.

9 The first matter that you must consider in
10 deciding whether the Commonwealth has met its burden
11 in this regard is what kind of force the defendant
12 used in this incidence.

13 There were two kinds: Deadly and
14 nondeadly. The Commonwealth claims here that deadly
15 force was used by the defendant and it must prove
16 that claim beyond a reasonable doubt. Deadly force
17 is force that under the circumstances in which it is
18 used is readily capable of causing death or serious
19 bodily injury.

20 Serious bodily injury is bodily injury
21 that creates a substantial risk of death or that
22 causes serious permanent disfigurement or protracted
23 loss or impairment of the functions of any bodily
24 member or organ.

25 According to this definition, force is not

1 deadly force simply because it happens to kill or
2 seriously injure. For example, a slap in the face
3 and freakishly and unexpectedly leads to death is
4 not deadly force.

5 A defendant uses deadly force when he or
6 she knows that his or her actions under the
7 circumstances in which he or she commits them are
8 readily capable of causing death or serious bodily
9 injury.

10 If the Commonwealth proves to you beyond a
11 reasonable doubt that the defendant used deadly
12 force and to prove that such force was not
13 justifiable in this case, it must prove one of the
14 following elements beyond a reasonable doubt; that
15 the defendant did not reasonably believe that he or
16 she -- that he or another were immediate danger of
17 death or serious bodily injury from Sardor Bolyganov
18 at the time he used the force and that therefore his
19 belief that it was necessary for him to use deadly
20 force to protect himself or another was
21 unreasonable.

22 To put another way, Commonwealth must
23 prove that either, one, that the defendant did not,
24 actually, believe he or another was endanger of
25 death or serious bodily injury such that he needed

1 to use deadly force to defend himself or another at
2 that moment; or two, while the defendant, actually,
3 believed that he needed to use such force, his
4 belief was unreasonable in light of all the
5 circumstances known to him.

6 Keeping this in mind, a person is
7 justified in using deadly force against another when
8 they or another are in actual danger of unlawful
9 attack but also when they mistakenly but reasonably
10 believe that they are.

11 A person is entitled to estimate the
12 necessity for the force he or she employed under the
13 circumstances as he or she reasonable believes them
14 to be at the time.

15 In the heat of conflict, a person who has
16 been attacked, ordinarily, has neither time nor
17 composure to evaluate carefully the danger and make
18 nice judgments about exactly how much force is
19 needed to protect himself or herself.

20 Consider the reality of the situation
21 faced by the defendants here when you assess whether
22 the Commonwealth has proved beyond a reasonable
23 doubt either that they did not believe they were,
24 actually, in danger of death or serious bodily
25 injury to the extent that they needed to use such

1 force in self-defense or that while they did believe
2 that, their belief was unreasonable.

3 B, that one in the same encounter with
4 Sardor Bolyganov, the defendant engaged in conduct
5 that demonstrated his intent to cause death or
6 serious bodily injury; and two, by that conduct he
7 provoked the use of force against him or the person
8 that he then contends he sought to protect.

9 The conduct by the defendant that provoked
10 the alleged victim's actions must be of such a
11 nature that it shows it was the defendant's
12 conscious object to cause death or serious bodily
13 injury to the alleged victim.

14 Conduct that is not of such a nature does
15 not constitute the kind of provocation upon which
16 the Commonwealth may rely to prove its case.

17 If you find beyond a reasonable doubt that
18 it is of such a nature, then you must then ask
19 whether it provoked the similar use of force against
20 himself or the person that he then sought to
21 protect.

22 In this assessment, the conduct may be the
23 initial provocation of the fight or it may be an act
24 that continues or escalates it. However, even if
25 the defendant was the initial aggressor or escalated

1 the incident to one involving use of deadly force if
2 he thereafter withdraws in good faith, making it
3 clear that his further intentions are peaceable and
4 his alleged victim pursues the other person and
5 renews the fight, the defendant does not forfeit his
6 claim of right -- his right of claim -- right to
7 claim justifiable defense of himself or another.

8 If on the other hand, you find beyond a
9 reasonable doubt that the defendant provoked the use
10 of force against another by engaging in conduct that
11 showed that he intended to cause death or serious
12 bodily injury to the victim, you should find that
13 his conduct was not justified.

14 C, that the defendant knew that he could
15 avoid the necessity of using deadly force with
16 complete safety by, one, retreating himself or
17 trying to cause the person that he sought to protect
18 to retreat and failing to do so, or two,
19 surrendering the possession of a thing to a person
20 asserting a claim of right to it or trying to cause
21 the person he seeks to protect to surrender
22 possession of thing -- of a person asserting a claim
23 of right to it and failing to do so.

24 However, there are certain exceptions to
25 this duty to retreat. A defendant is not obligated

1 to retreat from his dwelling or assist another in
2 doing so, unless he was the initial aggressor. A
3 defendant is not obligated to retreat from his place
4 of work or assist another in doing so unless either
5 he was the initial aggressor or was attack in his
6 place of work by another person whose place of work
7 the actor knows it to be.

8 The defendant is not obligated to retreat
9 from the place where he is attack or assist another
10 in doing so if, A, the defendant has a right to be
11 in that place; B, the defendant is not at that time
12 engaged in criminal activity.

13 Criminal activity means conduct that is a
14 misdemeanor or felon that's not justifiable under
15 crimes code and is related to confrontation between
16 and actor and person against whom force was used.

17 C, the defendant is not at that time
18 illegal in possession in a firearm.

19 D, the defendant reasonable believed that
20 it is immediately necessary for him to protect
21 another against death or serious bodily injury.

22 E, the person against who the defendant
23 uses force displays or otherwise uses a firearm or
24 any weapon readily or apparently capable of lethal
25 use.

1 If the Commonwealth proves these elements
2 beyond a reasonable doubt the action of the
3 defendant using deadly force is not justified. If
4 the Commonwealth fails to prove the elements the
5 defendants actions was justified, then you must find
6 the defendants not guilty of the crimes of attempted
7 murder, aggravated assault, simple assault, or
8 recklessly endanger another person.

9 Robbery. The defendants, Gregory Spector
10 and Lonnie Spector, have been charged with robbery.
11 To find the defendants guilty of this offense, you
12 must find that the following two elements have been
13 proven beyond a reasonable doubt.

14 First, that the defendants inflicted
15 serious bodily injury on the victim; or B,
16 threatened the victim with serious bodily injury; or
17 C, intentionally put the victim in fear of serious
18 bodily injury and second, that the defendant did
19 this during the course of committing a theft.

20 During the course of committing a theft
21 means that you can find the defendant guilty if you
22 find beyond a reasonable doubt that he or she did
23 these things either while actually committing a
24 theft, attempting to commit a theft or while fleeing
25 after either committing or attempting to commit a

1 theft.

2 A theft, of course, means taking unlawful
3 control of or exercising unlawful control over
4 someone else's property or intending not to give it
5 back.

6 Serious bodily injury is defined in the
7 law as a bodily injury that creates a serious risk
8 of death or serious -- or causes serious permanent
9 disfigurement or protracted loss or impairment of
10 any bodily member or organ.

11 This means, an injury that causes a
12 substantial risk that the victim will die or injury
13 that permanently, seriously disfigures the victim or
14 that causes a long term lost or limitation on the
15 use of any part of the body.

16 A claim of right to property, in this
17 case, the cell phone and remaining \$90, does not
18 give the defendants the right to resort to violence
19 and is not a defense to robbery.

20 Criminal attempt theft by unlawful taking
21 or disposition, moveable property, and receiving
22 stolen property: The defendants in this case are
23 charged with the crime of attempted theft by
24 unlawful taking and attempt theft of receiving
25 stolen property.

1 A person may be guilty of a crime even if
2 the ultimate goal of the crime is not achieved if
3 his or her conduct meets the test of being in an
4 attempt to commit that crime.

5 The crimes in this case that the defendant
6 is accused of attempting to commit are the crimes of
7 theft by unlawful taking and theft by receiving
8 stolen property.

9 To be guilty of completing these crimes,
10 the following elements of each crime must be proved.
11 Theft by unlawful taking or disposition of movable
12 property.

13 First, that the defendants took a cell
14 phone and money; second, that the cell phone of
15 moveable property of another -- moveable property is
16 property of location which can be changed; and
17 third, the taking was unlawful; and fourth, that the
18 taking was with the intent to deprive Sardor
19 Bolyganov of his property.

20 A person acts with intent if it is his or
21 her conscious object to engage in such conduct or
22 cause such a result.

23 Theft by receiving stolen property:

24 First, that the property of cell phone and money was
25 stolen property. You must determine that the

1 property of cell phone and money was a moveable
2 property of another person, in this case, the other
3 person was Sardor Bolyganov.

4 Under the law, property of another
5 includes property in which any person, other than
6 the defendant, has an interest on which the
7 defendant is not privileged to refrain an item of a
8 stolen property, if it has been subject of a theft
9 offense.

10 Thus, stolen property includes property
11 that someone, whether it was the defendant or
12 someone else, has unlawfully taken from its owner
13 with the intent to deprive the owner of it.

14 Second, the defendant was in possession of
15 the property. Possession is proven if the defendant
16 intentionally received, retained, or disposed of the
17 property of Sardor Bolyganov.

18 Under the law, a person acts intentionally
19 when it is his or her conscious object to engage in
20 the conduct of a particular nature achieve a
21 particular result.

22 Thus, you must determine if it was -- if
23 it was proven that the defendants acted
24 intentionally in receiving, retaining, disposing of
25 the property of the cell phone and money.

1 A defendant receives an item of property
2 if he or she inquires possession, control or title
3 of the property, lends on the security of the
4 property as constructive possession of the property.

5 Most people think of a receiver as a
6 person who required property after it was stolen by
7 someone else. Under the instructions I have given
8 you, it is possible to find the defendants guilty on
9 that basis, but you're not limited to that basis.

10 It's possible to find that the defendants
11 fulfilled the requirements of receiving, retaining,
12 disposing of property and is guilty of theft by
13 receiving on the basis that the defendant stole the
14 property himself or herself. It is also possible to
15 find the defendants guilty on the basis that the
16 defendants must have either stolen property himself
17 or herself inquired it after it was stolen by
18 someone else, although you're not sure which is
19 true.

20 Third, that the defendants received,
21 retained, disposed of the property either knowing
22 that it has been stolen or believing that it had
23 probably been stolen. As I already indicated, a
24 defendant can be guilty of theft by receiving if he
25 or she believed that the property had probably been

1 stolen.

2 It is not necessary that the defendant
3 know the details of the theft, nor that he or she is
4 certain that a theft had occurred.

5 Now, let me tell you what conduct is
6 sufficient to constitute an attempt to commit these
7 crimes.

8 In order to find the defendants guilty of
9 attempted theft by unlawful taking and/or attempted
10 theft by receiving stolen property, you must be
11 satisfied that the following three elements have
12 been proven beyond a reasonable doubt.

13 First, that the defendant or coconspirator
14 or an accomplice did a certain act.

15 Second, that the defendant or a
16 coconspirator or accomplice did the act with intent
17 to commit the crimes by theft by unlawful taking
18 and/or theft by receiving stolen property; and
19 third, that the act constituted a substantial step
20 toward the commission of those crimes.

21 Let me first address the issue of intent.
22 A person cannot be guilty of intent to commit a
23 crime unless he or she has a firm intent to commit
24 that crime.

25 If he or she has not definitely made up

1 his or her mind, if his or her purpose is uncertain
2 or wavering he or she lacks the kind of intent that
3 is required for an attempt.

4 Let me now discuss the issue of a
5 substantial step. A person cannot be guilty of an
6 attempt to commit a crime unless he or she does an
7 act that constitutes a substantial step toward the
8 commission of that crime.

9 An act is a substantial step if it is a
10 major step toward commission of the crime and also
11 strongly corroborates the jury's belief that the
12 person at the time he or she did the act that a firm
13 intent to commit that crime.

14 An act can be a substantial step, even
15 though other steps would have to be taken before the
16 crime could be carried out.

17 If you are satisfied that the three
18 elements of attempted theft by unlawful taking
19 and/or attempted theft by receiving stolen property
20 have been proven beyond a reasonable doubt, you
21 should find the defendant's guilty; otherwise, you
22 must find the defendants not guilty of either of
23 those crimes.

24 Possessing criminal instrument of crime:
25 In order to find defendants guilty of possessing a

1 criminal instrument, you must be satisfied that the
2 following three elements have been proven beyond a
3 reasonable doubt.

4 First, that the defendants possessed a
5 certain item, which is a handgun. For a person to
6 possess an item, he or she must have the power to
7 control, an intent to control that item; and second,
8 that the intent was an instrument of crime.

9 An instrument of crime is A, anything
10 specially made for criminal use, or B, anything,
11 specially, adapted for criminal use, or C, anything
12 that is used for criminal purposes and possessed by
13 the defendant at the time of alleged offense and the
14 circumstances not manifestly appropriate for lawful
15 uses that it may have; that a thing must somehow
16 facilitate the possible commission crime is not
17 enough.

18 To be an instrument of crime, that thing
19 must be something that the defendant would need to
20 use in the commission of the underlying offense, and
21 third, that the defendants possessed the item with
22 the intent to employ it criminally; that is, with
23 the intent to attempt or commit a crime with it.

24 The Commonwealth has charged here that the
25 crimes the defendants intended to commit with the

1 instrument alleged was attempted murder, aggravated
2 assault, simple assault, recklessly endangering
3 another person, and robbery.

4 Accomplish: There is a way that one
5 defendant can be prove liable for the conduct of
6 another person or persons; that is, when the
7 defendant is an accomplice of the person who
8 actually commits the crime at issue.

9 To be an accomplice, the person does not
10 have to agree to help someone else. The person
11 isn't an accomplice if he or she or his or her on
12 acts to help the other person commit a crime. More
13 specifically, you may find the defendant is an
14 accomplice of another in this case if the following
15 two elements are proved beyond a reasonable doubt;
16 that the defendant had the intent of promoting or
17 facilitating the commission of offenses and the
18 defendants solicits, demands, encourages, request
19 the other person to commit it or aids, agrees, or
20 attempts to aid another person in planning on
21 committing it.

22 An accomplice liability must be assessed
23 separately for each crime charged. If two or more
24 crimes are committed and the defendant before you is
25 being charged as an accomplice for each of these

1 crimes, he or she may not be found liable unless it
2 is shown as each individual crime that this
3 defendant had the intent of promoting specific crime
4 and then solicited, demanded, encouraged requested
5 the other person commit it or aided, agreed to aid
6 or attempted to aid the other person planning or
7 committing it.

8 In other words, you must decide whether
9 the prosecution proved beyond a reasonable doubt
10 that this defendant was an accomplice to the first
11 crime, the second crime, et cetera.

12 It is important to understand that a
13 person is not an accomplice just because he or she
14 is present when a crime is committed or knows that a
15 crime is being committed.

16 To be an accomplice, the defendant must
17 specifically intent to help bring about the crime by
18 assisting another in its commission.

19 A person who is an accomplice will not be
20 responsible for a crime if and only if the person
21 before the other person commits the crime either
22 stops his or her own efforts to promote or
23 facilitate the commission of the crime and either
24 wholly deprives his or her previous efforts of
25 effectiveness in the commission of the crime or

1 gives timely warning to law enforcement authorities
2 or otherwise gives proper effort to prevent the
3 commission of the crime.

4 The role of jury deliberations verdict
5 must be unanimous: Before you retire to decide this
6 case, I would like to provide you with some final
7 guidelines for the way in which you conduct your
8 deliberations and how you may properly arrive at a
9 verdict.

10 It is my responsibility to decide all
11 questions of law; therefore, you must accept and
12 follow my rulings and instructions on matters of
13 law. I'm not, however, the judge of the facts. It
14 is not for me to decide what the true facts
15 concerning the charges against the defendants.

16 You jurors are the sole judges of the
17 facts. It will be your responsibility to consider
18 the evidence, to find the facts, and applying the
19 law to the facts as you find them to decide whether
20 the defendants have been proven guilty beyond a
21 reasonable doubt.

22 Your decision in this case, as in every
23 case you hear is a matter of considerable
24 importance.

25 Remember, it is your responsibility as

1 jurors to perform your duties and reach your verdict
2 based on the evidence as it is presented during the
3 trial.

4 However, in deciding the facts, you may
5 properly apply common sense and draw upon your own
6 everyday practical knowledge of life as each of you
7 have experienced it.

8 You should keep your deliberations free of
9 bias or prejudice. Both the Commonwealth and the
10 defendants have a right to expect you to consider
11 the evidence conscientiously and supply the law as I
12 had outlined it to you.

13 In arriving at your verdict, you should
14 not concern yourself of any future consequences of
15 your verdict, including what the penalty might be if
16 you should find the defendants guilty.

17 The question of guilt and the question of
18 penalty are decided separately.

19 Upon retiring to deliberate, you should
20 select one of you to be the foreman or foreperson.
21 He or she is the one who will announce the verdict
22 in the courtroom after you have finished
23 deliberating.

24 Your verdict must be unanimous. This
25 means that in order to return a verdict, each of you

1 must agree to it. You have a duty to consult with
2 each other and to deliberate with a view to reaching
3 an agreement, if it can be done without doing any
4 violence to your individual judgment.

5 Each of you must decide the case for
6 yourself, but only after there has been impartial
7 consideration with your fellow jurors.

8 In the course of your deliberations, each
9 of you, as jurors, should not hesitate to reexamine
10 your own views and change your opinions if convinced
11 it is erroneous.

12 However, no juror should surrender an
13 honest conviction as to the weight or effect of the
14 evidence solely because of the opinion of your
15 fellow jurors or for the mere purpose of returning a
16 verdict.

17 I shall now confer with counsel briefly
18 pertaining to the charges.

19 (Whereupon there was a side-bar
20 discussion.)

21 THE COURT: Okay. I would also like
22 to suggest to you that you would be able to
23 deliberate more easily in a way that would be better
24 for all concerned if you treat your fellow jurors
25 and their views with the same courtesy and respect

1 as you would treat other persons in your everyday
2 life.

3 Again, thank you for your patience.
4 I know it's been a long journey, but we're almost
5 there.

6 Please follow the directions of the
7 court crier. Thank you.

8 (Jury exits the courtroom at 2:57
9 p.m.)

10 THE COURT: We received a question.
11 All right. So we have a question from the jury.

12 Question Number 1. Will Your Honor
13 provide us with the elements of each charge of each
14 defendant in written form, which we kind of
15 anticipated that they would ask for that. So we
16 were able to print that out, of the charges.

17 That's the only -- the thing.

18 MR. FEINMAN: It has to be in,
19 justification.

20 THE COURT: Justification. Because
21 it was part of the charges, even though it's
22 defense, it's part of the charges. So I, guess,
23 anything under the charges has to go in.

24 MS. HEARD: Yeah, I mean.

25 THE COURT: So all that has to go in.

1 We should be deliberating until 4:15 or so. I don't
2 expect them to get too far.

3 And then tomorrow they can come in at
4 9:30. They can just come in and start deliberating.

5 All right. That's it, unless we get
6 another one.

7 MR. FEINMAN: So Your Honor, we're
8 going to provide them with pages 12, 13, 14, 15, 16,
9 17.

10 THE COURT: And charges start at 12
11 through, actually, 24 but, the role of juror
12 deliberations were redacted.

13 MR. McGOVERN: Your Honor, they'll be
14 deliberating until at least 4:15?

15 THE COURT: Yes.

16 (Court adjourned.)

17

18

19

20

21

22

23

24

25

1

- - -

2

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

3

- - -

4

5

6

7

8

9

10

11

12

13

14

15

16

17

THERESA VALENTINO

18

Professional Court Reporter

19

20

21

22

23

24

25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)