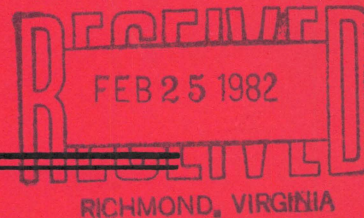


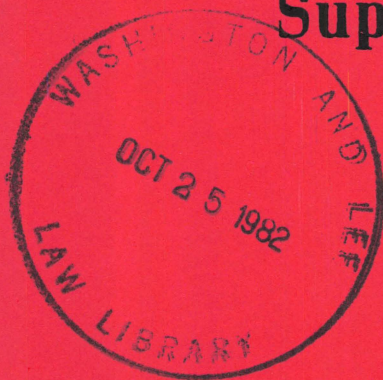
224 Va 127

CLERK  
SUPREME COURT OF VIRGINIA



---

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND



\_\_\_\_\_  
RECORD NO. 811845  
\_\_\_\_\_

MANUEL C. QUINTANA,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

\_\_\_\_\_  
VOLUME I  
APPENDIX  
\_\_\_\_\_

Benjamin N.A. Kendrick  
2007 N. 15th Street  
Arlington, Virginia 22201

Domingo L. Ordoveza  
Jose R. Recinto, Jr.  
ORDOVEZA & RECINTO  
2045 N. 15th Street, Suite 203  
Arlington, Virginia 22201

Counsel for Appellant

Thomas D. Bagwell  
Assistant Attorney General  
Supreme Court Building  
101 N. Eighth Street  
6th Floor  
Richmond, Virginia 23219

Counsel for Appellee



TABLE OF CONTENTS

APPENDIX  
PAGES

VOLUME I

1. WARRANT OF ARREST FILED MARCH 21, 1981 -----	1
2. INDICTMENT FOR FELONY FILED APRIL 20, 1981 -----	3
3. MOTION TO SUPPRESS FILED MAY 21, 1981 -----	5
4. PHYSICAL EXAMINATION FOR CRIMINAL CASES AS REQUIRED UNDER VIRGINIA CODE ANN. §19.2-169(1950), AS AMENDED -----	6
5. JURY INSTRUCTIONS	
a) Instruction No. 1 - granted -----	10
b) Instruction No. 1-A - refused -----	11
c) Instruction No. 2 - granted -----	12
d) Instruction No. 3 - granted -----	13
e) Instruction No. 4 - granted -----	14
f) Instruction No. 5 - granted -----	15
g) Instruction No. 6 - granted -----	16
h) Instruction No. 7 - granted -----	17
i) Instruction No. 8 - granted -----	18
j) Instruction No. 8-A - refused -----	19
k) Instruction No. 9-A - granted -----	20
l) Instruction No. 10 - withdrawn -----	21
m) Instruction No. 11 - refused -----	22
n) Instruction No. A - refused -----	23
o) Instruction No. B - refused -----	24
p) Instruction No. C - refused -----	25
q) Instruction No. D - refused -----	26
r) Instruction No. E - granted -----	27
s) Instruction No. F - refused -----	28
t) Instruction No. G - refused -----	29
u) Instruction No. H - refused -----	30
v) Instruction No. I - granted -----	31
w) Instruction No. J - granted -----	32
x) Instruction No. K - withdrawn -----	33
y) Instruction No. L - withdrawn -----	34
z) Instruction No. M - withdrawn -----	35
aa) Instruction No. N - withdrawn -----	36
bb) Instruction No. O - granted -----	37
cc) Instruction No. P - withdrawn -----	38
dd) Instruction No. Q - withdrawn -----	39
ee) Instruction No. R - withdrawn -----	40
ff) Instruction No. S - withdrawn -----	41
gg) Instruction No. T - withdrawn -----	42
hh) Instruction No. U - refused -----	43
ii) Instruction No. V - withdrawn -----	44
jj) Instruction No. W - withdrawn -----	45
kk) Instruction No. X - refused -----	46
ll) Instruction No. Y - refused -----	47
mm) Instruction No. Z - refused -----	48

mn) Instruction No. Z(1) granted -----	49
oo) Instruction No. Z(2) refused -----	50
pp) Instruction No. Z(3) given -----	51
6. VERDICTS OF JURY FILED JUNE 9, 1981 -----	52
7. ORDER FILED JULY 14, 1981 -----	54
8. MOTION TO VACATE FILED JULY 24, 1981 -----	56
9. MOTION FOR A NEW TRIAL FILED JULY 24, 1981 -----	57
10. MOTION FILED JULY 24, 1981 -----	59
11. PROBATION REPORT FILED JULY 27, 1981 -----	65
12. ORDER FILED AUGUST 4, 1981 -----	78
13. NOTICE OF APPEAL FILED AUGUST 21, 1981 -----	80
14. WRITTEN STATEMENT OF FACTS PURSUANT TO RULE 5:9, SUPREME COURT RULES FILED OCTOBER 30, 1981 -----	81
15. ASSIGNMENTS OF ERROR FILED DECEMBER 18, 1981 -----	83
16. EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON MAY 26, 1981	
a) Colloquy -----	87
b) Testimony of Edward W. Gabrielson -----	123
c) Colloquy -----	137
17. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 1, 1981	
a) Motions, Colloquy, etc. -----	147
18. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 2, 1981	
a) Testimony of Marche Rothlisberger -----	220
b) Testimony of Phillip Beuchert -----	230
c) Testimony of Norman E. Tyler -----	238
d) Testimony of Dr. James C. Beyer -----	262
19. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 3, 1981	
a) Testimony of Mark Nell -----	297
b) Testimony of Robert Carrig -----	298
c) Testimony of Norman E. Taylor -----	310
d) Testimony of Nelson Echemendia -----	348
e) Testimony of Humberto Rodrigues -----	401
f) Colloquy -----	414

## VOLUME II

### 20. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 4, 1981

a) Testimony of George Murphy -----	417
b) Colloquy -----	421
c) Testimony of Camabot Suarez Del Sol -----	425
d) Testimony of Dennis Reed -----	470
e) Colloquy -----	476
f) Testimony of John Shifflet -----	477
g) Testimony of David E. Pauly -----	478
h) Testimony of Deputy Curry -----	482
i) Testimony of Deborah Goad -----	483
j) Testimony of Barbara Goad -----	487
k) Testimony of Edward Timberman -----	489
l) Testimony of Maria Elena Capaisci -----	490
m) Testimony of Seollah Sharrari -----	492
n) Colloquy -----	493
o) Testimony of Deane Dabbs -----	494
p) Testimony of Morris Samuel Clark -----	527

### 21. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 5, 1981

a) Testimony of Edward W. Gabrielson -----	531
b) Testimony of Paul Douglas -----	581
c) Colloquy -----	588
d) Testimony of Robert E. Fudella -----	605
e) Colloquy -----	615
f) Testimony of James Sheehy -----	622
g) Testimony of Theodore Shell -----	656

### 22. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 6, 1981

a) Testimony of Kevin M. Tomez -----	658
b) Testimony of Dr. Hormuz Guard -----	677
c) Testimony of Barbara Escariz -----	743
d) Colloquy -----	748
e) Voir Dire Examination of Marche Rothlisberger -----	758

### 23. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 8, 1981

a) Colloquy -----	764
b) Voir Dire Examination of Raphael DeLeon -----	778
c) Colloquy -----	799
d) Testimony of Orlando Dominguez -----	811-A
e) Colloquy -----	823
f) Testimony of Umberto Amilio -----	825

### 24. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE CHARLES S. RUSSELL, JUDGE ON JUNE 9, 1981

a) Colloquy -----	833
-------------------	-----



b)	Testimony of James C. Beyer, M.D. -----	843
c)	Colloquy -----	844
d)	Testimony of Carmen Salgado -----	846
e)	Colloquy, Closing Arguments, etc. -----	862
f)	Jury Verdict -----	875

25. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE  
CHARLES S. RUSSELL, JUDGE ON JUNE 10, 1981

a)	Colloquy -----	878
b)	Testimony of Pedro Castro -----	879
c)	Testimony of Camabot Suarez Del Sol -----	888
d)	Colloquy -----	897
e)	Testimony of Ofelina Moya -----	899
f)	Colloquy, Sentencing, etc. -----	904

26. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE  
CHARLES S. RUSSELL, JUDGE ON AUGUST 3, 1981

a)	Colloquy -----	915
b)	Testimony of Marie Donohue -----	954
c)	Testimony of Susan E. Green -----	959
d)	Colloquy -----	960

**Commonwealth of Virginia, Arlington County, To Wit:**

TO THE SHERIFF OR ANY PEACE OFFICER OF THE COMMONWEALTH:

WHEREAS Detective J. Hargan, #348has this day made complaint and info made on oath before me the undersigned Special Magistrate for the said County, that Mamuel Guentaradid on or about the 19th day of March, 1981 in said Countycommit capital murder of Ophelia Guentara in  
the commission of robbery while armed with a  
deadly weapon, andin violation of Section 18.2-31 Code of Virginia, as amended ~~unlawfully~~/feloniously and against the peace and dignity of the Commonwealth, and on the basis of sworn statement of said complainant and undersigned has found probable cause to believe the accused has committed the offense

These are, therefore, in the name of the COMMONWEALTH OF VIRGINIA to command you forthwith to apprehend and bring before the Arlington General District Court the body of the said defendant named above to answer the said complaint, and to be further dealt with according to law, and to summon the witness named on the back hereof.

Given under my hand this 21st day of March, 1981.Justin E. O'Donnell Special Magistrate

Witnesses to be summoned:  
Name—

Address—

3-23-81  
IN THE GENERAL DISTRICT COURT  
OF  
ARLINGTON COUNTY

Commonwealth of Virginia

VS.

Manuel Quintana

CHARGED WITH

Capital Murder

Sec. Code of Virginia

18.2-231

WARRANT OF ARREST

ARREST RETURN

Executed the within warrant this 21  
day of March 19 81  
by delivering a true copy hereof to the  
defendant taking him into custody and  
summoning a witness named except

who were not found

of Arlington County, Virginia.

SUMMONS RETURN

Executed the within warrant this \_\_\_\_\_  
day of \_\_\_\_\_ 19 \_\_\_\_\_  
by delivering a true copy hereof to the  
defendant and summoning him (or her) to  
Court for the date and time directed on the  
warrant.

(NAME)

AND

(TITLE)

of Arlington County Virginia

3-23-81 Cont to 4-6-81

continued to

JUDGE

4-6-81

DATE

Plea of

Found

Sentence

3-23-81, no Bond

Held for Court

3/21/81  
Benjamin S. Kendrick  
J. R. Rios  
Honorable Orlando



V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

April 20, 1981

The Grand Jury charges that:

On or about the 19th day of March, 1981  
in the County of Arlington, MANUEL QUINTANA  
did feloniously kill and murder Ofelia Quintero in  
the commission of a robbery while armed with a deadly weapon.

Section <sup>18.2-31(d.)</sup>  
~~18.2-32~~, Code of Virginia, 1950, as amended.

Witnesses sworn and sent to the Grand

Jury by the Court to give evidence:

Detective E. Gabrielson, Arlington County Police Dept.

TESTE: David G. Bell

Clerk

C-17450

COMMONWEALTH OF VIRGINIA

VS.

MANUEL QUINTANA

INDICTMENT FOR FELONY

*True Bill*

*J. A. Harrison*

\_\_\_\_\_  
Foreman

VIRGINIA :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA

vs.

MANUEL QUINTANA

Defendant

CRIMINAL NO. C-17450

17451

17452

MOTION TO SUPPRESS

COMES NOW the Defendant, by counsel, and moves this Court to Suppress any and all evidence obtained from the Defendant's automobile on or about March 22, 1981 on the grounds that said search was unlawful and invalid and in violation of the Defendant's constitutional rights and laws of the Commonwealth of Virginia.

MANUEL QUINTANA

By Counsel

BEAN, KINNEY, KORMAN & HYLTON

By:

Benjamin N. A. Kendrick  
Benjamin N. A. Kendrick

Counsel for Defendant

2007 North 15th Street, P.O. Box 749

Arlington, Virginia 22216

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Suppress was hand delivered to the Commonwealth Attorney's office for the County of Arlington on this 21st day of May, 1981.

Benjamin N. A. Kendrick  
Benjamin N. A. Kendrick



DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

PHYSICIANS EXAMINATION FOR CRIMINAL CASES  
AS REQUIRED UNDER VIRGINIA CODE ANN. §19.2-169 (1950), AS AMENDED

Name of Patient: Manuel Quintana Camejo  
Full First Name Full Middle Name Full Last Name

Address: Arlington County Detention Center  
Street or Rural Number City or Town County or City Residence

Social Security No.: \_\_\_\_\_

Nearest Relative or Correspondent: \_\_\_\_\_  
Name

Birth Date: Feb. 8, 1953 Birth Place: Havana, Cuba  
Address Relationship to Patient

Marital Status: Single \_\_\_\_\_ Married ☒ Widowed \_\_\_\_\_ Divorced \_\_\_\_\_ Separated \_\_\_\_\_ Unknown \_\_\_\_\_

Religion: Catholic

MEDICAL HISTORY

Physical Illness

Physical Illness Present: None apparent.

Recent Illness or Injury: None.

Is Patient on Medication? Yes \_\_\_\_\_ No ☒ If yes, what: \_\_\_\_\_

If Hospitalized, where: \_\_\_\_\_  
Name Address

Previous Psychiatric or Mental Retardation Care

Inpatient Facilities (in chronological order)

- |    |                                        |                                         |
|----|----------------------------------------|-----------------------------------------|
| 1. | <u>Name and Address of Institution</u> | <u>Dates of Admission and Discharge</u> |
| 2. | <u>Name and Address of Institution</u> | <u>Dates of Admission and Discharge</u> |
| 3. | <u>Name and Address of Institution</u> | <u>Dates of Admission and Discharge</u> |

Outpatient Clinics

- |    |             |                |                        |
|----|-------------|----------------|------------------------|
| 1. | <u>Name</u> | <u>Address</u> | <u>Date of Service</u> |
| 2. | <u>Name</u> | <u>Address</u> | <u>Date of Service</u> |

TYPE OR PRINT ALL INFORMATION, except where signatures are required.

Private Psychiatrist

1. \_\_\_\_\_  
Name Address Date of Service

2. \_\_\_\_\_  
Name Address Date of Service

Mental Disease or Defect

Brief description of patient's mental symptoms:

Alert, cooperative, well oriented.  
Memory good for recent and remote events.

Symptoms First Observed: \_\_\_\_\_

How Rapid Development: \_\_\_\_\_

Has Patient Attempted Suicide?: Yes \_\_\_\_\_ No ☒ If yes, explain Apparently had episode of depression and suicidal ruminations following death of daughter.

Has Patient Attempted Homicide?: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain Homicide charge pending.

Is There Present Convulsive Disorder? Yes \_\_\_\_\_ No ☒ If yes, explain (including medication) \_\_\_\_\_

Has Psychological Testing Been Done? If Yes, state

a) intellectual level determined: \_\_\_\_\_

b) name and address of person administering test: \_\_\_\_\_

Is this patient an alcoholic? Yes \_\_\_\_\_ No ☒ state basis for opinion \_\_\_\_\_

Is this patient a drug addict? Yes \_\_\_\_\_ No ☒ Which drugs are used: \_\_\_\_\_

Amount \_\_\_\_\_

EVALUATION: State your opinion as to this patient's general mental condition and his capacity to stand trial and assist in his own defense.

Has mental capacity to understand pending charges and to assist in his own defense.

HOSPITALIZATION: State your opinion as to the advisability of temporary hospitalization to further determine the patient's ability to stand trial and assist in his own defense.

Not necessary.

George D. Weickhardt, M.D.  
Signature of Examining Physician  
5225 Burke Dr., Alex., Va  
Address

Signatures and addresses of committee members, if appropriate:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

NOTE: Attach any additional evaluation materials.

Virginia: In the \_\_\_\_\_ Court of the \_\_\_\_\_ of \_\_\_\_\_

Commonwealth of Virginia

ORDER

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, came the counsel for \_\_\_\_\_  
Commonwealth/Accused

and presented evidence that the accused because of mental disease or defect is in such mental condition that he lacks substantial capacity to understand the proceedings against him or to assist in his own defense. The court having previously appointed \_\_\_\_\_

\_\_\_\_\_, a physician skilled in the diagnosis of \_\_\_\_\_  
(Name of Physician(s)/Address) Insanity/feeble-mindedness

to observe, evaluate and examine \_\_\_\_\_ as to his competency as required by Virginia Code Ann. § 19.2-169 and having read the report submitted by the above named doctor(s) is satisfied as to the necessity for further inpatient evaluation in order to determine competency and therefore ORDERS that the accused be temporarily hospitalized at \_\_\_\_\_

\_\_\_\_\_ for a period not to exceed 45 days for observation. Within 45 days the director of the above named institution or his duly appointed representative shall report his findings to the court indicating whether the defendant is capable of understanding the proceedings against him and capable of assisting in his own defense. It is further ORDERED that \_\_\_\_\_  
Name of Institution  
prepare the necessary information relating to the crime as required by § 19.2-169.

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
Judge



**INFORMATION RELATING TO THE CRIME**

Name of Accused: \_\_\_\_\_

Present Address: \_\_\_\_\_

Name and Address of Counsel for the Accused:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

Name and Address of Counsel for the Commonwealth:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

The accused is charged with the commission of (    ) Felony (    ) Misdemeanor

Please attach the following papers:

1. A copy of the complaint or indictment attested by the clerk.
2. A summary of the facts surrounding the alleged crime. Attach copies of eyewitness reports, if available, and related police reports.
3. The prior criminal record of the accused.
4. A statement as to the accused's adjustment and behavior in jail.

Prepared pursuant to Court Order.

By: \_\_\_\_\_  
Name

\_\_\_\_\_  
Title

NOTE: The materials furnished pursuant to the Court Order and marked "Not to be reviewed or released to the accused" will be kept confidential.

INSTRUCTION 1

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

*Rever*  
*Off*

INSTRUCTION NO. 1A

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

*Rebaud*  
*CH*



INSTRUCTION 2

You are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements. While you have no right to arbitrarily disregard believable testimony of any witness, you do have a right to discard or accept in whole or in part the testimony of any witness which you think is proper to discard or accept when you consider it in connection with the other evidence in the case. You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

*Liver*  
*OKP*

INSTRUCTION NO. 3

The Court instructs the jury that it is not necessary that the facts be proven by direct evidence; they may be proven by circumstantial evidence, that is, the jury may draw all reasonable and legitimate inferences and deductions from the evidence before them. Circumstantial evidence is legal and competent, and a person charged with a crime may be convicted upon circumstantial evidence alone, or upon a combination of circumstantial and direct evidence, if the jury believe beyond a reasonable doubt from all of the evidence that he is guilty. All necessary facts and circumstances proved, however, must be consistent with the guilt of the defendant and inconsistent with his innocence, before he may be convicted. The evidence as a whole must exclude every reasonable theory of innocence.

*True*  
*OK*

INSTRUCTION NO. 4

The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- 1) That the defendant killed Ofelia Quintero; and
- 2) That the killing was willful, deliberate and premeditated; and
- 3) That the killing occurred during the commission of robbery while the defendant was armed with a deadly weapon.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt then you shall find the defendant not guilty of capital murder.

*Quintero*  
*RR*

INSTRUCTION NO. 5

Willful, deliberate, and premeditated means the adoption of a specific intent to kill. The intent to kill must come into existence at some time before the killing, but need not exist for any particular length of time and may be formed only a moment before the fatal act is committed provided the accused had time to think and did intend to kill.

*Smith*  
*CLP*

INSTRUCTION NO. 6

Robbery is defined as the taking, with the intent to steal, of property, regardless of ownership or value, from the person, custody or personal protection of another, against her will, by violence or intimidation.

*Foriner*  
*Ally*

INSTRUCTION NO. 7

A "deadly weapon" is any object or instrument, not a part of the human body, that is likely to cause death or great bodily injury because of the manner, and under the circumstances, in which it is used.

*Given*  
*CLP*

You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or to life imprisonment. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:

1) That, after consideration of his prior history or the circumstances surrounding the commission of this murder, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or

2) That his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind or aggravated battery to the victim. If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt either of the two alternatives then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment.

If the Commonwealth has failed to prove either alternative beyond a reasonable doubt, then you shall fix the punishment of the defendant at life imprisonment.

You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or to life imprisonment. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:

1) That, after consideration of his prior history or the circumstances surrounding the commission of this murder, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or

2) That his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder. If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt either of the two alternatives then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment.

If the Commonwealth has proven neither alternative beyond a reasonable doubt, then you shall fix the punishment of the defendant at life imprisonment.

*Refused*  
*EDR*



INSTRUCTION NO. 9-A

An "aggravated battery" is an act of violent injury to the person of another which is more than the minimum necessary to accomplish an act of murder.

It implies blows which, in the light of the surrounding circumstances, are both more numerous and more violent than would have been necessary to accomplish the killing.

*Griner:*  
*CH*

INSTRUCTION NO. 10

Proof of the exclusive personal possession by the defendant of recently stolen goods is a circumstance from which you may reasonably infer that the defendant was the thief.

The term "recently" is a relative term. The longer the period of time since the theft the more doubtful becomes the inference which may reasonably be drawn from unexplained possession.

"Exclusive personal possession" must be actual knowing possession.

*Withdrawn*  
*ELP*

INSTRUCTION NO. 11

If a person leaves the place where a crime was committed, this creates no presumption that the person is guilty of having committed the crime. However, it is a circumstance which you may consider along with the other evidence.

*Rebased  
BEP*

INSTRUCTION NO. A

The jurors are the sole judges of the weight and credibility of evidence and the jury has the right to discard or accept the testimony of any part thereof of any witness, which the jury regards proper to discard or accept when considered in connection with the whole evidence of the case. In determining the credibility of the witnesses, and the weight to be given their testimony, the jury may consider the interest of the witness in the thing about which he testifies, his means of knowledge, bias and prejudices in regard to the thing about which he testifies, and his demeanor while testifying.

*Revised*  
*AK*

INSTRUCTION NO. B

If you believe from the evidence that at the time he is alleged to have knowingly given false testimony the defendant, although able to understand the nature, character and consequences of the act charged against him and to perceive that it was wrong, nevertheless, if you are satisfied from the evidence that he was induced to commit the act by an impulse growing out of some mental disease affecting his volition, and that he was unable to resist an impulse to do the act because of such mental disease, then you shall find the defendant not guilty by reason of irresistible impulse and you shall so state in your verdict.

*Rebual*  
*ell*

INSTRUCTION NO. C

When the Commonwealth relies upon circumstantial evidence in order to secure a conviction, it is the duty of the jury to scan such evidence with great care and caution; and unless the circumstances proven are of such a character and tendency as to produce in the mind of the jury a moral conviction of guilt of the defendant beyond a reasonable doubt, then you must find the defendant not guilty.

*Revised*  
*CRP*

INSTRUCTION NO. D

Where the Commonwealth undertakes to prove the guilt of the defendant by circumstantial evidence, it must not only prove the circumstances relied upon, but it must overcome the presumption of innocence of the defendant and establish his guilt beyond a reasonable doubt. All necessary circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt, but they must exclude every reasonable hypothesis except that of guilt. The chain of circumstances must be unbroken and the evidence as a whole must be sufficient to satisfy the jury that guilt of the defendant has been proven to the exclusion of any other reasonable hypothesis.

*Rebutted*  
*CMP*

INSTRUCTION NO. E

Proof of a witnesses' prior conviction of a felony, or crime of moral turpitude, ~~or~~ one which involves the character of the witness for credibility, may be considered by the jury as affecting his credibility, but it does not render the witness incompetent to testify.

*Giver*  
*CHP*



INSTRUCTION NO. F

The defendant is presumed to be innocent of the offense with which he is charged and this presumption of innocence goes with him through the entire case and applies at every stage thereof and is sufficient to require you to find the defendant not guilty unless and until the Commonwealth upon whom the burden rests, proves his guilt beyond a reasonable doubt, and the Court further tells you that it is not sufficient that facts and circumstances proved be consistent with the guilt of the defendant, but they must be inconsistent with every reasonable hypothesis consistent with the innocence of the defendant.

*Referred  
all*

INSTRUCTION NO. 6

The burden is upon the Commonwealth to prove by the evidence beyond a reasonable doubt every material and necessary element of the offense charged against the defendant. It is not sufficient that the jury may believe his guilt probable, or more probable than his innocence. Suspicion or probability of guilty, however strong, will not authorize a conviction, but the evidence must prove his guilt beyond a reasonable doubt. The jury shall not speculate or go outside of the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence introduced by the Commonwealth and the defense and unless you believe, upon a consideration of all the evidence before you, that guilt of the defendant has been proved beyond a reasonable doubt as to every material and necessary element of the offense charged against him, then you shall find the defendant not guilty.

*Revised*  
*DMR*

INSTRUCTION NO. H

The burden resting upon the Commonwealth to prove guilt of the defendant beyond a reasonable doubt does not require that such guilt be proven beyond every imaginable, conceivable or possible doubt, but only beyond a reasonable doubt. The jury must limit its consideration to the evidence introduced, and you are not to go outside the evidence to hunt up doubts, nor must you entertain doubts which are speculative or conjectural. And if, upon a consideration of all the evidence you are satisfied of the guilt of the defendant beyond a reasonable doubt, then you shall find him guilty.

*Rebure's*  
*AKP*

INSTRUCTION NO. I

The finding of the indictment by the Grand Jury against the defendant in this case is no evidence against him and must not be permitted to influence the jury in any manner in arriving at a verdict.

*Given  
OK*

INSTRUCTION NO. J

Failure of the defendant to testify creates no presumption against him; and in considering his innocence or guilt, his failure to testify is not a circumstance which the jury is entitled to consider..

*Given*  
*ALP*

In this case you may find any one of the following verdicts:

1. That the defendant is guilty of capital murder. Capital murder is punishable by death; or by confinement in the penitentiary for life.

2. That the defendant is guilty of murder in the first degree. Murder in the first degree is punishable by confinement in the penitentiary for life or for any term not less than twenty years.

3. That the defendant is guilty of murder in the second degree. Murder in the second degree is punishable by confinement in the penitentiary for not less than five years nor more than twenty years.

4. That the defendant is guilty of voluntary manslaughter. Voluntary manslaughter is punishable by confinement in the penitentiary for not less than one year nor more than ten years, or by confinement in jail not to exceed twelve months and a fine not to exceed one thousand dollars, either or both.

5. That the defendant is guilty of involuntary manslaughter. Involuntary manslaughter is punishable by confinement in the penitentiary for not less than one year nor more than five years, or by confinement in jail not to exceed twelve months and a fine not to exceed one thousand dollars, either or both.

6. That the defendant is not guilty.

*Withdrawn  
CWP*

INSTRUCTION NO. 2

The Commonwealth must prove from the evidence beyond a reasonable doubt every material fact and if the jury have a reasonable doubt as to the grade of the offense, then they must resolve the doubt in favor of the defendant and find him guilty of the lower grade; to illustrate, if you have reasonable doubt as to whether he is guilty of murder in the first degree or second degree, you should find him guilty in the second degree; if you have reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, you should find him guilty of manslaughter; if you have reasonable doubt as to whether he be guilty at all, you must resolve that doubt in favor of the defendant and acquit him.

*W. Thayer*  
*MRP*

INSTRUCTION NO. M

Murder in the first degree is the wilful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant wilfully, deliberately, premeditatedly, and maliciously killed the deceased, then you shall find him guilty of murder in the first degree and fix his punishment with confinement in the penitentiary for life, or for any term not less than twenty years.

*Withdrawn  
file*



INSTRUCTION NO. N

In order to convict the defendant of murder in the first degree the burden is upon the Commonwealth to prove beyond a reasonable doubt that the killing was wilful, deliberate and premeditated with malice; and unless the Commonwealth has proven these elements beyond a reasonable doubt, then the defendant cannot be guilty of murder in the first degree.

*Withdrawn*  
*ELR*

INSTRUCTION NO. 0

While it is not necessary for the Commonwealth to prove a motive for the killing, nevertheless the presence or absence of a motive is a question for consideration by you as bearing on the guilt or innocence of the defendant.

*Quier*  
*MP*

INSTRUCTION NO. P

(a) Every unlawful homicide is presumed to be murder in the second degree.

(b) In order to elevate an unlawful homicide to murder in the first degree, the burden of proving the elements thereof is upon the Commonwealth.

(c) In order to reduce an unlawful homicide from murder in the second degree to manslaughter or excusable homicide, the burden is upon the defendant.

(d) It is your duty to consider all of the testimony, no matter by whom introduced, and ascertain therefrom if the defendant is guilty or innocent, and if guilty, of what offense.

*Withdrawn*  
*all*

INSTRUCTION NO. 6

In order for the killing to amount to murder in the second degree, although it is not necessary for the Commonwealth to prove wilfulness, deliberation and premeditation, it is incumbent upon the Commonwealth to prove that the defendant acted with malice, and unless you believe from the evidence beyond a reasonable doubt that he did act with malice, you cannot find the defendant guilty of second degree murder.

*Withdrawn*  
*all*

INSTRUCTION NO. R

Voluntary manslaughter is the unlawful killing of another without malice, upon sudden heat of passion, upon reasonable provocation, or in mutual combat.

*Witham*  
*AK*

INSTRUCTION NO. 5

Even though you may believe from the evidence beyond a reasonable doubt that the defendant killed Mrs. Quintero, if you further believe from the evidence that the killing was not from malice, but was done in the heat of passion, upon reasonable provocation, then you shall not find the defendant guilty of any higher offense than voluntary manslaughter.

*Withhold  
HLP*

INSTRUCTION NO. 7

In order for the killing to amount to voluntary manslaughter, such killing must have resulted from an intentional act, without malice, either upon sudden heat of passion, upon reasonable provocation, or in mutual combat, and if the Commonwealth has not proved such beyond a reasonable doubt, then the defendant cannot be guilty of that crime.

*Withers*  
*led*

INSTRUCTION NO. 4

Unless you believe from the evidence beyond a reasonable doubt that the death of the deceased resulted from criminal violence on the part of the defendant, you must find the defendant not guilty.

*Referred  
all*



INSTRUCTION NO. ✓

If you believe from the evidence beyond a reasonable doubt that the defendant, with intent to steal, took property of Mrs. Quintero and her son against their will, by the use of violence or intimidation, then you shall find him guilty, and fix his punishment at confinement in the penitentiary for life or any term not less than five years.

*Withdrawn*  
*ELP*

INSTRUCTION NO. W

Unless you believe from the evidence beyond a reasonable doubt that the violence or intimidation allegedly committed by the defendant, preceded or was concurrent or contemporaneous with the alleged taking of the property of Mrs. Quintero and her son you must find the defendant not guilty of robbery.

*Wither*  
*lll*

INSTRUCTION NO. ~~X~~

Even though you believe from the evidence beyond a reasonable doubt that the defendant used violence ~~or threats~~ to Mrs. Quintero, if you have a reasonable doubt that the same <sup>W/25</sup> ~~were~~ made prior to or contemporaneously with the alleged taking of the property of Mrs. Quintero and her son, or if you believe from the evidence that at the time of any alleged violence ~~or threats~~, the same <sup>W/25</sup> ~~were~~ used by the defendant for the purpose of retaining the property allegedly stolen, or <sup>W/25</sup> ~~were~~ used for purpose of escape you must find the defendant not guilty of robbery.

*Rehuel  
COP*

INSTRUCTION NO. 4

The accused must be identified beyond a reasonable doubt as the person who took the property of Mrs. Quintero and her son and killed Mrs. Quintero before he can be convicted. Suspicion or probability of guilt is not enough upon which to convict. And unless you believe from the evidence that the identity of the accused as the guilty party has been proven beyond a reasonable doubt, you shall find the defendant not guilty.

*Refused*  
*ELP*

INSTRUCTION NO. 2

The mere unexplained possession of stolen property by the defendant, without more, is not sufficient evidence to support a conviction of robbery, but is merely one circumstance which may be considered. And if you believe from the evidence that the defendant had in his possession property which was the subject of the robbery, but if you believe that the evidence as a whole fails to show beyond a reasonable doubt that the defendant perpetrated the robbery, then you cannot find the defendant guilty of robbery.

*Refused*  
*Withhold*  
*AM*

INSTRUCTION NO. 2(1)

In considering the weight to be given to the testimony of expert witnesses, whose opinions differ, you may consider the ability and character of the witnesses, their actions upon the witness stand, the weight and process of the reasoning by which they support their opinion, their possible bias in favor of the side for which they testify, their relative opportunities for study or observation of the matters about which they testify, and any other matters which serve to illuminate their statements.

*Isier*  
*AK*

INSTRUCTION NO. 2(2)

The failure of the defendant to flee after being told that he was being sought by the police for questioning in the robbery and murder of Mrs. Quintero raises no presumption that he did not commit the crimes, but the absence of flight, if proven, is a circumstance which the jury may take into consideration along with other facts and circumstances tending to prove guilt or innocence, and it may be given such weight as the jury deem proper in connection with other pertinent and material facts and circumstances in the case.

*Revised  
ELP*

INSTRUCTION NO. 23

If you believe that any witness has knowingly testified untruthfully as to any material fact in this case, you do not have to accept any of the testimony of that witness, or you may give that testimony such weight as you feel it is entitled.

*G. J. S.*  
*CH*



C-17450

We, the Jury, find the Defendant "Guilty" of "Capital Murder" as charged in the Indictment herein.

9 June 1981  
DATE

George K. Gwans  
FOREMAN

C-17450

We, the Jury, find the Defendant "Not Guilty".

                      
DATE

                      
FOREMAN

C-17450

We, the jury, on the issue joined, having found the defendant guilty of the willful, deliberate and premeditated killing of Ofelia Quintero in the commission of robbery while armed with a deadly weapon and that after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind or aggravated battery to the victim, and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

10 June 81

DATE

George H. Gwinn  
FOREMAN

Recorded in Common Law Order  
Criminal Book No. 195 Page No. 408  
On July 14 1981

COMMONWEALTH OF VIRGINIA

408

VS

C-17450

MANUEL QUINTANA

PURSUANT TO ADJOURNMENT the 10th day of June, 1981 came the Commonwealth of Virginia, by its Attorney, Kenneth Melson and Richard Trodden, the Defendant in custody of the Sheriff and his Court Appointed Attorneys, Benjamin N. A. Kendrick, Jose Recinto and Domingo Ordoveza.

WHEREUPON the Jury was polled as to their attendance on this date.

THEREUPON pursuant to the finding of "Guilty" on the previous day of this trial the Jury heard evidence of the Defendant's prior history and matters in mitigation of the offense and at the conclusion thereof the Court adjourned for the luncheon recess and the Jury was excused after the members thereof were admonished not to discuss this case nor to permit anyone to discuss it in their presence, nor to reach any conclusion until so directed by the Court.

WHEREUPON the Jury returned to its box and was instructed by the Court and after hearing closing arguments of the Attorney for the Commonwealth and counsel for the Defendant, the Jury retired to its room to consider its verdict and after a time presented a question to which the Court responded and after a further period returned into Court and presented the following verdict, to-wit:

C-17450

We, the jury, on the issue joined, having found the defendant guilty of the willful, deliberate and premeditated killing of Ofelia Quintero in the commission of robbery while armed with a deadly weapon and that after consideration of his prior history that there is probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind or aggravated battery to the victim, and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

June 10, 1981  
DATE

/s/ George Gowans  
FOREMAN

WHEREUPON, on motion of the Defendant, the Jury was polled and each member thereof answered affirmatively as to the foregoing being its verdict.

THEREUPON the Jury was discharged.

THEREUPON the Defendant moved the Court to refer this case to the Probation Officer for the Circuit Court of Arlington County, Virginia, for investigation and report prior to the imposition of sentence, which said motion the Court granted and accordingly ordered said reference.

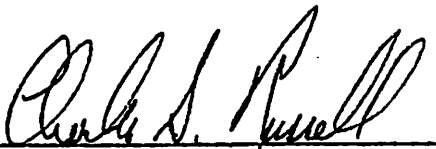
IT IS FURTHER ORDERED by the Court that this case be continued to August 3, 1981 at 9:30 A.M. for the filing of the aforesaid report and the imposition of sentence, subject to said report.

THEREUPON the Defendant moved the Court for leave to file post-trial motions in this case, which said motion the Court granted and accordingly ordered said motions to be filed, with authorities in support thereof, on or before July 20, 1981, with copies to the Attorney for the Commonwealth; and it is therefore

ADJUDGED and ORDERED by the Court that this case be and it hereby is continued to August 3, 1981 for a hearing on the aforesaid motions, if any are filed, and for the imposition of sentence.

AND the Defendant is hereby remanded to jail.

Entered this 14<sup>th</sup> day of <sup>July</sup>~~June~~, 1981.

  
Judge

VIRGINIA:

FILED

IN THE CIRCUIT COURT OF ARLINGTON COUNTY JUL 24 1981

COMMONWEALTH OF VIRGINIA,  
  
Plaintiff,  
  
v.  
  
MANUEL QUINTANA,  
  
Defendant.

DAVID A. BELL, Clerk  
Circuit Court, Arlington County, Va.  
By: David A. Bell, Deputy Clerk

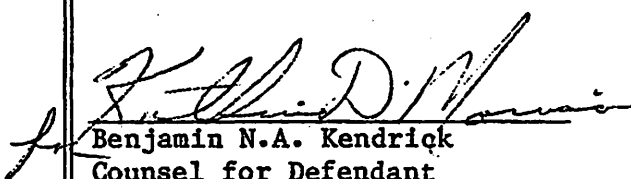
C-17450-52

MOTION

COMES NOW Defendant, MANUEL QUINTANA, and moves this Court for an Order vacating and setting aside the jury's verdict in the above styled case on the grounds that Defendant was convicted under an unconstitutional statute.

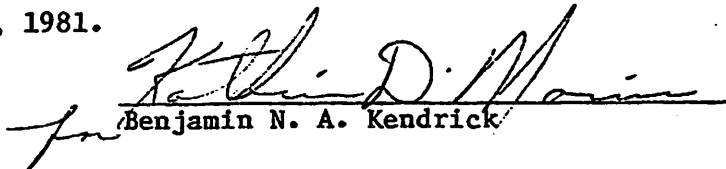
MANUEL QUINTANA

By Counsel

  
Benjamin N.A. Kendrick  
Counsel for Defendant  
2007 N. 15th Street  
P.O. Box 749  
Arlington, Virginia 22216

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was hand delivered to the Commonwealth Attorney's office for the County of Arlington, on this 24th day of July, 1981.

  
for Benjamin N. A. Kendrick

FILED

JUL 24 1981

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

DAVID A. BELL, Clerk  
Circuit Court, Arlington County, Va.  
By [Signature] Deputy Clerk

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

MANUEL QUINTANA.

Defendant.

C-17450-52

MOTION

COMES NOW Defendant, MANUEL QUINTANA, by counsel, and moves this Court for a judgment of acquittal or, in the alternative, a new trial and, in support of these motions, Defendant asserts that he was deprived of a fair trial by reason of the following errors:

1. The denial of Defendant's Motion to Suppress Evidence.
2. The denial of Defendant's Motion to Strike at the conclusion of the Commonwealth's case.
3. Improper rebuttal evidence by the Commonwealth Attorney.
4. The denial of Defendant's Motion for surrebuttal.
5. The Court's refusal to grant Defendant's Motion for a Mistrial after the Commonwealth's Attorney removed evidence from the courtroom and exhibited the same evidence to a witness prior to that witness's testimony in court, during which testimony the witness identified the same evidence.
6. The verdict was contrary to the weight of the evidence.
7. Defendant was ejected from the courtroom and the trial continued in his absence.
8. Questions asked by the jury during deliberation and answers given by the Court to said questions indicate that the jury misconstrued the law and evidence.

9. There is new evidence, discovered by counsel on July 22, 1981, which shows that Defendant was involved in an automobile accident on February 3, 1981, and was injured (a cut on the chin) which resulted in blood on the suit he is alleged to have been wearing on the date of the murder.

→ 10. Failure on the part of the Commonwealth's Attorney to disclose exculpatory evidence.


11. The unavailability of lesser included offense instructions and the apparent mandatory nature of the death penalty both interjected irrelevant considerations into the factfinding process diverting the jury's attention from the central issue of whether the State had satisfied its burden of proving beyond a reasonable doubt that Defendant was guilty of a capital offense.

12. Failure of the Court to admit a complete medical examiner's report.

13. The Court erred in admitting the testimony of Pedro Castro.

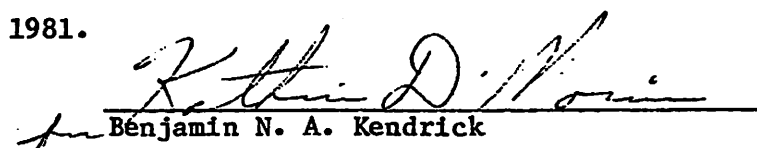
MANUEL QUINTANA

By Counsel

  
Benjamin N.A. Kendrick  
Counsel for Defendant  
2007 N. 15th Street  
P.O. Box 749  
Arlington, Virginia

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was hand delivered to the Commonwealth Attorney's office for the County of Arlington, on this 24th day of July, 1981.

  
for Benjamin N. A. Kendrick

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VA 124 1981

FILED

COMMONWEALTH OF VIRGINIA

Plaintiff

vs.

MANUEL QUINTANA

Defendant

C-17450-5 2

MOTION

COMES NOW Defendant, MANUEL QUINTANA, through counsel, and moves this Honorable Court to reverse his conviction and to hold the 1977 Virginia death penalty statute, Virginia Code Ann. §19.2-264.2 et seq (1981 Cum. Supp.), unconstitutional and in support hereof, alleges the following:

GENERALLY

1. The circumstances of Defendant's trial were, in their totality, so unfair and prejudicial that the imposition of the capital sentence would deprive him of his life without Due Process of Law in violation of the Eight and Fourteen Amendments to the Constitution of the United States and Article I, §8 and 11 of the Constitution of Commonwealth of Virginia.

2. Imposition of the death penalty by means of electrocution is unnecessarily cruel and is forbidden by the Eighth and Fourteenth Amendments to the Constitution of the United States.

IN PARTICULAR

3. Virginia's capital sentencing procedure is unconstitutional on its face under the Eighth and Fourteenth Amendments to the Constitution of the United States and under Article I, §9 of the Constitution of the Commonwealth of Virginia.



a) Virginia's capital sentencing procedure is unconstitutional on its face because it makes the decision to impose death dependent on the sentencer finding either of two aggravating circumstances, Virginia Code Ann., §19.2-264.2(1), each of which is so vague and subjective and so calculated to appeal to passion that the Commonwealth's capital sentencing process generates a substantial likelihood that the death penalty will be arbitrarily inflicted.

b) The statutory language which authorizes the imposition of the death penalty if the Commonwealth proves "beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute continuing serious threat to society," is so uncertain, vague, speculative and prone to error on the side of overinclusion that it is meaningless, fails adequately to channel the sentencer's discretion, and is arbitrary.

(i) Whether the Defendant will probably be a continuing serious threat to society is a speculative and unreasonable basis for imposing the death penalty.

(ii) The Virginia definition of dangerousness is fatally vague.

(iii) Predictions of future violence invariably err on the side of overinclusion.

(iv) Whether they employ clinical or statistical techniques, behavioral scientists cannot now, with present knowledge, accurately and reliably predict future violence.

(v) Selection of capital offenders to be executed on the basis of a probability of future violence fails to channel and objectify sentencing discretion and results, inevitably, in arbitrary decisions and raises a serious risk of invidious discrimination.

(vi) In a capital murder, in determining defendant's proclivity for violence, the jury may obtain from the mere record of previous convictions, an inaccurate or incomplete impression of defendant's temperament or disposition. (Stamper v. Commonwealth, 220 Va. 260 (1979)). Yet, the language of the Statute is designed to focus the fact finder's attention on prior criminal conduct as the principal predicate for a prediction of future "dangerousness." (Smith v. Commonwealth, 219 Va. 455).

c) The statutory language which authorizes the imposition of death if the sentencer finds the defendant's "conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery of the victim," is vague, overbroad and calculated to arouse emotion, fails to channel the sentencer's discretion, and creates a substantial likelihood that the death penalty will be arbitrarily inflicted.

(i) Whether the defendant's conduct in committing the offense was "outrageously or wantonly vile, horrible or inhuman..." is an emotionally-based and unreasonable basis for imposing the death penalty.

(ii) Evidence introduced to prove the "vileness" of defendant's conduct and instructions concerning this issue inevitably appeal to the passions of the jury.

(iii) Although the Virginia capital sentencing statute contemplates considerations of mitigating circumstances, the strong emphasis on the "vileness" of the defendant's conduct in committing the offense tends to inhibit rational and deliberate consideration of evidence in mitigation.

(iv) Selection of offenders to be executed on the basis of the "vileness" of the offense fails to channel and objectify sentencing discretion and results, inevitably, in arbitrary decisions and raises a serious risk of invidious discrimination.

4. The statute is fatally vague and does not establish procedures to guarantee the reliability and fairness of the imposition of the death penalty in that it does not specify which party bears the burden of proof on the question of mitigation, and does not specify the standard of proof for carrying that burden.

5. By making incapacitation of the defenant an independent and sufficient basis for imposition of the death penalty on persons convicted of capital offenses, Virginia's capital sentencing scheme violates the principles of "necessity" and "desert" implicit in the Eighth and Fourteenth Amendments to the Constitution of the United States and is, therefore, unconstitutional on its face.

a) Incapacitation can be served as well by life imprisonment without the possibility of parole as by the death sentence.

b) Execution is an unconstitutionally excessive penalty when there are less drastic, but equally effective, alternatives which can be employed to serve society's interest in preventing further crime by the offender.

c) The death sentence is unconstitutionally excessive for incapacitative purposes because it "...makes no measurable contribution to acceptable goals of punishment and, hence, is nothing more than purposeless and needless imposition of pain and suffering..." Coker v. Georgia, 433 U.S. 584, 592 (1977).

d) The Virginia death penalty statute creates an artificial necessity to impose death by giving the sentencer only two choices: Death and life imprisonment with eligibility for parole, and by failing to provide for a sentence of life imprisonment without possibility of parole or for adequate instructions concerning parole eligibility so that the sentencer can be informed about the incapacitative effect of a life sentence.

e) By emphasizing the defendant's future dangerousness, the Virginia death penalty statute diverts the sentencer's attention from the defendant's relative culpability for the offense, the factor which should be the primary focus of a decision to impose the death penalty.

6. The present Virginia capital sentencing procedure, as applied since it went into effect on July 1, 1977, has resulted in arbitrary and discriminatory application of the death penalty based on the race, gender and financial status of the offender and of the victim, and defendant's death sentence was imposed pursuant to this discriminatory pattern and practice in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States and Article I, §11 of the Constitution of the Commonwealth of Virginia.

a) Among capital defendants in Virginia, the death penalty has been disproportionately imposed upon defendants who, like defendant herein, belong to a minority group.

b) Among capital defendants in Virginia, the death penalty has been disproportionately imposed upon defendants, who like defendant herein, are male.

c) Among capital defendants in Virginia, the death penalty has been disproportionately imposed upon defendants, who like defendant herein, are poor.

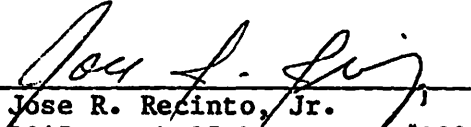
WHEREFORE, defendant prays that the Court enter judgement reversing his conviction and for an Order declaring Virginia death penalty statute unconstitutional, and grant defendant such other and further relief as may be appropriate under the premises.

MANUEL QUINTANA

By Counsel

ORDOVEZA & RECINTO

By:

  
Jose R. Recinto, Jr.  
2045 North 15th Street, #208  
Arlington, Virginia 22201

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was hand delivered to the Commonwealth Attorney's office for the County of Arlington, on this 24th Day of July, 1981.

  
Jose R. Recinto, Jr.

Filed 7/27/81

Probation Report  
Not to be opened without  
Permission of Court

DISTRICT NO. 10

PRESENTENCE REPORT

**CIRCUIT COURT**

PREPARED BY: Marie Donoghue

DATE TYPED: 7-24-81

**CIRCUIT COURT OF ARLINGTON COUNTY**

NAME: Manuel Quintana

PLACE OF BIRTH: C. Havana, Cuba

AKA:

SEX: Male

PRESENT ADDRESS: Arlington County Detention  
Center  
Arlington, Virginia

RACE: Hispanic

MARITAL STATUS: Married

PERMANENT ADDRESS: 3044 Patrick Henry Drive  
Apartment 102  
Fairfax, Virginia

DEPENDENTS: Two

AGE: 28

DOB: 2-8-53

SOCIAL SECURITY NO: 231-21-6813

JUDGE: Honorable Charles S. Russell

COMMONWEALTH'S ATTORNEY: Mr. Henry E. Hudson

DEFENSE ATTORNEY: Mr. Ben Kendrick, Jose Recinto, Domingo Ordoveza

TRIED BY: Jury

TRIAL DATE: 6-10-81

DATE OF DISPOSITION: 8-3-81

OFFENSE(S): Capital Murder

INDICTMENT NO.(S): C-17,450

PLEA(S): Not guilty

VERDICT(S): Found guilty by Jury - sentenced to death

CUSTODY STATUS: In Jail since March 21, 1981.

JAIL ADJUSTMENT: Satisfactory until July 10, 1981, when Mr. Quintana was placed  
in Administrative Segregation when he was found with a rope,  
\*two pieces of metal and an escape note. *S says he did not intend  
to escape.*

CODEFENDANT(S): N/A

DISPOSITION OF CODEFENDANT(S): N/A

*\* Comm. says there were 2 prisoners.*

PRESENT OFFENSE:

Mr. Kenneth Melson of the Arlington County Commonwealth's Attorney Office presented the following statement with regards to the details of this offense.

"On March 19, 1981, the brutalized body of Ofelia Quintero, a 72-year old Cuban refugee, was found in the kitchen of her apartment at 748 South Florida Street, where she had lived with her son, Nelson Echemendia. The Medical Examiner reported the cause of death to be multiple blunt force trauma to the head with skull fractures and cerebral trauma. The deceased was found to have suffered a brutal beating which resulted in a laceration to the right external ear, three full thickness scalp lacerations in the right temporal area, a laceration of the left ear, two full thickness lacerations in the left temporal area, six full thickness scalp lacerations in the back of the head and multiple abrasions and contusions to the neck and back. A bloodied hammer was found at the scene. This hammer was consistent with the instrument that inflicted the victim's wounds and was determined to be the murder weapon.

"A crime scene search revealed that the bedroom had been ransacked and numerous pieces of jewelry as well as money, clothing, and an INS identification card had been stolen. The fingerprints of the defendant were found on two items in the apartment, including one item which had been moved during the robbery.

"On March 21, 1981, the defendant's automobile was seized and on March 22, it was searched. Contained within the automobile was every item of property reported stolen.

*amm. \$162.00*  
"Further investigation revealed that, although the defendant had been released without money or employment from the Fairfax County Jail on March 18, 1981, he was able to purchase an automobile, have it repaired, pay traffic tickets, make large purchases of miscellaneous merchandise and retain \$102.00 in his wallet; all the transactions were made in cash and some with numerous twenty dollar bills, which were consistent with the money stolen from the deceased.

*\*I object to this as conclusory*  
"The clothing that the defendant was wearing on the day of the homicide contained splattered blood on the lower front of the pants' legs and on the right coat sleeve, which was also consistent with the victim's blood.

"Evidence adduced at the sentencing hearing revealed that the defendant had murdered at least one other person in Cuba, and had been sentenced to death by a firing squad but had been granted a reprieve from the execution at the last moment. Other evidence revealed that Quintana was released from a Cuban prison and placed on a boat to America during the exodus of 1980. Witnesses at the hearing also disclosed that the defendant had planned to kidnap a young female child from school, which was corroborated by witnesses to an attempted abduction of the girl and by the presence of numerous chains, locks and ligatures in the defendant's automobile."

*I object to all of this. Says it ~~was~~ is argumentative*



ITEM OF INTEREST:

This report was prepared with the help of Ms. Gloria E. Bustillo of the State of Virginia Spanish Speaking Committee. Ms. Bustillo is the Office Director of the Spanish Speaking Committee and acted as an interpreter between Manuel Quintana and this officer. She also translated subject's statement to the Court from Cuban to English.

OFFENDER'S VERSION:

The following is the statement submitted by Mr. Quintana translated into English by Ms. Bustillo.

"To the ~~justice~~: *Court:*

*Cornejo*  
"Manuel Quintana Cornejo, Arlington Detention Center C-8 Room #8.

"Remember that there have been two victims in this case asking for justice.

"I am going to ask justice for both of us. I know that it is going to be a lot of work but that justice will be proud of its service to two victims of the injustice.

Thank you

"Your Honor, and members of the justice: I am begging you to hold this trial again; with a full and complete investigation. I am innocent and everybody had been very injustice to me, unfortunately a life has been lost.

"I have been sentenced to death being innocent. Although none of my life or the proves were investigated, the only coincidental proves were shown since I still do not believe that the objects that are said to be found in my car were there. Because the people that make 10 mistakes also make 11 or 12 etc.

"A look is born-work and sweat for peace, fight, argue and try to get ahead of others.

"Shame and humiliation renew pride and vanity, they are taken away from their love ones-Life happiness turns into grieve.

"The weight of pain, worried and poverty, gets heavier every year!!

"Ambition at last dies and it's from a state of numbness.

"At last a gift, for the first time their land gives them and they leave a world in which they were of no consequence had not accomplished life's purpose. They were a mistake, error a necessity, signs of their being there are the injustice against them because there are recorded a world that cried for them a day and forgot them forever.

"What difference does it make that I die in an injustice, if my death will point out more of the injustice.

"When the ambition to obtain money and fame blinds us. Injustice takes a hold of us and of this injustice today I am the victim.

"I cannot defend myself because of the language barrier but my conscience will defend me because I am innocent, my hands have never been soiled by blood of even an animal, why then a human life?

"I have the right to have Justice given to me, not injustice.

"In the trial my rights were all denied. six times I asked for justice six times I asked to speak, six times my petition was a cause of disciplinary action, not taken as victim of injustice who was asking for justice.

"The trial lasted 10 days, days that were the darkest in my life, they were days of consistent lack of respect to my moral, they even made a joke of the death of my two year old daughter in Cuba who was also a victim of injustice in the trial.

"The Commonwealth Attorney also placed a criminal to testify against me reducing 6 years and 8 days of his sentence. This criminal served as an interpreter for me on April 17 for a few minutes.

"I am not satisfy with this trial and would like justice to take interest in this case, where there are two victims, one who by destiny and fault of injustice, can only confide in justice, so this person can find the right criminal of this death. I am the second victim I am also going to die unjustly and if this is executed there will be two victims.

"Let's make a deep investigation and clear up this incredible case.

"I want the truth to be out 1st because I am innocent. 2nd because the victim was like a mother to me. 3rd because I believe in justice.

"There are many, many things that are happening that are anti-human and injustible; and I know that you ignore them."

/s/ Manuel Quintana

In conversation with subject, he maintained his innocence. He stated that he did not understand why his case was not more fully investigated. He also did not understand why he could not speak in his behalf as he feels he could have answered many of the unanswered questions with regards to this offense.

#### OTHER CRIMINAL HISTORY INFORMATION:

Mr. Quintana denies ever committing any other crime either in the United States or while in Cuba. He also states that he has never been in prison *[in Cuba]*

Subject gave this officer a number to call in Havana, Cuba, in order to find out if he had a criminal record. With the help of another probation officer, Ms. Mary Beth Simpson, this office attempted to reach this number. We were told by the Cuban operator that there was no such number

in Havana, Cuba, however, she would try and contact a criminal records section of the Havana Police Department. Subsequently, we were put in touch with a General Dennis of the Havana Police Department. General Dennis stated that he would try and locate any records on our subject and would return our telephone call. As of this writing, we have not yet heard from General Dennis, however, it is hoped that he will be back in touch with this office before August 3, 1981.

This officer spoke with a Mrs. Lorenzo of the Catholic Charities, who worked with subject upon his arrival in the States. She informed this officer that she recalls that Mr. Quintana told her that he had been in prison in Cuba, but did not tell her why.

*I object  
this as  
hearsay.*

Item of Interest:

With regards to the fact that subject is now in Administrative Segregation, subject stated that he was going to commit suicide. He made no mention of the fact that it was suspected that he might be trying to escape.

FAMILY HISTORY:

Father: Antonio Quintana died in December of 1980, at the age of sixty-five. Subject states he does not know the cause of his father's death. Mr. Quintana was in the Cuban Army initially, and when Castro came to power, he continued to be employed in the Army as a civilian. Subject states that he last saw his father in May of 1980. At that time, he was not ill and his death was a surprise. Subject states that his father had no known record, no drug or drinking problem, and was in good health.

Mother: Celia B. Hernandez, approximately fifty years of age, resides at 52nd Street, 23712, between 237 and 239, C. Havana, Cuba. Subject states that he last saw his mother in May of 1980. She is a housewife and has attended college. She has no known record, no drug or drinking problem, and is in good health.

Subject states that his parents had been married for more than thirty years prior to his father's death. He states that they had a good relationship.

Siblings:

Subject has a total of thirteen siblings. Eight of them are his father's children, and the other five are both of his parents' children. He states he is not exactly sure of all of their ages, however, the oldest one is in his forties. The following is a list of subject's siblings ranging from the oldest to the youngest.

Brother: Jose' A. Gonzalez, resides in C. Havana, Cuba. He is employed doing restaurant work, is married, has no drug or drinking problem, and is in good health.

Guillermo Quintana resides in Pinnal del Rio, Cuba, and is in the military service. He is married, has no drug or drinking problem, and is in good health. He has no prior record.

Serafin Quintana resides in Pinar<sup>del</sup> del Rio, Cuba, and is married. Subject is not sure of his employment. He has no drug or drinking problem, no known record, and is in good health. Subject states that his brother was a political prisoner for two years.

<sup>Cardal</sup>  
Candel Caymejo resides in Pinar<sup>del</sup> del Rio, Cuba, and is a housewife. She is married and has five children. She has no known record, no drug or drinking problem, and is in good health.

Guillermo Caymejo was killed by Castro in 1964 *for political reasons*

Berenalda Caymejo resides in Pinar<sup>del</sup> del Rio, Cuba, and is a housewife. She is married and has five children. She has no known record, no drug or drinking problem, and is in good health.

Nienes Caymejo resides in Pinar<sup>del</sup> del Rio, Cuba, and is a housewife. She is married and has eight children. She has no known record, no drug or drinking problem, and is in good health.

Jhana Caymejo resides in Havana, Cuba, and is a housewife. She is married and has three children. She has no known record, no drug or drinking problem, and is in good health.

<sup>Cardal</sup>  
Candel Quintana resides in C. Havana, Cuba, and is a housewife. She is married and has three children. She has no known record, no drug or drinking problem, and is in good health.

Aleida Quintana resides in C. Havana, Cuba, and is a housewife. She is married and has six children. She has no known record, no drug or drinking problems and is in good health.

Enrique Quintana resides in C. Havana, Cuba, and is in the military service. He is married and had three children. He has no known record, no drug or drinking problem, and is in good health.

Soraya Quintana resides in C. Havana, Cuba, and is a housewife. She is married and has two children. She has no known record, no drug or drinking problem, and is in good health.

Miguel Quintana was killed by Castro in 1964 *for political reasons*.

#### DOMESTIC AND ENVIRONMENTAL SUMMARY:

Subject is one of fourteen children raised by both his parents in C. Havana, Cuba. Subject states that all of his siblings lived together with his parents. At the age of eight, subject went to military school and resided at the military school but returned home on various vacations and holidays. Subject states that his family was a rather typical Cuban family. He also states that he was the only boy sent to military school as he was the youngest. One of his uncles was killed in the military and, therefore, he was allowed to go to military school by the government.

Subject states that his parents were rather wealthy as his father was paid well in the military service. Subject also stated that since

he was away at military school most of the time, he did not get a chance to get particularly close with his parents.

At the age of sixteen, while subject was still in military school, he got married and continued in school. Subject states that his father continued to support him while he was married. After leaving school in 1976, subject resided on a farm in C. Havana, Cuba.

In May of 1980, subject came to the United States. He stated his only reason for coming here was because he wanted to change. He stated that he was not forced to come here for any political reasons.

Subject also states that his family is not aware of his current legal situation in the United States. He states that he would rather die than tell his mother of his current situation.

Mr. Quintana first arrived in the United States on May 26, 1980. He initially arrived in Miami, Florida. Subsequently he went to Pennsylvania. In October of 1980, he went to Arkansas and in November, came to Northern Virginia. He states that he and various other refugees, resided in various "forts" in the States. Subject states that the Catholic Charities helped him in finding an apartment, and helped him to finance this apartment. They also paid him sixty-three dollars per month for three months for living expenses. Mr. Quintana was residing in Falls Church, Virginia, when this offense occurred.

#### MARITAL HISTORY:

In 1969, in C. Havana, Cuba, subject married Estervina Rodrigues, who is currently age twenty-seven. Subject states that they only lived together for approximately one week. He states that they were both too young when they got married and the relationship did not work out. They had no children. Subject states, however, that he saw his wife in May of 1980, before he came to the United States. He does not know her education level, or if she is employed. He states that she is in good health and has never been in trouble.

Soon after separating from his wife, subject began a relationship with a Maria Rodrigues (no relation to his first wife). Subject and Ms. Rodrigues have been together since 1969. Subject states that he and his girl friend resided on a fairly large farm in C. Havana, Cuba. Subject states that he and Ms. Rodrigues had two daughters. Subject's oldest daughter, Jackeline, who was born in 1974, died in 1976. Subject states the reason for the death was that he accidentally ran her over with his car while backing out of the driveway. Their other daughter is Jasmile, born in 1976.

Subject states that Ms. Rodrigues did not come with him to the United States because she liked Castro's government. He stated that he planned on sending for her once he got established in the United States. He also stated that he hoped to marry her once she joined him. Ms. Rodrigues was a housewife and helped on the farm.

Subject states, that Ms. Rodrigues is not aware of his current criminal

difficulties in the United States. He states that he does not write to her at this time.

In addition, subject has had two girl friends since moving to the Northern Virginia area. Initially, when he came to Virginia, he met a Ms. Elizabeth Jinenez, age twenty-two. He states that he dated her for approximately fifteen days. He also had another girl friend, Maria Elena Cayuacachi, who is eighteen years of age. Subject states that she is from Peru. He also states that her parents opposed their relationship since they did not like Cubans.

#### EDUCATION:

From 1961 to 1976, subject attended the National Military School, otherwise known in Cuba as the Escuela Nacional Militar Martires de Giron, Baradeo, Cuba. School records have been sent for but have not yet been received as of this writing.

Subject states that he was kicked out of school in 1976, because he denied belief in Castro. He states he would have graduated in 1976 with a college education and a degree in Choropodiatry. Subject states, however, that he has taken many classes in this field and was trained in providing services for people with foot problems. He also states that he received a certificate in general psychology which would enable him to work in the military courts in Cuba.

Apparently, at this time, subject has the education equivalent to several years of college.

#### RELIGION:

Subject is of the Catholic faith and attends church.

*He requested that he be baptized here, as it is prohibited in Cuba.*

#### INTERESTS AND LEISURE TIME ACTIVITIES:

Subject states that he enjoys chess, gambling, and socializing. He also stated that while in Cuba, there were no recreational facilities. He states, however, that most of his spare time was spent socializing with his family and with his girl friend's family.

#### HEALTH:

Subject is in good physical health. He states that he has had no operations or illnesses.

In 1976, after the death of his daughter, subject became very depressed and would often times cry. He states that he went to outpatient mental health treatment on a once a week basis. He states that he was given various medication for anti-depression. He also took tranquilizers. Subject states that he has never been in an inpatient mental health hospital and that he was not forced into treatment by the police or any other authorities. Subject states that he attended treatment on his school campus.

*He denied that he was ever insane in Cuba. He was depressed at death of 2 yr old daughter.*

Subject denies the abuse of any illicit drugs and denies the use of alcohol.

#### EMPLOYMENT HISTORY:

Subject states that the only work he did while in Cuba was working on his farm.

While in the United States, subject was not employed on any regular basis. He was employed for approximately one month and a half on a part-time basis at the Washington-Lee Savings and Loan Company in Tysons Corner, Virginia, doing office cleaning. He states he was laid off from this job. He also worked for one week at the Ranch House in Falls Church, Virginia, as a dishwasher. He left this job as he was arrested and placed in the Fairfax Jail. Subject states that he spent approximately one and a half months in Fairfax Jail. Subsequent to his release he was arrested on this offense.

#### MILITARY HISTORY:

Subject has never been in the military.

#### FINANCIAL CONDITION:

Subject states that he is not in debt of any kind.

Subject states that while in Cuba, he owned a 1953 Plymouth and a large farm. On the farm, he grew various vegetables and raised cows and other livestock. Subject states that his wife's family worked on the farm with him.

Subject states that when he came to Virginia from the various Cuban forts, he had \$2,700.00. He stated that he earned this money gambling and trading various items. He also stated that the Catholic Charities paid the refugees rent for several months and gave them \$63.00 per month for three months.

#### EVALUATIVE SUMMARY:

Manuel Quintana is a twenty-eight year old married male who appears before the Court after being found guilty of the charge of Capital Murder. The jury has sentenced subject to death.

Mr. Quintana is a Cuban refugee who came to the United States in May of 1980. Prior to this time, he resided in C. Havana, Cuba. From what can be learned from the subject, he is one of fourteen children raised by both of his parents in Havana, Cuba. He states that at the age of eight, he went to military school and resided at the military school and returned home on various vacations and weekends. It appears that his relationship with his parents was relatively stable, however, he was not particularly close with them as he was not home very often. At the age of sixteen he married. Soon after, he and his wife separated. He then established another relationship with another woman who had two of his children. One of subject's daughters was killed by subject in an automobile accident when subject accidentally backed over her. Needless to say, this was

very emotionally upsetting to subject and as a result of this, subject became involved in mental health treatment. Subject states that he was in therapy for approximately one year due to his severe depression.

While in military school, subject earned a certificate in General Psychology and was studying Chiropractic. Subject, was, however, allegedly kicked out of school by Castro in 1976. After leaving school, subject, his girl friend, and his surviving daughter resided on a large farm in Cuba. In 1980, subject came to the United States. He states he came voluntarily and was not forced to come here for any reason.

Subject denies the abuse of any illegal drugs, and denies the use of alcohol.

Concerning this offense, subject denies his involvement totally. He also denies any prior criminal history, either in the United States or while in Cuba. Criminal records from Cuba have been requested, however, as of this writing, have not been received.

Throughout the course of this presentence investigation, subject was cooperative with this officer. Through the interpreter, subject supplied the necessary information. Mr. Quintana became very emotional on several occasions while being interviewed. He appears to be very ashamed of what has happened and does not want his family to know anything about his involvement. Mr. Quintana appears to be very depressed and Jail Classification Personnel informed this officer they felt that he could be suicidal.

Although Mr. Quintana is a seemingly bright individual, his questioning of the trial and conviction process, and his obvious confusion surrounding the methods of our Criminal Justice System, appear to indicate a lack of real understanding of what has happened to him resulting in his conviction of Capital Murder.

This officer feels that the language barrier, as well as the inability to secure verified information from Mr. Quintana's native land precluded a definitive picture of Manuel Quintana.

Mr. Quintana appears to be a very distraught individual who is most concerned that due to his unfamiliarity with the proceedings of the courts and his inability to communicate fully with his attorney, he has not received a fair trial. This is most tragic in view of the profound severity of this charge and its penalty.

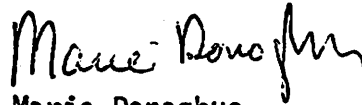
While Mr. Quintana's guilt has already been proven by the Commonwealth, and the penalty set by the jury, the severity of the sentence is of concern to this officer. The lack of communication that exists between subject and his attorneys, this officer and the Court in addition to the confusion that subject apparently feels has led to this officer's concern in this area.

While there appears to be no reconciliation of the issues surrounding the language barrier and the lack of understanding of the legal process,

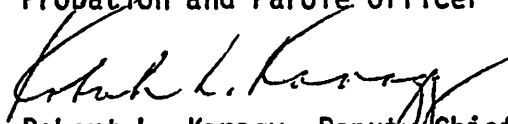


we cannot overlook the severity of the crime.

The above is respectfully submitted for the Court's consideration.



Marie Donoghue  
Probation and Parole Officer



Robert L. Kanagy, Deputy Chief  
Probation and Parole Officer

MD/gm

NAME: Manuel Quintana  
SEX: Male  
RACE: Hispanic  
DOB: February 8, 1953; C. Havana, Cuba  
SSN: 231-21-6813

FBI NO:  
CCRE NO: 513136

PRIOR RECORD:

2-6-81	PD Fairfax, Virginia	Burglary Unauthorized Use	Nolle Prossed Nolle Prossed - <i>Dismissed at Prelim. Hrg.</i>
2-9-81	PD Fairfax, Virginia	Grand Larceny - Auto	Nolle Prossed
3-21-81	PD Arlington, Virginia	Capital Murder	Instant Offense

*Marie Donoghue*  
Marie Donoghue  
Probation and Parole Officer

MD/gm

VS

MANUEL QUINTANA

129/17

THE 3rd day of August, 1981 came the Commonwealth of Virginia, by its Attorney, Kenneth Melson, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Court Appointed Attorneys, Benjamin N.A. Kendrick, Jose Recinto and Domingo Ordoveza.

It appearing to the Court that the Defendant was previously found "Guilty" of "Capital Murder", this case was continued to this date for the imposition of sentence and the hearing of post-trial motions.

WHEREUPON this case came on to be heard on the Defendant's motion for judgment of acquittal or new trial and motion to vacate on the ground of an unconstitutional statute, and the said motions were argued by counsel.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the said motions should be, and they hereby are, denied as are more specifically set forth in the stenographic record of this case.

WHEREUPON the Defendant was asked if he had read and understood the report of the Probation Officer, which was presented in open Court pursuant to Section 19.2-299 of the Code of Virginia, and further if he had discussed the report with his counsel, to all of which the Defendant replied in the affirmative.

THEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witness sworn to testify regarding the matter before the Court, to which the Attorney for the Defendant replied in the affirmative.

WHEREUPON the Court ordered that the report of the Probation Officer be filed as a part of the record in this case after certain discrepancies were noted therein, as are more specifically set forth in the stenographic record of this case, and the Defendant cross-examined the investigating officer, who was duly sworn as the law directs immediately prior thereto, and the Defendant and the Commonwealth introduced other evidence pertaining to the proceedings herein.

AND IT BEING DEMANDED of the accused if he desired to make a statement or to advance any reason why judgment should not be pronounced against him according to law, both he and his counsel made statements to the Court.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper, doth hereby find the Defendant guilty of "Capital Murder" as charged in the indictment herein.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the said Manuel Quintana be, and he hereby is, sentenced to Death as provided by law.

IT IS FURTHER ORDERED by the Court that the execution of the sentence herein imposed be, and it hereby is, suspended pending action of the Supreme Court of Virginia as provided in Section 17-110.1 of the Code of Virginia.

THEREUPON, the Defendant having been found to be indigent, the Court Appointed Benjamin N.A. Kendrick, Jose Recinto, and Domingo Ordoveza, discreet and competent Attorneys, to represent him for the appeal of this case.

BE IT REMEMBERED that Commonwealth's Exhibit #1 from the sentencing herein was returned to the Arlington County Sheriff Department.

Recorded in Common Law Order

Criminal Book No. 195 Page No. 736

On Aug 4 1981

IT IS FURTHER ORDERED by the Court that as soon as possible after the entry of this order, the Defendant be removed and safely conveyed according to law from the Jail of this Court to the Penitentiary of this Commonwealth; therein to be kept, confined and treated in the manner provided by law.

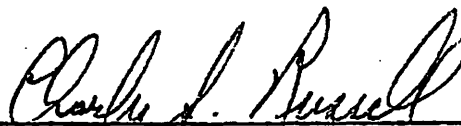
THE COURT ORDERS that the Defendant be allowed credit for the time spent in jail awaiting trial, namely since March 21, 1981.

THE COURT CERTIFIES that at all times during the trial of this case the accused was assisted by an interpreter duly sworn and qualified as provided by law and further certifies that at all times during the trial of this case the accused was personally present with the exception that he was removed during a portion of the Commonwealth's closing argument at trial due to disruptive behavior as more specifically set forth in the stenographic record of this case.

THE birth date of the Defendant is reported to be February 8, 1953.

AND the Defendant is hereby remanded to jail.

Entered this 4<sup>th</sup> day of August, 1981.

  
Judge

VIRGINIA :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

AUG 21 1981

COMMONWEALTH OF VIRGINIA,  
Plaintiff/Appellee

vs.

MANUEL C. QUINTANA,  
Defendant/Appellant

DAVID BELL, Clerk  
Circuit Court of Arlington County, Va.  
By: *[Signature]* County Clerk

Criminal Record No. 17450

NOTICE OF APPEAL

NOTICE is hereby given that MANUEL C. QUINTANA appeals the judgment of this Court by order entered August 4, 1981, in the above-captioned case. Furthermore, counsels for the Defendant/Appellant hereby states that the transcript of the hearing herein shall be filed and included as part of the record pursuant to Rules 5:6 and 5:9 of the Rules of Court of the Supreme Court of Virginia.

In addition, the Defendant/Appellant requests that the following be made part of the record on appeal from this Court::

1. The original papers and exhibits filed in this Clerk's office.
2. The original draft signed or initialed by the Judge of this Court, or a copy, of each order entered by this Honorable Court.
3. Any opinion or memorandum decision rendered by the Judge of this Court.
4. Transcript of any and all hearings held in this Court, testimony, written statements of facts, or other incidents of the case set forth above. as provided in Rule 5:9 of the Rules of Court as set forth above.

MANUEL C. QUINTANA

By Counsel

Ordoveza & Recinto  
2045 N. 15th Street, Suite 208  
Arlington, Virginia 22201

By: *[Signature]*  
JOSE R. RECINTO, JR.  
Co-counsel for Defendant/Appellant

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

MANUEL C. QUINTANA,

Defendant.

C-17,450

WRITTEN STATEMENT OF FACTS

PURSUANT TO RULE 5:9, SUPREME COURT RULES

1. On May 27, 1981, a motion was made by counsel for the defendant to have the defendant examined pursuant to 19.2-169 et seq. of the Code of Virginia, as amended.

2. On May 29, 1981, a conference was held at the office of Judge Charles S. Russell between defense counsel and the Commonwealth Attorneys Kenneth Melson and Richard Trodden. The purpose of the conference was to appoint a psychiatrist to examine the Defendant pursuant to the 19.2-169 motion.

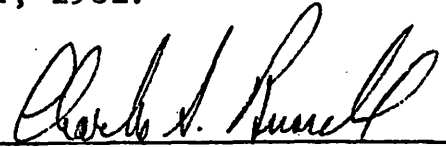
3. At this meeting, defense counsels asked Judge Russell to appoint Dr. Carlos Astrada, a Spanish-speaking psychiatrist from Springfield, Virginia. Defense counsel Domingo L. Ordoveza informed Judge Russell that Dr. Astrada would be able to examine the defendant in the morning of the following day, Saturday, and furnish the Court with a report by Sunday afternoon, May 31, 1981.

4. Over the objection of the defense counsels, Judge Russell appointed Dr. George D. Weichardt of Alexandria, Virginia, who is an English-speaking psychiatrist, to examine the defendant through an interpreter. The interpreter that assisted the psychiatrist was Ms. Gloria Bustillo.

5. The defendant was examined by Dr. Weichardt on May 29, 1981, and his report was filed with the court on the same day.

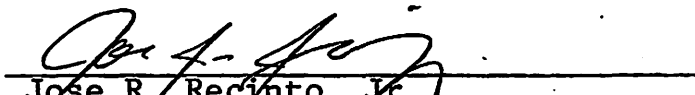
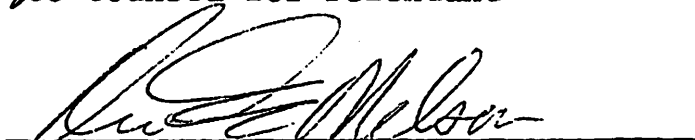
6. The opportunity was afforded to the defense to have Dr. Astrada appointed for the purpose of also examining the defendant at the State's expense. Dr. Astrada did not examine the defendant.

ENTERED this 30<sup>th</sup> day of October, 1981.



JUDGE

SEEN AND AGREED:

  
Jose R. Recinto, Jr.  
Co-counsel for Defendant  
Kenneth E. Melson  
Deputy Commonwealth's Attorney

IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND

DEC 18 1981

MANUEL C. QUINTANA,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA,

Appellee.

RECORD NO. 811845

ASSIGNMENTS OF ERROR

1. The Virginia Capital Murder statute is unconstitutional on its face.

2. The Virginia Capital Murder statute is unconstitutional as applied to Manuel C. Quintana.

3. The trial court erred in denying Mr. Quintana's Motion to Suppress.

4. The trial court abused its discretion in denying Mr. Quintana's motion for continuance made one week prior to start of trial.

5. The trial court erred in appointing an English-speaking psychiatrist who did not speak a word of Spanish, over the objection of defense counsel, to examine Mr. Quintana, who does not understand nor speak the English language, to determine his competency to stand trial.

6. The trial court erred in denying Mr. Quintana's motion to voir dire prospective jurors individually, or in smaller groups, instead of in panels of twenty.



7. Mr. Quintana was deprived of his constitutional right to an impartial and representative jury when the trial court excluded jurors who manifested their opposition to death penalty.

8. The trial court violated Mr. Quintana's constitutional right to confront witnesses against him and to a fair and impartial trial when the trial court utilized an untested system of simultaneous translation during his trial without providing for a tape recording system to record and preserve the original testimony of Spanish-speaking witnesses and the Spanish translation of English-speaking witnesses against him.

9. Mr. Quintana was deprived of his constitutional right to be present at all stages of his trial when he was prematurely and unconditionally ejected from the courtroom during the trial.

10. The trial court erred in denying Mr. Quintana's Motion for Mistrial following the Commonwealth Attorney's removal from the courtroom of an article already in evidence, and its being exhibited to a prosecution witness immediately prior to that witness' testimony.

11. The trial court erred in refusing to admit the complete Medical Examiner's report filed with the Medical Examiner's office.

12. The trial court erred in not allowing the jury to hear the testimony of Officer Rothlisberger.

13. The trial court abused its discretion in allowing the rebuttal testimony of a witness for the Commonwealth (Carmen Salgado) and in subsequently denying defendant's request for surrebuttal.

14. The trial court erred in submitting the case to the jury on the issue of capital murder, particularly where the Commonwealth failed to prove the exact time of death and there was some question whether the robbery could have occurred before or after the homicide thereby casting some doubt on

perpetrator.

15. The trial court allowed improper and irrelevant considerations to be interjected in the jury deliberations.

16. The trial court erred in denying Mr. Quintana's proposed instructions C, D, G, H, and U.

17. The trial court erred in failing to instruct, sua sponte, the jury as to lesser included offenses.

18. The Commonwealth Attorney erred in making improper and prejudicial closing arguments.

19. The verdict of the jury was contrary to the weight of evidence.

20. The trial court erred in admitting the testimony of Pedro Castro at the sentencing phase of the bifurcated trial.

21. The trial court erred in admitting colored photographs of the victim (Exhibit 103) at the sentencing phase.

22. The trial court erred in admitting evidence of Mr. Quintana's conduct in jail, over the objection of defense counsel, in considering the death penalty for Mr. Quintana.

23. The trial court erred in imposing the death penalty on Mr. Quintana after a consideration of the presentence report which did not recommend the death sentence and which did not contain any information that Mr. Quintana posed a continuing danger to society.

24. The trial court erred in denying Mr. Quintana's Motion to Strike at the conclusion of the Commonwealth's case in chief.

25. The sentence of death was imposed under the influence of passion, prejudice, and other arbitrary factors.

26. The imposition of the death penalty on Manuel Quintana constitutes cruel and unusual punishment.

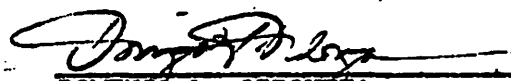
27. The sentence of death imposed on Mr. Quintana who was found guilty on evidence based mainly on circumstantial evidence is excessive and grossly disproportionate in comparison with other cases in which this Court has upheld the death penalty.

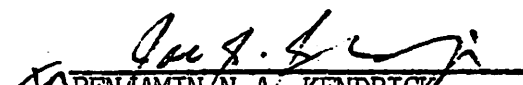
28. Any and all other errors which may appear to counsel upon a fuller reading of the transcripts of record and the record of the case in its entirety.

MANUEL C. QUINTANA  
By Counsel

ORDOVEZA & RECINTO  
2045 N. 15th Street, Suite 208  
Arlington, Virginia 22201  
(703) 243-0210


By:   
JOSE R. RECINTO, JR.  
Co-Counsel for Mr. Quintana

  
DOMINGO L. ORDOVEZA  
Co-Counsel for Mr. Quintana

  
BENJAMIN N.A. KENDRICK  
Co-Counsel for Mr. Quintana  
2007 N. 15th Street  
Arlington, Virginia 22201  
(703) 525-4000

CERTIFICATE OF SERVICE

I hereby certify that one true copy of the foregoing Assignment of Errors was mailed, postage prepaid, to THOMAS D. BAGWELL, Esq., Assistant Attorney General, 830 East Main Street, 900 Fidelity Building, Richmond, Virginia 23219, on this the 14<sup>th</sup> day of December, 1981.

  
Jose R. Recinto, Jr.

## AFTERNOON SESSION

(1:45 p.m.)

1  
2 THE COURT: Gentlemen, I suppose this brings us  
3 to the motion to suppress.

4 MR. KENDRICK: Yes, it does.

5 Your Honor, if I may get a feel for how the other  
6 instrument works, I would like to address the Court from  
7 that podium, if the Court has no objection.

8 THE COURT: Yes.

9 MR. KENDRICK: Your Honor, the affidavit in this  
10 case was for an automobile that belonged to my client.  
11 Apparently there is some evidence that was obtained from  
12 it and the suppression motion goes to that search and, in  
13 particular, that affidavit.

14 The affidavit which supported the search warrant  
15 was sworn to by Detective Gabrielson and the Magistrate  
16 before whom it was sworn to, "the officer issuing the  
17 warrant," end quote, was Magistrate O'Donnell. She failed  
18 to certify that affidavit to the Clerk and the failure has  
19 continued for more than thirty days.

20 It is mandatory under 19.2-54, Code of Virginia,  
21 1950, as amended, that certification by the issuing officer  
22 by application to the Clerk be done within the specified  
23 time.

1 THE COURT: Give me that code section again,  
2 please?

3 MR. KENDRICK: Yes, sir, 19.2-54.

4 Your Honor, I think it is necessary and I'll break  
5 whenever the Court deems it necessary, but it is important  
6 to realize the distinction and differences made in the  
7 1975 amendment. The important language is included in the  
8 1980 Supplement because there have been crucial changes in  
9 that.

10 Failure to comply with the requirement invalidates  
11 the search on that automobile. The Legislature intended  
12 this provision of the statute to connote a mandatory duty  
13 for providing a penalty for failure to comply. I submit  
14 to the Court when we are interpreting the word "shall" as  
15 used in 19.2-54 the primary object is to ascertain and to  
16 give effect to the Legislative intent.

17 By keeping in mind the following established rules  
18 of the statutory instruction, it becomes crystal clear that  
19 Section 19.2-54 imposes a mandatory duty with a sanction  
20 for noncompliance. One of the rules of construction that  
21 the Supreme Court has most recently dealt with and it has  
22 dealt with it numerous times, is that criminal matters should  
23 be construed constrictively against the Commonwealth and in

1 favor of the accused.

2 The latest case that I can find on that is an  
3 April, 1980, case in the advance sheets. That is Gray v.  
4 Gray, cited at 220 Va., page 943. Gray involved a question  
5 of whether a certificate of analysis pursuant to Code  
6 Section 19.2-187, Code of Virginia, 1950, as amended. In  
7 construing the statute in favor of the accused, the Court  
8 once again concerted its rules of obstruction.

9 Since the case at bar before Your Honor today  
10 involves a similar involvement of a criminal statute, the  
11 reasoning of Gray applies as well here. Construing this  
12 statute in favor of the accused, it becomes clear that the  
13 affidavit must be certified by the officer issuing the  
14 warrant and none other.

15 Further, that failure by such issuing officer to  
16 file a certified affidavit within thirty days of the  
17 issuance of the search warrant invalidates the search. If  
18 the Court were to construe the statute otherwise, the result  
19 would be contrary to the Legislative intent and the Court  
20 would be construing the statute contrary to the applicable  
21 rules of construction, as I have pointed out.

22 Where a statute is plain and unambiguous, there is  
23 no room for construction and the plain meaning is that the

1 favor of the accused.

2 The latest case that I can find on that is an  
3 April, 1980, case in the advance sheets. That is Gray v.  
4 Gray, cited at 220 Va., page 943. Gray involved a question  
5 of whether a certificate of analysis pursuant to Code  
6 Section 19.2-187, Code of Virginia, 1950, as amended. In  
7 construing the statute in favor of the accused, the Court  
8 once again concerted its rules of obstruction.

9 Since the case at bar before Your Honor today  
10 involves a similar involvement of a criminal statute, the  
11 reasoning of Gray applies as well here. Construing this  
12 statute in favor of the accused, it becomes clear that the  
13 affidavit must be certified by the officer issuing the  
14 warrant and none other.

15 Further, that failure by such issuing officer to  
16 file a certified affidavit within thirty days of the  
17 issuance of the search warrant invalidates the search. If  
18 the Court were to construe the statute otherwise, the result  
19 would be contrary to the Legislative intent and the Court  
20 would be construing the statute contrary to the applicable  
21 rules of construction, as I have pointed out.

22 Where a statute is plain and unambiguous, there is  
23 no room for construction and the plain meaning is that the

1 intent of the statute will be given intent. Utilizing  
2 these rules of construction, it is clear in the Rules that  
3 it must be the issuing officer. It is a certified affidavit  
4 which he or she -- no -- it is the certified affidavit  
5 which he or she must file within thirty days.

6 Not only is the language plain and unambiguous,  
7 but the Legislative intent is also demonstrated by the fact  
8 that the General Assembly has seen fit to specifically  
9 define what it is that must be certified and filed by the  
10 "issuing officer". If you look at the statute, by defining  
11 the term "affidavit" in the statute as "statements made  
12 under oath or affirmations and preserved verbatim," the  
13 Legislature has been specific in its penalty for failure  
14 to comply.

15 The reason behind this is the Fourth Amendment.  
16 It is crystal clear. There is no way that we can determine  
17 whether or not a particular affidavit has, in fact, been  
18 dealt with in accordance with the law unless we look at  
19 that particular affidavit after the search to see if the  
20 items that were contained in it were, in fact, the ones  
21 that were obtained.

22 That's the only way that we can determine whether  
23 or not -- what the issuing officer did and the original



1 Magistrate did as he was required by law is, in fact, what  
2 you ended up with as required by law. There is no other  
3 way. One might say, well, all we have to do is call the  
4 Magistrate and ask him.

5 Well, did you look at this affidavit after the  
6 search? Or you might call the Clerk of the Court of which  
7 the affidavit was filed and ask the Clerk: What were the  
8 results of the search? That cannot be done. That's why we  
9 have this section in the Code. By statute, and I refer to  
10 19.2-271 of the Code, the Magistrate and the Clerk cannot  
11 be compelled to testify about any matter that has come  
12 before them in their official capacity.

13 So, by law we eliminate the only two people in the  
14 world that can tell us whether or not the requirements under  
15 the Fourth Amendment and the statute have been met with by  
16 law and it is statutory. So, we see why the Legislature  
17 has set up this unique and rigid requirement for sanctions  
18 on compliance.

19 It is the only way we can be sure that the Fourth  
20 Amendment and this statute are being complied with. The  
21 only way. "A thirty day time requirement within the  
22 certified affidavit must be filed, recognizing the possible  
23 danger that any delay in filing -- " "any delay in filing

1 the certified affidavit might negate the ability to certify  
2 the affidavit due to exact memory." This is especially  
3 possible when there are related but different affidavits.

4 We have that here. We have related but different  
5 affidavits. There were several affidavits in this  
6 particular case sought and obtained and they can be easily  
7 mixed up. Evidence on one could be mixed up with the  
8 other.

9 MR. MELSON: Ben, could you talk a little louder?  
10 I'm having problems with the background noise and I would  
11 like to be able to understand you.

12 MR. KENDRICK: I thought I was yelling.

13 MR. MELSON: Please yell. With that background  
14 noise, I have a hard time.

15 MR. KENDRICK: Can you hear me, Judge? I feel like  
16 I'm yelling. I'm working up a sweat.

17 MR. MELSON: Back up to your previous paragraph and  
18 start from there, please.

19 MR. KENDRICK: Yes. In an attempt to avoid such  
20 problems, Your Honor, it is my position that the Legislature  
21 has clearly required that the affidavit be certified and be  
22 filed within thirty days by the issuing officer. The  
23 certification procedure must be viewed as mandatory since

1 the statute governs the issuance. I'm not talking about the  
2 return, but the issuance of warrants which permits either  
3 intrusions into the person's home, belongings and automobile.

4 So, if the statute so recognizes such intrusions,  
5 the Legislature found it important to govern them. To  
6 construe those provisions as merely directory would be  
7 contrary to the Legislature's intent that the Magistrates  
8 strictly comply with Section 19.2-54 and the related  
9 chapters and statutes found in Charter Five.

10 Given the language used in Section 19.2-54, its  
11 ordinary meaning supports the view that the certification  
12 procedure is mandatory. The certification requirement  
13 speaks in terms of "shall". In Gray, as mentioned and  
14 referred to earlier to the Court, the Supreme Court of  
15 Virginia held that the proviso that a certification shall  
16 be filed and must be construed in favor of the accused as  
17 mandatory.

18 Failure to file -- failure to comply with the  
19 filing requirement render their certification inadmissible,  
20 unless the certified affidavit is filed within thirty days  
21 under this case, with the issuance of a warrant, the search  
22 is invalid. Where a penalty is imposed for delay or where  
23 consequences attach to the failure to comply with the time

1 provision, the words should be construed as mandatory.

2 I would like to point out that there are several  
3 things that the statute says must be done and this does not  
4 deal with the return of the warrant or any of those  
5 problems that may arise there. This goes to the issuance  
6 of the warrant and it says it shall be done and no warrant  
7 shall issue unless it is done and it says -- the last  
8 paragraph says this isn't a problem. It s all not invalidate  
9 the search unless it continues for more than thirty days.

10 It is clear that if it does continue for more than  
11 thirty days, this requirement which relates back to the  
12 issuance of the warrant is mandatory and it does invalidate  
13 the search because we have no way of telling what went with  
14 what affidavit. Absolutely no way. The purpose of the  
15 statute is to eliminate all presumptions one way or the  
16 other. There is no room for presumptions once this statute  
17 takes effect.

18 In support of that argument, I would ask the Court  
19 to look at 3A(27) of the Supreme Court ruling. After the  
20 amendment of 19.2-54, the Supreme Court amended its rules  
21 requiring the Magistrate to certify to the Clerk. Before  
22 it was pretty much like the statute -- before the '79  
23 amendment. All the Magistrate had to do was certify the

1 affidavit and cause it to be filed.

2 That was the language. That language has been  
3 changed. Now, the Magistrate must certify the affidavit and  
4 he must certify the filer. Two things must be done. The  
5 Supreme Court has changed its rules to require the same two  
6 things. The Magistrate must certify and he must certify the  
7 filer. 3A(27) has been amended to go to track almost  
8 identically 19.2-54. For that reason, Your Honor, I ask  
9 the Court to consider that and to consider the motion as  
10 well founded and to suppress and to declare invalid and  
11 suppress the evidence obtained from that automobile.

12 MR. MELSON: If it please the Court, I don't believe  
13 that what Mr. Kendrick is asking the Court to do necessarily  
14 follows from the Magistrate's failure to certify the  
15 affidavit to the Clerk of the Court. If you look at section  
16 19.2-54, the sanction which is applied applies only to a  
17 failure to file the affidavit, not a failure to certify it.

18 The last paragraph reads: "Failure of the officer  
19 issuing such warrant to file the required affidavit." I  
20 think you have to look at the purpose for the requirement  
21 of the filing of the affidavit. I would submit to the Court  
22 that the purpose for the filing and affidavit is to make it  
23 a matter of public record and to give the public notice as

1 to why particular premises were searched and to tell them  
2 what was seized from those premises.

3 The fact that the affidavit is not certified or has  
4 not been certified has no function for the purposes of the  
5 filing requirement.

6 THE COURT: Let me refresh my recollection as to  
7 the facts: Is it contended that the affidavit was filed  
8 within thirty days and not certified or neither filed nor  
9 certified within thirty days?

10 MR. MELSON: No, it was filed within the period of  
11 time allowed by the statute.

12 THE COURT: But not certified?

13 MR. MELSON: But not certified.

14 The Clerk has the affidavit and search warrant which  
15 I would like to make a part of the record at this time so  
16 the Court can look at the affidavit.

17 MR. KENDRICK: I have no objection to that, Your  
18 Honor.

19 THE COURT: All right. May I see that, please?

20 MR. KENDRICK: Your Honor, this is the affidavit  
21 for the search warrant (handing to the Court).

22 MR. KENDRICK: And this is the search warrant itself  
23 which was filed (handing to the Court).

1 THE COURT: It appears that the affidavit was sworn  
2 to by Detective Gabrielson on March 22nd and it shows it  
3 is stamped that it was filed with the Clerk on March the  
4 23rd.

5 MR. KENDRICK: That's correct, Your Honor.

6 THE COURT: But the signature of the Special  
7 Magistrate that it was certified by is blank.

8 MR. KENDRICK: That's correct, Your Honor.

9 MR. MELSON: The requirement of filing the  
10 affidavit was, in fact, met well within the time limit  
11 allotted by statute. If you strictly construe the statute,  
12 which Mr. Kendrick says you must, then you must read the  
13 word "file" literally and then ask the question: was the  
14 affidavit filed within the time allotted. The answer to  
15 that question is, yes, it was.

16 The fact that it was certified has nothing to do  
17 with the function of filing. The error, if any, was merely  
18 a procedural error and not a substantive error. As such,  
19 it does not violate any of the strictures of the Fourth  
20 Amendment because there is no contention that the affidavit  
21 does not contain probable cause and that it does not  
22 describe the area to be searched or identify the items to  
23 be searched for or list the nature of the crime under

1 investigation.

2           There is no violation of the Fourth Amendment by  
3 the failure of the Magistrate to certify the document. If  
4 the contention is that we cannot prove that that affidavit  
5 is the affidavit that accompanies the search warrant, I  
6 submit to the Court that you can make that determination  
7 based not only upon the similarity in the places to be  
8 searched and the things to be searched for between the  
9 warrant itself and the affidavit, but the Commonwealth also  
10 is prepared and, for the record, would like to ask  
11 Detective Gabrielson to take the stand and, under oath,  
12 state whether that affidavit which has now been admitted  
13 into evidence is, in fact, the affidavit accompanying the  
14 search warrant which he executed on the automobile.

15           So, there is a means by which the Court can  
16 ascertain the validity of that affidavit.

17           With respect to Gray versus the Commonwealth, the  
18 Court held that the certificate of analysis was not  
19 admissible because it had not been filed within seven days.  
20 That case concerns a rule of evidence and I think it is,  
21 therefore, differentiated from this case where we are dealing  
22 with mere procedural aspects of a search warrant.

23           Mr. Kendrick also indicated, Your Honor, that the



1 requirement of certification is so critical in this matter  
2 because it is one of the requirements which must be met  
3 prior to the issuance of the warrant and, therefore, makes  
4 the issuance of the warrant invalid.

5 I don't believe that is the case. If you read the  
6 statute, it talks about what you do after the warrant has  
7 been issued. It says the affidavit shall be certified by  
8 the officer who issues such warrant and delivered by such  
9 officer or other authorized officer to certify such warrant  
10 to the Clerk in the Circuit Court when the search is made  
11 within seven days after the issuance of the warrant.

12 Certainly, the certification comes after the  
13 issuance of a warrant and does not have anything to do with  
14 the prerequisites for the issuance of the valid warrant.

15 In addition, when Mr. Kendrick cites the language  
16 in that statute which says: "No such warrant for a search  
17 shall be issued on the affidavit omitting such essentials,"  
18 "such essentials" refers back to the first sentence of the  
19 statute which says that: "each affidavit must reasonably  
20 describe the place, thing or person to be searched for  
21 rather than alleging briefly material facts constituting  
22 probable cause and so forth." The Court has held that if  
23 you don't put each one of those essentials in the affidavit,

1 then the warrant shall not be issued, but they are not  
2 referring to the certification of the affidavit to the  
3 Clerk. That is a requirement that comes after the issuance  
4 of the warrant.

5 So, really, that has nothing to do with the  
6 validity of the issuance of the warrant, but is merely a  
7 procedural requirement after the warrant has been executed  
8 or returned unexecuted and both the warrant and affidavit  
9 are transmitted to the Clerk's Office. It is a Magistrate's  
10 way of saying that this affidavit is the affidavit upon  
11 which I issued a search warrant.

12 As I said, that can be proven in this case not only  
13 by the similarity in the language on the warrant, but also  
14 by evidence which will be presented in a moment by  
15 Detective Gabrielson.

16 When Mr. Kendrick refers to the importance of the  
17 Supreme Court Rule in that the Supreme Court modified its  
18 language soon after the Legislature modified its language,  
19 it is interesting to note that the Rule of the Court does  
20 not provide any sanction whatsoever for failure to certify  
21 or to file the required affidavit.

22 Finally, Your Honor, I would like to point out to  
23 you the cases of Huff versus the Commonwealth at 213 Va.

1 710. That was a case where the affiant failed to sign the  
2 affidavit, although the Magistrate indicated that he was  
3 sworn and he swore to the contents of the affidavit under  
4 oath. The Court said, in denying the defendant's request  
5 to reverse the case, the Magistrate's certification that  
6 the affidavit was subscribed by the affiant when it was not,  
7 does not taint the validity of the affidavit. The jurat is  
8 not part of the affidavit itself.

9 It is simply written evidence that probable cause  
10 was supported by oath. Likewise, in this case, the  
11 certification by the Magistrate was not a part of the  
12 affidavit and did not go to probable cause or any of the  
13 essential elements required prior to the issuance of the  
14 warrant itself. It is merely procedural in nature and not  
15 substantive.

16 It cannot, in any way, have violated the  
17 defendant's rights or his rights under the Fourth Amendment  
18 to the United States Constitution.

19 Your Honor, if the Court rules adversely to the  
20 Commonwealth -- in fact, even if it rules in favor of the  
21 Commonwealth -- the Commonwealth would also like to offer  
22 evidence to support an alternative ground for the search of  
23 this automobile. It is submitted by the Commonwealth that

1 the police had the right to, and in fact the duty to, search  
2 that automobile based upon probable cause and they could  
3 have done so without the issuance of a search warrant, but  
4 that they obtained a search warrant out of an abundance of  
5 caution and we have witnesses here to testify to the  
6 probable cause they had when they first encountered the  
7 automobile and it will be submitted that they could have  
8 searched the automobile at the time it was discovered and  
9 could have searched it without a warrant at the time it  
10 was returned or brought to the station.

11 Therefore, even if the Court finds the warrant  
12 and affidavit defective, we submit that the search of the  
13 automobile was still permissible under the Fourth  
14 Amendment.

15 Now, may I inquire of the Court as to how it would  
16 like us to proceed with the evidence in this case? I would  
17 like to put on Detective Gabrielson with respect to the  
18 affidavit.

19 THE COURT: I would like Mr. Kendrick to answer.

20 MR. MELSON: Thank you, Your Honor.

21 MR. KENDRICK: Your Honor, Mr. Melson is  
22 absolutely correct when he points out the importance of  
23 showing that the affidavit was issued under a Magistrate's

1 signature and under the statute showing probable cause for  
2 the issuance thereof and the subsequent search and what he  
3 got are one and the same. You don't want the police officer  
4 who is getting the evidence and who is running around  
5 ferreting out crimes, as the Court has said, to make the  
6 determination of whether or not he has satisfied the  
7 statutory -- mandatory requirements.

8 You want the neutral, detached officer and his  
9 judgment that that's set up for that purpose. He issues a  
10 warrant describing the things to be searched and the places  
11 to be searched when he's supposed to do it and he goes out  
12 and the results of that are brought back to him. Your  
13 Honor, there is no other reading of that statute. That's  
14 why it was there.

15 That's why these amendments have been made, because  
16 he is the only one that can then say: You did what you were  
17 supposed to do and no more. You didn't go by way of  
18 somebody else's house and pick up some stuff to search on  
19 the way there or you went straight to where you were  
20 supposed to and no more.

21 To come before the Court today, sixty days after  
22 the time limit or more, has run and say that all we have  
23 to do is put the police officer up there who got the

1 affidavit is a little bit more than self serving. That is  
2 ludicrous in light of this language and that will not  
3 satisfy this language. The language is there for one reason  
4 and one reason only and that's to put up the safeguard  
5 around the Fourth Amendment and the statute against  
6 unreasonable searches and seizures.

7 They may have had 500 legitimate ways to get this  
8 evidence, but they choose this way. They went by this  
9 statute and they got an affidavit and they went by search  
10 and they didn't comply with the mandatory requirements of  
11 that search warrant. There is no other way around it. To  
12 say that I asked Detective Gabrielson what he did is the  
13 very point I was trying to make.

14 Detective Gabrielson says: I went straight down  
15 there and this is what I got and I took it straight back to  
16 the Clerk. You have to assume that there is nothing wrong.  
17 We are not the ones to make that determination. We are not  
18 the ones. There is only one person and that's that  
19 Magistrate who issued the warrant. If that were not the  
20 case, why go through all of this trouble to make this  
21 minute change? It is very minute, but it is cutting. It  
22 cuts very deep, Your Honor.

23 Before the 1979 amendment, the Magistrate only had

1 to certify the affidavit for probable cause and then cause  
2 it to be filed with the Clerk. That's what it said. The  
3 amendment comes along and that minute language is changed.  
4 Now, the Magistrate must certify the probable cause of the  
5 issuance of the warrant and he must certify that it has  
6 been filed with the Clerk.

7 That says there is only one person to check  
8 Detective Gabrielson's action with respect to the strict  
9 amendment in this statute.

10 THE COURT: You don't find the language that you  
11 refer to in the 1980 Supplement. What I see is: "Such  
12 affidavit shall be certified by the officer who issued such  
13 warrant and delivered by such officer or other officer  
14 authorized to -- "

15 MR. KENDRICK: (Interposing) There it is.

16 THE COURT: (continuing) -- "to the Clerk of the  
17 Circuit Court of the County.

18 MR. KENDRICK: That's correct.

19 THE COURT: Where does he certify probable cause?  
20 Doesn't he just have to certify this is an affidavit upon  
21 which he issued the warrant?

22 MR. KENDRICK: No, Your Honor. "No search warrant  
23 shall be issued until filed with the officer authorized to

1 certify the same -- " An affidavit. We know that has to  
2 be done. He has to go before the Magistrate and certify to  
3 get probable cause. The question then is what happens next?

4 He must describe the place. These are all things  
5 that go to the issuance of a warrant. That's the point  
6 that I'm making. He must describe the place, the person to  
7 be searched, the things to be searched for thereunder. He  
8 has to spell out all of these things and if you look at the  
9 other sections under 54, it tells you exactly what he has  
10 to do. It spells those things out.

11 It tells you the underlying circumstances for  
12 probable cause. The Magistrate must be satisfied that there  
13 is probable cause. He certifies it by issuing the warrant.  
14 Once that's done: "such affidavit shall be certified by  
15 the officer who issues such warrant and delivered by such  
16 officer and other officers authorized to certify such  
17 warrant to the Clerk of the Circuit Court of the County  
18 wherein such search or warrant is made within seven days."

19 If you come down three lines: "No such warrant  
20 shall be issued on an affidavit omitting these essentials  
21 and no general warrant search -- " and so on.

22 Your Honor, I say emphasis is added to this if you  
23 look at 3A(27). The Supreme Court made a change that says:



1 "The Magistrate shall then certify the filing." That's  
2 what they have said. It is more than certifying probable  
3 cause and causing it to be filed when they add this  
4 language. That's the language that has been changed. It  
5 is no longer certification by the Magistrate and any simple  
6 filing with the Clerk, because that doesn't satisfy the  
7 safeguards that we are looking for to determine what you  
8 get as a result of the search is what you asked for before  
9 you got it.

10 Now, if you go down to the last paragraph, in  
11 addition to what I've read, Your Honor -- what I'm saying  
12 is that the filing is now a certified filing, Your Honor.  
13 That's the only reading you can make if you look at the  
14 amendment.

15 THE COURT: Well, looking at 3A(27), the operative  
16 language seems to be: "if a warrant is issued, the  
17 Magistrate shall certify the affidavit to the Clerk of the  
18 Circuit Court of the County wherein the search is made -- "

19 MR. KENDRICK: (Interposing) Precisely.

20 THE COURT: (Continuing) -- "within seven days."

21 MR. KENDRICK: Precisely. That's the same  
22 language. We had to do it within seven days here. The  
23 statute goes further and says that if you don't do it within

1 seven days, it doesn't invalidate the search unless it  
2 continues for thirty days. Then it is clear what the  
3 sanction is. It does invalidate the search.

4 Your Honor, if you look at the old Rule 3A(27), it  
5 pretty much says the same thing as the old statute. In  
6 other words, certify probable cause and then cause it to be  
7 filed is what the old Rule 3A(27) said. Now, we have this  
8 very subtle but very, very important change that says it  
9 is more than just certifying probable cause and filing. It  
10 doesn't make sense.

11 If you think about it, we have no way of  
12 determining the safeguard that we want to determine.  
13 Absolutely no way. You set up a neutral and detached  
14 Magistrate and you say now your job is on probable cause  
15 to issue a search warrant. How do we know that the  
16 affiant or the search warrant does that?

17 Well, you bring it back to the person who issued  
18 it and he checks what you got with what he said you could  
19 go out and get. If it is done and he certifies that and he  
20 files that certification with the Clerk, then fine. There  
21 is no other way that you can guarantee that this protection  
22 that the Legislature has laid out can be met. It is  
23 impossible. That is why it is there and that's why it is

1 so tough. It eliminates presumption. It eliminates them.

2 No more do we have it so all we have to do is call  
3 the Clerk or the police officer and he tells us exactly if  
4 what he got is there. That's not the way it works. You  
5 look at the four corners of that doctrine to determine  
6 whether or not there is probable cause and then you look at  
7 the very last line and it is the man who issued the warrant  
8 who will say that I also certified what he got and was what  
9 he was authorized to get and no more and I certify that to  
10 the Clerk.

11 That's what that requires. Failure to do that --  
12 it is mandatory. It says "shall". Failure to do that is  
13 no problem unless it isn't done in more than thirty days.  
14 If it is insignificant and, as the Commonwealth says, if it  
15 is just a statutory procedure, then why put penalties in  
16 the same paragraph as the same statute?

17 Your Honor, those elementary construction statutes  
18 tell you that when there is a penalty in the same statute  
19 with mandatory language, it is not just procedural. It is  
20 mandatory and that's what "shall" means here.

21 Now, the issuance of that warrant shouldn't be  
22 misled just because the person who gets the property and the  
23 evidence has to come back in point of time to get the issuing

1 officer to certify to see if he's done everything right.  
2 That relates back to the issuance of it, because it is in  
3 the first paragraph. It says: "no warrant shall issue."  
4 Now, it would be virtually impossible to determine if it  
5 was properly certified and filed before you got it.

6 Obviously, you can't certify the things you have  
7 got in the affidavit before you get them. So, that's why  
8 you have the certification by the Magistrate for probable  
9 cause. Then you have the execution and then you come back  
10 and it is that certification that goes back to the issuance  
11 of the warrant and it is not to be interpreted that just  
12 because it comes later in point of time that that is not  
13 one of the requirements for the issuance of a valid warrant,  
14 because there is no other physical way that it can be done.

15 It is impossible to do it any other way. For the  
16 Commonwealth to say that, well, we can put somebody up here --  
17 that doesn't satisfy it either. If that was the case, we  
18 could just call the Magistrate and say, hey, did you just  
19 make a mistake here? But we can't do that. 19.2-71 says  
20 that you are incompetent as a witness about any matter that  
21 has come before you and the same as to the Clerk. The only  
22 person that we can ask is the person we can't ask and that  
23 is Detective Gabrielson.

1           What do you think he is going to say? He is going  
2 to say that there is nothing wrong with that warrant. That  
3 is absolutely what he is going to say. It is his affidavit  
4 and that's the reason why we have it set up. It is  
5 critical and very important. That's why there is so much  
6 teeth in this section. It has been changed. It is very  
7 subtle, but it is a big, big change.

8           It is a big change and it must be complied with.  
9 It is mandatory. Mandatory. Any fair reading brings you  
10 to that one conclusion. The Magistrate is the one that  
11 must certify that it is filed for the reason that he says.  
12 It is public record and we want everybody to know whether  
13 you are messing around with the concept of privacy, mine  
14 and yours. Any intrusions into that are done to the letter  
15 according to the law and we have the Fourth Amendment to  
16 back it up.

17           If you are going to violate this privacy, it must  
18 be done in a specified and certain way. You go to get it  
19 certified by a neutral and detached Magistrate and tell him  
20 what you want to do and he determines on your writing  
21 whether there is sufficient probable cause to issue a  
22 warrant. He certifies you and you go out and you can only  
23 go to where he says and do what he says you can do and get

1 what he says you can get. Once you get it, you don't just  
2 file it with the Clerk for the whole world to see. You  
3 bring it back to that man and he certifies that you did  
4 only what you were supposed to do and that's what we want  
5 the public to see. We want the public to see that law  
6 enforcement people are doing what they said they are  
7 supposed to be doing when violating private quarters.

8 That is what has not been done here and no matter  
9 what they do it is virtually impossible to determine what  
10 was done now.

11 MR. MELSON: Your Honor, if I can be heard?

12 Mr. Kendrick's argument with respect to the  
13 Magistrate certifying the officer to certify the premise is  
14 absolutely felacious and without any legal foundation  
15 whatsoever and without the support of the statute or any  
16 cases.

17 Looking at Section 19.2-57 where it talks about the  
18 execution of the search warrant and the return of the search  
19 warrant it says: "The officer shall execute the date  
20 thereon and file the same with the Clerk's Office." It is  
21 not with the Magistrate, but with the Clerk's Office. The  
22 Magistrate has nothing to do with certifying that the  
23 search was executed properly or along the guidelines in the

1 affidavit. That's for the Court to determine at a later  
2 time.

3 With respect to the amendment which is so subtle,  
4 as Mr. Kendrick said, look at the amendment footnotes.  
5 What was amended was the change in the wording which added  
6 a phrase "and delivered by such officer or other officer  
7 authorized to certify such warrant and delivered to the  
8 Clerk's Office and filed."

9 Apparently, the requirements for certification was  
10 in there long before this new amendment came up.

11 THE COURT: What do you contend the Magistrate is  
12 suppose to certify? What is the purpose of his  
13 certification? What is it you read in 19.2-54?

14 MR. MELSON: I think he is certifying that that  
15 is a copy of the affidavit -- or original affidavit when he  
16 sends it up to the Clerk.

17 THE COURT: That this is the exact affidavit upon  
18 which the warrant was issued?

19 MR. MELSON: Yes, sir.

20 THE COURT: Not some other affidavit?

21 MR. MELSON: Not some other affidavit. Nor is he  
22 certifying it as to how the warrant was executed and the  
23 certification comes after the issuance of the warrant.

1 That's the reason the Supreme Court said that if a warrant  
2 is issued, the Magistrate shall certify. It all comes after  
3 the issuance of the warrant and it is purely procedural and  
4 administrative in nature and not substantive whatsoever.

5 The search warrant itself is filed directly with  
6 the Clerk's Office. It doesn't go back to the Magistrate's  
7 Office apparently. Secondly, another amendment that the  
8 Supreme Court made in its rule in the last sentence in the  
9 subparagraph (c) is that they rewrote the fourth sentence  
10 and added the last sentence in subsection (c): "Each  
11 Clerk shall maintain an index of all such affidavits filed  
12 in this office in order to facilitate inspection."

13 That's what they are concerned about, the filing of  
14 the affidavit. That's what the amendment went to, the  
15 filing. That's what this last paragraph goes towards which  
16 is filing an index for that so that the public can have  
17 access to this public information.

18 So, for those reasons, number one, it is not  
19 pertaining to the execution of the warrant or the validity  
20 of the affidavit to begin with, but comes afterwards and  
21 also the fact that the amendment deals really with the  
22 filing, not with the certification. I submit the error in  
23 this case was merely procedural and denied the defendant no



1 substantive -- or was procedural rights denied in the  
2 statute. All the amendment went towards the filing of the  
3 affidavit.

4 The Magistrate, instead of just causing the  
5 affidavit to be filed, he shall file it. They wanted to  
6 tighten that up. They required the Clerk to index for  
7 filing and then they have a sanction for failure to file.  
8 The certification doesn't have anything to do with the  
9 actual requirement for filing. The sanction is failure to  
10 file, not failure to certify.

11 It is simpler to detect defect in the affidavit  
12 when you fail to put time and date in the issuance of the  
13 affidavit. If you can sustain that by other evidence, then  
14 that defect is eliminated.

15 So, I submit again, Your Honor, there was no defect  
16 in this affidavit which renders the warrant or the search  
17 inadmissible.

18 MR. KENDRICK: Your Honor, if I may just briefly:  
19 There is no filing if it is not certified. There has been  
20 no filing and not within the strict meaning of the statute.  
21 It may be sitting out there gathering dust, but if it hasn't  
22 been certified, then it is not filed. That's the point I  
23 am making. If you look at the old language of 19.2-54, it

1 is as clear as your nose on your face.

2 This is the old language before the amendment and  
3 before the Supreme Court amended it: "Such affidavit shall  
4 be certified by the officer who issues such warrant to the  
5 Clerk -- to the County Clerk of his County or to the Court  
6 Clerk admitting deeds to record and file." That's what it  
7 says and it says: "and filed with such Clerk within seven  
8 days."

9 They don't talk about certifying the filing. They  
10 don't talk about certifying that filing, but if you look at  
11 the amendment they do. They sure do there. That's the  
12 difference that I'm making. "Such affidavit shall be  
13 certified by the officer who issues such warrant and  
14 delivered by such officer or other officers authorized to  
15 certify." In other words, delivery by that officer or  
16 another officer who is certified to deliver it to the Clerk.

17 It is no longer just certification and cause to be  
18 filed. You must certify the filing or there is no filing.  
19 Then they talk about the strictures and penalties and  
20 sanctions for not doing it. There is only one interpretation  
21 when you look at that amendment, Your Honor. I say the very  
22 fact that the Supreme Court has chosen just that one little  
23 significant difference supports the fact of what I'm saying

1 and that is that the Magistrate has to certify, otherwise  
2 none of this makes any sense, Your Honor. It makes no  
3 sense insofar as safeguards and the Fourth Amendment is  
4 concerned. I can't believe that the people down in  
5 Richmond -- and maybe I can sometimes -- are sitting around  
6 with nothing to do other than making up complicated  
7 statutes like this.

8 The reason they are doing this is for Fourth  
9 Amendment type of protection and the concept of invasion  
10 of privacy protection. If that is the case, and it has to  
11 be, there is only one way you can afford that type of  
12 protection. You don't ask the police officer who is doing  
13 the investigation if it's a good warrant, I'll tell you  
14 that.

15 You go back to the Magistrate and ask him did this  
16 man do what you said to do, because we are going to file it  
17 in public for everybody to see. If it does, you certify  
18 it is. You are the one that issued it, so you can check  
19 and see if he has done what you said he can do and no more  
20 and then you certify that and you file it in the Clerk's  
21 Office.

22 You just don't cause it to be filed. You certify  
23 it. That tells us that the affidavit -- because I issued

1 the affidavit and it was an affidavit for certain things  
2 to seize specific items and the search was conducted and  
3 I've looked at the results and it was a proper search  
4 because I have got here what I filed for it.

5 Then it is checked with the Clerk's Office. If it  
6 is set up that way -- I don't think it is -- but if it is  
7 set up that way, something is left out and we can't cure it  
8 by calling the Magistrate of the Clerk. It is impossible  
9 to cure. We know it was not certified. Now, if the  
10 Commonwealth or Magistrate or Police Department have this  
11 procedure set up and it would be contrary to my  
12 understanding because I don't think that's the way it works,  
13 then we better get it set up right, because these ones are  
14 defective. They are fatally defective.

15 Every one of them issued this way is defective.

16 THE COURT: The former statute used the language:  
17 "Such affidavit shall be certified by the officer who issues  
18 such warrant to the Clerk and filed with such Clerk within  
19 seven days." The statute now says: "Such affidavit shall  
20 be certified by the officer who issued such warrant and  
21 delivered by such officer or other officer authorized to  
22 certify such warrant to the Clerk within seven days."

23 To my mind, the Legislative intent in making that

1 change was to provide for the unlikely event that the  
2 Magistrate or Justice of the Peace who issued the warrant  
3 might not be available within seven days to act and,  
4 therefore, any other Magistrate or Justice of the Peace  
5 having the same powers could perform this ministerial  
6 task. That is all I see in it. The penalty for it which  
7 seems to read in a new exclusionary rule applies to the  
8 failure to file with the Clerk and not the failure to  
9 certify it and there is no contention here that there was  
10 any failure to file.

11 MR. KENDRICK: Yes, Your Honor. I'm sorry.

12 THE COURT: It is filed and not failure to properly  
13 certify.

14 MR. KENDRICK: But there is no filing. That's my  
15 position.

16 THE COURT: I understand, but the act of the  
17 physical filing with the Clerk appears to be shown by the  
18 Clerk's stamp and it shows that it was filed with him, at  
19 least in the sense of being delivered to him --

20 MR. KENDRICK: (Interposing) We don't know that.

21 THE COURT: (Continuing) -- the day after the  
22 affidavit was sworn to and executed.

23 Turning back to what certification really means, it

1 would appear to me all it ever meant and all it means today  
2 is that the officer is supposed to attest that this is the  
3 genuine affidavit on which he issued the warrant and that  
4 it hasn't been doctored. I could see there being a strong  
5 motivation after a search had been completed for the  
6 authorities to go back and try to improve their poker hand  
7 by adding some things to the affidavit if the thing turned  
8 up in Court and it didn't fit the facts to the scene.

9 This is to protect against that. This is to ensure  
10 that the affidavit ultimately becomes lodged with the Clerk  
11 and is the one upon which the Magistrate issued the  
12 warrant and none other. It doesn't certify probable cause.  
13 The issuance of the search warrant does that. All it does  
14 is to certify that this is the original unadulterated  
15 affidavit which was sufficient in its day to persuade the  
16 issuance of the warrant.

17 The failure of the Magistrate to certify it does  
18 not per se justify an exclusionary rule. Exclusionary rules  
19 were invented, as I understand the Supreme Court, to provide  
20 a remedy with great teeth in it to a defendant whose  
21 constitutional rights have been invaded by the authorities.  
22 It was so the authorities would find it profitless to invade  
23 his constitutional rights. The failure to certify doesn't

1 invade his constitutional rights.

2 What it does is put him in a position that he can't  
3 be sure until he scrutinizes the papers in the Clerk's  
4 office that they're genuine and haven't been doctored. His  
5 rights aren't invaded, because there is a remedy for that.  
6 He can find out if his rights were invaded or not. It seems  
7 to me the remedy for that is the right to call the affiant  
8 who made out the affidavit and cross examine him.

9 No exclusionary rule is provided by either the  
10 statute or the ruling court for the failure of the Magistrate  
11 to certify.

12 But, since the witness is available here today to  
13 testify only to that one point, whether this is, in fact, a  
14 true, unadulterated or undoctored affidavit submitted, I  
15 think the Commonwealth should have the right to put him on.  
16 Subject to his testimony on that point, it would be the  
17 ruling of the Court that the search is not invalidated and  
18 the evidence seized under the search should not be  
19 suppressed for failure to certify.

20 But, I will go one step further: I make no claim  
21 to being omniscient in this or any other matter and in the  
22 event that the higher Court would determine this ruling  
23 erroneous and since we are set up with simultaneous

1 translation and all, it would seem proper to make a record  
2 in order if the case were to be sent back for that single  
3 fact. As regards the warrant, the Commonwealth can go ahead  
4 and abide by the warrant, but in addition that being done  
5 by the testimony and not a mere proffer and we will proceed  
6 with that at this time.

7 The Commonwealth may first call Detective Gabrielson  
8 to testify to the genuiness of the affidavit and he can  
9 testify to that.

10 MR. MELSON: The Commonwealth will then call  
11 Detective Gabrielson. He needs to be sworn.

12 Whereupon,

13 EDWARD W. GABRIELSON,  
14 was called as a witness by and on behalf of the Commonwealth  
15 of Virginia, and, having been previously duly sworn, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MELSON:

19 Q Sir, would you state your name for the Court,  
20 please?

21 A Edward W. Gabrielson.

22 Q By whom are you employed?

23 A Arlington County Government, Arlington, Virginia.



1 Q In what capacity?

2 A I am an investigator with the Robbery and Homicide  
3 Unit with the Arlington County Police Department.

4 MR. MELSON: Has this been marked as Commonwealth's  
5 Exhibit 1?

6 THE COURT: I will mark it.

7 (The document previously  
8 referred to was marked  
9 Commonwealth's Exhibit No. 1  
10 for identification.)

11 THE COURT: I have marked it Commonwealth's Exhibit  
12 1 with this date to differentiate it from any other exhibits  
13 introduced at trial.

14 BY MR. MELSON:

15 Q Let me show you Commonwealth's Exhibit No. 1 for  
16 identification and ask you if you can identify what this  
17 document is (handing to the witness).

18 A Yes, I can.

19 Q What is that document?

20 A This is the affidavit that I swore to on the 22nd  
21 day of March at 11:28 a.m. I know this is the form that I  
22 swore to because my signature is at the bottom rear on the  
23 second page of the affidavit.

1 Q Prior to swearing to that affidavit under oath, did  
2 you have occasion to read the affidavit?

3 A Yes, sir.

4 Q Since the affidavit has been submitted to the  
5 Magistrate and the warrant executed, have you again read  
6 that affidavit?

7 A Yes, I have.

8 Q Have you, in fact, again read that affidavit today?

9 A Yes, I have.

10 Q Do you find any differences between the affidavit  
11 as it existed on the date the search warrant was issued and  
12 today?

13 A The only difference between this affidavit today  
14 and the affidavit I swore to is the stamp on the rear that  
15 says "filed March 23, 1981. David A. Bell. Circuit Court  
16 by -- " and there is a second signature. That's the only  
17 difference in the form that I signed

18 MR. MELSON: Your Honor, I have no other questions.

19 MR. KENDRICK: Did he say he had no more questions?  
20 You didn't need that microphone for that.

21 CROSS EXAMINATION

22 BY MR. KENDRICK:

23 Q Detective Gabrielson, did you take this affidavit

1 along with the property that you got as a result of the  
2 search or back to the Magistrate that issued it to get him  
3 to sign it?

4 A No, sir.

5 MR. KENDRICK: That's all I have --

6 BY MR. KENDRICK:

7 Q Was it certified?

8 A I did not touch that form until I gave it to the  
9 Special Magistrate. The Special Magistrate held on to that  
10 form.

11 Q Did you go back with him over the results of that  
12 search and go back to him with that affidavit?

13 A Not with that affidavit, no, sir.

14 Q Did you go back to that Magistrate with any  
15 affidavit?

16 A Not with that affidavit. I do not know about any  
17 other affidavit.

18 Q So, the Magistrate did not certify that to the  
19 Clerk?

20 A I have no idea.

21 MR. KENDRICK: That's all I have, Your Honor.  
22  
23

## REDIRECT EXAMINATION

BY MR. MELSON:

Q To whom did you make your return on the search warrant?

A The Special Magistrate, whoever that was. The search warrant I made the return on.

Q He maintained the custody of the affidavit?

A After he issued it?

Q Yes, sir.

A Yes, sir.

THE COURT: How could he know what somebody else did?

BY MR. MELSON:

Q As far as you are concerned today, that affidavit --

MR. KENDRICK: (Interposing) Objection, Your Honor. Whether he thinks it is valid or invalid doesn't really matter

THE COURT: He hasn't completed his question.

BY MR. MELSON:

Q As far as you are concerned, that affidavit -- as far as you are concerned, that affidavit today has been unaltered except for that one addition that you mentioned?

MR. KENDRICK: Objection, Your Honor. The

1 validity is of no moment as far as this officer is concerned.  
2 He is not the one to make that determination. That's the  
3 point I am making.

4 THE COURT: Well, the question was asked and  
5 answered on direct examination.

6 All right, sir, you may step down --

7 MR. MELSON: (Interposing) Your Honor, with  
8 respect to the evidence of independent cause to search the  
9 vehicle without a warrant, our witness will also be  
10 Detective Gabrielson.

11 MR. KENDRICK: Your Honor, I really don't know what  
12 this is going to prove. This is like justifying a search  
13 as to what you got and we know that can't be done.

14 THE COURT: I don't know what this will consist of  
15 and for the reasons mentioned, I will let the Commonwealth  
16 make the proffer of evidence in the presence of the  
17 defendant on the record so if this should ever become  
18 important -- it is not important to me -- but so the case  
19 wouldn't have to be sent back to do this all over again.

20 BY MR. MELSON:

21 Q Detective Gabrielson, are you familiar with a 1969  
22 blue Plymouth vehicle bearing Virginia registration F265566?

23 A Yes, I am.

1           Q     Is that the vehicle upon which you executed a  
2 search warrant which was issued as a result of the  
3 submission of the affidavit which has been in question  
4 today?

5           A     Yes, it was the vehicle.

6           Q     Would you tell the Court when you first had contact  
7 with that vehicle?

8           A     Saturday afternoon. It would have been the  
9 21st of March.

10          Q     Where was the vehicle located at the time?

11          A     In a parking lot in Falls Church, Virginia. The  
12 address was near 3034 Patrick Henry Drive.

13          Q     At the time that you had contact with that vehicle,  
14 did you speak with any other investigators or law enforcement  
15 officials pertaining to your investigation of a homicide or  
16 that vehicle?

17          A     Yes.

18          Q     Did you speak with Detective Carrig?

19          A     Yes, I did.

20          Q     What, if anything, did he tell you had transpired  
21 with that automobile prior to your arrival?

22          A     He told me that the keys had a tag that belonged  
23 to the same corresponding numbers on the tag on the vehicle

1 and was withdrawn by Quintana from his pocket. He further  
2 told me that the vehicle which bore Virginia temporary tags  
3 had been investigated at the car dealership and the car  
4 itself had been purchased on the afternoon of the 19th,  
5 which was the day of the homicide.

6 Q Were you informed of how the vehicle was purchased?

7 A Yes, it was purchased in cash with twenty dollar  
8 bills for \$350.

9 Q When was that vehicle purchased with relation to  
10 when the homicide occurred?

11 A Shortly thereafter.

12 Q Did you have any information as to what had been  
13 taken from the apartment at the time?

14 A Yes, I had.

15 Q Did that include currency?

16 A Yes, it did.

17 Q Do you know approximately how much?

18 A In excess of \$900 in American currency.

19 Q Were you aware of the type of denominations?

20 A Twenties. The majority of it was in twenties.

21 Q Did Detective Gabrielson --

22 A (Interposing) Excuse me?

23 Q I'm sorry. Did Detective Carrig tell you anything

1 about the victim, Nelson Echemendia, coming to the  
2 automobile that day?

3 A Yes, he had.

4 Mr. Echemendia had just left prior to my arrival  
5 and there was a hat and some pornographic magazines on the  
6 back seat that Mr. Echemendia had identified as belonging  
7 to him prior to the homicide. The hat was given a detailed  
8 description to me earlier that day by Mr. Echemendia and  
9 Mr. Echemendia was brought to the car and looking from the  
10 outside to the inside and he saw his hat laying there.

11 Q Could you see the hat and magazines?

12 A Yes, I could.

13 Q Did you have to go into the vehicle to see that?

14 A No, sir, I did not.

15 Q From where could you see that?

16 A On the curb looking into the vehicle.

17 Q Is this a parking lot?

18 A Yes, it is.

19 Q Had you seen a photograph of that very hat earlier  
20 that day?

21 A Yes, I had. Several photographs.

22 Q Do you know whether or not it had been alleged  
23 that the hat and magazines were taken during the homicide?



1           A     It was alleged they were taken during the homicide.

2           Q     Do you know where Mr. Quintana had been shortly  
3 before the 19th of March?

4           A     Yes, I do.

5           Q     Where?

6           A     Fairfax County Jail.

7           Q     Do you know whether or not he had any money when  
8 he got out of the jail?

9           A     You are talking about Saturday afternoon whether  
10 he had any money?

11          Q     Let me ask you this. Do you know whether or not he  
12 had been working?

13          A     Yes, I do. He had not been working.

14          Q     He had just been released from jail?

15          A     Yes, sir. That's right.

16          Q     Did you know how many sets of keys there were to  
17 that automobile?

18          A     No, sir, I did not.

19          Q     Did you know who else might have had access to that  
20 automobile?

21          A     No, sir, I did not.

22          Q     Did you know whether or not the defendant had any  
23 individuals working with him or associating closely with

1 him?

2 A No, sir, I did not know how many people he had  
3 working with him.

4 Q Did you know whether he had any family members in  
5 the area?

6 A No, I did not.

7 Q Now, did there come a time that the automobile  
8 was returned to Arlington County?

9 A Yes, there did.

10 Q And why was the automobile seized?

11 A I seized it being the proceeds or fruits of a crime  
12 that being a homicide or a robbery.

13 Q What do you mean by that?

14 A We knew \$900 was stolen from the homicide victim.  
15 I knew of the reputation of the defendant as not being a  
16 worker or money maker. I knew just after the homicide that  
17 the car was purchased by a person by the name of Manuel  
18 Quintana and I knew the tags on the car bore the date of  
19 the homicide.

20 All this coupled together led me to believe that  
21 the money came from the homicide.

22 Q When you returned the vehicle to Arlington, did you  
23 subsequently get a search warrant?

1           A     Yes, I did.

2           Q     And is that the search warrant that has been the  
3     subject of discussion today, marked Commonwealth's Exhibit  
4     No. 1 here?

5           A     Yes, that's the affidavit.

6           MR. MELSON: That's all the questions I have at  
7     this time, Your Honor.

8           THE COURT: Do you wish to cross examine?

9                   CROSS EXAMINATION

10          BY MR. KENDRICK:

11          Q     Detective Gabrielson, why did you get a search  
12     warrant? You are saying basically everything was in plain  
13     view and you could go in the car and get it, right?

14          MR. MELSON: Your Honor, I think the reason why he  
15     got the search warrant is irrelevant.

16          MR. KENDRICK: I think all this is irrelevant.  
17     The fact of the matter is he got a search warrant and that's  
18     what he is bound by.

19          MR. MELSON: Your Honor, he was bound by an  
20     abundance of caution. He felt he ought to get the search  
21     warrant just to get another reason why he can go in the  
22     automobile. I'm not sure he is bound by that here or at any  
23     other time.

1 MR. KENDRICK: I'm not asking for a ruling. I don't  
2 think we need a ruling, Your Honor.

3 THE COURT: You may answer the question.

4 THE WITNESS: Repeat the question.

5 BY MR. KENDRICK:

6 Q Why did you get a search warrant?

7 A Because I felt it was best wisdom to get a search  
8 warrant at that time.

9 Q If I understand you correctly, you seized the  
10 car in Fairfax?

11 A Falls Church, I believe.

12 Q That's in Fairfax County?

13 A Yes, sir.

14 Q Was it unlocked or locked?

15 A It was locked at the time we seized it.

16 Q Who was there with you?

17 A Detective Carrig.

18 Q Just the two of you?

19 A There was a Fairfax police officer there. I don't  
20 remember his name and a crane driver.

21 Q Did you leave the car there before you got the  
22 warrant or did you get the warrant first?

23 A I seized the property and took it to Arlington and

1       secured the property and got the warrant.

2           Q     When you say you "secured the property," do you  
3       mean you took it to the impounding lot and left Detective  
4       Carrig on the hood until you got it?

5           MR. MELSON:   Excuse me?

6           MR. KENDRICK:   I asked him what he did to secure  
7       the car.   He indicated that he took the car to --

8           THE WITNESS:   (Interposing)   To the Sally port.

9           BY MR   KENDRICK:

10          Q     Is that an impounding type facility?

11          A     No, sir, it is a secure area.

12          Q     A secured area?

13          A     Yes, sir.

14          Q     What do you mean by "secured area"?

15                Is it locked?

16          A     Yes, sir.

17          Q     Is that where Detective Carrig -- did he stay with  
18       the car?

19          A     No, sir, he did not.

20          Q     Was he ever left with the car alone?

21                MR. MELSON:   Your Honor, I'm not sure that is  
22       relevant in determining the relevancy of probable cause to  
23       the warrant.

1 BY MR. KENDRICK:

2 Q Did you ever search the car without a warrant?

3 You are not saying that, are you?

4 A Is that a question?

5 Q Sure it is a question.

6 Did you ever search that car without a warrant?

7 A No, sir

8 Q The reason you were going to get the warrant was  
9 because you were going to search it?

10 A Yes, sir.

11 Q That's why you got the warrant, because you wanted  
12 to search the car?

13 A Yes, sir.

14 MR. KENDRICK: That's all I have, Your Honor.

15 MR. MELSON: That is all I have, Your Honor.

16 THE COURT: All right, sir, you may step down.

17 (Witness excused.)

18 THE COURT: Anything further, Mr. Melson?

19 MR. MELSON: Not on the subject of probable cause  
20 for the issuance of a warrantless search.

21 THE COURT: All right. I'll not make a rule on  
22 that, because it is in my view unnecessary. But the motion  
23 to suppress is denied and I do think the Commonwealth

1 should have and did introduce some evidence today upon which  
2 defendant could rely to show the genuiness of the warrant  
3 and the ruling was subject to that. I think that requirement  
4 has been met and upon that I will deny the motion to  
5 suppress.

6 Is there anything else to come before the Court  
7 today?

8 MR. KENDRICK: Just my oral motion for a continuance,  
9 Your Honor.

10 MR. MELSON: We also have two motions.

11 MR. KENDRICK: Your Honor, I'm sure this is going  
12 to be tied into his motion. He wants to know, I think, my  
13 alibi, if any, and I'm in the process of checking it out.  
14 I say I have an alibi, because I didn't commit the murder,  
15 but I don't know the exact details of the alibi because  
16 they can't tell me what time the murder was committed.

17 That's the dilemma I was in in an attempt to  
18 justify and explain my presence or my whereabouts every  
19 minute of the day. When I say "my" I'm referring to my  
20 client. I'm trying to retrace his steps the entire day of  
21 March 19, 1981, the day the murder was committed. I know  
22 where he was part of the day. I know he was at the auto  
23 dealers between 1:00 and 2:00 o'clock. I know that between  
2:00 and 3:00 he was at the Fairfax Courthouse.

1 I know that prior to that he was going to the Fairfax Court  
2 House and that's the problems I am having in as far as nailing  
3 down the times. I that regard, I would like the Court also  
4 to be aware that I'm trying to find the name of the individual  
5 that gave my client a ride from a particular gas station in  
6 Fairfax to the Court House in Fairfax. I have been advised  
7 as of this past weekend that most records -- I know the type  
8 of automobile and I have a description of the couple, but the  
9 records of that particular gas station have been sent to  
10 Houston and they are not available. I will have to sit down  
11 with every transaction that happened on a given day and try  
12 to track through all of those to find out who these people  
13 are. That has to be done to verify my client was at a  
14 certain place at a certain time on the 19th. I'm in the  
15 process of doing it.

16 Secondly, I'm also tracing the names and I have  
17 already been given a list of names from Metro of bus drivers  
18 who could recognize the defendant as a passenger on the  
19 morning of the 19th, because I know where he was and how he  
20 got to the gas station in Fairfax. I'm in the process of  
21 checking that out. I'm also in the process of going through  
22 the manifest in the Red Top Cab Company to find out how he  
23 got to the Fairfax Court House from the auto dealers, where



1 they know he was at 2:00 o'clock, at the time the alleged  
2 murder was committed. I have not tracked that down -- that  
3 cab driver yet. It requires a multitude of people going  
4 through papers and there is a lot of papers to go through.

5 In addition, I have reason to believe and it is my  
6 understanding that of all of the items that were found the  
7 one that's most incriminating was a camera found on the bed  
8 belonging to the victim and her son. They slept in the same  
9 bed. That camera on the bed had by client's fingerprints on  
10 it. I have been advised that there were people who saw him  
11 handle that camera at a time prior to March 19 and I'm in the  
12 process of trying to track that individual down. I have not  
13 been successful as of yet. I have leads and I am pursuing  
14 them. I am pursuing those leads with diligence. I am still  
15 looking for the people in the People's Drug Store who were  
16 identified indirectly without giving names as people who  
17 pointed out in pictures of my clients -- who said he was not  
18 the individual who made this purchase. This was a receipt  
19 found in his car, Your Honor. It was a very large purchase  
20 from People's Drug Store. It is my understanding the police  
21 went and talked to two people and showed them pictures and  
22 they said: No, this is not the guy. They won't talk to me  
23 unless the Commonwealth tells them to or tells them not to.

1 That's the way I understand it now.

2 All of these items, in particular the first three  
3 that go to alibi, are very crucial. I need time. I do not  
4 have time to do everything involved with five days remaining.  
5 Because of the time and expense needed to set this system up,  
6 I would ask the Court for a reasonable continuance to pursue  
7 this alibi, because I am convinced with what there is now  
8 there is an alibi. I have my own theories to explain the  
9 overwhelming evidence. But the fact of the matter is on  
10 alibi evidence I have at this point an air-tight alibi for  
11 the time the medical people say the crime was committed. I  
12 wasn't there and I can prove that. I have not accounted for  
13 my time in the morning. That's what I need the time for. I'm  
14 not prepared. It is going to take an incredible amount of  
15 investigation and I'm not going to be able to do it with the  
16 other things I have to do with five days remaining to this  
17 trial. I need a continuance and I need it desperately.

18 I cannot give them the information that they're  
19 entitled to until I get it. I feel it is there and I can  
20 get it and I need a continuance to get it.

21 MR. MELSON: Your Honor, the defendant has been  
22 represented by Mr. Kendrick since the preliminary hearing in  
23 this case.

1 THE COURT: They apparently can't hear you.

2 MR. MELSON: The defendant has been represented  
3 since before the preliminary hearing in this case and during  
4 the preliminary hearing he was apprised of the time limits  
5 in which the homicide must have occurred. That is within  
6 the 6:30 in the morning when the victim's son went to work  
7 at approximately 2:30 when the body was found by neighbors.  
8 He has had then a couple of months to work on this particular  
9 aspect of the case. He has not given you any indication as  
10 to when he started to work on it to show due diligence in  
11 preparing his alibi defense. Since he has had so much time  
12 and has been assisted by two other confident attorneys and  
13 I understand investigators as well --

14 MR. KENDRICK: (Interposing) No.

15 MR. MELSON: (Continuing) No investigators, but  
16 three people, I think he has had sufficient time to formulate  
17 an alibi. I think it is indicative of the fact that perhaps  
18 the work on the alibi did not begin soon enough was the fact  
19 that when we met in chambers it was around that time that they  
20 determined they couldn't understand their client. I don't  
21 know how it took three or four weeks to determine they  
22 couldn't understand their client if they had been working  
23 with him on this alibi. I submit the defendant shouldn't

1 be given the opportunity to continue this case and delay it,  
2 particularly in light of the fact that many of the witnesses  
3 of the Commonwealth are those of Cuban descent who are here  
4 as a result of coming into the country from Cuba via the  
5 mass exodus that occurred a few months ago and may not be  
6 here for very long periods of time. The longer the defense  
7 delays this case, the more difficulty it is for the  
8 Commonwealth to present a full and accurate hearing.

9 MR. KENDRICK: Your Honor, all the testimony at the  
10 preliminary hearing was preserved. Every bit of it. I feel  
11 quite certain, for example, with respect to the Suarez family  
12 they are not around and I can't find them anymore. That  
13 doesn't mean we preserved this because we knew these people  
14 were not going to be here. I'm not impressed with that.  
15 What I am impressed with is a man who cannot communicate with  
16 me. We have attempted to communicate and only recently have  
17 we found out they are communicating.

18 These leads have developed recently. We are  
19 pursuing them. We have not asked for anything unreasonable,  
20 it seems to me, especially not in light of the severity of  
21 the charge. We just have began to move, Your Honor, not  
22 because we didn't want to or didn't have other things to do.  
23 It has been a difficult thing to get off the ground and we

1 are pursuing every lead we possibly can and that's why I'm  
2 coming to Court now. I have got some serious problems. There  
3 is some stuff here that could prove this man innocent. I  
4 cannot prepare this case and investigate those leads in the  
5 five days remaining. It seems like to me if you look at the  
6 cases that I've been familiar with, especially the Smith case  
7 at 155 Virginia, that says that if you are talking about a  
8 murder case and trying to explore the leads for an alibi that  
9 a continuance is not unreasonable then. If it came up on the  
10 day of trial, that would be different, but there is a week  
11 and it is enough for the Court and for us to get a new date  
12 and put these people on notice about the system and how  
13 that's to work so we don't have to come in here the day  
14 before June 1st and waste their time.

15 I do not know how to get this case ready for trial  
16 and pursue this crucial aspect of alibi in five days. If I  
17 did nothing -- absolutely nothing from now until the trial  
18 except pursue that, I might be able to do it. Then how am I  
19 going to get the rest of the trial together? I need time.  
20 I don't need a lot of time, but I do need some time.

21 THE COURT: Mr. Kendrick makes the most appealing  
22 argument that could be made for a continuance. The problem  
23 is there is no assurance that these witnesses will be found

1 in any particular time frame or for that matter ever found.  
2 There has probably not been a case which could not have been  
3 better prepared if counsel had had a little more time. I'm  
4 sure I never tried one in my practice of law in which I didn't  
5 wish I had more time and a few more authority or thought I  
6 could have one or two more witnesses if I just had more time,  
7 but somewhere the line has to be drawn. This is, of course,  
8 the most serious kind of case there is. We are not trying to  
9 rush it.

10 The case has had a reasonable amount of time to  
11 develop. There doesn't appear to be any particular deadline  
12 that could be met if the case were continued. There is no  
13 assurance that if it would be continued for one week that that  
14 would do what counsel hopes for or one month that that would  
15 do what counsel hopes for. There is a continuing hope to find  
16 witnesses to support an alibi and, indeed, that is not an  
17 uncommon situation.

18 What I think should be done in this situation,  
19 particularly since there are some finite things that counsel  
20 has indicated that he knows of such as records of service  
21 station in Houston and a list of bus drivers, I will approve  
22 the expense of an investigator and approve the expense of  
23 flying somebody down to Houston, whether it be one of these

1 counsel or an investigator, to look at those so that that can  
2 be done within this week.

3 MR. KENDRICK: Thank you.

4 THE COURT: I don't want to foreclose counsel from  
5 pursuing all these leads and I know they will pursue them  
6 as vigorously as they can and I don't see any need for a  
7 continuance as long as this is worked on diligently. So,  
8 the motion for a continuance is denied. However, reasonable  
9 expenses for an investigator and traveling expenses will be  
10 approved.

11 MR. KENDRICK: Thank you.

12 Your Honor, my client has asked for a necessary  
13 recess.

14 THE COURT: The Court will take a short recess.

15 (Whereupon, a short recess was taken.)

16 MR. MELSON: Judge, we have a motion to amend the  
17 indictment for C-17450, which is the murder indictment, to  
18 amend the citation at the bottom of the indictment from Section  
19 18.2-32 to 18.2-31D.

20 THE COURT: It is now 18.2-32, is it not?

21 MR. MELSON: Yes, sir. 31D is the Capital Murder  
22 Section dealing with the willful, deliberate, premeditation  
23 in the commission of a robbery.

\* \* \*

\* \* \*

1 MR. KENDRICK: (Continuing) -- Thank you.

2 I think, Your Honor, because of the severity of  
3 this crime and it being the most severe in our system of  
4 justice and the penalty being the most severe that some  
5 precaution should be taken. At least the basic precaution to  
6 try to eliminate not all bias and prejudice that we all have  
7 -- I couldn't stand before the Court and say, "I'm pure; I  
8 have no bias or prejudice." I am sure no one in the world  
9 falls into that category. But, what we can strive to do is to  
10 eliminate the extremes so that we get people who are less  
11 likely to be under those extremes. If that is the object that  
12 is to be considered and ultimately obtained, it seems to me  
13 best considered and obtained if we proceed in smaller groups.  
14 I personally would like an opportunity to talk to the people  
15 one at a time. I realize the chances of that probably are  
16 slim and none. However, I think a group of twenty is the  
17 other extreme. I would ask the Court to consider groups of  
18 four, five, six and certainly no more than ten in an attempt  
19 to find jurors that are as free from extreme bias and  
20 prejudices that we can get.

21 THE COURT: Does the Commonwealth wish to comment?

22 MR. MELSON: The Commonwealth has no objection to  
23 taking the full panel of twenty and voir diring them as a



1 group. I don't believe the publicity as such or any statement  
2 by one or more of the jurors can claim the panel. There has  
3 not been that much publicity. I think I have all the  
4 articles covered in this case and they appeared I believe only  
5 in the Northern Virginia Sun.

6 MR. KENDRICK: Your Honor, if publicity was the only  
7 basis that would make a person bias or prejudice, then we  
8 could simply lock ourselves in a closet and not read and walk  
9 around in the society of unbiased and unprejudiced people.

10 THE COURT: What particular biases or prejudices are  
11 you concerned about not related to the facts in this case?

12 MR. KENDRICK: Your Honor, I am concerned about  
13 people's attitudes toward Spanish-speaking people. I am  
14 concerned about testimony -- the testimony of the police  
15 officer as opposed to other people. I am concerned about a  
16 multitude of prejudices and biases that we all have from  
17 subjective or objective. For example, if I'm the owner of a  
18 grocery store or bar and I put up a sign saying, "No blacks,  
19 no hispanics," that is an objective prejudice or racism.  
20 There is no question that has been proven to exist in our  
21 society. In other words, if I say I don't mind if they come  
22 in and buy groceries or sit in my bar, but I certainly  
23 wouldn't want a hispanic to marry my daughter. That's a

1 subjective bias or subjective prejudice that I should be able  
2 to find out if in fact a member of the jury has, because it  
3 will preclude that person from fairly and openly viewing all  
4 of the evidence as a whole because he has tunnel vision and  
5 precludes the evidence by what he thinks consciously or  
6 subconsciously is more important.

7           When you are talking to a group of people and  
8 saying, "Are any of you prejudiced," I can assure you I know  
9 what the answer will be, "Of course not, not me." None of us  
10 want to admit it. My job is protecting my client and giving  
11 him the best I can. I do not want to probe or interfere in  
12 anybody's life, but I do think my job requires I get the best  
13 possible jury free of all biases that I possibly can. That's  
14 not only for my benefit. That's for the prosecution's benefit  
15 too. It is not a poker game. It is supposed to be a search  
16 for the truth and I don't believe we can honestly say we are  
17 conducting that search properly if we have people who I have  
18 not been allowed to talk to and find out if in fact there are  
19 hidden biases and prejudices that somewhere might exist. I'm  
20 not saying there are or there are not. I just want the  
21 opportunity to find out, because if they are, it could have a  
22 bearing on the outcome of this case regardless of the evidence.

23           THE COURT: Do you think that someone should be

1       excused for cause that would indicate that he would be sure  
2       not to have his daughter marry someone of another religion or  
3       race?

4               MR. KENDRICK: Not solely for that alone. If that  
5       raised a flag and I inquired further if that person, for  
6       example, bears ill will -- boycotts grapes or lettuce because  
7       it is connected to Spanish-speaking people or, for example,  
8       people thinking Cubans have too big families and are shiftless  
9       or lazy or inferior. If that starts to develop, then I think,  
10      yes, that could affect that person in deliberating on the  
11      evidence. Yes, I certainly do.

12             THE COURT: Does the Commonwealth wish to respond?

13             MR. MELSON: No, sir. I still don't believe that we  
14      need to go into that much depth on an individual juror  
15      outside the presence of the remaining panel. I don't think it  
16      is going to create the type of prejudice that Mr. Kendrick is  
17      suggesting.

18             MR. KENDRICK: Your Honor, I haven't even touched on  
19      the subject of Cubans much less Cuban refugees. Obviously,  
20      there are prejudices that exist towards Cubans. They do  
21      exist. It is a fact that we much acknowledge. If that is a  
22      fact, then do we want that person on the jury? If somebody  
23      doesn't have them and can approach evidence without that type

1 of influence, that's going to affect their reasoning.

2 THE COURT: Well, I am by no means committing  
3 myself to permit in-depth personal questioning, but it  
4 doesn't seem to me that the answer that one person gives in  
5 response to that questioning is likely to taint the panel.  
6 The reason for questioning the jury in small groups is  
7 ordinarily because a case has received a lot of publicity,  
8 but memory of it is faded by the time the trial came up and  
9 some juror stands up and says, "Oh, yes, I read that case. It  
10 is a case where some person administered poison or something."  
11 That calls to the juror's minds facts and details known  
12 earlier, but forgotten. I don't think that will happen. If  
13 someone shows a deep-seated bias or prejudice, that doesn't  
14 create a chain reaction in a jury.

15 MR. KENDRICK: Yes, Your Honor, I appreciate what  
16 the Court is saying. Publicity or lack of publicity is just  
17 one basis -- one basis that a jury might be challenged for  
18 cause or ultimately struck by using preempt, but that's just  
19 one bias. That doesn't satisfy other treatises or other  
20 biases that people may not be as qualified as other people who  
21 serve on a jury on a case of this magnitude. I am not  
22 suggesting that the answer will or will not affect the other  
23 members of the panel. What I am suggesting is I have a right

1 to see if it exists and I can accomplish that much better and  
2 easily and faster in smaller numbers than I can in larger  
3 numbers because people are more prone to be open and honest  
4 and free with their thoughts in smaller numbers than in larger  
5 numbers. The whole process of having a large number people  
6 can intimidate them and will keep them from responding  
7 honestly to a question. That's the point I am making.

8 The publicity -- I don't suggest for a minute --  
9 there has been no publicity that I am aware of. I don't know  
10 any reason that any of these jurors should be struck. That's  
11 not a bias and prejudice that I am concerned with. I am  
12 concerned about a fair trial and an elimination of the  
13 extremes if they exist. I can't find out if they exist if I  
14 talk to one hundred people and say, "Is anybody prejudice."

15 THE COURT: Well, I think this is a proper case for  
16 impaneling twenty, but we will not have -- it is obvious that  
17 some of them will be excused and we will not have the others  
18 sitting in the courtroom and we will bring in another group.  
19 So, we will have to go through it at least twice or more than  
20 twice. But, I would like to start off with a full panel of  
21 twenty to let you exercise your voir dire questions upon them  
22 to begin with and we will keep all jurors in another  
23 courtroom. Resolved.

\* \* \*

1       graduating this week.

2               THE COURT: All right, sir. We will excuse you,  
3       Mr. O'Donoghue.

4               All right. I will allow at this time counsel to  
5       proceed with their voir dire questions of the remainder of  
6       the panel and we will repeat it when other jurors are called  
7       to take their places.

8               MR. KENDRICK: Your Honor, is there any preference  
9       from the Court as to which side goes first? Your Honor,  
10       counsel has indicated that his questions are shorter than  
11       mine. I have no preference as to which goes first. Does the  
12       Court have any preference?

13              THE COURT: The Commonwealth should go first.

14              MR. MELSON: Good morning, ladies and gentlemen. As  
15       the Court has already told you, this is a very important case,  
16       not only because the case involves a killing, but it also  
17       involves the possibility of the imposition of the death  
18       penalty. Therefore, we are asking you questions to determine  
19       the impartiality of the jury and we want to do this so that  
20       the defendant is entitled -- so that the defendant receives a  
21       fair trial to which he is entitled and also that the  
22       Commonwealth, that is the State and people, receive a fair  
23       trial.

1 I guess my first question is: Do all of you agree  
2 that just like the defendant the people of this state are  
3 entitled to a fair trial by an impartial jury? Do all of you  
4 agree with that?

5 Now, do any of the jurors have any sight or hearing  
6 impairments or problems that might prevent them from fully  
7 understanding the testimony here today, especially using the  
8 headphones or being able to see the exhibits that will be  
9 presented before you in the next three or four days? Do you  
10 have any problems with that? Would you raise your hands?

11 Do any of you speak Spanish fluently or understand  
12 Spanish fluently? Have any of you had any Spanish in schools  
13 or any courses?

14 Is that Mrs. Lee?

15 JUROR LEE: Yes.

16 THE COURT: Let me ask this of all of you because  
17 some of you have had some Spanish: Would you be willing to  
18 take the interpretation of the Spanish into English that you  
19 hear over the headphones as the interpretation rather than  
20 trying to rely on your own familiarity of Spanish? It is  
21 necessary for the jurors to hear the same thing regardless of  
22 whether it is the exact interpretation or not. Would you be  
23 able to rely on the interpreters?

1 JUROR LEE: Inasmuch as it is possible to do so  
2 when you understand what someone is saying.

3 MR. MELSON: All right. You will be listening to  
4 the evidence in English and attempting to block out your own  
5 attempted interpretation; would you be willing to do that?

6 JUROR LEE: To try, yes.

7 MR. MELSON: Other than Mr. O'Donoghue, do any of  
8 you others have any legal training or background? Have you  
9 been to law school, taken any course in criminal law or any  
10 type of legal background whatsoever?

11 Now, as you know, the burden is on the Commonwealth  
12 in this case to prove the defendant guilty beyond a reasonable  
13 doubt. But, do you understand that the burden is one of  
14 beyond a reasonable doubt and not one beyond any doubt or all  
15 doubt, but merely beyond a reasonable doubt? Do all of you  
16 understand that that is the burden in this case on the  
17 Commonwealth?

18 Well, this case involves a gruesome beating. It is  
19 a horrible crime. We don't want you to convict the defendant  
20 just because of the gruesome nature of the crime, but on the  
21 other hand, in order to present a fair trial on behalf of the  
22 people we are going to have to present this case with some  
23 explicit testimony and explicit evidence and we don't want you



1 to hold that against us because we have to present it. Are  
2 you all willing to accept this evidence by the Commonwealth  
3 without holding its presentation against us? Do any of you  
4 have any problems with receiving that type of evidence?

5 Do any of you have any religious or ethical  
6 problems with imposing a life sentence, life imprisonment, in  
7 this case merely because of its duration? Are any of you  
8 reluctant for any reason whatsoever to impose penitentiary  
9 time up to and including life imprisonment assuming you find  
10 the defendant guilty beyond a reasonable doubt if the facts  
11 warrant it?

12 Now, as the judge also told you, this case is a  
13 capital murder case in which there is a possibility that the  
14 death sentence may be an option for you to consider if you  
15 find the defendant guilty. Now, we understand that there are  
16 problems that some of you may have with the death penalty and  
17 those problems are understandable and we hope because of the  
18 importance of this case that you will not be reluctant to  
19 express your concerns about it, so we can indeed pick a jury  
20 that is impartial to both the defendant and the Commonwealth.  
21 Along those lines, I would first like to ask whether any of  
22 you have any religious, conscientious, ethical objections  
23 against the imposition of the death penalty?

1           That would be Karen Michael, Margret Lee -- you are  
2           Mr. McKenna?

3           JUROR MC KENNA: Yes.

4           MR. MELSON: And Mr. Hickey; is that correct?

5           JUROR HICKEY: Right.

6           THE COURT: And also Mrs. Steigelman?

7           JUROR STEIGELMAN: Steigelman.

8           THE COURT: Thank you.

9           MR. MELSON: All right. Now, with respect to that,  
10          would the fact that the death penalty is an option to you make  
11          you reluctant to find the defendant guilty despite the fact  
12          that such a finding might be warranted by the evidence. I am  
13          directing this to the five individuals who raised their hands  
14          previously.

15          Mrs. Lee?

16          JUROR LEE: Yes.

17          MR. MELSON: Would any of the others who responded  
18          affirmatively to that also --

19          Miss Steigelman raised her hand. Miss Steigelman --  
20          would both of you respond affirmatively also?

21          JUROR MICHAEL: I'm afraid so. I'm afraid it would  
22          affect my judgment.

23          JUROR HICKEY: Yes, I think so.

1 JUROR MICHAEL: Are you asking that if imposing the  
2 death penalty would affect my finding of guilty or not guilty?

3 MR. MELSON: Yes, m'am, the decision you will make  
4 prior to imposing life imprisonment or the death penalty.

5 JUROR MICHAEL: I don't think that would affect the  
6 way I would judge him or find him, but I don't think that I  
7 could sentence him to death.

8 MR. MELSON: But that would not affect your ability  
9 to find him guilty of capital murder?

10 JUROR MICHAEL: I don't think so.

11 MR. MELSON: Now, would your views prevent you from  
12 imposing the death penalty, which is the only punishment that  
13 could be given -- life imprisonment or the death penalty? In  
14 other words, could you only impose life imprisonment?

15 THE COURT: Rephrase it.

16 MR. MELSON: All right. I'm directing it simply to  
17 Karen Michael. If you had found the defendant guilty of  
18 capital murder, would you automatically impose the life  
19 sentence?

20 JUROR MICHAEL: If the only two choices were life  
21 and death, I don't think I could sentence him to death.

22 THE COURT: With respect to the five members of the  
23 jury that have been responding to these questions, is your

1 objection to the death penalty absolute? That is, because  
2 your views or objections to the death penalty, would you  
3 refuse to consider its imposition under any circumstances  
4 whatsoever?

5 MR. MELSON: If I may ask each one to respond  
6 individually.

7 Karen Michael?

8 JUROR MICHAEL: I'm not sure I understand what you  
9 are saying.

10 MR. MELSON: In other words, is your objection to  
11 the imposition of the death sentence so absolute that you would  
12 never under any circumstances agree to impose a sentence of  
13 death?

14 JUROR MICHAEL: Right.

15 MR. MELSON: Mrs. Lee?

16 JUROR LEE: Yes.

17 MR. MELSON: Mrs. Steigelman?

18 JUROR STEIGELMAN: Yes.

19 MR. MELSON: Mr. McKenna?

20 JUROR MC KENNA: Yes.

21 MR. MELSON: Mr. Hickey?

22 JUROR HICKEY: Yes.

23 MR. MELSON: Now, for those members of the jury who

1 have not responded affirmatively to those questions, may I ask  
2 these questions: In a death penalty case before the penalty  
3 of death is imposed, you must find beyond a reasonable doubt  
4 one of two factors; first, whether or not the particular act  
5 which he committed was so outrageously, wantonly, vile,  
6 horrible or inhumane in that involved torture or deprivity of  
7 mind or aggravated battery to the victim -- whether it  
8 involved that. The second aspect is whether or not the  
9 defendant constitutes a continuing threat to society. You  
10 have to find one or the other in order to impose the death  
11 sentence. Now, would any of you who have not responded  
12 affirmatively to any of the other questions require that the  
13 Commonwealth prove both of those factors before you considered  
14 the imposition of the death sentence, rather than only one of  
15 the two? Would any of you require us to prove both of those  
16 factors, both the aggravated battery and the continuing threat  
17 to society, prior to imposing the death sentence?

18 Yes, m'am? This is Mrs. Sheehan.

19 JUROR SHEEHAN: I would.

20 THE COURT: I think you should rephrase that by  
21 saying, "The law requires only one or the other be shown and  
22 the Court would so instruct the jury. The Commonwealth's  
23 burden is to prove one or the other of those factors beyond a

1 reasonable doubt, but not both. Now, could you all follow  
2 such an instruction?

3 Miss Sheehan?

4 JUROR SHEEHAN: Yes.

5 THE COURT: Do you think you could abide by that?

6 JUROR SHEEHAN: Yeah.

7 THE COURT: The same would be true of all other  
8 jurors, except those who indicated their conscientious  
9 objection? All right.

10 MR. MELSON: Would any of you feel that you could  
11 not follow the Court's instructions if only one of the two  
12 elements were proven? In other words, if only aggravated  
13 battery were proven and the Court said based upon that you  
14 could prove a death sentence, would any of you vote against  
15 the death sentence merely because you feel a case involving  
16 aggravated battery is not the type of case where death should  
17 be imposed? Do you think the question --

18 JUROR LEE: (Interposing) You don't mean us, do  
19 you?

20 MR. MELSON: No, not those who indicated they were  
21 absolutely opposed.

22 But, if the only thing the Commonwealth could prove  
23 in the case of the sentencing stage was that it was an

1       aggravated battery to the victim and she suffered a severe  
2       beating, would you be able to vote for the death sentence  
3       that you would feel appropriate in the light of an aggravated  
4       battery or do you feel that aggravated battery is not just  
5       cause for the death sentence?

6               Then, the other side of that question is: Do any of  
7       you feel that you could not vote for the death penalty if the  
8       only factor we were able to prove was that he was a continuing  
9       threat to society? Do any of you feel that that is not a  
10      legitimate factor for which you could vote the death penalty?

11             The form of capital murder which is alleged in this  
12      case is one which is a willful, deliberate, premeditated  
13      murder committed during the commission of a robbery while  
14      armed with a deadly weapon. Now, because this is the type of  
15      case which we have here today, do those of you who are not  
16      opposed to the death penalty feel that this is the type of  
17      case which is not an appropriate type of case for capital  
18      punishment? In other words, do you feel that capital  
19      punishment may be appropriate in some cases, but not in a case  
20      involving a willful, deliberate and premeditated murder  
21      during the commission of a robbery while armed with a deadly  
22      weapon? Do all of you feel that that is an appropriate type  
23      of case under some circumstances in which you could impose the

1 death sentence?

2 Do those of you who have not expressed an opposition  
3 to the death penalty agree with that? Does anybody disagree  
4 with that?

5 Also, there will be twelve jurors who are voting on  
6 the punishment to give the defendant, if he is found guilty of  
7 capital murder. Your decision is made individually. In the  
8 light of that, do you feel that you can vote on your own as an  
9 individual for the death penalty?

10 THE COURT: If the facts in the law warrant it.

11 MR. MELSON: Yes, sir.

12 Finally, ladies and gentlemen, because this is a  
13 capital murder case, would any of you impose a higher burden  
14 of proof on the Commonwealth with respect to the defendant's  
15 guilt or innocence -- higher than beyond a reasonable doubt?  
16 Do any of you feel that because the death sentence is an  
17 option in the case that you are going to require the  
18 Commonwealth to exceed its burden before you will find him  
19 guilty of capital murder? Would any of you impose that burden  
20 on the Commonwealth?

21 Thank you. That is all the questions I have right  
22 now. Thank you very much, ladies and gentlemen.

23 THE COURT: All right. Do you wish to make any



1 motions to challenge for cause?

2 MR. MELSON: Yes, I would.

3 THE COURT: You might as well do it now.

4 MR. MELSON: Would you like me to do it at the  
5 bench?

6 THE COURT: It is not necessary.

7 MR. MELSON: Well, Your Honor, I think under the  
8 cases Mrs. Michael, Miss Lee, Ms. Steigelman, Mr. McKenna and  
9 Mr. Hickey would be the subject of the Commonwealth's motion  
10 to strike for cause since they have expressed an absolute  
11 objection to the imposition of the death sentence under any  
12 circumstances.

13 THE COURT: As I understand the law, that is  
14 justified and the Commonwealth's motion is granted.

15 Mrs. Michael, Mrs. Lee, Mrs. Steigelman, Mr. McKenna  
16 and Mr. Hickey are excused. Will you please report up to  
17 Courtroom No. 703?

18 (Whereupon, five jurors were excused.)

19 THE COURT: Would you three jurors in the front row  
20 take seats inside the box?

21 Mr. Kendrick?

22 MR. KENDRICK: Ladies and gentlemen, this is called  
23 the voir dire aspect of the trial and in plain English voir

1 dire means "you speak;" it is your opportunity to talk and to  
2 give me and Mr. Melson and the Court the opportunity to find  
3 out about you in an attempt to make sure as humanly possible  
4 that we have a group of people that is sitting in judgment  
5 potentially on another man's life -- which necessarily means  
6 to the extent humanly possible -- that we get individuals who  
7 are as free of biases, prejudices and preconceived notions as  
8 we possibly can. We all have them. My feeling from  
9 listening to you in response to Mr. Melson's questions and  
10 the Judge's questions is that you are merely trying to be  
11 open and honest and I commend you for that, because this is a  
12 very serious case.

13 But the death penalty isn't the only area that I am  
14 concerned about and when Mr. Melson asked you questions and  
15 when I ask you questions, please do not be offended. I am  
16 not and certainly Mr. Melson isn't either, trying to pry into  
17 your private lives or feelings or background, but he has a  
18 duty to his client, the State, and I have a duty to my client,  
19 the defendant, to try and get people who are as free of bias  
20 as we possibly can. Please do not take my questions as  
21 attempting to pry into your private lives. That's not what I  
22 am trying to do. I want to try to eliminate extremes. We  
23 cannot find people, I am certain that are totally unbiased in

1 every sense of the word, but we can try to eliminate the  
2 extremes and you have to help. The only way you can help is  
3 to be open and free with your communications to me and  
4 Mr. Melson and to His Honor. I want to go through a series of  
5 questions and if you have any problem or want to talk to me  
6 about them, please feel free to do so.

7 I would like to know if any of you are connected  
8 with the police department in any way? Are you married to  
9 anyone or related to anyone that is connected to the police  
10 department, the whole police department, the State Police  
11 Department, any federal or law enforcement agency?

12 JUROR VIETS: I hold a commission in the Military  
13 Police and Army Reserve, but I've had no formal training  
14 whatsoever.

15 MR. KENDRICK: You hold that position at the present  
16 time?

17 JUROR VIETS: I'm an inactive Captain in the Army  
18 Reserve. I'm a field officer, I was branch transferred and I  
19 have had no military training whatsoever.

20 THE COURT REPORTER: Excuse me, Your Honor, they  
21 have changed positions.

22 THE COURT: The Court Reporter wants to keep track  
23 of the identity of the jurors who are speaking for the record.

1 They have changed their seating pattern.

2 MR. KENDRICK: Yes, right. I will try to do that,  
3 Your Honor.

4 Do any of you have any close friends that are  
5 members of a police department whether be State, local or  
6 Federal?

7 JUROR VIETS: In my Reserve Unit some of the people  
8 are what I refer to as "real cops."

9 MR. KENDRICK: Real cops?

10 JUROR VIETS: I'm not. I used to shoot -- "cannons."

11 JUROR SHEEHAN: Does that just include the State of  
12 Virginia?

13 MR. KENDRICK: I would like to know if they exist  
14 anywhere.

15 JUROR SHEEHAN: New York State.

16 MR. KENDRICK: Is it a close friend?

17 JUROR SHEEHAN: No, a relative.

18 MR. KENDRICK: Is it the New York City Police  
19 Department?

20 JUROR SHEEHAN: New York City and State Park.

21 MR. KENDRICK: Two individuals?

22 JUROR SHEEHAN: Uh huh.

23 MR. KENDRICK: Both by marriage?

1 JUROR SHEEHAN: Marriage, yes.

2 MR. KENDRICK: All right, thank you, m'am.

3 Do any of you belong to the Fraternal Order of  
4 Police or have any relatives that belong to the Fraternal  
5 Order of Police?

6 (Whereupon, Juror Viets raised his hand.)

7 MR. KENDRICK: Those of you who indicated -- whether  
8 you are "real copy" or "cannons," do any of you think that in  
9 and of itself would lend you to give more credence to police  
10 officers or to any other witness?

11 JUROR VIETS: Not really.

12 JUROR SHEEHAN: I wouldn't either. No.

13 MR. KENDRICK: Do any of you belong to the  
14 John Birch Society? Do any of you believe in the philosophy  
15 of the John Birch Society?

16 Thank you.

17 Have you ever appeared as a witness before a Grand  
18 Jury? Is this your first experience on a jury?

19 JUROR VIETS: No, last week.

20 MR. KENDRICK: No, I'm talking about --

21 THE COURT: (Interposing) This jury panel all  
22 served through last week.

23 MR. KENDRICK: I understand. With the exclusion of

1 last week, is this the first opportunity that you've had to be  
2 on a jury panel? Would this be the first?

3 Yes, sir?

4 JUROR WYNNE: I've served on a jury here twice  
5 before.

6 MR. KENDRICK: Does that include criminal trials?

7 JUROR WYNNE: No.

8 MR. KENDRICK: You weren't on any criminal trials?

9 JUROR WYNNE: No.

10 MR. KENDRICK: Is it Mr. Roche? Have you appeared  
11 on a criminal jury trial before?

12 JUROR ROCHE: Before last week, no.

13 MR. KENDRICK: I'm talking about prior to that  
14 time.

15 JUROR ROCHE: No.

16 MR. KENDRICK: Did any of those cases last week  
17 involve criminal cases?

18 JUROR ROCHE: Yes, it did.

19 THE COURT: It might be easier to have those hold  
20 up their hands who have served in criminal cases.

21 MR. KENDRICK: Did your contact in those criminal  
22 cases in any way affect your judgment with respect to future  
23 criminal cases in any way?

1 JUROR ROCHE: I don't believe so.

2 MR. KENDRICK: Did it place any burden on your  
3 capacity to deal with the criminal process or make you  
4 uncomfortable with the criminal process in any way?

5 JUROR ROCHE: No, it didn't.

6 MR. KENDRICK: How about you, sir?

7 JUROR VIETS: No. No.

8 MR. KENDRICK: Other than Mr. Viets, has anybody  
9 else been in the military where they had any connection with  
10 the Military Police or Shore Patrol or any type of military  
11 involvement?

12 JUROR WYNNE: I was in the Navy.

13 MR. KENDRICK: For how long?

14 JUROR WYNNE: Twenty-three years.

15 MR. KENDRICK: And what did you do in the Navy?

16 JUROR WYNNE: I was a line officer and we had Shore  
17 Patrols and we had court-martials.

18 MR. KENDRICK: Did you sit on court-martials?

19 JUROR WYNNE: Yes.

20 MR. KENDRICK: Were you in a judging capacity?

21 JUROR WYNNE: I was a member of a court-martial.

22 MR. KENDRICK: You were actually on the panel of the  
23 court-martial?

1 JUROR WYNNE: Yes.

2 MR. KENDRICK: How many times did you do that?

3 JUROR WYNNE: As I recollect, it could be a dozen  
4 times or more.

5 MR. KENDRICK: Were there criminal penalties  
6 involved in that?

7 JUROR WYNNE: Stuffed sometimes. Mostly shipboard  
8 and such.

9 MR. KENDRICK: All right. Thank you.

10 Are any of you connected with or have close family  
11 members connected with the C.I.A.?

12 Have any of you ever been the victim of a crime of  
13 violence?

14 Yes, sir, what is it?

15 JUROR ROCHE: I was held at gunpoint once.

16 MR. KENDRICK: How long ago was that?

17 JUROR ROCHE: About seven years ago.

18 MR. KENDRICK: Mr. Roche, do you think that that  
19 would in any way impair your judgment or affect your ability  
20 to sit as a fair, impartial or unbiased juror in this case?

21 JUROR ROCHE: I don't believe so.

22 MR. KENDRICK: Were you interviewed by the police?

23 JUROR ROCHE: Yes.



1 MR. KENDRICK: Did that case -- was it prosecuted?

2 JUROR ROCHE: No.

3 MR. KENDRICK: It was not prosecuted. Would the fact  
4 that it was not prosecuted -- did that make you feel that the  
5 police didn't do their job?

6 JUROR ROCHE: I really don't know --

7 MR. KENDRICK: (Interposing) Did you feel  
8 short-changed in any way so that that would make you biased  
9 toward the criminal justice system?

10 JUROR ROCHE: I don't think so.

11 MR. KENDRICK: Thank you, Mr. Roche.

12 Now, as His Honor instructs you that the crime that  
13 my client is charged with includes several elements, will you  
14 vote for an acquittal unless you are satisfied that the proof  
15 that the Commonwealth has offered establishes each and every  
16 one of those elements beyond a reasonable doubt? Will you  
17 vote for an acquittal?

18 JUROR VIETS: Could you rephrase the question?

19 MR. KENDRICK: Yes, if His Honor instructs you that  
20 murder and robbery consist of a series of elements and that  
21 that's the law and if the Commonwealth has not proven it to  
22 your satisfaction beyond a reasonable doubt that each and  
23 every one of those elements has been satisfied, will you vote

1 for an acquittal?

2 Do you understand that the burden of proof is on  
3 the Commonwealth and not on the defendant? Do you understand  
4 that he need not testify?

5 I had a grandfather --

6 Mr. Wayne, is it? Mr. Wayne?

7 JUROR WYNNE: Wynne.

8 MR. KENDRICK: I had a grandfather who was in the  
9 Navy and he was in Damage Control and years ago he told me --  
10 he said, "Sometimes I think the military is not like the  
11 criminal justice system, because in the military if you are  
12 accused of something you have to prove your innocence." I'm  
13 not sure if that is true. I am sure he was being facetious.  
14 But, do any of you think that we have to prove we are innocent  
15 in any way as opposed to the Commonwealth having to prove that  
16 we are guilty? Anybody have any problem with that concept --  
17 that basic concept of our criminal justice system?

18 You are going to be shown some very gruesome  
19 photographs undoubtedly during the course of this trial.  
20 Nobody will take issue that they are nasty photographs, but  
21 the question is, "Who killed the defendant." Will the fact  
22 of those gruesome photographs in any way, just the  
23 photographs in and of themselves, bias you towards the

1 defendant?

2 MR. MELSON: Well, Your Honor, I think we have to  
3 phrase that with respect to the determining of guilt or  
4 innocence. Certainly they concern the punishment involved.  
5 In fact, that is one of the considerations they can rely upon  
6 in determining whether or not the death penalty should apply.

7 MR. KENDRICK: Your Honor, that is a fair request.  
8 I will direct that to the first phase of the murder charge,  
9 finding him guilty or innocent.

10 Will the fact that you are shown pictures of a body  
11 whose head has been bashed in in livid color and I'm sure  
12 blown up incense you towards the defendant? Do you think it  
13 in any way will hamper your judgment or interfere with your  
14 ability to reason out the evidence?

15 Do all of you realize that the indictment in this  
16 case is just a piece of paper that the State has filed to get  
17 the process rolling? It means nothing, absolutely nothing  
18 insofar as guilt or innocence is concerned. You understand  
19 that? Do you understand that it is not to be received as  
20 evidence that he did anything, but it is purely the starting  
21 point of the criminal process?

22 Do you disagree with the concept that Mr. Quintana  
23 right now is innocent? He is presumed innocent at this point.

1 Does that bother you in any way? Do you feel that because  
2 he's sitting there and that there are deputies all over the  
3 courtroom and he has been indicted that he must have done  
4 something wrong or otherwise he wouldn't be here? Can you  
5 honestly say that you don't feel that way? In other words, do  
6 you feel that where there is smoke there must be fire? Can  
7 you honestly look at that man right now (indicating) and say,  
8 "You are innocent and I'm presuming that you have done  
9 nothing, absolutely nothing"? Can we all do that? If you  
10 can't, raise your hands.

11 If the Court tells you that that's the law, that  
12 Mr. Quintana is presumed innocent until he is proven guilty  
13 beyond a reasonable doubt, would you find any fault at all  
14 with that? Do you think it is a mere technicality that we go  
15 through? Do you have any problem at all with that concept?  
16 Are you willing to give Mr. Quintana the benefit of that  
17 presumption to this entire trial? Are you willing to give  
18 Mr. Quintana the benefit of that presumption through the  
19 entire trial and keep your minds open until all the evidence  
20 is in and until you, as a collective body, deliberate? Can  
21 you give him that presumption during that period of time  
22 whether it lasts a week, two weeks, three weeks?

23 How about the rules, the concept of beyond a

1 reasonable doubt or circumstantial evidence? You have any  
2 qualms with those as basic concepts and our criminal justice  
3 system? Would you have any problem following them if His  
4 Honor tells you that that is the law and that's what you must  
5 do?

6 Let me ask you this question. I have an idea that  
7 I call the "Perry Mason Syndrome." If you have ever read any  
8 of his books or seen the series on television, Mr. Mason not  
9 only does his client always get away -- I feel sorry for  
10 Mr. Burgher; not only that, but he always turns around and  
11 finds the guilty person. Do any of you think that I have any  
12 burden at all to pull that rabbit out of the hat like  
13 Mr. Mason does? Will you accept the standard that the burden  
14 is on the prosecution and not me from the beginning to the end  
15 of this trial?

16 This one is probably going to be tough if we are  
17 going to be honest: Are any of you prejudice against Cubans?  
18 Do any of you feel that Mr. Quintana is something inferior to  
19 us Caucasians because he can't speak English? Have any of you  
20 had any relationships or friendships with Hispanics or Cuban  
21 people?

22 (Whereupon, several jurors raise their hands.)

23 MR. KENDRICK: Were they favorable? Was there

1 anything about them that made you feel derogatory to them as a  
2 class of people as a whole?

3 The last few years, have any of you noticed any  
4 change in the apparent crime in Arlington County, more of it?  
5 Do any of you feel that Spanish-speaking people coming into  
6 the community as a class are responsible for that? Do you  
7 feel that Spanish-speaking people or Cuban refugees in  
8 particular are shiftless and lazy and all they do is sit  
9 around and have too many children? Do you harbor any of those  
10 feelings?

11 I think that bias or prejudice -- and I'm talking  
12 about racial prejudice now -- can be broken down into two  
13 categories. What I call "objective" and "subjective." Now,  
14 let me give an example before I ask you a question of the  
15 objective. If I owned a grocery store or bar and put up a  
16 sign and say, "No Cubans allowed," or "No blacks allowed,"  
17 that's what I refer to as objective racism. In other words,  
18 subjective racism is when you say, "I have nothing against  
19 Cubans. Some of my best friends are Cubans," but down deep  
20 inside, "I say I don't want my daughter marrying any of them  
21 or hanging around with any of them." Can all of us rule out  
22 that type of prejudice that you might have in this case?

23 THE COURT: Mr. Kendrick, I think when you start

1 asking people about who they would want their daughter to  
2 marry, you are becoming so objective. The kind of prejudice  
3 you refer to would be of no help to us. I'll preclude you  
4 from asking that type of personal inquiry. People may have  
5 all sorts of strong feelings about who they want their  
6 daughters to marry. It frequently may not work out that way  
7 at all, but it doesn't mean they are biased or prejudiced as  
8 jurors.

9 MR. KENDRICK: Well, to the extent that they would,  
10 Your Honor. I have strong feelings about who I would want my  
11 daughter to marry too. I'm sure we all do. What I'm trying  
12 to find out is whether there are biases that people have --  
13 that they feel, but they don't necessarily say that could very  
14 well affect their judgment when they are looking at evidence  
15 that they are trying to consider.

16 THE COURT: I am sure there are questions that you  
17 may ask directed to that which may serve your purpose. I am  
18 sure you have gotten into an area now that is so personal it  
19 will not have much bearing on the case.

20 MR. KENDRICK: Very well, Your Honor. Thank you.

21 Well, are you aware of any racial prejudices that  
22 you each harbor and that you think could interfere with your  
23 judgment in interviewing this evidence and keeping an open

1 mind? Are there any of you who are aware of that? Are you  
2 free of any bias or prejudice towards classes of people, like  
3 Cuban refugees and Spanish speaking people as a whole and if  
4 you are, can you put them aside -- honestly put them aside?

5 Thank you. I gather that we can all put them aside.

6 Let me ask you this question: Do you have any  
7 problem with the notion or law of open housing? Would you  
8 have any problems with a Cuban refugee moving next door to  
9 you?

10 Do you have any problems with the law that says you  
11 can't discriminate against a person because of their race,  
12 color or creed?

13 MR. MELSON: Your Honor, again, I think he is  
14 getting into a situation that does not regard their ability as  
15 jurors to sit partially or impartially in judgment of  
16 Mr. Quintana.

17 THE COURT: The objection is sustained.

18 MR. KENDRICK: Do you feel like the local police need  
19 your support? Do you have any bumper stickers that say,  
20 "Support your local police"? Would you go out of your way to  
21 help the police? Most of us would. Most of us would.

22 JUROR VIETS: Depending on the situation.

23 MR. KENDRICK: Precisely. Precisely. But, just



1 because they are police doesn't necessarily mean, does it,  
2 that you are going to accept what they say as gospel?

3 MR. MELSON: Your Honor, is that a question or a  
4 statement of Mr. Kendrick's?

5 MR. KENDRICK: That's a question.

6 I think you understand. You understand it is a  
7 question, don't you?

8 If and when Mr. Quintana testifies in this case,  
9 will you give him the same credence that you all give any  
10 other witness that testifies in this case -- if he testifies?  
11 Would you give greater credence to law enforcement personnel  
12 simply because they are law enforcement personnel as opposed  
13 to Mr. Quintana's testimony simply because he is the  
14 defendant?

15 Do you feel like witnesses that are called by the  
16 prosecution are more impartial than witnesses that would be  
17 called by the defense?

18 During the course of this trial Mr. Melson and I  
19 both, I'm sure, are going to raise many, many objections. Do  
20 you understand that the reason for that is the duty that we  
21 have, he to the State and me to my client, and we are not  
22 trying to keep things from you, but it is part of our job. Do  
23 you understand that?

1           Five of you have already been struck because of the  
2           opposition to the death penalty. Does not the death penalty  
3           bother you --

4           THE COURT: (Interposing) I don't think you can  
5           ask that.

6           MR. KENDRICK: Then I won't.

7           Let me ask you this: Are you in favor of the death  
8           penalty? Can I see the hands that are in favor of the death  
9           penalty?

10          JUROR VIETS: What do you mean, in favor?

11          THE COURT: Let me ask a question.

12          MR. KENDRICK: Very well, Your Honor.

13          THE COURT: Are there any of you ladies and  
14          gentlemen that think that the death penalty is the only  
15          appropriate punishment where a life has been taken and in no  
16          circumstances and no matter what the evidence showed should  
17          imprisonment be the punishment? Do any of you feel that?

18          All right.

19          MR. KENDRICK: Thank you, Your Honor.

20          Just because the prosecution talks about the death  
21          penalty and just because he may ask for the death penalty, do  
22          you understand that you don't have to impose the death  
23          penalty?

\* \* \*

1 for both sides, we need to ask you some questions so we are  
2 sure that the jury that is hearing this case is as impartial  
3 as we can make it.

4 Now, I want to make sure that it is impartial  
5 because we consider this to be a very serious case and we want  
6 the defendant to have a fair trial. But, I also want it to be  
7 impartial because the people of this country and the people of  
8 this State deserve a fair trial.

9 My first question, I guess, is whether any of you  
10 disagree with the proposition that just as the defendant is  
11 entitled to have a fair trial, so is the Commonwealth, the  
12 Commonwealth being Arlington County and the State of Virginia  
13 and its citizens? Do any of you disagree with that  
14 proposition?

15 All right. Do any of you have any hearing or sight  
16 problems that would keep you from fully evaluating this case?  
17 As you know, we are going to be using headphones. Are any of  
18 you unable to hear well enough to be able to pick up sounds  
19 through headphones or do any of you have any problems seeing  
20 the mass amount of evidence we have to present over the next  
21 four or five days? Anything that you know of impairing you  
22 from doing this?

23 Do any of you speak Spanish fluently or do you

1 understand Spanish fluently?

2 Yes, sir, Mr. Ferguson?

3 Other than Mr. Ferguson, have any of you had any  
4 courses in Spanish, however long ago -- either in high school?

5 All right. My question to the three or four of you  
6 would be: Will you be able to listen to the translation that  
7 our professional interpreters give you rather than trying to  
8 interpret the Spanish yourself? The reason I ask this, ladies  
9 and gentlemen, is because everyone on the jury panel has to  
10 hear the same thing. That's why we want you to listen to the  
11 Spanish and hear in English rather than try to interpret it  
12 yourselves.

13 Mr. Ferguson, will you be able to do that?

14 JUROR FERGUSON: (Juror shaking his head  
15 affirmatively.)

16 MR. MELSON: And the rest, the three or four, will  
17 you be able to listen to the interpretation rather than  
18 attempt to do it yourself?

19 Are any of you trained in any legal matters?

20 Yes, m'am?

21 JUROR LESSE: Yes.

22 MR. MELSON: What training is that?

23 JUROR LESSE: I have a J.D.

1 MR. MELSON: Do you practice law?

2 JUROR LESSE: I will be practicing, yes.

3 MR. MELSON: I take it you are waiting for the  
4 results of the Bar?

5 JUROR LESSE: No, I have passed the Bar.

6 MR. MELSON: All right. Anybody else had any legal  
7 training?

8 You all understand that the burden of proof in this  
9 case is on the Commonwealth to prove this man guilty beyond a  
10 reasonable doubt, but you also understand that our burden is  
11 only proof beyond a reasonable doubt and not proof beyond all  
12 possible doubt or beyond any doubt or any conceivable doubt.  
13 But, merely beyond any reasonable doubt. Do you all  
14 understand this concept? If you have an affirmative answer --  
15 or rather, negative answer, would you raise your hand and let  
16 me know if you have any problems with this?

17 This case also involves, as you know by this time, a  
18 very gruesome and horrible crime wherein the victim suffered  
19 a very severe beating and because of that there is going to be  
20 testimony and exhibits which will portray some of that. We  
21 don't want you to convict this man because of the gruesomeness  
22 of the crime or the photographs we show you. We want you to  
23 convict him on the evidence, but on the other hand, in order

1 to be fair to our client, the State/the people, we have to  
2 put on a trial that tells you accurately and fairly what  
3 happened and that's going to include some explicit testimony  
4 and photographs and exhibits. My question is: Because we  
5 have to show this to you and because some of it may be  
6 gruesome, will you hold that against us? Will you hold that  
7 against us in any way whatsoever? Is there anybody that feels  
8 that they won't be able to look at the exhibits and/or the  
9 photographs and consider them along with all the other  
10 evidence in the case?

11 Do any of you have any religious or moral or  
12 ethical reasons why you cannot impose a penitentiary sentence,  
13 a penitentiary sentence that may be a life sentence? Do any  
14 of you have any reasons why you could not impose, if the  
15 circumstances warranted it and you find the defendant guilty,  
16 a penitentiary sentence?

17 I also have to ask you some questions obviously  
18 about the death sentence and the imposition of the death  
19 penalty, because that's an option in the case and if you find  
20 the defendant guilty of capital murder, you will have to  
21 choose between the imposition of the death sentence or a life  
22 sentence and we understand that that is a very heavy burden  
23 and it may be a lonely decision on your part and that you may

1 have qualms against it, but it is important for us to know if  
2 you have those types of problems in order to make sure we get  
3 an impartial jury here both for the Commonwealth as well as  
4 the defendant. So, we are going to have to ask you some  
5 questions about your feelings with respect to the imposition  
6 of the death penalty and I'd appreciate it if you could be as  
7 candid as possible with us so we can make our decision based  
8 upon all the information in the case.

9 Do you have a question, sir?

10 JUROR LOUCAS: Yes, I'm prejudiced against capital  
11 punishment. I don't know if you can --

12 MR. MELSON: Fine, Mr. Loucas. That's quite all  
13 right. Let me ask a few questions of you along with the rest  
14 of the panel and see what the responses are and we will be  
15 able to tell you then whether we can proceed. Perhaps you  
16 will be responding to this question:

17 Do any of you have any religious or conscientious or  
18 ethical scruples against the death penalty?

19 Mr. Loucas, you would respond affirmatively to that?

20 JUROR LOUCAS: Yes.

21 MR. MELSON: And is it Mary Gray?

22 JUROR GRAY: Yes.

23 MR. MELSON: And Miss Matticole, is that correct,

1 and Welch?

2 JUROR MATTICOLE: Yes.

3 JUROR WELCH: Yes.

4 MR. MELSON: Shirley Bishop?

5 JUROR BISHOP: Yes.

6 MR. MELSON: Matthew Kelly and Sylvia Lesse; is  
7 that correct?

8 JUROR KELLY: Yes.

9 JUROR LESSE: Yes.

10 MR. MELSON: Is there anybody else -- have any  
11 religious or conscientious scruples about the imposition of  
12 the death penalty?

13 Would the fact that the death -- and I guess I'm  
14 addressing the other individuals, but I want everyone else to  
15 listen to it. Would the fact that the death penalty is an  
16 option in this case make you reluctant to find the defendant  
17 guilty if the facts warranted it merely because the death  
18 penalty is an option? In other words, when you are passing on  
19 the defendant's guilt or innocence with respect to capital  
20 murder, are any of you going to be reluctant to convict him of  
21 capital murder even though the evidence warns it and solely  
22 because you know you will then have the option of imposing the  
23 death penalty?



1 Yes, m'am?

2 JUROR GOUAZE: There are two options?

3 MR. MELSON: Yes, m'am. If the defendant is found  
4 guilty, you either have life or the death penalty. Now, would  
5 that option make you hesitant to find him guilty of capital  
6 murder because you have that option?

7 Would your views on capital punishment cause any of  
8 you to automatically impose life imprisonment as a sentence  
9 for murder rather than the death penalty?

10 Yes, is that Grace Gouaze? Is there anybody else?  
11 All right, Ms. Lesse and Mr. Loucas. All right. These are  
12 the individuals who responded previously to note their  
13 objection to the death penalty.

14 For those of you who responded affirmatively to the  
15 questions concerning objections to the death penalty as well  
16 as the juror that just responded to the last question, let me  
17 ask you this. Is your objection to the death penalty  
18 absolute? In other words, because of your views or objections  
19 to the death penalty, would you refuse to consider its  
20 imposition in any case regardless of the circumstances?

21 Let me ask each of you individually. Mr. Loucas?

22 JUROR LOUCAS: I didn't get the question clear.

23 MR. MELSON: Because of your views --

1 JUROR LOUCAS: (Interposing) Yes?

2 MR. MELSON: (Continuing) -- would you never impose  
3 the death sentence in any case?

4 JUROR LOUCAS: Yes, uh huh.

5 MR. MELSON: You would not impose it regardless of  
6 the circumstances?

7 JUROR LOUCAS: Yes, I would.

8 MR. MELSON: Are you saying you would not?

9 JUROR LOUCAS: Yeah.

10 MR. MELSON: And Mary Gray?

11 JUROR GRAY: I would.

12 MR. MELSON: Perhaps --

13 JUROR GRAY: (Interposing) Explain it to me a  
14 little better to me.

15 MR. MELSON: I'm asking you whether your objection  
16 to the death penalty is absolute?

17 JUROR GRAY: Yes.

18 MR. MELSON: In no case would you ever impose the  
19 death penalty?

20 JUROR GRAY: I'm afraid I wouldn't.

21 MR. MELSON: That's quite all right. I want you to  
22 be very candid with us on that subject.

23 Mrs. Matticole?

1 JUROR MATTICOLE: I would -- I would not.

2 MR. MELSON: Would not in any case impose the death  
3 penalty?

4 JUROR MATTICOLE: Yes, I would oppose it. I would  
5 not like to judge him and give him the death penalty.

6 MR. MELSON: I guess I'm having a hard time hearing.  
7 Are you saying in any case regardless of the circumstances you  
8 would not impose the death sentence?

9 JUROR MATTICOLE: That's right.

10 MR. KENDRICK: Your Honor, I didn't get that answer.  
11 I'm sorry to interrupt Mr. Melson's examination. I felt like  
12 the first time she said her opposition was not absolute.

13 THE COURT: I gather, Ms. Matticole --

14 JUROR MATTICOLE: (Interposing) I didn't phrase it  
15 properly, but --

16 THE COURT: (Interposing) You would not impose the  
17 death penalty in any case no matter what the evidence would  
18 show?

19 JUROR MATTICOLE: No, I would not.

20 MR. MELSON: Miss Gouaze, would you have the same or  
21 a different answer?

22 JUROR GOUAZE: I would vote for life imprisonment.  
23 I believe that we should have the death penalty in law, but

1 I'm reluctant to subject somebody to that.

2 MR. MELSON: So, you would say in every case where  
3 you have the option?

4 JUROR GOUAZE: I would always vote for life  
5 imprisonment.

6 MR. MELSON: You would not vote for the death  
7 penalty?

8 JUROR GOUAZE: No.

9 MR. MELSON: Ms. Welch?

10 JUROR WELCH: I would not vote for the death penalty.

11 MR. MELSON: Under any circumstances?

12 JUROR WELCH: Right.

13 MR. MELSON: And Ms. Bishop?

14 JUROR BISHOP: State the question again?

15 MR. MELSON: Is your objection to the death penalty  
16 so absolute that you would not under any circumstances vote to  
17 impose the death penalty?

18 JUROR BISHOP: No.

19 MR. MELSON: Can you conceive of some circumstances  
20 in which you would impose the death penalty?

21 JUROR BISHOP: Yes.

22 MR. MELSON: Mr. Kelly?

23 JUROR KELLY: I'm totally against the death penalty

1 under the criminal justice system. I'm totally opposed to it  
2 in any situation.

3 MR. MELSON: Absolutely?

4 JUROR KELLY: Absolutely.

5 THE COURT: Does that mean, Mr. Kelly, you would not  
6 personally vote to impose it no matter what the circumstances  
7 of the case is?

8 JUROR KELLY: That's right, Your Honor.

9 MR. MELSON: Ms. Lesse?

10 JUROR LESSE: My objection is absolute.

11 MR. MELSON: Your Honor, perhaps we can make our  
12 motions now to strike for cause for those jurors, so that I  
13 can inquire of the others some other questions. I think we  
14 have: Mr. Loucas, Mary Gray, Mrs. Matticole, Mrs. Gouaze,  
15 Anne Welch and Matthew Kelly and Miss Lesse.

16 THE COURT: The motion is granted and the following  
17 jurors are excused and I thank you very much, ladies and  
18 gentlemen, for remaining with us through this time and you are  
19 excused subject to the usual telephone call that tells you  
20 when you are next needed. That will be: Mr. Loucas,  
21 Miss Gray, Miss Gouaze, Miss Matticole, Miss Lesse, Mr. Kelly  
22 and Mrs. Welch. You all are excused.

23 Now, would the three jurors in the front now take

1 seats inside the box?

2 MR. MELSON: Ladies and gentlemen, let me ask you a  
3 few questions which go to the extent of your view on the death  
4 penalty. As Judge Russell has already told you, the law says  
5 that before you impose the death penalty in any case you have  
6 to find that the Commonwealth has proven beyond a reasonable  
7 doubt one or the other of the following two circumstances or  
8 facts: One, that the type of homicide here constitutes to  
9 what amounts to an aggravated battery. What the law says is  
10 very outrageous, wanton, vile, horrible and inhuman in that it  
11 involved torture, deprivity of mind or aggravated battery to  
12 the victim. We will shorten that and call it "aggravated  
13 battery." The other factor is whether or not the evidence  
14 indicates the defendant will be a continuing threat to  
15 society. Now, the law says you can impose capital punishment  
16 if you find one or the other beyond a reasonable doubt.

17 My first question, ladies and gentlemen, is whether  
18 any of you would require the Commonwealth to prove both of  
19 those factors? In other words, disregard the Court's  
20 instruction that we need only prove one and instead, require  
21 us to prove both of those factors before considering or  
22 imposing the death penalty. Is there any member of the panel  
23 that would never impose a death penalty sanction in a case

1 where all the Commonwealth could prove in the penalty section  
2 -- or stage of the trial was that there was an aggravated  
3 battery?

4 If at the penalty stage of the trial we cannot show  
5 through prior record or anything else that the defendant is a  
6 continuing threat to society, but merely that the  
7 circumstances that surround the case indicate that it was an  
8 aggravated battery, will you be able to impose the death  
9 sentence in that type of case if you feel the facts warrant it  
10 or are you going to tell me in that type of case you don't  
11 think it is appropriate for the death penalty under any  
12 circumstances?

13 THE COURT: Bear in mind, ladies and gentlemen, that  
14 the Court's instructions at such a time would be as I read to  
15 you out of the statute a little while ago. The death penalty  
16 may only be imposed if you, the jury, after having found the  
17 defendant guilty of capital murder and having heard further  
18 evidence decide, A, that he would be a continuing danger to  
19 society, or, B, that there was an aggravated battery. The  
20 Commonwealth doesn't have to prove both of those things. The  
21 Commonwealth has to prove either one and that would be the  
22 instruction to you. What Mr. Melson is asking you now is  
23 suppose he proves one and not the other, namely aggravated

1 battery and not the continuing threat. Would that be  
2 sufficient for you in spite of the Court's instruction that  
3 they don't have to prove both?

4 MR. MELSON: May I add one other thing? Although  
5 you may not have objections to the death penalty or say they  
6 may not be absolute and have reservations and feel you could  
7 only impose it in certain types of cases, my question is in a  
8 case that involves an aggravated battery, is it the type of  
9 case which you feel would be appropriate for the death  
10 penalty if the facts warranted or do you believe that in no  
11 case which the only thing involved is aggravated battery could  
12 you impose the death penalty? Do any of you have any  
13 problems with that? Do you understand it?

14 The other side of that coin is do you think an  
15 appropriate case for the death penalty might be a situation  
16 where we prove that although there was not an aggravated  
17 battery, the defendant constitutes a serious -- a continuing  
18 and serious threat to the community? Do you consider that an  
19 appropriate type of case in which you could have the death  
20 penalty?

21 JUROR BAIN: May I say something instead of just  
22 putting up my hand?

23 MR. MELSON: Yes, please. Any time you want to say



1 something, this is your time to tell us what you are feeling  
2 and what your concerns are.

3 JUROR BAIN: I would want to be absolutely convinced  
4 before I made any decision on my part. I would have to be  
5 completely convinced and then I would feel it was my duty to  
6 abide by the law.

7 MR. MELSON: So, you are telling me that if you  
8 were absolutely convinced you couldn't impose a death  
9 sentence?

10 JUROR BAIN: I would abide by whatever the law  
11 required.

12 THE COURT REPORTER: What is her name?

13 MR. MELSON: I'm sorry, what is your name, m'am?

14 JUROR BAIN: Bain.

15 THE COURT: Mrs. Bain.

16 MR. MELSON: All right. Mrs. Bain, let me ask you  
17 this question as a follow-up to your comment: The Court will  
18 instruct you in the penalty stage that we have to prove one  
19 or the other of those two factors beyond a reasonable doubt.  
20 Because of the concern that you just expressed, my question  
21 is: Would you impose upon us a burden greater than beyond a  
22 reasonable doubt before you would --

23 JUROR BAIN: (Interposing) No. I would do this. I

1 would simply want to be absolutely convinced for the sake of  
2 my own conscience.

3 MR. MELSON: Fine. You are telling me that if you  
4 believe beyond a reasonable doubt that he constituted a  
5 continuing threat to society, that you would be able then to  
6 consider the imposition of the death penalty?

7 JUROR BAIN: If the law required that for it, yes.

8 MR. MELSON: Along the same lines, I want to ask  
9 you: Is this type of case one you feel appropriate for the  
10 death penalty -- this particular capital murder case involves  
11 the willful, deliberate, premeditated murder of the  
12 seventy-two year old woman during the commission of a robbery  
13 while armed with a deadly weapon. That is the qualification  
14 that the legislature has set up saying under those  
15 circumstances the death penalty may be considered by the jury.  
16 Do you agree that that is a type of case in which you could  
17 consider the imposition of a death penalty if you felt the  
18 facts in the case warranted that harsh of a punishment or do  
19 you feel that in no murder during the commission of a robbery  
20 could you ever impose a death penalty? Do any of you feel  
21 that you could not impose a death penalty under those facts?

22 Now, you will also be deliberating with twelve other  
23 jurors. The decision as to what punishment you will vote for

1 is yours to make individually. In the light of that, are you  
2 all able to say that you can vote on your own as an  
3 individual for the death penalty if you feel that the  
4 circumstances in this case weren't such and a sanction?

5 JUROR BAIN: You'll have to explain that for me.

6 MR. MELSON: In other words, Mrs. Bain, if you are  
7 in the jury room, can you vote for the death penalty because  
8 you, as an individual, believe it is an appropriate sanction  
9 even though perhaps you believe that, but some of your fellow  
10 jurors might not be voting for it? Can you stand on your own  
11 conscience and vote for it?

12 JUROR BAIN: I can make that decision.

13 MR. MELSON: Now, because this is a capital murder  
14 case and the death penalty is involved, would any of you  
15 impose upon the Commonwealth -- that is the prosecution -- a  
16 burden higher than beyond a reasonable doubt before you would  
17 convict the defendant of capital murder? Are you going to put  
18 us through a stronger test in this case because one of the two  
19 possible sanctions involved is the death penalty? Are you  
20 going to require more than beyond a reasonable doubt? Are you  
21 all willing to follow the Court's instructions that we have to  
22 prove the defendant guilty of capital murder beyond a  
23 reasonable doubt prior to the finding of guilty? Do you agree

1 to abide by the instructions of the Court?

2 Thank you, Your Honor. Thank you, ladies and  
3 gentlemen, for your answers.

4 THE COURT: Mr. Kendrick?

5 MR. KENDRICK: Yes, Your Honor. Thank you.

6 Ladies and gentlemen, I think the question of  
7 capital punishment has been covered quite adequately. I do  
8 want to ask one question along those lines before I get into  
9 another.

10 This phase of the trial is called voir dire. What  
11 that means is in plain English is "you speak." This is your  
12 opportunity to talk to me and I encourage that. I invite  
13 that and I hope it will continue. I don't want to suggest  
14 that because the questions that I will be asking you go to  
15 bias and prejudice that any of you are prejudiced. I simply  
16 want to suggest that if you do have them, let's talk about  
17 them and see if I can't eliminate the extremes on both ends of  
18 the spectrum as much as is humanly possible, because that's  
19 what we're after. A man's life is at stake and if possible,  
20 we want a jury as free and unbiased and without prejudice as  
21 we can get.

22 With respect to capital punishment, do you  
23 understand that just because the prosecution asked for it and

\* \* \*

1 THE COURT: Are there any members of the jury  
2 conscious of any prejudice or bias which might affect you in  
3 deciding these cases?

4 Does any juror know of any reason why he or she  
5 couldn't render an impartial verdict based entirely on the law  
6 and the evidence? Do you know of any reason why you could not  
7 give both the Commonwealth and the defendant a fair trial here  
8 today?

9 Do counsel have questions?

10 MR. MELSON: Yes, sir, if it please the Court.

11 THE COURT: Mr. Melson.

12 MR. MELSON: Good afternoon, ladies and gentlemen,  
13 as you already know this is an extremely serious case and both  
14 sides are taking the case very seriously. It not only  
15 involves the death of a seventy-two year old elderly lady, but  
16 also involves the possibility of a death sentence being  
17 imposed if you should find the defendant guilty of capital  
18 murder. So, we are very concerned that we get a very  
19 impartial jury and one that can decide the case based upon the  
20 law and the evidence. We are concerned about this not only  
21 because of the defendant and because he is entitled to a fair  
22 trial and an impartial jury, but also we are concerned for the  
23 purpose of the Commonwealth's point of view because the people

1 of this State and this County are entitled to a fair trial  
2 also. So, we are going to be asking you some questions and  
3 hopefully we will be able to discern from those questions  
4 your impartiality to all of the topics covered in this  
5 particular case.

6 I guess my first question is to make sure that all  
7 of you agree that not only the defendant sitting here is  
8 entitled to a fair trial in your consideration, but the  
9 Commonwealth, the people, the Government, are also entitled to  
10 the same fairness in your deliberations. Do you all agree  
11 with that? Fine.

12 Do any of you have any sight or hearing impairments  
13 that might make it difficult for you to participate in this  
14 trial -- for example, the earphones -- for you to be able to  
15 see him, or see the exhibits that we are going to be  
16 introducing in the last four or five days? Do you all think  
17 you can hear and see what is going to be going on during the  
18 next couple of days?

19 As you know, there will be several witnesses who  
20 will speaking Spanish and the defendant speaks Spanish. So,  
21 you all will be hearing Spanish spoken in the courtroom. Do  
22 any of you speak Spanish fluently or understand it fluently?  
23 Have any of you had any courses in Spanish going way back to

1 high school?

2 All right. With respect to Miss Biddle and  
3 Miss Przybilla, are you willing to rely on the interpreter and  
4 his translation from Spanish to English and not attempt to use  
5 whatever knowledge you have in Spanish to interpret it  
6 yourselves? The reason I am asking this is the jurors all  
7 have to hear the same evidence and we want to make sure that  
8 you are hearing the same thing and understanding the same  
9 thing as everyone else. Are you willing to abide by what the  
10 interpreter interprets and not rely on your knowledge? Thank  
11 you.

12 Do any of you have any legal training, been to law  
13 school, worked in a law firm or been a paralegal?

14 JUROR BIDDLE: I used to work in a law firm as a  
15 legal secretary.

16 MR. MELSON: Did you participate in any --

17 JUROR BIDDLE: (Interposing) No, Government  
18 contracts.

19 JUROR PRZYBILLA: I worked in the Department of  
20 Justice in the Civil Division. I'm a legal secretary. I  
21 don't have legal training.

22 MR. MELSON: All right. Thank you.

23 As you know, the Commonwealth, in order to convict

1 this man, has to prove its case beyond a reasonable doubt.  
2 That is the burden that the law places on the Government in  
3 presenting its evidence, but the burden is only one of beyond  
4 a reasonable doubt. Do you understand that it is not greater  
5 than beyond all doubt or beyond any doubt or beyond any  
6 conceivable doubt, but it is merely a burden of beyond a  
7 reasonable doubt? Do you understand what the burden is?

8 This case is going to involve some very explicit  
9 testimony. It was a gruesome murder. The victim suffered a  
10 severe beating with a hammer and although we don't want you to  
11 convict this man merely because of the photographs we might be  
12 introducing and the fact that they are gruesome and that the  
13 facts are gruesome, you want to convict him only if he is  
14 guilty and not any other facts. It is only fair to him. But,  
15 on the other hand, because we introduce this evidence, we  
16 don't want you to be offended because we have to introduce it.  
17 In order for us to present the case fully and fairly to you,  
18 we might have to get into some of these details because you  
19 need to know everything in the case before you consider your  
20 verdict. Would any of you hold that type of evidence against  
21 us because we might have to introduce it and it may be explicit  
22 as to the wounds and battering that she received?

23 With respect to punishment in this case and also



1 with the robbery case, do any of you have any moral or ethical  
2 or religious objections or opposition to the imposition of a  
3 penitentiary as a result of the defendant's guilt? In other  
4 words, do any of you have any problems with imposing a  
5 penitentiary sentence or a life sentence on somebody if you  
6 find the facts warranted?

7 Now, as you know, the case has two aspects to it.  
8 One is the guilt stage and one is the sentencing stage and if  
9 you should find beyond a reasonable doubt that the defendant  
10 here, Mr. Quintana (indicating), is guilty of capital murder,  
11 then you are going to have the option of sentencing him either  
12 to life imprisonment or to death. We understand that is going  
13 to be a very weighty decision. It may be a lonely decision.  
14 It is going to be a hard decision, I'm sure, and we understand  
15 that. But, we need to have for this trial an impartial jury,  
16 so we are going to ask you some questions with respect to your  
17 views on the death penalty and I would very much like for you  
18 to be as candid as you can with us because it is important for  
19 everybody concerned. The first question is kind of a broad  
20 question, a general question, and that is: Do any of you  
21 have any religious, conscientious or ethical scruples or  
22 objections to the death penalty?

23 All right. Let me ask you this as a follow-up to

1 that then: Would the fact that the death penalty is an  
2 option make you reluctant to find the defendant guilty  
3 despite the fact that such a finding might be warranted by  
4 the evidence? In other words, that just because a finding of  
5 guilty may give you an option of the death penalty, would  
6 that make you more reluctant to find him guilty if the facts  
7 warrant a finding of guilty? Would you not find him guilty  
8 merely because there is a possibility of the death sentence  
9 being involved? Would any of you do that?

10 If you should find the defendant guilty of capital  
11 murder and therefore go into the second stage of the  
12 proceedings, would you automatically -- would any of you  
13 automatically vote for life imprisonment or would you give  
14 due consideration to the argument of counsel and the  
15 instructions of the Court and the evidence in the case in  
16 determining which sanction is appropriate? None of you would  
17 automatically vote for life imprisonment? Am I correct in  
18 that?

19 In determining which sanction to impose the law says  
20 that the Commonwealth has to prove beyond a reasonable doubt  
21 either of two things: First of all, whether the defendant,  
22 Mr. Quintana, constitutes a continuing and serious threat to  
23 society; or secondly, that the victim in this case suffered

1 through an aggravated battery. How the law phrases it is as  
2 follows: That his conduct in committing this offense was  
3 outrageously or wantonly vile, horrible or inhuman in that it  
4 involved torture, depravity of mind, or aggravated battery to  
5 the victim. All right. I will shorten that by saying  
6 aggravated battery. The two things we can prove are serious  
7 threat to society or aggravated battery. We only have to  
8 prove one of those two and if you find it is appropriate you  
9 can choose the death penalty. My question is: Is there any  
10 member of the panel that would require us to prove both of  
11 those regardless of what the Court tells you you will have to  
12 find before you impose the death penalty or will you follow  
13 the Court's instructions and consider the death penalty if we  
14 prove one or the other beyond a reasonable doubt? Will you be  
15 able to follow the Court's instructions?

16 Even though it appears that nobody on the panel is  
17 opposed to the death penalty absolutely or may not have any  
18 views against it at all, you may feel there are some cases in  
19 which you don't feel the death penalty is appropriate. We all  
20 do, but I want to ask you a couple of questions with respect  
21 to the types of cases that you would consider appropriate to  
22 consider the death penalty in. For instance, would you  
23 consider it an appropriate case -- consider the death penalty

1 if all we proved at the sentencing stage was that the  
2 defendant constituted a serious and continuing threat to  
3 society? Would you all feel that that is an appropriate type  
4 of case for you to consider the death penalty? Does anybody  
5 disagree with that?

6 JUROR PRZYBILLA: Could I say that after sitting  
7 here listening to you, I really wasn't sure how I felt about  
8 it, but honestly sitting here thinking about it, I don't  
9 think I could impose the death penalty.

10 MR. MELSON: I appreciate your candor at this time.  
11 Let me ask the follow-up question. Are you telling us that  
12 your objection to the death penalty is so absolute that you  
13 would never impose a death penalty in any case regardless of  
14 the circumstances?

15 JUROR PRZYBILLA: I think my feelings are that I  
16 could not impose it.

17 MR. MELSON: Under any circumstances?

18 JUROR PRZYBILLA: No.

19 MR. MELSON: Thank you. I appreciate your candor in  
20 regards to that.

21 I didn't want to cut off anybody with respect to the  
22 other question I had concerning the type of case appropriate  
23 for the imposition of the death penalty and we were talking

1 about the subject or type involving a continuous serious  
2 threat to society. I take it from your silence that all you  
3 people feel that would be appropriate for the death sentence;  
4 is that right?

5 JUROR GOWANS: I'm not sure it sounds like the same  
6 question. You said two things to do.

7 MR. MELSON: I was restating the previous one. The  
8 only part of that question is: Do you think it is appropriate  
9 type of case for you to consider the death penalty when all  
10 the Commonwealth can show is an aggravated battery? Under the  
11 right circumstances would a case involving merely an aggravated  
12 battery be the type of case that you would consider for the  
13 death penalty?

14 JUROR GERMAS: Aggravated battery meaning resulted  
15 in death? I mean if I were to slap someone --

16 MR. MELSON: (Interposing) No, you will be given an  
17 instruction on aggravated battery at the end of the case.  
18 But, the way the legislature has worded it is as follows and I  
19 will repeat it: The defendant's conduct in committing this  
20 offense was outrageously wantonly, vile, horrible, or inhuman  
21 in that it involved torture, deprivity of mind or aggravated  
22 battery to the victim. Aggravated battery: now, if you are  
23 given a case in which there is aggravated battery, would you

1 automatically say that that is not the type of case to impose  
2 the death penalty or would you consider it and impose a death  
3 penalty if you felt the circumstances warranted it? Would  
4 you be able to do that?

5 JUROR GERMAS: I understand. Yes.

6 MR. MELSON: The type of capital murder involved in  
7 this case is one in which the legislature has classified.  
8 There are several different instances and one is during the  
9 deliberate and premeditated killing of another during the  
10 commission of a robbery while armed with a deadly weapon.  
11 That is what we are going to prove in this particular case.  
12 You all agree that that is an appropriate type of case in  
13 which to consider the death penalty?

14 I'm not asking you whether you would impose it,  
15 because that's depending upon your view of the case and the  
16 facts. But, is it appropriate type of case to consider the  
17 death penalty?

18 Now, although there are going to be twelve jurors  
19 back in the jury room when you deliberate, each one of you  
20 must vote individually. Each one of you or an individual, and  
21 you are going to have to make that decision yourself. Are you  
22 able on your own as an individual to vote for the death  
23 penalty if you feel that the circumstances are appropriate for

1       it? In other words, if that's what you feel is appropriate,  
2       would you vote for it even though you may feel that another  
3       juror may not vote for it? Will you vote for it because you  
4       are an individual and that's a decision that you have made?

5               Now, because this is a capital case, it is a very  
6       serious case and if you are to find the defendant guilty of  
7       capital murder, there are two very serious sanctions which can  
8       be imposed. Now, because of that, are you going to impose  
9       upon the Commonwealth a burden of proof which is higher than  
10      beyond a reasonable doubt? In other words, you may have a  
11      case in which the maximum penalty may be twenty years to life  
12      -- I'm sorry -- the maximum may be twenty years. The burden  
13      of proof in that case is beyond a reasonable doubt. In this  
14      case the maximum punishment is death. Are you going to  
15      impose on us in this case a higher standard of proof than you  
16      would in a robbery case because of the severity of the  
17      sentence?

18             Thank you, Your Honor. I think that's all I have.

19             THE COURT: Mr. Kendrick?

20             MR. KENDRICK: Thank you, Your Honor.

21             It won't be the first time I got my wires crossed  
22      with the prosecution. Ladies and gentlemen, I'm going to ask  
23      you some questions on bias and prejudice and I don't want to

1 in any way suggest you are bias or prejudice, but I do want  
2 to try and find out and get you to think about some of the  
3 questions I'm going to ask to try to eliminate the extremes.  
4 We want a jury as free of bias and prejudice as we can  
5 possibly get. That necessarily means, if at all possible, to  
6 get rid of those individuals that may harbor those extreme  
7 opinions that would interfere with their deliberation or  
8 their judgment of the perception of the evidence.

9 Now, voir dire in plain English means "You speak,"  
10 and that's what I invite you to do. Please talk to me. Talk  
11 to His Honor. Talk to Mr. Melson. If you have questions in  
12 response to my questions by all means ask them. If you don't  
13 understand something, by all means ask.

14 There are just one or two questions along the lines  
15 of capital punishment that Mr. Melson was talking to you  
16 about. He asked you as an individual you could stick to your  
17 convictions if you believed the case warranted capital  
18 punishment regardless of what your peers were deliberating or  
19 what they felt, which is a fair question. I ask if you felt  
20 the penalty did not deserve capital punishment and if that's  
21 your conviction if you could stick to that regardless of the  
22 other members of the jury? If you truly felt this was not a  
23 case that could serve the death penalty even though the other



1 eleven did, could you maintain that position?

2 Do you understand that because the prosecution asked  
3 for the death penalty that doesn't mean that you have to come  
4 back with that decision? You can find my client innocent.  
5 Do you understand that?

6 Now, you undoubtedly were sitting in the courtroom  
7 when my client was brought in from this door here  
8 (indicating) that leads to the jail. Does that fact create  
9 an impression in your mind that he's done something? Are you  
10 of the opinion now that he must have done something wrong or  
11 he wouldn't be here or are you of the opinion if you had to  
12 vote right now as to whether or not he was guilty or he was  
13 innocent, would you vote to acquit him right now? Would  
14 anyone vote to acquit him right now? Well, yes, because he's  
15 presumed to be innocent at this point. That's a basic  
16 fundamental concept in our system. That's a basic concept in  
17 our system. The same would apply with the presumption of  
18 innocence. If you understand it I don't have to go forward.  
19 The government has to go forward. They have to produce the  
20 evidence. We don't even have to testify if we don't want to.  
21 We don't have to say a word. Will you hold that against us?  
22 Can you make the commitment now if he is innocent, as you say  
23 he is, can you make the commitment? Now, that will follow

1 through the entire trial and you will keep your mind open till  
2 all the evidence is in -- until all of you get together as a  
3 collective body to decide the question of guilt or innocence.  
4 Notwithstanding the fact that Mr. Melson is going to show you  
5 some very gruesome photographs, nobody will take issue with  
6 the gruesomeness of the photographs. They are disgustingly  
7 gruesome. A person is dead. But there is another person who  
8 is on trial for his life. Will those photographs in and of  
9 themselves cause you to be biased towards this man because  
10 he's charged at this point or during the course of the trial?  
11 Do you think that you -- if you look at things that are  
12 distressing in that way and of that nature that it might  
13 interfere with your ability to rationally look at the entire  
14 case and all the evidence? Those are just the photographs  
15 alone.

16 You understand that the indictment is nothing but a  
17 piece of paper. It means nothing. It is just a way of  
18 starting the criminal process and to get the ball rolling. Do  
19 any of you think that because this man has been indicted for  
20 robbery and for capital murder that he must have done  
21 something wrong?

22 Do you have any qualms or any problems with the  
23 basic concept of beyond a reasonable doubt and the presumption

1 of innocence, the burden of proof, circumstantial evidence?  
2 Do you feel that they are mere technicalities or games that  
3 we play and that sometimes people get off because they got  
4 slick lawyers or do those concepts really mean something to  
5 you?

6 Any of you belong to the John Birch Society? Have  
7 you ever received any literature from them? Does anyone  
8 believe in their philosophy?

9 How about the American Nazi Party? Does anyone  
10 believe in their philosophy?

11 I don't want you to think that I'm trying to probe  
12 into your personal lives or embarrass you. Again, I will  
13 repeat it, the purpose I am asking these questions is to find  
14 out and to get you to talk to me if you have anything that  
15 might interfere with this man's right to a fair trial.

16 Are you related by blood or marriage to anybody who  
17 is in the Police Department? How about the State Police? How  
18 about Federal Law Enforcement?

19 Anybody been in the military?

20 JUROR JOHNSON: My husband.

21 MR. KENDRICK: While in the military were you in any  
22 way connected with the Military Police?

23 JUROR JOHNSON: No.

1 JUROR GOWANS: No.

2 MR. KENDRICK: Do any of you feel that a government  
3 officer or law enforcement employee when testifying should be  
4 given more credence than the other witness who testifies who  
5 is not with the Police Department or a government employee?

6 Have any of you been the victim of a crime of  
7 violence?

8 JUROR PRZYBILLA: Yes, I was robbed in my home nine  
9 months ago.

10 MR. KENDRICK: Were you interviewed by the police?

11 JUROR PRZYBILLA: Yes, I was.

12 MR. KENDRICK: Was that case prosecuted?

13 JUROR PRZYBILLA: I never heard anything more about  
14 it. I don't know what happened.

15 MR. KENDRICK: I have a few questions in which I am  
16 going to direct you to what I call the "Perry Mason Syndrome."  
17 Do you watch Perry Mason on television and read his books?  
18 His clients have never been convicted of anything. The  
19 prosecution always loses. But, Perry Mason does more than  
20 free his client. He also finds the person who did it and they  
21 are always in the courtroom. Do you feel in any way that I  
22 have to do that? Do you feel that Mr. Quintana has to go  
23 forward and prove not only that he didn't commit the crime,

1 but who did it? Do you think that's the role that I play?

2 Mr. Melson is going to have objections during the  
3 course of this trial, I'm sure. I think I might have one or  
4 two. You understand that that's our job and we're not  
5 trying to keep anything from you?

6 Do any of you harbor any prejudice or bias toward  
7 Cubans? Do any of you think that because Mr. Quintana can't  
8 speak English that he's inferior to you? Have you ever had  
9 any unfortunate experiences with Hispanic or any Spanish  
10 speaking individual that would cause you to cast disparaging  
11 feelings towards Mr. Quintana solely because of his  
12 background?

13 If Mr. Quintana testifies, are you willing to give  
14 him the same credence -- or his testimony the same credence  
15 that you would give any other individual?

16 MR. MELSON: Again, Your Honor, I have the same  
17 objection to that type of a question as he has phrased it.

18 THE COURT: Well, it seemed to me that that was all  
19 right. He just said, "If the defendant testified, would you  
20 give the same credence to that as you would any other  
21 individual?" In other words, would they give him less  
22 credence because he happens to be the defendant who was on  
23 trial. I think it is all right. He didn't compare him with

1 any other particular person.

2 MR. KENDRICK: Thank you, Your Honor.

3 THE COURT: Now, --

4 MR. MELSON: (Interposing) Your Honor, I have a  
5 motion with respect to Juror Number One in that she was  
6 saying that she had an absolute objection.

7 THE COURT: Could you repeat it?

8 MR. MELSON: Your Honor, I have a motion to strike  
9 Juror Number One for cause on the grounds that she has  
10 expressed an absolute objection to the imposition of a death  
11 sentence under any conceivable case.

12 THE COURT: The motion is granted. Miss Przybilla,  
13 you are excused.

14 JUROR PRZYBILLA: May I step out this way?

15 THE COURT: Yes, you can and are subject to the  
16 usual telephone call for jury service.

17 Would all those sitting on the left-hand side of the  
18 courtroom as I face your right, please move over to the other  
19 side and leave that side for the jury?

20 Do counsel have any objection now to taking all the  
21 jurors who have gone through the voir dire procedure sitting in  
22 the courtroom and then having the Clerk draw at random the  
23 names of twenty who will be called into the box and then

1 taking your strikes? Then we will call for four from the  
2 panel seated in the courtroom to be impaneled for the  
3 selection of alternate jurors. Any objection to that  
4 procedure?

5 MR. MELSON: Not from the Commonwealth.

6 MR. KENDRICK: Your Honor, no objection, but one  
7 request. I'd ask the Court to entertain at this point once  
8 the twenty members are chosen I would ask for a recess so  
9 that we can confer before we make our strikes.

10 THE COURT: Perfectly all right. Surely.

11 MR. KENDRICK: Thank you.

12 THE COURT: Ladies and gentlemen, those of you now  
13 sitting in the box, would you please take a seat in the  
14 courtroom and would the bailiff call into the room the others  
15 in the jury room and let them sit with the seven jurors.

16 (Whereupon, the entire jury panel entered the  
17 courtroom.)

18 THE COURT: You now have twenty-eight names in the  
19 box?

20 THE CLERK: Do you want me to count them?

21 THE COURT: You better count them.

22 THE CLERK: Yes.

23 THE COURT: The Court finds that twenty-eight

1 prospective jurors have been examined upon their voir dire  
2 and found free from exception. The Clerk will now draw twenty  
3 names at random from that panel of twenty-eight who will be  
4 called into the box and upon whom counsel without further  
5 considering will exercise their preemptory challenges.

6 THE CLERK: Please take a seat in the jury box as I  
7 call your name:

8 Number One, Anna O'Neill; Number Two, Hal Wynne;  
9 Number Three, Robert Ellicott; Number Four, Marie Wright;  
10 Number Five, Elaine Germas; Number Six, George Gowans; Number  
11 Seven, Dortha Sheehan; Number Eight, Janet Fetteroff; Number  
12 Nine, Shirley Bishop; Number Ten, Richard Miller; Number  
13 Eleven, Larry Teter; Number Twelve, Gola Craver; Number  
14 Thirteen, John Roche; Number Fourteen, Debra Biddle; Number  
15 Fifteen, Bernice Simonik; Number Sixteen, May Kuschwa; --

16 JUROR KUSCHWA: (Interposing) That's Mary, by the  
17 way.

18 THE CLERK: Excuse me.

19 Number Seventeen, Robert Chew; Number Eighteen,  
20 Pamela Bradley; Number Nineteen, Robert Davis; Number Twenty,  
21 Beth Bain.

22 THE COURT: Will counsel now exercise their strikes?

23 MR. KENDRICK: Your Honor, may we have some time?

\* \* \*



1 THE COURT: Does the defendant wish to make a  
2 statement at this time?

3 MR. KENDRICK: Not at this time, Your Honor. I have  
4 convinced him that now is not the appropriate time. I have  
5 tried to explain to him how the trial is laid out and when his  
6 opportunity to speak will come. I think he understands that  
7 and I think he will refrain from anymore disruptions.

8 THE COURT: All right. Are you ready for the jury?

9 MR. MELSON: Yes, sir.

10 THE COURT: Who is the Commonwealth's first witness?

11 MR. MELSON: Officer Rothlisberger,  
12 R-o-t-h-l-i-s-b-e-r-g-e-r.

13 (Whereupon, the jury returned to the jury box.)

14 MR. MELSON: Your Honor, he has not been sworn.

15 Whereupon,

16 MARCHE ROTH LISBERGER,  
17 was called as a witness by and on behalf of the Commonwealth  
18 of Virginia, and, after having been first duly sworn, was  
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MELSON:

22 Q Sir, would you state your name for the ladies and  
23 gentlemen of the jury, please?

1 A Marche Rothlisberger.

2 Q By whom are you employed?

3 A Arlington County Police Department.

4 Q And in what capacity?

5 A I'm a police officer.

6 Q Directing your attention to March 19, 1981, did you  
7 have occasion to respond to 748 South Florida Street,  
8 Apartment Number 2?

9 A Yes, I did.

10 Q What county?

11 A Arlington.

12 Q Approximately what time did you respond there?

13 A About twenty minutes after 3:00 in the afternoon.

14 Q When you responded, who did you find in the  
15 apartment, if anyone?

16 A Officer Don Kerr and the deceased were in the  
17 apartment.

18 Q Was there anybody outside the apartment?

19 A Some Spanish community members were at the doorway.

20 Q What did you do when you went into the apartment?

21 A I entered the apartment and I saw Officer Kerr  
22 standing next to a telephone. He pointed out to me that the  
23 telephone did not have a cord between the handset and the base

1 part and I then walked into the kitchen and saw the deceased.

2 THE COURT: Wait just a moment. The witness should  
3 sit a little closer to the microphone. Speak a little more  
4 slowly. There are simultaneous interpreters here.

5 THE WITNESS: All right.

6 BY MR. MELSON:

7 Q What did you find in the kitchen?

8 A I found an elderly woman dead on the kitchen floor.

9 Q Did you do any examination to determine whether she  
10 was alive or dead at the time?

11 A I observed her several minutes to look for signs of  
12 breathing. I saw none and I then touched her on the leg and  
13 her body was cooler than mine was.

14 Q Did there come a time when the paramedics arrived?

15 A A few minutes afterwards the paramedics -- firemen  
16 from Bailey's Crossroads arrived.

17 Q Did you watch them perform their duties?

18 A One paramedic came in and checked the deceased.

19 Q When he did that, did he disturb the body or scene  
20 at all?

21 A Not that I could be aware of. Any disturbance of  
22 the scene was absolutely minimal.

23 Q Who arrived after the paramedics came?

1           A     The next to arrive was Detective Carrig and  
2 Thompson of the Arlington County Police Department.

3           Q     How long have you been a police officer,  
4 Officer Rothlisberger?

5           A     Twenty years.

6           Q     Prior to that, had you had any experience?

7           A     I had a year and a half in the United States Army.

8           Q     During your experience with the Army and the  
9 Arlington Police, did you have occasion to investigate any  
10 burglaries?

11          A     Yes, I have.

12          Q     Approximately how many?

13          A     It would be difficult to say. Easily I could say in  
14 excess of one -- a couple of hundred.

15          Q     During those investigations, have you searched for  
16 signs of recent forced entry?

17          A     Yes, I have.

18          Q     Did you in this case examine the premises for signs  
19 of recent forced entry?

20          A     Yes, I did.

21          Q     What did you examine?

22          A     I examined the main doorway into the apartment in  
23 Apartment Number 2 and the windows contained in the apartment.

1 Q And after examining those items, did you find any  
2 evidence of recent forced entry?

3 A No, sir.

4 Q How far off the ground are the windows?

5 A The windows are approximately fifteen feet from the  
6 ground level. The apartments -- the terrain around the  
7 apartment -- to go into the building itself, you would have to  
8 go up four or five stairs and as you go to the rear of the  
9 building, where the deceased's apartment was, the terrain goes  
10 downhill. So, the farther you go south from the building the  
11 farther from the grounds you come.

12 Q Did you examine the locks on the front door?

13 A Yes, I did.

14 Q Is that the only exit from the apartment, other than  
15 by the windows?

16 A Yes, sir.

17 Q What did you find with respect to the locks?

18 A The original lock in the door was a Mortis Lock and  
19 it was inoperable. It had at least the bolt missing and  
20 possibly other interior pieces, but it would not operate.

21 Q Did your examination of that reveal any recent  
22 injury to it?

23 A No, it appeared to be that way for quite a period of

1 time.

2 Q Any other locks in the door?

3 A A single cylinder deadbolt there, six inches above  
4 the Mortis Lock.

5 Q Was that in an open or closed position?

6 A It was open.

7 Q Did there come a time that you were there that a  
8 physician arrived at the apartment?

9 A Yes, sir.

10 Q Who was that? Do you recall?

11 A Dr. Sheehy.

12 Q And why did he come?

13 A He came after a request for a medical examiner.

14 Q Did you observe what he did?

15 A Yes. About ten minutes after 6:00 he did a  
16 preliminary on the deceased.

17 Q And that conversation was recorded by  
18 Detective Gabrielson.

19 Did he do anything during his examination that would  
20 have changed the condition of the body or the scene?

21 A Not that I could determine, no, sir.

22 Q What happened to the body of the deceased,  
23 Ophelia Quintero, after the doctor had examined her?

1           A     The police agents finished their work -- the  
2     printing around the area and the photographic work and at  
3     about 6:18 the body was transported out to Fairfax Hospital.

4           Q     What responsibilities did you have, if any, with  
5     respect to the removal of the body?

6           A     I escorted the hearse from 748 South Florida Street  
7     to Fairfax until it was locked in the vault at the morgue.

8           Q     You followed the body from the time it was removed  
9     from the kitchen to the Fairfax Morgue?

10          A     Yes, sir.

11          Q     On the way out there, was anything done to the body  
12     to change its condition or nature?

13          A     Not that I could ascertain from the outside. I was  
14     not in the hearse. I was behind the hearse as it went to the  
15     morgue.

16          Q     Where was the deceased left at the hospital?

17          A     In the morgue -- in the vault.

18          Q     I'm sorry?

19          A     In the vault. The main morgue vault. It probably  
20     holds -- there's room for fifteen or twenty bodies, I would  
21     say.

22          Q     What was done to the vault after the body was placed  
23     in there?

1           A     It was locked by the security guard. We responded --  
2 we were there to unlock it upon other entry.

3           Q     Did you observe that?

4           A     Yes, I did.

5           Q     Let me show you what's been marked as Commonwealth's  
6 Exhibit No. 1 for identification and ask if you can tell us --  
7 if you can identify the photo on that identification card?

8           A     The photo is the woman that I found deceased in the  
9 apartment.

10          Q     Is she the one that you followed and her body was  
11 taken from the apartment to the hospital and placed in the  
12 morgue?

13          A     Yes, it is.

14               MR. MELSON: Your Honor, I would like this moved in  
15 as Commonwealth's Exhibit No. 1.

16               MR. KENDRICK: No objection.

17               THE COURT: Received in evidence as Commonwealth's  
18 Exhibit 1.

19                               (The photograph previously  
20 marked for identification as  
21 Commonwealth's Exhibit No. 1  
22 was received in evidence.)

23               MR. MELSON: Your Honor, I have no other questions



1 of this witness.

2 THE COURT: Mr. Kendrick?

3 MR. KENDRICK: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. KENDRICK:

6 Q Officer Rothlisberger, would you indicate again the  
7 time that you first arrived at the scene?

8 A About twenty-one minutes after 3:00.

9 Q Twenty-one after 3:00?

10 A Yes, sir.

11 Q Do you know what happened to the phone cord that you  
12 made reference to?

13 A It was not in the apartment.

14 Q It was not in the apartment. It was just missing?

15 A Yes.

16 Q Okay.

17 Now, the body was found in the kitchen; is that  
18 correct?

19 A Yes, sir.

20 Q How big is that kitchen?

21 A Very narrow. Seven feet in length by approximately  
22 four feet in width.

23 Q Are there any windows?

1           A     Yes, sir, one in the kitchen.

2           Q     One window?

3           A     Yes, sir.

4           Q     Where is that window?

5           A     It would be on the east side of the building,  
6 facing Frederick Street.

7           Q     Where would that be in reference to the body? Would  
8 that window be at the head or the feet or at the side?

9           A     Close to the head. As you entered the kitchen, the  
10 body -- the feet were right at the threshold from the dining  
11 room to the kitchen. As you went down the kitchen in a  
12 southerly direction, the head of the body was up against --  
13 or very close to the radiator at the other end of the wall.

14          Q     There is one entrance to the kitchen?

15          A     Yes, sir.

16          Q     Does that entrance have a door?

17          A     No, it does not.

18          Q     Do you recall whether or not the window in the  
19 kitchen was open?

20          A     It was closed.

21          Q     It was closed?

22          A     Yes.

23          Q     Do you recall the weather that day?

\* \* \*

1 of the scene which it portrays?

2 A That's correct.

3 Q What does it portray?

4 A This would be a photograph here in the dining room  
5 table and several of the items that were located on the dining  
6 room table at the time that I was present at this crime scene.

7 MR. MELSON: Your Honor, at this time I would like  
8 to move the photograph marked Commonwealth's Exhibit No. 2  
9 into evidence.

10 (Handing to defense counsel.)

11 MR. KENDRICK: No objection, Your Honor.

12 THE COURT: No. 2 is received in evidence.

13 (The photograph previously  
14 marked for identification as  
15 Commonwealth's Exhibit No. 2  
16 was received in evidence.)

17 BY MR. MELSON:

18 Q Officer, let me again show you Commonwealth's  
19 Exhibit No. 2 and ask if it portrays in that photograph a  
20 water jug?

21 A That is correct.

22 Q Would you show it to the jury, please?

23 A (Displaying.) The water jug would be located in

1 about an even line with the candles and would be located in  
2 this section of the photograph (indicating).

3 Q Is my finger correct (indicating)?

4 A That's right.

5 (Showing to the jury.)

6 Q Did you have occasion to test that water jug for  
7 prints among other things shown in the photograph?

8 A That is correct.

9 Q Let me show you what is marked as Commonwealth's  
10 Exhibit No. 3 for identification and ask if you can identify  
11 what this object is?

12 (Handing to the witness.)

13 A Yes, this is when we dust a surface and we see that  
14 there is some type of ridge or pattern on that surface and we  
15 wish to remove it for comparison purposes, at that time we  
16 normally put down regular scotch tape. We put that over the  
17 surface and that's usually a very dark color -- the  
18 fingerprint powder that we normally use is very dark. In  
19 other words, in order to assist us in classifying a  
20 fingerprint, we will put it on a contrasting surface. So we  
21 put our black fingerprint powder on white cards. That's how  
22 we turn them in. This is a fingerprint card which I went  
23 ahead and processed and I know that to be true, because on the

1 back of the card I've identified it with my signature, the  
2 badge number, the date and the time and the location where the  
3 fingerprint was lifted and the location was from a glass water  
4 jar located in the dining room.

5 Q Do you recall what portion of the jar you found that  
6 particular print on?

7 A This would be on the exterior part of the jar and  
8 that's as specific as I have it.

9 Q All right.

10 Now, were there other places that you dusted that  
11 you were unable to find any prints on to lift?

12 A That's correct.

13 Q Did you also dust these other areas in which you've  
14 described in which you lifted some other apparent latent  
15 fingerprints?

16 A That is correct.

17 Q Let me show you what has been marked as  
18 Commonwealth's Exhibit No. 4 for identification and ask if you  
19 can identify what this envelope contains? You can remove it  
20 from the envelope if you would like to inspect it.

21 (Handing to the witness.)

22 A Yes. What I have here are seven cards. They are,  
23 again, identical to the card that I just described, which are

1 the cards you use to remove latent prints with and all of  
2 them I can identify as belonging to that apartment by the  
3 date, time and location and by my signature and from where I  
4 removed it.

5 Q Now, just because you lifted a print from a surface,  
6 does that mean you will be able to compare it with another  
7 print?

8 A No. The way our department is set up the police  
9 agent himself, which is the title that we use for crime scene  
10 technicians, remove the print and places it on a card, but we  
11 do not classify. We do not develop the prints of comparison  
12 in the field. We turn that over to the Identification  
13 Section which would at that time go ahead and classify the  
14 fingerprints.

15 Q Now, with respect to the fingerprint cards that you  
16 have there which I believe are Commonwealth's Exhibits 3 and  
17 4, what did you do with them once you lifted those prints?

18 A Once we lifted the prints, we attached them to the  
19 card and identify the card. We then carry them with us  
20 returning to the police station. At which time, under this  
21 particular set of circumstances our identification section was  
22 closed. So, what we have is an evidence locker which we go  
23 ahead and place the cards in and turn the key into the front

1 counter.

2 Q Now, do you make any entries?

3 A That is correct. We have a log book and fingerprint  
4 cards are logged in and placed in a sealed box. Once I place  
5 them in the box, I cannot retrieve them.

6 Q Directing your attention to Commonwealth's Exhibit  
7 No. 3, the latent fingerprints from the jar, does that appear  
8 to have been tampered with in any respect with respect to the  
9 prints itself?

10 A On the front of the card -- (witness removing card  
11 from wrapper) -- on the front of the card in an area at the  
12 bottom are some red notations which do not belong to me, but  
13 they do not interfere as far as the fingerprints are concerned  
14 which I lifted. Once I sealed them with the tape and they are  
15 attached to the card, they are in a fixed position. They do  
16 not alter at that point. But, the front of the card does  
17 have several red notations.

18 MR. MELSON: Your Honor, at this time I would like  
19 to move in Commonwealth's Exhibits 3 and 4.

20 MR. KENDRICK: No objection, Your Honor.

21 THE COURT: 3 and 4 will be received in evidence.  
22  
23

(The items previously marked  
for identification as  
Commonwealth's Exhibit No.'s 3  
and 4 were received in  
evidence.)

BY MR. MELSON:

Q Did you have occasion --

THE COURT: (Interposing) Excuse me. Just a  
minute. I made a note of where 3 came from. Where did 4 come  
from?

MR. MELSON: 4 is the series of cards.

THE COURT: I see. You gave a number of places and  
marked on there where they came from. All right. All right.  
Received in evidence.

BY MR. MELSON:

Q Officer, did you also have an occasion to take any  
photographs while you were in the apartment?

A That is correct.

Q Did you take photographs of the deceased?

A That is correct.

Q Let me show you just one photograph that you took  
and ask you if you can identify what it is. It is  
Commonwealth's Exhibit No. 5 for identification. Can you



1 identify that?

2 (Handing to the witness.)

3 A Yes, I can.

4 Q Is it a fair and accurate representation of that  
5 which it depicts?

6 A That is correct, at the time that I was present.

7 Q And what does it depict?

8 A This is a photograph which was taken of the rear  
9 section of the back of the victim indicating several marks  
10 which I observed at the time.

11 Q Now, was there also a telephone in that apartment?

12 A That is correct.

13 Q Did you have occasion --

14 Let me show you what has been marked as  
15 Commonwealth's Exhibit No. 6 and ask you if you can identify  
16 what this photograph is of?

17 (Handing to the witness.)

18 A Yes, I can. This is a photograph taken of a small  
19 hallway located within the apartment and centered basically in  
20 the photograph is a red telephone.

21 Q Is that a fair and accurate depiction of the  
22 telephone?

23 A That's correct.

1 MR. MELSON: Your Honor, at this time I would like  
2 to move into evidence Exhibit -- Commonwealth's Exhibit No. 5  
3 and 6.

4 MR. KENDRICK: No objection, Your Honor.

5 THE COURT: 5 and 6 are received.

6 (The photographs previously  
7 marked for identification as  
8 Commonwealth's Exhibit No. 5  
9 and 6 were received in  
10 evidence.)

11 BY MR. MELSON:

12 Q Did you have occasion to seize that telephone?

13 A That is correct.

14 (Handing to the witness.)

15 Q Let me show you Commonwealth's Exhibit that I have  
16 placed in front of you, which is Commonwealth's Exhibit No. 7  
17 for identification and ask you to open that bag and tell us  
18 what is in it?

19 (Witness removing item from bag.)

20 Officer, what is that exhibit?

21 A This is the telephone that is depicted in the  
22 picture that I removed from the apartment and with it is the  
23 part of the phone cord.

\* \* \*

1           Q     Let me show you a diagram marked Commonwealth's  
2 Exhibit No. 8 and ask you if you can identify what that is a  
3 diagram of?

4           A     That is a diagram of 748 South Florida Street,  
5 Apartment Two, here in Arlington.

6           Q     Is that to scale?

7           A     Yes, sir, approximately to scale. One foot equal  
8 to one inch.

9           Q     Did you take the measurements of that?

10          A     Yes, sir, I did.

11          Q     Does that diagram accurately and fairly represent  
12 the schematic range itself of the rooms and some of the  
13 furniture in the apartment?

14          A     Yes, sir, it does.

15               MR. MELSON: At this time I would like to move it  
16 into evidence and exhibit it to the jury.

17               MR. KENDRICK: No objection.

18               THE COURT: Received in evidence. What is the  
19 number, 8?

20               MR. MELSON: Yes, sir.

21               THE COURT: I will mark it later.  
22  
23

1 (The diagram previously  
2 marked for identification as  
3 Commonwealth's Exhibit No. 8  
4 was received in evidence.)

5 BY MR. MELSON:

6 Q Officer, would you step down to the board and  
7 explain to the jury what is exhibited by the diagram?

8 (Whereupon, the witness left the stand to  
9 demonstrate to the jury.)

10 THE COURT: Officer, you are going to have to talk  
11 into the microphone, so the translators can hear you. You  
12 can take it off the stand if it's easier.

13 THE WITNESS: The diagram shows basically the  
14 entire apartment, but it is broken down. You have an  
15 entranceway (indicating) which comes in from a hallway which  
16 goes into a common hallway. This being the entrance  
17 (indicating), you come into the living room area. This being  
18 the living room (indicating). From the living room, you have  
19 to walk through into a dining area (indicating). You have a  
20 small hallway (indicating), which has a closet off to one  
21 side (indicating) and a bath area (indicating) and then off  
22 of that hallway, also, is the bedroom (indicating). Also  
23 from the dining room, you have an open entrance into the

1 kitchen (indicating).

2 BY MR. MELSON:

3 Q Are you finished?

4 A (Witness shaking his head.)

5 Q Let me show you what has been marked as  
6 Commonwealth's Exhibit No. 9 and ask if you can identify what  
7 that photo is of?

8 (Handing to the witness.)

9 A Exhibit 9 is a photograph which depicts a portion of  
10 the living room and entrance. The photograph itself was  
11 taken standing in a position approximately over towards the  
12 dining room and facing the doorway (indicating). Also in the  
13 photograph you will notice there is a black area --

14 Q (Interposing) Before you go any further, is this a  
15 fair and accurate representation of the scene which it  
16 depicts?

17 A Yes.

18 MR. KENDRICK: No objection.

19 MR. MELSON: Move into evidence, Your Honor.

20 THE COURT: Received. No. 9 is received in  
21 evidence.  
22  
23

1 (The photograph previously  
2 marked for identification as  
3 Commonwealth's Exhibit No. 9  
4 was received in evidence.)

5 THE WITNESS: The photograph is of the front door  
6 area and it shows basically the entrance into the apartment  
7 and also your windows.

8 BY MR. MELSON:

9 Q Would you mark on the diagram -- on No. 9 -- the  
10 Exhibit No. on the back which this refers to?

11 THE COURT: Mr. Melson, let me initial it before  
12 you put it up there.

13 THE WITNESS: The Exhibit No. 9 shows this area  
14 (indicating) through here.

15 (Whereupon, the witness is marking the diagram.)

16 BY MR. MELSON:

17 Q And will you explain to the jury what this black  
18 substance was?

19 A The black substance around the front door is latent  
20 dust powder, which had to be used prior to the time the  
21 photograph was taken due to the possible destruction of any  
22 latents that might have been there.

23 Q Let me show you then this photograph, which is

1 Commonwealth's Exhibit No. 2 for identification and ask you  
2 where this was taken in the apartment?

3 (Handing to the witness.)

4 A Exhibit 2 was taken in the dining room and it shows  
5 within the -- the photograph was taken approximately from  
6 here (indicating) and it shows this area of the dining room  
7 (indicating) and a portion of the window (indicating).

8 (Whereupon, the witness is marking the diagram.)

9 Q Did you have occasion to go into the kitchen?

10 A Yes, I did.

11 Q All right.

12 And what did you find in the kitchen?

13 A In the kitchen, there was a body of a female victim  
14 laying face down --

15 MR. KENDRICK: (Interposing) Mr. Tyler, may I  
16 interrupt you for a second? Is there some way we can arrange  
17 this so His Honor can have the benefit of looking at it too?

18 THE COURT: That's all right. If I need to see it,  
19 I will come down.

20 THE WITNESS: (Continuing) -- There was a body of a  
21 female victim lying on the floor face down in the kitchen.  
22 The body was located from the doorway -- the feet were in the  
23 doorway and the head was up to the radiator (indicating).

\* \* \*

1 (The photographs previously  
2 marked for identification as  
3 Commonwealth's Exhibit No.'s 13  
4 14 and 15 were received in  
5 evidence.)

6 BY MR. MELSON:

7 Q Would you explain to the jury these photographs,  
8 please?

9 A (Witness displaying photographs to the jury.) Yes,  
10 all of these three photographs are of the east wall in the  
11 kitchen beside the radiator and above the radiator. On the  
12 photographs you will notice that there are red blood  
13 splatters on the side of the radiator and above the radiator  
14 and this is also right below the kitchen window (indicating).

15 Q Would you put a Number Thirteen by the radiator  
16 where the blood splatters were found?

17 (Whereupon, the witness is marking the diagram  
18 as instructed by counsel.)

19 BY MR. MELSON:

20 Q Now, Officer, as you examined the kitchen, did you  
21 see any evidence of a struggle?

22 A No, there was no indication of anything being  
23 knocked over. Basically -- that is turned over -- as I



1 pointed out in the photograph, there was a chair sitting right  
2 here (indicating). There was nothing really out of place,  
3 except for one handle from like a broom which had fallen down  
4 next to the body.

5 Q Other than the blood which you -- other than the  
6 blood that you found underneath and in front of the body and  
7 the splatters around the kitchen, did you find any evidence of  
8 smudges or handprints or anything that would indicate a  
9 struggle?

10 A No.

11 Q Did you have occasion after you examined the kitchen  
12 to go into the bedroom?

13 A Yes, I did.

14 Q Let me show you Commonwealth's Exhibit No. 16 and  
15 ask you whether that is a fair and accurate representation of  
16 the scene it depicts?

17 A Yes, it is.

18 MR. MELSON: Your Honor, at this time I would like  
19 to move No. 16 into evidence. It is a photograph of the  
20 bedroom.

21 THE COURT: What was 15?

22 MR. MELSON: 15 is one of the photos of the radiator  
23 and the blood splatters.

1 MR. KENDRICK: 13, 14 and 15, Your Honor, were  
2 basically the same. They showed what they call a pattern of  
3 blood on the wall above the radiator.

4 THE COURT: All right. Let me get those marked.  
5 13 and 14 and 15 and now 16 are admitted.

6 (The photograph previously  
7 marked for identification as  
8 Commonwealth's Exhibit No. 16  
9 was received in evidence.)

10 MR. KENDRICK: I don't have any objection to 16,  
11 Your Honor.

12 BY MR. MELSON:

13 Q Would you exhibit that to the jury and explain to  
14 them in which room you observed that?

15 (Witness displaying photograph to the jury.)

16 A All right, this was in the bedroom of the apartment  
17 and within the bedroom of the -- this is actually the bed that  
18 we see (indicating). On the bed are numerous articles which  
19 appear to have been placed on the bed and everything that is  
20 on the bed is in a disarrayed order. There is no order to the  
21 way it is laying there.

22 Q Would you please a Number Sixteen on the bed in the  
23 bedroom; that is the subject of this photograph?

\* \* \*

1 Q Now, with the clothing that you see there, were they  
2 there when you arrived?

3 A Yes, they were.

4 Q Is that taken from an angle such as this  
5 (indicating)?

6 A Yes, it is taken standing here (indicating) facing  
7 into the edge of the dresser.

8 MR. MELSON: I would like to have 19 moved into  
9 evidence, Your Honor.

10 MR. KENDRICK: No objection.

11 THE COURT: 19 is received.

12 (The photograph previously  
13 marked for identification as  
14 Commonwealth's Exhibit No. 19  
15 was received in evidence.)

16 BY MR. MELSON:

17 Q Let me show you Commonwealth's Exhibit No. 20 and  
18 ask you if that is a fair and accurate representation of the  
19 scene it depicts and if so, explain it to the jury?

20 (Witness displaying photograph to jury.)

21 A Item No. 20 is a photograph of the dresser and this  
22 is a photograph of the top drawer showing what was found in  
23 the top drawer at the time we opened that drawer.

1 MR. KENDRICK: May I see that one?

2 (Handing to counsel.)

3 MR. MELSON: The Commonwealth would move it into  
4 evidence at this time, Your Honor.

5 MR. KENDRICK: No objection, Your Honor.

6 THE COURT: In evidence.

7 (The photograph previously  
8 marked for identification as  
9 Commonwealth's Exhibit No. 20  
10 was received in evidence.)

11 BY MR. MELSON:

12 Q Also can you tell us whether No. 21 is a fair and  
13 accurate representation and tell me what that is?

14 (Handing to the witness.)

15 A This is an opening of the second drawer in the  
16 dresser. Here (indicating) you can see items in the dresser  
17 as they were found when the drawer was opened.

18 Q Let me show you Commonwealth's Exhibit No. 23 and  
19 ask if you can identify that one?

20 THE COURT: 21 is received in evidence.  
21  
22  
23

(The photograph previously  
marked for identification as  
Commonwealth's Exhibit No. 21  
was received in evidence.)

THE COURT: Did you mean to skip 22?

MR. MELSON: Yes, sir.

THE COURT: All right.

THE WITNESS: Item No. 23 is a photograph looking  
across the bottom of the bed or the foot of the bed towards  
the closet and you can see a portion of the door that leads  
into the bedroom. In other words, the photograph was taken  
from this angle here (indicating). Looking across in this  
direction (indicating), you can see the closet and just a  
portion of the door. This being the closet (indicating).  
This being the door which is the entrance to the bedroom  
(indicating).

BY MR. MELSON:

Q And this is the closet represented by the --

A (Interposing) This is the closet here represented  
(indicating).

Q Would you put a Number Twenty-three there?

(Witness marking the diagram.)

THE COURT: 23 is received.

(The photograph previously  
marked for identification as  
Commonwealth's Exhibit No. 23  
was received in evidence.)

BY MR. MELSON:

Q Thank you.

What does this object here (indicating) represent?

A That is the door leading from the hallway into the  
bedroom.

Q Let me show you Commonwealth's Exhibit No. 22 and  
ask you whether you can identify that object?

(Handing to the witness.)

A This is the back of the door. In other words,  
looking at the door from the bedroom side and as you --  
there's an article of clothing and also a brown type bag  
hanging on the back of the door.

MR. MELSON: May I move that into evidence at this  
time, Your Honor?

MR. KENDRICK: Can I see that, please?

(Handing to counsel.)

BY MR. MELSON:

Q Did you determine whether or not there was anything  
in that camera case?

1           A     There was nothing in that camera case at that time.

2           Q     Would you put a Number Twenty-two at the position  
3 where the camera case is?

4                     (Witness marking the diagram.)

5           MR. KENDRICK: No objection to No. 22, Your Honor.

6           THE COURT: 22 is received.

7                             (The photograph previously  
8                             marked for identification as  
9                             Commonwealth's Exhibit No. 22  
10                            was received in evidence.)

11           BY MR. MELSON:

12           Q     Did there come a time in your crime scene search  
13 that you found a camera?

14           A     Yes, I did.

15           Q     All right.

16                     Would you please point out in any of these  
17 photographs the camera you are referring to and where you  
18 found it?

19           A     The camera --

20           Q     (Interposing) Step back so the jury can see it.

21           A     (Continuing) -- The camera can be seen or a portion  
22 of the handle right here (indicating) in Photograph No. 16 and  
23 again in Photograph -- I'm sorry. That is incorrect.

\* \* \*

1 microphone is off, so can you start your answer over again?

2 THE WITNESS: (Continuing) -- No. 24 is One-Step  
3 Polaroid camera which was found on the bed in the bedroom.

4 BY MR. MELSON:

5 Q Is that the same camera that you refer to in  
6 Photograph No. 16?

7 A Yes, sir.

8 Q Is that the photograph that you processed for latent  
9 prints?

10 A It is the camera that I processed for latent prints,  
11 yes, sir.

12 Q Can you tell us, if anything, what you found?

13 A Yes, I found a number of latent prints which were  
14 removed from the camera and placed on the latent fingerprint  
15 cards which were later turned in for identification.

16 Q Would you tell us how you printed it and what  
17 precautions you took?

18 A With this particular item being a camera which is  
19 plastic, it has a fairly smooth surface, but in most cases it  
20 would be fairly heavily used and rather than taking a lot of  
21 latent fingerprint dust and putting it on the camera, which  
22 would tend to wipe out entire latents, the camera was dry  
23 brushed -- what I call dry brushing where no powder was added



1 to the brush, but only the powder which existed in the brush  
2 was used.

3 Q Could you tell us what an overlay is?

4 A An overlay is when a latent print is on an object  
5 and an individual picks that object up and tends to put his  
6 print over the top of the print that is already existing.  
7 This will give an overlay.

8 Q Let me show you what is marked as Commonwealth's  
9 Exhibit 25 for identification and ask you whether you can  
10 identify what that object is?

11 A Commonwealth's Exhibit No. 25 is the latent print  
12 card. The latent prints on this card were taken from the  
13 Polaroid camera which is Exhibit No. 24.

14 Q Now, is that print an overlay print?

15 A The latent print No. 3 is not, no, sir.

16 Q Now, can you recall where latent print No. 3 on that  
17 exhibit was found?

18 A This particular latent was found on the -- on the  
19 left side of the camera on the -- in this area here  
20 (indicating).

21 MR. MELSON: I wonder if we could have a piece of  
22 one of those tapes over there that doesn't have an I.D.  
23 number on it?

\* \* \*

1 THE COURT: Can you cover that by a question?

2 MR. MELSON: Yes, sir.

3 BY MR. MELSON:

4 Q As a part of your duties as a Police Agent, are you  
5 responsible for processing crime scenes?

6 A Yes, and that includes dusting for latent prints.

7 Q So you are talking about twenty-five crime scenes a  
8 month in which prints are searched for. Does that include what  
9 you are doing?

10 A Yes, anywhere from ten to twenty-five. It varies  
11 from month to month depending on the work load.

12 Q And the crime rate?

13 A Yes, sir.

14 Q Now, based upon your training, your first-hand  
15 experience and processing of this particular latent print,  
16 what can you tell us about that print?

17 A Well, I first lifted this latent and it appeared to  
18 me to be a fairly new latent.

19 Q What do you mean by "new latents"?

20 A That is had to have been put on that camera  
21 extremely recently.

22 Q On what do you base that?

23 A Well, in this particular situation when a camera is

1 in an apartment which has a fairly low humidity, which has a  
2 definite effect upon latents as far as the evaporation of  
3 materials from any surface and the latent will disappear very  
4 quickly.

5 In this case the latent appeared and it was fairly  
6 pronounced and in my opinion it was a new latent. It had not  
7 been on that camera for any length of time.

8 Q And you are saying "any length of time." Can you  
9 give us some sort of parameter?

10 A Well, it would have had to have been within a day or  
11 two.

12 Q Let me show you Commonwealth's Exhibit No. 26 for  
13 identification and ask you whether you can identify what these  
14 objects are?

15 (Handing to the witness.)

16 A These are also latent prints that were removed from  
17 the camera.

18 Q Did you do any other processing besides the camera?

19 A Yes, sir, I did.

20 Q What did you do?

21 A The dusting alone involved dusting the entire  
22 dresser. There was the dresser drawers in the room also.  
23 Around the door there were numerous packages or wrapped

\* \* \*

1 (The items previously marked  
2 for identification as  
3 Commonwealth's Exhibit No.'s  
4 25, 26 and 29 were received  
5 in evidence.)

6 BY MR. MELSON:

7 Q How was the apartment secured when you left and then  
8 came back?

9 A Prior to my leaving on the 20th, the front door lock  
10 was changed.

11 Q Under whose direction?

12 A I believe it was Detective Carrig and Gabrielson was  
13 there. I was also there when it was changed. That lock -- a  
14 new lock was placed on the door. The only keys were in my  
15 possession. At approximately 2:30 the apartment was closed  
16 and the lock was locked by me. Mind you now, the apartment is  
17 on the outside and fairly high off the ground, so someone  
18 couldn't break through a window and the door was locked and  
19 then in order to make sure no one did enter the apartment,  
20 evidence tape was placed across the door and the door jamb and  
21 then on that tape were markings I made in order to determine  
22 whether or not that tape was pulled off or broken and when I  
23 returned on the 20th and shortly after -- or right around

1 4:00 p.m. again the tape and the door was in the position it  
2 was supposed to have been in and had not been tampered with.

3 Q What was the purpose of going back on the 20th?

4 A To complete the crime scene. At that time it had  
5 not been completed.

6 Q Did you retrieve more evidence on that day?

7 A Yes, sir, I did.

8 Q Did you happen to come across a wallet?

9 A Yes, sir, I did.

10 Q Let me show you what's been marked as Commonwealth's  
11 Exhibit 27 for identification and ask if you can identify what  
12 that object is?

13 (Handing to the witness.)

14 A In the center of the photograph is a picture of a  
15 wallet, which is located on the bed and in the bedroom on the  
16 boxsprings underneath the mattress.

17 Q Is that a fair and accurate representation of the  
18 scene which it depicts?

19 A Yes, it is.

20 MR. MELSON: Your Honor, I would like to move it  
21 into evidence.

22 (Handing to counsel.)

23 MR. KENDRICK: No objection, Your Honor.

\* \* \*

1 that wallet?

2 A Yes, sir, continued the crime scene search into the  
3 living room.

4 Q And did you find anything while you were in the  
5 living room?

6 A Yes, sir, I did.

7 Q What did you find?

8 A I found a hammer.

9 Q Where did you find the hammer?

10 A The hammer was located under a round table which was  
11 in the northeast corner of the living room. It was a table --  
12 a round table which had a long skirt on it and it was  
13 underneath that table.

14 Q Let me show you that photograph and ask you if that  
15 is the table you are describing and whether it is in that  
16 photograph?

17 (Handing to the witness.)

18 A Yes, sir, it was the round table which had the skirt  
19 around it.

20 Q Is that a fair and accurate representation of the  
21 table and its surroundings?

22 A Yes, sir, all except part of -- the brief case and  
23 coat, those were some of the items that the officers had

\* \* \*

1 (The photographs previously  
2 marked for identification as  
3 Commonwealth's Exhibit No.'s  
4 30 and 31 were received in  
5 evidence.)

6 (Whereupon, the witness leaves the witness  
7 stand to mark the diagram.)

8 BY MR. MELSON:

9 Q Now, I notice in the photograph which had a hammer  
10 in it there was something else on the floor with it. Do you  
11 remember what that was?

12 A It appears to be a photograph which may have been  
13 sitting on the top of the table at one time.

14 THE COURT: What is No. 28?

15 THE WITNESS: The wallet, Your Honor.

16 THE COURT: Was that ever offered?

17 MR. MELSON: No, sir. I will offer it now.

18 MR. KENDRICK: No objection, Your Honor.

19 THE COURT: All right. No. 28 is received.

20 (The item previously marked  
21 for identification as  
22 Commonwealth's Exhibit No. 28  
23 was received in evidence.)

\* \* \*

1                   How long were you there around the body?

2           A       The precise amount of time?

3           Q       I will take your best guesstimate, estimate of the  
4       time.

5           A       On and off I was around that body almost the entire  
6       time, except when I was in the bedroom working and  
7       Officer Beuchert was in there the time that I wasn't in there.

8           Q       Did you touch it?

9           A       Yes, sir.

10          Q       Did you move it?

11          A       No, sir, I did not.

12          Q       What did you do when you touched it?

13          A       Well, we removed evidence or what we thought was  
14       evidence, hairs and fibers from the back of the shirt of the  
15       victim.

16               THE COURT: I am sorry. I didn't hear it because  
17       of the stenographer.

18               THE WITNESS: There were hairs and fibers which  
19       appeared on the back of the victim.

20               BY MR. KENDRICK:

21          Q       Was that done before the medical examiner arrived?

22          A       Yes, sir.

23          Q       Is that standard procedure?

\* \* \*



1 Q Did you observe the back of the body then?

2 A Yes, sir.

3 Q Did you notice anything which indicated a struggle  
4 from the back of the body?

5 A No, sir.

6 Q Did you notice any marks, bruises or cuts on the  
7 back of the hand?

8 A On the back of the hand?

9 Q Yes, sir.

10 A I did not examine her that closely, but I did not  
11 notice anything.

12 One shoe was off of the footed body.

13 Q One shoe was off?

14 A Yes, sir.

15 Q Do you recall which one?

16 A Sir?

17 Q Do you recall which one?

18 A Not right offhand. I would have to look at the  
19 photograph.

20 Q And you don't recall whether or not you observed  
21 cuts or bruises on the back of the hands?

22 A I didn't see any cuts on the back of the hand, no,  
23 sir.

\* \* \*

1           A     Do you want to know the total amount of latents  
2     that I took out of the apartment? That's marked on the card  
3     here (indicating).

4           Q     Yes, if you can tell me that?

5           A     I'll read off the numbers on each card if you want  
6     to add them up. There are quite a number. From Exhibit 26,  
7     there is a total of nine indicated latents from the Polaroid  
8     camera.

9           Q     From the Polaroid camera?

10          A     Yes, sir.

11          Q     All right.

12          A     From Commonwealth's Exhibit 25, there is another  
13     five removed from the Polaroid camera. From Commonwealth's  
14     Exhibit No. 29, there are a number of cards that were brought  
15     in from the apartment. On the first card, there is two  
16     latents from the dresser drawers. There are three latents --  
17     latents from the glass in the dining room. There was also a  
18     Polaroid photograph taken, one of the latents off of the  
19     dresser. Also from the dresser three more latents. From the  
20     package of woman's hose which is a plastic type surface there  
21     was one latent. Here again, from the Polaroid camera, another  
22     latent. Also the latch on a white pocketbook, which was in  
23     the bedroom, and there was a latent taken off of a plastic

\* \* \*

1 internal organs for their degree of involvement with diseased  
2 state or with trauma. Thirdly, a collection of samples of  
3 the organs for microscopic examination. Fourthly, an  
4 examination -- collection and examination of body fluids and  
5 tissues for possible drugs and chemical substances; and  
6 finally, a rendering of a final written report on the  
7 examination.

8 Q Did you conduct those procedures during the  
9 autopsy on Ophelia Quintero?

10 A Yes, sir.

11 Q Would you tell the jury what you found during your  
12 autopsy?

13 A This individual has sustained multiple blows  
14 primarily to the head. On the right side of the head, there  
15 were four injuries. One of these involves only the external  
16 ear. The other three involved the temporal area of the head  
17 where there was full thickness lacerations of the scalp and  
18 underlying skull fractures.

19 Q What do you mean, "full thickness lacerations,  
20 scalp and skull fracture"?

21 A This is where there has been force applied to the  
22 scalp over the skull and this causes stretching or the tearing  
23 of the scalp. If it is full thickness, it indicates it

1 involves all the layers of the scalp and exposure of the  
2 underlying skull.

3 Q Let me show you Commonwealth's Exhibit No. 34 for  
4 identification and ask you if you recognize that photo?

5 (Handing to the witness.)

6 A Yes, this is a photograph of the deceased -- the  
7 right side of her head. There are injuries to her external  
8 ear and the three lacerations of the scalp in the temporal  
9 region.

10 Q Does that show the full thickness and lacerations  
11 you are describing?

12 A That's correct.

13 MR. MELSON: Your Honor, I would like to move this  
14 into evidence.

15 MR. KENDRICK: No objection.

16 THE COURT: This is No. 34 and it is received in  
17 evidence.

18 (The photograph previously  
19 marked for identification as  
20 Commonwealth's Exhibit No. 34  
21 was received in evidence.)

22 THE WITNESS: In addition to the injuries to the  
23 right side of the head, she also had three similar type

1 injuries to the left side of her head. One of these also  
2 involved the external ear. The other two involves the scalp  
3 in the temporal area. Again, there was full thickness  
4 involvement and palpable underlying skull fractures. In  
5 addition to these injuries on the right and left sides of her  
6 head, she also had six lacerations or tearing of the scalp in  
7 the back of her head. Again, these were all full thickness  
8 involvement and exposed the underlying skull. In addition to  
9 these injuries involving the head, there was a large area of  
10 bruising or contusion occupying most of the back of her neck  
11 with extensive underlying hemorrhaging in the soft tissues,  
12 but no skeletal injury.

13 BY MR. MELSON:

14 Q Let me show you what's been marked as Commonwealth's  
15 Exhibit No. 35 for identification and ask you if you can  
16 identify what this is a photograph of?

17 (Handing to the witness.)

18 A This is a view of the back of the head, neck and  
19 upper chest. One can see the lacerations in the scalp and  
20 the extensive area of bruising on the back of the neck.

21 Q Now, can you tell us -- I withdraw that at this  
22 point.

23 Did she have any other wounds on her?

1           A     In addition to the bruising in the back of her  
2 neck, there were some crescent-shaped areas of bruising on  
3 the right back of her chest and in the lower left back of her  
4 chest there were some circular or round areas of contusion.

5           THE COURT: When you say "back of the chest,"  
6 Doctor, what are you referring to?

7           THE WITNESS: That would be the back of the thorax  
8 or chest area and area of the shoulder blade.

9           BY MR. MELSON:

10          Q     You are referring to the back of the person?

11          A     That's correct.

12          Q     Let me show you Commonwealth's Exhibit No. 5 and  
13 ask if you can recognize the object which that photograph  
14 portrays?

15                (Handing to the witness.)

16          A     Yes, these are photographs of two of the areas of  
17 contusion which were circular in character which were present  
18 on the back of the deceased.

19                In addition to the injuries to the head, neck and  
20 back of the chest, the individual also had a bruise with a  
21 superficial scrape or abrasion on the back of her left hand.

22          Q     Go ahead.

23          A     Internal examination revealed extensive skull

1 fractures in both the left and right sides of her head.  
2 There was also a fracture line which we designate as a basal  
3 skull fracture, which passed completely through the bottom  
4 base of the skull, and there was also a fracture line in the  
5 right back of the skull.

6 In addition to the skull fractures, there was  
7 laceration of the connective tissue membrane around the brain  
8 and also damage to the brain itself due to the fractures of  
9 the skull that had been pushed into the brain. This is the  
10 extent of -- pardon me -- the injuries to the deceased.

11 Q Did you find any wounds on the front of her body?

12 A There was a pale bruise in the left frontal region,  
13 but the remainder of her body was free of any signs of  
14 injury over the front or anterior aspect.

15 Q Was the bruise on the forehead that you referred to  
16 -- would it be consistent with her head hitting the floor, if  
17 she had fallen on to the floor?

18 A That would be a very possible mechanism, yes.

19 Q Are you able to -- do you know the total number of  
20 wounds administered to the victim's head?

21 A There were thirteen discreet or separate wounds  
22 administered to the head.

23 Q Are you able to tell how many wounds were

1 administered to the back of the neck?

2 A The back of the neck, the wounds were one on top of  
3 the other or confluent in character and therefore, I could  
4 not determine the numbers of wounds in the back of the neck.

5 Q Let me ask you the same question with respect to  
6 the lower part of the back from the neck on down.

7 A There were five identifiable and discreet wounds.

8 Q Now, as a result of your autopsy and based upon  
9 your training and experience, were you able to arrive at a  
10 conclusion as to the cause of death?

11 A The cause of death was rendered as multiple blunt  
12 force entry trauma to the head with skull fractures and  
13 cerebral or brain injury or trauma.

14 Q What do you mean by "blunt force entry"?

15 A It means that it is through a force of something  
16 other than a gunshot wound, a sharp dense object. It means an  
17 object having a blunt edge.

18 Q Did you during your examination come upon any  
19 pattern marks?

20 A The injuries in the lower part of the back of the  
21 neck and the contusions and abrasions on the back of the  
22 chest of the victim were characteristic in that they were  
23 circular or round in nature.



1           Q     Based upon your training and experience in  
2 performing autopsies, do you have an opinion as to whether or  
3 not those types of wounds would be consistent with the  
4 administration of force by this hammer (indicating), which is  
5 Commonwealth's Exhibit No. 32?

6                     (Handing to the witness.)

7           A     The pattern of injuries would be very consistent  
8 with having been afflicted by such an object having a head  
9 such as this hammer. Also, the scalp wounds are also  
10 consistent with having been inflicted by a similar type  
11 object.

12          Q     Did you find any pattern marks on the back of her  
13 body which indicated a square object being used?

14          A     None were identified.

15          Q     When you arrived at your opinion as to the cause of  
16 death, are you able to say whether or not those injuries were  
17 either accidental or self-inflicted?

18          A     There is no way that they could have been inflicted  
19 by either of those mechanisms.

20          Q     Either accidental or by themselves?

21          A     That's correct.

22          Q     Can you tell us whether -- or how many fatal wounds  
23 there were?

1           A     Certainly. All of the wounds of the head, except  
2 for the two wounds involving the external ears, could have a  
3 potential lethal or fatal outcome.

4           Q     With reference to the groups of wounds on the right-  
5 hand side and the ones grouped on the left-hand side and  
6 being grouped in the back, could they have been independently  
7 fatal? In other words, independent of one another?

8           A     That's correct. Any one of those three groups taken  
9 by themselves to the exclusion of the others could have proved  
10 fatal.

11          Q     Based upon the subject's age and upon your  
12 examination of the head wounds, would you tell us what would  
13 probably occur if any one of those head wounds were inflicted  
14 while she was standing?

15          A     The individual would undoubtedly drop -- fall to  
16 the floor or ground following the infliction of almost any one  
17 of the wounds.

18          Q     Doctor, based upon your experience and your training  
19 and your autopsies, can you give us an opinion as to the type  
20 of force used to cause the skull fractures to the extent that  
21 she had them?

22          A     One can't express it in foot pounds, but it takes  
23 considerable force to fracture a skull and with the type of

1 fracture she had -- particularly the fracture line passing  
2 through the base of the skull -- I would only characterize it  
3 as considerable force had been applied.

4 Q Now, did you have an occasion during your autopsy to  
5 preserve a sample of the victim's blood for testing by the  
6 laboratory?

7 A Yes.

8 Q Let me show you Commonwealth's Exhibit No. 37 and  
9 ask if you can identify this object.

10 (Handing to the witness.)

11 A Yes, this is the glass vial or container as well as  
12 rubber stopper in which I placed the sample of blood for  
13 analysis. The stopper is also sealed and marked by my initial  
14 and the label on the vial is made out in my handwriting.

15 MR. MELSON: Your Honor, at this time I would like  
16 to move in both that exhibit and the photograph that has not  
17 been moved into evidence.

18 THE COURT: Any objection to either?

19 MR. KENDRICK: No, Your Honor.

20 THE COURT: The photograph is 34 and that is  
21 admitted and the blood sample is 37, I think, and that is  
22 admitted.  
23

(The item previously marked  
for identification as  
Commonwealth's Exhibit No. 37  
was received in evidence.)

BY MR. MELSON:

Q Did you have occasion after completing your  
autopsy to reduce your report to writing?

A Yes.

Q Let me show you what is marked as Commonwealth's  
Exhibit No. 36. Would you examine that and tell us whether  
that is a copy of your report?

(Handing to the witness.)

A Yes, it is.

THE COURT: There is a photograph showing the back  
of the neck. Did you intend to offer that?

MR. MELSON: Yes, sir.

THE COURT: That is 35. Any objection?

MR. KENDRICK: No, Your Honor.

THE COURT: It is admitted.

(The photograph previously  
marked for identification as  
Commonwealth's Exhibit No. 35  
was received in evidence.)

1           MR. MELSON: I would like to move also the autopsy  
2 report into evidence.

3           THE COURT: The autopsy report, 36, is admitted.

4                           (The document previously  
5 marked for identification as  
6 Commonwealth's Exhibit No. 36  
7 was received in evidence.)

8           MR. MELSON: That's all the questions I have. Thank  
9 you, Doctor.

10          MR. KENDRICK: Your Honor, before the -- before the  
11 autopsy report comes in, I would like to know whether or not  
12 the entire report is coming in.

13          MR. MELSON: May we approach the bench, Your Honor.

14                   (Whereupon, the following bench conference  
15 was held out of the hearing of the jury.)

16          MR. MELSON: What about your client?

17          THE COURT: He can hear on the earphones.

18          MR. MELSON: Just so the record is clear and he is  
19 privy to this conference.

20          MR. KENDRICK: I think it is clear -- well, he can  
21 hear, can't he?

22          THE COURT: Yes.

23          MR. KENDRICK: Your Honor, there is a -- I don't

1 know. Does your offer --

2 MR. MELSON: (Interposing) Your Honor, I have  
3 offered Dr. Beyer's autopsy report, which is the report he  
4 prepares. Mr. Kendrick wants to introduce, I assume, a  
5 report of the medical examiner.

6 MR. KENDRICK: That's correct.

7 MR. MELSON: Dr. Sheehy -- he had no part in making  
8 this report.

9 MS. MOSBO: I don't believe we have a translation  
10 happening.

11 THE COURT: Will you ask the interpreters to  
12 translate? The interpreters should pick this up and  
13 translate for the benefit of the defendant.

14 All right. Go ahead.

15 MR. MELSON: I have offered Dr. Beyer's report into  
16 evidence, which he prepared after doing his autopsy. I  
17 believe Mr. Kendrick wants to add to that --

18 MS. MOSBO: (Interposing) The red light is on.  
19 They may not be able to hear you.

20 THE COURT: They can't hear it because the sound is  
21 too low. So, just pick up your microphones and talk  
22 directly into them. All right, try it now.

23 MR. MELSON: I have offered Dr. Beyer's report into

1 evidence, that portion which he prepared after the results of  
2 his examination. Mr. Kendrick, I think, wants to introduce  
3 the report by Dr. Sheehy and in no part of which Dr. Beyer  
4 participated in making. In addition, it has on the second  
5 page a completely hearsay statement by the doctor as to what  
6 someone told him, which does not pertain to the report that he  
7 made.

8 MR. KENDRICK: May I be heard, Your Honor?

9 THE COURT: Yes.

10 MR. KENDRICK: I received this report through  
11 discovery, which they are required to provide. Dr. Sheehy's  
12 report was attached to Dr. Beyer's report and in fact,  
13 Dr. Beyer has certified it as part of his report. It is  
14 important to me because Dr. Sheehy has indicated that the  
15 person was last seen alive at 1:00 o'clock. That may in fact  
16 be hearsay, but that's a part of his case study and he was the  
17 medical examiner that arrived on the scene. Obviously, it is  
18 critical to my case because if in fact that is true and it may  
19 be hearsay and may not be offered for the fact of the truth  
20 asserted, but if it is, arguably there is no way that woman  
21 can be dead in the morning. It could be critical to my alibi  
22 defense. It would be very crucial to my case. But I think a  
23 most important thing is Dr. Beyer has certified this as part

1 of his report. It goes into numerous things and I'm certain  
2 that he relies upon which he goes into in his autopsy and is  
3 included in his report.

4 Now, the Code Section 19.2-188 says that these  
5 results are admissible, I believe, into evidence and it also  
6 includes all of the medical examinations. I am certain that  
7 Dr. Beyer referred to this report and it is part of this  
8 report when he prepared his autopsy report. There are  
9 findings, Your Honor --

10 THE COURT: (Interposing) Where in Dr. Beyer's  
11 report is this incorporated?

12 MR. KENDRICK: Is what incorporated?

13 THE COURT: Dr. Sheehy's report.

14 MR. KENDRICK: Your Honor, all of the information  
15 at the top -- all of the information at the top of his report  
16 indicating the size, the shape, the rigor, the -- all of these  
17 factors are taken from this report that the medical examiner  
18 made on the scene. Dr. Beyer was not the medical examiner  
19 that was called to the scene of the victim's apartment, the  
20 murder scene. Dr. Sheehy was there at approximately 6:00  
21 o'clock. Dr. Beyer didn't see this until the following day.  
22 He certified it.

23 THE COURT: Well, isn't Dr. Sheehy available as a



1 witness?

2 MR. KENDRICK: They're not calling him.

3 THE COURT: You can.

4 MR. KENDRICK: I intend to. I want the report in.  
5 I'm going into Beyer's report to find out to what extent he  
6 relied on Sheehy's report in making his report.

7 THE COURT: I will sustain the hearsay objection to  
8 it. It seems to me it has already been obtained through the  
9 testimony of its author. I don't see though that you are  
10 precluded as long as you don't divulge to the jury what its  
11 content is.

12 MR. KENDRICK: It doesn't seem like to me the  
13 admissibility at this point should be dependent upon that. It  
14 seems to me the report should come in in its entirety. I  
15 don't see how they can take part of the report and not offer  
16 that, but call it the whole report.

17 THE COURT: It seems to me you may ask Dr. Beyer to  
18 what extent, if any, he copied information out of Dr. Sheehy's  
19 report and to what extent, if any, his report contains  
20 hearsay from Dr. Sheehy's report. The contents of the  
21 hearsay, though, should not be admitted and the hearsay  
22 objection will be suspended as to this independent document  
23 from Dr. Sheehy until he takes the stand.

1 MR. MELSON: Your Honor, I hope to be able to argue  
2 at the time he takes the stand that what he testifies to is  
3 also hearsay.

4 THE COURT: I will not rule on that until the time  
5 comes.

6 MR. MELSON: I might also say --

7 MR. KENDRICK: (Interposing) Well, Your Honor, in  
8 regard --

9 MR. MELSON: (Interposing) I'm not done.

10 MR. KENDRICK: Before you go to something else, in  
11 that regard, Your Honor, this is not being offered for the  
12 truth that's asserted therein. I'm offering this for the  
13 fact that was said, because it is part of his -- that's the  
14 normal procedure of the medical examiner.

15 THE COURT: I will rule on that when I get to it.

16 MR. MELSON: I want to say in reference to this  
17 medical examiner's report that is is only admissible to prove  
18 the facts therein, such as cause of death -- I'm sorry, not  
19 cause of death. The fact that the autopsy was performed --  
20 such as the fact that the autopsy was performed and things  
21 like that. This certainly would not be a fact. This is  
22 completely hearsay. He didn't have any personal knowledge. I  
23 don't think it is admissible under any particular section.

1 MR. KENDRICK: It is part of the case study, Your  
2 Honor.

3 THE COURT: We will get to that in a moment. For  
4 the moment, the objection is sustained as to Dr. Sheehy's  
5 report.

6 MR. MELSON: Do I understand then that Mr. Kendrick  
7 is not permitted to make any mention of 1:00 o'clock?

8 THE COURT: That's correct. Mr. Kendrick may not  
9 make any mention of the content of Dr. Sheehy's report or  
10 anything in it, but he may cross-examine Dr. Beyer to find out  
11 how much of Dr. Beyer's report is based on hearsay from  
12 Dr. Sheehy or any other source.

13 MR. KENDRICK: Can I simply ask him what he relied  
14 on in Dr. Sheehy's report, if anything?

15 THE COURT: Yes.

16 MR. KENDRICK: I can pursue that?

17 MR. MELSON: Then I think you have got to bring out  
18 that someone heard someone else say --

19 MR. KENDRICK: (Interposing) I cannot mention that  
20 now?

21 THE COURT: That's right.

22 (Whereupon, the bench conference was concluded  
23 and the proceedings continued within the hearing of  
the jury.)

\* \* \*

1 Q Is he required to file that report?

2 A Yes, he is.

3 Q With you?

4 A That's correct.

5 Q And you certify that report?

6 A If a copy is sent out.

7 Q Did you do that in this case?

8 A That's correct.

9 Q Did you attach his report to your report?

10 A If somebody requests an autopsy report, I send them  
11 an autopsy report. If they request the report of the  
12 investigation by the medical examiner, I would send them  
13 Dr. Sheehy's report.

14 Q Did the Commonwealth request either one in this  
15 case?

16 A In a case such as this, they routinely get an  
17 autopsy report.

18 Q How about the medical examiner's report?

19 A That generally is included also.

20 Q Was it included in this case?

21 A I have no way of knowing.

22 Q You know whether you sent it to them or not, don't  
23 you?

1           A     I don't have those records here.

2           Q     Well, if I showed you a copy that had your  
3 signature on it, would that satisfy you that you had sent it  
4 to them?

5           A     That would be an indication that I had done so.

6           Q     On your autopsy report at the top you indicated  
7 there is an item called rigor. What is rigor?

8           A     Stiffening of the body.

9           Q     You have indicated it is complete. What does that  
10 mean?

11          A     It means it is complete, over the entire body.

12          Q     Are you in any position to tell me the pattern that  
13 you use to determine that?

14          A     I attempted to move the body parts. If they are  
15 unable to be moved because of stiffness, it is concluded that  
16 rigor is present.

17          Q     Which parts start with the particular pattern that  
18 you follow?

19          A     I start with the head and go to the feet.

20          Q     Did you do that in this case?

21          A     Yes, I did.

22          Q     If rigor is complete, what conclusions do you draw  
23 from that insofar as the time of death is concerned or can you

1 draw that conclusion?

2 A One can draw a general conclusion that death  
3 undoubtedly has occurred at least twelve hours prior to my  
4 examination and perhaps no more than thirty-six hours.

5 Q All right.

6 The progression that you follow is usually the same  
7 or is it always the same?

8 A Always the same.

9 Q From the head down?

10 A Because that's the procedure I follow.

11 Q Why?

12 A In the performance of my duties, I have certain  
13 standard operating procedures and that is one of them and  
14 that is one of them I follow.

15 Q Isn't that standard among all forensic pathologists?

16 A I wouldn't know.

17 Q You wouldn't know. Is that what you said?

18 A That's right.

19 Q Are you saying it is peculiar to you or not  
20 peculiar to you?

21 A I don't know the procedure that any other pathologist  
22 might follow in estimating rigor or what portions of the body  
23 they may examine first.

1 Q Do you know of any standard procedure used among  
2 specialists of that kind in making that determination?

3 A No, there isn't.

4 Q There is not.

5 A No.

6 Q The next item is L-i-v-o-r, Livor.

7 A Yes.

8 Q Being fixed or unfixed?

9 A Both.

10 Q What's the difference?

11 A If it is unfixed that means any movement of the body  
12 will alter the state of livor or its position. If it is fixed  
13 that would indicate there would be no operation in its position  
14 regardless of the movement of the body.

15 Q What does it show?

16 A Deposit pooling of blood.

17 Q That means what?

18 A The blood has gone to deposit in parts of the body.

19 Q To the lowest points?

20 A That's correct.

21 Q Are you saying if the body is moved that could  
22 change?

23 A If it is not fixed.

1 Q If it is moved?

2 A Then it wouldn't move.

3 Q Was it fixed or unfixed here?

4 A Fixed.

5 Q Why do you say "fixed"?

6 A Because when we turned her over on her face, it  
7 didn't change.

8 Q When who turned her over?

9 A I did.

10 Q Do you know if anybody else turned her over?

11 A Not at the time of the autopsy, no.

12 Q Could she have turned over before you got to her?

13 A I would have no way of knowing that.

14 Q Could she have been -- what did you say?

15 A I would have no way of determining that.

16 Q You indicated body heat, none; what does that mean?  
17 What does "none" mean? There is obviously some temperature  
18 somewhere; isn't there, even if it is minus twenty? What does  
19 "none" mean?

20 A It indicates an absence of heat as determined by  
21 external examination.

22 Q Heat can be in terms of minus, can it not?

23 A Not normally, in that unless you are dealing with



1       hypothermia.

2           Q       What does "none" mean?

3           A       There is none -- no evidence of body temperature.

4           Q       Did you measure it?

5           A       No, I didnot.

6           Q       How can you say "none"?

7           A       The body had been in a cold box prior to my  
8       receiving it. Therefore, any temperature that I took would be  
9       artificial or false.

10          Q       Now, you indicated you have written -- published  
11       books on rape and other types of injuries?

12          A       That's correct.

13          Q       Did you find any type of injury along those lines  
14       on this body?

15          A       No.

16          Q       Did you find any type of sexual abuse at all?

17          A       None.

18          Q       Did you look?

19          A       Yes.

20          Q       Where in your autopsy report does it indicate that?

21          A       Back page -- the back side of the first sheet,  
22       microscopic smears negative for sperm. Those smears would be  
23       oral, anal and vaginal.

1 Q Is that the extent of your investigation?

2 A There was no evidence of sperm present in any of  
3 the body orifices.

4 Q What does that mean?

5 A There had been no attempted deposition of  
6 spermatozoa in any body orifice.

7 Q Does the absence of sperm -- does that mean there  
8 was no sexual abuse of that body? Is that conclusion that  
9 you are stating?

10 A If there's no evidence of injury to the breasts,  
11 genital, anal burrs so there was no evidence of sperm present  
12 in those areas.

13 Q Did you examine it?

14 A Yes.

15 Q You examined the breasts?

16 A That's right.

17 Q How about the anus? Did you examine that?

18 A That's correct.

19 Q And you found no indication there was any sexual  
20 abuse whatsoever?

21 A That's correct.

22 Q Where does it say that in your report?

23 A I don't have it in, because there's nothing in the

1 way of trauma. I don't indicate it.

2 Q Do you have any notes?

3 A My notes are the final report.

4 Q That's all you have?

5 A That's correct.

6 Q No independent notes?

7 A None. If there is evidence of trauma at the time  
8 when I perform the autopsy, it is indicated on the anatomical  
9 diagrams.

10 Q On the body weight, you have estimated one hundred  
11 seventy pounds. Is that standard procedure to estimate  
12 things like that?

13 A That is the only mechanism I have since we do not  
14 have a total body scale.

15 Q On the second page, "G.I. tract, stomach contains a  
16 very small amount of digested food material." What is "small  
17 amount"?

18 A Less than five millimeters.

19 Q Did you measure it?

20 A Yes.

21 Q Why didn't you write down the exact amount when you  
22 measured it?

23 A I don't bother when it is that amount.

1 Q Why?

2 A That's my procedure..

3 Q Wouldn't the stomach contents indicate something?

4 A Not if they are completely digested?

5 Q You mean you can't tell what they are?

6 A No, I cannot.

7 Q You can't tell how long they've been there?

8 A If they are digested one cannot estimate the period  
9 from food intake to death.

10 Q Doesn't it normally take two to four hours to  
11 digest food?

12 A Not necessarily.

13 Q Would that vary with the food?

14 A It would vary with the type of food, the amount of  
15 food and the degree of the filling of the stomach at the time  
16 the meal is ingested.

17 Q All right.

18 And from the sample that you have, you mean to tell  
19 me you cannot determine any of that?

20 A That's correct.

21 Q On the last page of your autopsy report, you  
22 indicated, "Filled tube of heart blood, blood liver, bile,  
23 vitreous humor and blood type." Vitreous humor is the removing

1 of fluid of the eyeball to determine the amount of potassium  
2 in it.

3 A That may be a mechanism I use for other purposes.

4 Q Can you also determine the time of death?

5 A It can be roughly estimated.

6 Q Did you try to indicate that?

7 A No, I did not.

8 Q Did you think the time of death was important?

9 A At the time, no.

10 Q Do you think it is important now?

11 A I have no knowledge of that.

12 Q Did you make any attempt at all to determine how  
13 long this woman had been dead?

14 A Other than the examination of the gastric contents  
15 and the degree of rigor, no.

16 Q Wouldn't the amount of potassium increase or decrease  
17 and removed with a syringe give you a fairly accurate time as  
18 to how long this person had been dead?

19 A It can be used as a rough indication.

20 Q When you look at these wounds, is there any way you  
21 can tell whether or not there was any type of struggle?

22 MR. MELSON: I'm sorry. What?

23 MR. KENDRICK: Struggle or resistance.

1 THE WITNESS: There is no way that you can estimate  
2 that from the character of the wounds themselves.

3 BY MR. KENDRICK:

4 Q You cannot?

5 A No.

6 Q Is it unusual for rigidity -- how long does rigidity  
7 take or what is rigidity first?

8 A Rigidity is rigor.

9 Q You said it was heat; is that correct?

10 A That's correct.

11 Q Did you indicate that you had written articles on  
12 the deaths of servicemen?

13 A That's correct.

14 Q Isn't it possible for rigor to happen instantaneously  
15 depending upon the amount of exertion before killed?

16 A It does not happen instantaneously. There is a  
17 period of time between death and onset.

18 Q Will that not vary with the amount of activity and  
19 the type of activity that the person is doing right before  
20 they die?

21 A That is a variable.

22 Q In other words, if a person is struggling and  
23 having activity, it could almost be instant; is that correct?

1           A     It is not instant. It will come on more rapidly if  
2 the individual dies under other means.

3           Q     Say within a couple of minutes?

4           A     No.

5           Q     You've never seen that happen?

6           A     No.

7           Q     You've never seen an example of servicemen frozen in  
8 a position to this?

9           A     No, I have not.

10          Q     It is your opinion or your position that rigor  
11 cannot be almost immediately?

12          A     Unless one talks about cadaveric rigor and many  
13 people question whether it even exists.

14          Q     Do you?

15          A     I don't believe it exists.

16          Q     Lividity, what is that?

17          A     Lividity is similar to libor.

18          Q     When you say "similar," it must be different.

19          A     Normally the terms are used interchangeably.

20          Q     It is the same?

21          A     It can be used interchangeably.

22          Q     Do you use it in your reports? Do you use it?

23          A     I don't believe I have used it, no.

1           Q     What is the significance of livor and whether it is  
2 fixed or unfixed? With respect to color, does that have any  
3 significance?

4           A     No.

5           Q     It has none?

6           A     No.

7           Q     In other words, if I approach a body presumably  
8 dead and I pushed my thumb or my finger on that body, the  
9 color that it leaves would not be significant?

10          A     You are referring to blanching of livor and it has  
11 nothing to do with fixed or unfixed.

12          Q     It has nothing to do with that?

13          A     No.

14          Q     What is the significance of color then?

15          A     (No response.)

16          Q     You say it has no significance at all?

17          A     It has a significance if the color is a  
18 characteristic one, such as one sees with certain types of  
19 poisoning that it may give you an indication that that has  
20 occurred. In the usual case, it is not important.

21          Q     Take a body that's laying on the floor face down,  
22 where would the blood normally settle?

23          A     In the most dependent portion.



1 Q Which would that be?

2 A The front part of the body resting on the floor.

3 Q Suppose I press the back portion of that body,  
4 would I not get some indication from the color?

5 A You'd have very little color change.

6 Q What's the significance of that?

7 A It means there isn't any livor there.

8 Q That's right.

9 Now, if I turn the body over and pushed on the  
10 other side immediately, would the color be different?

11 A You would get blanching in the area when livor is  
12 present.

13 Q Then color is significant, isn't it?

14 A You are producing an artificial color. I'm  
15 talking about natural state of livor.

16 Q Could you not use artificial color in your  
17 determination?

18 A No.

19 Q Do you use it in establishing the time of death?

20 A Color, no.

21 Q This kind of color this way -- the way we just  
22 talked about it -- could that be used in establishing the time  
23 of death?

1 A No.

2 Q Could not.

3 A No.

4 Q Can you give me any other factors that might affect  
5 rigidity?

6 A Body building, age, state of health, ambient  
7 temperature.

8 Q How about the room temperature?

9 A That's ambient temperature.

10 Q Okay. Thank you.

11 So, if a body was laying next to a radiator and was  
12 providing heat, what could I expect generally to happen to  
13 that body insofar as rigidity is concerned?

14 A Earlier onset than if it was in any other  
15 condition.

16 Q So, it could be considerably quicker; is that  
17 correct?

18 A It comes on faster and progresses more rapidly.

19 Q The more heat, the quicker the rigidity is?

20 A That's a general rule, yes.

21 Q Less heat means lower rigidity, so ice or a cooler  
22 environment would have a different effect than laying in front  
23 of a radiator; is that correct?

1 A That's correct.

2 Q How about wind blowing from a motor -- say from an  
3 icebox motor? Could that affect rigidity?

4 A It may delay it.

5 Q In what sense?

6 A In that you are cooling it.

7 Q It could take longer; is that correct?

8 A Right.

9 Q Would that not be a factor that you would consider  
10 in establishing the time of death?

11 A If one were utilizing rigor.

12 Q Do you know whether or not the medical examiner that  
13 first goes to the scene does that?

14 A He may attempt to use that as one of his means.

15 Q But you don't because you are not concerned with  
16 establishing the time of death; is that correct?

17 A Normally I do not go to the scene.

18 Q Well, if your medical examiner did something along  
19 those lines, would you want to know about it?

20 A I didn't discuss it with him.

21 Q I'm sure. Why not?

22 A The question never came up.

23 Q Did any question come up?

1           A     The only question was the cause of death, which I  
2 gave to him after the autopsy.

3           Q     Did you talk to your medical examiner in any way?

4           A     I gave him the cause of death.

5           Q     Did you rely on his report in any way?

6           A     No.

7           Q     Did you refer to his report?

8           A     No.

9           Q     Did you even read his report?

10          A     Yes.

11          Q     And you certified it?

12          A     That's correct.

13          Q     Why did you do that?

14          A     Why do I do what?

15          Q     Why did you certify his report, but don't use it?

16          A     I have no need to use it in the preparation of my  
17 autopsy report.

18          Q     They are totally dependent of one another?

19          A     No, they are not totally independent. His  
20 investigation is independent of my autopsy report.

21          Q     What is his investigation for?

22          A     His investigation is to determine the circumstances  
23 and to see if there is an indication as to the manner of death

1 and if an autopsy is indicated.

2 Q Does he also try to determine the time of death?

3 A That is one of his responsibilities.

4 Q It is one of his responsibilities?

5 A That's correct.

6 Q And is it done in the normal course of his duties?

7 A As a medical examiner, yes.

8 MR. KENDRICK: The Court's indulgence, Your Honor.

9 BY MR. KENDRICK:

10 Q Rigidity is going to be affected, is it not, in the  
11 amount of type of clothes that the body was wearing?

12 A To a degree, yes.

13 Q Again, along the same lines, it would keep the body  
14 hot or cold and that would affect the cooling process?

15 A That's correct.

16 Q When you examine the wounds on this body, did you  
17 also have a hammer?

18 A No, I did not.

19 Q But you measured the wounds?

20 A Those wounds which had a measurable diameter were  
21 measured.

22 Q Is there any way that you can tell whether or not  
23 the wounds that were inflicted on the skull were inflicted

\* \* \*

1 preclude either of us from showing that it was turned or  
2 moved at any other time also.

3 THE COURT: All right. Members of the jury, a  
4 stipulation means an agreed fact entered into to save both  
5 sides some difficulty in bring in a number of witnesses to  
6 prove that sequence of events. You should treat it as  
7 evidence in the case. It has the same weight as any other  
8 evidence just as though it had been testified to from the  
9 witness stand.

10 The next witness, Mr. Melson?

11 MR. MELSON: Officer Nell.

12 Whereupon,

13 MARK NELL,

14 was called as a witness by and on behalf of the Commonwealth  
15 of Virginia, and having been previously duly sworn, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MELSON:

19 Q Sir, would you state your name for the Court,  
20 please?

21 A My name is Mark Nell.

22 Q By whom are you employed?

23 A Arlington County, Department of Police.

\* \* \*

1 MR. MELSON: Thank you.

2 MR. KENDRICK: No questions, Your Honor.

3 THE COURT: Do you want this just marked for  
4 identification?

5 MR. MELSON: No, Your Honor, move into evidence at  
6 this time.

7 THE COURT: All right, sir. You are excused.

8 No. 39 is received in evidence.

9 (The item previously marked  
10 for identification as  
11 Commonwealth's Exhibit No. 39  
12 was received in evidence.)

13 MR. MELSON: Officer Carrig.

14 Whereupon,

15 ROBERT CARRIG,  
16 was called as a witness by and on behalf of the Commonwealth  
17 of Virginia, and, having been previously duly sworn, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MELSON:

21 Q Sir, would you state your name for the record,  
22 please?

23 A Robert Carrig.

1 Q By whom are you employed?

2 A Arlington County Police Department.

3 Q In what capacity?

4 A Detective, Homicide Division.

5 Q On March 20th, 1981, did you have occasion to  
6 attend an autopsy?

7 A Yes.

8 Q And do you know the name of the person autopsied?

9 A Ophelia Quintero.

10 Q Let me show you what has been marked as Commonwealth  
11 Exhibit No. 1 for identification and ask you if that is the  
12 person who was autopsied by Dr. Beyer on that date?

13 (Handing to the witness.)

14 A It is.

15 Q Now, directing your attention to the next day,  
16 March 21st, 1981, did you have occasion to go 3044 Patrick  
17 Henry Drive?

18 A Yes, sir.

19 Q For what purpose?

20 A To locate a witness in this case.

21 Q And what was the witness's name?

22 A The defendant, Manuel Quintana.

23 Q Who accompanied you?



1           A     Detective Shelton.

2           Q     Did there come a time that you entered an apartment  
3 there?

4           A     Yes, sir.

5           Q     Who was with you when you entered the apartment?

6           A     Detective Shelton, Detective Horgus from the  
7 Arlington County Police Department and a uniformed Fairfax  
8 County Police Officer.

9           Q     Why did you have a uniformed Fairfax Police Officer  
10 with you?

11          A     We were in plain clothes. We had done a search that  
12 morning. Old clothes. We were also in the jurisdiction of  
13 Fairfax. It is a courtesy to have one of their people  
14 accompany us.

15          Q     Did there come a time that you were in the  
16 apartment that you came upon somebody that's in the courtroom  
17 today?

18          A     Yes, sir.

19          Q     Would you point the person out?

20          A     The defendant, the gentleman with the headset on  
21 (indicating).

22               MR. MELSON: Your Honor, let the record reflect he  
23 has identified the defendant. Your Honor, may the record

1 reflect that he has identified Mr. Quintana?

2 THE COURT: Yes.

3 MR. MELSON: Thank you.

4 BY MR. MELSON:

5 Q While in the apartment, did Mr. Quintana remove  
6 anything from his pockets?

7 A Yes, he did.

8 Q What was that?

9 A A key ring containing a number of keys and a tag.

10 Q Did you notice anything about the keys and the tag?

11 A The tag was from a -- a standard dealership tag.  
12 The kind dealerships put on a set of keys.

13 Q What did you do -- did you have occasion to leave  
14 the apartment?

15 A Yes, I did.

16 Q And where did you go?

17 A I went out to the parking lot to look for the car  
18 that was described on the tag.

19 Q Did you find one?

20 A Yes, I did.

21 Q Let me show you what has been marked as  
22 Commonwealth's Exhibit No. 40 for identification and ask you  
23 if you can identify the subject of that photograph?

1 (Handing to the witness.)

2 A This is the vehicle that I located in the parking  
3 lot on Patrick Henry Drive.

4 Q Is that a fair and accurate representation of it?

5 A Yes, sir.

6 Q Was that taken at Patrick Henry in the parking lot?

7 A No, sir.

8 Q Where was that photo taken?

9 A In the garage sally port area of the jail located  
10 downstairs.

11 Q So, it was located in the parking lot at the time  
12 you actually saw him?

13 A Yes, sir.

14 MR. KENDRICK: May I see it?

15 (Handing to counsel.)

16 MR. KENDRICK: No objection, Your Honor.

17 THE COURT: No. 40 is received.

18 (The photograph previously  
19 marked for identification as  
20 Commonwealth's Exhibit No. 40  
21 was received in evidence.)

22 (Photograph displayed to the jury.)

23

1 BY MR. MELSON:

2 Q Now, did there ever come a time after you  
3 discovered that car that you looked inside the car?

4 A Yes, sir.

5 Q Without opening the door grade?

6 A Yes, sir.

7 Q What if anything did you see in there that caught  
8 your attention?

9 A On the floorboard of the rear seat of the  
10 automobile, I observed a greenish brown felt type hat lying  
11 almost on the floor of the car.

12 Q How did that hat have any significance to you?

13 A Earlier in the morning when we were at the victim's  
14 apartment it was brought to our attention by the victim's son  
15 that he was missing --

16 MR. KENDRICK: (Interposing) Objection, Your Honor.

17 THE COURT: It is stated just for the fact of the  
18 utterance, not for the truth and receivable for that purpose.

19 Mr. Kendrick; is that the reason it is being  
20 stated?

21 MR. KENDRICK: Yes, sir, to show why he thought it  
22 was significant.

23 MR. MELSON: Very well.

1 BY MR. MELSON:

2 Q You may continue.

3 A (Continuing) -- That greenish brown felt type hat  
4 was missing.

5 Q After seeing that hat, did you make a request for  
6 anything?

7 A Yes, I did.

8 Q What was that?

9 A I contacted by police radio my office and had the  
10 detective in the office contact the victim's son and had him  
11 respond to where I was.

12 Q Did he in fact do that?

13 A Yes, he did.

14 Q What did he do when he was there?

15 A He looked through the same window I did on the  
16 outside of the vehicle and broke down and cried and identified  
17 the hat --

18 MR. KENDRICK: (Interposing) Objection, Your Honor.

19 THE COURT: Objection overruled.

20 THE WITNESS: (Continuing) -- identified the hat  
21 that I observed through the window as the one that appears to  
22 be the one that was stolen.

23 MR. KENDRICK: Your Honor, I object to that. It is

1 hearsay.

2 THE COURT: Objection overruled.

3 BY MR. MELSON:

4 Q Approximately what time was this?

5 A After 1:00 o'clock in the afternoon.

6 Q And as a result of that --

7 THE COURT: (Interposing) Again, let me caution  
8 the jury. These expressions that are attributed to the  
9 victim's son are introduced only to show what the son said and  
10 did. They are not introduced as proof of the truth of what  
11 the son said. He will have to do his own testifying for that.  
12 This officer can't vouch for the truth of the statements. All  
13 he can tell you is that the statements were made and it was  
14 admissible to show what course of action the officer then  
15 took.

16 MR. KENDRICK: Thank you, Your Honor.

17 BY MR. MELSON:

18 Q Now, as a result of that identification, what did  
19 you do with respect to the automobile?

20 A Shortly thereafter my partner, Detective Gabrielson,  
21 whose case it was, arrived. He made the determination to  
22 seize the vehicle as evidence. A crane was called for from  
23 Arlington County -- a contractor crane that we use. The

1 vehicle was impounded and towed back to Arlington County to  
2 the sally port garage area located in the basement of the  
3 first floor of the jail. I observed the impounding and  
4 followed the vehicle back and it was placed in the sally port  
5 garage area of the jail.

6 Q Is that where that photograph was taken?

7 A That is correct, sir.

8 Q What was done to secure the car?

9 A I personally placed a special type of evidence tape  
10 on all the windows, doors, trunk, to seal the vehicle so it  
11 could not be entered without my knowledge.

12 Q How would tape help you in that regard?

13 A It is a special type of tape. If you try to peel it  
14 off it rips and if you open the doors and windows and what  
15 have you, it would rip and you could obviously tell someone  
16 had entered that part of the vehicle.

17 Q Tell us what the sally port is and whether or not  
18 that is a secure area.

19 A It is a garage type area located on the first floor  
20 of the police building maintained by the jail -- the Sheriff's  
21 Department. Its main purpose is to pull police vehicles into  
22 it so that prisoners can be removed from the vehicle without  
23 the possibility of escape. It has an electronic door operated

1 by the jail personnel of the Sheriff's Department and is a  
2 secure part of the jail.

3 Q Now, did you have occasion to return to the car the  
4 next day, the 22nd of March?

5 A Yes, I did.

6 Q For what purpose did you return?

7 A To insure that the vehicle was in the same condition  
8 as when I left it and to break the seals personally so that  
9 the vehicle could be searched.

10 Q Did you in fact return?

11 A Yes, I did.

12 Q Did you check the vehicle to determine whether or  
13 not it was in the same condition?

14 A I did.

15 Q Was it?

16 A The vehicle was sealed as I had sealed it the day  
17 before.

18 Q Did you need a key to open it or were the doors  
19 unlocked?

20 A I needed the key.

21 Q So, was the vehicle locked?

22 A Yes, sir.

23 Q Was the automobile searched?



1 A Yes, it was.

2 Q Was there a police agent there to process the car  
3 and seize the evidence that was found?

4 A Yes, there was.

5 Q Who was that?

6 A Agent Tyler.

7 MR. MELSON: Thank you. No other questions at this  
8 time, Your Honor.

9 MR. KENDRICK: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. KENDRICK:

12 Q When was your first contact with Mr. Quintana?

13 A Saturday morning, March 21st.

14 Q At approximately what time?

15 A At approximately noon.

16 Q Noon?

17 A In that area, yes, sir.

18 Q Who was with you?

19 A Detective Shelton, Detective Horgus, both from the  
20 Arlington Police Department, and a Fairfax uniformed Police  
21 Officer.

22 Q All right.

23 Did you talk to him at that time?

\* \* \*

1 and whether it is open to the public. I don't know what  
2 relevance it has whether they used the term "parking".

3 MR. KENDRICK: Detective Gabrielson hasn't  
4 testified yet. I have a lot to say to him. He swore under  
5 oath about certain things this man said and I want to test  
6 that.

7 THE COURT: All right.

8 BY MR. KENDRICK:

9 Q Now, what did you say?

10 A In all honesty, Mr. Kendrick, I don't know whether  
11 I said driveway, parking lot or roadway.

12 Q You don't know what you said to Detective Gabrielson.

13 A No, I don't know which word I actually used. He was  
14 also there.

15 Q He was what?

16 A He was also at the scene.

17 Q Then he saw the same thing that you saw?

18 A As I testified to earlier, he arrived out there and  
19 directed me to see the vehicle as evidence.

20 Q Was he at the public roadway with you?

21 A That's where the vehicle was, yes, sir.

22 MR. KENDRICK: All right. Thank you, Your Honor.  
23 That's all I have.

\* \* \*

1           A     This is the automobile that I was asked to search.

2           Q     Now, did you in fact conduct a search of that  
3 automobile?

4           A     Yes, sir, I did.

5           Q     Let me show you what's been marked as  
6 Commonwealth's Exhibit No. 41 for identification and ask if  
7 you can tell us what this is a photograph of?

8                     (Handing to the witness.)

9           A     This photograph shows the back seat of the Plymouth  
10 that was searched that day.

11          Q     All right.

12                     Is that before you searched the back seat?

13          A     Yes, it is.

14          Q     Is that a fair and accurate representation of the  
15 scene which it depicts?

16          A     Yes, it is.

17                     MR. MELSON: Mr. Kendrick, do you want to see the  
18 photograph?

19                     (Handing to counsel.)

20                     MR. KENDRICK: No objection.

21                     THE COURT: 41 is received in evidence.

22

23

(The photograph previously  
marked for identification as  
Commonwealth's Exhibit No. 41  
was received in evidence.)

BY MR. NELSON:

Q Where did you start your search of the automobile?

A The search of the automobile did start in the back  
seat.

Q Did you have occasion to remove any clothing?

A Yes, I did.

Q All right.

Would you explain to the jury what clothing you  
removed and what it was as it pertains to this photograph?

(Handing to the witness.)

A All right. In the right rear, first, was a hat  
(indicating), and this was removed first. There was also a  
shirt, which you see here (indicating) and a pair of pants  
(indicating).

Q Let me show you what is marked as Commonwealth's  
Exhibit No. 42 and ask you if you can identify what this  
object is? You can take it out and show the jury.

(Handing to the witness.)

A This is the hat which you have seen in the

1 photograph (indicating).

2 Q All right.

3 And that you seized out of the hospital?

4 A Yes, sir.

5 Q Let me show you Commonwealth's Exhibit No. 43 and  
6 ask you if you can identify this object --

7 Before I get to that object, referring back to  
8 No. 43 -- 42, for a second, when you referred to this hat,  
9 did you find any feather stuck in it?

10 A No, sir, I didn't.

11 Q Did you find the feather for it in the car any  
12 place?

13 A No.

14 MR. KENDRICK: Your Honor, I don't believe it has  
15 been established at this point that the hat had a feather.

16 THE COURT: It had not.

17 MR. MELSON: It will be.

18 BY MR. MELSON:

19 Q Let me show you Commonwealth's Exhibit No. 43 and  
20 ask you if you can identify that?

21 (Handing to the witness.)

22 A This is the black shirt that was in the back -- on  
23 the back floorboard of the car. It was laying on the back

1. seat --

2. THE COURT REPORTER: Excuse me?

3. THE WITNESS: Under the back seat.

4. BY MR. MELSON:

5. Q Is that the one you see in the photograph?

6. A Yes, it is.

7. Q Let me show you Commonwealth's Exhibit 44 for  
8. identification and ask you to identify that if you can?

9. A These are the trousers that were found on the back  
10. floorboard of the car.

11. Q Now, after you seized these items that you found,  
12. did you find anything else that was in the automobile?

13. A Yes, I did.

14. Q What was that?

15. A That was a lunch pail.

16. Q Is that this lunch pail (indicating)?

17. A Yes, right here (indicating).

18. Q And that is the lunch pail exhibited in  
19. Commonwealth's Exhibit No. 41?

20. A Yes, it is.

21. Q All right.

22. Let me show you now Commonwealth's Exhibit No. 45  
23. and ask you whether or not this is the lunch pail that was in

1 the automobile?

2 (Handing to the witness.)

3 A Yes, sir, this is the lunch pail that is shown in  
4 the photograph.

5 Q Did you have occasion to --

6 MR. KENDRICK: (Interposing) Your Honor, may I  
7 interrupt the Court very briefly? I just got a note. May I  
8 talk to this person for one second? I will only be a minute.

9 THE COURT: Yes.

10 MR. KENDRICK: Thank you, Your Honor.

11 (Whereupon, a short recess was taken.)

12 BY MR. MELSON:

13 Q Did you have an occasion after coming upon that  
14 lunch pail to seize the contents of it?

15 A Yes, I did.

16 Q And what types of items did you find there?

17 A There were papers in there -- personal papers.  
18 There was jewelry and tools.

19 Q All right.

20 Let me show you Commonwealth's Exhibit No. 46 and  
21 ask you if you can identify that?

22 (Handing to the witness.)

23 A Yes, this was one of the pieces of jewelry that was

1 removed from the lunch pail.

2 Q All right.

3 And let me show you Commonwealth's Exhibit No. 47  
4 for identification and ask you to identify that?

5 (Handing to the witness.)

6 A That is also a piece of jewelry removed from the  
7 lunch pail.

8 MR. MELSON: Your Honor, I'm moving each of these  
9 in as we go along. May I exhibit them to the jury as we go?

10 THE COURT: Well, starting with 42, the hat? I  
11 have not yet received any objections to them.

12 MR. KENDRICK: I have no objections.

13 THE COURT: You are moving in 42, the hat, 43, the  
14 shirt, 44, the pants, 45, the lunch pail and 46 and 47,  
15 jewelry. Do you have any objection to them?

16 MR. KENDRICK: No, Your Honor.

17 MR. MELSON: May I have a continuing motion to have  
18 them received in evidence as we go along?

19 THE COURT: Yes, but let me initial them.

20 MR. KENDRICK: 47 was a piece of jewelry?

21 THE COURT: 46 and 47 are both pieces of jewelry.  
22  
23



1 (The items previously marked  
2 for identification as  
3 Commonwealth's Exhibit No.'s  
4 42 through 47 were received  
5 in evidence.)

6 BY MR. MELSON:

7 Q Let me show you Commonwealth's Exhibit No. 48 and  
8 ask if you can identify that and tell us where you got it?

9 (Handing to the witness.)

10 A This was a pair of earrings. This was also taken  
11 from the lunch pail.

12 (The item previously marked  
13 for identification as  
14 Commonwealth's Exhibit No. 48  
15 was received in evidence.)

16 THE COURT: Let me have the hat, shirt and pants,  
17 too, please.

18 BY MR. MELSON:

19 Q Let me show you Commonwealth's Exhibit No. 49 for  
20 identification and ask you whether you also found that in the

21 --

22 (Handing to the witness.)

23 A (Interposing) It is also found in the lunch pail.

1 Q I show you Commonwealth's Exhibit No. 50.

2 (Handing to the witness.)

3 A Also a pair of earrings which were found in the  
4 lunch pail.

5 THE COURT: 49 and 50 are admitted.

6 (The items previously marked  
7 for identification as  
8 Commonwealth's Exhibit No.'s  
9 49 and 50 were received in  
10 evidence.)

11 BY MR. MELSON:

12 Q Let me show you Commonwealth's Exhibit No. 51.

13 (Handing to the witness.)

14 A These are a pair of earrings which were also found  
15 in the lunch pail.

16 THE COURT: 51 is admitted.

17 (The item previously marked  
18 for identification as  
19 Commonwealth's Exhibit No. 51  
20 was received in evidence.)

21 BY MR. MELSON:

22 Q Let me show you Commonwealth's Exhibit No. 52 and  
23 ask you the same question with respect to the contents of this

1 envelope?

2 (Handing to the witness.)

3 A A pair of earrings also found in the lunch pail.

4 THE COURT: 52 is admitted.

5 (The item previously marked  
6 for identification as  
7 Commonwealth's Exhibit No. 52  
8 was received in evidence.)

9 BY MR. MELSON:

10 Q Let me show you Commonwealth's Exhibit No. 53 and  
11 ask you whether you can identify this object?

12 (Handing to the witness.)

13 A Another piece of jewelry also found in the lunch-  
14 pail.

15 THE COURT: 53 is admitted.

16 (The item previously marked  
17 for identification as  
18 Commonwealth's Exhibit No. 53  
19 was received in evidence.)

20 BY MR. MELSON:

21 Q Let me show you Commonwealth's Exhibit No. 54.

22 (Handing to the witness.)

23 A Also found in the lunch pail.

1 THE COURT: 54 is admitted.

2 (The item previously marked  
3 for identification as  
4 Commonwealth's Exhibit No. 54  
5 was received in evidence.)

6 BY MR. MELSON:

7 Q Let me show you Commonwealth's Exhibit No. 55.  
8 (Handing to the witness.)

9 A This was a man's ring, which was also found in the  
10 lunch pail.

11 THE COURT: 55 is admitted.

12 (The item previously marked  
13 for identification as  
14 Commonwealth's Exhibit No. 55  
15 was received in evidence.)

16 BY MR. MELSON:

17 Q Let me show you Commonwealth's Exhibit No. 56 and  
18 ask you if you can identify that?

19 A Yes, this is a high school ring from Miami Springs  
20 High School and I believe it was also found in the lunch pail.

21 Q Do you recall if you found any initials on the inside  
22 of it?

23 A Yes, there were, A.B.T. or A.B.F. My initials are

1 also on the inside of that ring.

2 MR. ORDOVEZA: Move to strike out the officer's  
3 testimony as to that ring as not being competent as to the  
4 nature of the evidence, Your Honor.

5 THE COURT: He can testify to what he observed.

6 MR. MELSON: Excuse me?

7 THE COURT: The objection was that the officer was  
8 not competent to testify as to the nature of the evidence.

9 MR. ORDOVEZA: Yes, Your Honor. He was describing  
10 it as a high school ring.

11 THE COURT: He can testify as to identifying marks.  
12 That is all.

13 No. 56 is admitted.

14 (The item previously marked  
15 for identification as  
16 Commonwealth's Exhibit No. 56  
17 was received in evidence.)

18 BY MR. MELSON:

19 Q Let me show you Commonwealth's Exhibit No. 57 and  
20 ask you if that is an object which you found also?

21 (Handing to the witness.)

22 A Yes, this was found in the lunch pail.

23 Q Let me show you Commonwealth's Exhibit No. 58 and

1 ask you whether or not you found that in the lunch pail?

2 A Yes, this was also found in the lunch pail, the  
3 watch.

4 THE COURT: 57 and 58 were admitted.

5 (The items previously marked  
6 for identification as  
7 Commonwealth's Exhibit No.'s  
8 57 and 58 were received in  
9 evidence.)

10 BY MR. MELSON:

11 Q Did you find anything else in the lunch pail?

12 A Yes, sir. There were personal papers and also some  
13 tools.

14 Q Let me show you Commonwealth's Exhibit No. 59 and  
15 ask you if you can identify the contents of this envelope?

16 (Handing to the witness.)

17 A Yes, sir. This is a bottle of perfume which was  
18 also found in the lunch pail. It is marked "Me."

19 Q "Me," M-e?

20 A M-e, that't the name.  
21  
22  
23

(The item previously marked  
for identification as  
Commonwealth's Exhibit No. 59  
was received in evidence.)

BY MR. MELSON:

Q Did you have occasion to find any gloves in the  
lunch box?

A Yes, there were a pair of gloves in the lunch pail.

MR. KENDRICK: I'm sorry. Were they inside the  
lunch pail?

THE WITNESS: Yes, sir.

MR. KENDRICK: Thank you.

MR. MELSON: Could we have one second, Your Honor?  
Sorry, Your Honor, I wrote down 28 instead of 27.

MR. KENDRICK: That's the pair of gloves, isn't it?

MR. MELSON: Yes, sir.

BY MR. MELSON:

Q Officer, finally, let me show you a pair of white  
gloves marked as Commonwealth's Exhibit No. 60 for  
identification and ask you whether or not those are the ones  
you found in the lunch pail?

(Handing to the witness.)

A Yes, sir, these are the white gloves which were in

1 the lunch pail.

2 THE COURT: Any objection, Mr. Kendrick?

3 MR. KENDRICK: To what?

4 THE COURT: The white gloves.

5 MR. KENDRICK: Oh, no.

6 THE COURT: They are admitted, No. 60.

7 (The item previously marked  
8 for identification as  
9 Commonwealth's Exhibit No. 60  
10 was received in evidence.)

11 BY MR. MELSON:

12 Q Officer, let me show you, as one exhibit, the  
13 contents of these envelopes and ask you whether you can  
14 identify these?

15 (Handing to the witness.)

16 A Sure, it is a pair of sunglasses and also a key.  
17 These were taken from the lunch pail.

18 Q Let me show you these items, also.

19 (Handing to the witness.)

20 A These are also a number of small keys which were  
21 taken from the lunch pail and here again another set of keys  
22 taken from the lunch pail that appears to be a larger type  
23 key.



1 Q How about this?

2 (Handing to the witness.)

3 A Keys, fingernail clippers, small knife and the  
4 padlock with the key in it, all of these were in the lunch  
5 pail.

6 MR. MELSON: Your Honor, I would like to have all  
7 those items marked as Commonwealth's Exhibit No. 61, the  
8 items and keys.

9 THE COURT: Commonwealth's Exhibit No. 61 is  
10 admitted.

11 (The items previously marked  
12 for identification as  
13 Commonwealth's Exhibit No. 61  
14 were received in evidence.)

15 BY MR. MELSON:

16 Q Let me show you what has been marked as  
17 Commonwealth's Exhibit No. 62 and ask you if you can identify  
18 that?

19 (Handing to the witness.)

20 A Yes, this is a receipt, written receipt from  
21 Merrifield Exxon which shows a total bill of \$90.34 paid in  
22 cash and made out to Manuel Quintana.

23 Q Is there a date on that?

1           A     Yes, 3-20-81. This was also in the lunch pail.

2           MR. MELSON: May we have this marked as  
3 Commonwealth's Exhibit No. 62, Your Honor? May we have this  
4 marked, Your Honor?

5           (Handing to counsel.)

6           MR. MELSON: While Mr. Kendrick is examining that,  
7 may we take a morning break?

8           MR. KENDRICK: I'm through, but I would still like  
9 a break.

10          THE COURT: All right. Is there an objection to  
11 No. 62?

12          MR. KENDRICK: Is that this item? No objection,  
13 Your Honor.

14          THE COURT: All right. That would be admitted and  
15 at this point we will recess for ten minutes. Thank you.

16                               (The item previously referred  
17 to was marked as  
18 Commonwealth's Exhibit No. 62  
19 and received in evidence.)

20          (Whereupon, a short recess was taken.)

21          (Whereupon, the jury was temporarily excused.)

22          THE COURT: Ready for the jury, gentlemen?

23          MR. KENDRICK: I don't think they are quite ready.

1 MR. MELSON: One second.

2 THE COURT: Let's proceed. Would you call the  
3 jury, please?

4 (Whereupon, the jury returned to the jury box.)

5 THE COURT: For the record, 59, 60, 61 and 62 were  
6 admitted.

7 BY MR. MELSON:

8 Q Officer, other than the Merrifield Exxon receipt  
9 which is Commonwealth's Exhibit No. 62, did you find any  
10 other papers and documents in the lunch pail?

11 A Yes, sir, I did.

12 Q Let me show you Commonwealth's Exhibit No. 62-A and  
13 ask if you can identify that?

14 (Handing to the witness.)

15 A Yes, this is a note signed by Deputy Murphy from  
16 Fairfax County that was found in the lunch pail.

17 Q Let me show you Commonwealth's Exhibit No. 62 --

18 MR. KENDRICK: (Interposing) Did he say inside the  
19 lunch pail?

20 THE WITNESS: Yes, it was.

21 BY MR. MELSON:

22 Q Let me show you Commonwealth's Exhibit No. 62-B and  
23 ask if you can identify that?

1 (Handing to the witness.)

2 A These are two other notes that were also found in  
3 the lunch pail dated 3-20-81.

4 Q Let me show you Commonwealth's Exhibit No. 62-C and  
5 ask you if you can identify that?

6 (Handing to the witness.)

7 A These were some more items that were also found in  
8 the automobile.

9 Q In the lunch pail? Were those documents found in  
10 the lunch pail?

11 A Some of these were in the -- yes, in the lunch box.

12 Q And you mentioned you had also found some tools in  
13 the lunch box?

14 A Yes, sir.

15 Q Let me show you Commonwealth's Exhibit No. 63 and  
16 ask you whether or not you can identify these envelopes in  
17 that plastic bag as containing the tools to which you are  
18 referring?

19 THE COURT: Is there any objection to these notes,  
20 Mr. Kendrick?

21 MR. KENDRICK: No, Your Honor.

22 THE COURT: 62 --

23 MR. KENDRICK: (Interposing) The notes found

1 inside the lunch pail, Your Honor? No, sir.

2 THE COURT: 62-A and B are admitted and 62-C, which  
3 is miscellaneous papers are admitted.

4 (The items previously marked  
5 for identification as  
6 Commonwealth's Exhibit No.'s  
7 62-A through 62-C were  
8 received in evidence.)

9 BY MR. MELSON:

10 Q Are those the tools?

11 A These are the tools taken from the rear seat of the  
12 car.

13 THE COURT: The rear seat of the car and not the  
14 lunch pail, right?

15 THE WITNESS: Yes, sir. That's the way it is  
16 marked, "Rear seat of the car."

17 BY MR. MELSON:

18 Q These were in the rear seat of the car or the lunch  
19 pail in the rear seat of the car?

20 A I've got it marked just on the rear seat of the car.

21 Q Did you find any other container in the rear seat of  
22 the car?

23 A Yes, laying on the back seat was a plastic type bag,

1 Montgomery Wards, which you can see over on the right-hand  
2 side of the photograph.

3 Q Are you referring to this white object here  
4 (indicating)?

5 A Yes, the white object.

6 THE COURT: 63 is admitted.

7 (The items previously marked  
8 for identification as  
9 Commonwealth's Exhibit No. 63  
10 were received in evidence.)

11 BY MR. MELSON:

12 Q Let me show you Commonwealth's Exhibit No. 64 and  
13 ask you what that is?

14 (Handing to the witness.)

15 A That is the bag that was laying in the back seat of  
16 the automobile.

17 Q What did you find in that bag if anything?

18 A In the bag were some magazines.

19 Q Let me show you Commonwealth's Exhibit No. 65 and  
20 ask you if you can identify what those are?

21 (Handing to the witness.)

22 A These were the magazines that were in the bag.

23 Q All right.

1 Did you find any items of clothing in the bag?

2 A Yes.

3 Q Do you have the rubber band?

4 A It is on the end of the --

5 Q (Interposing) Thank you. Let me show you  
6 Commonwealth's Exhibit No. 66 and ask you if you can identify  
7 that?

8 (Handing to the witness.)

9 THE COURT: I assume there is no objection to any  
10 of those?

11 MR. KENDRICK: No, Your Honor.

12 THE COURT: 64, the bag, is admitted.

13 (The item previously marked  
14 for identification as  
15 Commonwealth's Exhibit No. 64  
16 was received in evidence.)

17 THE WITNESS: This was a piece of clothing found  
18 also.

19 THE COURT: 65, the magazines, are admitted in  
20 evidence.

21

22

23

(The items previously marked  
for identification as  
Commonwealth's Exhibit No. 65  
were received in evidence.)

BY MR. MELSON:

Q Let me also show you Commonwealth's Exhibit No. 67  
and 68 and ask you if you can identify those and tell me  
where you found them?

(Handing to the witness.)

A They are cloth type belts. 67 and also Exhibit 68  
are cloth belts and they were also in the bag which was laying  
in the back seat.

Q All right.

Let me show you Commonwealth's Exhibit No. 69 and  
ask you if you can identify that?

(Handing to the witness.)

A Yes, this appears to be a phone cord and this is  
also in the Montgomery Wards bag in the back seat of the  
vehicle.

THE COURT: Were all of these items in the  
Montgomery Ward bag, the jersey, 66, and the belts, which are  
67 and 68?

THE WITNESS: Yes, sir.



1 BY MR. MELSON:

2 Q Let me show you Commonwealth's Exhibit No. 7 and ask  
3 you whether or not you can determine whether that phone cord  
4 would fit this phone?

5 (Handing to the witness.)

6 THE COURT: 66, 7 and 8 are admitted.

7 (The items previously marked  
8 for identification as  
9 Commonwealth's Exhibit No.'s  
10 66, 67 and 68 were received in  
11 evidence.)

12 THE WITNESS: Yes, sir, it does..

13 BY MR. MELSON:

14 Q Could you remove it and place it back in the --  
15 (Witness returns item to bag.)

16 Q Let me also show you Commonwealth's Exhibit No. 70  
17 and ask you whether or not this was also found in the  
18 Montgomery Wards bag?

19 (Handing to the witness.)

20 A Yes, sir, it was.

21 Q What is it?

22 A This is a rope or twine that was inside the bag.

23 THE COURT: The phone cord, No. 69, and the piece of

1 rope, No. 70, are admitted.

2 (The items previously marked  
3 for identification as  
4 Commonwealth's Exhibit No.'s  
5 69 and 70 were received in  
6 evidence.)

7 BY MR. MELSON:

8 Q Did you find any other container in the back seat --  
9 any other bag?

10 A Yes, there was another bag.

11 Q Could you point that out for the jury, please?

12 A Yes, it was on the floorboard here (indicating).

13 Q Did it have a name on it?

14 A Yes, People's Drug.

15 Q People's Drug Store bag?

16 Now, did you find anything in the People's Drug  
17 Store bag?

18 A Yes, I found some receipts and an I.N.S. Card which  
19 was torn up.

20 Q Let me show you Commonwealth's Exhibit No. 71 for  
21 identification and ask you if you could tell us what that is?

22 (Handing to the witness.)

23 A Yes, that is a receipt from People's Drug Store

1 showing the date, 3-19 at 7:18 p.m.

2 Q Let me show you Commonwealth's Exhibit No. 72 and  
3 ask you if you can recognize that?

4 (Handing to the witness.)

5 A Yes, this is a Seven-Eleven receipt which shows a  
6 date of 3-19-81 which was also in the People's bag.

7 Q And also, marked Commonwealth's Exhibit No. 73?

8 (Handing to the witness.)

9 A This is the I.N.S. Card which was found in pieces  
10 and then pieced back together with the name Nelson Echemendia  
11 Quintero.

12 Q And if I understand you correctly, this was not  
13 found in the envelope?

14 A No, it was in pieces in the bag.

15 Q Was it torn up?

16 A Yes, it was.

17 Q Directing your attention to this item, the purple  
18 tint and color on it, can you tell us what that is?

19 A Yes, this is where it was chemically processed.

20 Q It was not like that at the time you found it?

21 A No, it was not. It was white with black type on it.

22 Q Let me also show you Commonwealth's Exhibit No. 75  
23 and 76 -- first of all, 75, and ask you whether that was found

1 in the bag?

2 (Handing to the witness.)

3 A Yes, this was found in the People's Drug bag in the  
4 back seat of the car.

5 Q What is it?

6 A It was a man's tie -- neck tie.

7 Q Let me show you Commonwealth's Exhibit No. 76 and  
8 ask if you can identify that?

9 (Handing to the witness.)

10 A This is also a --

11 THE COURT: (Interposing) Have you skipped No. 74?

12 MR. MELSON: Yes, Your Honor, I did. I decided it  
13 was a merely cumulative photograph of the I.N.S. and really  
14 doesn't add anything since we have the card. So, I'm going to  
15 withdraw 74.

16 THE WITNESS: No. 76 is also a receipt which was  
17 found in the bag.

18 BY MR. MELSON:

19 Q Did you find anything else in the automobile?

20 A Yes, I found a number of chains and padlocks -- and  
21 chains.

22 Q Let me show you Commonwealth's Exhibit No. 78 and  
23 ask if you can identify this object?

1 (Handing to the witness.)

2 A These are the chains and combination type chain  
3 locks and padlocks which were in the front seat of the  
4 vehicle. Some of them were hanging on the -- the window knob  
5 where you open and close the window and they were hung on the  
6 door.

7 Q Okay.

8 Let me also show you Commonwealth's Exhibit No. 77  
9 and ask you if you can tell us what objects are contained in  
10 this box and approximately where they were found?

11 (Handing to the witness.)

12 A There are a number of items, including the thermos.  
13 These are containers for combinations locks. These are  
14 plastic covers that were cut and have been on combination  
15 locks and chains --

16 THE COURT: (Interposing) When you found them, were  
17 they removed from the chains?

18 THE WITNESS: Yes, sir.

19 Some trash, a container for a Bic pen, and more  
20 items for chains, more combinations locks and containers,  
21 bubble gum, candy, a wrapper for the thermos, a carton of  
22 Winston cigarettes, more combination locks, a heart with the  
23 name "Bonnie" on it, a broken piece of a key ring from

1 Montgomery Wards and an air tire or air gauge for a tire and  
2 also a little blue object.

3 BY MR. MELSON:

4 Q Would you replace those in the box, please?

5 (Witness returns items into box.)

6 MR. KENDRICK: Is that going to be one exhibit?

7 MR. MELSON: Yes, Your Honor. That's all one  
8 exhibit, I believe.

9 MR. KENDRICK: Your Honor, do you have a 77?

10 MR. MELSON: This is 77.

11 MR. KENDRICK: Oh.

12 THE COURT: For the record, 71, 72, 73, 75, 76 and  
13 77 and 78 are admitted.

14 (The items previously marked  
15 for identification as  
16 Commonwealth's Exhibit No.'s  
17 71 through 78 were received in  
18 evidence.)

19 MR. RECINTO: What is 78, Your Honor?

20 THE COURT: What is 78? It is chains and locks.

21 BY MR. MELSON:

22 Q Did you find anything else in the car?

23 A Yes, under the front seat of the car was a necklace,

1 a bead type necklace.

2 Q All right.

3 Let me show you Commonwealth's Exhibit No. 80 and  
4 ask you whether you can identify that?

5 (Handing to the witness.)

6 A Yes, these are the beads.

7 THE COURT: Where was that found?

8 THE WITNESS: Underneath the front seat.

9 BY MR. MELSON:

10 Q Did you find other things under the front seat also  
11 or in the front area of the car?

12 A Yes, a pair of curtains.

13 Q Let me show you Commonwealth's Exhibit No. 81 and  
14 ask you whether you can identify this object?

15 (Handing to the witness.)

16 A Yes, sir, these are the curtains that were taken  
17 from the car. It is a pair of curtains.

18 MR. KENDRICK: Mr. Melson, can I see that one?

19 (Handing to counsel.)

20 BY MR. MELSON:

21 Q Did you also find any lighting device in the  
22 automobile?

23 A I'm sorry? Did I find what?

1 Q A flashlight or anything like that?

2 THE COURT: Excuse me. Mr. Kendrick, do you have  
3 any objection to any of that?

4 MR. KENDRICK: No, Your Honor.

5 THE COURT: No. 80, the bead necklace and 81, the  
6 pair of curtains, are received and admitted into evidence.

7 (The items previously marked  
8 for identification as  
9 Commonwealth's Exhibit No.'s  
10 80 and 81 were received in  
11 evidence.)

12 BY MR. MELSON:

13 Q Did you find anything else in the automobile?

14 A Yes, I believe there was a flashlight in there also.

15 Q Let me show you Commonwealth's Exhibit 82 and ask  
16 you whether this is a package for the object you are talking  
17 about?

18 (Handing to the witness.)

19 A Yes, this is the package for a light.

20 Q Did there come a time that you opened up the hood of  
21 the automobile?

22 A Yes, there was.

23 Q Did you notice anything under the hood that



1 attracted your attention?

2 A Yes, sir.

3 Q Let me show you what's Commonwealth's Exhibit No. 79  
4 for identification and ask if you can identify what that  
5 photograph is a picture of?

6 (Handing to the witness.)

7 A The photograph taken is of an alternator which  
8 appears to be fairly new.

9 Q Is there a fair and accurate representation of the  
10 scene which it depicts?

11 A Yes, it is.

12 MR. MELSON: Move that into evidence, Your Honor.

13 THE COURT: Any objection?

14 MR. KENDRICK: No objection.

15 THE COURT: 79 is admitted.

16 (The item previously marked  
17 for identification as  
18 Commonwealth's Exhibit No. 79  
19 was received in evidence.)

20 BY MR. MELSON:

21 Q Mr. Tyler, what did you do with these items after  
22 they were seized and secured? Did you place them any place  
23 for safe keeping?

1           A     Yes, I did. After they had been removed from the  
2 vehicle and marked and placed in the envelopes, they were  
3 taken back to the police department and they were placed in  
4 the Room 33, which is a locked secure area of the police  
5 department and they were left as evidence.

6           MR. MELSON: All right. Thank you. I have no other  
7 questions.

8           MR. KENDRICK: May I have the Court's indulgence?

9           THE COURT: Yes, sir.

10          No. 82, a flashlight and battery box, is admitted.

11                               (The items previously marked  
12                               for identification as  
13                               Commonwealth's Exhibit No. 82  
14                               was received in evidence.)

15          MR. KENDRICK: Mr. Melson, Commonwealth's Exhibit  
16 No. 41 began the items that were taken from the automobile?

17          MR. MELSON: 41 is a photo from the interior of the  
18 car. From that point on exhibits were removed from your  
19 client's car.

20                               CROSS-EXAMINATION

21          BY MR. KENDRICK:

22          Q     Officer Tyler, how many of these items you processed  
23 in any form at the scene? By "processed," I mean attention to

1 lift latents.

2 A None of them.

3 Q None of them.

4 At what point did that process begin, if it did  
5 begin?

6 A When did it begin?

7 Q Did it begin?

8 A Yes, there was a time that there was some  
9 processing done.

10 Q All right. When was that?

11 A It was quite some time later.

12 Q How much "quite some time later"?

13 A Let's see, the lunch pail --

14 Q (Interposing) I know about the lunch pail. We will  
15 get to that in a minute.

16 A You are talking about the vehicle itself?

17 Q I am talking about the items we have just been  
18 sitting here for two hours watching the Commonwealth mark that  
19 you said you got out of the car.

20 A Yes, sir?

21 Q At some point you brought those to the police  
22 station?

23 A Yes, sir.

1 Q At some point fingerprints, fibers, hairs and all  
2 that started; is that correct?

3 A No, that was up to Detective Gabrielson.

4 Q And you had nothing to do with it?

5 A Not at that time, no.

6 Q Did you have anything to do with it at any time?

7 A With several items, yes.

8 Q What items did you have anything to do with?

9 A The lunch pail and the interior of the vehicle.

10 Q All right. The interior of the vehicle, when was  
11 that done?

12 A About a week ago.

13 Q About a week ago?

14 A Yes, sir.

15 Q Where was that done?

16 A At the property yard.

17 Q Tell me exactly what was done -- this was a week  
18 ago?

19 A Yes, sir.

20 Q All right.

21 Tell me what was done.

22 A The interior of the vehicle was dusted.

23 Q The entire interior?

1 A Yes, sir.

2 Q All right.

3 Tell me what you mean by "entire interior"?

4 A The door latches, the windows, door jambs, any  
5 smooth surface within the vehicle, and the rearview mirror.

6 Q Including the plastic vinyl seats and doors?

7 A No, those were not conducive to dusting.

8 Q How about the back of the seat?

9 A No, same problem.

10 Q But the fixtures were?

11 A Yes.

12 Q Ash trays?

13 A Yes.

14 Q Windows?

15 A Yes.

16 Q Inside and out?

17 A No, just inside.

18 Q Just inside?

19 A Yes, sir.

20 Q Why not outside?

21 A Weather conditions.

22 Q Had it been kept outside?

23 A Yes, sir.

1 Q All right.

2 How about the visors?

3 A The visors?

4 Q Yes, sir?

5 A No, that's the same problem with dusting.

6 Q How about the rearview mirror?

7 A Yes, sir.

8 Q Any side mirror? Is there one on the left?

9 A The side mirrors on the outside, no.

10 Q You didn't dust that for the same reason?

11 A Yes.

12 Q Did you find any latents?

13 A I found a few, yes. They were turned in.

14 Q How many is a few?

15 A I think I turned in two or three cards.

16 Q And you turned that into whom?

17 A The I.D. Section.

18 Q Who?

19 A Who?

20 Q Yes.

21 A I signed it in, the latent cards.

22 Q Is somebody from that section going to come here and  
23 tell us what those prints were?

1 A Yes, sir.

2 Q You don't know what the results were?

3 A No, sir.

4 Q Now, you mentioned one other item, did you not, the  
5 lunch pail?

6 A Yes, sir.

7 Q That was found in the back seat or the back  
8 floorboard?

9 A It was on top of -- well, you can see it sitting in  
10 the floorboard area on top of items.

11 Q This pail (indicating)?

12 A Yes.

13 Q This was not processed at the scene or was it?

14 A It was not processed at the scene.

15 Q As a matter of fact, this wasn't processed until a  
16 week or so itself, was it?

17 A About two weeks ago it was.

18 Q Do you know who requested that to be done?

19 A You did.

20 Q Who did?

21 A You did.

22 Q All right.

23 Did you get any latents off of that?

1 A I got a couple of them.

2 Q Do you know the results of those?

3 A No, sir, I don't.

4 Q Will they be coming with some other information?

5 A Yes, sir, I would imagine so.

6 Q All of these items that have been marked as  
7 Plaintiff's Exhibits from 41 or 42 through 83, were they  
8 processed by someone?

9 A I don't know.

10 Q How would I find out?

11 A Detective Gabrielson.

12 Q Detective Gabrielson will tell me?

13 A Yes, sir.

14 Q I'll have to go through every one of those items  
15 with him?

16 A Yes, sir, I guess so.

17 MR. KENDRICK: That's all I have of this witness,  
18 Your Honor. I ask that he be subject to recall.

19 THE COURT: Any redirect at this time?

20 MR. MELSON: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. MELSON:

23 Q Let me show you Commonwealth's Exhibit No. 29 and



PRINTERS NOTE:

This page intentionally left blank.

1 ask you to look through -- refresh the jury's recollection as  
2 to what these are.

3 (Handing to the witness.)

4 MR. KENDRICK: Your Honor, I'm not sure they need  
5 any refreshing.

6 MR. MELSON: Well, I think they ought to know what  
7 we are talking about.

8 THE COURT: It is germane to cross-examine.

9 THE WITNESS: These particular cards are latent  
10 cards and these are the cards that I turned into the  
11 Identification Section and they show that they come from the  
12 vehicle which was searched.

13 BY MR. MELSON:

14 Q Okay.

15 Now, is there any writing on the back in red ink?

16 A Yes.

17 Q What does the writing say?

18 A "No value on all of the cards."

19 Q Okay.

20 Now, did you find any latent fingerprint cards in  
21 there from the pail -- lunch pail?

22 A Yes.

23 THE COURT: Are these already in evidence?

\* \* \*

1 A Only the clothes on our backs.

2 Q When did you arrive in Arlington County?

3 A On September 3rd, 1980.

4 Q Did anybody help you get an apartment and  
5 furnishings for your apartment?

6 A Yes, the church and Cubans who had been established  
7 here for some time helped me by providing me with furniture  
8 and clothing.

9 Q What day did you say you arrived in Arlington?

10 A On September 3rd.

11 Q When did you start working?

12 A About the 15th or 20th of October.

13 Q Where did you work?

14 A In Montgomery Wards.

15 Q Did your mother work?

16 A No, she did not.

17 Q Why didn't your mother work?

18 A Well, she was very old and the Government was  
19 providing her with some assistance.

20 Q Where were you living?

21 A At 748 South Florida Street.

22 Q Do you remember the apartment number?

23 A Number Two.

1 Q Who were you living with?

2 A My mother.

3 Q What was her name?

4 A Ophelia Quintero.

5 Q How old was she in March of 1981?

6 A Seventy-two years old.

7 Q Let me show you an identification card and ask you  
8 whether that is your mother's?

9 A Yes, I do.

10 Q Did you go to work on March 19th?

11 A Yes, I did.

12 Q Was that in Montgomery Wards?

13 A Yes.

14 Q Approximately what time did you leave for  
15 Montgomery Wards?

16 A At 6:30 a.m.

17 Q How did you get to Montgomery Wards?

18 A Well, I usually took my bicycle.

19 Q Did you take your bicycle on that date?

20 A Yes, I did.

21 Q Who was left in your apartment when you went to work  
22 on the morning of March 19th?

23 A My mother.

1 Q How do you recall that she was there?

2 A Well, because she prepares my lunch and she always  
3 accompanied me to the door and she kissed me good-bye.

4 Q Can you describe for us the condition of the  
5 apartment when you left?

6 A Well, everything was in order. Everything was  
7 clean. My mother was a very clean person and very careful.

8 Q What time did you return home that day?

9 A Well, I usually arrive around 4:20 p.m. On that day  
10 I also arrived about that time, 4:20 or 4:30.

11 Q Who was there when you arrived home?

12 A Well, when I arrived, I found the police -- the  
13 detective and the neighbors there all gathered waiting for me.

14 Q Did you have occasion at that time or later on to go  
15 into the apartment to determine whether anything was missing?

16 A Well, at first I did not. But about 9:00 p.m. after  
17 they had taken my mother's body away, I was able to go in with  
18 the police, of course.

19 Q Let me show you Commonwealth's Exhibit No. 16 and  
20 ask you if you recognize what that is a photo of?

21 (Handing to the witness.)

22 A This is the room of my house.

23 Q Was that the way your bedroom was when you left?

1 A No, it was not.

2 Q Can you tell us what is on the bed in that  
3 photograph, No. 16?

4 A Well, approximately one month before the 19th of  
5 March.

6 Q Why did you buy the suitcases?

7 A Well we had planned to take a trip on Mother's Day  
8 to Miami to see my mother's sister.

9 MR. MELSON: Your Honor, I'm not hearing that in my  
10 earphones.

11 THE WITNESS: I will repeat. The witness said,  
12 "They had planned to take a trip to Miami to see his mother's  
13 sister."

14 BY MR. MELSON:

15 Q Where were those suitcases kept in your apartment?

16 A We kept them on a shelf above the closet.

17 Q Did you say in the closet?

18 A On the upper part of the closet in a shelf on the  
19 upper part of the closet.

20 THE INTERPRETER: Do you wish to repeat the question?

21 MR. MELSON: Yes.

22 BY MR. MELSON:

23 Q Were the suitcases in the closet?

1           A     Yes, they were.

2           Q     Let me show you Commonwealth's Exhibit No. 17 -- I  
3 will show it to the jury first so they know which photograph  
4 we are talking about.

5                     (Displaying to the jury.)

6           MR. KENDRICK: I would like to see it too.

7                     (Showing to counsel.)

8                     (Handing to the witness.)

9           BY MR. MELSON:

10          Q     What is in the center of that photograph?

11          A     There is a small case in which my mother kept her  
12 jewelry.

13          Q     Where was that jewelry box normally kept?

14          A     On the dresser.

15          Q     Let me show you a photograph which is numbered 18.  
16 Is that the dresser on which --

17          A     (Interposing) Yes, it is.

18          Q     Can you show the jury where on the dresser it was  
19 kept?

20          A     Just under the mirror (indicating).

21          Q     Was anything -- when you looked at the jewelry box,  
22 was anything missing from it?

23          A     Yes, some of the jewelry and rings were missing.

1 Q Where did you and your mother get the jewelry that  
2 was in the box?

3 A These were presents from friends of ours who lived  
4 around here and from friends of ours in Miami. The watch was  
5 a gift from me to my mother.

6 Q Okay.

7 Let me show you Commonwealth's Exhibit No. 46 and  
8 ask you if you can recognize that piece of jewelry?

9 (Handing to the witness.)

10 A Yes, I do.

11 Q Whose piece of jewelry was that?

12 A It was my mother's.

13 Q Now, let me show you Commonwealth's Exhibit No. 83  
14 and ask you to tell us what that is a photo of?

15 (Handing to the witness.)

16 A A photograph of my mother.

17 Q All right.

18 And does she have any jewelry on?

19 A Yes, she has a necklace on. (indicating).

20 MR. MELSON: Could I have the photograph moved into  
21 evidence, No. 83?

22 THE COURT: Any objection?

23 MR. KENDRICK: Your Honor, could I see it again,



1 please?

2 (Handing to counsel.)

3 THE WITNESS: I do not recall the day, because I --  
4 I do not recall the date, because -- I do not recall the date,  
5 because we were in the house and at certain times I would say  
6 to her, "Why don't you wear the dress and necklace, so I can  
7 take a picture of you," and I did so at different times.

8 MR. MELSON: Your Honor, again, I would move to  
9 admit that photograph.

10 THE COURT: Is there an objection, Mr. Kendrick?

11 MR. KENDRICK: I still don't know who took the  
12 picture.

13 THE COURT: Well, did you take that picture?

14 THE WITNESS: Yes, I did take the picture.

15 THE COURT: All right, he answered it. He did take  
16 the picture and the exhibit will be admitted.

17 MR. KENDRICK: No objection.

18 THE COURT: No. 83 is in evidence.

19 (The photograph previously  
20 marked for identification as  
21 Commonwealth's Exhibit No. 83  
22 was received in evidence.)

23 MR. MELSON: Exhibit it to the jury, please.

1 (Displaying to the jury.)

2 BY MR. MELSON:

3 Q Let me show you then Commonwealth's Exhibit No. 47  
4 and ask you whether you can identify that?

5 (Handing to the witness.)

6 A This is a pin that belonged to my mother.

7 Q Let me show you Commonwealth's Exhibit No. 48 and  
8 ask if you can identify that?

9 (Showing to the jury.)

10 (Handing to the witness.)

11 A These are a pair of earrings belonging to my mother.

12 Q See if you can identify Commonwealth's Exhibit No.  
13 49?

14 (Displaying to the jury.)

15 (Handing to the witness.)

16 A Yes, I can.

17 Q What is that?

18 A It is the figure of a fish that is -- was used by my  
19 mother as a pin.

20 Q Let me show you then Commonwealth's Exhibit No. 50  
21 and ask whether you can identify that?

22 (Displaying to the jury.)

23 (Handing to the witness.)

1           A     These are the earrings also belonging to mother.

2           Q     Let me show you Commonwealth's Exhibit No. 51. Can  
3 you identify those?

4                     (Displaying to the jury.)

5                     (Handing to the witness.)

6           A     Yes, these are rings also belonging to my mother.

7           Q     Let me show you Commonwealth's Exhibit No. 52. Can  
8 you identify the contents of that exhibit?

9                     (Displaying to the jury.)

10                    (Handing to the witness.)

11          A     Yes, items belonging to my mother.

12          Q     How about Exhibit No. 53?

13                    (Displaying to the jury.)

14                    (Handing to the witness.)

15          A     This is the necklace that is part of a set with  
16 earrings also belonging to my mother.

17          Q     Let me show you then what's Commonwealth's Exhibit  
18 No. 54. Can you identify that?

19                    (Displaying to the jury.)

20                    (Handing to the witness.)

21          A     Yes, this is a small medallion.

22          Q     And to whom did that medallion belong?

23          A     It belonged to my mother. Well, it was given to us

1 as a gift from the church and was there inside the case.

2 Q Let me show you Exhibit No. 50 --

3 MR. KENDRICK: (Interposing) When he says "case,"  
4 is he referring to the jewelry box?

5 BY MR. MELSON:

6 Q What are you referring to when you refer to the  
7 "case"?

8 A The jewelry case, where the jewelry was kept.

9 Q Let me show you Exhibit No. 55.

10 (Displaying to the jury.)

11 (Handing to the witness.)

12 A This was a ring that belonged to me.

13 Q Where did you get that ring from?

14 A It was given to me by a cousin of mine in Miami.

15 Q Let me show you Exhibit No. 56.

16 (Displaying to the jury.)

17 (Handing to the witness.)

18 A This is a graduation ring that was also given to me  
19 by my cousin in Miami.

20 Q Let me show you then Commonwealth's Exhibit No. 57.

21 (Displaying to the jury.)

22 (Handing to the witness.)

23 A This is a ring that also belonged to my mother.

1 Q And finally, let me show you Exhibit No. 58.

2 (Displaying to the jury.)

3 (Handing to the witness.)

4 A This is the watch that I gave to my mother for  
5 Christmas.

6 Q Let me show you a photograph that is marked as  
7 Commonwealth's Exhibit No. 84.

8 (Displaying to the jury.)

9 (Handing to the witness.)

10 A This is my mother.

11 Q Is she wearing anything on her wrist?

12 A Yes, the watch that I had given to her.

13 Q Who took that photograph?

14 A I did.

15 Q Was it a Polaroid photograph?

16 A Yes, it was.

17 Q Was all the property that you looked at, the  
18 jewelry, in the jewelry box?

19 A Yes, it was.

20 Q Did your mother have a purse?

21 A She had several, white, brown, black.

22 Q Let me show you Commonwealth's Exhibit No. 17.

23 (Displaying to the jury.)

1 (Handing to the witness.)

2 A This is the white one that I had given to her for  
3 her trip to Miami.

4 Q Did it have anything in it?

5 A A pair of white gloves also.

6 Q Let me show you Commonwealth's Exhibit No. 60. Do  
7 those look like the white gloves that were in the purse?

8 (Displaying to the jury.)

9 (Handing to the witness.)

10 A Yes, they are.

11 Q How do you know those gloves were in the purse?

12 MR. KENDRICK: Your Honor, I'm not sure when he's  
13 referring to. Could I see some clarification on that,  
14 please?

15 THE COURT: That is well taken.

16 BY MR. MELSON:

17 Q Were the gloves in the purse on the morning of the  
18 19th?

19 A Yes, they were. Yes.

20 Q How do you know the gloves were in the purse?

21 A Well, because on the 18th was when I purchased the  
22 purse for her and then I put the gloves inside to prevent them  
23 from getting soiled and I put the purse then inside a plastic

1 bag and one of those Montgomery Wards bags.

2 Q I'm sorry. I did not hear the date that you said  
3 you purchased the purse?

4 A The 18th of March.

5 Q Did you say the purse was for your mother to go to  
6 Miami with?

7 A Yes.

8 Q How long had you been saving to go to Miami?

9 A Well, ever since I began working. Everything that  
10 I earned and that I could save I saved up for the trip.

11 Q Let me show you photograph No. 19 and ask you what  
12 that is a photograph of?

13 A This is the chest of drawers in the bedroom and the  
14 clothes that were inside the drawers were scattered -- are  
15 scattered on the floor.

16 (Displaying to the jury.)

17 Q Is that the same dresser that had the jewelry box on  
18 it?

19 A Yes, it is.

20 Q What are the other items that are remaining on top  
21 of the dresser?

22 A Well, I see the perfume bottle, the talcum powder  
23 and there is one perfume bottle missing that belongs to my

1 mother.

2 Q What type of perfume was that?

3 A It was a small -- small flask with a long stopper  
4 with a brand name "Me."

5 Q Let me show you Commonwealth's Exhibit No. 59 and  
6 ask you whether that resembles the perfume your mother had?

7 (Displaying to the jury.)

8 (Handing to the witness.)

9 A Yes, this is the same.

10 Q Now, if you would look at Photograph No. 19, again,  
11 you mentioned earlier the clothing on the floor?

12 (Displaying to the jury.)

13 (Handing to the witness.)

14 A Yes.

15 Q Was the clothing on the floor when you left in the  
16 morning?

17 A No, it wasn't. Everything was inside the drawers.

18 Q Let me show you Exhibit No. 20. Was that top  
19 drawer like that when you left in the morning?

20 (Displaying to the jury.)

21 (Handing to the witness.)

22 A No.

23 Q What was in the top drawer?



1           A     Blouses belonging to my mother and other items of  
2 clothing belonging to her.

3           Q     Let me show you Exhibit No. 21. Was the second  
4 drawer in that condition when you left for the morning?

5                     (Handing to the witness.)

6           A     No, it was not.

7           Q     Was that particular container in the drawer?

8           A     This was a box -- empty box of talcum powder.

9           Q     Was that like that when you left?

10          A     I'm not sure if it was there, but it was all in an  
11 orderly fashion, whereas, in the photograph everything is all  
12 messed up.

13          Q     Did you keep anything else in the drawer of  
14 importance?

15          A     Yes, in the bottom of the drawer I kept my billfold  
16 with my money around here (indicating).

17          Q     I'm sorry? Where?

18          A     Around this part of the drawer (indicating).

19          Q     Let me show you Commonwealth's Exhibit No. 27 --  
20 MR. MELSON: That should be the wallet, Rachel, the  
21 photo.

22                     BY MR. MELSON:

23          Q     (Continuing) -- Is that where you kept your wallet?

1 (Handing to the witness.)

2 A No, I never kept it there.

3 Q Would you exhibit the photograph to the jury so they  
4 will know which one we are talking about?

5 (Displaying to the jury.)

6 Where did you keep your wallet -- let me rephrase  
7 that before you answer. Where was your wallet in the morning  
8 when you left?

9 A Here in the drawer (indicating), in this position  
10 in this place where I'm indicating now.

11 Q Now, let me show you Exhibit 28.

12 (Displaying to the jury.)

13 (Handing to the witness.)

14 A Yes, this is my billfold.

15 Q Now, what did you keep in your billfold?

16 A I had my money, my identification card given to me  
17 at the Refugee Center, a kind of document, my Social Security  
18 Card and some Montgomery Ward cards for discounts to  
19 employees.

20 Q How much money did you have in your wallet when you  
21 left on the morning of the 19th?

22 A Well, there was about \$1,000.00 there.

23 Q How do you know how much money you had?

1           A     Well, because on the 18th it so happened that I  
2     received my salary. We were paid every Wednesday and then I  
3     put the money away. Every time I was paid \$180.00 for  
4     whatever. Therefore, I had set aside the airfare which were  
5     \$480.00 in total, and then I had \$480.00 set aside in the  
6     billfold and then in another part of the billfold I had about  
7     \$500.00. So, on that same day I added another \$100.00, so I  
8     had \$600.00 plus \$480.00. So, I had \$1,080.00 in there. I  
9     knew that because the previous night I had put the money in  
10    there and I had also counted the money each time I did so.

11           Q     In what denominations did you have the money in?

12           A     Most of them were twenty dollar bills. There were a  
13    few ten dollar bills and there were a few -- four or five one  
14    dollar bills.

15           Q     Did you have a form in your wallet from the  
16    Immigration and Naturalization Service?

17           A     Yes, I did. Yes.

18           Q     Let me show you Commonwealth's Exhibit No. 73.

19                   (Handing to the witness.)

20           A     Yes, this is my form I-94.

21           Q     Does it have your name on it?

22           A     Yes, it does.

23           Q     Was it in that condition when you left that in your

1 wallet last?

2 A No, it was intact and now it is all torn up. This  
3 was a document I did not wish to have damaged in any way.

4 Q Let me show you the photograph marked Commonwealth's  
5 Exhibit No. --

6 MR. MELSON: The one of the closet, not that one.  
7 The next one, 23. Yes, 23.

8 BY MR. MELSON:

9 Q All right.

10 Do you recognize the closet in that photograph?

11 A Yes, it is my closet.

12 Q What was kept in the closet?

13 A My clothes and that's here (indicating) on top of  
14 this shelf I kept the two suitcases and wallet.

15 Q Where did she keep the purse -- the white purse?

16 A Up here (indicating) on the side of the suitcases.  
17 Not in the suitcases, but on top.

18 Q In the closet?

19 A Yes, in the closet.

20 Q Let me show you Commonwealth's Exhibit No. 68 and  
21 ask you if you recognize what that is?

22 (Displaying to the jury.)

23 (Handing to the witness.)

1           A     Yes, it is like a small belt that you wear on  
2 dresses and this belongs to my mother.

3           Q     Let me then show you Commonwealth's Exhibit No. 85  
4 and ask you if you recognize this exhibit?

5                     (Displaying to the jury.)

6                     (Handing to the witness.)

7           A     This is a blouse that belongs to my mother.

8           Q     Did the object that you have in your right hand,  
9 Exhibit 85, was that still in the apartment?

10          A     Yes. Yes, this was there.

11          Q     Just the belt was taken?

12          A     Yes, that is correct.

13          Q     Let me show you Exhibit No. 70.

14                     MS. MOSBO: 68.

15                     MR. MELSON: Yes.

16                     BY MR. MELSON:

17          Q     I'm sorry, 68.

18                     (Displaying to the jury.)

19                     (Handing to the witness.)

20          A     Yes, this is another belt belonging to one of my  
21 mother's dresses.

22          Q     Let me then show you Commonwealth's Exhibit No. 86.

23                     (Displaying to the jury.)

1 (Showing to defense counsel.)

2 (Handing to the witness.)

3 A Yes, this is a dress that matches the belt.

4 Q Was just the belt taken?

5 A Yes, only the belt.

6 THE COURT: Mr. Melson, those two dresses are not  
7 in evidence.

8 MR. MELSON: May I move them in at this time?

9 THE COURT: Is there objection?

10 MR. KENDRICK: Your Honor, I don't think they've  
11 been established -- or it's been established that they've  
12 been taken.

13 THE COURT: No, he says the dresses were not taken,  
14 only the belts, but they were shown to the jury and they  
15 haven't been introduced into evidence.

16 MR. KENDRICK: I object on the ground of relevancy  
17 then.

18 THE COURT: He has testified that the belt goes to  
19 them and that the dresses remained behind in the apartment.  
20 They will be admitted. May I have the two dresses to mark  
21 them?

22 (Handing to the Court.)

23 THE COURT: 85 and 86 are admitted. I do not have

1 an 84.

2 MR. MELSON: That's probably the photograph.

3 MS. MOSBO: Yes, it is.

4 MR. MELSON: Mr. Echemendia, do you need some water?

5 THE WITNESS: No, thank you.

6 MR. MELSON: Do you have Exhibit 44, Rachel, the  
7 blue pants and belt?

8 MS. MOSBO: Yes.

9 BY MR. MELSON:

10 Q Let me show you Exhibit 44, did you have a pair of  
11 pants and a belt similar to that?

12 (Showing to the jury.)

13 (Showing to counsel.)

14 (Handing to the witness.)

15 A Yes, I did.

16 Q Now, on March 19th, 1981, did you also have a --

17 MR. KENDRICK: (Interposing) Did he say he had a  
18 pair that was similar to this?

19 THE COURT: That's what he said.

20 MR. KENDRICK: Have these been offered into evidence  
21 yet? Did he ask if they're his pants?

22 THE COURT: The objection is overruled, but you may  
23 cross-examine.

1 BY MR. MELSON:

2 Q Are those your pants?

3 A Yes, they are.

4 Q Now, did you also have a hat on March 19th?

5 A Yes, I did.

6 Q Let me show you Item No. 42. Do you recognize that?

7 (Handing to the witness.)

8 A Yes, I do. It is mine.

9 Q How do you know it is yours?

10 A Well, I know. I notice button and the lining -- the  
11 lining was unsewn.

12 Q Okay.

13 When you had the hat, did it have anything else on  
14 the outside?

15 THE COURT: Repeat the question.

16 BY MR. MELSON:

17 Q Did it have anything on the outside of it?

18 A Yes, right here (indicating) there was a feather.

19 Q Let me show you Commonwealth's Exhibit No. 38 --

20 MR. KENDRICK: (Interposing) Your Honor, while  
21 there is a break in the questioning I appreciate the problem  
22 that Mr. Melson and Mr. Echemendia have, but if we could  
23 refrain from leading the witness so much, I would appreciate



1 it.

2 BY MR. MELSON:

3 Q Do you recognize Exhibit No. 38?

4 (Handing to the witness.)

5 A Yes, I do recognize the feather, which was the one  
6 that was on the hat.

7 Q Let me show you Commonwealth's Exhibit No. 22. Can  
8 you tell us what is hanging from the back of the door?

9 (Handing to the witness.)

10 A This is the Polaroid camera case that belongs to me.

11 Q Was it hanging there when you left? Where was it  
12 when you left on the morning of the 19th?

13 A The camera was there inside its case right in that  
14 same position.

15 Q Let me show you the camera -- a camera and ask you  
16 whose camera that is?

17 MS. MOSBO: 24.

18 MR. MELSON: Exhibit 24? I'm sorry. I don't think  
19 we got that answer.

20 THE INTERPRETER: Could you repeat your question,  
21 please?

22 BY MR. MELSON:

23 Q Yes, what camera is that?

1 A It is my Polaroid camera.

2 Q Prior to March 19th, when was the last time you  
3 used that camera?

4 A March the 1st.

5 Q Why do you remember using the camera on March the  
6 1st?

7 A Because I had a party at my home and I took an  
8 entire film of pictures and when I finished taking the  
9 pictures I put it away and didn't use it anymore.

10 Q What was the party for?

11 A Because a friend of some Cuban friends had a  
12 birthday on February 28th and since they had been so nice to  
13 me I wanted to offer a party for her -- to this lady.

14 Q Did anybody else handle the camera on that day?

15 A I took some pictures, and they had some spots on them  
16 and then somebody was there and she said that those are spots  
17 on the pictures and took the camera from my hands to see if  
18 anything was wrong and he thought it was -- I was using an old  
19 film.

20 MR. KENDRICK: Objection, Your Honor. That's  
21 hearsay.

22 MR. MELSON: It is only to indicate what's  
23 happening and it is not offered for the fact that there was

1 anything wrong with the camera. .

2 MR. KENDRICK: It is being offered for the truth  
3 and I object to it on the grounds of hearsay. I ask that it  
4 all be stricken.

5 MR. MELSON: Whether the camera was malfunctioning  
6 or not is irrelevant. It is not offered for the truth, but  
7 it is offered for why the other person handled the camera.

8 THE COURT: The objection is overruled.

9 BY MR. MELSON:

10 Q Do you know Quintana?

11 A Yes, I do.

12 Q Is he in the courtroom today?

13 A Yes, he is.

14 Q Can you point him out to us?

15 A (Indicating.) He is there.

16 Q Which one is he?

17 A The person sitting in the middle with the blue shirt  
18 on.

19 MR. MELSON: Your Honor, if the record could reflect  
20 he has identified the defendant?

21 THE COURT: Yes, it will..

22 BY MR. MELSON:

23 Q Was Quintana at the party you gave for your friends

1 on March 1st?

2 A No, he wasn't.

3 Q To your knowledge, has Mr. Quintana ever handled  
4 your camera prior to March 19th?

5 A No.

6 Q Can you tell us whether or not your mother would  
7 ever let people use things without your knowledge?

8 MR. KENDRICK: Objection, Your Honor.

9 THE COURT: Objection sustained.

10 BY MR. MELSON:

11 Q Has your mother ever told you --

12 MR. KENDRICK: (Interposing) Objection.

13 THE COURT: That would not be admitted for the  
14 truth, but the fact of the utterance just to show the state of  
15 knowledge on his part.

16 BY MR. MELSON:

17 Q Has your mother ever told you that she let Quintana  
18 use your camera?

19 A No.

20 Q Did your apartment have a phone?

21 A Yes, it did.

22 Q Let me show you the photograph of your mother in it  
23 on the phone. Is that the phone?

1 (Handing to the witness.)

2 A Yes, it is.

3 Q On the morning of the 19th, did your phone have a  
4 cord between the receiver and the body of the phone?

5 A Yes, it did.

6 Q Did you give anyone permission to take the property  
7 out of your apartment?

8 A No.

9 Q Let me show you Commonwealth's Exhibit No. 2. Do  
10 you recognize what that is a photograph of?

11 (Handing to the witness.)

12 A Yes, this is the dining room in my home.

13 Q Is there something on the table which contains a  
14 liquid?

15 A Yes, there is a water jug.

16 Q What is that water jug used for?

17 A Well, just to drink water during lunch, dinner or  
18 whenever one has thirst.

19 Q Where is that water jug usually kept?

20 A In the refrigerator..

21 Q Was the water jug on the table when you left in the  
22 morning?

23 A No.

1 Q How often was the water jug used?

2 A Well, during dinner time if somebody came and  
3 wanted water, we just poured some water out of it.

4 Q Was it used every day?

5 MR. KENDRICK: Objection, Your Honor.

6 THE WITNESS: Yes, it is.

7 THE COURT: The objection is overruled.

8 BY MR. MELSON:

9 Q How often did your mother wash dishes?

10 MR. KENDRICK: Objection, Your Honor.

11 THE COURT: What's the nature of the objection?

12 MR. KENDRICK: Well, I'm not sure he can tell. If  
13 he works every day, how can he possibly tell?

14 THE COURT: Well, it could only be within his  
15 observations. Why don't you amend your question and ask him  
16 how often he has observed his mother washing dishes?

17 THE WITNESS: Well, right after dinner she washed  
18 the dishes.

19 BY MR. MELSON:

20 Q Can you tell us whether your mother would serve  
21 anything other than water to visitors?

22 A Yes, sometimes we offered coffee, especially if the  
23 visitors were Cuban, because that is the custom. She served

1 coffee.

2 Q Let me show you Commonwealth's Exhibit No. 11 and  
3 can you recognize what is in that photo?

4 (Displaying to the jury.)

5 (Showing to counsel.)

6 (Handing to the witness.)

7 A Yes, this is the kitchen in my apartment. This is  
8 the kitchen of my apartment.

9 Q Do you see anything in there that would indicate  
10 that the coffee was being made?

11 A Yes, an espresso coffee maker -- Italian espresso  
12 coffee maker.

13 Q Is it on the stove?

14 A Yes, it is.

15 Q Let me show you Commonwealth's Exhibit No. 12 and  
16 ask you if you recognize what that is a photo of?

17 (Handing to the witness.)

18 A Yes, this is a coffee cup.

19 Q And did you use those coffee cups all the time for  
20 coffee?

21 A No, we do not. My mother and I use larger cups, but  
22 we did give our visitors in the small cups.

23 Q Is the smaller cup the type that is on the counter?

1 A Yes, that is correct.

2 Q Do you see a chair in that photograph?

3 A Yes, I do.

4 Q Where was that chair normally kept?

5 A Well, this chair was always placed in the corner of  
6 the dining room. There were two. One was placed at either  
7 end, but never inside the kitchen -- never inside the  
8 kitchen.

9 Q Did you do anything to the cupboards to help your  
10 mother?

11 A No, I did not.

12 Q Would your mother need to use a chair to get  
13 anything from the cupboards?

14 MR. KENDRICK: Your Honor, that calls for  
15 speculation on his part and again, I don't want to be  
16 interrupting counsel, but he is leading the witness and it  
17 seems to me he is going a little too far.

18 MR. MELSON: Well, Your Honor, it is not  
19 speculation. There is an answer for it. I'm not sure he  
20 understands the question and that is what we are trying to get  
21 at.

22 THE COURT: The objection is overruled.  
23



1 BY MR. MELSON:

2 Q Would your mother need to use a chair to get to the  
3 items in the cupboard?

4 A No, she did not.

5 Q Why not?

6 A Well, because she was able to reach them. The  
7 smaller cups and glasses and everything was there within  
8 reach so that she did not have to climb up on top of a chair.  
9 She never did that.

10 Q Did you know Manuel Quintana prior to March 19th?

11 A Yes, I did.

12 Q Did your mother know him?

13 A Yes, she did.

14 Q Had he been over to your apartment prior to  
15 March 19th?

16 A Yes, he had.

17 Q Prior to March 19th, when was the last time he was  
18 in your apartment to your knowledge?

19 A Well, I believe it was about the 3rd of February. I  
20 did not see him, but I know that he was there because when I  
21 came back from work my mother told me that he had been there.

22 Q Did you own a hammer?

23 A Yes, I did.

1 Q Did you own it on March 19th?

2 A Yes, I did.

3 Q Where did you keep your hammer?

4 A Well, it was usually kept in this drawer that was  
5 halfway open that we see here (indicating). It was always  
6 kept there.

7 MS. MOSEBO: 32.

8 MR. KENDRICK: What was the exhibit number he  
9 referred to? Just tell me the number.

10 MS. MOSBO: 12.

11 BY MR. MELSON:

12 Q Did you ever see, prior to March 19th, Quintana and  
13 your hammer together?

14 A Yes, I did.

15 Q Would you explain the circumstances?

16 A Well, I had a record player that was broken. It was  
17 a gift, but it wasn't working. So, one day he arrived and  
18 said why don't you buy one -- a new one, and I said, "Yes, I  
19 wish to buy a new one. I wished to buy a new record player,  
20 but I'm going to Miami and I'm putting some money away and  
21 saving some money for the trip so when I return from the trip  
22 I would then purchase a record player." He said, "What are  
23 you going to do with that one." I asked him, "Do you want it."

1 He said, "Yes." I said, "All right, I'll give it to you."  
2 Then the next day when I returned from work I found him on my  
3 dining room table with the hammer and a screw driver trying to  
4 fix the record player. So, when my mother opened the door I  
5 came in and saw him and said to my mother, "Please don't open  
6 the door to anyone when I am not here."

7 Q Where did you keep the hammer on that day, the day  
8 he was working on the record player?

9 A Right here in the drawer (indicating).

10 Q Would you show the jury what drawer you are talking  
11 about?

12 (Displaying to the jury.)

13 A Yes, this particular drawer here in the kitchen  
14 (indicating).

15 Q Was he there when the tools were put away or taken  
16 out?

17 MR. KENDRICK: Your Honor, I don't know if he can  
18 tell if he was there -- I'm sorry. I don't know that he is a  
19 position to say when the tools were taken out, because he  
20 wasn't there. And so far as putting them back, that's one  
21 thing; but he said when he arrived his mother was in there  
22 and he already had the hammer out.

23 THE COURT: What was the question, Mr. Melson?

1 MR. MELSON: Your Honor, if that's his objection, I  
2 will rephrase it.

3 MR. KENDRICK: It is an objection on my part.

4 MR. MELSON: I will rephrase it.

5 BY MR. MELSON:

6 Q Was he there when the tools were put away?

7 A Yes, he was.

8 Q And where were the tools put?

9 A Right there (indicating), right there in that same  
10 drawer.

11 Q Let me show you Commonwealth's Exhibit No. 32. Do  
12 you recognize that exhibit?

13 (Displaying to the jury and counsel.)

14 (Handing to the witness.)

15 A Yes, I do. Yes, this is my hammer.

16 Q Is there any writing on the hammer?

17 A Yes. My name is on the hammer. I had put my name  
18 on it.

19 Q Is that the hammer you are referring to that was in  
20 the drawer?

21 A Yes, it is.

22 MR. MELSON: Thank you. No other questions.

23 Mr. Echemendia, would you answer Mr. Kendrick's

1 questions, please?

2 THE COURT: Would you like a recess before we begin?

3 MR. KENDRICK: Please.

4 THE COURT: All right. Five minute recess before we  
5 begin.

6 MR. KENDRICK: Thank you, Your Honor.

7 (Whereupon, a short recess was taken.)

8 THE COURT: All right. Call the jury in, please.

9 (Whereupon, the jury returned to the jury box.)

10 MR. MELSON: Your Honor, I don't believe Exhibit No.  
11 84 has been moved into evidence or received.

12 THE COURT: You offer it now?

13 MR. MELSON: Yes, sir.

14 THE COURT: All right, Exhibit 84, which is a  
15 photograph, is received. If I may have it on the bench here?  
16 (Handing to the Court.)

17 (The photograph previously  
18 marked for identification as  
19 Commonwealth's Exhibit No. 84  
20 was received in evidence.)

21 THE COURT: Are you ready, Mr. Kendrick?

22 MR. KENDRICK: Yes, Your Honor, I think so.

23 THE COURT: You may proceed.

## CROSS-EXAMINATION

BY MR. KENDRICK:

Q Mr. Echemendia, do you recall what your mother was wearing on the morning of the 19th?

A Wearing what?

Q Clothes. Do you recall what kind of clothes she was wearing?

A When I left, she was wearing a nightgown.

Q This was about 6:30 in the morning or 7:00 o'clock in the morning?

A 6:30, not 7:00.

Q 6:30?

A (Witness shaking head.)

Q When did you start to work at Montgomery Ward?

A I think the 15th or 20th of October.

Q Of 1980?

A Yes, sir.

Q What were you doing at the Montgomery Wards?

A Display -- I was in charge of display and decoration.

Q Were you paid by the hour? Were you paid at a flat amount, a salary? Did you receive a salary?

A They pay me by the hour and I get a check every

1 week.

2 Q Do you recall -- did you work basically the same  
3 amount of hours?

4 A Yes, I worked eight hours a day.

5 Q How many during the week did you work?

6 A Five days a week.

7 Q Now, were you ever sick during that period of time?

8 A Never.

9 Q So, from October of 1980 to March 19, 1981, you  
10 worked five days a week at the Montgomery Wards?

11 A Yes.

12 Q You work eight hours a day?

13 A Yes.

14 Q What was your rate of pay?

15 A Well, the first month until December 31st I got  
16 \$98.00 gross salary and after January 1st I started to earn  
17 \$115.00 or \$118.00, it depended.

18 Q Did they pay you a certain amount per hour?

19 A Well, I think they paid me \$3.25 at the beginning  
20 per hour and after that they increased it to \$3.60 per hour.

21 Q Thank you.

22 Did you have any other source of income other than  
23 working at the Montgomery Wards?

1 A Yes, I did.

2 Q What was that?

3 A On the weekends, Saturdays and Sundays, I used to  
4 work on gardens. I cleaned houses and they paid me sometimes  
5 fifty to sixty dollars.

6 Q Do you recall any of the people that you worked for?

7 A Oh, yes, I know them all. They were all Americans  
8 and I do not know their names.

9 Q Do you know where they live?

10 A Yes, I do.

11 Q Can you give me their addresses?

12 A Well, I really don't know the exact address, because  
13 they came to pick me up in a car and they brought me back  
14 home. The families I work for live close to Lord & Taylor and  
15 another family lived in Annandale and another close to Fairfax  
16 Hospital and another lady here in front of those buildings --  
17 I think Skyline -- and so on. Different locations.

18 Q How did you meet them?

19 A Well, through other Cuban people who lived here and  
20 sometimes they asked those people if they knew of somebody  
21 who could work in the garden and then my friend said, "I know  
22 of somebody." Then they asked me and I said, "Yes, of course,"  
23 and I went there to clean and sometimes I was not able to



1 finish the work in one day because the house was too big and  
2 I went one day and if I didn't finish one day, they asked me  
3 to continue the following week. Then I went there and  
4 either I finished or I finished the following week and during  
5 Christmas I decorated several houses with Christmas  
6 decorations.

7 MR. KENDRICK: May I have the Court's indulgence,  
8 please?

9 BY MR. KENDRICK:

10 Q I would like for you to look at this photograph,  
11 Commonwealth's Exhibit No. 19, and I would like to know how  
12 many other bottles of perfume were in the dresser, if any?

13 MR. MELSON: At what time are you referring to?

14 BY MR. KENDRICK:

15 Q In the photograph?

16 A Well, I see only four bottles of perfume.

17 Q In that photograph there?

18 A Yes, Yes, I see four.

19 Q So, there is only one bottle of perfume missing?

20 A Yes, that is correct.

21 Q Do you remember if your mother had more than five  
22 bottles of perfume?

23 A Oh, yes. We both wear perfume. One day we wore one

1 and the next day we wore another one. We both gave perfume to  
2 us. The perfume "Me," I got myself. My mother didn't like  
3 it because it was stronger. I thought, yes, it was strong,  
4 but we wore the others.

5 Q But that's the only bottle that was taken; is that  
6 correct?

7 A Yes, sir.

8 MR. KENDRICK: Pete, I need the picture of the  
9 dresser, the drawer that's open.

10 (Handing to the witness.)

11 BY MR. KENDRICK:

12 Q Is that the dresser drawer that you kept your  
13 wallet in?

14 A Yes, it is.

15 Q Did you also keep it in that place (indicating)?

16 A Yes, always.

17 Q Did you ever put it in another place?

18 A No.

19 Q You never did?

20 A No.

21 Q Did your mother know it was there?

22 A Well, she always counted the money when I did and  
23 we both put it away. We counted it and put it away and put it

1 back. I'm sure she knew exactly where it was.

2 Q Do you telling the police that -- the fact that  
3 you had a lot of money in the apartment was well known?

4 A Well, some people knew about it. Some people knew  
5 I had the money. They didn't know how much, but two or three  
6 people had already asked me if I -- to put it in the bank,  
7 but of course I always arrived home late and my friends were  
8 always home late. We thought that maybe on Saturday we would  
9 put it in the bank, but things were very complicated because  
10 I had to work on Saturdays and that's why we didn't put it in  
11 the bank. Sure, people we knew we had the money.

12 Q Did you talk to people?

13 THE COURT: Excuse me. Did you say "bank," b-a-n-k  
14 or "back," b-a-c-k?

15 THE INTERPRETER: Bank, Your Honor.

16 BY MR. KENDRICK:

17 Q Did you talk to people about how much money you had?

18 A No.

19 Q How did these people know about the money?

20 A Well, it was obvious. If I didn't keep putting the  
21 money in the bank and I was working, obviously the money was  
22 at home and besides I had told people that I was going to open  
23 a bank account, but I told them I didn't have anybody to take

1 me to the bank and people said it was not necessary to know  
2 English to open an account and many people said that they  
3 would take me on Saturday, but things were complicated and  
4 days just went on and on and we never did anything.

5 Q Did you know Orlando?

6 A Yes, I did.

7 Q How did you get along with Orlando?

8 A They lived in the apartment on top of my house --  
9 my apartment and when they came to live there we were  
10 introduced to them and they were also Cuban refugees. They  
11 visited my house. Many times they came for lunch.

12 MR. KENDRICK: Your Honor, a juror's having  
13 problems.

14 A JUROR: Excuse me, Your Honor, the translator is  
15 saying "they" instead of the singular.

16 BY MR. KENDRICK:

17 Q Did Orlando live with someone? Who did he live  
18 with? Do you know?

19 A He lived with another man.

20 Q Was this in Apartment Five?

21 A Yes.

22 Q How did you get along with him?

23 A Who, me?

1 Q Yes.

2 A Well, we always got along fine. He came to my  
3 house. He watched television and the other man who lived in  
4 the apartment called Cuba and it was a call that cost about  
5 \$298.00 and I told him he had to pay for that call and I  
6 could not pay for the call. They said yes, they would pay me  
7 little by little and then I kept asking them for the money  
8 and that man kept on saying that he didn't have any money and  
9 I told him that it was not my fault that you had to call Cuba  
10 and my phone was going to be cut off. So, one day he sent me  
11 a note asking me to leave him alone. He said he couldn't pay  
12 for the phone call and my mother asked me what it was all  
13 about and I said that I didn't know. In the afternoon he  
14 knocked at the door --

15 MR. KENDRICK: (Interposing) They're having a  
16 problem hearing.

17 THE COURT: Can you give us a test again on it?

18 THE INTERPRETER: Yes.

19 THE COURT: All the jurors can hear but one.

20 THE INTERPRETER: Can all the jurors hear now?

21 THE COURT: Yes. Thank you.

22 THE WITNESS: (Continuing) -- Yes. Well, he sent me  
23 a note in which he said that he could not pay that money and

1 then when we came back in the afternoon, he knocked on the  
2 door and I opened the door, but I opened it with a security  
3 chain when I saw that it was him. I opened the door and he  
4 said, "You know, I can't pay you for that call," and I told  
5 him to pay and he said, "Well, I can't do it." I said, "Well,  
6 I have already paid it with my money." I told him I had  
7 borrowed money in order to pay for the call and I said, "Now  
8 I have a problem because I can't pay the people from whom I  
9 am paying the loan."

10 Q Who did you -- I'm sorry.. Go ahead.

11 A Well, then the next day he said, "I think I'm going  
12 to move because I can't pay for this friend here." He just  
13 disappeared and he said, "In the note that I gave you -- "  
14 "In the note I sent for the money because I was a bit upset,  
15 but that's not important, so destroy it." I told him I had  
16 destroyed it but I didn't. I kept it. He left and I didn't  
17 see him anymore and my mother asked me what about the people  
18 upstairs and I said, "Well, I don't know about the people  
19 upstairs."

20 Q Who was this other man that he lived with? Do you  
21 know?

22 A I do not know with whom he lived, because I never  
23 visited his apartment.

1 Q He only came to your apartment?

2 A Yes.

3 Q Did he come to your apartment a lot?

4 A Yes, he did.

5 Q Did your mother ever say he was there when you  
6 weren't there?

7 A Yes, of course. He went there when I was there and  
8 when I wasn't there because when I arrived my mother would  
9 say this man came and visited. Mr. Quintana was here.

10 THE COURT: Wait just a moment.

11 A JUROR: I'm confused on who we are talking about  
12 and who "he" is.

13 MR. KENDRICK: I think we are talking about  
14 Orlando's roommate and I think the person we are talking about  
15 coming to his mother's apartment is Orlando.

16 BY MR. KENDRICK:

17 Q Is that correct? Did Orlando come to your apartment  
18 a lot?

19 A Aren't you asking me about Mr. Quintana?

20 Q No, I'm asking you about the people that lived in  
21 Apartment Five.

22 THE INTERPRETER: He wants to find out if you are  
23 asking him if they came to visit him, the people in Apartment

1 Five.

2 MR. KENDRICK: Yes.

3 THE WITNESS: Yes, they came to visit, but after  
4 the call they made to Cuba that they did not pay for, they  
5 did not come back to see me.

6 BY MR. KENDRICK:

7 Q I understand, and did they visit your apartment a  
8 lot before the call to cuba?

9 A Yes, they did.

10 Q Did Orlando come there when you weren't there?

11 A No -- very rarely, because he wasn't there during  
12 the day. According to my mother's -- according to what my  
13 mother said, because I wasn't there, but sometimes I would  
14 ask her about the people upstairs and she would say they  
15 don't seem to be there, because I don't hear any steps from  
16 upstairs, you know, sometimes you could hear the people  
17 walking upstairs and sometimes they came to listen to Spanish,  
18 perhaps, and they would come at dinner time and have dinner  
19 with us, because we knew that they were in a bad situation and  
20 didn't have resources and sometimes they would not eat. They  
21 would say that they already had dinner and we would give them  
22 coffee and have talk -- conversation and watch television and  
23 then after 10:30 or so I went to bed and then they usually



1 left at that time.

2 Q Do you recall communicating to them about the  
3 difficulties you were having getting to the bank?

4 A No.

5 Q You don't recall that?

6 A No, we never spoke about that.

7 Q Did you ever talk to him about the amount of money  
8 you had around the apartment?

9 A No, I did not. No. As a matter of fact, I told  
10 him that I didn't have the money to pay for the phone call he  
11 made. I told them I had to borrow the money. I said, "I  
12 don't have the money and I'm going to have to borrow the  
13 money," because I didn't want to lend them the money because  
14 they would not pay me if I told them that I used my own money  
15 to pay for the call. So, by saying that I borrowed the money,  
16 I was forcing them to pay me back so I could repay the lender.  
17 I told one of my friends if they ask you anything about the  
18 fact that I borrowed money from you, please say that I did, so  
19 I would justify it. But I lost the money, because they never  
20 repaid me.

21 Q Did you in fact borrow money or did you make that  
22 up?

23 A No. I told them that story. I told them that I did

1 not have the money so that I would be able to collect from  
2 them, because if I told them that I had the money and that I  
3 paid them with my money, then they wouldn't repay me. I  
4 never told them I had any money. Only the people that were  
5 here for twenty years and were in a good position and that had  
6 reasonable income -- people who were in a good economic  
7 condition, those people I would tell -- I would tell these  
8 people, but I didn't tell them because I knew they were in  
9 dire straits.

10 Q Did you borrow the money though?

11 A No. No, it was my money.

12 Q Okay.

13 Is that part of the money that you made at  
14 Montgomery Ward?

15 A Yes. When I received income tax refund -- I never  
16 threw any money away. I never misspent any money. I made my  
17 purchases with the money that my mother received from welfare  
18 and we paid the rent and so on. I didn't go to the theater  
19 and see anything, to any entertainment or anything. I just  
20 spent the money on things that were necessary and the  
21 clothing that I needed and so forth, but I did receive gifts  
22 of clothing and I had to receive whatever gifts I could  
23 obtain. Then after I had a little money, then I began to

1 purchase small items. So, I had a fifteen percent discount  
2 at the store on clothing and I had purchased a few items for  
3 the trip.

4 Q Did you think Orlando was a friend before the phone  
5 calls were made? Were they friends?

6 A Well, not a friend, but someone that I knew. He  
7 wasn't a friend as such. A friend is something else. He was  
8 Cuban and therefore he was an acquaintance and he would come  
9 to borrow sugar or salt or whatever, coffee, and we would  
10 provide them with whatever they needed.

11 Q Did you try to help him as much as you could?

12 A No. No, we didn't help them. I would say that for  
13 example if they were to need salt in order to cook or  
14 something and they came and asked us for salt, we would give  
15 them a little bit of salt, but that was only two or three  
16 times. No, I didn't help them at all in any other sense.

17 Q Once you got the note, did your relationship change?  
18 Is that a fact? Is that true?

19 A Well, they stopped coming to see me and before that  
20 -- even before the note, they did not come to visit anymore.  
21 After the bill, the telephone bill arrived for about \$300.00  
22 and I showed them the bill and when I did so, they didn't  
23 come back. I told my mother that these people are pretending

1 to be upset with us so as not to pay for the call. So, I  
2 just let the matter ride. After a few days, I went back and  
3 asked them for the money and they said, "Well, we'll see what  
4 we can do," and so on, but they repaid me \$120.00 in total,  
5 twenty, sixty, twenty-five or so on different occasions.  
6 They gave me certain amounts of money. But after that, they  
7 gave me no more money and I had to pay the rest, which was  
8 about \$170.00.

9 Q Would you say there was friction between the two of  
10 you after that?

11 A No, we didn't have any friction. They didn't come  
12 to see me and I didn't see them.

13 I arrived at my house -- to my apartment. I took a  
14 bath, watched television and stayed there. If they didn't  
15 come to see me, I had no reason to go and see them. So, if  
16 they came, we received them. But if they didn't come, that  
17 was it.

18 Q Did you ever tell the police there was friction  
19 between you and Orlando?

20 A No, there was no problem except the money, because  
21 he didn't want to pay it and I wanted him to pay it, but I  
22 decided just to let the money go. I'll just pay for it and my  
23 mother said, "You'll have to pay it." So, I did and that was

1 it.

2 Q Did you ever tell the police there was friction  
3 between Orlando and your mother?

4 A Yes, because the day in which he left me the note  
5 he said something that he was tired of seeing of us and so on  
6 and I asked him, "When are you going to pay?" He said, my  
7 mother said, "Well, forget it." She said, "You are going to  
8 have a problem with these people." I said, "Well, I'm just  
9 not going to give them \$170.00 out of my hard earned money.  
10 How are they going to just take this money away and not  
11 matter?" My mother said, "Forget about it. If we can't  
12 collect, just forget about it." Finally they cut off the  
13 phone. I just waited to see if they'd pay and finally the  
14 phone was cut off and eventually I paid that telephone bill  
15 and they reconnected the phone.

16 Q How many bedrooms did you have in your apartment?

17 A Just one.

18 Q And your mother shared the same bedroom with you?

19 A Yes, we slept in the same bed.

20 MR. KENDRICK: May I have the Court's indulgence?  
21 Do you have that note?

22 MS. MOSBO: We are checking.

23 MR. KENDRICK: I'm talking about the note that

\* \* \*

1 page number, please?

2 MR. KENDRICK: Page 49, transcript of the  
3 preliminary hearing, April 6th, 1981, the Commonwealth of  
4 Virginia versus Manuel Quintana.

5 BY MR. KENDRICK:

6 Q Ask him if he knew -- "Ask him if his mother knew  
7 where the money was?" Do you remember that question?

8 A Yes.

9 Q Do you remember this answer?

10 "She knew where the money was kept in the  
11 house. She didn't know exactly where. Sometimes I  
12 used to change places. Sometimes I put it in one  
13 drawer and sometimes I put it in another drawer"

14 A Yes, but within the same drawer. Sometimes I put  
15 in one side of the drawer and sometimes I put it in the other  
16 side, but within the same drawer. I would change it from one  
17 side to the other side of the drawer. It is possible that my  
18 mother may have come across it, since she lived there. She  
19 could have seen me put it in the drawer and so on.

20 Q Didn't you testify today just a little while ago  
21 that she knew where the wallet was?

22 A Yes.

23 Q And didn't you testify here that she didn't know

1 where it was?

2 A No. No. Please understand. What I wanted to say  
3 was that one time I placed it here (indicating) and sometimes  
4 I placed it in another part of the drawer.

5 THE INTERPRETER: Your Honor, may I say something?  
6 I think perhaps the interpretation of that particular passage  
7 was not precise and this is the reason for the  
8 misunderstanding, what Mr. Quintana said was that he would --  
9 I'm sorry -- Mr. Echemendia, the witness, what he said was  
10 that he would count the money and his mother would be present  
11 at that time. Then he would put the money in the drawer and  
12 that perhaps, since his mother lived with him, she would  
13 obviously realize where the money was being put. That is his  
14 exact answer.

15 THE COURT: Thank you.

16 MR. KENDRICK: Your Honor, I understand what he's  
17 saying now, but if I'm not going to get an correct  
18 interpretation, I'm going to put him on the stand as a witness.  
19 He's not going to come along and tell me what this man said on  
20 another occasion and what I said to him.

21 THE COURT: He just gave you the exact  
22 interpretation.

23 MR. KENDRICK: Just tell me what the man says when

\* \* \*

## DIRECT EXAMINATION

BY MR. MELSON:

Q Sir, would you state your name for the Court, please?

A Humberto Rodriguez.

Q Would you spell your first and last name, please?

A H-u-m-b-e-r-t-o, R-o-d-r-i-g-u-e-z.

Q Mr. Rodriguez, where were you living in February of 1981?

A I lived in Monticello.

Q Who were you living with?

A I lived with Fernando Fernandez in an apartment.

Q Was that apartment in Fairfax County?

A Yes.

Q Do you know where Manuel Quintana is?

A Yes.

Q Is he in the courtroom today?

A Yes, I do.

Q Would you point him out for me?

A (Indicating the defendant.)

Q What is he wearing so that we know which one you are pointing to?

A The man sitting in the middle with the light blue



1 shirt.

2 MR. MELSON: Your Honor, if the record could  
3 reflect that the witness has identified the defendant.

4 THE COURT: It will so reflect.

5 BY MR. MELSON:

6 Q Mr. Rodriguez, were you working in February?

7 A Yes, I was.

8 Q Do you remember a time in February when Mr. Quintana  
9 took you to work?

10 A Yes.

11 Q On the day that he took you to work --

12 A (Interposing) Yes?

13 Q When did you first see him on that date?

14 A I saw him at 9:30 a.m.

15 Q Where?

16 A At my apartment -- in my own apartment.

17 Q What were you doing when he arrived?

18 A Well, I had just gotten up and I was taking a  
19 shower.

20 Q Did you let him in the apartment?

21 A Yes, I did. I asked him to come in and sit down as  
22 I finished preparing myself and dressing.

23 Q Was there anyone else in the apartment at the time

1       besides you and Mr. Quintana?

2           A       No, there wasn't.

3           Q       Did you go back and finish washing?

4           A       Yes.

5           Q       Where were the keys to your front door?

6           A       On top of the table.

7           Q       Why do you remember them being on top of the table?

8           A       Because I'm in the habit of leaving them on top of  
9       the table when I'm taking a shower or doing something else.

10          Q       In what room did you finish getting dressed in?

11          A       In my own room, upstairs.

12          Q       Where was Quintana while you were getting dressed?

13          A       Below.

14          Q       What do you mean by "below"? In what room?

15          A       Yes, he was downstairs in the living room.

16          Q       After you got dressed, did you go to work?

17          A       Yes, I did.

18          Q       What did you do with the keys when you left for  
19       work?

20          A       Well, I picked them up and put them in my pocket  
21       and went off to work.

22          Q       Did you examine the keys before putting them in your  
23       pocket?

1 A No, I did not.

2 Q Did you have to use your front door key to lock the  
3 door when you left?

4 A No, because it locks itself by simply closing the  
5 door.

6 Q When you got to work, did you take anybody there?

7 A Yes, with Manuel Quintana, who took me there.

8 Q When you got to work, did Quintana stay with you or  
9 did he leave?

10 A He left immediately..

11 Q After he left, did you talk to anybody about the  
12 fact that you were with Quintana?

13 A Yes, with Nelson Echemendia.

14 Q And after you talked with him, what did you do?

15 A Mr. Echemendia --

16 Q (Interposing) Just tell us what you did after you  
17 talked to him. You don't need to tell us what you said. Just  
18 tell us what you did next.....

19 A After I talked to Nelson?

20 Q Yes, after you talked to Nelson, did you make a  
21 phone call?

22 A Yes, I called my home and somebody would pick up  
23 the phone and then hang it up again. Then I talked to someone

1 who was in front of me and said I was going back to my  
2 apartment. Then I went back to my apartment. I found  
3 everything in disarray. I found the keys on the floor as  
4 though someone had come in and robbed the place. The police  
5 then afterwards --

6 Q (Interposing) Wait a second.

7 THE COURT: Would you interpret a little louder on  
8 the English channel, please?

9 BY MR. MELSON:

10 Q Mr. Rodriguez, before getting back to your  
11 apartment, did you look at your keys?

12 A Yes, I did.

13 Q What did you notice about your keys?

14 A Well, I noticed that my keys were missing. My key  
15 to my apartment and to the outside door.

16 THE COURT: Wait just a moment. One juror isn't --

17 A JUROR: (Interposing) When he talked with you it  
18 is very clear and when I went back on my channel it is --

19 THE COURT: (Interposing) Try it. Give us a test  
20 on that, please.

21 A JUROR: Just barely.

22 THE COURT: Apparently it is very faint.

23 THE INTERPRETER: Can you hear me now?

1 A JUROR: Just barely.

2 THE COURT: Try another headset.

3 (Whereupon, the juror was given a new headset.)

4 THE COURT: Thank you. Go ahead.

5 BY MR. MELSON:

6 Q Mr. Rodriguez, I would like to back up, because not  
7 everybody heard your answers. Before you returned to your  
8 apartment, did you look at your keys?

9 A Yes, I did.

10 Q Did you notice -- what did you notice about your  
11 keys?

12 A That the main entrance key was missing; also the  
13 key to the door.

14 Q What happened when you arrived at your apartment?

15 A Well, when I arrived there, I found the door open.  
16 The key was on the floor and everything was in disarray and  
17 clothes were on top of the bed and everything was in disorder.

18 Q Did you look to see whether anything was missing?

19 A Yes, of course.

20 Q Would you tell us what if anything you found as  
21 missing?

22 A Well, first of all, a cream colored suit, a three  
23 piece suit, my bank book, two pairs of pants, one of them -- a

1 black pair of shoes, brand new moccasins, perfumes, a pair of  
2 clothes, a pullover.

3 Q What do you mean by "perfumes"?

4 A Shaving lotions and things of that sort.

5 Q Now, directing your attention to the cream colored  
6 suit that you mentioned, let me show you Commonwealth's  
7 Exhibit No. 87, A, B and C. Do you recognize the clothing  
8 that is being shown to you?

9 (Handing to the witness.)

10 A Yes, this is my very own suit.

11 Q Look at the breast pocket of that jacket on the  
12 outside.

13 A Yes, that is my own suit. It is.

14 Q What did you just look at?

15 A I just noticed that it is my own suit. There is no  
16 doubt.

17 Q Let me show you something --

18 MR. KENDRICK: (Interposing) Your Honor, counsel  
19 is leading the witness.

20 THE COURT: I will wait and see what the question  
21 is.

22 BY MR. MELSON:

23 Q Directing your attention to the outside breast

\* \* \*

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

Your Honor, I would like at this time to move the  
suit into evidence.

MR. KENDRICK: Your Honor, I would like to  
cross-examine him first. if I may?

THE COURT: All right

CROSS-EXAMINATION

BY MR. KENDRICK:

Q How did Mr. Quintana take you to work?

A He took me by car.

Q Is this the car (indicating)?

(Handing to the witness.)

A I don't know the exact kind of car. He just told me  
it was his car. I went with him to work. That's all. I  
don't know the kind of car it was. I didn't notice.

A JUROR: Excuse me.. The set is --

THE COURT: (Interposing). We have a dead headset.

MR. KENDRICK: No, we have got a problem.

THE COURT: We have a dead headset here.

THE INTERPRETER: Members of the jury, can you hear  
me? Mr. Kendrick?

MR. KENDRICK: I can.

THE COURT: Still one juror cannot.

THE INTERPRETER: Can you hear me?

1 THE COURT: Yes, she can hear you.

2 THE INTERPRETER: Thank you, Your Honor.

3 BY MR. KENDRICK:

4 Q Mr. Rodriguez, let me go back again.

5 How did Mr. Quintana take you to work in an  
6 automobile?

7 A Yes, sir, in an automobile.

8 Q And you don't know whether it is that automobile  
9 and I am referring to Commonwealth's Exhibit No. 40, the  
10 picture in front of you? Was it another car?

11 A I don't remember if it was this car or another car.

12 Q All right.

13 How do you know that's your suit?

14 A Because it was given to me. I had it. I liked it  
15 and I know it was mine. Well, I didn't wear it, but I saw it  
16 once in a while and of course I know it.

17 Q You never wore it?

18 A Well, I wore it a couple of times at home just to  
19 try it on to see how it fit. But, of course, I know it. It  
20 is mine.

21 Q Is there anything in that that has your name on it?

22 A No, there is nothing that has my name on it.

23 Q How many times did you try it on?

\* \* \*



1           A     He's wearing a light blue shirt.

2           MR. MELSON: May the record reflect that the witness  
3 has identified the defendant?

4           THE COURT: Yes.

5           BY MR. MELSON:

6           Q     Where did you first have contact with Mr. Quintana?

7           A     It was on Route 50 in Fairfax County -- on Route 50  
8 known as Arlington Boulevard just prior to Seven Corners.

9           Q     Do you recall what he was wearing?

10          A     Yes, sir, he was wearing a beige three piece suit.

11          Q     Did you have occasion subsequent to your contact  
12 with him to take a photograph of him in that suit?

13          A     Yes, I did.

14          Q     Let me show you what has been marked as  
15 Commonwealth's Exhibit No. 88 and 89 and ask you if you can  
16 identify those two photographs?

17                   (Handing to the witness.)

18          A     Yes, sir, they are the pictures that I took of  
19 Mr. Quintana on February 6, 1981.

20          Q     Let me show you Commonwealth's Exhibit No. 87, A, B,  
21 C, and ask if you can tell us what that is?

22                   (Handing to the witness.)

23          THE WITNESS: Could I stand up?

1 THE COURT: Yes, sir.

2 (Whereupon, the witness stood.)

3 THE WITNESS: With the exception of the suit coat,  
4 it appears to be the same suit -- I mean with the exception  
5 of the pants and vest, it appears to be the same suit. I  
6 could positively identify the jacket as the one worn by  
7 Mr. Quintana at that time.

8 BY MR. MELSON:

9 Q How can you do that?

10 A At the time -- at the time of the contact with  
11 Mr. Quintana, I took his picture and I also took the picture  
12 the best I could with a Polaroid. It came out instantly and  
13 had these two ink spots on his pocket. I believe the only  
14 pocket on there is the upper pocket of the suit and if you  
15 will look at the photograph, I believe the spots are  
16 noticeable there and should match up.

17 BY MR. MELSON:

18 Q Okay.

19 Now, are you saying that you cannot positively  
20 identify the pants and vest?

21 A They match suitwise, but there's no characteristic  
22 there that I could --

23 Q (Interposing) You have no marks on it?

1           A     No, sir, I didn't put any marks on it.

2           Q     Did the pants and vest he was wearing on the day  
3 you came in contact with him and the day you took those  
4 photographs match the suit coat?

5           A     Yes.

6           Q     Is there any reason to believe that the pants and  
7 that vest are not the two --

8           MR. KENDRICK: (Interposing) Objection, Your Honor.

9           THE COURT: The objection is sustained.

10          BY MR. MELSON:

11          Q     When you came in contact with him on that day, did  
12 you find anything in the suit?

13          A     Yes, sir.

14          Q     Was that while he was wearing the suit?

15          A     Yes, sir.

16          Q     What did you find in the suit?

17          A     There was a number of articles in the pocket. Most  
18 noticeably and probable the most identifiable would have been  
19 a checkbook.

20          Q     Let me show you Commonwealth's Exhibit No. 90 and  
21 ask if you can identify its contents?

22                   (Handing to the witness.)

23          A     It is a checkbook which I took out of Mr. Quintana's

1 possession from his suit coat and I marked it in my report at  
2 the time. The checkbook belonged to Mr. Rodriguez --  
3 Humberto Rodriguez. There was a number of checks already  
4 signed in the box and not endorsed to anybody else.

5 Q Okay.

6 Now, where was Mr. Quintana taken on February 6th?

7 A He was first taken to the McLean Substation and  
8 then subsequently taken to the jail in Fairfax County.

9 Q Did he have the same jacket and pants and best on  
10 when he went to jail?

11 A Yes, sir.

12 Q How did the pants and vest in front of you compare  
13 with the ones that you saw him wearing that day?

14 A They appear to be the same.

15 Q The same pants and vest?

16 A Yes, sir.

17 MR. MELSON: I have no other questions.

18 MR. KENDRICK: No questions, Your Honor.

19 THE COURT: All right. Officer, you are excused.  
20 Thank you.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: All right, the suit was offered into

1 evidence, but you withheld it while you examined the previous  
2 witness.

3 Mr. Kendrick, do you have any objection to it now?

4 MR. KENDRICK: Yes, Your Honor, I would like to  
5 address the Court out of the presence of the jury.

6 THE COURT: All right. Is that all the witnesses  
7 you are going to have for this evening, Mr. Melson?

8 MR. MELSON: Yes, sir, I think so.

9 THE COURT: All right.

10 I will excuse the jury until 9:30 tomorrow morning.  
11 The same instructions apply, ladies and gentlemen.

12 (Whereupon, the jury was temporarily excused  
13 until 9:30 o'clock a.m., June 4, 1981.)

14 MR. KENDRICK: Your Honor, I object to the admission  
15 of this suit into evidence on the ground that it's totally  
16 irrelevant. It is my understanding based upon the lab reports  
17 that I received from the Commonwealth that there was in fact  
18 blood stains that appeared on the suit, however, my reading of  
19 those reports indicate that the blood type is totally  
20 inconclusive. There is no way that they can tell that that  
21 blood is the blood of the victim as opposed to anyone else.  
22 If that's the case and the reports are accurate in that  
23 regard and I am correct, then it is very inflammatory and

1 totally irrelevant and has no business in evidence at all.

2 MR. MELSON: Your Honor, I believe it is going to be  
3 relevant because we are not going to be able to put that suit  
4 on him on the day of the homicide, but the fact that the  
5 blood is consistent with the victim's blood and not  
6 inconsistent has some probative value and should be admissible  
7 into evidence.

8 MR. KENDRICK: I would like to know how it is  
9 consistent. Just saying so doesn't make it consistent, Your  
10 Honor. It is my understanding that everything they have with  
11 respect to that blood also complies with the defendant's  
12 blood as well as the victim's blood and could be two hundred  
13 million people's blood.

14 MR. MELSON: The fact that it is not inconsistent  
15 with the victim's blood has some probative value.

16 THE COURT: It would seem to me that the mere fact  
17 that it has blood on it period, even if it is unidentifiable  
18 blood, would be circumstantial evidence the jury would be  
19 entitled to consider. The evidence was that the blood was  
20 splattered on the wall and if someone was standing there when  
21 the blood was splattered on the wall chances are it would  
22 stain the trousers and the jury can consider that. If a  
23 positive identification can't be made on the blood, I think that

1 would go to the weight. It is true that was in exclusion of  
2 the evidence and someone gave the opinion that, "No, that is  
3 not blood of the victim," then that would be a different  
4 matter. But, the blood can't be identified one way or the  
5 other. I think the jury has a right to weigh it for whatever  
6 it is worth. I will admit it into evidence. What is the  
7 number on it?

8 MS. MOSBO: 87-A, B and C.

9 (The items previously marked  
10 for identification as  
11 Commonwealth's Exhibit No.'s  
12 87-A, B and C were received in  
13 evidence.)

14 THE COURT: The Court is recessed until 9:30  
15 tomorrow morning.

16 MR. MELSON: Your Honor, may I move in before we  
17 recess the other two exhibits?

18 MR. KENDRICK: Your Honor, I would object to them  
19 going into evidence with the writing and notations on the back  
20 showing the unauthorized use.

21 MR. MELSON: We will take that off.

22 MR. KENDRICK: If they will take that off, then it  
23 is okay.

\* \* \*

PRINTERS NOTE:

Transcript of trial is continued to Volume II.