

FIRST DAY
IN THE COURT OF COMMON PLEAS
IN AND FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH : JANUARY SESSIONS, 1982
 :
 v. :
 :
 MUMIA ABU-JAMAL, a/k/a :
 WESLEY COOK : NOS. 1357-59

Tuesday, June 1, 1982

253 City Hall, Philadelphia, Pennsylvania

BEFORE: ALBERT F. SABO, J.

APPEARANCES:

JOSEPH J. MC GILL, ESQ.,
Assistant District Attorney,
For the Commonwealth;

MUMIA ABU-JAMAL,
In Propria Persona;

ANTHONY E. JACKSON, ESQ.,
For Defendant.

MR. MC GILL: Good morning, Your Honor.

THE COURT: Good morning.

MR. MC GILL: Your Honor, this is the Commonwealth of Pennsylvania vs. Mumia Abu-Jamal. This would be the charges, Your Honor, of murder, possessing an instrument of crime.

This is a Motion to suppress, Your Honor. There were two Motions filed, actually. There was Motion 2 as well as Motion 1 in suppression of evidence.

Now, Your HONor, I believe that in reference to representation of the defendant, the defendant has indicated (I think the Court is aware before Judge Ribner) that he wishes to represent himself.

The Judge recognizes he was permitted to do that, and ordered Mr. Jackson to remain as backup Counsel.

So, at this point, Your Honor, perhaps we should (consistent with what Your Honor wishes to) determine the status of Counsel.

THE CRIER: Do you want him sworn, sir?

THE COURT: Either affirmed or sworn.

MUMIA ABU-JAMAL, affirmed.

THE COURT: Mr. Jamal, it has been indicated to me that you wish to represent yourself in these proceedings.

Is that true?

THE DEFENDANT: That is correct.

THE COURT: Now, you realize, of course, that Mr. Jackson, Anthony Jackson, has been appointed by the Court sometime ago and has represented you initially until very recently before Judge Ribner who heard your request for self-representation.

Is that right?

THE DEFENDANT: I am aware that Anthony Jackson was Court-appointed.

THE COURT: And, that he has represented you in the past?

THE DEFENDANT: I am aware that he is Court-appointed as my attorney or backup Counsel. I have made the decision to represent myself, because only I can represent myself.

THE COURT: You realize, though, that this is a very serious case, and it is a capital case, and your very life is at stake.

You understand that?

THE DEFENDANT: It's upon that realization

that I have made that decision.

THE COURT: And, you realize that usually others, even attorneys who might be prosecuted criminally, have always found it wise not to represent themselves?

Do you understand that?

THE DEFENDANT: Yes, I understand that.

THE COURT: Now, you have an absolute right to be represented by an attorney, and for that purpose, the Court had appointed Mr. Jackson to represent you; however, Judge Ribner, in hearing your request to represent yourself, had indicated that Mr. Jackson could remain in as backup Counsel.

THE DEFENDANT: Let the record reflect that Mr. Jackson is functioning as backup Counsel under protest.

THE COURT: Well, that may be so, but--

THE DEFENDANT: Also, that he has made it clear in the court of law that he is not trained to function in that role.

THE COURT: That is not true. Mr. Jackson is very well qualified. He has appeared before this Court and this Judge.

THE DEFENDANT: As backup Counsel?

THE COURT: As trial Counsel.

THE DEFENDANT: The point I am making is he has never appeared as backup Counsel.

THE COURT: Well, I think that is wrong. He appeared as backup Counsel in the MOVE case.

THE DEFENDANT: No, he did not, Your Honor.

THE COURT: You did not, sir?

MR. JACKSON: No.

THE DEFENDANT: No, he did not.

THE COURT: Well, backup Counsel, really-- all he is there for is to consult with you and to give you advice, if you seek it.

THE DEFENDANT: I understand.

THE COURT: It isn't a very difficult job. The difficult job is to represent a defendant as the trial attorney.

It doesn't require too much to represent someone as backup Counsel.

THE DEFENDANT: Well, the point you made is that he has functioned as trial Counsel before you and before other Judges in this City Hall.

The point I am making is that he has not functioned as backup Counsel. He has protested that

Order under Judge Ribner.

THE COURT: He may protest it. I don't know what his protests may be.

THE DEFENDANT: I am saying he protested that in front of Judge Ribner, and I also second that protest.

If a man says he cannot function in that role, why should he be put in that role?

THE COURT: He has only been put in that role by your objections.

THE DEFENDANT: I disagree.

THE COURT: Mr. Jamal, let me go a little further to see whether what you are doing is knowingly and voluntarily being done.

How old are you, Mr. Jamal?

THE DEFENDANT: Twenty-eight years old.

THE COURT: And, what is the date of your birth?

THE DEFENDANT: 4/24/54.

THE COURT: And, I realize that some of the questions I am going to ask you may have already been asked of you by Judge Ribner, but I hope you will understand that this is a decision that I have to make, and I am not familiar with what your

answers were before Judge Ribner, so if I seem to be repetitious, I hope you will excuse me.

How far did you go in school, Mr. Jamal?

THE DEFENDANT: Two years of college.

THE COURT: And, what college was that?

THE DEFENDANT: Goddard College.

THE COURT: Now, can you speak and understand the English language?

THE DEFENDANT: Yes.

THE COURT: Can you read and write the English language?

THE DEFENDANT: Yes.

THE COURT: Have you ever been in a mental institution?

THE DEFENDANT: No.

THE COURT: Have you ever received treatment for mental illness, alcohol, or drug abuse?

THE DEFENDANT: No.

THE COURT: Are you presently undergoing any psychiatric, alcohol, or drug abuse treatment?

THE DEFENDANT: No.

THE COURT: Are you currently under the influence of any drug or alcohol?

THE DEFENDANT: No.

THE COURT: Are you presently suffering from any physical, mental, or emotional problems which might affect your understanding everything which is said today?

THE DEFENDANT: No.

THE COURT: Have you understood everything I have said so far?

THE DEFENDANT: Yes.

THE COURT: Mr. Jackson, do you have any knowledge of anything that might prevent the defendant from understanding the consequences and nature of his waiver of representation by Counsel?

MR. JACKSON: I do not.

THE COURT: Now, Mr. Jamal, you have been charged with murder and possession of instruments of crime generally.

Now, the Commonwealth would have to establish beyond a reasonable doubt that you intentionally or wilfully with premeditation and malice aforethought did kill another person.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And, they would also have to prove beyond a reasonable doubt that at that time

you possessed an instrument of crime which I think was a gun.

Is that your understanding?

MR. MC GILL: Yes, Your Honor.

THE COURT: Do you understand that?

THE DEFENDANT: I understand what you are saying.

THE COURT: Do you understand that that is what they would have to prove?

THE DEFENDANT: Yes.

THE COURT: Now, are you aware of the fact that you are being charged with first degree murder which carries the penalty of either life imprisonment or death?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that it would be up to the jury to make that decision as to whether it would be life or death?

Do you understand that that is a very, very serious responsibility that you are going to have to carry in representing yourself?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, do you understand that although the Commonwealth is seeking the death penalty, the jury could properly find you guilty of a lesser degree?

Do you understand that?

THE DEFENDANT: I understand it can also find me innocent.

THE COURT: That is true; that is true.

Now, do you understand that even though you decided to represent yourself and Mr. Jackson will act as standby Counsel that you are still bound by all the Rules of Procedure and that Mr. Jackson who is an attorney is familiar with these Rules?

Do you understand that?

THE DEFENDANT: Um-hmm.

THE COURT: Now, do you understand that you will still be bound by all the Rules of Evidence including the Rules governing examination of witnesses and introduction of evidence, and that Counsel, Mr. Jackson, would be familiar with those Rules?

Do you understand that?

(The defendant nods his head in the affirmative.)

THE COURT: Do you understand that there may be procedural, Statutory, or Constitutional defenses to the charges against you of which Counsel would be aware, which might be lost permanently if not raised properly and timely?

Do you understand that?

(The defendant nods his head in the affirmative.)

MR. MC GILL: Do you understand that?

(There was no response.)

MR. MC GILL: Your Honor, I don't think the Stenographer is getting a response. He is nodding.

THE COURT: You have to answer "yes" or "no," because he can't put that down in the record.

So, to the last question: Do you understand that there may be procedural, Statutory, or Constitutional defenses to the charges against you of which Counsel would be aware, and which might be lost permanently if not raised properly and timely?

Do you understand that?

THE DEFENDANT: I repeat: Yes.

THE COURT: Do you understand that if errors occur during the trial which are not properly

or timely objected to or otherwise raised by you, you may be permanently deprived of the right to bring those errors to the attention of the trial Court or a Court of Appeals?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that in addition to the defenses and recognition of errors, you would have many rights both procedural and substantive with which Counsel would be familiar which if not timely and properly ascertained may be permanently lost to you?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, do you understand that because you elect to represent yourself or rely on the assistance of nonlawyers, you cannot thereafter complain that the quality of your defense amounts to the denial of effective assistance of Counsel?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And, do you understand that Counsel will be familiar with all of the above substantive and procedural rights and Rules and would

be expected to raise them properly or timely? You may not be aware of these rights and Rules, and by failing to raise them properly at the right time, permanently lose the right to raise them later before either the trial Court or a Court of Appeals.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, have you discussed with Mr. Jackson the implications of and possible problems which might arise from waiving representation by Counsel?

THE DEFENDANT: Yes.

THE COURT: Now, do you understand that the trial Judge has the right to terminate your self-representation if you deliberately engage in disruptive or obstructionist conduct before, during, or after the trial?

Do you understand that?

THE DEFENDANT: I understand what you are saying.

THE COURT: Do you understand that since you are incarcerated you may not have the ability, means, or opportunity to conduct a factual investigation to prepare your defense, including, but not

limited to, the location and questioning of witnesses?

In addition, do you understand that you may not have access to adequate legal or other research materials which will allow you to prepare your case?

Counsel, however, would be free to conduct such a full factual investigation, as well as such legal research as may be necessary.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that once this trial has commenced, you may request that standby Counsel assume direct representation of you in this matter?

If that occurs, however, the Court may not allow the trial to be delayed or give standby Counsel additional time in preparation, and may expect the trial to continue immediately.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And, do you understand that if standby Counsel once assumes direct representation of you that that then will not be reversed at

any other time?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, have you been forced or coerced into making your decision or has anyone made any promises to you in connection with your decision?

THE DEFENDANT: No.

THE COURT: Do you have any questions that you wish to ask the Court about this?

THE DEFENDANT: Again, I would like to raise the point that I raised earlier before you began this colloquy: that Mr. Jackson has been Court-appointed.

Mr. Jackson has protested his appointment by Judge Ribner in the role of backup Counsel. OK? He has protested it because he has not been trained to do so, and he does not feel comfortable or able to do so.

THE COURT: Well, I disagree that he hasn't been trained. He has been trained for that. He may be uncomfortable, and he may not like it, but as an Officer of the Court, I assume that he knows his responsibility and will carry out his

responsibility to the letter.

THE DEFENDANT: Can I select Counsel of my choice who I feel is comfortable, who I can work with?

THE COURT: No.

THE DEFENDANT: I cannot?

THE COURT: No. When Court appoints Counsel, that is the Counsel that you have.

THE DEFENDANT: Whether--

THE COURT: If you can afford Counsel and you can go out and pay someone to represent you, that is perfectly all right.

But, as I said before, the Court will not delay the trial.

THE DEFENDANT: I am not asking for delay of the trial. I am not asking for you to pay a single penny.

I am saying to you that I would like to select someone else to represent me.

THE COURT: If you have someone else that wishes to come in and is willing to assume the responsibility either as backup Counsel or as direct Counsel and he is willing to proceed immediately with the trial, I don't think the Court would have

any objection.

I can't allow you to delay the trial,
however.

THE DEFENDANT: Pardon?

THE COURT: I cannot allow you to delay
the trial by such tactics.

THE DEFENDANT: I don't know why you are
assuming that I am delaying the trial. At this
point in time, this is the first opportunity I ever
had to speak to you about Counsel.

Is that correct?

THE COURT: Well, it was sent to me for
trial, not to speak to me about Counsel.

THE DEFENDANT: Well, you asked me about
Counsel, and I am making it clear to you that there
has been a problem with a Court-appointed Counsel
functioning as backup Counsel.

He said that is not his role that he was
trained for. He is not comfortable doing that.

You have made the point that this is--

THE COURT: Well--

THE DEFENDANT: May I continue?

You have made the point that this is a
capital case, that it is, indeed, my life and my

freedom at stake.

I have asked you: Do I have the choice of selecting Counsel that I wish to represent myself?

THE COURT: Well, who do you have in mind?

THE DEFENDANT: John Africa.

THE COURT: Is he a member of the Bar?

THE DEFENDANT: No.

THE COURT: If he is not a member of the Bar--

THE DEFENDANT: What does that mean? Am I a member of the Bar?

THE COURT: Well, the law makes an exception when a defendant wants to represent himself, even though he is not a member of the Bar.

THE DEFENDANT: Can't I choose someone to represent myself?

THE COURT: Only if he is a member of the Bar.

Sir, do you understand what you are doing in that you have decided to represent yourself solely?

THE DEFENDANT: Yes.

THE COURT: With full knowledge of the

effect this might have on your ability to properly defendant yourself?

Do you understand that?

THE DEFENDANT: Yep.

THE COURT: Gentlemen, may I see you at sidebar?

(There was a sidebar conference reported as follows):

THE COURT: Are there any further questions that Counsel may wish to ask?

Do you wish to ask any other questions?
Do you, Mr. Jackson?

MR. JACKSON: Maybe, unless the Court would want me to give my reasons, because I feel comfortable not saying anything.

But, if you want it on the record, I would give my reasons as to what Mr. Jamal--and, I agree with what he said.

If you want it on the record, fine. Otherwise, I have nothing else to add.

THE DEFENDANT: I would like him to get it on the record.

MR. JACKSON: OK. I can do that in open court.

MR. MC GILL: I think there are some points, if I may, Your Honor.

THE COURT: That you wish to raise?

MR. MC GILL: Well, I think that the Court may properly ask the questions.

I wondered if Your Honor mentioned that he could be found guilty of murder in the first degree as well as other charges, and, of course, also, he can be found not guilty.

Would Your Honor mind defining the charges of murder in the third degree as well as voluntary manslaughter, and, also, giving the sentences, so that he is aware of that?

I think that would be appropriate. Also, Your Honor covered mostly all of the things. I would suggest, however, the Court also ask if he was aware that Counsel could advise him, or Counsel could himself become active in presenting a defense or suggesting defenses, whereas as trained Counsel he could do that.

For example, alibi or insanity, just as an example.

THE COURT: All right.

MR. MC GILL: And whereas--

THE COURT: I will explain that.

MR. MC GILL: --Mr. Jamal may not, because of his background, may not be aware of it.

He also may be very well aware of it, since he has been active in the court system over the course of years.

However, I think you ought to also mention that defenses may be made available to him, and if Counsel were actively working as his Counsel--he could, in a sense, as backup Counsel--he should be aware of that aspect of this.

Did you handle ineffectiveness, Your Honor, that he could not raise that later? Perhaps you did.

THE COURT: Yes, I mentioned that to him.

MR. MC GILL: All right.

Your Honor covered about everything. And, that Your Honor would not give any special favors, or anything of that nature, to an individual because he is not a member of the Bar representing himself?

THE COURT: I said he has to stick to the strict Rules of Evidence and Procedure the same as anybody else.

MR. MC GILL: Of course, Your Honor will

note for the record that he is at all times with him and will be seated with him?

THE COURT: Oh, yes.

MR. MC GILL: Or, wherever he wants him, but I would prefer--

THE COURT: Well, he has to be there.

MR. MC GILL: That he be there so he could turn and ask him for advice, or whatever.

Those things, I think, Your Honor, would cover it.

Let's see, so I don't then ask for a further sidebar.

OK.

(The proceedings were resumed in open court as follows):

MR. JACKSON: May it please the Court, Your Honor, Mr. Jamal has made certain representations to this Court with respect to my representations to Judge Ribner, and my present attitude and feelings towards representation of Mr. Jamal.

I would like the record to clearly reflect that it has, indeed, been my decision and my request that I be removed from this trial as backup Counsel.

To the extent--if I were removed, to the extent that I would participate or assist Mr. Jamal, that would be my decision and Mr. Jamal's decision.

But, to the extent that the Court--that I am now positioned as backup Counsel, a role, again, that I have not ever been trained in.

I have been, I believe, an effective Counsel for many, many years here in the City of Philadelphia.

I have never served the role of backup Counsel. I have, indeed, participated in MOVE trials in the past, but I have never participated as a backup Counsel.

I have always represented individuals as a lawyer. Secondly, Your Honor, I think that I would also like to make it very clear that I respect Mr. Jamal's decision, and that I believe that the right to self-representation is fairly absolute.

And, unfortunately, I believe that our system, particularly here in the State of Pennsylvania, is somewhat defective in that if that right is, in my view, absolute, then that would mean once he decides that, I am not his Counsel. Then I am no longer his Counsel at any time, and that the Court

would not have the authority then to impose representation upon him.

I appreciate the fact that we do not have that problem right now, but if at a later point that becomes an issue, I believe that Mr. Jamal should have the right to tell me to do something or not to do something. And, I believe that Mr. Jamal's right to self-representation would then fly in the face of this Court's discretion with respect to appointing Counsel.

I'd like that clear for the record, sir.

MR. MC GILL: May I respond, Your Honor?

THE COURT: Go ahead.

MR. MC GILL: Respectfully, Your Honor, the purpose for the absolute right to self-representation is, I think, clear, and that is that an individual who is, in fact, charged with a very serious crime has the right to speak up for himself no matter what his training may be.

I may point out that Mr. Jamal has significant association with the criminal justice system professionally, so I am sure that he is aware of many things and strategies and defenses; however, the purpose for backup Counsel is somewhat different.

And, the purpose for backup Counsel is in order to assure that the case would continue in a way which would be fair to both sides, and with particular concern about the defendant's rights.

If for any reason, No. 1, the defendant should choose not to represent himself anymore during the course of the trial, or, No. 2, any actions would occur that would make it necessary for the Court to terminate the representation of himself that the Court has granted, then at that time, rather than declaring a mistrial, stopping the trial, or whatever, backup Counsel would immediately take up the slack, so to speak, or fill the void, and represent this defendant.

Mr. Jackson has been aggressively--I know this for a personal fact--representing the defendant since January, since I was present in all courtroom proceedings with him.

No one is more familiar with the case than Mr. Jackson, and, of course, Mr. Jamal.

To put anyone else in here who is a trained attorney and a member of the Bar would be to a very great extent unfair to the defendant.

The purpose, again stated, for the reason

for backup Counsel is as I stated before, so, Your Honor, I believe at this point the Court is quite within its rights to continue the Order of Judge Ribner, and Judge Ribner was definitely within his rights and within an eye to the concern for this defendant that he left Mr. Jackson in here to serve as backup Counsel.

THE DEFENDANT: I'd like to speak.

THE COURT: Yes? Go ahead.

MR. JACKSON: Will Your Honor excuse us for a minute?

(There was an off-record discussion between Mr. Jackson and the defendant.)

THE DEFENDANT: Despite what Mr. McGill has said, I think a lot of your questions and a lot of your--the direction of your questions has been pretty presumptuous.

It seems you are assuming that for some reason or another I would not be able to defend myself, that I will be put out of this court, that, you know, you are assuming a disruption that has not occurred.

I think it's for me to decide how aggressively I have been defended, not Mr. McGill. I

think it's for me to decide who I wish to represent myself, because, as you said moments ago, it's a capital case.

Mr. Jackson has made it very clear to you that he is uncomfortable with the role that has been thrust upon him by this Court, and I think that despite Mr. McGill's claims of concern of fairness, it would be less than fair to have a Court-appointed Counsel functioning as backup Counsel against his own will and against the will of that defendant.

THE COURT: I think, Mr. Jamal, and Mr. Jackson, you miss something in my questioning. I am not assuming anything. I want to say that at the very beginning. I am not assuming anything.

Any questions that I asked you are merely bringing out that which the Supreme Court has said must be covered in order for the Court to make an intelligent decision as to whether or not you should represent yourself.

And, that's the reason for the questions, not that I am assuming that you are going to do anything or that you are going to be incompetent.

All I want to do is to put that in the

record to make sure that you understand exactly what you are doing, and if that is your choice, then so be it.

But, I am not assuming anything at all. And, although Mr. Jackson may be uncomfortable in being standby or backup Counsel--he may feel that it is demeaning to his position as a trial Counselor--I am sure that Mr. Jackson realizes the necessity for this status.

He is here to assist you, if you request it. He is here to give you advice on anything that you feel that you need advice on.

If you choose not to consult with him, then that is for you to decide. But, you may be suffering because you did not consult with him.

He is here to assist you, to tell you what is a proper procedure, or anything else that you may want to know.

And, if you choose not to drink of that fountain of knowledge, then you do so at your own peril.

Now, no one goes to law school to be trained to be backup Counsel. Backup Counsel is similar to co-Counsel in a case.

Now, you may--you have seen cases where there were two lawyers representing a defendant, and one was more or less co-Counsel. He was assisting Counsel. That, in effect, is what Mr. Jackson is doing here. He is assisting you.

You are the primary Counsel, and he is your co-Counsel. He is here to help you and assist you in any way that may be necessary, and that's the proper status of his being here.

THE DEFENDANT: But, the difference is obvious: that in a case where there is Counsel and co-Counsel, obviously there is some kind of agreement for Counsel and co-Counsel to be there.

You have heard disagreement. You have heard very clearly the lack of willingness on the part of Mr. Jackson to function in that role.

That is the point I am making, and I think you are ignoring it.

THE COURT: We realize what his function is, and he will act accordingly. If you have any questions you want to ask Mr. Jackson, I'm sure he will answer them for you.

I just wanted to go over one other thing with you, Mr. Jamal.

I had explained to you the--what was first degree murder. First degree murder was a specific intent to kill with malice aforethought for which the penalty could be either death or life imprisonment as the jury would decide based on aggravating and mitigating circumstances, if they should find you guilty of first degree murder.

As to third degree murder, third degree murder is also a killing with malice aforethought; however, it's really with an intent to do bodily harm and not to kill, but as a result of the injury that was inflicted, death results.

The jury could also find you guilty of third degree murder, which carries a maximum penalty of no less than ten nor more than twenty years.

The jury could also find you guilty of voluntary manslaughter, and voluntary manslaughter is the killing in the heat of passion or rage without time to cool due to a legal provocation on the part of the deceased, and in that situation, there is no malice in that case, because if there is ice, then it would have to be murder either of first or of the third degree, but it would only apply if there was no malice.

The maximum penalty for that charge is no less than five nor more than ten years, and the one remaining which I have already discussed with you: the possession of an instrument of crime generally, carries a penalty of no less than two and a half to five years.

Now, with the possession of an instrument of crime, it means that you possessed an instrument of crime such as a gun, with the intent to employ it criminally, and those would be the elements that have to be proven to the jury.

Do you have any questions that you want to ask me about the different charges?

Do you understand them perfectly?

THE DEFENDANT: Yes.

THE COURT: And, you've discussed those charges and possible penalties with your Counsel, Mr. Jackson?

THE DEFENDANT: No.

THE COURT: You have not?

THE DEFENDANT: No.

THE COURT: Of course, he is available to you, and you may, if you so wish, discuss them with him, and I'm sure he will explain them for you

further.

Is there anything else, gentlemen?

MR. MC GILL: Your Honor, as to the defenses, Your Honor, I think Your HONor is going to mention that Counsel would be able to litigate the matter discussing defenses.

THE COURT: Well, if Mr. Jamal has a defense of any nature to this charge, no matter what it may be, whether it be an alibi or self-defense, or anything that he may have, he can discuss that with Mr. Jackson, and proceed accordingly on whatever advice Mr. Jackson gives him, whatever he sees; however, as I said before, if he chooses not to consult with Mr. Jackson nor to discuss these possible defenses, he is going to be waiving them.

That is why I say it is so very serious for someone to represent himself; however, if he chooses to do that, and he does that, he is going to be waiving any rights that he may have either before this Court or the Appellate Court.

And, I can't explain it any better than that. As I said all along, it is a very serious case, and he is making a very, very serious decision at this time.

MR. MC GILL: Did Your Honor cover--I think we spoke of it at sidebar, but I just wanted to be sure for the record--that if Mr. Jamal does represent himself, and for some reason fails to raise issues that Counsel, learned Counsel, otherwise may and should, that he would waive his right to object to that and to litigate that on appeal if he is convicted?

THE COURT: That's what I said. I said that. There are certain rights, and there are certain Statutory and procedural rights which if he does not exercise them at this level, at this trial level, he will be waiving them, and if he doesn't consult with Mr. Jackson in order to preserve those rights, he is going to be giving them up. He is going to be losing them.

Do you understand that, Mr. Jackson? You cannot on appeal argue it before the Appellate Court. If they say, "You waived it," then that is it.

That's why I am emphasizing the seriousness of the decision that he has the right to make to represent himself, but I want him to understand that these are certain rights that he may be giving

up by representing himself by failing to take advantage of any procedural or evidentiary or Statutory right of objection to certain matters, which if he doesn't exercise them at this level will be waived as far as the Appellate level is concerned.

They won't consider it on appeal.

MR. MC GILL: Also, Your Honor--

THE COURT: That is assuming he is convicted.

MR. MC GILL: Of course.

THE COURT: But, I want him to understand that.

MR. MC GILL: Also, that he could not raise his own ineffectiveness.

THE COURT: I already told him that he could not raise his own ineffective assistance of Counsel. He cannot accuse himself of being ineffective if he chooses to represent himself in this matter.

He understands that. He said he understood it, and I assume that he realizes that this is a factual situation that he is making that decision.

MR. MCGILL: I believe Mr. Jackson has some

comment.

MR. JACKSON: Yes. May it please the Court, Your Honor, again I'd like the record to clearly reflect my position in this matter with regard to my relationship with Mr. Jamal.

I mean, of course, Judge Ribner has appointed me as backup Counsel. I am serving in that capacity quite frankly not directly as a result of that Order, but because of my sense of responsibility to Mr. Jamal.

My request to be removed from this case was not out of any sense of disinclination, but, indeed, to remove the Court from jurisdiction over me in my role with Mr. Jamal.

I feel my role with regard to backup Counsel to Mr. Jamal is that, indeed, I represent him, that I anticipate that there is the possibility that Mr. Jamal's defense, Mr. Jamal's role, and activity in this court may come into conflict with the Court Rules, with Your Honor, and I am suggesting at this point that I will follow the Rules that request the order and command of my client, and I wanted that to be clear.

That is the reason that I have requested

to be removed as backup. And, I am now letting the Court know that that is my sense of responsibility, and that sense of responsibility is borne out of my belief that it is an absolute right to self-representation, and that this Court most respectfully could not impede upon that right, and for that reason I intend to represent Mr. Jamal in the capacity the Court has dictated in a manner that is most comfortable and most suitable to me, Your Honor.

THE COURT: Thank you.

I realize that what you are saying about his absolute right to represent himself is true. The United States Supreme Court in the Loretta case, Loretta v. California, has so held that he has that right, and because they have said that he has that right, he does have that right, and the Court recognizes that.

But, by the same token, he has to realize the seriousness of the charges against him and the ramifications as to what can happen as a result of mis representation of himself.

As I said before, Mr. Jackson, you know this to be true, that there are lawyers who are accused of crimes, and even, maybe, Judges, who have

other people, other attorneys, represent them, and they are trained in the law, and even they have enough sense to realize that when it comes to defending yourself in a case, it is sometimes better to have somebody that is not so emotionally involved in the case to represent them.

That is all I wanted Mr. Jamal to understand. And, Understanding that, if he still wishes to represent himself, the Court has no objection to his representing himself.

However, he must realize that he must follow the Rules of Procedure and the Rules of Evidence that have been set down by the Courts.

And, as I said to him before, if he becomes obstreperous, or for any other reason disrupts the orderly proceedings, then he would have to be removed as Counsel, and you would have to take over the active role.

Knowing that, and understanding all of that, if he still wishes to represent himself, the Court will allow him to represent himself, and you, Mr. Jackson, will act as co-Counsel or backup Counsel in the event that your services become necessary.

The Court appreciates your feelings and

everything in this case and realizes that you understand that as an attorney you have certain obligations, and sometimes it is to represent someone who maybe even doesn't want you to represent them at all.

But, you have to be available to give him the full benefit of your knowledge, including all the Rules of law and evidence, and everything else that if he chooses he can ask for your advice.

But, by the same token, as I told him, if he fails to do that, he is making a big mistake.

The Court rules that for the aforesaid reasons Mr. Jamal may represent himself, and Mr. Jackson will act as backup Counsel.

All right.

I understand that we have Motions.

MR. MC GILL: Yes. There is a Motion to Suppress.

THE COURT: Now, it is my understanding, as I mentioned before, that there are two Motions filed.

MR. MC GILL: Your Honor, I understand there are two Motions filed. I'm showing the defendant now these two which were filed duly by Mr.

Jackson.

It has been indicated that it's the same Motion and the same allegations. They have not changed.

Is that correct, Mr. Jamal?

THE DEFENDANT: I have some additional Motions to file.

THE COURT: All right. Well, let's finish these first, and see what else he has.

THE DEFENDANT: I would also ask if the Commonwealth has any witnesses they be sequestered.

THE COURT: Let me find out what the Motions are, first.

MR. MC GILL: Do you have a copy of them?

THE COURT: I don't have anything. That's why I am asking you.

MR. MC GILL: Let me give you this, then. I will give you my copy.

THE COURT: I am sure the Court record has the original. Let me see if she can get them for me.

You need these. It looks like one is a Motion to Suppress evidence and identification. Is that right?

MR. MC GILL: Yes. Basically, Your Honor, there is a Motion to Suppress physical evidence, a Motion to Suppress any kind of statements, and a Motion to Suppress identification, those three areas.

THE COURT: All right. Physical evidence, statements, and what was the third? Identification?

MR. MC GILL: Yes.

THE COURT: Is that the three?

MR. MC GILL: That would be the ones that I am aware of that have been duly filed according to the Rules.

THE COURT: All right.

Now, did you say you had additional Motions you wanted to make?

THE DEFENDANT: Yes, sir.

THE COURT: What are they?

THE DEFENDANT: There are two Motions to suppress the testimony of the identifying witnesses and a Motion to provide notes of testimony of trial.

THE COURT: A Motion for what?

THE DEFENDANT: A Motion to provide notes of testimony of trial.

THE COURT: What notes of testimony?

THE DEFENDANT: I am saying during the

trial. Ok? I need the notes of testimony provided to me daily.

THE COURT: Well, I am afraid you can't get that.

THE DEFENDANT: Why can't I get that?

THE COURT: I am afraid this Reporter may be good, but I don't think he can do that.

I don't think he can do that.

THE DEFENDANT: Why can't he? I need these.

THE COURT: Well, I would suggest that you make notations just like every other lawyer does who is trying a case.

It would be nice if you could have it, but it is impossible.

THE DEFENDANT: I believe that with the charge of this gravity and complexity that I cannot be adequately defended without the benefit of a daily transcript of the trial proceedings.

THE COURT: Well, maybe your co-Counsel there could write it down for you, write down the notes.

THE DEFENDANT: That is not his role or function. Is he a secretary?

THE COURT: I am sorry, but the Court Reporter can't do it. It is impossible.

THE DEFENDANT: It is not impossible.

THE COURT: Yes, it is.

THE DEFENDANT: Why?

THE COURT: He is going to be here all day. Is he going to spend all night, and, then, come in the next day?

THE DEFENDANT: Are you saying that it is more important that he gets his sleep than I get the notes of testimony?

THE COURT: No, it is not more important, but it is important that he does get his sleep so that he can adequately take down the notes of testimony.

THE DEFENDANT: It is also important that I can get the notes of testimony so that I can have a complete record of what has transpired.

THE COURT: You made your point Mr. Jamal.

THE DEFENDANT: No, I haven't.

THE COURT: You have. You made a request for daily notes, and I have explained to you that it cannot be done. It is noted of record.

All right. What is your other Motion?

THE DEFENDANT: A Motion to Suppress.

THE COURT: What?

THE DEFENDANT: The testimony of Inspector Alphonso Giordano.

MR. MC GILL: If I may see the Motion, just so I know what he is talking about.

Thank you.

Has Your Honor see this?

THE COURT: I haven't seen anything.

MR. MC GILL: I will present a copy to the Court.

THE COURT: Is this the original?

THE DEFENDANT: No. It's a copy, Your Honor.

THE COURT: Oh!

MR. MC GILL: Your Honor, perhaps I could shortcut that. I believe that one of the witnesses in the Motion that has already been filed by Mr. Jackson will be Inspector Giordano.

THE COURT: You mean as far as the statements are concerned?

MR. MC GILL: Yes.

THE COURT: So--

MR. MC GILL: So that would be ruled upon

by the Court as part of that, so that essentially would be incorporated, so any other allegations or statements that he may have given to the Detectives later on--in other words, Inspector Giordano--I don't believe they would be the proper subject matter of a Motion to Suppress, but anything Mr. Jamal is alleged to have said to Inspector Giordano is definitely the subject of this Motion and will be litigated.

THE COURT: That is covered under the Motion that Mr. Jackson had originally filed?

MR. MC GILL: Yes.

THE COURT: OK.

MR. MC GILL: Do you have another copy of that there? I gave the Judge mine. If you don't--

THE DEFENDANT: I do.

THE COURT: Do you have the original there?

THE DEFENDANT: Yes, I do.

THE COURT: File it with the Clerk of the Court. Make a notation that that is being filed at the Bar of the Court.

All right. Then I think we are ready to proceed on the Motion.

MR. MC GILL: Yes, Your Honor, we are.

May I check outside to see if the witnesses are present?

THE COURT: All right. All witnesses on behalf of the Commonwealth and the defense who will testify in this Motion to Suppress are sequestered.

By that it means you will remain outside until you are called to testify. You will not discuss your testimony with anyone.

Since I do not know who will be testifying either for the Commonwealth or the defense, I am expecting both sides to keep their witnesses outside until they are called.

MR. MC GILL: Let me just check to see if they are outside. Just a moment, Your Honor.

THE COURT: All right.

MR. MC GILL: May I proceed, Your Honor?

THE COURT: You may.

MR. MC GILL: Yes. Officer Shoemaker would be the first witness.

COMMONWEALTH'S EVIDENCE ON THE MOTION TO SUPPRESS

OFFICER ROBERT SHOEMAKER, Badge No. 4669, Stakeout Unit, sworn.

DIRECT EXAMINATION

BY MR. MC GILL:

Q All right. Officer Shoemaker, I am directing you now to December the 9th, 1981.

Were you a member of the Philadelphia Police Force at that time?

A Yes, sir, I was.

Q What was your tour of duty at that time?

A I worked last out, eleven-thirty to seven-thirty in the morning.

Q And, were you alone or with someone else when you were working?

A I was with my partner, Officer James Forbes, Badge No. 9811.

Q And, did you have occasion to hear a radio call?

A That is correct, sir.

Q What was the nature of the radio call?

A "Officer with car stop."

Q All right. And, what if anything did you do? Just tell the Court exactly what you did.

A If Your Honor pleases, on the date in question, 12/9/81, at approximately 3:55 in the a.m., while on routine patrol in a marked stakeout wagon, 705, we were in the area of 12th and Chestnut when we overheard an

Officer go over the air of a car stop in the area of 13th and Locust.

A few moments later, the Officer went back over to the radio and said he needed a wagon. I proceeded-- I was driving the patrol wagon. I proceeded south on 12th Street.

When at Locust, I bucked traffic and headed up Locust Street the wrong direction. Right after I made the turn, we were stopped by a cab driver who was swaying back and forth in the street.

He rolled down his window and stated to my partner that they had shot a cop, and the Officer was shot.

With this I sped up the street and stopped approximately two carlengths away from the Officer's car.

His dome lights were on.

Q All right. Now, when you say "up the street," what street were you on?

A Locust Street.

Q Where were you coming from?

A I am coming from 12th Street heading towards 13th Street. I am going the wrong way on Locust Street.

Q All right. What did you do when you stopped?

A As I exited my patrol wagon, I drew my revolver, and

I started to walk between two parked cars, a Volkswagen which was on my right and a Ford, I believe, which was on my left.

As I walked between the two parked cars, I observed Mr. Jamal sitting on the curb with his feet in the street. He had his right hand crossed in front. His left arm was extended next to his body about six inches from his side.

We made eye contact at approximately the same time, at which time I told the man to freeze. His left hand started to motion towards the left.

At this point I did not know what he was reaching for, if he was reaching for anything at all, so to give myself a better advantage, I took a side step to the left, at which time I saw a two-inch revolver that was approximately six inches to a foot away from his hand.

I ordered the male to freeze again, which he did not. His hand slowly reached for the revolver. Before the male could reach the revolver, I kicked the male one time in the center of the chest, the heel to the center of the shoulder, and the sole grazing his right cheek.

With this, he fell backward and stated

twice, "I am shot. I am shot."

At this point I stepped over to Mr. Jamal with the gun still pointed on him. I kicked the revolver that was near his body out of his reach with my right foot.

At this point I walked over to Officer Faulkner, Officer Faulkner who was lying approximately four feet from the defendant.

The Officer was bleeding very badly from the area of the face. I leaned over, and myself and Officer Danny Sobolutsky, Officer James Shunk--

Q All right. Let me interrupt you now.

At the time, Officer, you were there, were any weapons recovered?

A Yes, sir.

Q And, who recovered those weapons?

A My partner.

Q Who was that?

A Officer James Forbes.

Q And, was one of those weapons the Officer's, Officer Faulkner?

A Yes, sir.

Q All right. And, were they recovered on the sidewalk or in the street area?

A Yes, sir.

Q All right. Now, what if anything did Mr. Jamal say to you? "I am shot"?

A The only statement he made to me was, "I am shot. I am shot."

Q And, where was Officer Faulkner in relation to Mr. Jamal at that time?

A Approximately four feet behind Mr. Jamal in the center of the pavement, lying on his back.

Q Besides Mr. Jamal and Officer Faulkner, was anyone else, any other civilian, there?

A William Cook was standing up against the building line with his hands in his pocket.

Q And, did he say anything?

A When I was leaning over Officer Faulkner, I looked up to William Cook, and he stated to me, "I had nothing to do with that."

That's all he said to me.

Q All right. And, what if anything did you do or was done with Officer Faulkner?

A Myself and three other Officers picked Officer Faulkner up, and we took him over to a wagon and transported him to the hospital.

Q And, what happened to Mr. Jamal?

A He was placed in the wagon by other police. I wasn't there.

Q He was placed in a wagon and taken to the hospital?

A I imagine so, yes.

Q OK. Now, you've indicated that when you had your gun drawn and when you saw Mr. Jamal's arm or hand reaching toward the weapon, was that one of the weapons that was recovered by your partner?

A That's correct.

MR. MC GILL: Cross-examine.

CROSS-EXAMINATION

BY MR. JAMAL:

Q How do you know what was being reached for?

A I observed it with my own eyes, sir.

Q You say you didn't see it first, and you had to step around?

A I took one step to my left.

Q Did you kick anyone at this time?

A I kicked the defendant, Mr. Jamal.

Q How many times?

A One time.

Q Why?

A Because, he was reaching for a revolver.

Q Why didn't you--did you see the defendant was

injured any at the time? Did you see any blood?

A I did not see any blood.

Q Did you see any blood coming from a head wound?

A The only blood I saw was coming from Officer Faulkner.

Q You didn't see any blood coming from the defendant?

A No, I didn't.

Q How far away were you from the weapon you said you saw?

A Approximately three foot.

Q Now, did you see any other police at that scene kick the defendant?

A No, sir, I didn't.

Q Beat the defendant?

A No, sir, I didn't.

Q Shoot the defendant?

A No, sir, I didn't.

Q Did you see the defendant injured in any way?

A No, sir, I didn't.

Q So, according to what you saw, you didn't see any injuries at all to the defendant?

A The only injuries that I presumed that the male had was that he was shot.

Q How could you presume that?

A Because, the male stated to me twice that he had been

shot.

Q But, you saw no injuries with your own eyes?

A No, sir, I didn't.

Q Did you see the defendant hand-cuffed?

A No, sir, I didn't.

Q Did you see the defendant put in the patrol wagon?

A Yes, sir, I did.

Q And, you didn't see him hand-cuffed?

A As he was being put into the truck, he was hand-cuffed.

Q I just asked you if you saw him hand-cuffed.

A I didn't see him actually hand-cuffed. They put the hand cuffs on. He was hand-cuffed, which is normal procedure before you put someone in a truck.

Q But, you didn't see the hand cuffs being put on the person?

A No, I didn't. I was carrying an Officer to the wagon.

Q Just answer the question. You say you--who were you with when you arrived at the scene? Who did you say you were with?

A My partner.

Q And, what is his name?

A Officer James Forbes.

Q How much time passed before your initial call and your arrival at that scene?

A Forty-five seconds.

Q Did you make a statement on the 9th of December about that incident?

A Oh, yes, sir.

Q When you arrived at that scene, did you notice any other people in the area?

A The only three people that I noticed were Mr. Jamal, Officer Faulkner, and William Cook.

Q You didn't see anyone in that immediate area other than those three people?

A My attention was drawn right to the place of occurrence.

Q I am asking you what you saw. You didn't see any other people at that area other than the people you just named?

A They are the three that I remember seeing, yes.

Q Did you see any people across the street from the incident?

A No, sir.

Q Did you see any people on the parking lot at that scene?

A My attention wasn't directed in that direction, sir.

No, I didn't.

Q OK. So, the only people you saw were the three that you mentioned, right?

A Yes, sir.

Q Can you identify this--that this is your signature?

Did you make that statement on December the 9th?

MR. MC GILL: Could I see it, Your Honor?

THE WITNESS: Where is the signature?

There is no signature on this.

MR. JAMAL: OK.

BY MR. JAMAL:

Q Did you make this statement to Detective D'Amato on December the 9th at 5:15 in the morning?

A I am not sure which Detective it was, but I made a statement.

Q OK. At 5:15 when you asked--when you arrived at the scene, were there other people nearby?

Do you remember your response?

A At what time, sir?

Q 5:15 when you made this statement. You did make this statement, right?

A Yes, sir.

Q And, you were asked: "Were there any other people

nearby?"

Do you remember your response?

A Do I remember my response?

Q Yes.

A I believe so. I couldn't tell you who they were.

Q I didn't ask who they were.

A At four o'clock the clubs let out. There is probably fifty--

Q I didn't ask you that. I asked you: Did you remember the statement you made on December the 9th, the one with Detective D'Amato's name or your name and your badge number?

A Yes, sir.

Q OK. Do you remember your response in that statement?

A I can't recall, sir.

Q You can't recall? This is your statement? You looked over it?

A I did, but it is not signed, sir.

Q It's not signed. OK.

A If you would look closer, you will find out it is not signed.

Q OK. Do you have any reason to believe why this isn't your statement?

A I have no reason.

Q Take a look at it once more. And, if you have any reason why you feel that statement isn't representative of what you told Detective D'Amato, let us know.

Have you familiarized yourself with that statement?

A Yes, sir, I have.

Q Are those words accurate?

A Yes, sir, it is.

Q What you told Detective D'Amato?

A (The witness nods his head in the affirmative.)

Q OK. May I have it back, please?

The morning you got the initial call, you were monitoring "J" band?

A "H" and Central.

Q "H" and Central? You say you got a--what was the nature of that initial radio transmission that you received that you responded to?

A Officer had a car stop.

Q Did you hear any transmission for a wagon?

A Yes, I did.

Q How much time transpired between the first transmission and the second?

A Oh, approximately thirty to forty-five seconds.

Q So--

A It couldn't have been thirty seconds.

Q You heard one transmission; then you waited for the other?

A No. We started right away.

Q As soon as you heard the car stopped, you started right away?

A Yes, sir.

Q Are you sure about that?

A I am very positive, sir.

Q Did you get any information over "H" band or "C" band about a why that car was being stopped?

A Excuse me, sir. I didn't hear you.

Q Did you get any indication when you received your transmission over "H" band or "C" band about why the car was being stopped?

A No, sir, just that the Officer had a car stopped, and it came over Central band.

Q And, as soon as you got the first transmission, you sped over to the scene?

A Right. That's correct.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

Q You stated that you--as you were responding to that

transmission that you bucked traffic and went the wrong way down the street.

A That's correct.

Q Why?

A Well, because at approximately 3:55 in the a.m., a lot of clubs are being closed at that time, and Officers from the 6th and the 9th District are out checking the clubs, so we more or less--our role is to back up the police, and knowing this, and working the 9th District for seven years, I know the routine, so I just rode in on the job.

The reason I bucked traffic was because the Officer had already called for a wagon. All that is says to me/that he has a prisoner, so I expedited it.

Instead of going around the corner, I went the wrong way with my lights on.

Q It took you thirty seconds from the first transmission down to--

A From 12th and Chestnut until I arrived at 1232 Locust Street.

Q Thirty seconds?

A Forty-five seconds, sir.

Q Forty-five seconds?

A No traffic on the streets at all.

Q All right.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

Q You said a moment ago that after you got the call for the backup, the wagon, that you knew that the Officer had a prisoner.

A The Officer stated over the radio that he had a prisoner.

Q He stated that over the radio?

A He wanted a wagon.

Q What did he say?

A I think I am not sure of his exact words, something like, "Better yet, get me a wagon."

Q He said, "Car stop. Better yet, get me a wagon"?

A He said the car stop, first. Then moments later he came back and said, "Better yet, get me a wagon."

Q By the time he said, "Better yet, get me a wagon," you were already enroute, weren't you?

A Yes, sir, we were enroute.

Q In your statement on December 9th to Detective D'Amato, you were asked: "When you arrived at the scene, were there other people in the area?"

And, your response, according to this statement, is: "Not in the immediate area, but there was

some at 13th and Locust on the corner and a few directly across the street on the north side near the parking lot."

A The club is letting out.

Q I understand, but I asked you a moment ago if you saw any people there.

A I wasn't directing my attention to patrons of the bars. I was directing my attention to--

Q I understand where your attention was directed. But, I asked you a few moments ago if you saw any people on the corner near the parking lot or across the street, and you said, "No."

A There were people there, but I wasn't directing my attentions towards them.

Q I didn't ask you where you directed your attention to.

My question was: Did you see any people in that area, and you said, "No."

A Not in the immediate area of where the so-called shooting had taken place.

Q Did you--you testified, I think, it was Officer Forbes who was on the scene, as well, right?

A Yes, sir.

Q Did he--did you see him seize any weapons?

A Excuse me?

Q Did you see him seize any weapons? Did you actually see that?

A I didn't actually see him take the weapons, no. I was carrying Officer Faulkner to the wagon at that time.

Q So, you didn't actually see him bend down and pick the weapons up?

A No, sir.

Q So.

MR. JAMAL: At this time I move to strike all of the testimony from Officer Shoemaker as it regards the seizure of the weapons. This is something he did not see.

He assumed that. He did not see them seized.

THE COURT: If that is a motion, that motion is denied.

MR. JAMAL: Pardon?

THE COURT: If that is a motion that you are making to the Court, it is denied.

BY MR. JAMAL:

Q It seems that you said a weapon was how far away from me?

A How far away from me?

Q How far away from you was the weapon which you said

you saw?

A Which weapon are you talking about, sir?

Q Whatever weapon. How many weapons did you see?

A I saw one weapon. It was a two-inch revolver.

Q How far away from you was it?

A Three feet.

Q How far away from you was it? Three feet?

A Three feet.

Q Couldn't you reach down and pick it up?

A I would have had to take a step or two closer to it, and then I could have reached down.

Q So, instead of taking that step, you kicked the person that you said was reaching for it?

A Well, it was either that, or let the male pick the gun up, which I didn't want him to do, obviously.

Q And, even after kicking that person, you still didn't pick the weapon up?

A I kicked it with my right foot. My main concern was to go over to Officer Faulkner.

Q Where did you kick it to?

A To my right with my right foot away from the male, out of his immediate reach.

Q So, you kicked the male with your left foot?

A I kicked the male with my right foot.

Q And, then, you kicked the gun with the right foot, as well?

A I stepped closer to the male as he went backwards stating, "I am shot. I am shot." I stepped up to the male with my gun still drawn on him and kicked the revolver with my right foot out of his way, because he was to my left.

Q So that the revolver was close enough to kick, but not close enough to pick up?

MR. MC GILL: Objection. Argumentative.

THE COURT: Sustained.

MR. JAMAL: I am asking a question.

THE COURT: What is your question?

MR. MC GILL: Go ahead. I withdraw the objection.

THE COURT: What is your question, again?

BY MR. JAMAL:

Q It was close enough to kick with his foot, but not close enough to pick up with his hand?

THE COURT: I have to sustain the objection to that question. It is argumentative. He can only testify as to what he actually did.

That's for the trier of fact to decide.

Go ahead.

BY MR. JAMAL:

Q So, let's make it clear. Before you left that scene, you saw no one beaten, no one kicked, other than your one kick, no one black-jacked, no one hand-cuffed?

A No, sir. There was someone hand-cuffed.

Q Let me finish. No one slammed into a pole and thrown into a police wagon?

A No, sir. I saw the male hand-cuffed. I did not see him actually hand-cuffed, then being placed in the wagon. But, as he was being put into the wagon, which is procedure, the male must be hand-cuffed.

That's what I saw. I did not see anyone beaten or any of those other accusations that you made.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q When you went over to Officer Faulkner, did you notice his weapon?

A (There was no response.)

Q Where was it?

A He did not have a weapon.

Q Pardon?

A His weapon was not with him.

Q He didn't have a weapon?

A His weapon was not in his holster, no, sir.

Q Where was his gun? Did you see it at all?

A I did not see his gun, sir.

Q Just about five minutes ago when on direct, what did you say about Faulkner's weapon?

A I don't understand the question.

MR. JAMAL: Mr. Stenographer, can you go back to Mr. McGill's direct examination of Officer Shoemaker and note if there is anything there in reference to Faulkner's weapon? I believe it was.

MR. MC GILL: Your Honor, to save time, I can recall--

MR. JAMAL: What are you saying?

MR. MC GILL: I recall asking Officer Shoemaker: Were weapons seized? And, he said, "There were two weapons seized."

And, I said: Were one of the weapons seized Officer Faulkner's?

And, his response was, "Yes."

BY MR. JAMAL:

Q But, you testified that you only saw one weapon, didn't you?

A After I took Officer Faulkner to the truck, I came back to the scene, looked for my partner, saw him stand-

ing right at about the scene with two guns in his hand,
in his left hand.

That's why I said he seized the weapons,
but I did not see Officer Faulkner's gun before that.

MR. JAMAL: No further questions.

REDIRECT EXAMINATION

BY MR. MC GILL:

Q Just one thing, Officer. You indicated the word
"defendant" and "Mr. Jamal."

You mean the defendant in this case?

A Yes.

MR. MC GILL: Thank you very much.

Your Honor, the next witness will be
Inspector Giordano.

INSPECTOR ALPHONSO GIORDANO, Command
Inspections Bureau, sworn.

DIRECT EXAMINATION

MR. MC GILL: May I proceed, Your Honor?

THE COURT: Very well.

BY MR. MC GILL:

Q All right. Inspector Giordano, on December the 9th,
1981, were you a member of the Philadelphia Police De-
partment?

A Yes.

Q And, what was your rank at that time?

A Inspector.

Q Now, Inspector, I'm directing your attention to that particular day.

Did you have occasion to see the defendant then?

A Yes.

Q Where did you see the defendant on that day?

A He was in back of 601 wagon parked in the 1200 block of Locust Street.

Q And, approximately when, if you can recall?

A It was about 4:00 a.m.

Q Would you please relate to the Court what the circumstances were concerning the contact that you had with this defendant?

A The first call came out around 3:55 of a policeman being shot in the 1200 block of Locust. I was in--approximately in the area of Broad and Poplar.

Q All right. Inspector, could you go directly to when you arrived and when you first saw this defendant?

What were those circumstances?

A They opened the rear doors of 601 wagon, and Mr. Cook was laying there. His head--

Q When you say "Mr. Cook," who are you referring to?

A The defendant.

Q All right. Mr. Jamal. Mr. Mumia Abu-Jamal.

Mr. Jamal was lying, and what was he doing?

A His head was facing me, and his feet were toward the front of the wagon. As the doors opened, I noticed that his outer jacket was pulled back a little bit here, and there was a white strap running across his shoulder.

I then asked one of the policemen that were driving the wagon or assigned to the wagon if he had been searched.

They stated, "No." I then climbed into the wagon with the intention of seeing if that strap led to a holster. It looked like a white shoulder holster type strap.

As I stepped into the wagon, I had to turn around so that I could get over the defendant, and I reached down and pulled his jacket open.

As I did, my right hand touched the shoulder holster which was under the left armpit, and my left hand felt something wet over on the right side.

As I pulled my hand out, I noticed there was blood on it. I asked him if he had been hurt. He

did not respond. I asked him at least one other time if he had been injured. He did not respond.

Then I asked him where the gun was that went in the holster, and he stated that he dropped the gun beside a car after he shot him.

Q Now, Inspector, prior to your contact with the defendant, or, I should say, during the course of your contact with this defendant, did you have occasion to observe any individual being brought up to the wagon even before you had asked the question?

A No. He must have been in the wagon when I arrived.

Q No. I don't mean that. Was anybody outside, any civilian, taken up to the wagon?

A Oh, yes. There was a cab driver, a white cab driver.

Q All right. And, tell us about that. What did you observe there?

A The white cab driver stated that the man that shot the policeman ran away, and he was a MOVE member, and I said, "What do you mean, a MOVE member?"

He said, "He had the hair, the funny hair.

And, at that point, somebody said, "We have in back of the wagon a man with dread locks."

Q Now, was anyone taken up to that wagon for purposes of identifying the man that you can recall?

A No. I think this gentleman was standing with this cab driver. I don't think he was taken to the wagon.

Q OK. And, did he identify this defendant?

A Yes, he did.

Q All right. And, what did he say?

A As soon as the doors opened up and he saw this gentleman, he said, "That's the man. He shot the policeman."

Q Now, that was before you went in? Is that correct?

A Yes.

Q OK. And, then, after he had said that, you went in, and then you noticed this--

A I went in as a result of the strap, because I couldn't see the holster, and I wanted to make sure he still didn't have the gun on him.

Q OK. And, what--so, if I can get the sequence right, the man had identified Mr. Jamal as the one who shot the Police Officer?

A Yes.

Q Before you went into the wagon?

A Yes.

Q And, when you went into the wagon, during the course of the things that you said you had done, you had asked him whether he was hurt, and there was no response?

A That's correct.

Q You asked him again if he was hurt, and there was no response, and, then, when you eventually had seen the holster, you had then asked him, "Where is the gun?"

A Right.

Q Are those the words you used?

A That's right.

Q And, for what reason did you ask him where was the gun?

A Well--

Q That was in that holster.

A If I can go back a little bit to the original scene, when I arrived on it, there was a blue Volkswagen parked by the curb. 601 was behind it with the spot light on the car itself.

There was a large pool of blood by 1234 Locust, and it was mass confusion. Policemen were running around. The Police radio was broadcasting a description of the car that had--

Q OK. All right. Well, go ahead. Go ahead.

A Broadcasting the description of a blue Volkswagen which I was looking at, so my idea was to try to find the gun, if he had it on, and protect possibly other policemen from being shot, or somebody else.

MR. MC GILL: Thank you. Cross-examine.

CROSS-EXAMINATION

BY MR. JAMAL:

Q Inspector Giordano, what was the first thing you did when you went to the patrol wagon?

A I think the first thing that I did, or that somebody else did--

Q That you did.

A After the doors were opened, and I observed the strap, I climbed in.

Q Did you climb in alone?

A No. When I got in and turned myself around, I noticed there was another policeman that apparently climbed in behind me.

The door closed, and after a short period of time, it opened again, and he alighted out of the wagon.

Q So, what period of time would you say that other policeman was in there with you?

A A short period of time.

Q How short? Estimate it for me.

A Maybe thirty, forty-five seconds. I wasn't in there more than a couple of minutes.

Q Thirty to forty-five seconds? What is the first-- what is the first thing you asked him?

A If you were hurt.

Q And, next?

A I think I asked if you were hurt the second time. Then, the third question was, "Where is the gun?"

Q Do you know who that other policeman was who went inside with you?

A No, I don't. I would assume--it is just an assumption. It was one of the fellows assigned to the wagon.

Q But, you don't know who it was?

A No.

Q But, you do know that at the most he was there a half a minute or so? Thirty seconds?

A That's an approximation, yes.

Q And, you do know that the first thing you asked was I hurt?

A (The witness nods his head in the affirmative.)

Q Did you see any blood on me, on my face?

A No, no blood any place, no, sir. Your jacket on the right-hand side was wet, but I couldn't tell in that dim light in the wagon whether it was blood or not.

Q Say that again.

A The right-hand side of your jacket was wet, but I couldn't tell in the dim light whether it was blood or not.

Q How long have you been an Inspector in the Police Department?

A Since 1976.

Q Would you say that you are professional at all times?

A At all times.

Q Would you say that at no time on that date did you depart from your professionalism, your professionalism?

MR. MC GILL: Your Honor, I would object. If we are talking about what occurred--

MR. JAMAL: Yes, we are talking about what occurred.

MR. MC GILL: Excuse me, Your Honor. Maybe I can finish my objection. I apologize for not standing, Your Honor.

Your Honor, we are talking about the alleged statement by the defendant, Mr. Jamal, to Inspector Giordano in the car.

If he starts opening up the business about where he was before or afterwards, I think it is going to--I think the main focus of the Motion to Suppress is his oral statements to Inspector Giordano in the wagon, and that's all he will testify to.

MR. JAMAL: What we are trying to find out, obviously, is: What happened on that evening?

THE COURT: Why don't you just ask him that?

MR. JAMAL: Well, can I ask him in the manner in which I wish to ask him?

THE COURT: I don't know what you mean by "professionalism." Why don't you break that down?

MR. JAMAL: OK.

BY MR. JAMAL:

Q Have you--everything on your -75--your investigation form--is correct? Is that right?

A I made no investigation.

Q No, no. I didn't ask you that. I said everthing on your investigation form, the investigation interview record, form 75-49--

A I would have to see it. I don't know what you are talking about, Mr. Jamal. I would have to see it.

Q Did you make a statement at 6:15 the morning of December 9th?

A Yes, I did.

Q Let me finish the question. To an interviewer, a Police Officer by the name of Bennett?

A I don't know.

Q You don't know?

A I would have to see it.

Q You made a statement, but you don't know who you made it to?

A That's correct.

Q OK. But, you can safely assume--

A No, I can't.

Q Did you see a copy of the statement that you made?

A Not right now, I don't, no.

Q I said: Did you see a copy of the statement that you made?

A Probably after I gave it, yes.

Q Not probably. Did you see a copy of it?

A After, I did, yes.

Q OK. Did you correct it?

A I can't remember making any corrections.

Q If you didn't make any corrections on this statement at 6:15 in the morning, we can assume it is true? Was it true?

MR. MC GILL: Your Honor, if we are going to cross-examine him on the statement, I would ask that Mr. Jamal show him the statement so he can identify it and work from there.

THE COURT: Do you have any copies?

MR. MC GILL: All he has to do is show it to him. I have one here.

THE COURT: Do you have a copy? Do you have an extra copy?

MR. JAMAL: Well, can I finish my cross-examination before he shows him a copy?

THE COURT: Well, if you are going to ask him questions on this statement, we have to--the Court has to know what statement you are talking about.

MR. JAMAL: All we asked was did he make a statement on that morning, and he agreed he did. OK? So, shouldn't he know what he said to Officer Bennett?

THE COURT: That's assuming that he remembers everything.

MR. JAMAL: Well, we are basing a lot of this on his memory, aren't we?

THE COURT: I don't know what you are basing it on. I am only the Judge. You are asking the questions.

MR. JAMAL: Fine. And, my question is--

THE COURT: You will have to make your objections, and I will just have to rule on them.

MR. JAMAL: Thank you.

MR. MC GILL: Yes, sir.

BY MR. JAMAL:

Q Did you see any policemen strike me?

A Any policemen strike you?

Q Yes.

A Absolutely not.

Q Did you strike me?

A No, sir.

Q At no time?

A At no time.

Q Do you own a walkie-talkie?

A Do I own a walkie-talkie? No.

Q You don't own a police radio?

A No.

Q Was one issued to you?

A Yes.

Q So, you carry one? Is that correct?

A Either I or my chauffeur carries it.

Q On the morning in question, did you carry one?

A Yes.

Q Did you use it to strike me in my head?

A No.

Q When you first arrived at the scene--I mean, got into the wagon--excuse me--your first question was what?

A Are you hurt, or are you injured?

Q You got no response, correct?

A That's correct.

Q And, then, your succeeding questions were what?

A The second was the same thing. Are you hurt or injured?

Q By this time I had turned myself around so that I was facing you face to face, facing the rear of the wagon, right?

A Yes, that's correct.

Q Right. I was hand-cuffed, right?

A You were hand-cuffed behind your back.

Q Under arrest and restrained, correct?

A I didn't quite get you.

Q I said under arrest and restrained, correct?

A I don't know how you would say under arrest and restrained.

Q Well, you are a policeman. You know what arrest means, right?

A I know what it means, yes.

Q OK. I was in a wagon, hand-cuffed?

A That's right.

Q Was I underarrest?

A You were being detained. I don't know about under arrest.

Q You just think I was just sitting there?

MR. MC GILL: Your Honor, I would object.

BY MR. JAMAL:

Q Was I under arrest or restraint?

A (There was no response.)

Q Could I get up and walk away?

MR. MC GILL: Your Honor--

BY MR. JAMAL:

Q Could I get up and walk away?

A Not inside the wagon, no. You could get up, but you couldn't walk too far.

Q OK. So, I was in custody, correct?

A Custody would be a better word, yes.

Q You stated that the first thing you said when you got into the wagon was was I hurt.

A (The witness nods his head in the affirmative.)

Q That's right, isn't it?

A Yes.

Q Did you ask me at any time--strike that.

Did you mention at any time in that wagon that I was under arrest?

A No.

Q That I had the right to remain silent?

A No.

Q That anything I can say--that anything I said can and will be used against me in court?

A No.

Q You have been an Inspector since 1976, right?

A That's correct.

Q Are you familiar with Miranda warnings?

A Yes, I am.

Q Did you forget them that morning?

A No.

Q So, you entered the wagon, had the door closed about thirty seconds later after another policeman went out, and interviewed me privately?

A Yes.

Q And, you didn't strike me at any time, right?

A No, sir.

Q Would you look at this, please, and if you can identify it, would you do so?

A (There was no response.)

Q To the best of your memory, is that the statement you gave to Detective Bennett at 6:15 that morning?

A Although it is not signed, this is the statement that I gave that morning, yes.

Q OK. May I have it back, please?

A OK.

Q In this statement do you want to read something that you agreed you said to Bennett on 6:15 that morning?

A No. I said that that is the statement. I didn't say it was correct.

Q Well, is this statement incorrect?

A There are a couple minor discrepancies in it, yes.

Q Minor discrepancies?

A Yes, there are.

Q You said that a few moments ago that you did re-view the statement you made to Bennett.

A I said I read it the day I gave it.

Q And, it was correct then, wasn't it?

A I thought so, but looking at it now, there are a couple of minor discrepancies.

Q A couple of minor discrepancies?

A Yes.

Q Such as?

A It states there I asked you first about the gun. I didn't. I ask you about being hurt, first.

Q So, which one is it?

A As I testified here and at about three other hearings, Mr. Jamal. At least three or four times I testified I asked you whether you were hurt.

Q I asked you: Which one is the truth?

A I asked you in the wagon whether you were hurt, and, then, whether--where the gun was at.

Q In your statement that you gave to Detective Bennett that you now have some minor discrepancies about, you say, "I climbed into the wagon by myself and pulled his coat back, and I found the holster empty strapped to his left armpit."

A That's correct.

Q Didn't you just say when you went into the wagon there was another policeman with you?

A Yes. You asked me, and I said there was another policeman came in after me, but I entered by myself.

Q You entered--

A I entered by myself, and behind me--

Q Let me ask the question. OK? And, then, you can respond. All right?

A Go ahead.

Q You entered the wagon by yourself, correct?

A That's right.

Q The door closed, correct?

A I don't know whether the door closed or not. I had my back to it. The first I knew there was anybody else in the wagon was when I attempted to turn around, and then saw there was another policeman.

Q Well, how long did it take you to turn around?

A Trying to get over your feet, a few seconds.

Q A few seconds. Now I'd like to direct your attention to the notes of testimony taken on January the 8th of 1982 before Judge Mekel, the preliminary hearing.

That day you were asked on cross-examination--

MR. MC GILL: What Page, Mr. Jamal?

MR. JAMAL: Page 33--93. I am sorry.

MR. MC GILL: Thank you.

BY MR. JAMAL:

Q You were asked: "Inspector Giordano, when you went inside 601 wagon, were you there by yourself?"

You responded, "No. One of the wagon crew came in briefly with me when I went in, and then he stepped out and shut the door of the wagon."

Of course, this is several months after-- several weeks, I should say--almost one month to the day after December 9th.

Why is there no mention of another policeman in this statement at 6:15 that morning?

A I can't answer why. Maybe the same reason it was never signed.

Q Well, of course, I have nothing to do with you

signing a police statement, do I?

A I really thought that was going to be an initial statement, and I thought I would be able to give one later on, and that never happened, because, if you will notice, in all the other police statements--and, I haven't seen them--if you will look through them, I will bet nine out of ten of them are signed.

I will bet mine is one of the few in that batch that aren't signed.

Q Does it make any difference as to whether it is signed or not as to the truth of the statement?

A No.

MR. MC GILL: Objection, Your Honor.

THE WITNESS: It makes a difference on how thorough it is.

THE COURT: I sustain the objection.

THE WITNESS: OK.

BY MR. JAMAL:

Q I direct your attention to notes of testimony from January the 11th before Judge Ribner, Page 75.

You were asked on cross-examination:
"When Jamal was in the wagon and you were in the wagon, you were in the wagon alone with defendant Jamal? Is that correct?"

Your answer: "No. When I stepped in, the policeman from 601 wagon stepped in with me. When I turned myself around so that I could stare him in the face, the policeman stepped out and closed the door of the wagon."

How much time did that take?

A Again, I would have to give you the same answer I gave you earlier, maybe thirty seconds.

Q So, when that policeman stepped out and closed the door of the wagon, what was taking place?

A I was porbably still asking him the questions. I don't remember if you had answered with that answer, or if he could have heard it. I don't know at that point.

Q Do you remember if I gave any answer when he stepped out?

A I couldn't truthfully say, no.

Q Did you consider that question or any of those questions interrogation?

A No. You weren't even in my mind at that point a suspect.

Q What is the difference between interrogation and questioning?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained. That's for the

Court to decide. Just ask him questions as to what he did, what he saw, what he heard.

BY MR. JAMAL:

Q You said that I was in custody, correct?

A In custody, yes, just like other people at the scene were in custody, also.

Q You said that I was in custody, correct?

A Yes.

Q Under arrest and restraint, correct?

A That's not what I said. I said custody. I didn't say arrest.

Q OK. You saw handcuffs, didn't you?

A No, I didn't see the handcuffs until--in fact, I never saw the handcuffs. I felt them. I reached under you.

Q You felt the handcuffs?

A Looking for the gun, yes.

Q So, you knew there were handcuffs, didn't you?

A Yes.

Q Who were you looking for in the wagon if not a suspect?

A The first thing I was looking for in the wagon was a gun that would be in the holster when I saw the strap as I testified. I just wanted to make sure there wasn't

going to be another shooting at that point.

Q Who were you looking for in the wagon, if not a suspect?

A I can't--

Q A passerby?

A Pardon me?

Q A passerby?

A Well, you were the first wagon. There was another wagon with a person in it, and I wanted to go from yours to the second one, and possible to any other people that may have been picked up at the scene.

You weren't the only individual in the wagon.

Q Was I a suspect?

A Not in my mind until you said you dropped the gun after you shot him. Then is when I stopped asking you any questions, because right then and there you were the prime suspect in my mind, yes.

Q In your mind?

A That's correct.

Q When you got on the scene--OK? When you first got there, you talked to Lieutenant O'Neil?

A Yes.

Q What did he tell you?

MR. MC GILL: Your Honor--

THE WITNESS: That there was a--

MR. MC GILL: Go ahead.

THE WITNESS: That there was someone--and, I don't know if he used the word "suspect" in the back of the wagon, and he was standing in front of-- I would have to read the statement.

MR. JAMAL: Well--

THE WITNESS: I don't know what I said up until the point the cab driver said you were the man.

BY MR. JAMAL:

Q Well, my question is: What did Lieutenant O'Neil tell you?

A Well, I don't know if he used the word "suspect." "We have somebody in the back of 601 with dread locks."

Q Again I refer you to your statement of December 9th at 6:15.

A Yes?

Q A statement that even though you didn't sign it, you agreed repeated your words.

Lieutenant O'Neil, 3rd District, stated to you the suspect in the rear of EPV 601. So, when you opened the door, or when the door of 601 was opened, who were you looking for?

A Looking for a suspect, just as in 600-whatever the other wagon was. At the same time I was told there was another individual picked up.

Q So, when you opened that door, I was a suspect, wasn't I?

A You were the same as any other individuals.

Q I didn't ask you that. I was a suspect, wasn't I?

A Well, see, I have to explain a little more.

Q I am not trying to do anything. Will you tell him to answer this question?

A I have to explain it in a little bit more substance than just trying to pinpoint--

MR. MC GILL: Your Honor, I would object to this, because I think the line of questioning as to whether or not this Inspector felt he was a suspect is irrelevant.

It depends upon the Court's determination as to the general facts. What the Officer feels is not relevant. I will object to this.

MR. JAMAL: What the Officer was informed of is relevant. What the Officer was informed of--

THE COURT: Then ask him that question if that is what you want.

MR. JAMAL: Pardon?

THE COURT: Then ask him that question if that is what you are asking.

MR. JAMAL: I want him to answer the question.

THE COURT: Well, he has already answered that particular question.

MR. JAMAL: No, he hasn't.

THE COURT: I have it down that he has, but go ahead.

BY MR. JAMAL:

Q So, when EPV 601 was opened, you were looking for a suspect, weren't you?

A When the back door opened, as I testified before, I saw the strap. I was looking for a holster related to the gun.

Q Strapped on who?

A On you.

Q You didn't see the man?

A At first I saw your head and your hairdo; from there I saw the strap.

Q Right. But, I am saying you were looking for a suspect, weren't you?

A You were as much a suspect as the other fifty-five people standing around that happened to be black, if you

want to say that, Mr. Jamal. Mr. Jamal, at that point you were not a suspect, per se, in my mind.

MR. MC GILL: Your Honor, I would object.

BY MR. JAMAL:

Q Were the other fifty-five people hand-cuffed?

MR. MC GILL: Objection, Your Honor.

BY MR. JAMAL:

Q Beaten?

THE COURT: Sustained.

BY MR. JAMAL:

Q Were they shot?

THE COURT: Counsellor, it's for me to decide whether or not you were a suspect at that time.

MR. JAMAL: Were you at the scene?

THE COURT: I make the legal decision based on what evidence I hear here.

That's why we are having this Motion to Suppress. I have to make the decision.

BY MR. JAMAL:

Q You stated in your statement of December 9th that a white male from the crowd said something to you.

What did he say?

A The words went something on the order--I might be

off a little bit.

Q To the best of your knowledge.

A To the best of my knowledge, "The man that shot the policeman is a MOVE member," and either I or somebody else asked him, "What do you mean MOVE member?"

And, he said, "The hair there."

This is the fellow I think was the cab driver. He was a white fellow.

Q OK. Where did he say the man ran?

A At one point I think he said he ran, or ran away.

Q Did he say where?

A No, because at that point I think Lieutenant O'Neil said, "We have an individual"--I think he mentioned dread locks--"in the back of the wagon."

Q Did Lieutenant O'Neil happen to say the word "suspect" when he said that?

A He could have.

Q It slipped your mind?

A (There was no response.)

Q Now, you arrived at the scene. Are you OK?

A Yes.

Q You arrived at the scene. Lieutenant O'Neil makes a statement to you about a suspect in the rear of EPV to you 601. A white male states/he saw a black MOVE member run

away.

You ask, "What do you mean MOVE member?"

He says, "His hair"?

A Yes, sir.

Q OK. You open the wagon. And, what is the first thing you saw?

A You, lying upsidedown. When I say, "upsidedown," sort of a second reason for me getting in the wagon other than the strap was to get a look at you. All I could see was the back of your head, or the top of your head.

Q All you could see was hair?

A Yes. Let's put it that way.

Q Right. And, at that moment, wasn't I a suspect?

A Not in my mind, no.

Q There was no suspicion in your mind?

A As I said, a suspect to me would have to be more than just the hair, and more than the fact that you were Black.

Q Why did you think I was in the wagon?

A Probably for the same reason other people were picked up and detained that night.

Q Why do you think I was in the wagon?

A You were on the scene the same as the other folks.

Q So, you arrested everybody on the scene?

A No, sir.

MR. MC GILL: Your Honor, I object to this. I think this goes beyond the direct examination. The fact of custody, I think, has been explored thoroughly.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q When you arrived at the scene, were there two wagons in the area?

A There were at least two wagons with people in them, yes.

Q There could have been more?

A Very possibly there could have been more, yes.

Q You only remember specifically two? Right?

A I remember the two because they were blocking the street.

Q OK. How many other people did you see?

A Are you talking about police?

MR. MC GILL: Objection. Beyond the scope, Your Honor.

MR. JAMAL: Can I finish my question?

MR. MC GILL: Beyond the scope.

THE COURT: The objection is well taken.

It is sustained.

MR. JAMAL: You haven't heard the question. How can you sustain an objection to a question you haven't heard? Are you presuming what I am going to ask?

THE COURT: All right. Ask your question. Wait until he finished his question.

MR. JAMAL: Thank you.

MR. MC GILL: Yes, sir.

BY MR. JAMAL:

Q How many other people at that scene did you see hand-cuffed in the back of an EPW?

MR. MC GILL: Your Honor, objection.

THE COURT: No. I will let him answer if he saw anybody. I don't know.

THE WITNESS: I didn't see anyone after talking to you.

MR. JAMAL: OK.

THE WITNESS: There were more, but I didn't see them.

MR. JAMAL: No further questions.

REDIRECT EXAMINATION

BY MR. MC GILL:

Q All right, Inspector. As I understand what you said,

the reason you had asked that question regarding the gun to Mr. Jamal was to prevent anyone else from being shot? Is that what you said? "Yes" or "no."

A Yes.

MR. JAMAL: Objection. Leading the witness.

THE COURT: Well, he has already answered that question, Counsellor.

BY MR. MC GILL:

Q All right. And, the individual that you had said was there and who was talking about the MOVE member--he identified this defendant as the one who shot the Police Officer?

A Yes.

MR. MC GILL: Nothing further, Your Honor.

Judge, if the Court pleases, at this time may we ask--I would ask for a recess so I can get my witnesses together.

THE COURT: What time do you want to come back?

MR. MC GILL: Whatever Your Honor wishes.

THE COURT: I can be back at two o'clock. I don't know whether you people can or not. That's why I am asking you.

MR. MC GILL: OK, Your Honor. Well, I am not sure how the eating situation is upstairs.

THE COURT: He can be back at two if you can. If you want it later, say so.

MR. MC GILL: OK.

THE COURT: What time do you want?

MR. MC GILL: Your Honor, two o'clock will be fine.

THE COURT: All right. We will recess until two o'clock.

(A luncheon recess was taken until 2:00 p.m. this date.)

(After recess):

(There was a sidebar conference, reported as follows):

MR. JACKSON: Your Honor, George Fassnacht is a ballistician, and he was appointed as a ballistician for Mr. Jamal. Mr. Jamal has never spoken to him.

Mr. Fassnacht said that he would be available tomorrow when we take a luncheon break, and I wondered whether Mr. Jamal could talk with him some place here in the courtroom, one of the rooms, as opposed to the cellroom upstairs.

THE COURT: I understand that the Sheriff's orders are that is the only place he can see him.

Why not the prison?

MR. JACKSON: We were trying to make it convenient for him to see him here.

THE COURT: The only place I know of is up in the cellroom. That is the Sheriff's area. So, if he wants, he can see him up there, or he can see him down at the prison, you know, any time, in the evening, any time.

MR. JACKSON: I will just have to make the arrangements.

MR. MC GILL: Just quote for the record, Your Honor, so that the proceedings are documented, during the course of this morning's session, Mr. Jamal and Mr. Jackson--and, I think the Court will see that--were often in conversation in reference--

THE COURT: That is all right. That's what I told them to do.

MR. MC GILL: Yes. So, he is certainly abiding by that rule of the Court. Both people are abiding by the rule of Court to discuss the case and to exchange comments after each witness, and, in fact, during the examination, during ques-

tions, they sometimes consult.

THE COURT: That is all right, perfectly all right.

(The proceedings were resumed in open court, as follows):

MR. MC GILL: May I proceed, Your Honor?

THE COURT: Yes.

MR. MC GILL: The Commonwealth's next witness is Priscilla Durham.

THE COURT: Before we proceed, will you see that they clear that area? Get them out entirely. Tell them to either go out or go up to the cellroom, either one. I am not going to stand for this nonsense.

Will you please get them away from the door?

THE CRIER: Your Honor, the Sheriffs are coming down just now.

OFFICER PRISCILLA DURHAM, Badge No. 27, Jefferson Hospital Security, sworn.

DIRECT EXAMINATION

MR. MC GILL: May I proceed, Your Honor?

THE COURT: You may.

BY MR. MC GILL:

Q Officer Durham, if you can't hear me, let me know.

Officer Durham, now, referring to December 9th, 1981, now, during the course of that time were you on duty at Jefferson Hospital?

A Yes, I was.

Q And, did you have occasion to get to see this defendant there?

A Yes, I did.

Q And, when did you first see the defendant?

A When he was brought into the emergency room by the Philadelphia Police Department.

Q And, when he was brought in, what if anything occurred, or what if any contact or communication did you hear?

A I heard Mr. Jamal make a statement about, "Yes, I shot the mother-fucker, and I hope the mother-fucker dies."

Q And, where was he when he said that?

A He was at my feet.

Q And, where was that?

A It was right at the doorway leading into the emergency treatment area.

Q And, right after that, after the defendant said

that, did you hear anything else?

A No.

Q What about not from the defendant, but, specifically, from any type of Police Officer?

A Yes, I did. I heard a Police Officer--several Police Officers--ask me where could they take Mr. Jamal.

Q All right. But, after Mr. Jamal said what you said he said, did a Police Officer respond in any way to that?

A Yes, he did.

Q What was that?

A A Police Officer said, "If he dies, you die."

Q Now, at that point, is that when other Officers asked you where they could place him?

A Yes, yes.

Q And, what then did you do?

A I went around through the other side and opened the door directly across from where Mr. Jamal was and opened the door, and, then, led them through that way.

Q And, was he, in fact, led through that way?

A Yes, he was.

Q And, while he was led through that particular area, did you hear him--Mr. Jamal--say anything else?

A Yes. He said the same thing that I heard him say

before: "I shot the mother-fucker, and I hope the mother-fucker dies."

Q And, from the time that you saw him being brought over after the first time that he had said that, and then a Policeman had responded to that, from that time until the second time he said the same thing, did you hear the Police Officer say anything to him?

A No.

Q And, did you hear anybody say anything at all before Mr. Jamal said that the first time?

A No, I didn't.

MR. MC GILL: Cross-examine.

Excuse me, Your Honor. Before I hand the examination over, may I ask just a few other points?

THE COURT: Go ahead.

BY MR. MC GILL:

Q Officer Durham, when he was--Mr. Jamal was--walking over after he had said that the first time and before he said it the second time, how was he walking, if you can recall?

A Well, he had to be assisted. He wasn't co-operative. They had to pick him up and make him walk across the floor.

MR. MC GILL: Cross-examine.

CROSS-EXAMINATION

BY MR. JAMAL:

Q What was the date that you heard this? What was the date that you heard this statement that you said you heard me say?

A December the 9th.

Q When did you report that to the Police?

A When I was asked by the Police Department. I am not sure of the date.

Q Can you give an approximation?

A Oh, maybe around the end of January, the 1st of February. I am not sure.

Q Did you at any time think that that was important? what you heard? Did you think that was important, what you heard?

MR. MC GILL: Your Honor, I would object.

I think that that goes--going to credibility, I think that is a trial issue. What we are concerned with right now are the circumstances surrounding the admission in the hospital.

THE COURT: Can you rephrase your question, somehow?

BY MR. JAMAL:

Q What did you think when you heard that statement?

A (There was no response.)

Q When you heard that statement--

MR. MC GILL: Objection.

THE COURT: I will let her answer it.

Go ahead.

THE WITNESS: I thought you was out of
your mind to make a statement like that.

BY MR. JAMAL:

Q Did you tell anybody that you heard that?

A By "anybody," are you referring to the Police or
co-workers?

Q I mean anybody.

A We talked about it, yes.

Q Who are we?

A Me and several people in the hospital.

Q Who?

MR. MC GILL: Objection. That is a trial
matter, Your Honor, going into that.

MR. JAMAL: This is an issue of credibil-
ity. I want to find out who she talked to, and,
if so, when and where.

MR. MC GILL: Your Honor, this is not a
minitrial at this point. The circumstances surround-

ing the incident for purposes of determining the constitutionality of the statement are what--are the circumstances surrounding that particular point--that's what is at issue right now.

As to who she told or what is not relevant at this point. It would be relevant at trial.

THE COURT: The objection is well taken. It's sustained.

BY MR. JAMAL:

Q At the time that you allegedly heard this statement, was anyone around you?

A Yes.

Q Could you identify them?

A Yes.

Q What are their names, please?

A I don't know their names.

Q But, you can identify them?

A Yes.

Q How can you identify them if not by name?

A By face.

Q You know their faces, but you don't know their names?

A Yes.

Q Were they hospital employees?

A No.

Q Were they police?

A Yes.

Q And, you know them by face, but not by name?

A Well, there were other Security Officers from Jefferson there.

Q OK. The other Security Officers from Jefferson-- are they hospital employees?

A Yes.

Q OK. I asked you whether they were hospital employees.

A Yes.

Q All right. Do you know the names of the hospital employees?

MR. MC GILL: Again, objection, Your Honor. That is a trial matter, not a suppression matter.

THE COURT: I'll sustain that objection. You can get that information if you want later.

MR. JAMAL: Judge, this is a matter of credibility. I am trying to determine--

THE COURT: You can get that matter later on.

MR. JAMAL: I am trying to determine if

someone else was in the area when she heard this alleged confession, and, if so, who they were so we can examine them, as well.

MR. MC GILL: Questions of credibility are finders of fact decisions, Your Honor, at trial.

We are talking about the constitutionality of this particular admission. That is the issue at this point.

THE COURT: There are ways of getting that information, if you talk to your attorney, but this isn't the proper place for that at this time.

BY MR. JAMAL:

Q When you say you first heard this statement, how many police were around? How many police were around?

A I didn't count them.

Q Approximately.

A I have no way of knowing.

Q You have no guess?

A No.

Q How many Security Guards assigned to the hospital were around?

A At this particular time there was only two of us in

the area.

Q Two Security Guards?

A Yes.

Q You and another?

A Yes.

Q OK. Are you sure of that?

A (There was no response.)

Q Are you sure?

A Yes.

Q How long have you been assigned to the Jefferson Hospital Security?

A Four and a half years.

Q So, if there was someone else you would know that person?

A Yes.

Q You said that there were police around. You recognized their faces, but you didn't know their names. You mentioned how you recognized their faces.

Have you seen them often?

A Yes.

MR. MC GILL: Objection as irrelevant.

MR. JAMAL: She said, "Yes."

THE COURT: The witness has already answered the question.

BY MR. JAMAL:

Q Did you see me being brought into the hospital?

A No.

Q Just into the emergency room?

A When I seen you, you were already in the emergency room.

Q I was already in? Explain what I was doing when you saw me.

A You were placed at the entrance into the emergency treatment area, and there is an automatic door there that opens for anyone in that area, and I was on the other side of that door.

So, when you were placed on the floor, the door automatically opened, and that's where I was standing.

Q Was I lying on the floor?

A Yes.

Q Do you know a Dr. Regina Cudemo?

A No.

Q Did you see any doctors in the area when I was lying on the floor?

A There were no doctors around.

Q There were no doctors around? You are quite sure?

A Yes.

Q Are you quite sure?

A Yes.

Q Were you questioned by the police about this?

MR. MC GILL: Objection.

THE COURT: Rephrase your question.

BY MR. JAMAL:

Q How many times were you questioned by police about what you say you heard and saw?

A Twice.

Q Do you remember the dates?

A No.

Q Do you remember the approximate dates?

A Well, one is the first time. Like I said, I am not sure if it was February. And, it was approximately only two or three days behind one another that I was questioned.

Q You don't know what month?

A Of February, I believe.

Q Are you sure it was February?

A No, I am not sure.

Q You are not sure. Now, those two times at that period that you are talking about--these are official statements that you gave to the police, right?

A Yes.

Q You sat down and you were questioned? Is that correct?

A Yes.

Q Have you talked to the police at any other time unofficially?

A No.

Q OK. Those police that you recognized on December the 9th--have you seen them at that hospital since then?

A Yes.

Q And, you haven't talked about this?

A No.

Q You have not mentioned it at all?

MR. MC GILL: Objection, Your Honor. All of this is trial matter. It has nothing to do with the circumstances of the voluntary admission.

THE COURT: I sustain the objection.

BY MR. JAMAL:

Q Did you, other than the two official times that you testified to, did you discuss the contents--did you discuss the statements that you said you heard with District Attorney McGill?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained.

BY MR. JAMAL:

Q Did you discuss it with any members of the D.A.'s Office?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JAMAL:

Q Did you discuss them with any other members of the Police Department other than those who interviewed you?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JAMAL:

Q Will you examine this, please?

Is that your signature at the bottom of that statement?

A Yes, it is.

Q According to this statement on the 9th of February at 11:13 a.m., you made a statement to Sergeant Parks.

A Yes.

Q Is that right?

A If that is the date that is on the paper. I didn't remember the date.

Q You waited two months before you talked to the police about what you heard?

A I was out on medical relief.

Q Out on a medical relief?

A Yes.

Q How long was your medical relief?

A Approximately maybe six weeks or so.

Q Six weeks or so? At any time the night of December 9th, were you crying for any reason?

A Yes, I was.

Q Were you crying as you were leaving the emergency room?

A I am sorry. I didn't hear you.

Q You were crying as you were leaving the emergency room, right?

MR. MC GILL: Objection, Your Honor.

THE COURT: Well, I'll permit that.

THE WITNESS: Yes.

BY MR. JAMAL:

Q Why were you crying?

A Because, Officer Faulkner had just died.

Q While you were in the emergency room, did you see police beat anyone?

A No, I did not.

Q Did you see anyone kicked?

A No.

Q Now, remember the electric door you were speaking of?

A Yes.

Q Is this a glass door that you can see through?

A Yes.

Q OK. Did you see me actually placed on the floor?

A No.

Q So, you just saw me lying on the floor?

A Yes.

Q Do you know how I got there?

A (There was no response.)

Q Do you know how I got there?

A No, I don't.

Q Now, when you came to the emergency room, were you standing at the door looking through the door, or were you looking through that doorway?

A I don't understand your question.

Q When you first came up to the emergency room--right?--when you first came up to the emergency room, were you standing there looking through the doorway?

A I still don't understand your question.

Q What don't you understand?

A Are you saying when I first came to the emergency room I was in the emergency room all the time?

Q Oh, then you were in the emergency room when I was brought in there?

A No. I was on the inside of the emergency room, yes.

Q You were on the inside of the emergency room when I was first brought there?

A Yes

Q OK. You saw no injuries to me, no wounds, or nothing?

A I didn't hear you.

Q Did you see any wounds or injuries to myself?

A No.

Q I looked perfectly normal to you, right?

A No.

Q Were there any policemen around?

A Yes, there was.

Q Was I hand-cuffed?

A Yes.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q Before I came into the emergency room--right?--you were already in this emergency room? You saw me--you did see me brought in, right?

A No.

Q What was the first thing you saw about me? You

just saw me lying on the floor?

A Yes.

Q Did you see any policemen in contact with me?

A I seen a policeman trying to control their prisoner.

Q You saw one policeman?

A No, I seen the police trying to control their prisoner.

Q OK. What does that mean? What did you see?

A Well, you were thrashing around. You were very uncontrolled, and they were just trying to keep you in control.

Q What do you mean "keep me in control"?

A Well, you know, you were kicking your feet. You know, you was just being very uncontrollable. Couldn't no one policeman hold you.

Q Say that again?

A Couldn't no one policeman hold you.

Q So, it took two to hold me?

A Probably, yes.

Q Were they holding me while I was lying on the floor?

A Yes, they were holding you on the floor.

Q They were holding me on the floor?

A Yes.

Q But, they didn't hit me?

A I didn't see it.

Q They didn't kick me, though, did they?

A I didn't see it.

Q Were there any hospital Security Supervisors on the scene?

MR. MC GILL: Objection.

BY MR. JAMAL:

Q Do you recall any of your supervisors at the scene?

MR. MC GILL: I object as being irrelevant to the circumstances surrounding what she observed.

THE COURT: This witness is for a specific purpose, only. If you want that information, speak to your Counsel. There are ways of getting it. That is not proper at a Motion to Suppress. This is for a limited purpose at this time.

BY MR. JAMAL:

Q Were you--excuse me. Were you assigned specifically to the emergency room?

A No, I was not.

Q What was your area of assignment?

A I was only assigned to the emergency room after Officer Faulkner was brought in.

Q Who made that assignment?

A My Lieutenant.

Q Do you know his name?

A William, Lieutenant William.

Q Did you personally talk to the police that night before you were assigned?

MR. MC GILL: Objection, Your Honor.

Objection, sir.

"Did you talk to any police after this?"

THE COURT: No. He said "before she was assigned."

MR. JAMAL: Yes.

THE COURT: I'll let that question be answered.

MR. MC GILL: Yes.

BY MR. JAMAL:

Q Did you?

A Are you--

THE COURT: Do you understand the question?

THE WITNESS: No, I don't.

THE COURT: Repeat your question. She didn't hear it.

BY MR. JAMAL:

Q Did you talk to any police before you were assigned to the emergency room?

A I imagine so.

Q Did you talk to any police in reference to myself and Mr. Faulkner?

A No.

Q Just general conversation?

A I don't understand. Are you asking me before this happened?

THE COURT: Would you repeat that question for her? Maybe she didn't hear the initial question. If you can find that. If not, I will ask him to repeat it.

(The Reporter was directed to read a previous question, as follows):

"Q Did you talk to any police in reference to myself and Mr. Faulkner?"

MR. MC GILL: I believe the witness has been confused as to the time. She may think the defendant is questioning her before the incident.

BY MR. JAMAL:

Q After you were assigned to the emergency room--OK?--and before you saw my body on the floor, did you talk to any police at the scene?

A No.

Q Did you talk to the Detective?

A No.

Q How long had you been in the emergency room before you saw me?

A I'd say approximately maybe anywhere from fifteen minutes to a half hour.

Q You said that Lieutenant William assigned you to the emergency room, right?

A Yes.

Q When he did this, when he did this, did he tell you that--do you remember his words when he assigned you?

MR. MC GILL: Objection. Irrelevant, Your Honor.

THE COURT: I sustain the objection.

MR. JAMAL: Judge, can we have a sidebar conference?

(There was a sidebar conference, reported as follows):

MR. JAMAL: You sustained Mr. McGill's objection as to the issue of relevancy, and, obviously, the direction of the questioning was to credibility, as well as her role and her function, you see.

I consider it very relevant, and I think that your objection--I mean, your sustaining of his

objection was premature, because the information should bear out that she was under the direction of her supervisor and that she was directed by police to perform a security function at the hospital, that she was, in fact, working in concert with police, and she did not just happen to be there.

MR. MC GILL: I think she has already said that, Your Honor. I believe that the witness has already stated that she was assigned to the emergency room, and that she, in fact, was there fifteen or twenty minutes. I think she said maybe a half hour in the emergency room, so that's on the record.

So, it's clear that she is there as part of her job, and not just because she is passing time, and she said she was directed there by her supervisor.

MR. JACKSON: If I could lead a little, what Mr. Jamal is saying is that, in fact, she wasn't there just as a security officer, but she is directly under the control of the police as to whatever it is that she observes and sees.

THE COURT: That is argument that you make to the Judge when interpreting the facts, but

she can only testify as to facts.

MR. JACKSON: But, what Mr. Jamal is saying is that that is the direction. That's why the questions are relevant, to show that. He can't argue it if you don't give him a chance to show it.

THE COURT: She already said it. She was assigned there when Faulkner evidently was first brought in, so she was assigned there.

MR. JACKSON: But, he was getting into the questions about where her supervisors were and what police were there. Again, that went to the issue of who she was being controlled by.

THE COURT: No. That is improper. That is not part of the Motion to Suppress.

The Motion to Suppress is whether or not statements he made were somehow obtained improperly and violated his constitutional rights.

Now, when it comes time for trial and you want to argue credibility, of course you can bring that out as to what she did, but in a Motion to Suppress, it is really for a limited purpose, only.

This is not the trial of the case. This is to see whether or not somehow his statements were forced out of him, and that's what she was on

the stand for.

(The proceedings were resumed in open court, as follows):

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Officer.

Officer Bray.

POLICE OFFICER THOMAS M. BRAY, Badge No. 1302, 9th District, sworn.

MR. MC GILL: May I proceed, Your Honor?

THE COURT: Please do.

DIRECT EXAMINATION

BY MR. MC GILL:

Q Officer Bray, on December the 9th, 1981, were you a member of the Philadelphia Police Department?

A Yes, sir.

Q And, of what District were you a member?

A 9th District.

Q What was your tour of duty?

A We were working the twelve to eight a.m. tour.

Q Now, did you have occasion to see this defendant, Mr. Jamal, in the hospital sometime after he had been brought in?

A Yes, sir, I did.

Q Where was it that you saw him in the hospital?

A In a hospital treatment gurney or bed.

Q All right. And, that was sometime after he was brought in?

A That's correct.

MR. JACKSON: Could he repeat that, Your Honor?

THE COURT: Repeat that.

(The Reporter was directed to read previous testimony, as follows):

"Q Where was it that you saw him in the hospital?

"A In a hospital treatment gurney or bed.

"Q All right. And, that was sometime after he was brought in?

"A That's correct."

BY MR. MC GILL:

Q All right. Officer, did you have occasion to hear any communication of this particular defendant, anything said by this defendant?

A Yes, sir, I did.

Q And, who was in the room, if anyone, besides yourself and the defendant when it was said?

A I don't know who else was in there. There were policemen, hospital personnel moving about.

Q All right. So, you don't know whether anyone was in there at that time? Is that what you are saying?

A That's right.

Q OK. What if anything did the defendant say to you, or say?

A He made a statement, "I'm glad. If you let me go, I will kill all you cops."

Q Now, did you ask him any questions or say anything to him immediately before he made that statement?

A No, sir, I did not.

Q Did anybody in your presence, if anybody was there other than the defendant and yourself, say anything at all before he said that?

A No, sir.

Q Did you have occasion to see--strike that.

Were the clothing or was the clothing, rather, of the defendant seized on that particular day?

A Yes, sir.

Q All of his clothing?

A Yes, sir, to the best of my knowledge, everything.

Q And, who did that?

A Detective Sobolutski.

Q Did you or anyone in your presence force this defendant to make that statement?

A No, sir.

Q Did the doctor later arrive?

A Yes, he did.

MR. MC GILL: Cross-examine.

CROSS-EXAMINATION

BY MR. JAMAL:

Q Officer Bray, how long have you been a member of the Police Department?

A Approximately five years.

Q Would you repeat that quote that you said I said?

A I am sorry. Could you repeat that, please?

Q Can you repeat the quote you said I said?

A I said that you said, "I'm glad. If you let me go, I'll kill all you cops."

Q Did you hear anyone say anything to me prior to that statement?

A No, sir, I did not.

Q Do you know what "I'm glad" was in response to, who I was speaking to? Was I talking to you?

A You were--it was an outburst. You were saying it out loud.

Q It was an outburst, but I wasn't speaking to you?

A I didn't take it to me directly. I took it to anyone who was present.

Q And, who was present? Who was present?

A Different people were milling about.

Q Other policemen?

A Yes, sir.

Q Could you identify them?

A No, sir.

Q You don't know their names?

A No, sir. I was in the process of hand-cuffing you to the gurney, so I was more looking at your arm than anything else.

Q But, you don't remember any other policemen at the scene?

A (There was no response.)

Q You don't know their names?

A Anyone in particular, no, sir.

Q Did you hand-cuff me?

A Yes, I did.

Q Were you the only policeman who hand-cuffed me?

A I was the only policeman who hand-cuffed your right arm.

Q My right arm?

A Yes, sir.

Q Was my left arm hand-cuffed as well?

A I believe so. I don't recall.

Q You don't recall? About what time, if you can remember, about what time was it that you heard what you said you heard?

A In the area of about, I guess, 5:00 a.m.

Q 5:00 a.m., December 9th, right?

A Pardon me?

Q December 9th?

A Yes, sir.

Q OK. Did you fill out an incident report?

A No, sir, I did not.

Q Can you tell me why you didn't?

MR. MC GILL: Objection, Your Honor.

BY MR. JAMAL:

Q Did you tell anyone what you heard?

A Yes, I did.

Q Other policemen, I presume?

A Yes, sir.

Q When?

MR. MC GILL: Objection, Your Honor.

Again, it is not the issue at the trial--or, rather, at this hearing.

THE COURT: I'll sustain that objection.

BY MR. JAMAL:

Q Did you tell any other policemen that night?

MR. MC GILL: Objection.

THE COURT: I'll let him answer that question.

MR. MC GILL: Yes.

THE WITNESS: No, sir, not that I recall.

BY MR. JAMAL:

Q Not that you recall?

A Not that I recall.

Q When was the first time you discussed this? Do you recall?

A The first time?

Q Yes.

A No, sir. I don't recall.

Q Do you have an estimate?

MR. MC GILL: Objection.

BY MR. JAMAL:

Q Can you give us your best estimate of when you told someone that you heard this?

MR. MC GILL: Your Honor, I respectfully object, sir. I again say that this has to do with trial issues, and not the circumstances of the action itself.

Any kind of factual matter as to the statement itself is a trial issue of fact, not at

the Motion to Suppress.

THE COURT: Yes. What weight will be given to this statement if it is admissible will depend on the jury, and will not be proper at this time.

I sustain the objection.

BY MR. JAMAL:

Q Did you hear at any time--when I was in the hospital, did you hear any policeman make any statement to me?

A No, sir.

Q Did you hear any policemen make a statement in reference to me about me?

A No, sir, I did not.

Q At all?

A Not at all.

Q On the 1st of March did you make a statement to Sergeant Parks?

MR. MC GILL: Objection, the same objection.

THE COURT: Sustained.

BY MR. JAMAL:

Q Are you sure those words you said you heard are correct, or is that a guess now?

A I am pretty sure of those words, yes, sir.

Q Pretty sure?

A (The witness nods his head in the affirmative.)

Q "I'm glad. If you let me go, I'll kill all you cops"? Those were my words, right?

A Could you repeat that?

Q Why don't you repeat what you heard me say?

A "I'm glad. If you let me go, I'll kill all you cops."

Q And, I said it to no one in particular? It was just an outburst, you say?

A Correct.

Q Was there any response to that by anyone?

A No, sir.

Q It was said and no policemen at the scene had any response to what I said?

A Not that I heard, sir.

Q You said the first time that you saw me at the hospital where was I being taken?

A You were already on the gurney.

Q I was gone where?

A You were on the hospital gurney.

Q Where was I being taken? was the question.

A You weren't being taken anywhere.

Q Did you see any other policemen contact me, touching me?

A Not at that time, no, sir.

Q Did any other policemen at the scene say anything to you about me?

A What do you mean by "at the scene"?

Q I mean at the scene of the hospital where you saw my body on a gurney.

A I heard no other Officers say anything to you.

Q I said about me.

A Or, about you.

Q On the second page of this investigation interview record, could you identify this signature, please?

A (There was no response.)

Q If it's yours, could you identify it? Is that your signature at the bottom of the page?

A Yes, sir.

Q Can I have it back, please?

For the record, this record is dated the 1st of March, 8:10 p.m.

That's about the time you made your statement? Is that correct?

A If that's what it says, yes, sir.

Q If it says here, then--do you remember being inter-

viewed by Sergeant Farks?

A I remember being interviewed. I don't recall the Officer's name.

Q You don't remember? OK.

Sergeant Farks, according to this interview record, asked: "Did you see Jamal at any time in the hospital?"

Do you remember your response?

A No, I don't remember my response.

Q OK. Well, let's act as if this is a new question. What is your response to that question? What did you tell your Sergeant?

A That I saw you in the hospital in the gurney.

Q Was I being taken anywhere?

A No, sir, not that I recall.

Q And, no policemen said anything to me or about me?

A No, sir.

Q At all?

A Not that I recall, no, sir.

Q All you recall is that you hand-cuffed my right arm to the gurney, right?

A You were laying on your back. That would be your right arm, yes.

Q Do you want to look over this statement again?

Is it accurate?

See if there are any inconsistencies in the statement.

Everything proper?

A Everything is proper.

Q May I have it back, please?

You just said that when you saw me I was laying on my back on a gurney. I wasn't being taken anywhere. Is that correct?

A That's correct.

Q According to your statement, the first time you saw me I was being taken into a treatment room. This is your statement.

A That's correct.

Q Now you said that at no time any other Officers said anything to me or about me. I was lying on my back. You hand-cuffed my right arm to the gurney.

My left arm may have been hand-cuffed, but you don't recall, correct?

A Sir, you said did I hear any other Officers saying anything to you.

Q Or, about me.

A Or, about you, and I said, "No." I did not recall.

Q Do you recall now something?

A I recall after reading that statement.

Q Was there something inconsistent that you want to change?

A One of the Officers--I didn't know who--said to hand-cuff you, which is why I did that.

Q Didn't you hand-cu-f me?

A Yes, I did.

Q So, you hand-cuffed my right arm and another Officer hand-cuffed my left arm, right?

A I said I hand-cuffed your right arm.

Q So, you did hear another policeman say something about me. Who was it? You did hear another policeman at the scene say something about me, right?

A Someone did.

Q Do you remember anything else that you may have forgotten?

A No, sir.

Q Did you see me getting kicked?

A No, sir.

Q Punched?

A No, sir.

Q Beaten?

A No, sir.

Q Did you notice any injuries to that body that was

on the gurney?

A No, I didn't. I was with you a short time, long enough to cuff you, and then get out of the doctor's way.

Q Did you hear anyone say, "If he dies, you die" to me?

A No, sir.

Q Do you happen to remember the identity of that Officer who hand-cuffed my other hand, arm?

A No, I don't.

Q You don't remember that?

A (There was no response.)

Q Do you remember removing my wallet?

A Yes, sir.

Q Who did you give it to?

A I believe the Lieutenant.

Q Do you happen to know his name?

A No, sir. He was from a different District, anyway.

Q Do you know--you know you were there at five o'clock in the morning. Is that the right time?

A Approximately.

Q It wasn't until March until you remembered that statement?

MR. MC GILL: Objection, Your Honor.

BY MR. JAMAL:

Q It wasn't until March until you remembered that statement?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JAMAL:

Q You are a trained police officer, aren't you?

A That's correct.

Q Trained to remember features, correct?

A Trained Officer, trained to remember.

Q Features?

A Different things.

Q Things you hear?

A And see.

Q And see? It took you three months to remember to report this, didn't it?

MR. MC GILL: Objection.

THE COURT: I sustained the objection.

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Officer.

Detective William Thomas, Your Honor.

Your Honor, for today's session, if it pleases the Court, that would be my last witness for the Motion for today. There will be additional witnesses

tomorrow.

DETECTIVE WILLIAM THOMAS, Badge 744,
Homicide Division, sworn.

DIRECT EXAMINATION

BY MR. MC GILL:

Q All right, Detective Thomas. Did you have occasion to obtain a search warrant for a 1976 Plymouth automobile, a United Cab?

A Yes, sir, I did.

MR. MC GILL: I'll ask this be marked C-1. Clip that together, please. Show it to the defendant.

(The above-mentioned Exhibit was received and marked C-1 for identification.)

BY MR. MC GILL:

Q All right. I am showing you, Detective, what has been marked C-1.

Can you identify that Exhibit?

A Yes, sir.

Q What is that Exhibit?

A This is a search warrant No. 6330 which I obtained on December the 10th.

Q And, where did you obtain it?

A At the arraignment court at 8th and Race.

Q And, did you swear before the Judge the contents of it?

A Yes, I did.

Q And, did the Judge sign and seal it with his seal?

A Yes, sir, he did.

Q Are you looking for the warrant?

A No, sir. I have the warrant. I was looking for something else.

Q OK. Do you recall the Judge's name?

A I believe, reading from it here, I believe it was Judge Conroy, but I am not sure.

Q Judge Conroy?

A Yes.

Q And, when you served the warrant, when did you serve it?

A This warrant was served at 7:40 a.m. of December the 10th, 1981.

Q Where?

A At the PAB holding garage at 8th and Race.

Q The car was originally parked on 13th Street, the cab?

A Yes, sir, it was originally parked at 212 South 13th Street.

Q And, it was then towed to that garage?

A That is correct.

Q And, what was the reason for that?

MR. JAMAL: Objection. Do you know that it was towed?

MR. MC GILL: There is an objection, Your Honor.

THE COURT: The objection is overruled.

BY MR. MC GILL:

Q Why was it towed to that garage?

A It was towed to the garage--well, so that I could have time to obtain this warrant. At the location it was, it was a busy intersection, and what have you, so I secured the cab and had it towed into the garage, and then at that time that it was towed originally, I was unable to have a Judge sign the warrant.

So, it was secured in the PAB storage garage under the care of the cell man.

Q All right. And, did you serve the warrant?

A Yes, sir, I did.

Q Where and when?

A At the PAB in the cell room garage on December the 10th at 7:40 a.m.

Q And, did you serve the warrant on anyone?

A I did contact the owner of the cab who was present when the cab was towed into the holding area. That was a Mr. Frank Allen who resided in the 5600 block of West Berks Street.

Q And, pursuant to the warrant, did you seize any items?

A Yes, sir. I seized a clipboard of the United Cab Association, trip tickets and gas tickets on it. I also seized a Samsonite brief case containing miscellaneous tapes, a razor, I.D., a Mumia Abu-Jamal "T" shirt, and letters, and, also, a camel case.

Q You indicated a briefcase. Where was the briefcase?

A This briefcase was in the trunk of the cab.

Q For what purpose did you search the trunk?

A Well, I searched the cab basically in a search for guns and ammunition, and I also had noted on here the camera case and other contraband that may be found in the automobile.

Q Now, for what purpose--did you eventually--you did seize the briefcase? Is that correct?

A Yes, I did.

Q Did you have occasion to open the briefcase and look at the contents?

A Yes, sir, I did.

Q And, for what reason did you open the briefcase?

A I oepned the briefcase looking for ammunition and what have you and possibly weapons.

Q And, what if anything did you observe in there?

A Well, I observed numerous pieces of identification for Mumia Abu-Jamal, and--

Q And, did you seize that?

A I seized it.

Q And, why did you seize that?

A Basically because it would set an individual being in this case, b-cause of his name and identification belonging to him, was in this cab. It would mean that he had the opportunity to be in the cab.

Q And, when you opened the briefcase to look for weapons and ammunition and all, were the pieces of identification in plain view?

A Yes. There was numerous things in there, in the briefcase, with Mr. Jamal's name and residence on it.

MR. MC GILL: Cross-examine.

Before you start--

BY MR. MC GILL:

Q What was the date and time that you got the warrant?

A The warrant was signed on December the 10th, 1981.

Q And, it was served on the same day at what time?

A At 7:40 a.m.

Q Did Mr. Allen pose any objections when his cab was towed to the PAB?

A No, sir, he did not.

CROSS-EXAMINATION

BY MR. JAMAL:

Q Detective Thomas, where was this cab when you first saw it?

A When I first observed the cab, it was parked in the 200 block of South 13th Street on the west side of the street.

Q On the west side of the street?

A That's correct, sir.

Q Why did you seize that cab?

A Excuse me? I couldn't hear you.

Q Why did you seize the cab?

A I had information, and I also had spoke with the owner of the cab, a Mr. Frank Allen, who was present at that time.

Q You said that you got a search warrant for guns, ammunition, and other contraband?

A Yes, sir.

Q Were any guns, ammunition, or contraband found?

A I found no guns or ammunition.

Q I am curious. You say you actually searched--the warrant was served at 7:40 a.m., Decdmber 10th?

A Yes, sir.

Q Does that mean that is the time you actually searched the cab?

A Yes, sir.

Q Was anyone present when you searched it?

A Yes, sir. Present duringthe search was Corporal Norton, Badge No. 8115, and, also, parking enforcement driver, a Mr. Donald Smack. His last name is spelled S-m-a-c-k.

Q But, no one else?

A No, sir.

Q When you saw this on 13th Street,did you call Mr. Allen to be at the scene? How did he happen to be there?

A I'm not sure I understand your question. His voice was dropping.

Q OK. When you first saw the vehicle at 13th Street, was Mr. Allen there before you got there?

A Yes, sir. When I first arrived to see the vehicle, Mr. Allen was there. That's correct.

MR. JAMAL: No further questions.

REDIRECT EXAMINATION

BY MR. MC GILL:

Q Did Mr. Allen consent to the search?

A He stated that he could co-operate when I explained to him that I was unable to obtain a search warrant at that time, and all, and he consented to having his cab No. 289 towed into the police facility where it could be held until I could obtain a search warrant.

MR. MC GILL: Thank you, Detective.

Your Honor, that would conclude the witnesses for today.

THE COURT: All right. We will adjourn for the day. 9:30 all right tomorrow morning?

MR. MC GILL: Your Honor, would--would Your Honor mind starting at ten o'clock? I know Your Honor starts always very early.

THE COURT: All right. We will adjourn until tomorrow morning at 10:00 a.m.

MR. JAMAL: Judge, I would like to cover another matter.

When this issue was last before this Court, before Judge Ribner--

THE COURT: What issue?

MR. JAMAL: This case.

THE COURT: This Motion to Suppress?

MR. JAMAL: Not the Motion to Suppress,

Your Honor.

THE COURT: Oh, you are talking about something else?

MR. JAMAL: Yes. I am addressing an issue that Judge Ribner directed the District Attorneys to turn over the results of this investigation to the defense.

THE COURT: Do you know anything about this?

MR. MC GILL: Yes. Before trial would commence, the--it was not directly an Order by Judge Ribner, but irrespective of that, we will certainly have the results of the investigation for Mr. Jackson or Mr. Jamal or both of them. As I understand it--I do not know myself, since another part of the office is handling it, but I will guarantee them the results before the trial will start.

THE COURT: All right.

MR. MC GILL: They will be in their possession.

MR. JAMAL: Judge, we need the results of that investigation now. Mr. McGill agreed before Judge Ribner that he would have the results on the 1st. This isn't--you know, he is not being--this is

not the first time he has heard of this, you know. We have raised this issue several times, and still, you know, we are told about a continuing investigation that is germane to this case.

MR. MC GILL: Judge, as a matter of fact, it's quite irrelevant to the case; however, Judge, it's a fact that Judge Ribner expressed interest to have the results available to them.

At no time did Judge Ribner state that there was any relevance to the case since the matters obviously do not involve the actual shooting of Officer Faulkner, but what they are alleging occurred afterwards; however, irrespective of all that, not only has the District Attorney's Office through me offered in giving them all the statements involving the investigation which he himself asked for, but we are stating that he will get the results from the investigation.

It's a matter of days. I do not know exactly myself, but I know it is a matter of days he will get it.

THE COURT: All right. Ok.

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


Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge