

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH : January Sessions, 1982
:
vs. : No. 1357, PIC, PIC
: No. 1358, MURDER, VOL MANSL
MUMIA ABU JAMAL : No. 1359, INVOL MANSLAUGHTER

Room 513, City Hall
Philadelphia, Pennsylvania

June 2, 1982

MOTION TO SUPPRESS

BEFORE: HONORABLE ALBERT F. SABO

APPEARANCES:

JOSEPH McCILL, ESQUIRE,
Assistant District Attorney,
For the Commonwealth.

MUMIA ABU JAMAL,
In Propria Persona

ANTHONY E. JACKSON, ESQUIRE,
Court Appointed

[The motion was continued.]

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

THE COURT: Yes, please.

MR. MC GILL: If it please the Court, the first witness will be Officer Forbes.

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OFFICER JAMES FORBES, Badge 9811,
Stake-Out Unit, Philadelphia, sworn.

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DIRECT EXAMINATION

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

THE COURT: Yes.

BY MR. MC GILL:

Q Officer Forbes, on December 9, 1981, were you a member of the Philadelphia Police Department?

A Yes, I was.

Q What district?

A Stake-out unit.

Q What tour of duty were you working that night?

A 11:30 p.m. to 7:30 a.m.

Q At approximately shortly before 4:00 a.m. on

December 9, 1981, did you happen to be in the area of 13th and Locust?

A Yes, I was.

Q Were you with your partner at that time?

A Yes, I was.

Q Shortly thereafter did you have occasion to seize any evidence?

A Yes, I did.

Q What was it?

A Two revolvers.

Q Where?

A On the sidewalk at 1234 Locust Street.

Q Approximately when was that?

A A few minutes before 4:00 a.m.

MR. MC GILL: Cross-examine.

[Mr. Jackson conferred with the defendant.]

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CROSS-EXAMINATION

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BY MR. JAMAL:

Q Who was your partner that night, Officer Forbes?

A Officer Robert Shoemaker, Badge Number 4469.

Q Did you see me at that scene?

A I can't hear you, sir.

Q Did you see me at that scene?

A Yes, I did.

Q Where was I?

A You were sitting on the sidewalk.

Q Did you notice anything unusual or peculiar about me?

A That you had blood on your right breast pocket of your shirt.

Q Any on my face or head?

A I can't hear you, sir.

Q Any on my face or head?

A No.

Q You said you recovered two weapons. Do you remember where you recovered them from?

A One was about a foot from your left side. It would have been a two-inch revolver. And the other one was a four-inch revolver approximately three feet from that one.

Q About a foot from me, you say?

A That's correct. From your left side.

Q Did you see Officer Shoemaker kick me?

A No, I did not.

Q Did you see Officer Humicka (phonetic) kick a pistol away from me?

A No, I did not.

Q Have you ever heard Officer Shoemaker discuss this incident with you?

A Yes.

Q Did he tell you he kicked the pistol away from me?

A Yes.

Q Did he kick it closer to me?

A No.

Q Can you explain how Officer Shoemaker saw a pistol four feet away from me and you saw one foot away from me?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JAHAL:

Q You say you didn't see Officer Shoemaker kick me, right?

A No, sir.

Q You didn't see him kick a pistol either?

A No, sir.

Q Did you see any officer there kick me?

A No, sir.

Q Did you kick me?

A No, sir.

Q Did you shoot me?

A No, sir.

Q Did you beat me?

A No, sir.

Q Did you see me handcuffed?

A Briefly I turned back and saw you were being handcuffed, yes.

Q Do you remember who was handcuffing me?

A No. There were several police there.

Q Would you describe the handguns you picked up again?

A One was a two-inch blue-steeled revolver with brown wooden grips. The other was a four-inch blue-steeled revolver, black, but it's called a Packmeyer grip. It's a hard rubber grip.

Q Where was the Packmeyer grip?

A That revolver was laying just off the curb in the street.

Q In the street?

A In about the middle of the Volkswagen.

Q How far was the weapon you say in the street from the body of Officer Falkner?

A From the bottom of Officer Falkner it was approximately, I'd say, five to six feet.

Q Five or six feet.

How did you pick them up? Just show me.

A First I picked up the small revolver by the outside of the wooden grips and then I observed the second revolver. And I went over and picked that also up by the grips and I placed them both in my left hand.

Q You were holding them, both of them, like this?

A That's correct. In my left hand.

Q Just to be sure, you didn't grip it fully at any time, did you?

A No.

Q What did you do with these weapons?

A They never left my left hand until I got down to the Police Administration Building where I submitted them to the chemical laboratory for fingerprints.

Q As soon as you retrieved the weapons, you went down to Homicide?

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L THE COURT: Closer to the Volkswagen.
He can't remember it. Repeat it for him.
[The Reporter read back the following:
"Answer: It was closer to the
Volkswagen than the other car."]

BY MR. JAMAL:

Q What was the other car?

A The police car.

Q Do you remember which direction I was facing
on the curb?

A Towards the street.

Q Towards what street?

A Locust.

Q So my back was to the wall? Think about it.

A Sitting in this position like this.

Q My question to you was: was my back to the
wall?

A Not really.

Q No?

A It was to a slant.

Q Slant?

A Yes.

Q Did you see any weapons near me? •

A I didn't notice.

Q Did you see any weapons near me?

A I didn't notice any.

Q So you did not see any weapons?

A I didn't notice any.

Q If you had seen one, would you have noticed one?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JAMAL:

Q Did you see me arrested, handcuffed?

MR. MC GILL: Your Honor, objection.

Beyond the scope.

THE COURT: I think she already answered that question, too. Sustained.

(Mr. Jackson conferred with the defendant.)

BY MR. JAMAL:

A You say you first formally identified me at the preliminary hearing, right? You came into court?

A Right. I identified you before then.

Q On December 97

A Yes.

Q And after December 9 when was the next time you saw me?

A Saw you?

Q Yes.

A At the hearing.

Q January 8, right?

A I don't remember the date.

[Mr. Jackson conferred with the defendant.]

Q How did you identify me on December 9?

MR. MC GILL: Objection. Repetitious, Your Honor.

THE COURT: I sustain that objection. You went over that several times already.

BY MR. JAMAL:

Q Have you ever seen me in the newspaper?

A Yes, and --

MR. MC GILL: Your Honor, I withdraw my objection. Go ahead.

THE WITNESS: After I identified you.

BY MR. JAMAL:

Q After you identified me after December 9?

A It was after the hearing.

Q You didn't see any newspaper photographs of me before the hearing, did you?

A No.

Q Do you read newspapers?

MR. MC GILL: Objection, Your Honor.

The area of photographs in newspapers are not relevant to the motion anyway.

THE COURT: Sustain the objection.

BY MR. JAMAL:

Q You say when you saw me sitting on the sidewalk I was sitting closer to the VW than the police car?

A Yes.

Q Were my feet in the street?

A Yes.

Q So if my feet were in the street my back would have to be to the wall, correct?

A You were sitting in a slant position.

Q Were my feet on both the sidewalk and the street?

MR. MC GILL: Your Honor, I really object. This is going far afield beyond this motion.

THE COURT: I sustain the objection.

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Miss White.

[The witness was excused.]

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MR. MC GILL: Your Honor, would
Your Honor want a break or something?

THE COURT: All right. Five-minute
recess.

[At 11:43 o'clock a.m. there was
a five-minute recess.]

MR. JAMAL: Judge, can we see you
at side bar for a moment?

[A side-bar conference was held off
the record.]

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

THE COURT: Yes.

MR. MC GILL: Mr. Robert Chobert.

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ROBERT CHOBERT, sworn.

- - -

DIRECT EXAMINATION

- - -

MR. MC GILL: Your Honor?

THE COURT: Go ahead.

BY MR. MC GILL:

Q Mr. Chobert, speak loud so I can hear you and the people over here, the Judge, everybody, all right?

A Uh-huh.

Q Now, I'm directing your attention to December 9, 1981. At approximately -- well, a few minutes before 4:00 a.m. where were you?

A Driving a cab at 13th and Locust.

Q Did you park that cab?

MR. JACKSON: Excuse me. Could he possibly move forward to the microphone because I can see there are going to be problems.

BY MR. MC GILL:

Q Did you park that cab?

A Yes, I did.

[Mr. Jackson conferred with the defendant.]

Q Where?

A In back of Daniel Faulkner's police car.

Q Did you have occasion to observe anything?

A Yes, I did.

Q What did you observe?

A I heard a shot and I looked up and I saw the police officer falling, and then about a minute later I saw the shooter bend over and fire a couple more times. Then he started walking away. He got about a car and a half away and he fell.

Q Now, is the individual that did that in this courtroom?

A Yes, he is.

Q Will you point him out?

A The guy right there.

Q Indicating, for the record, the defendant, Mr. Jamal.

Where were you when you saw that?

I mean, where were you? Were you outside or inside the cab?

A I was sitting in my cab.

Q Did you later see the defendant again?

A Yes, I did.

Q What were the circumstances of that?

A When the police officer stuck him in the wagon.

Q What were the circumstances of your seeing him in the wagon?

A The police officer asked me if I saw the guy that shot the cop and I told him I did. Then they brought me over to the wagon and asked me was that the guy. I said, "That's him."

Q The man that you pointed out, is he in the courtroom?

A Yes, he is.

Q Will you point him out?

A Sitting right there.

Q Again indicating Mr. Jamal, the defendant in this case.

Q When you saw Mr. Jamal in the wagon, did you have occasion to see his face at that time?

A Yes.

Q Approximately how far from you was he when you saw him in the wagon?

A About a couple steps away.

Q Approximately how far was the defendant away from you when you saw him shoot the police officer?

A About two car lengths.

Q Did you have occasion when you saw -- when he

was shooting the police officer, did you see a portion of his face then?

A Yes, I did. I saw his right-hand side.

Q From the time that you saw the police officer being shot by the defendant, to the time that you saw the defendant going toward 12th Street and then fall down, to the time that you saw the defendant in the police wagon, did you ever lose sight of the defendant?

A No, I didn't.

Q Did anybody, any police officer, in any way suggest that the defendant was the man who shot?

A No.

Q Approximately how long did you have him in view to the time that you saw him shoot Police Officer Faulkner to the time that he fell down on the curb?

A About five minutes.

Q And approximately how long did you have him in view when you saw him in the wagon?

A A couple of seconds.

MR. MC GILL: Cross-examine.

(Mr. Jackson conferred with the defendant.)

MR. JACKSON: Could we have the stenographer read back his last answer with regard to how long he saw him?

THE COURT: In the wagon?

MR. JACKSON: No, how long he saw him at the scene I believe -- I think was the question. Something to that effect.

[The Reporter read back the following:

"Question: Approximately how long did you have him in view to the time that you saw him shoot Police Officer Faikner to the time that he fell down on the curb?

"Answer: About five minutes."]

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CROSS-EXAMINATION

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BY MR. JAMAL:

Q On December 9 and December 12 you gave descriptions to the police, didn't you?

A Yes, I did.

Q Do you remember those descriptions?

A Not really.

Q I couldn't hear that.

A Not all of them.

Q What did you say?

A Not all of them.

Q Are you eating something?

A Yeah.

Q Are you eating something?

A No, I'm chewing on a piece of gum.

Q Do you remember anything you said about height?

A Height? I said about six foot.

Q Weight?

A Weight I gave two-twenty or two-twenty-five.

Q Clothing? Do you remember what he was wearing -- what I was wearing?

A All I remember -- I ain't too sure.

Q You ain't too sure?

A No.

Q Can you identify your signature on this statement?

A Yes, I can.

Q Without looking at it?

A Excuse me?

Q Look at it first before you identify it.

A Yeah, that's mine.

Q Thank you.

And just to save time, I want you to look at this, too. Tell me if you signed that statement?

A It's mine.

Q That is your signature?

A Yes, it is.

Q Tell me when you signed that statement -- correct me if I'm wrong -- you were asked by the interviewers did you agree with what you said, right?

A I guess if I signed it, I did.

Q On December 9 about 4:15, or thereabouts, you were interviewed by Detective Witcher, correct?

A I guess so if it's down there.

Q You don't remember his name?

A No, I don't.

Q But you do remember what you said?

A Some, yeah.

Q Some.

You said a man was wearing a light tan shirt, didn't you? Didn't you?

A I don't remember.

Q Did you say blue jeans?

A I don't remember.

Q You don't know what?

A I don't remember.

Q You don't remember.

Did you see another man running away from that scene?

A Yes.

Q What happened to him?

A What happened to him?

Q What happened to him?

A The way I saw him the cops got him. He didn't get too far away. The cops stopped him.

Q How far is too far, approximately?

A About ten feet.

Q Ten feet.

Do you remember what he was wearing?

MR. MC GILL: Objection.

MR. JAMAL: Do you remember what he looked like?

MR. MC GILL: Objection. Beyond the scope of his identification of this

defendant.

THE COURT: Sustained.

BY MR. JAMAL:

Q Would you say ten feet is about a half a block away?

A No.

Q You did say on December 9 that the man got about a half block away, didn't you?

A No.

Q This is your statement, isn't it?

A It sure is.

Q Would you read for me what I checked, please?

These are your words, correct? See the two check marks? Can you read?

A Yeah, I can read.

Q Can you read what is checked on there? Do you see the check marks on the left-hand side?

Can you read it out loud?

A Okay.

Q Thank you.

A "Did this man run along with the man that did the shooting?

"Answer: No. I said he started

running the soon the man was fired. Then he got about half a block away. Then all the cops came and just stopped him."

Q Thank you.

So how far did the man get, half a block or ten feet?

A He got about ten feet.

Q You were wrong here, but you are right now.

Tell me what is right. Tell me what you saw. Did you see half a block away or ten feet?

A He got about ten feet. That's wrong. I made a mistake.

Q Okay. Let me get back: you identified the man that shot the officer as having long hair. How tall?

A About six foot.

Q What was the weight you said?

A About two-twenty or two-twenty-five.

Q Heavy built. Would you say that is heavysset?

A Yes.

Q Do you remember any clothing?

A No.

(Mr. Jackson conferred with the

defendant.)

Q Where were you at when you were making these observations?

A Where?

Q Where were you at when you were making the observations?

A Say that again, please.

Q Where were you at when you saw what you saw?

A At 13th and Locust on the corner.

Q You were on the corner of 13th and Locust?

A Yes.

Q Where were you at?

A Inside my cab.

Q Where was your cab at?

A On the corner of 13th and Locust.

Q Was it near anything that is like a landmark?

Think about the place. Where was it at?

A In back of a police car.

Q In back of a police car?

A Yes.

Q Can you estimate how far you were from the incident in terms of feet?

A In feet?

Q Yes. Or yards, whatever.

A Well --

Q Just an estimate. Your best estimate.

A Say about two car lengths.

Q Okay. The morning of December 9 you said the man was wearing a light tan shirt and blue jeans, according to your statement.

This is your statement, right?

A Yes.

Q But now you don't remember, do you?

A I don't remember. It's too long ago.

Q Too long ago?

A Yeah.

Q Can you estimate height?

A Yes.

Q How tall would you say I am?

A You?

Q Yes.

A You're about five-eight.

Q Five-eight?

A Yeah.

Q Five-eight?

A Yeah.

Q Would you call me a short man?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained.

BY MR. JAMAL:

Q How would you describe my height?

MR. MC GILL: Objection, Your Honor. His observations in the courtroom are not in issue.

THE COURT: Sustained.

BY MR. JAMAL:

Q Can you estimate weight?

MR. MC GILL: Objection. Repetitious, Your Honor. It's not relevant and objection.

THE COURT: Sustained. I'll let him answer. Go ahead.

BY MR. JAMAL:

Q Can you estimate weight?

A Not really, no.

Q Not really?

A No.

Q Not well?

A No.

Q You couldn't give an estimate about how heavy

I am, could you?

MR. MC GILL: Objection.

MR. JAMAL: Could you?

THE COURT: I'll let him answer it.

BY MR. JAMAL:

Q Could you?

A Now?

Q Now. Right now.

A You're about one-seventy, one-eighty.

Q On December 12th you gave another statement to a Detective Harmon, correct?

A Yes.

Q You presently identified this as your statement, this as your signature, correct?

A Yes, I did.

Q Could you be so kind as to read the first two lines that you gave Detective Harmon out loud, please? Slowly, please.

A "Mr. Cherbot (phonetic), can you describe the person that you saw shooting at Police Officer Faulkner?"

That's a mistake.

MR. JACKSON: I can't read it. You have to read it.

THE WITNESS: If I can't read it,
I'm not reading it.

BY MR. JAMAL:

Q Is that the question on there? Can you read
the answer?

A "He was in mid thirties, dark complexion,
black curly long hair like Move member, heavy
mustache but the same as this detective."

Q Indicating Detective Harmon, right? That
was the defective you were talking to?

A Right.

MR. MC GILL: I would object.
That is inaccurate as well as improper.

MR. JAMAL: Correct me. I'm just
based on what he's --

MR. MC GILL: For the record, it
says Detective Allen.

MR. JAMAL: All right. Detective
Allen.

Continue, please.

THE WITNESS: "He looked to be about
the same size as me. I'm 6 foot tall. He
looked heavy, about 220, 225. He didn't --
he was wearing a greenish color dress shirt

that was dark gray. It was a red and green picture on his back."

BY MR. JAMAL:

Q Thank you.

Now, on December 9, when your memory was still fresh, you described the man wearing a light tan shirt and blue jeans, right? On December 12 you described the man wearing a grayish color dress shirt, dark gray, with a red-and-green picture on his back.

Can you tell colors?

A Yeah, I can.

Q Is there a difference between gray and tan?

A Yeah.

Q The man that was running away, that ran about ten feet away, according to your statement a half a block away, did you see what happened to him?

A The cops got him.

Q Was I that man?

A No, you wasn't.

[Mr. Jackson conferred with the defendant.]

Q Did you ever see that man again?

A Excuse me?

Q Did you ever see that man again?

A No.

Q No?

A No.

Q Did you see him arrested?

A I saw cops grab him. That's all I saw.

Q Did you see him handcuffed?

A No.

Q Did you see him placed in a wagon, or anything like that?

A No.

Q You just saw the cops grab him?

A That's right.

[Mr. Jackson conferred with the defendant.]

Q Do you remember you told the court under direct that you looked in the wagon, right?

A Yes.

Q Who asked you to look in the wagon?

A A police officer.

Q Do you remember his name?

A No, I don't.

Q Do you remember what he was wearing? Was

he wearing a white shirt, or blue shirt? Was he an inspector or a flatfoot?

A He was a regular police officer.

Q Did he ask you to look in the wagon?

A He asked me if I know the guy that shot.

Q I couldn't understand that. Could you repeat it?

A He asked me if I saw the guy that shot the officer. I did. He brought me over to the wagon. He opened the door and I pointed you out.

Q What did you see when the door of the wagon was opened?

A What I saw?

Q Yes.

A I saw you laying there.

Q How was I laying?

A How was you laying there?

Q Yeah.

A Laying on your back.

Q Was my feet towards you, my head?

A No, your face was.

Q Say again.

A Your face.

Q I was laying on my back and my face was towards you?

A Uh-huh.

Q Was I like this (indicating)?

A Yes.

Q I was.

What did you say to the policeman when he opened the back of that wagon?

A What did I say to him?

Q Yes.

A I told him you're the guy that shot the cop.

Q Anything else?

A That's all.

Q Did he say anything to you?

A He just told me to get back in my cab.

[Mr. Jackson conferred with the defendant.]

Q You did see the cop being shot -- the man shoot the cop?

A Yeah. I said I did, didn't I?

Q Well, you sure did.

And you saw me in the back of the

wagon, didn't you?

A Yes, I did.

Q What made you certain it was the same man?

A Because I saw you, buddy. I saw you shoot him.

Q You saw me --

A I saw you shoot him, and I never took my eyes off you until you got in the back of the wagon.

Q Were you looking at my face the whole time?

A The whole time, no.

Q You obviously weren't looking at my clothes, were you?

A No.

Q The man you described in your statement differs from this man about fifty pounds, doesn't he?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained.

MR. JAMAL: Doesn't he?

THE COURT: I sustained the objection.

MR. JAMAL: Doesn't he differ for about fifty pounds?

MR. MC GILL: Objection.

THE COURT: Sustained.

MR. JAMAL: You still say I'm about
five-eight?

MR. MC GILL: Objection, Your Honor.
Argumentative.

MR. JAMAL: Or six feet or both?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained.

[Mr. Jackson conferred with the
defendant.]

BY MR. JAMAL:

Q Are you sure about the identification you
made, Mr. Chobert?

MR. MC GILL: Objection, Your
Honor. Repetitious.

THE COURT: Sustained.

BY MR. JAMAL:

Q The only thing you remember is my hair,
isn't it?

MR. MC GILL: Objection, Your Honor.

THE COURT: Sustained.

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Mr. Chobert.

[The witness was excused.]

MR. MC GILL: Your Honor, if the Court pleases, could we break for lunch at this time?

THE COURT: Yes. What time do you want to be back? At your convenience.

MR. MC GILL: Whatever Your Honor thinks. 1:00 o'clock, Your Honor, please.

THE COURT: All right. We are going to recess until 2:00 o'clock.

[Trial recessed from 12:30 o'clock p.m. to 2:00 o'clock p.m.]

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AFTERNOON SESSION.

MR. JAMAL: Your Honor, during the lunch period ballistics by the name of John Fashnught (phonetic) wanted to meet with me and --

THE COURT: We will take it up later.

MR. JAMAL: Say what?

THE COURT: We will take it up later.

MR. JAMAL: Take up what later?

THE COURT: About your Fashnught.

MR. JAMAL: Do you know what I'm going to say, Judge?

THE COURT: Yes.

MR. JAMAL: What am I going to say? Why don't you finish my question?

THE COURT: You told me yesterday you wanted to see him.

MR. JAMAL: Right.

THE COURT: During the lunch. You said that before. I said we will take it up later.

MR. JAMAL: The issue is he tried to see me during the lunch hour and couldn't get in to see me. I need an order from you so that I can meet him.

THE COURT: You don't need an order from me. You can go to the prison at any time.

MR. JAMAL: No.

THE COURT: I can't tell the sheriff what to do.

MR. JAMAL: I didn't say up the sheriff. I said up at the prison.

THE COURT: Do you need an order up at the prison?

MR. JAMAL: Yes.

THE COURT: I don't see why you need one. But give him one. All right.

MR. JAMAL: At this time I would like to renew my motion to have John Africa appointed as counsel for me, backup counsel.

THE COURT: We went over that.

MR. JAMAL: We did not go over that.

THE COURT: Yes, I did. I made a

decision on that already.

MR. JAMAL: You said I had an absolute right to defend myself, didn't you?

THE COURT: That is what you are doing right now.

MR. JAMAL: You said I have an absolute right to defend myself, right?

THE COURT: That is what the Supreme Court says, yes.

MR. JAMAL: And you agree with that, don't you?

THE COURT: I always agree with the law.

MR. JAMAL: Okay. Well, if I don't have an absolute right to decide who I want to have as defense counsel, how can I have an absolute right to my defense?

THE COURT: Because only a lawyer trained in the law can actively defend you in this courtroom. If you want to be your own lawyer, they make an exception in that case.

MR. JAMAL: I have waived my right.

THE COURT: I understand. It isn't the smartest thing, but they waived that exception. They say you are entitled to that, and that is what you have.

MR. JAMAL: Regardless of what it is your agreement or belief was the smartest or wisest thing, I made that decision.

THE COURT: You are defending yourself.

MR. JAMAL: And I would like to defend -- I would like to decide who I would like to have as defense counsel.

THE COURT: You are conversing whenever you want, but only in this courtroom with Mr. Jackson.

MR. JAMAL: I'm not talking about conversing. I'm making a point to you who I want to sit right next to me as counsel.

THE COURT: Mr. Jackson will sit next to you.

MR. JAMAL: Mr. Jackson has made it clear to --

THE COURT: I know he has. I made a ruling. We are not going to sit here all day.

Bring in your next witness.

MR. JAMAL: I'm not finished.

THE COURT: I am. We are going to proceed.

MR. JAMAL: We are not going to proceed if that means you are going to ignore who I might have as backup counsel.

THE COURT: I already ruled on it and that's it.

MR. JAMAL: What do you mean that that's it?

THE COURT: If I'm wrong, you have a right to appeal to the Supreme Court.

MR. JAMAL: Why should I wait for an appeal? Why can't you make a decision now?

THE COURT: I made a decision. I told you he cannot.

MR. JAMAL: Why not?

THE COURT: Because I say so.

Because the law says so.

MR. JAMAL: The law does not say so. You said he's not a member of the law. I don't want a member of the law.

THE COURT: That's fine. Go on with your next witness, Mr. District Attorney.

MR. JAMAL: Judge, I would like to have John Africa represent me in this case. I would like to have Mr. Jackson withdraw from this case.

THE COURT: Mr. Jamal, I made a decision in this case. You are going to make me remove even you as counsel.

MR. JAMAL: I'm not intimidated by your threats you will remove me as counsel. You can remove me from this courtroom. I will tell you what I wish to have. This is not his trial, it is my trial. Can I decide who I wish to have represent me at this table?

THE COURT: No.

MR. JAMAL: Why not? Don't I have an absolute right to defend myself?

THE COURT: Sure. That is exactly what you are doing.

MR. JAMAL: And I can't choose who I want to have as backup counsel?

THE COURT: That is exactly what you are doing.

MR. JAMAL: In light of that absolute right to defend myself, as you and the Supreme Court agree, I'd like to decide absolutely who I would like to have as backup counsel, John Africa, who is not a member of the Bar.

THE COURT: Do you have anything you want to say?

MR. MC GILL: Yes, Your Honor. At this point I would like to say --

MR. JAMAL: Judge, I would like you to answer my question.

THE COURT: I answered your question.

MR. MC GILL: I believe the Court is addressing me.

MR. JAMAL: I would like to answer

my question.

THE COURT: I'm addressing myself to the Assistant District Attorney.

MR. JAMAL: And I'm addressing myself to you, Judge. Why are you ignoring me, Judge?

THE COURT: Go ahead.

MR. MC GILL: In reference to the question as to the right of counsel, absolute right to counsel, that is true. There is at no time no decision in this Commonwealth or, for that matter, in the Federal jurisdiction any decision that you have an absolute right to the choice of your backup counsel.

The very purpose of backup-counsel request requires the direction that has been given us through the Supreme Court. It is not merely to have the defendant choose someone who he would like to have with him.

The purpose of backup counsel, as stated yesterday, is, number one, to literally protect. And the law feels this is necessary and, I believe it and understand

it. To protect a defendant against himself is one reason why the law allows that or requires that.

Secondly, a reason for backup counsel to be a professional member of the Bar is in the event that the defendant would want to relieve himself of the right that has been permitted him by this court. Counsel would be present, would be legally equipped to handle the case throughout.

Lastly, if for whatever reason -- and I'm not saying that there will or is a reason -- that the defendant would for any reason be ejected from the courtroom, at that point backup counsel, a professionally competent individual who is a member of the Bar, and aware of the procedures in the law, would then take over for the defendant maintaining all of his rights.

For those reasons, Your Honor, it is necessary that a member of the bar be present for Mr. Jamal's own sake. There

is no right --

MR. JAMAL: You don't give a damn about my think.

MR. MC GILL: There is no right, Your Honor -- no absolute right to a backup counsel of your choice.

MR. JAMAL: I renew my motion. I would like to have John Africa appointed as backup counsel.

THE COURT: Your motion is denied.

MR. MC GILL: Your Honor, the Commonwealth's next witness --

MR. JAMAL: Why, Judge?

THE COURT: I don't have to give an explanation. If you don't like the decision, you appeal it.

MR. JAMAL: I'm asking you now, okay, so that we won't have to talk about appeal now? I'd like to have the reason from you.

THE COURT: I already went through the whole dissertation.

MR. JAMAL: That dissertation

means nothing to me.

THE COURT: All right. It doesn't mean anything.

MR. JAMAL: Because the Commonwealth of -- Africa versus the Commonwealth there were nine backup counsel. They didn't do anything for those MOVE members.

I would like to choose my backup counsel. It's for me. It's for my life. Is it for you? Are you on trial?

THE COURT: I already ruled on that point.

MR. JAMAL: Are you on trial?

THE COURT: Mr. Jamal, are you trying to disrupt the orderly proceedings of this case?

MR. JAMAL: I'm asking you a question, Judge Sabo.

THE COURT: I'm asking you a question. Are you trying to disrupt the orderly proceedings of this case?

MR. JAMAL: I'm trying to have my counsel appointed to sit beside me for

advice and counsel of my choice. That's what I'm trying to do. That is the only thing I'm trying to do.

THE COURT: Proceed with the next witness.

MR. MC GILL: Yes. Mr. Albert Magilton.

MR. JAMAL: Am I to answer your question but you are not to answer mine?

THE COURT: I have already ruled. I am not going to go over the same thing again. If you don't like it, appeal.

Go ahead. Next witness.

MR. JAMAL: Judge, I protest this decision.

THE COURT: You know where to protest it, the Appeal Court.

MR. JAMAL: I'm in court now.

THE COURT: No, you have to go to the appellate court.

MR. JAMAL: Why?

THE COURT: Because I made a ruling and if you think it's wrong, appeal it.

MR. JAMAL: I'm saying it's wrong now. Why should I wait for appellate court to make that decision?

THE COURT: I already made one. You didn't like it. If you don't like it, that's the only place you can go is up.

MR. JAMAL: I want John Africa appointed as my defense counsel, Judge.

THE COURT: Denied.

MR. JAMAL: I want several legal runners appointed, in addition to that. Yesterday when you began that colloquy you said that one of the things I would suffer from by defending myself is the inability to have investigators, field contacts, and so forth. I'd like to have several legal runners appointed to perform that function since I'm not able to do it myself.

THE COURT: Any motions that you want to make you put them in writing.

MR. JAMAL: I can write it right now, Judge.

THE COURT: You will have to do that some other time. We are in the middle of a motion to suppress.

MR. JAMAL: I understand. But the reason I'm asking you now, we just came back from lunch and we did not begin procedures --

THE COURT: You have to put it in writing.

MR. JAMAL: Why are you interrupting me?

THE COURT: I'm saying any motion you have to write. Put it in writing, okay?

MR. JAMAL: No, it's not okay.

THE COURT: Well, this is my ruling.

MR. JAMAL: So you can ignore it in writing, as well as ignore it -- I make oral motion to you for legal runners and you are going to ignore it and I make a written motion so you can ignore it.

THE COURT: Put it in writing so we can make it part of the court record.

MR. JAMAL: Do you object to me having legal runners as well, Judge?

THE COURT: Mr. Jamal, we are in the middle of a motion to suppress.

MR. JAMAL: No, we are not.

THE COURT: Yes, we are. Proceed.

MR. MC GILL: I am prepared --

MR. JAMAL: What about my right to have legal runners, right of investigator of my choice?

THE COURT: We will take it up later.

MR. JAMAL: When will we take it up, Judge?

THE COURT: Later.

MR. JAMAL: When?

THE COURT: Later.

- - -

ALBERT CHARLES MAGILTON, sworn.

- - -

DIRECT EXAMINATION

- - -

[Mr. Jackson conferred with the defendant.]

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

THE COURT: Go ahead.

BY MR. MC GILL:

Q Mr. Magilton, I'm directing your attention now to December 9, 1981, a few minutes before 4:00 a.m..

Do you recall that early morning?

A Yes, I do.

Q Did you have occasion to observe anything on that day?

A Yes, I did. I observed a police officer pulling over a blue Volkswagen.

Q Where did the police officer pull the Volkswagen over?

A Southeast corner of 13th and Locust.

Q Then what did you do?

A I stood there and I watched a little bit and then I proceeded in my direction.

Q What then happened?

A Well, I noticed a gentleman coming -- running through the parking lot towards the car that was pulled over.

Q Where was that parking lot located?

A Northeast corner of 13th and Locust.

Q Was that across from where the police officer and the Volkswagen had been parked?

A Yes, it is.

Q Stopped rather.

Where was this man coming from that -- where did you observe him coming from?

A From 13th Street side headed towards like across the corner to where the cars are pulled over.

Q Was he coming from inside the parking lot area?

A He was cutting across the parking lot from 13th Street.

Q What did you observe?

A I observed the man moving in a fast motion across the street. He had like his one hand sort of behind his back or in his pocket and from that there point on I had to watch myself because I was in the middle of the street.

Q What then happened?

A I heard some shots and -- a number of shots and then I turned around and I didn't see the officer standing there no more. So as I walked over I got to the southeast corner of 13th and Locust. I walked over and I seen the officer's body laying on

the ground and I didn't notice the gentleman I seen coming from the parking lot.

Q What did you do?

A Well, I proceeded to move up closer. That is when I noticed the gentleman I seen coming from the parking lot.

Q Where was that gentleman?

A He was laying on the curb slouched up against the car, the Volkswagen.

Q That individual that you saw running across the street from the parking lot, is he in this courtroom ?

A Yes, he is.

Q Would you point him out?

A Right over there next to the gentleman in the suit.

Q Indicating Mr. Jamal, for the record, the defendant in this case.

Did you later see that man that you saw running across the street and that you saw at the curb anywhere else?

A Yes, they were putting him in the paddy wagon.

Q Did you have occasion to go up to that

paddy wagon?

A Yes. An officer had seen me up there and asked me if this was the man. I said, "That's the man I seen coming from the parking lot."

Q And the man that you saw in the wagon, is he in this courtroom?

A Yes, he is.

Q Would you point him out?

A Same gentleman.

Q Again indicating Mr. Jamal, the defendant in this case.

When you saw him running from inside the parking lot, approximately how long did you have him in view?

A Say about forty-five seconds to a minute.

Q When you saw him on the curb as you walked forward, how long did you have him in view?

A A couple of minutes. Until the officers had moved us out of the way so they could get the wounded officer into the car.

Q When you went to the wagon, how long did you have the defendant in view?

A About twenty seconds.

Q Did you have occasion to observe his face in the wagon?

A Yes, I did.

Q What part of his face did you see when he was running across the street from the parking lot?

A The right side of his face.

Q Indicating, for the record, the witness touched or indicated the right portion of his face.

Did you have occasion to see the face of the individual while he was seated at the curb near the Volkswagen?

A Yes, I did.

MR. MC GILL: Cross-examine.

- - -

CROSS-EXAMINATION

- - -

CROSS-EXAMINATION

- - -

BY MR. JAMAL:

Q Did you see anyone fire any shots?

A No, I didn't.

Q Did you see anyone with a gun?

A No, I didn't.

Q Did you see any policemen take their guns out?

A Not that I know of.

Q Did you see me shot?

A No. No, I didn't. There was a scuffle when you were resisting. They were trying to --

Q I didn't ask you that. I said: did you see me beat?

A No, I didn't.

Q Do you remember the clothing of the man you identified that night?

A Yes, I did. You were wearing a red striped sweater or jacket.

Q Could it have been a striped shirt?

A Yes, it could have been a shirt.

Q Did you see the man actually cross the street?

A Yes, I did. I seen you until you got to about the middle of the street is when I turned around. I was stuck in traffic.

Q Did you see the man actually cross the street all the way?

A Not all the way.

[Mr. Jackson conferred with the defendant.]

Q When you made these observations, were you in a car?

A No, I was -- no, I wasn't. I was standing.

Q Where exactly were you at?

A I was in the middle of the street on the southwest side of 13th Street crossing Locust.

Q You saw a man begin to cross the street. How far away were you from him?

A I'd say about 75, 80 feet.

Q When you heard the shots, did you turn around and look?

A Yes, I did.

Q You did.

What did you see?

A I didn't see anyone standing there. I saw one gentleman standing towards the front of the car. He was the driver of the car.

Q How do you know that?

A Because I saw him when he got out of the car.

[Mr. Jackson conferred with the defendant.]

Q Now, let's see. You were on 13th Street crossing Locust?

A I was.

Q Were you going north or south?

A I was going north.

Q How far away from that scene would you estimate you were when you first heard shots?

A Say about eighty, eighty-five feet.

Q Where were you? In the middle of the street?

A I was in the middle of the street.

Q Did you continue crossing the street?

A No. I wasn't -- I was stuck in between traffic because the light had changed. Cars were moving beside me.

Q Did you go back to the corner or did you go on the other side?

A After I heard the shots I turned around. I didn't see no one so I proceeded back to the corner to see what went wrong. That is when I noticed the police officer's body on the ground.

Q Did you see any guns at that scene?

Did I ask you?

A No, I didn't.

Q Did you see anyone beaten by police?

A No, I didn't.

Q Did you see anyone handcuffed and arrested?

A Yes, I did.

Q One man, two men, three men?

A One man. The driver of the car was standing there handcuffed.

Q When are you speaking of?

A When I first -- when the police first arrived, the driver of the car was handcuffed standing there and they were trying to handcuff you, the defendant.

Q When you first got there?

A When the police first arrived. The other man was already handcuffed.

[Mr. Jackson conferred with the defendant.]

Q I guess -- what time is this? You were crossing the street, right?

A Yes, I was.

Q You heard something and you went back, right?

A Yes.

Q Is that when you saw the other man handcuffed?

A Well, the other man was standing there.

Q I asked you is this --

A I assumed he was handcuffed.

Q You were crossing the street. You stopped and you came back to the corner?

A Yes, after I heard shots.

Q Right. Is that when you saw the other man handcuffed?

A Yes.

Q Did you see a man sitting on the curb?

A Yes, I did.

Q Can you give me an idea of his position? Where was he sitting at?

A He was sitting on the curb slouched up against the fender of the car.

Q The front of the car?

A The rear of the car.

Q The rear of what kind of car?

A Right where the door is.

Q Of what kind of car?

A It was a blue Volkswagen.

Q Was his back to the Volkswagen?

A Yes.

Q His front was to the wall?

A Yes, it was. Sort of on a slant like.

Slouched up like that?

Q But you are sure that his back was against the Volkswagen?

A Maybe not all of the back.

Q Some of his back perhaps?

A Yes.

Q And his feet are to the wall; is that what you said?

A Yes.

Q You saw the man arrested and handcuffed, right?

A Yes.

MR. MC GILL: I would have to object. What man? The same man?

BY MR. JAMAL:

Q The man sitting on the curb?

A Yes.

Q You saw him arrested and handcuffed; is that correct?

A Yes.

Q Did you see a policeman come by and kick him in the chest?

A No, I didn't. There was a scuffle, that's all.

Q I didn't ask you about a scuffle. I asked you did you see a policeman come by and kick him in the chest?

A No, I didn't.

Q Did you see a policeman come near and kick anything in that area?

A No.

Q Did you hear what could have been -- no.

[Mr. Jackson conferred with the defendant.]

Q When you were crossing the street, and you stopped, you went back to where you began crossing the street from, right?

A Yes.

Q When you got back to the corner, had police already arrived?

A No, not when I reached the corner.

Q So you waited until the police arrived?

A No. As I was moving toward the vehicle, that is when the police started to arrive.

Q You were moving toward what?

A Towards the vehicle, the Volkswagen.

Q The Volkswagen.

You testified you saw me handcuffed and arrested, correct?

A Yes.

Q Did you see me put in a wagon?

A Yes, I did.

Q From the time that you first began crossing the street, to the time that you saw me placed in a wagon, did you see any guns?

A No, I didn't.

Q And you saw no one beaten, correct?

A No, I didn't.

MR. JAMAL: No further questions.

- - -

REDIRECT EXAMINATION

- - -

BY MR. MC GILL:

Q Mr. Magilton, during the course I believe you used the word scuffle. Did you hear the defendant say anything?

A Yes, I did.

Q What was that?

A He was going to the police officers, "Leave me alone, you fucking pigs. I know my rights, you

fucking pigs."

MR. MC GILL: Nothing further.

- - -

RE-CROSS-EXAMINATION

- - -

BY MR. JAMAL:

Q By the way, one other thing further: did you later see -- never mind. Withdraw that.

MR. MC GILL: Thank you, Mr.

Magilton.

[The witness was excused.]

- - -

MR. MC GILL: Your Honor, the next witness is Mrs. Pettus.

[Mr. Jackson conferred with the defendant.]

MR. JAMAL: Judge, can you recall -- can you call Mr. Magilton back to the stand?

MR. MC GILL: I have no objection, Your Honor.

- - -

ALBERT CHARLES MAGILTON, resumed.

- - -

RECROSS-EXAMINATION

- - -

BY MR. JAMAL:

Q After you saw me sitting at the curb, and before the wagon -- did you see the wagon actually leave?

A Which wagon are you referring to?

Q The wagon I was in.

A No, I didn't, because after I identified you in the wagon I was taken down to Homicide Division.

Q Did you come up to the police or did they come up to you prior to that identification?

A Yes, they did.

Q What did they ask you?

A They asked if I seen anything and I had told them what I had seen. Then they took me over to the wagon and they asked me if that was the man I seen coming through the parking lot. I said, "Yeah, that's the man."

[Mr. Jackson conferred with the defendant.]

Q What did you actually tell the police?

MR. MC GILL: Objection, Your Honor.

Improper recross.

THE COURT: I sustain that objection.

[Mr. Jackson conferred with the
defendant.]

BY MR. JAMAL:

Q The police asked you did you see anything;
is that correct?

A Yes, they did.

Q Can you tell me what words you told the
police at that time?

MR. MC GILL: Your Honor, I have
to object. If Your Honor would like, this
is recross-examination. It's really beyond
the scope of redirect.

THE COURT: All right. Maybe it's
easier to -- let's go ahead.

MR. MC GILL: Yes, sir.

THE WITNESS: Pardon?

THE COURT: You may answer.

THE WITNESS: Well, after they had
asked me what I had seen, I told them I seen
the officer pull the car over, then the officer
got out of his car, and the guy got out of

the Volkswagen. They went to the pavement and then started walking across the street. And when I noticed someone coming from the parking lot I watched until he had gotten halfway in the street, which is when I was stuck in traffic, cars started honking, and I started to proceed across the street.

BY MR. JAMAL:

Q I thought when the cars started honking you came back to the corner you -- and you didn't proceed?

A After I heard the shots I came back to the corner.

[Mr. Jackson conferred with the defendant.]

Q Before the doors of the wagon were opened, what did the policeman say to you?

A He asked me if I could identify the man I seen coming from the parking lot. I said yes. That is when he opened up the door and I said, "Yes, that's the man."

Q That's the man that what?

A The man I seen coming from the parking lot.

[Mr. Jackson conferred with the
defendant.]

Q Did they tell you who was in that wagon?

A No, they didn't.

Q Have you seen any police photographs of me,
mugshots?

A No, I haven't.

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Mr.
Magilton.

[The witness was excused.]

- - -

MR. MC GILL: Mrs. Pettus.

- - -

HELENA PETTUS, Deputy Clerk,
Quarter Sessions Court, Philadelphia, sworn.

- - -

DIRECT EXAMINATION

- - -

BY MR. MC GILL:

Q Mrs. Pettus, what is your employment?

A I'm a deputy clerk of Quarter Sessions.

Q Certified to the Court of Common Pleas in this

jurisdiction?

A Yes.

Q Is your function to have custody of the official Common Pleas court records of defendants in various criminal cases?

A Yes, it is.

Q Do you have the court file -- official court file of this defendant, Mumia Abu Jamal?

A Yes, I do.

Q Would you take a look at it, please, and tell me if listed on that file is the arraignment time of this defendant?

A Yes, it is.

Q What is the arraignment time?

A It would be 9:08 a.m.

Q On what date?

THE COURT: I'm sorry. I didn't hear that.

THE WITNESS: 9:08 a.m. on December 9, 1981.

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

MR. JAMAL: No questions. *

MR. JACKSON: Just a moment.

[Mr. Jackson conferred with the
defendant.]

- - -

CROSS-EXAMINATION

- - -

BY MR. JAMAL:

Q Mrs. Pettus, were you present at the arraignment?

A No, I was not.

Q You didn't actually see me arraigned, correct?

A No, I did not.

MR. JAMAL: No further questions.

MR. MC GILL: Thank you, Mrs. Pettus.

[The witness was excused.]

- - -

MR. MC GILL: Your Honor, the Commonwealth moves to introduce Commonwealth's exhibit, I believe, C-1, which is the search warrant, and respectfully rests on the motion.

THE COURT: C-1 is admitted into evidence.

Commonwealth rests?

MR. MC GILL: Yes.

[Commonwealth's Exhibit C-1,
previously marked for identification, received
in evidence.]

[Mr. Jackson conferred with the
defendant.]

MR. JAMAL: Judge, I've just given
you a written petition for legal runners,
and now that the prosecution has rested on
this motion it's fairly evident that I need
those legal runners to present my witnesses
on this motion as well.

And as you stated during the --

THE COURT: What witnesses do you
need?

MR. JAMAL: Say what?

THE COURT: What witnesses do you
need? Perhaps we can have them for you.
Are any of these police officers?

MR. JAMAL: Yes, some.

THE COURT: All right. Tell the
District Attorney and he will have them for
you.

MR. JAMAL: Some are private citizens as well.

THE COURT: First of all, who do you want of the police officers?

MR. JAMAL: Could you rule on my motion, Judge?

THE COURT: I want to first find out who you want and then we will see where we go from there.

[Mr. Jackson conferred with the defendant.]

MR. JAMAL: Judge, a policeman -- I'd like to have -- I have their names here.

THE COURT: Read them off.

MR. JAMAL: Daniel Soboloski and John McGurk.

THE COURT: How do you spell that last?

MR. JAMAL: Mister S-O-B-O-L-O-S-K-I.

THE COURT: Who is the next one?

MR. JAMAL: John McGurk, M-C-G-U-R-K. Soboloski is 5596.

THE COURT: How do you spell that

last name of McGurk?

MR. JAMAL: M-C-G-U-R-K.

THE COURT: Okay.

MR. JAMAL: McGurk is 3185, 6th

District.

THE COURT: Those are the only two
officers?

MR. JAMAL: Yes.

THE COURT: Who else do you want?

MR. JAMAL: Debbie Kardonsky.

THE COURT: How do you spell that
last name?

MR. JAMAL: K-A-R-D-O-N-S-K-Y.

And Veronica Jones, J-O-N-E-S.

THE COURT: Who else?

MR. JAMAL: One second.

[Mr. Jackson conferred with the
defendant.]

MR. JAMAL: Judge, I have no objec-
tion to the District Attorney's Office supply-
ing the police witnesses. They are available
to him.

THE COURT: Before we get into that,

who else after Veronica Jones or is that the end?

MR. JAMAL: That is the end.

THE COURT: That is four of them, two police officers and --

MR. JAMAL: Judge, can I have --

MR. MC GILL: I just want to make sure I understand. Did I hear he said he had no objection that we supply the officers for him?

THE COURT: Yes.

MR. MC GILL: If the Court would wish me, I'd be very glad to get them. I was going to get them anyway.

THE COURT: Soboloski and McGurk.

MR. MC GILL: I just thought the wording was curious, Judge.

THE COURT: How about this Debbie Kardonsky and Veronica Jones, do you have anything to do with them, Mr. McGill?

MR. MC GILL: Who?

THE COURT: Debbie Kardonsky and Veronica Jones. Anybody that you know?

MR. MC GILL: I don't believe that is a police person, Your Honor.

THE COURT: No.

MR. JAMAL: Judge --

MR. MC GILL: Let me see.

MR. JAMAL: Again, I would like to have legal runners interview and determine what their statements -- take formal statements from them and supply me with that information.

THE COURT: I don't care. You don't need an order for that.

MR. JAMAL: I do need an order from you for legal runners because they need to have access to me at that prison. It's not a hotel.

THE COURT: I know it's not, but if you give them a list of names of people who you want to visit they can visit you.

MR. JAMAL: Judge, you know and I know, okay, that they can't only come up to see and just take a list of names. I need access to them to give them that information and in some sense of confidence.

THE COURT: Why don't you give them at the prison? If you have any problems --

MR. JAMAL: The point is they cannot get to me at the prison. I cannot pass a list of names at the prison.

Why are you resisting appointing legal runners? I need their help. You say this is a fair -- I don't have anything to do with legal runners. You do, Judge.

[Mr. Jackson conferred with the defendant.]

THE COURT: Maybe counsel here can help you with your legal runners.

[Mr. Jackson conferred with the defendant.]

MR. JAMAL: I would like Mr. Jackson to make a statement based on some of the problems I had in getting some witnesses together.

MR. JACKSON: Your Honor, there have been a number of times over the recent months that Mr. Jamal has required additional individuals to see him. I have assisted in

having their names given to the Superintendent of Prison David Owens. Judge Ribner has spoken to him before and he has as well agreed that these witnesses or these persons should visit with Mr. Jamal. So we have no problem with that except when the witnesses went up to see Mr. Jamal the superintendent -- if the superintendent wasn't there, they didn't get in. Even though I can show you a copy of the names --

THE COURT: Owens, you say?

MR. JACKSON: Superintendent David Owens. And I don't think the superintendent is going to give you any problem. He will agree. But the problem --

THE COURT: The thing he has to do is put in an order for these guards so they understand.

MR. JACKSON: But, Your Honor, I'm saying that I can take you up right now to Holmesburg Prison and find you that list. But if the names -- Mr. Jamal names an individual, that individual goes up to the

prison, he doesn't know where that order is and whoever is at that gate doesn't come in.

What Mr. Jamal is asking you for, Your Honor, to issue an order that that individual can carry with him.

THE COURT: What I do is issue an order to Superintendent Owens to issue an order to his guards. Then I have control over Superintendent Owens.

MR. JACKSON: Well, perhaps it will help.

THE COURT: That is the only way to do it because this way I have control over Superintendent Owens if he doesn't issue the order to the proper people.

[Mr. Jackson conferred with the defendant.]

MR. JACKSON: Fine. I suspect that accomplishes what Mr. Jamal wants, if those names are placed on that order.

THE COURT: Right. And that is what he should do. I'll talk to Superintendent

about that.

You say he already has those names?

MR. JAMAL: No.

MR. JACKSON: I don't know which names Mr. Jamal --

THE COURT: You said that he already has some?

MR. JACKSON: What I'm saying, I know the difficulty that he has had with names that were given him before or Judge Riber has talked to Superintendent Owens. He said okay they will be allowed to come in, and when the person goes up there whoever is at the gate says I don't know nothing about it.

THE COURT: Superintendent Owens didn't issue the proper orders.

MR. JACKSON: Your Honor, I have a letter from Superintendent Owens indicating that he has sent -- well, it's a letter that he has sent to the gatekeepers, I suspect, indicating that certain individuals are to get in. I know for a fact a number of these

individuals have not gotten in.

I don't know whether the order goes one way and the letter goes another way, but I know for a fact there have been times when they couldn't get in. I wanted the Court to be aware of that.

THE COURT: I'll check that.

MR. JAMAL: Judge, are you going to contact Superintendent Owens in their regard?

THE COURT: Yes.

MR. JAMAL: Those are the names on that petition that I submitted to you.

MR. MC GILL: Your Honor, I would of course, provide the police officers at the Court's request for purposes of the motion to suppress. However, perhaps, Your Honor, we could discuss at side bar, whatever, and an offer of proof, because it may be that these are witnesses that Mr. Jamal would want for trial.

[A side-bar conference was held as follows:]

MR. JACKSON: Before we go on I have just one question, Judge. You signed an order for Mr. Fashnaught to come in. I can give this to Mr. Jamal because it doesn't do me any good. What do I do? Give it to the sheriff?

THE COURT: Why can't you call Fashnaught or mail it to him? Where is he today?

MR. JAMAL: I was here and they won't let me --

THE COURT: I know that. But isn't he around?

MR. JACKSON: No. He just went back because he says there was no reason to stay around.

THE COURT: Give it to the sheriff.

MR. JACKSON: The sheriff could take it down, but I'm afraid it might get lost.

MR. JAMAL: Take it where?

MR. JACKSON: To the prison.

THE COURT: To the prison. But like you say, it can get lost. Can't you call him on the phone?

MR. JACKSON: Yes.

THE COURT: Because we are going to break shortly.

MR. JAMAL: I have to break.

THE COURT: He's not ready to go ahead today anyway.

Get him on the phone and see that he gets that, otherwise I'm afraid it's going to get lost.

MR. MC GILL: As long as we are mentioning that, I just note for the record for purposes of documentation that Mr. Jackson and Mr. Jamal have had constant communication during the course of witnesses. I think the Court also observed it. I certainly observed it during the course of the witnesses that were called. I am sure that the reasons for the conversations were strategic or questions to ask or discussions of law, which again is abiding by the Court's ruling.

MR. JAMAL: Did you hear what I said to him or what he said to me?

THE COURT: Are you saying, Mr. Jamal,

that you did not talk to him at all?

MR. JAMAL: I am asking you did you hear it?

MR. MC GILL: I didn't hear at all but you were talking to him during the course of the testimony of witnesses.

Are you telling me that you did not?

MR. JAMAL: I'm not telling you anything. I asked you a question, Mr. McGill.

MR. MC GILL: All right. Will you admit that you were talking to him?

MR. JAMAL: It's not an admission. I asked you did you hear what I said to him?

MR. MC GILL: Then you were talking to him.

MR. JAMAL: Did you hear me say anything to --

MR. MC GILL: Did you talk to him at all?

MR. JAMAL: Go ahead.

MR. MC GILL: You are counsel now, Mr. Jamal. You can be communicated to as

counsel-to-counsel.

Judge, now in reference to an offer of proof, I would ask that an offer be made. It may well be afterward it may not be necessary for the motion and there may be plenty of time for the trial for these witnesses to be called if Your Honor would not feel it would be relevant for the motion. In other words, why delay and wait for somebody to come in if Your Honor finds it may not be relevant?

Could you ask for an offer?

THE COURT: What is the offer of proof as to Officer Soboloski?

MR. JAMAL: I'll bring them in --

MR. MC GILL: I'm not worried about them. I'm more concerned about civilians in case they can't be reached.

THE COURT: Are you going to get the civilians?

MR. MC GILL: No. I'll get the cops. I'm saying in order to prevent a delay in the motion to suppress we may find an offer at this point to determine --

THE COURT: You mean as far as the officers?

MR. MC GILL: No, civilians.

MR. JAMAL: Also got the names of two civilians.

THE COURT: All right. The two civilians. You don't care about an offer of proof for the two officers; is that what you are saying?

MR. MC GILL: Not at this point.

THE COURT: What about the civilians? Debbie Kardonsky.

MR. JAMAL: They are witnesses. They were at the scene. They were interviewed by the Commonwealth and, I think, they have important information to give.

THE COURT: As to this motion?

MR. JAMAL: Sure.

THE COURT: I mean, as far as the trial, they may be important in the trial. But are they important as far as this motion to suppress? We are here now on the motion to suppress three things: one, statements;

two, the evidence that was seized; and three, the identification.

Now, in what way would Kardonsky or Jones be material; do you know?

[Mr. Jackson conferred with the defendant.]

THE COURT: These two are civilians.

MR. JACKSON: Could I have a moment?

THE COURT: Yes.

[Mr. Jackson conferred with the defendant.]

MR. MC GILL: Were you talking all of them, Mr. Jamal?

MR. JAMAL: That was private.

MR. MC GILL: That was private?

MR. JAMAL: Yes.

MR. MC GILL: About three minutes worth of private, for the record.

MR. JAMAL: Is there a limit on privacy?

MR. MC GILL: The more you want to talk to Mr. Jackson the better to protect your rights, sir.

MR. JAMAL: As if you give a damn.

MR. MC GILL: The law does so I must.

MR. JAMAL: And you are the law?

MR. MC GILL: Not really. I wish
I were.

MR. JAMAL: I would like to strike
those names.

THE COURT: You don't want these
at all?

MR. JAMAL: Not those two civilians.
The two policemen, yeah.

THE COURT: You still want the two
policemen?

MR. JAMAL: Yes.

THE COURT: You still want the
policemen, but you don't want the Debbie
Kardonsky or Veronica Jones. Do you want
somebody in their place?

MR. JAMAL: Yes, Dr. Regina Gudemo.

THE COURT: Is that it?

MR. JAMAL: Yes.

THE COURT: Any problem in getting
that doctor; do you know?

MR. MC GILL: I don't know, Judge.

MR. JAMAL: Jefferson Hospital.

THE COURT: Have you been in touch with that doctor?

MR. JACKSON: No, I haven't.

MR. MC GILL: What will the relevance be there?

MR. JAMAL: The relevance is that the Commonwealth has presented Security Officer Durham who contended certain statements were made. Dr. Cudemo was in that immediate area and obviously could testify as to whether any statements were made, whether any beatings were inflicted prior, during and --

MR. JACKSON: If I could interrupt so you understand it? Whether or not the police were beating or attempting to beat a statement from him at the time that she saw him. And I think that as far as the offer of proof that would be it. She would testify indeed that the police were kicking him, trying to force a statement from him.

MR. MC GILL: She would testify that

the police were kicking him and trying to coerce a statement from him?

MR. JACKSON: Yes.

MR. MC GILL: That is what she would testify to.

THE COURT: Have you been in touch with her?

MR. JACKSON: I have not been in touch with her personally, and we have gotten some statements from the police.

MR. MC GILL: It's not what her statement says.

MR. JACKSON: I'm not talking about that now. We have gotten some statements from the police that would indicate that she saw Mr. Jamal kicked. Agreed so far?

MR. MC GILL: She at no time said she observed a kick.

MR. JACKSON: No sense of me going on the facts then. That's all.

THE COURT: Well, how are we going to get her in?

MR. JACKSON: I don't know.

THE COURT: Do you want her subpoenaed now?

MR. JACKSON: Your Honor, I think that goes to Mr. Jamal's motion. Two things: number one, we have not been given the addresses of any of the witnesses the Commonwealth has interviewed.

MR. MC GILL: Jefferson.

THE COURT: He said Jefferson Hospital. That ought to be easy for you.

MR. JACKSON: Okay. That is no problem. I'm not shirking from my responsibility, but I don't want to interfere with Mr. Jamal's request.

THE COURT: He wants her in. Why don't you call her on the phone? She may come in voluntarily without a subpoena.

MR. JACKSON: Okay.

THE COURT: Tell her to come in tomorrow and whenever she comes in we will put her on she can leave. I don't want to tie her up because I realize she is a doctor and their time is precious, too. I don't want

to hold her up. Whatever time you set for her is all right with me. In the meantime, you can have the two officers here, if he wants them, or if she comes in first we can go with her first.

MR. JACKSON: Okay. I'll call and determine her availability. I just don't know. I never talked to her. I know I had an investigator and Mr. Jamal had an investigator attempt to locate her at the hospital and he's been unsuccessful in locating her, whether she was on duty or whether she was supposed to be on duty. So I don't know. I'm not saying she is avoiding us. I don't know. I just don't know what the situation is.

THE COURT: Try and see whenever you can get her in.

MR. JACKSON: Fine. I'll do that immediately.

THE COURT: What time do you want to start tomorrow?

MR. JACKSON: Ten. 10:00 o'clock is fine.

MR. JAMAL: Ten o'clock.

[Side-bar conference concluded.]

THE COURT: We will adjourn court
until 10:00 o'clock tomorrow morning.

[Motion recessed at 3:37 o'clock p.m.]

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I N D E X

<u>Witness:</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
James Forbes	2.2	2.3	2.15	
Cynthia White	2.17	2.22		
Robert Chobert	2.55	2.60		
Albert Charles Magilton	2.92	2.97	2.105	2.106
Helena Pettus	2.110	2.112		

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EXHIBITS

<u>Number:</u>	<u>Description:</u>	<u>Marked:</u>	<u>Admitted:</u>
C-1	Search warrant (previously marked)		2.113

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