

And Now, to-wit, Friday, March 1, 1974, beginning at 9:00 A.M., EDT, the trial in the above-captioned matter was continued before the Honorable Charles F. Greevy, President Judge, and a Jury, in Court Room No. 1, at the Lycoming County Court House, Williamsport, Penna., at which time the Defendant was present with his Counsel and the following proceedings were had:  
By The Court:

As the Court Bailiff announced, no one will be leaving the Court Room until the Judge finishes the Charge. If anyone cares to leave at this time, they may do so, however.

CHARGE OF COURT

By The Court:

Members of the Jury:

You have been engaged for several days in hearing the testimony and having other evidence presented before you and hearing the arguments of Counsel. The Court has observed your careful interest and attention to the presentation of evidence and the summations of Counsel. You had the opportunity to see able Lawyers present their contentions in able fashion. For the Commonwealth, Mr. Ertel, and for the Defendant, Mr. Fierro. I commend Counsel for their careful and competent presentations.

It now becomes my duty as Judge to instruct you in the law that applies to this case, and it is your duty as Jurors to follow the law as I shall state it to you. On the other hand, it is your sole providence to determine the facts in the case and

to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me and none may be inferred by you. You are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all of the instructions and as a whole, and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection, nor may you draw any inferences from the question itself.

You must weigh and consider this case without regard to sympathy, prejudice or passion. Your decision, of course, must be unanimous, all of you must be in accord and agreement. However, each Juror must reach his or her own judgment since each Juror acts for himself or herself in determining the guilt or innocence of a Defendant, and each Juror must look solely to the law as given by the Court, and the evidence as presented in the Court in determining for himself or herself the guilt or innocence of this Defendant.

The evidence includes the testimony received from the witnesses, exhibits admitted during the trial, and any fact or facts agreed to or stipulated by Counsel in the course of the trial.

The evidence in this case is of two different types. On the one hand there is direct evidence, which is testimony by a witness from his or her own personal knowledge, such as something that he or she saw or heard themselves.

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

In deciding whether or not to accept circumstantial evidence as proof of the facts in question you must be satisfied, first, that the testimony of the witness is truthful and accurate and, second, that the existence of the facts the witness testifies to leads to the conclusion that the facts in question also happened.

Circumstantial evidence alone may be sufficient to prove the Defendant's guilt. If there are several separate pieces of circumstantial evidence, it is not necessary that each piece standing separately convince you of the Defendant's guilt beyond a reasonable doubt. Instead, before you may find the Defendant guilty all of the pieces of circumstantial evidence, when considered together, must reasonably and naturally lead to the conclusion that the Defendant is guilty and must convince you of the Defendant's guilt beyond a reasonable doubt. In other words, you may find the Defendant guilty based on circumstantial evidence alone, but only if the total amount and quality of that evidence convince you of the Defendant's guilt beyond a reasonable doubt. A reasonable doubt will be defined for you later in the charge.

The speeches of Counsel are not part of the evidence, and you should not consider them as such. However, in deciding the case you should carefully consider the evidence in light of the various reasons and arguments which each Lawyer presented. It is the right and duty of each Lawyer to discuss the evidence in a manner which is most favorable to the side he represents. You should be guided by each Lawyer's arguments to the extent they are supported by the evidence and insofar as they aid you in applying your own reason and common sense. However, you are not required to accept the arguments of either Lawyer. It is for you and you alone to decide the case based on the evidence as it was presented from the witness stand and in accordance

with the instructions which I am now giving you.

The facts which will govern your verdict are for you, and you alone, to determine. This is because you are the sole judges of the facts. If you have read or heard anything about this case before taking your seats as Jurors, you must lay that wholly aside. You are to determine the facts upon the evidence presented here during the progress of the trial, giving effect to the testimony you believe, in light of all the circumstances of the trial.

You are trying the Defendant, Kim Lee Hubbard, on an Indictment charging Murder. The substance of the Indictment is "...that on or about the 19th day of October, 1973...." Kim Lee Hubbard "...did feloniously kill and slay another. Victim--Jennifer May Hill."

The Commonwealth contends that it has proven a series of fact which establish the guilt of the Defendant beyond a reasonable doubt. <sup>X</sup> [The Defendant has offered evidence which tends, which raises the issue of his whereabouts at the time of the alleged commission of the crime charged.]

Obviously, the Defendant cannot be guilty unless he was at the scene of the alleged crime. You should consider this evidence along with all the other evidence in the case in determining whether the Commonwealth has met its burden of proving beyond a reasonable doubt that a crime was committed and that the Defendant himself committed it. The Defense evidence that the Defendant was not present, either by itself or together with other evidence may be sufficient to raise a

reasonable doubt of his guilt in your minds. If you have a reasonable doubt of the Defendant's guilt, you must find him not guilty.

A fundamental principle of our system of criminal law is that the Defendant is presumed to be innocent. The mere fact that he was arrested and is accused of a crime is not any evidence against him. Furthermore, the Defendant is presumed innocent throughout the trial, and unless and until you conclude, based on careful and impartial consideration of the evidence, that the Commonwealth has proven him guilty beyond a reasonable doubt.

It is not the Defendant's burden to prove that he is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged and that the Defendant is guilty of that crime beyond a reasonable doubt. A person accused of a crime is not required to present evidence or prove anything in his own defense. If the Commonwealth's evidence fails to meet its burden, then your verdict must be not guilty. On the other hand, if the Commonwealth's evidence does prove beyond a reasonable doubt that the Defendant is guilty, then your verdict should be guilty.

Although the Commonwealth has the burden of proving that the Defendant is guilty, this does not mean that the Commonwealth must prove its case beyond all doubt and to a mathematical certainty, nor must it demonstrate the complete impossibility of innocence. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate

before acting upon a matter of importance in his own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some elements of the crime. A reasonable doubt must be a real doubt, it may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

So, to summarize, you may not find the Defendant guilty based on a mere suspicion of guilt. The Commonwealth has the burden of proving the Defendant guilty beyond a reasonable doubt. If it meets that burden, then the Defendant is no longer presumed innocent and you should find him guilty. On the other hand, if the Commonwealth does not meet its burden, then you must find him not guilty.

With these principles in mind, you must consider next the instructions as to Criminal Homicide. The Pennsylvania Criminal Code provides: "A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being."

A person acts intentionally with respect to a material element of an offense when:

( 1) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(2) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

A person acts knowingly with respect to a material

element of an offense when:

(1) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(2) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(3) Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

(4) Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

Criminal Homicide shall be classified as Murder, Voluntary manslaughter or Involuntary manslaughter.

The Court now instructs you on the Criminal Homicides



that are in question in this case.

**First, Murder of the First Degree.** A criminal homicide constitutes murder of the first degree when it is committed by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

**Murder of the Second Degree.** All other kinds of murder shall be murder of the second degree.

**Voluntary Manslaughter.** Generally, a person who kills an individual without lawful justification commits voluntary manslaughter if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by: (1) the individual killed; or (2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the individual killed.

In order to find the Defendant guilty of any of these Criminal Homicides, the Commonwealth must prove beyond a reasonable doubt that, first, a death has occurred; and secondly, the death resulted from a criminal agency; and third, the defendant is legally responsible for the death.

Murder is an unlawful killing of another with malice aforethought.

Malice express or implied is the hallmark, the criterion and absolutely essential ingredient of either first or second degree murder. Malice in its legal sense exists not only where there is a particular ill will, but also whenever there is a wickedness of disposition, hardness of heart, wanton conduct, cruelty, recklessness of consequences and a mind

regardless of social duty. Legal malice may be, either express or implied, that would be inferred and found from the attending circumstances. Malice is present if the Defendant had an intent to do the deceased serious bodily harm.

Now, in the definition of First Degree Murder, the words, "Wilfull, deliberate and premeditated" as used in defining First Degree Murder, means a distinctly formed malicious intent to kill. Intention to kill is the essence of the offense. If a malicious intention to kill exists it is wilfull; if this intention be accompanied by such circumstances as evidence a mind fully conscious of its own purpose and design, it is deliberate; and if sufficient time be afforded to enable the mind fully to frame the design to kill, and to select the instrument, or to frame the plan to carry out the design into execution, it is premeditated. So, wilfullness is the intent to kill, deliberateness is a state of mind which has been fully made up; premeditation is a mind that has considered the murder in advance, and made preparation for it.

Now, the law does not fix any length of time that is necessary to form the intention to kill, but leaves the existence of a fully formed intent as a fact to be determined by the Jury, from all the facts and circumstances in the case. The time required to form such an intention is not long, as we know from the swiftness of human thought. However, suddenness is opposed to premeditation and in considering the question of premeditation, you should be convinced that the purpose to kill is not the immediate offspring of rashness, or an impetuous temper,

but that the mind has been fully conscious of its own design with time to frame in the mind, fully and consciously, the intention to kill and to select the weapon or means of death, and to think and know beforehand, though the time is short or was short, for the use to be made of it.

In establishing the presence of a specific intent to kill, the Commonwealth is not required to depend upon proof by direct evidence, but also may meet its burden by circumstantial evidence alone.

The specific intent to kill which is necessary to constitute Murder in the First Degree may be found from a Defendant's conduct or from the attendant circumstances together with all of the reasonable inferences therefrom.

You will recall that the Statutes I referred to provides after defining Murder of the First Degree, that all other kinds of murder shall be Murder of the Second Degree. The distinguishing thing between Murder of the First Degree and Murder of the Second Degree is that Murder of the First Degree requires a specific intent to take the life of another human being. So if the purpose of attacking another is simply to inflict grave bodily harm, but not to kill, even though the act may be deliberate and premeditated, it would then be Murder in the Second Degree because of the absence of a specific intent to take life. When the act results in the death of another the law makes certain presumptions. When the killing is unlawful and unjustifiable the presumption of the law is that the offense was Murder of the Second Degree. Of course, Members

of the Jury, you must understand that we are not saying that the presumption of the law in this case is that the Defendant is guilty of Murder in the Second Degree. The basic presumption is that a Defendant is innocent unless and until evidence establishes guilt beyond a reasonable doubt. The presumption of law in this particular regard is that where it appears from evidence that there has been an unlawful and unjustifiable killing of a person by another in the absence of anything further, the killing is Murder in the Second Degree. In order to establish that it is Murder in the First Degree, there must be evidence presented to show the elements of wilfulness, deliberation and premeditation as stated earlier.

All unlawful killing is not Murder of the First Degree or Second Degree. Under particular circumstances it may be Voluntary Manslaughter, as we have previously defined for you, but in the Court's opinion of the evidence in this case, a verdict of Voluntary Manslaughter would not be warranted under the facts of this case. However, the ultimate decision is for you, the Jury and not the Court, and we leave it for you to decide what the verdict should be, and voluntary manslaughter is an option legally open and available to you.

It is my duty to outline the several contentions that are made by the Parties to this action. Counsel have stipulated that the Court need not review the testimony of each individual witness, but in so doing I shall not intrude into your province and assume to say what the facts are, nor do I mean or any way to intimate, much less to assert that these facts have been

proved or established in the case. Whether or not they have been proved and established in the case is to be determined solely by you, the Jury. You are the judges of what the witnesses in the case have testified to and it is your duty to recall all of the testimony when you go to the Jury Room to deliberate on this case, and you will take the testimony as you heard it from the lips of the witnesses on the stand and not from Court or Counsel.

It is undisputed that Jennifer Hill, aged twelve, five feet one inch, stayed overnight of October 18 - 19, 1973, at the Hubbard home in South Williamsport, and that on the morning of October 19, 1973, Jennifer Hill was wearing a jersey with the number "33" on it and was playing outside with other children. At noon she ate half a hoagie, a few French fries, and a milk shake. Early afternoon she had a few grapes. The Commonwealth contends that Jennifer Hill and Ruth Hubbard played outside until about 3:30 P.M. At 3:40 P.M. she was inside of the Hubbard home and talked on the phone with her Mother. That about 3:45 P.M. she was walking on the south side of West Central Avenue. About 4:30 P.M. she walked past 503 Howard Street, South Williamsport, towards the mountain and got into a light green, metallic-colored car, which had a white helmet on the back ledge. The car had stopped in the middle of the street and Jennifer Hill got into the front passenger side of the car alongside of the male driver. No other passengers were in the car.

On Sunday, October 28, 1973, about 4:00 P.M., Jennifer Hill's body was found in a cornfield, 127 feet off Sylvan Dell Road and four or five feet from a lane that runs from Sylvan Dell Road to the Atlantic-Richfield tank area. Her feet were towards the lane. Tireprints were found on the lane 26 feet from the Sylvan Dell Road. There were identifiable footprints next to the body, others two to ten feet from the body and also under the body. That Jennifer Hill's death occurred on October 19th sometime between 4:30 P.M. to 6:00 or 8:00 P.M., caused by manual strangulation. The length of time of consciousness was 30 to 90 seconds, unconsciousness for several more minutes before death occurred. The clothing worn by Jennifer Hill at the time she was found was admitted into evidence.

On October 31st the Defendant voluntarily turned over to the Police his combat boots and his light green 1967 Oldsmobile sedan, which at the time had a white construction helmet on the back ledge.

James L. Miller, Chemist for the State Police Laboratory testified in his opinion that dirt from the impression at the crime scene and dirt taken from the Dye-Tex Plant were extremely similar.

Leon E. Krebs, Pennsylvania State Policeman, assigned to the Crime Laboratory, who is a firearm and toolmark examiner testified that he made comparisons of the tires of the Defendant's car with casts made at the scene and said that in his opinion Exhibit No. 88, which is the right rear tire made one of the plaster impressions. That tire No. 90, which is the one that

was at Poole's could have made one of the impressions, but there was no conclusion made by him. Tire No. 89, the right front, could have made, but no conclusion made by the witness. That tire No. 87, the left rear tire, matched the cast No. 91, the plaster impression, and made that plaster impression. The witness also testified that he made a comparison of the combat boots, Nos. 96 and 97, with the plaster cast, No. 51, in his opinion the two separate full impressions taken from the scene were made by the left boot, Exhibit No. 97, which had been received from the Defendant. The prints shown on the plaster cast No. 51 were underneath the victim's body.

The Defense contents that on October 19, 1973, after playing outside, Jennifer Hill and Ruthie Hubbard returned to the Hubbard home at 3:00 P.M. and Jennifer Hill left the home, the Hubbard home, alone at about 3:45 P.M.

The testimony of the defense is that during the day and up to the time Jennifer Hill left the Hubbard home she was wearing blue jeans with heart-shaped patches, Exhibit No. 67. The Defense produced a witness that saw a young girl wearing a jersey with number "33" on it at 3:50 P.M. approaching the corner of West Central Avenue and Market Street.

It is the contention of the Defense, that the Defendant is 20 years of age, five feet nine inches, weight 140 to 145 pounds. That on October 19, 1973 he resided with his Parents at 1030 W. Central Avenue in South Williamsport, and on that date and prior thereto was the owner of a '67 Oldsmobile Cutlass that had extensive damage to the left front of the car. That on

October 19, 1973, the Defendant got up at 12:30 to 1:00 P.M. He went to the Super-Duper Store and bought cigarettes. He returned home. He went to the Rentall Service in Williamsport about 1:45 P.M., he rented a buffer and pads and took them home. He received a check from his Mother which he cashed at the Super-Duper and then went to the Strouse Insurance Company and paid for insurance. That on his return he stopped at the Hum-Dinger and at Poole's Station, and then tried to locate a friend, Tom Wilt, and in doing so drove down the Old Look-Out on the Sylvan Dell Road. He did not locate Wilt, so he returned home and worked on his car outside for a half to three-quarters of an hour. He went back into his home, then went to the car wash in Williamsport, washed his car, and on his return stopped at the Hum-Dinger for a coke. He then went to District Justice Blackburn's office, then to the Barr home, leaving there at exactly 3:58 P.M. and arriving at his own home at 4:00 P.M. He parked his car, went into the home, then walked to the Hum-Dinger, which was two and a half blocks from his home where he had half a Cosmo and a coke. While there he made two phone calls and talked to Bob Fries, being there a total of 15 to 20 minutes. He walked back home and started to buff the floor for his Mother, being interrupted by four phone calls, one was when Jackie Hill called at 4:00 P.M. asking if Jennifer was there, one was from Colleen Whitenight about 4:30 and another was precisely at 4:45 P.M. from Jack Hill inquiring if Jennifer Hill had left yet. This is one of the conflicts in the testimony, if you recall Jack Hill testified the phone call was made at 5:00 P.M.



Mrs. Hill testified it was made between 4:45 and 4:50 P.M. After the last call the Defendant resumed buffing for ten minutes, and then at his Mother's request, drove around looking for Jennifer Hill. He returned home and at 6:00 P.M. called Colleen Whitenight, continued buffing for a short time, then went outside where he saw his Mother, his sister and the Hills and he exchanged greetings with Jack Hill, and rode a bicycle in front of his own home and then he went back into the house. He continued buffing until 7:15 P.M., then he went outside and met Colleen Whitenight and was with her until 12:30 the following morning. During this time he was at his home, Captain Ross stopped at 6:00 P.M. and again at 8:00 P.M. and then they stopped, that is the Defendant, Colleen Whitenight and the Defendant's Mother, stopped at another person's address, and then they returned home, and then the Defendant and Colleen went to the Hum-Dinger at 8:30 to 9:00 P.M., then went to the Sylvan Dell Road and parked for an hour and then returned to the Defendant's home at 10:00 P.M. and watched television. At 12:30 A.M. he took Colleen Whitenight home and then returned to his own home and stayed there for the remainder of the morning, talking to Colleen Whitenight at, three times on the phone prior to going to bed.

The Defendant testified that he wore sneakers on October 19, 1973 and that no one else drove his car on that day, and that Exhibit No. 115, being the white helmet, did not come into his possession until October 24, 1973. That on October 19, 1973 he did not have a white helmet. Further that he saw

Jennifer Hill only once on October 19, 1973, and that was in the early afternoon when she was playing football with his sister and a number of other young people, and he was on his way to the Super-Duper for cigarettes and he waved towards his young sister.

Michael Rotman, a Private Investigator, on February 14, 1974 at the State Police Barracks, testified on behalf of the Defense, that he examined four tires, two boots, and casts that are in evidence, and testified that he compared the tires and the boots with the casts, and in his opinion he cannot say with any degree of certainty that the impressions or casts were made by any of the objects. He testified that any number of tires or boots could have made the impressions.

On Rebuttal the Commonwealth presented evidence that the Defendant was employed at Eastern Wood from March 13, 1973 to May 21, 1973 and was issued a white helmet that was not returned when the employment terminated. Further, that in July and August, 1973, that a witness saw two white helmets in the Defendant's car.

On Sur-rebuttal the Defense produced a number of witnesses who testified that they were familiar with the Defendant's car and had never seen white helmets in the car.

Now, if you, the Jury, find in weighing the testimony, that you cannot reconcile some of the testimony, it then becomes your duty to determine which testimony you will believe, whom do you think was telling the truth about what happened? The weight and value of all testimony and the credibility of

each and every witness are matters for your sole determination. The testimony of each witness must be impartially considered and tested by your judgment as to whether the witness had motive or interest other than to tell the truth. If you find motive or interest present in any witness, it is for you to judge how far, if at all, it affects the testimony.

You should not decide this case on the basis of which side presented the greater number of witnesses or the greater amount of evidence. Instead, you should decide which witnesses to believe and which evidence to accept on the basis of whether or not the testimony or evidence is believable.

In deciding which of several witnesses to believe, it is proper for you to consider whether or not the testimony of each witness is supported by other evidence in the case. However, you should recognize that it is entirely possible for a single witness to give truthful and accurate testimony and that his testimony may be believed, even though a greater number of witnesses of apparently equal reliability contradicted him. The question for you to decide, based on all the considerations I am discussing with you, is not which side produced the most evidence, but which evidence you will believe. When the Court refers to the masculine as far as witnesses, it also includes the feminine.

If you conclude that one of the witnesses or more testified falsely and intentionally about any fact which is necessary to your decision in this case, then, for that reason

alone, you may, if you wish, disregard everything that the witness said. However, you are not required to disregard everything the witness said for this reason. It is entirely possible that the witness testified falsely and intentionally in one respect, but truthfully about everything else. If that is the situation, then you may accept that part of his testimony which is truthful and which you believe, and you may reject that part which is false and not worthy of belief.

The Defendant took the stand as a witness. In considering the Defendant's testimony, you are to follow the general instructions I gave for judging the credibility of any witness.

You should not disbelieve the Defendant's testimony merely because he is the Defendant. In weighing his testimony, however, you may consider the fact that he has a vital interest in the outcome of this trial. You may take the Defendant's interest into account along with all other facts and circumstances bearing on credibility in making up your minds what weight his testimony deserves.

Where there is a conflict in the testimony, the Jury has the duty of deciding which testimony to believe. But you should first try to reconcile, that is, fit together, any conflicts in the testimony if you can fairly do so.

Discrepancies and conflicts between the testimony of different witnesses may or may not cause you to disbelieve some or all of their testimony. Remember, that two or more persons witnessing or involved in an incident may see or hear it

happen differently; also it is not uncommon for a witness to be innocently mistaken in his recollection of how something happened.

If you cannot reconcile a conflict in the testimony, it is up to you to decide which testimony, if any, to believe, and which to reject as untrue or inaccurate.

In making this decision consider whether the conflict involves a matter of importance or merely some detail and whether the conflict is brought about by an innocent mistake or by an intentional falsehood. You should also keep in mind the other factors already discussed which go into deciding whether or not to believe a witness.

As the Court charged you several times throughout the trial that photographs were admitted into evidence for the purpose of showing the nature of the wounds received by the deceased. Some showing the conditions at the scene of the alleged crime and some helping you to understand the testimony of the witnesses who referred to them. These photographs were admitted into evidence for whatever rational value they may have in proving or disproving the facts in the case. The Court also stated that there were several photographs that are not pleasant photographs to look at. You should not let them stir up your emotions to the prejudice of the Defendant. Your verdict must be based on a rational and fair consideration of all of the evidence, and not on passion or prejudice against the Defendant, the Commonwealth, or anyone else connected with the case.

There were a number of expert witnesses that testified in this case, namely, James L. Miller, Leon Krebs, Michael Rotman, Doctor Earl R. Miller and Doctor Robert L. Catherman. The Court charges you in regards to expert testimony. As a general rule a witness can only testify about what he saw or heard. He may not give you an opinion or draw conclusions. An exception to this rule is the so-called "expert witness". Such a witness is one who by training, education or experience has acquired a special level of skill or knowledge in some art, science, profession or calling. By virtue of his special skill or knowledge, an expert is permitted to give explanations and draw inferences not within the range of ordinary knowledge, intelligence and experience, and to give an opinion and state his reasons for it.

In deciding whether or not to accept the experts' opinions, and the Court has named the experts that testified, you should consider the evidence as to their training, education or experience, as well as the reasons and facts on which their opinions are based.

Also, in deciding whether or not to accept their opinions, you should bear in mind that you are not bound to accept them merely because it is the testimony of someone having special skill or knowledge.

In this case several witnesses have testified as experts and there were conflicts in several of their opinions, I am referring specifically to Leon E. Krebs and Michael Rotman, and perhaps James L. Miller. In deciding which of their

opinions to accept, if any, you should consider which of the experts is better qualified by training, education or experience to give an opinion in this case, and you should also consider the reasons and facts on which each opinion is based.

Before you retire to decide this case, I would like to provide you with some final guidelines for the way in which you conduct your deliberations and how you may properly arrive at a verdict.

It is my responsibility to decide all questions of law. Therefore, you must accept and follow my rulings and instructions on matters of law. I am not, however, as I have stated, the judge of the facts. It is not for me to decide what are the true facts regarding the charges against the Defendant. You, the Jurors, are the sole judges of the facts. It will be your responsibility to consider the evidence, to find the facts and, applying the law to the facts as you find them, to decide whether the Defendant has been proven guilty beyond a reasonable doubt.

Your decision in this case is a matter of considerable importance. Remember, it is your responsibility as Jurors to perform your duties and reach a verdict based on the evidence as it was presented during the trial. However, in deciding the facts, you may properly apply common sense and draw upon your own everyday, practical knowledge of life as each of you has experienced it. You should keep your deliberations free of any bias or prejudice, both the Commonwealth and the Defendant have a right to expect you to consider the evidence

conscientiously and to apply the law as I have outlined it to you.

Your verdict will be one of the following, and these are not in any set order: Not Guilty if the guilty of the accused has not been shown beyond a reasonable doubt. Second: Guilty of Voluntary Manslaughter; Third: Guilty of Murder in the Second Degree, or Fourth: Guilty of Murder in the First Degree.

A verdict of guilty will be proper only if guilt has been established beyond a reasonable doubt. You will be furnished two forms upon which you will render your verdict. If you find the Defendant guilty of either Voluntary Manslaughter, Second Degree Murder or First Degree Murder, you will use the form which provides for a verdict of guilty, and it will be self-evident by examination of the form, and you write on the form the offense of which you find the Defendant guilty of.

If you find the Defendant not guilty, you will use the form which specifies not guilty.

You will take these forms to the Jury Room and when you have reached a unanimous agreement as to your verdict, you will have your Foreman fill in, date and sign the form and state the verdict upon which you unanimously agree as to the Defendant, and then return with your verdict to the Court Room. Upon retiring to the Jury Room you will select one of your number to act as Foreman. The Foreman will preside over your deliberations and will be your spokesman here in Court.



The Foreman will maintain order and fairness in your deliberations, therefore, the administrative control of this case is in your hands. By that I mean that, within reason, you discuss and decide the hours of your deliberation. We are not permitted to know what takes place in the Jury Room or the status of your discussions. You will deliberate according to a schedule upon which you will agree.

I make this inquiry of the twelve members of the Jury, the twelve first chosen. Do you find yourselves presently to be able to physically proceed with the deliberations in this case before I continue to close and discharge the two alternates? Not hearing a response, I will assume each and all of you do consider yourself physically able to do so.

As to the Alternates, you realize that you were chosen to be available if something happened as to one or more of the principle or the first twelve. Fortunately, this did not occur, and I wish to express sincere appreciation to you two Alternates for your service in this case. You are obliged to retire from the case very shortly when I discharge you, and when the Jury commences its deliberations. You are not to discuss the case or tell anyone what you would have done by way of a verdict .

Speaking now to the two Alternates, you are excused very shortly when the Jury is excused to go to the Deliberation Room. We appreciate your attendance throughout the trial, and that you have sacrificed substantially in order to participate and assume this responsibility. The Court expresses to you on

its behalf and on behalf of the Comty sincere appreciation for your performance to this important function and thank you very much. You are not discharged, however, yet.

Members of the Jury, before you retire to the deliberation room, I must caution you that all of your deliberations and any and all matters concerned with the case are to take place in the deliberation room in the presence of all twelve of you and no one else. The Exhibits will be available to you at all times. Some of them are cumbersome, but I have arranged with the Court attendants that if you want to see those which are cumbersome and which are not with you, you notify the Tipstaves and they will be produced for you.

If it is necessary that you have any questions, you must not relate them to the Tipstaves or the Court Attendants at any time, but you must inform them you would like to meet with the Court. It is then necessary that you all be present here as a group. It is necessary that the Defendant be present, Counsel, and the District Attorney, as well as the Court. If you have anyother questions, I will answer them for you when everyone is in the open Court Room.

As the Court has stated to you, your verdict must be unanimous. This means that in order to return a verdict each of you must agree to it. You have a duty to consult with each other and to deliberate with the view to reaching an agreement, if it canbe done without doing any violence to your individual judgment. Each of you must decide the case for him or herself, but only after there has been impartial consideration

with your fellow Jurors. In the course of deliberations, each Juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no Juror should surrender an honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow Jurors, or for the mere purpose of returning a verdict.

In closing, I would also like to suggest that you will be able to deliberate more easily and in a way that will be better for all concerned if each of you treats your fellow Jurors and their views with the same courtesy and respect as you would other persons in your every day life.

Gentlemen, now before I discharge the two Alternate Jurors, is there anything that has been misstated, omitted, distorted or overlooked? Is there anything further which ought to be said to the Jury at this time? Would you come to Side Bar? (AT SIDE BAR.).

By Mr. Ertel:

The first thing when you read the Statute, you didn't charge complicity of the new Act, and I think that should be.

By The Court:

What do you mean "complicity"?

By Mr. Ertel:

"Complicity" could be depositing of the dead body and still be guilty of Murder under the Act.

By The Court:

Let the record show that the Court considered this

very carefully and there is no evidence to support it, and your request is denied.

By Mr. Ertel:

We consider it evidence too about the disrobing of the girl. You said he talked to Bob Fries on the telephone, in your charge?

By The Court:

No, I said personally.

By Mr. Ertel:

No, you said on the telephone. The third thing the Defense said obviously the Defendant cannot be guilty unless he was at the scene of the crime, nobody knows where the scene of the crime is.

By The Court:

What I was doing, he was enumerating where he was all of the time. Are you satisfied with what I said on that?

By Mr. Fierro:

Yes.

By Mr. Ertel:

There was no charge on contradictory statements to the Police.

By The Court:

I had it marked, but I didn't feel it was that contradictory, but I think I gave you enough on credibility to cover it.

By Mr. Fierro:

The Court said he was not going over the witnesses' testimony piece by piece.

By Mr. Ertel:

You forgot the handwriting expert when you listed the witnesses.

By Mr. Fierro:

It was admitted.

By The Court:

Do you want me to mention it?

By Mr. Fierro:

I don't want it mentioned, it was admitted.

By Mr. Ertel:

All I want to do is make sure. That is it.

By Mr. Fierro:

There is only one thing I want to bring to your attention that when you were talking about Mr. Hill, you said that this is one of the conflicts of the testimony, because he testified he made the phone call at 5:00, and I am pretty sure that in his testimony he said it was around 5:00, he did not say 5:00.

By Mr. Ertel:

That is right, he said around 5:00.

By Mr. Fierro:

That is all.

(END OF SIDE BAR.).

By The Court:

As the Court has stated on several occasions, you will take your recollection of the testimony as you heard it from the lips of the witnesses on the stand and not from Court or

Counsel. One of the errors that the Court made was that when I said about Mr. Hill saying when he made the phone call, it has been called to my attention I said precisely 5:00, where his testimony was "around 5:00", but in all regards whether it is mentioned by Counsel or Court, you take your recollection of the testimony.

Now, Jurors Nos. 13 and 14 are excused with the appreciation of the Court. Thank you very much. You may now depart.

The Court has arranged that the Jury will use the Grand Jury Room and the Jurors' Lounge for your deliberation. We will, we feel that the larger space will be helpful to you. Mr. Jewell and Mr. Metzger, we will send the photographs, the small items over immediately. The other items we will be deposit somewhere, where they will be available at all times.

The Jury will now retire to the deliberation room with the Court Attendants.

(Jury excused at 10:13 A.M.).

By The Court:

Mr. Fierro, the Court knows that you must go out of town today, that at this time would you put it on the record?

By Mr. Fierro:

Yes, your Honor, I have discussed with my Client, Kim Hubbard, who obviously is here and listening to me, and my Partner will be available for additional instructions, if necessary, or the receiving of the verdict, whichever, or both.

By The Court:

Mr. Hubbard, Mr. Fierro called this to my attention last night, if I didn't charge last night it was necessary for him to go out of town today. He said he has advised you of that, but that Mr. Miele will be available at all times, is that agreeable with you, Sir?

By The Defendant:

Yes, Sir.

By The Court:

You will have Mr. Miele advise Mr. Feese of where he will be?

By Mr. Fierro:

Yes, your Honor.

By The Court:

Court is recessed. First, the Defendant is excused. Everyone else remain seated. You are excused, Sir, with the Sheriff.

(Defendant excused from Court Room.).

By The Court:

Mr. Miele, Mr. Fierro just placed on the record that you will be available, will you let Mr. Feese know?

By Mr. Miele:

Yes, your Honor.

By The Court:

The Court now stands in recess.

(Court recessed at 10:15 A.M., EDT.).

(Jury Returned at 2:40 P.M., EDT.)

(Mr. Anthony Miele appeared with the Defendant.)

(Mr. Allen E. Ertel, appeared for the Commonwealth.)

By The Court:

Will the Foreman of the Jury please rise?

(Foreman rose.)

By The Court:

Mr. Foreman, has the Jury arrived at a verdict  
in the case of Commonwealth of Pennsylvania versus Kim Lee Hubbard?

By The Foreman:

We have.

By The Court:

Would you give it to the Clerk, please so that the  
Court might inspect it?

(Presented verdict to the Clerk, who in turn presented it to the  
Court, and then returned to the Foreman.)

By The Court:

Would the Defendant and his Counsel please rise?

(Mr. Miele and Defendant rose.)

By The Court:

Would the Jury please rise?

(Jury rose.)

By The Court:

Mr. Foreman, will you read the verdict, please?



By The Foreman:

"And Now, to-wit, March 1, 1974, we the jurors empaneled in the above-entitled case find the Defendant guilty under the following counts: Murder of the Second Degree."

By The Court:

The Jury and the Defendant may be seated. Is there anything further, Gentlemen? Mr. Ertel?

By Mr. Ertel:

Not from the Commonwealth.

By The Court:

Mr. Miele?

By Mr. Miele:

Except for the filing of motions, nothing.

By The Court:

Would the Defendant and his Counsel come before the Court.

(Defendant and Counsel came before the Court.).

By The Court:

Mr. Hubbard, you have the right to file motions for Arrest of Judgment within seven days on the grounds of errors appearing on the face of the record or that the evidence is insufficient to sustain the charge, or that the Court does not have jurisdiction, and if the Court should rule favorably on such motion you would be discharged and the charge dismissed.

You have the right to file motions for a New Trial within seven days on the grounds of trial errors prejudicial to the Defendant, or that the verdict is against the weight of the

evidence or for other possible reasons. If the Court should rule favorably on such motion, a new trial would be granted.

You have the right to Counsel concerning such motions, and if you cannot afford Counsel and you request Counsel, Counsel will be appointed by the Court to represent you free of charge in all proceedings, including appeal to higher Courts, but such request should be made promptly because the motions mentioned must be filed within seven days.

If such motions are filed, and the Court rules against you, you have the right to appeal such rulings to a higher Court with all of the same rights to the services of free Counsel for such appeal as already explained with respect to filing the motions.

If such motions are not filed, or even if they are filed but are later voluntarily withdrawn by you, the legal effect will be that the verdict will stand and you would be waiving or giving up your right to appeal to a higher Court.

The Court is not urging or discouraging the filing of any such motions, nor am I indicating how I would rule on any such motions, but the Court is merely advising you of your legal rights.

Do you understand these rights as I have explained to you?  
By The Defendant:

I do.

By The Court:

Mr. Miele, will you further explain these rights, you and Mr. Pierro, to Mr. Hubbard?

By Mr. Miele:

We will.

By The Court:

Mr. Hubbard, is there anything that you wish to state to the Court?

By The Defendant:

Not at this time.

By The Court:

You have been satisfied with the representation of your own selected Counsel, Mr. Pierro?

By The Defendant:

I am.

By The Court:

The Defendant is now excused.

By Mr. Miele:

May I place on the record the appropriate motions to be followed by written motions?

By The Court:

Yes.

By Mr. Miele:

At this time, your Honor, Counsel for the Defendant on behalf of the Defendant, files a Motion for Arrest of Judgment and a Motion for a New Trial.

By The Court:

The Defendant is remanded to the Lycoming County Prison. Sheriff, he is in your custody. Everyone else remain seated.

(Defendant remanded to Lycoming County Prison.)

By The Court:

The Court expresses sincere and deep appreciation to each of you Jurors, and to the Court Officers, the Tipstaves, the Bailiff, the Sheriff and his Staff. All of you have sacrificed substantially in order to participate and assume the responsibility as a Juror.

You have rendered service not only to the community, but to yourselves because, as I have stated in my opening remarks to the main Jury, our form of society is only as strong as its' law. The effectiveness of a democratic society is measured by the integrity and intelligence and the quality of Jurors who serve in our Courts.

You are now excused from further service at this term of Court.

The Jury is now excused.

Court is now adjourned and everybody will leave the Court Room.

(Court Adjourned.)

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL

**COMMONWEALTH**

2

**VS.**

: No.

**KIM LEE HUBBARD**

1

**TO: Allen E. Ertel, District Attorney  
John A. Felix, Attorney for Defendant.**

You are hereby notified that the testimony in the above stated case has been lodged with the Prothonotary of Lyscoming County this                      day of 1974, and unless objections are made thereto within fifteen days after service of this notice, the same will be duly certified and filed so as to become a part of the record.

**Official Reporter.**

Now, \_\_\_\_\_, 1974, acceptance  
of service of the above notice is acknowledged.

**District Attorney**

**Attorney for Defendant**

**CERTIFICATE OF OFFICIAL STENOGRAPHER:**

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

Official Reporter.

**APPROVAL OF JUDGE:**

The foregoing record of the proceedings on the hearing of the above cause having been lodged with the Prothonotary of Lycoming County on , 1974 and no objections having been filed thereto within fifteen days after service of said notice, now this day of 1974, the same is hereby approved and directed to be filed.

By The Court,

C. F. Greevy, P.J.