

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

COMMONWEALTH :
VS. : No. 73-11,218.
KIM LEE HUBBARD :

TRANSCRIPT OF PROCEEDINGS had before the
Honorable Charles F. Greevy, President Judge, and a Jury, in
Court Room No. 1, at the Lycoming County Court House, Williamsport,
Penna., beginning on Wednesday, February 20, 1974, and continued
on Thursday, February 21, 1974; Friday, February 22, 1974;
Saturday, February 23, 1974; Monday, February 25, 1974;
Tuesday, February 26, 1974; Wednesday, February 27, 1974;
Thursday, February 28, 1974 and Friday, March 1, 1974.

APPEARANCES:

Allen E. Ertel, District Attorney, and
William S. Kieser, Assistant District Attorney,
appeared for the Commonwealth.

Patrick H. Fierro, Esq., of Fierro & Miele,
Attorneys at Law, appeared for the Defendant.

Reported & transcribed by:
Henry O. Fesse,
Official Court Reporter,
Lycoming County, Penna.

And Now, to-wit, Wednesday, February 20, 1974,
beginning at 3:30 P.M., EDT, the above-captioned matter came
on to be heard 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 and place the
defendant was present with his Counsel, and the following
proceedings were had:

By The Court:

Gentlemen, are you satisfied with the Jury?

Mr. Ertel?

By Mr. Ertel:

The Commonwealth is satisfied.

By The Court:

Mr. Fierro?

By Mr. Fierro:

Yes, your Honor.

By The Court:

Mr. Kim Lee Hubbard, are you satisfied with the Jury?

By The Defendant:

Yes, Sir.

By The Court:

Swear the Jury.

(Jury sworn at 3:32 P.M., EDT.).

By The Court:

Ladies and Gentlemen of the Jury: You have been
selected to perform one of the most solemn duties of citizenship.

You are to sit in judgment upon a criminal charge made by the Commonwealth against one of your fellow citizens. The services you render as jurors in this case are as important to the administration of justice as those rendered by me as judge and by the attorneys. You should pay close attention to what is said and to what occurs throughout the trial so that you can faithfully perform your sworn duties as jurors.

The Trial Judge, under the Pennsylvania Rules of Criminal Procedure, the Trial Judge may, in the interest of justice, order sequestration of trial jurors.

When sequestration is ordered, each juror, including alternates, are sequestered from the time of acceptance as a juror until discharged by the Court.

In the interest of justice I have ordered sequestration of you Jurors in this case. Therefore, it is necessary from this time until you are discharged to remain together. You must not separate. You must remain in the charge of the Tipstaves who have been assigned for this purpose. It is their duty to see that you have no communication with outsiders during the course of the trial until a verdict has been rendered.

You will not have access to phones and you are cautioned not to stop and talk with others, nor may you converse with the District Attorney, Defense Counsel, the Defendant or others.

If it is necessary for you to send messages or to have communications with anyone outside, the Tipstaves will make and receive appropriate calls for you.

have been arranged. We believe them to be adequate, however if you have individual or personal needs for which we have made no provisions, bring them to the attention of the Tipstaves.

During recesses and upon adjournments you will depart first from the Court Room. Everyone else in the Court Room will remain seated until the Trial Judge leaves the Bench. During a recess you will be taken to the Jury Rooms adjoining the Court Room or to the Jurors' Lounge.

The proposed Court schedule will be as follows:

Tomorrow morning the Court will convene at 9:30 A.M. Thereafter, it will convene at 9:00 A.M. We will have a recess from 10:30 A.M. for fifteen minutes. We will reconvene at 10:45 A.M. Lunch hour, which will be here in either the Jurors' Lounge or in the Deliberation Rooms will be from 12:15 P.M. to 1:15 P.M. We will reconvene at 1:15 P.M. We will recess at 2:45 P.M. We will reconvene at 3:00 P.M. We will recess at 4:30 P.M. and we will reconvene at 4:45 P.M. and we will adjourn each day at about 5:30 or 6:00. Saturday we will be in session from 9:00 A.M. until 12:30 P.M., with the recess from 10:30 A.M. until 10:45 A.M. This will be varied from time to time when necessary.

The Court will appreciate your cooperation with the Tipstaves who have been appointed. A Deputy Sheriff will be on duty from 8:00 P.M. to 8:00 A.M. every night where you will be staying.

If you have any problems, you will communicate them to

I shall describe, in a general way, what will take place. First, the District Attorney may, if he wishes, make an opening statement in which he outlines the Commonwealth's case against the Defendant. The opening statement is intended to help you in understanding the evidence and applying the law, but it is not evidence. The Defendant's Attorney may make an opening statement outlining the defense, either immediately following the District Attorney's statement or later in the trial.

Second, the District Attorney will present evidence. He may call witnesses to testify and he may offer exhibits such as documents or physical objects. The Defendant has a right to cross-examine witnesses called by the Commonwealth in order to test the truthfulness and accuracy of their testimony. At the close of the Commonwealth's case, the Defendant's Attorney may present evidence for the Defendant. The Defendant has no obligation to offer evidence or to testify himself. Under the law, every Defendant is presumed innocent and has the right to remain silent. The burden is on the Commonwealth to prove him guilty beyond reasonable doubt. The District Attorney may, of course, cross-examine any witnesses called by the Defense.

Third, after all of the evidence has been presented, the Attorneys for each side will have an opportunity to address arguments to you. I shall then give you my final charge which will include instructions on the rules of law pertinent to the case and whatever additional guidance I think you will need for your deliberations. You will then retire to the jury room to deliberate and decide

what your verdict will be.

It is the responsibility of the Court to decide all questions of law. Therefore, you must accept and follow my rulings and instructions on matters of law.

I am not, however, the judge of the facts. It is not for me to decide what are the true facts concerning the charges against the Defendant.

You, the Jurors, are the sole judges of the facts. It will be your responsibility to weigh the evidence, to find the facts and, applying the rules of law which I give to the facts as you find them, to decide whether the Defendant has been proven guilty.

You are not permitted to take notes on the testimony or on anything said by me or by Counsel. When you deliberate on your verdict you will have to rely on your own memories of what was said in the Court Room.

You are the judges of the credibility and weight of all evidence, including the testimony of witnesses. By credibility of testimony, or other evidence, I mean its truthfulness and accuracy. In judging credibility and weight you should use your understanding of human nature and your common sense. Observe each witness as he testifies. Be alert for anything in his words, demeanor or behavior on the witness stand, or for anything in the other evidence in the case which might help you to judge the truthfulness, accuracy, and weight of the testimony. I shall give you further instructions on this subject later in the trial.

Each of you must keep an open mind throughout the trial. In the oath you just took you swore to do so. You should avoid forming opinions about the guilt or innocence of the Defendant or about any other disputed question until you begin your deliberations.

You should not talk with each other about the evidence or any other matter relating to whether the Defendant has been proven guilty until I send you to the jury room to deliberate on your verdict. Only then will you know enough about the evidence and the law to discuss the case intelligently and fairly.

As I told you earlier, although you must follow my instructions regarding rules of law, you are the sole judges of the facts. It is your recollection of the evidence and not mine or Counsel's on which you must rely during your deliberations. You are not bound by any opinion you might think Counsel or I have expressed concerning guilt or innocence, credibility of witnesses, weight of evidence, facts proven by the evidence or inferences to be drawn from the facts.

Even though statements and arguments of Counsel are not binding upon you and are not evidence, you should consider them carefully. It is proper for you to be guided by them if the statements and arguments are supported by the evidence and appeal to your reason and judgment. The questions which Counsel put to witnesses are not themselves evidence. It is the answers of the witnesses which provide evidence. You should not speculate that a fact may be true merely because one of the Lawyers asks

questions which assume or suggest that the fact is true.

The admission of evidence at trial is governed by rules of law. It is my duty to rule on objections to the evidence made by Counsel. If I overrule an objection, that means you are not entitled to consider the evidence; if I sustain the objection then you will not....I repeat, if I over rule an objection that means you are entitled to consider the evidence. If I sustain the objection, then you will not be entitled to consider it. You must not concern yourself with the objections or with the reasons for my rulings. You must disregard evidence or any other matter to which I sustain an objection or which I order stricken from the record.

Counsel and I are required by law to take up certain matters out of your hearing. We may do this at the bench, or in my chambers, or I shall ask you to leave so that we may do so in the Court Room. You should not concern yourself with any such proceeding.

A Jury's verdict must be unanimous to be valid. In the Jury Room you will discuss the case among yourselves, but ultimately each of you will have to make up his own mind. After the verdict is announced in open Court, you may be called upon individually to say whether you agree with the verdict. Each of you has a responsibility as a Juror which he cannot shirk. You must do your best throughout the trial to fulfill this great responsibility.

I am likely to give other instructions during the trial in addition to these preliminary instructions and my final charge.

You should consider all of my instructions as a connected series. Taken together, they constitute the law that you must follow.

May I see Counsel?

(Side Bar consultation not made a part of the record.).

By The Court:

Members of the Jury, there are a number of matters the Court must discuss with Counsel and for that reason we are going to adjourn for today and that will give you an opportunity for those of you selected today to get located with the help of the Tipstaves, and we will reconvene tomorrow morning at 9:30.

The Jury is now excused, no one else but the Jury.

(Jury Excused.).

By The Court:

Court is adjourned.

(Court adjourned at 3:45 P.M., EDST.).

And Now, to-wit, Thursday, February 21, 1974, beginning at 9:30 A.M., EDST, 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 Counsel, and the following proceedings were had:

By The Court:

Mr. Ertel?

(Mr. Ertel opened to Jury at 9:30 A.M., EDST and completed at 9:58 A.M., EDST.).

By The Court:

Mr. Fierro, you have indicated you desire to make your opening statement at the close of the Commonwealth's case in chief?

By Mr. Fierro:

Yes.

By The Court:

Proceed.

(Commonwealth's Exhibits Nos. 1 through 41 marked previously.).

(Commonwealth's Exhibits Nos. 42, 43, 44 and 45 marked.).

CHIEF OF POLICE CHARLES E. SMITH, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name and occupation?

A. Chief of Police, Charles E. Smith, South Williamsport.