

1 (Beginning of Sidebar Discussion)

2 MR. KLYMAN: Good morning, Your Honor.

3 MR. ANDREOPOLOUS: Good morning, Your Honor.

4 At Mr. Kirkland's request -- we ran into some  
5 difficulties this morning.

6 I am here at his request. He wanted to address the  
7 Court, and we spoke about that, and he told me exactly what  
8 he wanted me to tell you. So, for purposes of avoiding any  
9 difficulties here, I'm going do that if the Court doesn't  
10 mind?

11 THE COURT: Okay.

12 MR. ANDREOPOULOS: These are handwritten notes of  
13 Mr. Kirkland. He wants the Court to know that several  
14 months ago -- quote, "Several months ago I shared some  
15 information with my attorneys, Nicholas Andreopoulos and  
16 Andrew Klyman, and asked -- requested that they get in touch  
17 with an important witness and to add her to our witness  
18 list.

19 "Several weeks ago I reiterated that information and  
20 turned in some exculpatory evidence to my attorneys and  
21 continue to request that we put this witness on our witness  
22 list so we can legally admit this evidence at my trial.

23 "I request that our private investigator go talk with  
24 this witness and we summons the witness. If she still  
25 doesn't come, file a capias, because we may need this

1 the jury would come out?

2 THE COURT: Certainly.

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1 witness' testimony.

2 "All of my requests have been denied by my own  
3 attorneys.

4 "The reason this witness and evidence is so important,  
5 because it can simply prove my innocence in the matter that  
6 we're here for today.

7 "I told my lawyers that we are not ready to rest and  
8 they said, no, we are not calling her.

9 "I attempted to address the Court and was told that I  
10 cannot address the Court. Then all attorneys went to  
11 sidebar. I don't know what was said. After sidebar, the  
12 jury was called and my attorney rested our case without our  
13 witness or evidence admitted into evidence.

14 "The reason that this witness and evidence is important  
15 to proving my innocence is on April 22, 2011, this young  
16 woman came to visit me at the Shirley minimum. During this  
17 visit we posed for several photographs together. Those  
18 photographs depict the hairstyle I was wearing eight days  
19 before the shooting at the barbershop. In looking at those  
20 photos, anyone with eyesight can see what the hairstyle I  
21 was wearing on April 22nd. There was no way I could have  
22 had braids on April 30th.

23 "Therefore, it shows the jury that Trooper Gregorczyk  
24 was not being truthful in his testimony. It shows the jury  
25 that Officer Capozza was not being truthful during her

1 testimony. And it shows the jury that Ms. Carolyn Wright  
2 was not truthful in her testimony or statement to police.

3 "Furthermore, it shows that I am not the black male  
4 with braids and black hoodie that went into the barbershop  
5 and shot those men."

6 That is the client's version and he wants you to know  
7 that. He also would like me to ask you to admit this in  
8 your discretion. I told him I would ask that.

9 There was a lot of back and forth between the District  
10 Attorney and I about this very photograph, and the District  
11 Attorney was quite courteous and accommodating. There were  
12 some proposals made back and forth, potential stipulations,  
13 and for other reasons, there is no stipulation at this time.

14 So, my client knows this and he would like you to  
15 consider publishing this or admitting this as an exhibit.

16 THE COURT: All right. Mr. Mastroianni.

17 MR. MASTROIANNI: We did have discussions about the  
18 photograph and we discussed, and then they were reduced to  
19 writing, tactical concerns of both sides that may be  
20 affected by the introduction of the photograph.

21 And I think introducing the photograph would -- it  
22 should fairly allow the Commonwealth to make an inquiry as  
23 to the date the photograph was taken. The photograph was  
24 taken eight days before he -- I want to say this  
25 correctly -- I believe eight days -- several days before he

17  
1 escaped, but eight days before -- am I saying that  
2 correctly? Eight days before the date of the offense.

3 He escaped two days after that. He escapes two days  
4 after that.

5 THE COURT: The 24th?

6 MR. MASTROIANNI: Right. But was not found until the  
7 30th.

8 Here was my concern: My concern was that without  
9 explaining to the jury where the photograph was taken and  
10 the date that he left, all the jury knows right now is there  
11 was a warrant for him for an escape.

12 I think it's a fair inference for the jury to think his  
13 escape probably happened a day or so before this shooting.  
14 Therefore, I do not want the jury to think that the  
15 hairstyle he had in prison was -- he went from prison, in  
16 other words, to jumping out of the trunk. I need to show he  
17 had been escaped on the street for eight days, plenty of  
18 time left to change his appearance, to change his hairstyle.

19 So, I explained to defense what my concerns were. I  
20 don't think the defense thought I was being unreasonable,  
21 and that's where we are.

22 THE COURT: Okay. I think --

23 MR. MASTROIANNI: I memorialized that conversation we  
24 had in writing to the defense.

25 THE COURT: All right. So, I'm sure that all attempts

1 were made to find this young woman who was in the picture,  
2 correct?

3 MR. ANDREOPOLOUS: There are many reasons -- well,  
4 there are many reasons that we -- both Attorney Klyman and I  
5 have thought about this witness, and beside the ones just  
6 stated by Mr. Mastroianni, there are other reasons.

7 THE COURT: Which you --

8 MR. ANDREOPOLOUS: I think it's -- perhaps it suffices  
9 to say there has been a lot of discussion between myself,  
10 Mr. Klyman, and Mr. Kirkland about this very subject.

11 THE COURT: Okay. All right. Well, if it's admitted  
12 as an exhibit, you're not stipulating to its admissibility,  
13 correct?

14 MR. MASTROIANNI: At the state it is right now, without  
15 an agreement that we can talk about the prison and when he  
16 escaped and et cetera.

17 MR. ANDREOPOLOUS: We don't want to agree to that.

18 THE COURT: Okay. So what we're going to do is have  
19 this marked for identification. Okay.

20 I'm not going to permit the photograph to be introduced  
21 absent permitting the Commonwealth to explain the  
22 circumstances under which it was taken and the time factor,  
23 and provide an explanation as to what could have happened  
24 between April 22 and April 30.

25 MR. MASTROIANNI: Okay, Your Honor.

1 THE COURT: And I -- well, if you wish, I will say that  
2 in open court, that the evidence is closed. It's -- you  
3 know, it's up to you.

4 MR. KLYMAN: As far as? I'm sorry. I am not -- what?  
5 I am not sure what you would say in open court. The  
6 evidence is closed?

7 THE COURT: And we will proceed with closing arguments.

8 All right. Do you want his letter -- the letter was  
9 written to you, but he wanted you to share it with the  
10 Court, correct?

11 MR. KLYMAN: Correct.

12 THE COURT: So perhaps the letter should also be --

13 MR. ANDREOPOLOUS: There -- I think there are other  
14 parts of it. I read it verbatim.

15 THE COURT: You can think about it.

16 MR. ANDREOPOLOUS: Okay.

17 MR. KLYMAN: Maybe afterwards.

18 THE COURT: Exactly. Let me know.

19 THE CLERK: The photo will be J, Your Honor.

20 THE COURT: Okay.

21 (Exhibit J, photograph, marked for Identification)

22 MR. MASTROIANNI: May I inquire if the Court wants the  
23 letter I wrote memorializing our communication on the issue  
24 just to show defense and prosecution have talked about the  
25 evidence, the photo in detail? I can mark that photo for

1 ID.

2 THE COURT: That's fine. In the event you want the  
3 letter marked for Identification, we will do that at the end  
4 of the closings.

5 MR. KLYMAN: Thank you.

6 THE CLERK: Letter will be K for ID.

7 (Exhibit K, letter between the Commonwealth and the  
8 defense, marked for Identification)

9 THE COURT: This is the chalk that I prepared. It just  
10 follows the elements -- I'm sorry, I didn't make two  
11 copies -- with respect to the two theories of first degree  
12 murder and the two theories of second degree murder.

13 My intent is to give that to the jurors when they begin  
14 their deliberations, because it's going to take Ms. Cayode  
15 at least an hour to prepare the elements. So at least they  
16 will have something to begin working on.

17 MR. KLYMAN: To look at, sure.

18 THE COURT: Do you want to look at that a little  
19 further, Mr. Klyman?

20 MR. KLYMAN: I should be finished in a second.

21 THE COURT: That's all right. Take your time.

22 (Pause)

23 THE COURT: It follows the model. Okay.

24 (Pause)

25 MR. KLYMAN: That's fine, Your Honor.