

1 THE COURT: Okay. So I read the cases that you  
2 provided and I thank you for them. However, my concern is  
3 as follows: There's a missing link here as far as the Court  
4 is concerned.

5 We go from the 23rd when the defendant's mother was  
6 shot and the 25th at about 7:15 a.m. when the DOC notices  
7 that he's gone. And then to the 30th to the shooting at the  
8 barbershop. There's nothing that I've heard from the  
9 Commonwealth that ties his mother's -- his mother's shooting  
10 to him going into Bill Brown's House of Beauty and shooting  
11 at Mr. King. I think that's the link that's missing.

12 In the cases that you provided to the Court with  
13 respect to *Marrero*, that's at 427 Mass 65, the prior bad act  
14 evidence, and I really wouldn't consider this but for the  
15 escape, prior bad act evidence, the fact that his mother was  
16 shot, but that evidence was allowed in to explain the  
17 defendant's mode of operation with respect to how he dealt  
18 with drug dealers who did not pay him.

19 With respect to *McCowen*, that was the case up on the  
20 Cape where the garbage collector killed the writer in Truro,  
21 I think it was, that prior bad act evidence was allowed in  
22 to specifically rebut an inference that the police had acted  
23 unfairly.

24 And here we go from a shooting and an escape to what I  
25 would characterize as a general motive to kill or to shoot

1 up a barbershop. There's no specific motive that the  
2 Commonwealth has presented to the Court that would permit me  
3 to allow this evidence in.

4 In the event that you can develop it, I will reconsider  
5 my ruling, but for now I'm not going to allow the evidence  
6 in.

7 MR. MASTROIANNI: Thank you, Your Honor.

8 MR. KLYMAN: Thank you, Your Honor.

9 THE COURT: You're more than welcome. So are we ready  
10 to proceed?

11 MR. MASTROIANNI: Yes.

12 THE COURT: Could you please have the jurors for me.

13 COURT OFFICER: On their way, Your Honor.

14 (The jury entered at 2:15 p.m.)

15 THE COURT: Good afternoon, ladies and gentlemen. I  
16 hope you enjoyed your longer than usual lunch.

17 Now, have any of you begun discussing the case amongst  
18 each other or with anyone outside of the courtroom?

19 Seen heard or read anything about the case? Done any  
20 independent research or taken any independent views to any  
21 of the areas that we have discussed?

22 Is there anything that needs to be brought to my  
23 attention before we resume this case?

24 (Pause)

25 THE COURT: For the record, there are no affirmative