

1 D E F E N S E ' S ^ C L O S I N G A R G U M E N T

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3 MR. YZURDIAGA: THANK YOU, YOUR HONOR.

4 GOOD AFTERNOON, MEMBERS OF THE JURY AND
5 ALTERNATES. AS YOU ALL KNOW, THIS IS THE LAST TIME THAT
6 DEFENSE WILL GET TO ADDRESS YOU AND IN MY SUMMATION, MY
7 CLOSING ARGUMENT I WILL TRY TO COVER EVERYTHING THAT I
8 CAN.

9 OFTEN YOU SEE I HAVE A BUNCH OF NOTES HERE.
10 OFTEN TIMES I DON'T USE THE NOTES. SOMETIMES I DO, BUT
11 I WILL TRY TO COVER EVERYTHING. IF THERE IS ANYTHING IN
12 THIS CASE THAT YOU THINK IS IMPORTANT THAT I OVERLOOK,
13 PLEASE DON'T THINK THAT IT'S BECAUSE IT'S UNIMPORTANT.
14 IT'S BECAUSE I OVERLOOKED IT, AND IF IT IS SIGNIFICANT
15 TO YOU, THAT'S WHAT MATTERS.

16 INITIALLY, WHEN WE TALKED ABOUT THIS CASE
17 THE LAWYERS ASKED YOU SEVERAL QUESTIONS. MR. COONEY
18 ASKED YOU A LOT OF QUESTIONS. I ASKED YOU QUITE A FEW
19 QUESTIONS. MR. KLINK DID. AND BASICALLY, WE TALKED
20 ABOUT SEVERAL THINGS. THE MAIN THINGS I GUESS WE TALKED
21 ABOUT WAS COULD YOU BE FAIR AND IMPARTIAL AND EACH ONE
22 OF YOU ASSURED THE DEFENSE AND THE PROSECUTION THAT YOU
23 COULD BE FAIR AND IMPARTIAL AND THAT YOU COULD SIT AS
24 FAIR JUDGES IN THIS CASE.

25 YOU ALSO INDICATED THAT YOU COULD SEPARATE
26 THE ACTIVITIES THAT WENT ON IN THIS CASE FROM THE CHARGE
27 THAT'S HERE BEFORE YOU IN THE COURTROOM, THAT ALTHOUGH
28 YOU MAY NOT THINK THAT MICHAEL DORROUGH WAS ADMIRABLE IN

1 THE BUSINESS THAT HE WAS IN THAT YOU COULD SEPARATE THAT
2 FROM DECIDING THE ISSUES IN THIS CASE, ALL OF YOU AGREED
3 THAT YOU WOULD DO THAT ONE WOULDN'T OVERFLOW AND CAST
4 ANY PREJUDICE ON MICHAEL.

5 YOU ALSO SAID YOU WOULD CRITICALLY ANALYZE
6 AND EVALUATE THE EVIDENCE THAT CAME FROM THAT WITNESS
7 STAND, EACH OF YOU WOULD LOOK AT IT AND TURN IT OVER AND
8 DECIDE IF IT WAS ENOUGH FOR YOU TO DECIDE BEYOND A
9 REASONABLE DOUBT AND IF IT MET THAT TEST FROM YOU.

10 EVERY ONE OF YOU SAID IN DECIDING WHAT A
11 REASONABLE DOUBT WAS, YOU ALL AGREED THAT THERE IS A
12 DIFFERENCE BETWEEN THINKING A PERSON HIS GUILTY, AND
13 BEING CONVINCED BEYOND A REASONABLE DOUBT OF A PERSON'S
14 GUILT.

15 ALL OF YOU SAID COULD YOU DO THAT. SOME OF
16 YOU SAID IT WOULD BE TOUGH TO DO, BUT YOU SAID YOU COULD
17 DO IT. THAT'S WHAT THE SYSTEM IS ALL ABOUT. IF YOU CAN
18 DO THAT, IT TAKES INTEGRITY.

19 YOU ALSO SAID YOU WOULDN'T GIVE ANY REGARD
20 WHATSOEVER IF THERE WERE NO DEFENSE WITNESSES,
21 WHATSOEVER, YOU WOULD LOOK AT THE EVIDENCE THAT CAME
22 FROM THE WITNESS STAND AND WOULD DECIDE IF IT WOULD HOLD
23 UP IF THE AMOUNT OF PROOF WAS ENOUGH CONVINCING YOU.

24 NOW, IN TALK ABOUT REASONABLE DOUBT, WE
25 TALKED ABOUT A DIFFERENCE IN STATE OF MIND, THAT IS
26 THINKING SOMEONE IS GUILTY IS VERY DIFFERENT FROM BEING
27 CONVINCED BEYOND A REASONABLE DOUBT. AND AT THE OUTSET
28 THE JUDGE READ YOU AN INSTRUCTION THAT SAID IT'S THAT

1 STATE OF MIND WHERE YOU WOULD NOT HESITATE TO ACT IN THE
2 MOST IMPORTANT OF YOUR OWN AFFAIRS.

3 THAT'S A PRETTY AWESOME BURDEN WHEN YOU
4 THINK ABOUT THAT, THAT YOU WOULDN'T HESITATE TO ACT WHEN
5 YOU HAVE GOT A NICE COMFORTABLE JOB THAT YOU HAVE BEEN
6 ON FOR EIGHT OR TEN YEARS AND YOU ARE GOING TO SWITCH
7 BECAUSE YOU ARE CONVINCED TO THAT EXTENT, ANY HESITATION
8 IS REMOVED AND YOU ARE GOING TO DO IT BECAUSE YOU KNOW
9 YOU ARE MAKING THE RIGHT DECISION.

10 IN SELECTING A PARTNER FOR YOUR LIFE, A
11 HUSBAND OR WIFE, YOU DO THE SAME THING. IF YOU CAN DO
12 THAT WITHOUT HESITATING, THOSE ARE AWESOME TYPE OF
13 DECISIONS HERE, IN THE MAGNITUDE OF THIS CASE, THE MOST
14 AWESOME KIND OF DECISION BEFORE YOU, THAT SAME BURDEN
15 APPLIES WHERE YOU WOULDN'T HESITATE TO ACT, THEN IF IT
16 IS NOT AT THAT LEVEL YOU HAVE NO BUSINESS VOTING FOR ANY
17 KIND OF GUILT ON ANY KIND OF CHARGE.

18 WHY WE HAVE A JURY IS SO TWELVE PEOPLE
19 WON'T OVERLOOK WHAT IS CRUCIAL OR IMPORTANT. TWELVE
20 DIFFERENT MINDS, TWELVE DIFFERENT BACKGROUNDS, TWELVE
21 DIFFERENT BASES OF EXPERIENCE. EVERYONE OF YOU HAS A
22 FAIRLY DISTINCT BACKGROUND ONE FROM THE OTHER, EACH ONE
23 OF YOU BRINGS THAT INTO THE POOL. THAT'S ONE OF THE
24 REASONS THAT WE HAVE A JURY TRIAL, SO THAT WORST OF ALL
25 THINGS WON'T HAPPEN, THAT IS THAT THE INNOCENT PERSON IS
26 CONVICTED WHEN HE SHOULD NOT BE.

27 BETTER TO LET THE GUILTY ONE GO, THAN DO
28 THE MOST AWFUL THING AS CONVICT AN INNOCENT PERSON.

1 IN EVALUATING THE EVIDENCE I WOULD LIKE TO
2 GIVE YOU A LITTLE CHRONOLOGY OF EVENTS, SEQUENCE OF
3 EVENTS.

4 I HAVE A CHART I WILL GO THROUGH AND I WILL
5 STAND UP HERE AS I REFER TO THE JURY.

6 NOW, THE FIRST DATE THAT WE HEARD ANY
7 TESTIMONY ABOUT WAS MARCH 1ST. WE HEARD ABOUT J.R., AND
8 THIS IS THE DATE ALSO THAT LINDA TOLIVER ACTUALLY
9 ENTERED THE HOSPITAL FOR HER HOSPITALIZATION AND YOU
10 WILL SEE THAT.

11 WHY THAT'S IMPORTANT I WILL TIE IN AS WE GO
12 THROUGH THIS.

13 WHY LINDA TOLIVER WENT INTO THE HOSPITAL IS
14 THE CRUCIAL DATE RATHER THAN WHAT SHE TOLD YOU THE 27TH
15 OF FEBRUARY WHICH SHE HONESTLY BELIEVES.

16 NOW, ALSO MARCH 2ND IS THE DAY THAT THE
17 CRIME WAS COMMITTED IN THE EARLY MORNING HOURS, WE DON'T
18 HAVE A FIX ON THE TIME. WE HAVE SOME AT BEST RANK
19 SPECULATION FROM THOMAS VANDIVIER. THERE ARE NO
20 SUSPECTS ON THAT DATE.

21 ON MARCH 5TH, THIS IS SLIGHTLY OUT OF
22 SEQUENCE, BUT LINDA TOLIVER TELLS YOU THAT ON THAT DATE
23 THOMAS VANDIVIER WAS WORKING FOR THE FIRST TIME AT THIS
24 HOUSE AS A LOOKOUT. HE DID NOT WORK THERE BEFORE SHE
25 WENT INTO THE HOSPITAL ON MARCH FIRST.

26 SECONDLY, SHE SAYS ON THIS DATE MICHAEL
27 DORROUGH MADE A STATEMENT TO HER ABOUT WHAT HAD
28 HAPPENED. SHE BELIEVES SHE WAS RELEASED ON MARCH 6TH

1 AND SHE IS NOT SURE WHETHER SHE MADE THE STATEMENT OR
2 HEARD THE STATEMENT FROM HIM ON ON THE 5TH OR THE 6TH.
3 THAT IS IMPORTANT AGAIN BECAUSE THE KEY TO HER
4 RECOLLECTION AND WHAT HAPPENED AND THE SEQUENCE OF
5 EVENTS IS HER HOSPITAL STAY.

6 AGAIN, THE RECORDS WILL SHOW THAT SHE WENT
7 IN ON MARCH 1ST, WAS RELEASED ON MARCH 5TH.

8 IN THE TRANSCRIPT OF EARLIER TESTIMONY,
9 WHICH WAS BROUGHT OUT, SHE SAID THE DAY THAT SHE WAS
10 RELEASED FROM THE HOSPITAL SHE DIDN'T SEE MICHAEL
11 DORROUGH OR HE MADE NO STATEMENT TO HER ABOUT IT, THAT
12 HE MADE IT ON A SUBSEQUENT DATE. THAT IS EITHER CORRECT
13 OR IT'S INCORRECT, BUT IT GOES TO HER RECOLLECTION AND
14 WHAT SHE IS ACCURATE OR IN ACCURATE ABOUT.

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1 THE MOST CRUCIAL DATE IN ALL OF THIS IS
2 MARCH THE 18TH. THIS IS THE DATE THAT THOMAS VANDIVIER
3 WAS ARRESTED. KEY PROSECUTION WITNESS. HE IS THE
4 LYNCHPIN FOR THIS CASE. YOU BELIEVE THOMAS VANDIVIER
5 AND ACCEPT IS VARIATION OF HIS STORIES OR YOU DO NOT.
6 THIS IS THE DAY THAT HE IS ARRESTED.

7 LINDA TOLIVER IS ARRESTED. ALSO A KEY
8 PROSECUTION CASE. THIS IS A KEY DATE BECAUSE ALL OF THE
9 MOTIVATION FOR THE TESTIMONY THAT YOU HAVE HEARD HERE IN
10 THIS COURTROOM GREW OUT OF THAT DATE OF MARCH 18TH.
11 NOBODY SAID ANYTHING TO ANYBODY FOR 16 DAYS.

12 GERALD PICKENS WAS ARRESTED ON THAT DATE.
13 WHY IS THAT IMPORTANT? BECAUSE THOMAS VANDIVIER WAS
14 JUST AS POSITIVE THAT MICHAEL DORROUGH WAS ARRESTED WITH
15 HIM ON MARCH THE 18TH AS THE FACT THAT MICHAEL DORROUGH
16 WAS ONE OF THESE THREE GUYS THAT TOOK J.R. OUT INTO THE
17 FIELD.

18 JUST AS POSITIVE, REMEMBER THAT, HE IS JUST
19 AS CERTAIN THAT MICHAEL WAS ARRESTED ON THAT DATE AND
20 THAT'S A BIG IMPORTANT DATE.

21 HE WAS ARRESTED ON THAT DATE, HE WOULD
22 REMEMBER THAT DATE, HE WOULD REMEMBER FACTS ABOUT THAT
23 DATE HE HAS GOT THIS MAN CONFUSED WITH MICHAEL DORROUGH.

24 ALSO, THEY FOUND NOTHING TO CORROBORATE ANY
25 EVIDENCE TO CORROBORATE THE MURDER IN THE INVOLVEMENT
26 OF OUR CLIENT MICHAEL DORROUGH, ON THIS DATE IS THE
27 INTERVIEW OF THOMAS VANDIVIER.

28 I MEAN, LADIES AND GENTLEMEN, THIS IS A

1 MURDER CASE. THE MOST AWESOME THING THAT YOU COULD
2 EXPECT TO EVER SUBMIT A JUDGMENT ON A HUMAN BEING ON THE
3 TWELVE OF YOU PERHAPS ONE OF THE OTHER FOUR OF YOU IS
4 GOING TO DECIDE THIS CASE OR MAY BE MORE THAN ONE OF THE
5 OTHER FOUR OF YOU, THE MOST AWESOME THING, THEY
6 MISPLACED REPORTS THAT MAY BE WORTH NOTHING BUT IT COULD
7 BE WORTH A LOT.

8 WHY WOULD THEY MISPLACE A REPORT LIKE THAT?
9 AND INCIDENTALLY, IT SEEMED TO ME IT WAS HANDLED KIND OF
10 LIKE, OH YEAH, WE COULDN'T FIND THEM WE LOST THEM, THEY
11 CONTINUALLY MISPLACED, DOES THAT RING RIGHT TO ANY OF
12 YOU?

13 NOW, ON MARCH THE 26TH IS WHEN VANDIVIER IS
14 INTERVIEWED. AT THAT FIRST INTERVIEW, HE TALKS ABOUT A
15 LOT OF DETAIL. HE TALKS ABOUT A CHASE, HERMAN COLEMAN
16 RUNS OUT AFTER THIS GUY, J. R. STOPS OUT IN THE FIELD,
17 HERMAN RUNS UP TO HIM, THEY HAVE A FIGHT, HERMAN BREAKS
18 AWAY, ONE RUNS TOWARD THE HOUSE, JUNIOR RUNS TOWARD THE
19 GYM FIELD, TOWARD THE GYM HOUSE.

20 HE COMES BACK, HERMAN ASKS VANDIVIER WHERE
21 HAD JUNIOR GONE WHEN HE CAME OUT OF THE HOUSE?
22 VANDIVIER TELLS HIM. HE GOES, APPARENTLY LOOKING FOR
23 JUNIOR. THE FRAY GOES ON. THEN THE OTHER GUYS COME
24 OUT, THERE IS A FIGHT, THIS IS SO DETAILED THAT IT'S
25 EITHER CONCOCTED, HEARD FROM OTHER PEOPLE OR A SUMMATION
26 OF THINGS HE HEARD FROM OTHER PEOPLE OR IT'S FLAT OUT
27 UNTRUE. TOO MUCH DETAIL.

28 ALSO, WHEN HE TESTIFIES -- EXCUSE ME -- AT

1 THAT INTERVIEW OFFICER CHATMAN EXPLAINS THAT JUST MAYBE
2 HE COULD GET FIVE YEARS IN THE PENITENTIARY. FOLKS,
3 THAT IS MOTIVATION TO TALK. THIS IS MARCH 18TH, BUT
4 THAT'S KIND OF MOTIVATION, ISN'T IT, THAT'S A LITTLE BIT
5 OF MOTIVATION. HE SAID WELL, THEY TOLD ME I COULD GET
6 FIVE YEARS FOR THIS.

7 THEY TALKED ABOUT THE MURDER FOR OVER AN
8 HOUR. THE POLICE OFFICER DIDN'T WANT TO HEAR ABOUT
9 ANYTHING ELSE. ALL HE WANTED TO HEAR WAS THE MURDER,
10 THE MURDER, THE MURDER. HE DIDN'T TALK TO HIM ABOUT THE
11 COCAINE CASE, BUT FOR THE FACT THAT HE'D EXPLAINED TO
12 HIM MAYBE YOU'LL GET FIVE YEARS, THOMAS.

13 YOU ALL SAW THOMAS. AN IMPRESSIONABLE --
14 SOMEONE YOU CAN USE OR MANIPULATE. NOW, AT THE PRELIM
15 HE TESTIFIED AGAIN TO A FIGHT, HE DID NOT SEE THE
16 SHOOTING AT THE PRELIMINARY HEARING. THEN HE SAYS HE
17 DID SEE THE SHOOTING AT THE PRELIMINARY HEARING. HE
18 SAYS HE RAN HOME, WHICH IS CONSISTENT WITH WHAT HE'D
19 TOLD THE POLICE AT HIS INTERVIEW OF MARCH THE 26TH. AND
20 HE TESTIFIES TO A THREAT BEFORE HE TESTIFIED.

21 OKAY, LET'S TALK ABOUT THAT THREAT FOR A
22 MOMENT. OBVIOUSLY, THAT COULD VERY WELL HAVE HAPPENED.
23 WHY WASN'T THERE SOME TESTIMONY ABOUT A THREAT BETWEEN
24 MARCH 2ND AND MARCH 16TH? BECAUSE THERE WAS NONE. BUT
25 HE TOLD THEM ESSENTIALLY THE SAME STORY. NOW, SINCE HE
26 IS CHANGING HIS STORY, HE SAYS HE WAS THREATENED, AND
27 MAYBE HE WAS. I AM NOT SAYING ONE WAY OR THE OTHER.
28 THIS IS SOMETHING YOU PUT INTO THE FORMULA OF TRYING TO

1 DETERMINE TRUTH.

2 FINALLY, ON MARCH THE 2ND, WHY IS THIS
3 INTERVIEW WITH LINDA TOLIVER IMPORTANT? BECAUSE SHE
4 TOLD THE POLICE YOU WILL FIND THE MURDER WEAPONS AT THAT
5 ADDRESS OVER AT 1460 EAST 112TH. THEY GO THERE, THEY
6 DON'T FIND THE MURDER WEAPONS. SHE SAYS THEY ARE GOING
7 TO FIND A SHOTGUN, A WINCHESTER, THEY ARE GOING TO FIND
8 A MACHINE GUN. THEY DON'T FIND ANY OF THAT. THAT
9 SEARCH WAS ACTUALLY ON THE 4TH OF APRIL. OKAY. THAT
10 KIND OF GIVES YOU A SEQUENCE OF HOW THESE THINGS DEVELOP
11 AND TRANSPIRE.

12 NOW, HERE IS VERY TROUBLING TO ME AND THE
13 MOST IMPORTANT OF ALL CASES THAT ANYBODY CAN SIT ON
14 ANYWHERE IN THE WORLD THEY BRING TO YOU THIS EVIDENCE, A
15 CORONER WHO PREPARED FOR ONE HOUR BEFORE HE TESTIFIED.
16 HE LOOKED AT THAT FILE THE HOUR BEFORE HE GOT HERE, THEN
17 HE CAME UP HERE AND TESTIFIED FROM THAT WITNESS STAND.
18 THEY LOSE OR THEY MISPLACE REPORTS, CRUCIAL, VITAL
19 WITNESSES, REPORTS ARE LOST.

20 AND J.R., JUNIOR, NOT EXACTLY A WONDERFUL
21 HUMAN BEING. I AM NOT SAYING HE DESERVED TO DIE, BUT HE
22 IS OUT GETTING LOADED ALL DAY LONG, HE IS STEALING FROM
23 PEOPLE, HE MUGS A GIRL, HE TAKES MONEY HE IS SUPPOSED TO
24 BUY COCAINE WITH AND USES IT FOR HIMSELF. NOT AN
25 ADMIRABLE MAN.

26 LINDA TOLIVER. IT APPEARED TO ME THAT SHE
27 WAS LOADED WHEN SHE TESTIFIED. SHE APPEARED TO BE UNDER
28 THE INFLUENCE TO ME. NOW, IF THAT DIDN'T APPEAR THAT

1 WAY TO ANY OF YOU, THAT'S FINE. DISREGARD WHAT I HAVE
2 SAID ABOUT THAT. BUT SHE APPEARED TO BE LOADED WHEN SHE
3 TESTIFIED, TO ME.

4 AND TO USE THAT KIND OF TESTIMONY IN A CASE
5 LIKE THIS IS MORE THAN A LITTLE BIT BOTHERSOME TO ME.
6 AND FINALLY, TESTIMONY ABOUT THOMAS VANDIVIER. HE GAVE
7 TWO MAJOR VERSIONS ON THIS CASE, TWO COMPLETELY
8 DIFFERENT VERSIONS AND THEY ARE NOT JUST A LITTLE BIT
9 OFF, THEY'RE COMPLETELY, COMPLETELY DIFFERENT.

10 AND YOU HAVE TO ASK YOURSELF, CAN YOU RELY
11 ON THIS KIND OF EVIDENCE ON ANY CASE? AND CAN YOU RELY
12 ON IT IN A CASE OF THIS MAGNITUDE? I SAY ABSOLUTELY
13 NOT. COULD YOU FREELY AND READILY MAKE ONE OF LIFE'S
14 MAJOR DECISIONS OFF THAT KIND OF TESTIMONY? AGAIN, I
15 SAY NOT.

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