

## APPENDIX

*[This transcript is excerpted from a 2005 preliminary hearing in a Pennsylvania homicide case. Counsel for the defendant, recently ranked a "superlawyer" in a statewide survey of attorneys, is a prominent defense attorney with past experience as a prosecutor. The names have been changed for anonymity purposes.]*

### PRELIMINARY HEARING

Barnet Turner, having been duly sworn, having been called on behalf of the Commonwealth, was examined and testified as follows:

### DIRECT EXAMINATION

**Q:** Mr. Turner, I'm going to direct your attention back to the 26th of April 2004. Were you in the area of the 1100 block of West Ruscomb Street here in the City and County of Philadelphia?

**A:** Yes.

**Q:** And around 9:45 in the morning did you come into contact or see anyone at that location that you see here in court today?

**A:** Yes.

**Q:** Could you identify that person for the court?

**A:** The defendant to my right.

**Q:** Sir, tell the judge what it was you observed involving this defendant on that date?

**A:** He was on Ruscomb Street and Marvine in the middle of the street in back of another gentleman I will call the victim. He was in the middle of the street and pulled out a weapon. The victim turned around and yelled as my daughter and I were stepping to the street. When I looked up he shot him twice from the middle of the street. When the victim hit the ground he walked on the sidewalk and put two more rounds into him.

**Q:** When you saw the defendant approach the person you have identified as the victim, do you recall what, if anything, may have been said prior to the shots being fired?

**A:** Just the victim turning around, seeing the defendant and saying OH NO. When I watch[ed] the two of them he shot twice and he fell. The defendant walked around the car and shot him twice on the sidewalk standing over top of him.

**Q:** And from where you were positioned when you initially saw the victim and the defendant was anything blocking your view?

**A:** No, clear view.

**Q:** Around the time this occurred after the two additional shots were fire[d] in the victim what, if anything, did you see the defendant do?

**A:** There was a neighbor—well, first I had my daughter in the back of me and I was behind a car. I was looking around to see if anyone was coming after the first two shots to investigate the two shots that had been fired. When the defendant was crossing the street after he left the sidewalk he discarded the gun and started walking towards my daughter and I. We had eye to eye contact. He turned around and went back to Marvine Street, made a right. I grabbed my daughter and was running towards the victim because that was in front of my front door. I saw my neighbor Vivian Mason come to the window and she asked me what happened. I said a gentleman had just been shot, call the police. I kept yelling for the neighbors to come and to call the police. I put my daughter in the backyard and ran to the victim and he was moaning a little bit. I tried to get him to tell me his name and who it was that shot him.

. . .

**Q:** You indicated that you saw the defendant discard the weapon. Do you know where the weapon was?

**A:** As he was standing over the victim on the last two shot[s], he came back around the car and started across Ruscomb Street. Before he got to the curb he dropped the gun and went to kick it up under the car but it hit the corner and bounced on the sidewalk. He was walking towards my daughter toward us. Be-

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fore he got to the corner he saw us just standing there. We had eye to eye contact. He backed up and retreated and went down Marvine.

#### CROSS EXAMINATION

**Q:** Was there any gloves on his hands?

**A:** No, bare hands.

*[A series of questions concerning the location of the gun under the car were posed and answered. Thereafter, the cross continued and concluded as follows.]*

**Q:** The incident took how long in minutes from when you first saw the victim in the street until you saw the individual who did the shooting leave the scene? How long would you estimate that took?

**A:** From the time the victim yelled OH NO and the last shot, less than a minute. Didn't take that long to shoot somebody.

**Q:** So it was less than a minute that you had to observe the people that you observed in the courtroom?

**A:** Yes.

**Q:** And the individual that did this shooting, could you tell us what he was wearing?

**A:** He was outfitted in urban wear like construction jacket, khaki pants with the patch pockets, brand new Timberlands, skull cap.

**Q:** How long after the incident was it that you were shown photographs as best you remember?

**[The Prosecutor]:** Objection, Your Honor.

**The Court:** Sustained.

**[Defense Counsel]:** Thank you. Nothing further.