

5-26-1967

Trial Transcript # 31: New Jersey v. Rubin Carter and John Artis

Lewis M. Steel '63

Sec # P 672-744

PASSAIC COUNTY COURT
LAW DIVISION (CRIMINAL)
INDICTMENT NO. 157-66

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STATE OF NEW JERSEY,

Complainant.

-vs-

RUBIN CARTER and
JOHN ARTIS,

Defendants.

May 25, 1967:
CONCLUSION OF SUMMATION OF
MR. BROWN-Pages 596-603
SUMMATION OF MR. HULL-
Pages 604-659

May 26, 1967:
CHARGE OF COURT-Pages 662-705
EXCEPTIONS TO CHARGE-
Pages 703-714

SELECTION OF JURY-Pages 714-
716

REQUESTS TO CHARGE SUBMITTED
BY DEFENDANTS-Pages 718-734

JURY QUESTION-Pages 735-738
JURY VERDICT-Pages 738-741.
Paterson, New Jersey

Thursday, May 25, 1967,
Friday, May 26, 1967.

Before:

HONORABLE SAMUEL A. LARNER, J.S.C.

Appearances:

VINCENT E. HULL, Esq.,
Assistant Prosecutor,
Attorney for the State.

RAYMOND A. BROWN, Esq.,
Attorney for Defendant, Carter.

ARNOLD M. STEIN, Esq.,
Attorney for Defendant, Artis.

Reported by:
Eleanor H. McIntosh,
Certified Shorthand Reporter.

(31)

END of trial

1 facts and those ultimately sought to be
2 proved.

3 Now, in our case, for example, the
4 State has sought to prove that the Defendants
5 were in the bar and did the shooting, through
6 testimony that they were seen coming around
7 the corner of the building shortly after
8 shots were heard, carrying a shotgun and a
9 revolver. This, of course, is denied by
10 the Defendants, but if you find that it was
11 the Defendants who were seen coming around
12 the corner in the fashion described by the
13 testimony, you may infer, if you deem fit,
14 that their presence on the sidewalk at that
15 time and place establishes circumstantially
16 that they were in the bar shortly prior
17 thereto, and that if they had guns in their
18 hands, that such guns were used for shooting
19 in the tavern. These are permissible
20 inferences. They are not mandatory infer-
21 ences, provided you conclude that the facts
22 leading to those inferences have been proved
23 beyond a reasonable doubt. In any event, this
24 particular item of evidence is referred to by
25 me as an example of circumstantial evidence

1 within the framework of the contentions of
2 the State in this case. It is, therefore,
3 not essential that the State prove by
4 direct eyewitness testimony that the
5 Defendants shot the victims in the Lafayette
6 Bar. The law makes no distinction between
7 direct and circumstantial evidence. The
8 State may thus prove its case, and a jury
9 may convict on the basis of either direct
10 evidence or circumstantial evidence or
11 both, so long as the proof, in totality, is
12 beyond a reasonable doubt. Indeed, it has
13 been said that circumstantial evidence may
14 be more persuasive and more satisfactory
15 than direct evidence. It should, of course,
16 be carefully scrutinized by you so that you
17 do not base your verdict on mere conjecture
18 or suspicion, but a conviction may be based
19 on circumstantial evidence alone, provided
20 you are convinced of the Defendants' guilt
21 beyond a reasonable doubt.

22 Now, it is for you, as the triers of
23 the facts to determine from all the evidence
24 where the truth lies, and whether the State
25 has established proof of guilt beyond a

1 reasonable doubt. In arriving at your
2 conclusion, one of your prime functions is
3 to judge the credibility of the witnesses
4 involved. That is obvious in this case
5 particularly. Now, in determining the
6 credibility of a witness, you should take
7 such factors into consideration as for
8 example the demeanor of the witness on the
9 stand. How did he look to you? How did
10 you react to him? Did he appear honest and
11 believable? Did he not? His memory or
12 lack of memory. His candor, frankness, or
13 lack of candor and frankness; his power of
14 observation. Was he in a position to see
15 what he said he saw? Was he not? His
16 intelligence or lack of intelligence. The
17 nature of his testimony in itself. The
18 reasonableness and believability of the
19 testimony given by the particular witness,
20 its internal consistency or inconsistency
21 with other statements made out of Court.
22 The interest or lack of interest of the
23 witness in the outcome of the case. The
24 motives, if any, of the witness who testi-
25 fied. His bias or prejudice, if any, which

1 underlay his testimony. These are all items
2 which I suggest to you as items which should
3 be considered in assessing the credibility
4 of a witness.

5 In addition, you should also take into
6 consideration whether or not the evidence
7 establishes that the testimony of a par-
8 ticular witness is affected or colored by
9 any hope of reward, either from a money
10 standpoint or from the standpoint of favor
11 or leniency with regard to pending criminal
12 charges.

13 Now, in addition to all these factors,
14 it is obvious, I am sure, that you may
15 also apply such other factors as you may
16 apply in your daily experiences with human
17 beings. I am sure that every day in your
18 contacts, either socially or in business,
19 you consciously or unconsciously size up
20 an individual. You talk to him. You watch
21 him. You listen to him, and you decide on
22 your own whether he is telling the truth or
23 not. These are normal human reactions.
24 These are things that you are expected to
25 utilize your general background of intelligence

1 and reactions, utilize that in judging the
2 witnesses as well, and with this entire
3 picture, you are then in a position to
4 decide for yourself whether you believe what
5 a witness is saying, whether you believe
6 part of it, whether you don't believe any
7 of it. Of course, I am sure that you
8 recognize that you are not required to
9 accept the testimony of any witness merely
10 because his or her testimony is given under
11 oath. You should, under these suggested
12 guidelines which I have given you, weigh
13 and consider the testimony of each witness
14 and give it such weight and such credit as
15 you think is warranted under all the
16 circumstances.

17 Now, in this case, there has been
18 proof submitted that certain witnesses
19 produced by the State had a record of
20 previous convictions of crime. Do you
21 remember that testimony? I think that was
22 with respect to two witnesses produced by
23 the State. Now, such proof is permitted
24 for the single purpose of adding another
25 factor for your consideration of the

1 credibility of the witness. In addition
2 to the factors which I have already referred
3 to, and in addition to the application of
4 your normal common sense in judging the
5 credibility of a witness, you should
6 consider whether the fact that a particular
7 witness has previously been convicted of a
8 crime diminishes the believability of his
9 testimony. Thus the proof of the conviction
10 of a crime is another circumstance for the
11 jury to take into consideration in appraising
12 the truthfulness of a witness in connection
13 with testimony during the trial. You may
14 determine that it does affect the witness's
15 credibility. You may determine that it
16 does not. In any event, the ultimate
17 decision of the effect to be given to the
18 criminal record is yours alone to make.
19 I merely point it out as an element for
20 your consideration.

21 Now, there has also been submitted
22 proof of previous conviction of crime on
23 the part of the Defendant, Carter. Now,
24 as to him, the previous conviction of a
25 crime does not establish or tend to establish

1 his guilt of the crime charged by the State
2 in this case. That is clear. You are not
3 to use any previous conviction of a crime
4 as evidence of any guilt of this crime.
5 In fact, the evidence was not admitted for
6 that purpose, and is not to be considered
7 as proof in that manner. As to the Defen-
8 dant also, Carter, similarly as in the case
9 of the witnesses for the State, a previous
10 conviction of crime should be considered
11 by you together with all of the other
12 factors which I have discussed, solely to
13 determine his credibility as a witness.
14 Does it reduce his credibility? Does it
15 not? That is up to you to decide. Thus,
16 in connection with a prior conviction of
17 a crime, the purpose of such evidence and
18 its use by you as the jury is the same in
19 the case of the Defendant, Carter, as it is
20 in the case of any other witness.

21 Now, there is one rule of evidence
22 which I should also call to your attention,
23 which may or may not, as you deem fit, help
24 you in the evaluation of a witness's testi-
25 mony. It is summarized in the expression,

1 "False in one thing, false in all". This
2 means that if you find that a witness
3 wilfully and intentionally testified falsely
4 as to any material fact or facts, you may,
5 if you deem it appropriate, reject and
6 disregard all his testimony. Of course,
7 this rule, again, is not mandatory. It is
8 entirely within your judgment whether to
9 reject all, a part, or none of his testi-
10 mony, and within your judgment to give his
11 testimony the weight which you feel it
12 deserves. I merely point out this eviden-
13 tial rule as a guide for you to use or not
14 as you deem fit.

15 Now, while we are discussing testimony,
16 I should point out something with respect
17 to certain witnesses produced by the State
18 who were qualified as experts by the Court,
19 and you will recall they were then permitted
20 to give their opinions as to the matters
21 within their special expertise. Of course,
22 the mere fact that the experts were qualified
23 by the Court does not mean that you are
24 bound by their testimony. You should con-
25 sider the expert testimony and give it the

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weight to which you deem it to be entitled by weighing not only the conclusions but the reasons given for the opinion and the facts underlying the same. If the reasons given for the opinion are unsound or the facts upon which the opinion is predicated are not established, then, of course, you may reject the opinion or any part of it. In essence, you should weigh the expert's opinion in the light of the totality of the evidence, taking into consideration his qualifications, his reasoning and the underlying facts.

Now, you will recall that during the trial there were admitted into evidence oral statements of both defendants which were given to Lieutenant DeSimone on June 17, 1966. Under our law, a statement of a Defendant, whether oral or written, cannot be used against him unless it is given voluntarily and after certain warnings relating to his rights are given to him. The person questioned must be warned that he has a right to remain silent, that any statement he makes may be used as evidence

1 against him, that he has the right to an
2 attorney of his choice, and that if he cannot
3 afford an attorney one will be supplied to
4 him. The State produced the evidence that
5 all of these warnings were given, both to
6 Carter and to Artis, before they made their
7 oral statements relating to their activities
8 on the night of June 16th, and early
9 morning of June 17th of 1966. The State
10 also contends that after these warnings
11 both Defendants voluntarily, knowingly and
12 intelligently waived their right to Counsel.
13 The Defendants deny that the warnings were
14 given, and deny that there was a waiver of
15 the right to Counsel.

16 Now, waiver is the intentional giving
17 up of a right. It represents a voluntary,
18 clear, and affirmative act reflecting a
19 decision to forgo the right to Counsel
20 granted to the individual. It is for you
21 to determine from the disputed positions of
22 the State and the Defendants whether the
23 Defendants were warned of their rights and
24 waived the right to Counsel before submitting
25 to questioning and giving their oral

1 statements. The State has the burden, of
2 course, of proving beyond a reasonable
3 doubt that the warnings were given and that
4 the Defendants waived their rights. If
5 you find that the warnings were given and
6 that the Defendants did waive their right
7 to Counsel, then you should consider and
8 evaluate the oral statements made by them,
9 together with all the other evidence in the
10 case in determining the issue of guilt or
11 innocence. If, however, you find that the
12 warnings were not given or that the Defen-
13 dant or Defendants did not waive their
14 right to Counsel, then you should not
15 consider the oral statements made by the
16 Defendant or Defendants in the total
17 evaluation of the testimony. Under such
18 circumstances, the oral statements should
19 be disregarded and given no evidential
20 weight whatsoever.

21 Now we will get to the problem of the
22 definition of the crimes or crime or crimes
23 charged in this case. As I have already
24 observed, the charge by the State in this
25 case is Murder. Thus the State must prove

1 beyond a reasonable doubt that it was the
2 Defendant, and, of course, again when I say
3 Defendant I mean one or both, who shot the
4 victims. The State must prove that beyond
5 a reasonable doubt, that the Defendant shot
6 the victims, that the victims died as a re-
7 sult of those shots, and that this was done
8 with malice aforethought. Murder is thus
9 defined as the unlawful killing of another
10 human being with malice aforethought. Now,
11 such malice, as you have heard in the
12 definition, need not be express, and need
13 not be established through affirmative
14 evidence. In a legal sense, malice means
15 nothing more than an evil state of mind,
16 and in the framework of the facts in this
17 case, the proof of the killing, in itself,
18 if you find that, raises a presumption of
19 malice since there is no evidence pointing
20 to justification, mitigation or excuse
21 for the same.

22 Now, in our State the crime of Murder
23 is divided into two degrees, Murder in the
24 First Degree and Murder in the Second Degree,
25 and under our law, we start with the initial

1 presumption that every malicious, unlawful
2 killing of another human being is Murder
3 in the Second Degree. Therefore, in order
4 to justify a conviction of Murder in the
5 First Degree, the burden rests with the
6 State to establish beyond a reasonable
7 doubt the additional legal elements which
8 elevates Murder from the Second Degree to
9 the First Degree. The additional legal
10 elements, in order to constitute First
11 Degree Murder, are the following: They
12 are three separate and distinct additional
13 elements which translate Murder in the
14 Second Degree to Murder in the First Degree.
15 1. The killing must be willful. 2. There
16 must be premeditation. 3. There must be
17 deliberation.

18 Now, let me take each one of those
19 elements separately, not in the order which
20 I have just given them to you, but I am
21 sure you will understand it. First, we
22 talk about the element of premeditation.
23 Now, premeditation means the conception,
24 the mental conclusion by a Defendant of a
25 design or plan to kill. Next we talk about

1 deliberation. Now, this means more than
2 the usual common sense meaning of willful
3 or intentional. It connotes a process of
4 deliberation that is a reconsideration of
5 the design to kill with the weighing of
6 the pros and cons with respect to it. That
7 has to appear in order to arrive at the
8 element of deliberation. The third
9 element, which is willfulness, signifies
10 merely the intentional execution of the plan
11 to kill which has been conceived and de-
12 liberated upon. There you have the three
13 additional elements which changes Murder
14 from Murder in the Second Degree to Murder
15 in the First Degree.

16 Now, the law does not require that any
17 particular length of time shall intervene
18 between the formatn of the design to kill
19 and its ultimate execution. It rather
20 requires that the design to kill be
21 conceived, that is premeditation, that it
22 be deliberated upon, that is deliberation,
23 and be willfully executed, that is willful-
24 ness. If these mental operations, these
25 three mental operations did in fact occur,

1 the period of time involved would be of
2 no significance, and the killing would then
3 constitute Murder in the First Degree.
4 If the State, therefore, fails to prove
5 any one of the three elements, namely
6 premeditation, deliberation, or willfulness
7 beyond a reasonable doubt, then it has failed
8 to establish Murder in the First Degree,
9 and the killing would be classified as
10 Murder in the Second Degree. Thus if the
11 intent was merely to do the deceased in
12 each instance great bodily harm, not an
13 intent to kill, or if the intent was even
14 to kill the deceased, but it was not
15 deliberated and premeditated, then it would
16 constitute Murder in the Second Degree.

17 Now, you have noted, I am sure, in my
18 discussion, that the crime of Murder and
19 particularly the distinction between First
20 and Second Degree Murder involves a factual
21 finding by you as to the mental operation
22 and intent of the Defendants. Now, such
23 element of intent or mental operations, of
24 course, cannot be seen, and generally
25 cannot be proved by direct evidence. There

1 is no requirement that the mental operations
2 of a Defendant be established through
3 witnesses who saw him plan or heard him
4 discuss his intent or his plan. You may
5 determine intent and mental operations by
6 inference from the character of the act
7 which was done, from the manner in which
8 the killing was carried out, from the
9 number of shots, the nature of the weapons,
10 the actions of the accused, what they said
11 or did not say, and all the surrounding
12 circumstances which existed at the time and
13 place of the crime, as well as preceding
14 and succeeding the actual killings. In
15 this manner you will be able to determine
16 the intent involved in the offense, and
17 whether the elements of First Degree Murder
18 have been established.

19 Now, although intent is a necessary
20 element of the crime of Murder, this should
21 be distinguished by you from motive. Intent
22 and motive are two different words, and
23 connote two different meanings. Although
24 it is essential for the State to prove
25 intent, it is not essential for the State

1 to prove a motive for the killing, as long
2 as it has proved the essential elements
3 which I have already outlined. Murder is
4 murder, either in second degree or in first
5 degree, based upon the definitions already
6 given to you, regardless of the motive of
7 the killers or even if they had no demon-
8 strable motive.

9 Now, in this case the State contends
10 that the Defendants were acting in concert,
11 together. That is, they were aiding and
12 abetting each other in the commission of
13 the crime charged. Thus it becomes
14 incumbent upon you, upon me, rather, to
15 explain to you what the law is with respect
16 to aiders and abettors. Under our law any
17 person who aids, abets, counsels, commands,
18 induces, or procures another to commit a
19 crime is as guilty as the actual perpetrator
20 of the crime. There is no distinction
21 between the two. Now, such aiding or
22 abetting may be proved circumstantially,
23 and not necessarily by direct evidence of a
24 formal plan. You may infer, if you deem
25 fit, that such participation occurred from

1 the circumstances and conduct of the
2 parties. In applying this principle of
3 law to our case, if you find beyond a rea-
4 sonable doubt that the Defendants were in
5 the Lafayette Tavern and acted in concert
6 to accomplish the killing, then both would
7 be equally responsible for the crime, and
8 this results whether one or the other
9 actually fired a particular shot or shots
10 or whether one victim was killed by the
11 shots from the gun held by one Defendant
12 or the other. If you find beyond a
13 reasonable doubt that both acted in concert,
14 and aided and abetted each other, it is not
15 necessary for the State to prove that a
16 particular bullet of a particular gun held
17 by a particular Defendant resulted in the
18 killing of a particular victim. If both
19 Defendants were partners in the commission
20 of the crime, and the intent involved in
21 said crime, both would be equally guilty as
22 to all the victims, regardless of which one
23 actually fired the shots involving a
24 particular victim.

25 From what I have said, it is clear

1 that if you find the Defendant guilty beyond
2 a reasonable doubt, you must designate
3 whether he is guilty of Murder in the First
4 Degree or Murder in the Second Degree. If
5 your finding is Guilty of Murder in the
6 Second Degree, you would have no further
7 function with respect to punishment, and
8 that would be determined by the Court. If,
9 however, you should find the Defendant
10 Guilty, and when I say again Defendant I
11 mean either or both Defendants, Guilty of
12 Murder in the First Degree, it will then be
13 your function to determine the character of
14 the punishment which he shall suffer. That
15 is, whether he shall be sentenced to life
16 imprisonment or to be put to death. Now,
17 this function of the jury stems from a
18 provision of the pertinent Statute of the
19 State of New Jersey which reads as follows:
20 "Every person convicted of Murder in the
21 First Degree shall suffer death unless the
22 jury shall, by its verdict, and as a part
23 thereof, upon and after a consideration of
24 all the evidence, recommend life imprison-
25 ment, in which case this and no greater

1 punishment shall be imposed." That is the
2 law with respect to punishment. Thus, if
3 you find the Defendant Guilty of Murder in
4 the First Degree and say nothing more,
5 that is, if you say merely, "Guilty of
6 Murder in the First Degree", then the
7 Court must sentence him to death. If you
8 should find him Guilty of Murder in the
9 First Degree and add in your verdict that
10 you recommend life imprisonment, then the
11 Court must impose the sentence of life
12 imprisonment. You can, therefore, see
13 that if the guilt involves Murder in the
14 First Degree, the law entrusts to the
15 jury's discretion and judgment the alterna-
16 tive penalties of life imprisonment or
17 death. This is a decision which you must
18 make from all the evidence in this case,
19 that is, all the credible evidence produced
20 by the State and the Defense.

21 In this connection, and for this
22 purpose, you should not only consider the
23 evidence dealing with the nature and
24 commission of the crime and the circumstances
25 surrounding it, but also all the evidence

1 relating to the Defendant's past life and
2 background, such as schooling, employment,
3 character, parentage, home environment,
4 interests and activities, age or maturity,
5 etcetera. In other words, everything that
6 has been produced in this case relating to
7 the background of the Defendants. This
8 background evidence was admitted by the
9 Court not to establish that the crime was
10 or was not committed, but it was admitted
11 solely for the purpose of determining the
12 extent of the penalty in the event that you
13 find the Defendant or Defendants Guilty of
14 Murder in the First Degree.

15 Now, I cannot give you any standard by
16 which to measure the penalty in the event
17 you find the Defendant or Defendants Guilty
18 of Murder in the First Degree. I can only
19 advise you that the Legislature has en-
20 trusted this decision to your best
21 conscientious judgment, based always on the
22 evidence alone. From that you must
23 determine whether in this particular case
24 justice will be better served by the
25 imposition of life imprisonment or death.

1 Now, a review of the kernel of evidence,
2 the testimony in this case, we find that the
3 major thrust of the defense is the denial
4 by the Defendants of the commission of the
5 crime by virtue of the fact that they deny
6 their presence at or near the scene at the
7 time that the crime was committed. This is
8 what is generally known as an alibi. The
9 Defendants by this defense merely contend
10 that they were not present at the time and
11 place that the crime was alleged to have
12 been committed, but were somewhere else,
13 and, therefore, could not possibly have
14 committed the crime. Now, where the presence
15 of the defendant at the time and place of
16 the alleged crime is an essential link in
17 the chain of proof as it is in this case,
18 such presence, as every other essential
19 fact, must be established by the State
20 beyond a reasonable doubt. The Defendants
21 do not have an obligation to bear the burden
22 of proof that they were not present, and
23 if the State fails to prove the presence of
24 the Defendant or Defendants at the time and
25 place of the crime beyond a reasonable doubt,

1 you must, of course, return a verdict of
2 "Not Guilty". You must, therefore, in this
3 connection, determine whether the State has
4 proved each element of the offense charged,
5 including that of the Defendants' presence
6 at the scene of the crime. Thus, after a
7 consideration of all of the evidence,
8 including the evidence of alibi, if you
9 have a reasonable doubt as to the presence
10 of the Defendant or Defendants at the time
11 and place of the alleged crime, you must
12 return a verdict of "Not Guilty". If,
13 however, after considering all of the
14 evidence, you are convinced beyond a
15 reasonable doubt of the Defendants' presence
16 at the scene and also have concluded that
17 the State has proved every element of the
18 offense charged beyond a reasonable doubt,
19 it is your duty to return a verdict of
20 "Guilty".

21 Now, Counsel has reviewed very fully
22 the evidence in their summations from their
23 respective viewpoints. There would, there-
24 fore, be no purpose served in my review of
25 the evidence. Since you have heard their

1 summations, and since you are the sole
2 judges of the facts, I will not enter into
3 a review of all the evidence from start to
4 finish. It is apparent, however, that
5 among other factual issues, the most impor-
6 tant one for your consideration which is
7 involved in this case is whether the
8 Defendants were present in the Lafayette
9 Grill at the time and place of the shooting.
10 The State contends that the Defendants were
11 the individuals in the bar who committed
12 the murder on the night in question, and
13 has sought to prove that fact through a
14 chain of circumstantial evidence. The
15 Defendants, on the other hand, deny the
16 commission of the crime and say that they
17 were not in the bar or on the street outside
18 the bar at the time involved, and that the
19 identification by the State's witness is
20 false and erroneous. These respective
21 contentions have created conflicts in the
22 testimony which must be resolved by you in
23 order to determine whether the State has
24 proved guilt beyond a reasonable doubt.
25 This you must do by an evaluation of all of

1 the evidence, oral and written, and an
2 evaluation of the credibility of the
3 witnesses produced by the State and the
4 credibility of the Defendants and the
5 witnesses produced by them. After this
6 type of thorough analysis, you will be in
7 a position to determine where the truth
8 lies, and whether the quality of the
9 evidence points to guilt beyond reasonable
10 doubt or the contrary.

11 Now, it is fundamental under your oath
12 that each of you has the undivided respon-
13 sibility of reaching a verdict upon the
14 basis of your own conscientious conviction
15 and judgment involving your view of the
16 evidence and the application of the law
17 which the Court has charged to that evidence.
18 This conviction on your part should not be
19 abandoned merely for the purpose of going
20 along with other fellow jurors. However,
21 while your verdict should represent your
22 individual opinions, it by no means follows
23 that opinions may not be changed by dis-
24 cussion with your fellow jurors. In fact,
25 the very object of the jury system is to

1 secure unanimity by a comparison of views,
2 by a consideration of the evidence with
3 fellow jurors, and by arguments among the
4 jurors themselves. A juror should not go
5 into the jury room with a blind determination
6 that his opinion of the case is correct and
7 close his ears and mind to the arguments of
8 the other men and women on the jury who are
9 equally honest and equally intelligent as
10 himself. You should be open minded and
11 consider the issues with proper deference
12 to and respect for the opinions of each
13 other, and you should not hesitate to
14 reexamine your own views in the light of
15 such discussions. As I have pointed out
16 over and over again, you are the sole judges
17 of the facts. You are the sole judges of the
18 reasonable inferences to be drawn from
19 those facts. You are the sole judges of
20 the credibility of the witnesses, and
21 finally you are the sole judges of the
22 ultimate conclusion of guilt or innocence.
23 Your decision, whatever it may be, should
24 be founded upon the credible evidence in
25 the case, not upon conjecture or guesswork.

1 or suspicion, and it should be based upon
2 the law which the Court has charged. If
3 the State has proved the elements of the
4 crime beyond a reasonable doubt, it is
5 your sworn duty to return a verdict of
6 "Guilty", and in the degree of guilt, in
7 accordance with the definitions which I
8 have given to you. If, on the other hand,
9 the State has failed to prove the case
10 beyond a reasonable doubt, namely that the
11 Defendant committed the crime charged, it
12 is your sworn duty to return a verdict of
13 "Not Guilty".

14 Each Defendant, of course, must be
15 considered separately and you must return
16 a verdict as to each Defendant on each
17 count of the Indictment. For clarity, I
18 have prepared a series of written questions
19 for your responses, which set forth the
20 several possible verdicts which you may
21 return. I will review them for you now so
22 that you have the continuity in the Charge.
23 As to each Defendant and each count, on
24 each count there are four possible verdicts,
25 as you will note. Of course, as to each

1 count you must designate only one of the
2 four possible verdicts, and on this sheet
3 which will go in with you to the jury room,
4 as to each Defendant, there is a list, one
5 is as to Defendant Rubin Carter, the other
6 as to Defendant John Artis. The language
7 is exactly the same, and it reads as
8 follows: "Possible verdicts as to Defen-
9 dant, first count involving charge of
10 murder of James Oliver: Not Guilty --"
11 there is a box for you to put a cross in
12 it; "Guilty of Murder in the Second Degree;
13 Guilty of Murder in the First Degree;
14 Guilty of Murder in the First Degree with
15 recommendation of life imprisonment." You
16 must select one of those four after a
17 consideration of all the evidence. "Second
18 count involving the charge of Murder of
19 Fred Nauyaks: Not Guilty; Guilty of Murder
20 in the Second Degree; Guilty of Murder in
21 the First Degree; Guilty of Murder in the
22 First Degree with a recommendation of life
23 imprisonment. Third count involving charge
24 of Murder of Hazel Tanis: Not Guilty;
25 Guilty of Murder in the Second Degree;

1 Guilty of Murder in the First Degree; Guilty
2 of Murder in the First Degree with recom-
3 mendation of life imprisonment." Those
4 are the four basic alternatives of a verdict
5 on each count.

6 Now, you should approach your
7 deliberations and arrive at a verdict
8 without passion, without bias, without
9 prejudice and without sympathy. It goes
10 without saying that the race of the
11 Defendants is of no significance in this
12 case except as it may be pertinent to the
13 problem of identification. The Defendants
14 are entitled to full justice under the law
15 whatever their color. The State has not
16 and does not bring this proceeding against
17 them simply because they are Negroes. Such
18 an issue is not in this case, and any
19 suggestion to the contrary is wholly
20 improper. This issue should not enter your
21 minds in any respect in determining the
22 guilt or innocence of these Defendants.
23 Your decision must be based upon the evidence,
24 and you should perform your sworn duty
25 without favor and without fear and without

1 consideration of any extraneous matters or
2 influences, in toto, with justice and
3 fairness to the State and to the Defendants.

4 In this case as in every single case,
5 your verdict must be unanimous, that is, all
6 twelve of the jurors who are finally select-
7 ed must agree upon the verdict as to each
8 Defendant and as to each count. Now, when
9 the twelve are finally selected for
10 deliberation, Number One Juror who is
11 selected will act as your Foreman. Now,
12 when you have agreed upon the verdicts, I
13 suggest that you note on the sheets being
14 submitted to you the verdict on each count
15 for each Defendant, and when you have agreed
16 upon your verdicts, you should notify the
17 Court attendant and he will in turn convey
18 your message to the Court. Upon return to
19 the Courtroom, a matter of procedure, your
20 Foreman will act as your spokesman and will
21 announce the verdict to the Court, and in
22 order to insure accuracy, I suggest that the
23 Foreman at that time read the verdicts from
24 the sheet which has been completed in the
25 jury room and which reflects the action of
the entire jury panel.

1 Now, all Counsel have performed a
2 very creditable job on behalf of their
3 respective clients and have produced all
4 the evidence which is available for your
5 consideration. It is your duty to deter-
6 mine this case upon the evidence which has
7 been presented in this Courtroom. It is
8 not your function to make any further
9 investigation or seek further evidence.
10 There is no more for your consideration.
11 You must, therefore, decide this case on
12 the basis of the available facts which have
13 been produced for your evaluation by both
14 sides.

15 Now, if you have any questions during
16 your deliberations which require reply or
17 clarification by the Court, these questions
18 should be submitted in writing to the Court
19 attendant who will in turn deliver the same
20 to the Court for such action as the Court
21 may deem proper. There should not be any
22 oral communications between the jury and
23 any Court officers except to advise that
24 you have agreed upon a verdict.

25 Ladies and gentlemen, that is the end

1 of the Court's charge and instructions
2 to you. I will now excuse you for a few
3 moments while we take up some final legal
4 problems, but please do not commence your
5 deliberations as yet until you are properly
6 excused by the Court for that purpose, and
7 until the officers are properly sworn.

8 Will you take the jury to the jury
9 room, please.

10 (The jury left the Courtroom at 11:02 A.M.)

11 THE COURT: Gentlemen --

12 MR. BROWN: Yes, sir.

13 THE COURT: I will first rule for the
14 record upon the requests submitted by
15 Counsel, and then I will hear your objections.

16 MR. BROWN: Yes, sir.

17 THE COURT: First, so that the record
18 is clear, there were typed requests,
19 numbering 29. There were 4 supplemental
20 requests which were attached to that set.

21 MR. BROWN: Right.

22 THE COURT: In addition, there was one
23 additional request with various subdivisions
24 submitted to me this morning.

25 Request number one is denied because

1 the subject matter was fully covered in
2 the Court's Charge. The same applies to
3 numbers 2, 3, 4, 5, 6, 7, 8, 9. The
4 pertinent and relevant part of it was
5 charged. The portion dealing with Man-
6 slaughter is denied because there is no
7 evidence which can support that type of
8 Charge in this case. Ten was adequately
9 charged in the language of the Court. As
10 to eleven, the Court properly, in its
11 opinion, charged the law relating to
12 circumstantial evidence. It denies the
13 major thrust of that charge in view of the
14 fact that that law set forth is no longer
15 the law in this State. I refer to the case
16 of State vs. Ray, 43 N.J., 19; State vs.
17 Fiorillo, 36 N.J., 80; and Holland vs. U.S.,
18 348 U.S. 121. Number twelve was charged
19 in the language of the Court, therefore,
20 denied; thirteen similarly charged; fourteen
21 is denied for the same reason. Fifteen is
22 similarly denied. Sixteen and seventeen are
23 denied because the Court feels that they are
24 improper and unduly emphasize one class of
25 testimony as distinguished from another.

1 Eighteen was properly charged. Nineteen
2 was charged. In all of these, the record
3 should indicate, in the language of the
4 Court, not in the language of the requests.
5 Twenty, in substance, was charged in the
6 language of the Court, as well as 21, 22 --
7 the latter half of 22 was not charged
8 because the Court deems it to be an improper
9 statement of the law. The third paragraph
10 of 22 was charged. Twenty-three and 24
11 deals with expert witnesses, and the Court
12 properly and adequately charged the law
13 relating to that. Twenty-five was charged
14 in the language of the Court, the request
15 not being accurate in accordance with the
16 law. Twenty-six was properly charged in
17 accordance with the law, in the Court's
18 language. Twenty-seven was adequately
19 charged. Similarly as to 28. Twenty-nine
20 was also charged.

21 Now, with respect to supplemental
22 requests: Number one, two, dealing with
23 reputation evidence, was adequately charged
24 by the Court. Number three was charged
25 by the Court in general reference to the

1 problem of credibility involved of the
2 witnesses, and that applies to all the
3 subdivisions of number three; and the
4 additional request also covers the problem
5 of the credibility of Arthur Bradley because
6 of the pending charges against him. The
7 Court feels that it adequately charged the
8 jury on that subject matter.

9 All right, Mr. Brown, any further
10 objections?

11 MR. BROWN: Yes, sir. Only as to
12 number five, your Honor, I feel, respect-
13 fully, that that was not, although your
14 Honor did mention that the decision of the
15 jury may be based upon lack of evidence,
16 as well as positive evidence, but in the
17 sense of five, I respectfully object. I
18 have no objection to any other except, your
19 Honor, sixteen. Your Honor's refusal to
20 charge 16, 17 and 18, I do concede that 18
21 has been charged to the extent that your
22 Honor has distinguished and defined circum-
23 stantial evidence, but the element of quality,
24 if your Honor please, I did not hear
25

1 emphasized throughout the Charge. I
2 believe that in circumstantial evidence,
3 as in direct, quality is important, but in
4 circumstantial, even though your Charge
5 was certainly accurate, the element of
6 quality was not sufficient here; and I ask
7 your Honor to consider, if you will, that
8 charge.

9
10 As to the supplemental charge, I have
11 no objection to any of the other rulings
12 by your Honor, except to the last of the
13 supplementary charges dealing with the
14 detailed number four of the supplemental
15 charge and number three of the supplemental
16 charge, and, of course, the additional
17 request submitted to your Honor this
18 morning.

19 THE COURT: I gather your point on
20 those is that the Court should have charged
21 them in your language, setting forth the
22 details of the charges against the witnesses.

23 MR. BROWN: Or, if not, that to
24 there are
25 emphasize the fact that pending charges
and reward. Your Honor did mention it.

THE COURT: Yes.

1 MR. BROWN: I would respectfully urge
2 that in a case of this kind, as you have
3 pointed out in your Charge, perhaps one of
4 the most crucial elements is the question
5 of the credibility of the two witnesses.
6 You pointed out in terms of definition of
7 alibi and commonly on all witnesses, but
8 specifically with respect to these two
9 witnesses, it is a critical phase, his
10 observations on the sidewalk outside the
11 tavern, that these two should be charged,
12 if not in precise detail, at least so the
13 jury would understand more clearly with
14 respect to those two people.

15 For example, if only the head, not
16 the leading paragraph were charged, with
17 general reference to charge, I believe to
18 the defense it would be essential.

19 THE COURT: All right. With respect to
20 that, Mr. Brown, I recognize your position.
21 I feel the Court has charged the subject
22 matter, and there is no need to give it the
23 emphasis, of course, an adversary would like.

24 MR. BROWN: The only other objection I
25 have, your Honor, is with respect to the

1 charge on motive, which, as far as it went,
2 I think was particularly instructive, but
3 I do urge your Honor to consider that in
4 that charge while there is a distinction
5 between intent and motive, which is certainly
6 the law of this State, and it is also the
7 law of the State, as I understand it, that
8 the State need not prove motive, that the
9 combination of the charges given, which I
10 have roughly noted, and which I do not
11 pretend to have verbatim, was, as I have
12 noted it and I state specifically is not
13 verbatim,"Although intent is a necessary
14 element it should be distinguished by you
15 from motive. They connote two different
16 thoughts. It is essential to prove intent,
17 but it is not the burden of the State to
18 prove motive. Murder is murder, and second
19 or first degree would depend on definition,
20 regardless of motive of the killers, even
21 if there is no proof of demonstrable motive.

22 My objection to that, if your Honor
23 please, is, the way I have written it down,
24 and if I have misinterpreted, I hope you
25 would straighten me out on it now, this

1 almost vitiates an intent as well. I know
2 that is certainly not the intent of the
3 Court, but as I listened to it in the guise
4 of a juror, as opposed to your Honor's
5 position as the author and speaker, as it
6 came out it seemed to suggest that while
7 there is a distinction, that virtually, if
8 it is murder, that is it, and the intent
9 which you mentioned in there becomes almost
10 completely vitiated in its purpose and force.

11 THE COURT: Well, I have ^{it} in front of
12 me, and I don't see that intent or that
13 possible inference to be drawn from it.

14 MR. BROWN: Judge, I am not saying
15 intent --

16 THE COURT: No. I am sorry. I mean
17 inference to be drawn from it.

18 MR. BROWN: That would be a most unfair
19 statement because I certainly didn't intend
20 that.

21 THE COURT: I know you didn't intend
22 that. I, to the extent I was able to clarify
23 in the limited language available to me, I
24 feel that it has been expressed properly.

25 MR. BROWN: I realize it is not easy,

1 and it is a very critical point.

2 THE COURT: Yes, Mr. Stein.

3 MR. STEIN: Just one element. With
4 reference to the problem of testifying in
5 the hope of gaining favor, now, your Honor's
6 Charge specifically related to pending
7 formal charges against individuals. Now,
8 I don't think that that type of a charge
9 takes into consideration the fact that
10 Mr. Bello has no formal charges pending
11 against him for offenses which he committed
12 in his direct testimony to the State. He
13 hasn't been formally charged with these, but
14 I think the jury could consider them.

15 THE COURT: Well, there was a violation
16 of parole, wasn't there, as to him?

17 MR. STEIN: Nothing has been done.

18 THE COURT: That is a charge. Well,
19 whether anything has been done or not, that
20 is pending against him.

21 MR. STEIN: That he violated parole?

22 THE COURT: Yes. Wasn't that your
23 contention, that he was on parole and,
24 therefore, he had something to worry about
25 and, therefore, that this would be a gain?

1 MR. STEIN: Yes but, therefore, in
2 addition to that there were other charges.
3 There were other offenses committed. You
4 see, this is a rather unique situation.

5 THE COURT: The conviction of the
6 crimes in the past, in my opinion, do not
7 go to this issue. They go to the question
8 of credibility.

9 MR. STEIN: I agree.

10 THE COURT: And there must be a dis-
11 tinction made between prior convictions
12 which are credibility, and pending charges
13 which involve the favor or hope of reward.

14 MR. STEIN: Now, I agree, but in this
15 instance, here is a man who has admitted
16 to the police, and in open Court, that he
17 has committed two unlawful offenses, one
18 breaking into the Ace Sheet Metal Company,
19 and the other stealing money from the tavern.
20 Now, there are no formal charges against
21 him for this, and I would think from the
22 nature of the instruction that the jury
23 wouldn't consider that he is looking for
24 favor for these particular types of offenses
25 because of the fact that your instruction

1 limited them to consideration of outstanding
2 formal charges pending against the witness
3 who testified.

4 THE COURT: Well, I feel it was
5 adequately covered, and your application
6 will be denied.

7 MR. STEIN: I should make mention of
8 one other factor, and your Honor did instruct
9 the jury when this arose during the trial,
10 that there were out of court statements
11 given by both defendants in this particular
12 matter, and I think for a matter of clari-
13 fication there should be an instruction,
14 I realize I haven't requested it, but the
15 testimony out of Court or statement out of
16 Court of one defendant should not be binding
17 upon another defendant. I know you
18 specifically instructed them during the
19 course of the trial.

20 THE COURT: Well, I think at the time
21 they were introduced, which was probably
22 the most significant time for understanding
23 by the jury, the Court instructed them.

24 MR. STEIN: That's true.

25 THE COURT: And I think that should be

1 adequate on that score.

2 MR. BROWN: I join Mr. Stein that you
3 did instruct them at that time, but urge
4 you to reconsider instructing them now.

5 THE COURT: I deny that.

6 Mr. Hull?

7 MR. HULL: No objections.

8 THE COURT: All right. Call the jury,
9 please. Gentlemen, have you checked the
10 exhibits accurately?

11 MR. BROWN: Most, your Honor, but could
12 we do that afterward?

13 THE COURT: All right.

14 MR. BROWN: After the jury is sent out.
15 I think after the other day they should be
16 pretty accurate.

17 THE COURT: All right. You will check.

18 MR. BROWN: We will check them before
19 they go in.

20 THE COURT: All right.

21 (The jury re-entered the Courtroom at 11:18 a.m.)

22 THE COURT: All right. You may
23 proceed, Miss Clerk.

24 (The Clerk of the Court proceeded to draw the names of the
25 twelve jurors to whom the case would be submitted for

1 final determination:

2 THE CLERK OF THE COURT: Number twelve
3 in the box, Cornelius Sullivan, juror #1.

4 Number ten in the box, Kathleen T.
5 Payne, juror #2.

6 Number eight in the box, Ronald F.
7 Luna, juror #3.

8 MR. STEIN: Luna?

9 THE CLERK OF THE COURT: Yes.

10 THE COURT: I will have to tell you
11 to speak up a little bit, Miss Sportelli.

12 THE CLERK OF THE COURT: All right.

13 Number five in the box, George F.
14 Cupolo, juror # 4.

15 Number one in the box, Antoinette M.
16 Fargnoli, juror # 5.

17 Number eleven in the box, Carl A.
18 Matonak, juror # 6.

19 Number three in the box, Patricia M.
20 Joy, juror # 7.

21 Number six in the box, John R.
22 Kokorsky, juror # 8.

23 Number nine in the box, Vincent J.
24 Tassitano, juror # 9.

25 Number four in the box, Jean E. Eelman,
juror # 10.

1 Number thirteen in the box, Joseph
2 Thear, juror # 11.

3 Number fourteen in the box, Natale J.
4 Congon, juror # 12.

5 The remaining two jurors are number
6 seven in the box, Ronald J. Patierno, and
7 number two in the box, George S. Griffith.

8 THE COURT: All right. Mr. Griffith
9 and Mr. Patierno, will you please remain
10 for a short time.

11 All right. Will you swear the officers,
12 please.

13 (The Court Officers were duly sworn by the Clerk of the
14 Court.)

15 THE COURT: All right, ladies and
16 gentlemen, you may take the case. The
17 exhibits will be brought into the jury room
18 as soon as they are collected.

19 (The jury left the Courtroom at 11:22 a.m.)

20 THE COURT: Mr. Griffith and Mr.
21 Patierno, the Court can hardly express its
22 thanks for your extraordinary service in
23 this case. I am sure the County and all its
24 citizens recognize the tremendous sacrifice
25 given by you, and the debt of gratitude owed

1 to you for doing this for your Community
2 and for the cause of justice, and this is
3 something I am sure you will remember for
4 the rest of your lives, and it will be a
5 very rewarding experience, even though you
6 do not participate in the actual delibera-
7 tion and the actual decision in this case.

8 You are now free to do as you see fit,
9 one way or the other, and you are no longer
10 tied down by the Court or by the County.

11 Thank you very much.

12 MR. GRIFFITH: Thank you.

13 MR. PATIERNO: Thank you.

14 THE COURT: The Court stands in recess.
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1 REQUESTS TO CHARGE SUBMITTED TO THE COURT BY RAYMOND A.
BROWN, ESQ., and ARNOLD M. STEIN, ESQ., on behalf of the
2 DEFENDANTS: REQUESTS FOR INSTRUCTIONS

3 It is now respectfully requested that the
4 Court instruct the jury as follows:

5 1. A person charged with crime is
6 presumed to be innocent until proven guilty. This
7 presumption abides with him through the trial.
8 Therefore, when the jury go from the bar of the Court
9 to their room to deliberate, they enter the jury
10 room with the presumption of innocence still pro-
11 tecting the defendant. In the various mental
12 conditions, ranging from that in which the jury
13 think the defendant innocent to that in which they
14 are convinced beyond a reasonable doubt of his guilt,
15 he is entitled to the benefit of their uncertainty.
16 State v. Linker, Err. & App. 1920, 94 NJL 411, 415-
17 416, 111 A 35; cf. State v. Raymond, Sup. 1891, 53
18 NJL 260, 267, 21 A 328.

19 2. The defendant is to be acquitted unless
20 his guilt be proved beyond a reasonable doubt. If
21 the jury are not satisfied beyond a reasonable doubt
22 of the guilt of the defendant, he must be acquitted.
23 State v. Zimmer, Sup. 1939, 122 NJL 154, 156, 4 A 2d
24 82; cf. State v. Faure, Sup. 1922, 98 NJL 18, 21-22,
25 119 A 4.

1 3. The defendant is presumed to be innocent
2 and unless the crime charged, in each of its elements,
3 is proved against him beyond a reasonable doubt, he
4 is entitled to an acquittal. The burden of proving
5 the defendant guilty rests upon the prosecution and
6 never shifts. State v. D'Orio, Err. & App. 1947,
7 136 NJL 204, 208 51 A 2d 97; cf. State v. Kisik, Err.
8 & App. 1924, 99 NJL 385, 388, 125 A 239; etc.

9 4. The indictment is not evidence against
10 the defendant and is not to be considered as such
11 during the jury's deliberation upon the evidence in
12 the case. State v. D'Orio, Err. & App. 1947, 136 NJL
13 204, 205-207, 51 A 2d 97.

14 5. In a criminal prosecution it is not
15 merely a belief in defendant's innocence, but it is
16 the absence of a belief in his guilt so clear and
17 strong as to exclude reasonable doubt, which requires
18 his acquittal. In the various mental conditions
19 ranging from that in which the jury think the accused
20 innocent, to that in which they are convinced beyond
21 a reasonable doubt of his guilt, he is entitled to
22 the benefit of their uncertainty. State v. Raymond,
23 Sup. 1891, 53 NJL 260, 267, 21A 328; cf. State v.
24 Linker, Err & App. 1920, 94 NJL 411, 415-416, 111 A
25 35.

1 6. Criminal liability must rest firmly
2 upon evidence that bespeaks guilt. State v. LaFera
3 42 N.J. 97, 119.

4 7. A man may not be condemned upon
5 surmise, conjecture or suspicion. State v. LaFera
6 42 N.J. 97, 119.

7 8. An unlawful homicide is presumed to
8 be murder in the second degree. The burden is then
9 the State's to prove facts which elevate the offense
10 to murder in the first degree. State v. Williams,
11 29 N.J. 27, 44 (1959) N.J.S. 2A:113-2 specifies what
12 murders are in the first degree. We are here concerned
13 with the category described as a "wilful, deliberate
14 and premeditated killing". The statutory language is
15 actually an inverse statement of the natural sequence
16 of the required mental operations. State v. Mangano,
17 77 N.J.L. 544, 546 (E. & A. 1909). As settled by
18 judicial construction, the first element is premedi-
19 tation, which consists of the conception of the design
20 or plan to kill. Next comes deliberation. The
21 statutory word "deliberate" does not here mean "wilful"
22 or "intentional" as the word is frequently used in
23 daily parlance. Rather it imports "deliberation" and
24 requires a reconsideration of the design to kill, a
25 weighing of the pros and cons with respect to it.

1 Finally, the word "wilful" signifies an intentional
2 execution of the plan to kill which has been conceived
3 and deliberated upon. State v. Ernst, 32 N.J. 567,
4 579 (1960); State v. Mangano, *suprs* (77 N.J.L., at
5 p. 547). State v. DiPaolo 34 N.J. 279, 294-295.

6 9. The fact of killing being established,
7 the presumption is that it is murder in the second
8 degree. Wilson v. State, 60 NJL 171 (E. & A. 1897);
9 Brown v. State, 62 NJL 666, 713 (E. & A. 1899). The
10 intent to take life is not a necessary element re-
11 quired to constitute the crime of murder in the second
12 degree. The intent to do grievous bodily harm is
13 sufficient. State v. Moynihan, 93 NJL 253 (E. & A.
14 1919). Finally, the killing of another in a passion
15 of hot blood with reasonable provocation comprises
16 the crime of manslaughter. State v. Zellers, 7 NJL
17 220, 223 (Sup. Ct. 1924). To mitigate the offense to
18 manslaughter, the facts must show that the homicide
19 resulted from passion or the heat of blood upon a
20 reasonable provocation. The provocation must be of
21 such a character and so close to the act of killing
22 that for the moment the accused could be considered
23 as not the master of his own understanding. State v.
24 Wynn, 21 N.J. 264, 270.

25 10. There have been a number of instances

1 during the trial in which witnesses have been
2 contradicted. If you believe that any witnesses have
3 wilfully or knowingly or intentionally given false
4 testimony concerning a material fact, you may reject
5 all or any part of the testimony of that witness.
6 State v. Dougan, 84 NJL 603 (S. Ct. 1913).

7 11. Circumstantial evidence is of two
8 kinds, namely "certain", or that from which the
9 conclusion in question necessarily follows; and
10 "uncertain", or that from which the conclusion does
11 not necessarily follow, but is probable only, and is
12 obtained by a process of reasoning. In criminal
13 cases, because of the serious and irreparable nature
14 of the consequences of a wrong decision, the jurors
15 must be satisfied beyond any reasonable doubt of the
16 guilt of the accused, or it is their duty to acquit
17 him, the charge not being proved by that high degree
18 of evidence which the law demands. It is not suffi-
19 cient if the evidence, on the whole, agrees with
20 and supports the supposition which it is adduced to
21 prove - in a criminal case the evidence must exclude
22 every other rational supposition but that of the
23 guilt of the accused, and if it does not do so he
24 must be acquitted. Jackson v. D.L. & W.R.R. Co. 11
25 NJL 487, 490 (E. & A. 1933).

1 12. Alibi deals with physical absence and
2 involves physical impossibility of guilt, and offer to
3 establish it is not offer of affirmative issue in
4 advance of the defense but is merely a showing of
5 facts inconsistent with essential element of criminal
6 charge. State v. Searles, 82 N.J. Super, 210, 211.

7 13. Where the presence of the defendant
8 at the time and place of the alleged crime is an
9 essential link in the chain of proof, such presence,
10 like any other essential fact, must be established
11 by the prosecution beyond a reasonable doubt and the
12 burden of proving alibi never rests upon the defen-
13 dant. If the testimony on that question alone raises
14 a reasonable doubt, the defendant is entitled to an
15 acquittal. State v. Ing Kee, Err. & App. 1930, 106
16 NJL 336, 338 150 A 358, referring to State v. Guarino,
17 Err. & App. 1929, 105 NJL 549, 147 A 395.

18 14. Proof of an alibi need not reasonably
19 exclude the possibility of the defendant's presence,
20 nor must the defendant satisfy the jury whether he
21 was there or not at the time of the commission of the
22 crime. If the testimony creates such a degree of
23 uncertainty as to the defendant's whereabouts that the
24 jury are not satisfied beyond a reasonable doubt of
25 his guilt, he is entitled to an acquittal. State v.

1 Tapack, Sup. 1909, 78 NJL 208, 72 A 962.

2 15. Proof beyond a reasonable doubt of
3 the identity of the accused as the person who com-
4 mitted the crime, is essential to a conviction.

5 16. No class of testimony is more uncertain
6 and less to be relied upon than as to identity and
7 where doubt is cast upon it by the witnesses them-
8 selves, extreme caution should be exercised by the
9 jury in evaluating this evidence.

10 17. The carelessness or superficiality of
11 observers, the variety of powers of graphic descrip-
12 tion and the different force with which the peculiarity
13 of form or color or expression strikes different
14 persons, makes recognition or identification one of
15 the least reliable facts testified to by actual
16 witnesses who have seen the parties in question.

17 18. In a circumstantial evidence case, the
18 inquiry is whether the evidence is of sufficient
19 quality to convince a jury beyond reasonable doubt of
20 the defendant's guilt. State v. Tassiello, 75 N.J.
21 Super 1, 4; State v. Danoyger, 29 N.J. 76, 84 (1959).

22 19. The witnesses Arthur Bradley and Alfred
23 Bello have admitted to convictions of various crimes.
24 You must consider whether or not their convictions of
25 a crime affects their credibility in this case and so

1 taints the evidence given by them. If you find that
2 these convictions prompts you to doubt their credi-
3 bility, then you may disregard any or all of their
4 testimony.

5 20. Each of the defendants has pleaded
6 not guilty to the charges made against them. These
7 pleas create issues of fact for you to decide. This
8 trial is for the purpose of determining the guilt or
9 innocence of the defendants on the charges made against
10 them respectively in the indictment. Each defendant
11 is entitled to your careful, conscientious and con-
12 siderate comparison and evaluation of all of the
13 evidence which is relevant and material on the issue
14 of his guilt or innocence on any of the charges made
15 against them.

16 21. The law presumes a defendant to be
17 innocent of a crime. Thus a defendant, although
18 accused, begins the trial with a "clean slate" --
19 with no evidence against him. And the law permits
20 nothing but legal evidence presented before the jury
21 to be considered in support of any charge against
22 the accused. So the presumption of innocence alone
23 is sufficient to acquit a defendant, unless the jurors
24 are satisfied beyond a reasonable doubt of the
25 defendants' guilt from all the evidence in the case.

1 A reasonable doubt is a fair doubt
2 based upon reason and common sense and arising from
3 the state of the evidence. It is rarely possible to
4 prove anything to an absolute certainty. Proof
5 beyond a reasonable doubt is established if the
6 evidence is such as you would be willing to rely and
7 act upon in the most important of your own affairs.
8 A defendant is not to be convicted on mere suspicion
9 or conjecture.

10 A reasonable doubt may arise not only
11 from the evidence produced, but also from a lack of
12 evidence. Since the burden is upon the prosecution
13 to prove the accused guilty beyond a reasonable doubt
14 of every essential element of the crime charged, a
15 defendant has the right to rely upon failure of the
16 prosecution to establish such proof. A defendant
17 may also rely upon evidence brought out on cross
18 examination of witnesses for the prosecution. The
19 law doesnot impose upon a defendant the duty of
20 producing any evidence.

21 A reasonable doubt exists in any
22 case when, after careful and impartial consideration
23 of all the evidence, the jurors do not feel convinced
24 to a moral certainty that a defendant is guilty of
25 the charge. As to the effect of the presumption of

1 innocence, see: *Holt v. United States*, 1910, 218 U.S.
2 245, 253, 31 S. Ct. 26, 54 L. Ed. 1021. As to
3 reasonable doubt, see: *Holland v. United States*,
4 1954, 348 U.S. 121, 139-140, 75 S. Ct. 127, 137, 99
5 L. Ed. 150.

6 22. Where a defendant has offered evidence
7 of good general reputation for truth and veracity or
8 honesty and integrity, or as a law-abiding citizen,
9 the jury should consider such evidence along with all
10 the other evidence in the case.

11 Evidence that a defendant's reputation
12 for truth and veracity or honesty and integrity, or
13 as a law-abiding citizen, has not been discussed or,
14 if discussed, those traits of the defendant's charac-
15 ter have not been questioned, may be sufficient to
16 warrant an inference of good reputation as to those
17 traits of character.

18 Evidence of a defendant's reputation,
19 as to those traits of character ordinarily involved
20 in the commission of the crime charged, may give rise
21 to a reasonable doubt; since the jury may think it
22 improbable that a person of good character in respect
23 to those traits would commit such a crime.

24 23. Members of the jury may reject the
25 testimony of expert witnesses if you (jurors) conclude

1 that the reasons given in support of the opinions are
2 unsound or if you find that the experts' opinion is
3 not based on knowledge and experience.

4 24. The mere fact that the Court admits
5 testimony of expert witnesses, it is for the jury to
6 decide whether any, and if any, what weight is to be
7 given to the testimony.

8 25. I further instruct you that there is
9 a legal maxim that you may consider in evaluating the
10 testimony of Arthur Bradley and Alfred Bello.

11 That maxim is couched in the Latin
12 phrase, falsus in uno, falsus in omnibus, which means,
13 false in one thing, false in everything. In view of
14 the admission by both Bradley and Bello that they
15 testified falsely under oath in prior judicial pro-
16 ceedings and admitted that such testimony was wilfully,
17 knowingly and intentionally designed to be false, and
18 if you find that they have wilfully, knowingly and
19 intentionally given false testimony in this trial,
20 you may disregard all of their testimony or any portion
21 thereof that you find unworthy of belief.

22 26. Evidence of a defendant's previous
23 conviction of a felony is to be considered by you
24 only insofar as it affects the credibility of the
25 defendant as a witness, and must not be considered as

1 evidence of guilt of the offenses charged in the
2 indictment for which the defendants are presently on
3 trial. *Michelson v. United States*, 335 U.S. 469,
4 482-483 (1948).

5 27. It is your duty to give separate,
6 personal consideration to the case of each individual
7 defendant. When you do so, you should analyze what
8 the evidence shows with respect to that individual,
9 leaving out of consideration entirely any evidence
10 submitted solely against some other defendant. Each
11 defendant is entitled to have his case determined
12 from his own acts and statements and the other evidence
13 in the case which may be applicable to him.

14 28. The Court instructs the jury that you
15 are the sole judges of the weight of the evidence and
16 of the credibility of the witnesses in the case. That
17 you are entitled to take into consideration, in deter-
18 mining what weight will be given to the testimony of
19 the several witnesses, their demeanor on the witness
20 stand; the probability or improbability of the facts
21 testified to by them, as shown by the evidence, the
22 means of observation and knowledge of the witnesses;
23 the intelligence or lack of intelligence of the
24 witnesses, the bias, interest, or prejudice, if any,
25 of the witnesses, or the lack of bias, prejudice, or

1 interest; all as may be shown by the evidence,
2 together with all matters, facts, and circumstances
3 shown in evidence on the trial; and to give the
4 testimony of each witness such weight as you believe
5 it is fairly entitled to in the case.

6 29. You are not required to accept the
7 statements of any witness merely because his or her
8 testimony is given under oath, but you should weigh
9 and consider the testimony of each witness and give
10 it such weight and credit as you may think it is
11 fairly entitled to under the circumstances and proof
12 when compared and contrasted with the rest of the
13 evidence.

14 SUPPLEMENTAL REQUESTS TO CHARGE FOR DEFENDANT
15 JOHN ARTIS

16 1. You must consider the evidence which
17 you heard at this trial of the good character and reputation
18 of the defendant John Artis as a peaceable, law-abiding and
19 honest citizen. If such evidence of good character and repu-
20 tation, by itself, is sufficient to raise a reasonable doubt as
21 to his guilt, then you must find John Artis not guilty. *Baker*
22 *v. State*, 53 N. J. L. 45, 47 (Sup. Ct. 1890); *State v. Elliott*,
23 94 N. J. L. 76, 78 (Sup. Ct. 1919).

24 2. In weighing all of the evidence in this
25 case, you must take into consideration that testimony relating
to the good character or reputation of the defendant John Artis.

1 If, on such consideration, there arises a reasonable doubt
2 as to his guilt, even solely because of his good character or
3 reputation prior to June 16th or 17th, 1966, then the defendant
4 John Artis is entitled to an acquittal. Baker v. State, supra;
5 State v. Siciliano, 21 N. J. 249, 260=262 (1956).

6 3. In determining the credibility of the
7 testimony of Alfred Bello, you shall take into consideration
8 the following:

9 1) The numerous previous convictions
10 of him for various crimes.

11 2) Whether he testified on behalf of
12 the State in the hope of or for the purpose of obtaining all or
13 part of the reward money offered both by the Tavern Owners'
14 Association of the City of Paterson and by the Board of
15 Estimates of the City of Paterson.

16 3) The fact that he has not yet been
17 formally charged for commission of any or all of the following
18 offenses to which he admitted in this Court:

19 a) Participation in the attempted
20 breaking and entry of the Ace Sheet Metal Company on
21 June 17, 1966.

22 b) Stealing money from the cash
23 register of the Lafayette Bar and Grill on June 17, 1966.

24 c) Violation of parole from a
25 state penal institution.

1 determining the truthfulness of this witness, whether he
2 testified on behalf of the State and against defendants for the
3 purpose of escaping prosecution, or in the hope of gaining
4 leniency or some other form of favor from the State or some
5 other penal, correctional or governmental authority.

6 State v. Curcio, 23 N.J. 521, 524-527 (1957).

7 4. And in determining the credibility and
8 truthfulness of the testimony of Arthur Dexter Bradley, you
9 shall take into consideration the following:

10 1) The numerous convictions of him
11 for various crimes.

12 2) Whether Bradley testified on behalf
13 of the State in the hope of or for the purpose of obtaining all
14 or part of the reward money offered both by the Tavern
15 Owners' Association of the City of Paterson and by the Board
16 of Estimate of the City of Paterson.

17 3) The fact that Bradley has not yet
18 been formally charged with any or all of the following offenses
19 to which he admitted in Court:

20 a) The attempted breaking and
21 entry of the Ace Sheet Metal Company on June 17, 1966.

22 b) The actual breaking and entry
23 of the Ace Sheet Metal Company later on in the morning of
24 June 17, 1966.

25 c) Receipt of a portion of the money

1 which Alfred Bello stole from the Lafayette Bar and Grill on
2 the morning of June 17, 1966.

3 4. The fact that he is presently confined
4 at the Morris County Jail, in Morristown, New Jersey.

5 And you shall further consider, in deter-
6 mining the truthfulness of Arthur Dexter Bradley, whether he
7 testified on behalf of the State and against the defendants for
8 the purpose of escaping prosecution, or in the hope of obtaining
9 leniency or some other form of favor from the State or some
10 other penal, correctional or governmental authority, for the
11 offenses with which he has not yet been formally charged, or
12 in the hope of obtaining immediate or early release from the
13 Morris County Jail. State v. Curcio, supra.

14 ADDITIONAL REQUEST TO CHARGE ON BEHALF OF
15 DEFENDANTS CARTER AND ARTIS:

16 In further determining the credibility and
17 truthfulness of the testimony of Arthur Dexter Bradley, you
18 shall also consider that, at the time that he testified on behalf
19 of the State at this trial, there were and still are, pending
20 against him, the following criminal charges:

21 1) Armed robbery of the Pine Brook
22 Motor Lodge, Montville, Morris County, New Jersey.

23 2) Armed robbery of the Riviera Motor
24 Lodge, Fort Lee, Bergen County, New Jersey.

25 3) Larceny of a motor vehicle, in
Upper Saddle River, Bergen County, New Jersey.

1 4) Breaking, entering and larceny, in
2 Wayne Township, Passaic County, New Jersey.

3 5) Escape from the police of the
4 Borough of Haledon, Passaic County, New Jersey.

5 6) Armed robbery of the Benedict
6 Motel, Linden, Union County, New Jersey.

7 7) Armed robbery of the Jacobus
8 Tavern, Bloomfield, Essex County, New Jersey.

9 8) Possession of stolen property, in
10 Paterson, Passaic County, New Jersey.

11 9) Breaking, entering and larceny,
12 in the Borough of Cartaret, Middlesex County, New Jersey.

13 And in determining or evaluating the
14 truthfulness of Arthur Dexter Bradley, you shall further
15 consider whether he testified on behalf of the State and
16 against the defendants for the purpose, hope or expectation
17 of obtaining favorable treatment or leniency in the disposition
18 of all or any of the above charges now pending against him,
19 in exchange for his testimony. State v. Mathis, 47 N.J. 455,
20 468 (1966); State v. Curcio, 23 N.J. 521, 524-527 (1957).

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1 (The jury entered the Courtroom at four p. m.)

2 THE COURT: Ladies and gentlemen,
3 through your Foreman, I have received the
4 following note:

5 "The jurors would like the question
6 below answered: How did Bello describe
7 Carter and Artis before they were returned
8 to the scene of the crime?"

9 Now, let me say first, that the form
10 of the question would, on its surface, require
11 an answer of how he actually, as a fact,
12 described Carter and Artis. That, of course,
13 I cannot answer. I cannot tell you how he
14 actually described them. That is a fact that
15 you must determine from the testimony.
16 However, in order to assist you in this, I
17 have reviewed the testimony of the witness,
18 Bello, and I will read to you that which appears
19 in the transcript of his testimony first, which
20 I have available, dealing with this particular
21 subject, and then I also have my notes, without
22 the actual testimony, on what Detective
23 Greenough said that Bello told him before the
24 vehicle was returned to the scene of the crime.

25 With respect to my notes, I want to

1 make it clear that I have reviewed that with
2 Counsel and this seems to be an accurate synthesis
3 of what Officer Greenough said, but, again, I
4 must caution you with respect to any of this
5 testimony, my notes or what I think a witness
6 said is not binding upon you. You are the only
7 judges of what was actually said.

8 Now, with respect to Bello's testimony,
9 the information you seek was developed on cross
10 examination, and appears on page 36 of the
11 transcript of his cross examination on May 11,
12 1967: "Question- And you also told, at the very
13 scene, other police, Officer Greenough, that
14 these men were slim built, 5-11 or so, is that
15 correct? Answer - I meant to say one was a
16 little taller than the other one. Question - Let
17 us see what has been noted. This is not your
18 signature, but I want that understood, but let
19 me ask you if you did, in fact, tell to Officer
20 Greenough, that one colored, C. M., was wearing
21 a fedora and sport jacket, thin built, 5-11;
22 number two colored man, thin built, 5-11. Did
23 you tell Officer Greenough that? Answer - Yes,
24 I might have. I don't recall exactly. I can't
25 exactly recall exact words. Question - But it

1 is recorded. Does this refresh your recollection?

2 Answer - Does it refresh my recollection?

3 Question - I beg your pardon. Answer - I am
4 thinking a minute. Not exactly. I remember
5 telling him that one was taller than the other one,
6 and he asked me what they were wearing. I said
7 one had on a white jacket, black vest and black
8 clothes, and the other one a hat and black colored
9 clothes and was a little taller. He said, 'How
10 tall?' I said one could have been my height. One
11 could have been a little taller. I said, 'One could
12 have been my height. One could have been a little
13 taller.' I don't know what he wrote or recorded.

14 Question - Excuse me. Answer - Yes, sir.

15 Question - Then you deny telling Officer Unger
16 and Officer Greenough, on the morning of the
17 17th of June 1966, that one man was 5-11, and
18 the second one was 5-11, and that both were thin
19 built, you deny that? Answer - I don't deny
20 anything. If it is there, I must have said it."

21 Now, that ends the actual testimony of
22 which we have a transcript on that subject.

23 Officer Greenough, among his other testimony,
24 testified that Bello at that time told him that both
25 men were 5-11, colored, thin build. That is the

1 extent of the testimony that I can give you on
2 this subject.

3 It is for you to decide what he actually
4 told him, and if that is part and parcel of your
5 prob in your deliberations. In addition, I
6 wish to make it clear that by reading this
7 testimony I do not intend that this be emphasized
8 either more or less than any other testimony in
9 the case. It is to be used by you, together with
10 all the other testimony in arriving at your
11 conclusion. It is for you to give it the weight
12 that it deserves or does not deserve.

13 That's all, ladies and gentlemen.

14 (The jury retired to the jury room at 4:08 p.m.)

15 THE COURT: All right, the Court
16 will stand in recess.

17 (The jury entered the Courtroom at 4:34 p.m. The jury roll was
18 called by the Clerk of the Court.)

19 THE CLERK OF THE COURT: Ladies and
20 gentlemen of the jury, have you agreed upon a
21 verdict?

22 THE COURT: The defendants will
23 rise.

24 THE CLERK OF THE COURT: Mr.
25 Foreman, --

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THE FOREMAN: Yes, we have.

THE CLERK OF THE COURT: --what
is your verdict?

THE FOREMAN: We find, the jurors
find the defendants, Rubin Carter and John Artis,
guilty of all three counts in Murder in the First
Degree, with a recommendation of life
imprisonment.

THE COURT: Will you take her outside

THE CLERK OF THE COURT: Ladies
and gentlemen of the jury, hear your verdict as
recorded: You say you find Rubin Carter guilty
of the first count involving the charge of Murder
of James Oliver, guilty of Murder in the First
Degree with a recommendation of life imprison-
ment; second count, involving a charge of Murder
of Fred Nauyaks, guilty of Murder in the First
Degree with a recommendation of life imprison-
ment; third count, involving the charge of Murder
of Hazel Tanis, guilty of Murder in the First
Degree with a recommendation of life imprisonment.

You say you find John Artis guilty of
Murder in the First Degree with a recommenda-
tion of life imprisonment regarding the murder
of James Oliver; guilty of Murder in the First

1 Degree with a recommendation of life imprison-
2 ment on the second charge regarding the murder
3 of Fred Nauyaks; guilty of Murder in the First
4 Degree with a recommendation of life imprison-
5 ment on the third count regarding the charge of
6 murder of Hazel Tania, on Indictment Number
7 137-66, and so say you all.

8 MR. BROWN: May we have the
9 jury polled.

10 THE COURT: Mr. Foreman, have
11 you written down the verdicts on the sheets given
12 to you?

13 THE FOREMAN: Yes.

14 THE COURT: All right. Will you
15 hand them up. All right.

16 Will you poll the jury.

17 THE CLERK OF THE COURT: Ladies
18 and gentlemen of the jury, as your name is
19 called, and you agree with that verdict, you will
20 say "I agree". If you disagree, you will answer
21 "I disagree".

22 Cornelius Sullivan -- I agree; I agree.

23 Kathleen T. Payne -- I agree.

24 Ronald F. Luna -- I agree.

25 George F. Cupolo -- I agree.

1 Antoinette M. Fagnoli -- I agree.

2 Carl A. Matonak -- I agree.

3 Patricia M. Joy -- I agree.

4 John R. Kokorsky -- I agree.

5 Vincent J. Tassitano -- I agree.

6 Jean E. Eelman -- I agree.

7 Joseph Thear -- I agree.

8 Natale J. Congon -- I agree.

9 THE COURT: All right. Defendants
10 will be seated, please.

11 Ladies and gentlemen, I wish to
12 express on behalf of the County and the Court,
13 the great appreciation and thanks for your unusual
14 services in this case. You labored long and
15 arduously in a very difficult type of case, and
16 you have done your duty as you saw it, based
17 upon the evidence. This was an extraordinary
18 sacrifice on your part, and it is one for which
19 you deserve extraordinary thanks, not only from
20 the Court, but from the entire community, as
21 this is something which required a lot more from
22 you than the normal service on a jury.

23 I trust, in addition to the knowledge
24 of what you have done and what you have sacri-
25 ficed as citizens of this County, that you also

1 have come away with the thought in your hearts
2 and minds that you have done what you are
3 required to do as citizens, and you have had
4 a s e r v i c e which was rewarding
5 to you from the viewpoint of having performed
6 that which every citizen should perform in this
7 County.

8 You are excused with the thanks of
9 the Court.

10 THE SERGEANT AT ARMS: Everyone
11 remain seated until the jury leaves.

12 (The jury left the Courtroom at 5:40 p.m.)

13 THE COURT: The Court will take a
14 ten minute recess.

15 (At this point a brief recess was taken.)

16 THE COURT: Sentence will be
17 imposed in this case on June 28 at 9:30 a.m.
18 In the meantime, the defendants will be remanded
19 to the County Jail.

20 MR. BROWN: June 28th, your Honor?

21 THE COURT: That is correct.

22 MR. BROWN: A Wednesday?

23 THE COURT: Is there any problem
24 with that date?

25 MR. BROWN: Wednesday?

1 THE COURT: Pardon?

2 MR. BROWN: Wednesday, in all
3 likelihood, I would have such a problem.

4 THE COURT: Well, if that is a
5 problem, I suppose we can make it a special
6 date. Is the 29th better?

7 MR. BROWN: Yes, Sir, I think it
8 would be much better.

9 THE COURT: Mr. Stein, is that
10 all right?

11 MR. STEIN: To my knowledge the
12 29th would be all right.

13 THE COURT: All right. We will
14 make it June 29 at 9:30.

15 MR. BROWN: If your Honor please,
16 may we have a half hour or so with the
17 defendants in the "bull pen", if it is possible?

18 THE COURT: All right.

19 MR. BROWN: Whatever it is, across
20 the way.

21 THE COURT: You can work that out
22 with the Officers.

23 Is that all right, Chief?

24 MR. SCHULTZ: Yes, yes.

25 THE COURT: That is perfectly all

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right.

All right, Court is in recess.

* * * * *

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PASSAIC COUNTY COURT
LAW DIVISION (CRIMINAL)
INDICTMENT NO. 167-66

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5 STATE OF NEW JERSEY, :

6 Complainant. :

7 -vs- :

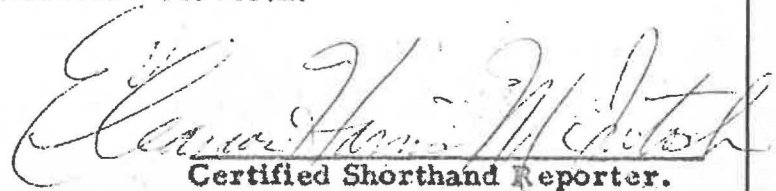
8 RUBIN CARTER and
9 JOHN ARTIS, :

10 Defendants. :
11 -----:

CERTIFICATE
OF
STENOGRAPHER

12 Paterson, New Jersey
13 Thursday, May 25, 1967,
14 Friday, May 26, 1967.

15 I, ELEANOR H. McINTOSH, a Certified Shorthand
16 Reporter of the State of New Jersey, having been duly sworn as the
17 Official Reporter, do hereby certify that the foregoing is a true and
18 accurate transcript of the testimony as taken by me at the time,
19 place and on the date hereinbefore set forth.

20 
21 Certified Shorthand Reporter.
22
23
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25