

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

SUCR 00-10777

00-10975

Before: Rouse, J.

COMMONWEALTH OF MASSACHUSETTS *

VS. *

JASON ROBINSON AND TANZERIOUS *

DISPOSITION

ANDERSON *

Thursday, April 4, 2002

Boston, Massachusetts

PATRICIA S. FLAHERTY

Official Court Reporter

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APPEARANCES:

ROBERT TOCHKA, ESQ.
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TIMOTHY FLAHERTY, ESQ.
Counsel for Defendant Anderson

PROCEEDINGS

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THE CLERK: Your Honor, now before the Court, the cases of the Commonwealth versus Tanzerius Anderson, indictment number 2000-10777. Mr. Anderson is present in court this afternoon with Attorney Flaherty, and the Commonwealth versus Jason Robinson, 2000-10975. Mr. Robinson is present with Attorney Michael Doolin. Mr. Tochka is present for the Commonwealth. The case is here for disposition, the defendants having been found guilty by a jury yesterday, April 3rd.

MR. TOCHKA: Good afternoon, Your Honor, Robert Tochka for the Commonwealth. The Commonwealth now moves for sentencing. Your Honor, at this point in time I have two individuals who would like to make victim-witness impact statements to the court. One of them is Riad Jasbec and the other individual is George Jarjoura, J-A-R-J-O-U-R-A, who was a family friend. If the Court wishes, at

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this time I'd like to call Riad Jasbec.

THE COURT: You may go ahead.

MR. TOCHKA: Sir, would you please identify yourself, tell us your name?

MR. JASBEC: My name is Riad Jasbec.

MR. TOCHKA: Sir, could you please the address the Court in terms of whatever you wish to tell the court about.

MR. JASBEC: I don't see my brother for thirteen years, the whole family, nobody see my brother for thirteen years. Everybody going back, you know, say Yas very good, Yas is good guy, he's helping. When I come here to America he help me. A lot of people say, You have good brother, you have good brother. I'll never feel my brother again, he got killed. I don't know why is it my brother get killed, I don't know. He's very good guy, he's all kind of help. Wherever I go, somebody let me

1 remember they say, You're Yas's brother.

2 We came here, I'm not from this
3 country. We came here because we got
4 good life. My brother, he came here to
5 get good life. Somebody, he got killed,
6 it was nothing, it was all problems of
7 any defense, I don't know why. Sometime
8 I stay in gas station and walk over.
9 Every five minutes came here to say, He's
10 Yas's brother, he's Yas's brother. Every
11 time I call my mother after what
12 happened, I can't talk with my family, I
13 can't talk with my mother. Every time I
14 call them, two or three minute, I cannot
15 keep going hearing my mother cry, my
16 father cry. I cannot keep going and
17 speak.

18 My brother got killed because he was
19 -- if you need help, he help you. He
20 trusts everybody. That's why he got
21 killed, he was trust everybody and it
22 didn't help, and I never feel I'm going
23 to be here someday. One time I worked in
24 the gas station. One time somebody came

1 to the gas station to help me and they
2 pulled a knife in my face and took the
3 money and then when I came back home, he
4 saw he, he told me what happened. I told
5 him that's what happened. He said, Don't
6 go back to work. I have here thirteen
7 years, nobody touch you. Just leave the
8 work, no more work for you night
9 time.

10 I don't know what happens, I don't
11 know nothing. Everybody surprised what
12 happened to Yas. I don't know. My
13 mother asks every time, my grandmother
14 asks all the time. Every time he call,
15 she waiting, waiting. My grandmother ask
16 all the time. She's 95 years now.

17 THE COURT: Is there anything
18 else sir, you'd like to say?

19 MR. JASBEC: No.

20 THE COURT: Thank you very much,
21 Mr. Jasbec.

22 MR. TOCHKA: At this time the
23 Commonwealth would call George Jarjoura.

24 THE COURT: Good afternoon.

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MR. JARJOURA: Good afternoon.

THE COURT: Would you give me your name, please, sir.

MR. JARJOURA: My first name is George, last name Jarjoura, J-A-R-J-O-U-R-A.

THE COURT: What was your relationship with Mr. Jasbec?

MR. JARJOURA: We were friends, family friends, and neighbors. He was my next door neighbor back home in the village that we grew up in in Lebanon. When he came here, he was my friend here.

THE COURT: What would you like to say, sir?

MR. JARJOURA: I'd like to say whoever said it takes a village to raise a child, must have once visited our home town of Shika. Located in the north of Lebanon, not far from Tripoli, the country's second largest city. When Enam was brought home to be laid to rest, the villagers met him on the town line and escorted his body to his mother who was

1 waiting for him at home.

2 Young, old, rich, poor, all marched
3 to mourn a man who was known for his
4 kindness and warmth, his strength and
5 support for others who he put above
6 himself. Leading the processions was
7 Enam's grandmother, Helena, who would
8 wait patiently by the phone for his
9 weekly calls. For her Enam was a
10 grandson who held the family together,
11 the one who everybody counted on and
12 believed in, the one who transformed his
13 American dream into a reality, like so
14 many who are welcome to America from
15 troubled places looking for a better life
16 and freedom.

17 When Enam's life was robbed from us
18 on that dark, rainy night, for forty-six
19 dollars and change, a mother lost a son,
20 a brother lost a brother. I lost a true
21 and loyal friend, a good person, but most
22 importantly a small village in the north
23 of Lebanon was robbed of one of its own.

24 I speak to his mother frequently

1 since the first day this happened. She's
2 still in mourning. She told me no mother
3 should wait thirteen years to have her
4 son shipped in the box. On top of that,
5 he was severely disfigured; they wouldn't
6 let her open his casket. She said no.
7 No, I waited too long, I need to hug him,
8 I need to touch him, I need closure. I
9 know it's not going to bring me much, but
10 I'll ask you for that.

11 They had to negotiate for six hours
12 before they can let her open the casket
13 because half of his face was gone. They
14 had to do a minor surgery and they were
15 afraid if she come near him, it's going
16 to fall apart. They had to hold her
17 down, and when they opened the casket,
18 she saw him and she said, He looks the
19 same. She was more at ease and she
20 wouldn't let go. They had to leave the
21 casket in her room for three days before
22 they can make an arrangement. She said,
23 I haven't seen him, I need to see him,
24 enough of him.

1 She said, Of all my children, this is
2 the son I counted on. I am a mother, I
3 know. I said, If anyone can make it, he
4 can, and when the two brothers were
5 coming to see him, they had no worries
6 because they have a brother who will wait
7 for them, who will give them home and
8 shelter, but the dream didn't happen
9 because he only lasted five months with
10 Riad and never got to see Carlos.

11 She said, I was at ease when he came.
12 Now it has been three years. I go to
13 sleep worried, I wake up worried, I'm so
14 worried about them, and I don't know
15 where I went wrong. I feel like I've
16 done something, and she hasn't done
17 anything wrong. He was such a good guy,
18 helped his parents when they needed help.
19 Any friend or any family that came from
20 home and wanted a place to stay or a job,
21 they say, Where to go, they say, This is
22 Enam's number in Watertown. He was so
23 easy to make friend. My father's eighty
24 years old and he will joke with him like

1 he's his buddy. He make friends older,
2 younger, girls, guys.

3 At the station he worked at, he knew
4 everybody, that's how he start his
5 landscaping business. He got their
6 number, they all love him, they give him
7 small jobs, actually he had his own
8 business going. This is the type of guy
9 he is. Even the day he got killed, the
10 owner of that restaurant asked him about
11 a place to get wholesale meat. He said,
12 I know a place. Tomorrow I think it's
13 going to be a rainy day, I'm not working,
14 I'll take you there.

15 He was always there for everybody
16 else. He didn't do any wrong to anybody,
17 he doesn't deserve that. His mother,
18 still in tears, still in mourning.
19 She'll never recover. She's in black day
20 and night. She doesn't leave her home.
21 She said, I don't deserve to see the
22 light, I don't deserve to smell the
23 flowers. She needs help, but nothing's
24 going to bring Enam back. The only thing

1 is justice will bring a little bit of
2 closure I think. I don't know what to
3 say, but we all love him and miss him and
4 too bad, it shouldn't have happened.

5 THE COURT: Thank you very much,
6 sir.

7 MR. TOCHKA: Your Honor, with
8 respect to the defendant Tanzerius
9 Anderson, it's my understanding that the
10 jury having come back on two separate
11 theories that he is eligible to be
12 sentenced on the armed robbery as well as
13 the murder indictment. I don't know if
14 the Court's understanding is the same.

15 THE COURT: I think you need to
16 research this if you haven't, because it
17 could pose problems and because the armed
18 robbery is the underlying felony that
19 supports the felony murder conviction, we
20 need to assure ourselves as to what is
21 the proper disposition of the armed
22 robbery for both of the defendants, and I
23 take it you have some question about
24 that, as I do, so I would hope that ----

1 MR. TOCHKA: Frankly, I thought
2 when I came to court today, it did merge,
3 and I had checked prior to coming with my
4 appellate division that it confirmed what
5 I thought to be the case, and they had
6 told me that they believed that it did
7 merge as well, so I didn't think it
8 necessary to ----

9 THE COURT: Even if that were the
10 case, with respect to Mr. Anderson -- I
11 mean Mr. Robinson -- it would not be the
12 case with Mr. Anderson.

13 MR. TOCHKA: Correct.

14 THE COURT: So, you still need to
15 make a recommendation to me which is in
16 line with -- I do believe there's SJC
17 case law on this, so did you want to --
18 do you have somebody looking at this now?

19 MR. TOCHKA: No, I don't have
20 anybody looking at it. I checked with
21 another, with one of the other assistants
22 and I was told that he had researched it.
23 I don't have the case law, but he had
24 researched it and it definitely did not

1 merge because the jury having come back
2 with two separate theories. In any case,
3 Your Honor, in order not to prolong the
4 sentencing hearing at this particular
5 time, the Commonwealth would just move at
6 this point in time on the murder, first
7 degree, obviously that being a mandatory
8 sentencing of life in prison without
9 parole.

10 As for the robbery charge, Your
11 Honor, it would have been the
12 Commonwealth's recommendation -- it would
13 be the Commonwealth's recommendation if
14 it did not merge that it be for Mr.
15 Anderson eighteen to twenty years on the
16 armed robbery and an on and after
17 sentence on the life. Being that the
18 case, if it does merge, Your Honor, the
19 Commonwealth would recommend a life
20 sentence.

21 THE COURT: Sir, I can't impose a
22 sentence which is illegal, and it's
23 important --

24 MR. TOCHKA: I realize that, Your

1 Honor.

2 THE COURT: -- that you have some
3 support that you can give to me for this,
4 because I don't even know if a guilty
5 filed on the armed robbery is
6 permissible, so I cannot impose sentence
7 until I'm assured of this.

8 MR. TOCHKA: If the Court wishes
9 then, to take a short break and I can
10 check into that.

11 THE COURT: I think we should, I
12 think we should try to do that to make
13 sure that there aren't any difficulties
14 or problems with that.

15 MR. TOCHKA: I did in terms while
16 the Court was in the lobby, I did try to
17 check on it, so I'll just check on it
18 further..

19 THE COURT: Did either Mr.
20 Flaherty or Mr. Doolin want to offer some
21 comment on that?

22 MR. FLAHERTY: From my
23 perspective, Your Honor, is that it does
24 merge, it has merged on the theory of

1 felony murder and therefore the Court
2 should not sentence.

3 THE COURT: Well, I know we
4 shouldn't sentence. The issue is whether
5 one does something else with the armed
6 robbery conviction, dismissal or guilty
7 filed, I think those are the options.

8 MR. FLAHERTY: My understanding
9 is upon its merger it should be
10 dismissed.

11 THE COURT: Mr. Doolin, did you
12 have something?

13 MR. DOOLIN: I agree with Mr.
14 Flaherty. I think it does merge, Judge.
15 I've filed a motion for required finding.
16 I don't know if that's the appropriate
17 vehicle.

18 THE COURT: Why don't we just
19 take a brief recess and see if we can get
20 this straightened out. Thank you.

21 (Recess.)

22 THE COURT: All right, there are
23 two cases on point at least, one of which
24 says that when there is a felony murder

1 conviction as well as a conviction of
2 murder in the first degree under some
3 other theory, then the underlying felony
4 is considered a separate and distinct
5 crime, Commonwealth versus Jackson, and
6 that's at 428 Mass., 455 and Commonwealth
7 versus Morette at 432 Mass., 534,
8 addresses when the predicate felony is
9 merged in felony murder, the only
10 conviction of murder in the first degree,
11 the Court says that the conviction has to
12 be vacated and the indictment dismissed.
13 Did you find something different?

14 MR. TOCHKA: No, I didn't, Your
15 Honor. In light of that, with regard to
16 defendant Tanzerius Anderson, on the
17 armed robbery, the Commonwealth would
18 recommend an eighteen to twenty year
19 sentence at MCI Cedar Junction, and on
20 the firearm a four to five year sentence
21 concurrent with the eighteen to twenty.
22 The Commonwealth would recommend that
23 those sentences be served consecutively
24 with the first-degree murder charge.

1 With respect to Jason Robinson, the
2 Commonwealth would recommend a four to
3 five year sentence on the firearm to be
4 served concurrently with the conviction
5 of first-degree murder.

6 THE COURT: Thank you. Mr.
7 Flaherty?

8 MR. FLAHERTY: As to the murder
9 indictment, Your Honor, the defendant
10 understands the statutory penalty must be
11 imposed by this Court without discretion.
12 As to the armed robbery indictment,
13 actually with respect to the murder
14 indictment, Your Honor, I would ask that
15 the record reflect that that penalty is
16 imposed under the theory of extreme
17 atrocity or cruelty if the Court is
18 inclined to sentence on the armed
19 robbery. I would ask that the armed
20 robbery simply be a guilty filed and the
21 firearm be a guilty filed, that would be
22 the defendant's recommendation.

23 THE COURT: Thank you. Mr.
24 Doolin?

1 MR. DOOLIN: Your Honor,
2 respectfully, as to Jason Robinson, I am
3 in agreement with the Commonwealth's
4 recommendation of a concurrent sentence.
5 I would suggest to the Court that he's
6 twenty-one years old, he has lived in
7 Brighton his entire life. His family has
8 been in court throughout and has been
9 supportive of him. He went to the Boston
10 Public Schools. Respectfully, I think a
11 concurrent sentence based on the facts of
12 the case would be appropriate.

13 THE COURT: Thank you. Anything
14 more, Mr. Tochka?

15 MR .TOCHKA: Nothing, thank you,
16 Your Honor.

17 THE COURT: Thank you.

18 THE CLERK: Tanzerius Anderson,
19 please stand. The jury having returned
20 verdicts of guilty, sir, the Court in
21 consideration of your offense as set
22 forth on indictment number 2000-10777,
23 001, would order that you be committed to
24 Massachusetts Correctional Institution at

1 Cedar Junction for and during the term of
2 your natural life. The Court would
3 impose a \$60.00 victim-witness assessment
4 as to that indictment.

5 As to offense 002, the Court would
6 order that you be committed to
7 Massachusetts Correctional Institution at
8 Cedar Junction for a term of not less
9 than eighteen years nor more than twenty
10 years, that sentence to be served
11 concurrently with the sentence imposed on
12 offense 001.

13 As to offense 003, the Court would
14 order that you be committed to the
15 Massachusetts Correctional Institution at
16 Cedar Junction for a term of not less
17 than four years nor more than five years,
18 that sentence to be served concurrently
19 with offense 001.

20 The Court would deem to have served
21 whatever time you spent in custody
22 awaiting disposition of this matter and
23 notifies you of your right to appeal
24 within thirty days, sir. You stand

1 committed.

2 Jason Robinson, the jury having
3 returned a verdict of guilty as to
4 indictment number 2000-10975, 001, the
5 Court would order that you be committed
6 to the Massachusetts Correctional
7 Institution at Cedar Junction for and
8 during the term of your natural life.
9 The Court imposes a \$60.00 victim-witness
10 as to that indictment.

11 As to offense 004, the Court orders
12 that you be committed to the
13 Massachusetts Correctional Institution at
14 Cedar Junction for a term of not less
15 than four years nor more than five years,
16 that sentence to be served concurrently
17 with the sentence imposed on offense 001.
18 The Court would deem you to have served
19 whatever time you've spent in custody
20 awaiting disposition of those matters and
21 notifies you of your right to appeal
22 within thirty days.

23 As to offense 003, the Court would
24 order the guilty verdict vacated and the

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Court would order that indictment
dismissed. You stand committed, sir..

(Whereupon the hearing was concluded.)

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C E R T I F I C A T E

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I, Patricia S. Flaherty, a Notary

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Public in and for the Commonwealth of

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Massachusetts, do hereby certify that the

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foregoing record, Pages 1 to 22,

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inclusive, is a true and accurate

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transcript of my System Tapes to the

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best of my knowledge, skill and ability.

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In Witness Whereof, I have hereunto

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set my hand and seal this tenth day of

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June, 2002.

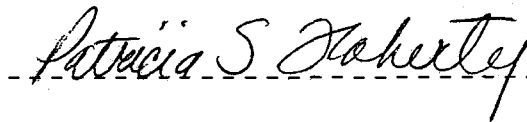
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PATRICIA S. FLAHERTY, Notary Public

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Official Court Reporter

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My Commission expires July 17, 2003