

1 A. Yes, I do.

2 Q. Do you know how many were washed that night?

3 A. It's -- I don't have the information with me. I could
4 find out. I do -- I do not know at this time.

5 Q. Okay, and how many of the employees does it take to wash
6 one of the trucks? Does it take both of them?

7 A. It would take both of them, yes.

8 Q. Okay. So if a truck is being washed between twelve
9 o'clock and midnight -- twelve o'clock midnight to sunrise the
10 following morning, both employees would be inside washing the
11 trucks?

12 A. That's correct.

13 Q. Okay. Do you all have security guards?

14 A. No. Not right now.

15 Q. No one's out there patrolling the premises to see if
16 there's anybody else up there?

17 A. No, there's not.

18 MR. FORD: Pass the witness.

19 MR. PRICE: No questions.

20 MR. FOGLEMAN: Nothing further.

21 (WITNESS EXCUSED.)

22 MR. FOGLEMAN: Your Honor, I've got one more, but I
23 think it would take some time.

24 THE COURT: Alright, ladies and gentlemen, with the
25 usual admonition not to discuss the case, you may stand

1 in recess until one o'clock.

2 (RECESS.)

3 THE COURT: Are you all ready?

4 MR. DAVIS: Your Honor, in regards to the State's
5 rebuttal we would rest at this time.

6 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
7 OF THE HEARING OF THE JURY.)

8 MR. FOGLEMAN: Your Honor, we do want to reserve the
9 right to---

10 MR. FORD: That's what---

11 MR. FOGLEMAN: We do want to reserve the right to
12 reopen if this test comes back.

13 THE COURT: Alright.

14 MR. WADLEY: What did you say?

15 MR. FOGLEMAN: We do want to reserve the right to
16 reopen if this test comes back in the morning since we
17 won't be doing anything else this afternoon.

18 MR. FORD: Are we done? We're not going to close
19 this afternoon?

20 THE COURT: Well, no, he's telling me---

21 MR. FORD: Are we on the record, Barb?

22 THE COURT: Yes. He indicated to you Monday or
23 whenever it was that -- Friday -- that there was a
24 laboratory report that they're waiting to get back so I'm
25 going to wait until in the morning to read the

1 instructions. We'll go over the instructions and hash
2 those out and do whatever else we need to do.

3 Have you all got anything else to do?

4 MR. WADLEY: Let me talk to Paul for a minute if I
5 could, Judge.

6 MR. DAVIS: Do you all have any surrebuttal?

7 MR. PRICE: No.

8 MR. FOGLEMAN: Do you all have any surrebuttal?

9 MR. WADLEY: I don't know yet--

10 MR. FOGLEMAN: --Okay.

11 MR. WADLEY: --We might.

12 THE COURT: Is there any reason we can't call the
13 jury in?

14 MR. FOGLEMAN: Call them in and tell them we've got
15 -- well---

16 MR. PRICE: They might have something--

17 MR. FOGLEMAN: --Your Honor, I would suggest you
18 tell them that you've got matters to take up with the
19 lawyers outside the presence and they can go home.

20 THE COURT: Sure. I think that applies to you all
21 real good.

22 MR. DAVIS: We do need to go over the jury
23 instructions one-by-one before we leave.

24 MR. PRICE: That's fine.

25 MR. FORD: We would renew our previously made Motion

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1 for a Directed Verdict now that the -- all evidence has
2 been presented in the case for the previous reasons
3 stated, your Honor.

4 MR. PRICE: Judge, we would also like to do the same
5 thing on behalf of Mr. Echols. Now that the entire case
6 is over with we would like to renew our Motion for a
7 Directed Verdict for lack of sufficiency of the evidence.

8 THE COURT: Both motions will be denied for the same
9 reasons previously stated. The Court's of the opinion
10 that a jury question has been formed.

11 MR. FOGLEMAN: Your Honor, I would like the record
12 to reflect that we had previously notified the defense in
13 regard to this potential new evidence and that we have
14 asked to have the opportunity if it comes back
15 positive---

16 THE COURT: --You'll be permitted to reopen tomorrow
17 morning for that purpose if it develops.

18 MR. DAVIDSON: Your Honor, we have not argued
19 anything regarding that. We may have an argument if it
20 comes back, but we have not made any objection, but if it
21 does--

22 THE COURT: --Well, I mean, I'll let you argue, you
23 know. My inclination would be that that's discretionary
24 with the Court and I'd be--

25 MR. FOGLEMAN: --That new evidence would only go to

1 -- to--

2 THE COURT: --Yes, I understand that.

3 Alright, I'm going to call the jury back in and then
4 we'll go over jury instructions the rest of the
5 afternoon.

6 Alright, call them back in.

7 (JURY ENTERING COURTROOM.)

8 THE COURT: Alright, ladies and gentlemen, I can
9 make this announcement to you. While you were waiting
10 both sides have now rested their case. The Court has
11 heard the customary motions and made rulings on those. I
12 do need some time to go over with the lawyers the
13 instructions because they may -- depending upon what we
14 do -- be complicated. They may be rather simple. But in
15 any event it's going to take us some time to hash those
16 out.

17 There is also a slim possibility that an additional
18 witness would be called in the morning that would take
19 maybe an hour at the most. But in any event I suspect
20 that the Court will be prepared to read the instructions
21 of law to you in the morning and that we'll commence with
22 the final arguments of the lawyers in the morning.

23 So again, with the customary and usual admonition
24 that you are not to discuss this case with anyone, or
25 attempt to find anything out about the case, you're free

1 to go until in the morning at nine-thirty.

2 You might also let the folks at home know that
3 tomorrow night may be rather late. We'll work until at
4 least a reasonable period of time tomorrow evening if
5 necessary and then, of course, we'll have the balance of
6 the week to finish it as well. So just let your home
7 folks know that there will be leftovers and they can warm
8 it up or whatever.

9 So you're free to go until in the morning at nine-
10 thirty.

11 (JURY LEAVING THE COURTROOM AT THIS TIME.)

12 THE COURT: We can go ahead and do it now. Well,
13 they're specifically requesting one oh -- I mean, one
14 eleven as far as Jason Baldwin is concerned.

15 MR. FORD: That's correct.

16 THE COURT: Alright.

17 You have to request it because if you don't request
18 it---

19 MR. FORD: --I understand.

20 THE COURT: ---it could be considered a comment on
21 the evidence---

22 MR. FORD: --I understand.

23 THE COURT: ---or comment on the failure for the
24 defendant to take the stand.

25 MR. FORD: I understand. We do request that it be

1 -- that it be given, your Honor. I know we're going
2 to---

3 COURT REPORTER: Are you going to be making a record
4 on the rest of this now, or are you just going---

5 MR. FORD: --Yeah, let's just wait---

6 THE COURT: Did you have something else?

7 MR. PRICE: Well, we just -- the instructions.

8 MR. FORD: Can we make these arguments in the
9 chambers outside the presence of the press and the
10 public?

11 THE COURT: Well, they would just raise Cain. I
12 don't see what difference it makes.

13 MR. FORD: It made a difference yesterday, Judge.

14 THE COURT: Well, that was a different subject
15 matter and it was required to be in camera. This is not.

16 MR. FORD: Okay. Come here, Jason.

17 DEFENDANT BALDWIN: (COMPLIES.)

18 MR. FORD: Can we turn the mike off, your Honor?

19 MR. WADLEY: Have them kill them as far as the press
20 room?

21 THE COURT: These are off.

22 MR. FORD: Your Honor, Jason here is standing at the
23 bench in front of -- in front of the Court and we want to
24 inquire in front of the Court on the record from Jason.

25 Jason, we had previously discussed with you -- and

1 this is simply for the purpose of instructions, your
2 Honor.

3 Have we discussed with you the under -- what is
4 meant by lesser included offenses?

5 DEFENDANT BALDWIN: Yes, sir.

6 MR. FORD: And that lesser included that you're
7 charged with capital murder.

8 DEFENDANT BALDWIN: Yes, sir.

9 MR. FORD: And that includes lesser included
10 offenses of first degree murder and second degree murder.

11 DEFENDANT BALDWIN: Yes, sir.

12 MR. FORD: And you understand that you have a right
13 to have the jury instructed on those -- you could in the
14 Court's discretion -- he could decide to instruct the
15 jury as to those lesser included offenses of first degree
16 murder and second degree murder if we requested it.

17 DEFENDANT BALDWIN: Yes, sir.

18 MR. FORD: Do you understand that?

19 DEFENDANT BALDWIN: Yes.

20 MR. FORD: Are you asking that the Court instruct
21 the jury only on capital murder?

22 DEFENDANT BALDWIN: Yes, sir.

23 THE COURT: Do you want to be heard on that?

24 MR. FOGLEMAN: Your Honor, we are requesting the
25 lesser included as to first and second.

1 THE COURT: I'm going to give the lesser included
2 instructions of first degree murder and second degree
3 murder.

4 MR. PRICE: Judge, I---

5 MR. DAVIDSON: Your Honor, we would like to make an
6 argument.

7 THE COURT: Are you making a similar motion?

8 MR. PRICE: Yes, sir, we're making a similar motion
9 on behalf of my client.

10 Damien, you want to come around?

11 DEFENDANT ECHOLS: (COMPLIES.)

12 MR. PRICE: Judge, on behalf of Mr. Echols we have
13 discussed with him the -- we've gone over the jury
14 instructions on several occasions and we've talked to you
15 about the advantages and disadvantages and there's no
16 good answer one way or the other, but after discussions
17 with us is it your opinion to only give the capital
18 murder jury instructions on all three of the victims?

19 DEFENDANT ECHOLS: Yes.

20 MR. PRICE: And not -- specifically not to give the
21 lesser included instructions on first degree and second
22 degree?

23 DEFENDANT ECHOLS: Right.

24 MR. PRICE: Okay.

25 MR. DAVIDSON: Did anybody force you or anything to

1 make that decision?

2 DEFENDANT ECHOLS: No.

3 MR. DAVIDSON: You made that of your own free will?

4 DEFENDANT ECHOLS: Yes.

5 MR. PRICE: And we've actually been talking about
6 this for a while now?

7 DEFENDANT ECHOLS: Yes.

8 MR. PRICE: Judge, the only citation I'd like to
9 quote where the defendant denies an act at all. There is
10 no rational basis for lesser included offense
11 instructions. Dolby versus State, 290 Ark. 408, 720
12 S.W.2d 694, a nineteen eighty-six case.

13 MR. DAVIDSON: Also Corley versus State and Frye
14 versus State.

15 MR. FORD: Your Honor, we would likewise -- the
16 State has charged him with capital murder not with first
17 degree murder and not with second degree murder. It's
18 typical that the lesser included offenses are given at
19 the request of the defendant and not at the State of
20 Arkansas. The State of Arkansas would request that they
21 give these lesser included offenses and we would like to
22 be able to argue to the jury that the State of Arkansas
23 does not even believe it has proven the charges of
24 capital murder because they are requesting that you
25 consider first degree murder which is a burden -- it

1 causes less burden on them. And that they don't even
2 believe they've met the burden of proof on the charge of
3 capital murder.

4 THE COURT: Well, that would be an impermissible
5 argument and the Court would not allow such an argument.
6 That would be totally and completely improper.

7 What is the State's position?

8 MR. FOGLEMAN: Well, the State's position is -- is
9 that under -- there was a case here in Jonesboro, I don't
10 remember the name---

11 THE COURT: --One of them is Ross Allen Milburn
12 versus State where it was reversible error for the Court
13 to not give the lesser included instruction when
14 requested by the State and over the objection of the
15 defendant. It's a nineteen seventy-eight case, I believe
16 -- maybe a little earlier than that. There were two of
17 them so it was the first Ross Allen Milburn case.

18 MR. FOGLEMAN: Your Honor, on another thing while
19 we're up here. The State would move in limine at this
20 time prior to closing arguments for the Court to instruct
21 defense counsel for both sides not to argue in relation
22 to Inspector Gitchell's saying that the case was an
23 eleven on a scale of one to ten. There's no evidence in
24 the record that he made that statement so they would be
25 arguing matters outside the record. Mr. Ford stated in

1 his -- used that reference in his opening statement.
2 There's been no proof in the record in regard to that
3 statement and so we would request an instruction of the
4 Court that -- in limine -- that Mr. Ford nor Mr. Wadley
5 nor Mr. Davidson nor Mr. Price argue that statement.

6 THE COURT: You'll be -- all counsel -- State and
7 defense -- will be limited to any reasonable inference
8 that can be made based upon the testimony received in
9 evidence and any argument based upon testimony not in the
10 record will be improper and you're cautioned against
11 making such arguments.

12 MR. FOGLEMAN: Your Honor, we're asking---

13 THE COURT: --I don't think I ruled on the issue. I
14 might have, but the Court feels that the evidence in this
15 case would justify and warrant an instruction of capital
16 murder, first degree murder, and second degree murder,
17 and therefore, if the State's requesting it then I will
18 give those instructions.

19 MR. FORD: Note our objection, your Honor.

20 MR. FOGLEMAN: Your Honor, we are asking
21 specifically in relation to that particular statement
22 since Mr. Ford mentioned it in his opening statement---

23 MR. FORD: --I don't have any problem with that,
24 your Honor. It's not in the record.

25 THE COURT: Well, I'm warning you that you're to

1 confine your arguments to any reasonable inferences that
2 can be raised---

3 MR. PRICE: Alright.

4 THE COURT: ---or drawn from the evidence adduced in
5 the trial.

6 MR. FORD: Opening statement is what you think is
7 going to come out, but I thought that may very well come
8 out in this trial and it didn't, and I agree that that
9 argument.

10 MR. FOGLEMAN: We were hoping you would ask. You
11 showed much more restraint than we expected.

12 THE COURT: Any reason to keep them here further?
13 Do you want me to ask them about their satisfaction with
14 your representation for the record?

15 MR. FORD: That would be nice, your Honor.

16 THE COURT: Alright, Mr. Baldwin and Mr. Echols, I
17 need you to stand and let me address a couple of
18 questions to you.

19 Each of you have been appointed two public defenders
20 or two attorneys to represent you free of charge to you.
21 Are you satisfied -- each of you -- as to their
22 representation, the arguments they've made, and the
23 efforts that they've put forward in the cases in your
24 behalf at this point?

25 Mr. Echols, are you satisfied?

1 DEFENDANT ECHOLS: Yes, sir.

2 THE COURT: Mr. Baldwin?

3 DEFENDANT BALDWIN: Yes, sir.

4 THE COURT: Do you have any complaint or criticism
5 that you want to voice at this time whatsoever?

6 DEFENDANT BALDWIN: No, sir.

7 DEFENDANT ECHOLS: No, sir.

8 THE COURT: Alright. Alright, you may escort them
9 back to custody.

10 (DEFENDANTS EXITING COURTROOM AT THIS TIME.)

11 THE COURT: Alright, gentlemen, the Court's going to
12 give A. M. C. I. One Oh One through One Eleven and the
13 record should reflect that One Eleven was specifically
14 requested. Unless you've got any objections to those,
15 I'm ready to proceed to the next instruction.

16 MR. DAVIS: When you say "One Eleven", Judge---

17 THE COURT: That's the no inference is to be drawn
18 from the defendant's failure to take the stand.

19 Alright, I'm down to A. M. C. I. Four Oh One, the
20 definition of accomplice and joint responsibility and it
21 seems to be appropriate and tracks the statute to me.

22 MR. DAVIS: Judge, what about A. M. C. I. Two Oh
23 Two?

24 THE COURT: Two Oh Two, if I skipped it, that will
25 be given, too. I believe that's the one on prior

1 inconsistent statements.

2 MR. PRICE: Yes.

3 MR. DAVIDSON: We would like that, your Honor.

4 THE COURT: Well, I'm going to give it, yes.

5 MR. DAVIS: Judge, One Oh Two needs to be given.
6 It's not in that standard sheet.

7 THE COURT: What is One Oh Two?

8 MR. FORD: Yes, we need -- if two or more defendants
9 are tried separately.

10 THE COURT: Alright, somebody prepare that, too.

11 I indicated I was going to give all of them which
12 included One Oh Two, but I don't have it here.

13 MR. FORD: We'll give One Oh One through One Eleven.

14 THE COURT: Right.

15 MR. FORD: Okay.

16 THE COURT: Okay. We're going to give Two Oh Two.
17 I've giving Four Oh One -- A. M. C. I. Four Oh One as
18 drafted.

19 MR. FORD: Your Honor--

20 MR. DAVIDSON: Your Honor, we would object to that.
21 We can say that there is absolutely no testimony as to
22 any accomplice activity at all. There has been no -- no
23 testimony at all---

24 MR. FORD: Your Honor---

25 MR. DAVIDSON: ---regarding anybody acting as an

1 accomplice or anybody else.

2 MR. FORD: Your Honor, before we -- before we get to
3 that, we would -- we are going to request A. M. C. I. Two
4 Oh Three, evidence that a witness has previously been
5 convicted of a crime may be considered for the purpose of
6 judging the credibility of the witness because of the
7 convictions of Michael Carson.

8 THE COURT: Okay, fix it.

9 MR. FORD: A. M. C. -- with respect to A. M. C. I.
10 Four Oh One, on behalf of Jason Baldwin, we would object
11 to the giving of that instruction, your Honor. There has
12 been no testimony whatsoever of any actions together.
13 None. Not one witness. Not one witness has even put
14 them together on that day -- May the fifth -- not one
15 witness.

16 MR. FOGLEMAN: Your Honor, the evidence has been
17 that -- circumstantial evidence has been from which the
18 jury could draw the inference that there were multiple
19 perpetrators of the crime. And, your Honor, we would
20 submit that that justifies an accomplice instruction.

21 Anytime they act -- two or more people act in
22 concert in the commission of a crime they're accomplices.

23 MR. DAVIS: Your Honor, also in that light, there's
24 a statement of Michael Carson and also the statement of
25 the girls at the ballpark that they both made statements

1 admitting committing it.

2 MR. FORD: Wait -- wait a minute.

3 MR. DAVIS: I think -- and I think logical inference
4 is that when they both made the statement admitting
5 commission of the crime, then it didn't occur at two
6 separate time periods when they were separate and apart.
7 I think we can logically argue that they -- that they
8 were both together and acting in concert when the crime
9 was committed.

10 MR. FORD: Your Honor, this Court has given multiple
11 instructions regarding must consider the evidence
12 separately. This witness's testimony can only be
13 considered against Damien. This witness's testimony can
14 only be considered against Jason.

15 You've allowed us in voir dire and in opening
16 statements to talk about two separate trials in which
17 there is no evidence of any accomplice liability.

18 THE COURT: Even if they were tried separately this
19 would be an appropriate instruction under the
20 circumstances of the case inasmuch as you've got one what
21 we've been characterizing as a jailhouse confession and
22 two, the two girls' testimony indicating that a
23 confession or an admission on the part of Mr. Echols.
24 When you take those acts -- while you view them
25 separately -- while you take them collectively a

1 reasonable inference and argument could be made that they
2 were on a joint mission and that they were accomplices
3 each of the other, and I'll give Four Oh One over the
4 objection of both defendants.

5 MR. PRICE: Well, Judge, but Four Oh One -- it's my
6 understanding Four Oh One is if it's agreed that there --
7 if it is not in dispute that they were accomplices.

8 MR. FORD: Four Oh Two -- there is a -- there is a
9 Four Oh Two. It's undisputed status.

10 MR. FOGLEMAN: Your Honor, that's when they testify.

11 MR. PRICE: Okay.

12 THE COURT: It's not appropriate in this case.

13 MR. PRICE: Is Four Oh One the one where---

14 MR. DAVIS: Right, disputed. Four Oh One is the
15 generic accomplice instruction where it doesn't matter
16 whether there is testimony--

17 THE COURT: --Four Oh One is the appropriate one if
18 I give it at all and I think from the circumstances of
19 the facts as adduced that it's appropriate.

20 MR. FORD: So does that mean that the State can
21 argue that evidence against Jason Bald -- Jason --
22 evidence against Damien Echols applies to Jason Baldwin
23 and that he can be convicted on statements and acts of
24 Damien Echols?

25 MR. DAVIS: No.

1 THE COURT: No, that's not what I said. I said when
2 you take the two separately that to make any sense out of
3 it, it would have to be logical that the murders
4 occurred, first of all, simultaneously and at the same
5 time -- at the same location -- and inasmuch as you have
6 a statement attributed to each of the defendants, that
7 it's reasonable to assume that they were accomplices each
8 of the other.

9 MR. FORD: But this instruction states that the
10 actions of one party are imputed to the other and that
11 Jason Baldwin can sit over in that chair and be convicted
12 based on what was done wholly by Damien Echols.

13 THE COURT: Only if the jury finds that they aided
14 or directly participated in the offense with the purpose
15 of facilitating, aiding or agreeing to aid or attempting
16 to aid the other person in the planning or committing of
17 the offense. It's rather clear.

18 MR. PRICE: Judge, if I---

19 MR. FORD: There's no evidence in the record on any
20 one of those factors.

21 THE COURT: That's something you'll be permitted to
22 argue.

23 MR. PRICE: Judge, I've got two points to make.
24 Number one, I raised this four oh -- this accomplice
25 instruction as another basis for our objection to the

1 cases not being severed. Because if the cases had been
2 severed the statement of Jason Baldwin -- the jailhouse
3 snitch would not have been admissible at the trial of Mr.
4 Echols and that they would not be able to prove anything
5 about accomplice.

6 THE COURT: Well, I think you can clearly argue to
7 the jury that the confessions in and of themselves apply
8 only to the particular defendant. But when you---

9 MR. PRICE: --But -- but if -- if -- my argument,
10 Judge -- I would like to go ahead and make it -- is that
11 if the Court would have granted a severance then we
12 wouldn't even have had the testimony of the jailhouse
13 snitch, Mr. Carson.

14 THE COURT: You would have still had a Four Oh One
15 argument given.

16 MR. FORD: Was the Four Oh One---

17 THE COURT: --That they weren't charged alone.

18 MR. FORD: ---instruction given in the trial of
19 Jessie Misskelley?

20 THE COURT: Yes, it was.

21 MR. PRICE: But, Judge, besides Four Oh One, we also
22 -- the Court would have to give Four Oh Two, that an
23 accomplice is undisputed or Four Oh Three, the accomplice
24 status is in dispute and there's still corroboration
25 required.

1 THE COURT: Fix me up Four Oh Three.

2 MR. PRICE: Four Oh Three.

3 MR. FOGLEMAN: Your Honor, that only applies when an
4 accomplice testifies---

5 MR. FORD: --Well, Damien got up there.

6 MR. FOGLEMAN: ---against the other one.

7 MR. DAVIDSON: No. This instruction is to be given
8 when the alleged accomplice has testified and the
9 sufficiency of the corroborating evidence presents an
10 issue of fact for the jury. That's exactly what we have.

11 MR. FOGLEMAN: No.

12 MR. DAVIDSON: And it doesn't say anything about
13 meaning when one testifies against the other. It's
14 talking about corroborating evidence.

15 MR. FOGLEMAN: Well, what are you corroborating if
16 you're not corroborating his testimony against the other?

17 THE COURT: Well, you can fix the Four Oh Three for
18 consideration, but I don't think it's applicable. But
19 anyway, fix it and we'll take a look at it.

20 That brings us down to Three Oh One, Three Oh Two,
21 Fifteen Oh One, Fifteen Oh Two, and Fifteen Oh Three.

22 MR. FORD: Your Honor, we would previously -- as
23 previously stated, we would object to the giving of the
24 lesser included offenses and thus object to Three Oh One,
25 Fifteen Oh -- Three Oh Two, Fifteen Oh Two, Three Oh Two,

1 and Fifteen Oh Three. We feel the only instructions
2 should be Fifteen Oh One which is the -- I believe that's
3 the number on the capital murder.

4 THE COURT: I've already ruled on that and it's the
5 Court's belief that the facts as adduced from the
6 testimony at trial it would be appropriate for the Court
7 to instruct upon the offenses of capital murder, first
8 degree, and second degree murder. And whether I do it
9 all on the same page or whether you have them separate
10 doesn't really matter to me, as long as you've got the
11 transitions in there.

12 A. M. C. I. Fifteen Oh Seven is premeditation and
13 deliberation. I'm going to give it unless you don't want
14 it.

15 MR. PRICE: No, we have no objection to that
16 instruction, Judge.

17 MR. FORD: Eighty-one Oh One is proper are far as---

18 THE COURT: Okay.

19 MR. DAVIS: Is that numbered incorrect? I don't --
20 that came out of the last trial.

21 MR. FORD: It's Eight Oh One, isn't it?

22 THE COURT: It's not Eighty-one Oh One. I don't
23 know what it is, but it is an appropriate instruction.
24 We need to correct the number on it. I think it's---

25 MR. PRICE: Which one is it?

1 MR. FORD: It's the one about if you find them
2 guilty of one or more counts of capital murder, first
3 degree or second degree murder--

4 MR. DAVIS: --Are you all objecting to that?

5 MR. PRICE: No, I just asked what the number was.

6 THE COURT: I'm not sure what the number is.

7 MR. DAVIS: The number's not right on it, I know.

8 THE COURT: I don't think it is either.

9 MR. FORD: Your Honor, we would---

10 THE COURT: Six Oh Oh Two is the bifurcated and they
11 are not to consider punishment.

12 MR. FORD: That's correct.

13 THE COURT: That's basically it.

14 MR. FORD: Six Thousand Three.

15 MR. FOGLEMAN: I want to look at the verdict form?

16 MR. FORD: Your Honor, the verdict forms, I will
17 have them retyped and proffered. We would like them to
18 -- to be per count that have been charged.

19 THE COURT: Alright.

20 MR. FORD: And we would like for them to have one
21 verdict form for each young boy---

22 MR. DAVIDSON: --For each--

23 MR. FORD: ---or for each boy -- for Michael Moore,
24 for each---

25 MR. DAVIDSON: --For each defendant, also.

1 MR. FORD: ---yes, so there would be six verdict
2 forms and that we would prepare to where each -- we
3 find---

4 THE COURT: There will be six verdict forms for each
5 of three charges. That will be eighteen verdict forms.

6 MR. FORD: No, sir, there will be three for Jason.
7 In other words, they would have four places where they
8 could mark. They could either find him guilty of
9 capital, guilty of first, guilty of second on Michael
10 Moore, or not guilty on Michael Moore. That would be one
11 form.

12 THE COURT: Alright, I'll do it that way.

13 MR. FORD: And then Stevie Branch, capital, first,
14 second and not guilty.

15 THE COURT: That's alright.

16 MR. FORD: Do you all follow what I'm saying?

17 MR. PRICE: Yes.

18 THE COURT: Yes, that's fine, fix them.

19 MR. FORD: Alright, we'll prepare those then, Judge.

20 THE COURT: Anything else?

21 MR. FORD: Let me make sure I've got the numbers
22 then. We're going to give one -- One Oh One through One
23 Eleven -- all through that, right?

24 THE COURT: All of them.

25 MR. FORD: Okay.

1 MR. DAVIS: Judge, one thing, if Mr. Ford is going
2 to do that on those pertaining to his client, then if he
3 could also prepare similar verdict forms -- or
4 somebody---

5 MR. FORD: I'll do them all. I'll do them.

6 MR. DAVIS: Okay.

7 MR. FORD: That way they'll all look on the --
8 they're on the same printer. I'd be happy to do it.

9 MR. DAVIDSON: Are you going to do them for us, too?

10 MR. FORD: I'll do them all for you, too. That will
11 be fine.

12 MR. DAVIS: And if we could get copies of all of
13 those, too.

14 MR. FORD: We'll get it done this afternoon before
15 they go home.

16 Then we're going to give -- what was it -- Two Oh
17 Two.

18 MR. DAVIS: I think it was One Oh Two.

19 MR. PRICE: One Oh Two.

20 THE COURT: One Oh Two is the one you don't have but
21 that's where there's two or more defendants charged
22 jointly and that should be given.

23 MR. FORD: Okay.

24 Then we're going to to go to Two Oh Two---

25 THE COURT: Two Oh Two and Two Oh Three.

1 MR. FORD: Two Oh Two. Two Oh Three.

2 THE COURT: Then you're actually going to have a
3 Three Oh One, a Three Oh Two.

4 MR. FORD: Three Oh One. Three Oh Two and then it's
5 Fifteen Oh One?

6 THE COURT: Four Oh One and a Fifteen Oh One,
7 Fifteen Oh Two, and Fifteen Oh Three.

8 MR. FOGLEMAN: Your Honor, the accomplice
9 instruction ought to come before the---

10 THE COURT: I'll read it before I read---

11 MR. FORD: ---before you start reading the three
12 hundreds and fifteens.

13 THE COURT: Yes.

14 MR. DAVIS: And the Three Oh One and the Three Oh
15 Twos are all combined in there with the---

16 THE COURT: I think the way you've got it is fine in
17 here frankly.

18 MR. FORD: Yes, I like the way that's done.

19 THE COURT: The only thing you really need to change
20 is those first -- One Oh One through One Eleven and the
21 number on what we've got as Eight One Oh One.

22 Any reason to keep Barbara here?

23 MR. FORD: No, sir, I don't think so.

24 THE COURT: Okay, Barb, see you tomorrow.

25 (ADJOURNMENT.)