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8/10/98

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CA 96-11598-MEL

LASKER, Sen.J.

JASON DAVIS

v.

EILEEN P. ELIAS, ALAN ZAMPINI, EDWARD M. MURPHY,
PAUL RENNIE, RICHARD GILLIS, MICHAEL HANLON,
JOYCE WEIGERS, JEFFREY FLOWERS, LEONARD FITZPATRICK,
NICHOLAS L. TASSONE, FRANTZ JOSEPH and PHILLIP BRAGG

Afternoon Session
Thirteenth Day of Trial

APPEARANCES:

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Courtroom 8
Federal Courthouse
Boston, Massachusetts

October 19, 1998

Computer-Aided Transcription

James E. McLaughlin, Official Court Reporter
1 Courthouse Way, Room 5205, Boston MA 02210 (617)261-6626

Jason H. Davis, sworn

Direct Examination by Mr. Christopher Perry

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THE LAW CLERK: Please be seated, and state and spell your full name for the record.

THE WITNESS: My name is Jason H. Davis, H for Harland.

Q Jason, where do you live?

A I live at 36 South Street in Framingham, Apartment 2.

Q Is that an apartment in a DMH care facility?

A Yes. It's 24-hour staffing.

Q How many staff people are there, if you know, offhand?

A It's usually two, one to two staff. Sometimes staff can't be there at all times, it's a new program and it's still kind of rooting themselves.

Q All right. I ask you, if you could, to speak up to make sure the court reporter can hear you.

What's your date of birth, Jason?

A 8/10/65.

Q Where were you born?

A Austin, Texas.

Q And at some point did you come to the State of Massachusetts?

A Yes, I did.

Q Do you recall when, approximately?

A When I was four years old.

1 MR. MESHNICK: Objection. I'll withdraw it.

2 THE COURT: Overruled.

3 A He made reference to the fact that there's no way -- I
4 said: I'll just go and have a cigarette. And he said there's
5 no way you're going to have a cigarette. He said: What are
6 you going to do? Kick our asses?

7 THE COURT: Who said that?

8 THE WITNESS: Paul Rennie said that. And I said,
9 like, Look what I could do, and I was being foolish. And he
10 took his arm and he wrapped around my neck and he threw me
11 down. As first I didn't know who it was. They had me by the
12 neck.

13 Q Let me stop you there. When he put his arm around your
14 neck, did you have his back -- did you have your back towards
15 Paul Rennie?

16 A Yes, I was laying on my stomach.

17 Q When you first did that kick against the wall, Jason, was
18 your back towards the door of the Open Quiet Room or the
19 seclusion room, I should say?

20 A It was towards the -- it was this way, and the door was
21 right here.

22 Q And when he put his around your neck, what happened after
23 that?

24 A He said, he said, like, he was grating his teeth, and he
25 said: Are you going to walk, or are we going to have to carry

1 you? And that's all he said. He didn't say anything about
2 where we were going to go or what was going to happen. He
3 said: Are you going to walk, or are we going to have carry
4 you?

5 Q When you were on the mat, did Paul Rennie do anything to
6 you?

7 A I, I said I'll walk.

8 Q All right.

9 A And then when I got up, he said: You're not so tough to
10 take down or something like that. He said: I thought you
11 were tough.

12 Q Okay.

13 Did he choke you when you were on the mat?

14 A Yes.

15 Q And describe the choke for us, if you could? I mean, was
16 it around your neck?

17 A It was just headlock and my larynx was at right here.

18 Q And was there any other person in the room at this time?

19 A I, I don't -- I couldn't tell. I was, I was face down.

20 Q And did Nick Tassone come in at some point?

21 A I don't recall.

22 Q All right.

23 And did you stand up?

24 A I got up. And he said: You're not so hard to bring
25 down. I thought you were tough. And Paul, you know, and he

1 was my friend. He would not -- the way that he was talking me
2 wasn't right.

3 Q How did you feel when Paul was talking to you like this?

4 A It wasn't Paul. It was like he was someone else.

5 Q All right. At some point did you start to move -- well,
6 strike the question.

7 Did they transport you from the Open Quiet Room or
8 start to transport you from the Open Quiet Room to the 4 Point
9 Room?

10 A I walked out, and I kicked, because I was afraid, you
11 know. It wasn't Paul, you know, he was acting different
12 because of Phil because Phil was the big, you know, the big,
13 cool guy, the one that shot someone or something like that.
14 Everybody said he shot and killed someone. That's what I
15 heard.

16 Q Did they tell you that they were going to take you to
17 the four-point bed when you were inside the --

18 A They didn't -- they said: Are you going to walk --

19 THE COURT: Excuse me. Really, that's too much
20 leading. You want to ask him what they said to him.

21 Q All right. When you were still in the Open Quiet Room,
22 did somebody tell you that they were going to transport --

23 THE COURT: No, not "did somebody tell you." Did
24 they tell you anything? If so, what did they tell you?

25 Q When you were in the Open --

1 A They said: Are you going to walk, or are we going to
2 have to carry you?

3 THE COURT: To where?

4 THE WITNESS: The didn't say where. They just said:
5 Are you going to walk, or are we going to have to carry you?

6 Q And when you just got outside over the threshold of the
7 doorway, did Paul Rennie say anything else to you?

8 A He said that I wasn't so hard to take down. He said: I
9 thought you were tough.

10 Q And what did you do at this point, Jason?

11 A I spun and kicked him.

12 Q All right. And why did you spin and kick Paul Rennie?

13 A Because I was afraid of him.

14 Q All right.

15 A There was no way that I was going to let them strap me to
16 that bed. There was no way that I was going to let that
17 continue. But at the same time there was like no way out. I
18 couldn't have gotten out of there or ran away. I couldn't
19 have ran away. Where was I going to run to?

20 Q Were there any other people in the hallway that you saw
21 when you came out of the Open Quiet Room after you kicked Paul
22 Rennie? Did you see any other people?

23 A I saw people running out. They were coming out from
24 everywhere, flying out, like, you know, just like literally
25 flying out, and I was freaking out.

1 Q Let me ask you, Jason, you said you were afraid, you
2 didn't want to let them strap you down on the bed. What were
3 you afraid of, Jason?

4 MR. SHUGRUE: Objection.

5 THE COURT: I'll allow it.

6 Q What were you afraid of Jason?

7 A Well, every time that someone ever got restrained they
8 would scream. And they would, they would get us all to go in
9 the room and all you can do is hear them scream.

10 THE COURT: Excuse me.

11 Ladies and Gentlemen, I want to instruct you about
12 this. This is, I'm allowing the witness to tell you what is
13 in his mind. But that doesn't necessarily mean that was
14 fact. I don't know whether it was or wasn't.

15 Q All right, Jason, you've got to keep it to what you were
16 thinking?

17 THE COURT: No, he did. He answered appropriately,
18 but I wanted to explain to the jury that's just what was in
19 his mind.

20 Q Okay. Now, you talked about being afraid. What were you
21 afraid of, Jason, when, you know, they said that they were
22 going to take you somewhere? What you were afraid of, Jason?

23 A I was afraid they'd strap me down and I wouldn't be able
24 to defend myself. But at the same time, I was thinking two
25 things, I can't defend myself, I can't run. What am I

1 supposed to do? I didn't know what to do.

2 Q All right.

3 And did you see other employees in the hallway area
4 after you kicked Paul Rennie?

5 A Yes.

6 Q All right. How many employees did you see?

7 A They were all over the place.

8 Q All right. And did they put you down on the floor at
9 some time, Jason?

10 A Yes, they did.

11 Q All right. And what did you go down, did you go down
12 face first, or was your face going towards the ceiling?

13 A My faceup.

14 THE COURT: I'm sorry, "your face" what?

15 THE WITNESS: Faceup.

16 Q And what happened next, Jason?

17 A They were on my arms and my legs, and I was held spread
18 eagle down. And they were like shuffling around. And all of
19 a sudden I just felt booming, feelings, and boom; it was like,
20 like thunderous noises, and I was, like, blackening out. And
21 I kept -- it was weird. I don't know how to talk. I can't
22 explain it. Sometimes it comes back to me and I relive it.

23 Q Were you getting punched in the face?

24 A I saw Phil Bragg's face with his glasses hanging off his
25 face.

1 Q And did you see punches coming from Phil Bragg?

2 A Yes.

3 Q Do you know how many times you got punched in the face,
4 Jason?

5 A It was, it was over and over and over again. It was like
6 it would never stop. And then I was calling --

7 Q Did --

8 A -- I was calling for help and nobody was stopping them
9 and they kept hitting me. I didn't know when it was going to
10 stop. Nobody ever told me when it was going to stop. I felt,
11 I felt the blood; it was, you know, it was coming down my
12 face, and then he stopped. And you could hear Nick saying:
13 It's going to be all right. Nick kept saying: It is going to
14 be all right. And then he said he had my goal. He said it's
15 over now.

16 THE COURT: Who said that?

17 THE WITNESS: Nick.

18 THE COURT: Do you want to take a rest?

19 THE WITNESS: Yes.

20 THE COURT: Okay. We'll take a ten-minute recess.

21 [Whereupon, the jury was excused.]

22 (Recess.).

23 [Whereupon, the jury entered the courtroom.]

24 THE COURT: Please be seated, everyone. The jury had
25 some difficulty deciding this matter, so I exercised my

1 responsibilities and decided we will conclude with Mr. Davis
2 today and hear the last witness tomorrow morning. And I have
3 promised the jury they'll be out of here by 11 o'clock
4 tomorrow morning.

5 Mr. Perry.

6 MR. CHRISTOPHER PERRY: Thank you, your Honor.

7 Q Jason, we're almost done, just a few more questions.

8 You had testified before that you were screaming when
9 you were on the floor during the course of the beating by Phil
10 Bragg. Can you tell us, were you screaming, Jason, was it a
11 loud scream?

12 A It wasn't -- it was a yell, not a scream.

13 Q Okay. It was a yell?

14 Were you able to recall what you were yelling?

15 A I was yelling for help. And I could hear Dean yelling,
16 but he didn't stop it or anything.

17 Q All right. Do you know where Dean was at this time?

18 A No. I just heard him yelling, saying that -- he was
19 yelling, saying --

20 MR. RICCIARDONE: Objection.

21 THE COURT: No, I'll allow him to say he was
22 yelling.

23 Q Did Phil Bragg say anything to you when you were on the
24 floor?

25 A He said this is what you wanted, this is what you get, or

1 what you got. I don't remember the exact words.

2 Q Did Joyce say anything to you?

3 MR. SHUGRUE: Objection, Judge, he's leading.

4 THE COURT: Sustained.

5 Did anyone else say anything?

6 Q Did anyone else say anything?

7 A Joyce Weigers was saying something. I heard Gregg Plesh
8 yelling or something at Joyce Weigers. And Joyce Weigers was
9 -- he was yelling at her to make them stop what they were
10 doing, and she refused to.

11 MR. SHUGRUE: May that be stricken, your Honor?

12 THE COURT: Yes. What Mr. Plesh said is hearsay. I
13 mean, you can ask Mr. Plesh.

14 Q Did you at that point get taken up off the floor, Jason?

15 A He -- the hitting stopped, and then they turned me over.
16 They were discussing whether I should be brought upside down
17 or whether I should be brought upwards. And they brought me,
18 they took me, my arms, and they hog-tied me and they carried
19 me by my legs and my feet.

20 Q Did you see anything on the floor, Jason?

21 A There was blood. There was blood everywhere, all over my
22 face and my eyes.

23 Q Was there blood on your shirt?

24 A Not on my shirt, no, not that I recall. It was just
25 blood on my eye, around my eye, like that, and it was all

1 crushed up around the eyes.

2 Q Did you go into the 4 Point Room, Jason?

3 A They put me in the 4 Point Room, facedown. And I was
4 bleeding profusely out of my nose. The blood was just gushing
5 out of my nose.

6 Q Were you face down?

7 A Yes.

8 Q And were all four straps on you at that point?

9 A Yes.

10 Q And tell us what if any problems you had breathing while
11 you were on the four-point restraint table?

12 A I couldn't breathe. I kept moving my face like that, and
13 it hurt really bad. So I moved my face like that and it hurt
14 really bad, so I put my face forward and I started to drink my
15 blood.

16 Q And why did you drink your blood, Jason?

17 A Because I couldn't breathe.

18 Q And at some point did some people come into the room?

19 A I was struggling and they didn't know why I was
20 struggling. And they were asking me why I was struggling.

21 THE COURT: You don't know who it was?

22 THE WITNESS: Who was what?

23 THE COURT: That asked you?

24 THE WITNESS: Oh, I'm sorry, I don't recall who it
25 was. They, they did release one of my arms, and I pointed

1 down the hallway towards the bathroom. And they took me down
2 to the bathroom. And they were, they were black gentlemen
3 that were doing it and they had accents. I don't know what
4 kind of accents. I think Haitian or something. And they were
5 saying: What is it that he wants? What does he want? And I
6 kept pointing towards the bathroom, and I couldn't talk. And
7 then when I got into the bathroom I started to vomit blood,
8 and they were laughing at me.

9 Q Do you know who the people were, Jason, who were laughing
10 at you? Do you know their names?

11 A No, I don't. They thought it was funny because I didn't
12 know what I wanted to do.

13 Q When you went in on the four-point table, Jason, was
14 there a sheet on that?

15 A On the four-point table?

16 Q Yes.

17 A No.

18 Q When you went in the first time, though, when they put
19 you down, before they put down, did you see a sheet?

20 A Yes, there was a blood-soaked sheet. And the blood
21 soaked through on to the mattress and there was a puddle of
22 blood on mattress.

23 Q Did somebody take the sheet off?

24 A What happened was they, they, after they did that, I
25 went -- they escorted me back to the 4 Point Room and returned

1 me back in the position on to the bloody sheet and then just
2 laid me on the sheet, and then they left. There was nobody in
3 the room. And what was the question?

4 Q Did somebody take the sheet off, Jason?

5 A Oh, and then Nick Tassone and Sheila came in and uncuffed
6 me and sat me up. And Sheila grabbed the sheets off really
7 fast. And I heard over the PA system someone calling for
8 Phil -- or for Kermit Brown and a couple of other people.
9 They were calling for them because they knew that they were in
10 the building and they just happened to be on their way to
11 where it happened. And Sheila took the sheets off and she
12 sprayed, wiped the blood up, and sprayed with disinfectant
13 where the blood was. And I don't think -- she was trying to
14 hide it or anything. She just didn't want me to see it. So I
15 sat up. And Sheil -- Nick gave me an ashtray and lit a
16 cigarette, and pack of matches, and lit a cigarette. And Nick
17 was saying over and over again: I don't believe it. He
18 said: I don't believe it. And he was walking back and forth,
19 and he was saying: I don't believe it.

20 Q Did you talk to Nick about this thing after it happened?

21 A I asked him why he won't help me and why he wouldn't help
22 me. Everybody was denying it happened. And he said: I did
23 help you. I said: How did you help me? And he said: I told
24 them that I held your head the whole time. He said: Your
25 head never hit the floor.

1 Q And did you talk to anybody else about this after it
2 happened, like Jeffrey Flowers or anything?

3 The next day, Jason?

4 A They locked -- they put me into a room and they wouldn't
5 let me out of the room and they said I couldn't talk to
6 anybody. They said not to talk to anybody about it. And I
7 was begging them to let me out of the room because I want to,
8 you know, smoke and stuff. And they said as long as you don't
9 talk about it. And I walked out and I saw Dean Dexter. And I
10 told -- I asked Dean about it and stuff, and we started to
11 talk about it. This guy, and I can't remember the guy's name,
12 he said: You weren't supposed to talk about it.

13 MR. RICCIARDONE: Objection.

14 THE COURT: Sustained.

15 Q We'll come back to that topic, Jason.

16 But, first, did Sheila help you when you were in the
17 4 Point Room?

18 A Yes, she washed the blood off my face.

19 Q All right. How did she do that, Jason?

20 A I'm sorry, what?

21 Q Did she do that with a sponge or a washcloth?

22 A I don't remember. But there's blood, there was blood
23 covering my eyes. So when she wiped the blood off there was,
24 like, in the perimeter of my eyes was -- it's scabbed, like
25 eyeliner. It was like eyeliner. And some of it got into the

1 bottom of my eye, like, right down there. And what happens
2 when blood gets into your eye it kind of stains it and it
3 stays there for couple of months. So it looked like, it was
4 just like red, like it was just painted red on the bottom of
5 my eye.

6 Q All right. Did a doctor come in, Jason, some time and
7 help you out a little bit?

8 A Dr. Weeratne did.

9 Q Yes. And did she clean up your bruises and your cuts and
10 things like that?

11 A They were already cleaned up. She was just pressing on
12 my face and asked where it hurt and if it hurt, pressing at
13 certain different points and checking my nose to see if it was
14 broken.

15 Q Did they put you in a stretcher, Jason? Did you go to
16 the hospital in a stretcher?

17 A Immediately, there was a -- it was a, I guess it's called
18 a stretcher; it's got wheels on it. It's a bed with wheels.

19 Q All right. Did you go to the hospital in an ambulance?

20 A Yes.

21 Q Do you know what hospital it was; do you remember?

22 A U. Mass.

23 Q And do you know how long you stayed there, Jason?

24 A When I went to U. Mass., I went with a staff person --
25 I'm sorry. I don't know what I'm talking about.

1 Q Was that when you came back, you came back from the
2 hospital with the staff person when you went there that day?

3 Strike the question.

4 Did you go -- you went to the hospital in the
5 ambulance, right?

6 Did you stay there for a few hours, Jason, and have
7 some x-rays taken?

8 A They, they -- this lady said: Open your mouth, and she
9 was yelling at me. She was the nurse. She was saying: Open
10 the mouth up. And I opened it up. And she said: Wider,
11 wider. She started quelling at me. I said: I can't open it
12 wider. My face is all swollen. It was swollen right here,
13 and it hurt too much for me to open my mouth up. So she
14 yelled at me, and she said: You know, that guard, that guard
15 that you hurt, he's in the next room. And she said: He's got
16 a bruised spleen, is what she told me. She said: You bruised
17 his spleen.

18 Q All right. Did you have some x-rays taken at the
19 hospital?

20 A Yes.

21 Q All right. And did you stay there for, what, three or
22 four hours or so?

23 A Yes.

24 Q And then did you go back to the Westborough State
25 Hospital that same day?