

Excerpt From:

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss. Superior Court

No. 7626 Byron, J.

COMMONWEALTH OF MASSACHUSETTS

vs.

WILLIAM SMITH

APPEARANCES:

District Attorney's Office (By Ronald A. Pina, District Attorney; Ralph K. Mulford, Assistant District Attorney; and Raymond P. Veary, Assistant District Attorney), P.O. Box 940, 908 Purchase Street, New Bedford, Massachusetts 02741, on behalf of the Commonwealth.

Long & Silvia (By William F. Long, Esq., and Thomas Leedham, Esq.), 373 North Main Street, Fall River, Massachusetts 02720, on behalf of the Defendant.
John F. Doherty, Esq., 478 Torrey Street, Brockton, Massachusetts 02401, on behalf of Robin Murphy.

New Bedford Superior Courthouse

New Bedford, Massachusetts

Wednesday, December 29, 1982, 2:00 p.m.

TESTIMONY OF ROBIN MURPHY ON DECEMBER 29, 1982 IN
CRIMINAL CASE 1980-7626, COMMONWEALTH VS. WILLIAM SMITH
BEFORE BYRON, J.

1 Would you give the oath to Miss Murphy, please.

2

3

ROBIN MURPHY, Sworn.

4

BY THE COURT:

5

Q: Would you please tell us your name and address?

6

A: My name is Robin Murphy. I'm currently residing at MCI

7

Framingham.

8

Q: How long have you been there?

9

A: Since May 9th of 1980.

10

Q: How old are you?

11

A: 20 years old.

12

Q: How far have you gone in school?

13

A: Tenth grade.

14

Q: Have you worked since you left school?

15

A: Yes, I have.

16

Q: What type of work have you done?

17

A: Cashier. Nurse's aide

18

Q: Do you have any trouble understanding or reading English?

19

A: No, I don't.

20

Q: Massachusetts has granted you immunity to testify in the

21

case against William Smith where it has been alleged that

22

he murdered Doreen Levesque?

23

A: Yes.

24

Q: Would you tell me in your own words what that means to

1 you?

2 A: I can't answer that question.

3 Q: You can't answer that?

4 A: No, sir.

5 Q: Well, do you understand that you cannot be prosecuted
6 for your participation, if any, concerning that crime?

7 A: Yes.

8 Q: Do you understand that?

9 A: Yes, I do.

10 Q: I also want you to understand, though, that it would not
11 prevent you from being prosecuted for perjury while
12 testifying about that event. Do you understand that?

13 A: Yes.

14 Q: Further, it would not prevent you from being prosecuted
15 for the crime of contempt in relation to your testimony or
16 refusal to give testimony. Do you understand that?

17 A: Yes.

18 Q: Have you discussed this immunity with your lawyer, Mr.
19 Doherty?

20 A: Yes, I have.

21 Q: Has he told you anything differently than what I have
22 just told you?

23 A: No, sir.

24 Q: I want you to understand that no matter what any

1 representative of the Commonwealth has said to you, whether
2 that representative has been a police officer or a member
3 of the District Attorney's staff or anybody else, that you
4 can be prosecuted if you do not tell the truth while
5 testifying. Do you understand that?

6 A: Yes, I do.

7 Q: Did you know Doreen Levesque?

8 A: No.

9 Q: You didn't know her?

10 A: No, I did not.

11 Q: Did you know who she was?

12 A: No.

13 Q: Were you ever in her presence?

14 A: No.

15 Q: Did you ever tell anybody else that you were in her
16 presence?

17 A: Yes, I have.

18 Q: When?

19 A: On several occasions.

20 Q: Why did you say that you were in her presence if you were
21 never in her presence?

22 A: I can't answer that question.

23 Q: Did anybody force you to answer that you were in her
24 presence?

1 A: No one forced me, no.

2 Q: Did anybody promise you any reward for making any such
3 statement?

4 A: No reward, no.

5 Q: Did anybody threaten you?

6 A: Yes.

7 Q: Who was that?

8 A: Your Honor, I'm sorry. I can't answer these questions.

9 Q: Why not?

10 A: I just -- I just can't answer them.

11 Q: You mean you don't want to answer them?

12 A: It's -- I just can't have -- give you a serious answer
13 right now. I don't know.

14 Q: Let me ask you this; What do you know about the killing of
15 Doreen Levesque?

16 A: I know what was told to me by Karen Marsden.

17 Q: Were you ever present when she was at least assaulted by
18 anybody?

19 A: No, sir.

20 Q: Did you tell anybody you were?

21 A: Yes.

22 Q: Did you testify before the grand jury that you saw someone
23 assault her?

24 A: Yes, I did.

1 Q: Whom did you say assaulted her at that time?

2 A: I don't understand.

3 Q: Well, you told the grand jury that somebody assaulted the
4 late Doreen Levesque; is that correct?

5 A: Yes, I did.

6 Q: Did you tell the grand jury who that person was that
7 assaulted Doreen?

8 A: Yes, I did.

9 Q: Who did you say it was before the grand jury?

10 A: Carl Drew.

11 Q: Did you ever say William Smith participated in that event?

12 A: Yes, I did.

13 Q: Was that true?

14 A: No, it was not.

15 Q: Why did you say so if it wasn't true at that time?

16 A: My previous counsel told me that that's what was best for
17 me to do.

18 Q: Who was your previous counsel?

19 A: Kenneth Sullivan.

20 Q: Did he tell you to lie? Is that what you're telling me?

21 A: Yes.

22 Q: Where were you when you had that conversation with Mr.
23 Sullivan?

24 A: At MCI Framingham as well as in this courthouse.

1 Q: When you lied, did you know that you-could be prosecuted
2 for perjury?

3 A: Yes, I did.

4 Q: Do you realize that you may, in effect, have convicted
5 yourself by what you have said here today?

6 A: Yes.

7 THE COURT: Gentlemen, do any one of you want to ask
8 any questions; or do you wish me to ask any further
9 questions of the witness?

10 You do. Let's approach the side bar.
11 (bench conference.)

12 MR. PINA: Mr. Mulford has nothing in the grand jury
13 minutes, your Honor. The only thing I would suggest is that
14 she may have -- I don't know. When she said Mr. Sullivan,
15 she had discussions with him relating to another case in
16 which she plead to second degree murder. I don't know if
17 she has that mixed up with this case. Those were two other
18 murder cases, that was Carl Drew and also --

19 THE COURT: Who was the victim in that one?

20 MR. PINA: Karen Marsden.

21 MR. MULFORD: Your Honor, I do have one suggestion.
22 This crime is alleged to have occurred on the evening and
23 early morning hours of October 12 and 13, 1979. I think,
24 perhaps, she should be asked if she was present with other

1 people.

2 THE COURT: I had intended to go through that
3 transcript and ask the same type of questions. I don't know
4 whether it will do any good in view of what she has told
5 me, but I'll ask her some questions.

6 MR. LONG: I think as long as she says she wasn't at
7 the Doreen Levesque murder, that's it, if she wasn't a
8 witness to Doreen Levesque's murder.

9 THE COURT: That may not necessarily be it, Mr. Long.
10 There may be more to it than you and I know about.

11 MR. PINA: Frankly, she has something, it seems, that
12 she doesn't want to talk about. Is your Honor sufficiently
13 familiar with the transcript?

14 THE COURT: I have it right here.

15 (End of Bench conference.)

16 Q: Did Mr. Sullivan represent you in this case?

17 MR. DOHERTY: I'm going to object at this time, your
18 Honor, and instruct the witness not to answer.

19 THE COURT: All right.

20 You don't have to answer that question.

21 Q: When you appeared before the grand jury, were you
22 represented by a lawyer at that time?

23 A: I'm not sure.

24 Q: In the fall of 1979. did you know Doreen Levesque?

1 A: No, I did not.

2 Q: Did you know Carl Drew at that time?

3 A: Yes, I did.

4 Q: Do you know whether or not Doreen Levesque was working for
5 Carl Drew at that time?

6 A: No, I do not.

7 Q: Did you ever tell anybody that Doreen Levesque was working
8 as a prostitute in Fall River at that time?

9 A: Yes, I have.

10 Q: Did you tell anybody that she worked for Carl Drew?

11 A: No, I did not.

12 Q: Do you know William Smith?

13 A: No, I do not.

14 Q: You don't know William Smith?

15 A: No, I don't.

16 Q: Did you ever tell anybody that you knew him?

17 A: Yes, I did.

18 Q: Did you ever tell anybody that he participated in
19 ritualistic meetings?

20 A: Yes.

21 Q: At a time when you and Carl Drew were present?

22 A: Yes.

23 Q: Are you telling me now that William Smith was never at
24 those meetings?

1 A: I have no idea.

2 Q: Did you ever see him at the meetings?

3 A: No, sir.

4 Q: You never saw him.

5 Have you been to Sword & Shield in Fall River?

6 A: Yes.

7 Q: What kind of a place is that?

8 A: It's a gay disco.

9 Q: On or about October 12 of 1979, were you there?

10 A: No, I was not.

11 Q: Do you know what type of automobile Carl Drew had at about
12 that time?

13 A: Yes.

14 Q: Had you been in that automobile?

15 A: No.

16 Q: Did you at any time recite the details of how Doreen
17 Levesque was beaten?

18 A: Yes.

19 Q: Where did you get the details?

20 A: From Karen Marsden.

21 Q: Where was she when she told you about those details?

22 A: At Harbor Terrace.

23 Q: Have you ever been on Eagle Hill Road in Tiverton?

24 A: Have I ever been on that road?

1 Q: Yes.

2 A: Yes, I have.

3 Q: Were you there in the fall of 1979?

4 A: No, I was not.

5 Q: Have you ever been in the area of Diman Vocational School?

6 A: Yes, I have been in that area.

7 Q: Were you there in the fall of 1979?

8 A: No. I --

9 Q: Do you know whether there are any bleachers at Diman

10 Vocational School?

11 A: Excuse me?

12 Q: Do you know whether there are any bleachers?

13 A: Yes, I do know there are bleachers at Diman Vocational.

14 Q: How do you know that?

15 A: State police took me there.

16 Q: When was that?

17 A: Sometime in 1981.

18 Q: What were the circumstances of the State police taking you

19 there?

20 A: To take me to the scene of where Doreen Levesque was found.

21 Q: Did you tell them that she was there?

22 A: Yes, I did.

23 Q: Did you lead them to the spot?

24 A: They brought me down under the bleachers.

1 Q: Did you show them where Doreen Levesque's body was left?

2 A: No.

3 Q: What did you tell them at that time?

4 A: I told them that I wasn't sure.

5 Q: Is that the only thing you told them?

6 A: As far as I remember, yes.

7 THE COURT: Mr. Pina?

8 MR. PINA: Yes, your Honor.

9 THE COURT: I'm going to permit either you or a member
10 of your staff to make further inquiry of this witness if
11 you wish.

12 MR. PINA: We have no further questions.

13 THE COURT: Mr. Long?

14 MR. LONG: No questions, your Honor.

15 THE COURT: Mr. Doherty, any questions?

16 MR. DOHERTY: No questions, your Honor. Thank you.

17 THE COURT: All right. You may step down.

18 (Witness steps down.)

19

20 MR. PINA: Your Honor, the trial, I understand at this
21 point, is scheduled for January 3.

22 MR. MULFORD: That's correct, your Honor.

23 MR. PINA: The Commonwealth would ask for -- today is
24 the 29th -- if we could report back that morning on any

future determinations the Commonwealth -- whether or not we will proceed with the trial.

THE COURT: All right. Mr. Long, anything you would like to say?

MR. LONG: I have to move to dismiss the grand jury indictment at this point, your Honor, on Commonwealth versus McCarthy.

THE COURT: On what ground?

MR. LONG: Commonwealth versus McCarthy; that there is evidently only hearsay evidence before the grand jury at this point.

THE COURT: Well, that's all that is required before a grand jury.

MR. LONG: Not according to Commonwealth versus McCarthy.

THE COURT: What's that?

MR. LONG: According to Commonwealth versus McCarthy, there has to be more than that.

THE COURT: I didn't think that that's what that case said, Mr. Long I'll listen to you I like to be educated on these matters.

I thought Commonwealth versus McCarthy said there is absolutely no evidence to identify the defendant having committed any crime in that case. No evidence at all.

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1 Here, we have hearsay evidence and prior to that case,
2 there has been -- the name of the case escapes me -- is
3 that it's sufficient if an indictment is based upon hearsay
4 evidence.

5 MR. LONG: I don't think we even have hearsay evidence
6 here.

7 THE COURT: Well, she said that she told the grand jury
8 information that she got from someone else and I don't have
9 enough information, right now at least, to determine
10 whether or not there is sufficient evidence before the
11 grand jury, whether that was based on hearsay or otherwise.
12 I assume by now you made motions according to that case,
13 have you Mr. Long?

14 MR. LONG: No, your Honor.

15 THE COURT: Before I got involved in this case?

16 MR. LONG: No, your Honor.

17 THE COURT: Now, is my representation of Commonwealth
18 versus McCarthy accurate?

19 MR. LONG: In part.

20 THE COURT: In part? Well, how is it inaccurate?

21 MR. LONG: Well, may we file --

22 THE COURT: Maybe you can correct my erroneous
23 impression if I have such an erroneous impression.

24 MR. LONG: I was under the impression that there was

1 not adequate evidence now before the grand jury.

2 THE COURT: I don't know. I haven't reviewed all of the
3 evidence. All I know is that this girl has told me and all
4 of us present here that she didn't witness a crime, and any
5 information she had concerning the details of it came from
6 someone else. That's all. Now, I don't know what other
7 evidence the Commonwealth has to support it's claim. I know
8 that, at least now, the Commonwealth relied on the
9 evidence of this witness because I have in front of me a
10 transcript of the grand jury minutes and I was referring
11 to that. I hadn't read them before, but I was following
12 them and --

13 MR. LONG: I think that's the only witness that
14 appeared at the grand jury.

15 THE COURT: So, that's all that's necessary.

16 MR. LONG: And now that she has said what she said
17 before the grand jury -- she said to the grand jury that
18 she witnessed it. She is saying now that she did not
19 witness it.

20 THE COURT: She said she lied.

21 MR. LONG: Right.

22 THE COURT: Okay.

23 MR. LONG: So I would ask you, on the basis of what she
24 said today, to dismiss the indictment that came from that

1 grand jury.

2 THE COURT: On what grounds?

3 MR. LONG: That what she has said today, that she lied
4 before the grand jury. Therefore, the information the
5 grand jury had was that she witnessed a murder. She has
6 said today that she has not witnessed it and on those
7 circumstances, I would ask you to dismiss the indictment.

8 THE COURT: Do you have any authority for that
9 proposition?

10 MR. LONG: We'll get some authority for it.

11 THE COURT: Certainly, if the Commonwealth -- I
12 shouldn't say that. If the District Attorney's office had
13 knowingly used perjured testimony to get an indictment,
14 that would be grounds for dismissals but there is no such
15 evidence in this case at all. On the contrary I think that
16 the District Attorney's office acted in good faith in
17 making its presentment.

18 MR. LONG: Not making any remarks along that nature,
19 we're talking now about probable cause; and we're talking
20 about what she witnessed. We're talking about --

21 THE COURT: You recall on that McCarthy case that the
22 Court, in its footnote on the left-hand page, said that
23 there is a difference in probable cause to arrest and
24 probable cause to bind over someone. Okay, it cited a

10

1 United States Supreme Court case for that authority
2 because there is a difference in the quantum of proof. Even
3 a police officer has probable cause to arrest on hearsay
4 evidence.

5 That's the standard, at least for that case. It can go
6 further than that but in that case that they use in
7 Commonwealth versus McCarthy, it says: We don't really have
8 to get too involved in that because in this case, there was
9 nothing at all tying down the defendant. Was that footnote
10 in there something like that?

11 MR. LONG: It was, your Honor.

12 THE COURT: Okay, so you haven't persuaded me. You may
13 have something, but I realize you're getting this at the
14 last minute. You haven't had a chance to do some research,
15 and I'll permit you to press the point further if you come
16 up with something but at the present time, your oral
17 motion to dismiss the indictment is denied.

18 Anything further?

19 MR. LONG: Not at this time, your Honor.

20 THE COURT: All right. That concludes this hearing
21 today; and the case will stand for trial on Monday,
22 January 3, 1983.

23 MR. PINA: Thank you, your Honor.

24 (Whereupon this matter was adjourned.)

CERTIFICATE

I, Cindy L. Lamberta, CSR, RPR, CM, Official
Court Reporter, do hereby certify that the foregoing
record, is a complete, accurate and true transcription of
my stenographic notes taken in the aforementioned matter to
the best of my skill and ability.