

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND.

STATE OF MARYLAND

vs.

Criminal Trial 07-1664X

KEITH A. WASHINGTON,

Defendant.

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REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

Volume IX of IX

Upper Marlboro, Maryland

Monday, February 25, 2008

BEFORE:

HONORABLE MICHAEL P. WHALEN, Associate Judge

(and a jury)

APPEARANCES:

For the State of Maryland:

WILLIAM D. MOOMAU, ESQUIRE  
JOSEPH L. WRIGHT, ESQUIRE  
RAEMARIE ZANZUCCHI, ESQUIRE

For the Defendant:

VINCENT H. COHEN, JR., ESQUIRE  
MICHAEL STARR, ESQUIRE

Cindy S. Davis, RPR  
Official Court Reporter  
Post Office Box 401  
Upper Marlboro, Maryland 20773

T A B L E O F C O N T E N T S

P A G E

Verdict

9-9

## P R O C E E D I N G S

(Jury not present upon reconvening.)

THE COURT: Do you want to approach the bench, gentlemen?

(Counsel approached the bench and the following ensued.)

THE DEPUTY CLERK: Criminal trial 07-1664X, State of Maryland versus Keith A. Washington.

THE COURT: All of the jurors were here by nine except for two. We had the jury commissioner's office try to raise both of them by telephone. One juror said they thought they didn't have to be here until ten, because they heard me say, if it's Friday, ten, but they didn't hear the part where, if it's Monday, it's 8:30. My understanding is they're now here?

THE DEPUTY CLERK: One.

THE COURT: One of them is now here, and I believe -- because she said she was on her way the minute she got the call.

The second juror they tried to raise by phone and were not able to get ahold of the person. Which juror is that one?

THE DEPUTY CLERK: Number 37, last name Johnson.

THE COURT: Yes, juror number 37 is Mr. Johnson. Madam Clerk is on the phone with the jury commissioner's

1 office, who is indicating what.

2 THE DEPUTY CLERK: That juror is here.

3 THE COURT: The second juror? Which juror? Tell  
4 them to bring whoever it is down if they're on this jury so  
5 we can find out who is here.

6 MR. MOOMAU: Another thing, Your Honor -- we don't  
7 need to be on the record on this.

8 THE COURT: We're off.

9 (Discussion off the record.)

10 MR. COHEN: There is something I do want to put on  
11 the record about the other case. Your Honor, our concern is  
12 that -- I'm not sure -- and the Court can correct me if I'm  
13 wrong. I'm not sure that the jurors were admonished not to  
14 begin deliberations until all of the jurors were present. I  
15 don't remember that happening. If it is, if you did say  
16 that, that's fine. But I'm not sure that that was stated,  
17 and I think they should be told --

18 THE COURT: I'm pretty sure I did, but I will write  
19 them a note right now.

20 MR. COHEN: That's our request at this time.

21 MR. STARR: Sheila says they're all here.

22 MR. MOOMAU: You can tell them in person.

23 THE COURT: If we can have them polled or at least  
24 find out if they talked about it prior to.

25 THE DEPUTY CLERK: They're all here. Do you want

1 to bring them in?

2 THE COURT: Yes.

3 (The jury entered the courtroom at 10:10 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. I  
5 hope that during the recess, Thursday night and through the  
6 weekend and inclement weather that we did eventually have,  
7 which caused the Court to close on Friday, that no one found  
8 themselves in a position where they either heard, saw or read  
9 any accounts of the circumstances of this case or this trial  
10 that may have been put forth by the news media.

11 Did anyone hear, see or read any news media account  
12 of the circumstances of this case or trial during that time  
13 period and up through this morning? The Court sees no  
14 affirmative response.

15 Now, I need to ask one other question of you. That  
16 question is -- when I ask it, I'm not going to ask you to  
17 respond right now, but I'm going to ask you to go back into  
18 the deliberation room and tell your foreman whether or not  
19 this is the case and we'll go from that point.

20 As you may know and as we had advised you earlier,  
21 you're not able to begin deliberations on this case until all  
22 12 jurors were present in the jury deliberation room. Did  
23 any of you begin to deliberate with any other juror any  
24 matters about this case prior to the time that all 12 of you,  
25 this morning, were in that deliberation room?

1 Don't respond verbally. We're going to ask you to  
2 go back into the jury deliberation room. If you did, please  
3 put your name on a paper to your foreman, and then we will  
4 call you in one at a time, if that's the case.

5 Sheila, please take them back into the jury  
6 deliberation room.

7 (The jury was excused from the courtroom at  
8 10:15 a.m.)

9 THE COURT: Gentlemen, do you want to look at this  
10 note before I send it in?

11 Actually, it should be "did any of you begin  
12 deliberations with any other juror on this case this morning  
13 before all 12 members were present?" I guess I better change  
14 it to read that.

15 Anybody have any problem with that?

16 MR. COHEN: No, sir.

17 (Assistant State's Attorney Joseph Wright enters  
18 the proceedings.)

19 THE COURT: Just for purposes of the record, we had  
20 requested the jurors, at around midnight or a little shortly  
21 before midnight on Friday, the --

22 MR. COHEN: Thursday.

23 THE COURT: Thursday? That's right. Thursday, the  
24 21st, to return Friday at ten in the morning, unless the  
25 courthouse was closed. We gave them a number to call for

1 those purposes, to find out if the weather was going to close  
2 the courthouse and, if the courthouse was closed, to return  
3 Monday morning at 8:30. The courthouse was, in fact, closed  
4 on Friday due to inclement weather that evening or earlier in  
5 the morning.

6           Early this morning, which is Monday, the 25th, ten  
7 of the jurors were present by nine; two were missing. They  
8 both arrived late. It is now 10:20. All of them are here,  
9 and we are awaiting to determine their response to the  
10 question if any of them began to deliberate with any other  
11 juror prior to all 12 being here this morning. So we'll see  
12 what happens.

13           MR. MOOMAU: So if they say no, then they're just  
14 going to start deliberating?

15           THE COURT: Yes.

16           MR. MOOMAU: You'll bring them back in and tell  
17 them to?

18           THE COURT: No. I'll just send them a note and  
19 tell them to begin. But if they did, then I need to bring  
20 them in one at a time and find out.

21           (Bailiff hands the Court a note.)

22           THE COURT: The answer, apparently, is no and it's  
23 signed by the foreman. So I'm going to write them a note  
24 saying please begin deliberations.

25           Did you want to say anything?

1 MR. MOOMAU: No.

2 THE COURT: So I'm saying "please begin  
3 deliberations. Thank you, Judge Whalen."

4 MR. MOOMAU: We'll be close by.

5 THE COURT: We have your numbers?

6 MR. MOOMAU: Yes.

7 MR. COHEN: Yes.

8 MR. STARR: Yes.

9 THE COURT: Thank you, gentlemen.

10 (Counsel were excused from the courtroom, and the  
11 Court handled other court matters while the jury  
12 deliberated.)

13 THE COURT: The Court stands in recess until we  
14 have a verdict.

15 (A recess was taken at 11:20 a.m.)

16 (A verdict was reached at 1:30 p.m., and all  
17 counsel and the defendant returned to the  
18 courtroom.)

19 THE COURT: Ladies and gentlemen, it appears that  
20 we have a verdict. I would appreciate, regardless of the  
21 outcome, no outburst of any kind in the courtroom. I know  
22 how emotions run high on either side, but please do the best  
23 you can.

24 THE DEPUTY CLERK: Criminal trial 07-1664X, State  
25 of Maryland versus Keith A. Washington.



1 MR. MOOMAU: Good afternoon, Your Honor. William  
2 Moomau for the State.

3 MR. WRIGHT: Joseph Wright for the State.

4 MS. ZANZUCCHI: Raemarie Zanzucchi for the State.

5 MR. COHEN: Good afternoon, Your Honor. Vincent H.  
6 Cohen, Jr., on behalf of Keith Washington.

7 MR. STARR: And Michael Starr on behalf of  
8 Mr. Washington. Mr. Washington is present.

9 (The jury returned to the courtroom at 1:40 p.m.)

10 **VERDICT**

11 THE DEPUTY CLERK: Ladies and gentlemen of the  
12 jury, are you agreed of your verdict?

13 THE JURY: Yes.

14 THE DEPUTY CLERK: Who shall say for you?

15 THE JURY: Our foreman.

16 THE DEPUTY CLERK: Mr. Foreman, what say you in  
17 criminal trial 07-1664X, State of Maryland versus Keith A.  
18 Washington? As to question one, do you find the defendant  
19 guilty or not guilty as to the charge of second degree murder  
20 of Brandon Clark?

21 THE FOREMAN: Not guilty.

22 THE DEPUTY CLERK: As to question two, do you find  
23 the defendant guilty or not guilty as to the charge of  
24 voluntary manslaughter of Brandon Clark?

25 THE FOREMAN: Not guilty.

1           THE DEPUTY CLERK: As to question three, do you  
2 find the defendant guilty or not guilty as to the charge of  
3 involuntary manslaughter of Brandon Clark?

4           THE FOREMAN: Guilty.

5           THE DEPUTY CLERK: Please specify.

6           THE FOREMAN: "B," by feloniously engaging in an  
7 unlawful act which resulted in the death of Brandon Clark.

8           THE DEPUTY CLERK: As to question four, do you find  
9 the defendant guilty or not guilty as to the charge of first  
10 degree assault of Brandon Clark?

11          THE FOREMAN: Guilty.

12          THE DEPUTY CLERK: As to question five, do you find  
13 the defendant guilty or not guilty as to the charge of use of  
14 a handgun in the commission of a felony upon Brandon Clark?

15          THE FOREMAN: Guilty.

16          THE DEPUTY CLERK: As to question six, do you find  
17 the defendant guilty or not guilty as to the charge of  
18 attempted second degree murder of Robert White?

19          THE FOREMAN: Not guilty.

20          THE DEPUTY CLERK: As to question seven, do you  
21 find the defendant guilty or not guilty as to charge of first  
22 degree assault of Robert White?

23          THE FOREMAN: Guilty.

24          THE DEPUTY CLERK: As to question eight, do you  
25 find the defendant guilty or not guilty as to the charge of

1 use of a handgun in the commission of a felony on Robert  
2 White?

3 THE FOREMAN: Guilty.

4 THE DEPUTY CLERK: Ladies and gentlemen of the  
5 jury, harken to your verdict as the Court has recorded it.  
6 Your foreman sayeth that, as to question one, you find the  
7 defendant not guilty as to the charge of second degree murder  
8 of Brandon Clark;

9 As to question two, you say you find the defendant  
10 not guilty as to the charge of voluntary manslaughter of  
11 Brandon Clark;

12 As to question three, you say you find the  
13 defendant guilty as to the charge of involuntary manslaughter  
14 of Brandon Clark; specifically (b), feloniously engaging in  
15 an unlawful act which resulted in the death of Brandon Clark;

16 As to question four, you say you find the defendant  
17 guilty as to the charge of first degree assault of Brandon  
18 Clark;

19 As to question five, you say you find the defendant  
20 guilty as to the charge of use of a handgun in the commission  
21 of a felony upon Brandon Clark;

22 As to question six, you say you find the defendant  
23 not guilty as to the charge of attempted second degree murder  
24 of Robert White;

25 As to question seven, you say you find the

1 defendant guilty as to the charge of first degree assault of  
2 Robert White;

3 As to question eight, you say you find the  
4 defendant guilty as to the charge of use of a handgun in the  
5 commission of a felony on Robert White.

6 And so say you all?

7 THE JURY: Yes.

8 THE COURT: Any other requests?

9 MR. STARR: No.

10 MR. WRIGHT: No, Your Honor.

11 MR. COHEN: Your Honor, we would ask that the  
12 jurors be polled.

13 THE DEPUTY CLERK: Mr. Foreman, juror number 25,  
14 you sayeth that you find the defendant not guilty as to the  
15 charge of second degree murder of Brandon Clark;

16 As to question two, you say you find the defendant  
17 not guilty as to the charge of voluntary manslaughter of  
18 Brandon Clark;

19 As to question three, you say you find the  
20 defendant guilty as to the charge of involuntary manslaughter  
21 of Brandon Clark; specifically (b), by feloniously engaging  
22 in an unlawful act which resulted in the death of Brandon  
23 Clark;

24 As to question four, you say you find the defendant  
25 guilty as to the charge of first degree assault of Brandon

1 Clark;

2 As to question five, you say you find the defendant  
3 guilty as to the charge of use of a handgun in the commission  
4 of a felony upon Brandon Clark;

5 As to question six, you say you find the defendant  
6 not guilty as to the charge of attempted second degree murder  
7 of Robert White;

8 As to question seven, you say you find the  
9 defendant guilty of as to the charge of first degree assault  
10 of Robert White;

11 As to question eight, you say you find the  
12 defendant guilty as to the charge of use of a handgun in the  
13 commission of a felony on Robert White.

14 Is this your verdict?

15 THE FOREMAN: Yes.

16 THE DEPUTY CLERK: Juror number 2, is your  
17 foreman's verdict your verdict?

18 JUROR NO. 2: Yes.

19 THE DEPUTY CLERK: Juror number 3, is your  
20 foreman's verdict your verdict?

21 JUROR NO. 3: Yes.

22 THE DEPUTY CLERK: Juror number 4, is your  
23 foreman's verdict your verdict?

24 JUROR NO. 4: Yes.

25 THE DEPUTY CLERK: Juror number 6, is your

1 foreman's verdict your verdict?

2 JUROR NO. 6: Yes.

3 THE DEPUTY CLERK: Juror number 16, is your  
4 foreman's verdict your verdict?

5 JUROR NO. 16: Yes.

6 THE DEPUTY CLERK: Juror number 19, is your  
7 foreman's verdict your verdict?

8 JUROR NO. 19: Yes.

9 THE DEPUTY CLERK: Juror number 22, is your  
10 foreman's verdict your verdict?

11 JUROR NO. 22: Yes.

12 THE DEPUTY CLERK: Juror number 27, is your  
13 foreman's verdict your verdict?

14 JUROR NO. 27: Yes.

15 THE DEPUTY CLERK: Juror number 37, is your  
16 foreman's verdict your verdict?

17 JUROR NO. 37: Yes.

18 THE DEPUTY CLERK: Juror number 44, is your  
19 foreman's verdict your verdict?

20 JUROR NO. 44: Yes.

21 THE DEPUTY CLERK: And juror number 50, is your  
22 foreman's verdict your verdict?

23 JUROR NO. 50: Yes.

24 THE DEPUTY CLERK: And so say you all?

25 THE JURY: Yes.

1 THE COURT: Alright, ladies and gentlemen of the  
2 jury, we thank you very much for all of your efforts on this  
3 case. You have the thanks of a grateful county and a  
4 grateful state. Your services are no longer required. You  
5 are discharged from jury service. Thank you again.

6 (The jury was discharged from service at 1:45 p.m.)

7 THE COURT: We're going to order a full presentence  
8 investigation. The sentencing will be scheduled for April  
9 17th?

10 MR. MOOMAU: Your Honor, I do have motions in the  
11 homicide case that day that probably will take all morning.  
12 Any other time that week is fine, Your Honor.

13 THE COURT: April 23rd?

14 MR. MOOMAU: That's fine, Your Honor.

15 MR. COHEN: That's fine with the defense, Your  
16 Honor.

17 MR. MOOMAU: Your Honor, as far as bail, the State  
18 would ask that, since he has been found guilty, he no longer  
19 has the presumption of innocence. The State would request  
20 that bail be revoked and he be remanded to the custody of the  
21 sheriff.

22 MR. COHEN: Your Honor, we'd ask to approach on our  
23 motion regarding release.

24 THE COURT: Okay.

25 (Counsel approached the bench and the following

1           ensued.)

2           MR. COHEN: Your Honor, first, we'd ask the Court  
3 to consider the relevant factors pursuant to 4-216(e), prior  
4 record of appearances. As you know, Mr. Washington has been  
5 here at every court appearance. This case has been going on  
6 for more than a year. In fact, at a number of the chambers  
7 meetings he also was present and didn't have to be, which  
8 actually led to his ability to put his Hicks waiver on the  
9 record. So at this point I think the fact that he will come  
10 back should not be of concern to the Court.

11           With respect to risk of flight, we do not feel that  
12 our client is a risk of flight. He does have a passport.  
13 I'll be more than happy to get it from him and tender it to  
14 the Court or tender it to the State, whatever the Court is  
15 inclined to do.

16           He has substantial family ties to the community.  
17 He has been here for more than 20 years. He has a home. He  
18 lives with his wife and his daughter and has a number of  
19 family members in the same area. He has been employed, for a  
20 number of years, both as a police officer, as well as in the  
21 military. So in terms of his attendance and a showing of the  
22 work and that sort of thing, that's not necessarily a concern  
23 for the Court.

24           Also, Your Honor, I think that in terms of him  
25 being a danger to the community, his firearm was removed from



1 him, and I believe that what the jury found him guilty of was  
2 dealing with a specific incident dealing with assault of  
3 conduct that he received in this matter. So I don't think  
4 that the community at large or in general is in any harm from  
5 the defendant.

6 So we would ask that the Court allow him to remain  
7 on his release, pursuant to his bond, pending sentencing.

8 And the bond, Your Honor, is \$150,000 bond as well.  
9 Obviously, that's substantial, and I don't think that he'd  
10 have a problem returning based on that bond amount as well.

11 MR. MOOMAU: The State's position is he has been  
12 found guilty of two crimes involving the death of two human  
13 beings. He's facing mandatory sentencing. The State sees no  
14 reason why he needs to be on bail at this time. The State  
15 asks that the bail be revoked.

16 THE COURT: First, I want to commend the  
17 performance of defense counsel in this case. You know how  
18 well you did in this trial.

19 But, with all due respect, because of the serious  
20 nature of these charges and all of the circumstances  
21 surrounding this matter, that it has changed to the extent  
22 that where he was presumed innocent, he's now found guilty,  
23 and, with all due respect, I am going to revoke his bond.

24 MR. COHEN: Your Honor, we would ask for a brief  
25 moment that he can say good-bye to his wife. Is that

1 possible?

2 THE COURT: We ordinarily don't allow that because  
3 of the security. This isn't the only case where that request  
4 is made. Because of the large number of people in here, with  
5 representatives on both sides, security, they're not going to  
6 let me do that anyway. The sheriffs will not let me do that.  
7 That's been requested of them before, and that's not part  
8 of -- they're concerned about the large scale audience of  
9 this.

10 MR. COHEN: If I could ask one more request. I'd  
11 ask that the Court allow the courtroom to clear, and maybe he  
12 could speak to his wife across the bar, behind defense table.

13 THE COURT: I understand the circumstances. I wish  
14 I could accommodate it, but I really can't. I can't clear  
15 the courtroom for that purpose because of everybody's first  
16 amendment rights and everybody else's rights. They're going  
17 to be a variety of different interpretations about that with  
18 regard to security.

19 So, again, I wish I could accommodate that request,  
20 but I don't believe I'm going to be able to. So I'm going to  
21 have you go back to trial table, and I'm going to announce  
22 that his bond has been revoked.

23 MR. COHEN: Please give us a minute to get his  
24 personal belongings together.

25 MR. STARR: Is he going to be in a place where we'd

1 be able to talk to him after he's removed from the courtroom?

2 THE COURT: I don't believe they're going to  
3 transport any prisoners back -- they just would like the  
4 opportunity to talk to him at some point after he's  
5 incarcerated. I don't believe they're going to transport  
6 anybody back until five. So we're going to see if we can set  
7 up a time to talk to their clients. That's all I was trying  
8 to do.

9 MR. MOOMAU: That's fine.

10 (Counsel returned to trial tables and the following  
11 ensued.)

12 MR. COHEN: Court's indulgence.

13 THE COURT: The defendant's bond is revoked. I'm  
14 going to ask counsel to avail themselves to the Court. We  
15 have some exhibits we need to make some determinations on as  
16 well.

17 MR. MOOMAU: Yes, Your Honor.

18 THE COURT: Also, if you'd approach the bench for a  
19 moment.

20 (Counsel approached the bench and the following  
21 ensued.)

22 THE COURT: I'm going to need an order separating  
23 him from the rest of the population in the county detention  
24 center.

25 MR. COHEN: That was going to be our request as

1 well.

2 MR. MOOMAU: Do you want me to just e-mail it to  
3 you?

4 THE COURT: However it needs to be done, but I'm  
5 going to need to have that in their hands before he's  
6 transported over there. I will e-mail that directly to -- I  
7 mean, I'll give it to the sheriff before they deliver him  
8 over. But I'll e-mail it to the director of the county  
9 detention center, as well, the minute I get off the bench and  
10 the minute I get that order.

11 Vickie is going to need to go over with you some of  
12 the exhibits.

13 (The trial was concluded at 2:00 p.m.)

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## REPORTER'S CERTIFICATE

I, Cindy S. Davis, an Official Court Reporter for the Circuit Court for Prince George's County, Maryland, do hereby certify that I stenographically recorded the proceedings in State of Maryland versus Keith A. Washington, criminal trial 07-1664X, on February 25, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 20 constitute an official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 26th day of June, 2008.

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Cindy S. Davis, RPR

Official Court Reporter