

1 you believe that confession was given freely and willfully and  
2 on the basis of that consideration you are entitled, as jurors,  
3 to give that statement as much weight or as little weight as you  
4 deem appropriate. You saw Earl Washington. You heard him. I  
5 respectfully submit, and this is argument, that the Commonwealth's  
6 assertion that Earl Washington claims that a conspiracy took  
7 place among law enforcement officers is misplaced. Earl Washing-  
8 ton doesn't probably know what a conspiracy is. That's argument.  
9 Those aren't facts. That's my presentation to you. You heard  
10 the evidence, but you must consider all that you heard and all  
11 that you observed in making your decision. This case is in your  
12 hands where it properly belongs. You have to determine whether  
13 or not Earl Washington ... Earl Washington has been proved guilty  
14 beyond a reasonable doubt. You have to use your collective  
15 experience and common sense in making that determination. I am  
16 sure that you collectively and individually will do that and I'm  
17 sure that you collectively and individually will return with a  
18 decision as appropriate in consideration with the law and all of  
19 the evidence in its entirety that you heard during the last day.  
20 Thank you.

21 THE COURT: Mr. Bennett?

22 MR. BENNETT: Ladies and gentlemen, in regard to this  
23 question as to whether this statement was made by Mr. Washington,  
24 a statement made freely and voluntarily, I just ask you to recall  
25 these facts that before Investigator Wilmore and before Lt. Hart

1 from the Town Police ever began talking with Mr. Washington....  
2 of course, he made certain statements to Investigator Schrum  
3 from the Fauquier County Sheriff's Department, but before they  
4 ever began talking with him they, as you recall, Lt. Hart came  
5 over that Saturday afternoon, the defendant was asleep, they  
6 didn't make any attempt to talk to him at that time, let him get  
7 a good night's sleep, let him eat, do whatever he wanted to do,  
8 came back over the next morning and they didn't start talking  
9 with him until 10:00 that morning and you'll recall the testimony  
10 of Investigator Schrum of Fauquier that when the defendant came  
11 in that morning he was in much better spirits, he looked calm,  
12 fairly relaxed and he said, I had a good night's sleep. He was  
13 smiling about it. That was the investigator's testimony. He  
14 was smiling and that I had a good night's sleep, it just wasn't  
15 quite long enough, and then the investigators came in, began  
16 talking with him. Is there one shred of evidence or any factual  
17 matter before you that this defendant was in any way forced to  
18 give this statement and was coerced into giving this statement...  
19 is there any indication that these officers intimidated him, that  
20 he had been kept awake for days on end, badgered with different  
21 questions and accusations and threats against his family or other  
22 people or anything of that nature? There's not a shred of any  
23 evidence before you that these officers behaved in any other  
24 fashion than a fashion that was entirely appropriate. They just  
25 went in there and the defendant was there. They sat down and

1 they started talking. The defendant took them over to Culpeper  
2 and showed them where the actual apartment was where the act  
3 took place and I ask you to consider very carefully that the  
4 defendant ... there wasn't any coercion here, that at that point  
5 the defendant probably wanted to talk about this. You recall  
6 the testimony of Investigator Schrum that the defendant was  
7 there and his hands were shaking, he was obviously bothered or  
8 upset, and that as soon as he admitted, and apparently admitted  
9 for the first time, that he, in fact, killed [REDACTED],  
10 that his hands stopped shaking and that he was relaxed and began  
11 crying at that point, and that he told the investigator that he  
12 felt better, that it had been some time during that whole time  
13 that he'd never told a single person what he had done and I ask  
14 you to ask yourselves in your own minds, is that the police  
15 forcing this man to talk, and coercing him, making him give an  
16 involuntary statement? All the police did in this case was ask  
17 him the questions and he gave them the answers, for whatever  
18 reasons he had in his mind, but the police were just doing their  
19 job and they didn't do anything improper. Now, as to the  
20 allegation or the assertion by the defendant that the police  
21 just made up everything that was testified to by them in the  
22 course of this trial, that in effect that they were lying, I  
23 ask you to consider how they would have gotten all the information  
24 about the defendant to put in a statement in the first place,  
25 about his age, about his education, the fact that he was living

1 with his sister and what his sister's name was, who he was  
2 working for, all those various things, and I ask you to consider,  
3 second of all, only a person who was actually there, who actually  
4 did this, could have given them that statement, for several  
5 reasons. He said that he kicked on the door, but the door was  
6 open. What's the testimony of Special Agent Wilmore who was  
7 there at the scene? There was no damage to the door. It  
8 apparently was, in fact, open. If the door had been locked or  
9 closed there would have been some damage to the lock... asked  
10 the defendant ... didn't suggest to him ... didn't ask him,  
11 was the radio on? They asked him, was the radio on or off and the  
12 defendant said the radio was on. What's the testimony of the  
13 people there on the scene the day that this happened? When they  
14 walked into the apartment there was a radio on. It was on FM 105.  
15 They asked the defendant to describe how it happened and what did  
16 the defendant say? That he took [REDACTED] [REDACTED] [REDACTED] into the  
17 back bedroom and you'll recall the diagram of the house, the  
18 bedroom was all the way at the end of the hall, the back bedroom  
19 in the apartment. How could anyone know that, except the person  
20 who was there and the person who did it? The last piece of  
21 evidence is that they asked him, did you take anything with you?  
22 No, didn't take anything with me. Did you leave anything there?  
23 Yes, I left a shirt. Why did you leave the shirt there? Because  
24 it had blood on it, and what was found in the apartment, or later  
25 found in the dresser that was removed from the apartment to the

1 mother-in-law's house, so she could separate the clothing and  
2 take out [REDACTED] clothing and discard it and keep her son's  
3 clothing? There was a shirt and you heard the testimony of  
4 Kenny Buraker from the Town Police Department that when that  
5 shirt was handed over to him it had red spots on it that appeared  
6 to be bloodstains. You've heard the testimony that when they  
7 took that shirt back and held it up in front of the defendant  
8 he said, yes, that was the shirt I was wearing. They asked him,  
9 how do you know that was your shirt? Because the patch was  
10 missing over the left top pocket. Now, how does somebody make  
11 all that up, unless they were actually there and actually did  
12 it? I would submit to you that there can't be any question in  
13 your mind about it, the fact that this happened and the fact that  
14 Earl Washington Junior did it.

15 THE COURT: Ladies and gentlemen, the case is about to  
16 be submitted to you on the question of guilt or innocence. When  
17 you retire to the jury room you should select a foreman from  
18 among your number who will preside over your deliberations and  
19 who will record the verdict, whatever it may be. Now in that  
20 regard I have written out on the back of the last instruction a  
21 form verdict which gives the jury two options of either finding  
22 the defendant not guilty or guilty as charged in the indictment  
23 and whichever of those verdicts is appropriate, it's up to the  
24 jury to select, once the decision has been made, and simply  
25 record it by having the foreman sign the verdict as reached.