

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

- - -

STATE OF OHIO,	)	Case No. CR2020-10-2863
	)	C.A. No. 30799
Plaintiff,	)	
	)	TRANSCRIPT OF
vs.	)	PROCEEDINGS
	)	(WITH EXHIBITS)
JOSEPH SENK,	)	
	)	Volume 4 (of 4 Volume)
Defendant.	)	

- - -

**APPEARANCES:**

**SALLY MONTELL** and **MATTHEW MEYER**,  
Assistant Attorneys General,  
On behalf of the State of Ohio.

**JOHN GREVEN**, Attorney at Law,  
On behalf of the Defendant.

- - -

BE IT REMEMBERED that upon the hearing of  
the above-entitled matter in the Court of Common  
Pleas, Summit County, Ohio, before THE HONORABLE  
ALISON McCARTY, Judge Presiding, commencing on  
Monday, May 1, 2023, the following proceedings  
were had, being a Transcript of Proceedings:

**(JURY TRIAL)**

CYNTHIA S. KLINE, RPR  
Official Court Reporter  
Summit County Courthouse  
209 South High Street  
Akron, OH 44308

CYNTHIA S. KLINE, RPR - OFFICIAL COURT REPORTER

I N D E X

<u>Voir Dire</u>			23	
 <u>Opening Statements</u>				
By Ms. Montell			158	
By Mr. Greven			167	
<u>STATE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Richard Brownley	168	201	225	231
Julie Brown	233	246	---	---
Rebecca Bralek	248	265	266	---
Paul Maloney	268	280	285	291
Grant Rose	296	304	306	---
Jennifer Carlin	308	335	340/343	342
Matthew Whittaker	344	366	367	370
Mike Zsednay	374	380	---	---
Joseph Beltrami	384	392	397	---
Jared Prill	402	408	409	410
Jason Walters	412	441	---	---
 <u>Closing Arguments</u>				
By Mr. Meyer			469	
By Mr. Greven			480	
By Ms. Montell			498	
<u>JURY CHARGE:</u>			453/508	

M O T I O N S

Defendant Motion to appoint new counsel	
Defendant Motion to exercise inalienable rights protected by the Bill of Rights	
State Motion of intent to introduce other acts	
Defendant Rule 29 Motion	
State Motion to Amend Count 2	

E X H I B I T S

STATE'S EXHIBITS:

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Exhibit No. 1a-1d	Photos
Exhibit No. 2a-2h	Photos
Exhibit No. 3	Photo
Exhibit No. 4a-4e	Photos
Exhibit No. 5a-5d	Photos
Exhibit No. 6a-6b	Photos
Exhibit No. 7	Letter dated 5/2/2013
Exhibit No. 8a-8d	Photos
Exhibit No. 9	Letter dated 7/25/2017
Exhibit No. 10	Letter dated 7/16/2020
Exhibit No. 11	Letter dated 9/29/2020
Exhibit No. 12a-12e	Photos
Exhibit No. 13a-13b	Photos
Exhibit No. 14a-14x	Photos
Exhibit No. 15	All Tread Xpress Invoice

ALSO INCLUDED:

Copy of Jury Instructions

\* \* \*

1 \*\*\*\*\*Tuesday May 2, 2023

2 AFTERNOON SESSION

3 - - -

4 (Whereupon, a discussion was held  
5 between Court and Counsel off the  
6 record.)

7 - - -

8 (Whereupon, State's Exhibits 1-16,  
9 19, 21-22, and 25 were admitted  
10 into evidence pursuant to  
11 proceedings held off the record.)

12 - - -

13 (The following proceedings were  
14 held outside the presence of the  
15 jury panel:)

16 THE COURT: Does the State have any  
17 further witnesses then?

18 MS. MONTELL: No. The State rests.

19 THE COURT: All right.

20 Exhibits have been admitted.

21 Any motions that need to be heard?

22 MR. GREVEN: Judge, understanding  
23 that the standard the Court uses is  
24 looking at the evidence in a light most  
25 favorable to the State, we believe that

1           they have not shown a prima facie case  
2           that could lead to a conviction.

3                     And we would ask you to dismiss  
4           both charges.

5                     THE COURT: All right then.

6                     As to Count 1, the allegation is  
7           that the Defendant, on or about the 20th  
8           day of March of 2019, in Summit County,  
9           Ohio, knowingly transported scrap tires  
10          anywhere in this State without first  
11          registering with and obtaining a  
12          registration certificate from the Director  
13          of Environmental Protection.

14                    So the standard on a motion for  
15          acquittal, pursuant to Rule 29, is that  
16          the Court must view the evidence in the  
17          light most favorable to the non-moving  
18          party, which means I have to make all  
19          presumptions in favor of the State, since  
20          the defense is the one making the motion.

21                    Then the question goes to the Court  
22          is whether or not reasonable jurors could  
23          differ as to the issue as to whether the  
24          State had, in fact, proved its burden  
25          beyond a reasonable doubt.

1                   And it's the Court's opinion that  
2                   reasonable jurors could differ on that  
3                   issue.

4                   And that means that, ultimately, I  
5                   will overrule that motion as to Count 1,  
6                   let the jury decide that issue.

7                   And as to Count 2, whether --

8                   You know, I don't normally put the  
9                   code section in.

10                  Is there some reason, in  
11                  particular -- I put it on the verdict  
12                  form, but I don't put it in the  
13                  instructions that I will read to them.

14                  So I will leave the code out. I  
15                  will just say: In violation.

16                  MR. MEYER: Agreed.

17                  THE COURT: I don't actually put in  
18                  the code section on that. I just put it  
19                  on the verdict form.

20                  Anyway, the charge is before you  
21                  find the Defendant guilty, you must find,  
22                  beyond a reasonable doubt, that on or  
23                  about the -- beginning in the summer of  
24                  2018 and continuing thereafter and in  
25                  Summit County, Ohio, the Defendant

1           recklessly disposed of solid waste by open  
2           dumping, and solid waste consisted of  
3           scrap tires.

4                       Once again, taking the evidence  
5           most favorable to the non-moving party,  
6           the Court finds that reasonable minds  
7           could differ as to whether or not the  
8           State has proved its burden.

9                       And so I'm going to overrule that  
10          motion as well. We will let the jury  
11          decide.

12                      All right. And then as far as the  
13          defense goes, when we bring the jury back  
14          in here, do you have any evidence or  
15          witnesses you wish to present?

16                      MR. GREVEN: Judge, I've had  
17          discussions with Joe; and Joe has decided  
18          he does not wish to testify.

19                      I would ask the Court to inquire.

20                      THE COURT: All right. So for the  
21          record, Mr. Senk, I just need to make sure  
22          that that's your decision, because  
23          ultimately, you are the only one that can  
24          decide that issue.

25                      In other words, your lawyer can't

1 force you to testify; and your lawyer  
2 can't order you not to testify.

3 Ultimately, you have to be the one  
4 that makes that decision.

5 So is this your decision not to  
6 testify?

7 THE DEFENDANT: Yes, it is my  
8 decision. I do not want to testify.

9 THE COURT: All right. Okay. So  
10 noted.

11 That means when we come back, we'll  
12 be ready to give closing arguments.

13 MR. GREVEN: Are we both --

14 THE COURT: I'll have you each rest  
15 for the record in front of the jury.

16 You didn't have any evidence, so I  
17 don't know if you need to renew your  
18 motion.

19 But how much time would you like  
20 for closings?

21 MS. MONTELL: 20 and 10, so 30  
22 total.

23 THE COURT: Are you okay with that?

24 MR. GREVEN: No. That's fine. If  
25 I go past 30, I'll --



1                   THE COURT:   Why don't we say --  
2                   we'll say 40, and that way nobody has to  
3                   rush, okay?   Because we -- feel free to  
4                   not take up 40 minutes.

5                   MR. GREVEN:   I'm not going to take  
6                   but 10 or 15.

7                   THE COURT:   The other thing is, I'm  
8                   going to let them know that the Court  
9                   needs to leave today no later than 4:30.

10                  So we're going to be checking back  
11                  with them around 4.   And if they are not  
12                  very close to a verdict, we're going to be  
13                  releasing them until the next day; and  
14                  they will be back here tomorrow at 9,  
15                  okay?

16                  So I'm kind of giving them a  
17                  timeline so they understand I can't stay  
18                  late today.   All right.

19                  (Pause in the proceedings.)

20                  THE BAILIFF:   All rise.

21                  (Whereupon, the jury was summoned  
22                  and the following proceedings were  
23                  had:)

24                  THE BAILIFF:   Go ahead and have a  
25                  seat.

1 THE COURT: All right. Thank you.

2 So does the State have any further  
3 witnesses?

4 MS. MONTELL: No, Your Honor. The  
5 State rests.

6 THE COURT: Okay. Thank you.

7 The State having rested, the Court  
8 has gone over the exhibits and -- with the  
9 lawyers, and those have been admitted.

10 Does the defense wish to present  
11 any evidence or witnesses?

12 MR. GREVEN: Judge, we would also  
13 rest; and we would renew all previously  
14 argued motions --

15 THE COURT: All right.

16 MR. GREVEN: -- and objections.

17 THE COURT: Thank you.

18 So those motions have previously  
19 been ruled on. The Court will rule in  
20 accordance with the same.

21 And we are now going to proceed  
22 into the closing arguments, okay?

23 First, I'm going to read you some  
24 law.

25 I will tell you that the law

1 requires me to verbally read these  
2 instructions to you, and so I must do so.

3 However, I am going to give you  
4 typewritten copies of the instructions, so  
5 you will have them in the jury room, so --  
6 but I won't give them to you in advance  
7 because you actually have to listen to me.  
8 And then you'll have them in the jury room  
9 for you, okay? So you don't have to worry  
10 about taking notes feverishly during the  
11 instructions.

12 And I give the majority of them  
13 ahead of time so the lawyers don't have to  
14 spend most of their times in openings and  
15 closings talking about the law.

16 Since I have already read it to  
17 you, you will have already heard it.

18 And then after I'm done with the  
19 preliminary instructions then, the State  
20 will give its closing, the defense will  
21 give its closing, then the State will be  
22 permitted to give a final closing. And  
23 they've been allocated an equal amount of  
24 total time.

25 So you have heard all of the

1 evidence and you're about to hear the  
2 arguments of counsel.

3 It's now my duty to instruct you as  
4 to the law that applies in this case.

5 Now, the Court and the jury have  
6 separate functions. You decide the  
7 disputed questions of fact, and the Court  
8 provides you with these instructions of  
9 law.

10 It is your sworn duty to accept  
11 these instructions and to apply the law to  
12 the facts as you determine those facts to  
13 be.

14 You're not permitted to change the  
15 law. You are to apply your own ideas as  
16 to what you think the law should be.

17 Now, a criminal case begins with  
18 the filing of an indictment accusing or  
19 charging the Defendant with committing  
20 particular crimes.

21 The indictment in this case is for  
22 one count of illegal transportation of  
23 scrap tires and one count of open dumping  
24 of solid waste.

25 It is important that you understand

1           that the filing of the indictment or the  
2           indictment itself is in no way to be  
3           considered by you as evidence against the  
4           Defendant.

5                     The filing of an indictment informs  
6           the Defendant that he has been accused of  
7           the offenses, so it's a notice document.

8                     The plea of not guilty is a denial  
9           by the Defendant of the crimes that are  
10          charged and puts into issue all of the  
11          essential elements of the crimes charged.

12                    Now, the Defendant is presumed to  
13          be innocent unless and until his guilt is  
14          established beyond a reasonable doubt.

15                    The Defendant must be acquitted  
16          unless the State produces evidence which  
17          convinces you, beyond a reasonable doubt,  
18          of every essential element of the crimes  
19          alleged.

20                    I am now going to define reasonable  
21          doubt for you. Reasonable doubt is  
22          present when you, the jurors, after you  
23          have carefully considered and compared all  
24          the evidence, cannot say you are firmly  
25          convinced of the truth of the charge. It

1 is a doubt based on reason and common  
2 sense.

3 Reasonable doubt is not mere  
4 possible doubt because everything relating  
5 to human affairs, when depending on moral  
6 evidence, is open to some possible or  
7 imaginary doubt.

8 Proof beyond a reasonable doubt is  
9 proof of such character that an ordinary  
10 person would be willing to rely and act  
11 upon it in the most important of his or  
12 her own affairs.

13 Now, I'll define evidence for you.  
14 Evidence is the testimony from the  
15 witnesses, the exhibits admitted during  
16 the trial, and any stipulations agreed to  
17 by counsel.

18 Evidence may be direct or it may be  
19 circumstantial or a combination of the  
20 two.

21 Direct evidence and circumstantial  
22 evidence are of equal weight or probative  
23 value.

24 Direct evidence is testimony given  
25 by a witness who has seen or heard or felt

1           certain acts or facts to which he or she  
2           testifies.

3                     Direct evidence includes exhibits  
4           admitted during the trial.

5                     Evidence may also be used to prove  
6           a fact by an inference. This type of  
7           evidence is called circumstantial  
8           evidence.

9                     It is the proof of facts by direct  
10          evidence from which you may infer other  
11          reasonable related facts or conclusions  
12          which naturally and logically follow  
13          according to the common experience of  
14          mankind.

15                    Just to give you an example, say --  
16          unfortunately, it's May and this example  
17          might actually be true.

18                    Say you looked out the window last  
19          night when you went to bed and the ground  
20          was dry and clear. I don't think it was.  
21          But let's -- just for the hypothetical, it  
22          was dry and clear when you went to bed  
23          last night. You didn't see or hear  
24          anything.

25                    When you woke in the morning, you

1           looked out, and the ground was covered in  
2           a blanket of white snow.

3                       So you didn't actually directly  
4           see -- you didn't see direct evidence of  
5           snow falling because you were asleep. But  
6           from what you did see, no snow the night  
7           before, snow the next morning, you can  
8           infer that while you were sleeping, snow  
9           fell.

10                      Whether an inference is made rests  
11           entirely with you.

12                      To infer or make an inference is to  
13           reach a reasonable conclusion of fact  
14           which you may but are not required to make  
15           from other facts which you find have been  
16           established by direct evidence.

17                      The evidence, as I have said, does  
18           not include the indictment.

19                      It does not include the answers to  
20           questions you were instructed to disregard  
21           or any statements that were stricken from  
22           the record.

23                      It does not include the opening  
24           statements or closing arguments of  
25           counsel.



1           The opening statements and closing  
2 arguments of counsel are designed to  
3 assist you, but they are not evidence.

4           Now, you must not speculate as to  
5 the reason why the Court sustained an  
6 objection to any question or what the  
7 answer to the question might have been.

8           You must not draw any inference or  
9 speculate on the truth of any suggestion  
10 included in a question that was not  
11 answered or not permitted to be answered.

12          You, the jury, are the sole judges  
13 of the facts, the credibility or  
14 believability of the witnesses, and the  
15 weight of the evidence.

16          To weigh the evidence, you must  
17 consider the credibility of each person  
18 who testified.

19          You must apply the tests for  
20 truthfulness that you apply in your daily  
21 lives. These tests include the appearance  
22 of the witness on the stand, his or her  
23 manner of testifying, the opportunity he  
24 or she had to see, hear, or feel the  
25 things about which he or she testified,

1           the accuracy of the witness's testimony,  
2           the witness's frankness or lack of it, the  
3           witness's intelligence, bias, interest in  
4           the outcome, if any, the witness's prior  
5           criminal record, if any, together with all  
6           the facts and circumstances surrounding  
7           the testimony.

8                   Applying these tests, you will  
9           determine the weight to be given to each  
10          witness's testimony.

11                   Remember, you may believe or  
12          disbelieve all or any part of the  
13          testimony of any witness.

14                   It is your promise to determine  
15          what testimony is worthy of belief and  
16          what testimony is not worthy of belief.

17                   You should not decide any issue of  
18          fact merely on the basis of the number of  
19          witnesses who testified to each side of an  
20          issue.

21                   Rather, the final test in judging  
22          evidence will be the force and weight of  
23          the evidence, regardless of the number of  
24          witnesses on each side of an issue.

25                   The testimony of one witness

1           believed by you is sufficient to prove any  
2           fact.

3                   Also, discrepancies in a witness's  
4           testimony, between his or her testimony  
5           and that of others, if there are any, does  
6           not necessarily mean that you should  
7           disbelieve the witness, as people commonly  
8           forget facts or recollect them erroneously  
9           after the passage of time.

10                   You are certainly aware of the fact  
11           that two persons that are witnesses to an  
12           event or incident may often see or hear it  
13           differently.

14                   In considering a discrepancy in a  
15           witness's testimony, you should consider  
16           whether such discrepancy concerns an  
17           important fact or a trivial one.

18                   If you conclude that a witness has  
19           willfully lied in his or her testimony as  
20           to the material fact, you may distrust all  
21           of his or her testimony. And you would  
22           then have the right to reject all of his  
23           or her testimony, unless from all of the  
24           evidence you believe that the probability  
25           of truth favors his or her testimony in

1           other particulars.

2                       Now, normally, a witness may not  
3           express an opinion; however, one who  
4           follows a profession or special line of  
5           work may express his or her opinion  
6           because of his or her education,  
7           knowledge, and experience.

8                       Such testimony is admitted for  
9           whatever assistance it may provide to help  
10          you to arrive at a just verdict.

11                      It is not necessary that a  
12          Defendant take the witness in his or her  
13          defense. He or she has a constitutional  
14          right not to testify.

15                      The fact that the Defendant did not  
16          testify must not be considered by you for  
17          any purpose.

18                      Now in Count 1, the Defendant,  
19          Joseph Senk, is charged with illegal  
20          transportation of scrap tires.

21                      Before you can find the Defendant  
22          guilty, you must find, beyond a reasonable  
23          doubt, that on or about the 20th day of  
24          March, in the year 2019, and in Summit  
25          County, Ohio, the Defendant, Joseph Senk,

1            knowingly transported scrap tires anywhere  
2            in this state without first registering  
3            with and obtaining a registration  
4            certificate from the Director of  
5            Environmental Protection.

6                        Now, I'll define some terms for  
7            you.

8                        Knowingly. A person acts  
9            knowingly, regardless of purpose, when the  
10          person is aware that that person's conduct  
11          will probably be of a certain nature. A  
12          person has knowledge of circumstances when  
13          he or she is aware that such circumstances  
14          probably exist. Because you cannot look  
15          into the mind of another, knowledge is  
16          determined from all the facts and  
17          circumstances in evidence.

18                        You will determine, from these  
19          facts and circumstances, whether there  
20          existed, at the time, in the mind of the  
21          Defendant, an awareness of the probability  
22          that he transported scrap tires without  
23          obtaining a registration certificate from  
24          the Director of Environmental Protection.

25                        All right. So now, I'm going to

1           define the term scrap tire for you. And  
2           scrap tire means an unwanted or discarded  
3           tire. So if you find that the State  
4           proved, beyond a reasonable doubt, all the  
5           essential elements of the offense of  
6           illegal transportation of scrap tires,  
7           your verdict must be guilty, according to  
8           your findings.

9                       If you find that the State failed  
10           to prove, beyond a reasonable doubt, any  
11           one of the essential elements of the  
12           offense of illegal transportation of scrap  
13           tires, then your verdict must be not  
14           guilty, according to your findings.

15                      In Count 2, the Defendant, Joseph  
16           Senk, is charged with open dumping solid  
17           waste.

18                      Before you can find the Defendant  
19           guilty, you must find, beyond a reasonable  
20           doubt, that on or about the beginning of  
21           the summer of 2018, and continuing  
22           thereafter, and in Summit County, Ohio,  
23           the Defendant, Joseph Senk, recklessly  
24           disposed of solid waste by open dumping,  
25           and the solid waste consisted of scrap

1           tires.

2                   A person acts recklessly when, with  
3           heedless indifference to the consequences,  
4           the person discards a substantial and  
5           unjustifiable risk that the person's  
6           conduct is likely to cause a certain  
7           result or is likely to be of a certain  
8           nature.

9                   A person is reckless with respect  
10          to circumstances when, with heedless  
11          indifference to the consequences, the  
12          person disregards a substantial and  
13          unjustifiable risk when such circumstances  
14          are likely to exist.

15                  Substantial risk means a strong  
16          possibility, as contrasted with a remote  
17          or significant possibility, that a certain  
18          result may occur.

19                  Scrap tire has already been defined  
20          for you.

21                  Disposal. Disposal means the  
22          discharge, deposit, injection, dumping,  
23          spilling, leaking, emitting, or placing of  
24          any solid waste or hazardous waste into or  
25          on any land or ground or surface water or

1           into the air, except if the disposition or  
2           placement constitutes storage or  
3           treatment; or if the solid waste consists  
4           of scrap tires, the disposition or  
5           placement constitutes a beneficial use or  
6           occurs at a scrap tire recovery facility  
7           licensed in accordance with the Ohio  
8           Revised Code.

9                       So solid waste includes but is not  
10           limited to garbage, scrap tires,  
11           combustible and noncombustible material,  
12           street dirt and debris. Solid waste does  
13           not include any material that is an  
14           infectious waste or hazardous waste.

15                      Open dumping means the depositing  
16           of solid waste into a body or stream of  
17           water or onto the surface of the ground at  
18           a site that is not licensed as a solid  
19           waste facility under the Ohio Revised  
20           Code.

21                      If you find that the State proved,  
22           beyond a reasonable doubt, all of the  
23           essential elements of the offense of open  
24           dumping solid waste, your verdict must be  
25           guilty, according to your findings.



1           If you find that the State failed  
2           to prove beyond a reasonable doubt --  
3           excuse me -- if you find the State failed  
4           to prove, beyond a reasonable doubt, any  
5           one of the essential elements of the  
6           offense of open dumping solid waste, then  
7           your verdict must be not guilty, according  
8           to your findings.

9           If you find that the State proved,  
10          beyond a reasonable doubt, all the  
11          essential elements of any one or all of  
12          the offenses charged in the separate  
13          counts of the indictment, your verdict  
14          must be guilty as to such offense or  
15          offenses, according to your findings.

16          If you find that the State failed  
17          to prove, beyond a reasonable doubt, any  
18          one of the essential elements of any one  
19          or both of the charges charged in the  
20          separate counts of the indictment, your  
21          verdict must be not guilty as to such  
22          offense or offenses, according to your  
23          findings.

24          The charges set forth in each count  
25          in the indictment constitute a separate

1           and distinct matter.

2                   You must consider each count and  
3           the evidence applicable to each count  
4           separately.

5                   And you must state your finding as  
6           to each count uninfluenced by your verdict  
7           as to the other count.

8                   The Defendant may be found guilty  
9           or not guilty of any one or both of the  
10          offenses charged.

11                   Now, we're going to hear the  
12          closing arguments of counsel. And we will  
13          start with the State.

14                   And that's going to be Mr. Meyer?

15                   MR. MEYER: Yes, Your Honor. Thank  
16          you.

17                   May it please the Court, ladies and  
18          gentlemen of the jury.

19                   I want to thank you for your  
20          attention during the last two days, on  
21          behalf of myself, Miss Montell, people of  
22          the State of Ohio.

23                   And I think I can speak for all the  
24          lawyers in this room, we appreciate your  
25          time. Your time is important and all of

1           these cases are important.

2                       So with that in mind, I am going to  
3           try to get to the point quickly and  
4           explain to you why the evidence, in the  
5           State of Ohio's estimation, proves, beyond  
6           a reasonable doubt, that the Defendant,  
7           Joseph Senk, is guilty of both the charged  
8           counts in this case.

9                       The first count, illegal  
10          transportation of scrap tires. The  
11          elements of this count -- you have to find  
12          each one -- are that on or about March 20,  
13          2019 -- and that's the date -- it doesn't  
14          have to be the precise date, but that's  
15          about the date this offense occurred -- in  
16          Summit County, Ohio, the Defendant  
17          knowingly transported scrap tires without  
18          first obtaining a registration certificate  
19          from the Director of Environmental  
20          Protection.

21                      You heard evidence, over the last  
22          few days, that you will use to evaluate  
23          those elements.

24                      You just heard the Judge's  
25          instruction of law, but I'm going to

1 repeat them here. This is extremely  
2 important.

3 A person acts knowingly, regardless  
4 of purpose, when the person is aware that  
5 the person's conduct will be of a certain  
6 nature.

7 A person has knowledge of  
8 circumstances when the person is aware  
9 that such circumstances probably exist.  
10 Remember those words.

11 Now, the evidence in this case, we  
12 submit to you, ladies and gentlemen,  
13 proves that the Defendant had knowledge  
14 that he illegally transported scrap tires.

15 You remember Julie Brown. She  
16 works for the Summit County Health  
17 Department. And she testified clearly  
18 that she told Mr. Senk all the way back in  
19 2013, ten years ago, that the Defendant  
20 could not transport scrap tires without a  
21 proper certificate of registration.

22 You also heard Rebecca Bralek  
23 testify, on behalf of the Summit County  
24 Health Department, that she gave Mr. Senk  
25 written notice, in 2017, that he could not

1 transport scrap tires without a license.

2 And it's right there on that piece  
3 of paper you're going to carry back with  
4 you in the jury room.

5 You cannot do this. As if the  
6 prior one wasn't enough, you had it in  
7 writing.

8 Whatever you may think throughout  
9 this trial, the Defendant clearly could  
10 use paper. He signed paper, he gave  
11 paper, he received paper.

12 And then, just to really drive the  
13 point home, remember those documents that  
14 Mr. Rose testified to and Mr. Brownley  
15 testified to, from Lightning Auto Service  
16 and Strong Tire, those licenses that Mr.  
17 Senk gave, so the people would be  
18 convinced that he actually had the legal  
19 ability to transport the tires for them?

20 Those are his own documents, ladies  
21 and gentlemen. As if there were any  
22 doubt, he gave those documents out.

23 He had been warned multiple times.

24 And remember, his own documentation  
25 shows he knew about the rules.

1                   Now, he might want to hide in the  
2                   weeds on a technicality; but you heard  
3                   Jennifer Carlin, from the EPA, testify,  
4                   there are no technicalities here. There  
5                   are no exceptions. He could not transport  
6                   scrap tires. It was against the law, and  
7                   he was warned not to do it repeatedly.

8                   So you heard Judge McCarty testify  
9                   or tell you about circumstantial evidence.

10                  Well, what is circumstantial  
11                  evidence in this case?

12                  When Mr. Senk gave those documents  
13                  out showing an awareness of the rules and  
14                  regulations that govern scrap tire  
15                  hauling, it snowed. That's circumstantial  
16                  evidence.

17                  And you can draw a direct inference  
18                  from that evidence to his knowledge that  
19                  what he was doing was wrong. He knew.  
20                  Fits the definition squarely.

21                  And you had the evidence that,  
22                  according to his own roommate or tenant,  
23                  friend, Paul Maloney, when he was pulled  
24                  over, hauling those tires, his own truck,  
25                  he was calling the shots. He was

1 directing people. He was the one in  
2 charge. It was him, nobody else, him.

3 Count 2, open dumping of scrap  
4 tires. What are the elements? On or  
5 about the summer of 2018, in Summit  
6 County, the Defendant recklessly disposed  
7 of solid waste by open dumping, and the  
8 offense involved scrap tires.

9 And that's the Sagamore Road  
10 property in Summit County, Ohio, in the  
11 Village of Northfield.

12 Remember the definition that Judge  
13 McCarty read to you. I'm going to read it  
14 to you again. It's important.

15 A person acts recklessly when, with  
16 heedless indifference to the consequences,  
17 disregards a substantial and unjustifiable  
18 risk that the person's conduct is likely  
19 to cause a certain result or is likely to  
20 be of a certain nature.

21 A person is reckless with respect  
22 to circumstances when, with heedless  
23 indifference to the consequences, the  
24 person disregards a substantial and  
25 unjustifiable risk that such circumstances

1           are likely to exist.

2                   So what's the evidence here? You  
3           heard several witnesses here. You heard  
4           Jason Walters, the Village of Northfield  
5           service director.

6                   You heard Julie Brown, who works  
7           for Summit County's Health Department.

8                   Rebecca Bralek, also the Health  
9           Department.

10                  Jennifer Carlin, the Ohio EPA.

11                  They all told Mr. Senk repeatedly,  
12           not once, not twice, numerous times over  
13           many years: You can't do this. You can't  
14           leave tires on the ground. He did it  
15           anyway.

16                  You heard Jennifer Carlin explain  
17           what scrap tires are. She testified that  
18           solid waste includes scrap tires and that  
19           scrap tires are unwanted or discarded  
20           tires. That's what we're talking about  
21           here.

22                  Now, the State's not required to  
23           prove motive; but I submit to you, it's  
24           right in front of you. It's pretty  
25           simple.



1                   He had a business, and that  
2                   business required him to pay overhead.  
3                   The overhead was the cost of illegally  
4                   transporting and disposing scrap tires.  
5                   He didn't have the money. He couldn't do  
6                   it, so he wanted to do it on the cheap.  
7                   And who wouldn't want to run a business  
8                   with no overhead? Sounds great.

9                   Except that the way you're doing it  
10                  is a crime. It is a crime to illegally  
11                  transport scrap tires. It is a crime to  
12                  open dump scrap tires.

13                 If you pay the cost of doing it  
14                 right, it costs money. If you don't, you  
15                 do it on the cheap, you save money; and  
16                 you put that money in your own pocket.

17                 That, I submit to you, ladies and  
18                 gentlemen, is why this happened.

19                 It's not complicated. It's right  
20                 in front of you. The evidence is there.

21                 You heard his neighbors,  
22                 Mr. Zsednay; Mr. Maloney, his tenant; Mr.  
23                 Whittaker, we won't talk about him long;  
24                 Mr. Rose; and Mr. Walters all testified  
25                 that Mr. Senk here was responsible for

1           this. No one else. Mr. Senk.

2                   Now, I won't preach about  
3           disabilities. People with disabilities  
4           deserve respect and fair treatment. But  
5           to hide behind that as some sort of  
6           suggestion he couldn't do this should  
7           offend anyone's reason and common sense.

8                   The evidence was, he did this by  
9           directing his friends and associates.  
10          There's no disability in that. He can't  
11          hide behind that, pretend that he's not  
12          guilty because he was legally blind or  
13          couldn't haul the tires himself.

14                  Telling his friends and associates  
15          to do it is the same thing as doing it  
16          himself.

17                  The law does not give him a pass,  
18          and neither should you.

19                  Evidence of recklessness. Mr. Walters  
20          testified that he had many run-ins with  
21          Joe over the years. He told him: You  
22          can't do this. You can't leave these  
23          tires laying around.

24                  Mr. Brownley testified that those  
25          tires appeared in the summer of 2018.

1                   Now, you heard some testimony that  
2                   Mr. Senk may have directed people to clean  
3                   up tires two years later after a  
4                   torrential rainstorm drove them down the  
5                   creek that leads to Tinker's Creek that  
6                   leads to the Cuyahoga River that leads to  
7                   Lake Erie.

8                   That's not Mr. Senk's water.  
9                   That's the people's water. That's our  
10                  water. That's where he put his tires.  
11                  Remember that.

12                  This isn't a victimless crime.  
13                  Remember who depends on the water, who  
14                  uses the water, who enjoys the water.  
15                  Everyone.

16                  Anyone is born with the skills to  
17                  understand why this is wrong. I can tell  
18                  you it's wrong. The witnesses can tell  
19                  you it's wrong.

20                  But you're born with the skills to  
21                  understand why this is wrong, when you do  
22                  something that harms the environment, that  
23                  other people enjoy and rely on. Reason  
24                  and common sense.

25                  So I might have been born last

1 night or born at night but not last night.

2 Don't fall for technicalities,  
3 traps, or nonsense.

4 This is simple. It's not a  
5 who-done-it.

6 The evidence shows that he did it.  
7 The evidence shows why he did it. The  
8 evidence shows that he knew he was doing  
9 it, Count 1; and that he was reckless in  
10 doing it, Count 2.

11 So to sum up, it's not a victimless  
12 crime. There have been numerous witnesses  
13 who have testified unequivocally, clearly,  
14 and consistently that he did this. He had  
15 no excuse for doing it.

16 And now, I submit to you, the State  
17 has proven it to you by proof beyond a  
18 reasonable doubt.

19 You're the voice of the community.  
20 It's not my community, it's your  
21 community.

22 You evaluate the evidence and you  
23 return a verdict.

24 I look forward to listening to your  
25 result.

1 Thank you.

2 THE COURT: Thank you, Mr. Meyer.

3 MR. GREVEN: Good afternoon.

4 When I was a kid, 50-plus years  
5 ago, sometimes my mom and dad would argue;  
6 and sometimes those arguments would end up  
7 with my dad saying to my mom: Jesus,  
8 Bernice, make a federal case out of it.

9 I couldn't help but think about  
10 that quote as I sat here during the past  
11 two days.

12 So one thing -- well, factually,  
13 there's not a whole lot of things in  
14 dispute here.

15 It's not like I got up here and  
16 said he wasn't in that red truck or he  
17 never owned that property or any kind of  
18 thing like that.

19 So factually, we agree. Both sides  
20 of the table actually agree on a lot of  
21 things. What we don't agree on is whether  
22 the State has proved, beyond a reasonable  
23 doubt, that Joe Senk is guilty of these  
24 crimes.

25 Now, you've heard all the testimony

1 from a bunch of different people. I'm not  
2 going to go over individual testimony  
3 because your 12 collective memories are  
4 certainly much better than mine. But I do  
5 want to talk about jury instructions.

6 And the prosecutor put up some of  
7 the jury instructions, but he also left  
8 some of them out. And again, you're going  
9 to have copies of these in the back.

10 So Count 1, which is the illegal  
11 transportation of scrap tires, before you  
12 can find the Defendant guilty, you must  
13 find, beyond a reasonable doubt, that on  
14 or about the 20th day of March, 2019, in  
15 Summit County, Ohio, the Defendant  
16 knowingly transported scrap tires anywhere  
17 in the State without first registering  
18 with and obtaining a registration  
19 certificate from the Director of  
20 Environmental Protection.

21 Knowingly. A person acts  
22 knowingly, regardless of purpose, when the  
23 person is aware that the person's conduct  
24 will probably be of a certain nature.

25 A person has knowledge of

1           circumstances when a person is aware that  
2           such circumstances probably exist.

3                       Now, there are two paragraphs that  
4           the prosecutor put up there, but there's  
5           another paragraph to knowingly. And  
6           again, you'll have this back there, but  
7           I'm going to read you this one.

8                       Because you cannot look into the  
9           mind of another, knowledge is determined  
10          from all the facts and circumstances in  
11          evidence. You will determine from these  
12          facts and circumstances -- here's the  
13          important part -- whether there existed at  
14          the time, in the mind of the Defendant, an  
15          awareness of the probability that he  
16          transported scrap tires without obtaining  
17          a registration certificate from the  
18          Director of Environmental Protection.

19                      So there has to be an awareness, in  
20          Joe's mind, that he's committing a crime.  
21          And I'm here to tell you that you have  
22          evidence that, frankly, the State produced  
23          that shows he did not have that awareness.

24                      He -- the State talked about  
25          Exhibits 15 and 16, which is the letter

1           that Joe gave when he got tires from  
2           people.

3                       And in that letter, Joe says:  
4           Registration certificate is not required  
5           as to the above activity regarding scrap  
6           tires under the Administrative Code of  
7           3745-27-56 under the State of Ohio.

8                       So in Joe's mind, he didn't need  
9           one, a certificate; he didn't have to have  
10          one.

11                      Now, let's talk about whether or  
12          not Joe commits a crime. Let's talk about  
13          that day back on March 20th. Joe is in a  
14          truck that gets pulled over by a uniformed  
15          police officer with the lights, and I  
16          assume, siren going, okay?

17                      You heard the police officer say  
18          that he believed that, on that day, Joe  
19          was committing a felony.

20                      You heard Agent Brownley say  
21          yesterday that at that time, he believed  
22          that Joe was committing a felony.

23                      Now, if you are a police officer  
24          and someone commits a felony right in  
25          front of you, you don't have to talk to a



1 lawyer, a prosecutor, Police Legal  
2 Adviser. You can charge that person. It  
3 happens right in front of them.

4 So you have two different people in  
5 law enforcement tell you that, yeah, he's  
6 committing a felony. But do they arrest  
7 him? No.

8 Agent Brownley says because they  
9 didn't have a place to put the truck. But  
10 I also talked to the police officer today,  
11 and he had said: You don't have to arrest  
12 somebody. You can give them a summons to  
13 appear in court and still charge them with  
14 a crime.

15 So if you're Joe Senk, and they're  
16 telling you, you can't do this; nobody's  
17 arrested him.

18 So after that traffic stop is over,  
19 and you're Joe Senk, and you're driving  
20 away in that red truck with one of the  
21 other guys driving, do you really have  
22 reason to believe that you're committing a  
23 crime? Ask yourself that question.

24 If you get pulled over, and there's  
25 something sitting right there that is

1 illegal and the police officer just  
2 decided not to do anything about it, then  
3 you have to start asking yourself, maybe  
4 that stuff sitting next to me isn't  
5 illegal.

6 So if you read the entire  
7 definition of knowingly, they have not  
8 proven their case, beyond a reasonable  
9 doubt, that he should be found not guilty  
10 on Count 1.

11 Let's talk about Count 2. Again,  
12 let's go to the jury instructions because  
13 you need to read all of them.

14 Count 2, open dumping.

15 Look, you've seen the pictures.  
16 There's a lot of tires on Joe's property.  
17 There was tires over the crick, everything  
18 like that. But again, you have to go by  
19 what the law says. The law is contained  
20 in these jury instructions that the Judge  
21 has already given you.

22 Count 2, open dumping solid waste.

23 Count 2, the Defendant is charged  
24 with open dumping solid waste in violation  
25 of Section 3734.03 of the Ohio Revised

1 Code. Before you can find the Defendant  
2 guilty, you must find, beyond a reasonable  
3 doubt, that on or about beginning the  
4 summer of 2018, continuing thereafter, in  
5 Summit County, Ohio, the Defendant  
6 recklessly disposed -- key word -- of  
7 solid waste by open dumping and solid  
8 waste consisted of scrap tires.

9 So go to the definition of  
10 disposal.

11 Judge just read it to you. You'll  
12 have it back there, but I want to read it  
13 to you again and tell you why I think it's  
14 important for Joe.

15 Disposal means the discharge,  
16 deposit, injection, dumping, spilling,  
17 leaking, emitting, or placing of any solid  
18 waste or hazardous waste into or on any  
19 land or ground or surface water or into  
20 the air, comma, except if the disposition  
21 or placement constitutes storage or  
22 treatment.

23 So there is an exception. You can  
24 dump things if it constitutes storage or  
25 treatment.

1                   Again, or, comma -- there's another  
2                   exception -- if the solid waste consists  
3                   of scrap tires, the disposition or  
4                   placement constitutes a beneficial use or  
5                   occurs at a scrap tire facility.

6                   So it's illegal to dump things  
7                   unless that placement constitutes a  
8                   beneficial use or is a tire storage  
9                   facility. We're not talking about that.

10                  So the question you have to ask  
11                  yourself is: What's beneficial use? Who  
12                  gets to decide what beneficial use is?  
13                  The government.

14                  Do you want the government telling  
15                  you what's a beneficial use, what's okay  
16                  to do with things and what's not okay to  
17                  do with things?

18                  Or does beneficial use exist in the  
19                  mind of Joe Senk? Because remember, Joe  
20                  cut up these tires, okay?

21                  Now, you heard the witness today  
22                  from the Twinsburg -- Twinsburg office of  
23                  the EPA, yeah, it's okay to cut up tires.  
24                  Again, that's one of those exceptions as  
25                  to why you have to get the license.

1                   And she said they have to be 2 to  
2                   12 inches long, but nowhere is that found  
3                   anywhere in the law in the State of Ohio.  
4                   So I guess you just have to guess.

5                   If it's 13 inches long, apparently,  
6                   you're work breaking the long; but if it's  
7                   12 inches long, you're not, okay?

8                   Even if Joe had those, Revised  
9                   Code, Administrative Code in Braille, he  
10                  could not find that because it's nowhere  
11                  in the law.

12                  So the question becomes: Was this  
13                  beneficial?

14                  Well, what did you Joe do with  
15                  these scrap tires? He tried to put them  
16                  over the creek.

17                  You heard a couple witnesses say  
18                  the purpose of that was because he wanted  
19                  to build a bridge so he could cross the  
20                  crick with his whatever kind of motorized  
21                  equipment it was, okay?

22                  Is that a beneficial use? To Joe  
23                  Senk it was.

24                  Who gets to decide? Again, do we  
25                  let the government decide what's

1           beneficial for all of us?

2                   Now, what happens? There's a huge  
3 storm, okay? Those scrap tires get taken  
4 down the crick, and you saw pictures of  
5 them. Not -- you know, there's two or  
6 three scrap tires, two or three down there  
7 and everything.

8                   The city goes -- or the village --  
9 I was joking -- the village goes and  
10 removes them, and what happens next? Joe  
11 gets rid of them. You heard that  
12 testimony from a couple of witnesses.

13                  Okay. That's beneficial use, I was  
14 trying to build this bridge, but maybe  
15 that's a harebrained idea. And as we look  
16 back on it now, it is a harebrained idea,  
17 you have to admit. I think Joe would  
18 probably admit that.

19                  But at the time, he believed it was  
20 a beneficial use. If you dispose of  
21 things for a beneficial use, it is not a  
22 crime. So you have to make that  
23 determination.

24                  And again, the State has to prove  
25 their case beyond a reasonable doubt. We

1           talked about this in jury selection. I  
2           don't have to prove to you that he didn't  
3           do these things. They have to prove each  
4           and every element of the crimes that he is  
5           indicted on. They have to prove it, and  
6           they have to prove it beyond a reasonable  
7           doubt.

8                     And I'm telling you, if you look at  
9           the evidence, and if you look at these  
10          instructions, you can look deep into them,  
11          not just the ones that they are showing  
12          you.

13                    They have not proven their case  
14          beyond a reasonable doubt. Thank you.

15                    THE COURT: Ms. Montell.

16                    MS. MONTELL: Can we approach?

17                    THE COURT: Do you want to go to  
18          sidebar?

19                    MS. MONTELL: Yeah.

20                    THE COURT: Yeah.

21                    (The following proceedings were had  
22                    at sidebar, outside the presence of  
23                    the jury:)

24                    MS. MONTELL: Okay. I have, like,  
25          three different things I want to talk

1           about.

2                   The first is, I think he misstated  
3           the law by saying he had to know the law  
4           versus he had to know he was transporting  
5           scrap tires without a registration  
6           certificate.

7                   MR. MEYER:   He said he had to be  
8           aware that he was committing a crime.

9                   MS. MONTELL:   Yes.

10                  MR. MEYER:   That's a misstatement  
11           of law.

12                  MS. MONTELL:   I wonder if we can  
13           get an instruction he's presumed to know  
14           the law.   And then also --

15                  MR. GREVEN:   I don't think I said  
16           that.   Did I say that?

17                  MR. MEYER:   I wrote it down.   Yes.

18                  MS. MONTELL:   Yes.   I heard you say  
19           it.

20                  And then you said these terms  
21           storage and beneficial use.   These are  
22           defined terms and these are defenses.

23                  And we didn't -- he didn't present  
24           any evidence that he was storing or  
25           beneficially using.



1                   Beneficial use includes, with  
2                   regard to scrap tires, to use a scrap tire  
3                   in a manner that results in a commodity  
4                   for sale or exchange or in any other  
5                   manner authorized as a beneficial use in  
6                   rules adopted by the director in  
7                   accordance with Chapter 119 of the Ohio  
8                   Revised Code.

9                   You're putting it in their mind  
10                  when we didn't go over this because  
11                  it's --

12                 THE COURT: Right. But it is in  
13                  the instructions. But we didn't define  
14                  beneficial use, if you want me to add that  
15                  definition --

16                 MR. MEYER: We would ask --

17                 THE COURT: -- in the instructions.

18                 MR. MEYER: Yes, we would ask.

19                 THE COURT: I can just do that.

20                 MS. MONTELL: At the bare minimum,  
21                  adding these definitions, storage is  
22                  defined, beneficial use is defined.

23                 THE COURT: Were you arguing  
24                  storage? I mean, those -- I can add  
25                  those.

1                   MR. GREVEN: I don't think I said  
2 storage.

3                   MS. MONTELL: You did.

4                   MR. MEYER: You did.

5                   MS. MONTELL: You said to the  
6 jurors or he was storing them, which would  
7 be legal.

8                   MR. MEYER: We need to define those  
9 terms.

10                  MS. MONTELL: But also he's making  
11 it seem like -- okay. So adding the  
12 definitions maybe will help.

13                  But the third issue is the going  
14 down this aggregate argument. Again, we  
15 don't need to prove that he was creating  
16 aggregate.

17                  MR. MEYER: We can argue that. I  
18 think we're okay there.

19                  THE COURT: I don't think he argued  
20 that.

21                  MR. MEYER: No. We can argue it  
22 wasn't.

23                  MS. MONTELL: He's saying -- he's  
24 saying Joseph Senk, Joseph Senk, in his  
25 mind, thought he had an exception; but

1 he's presumed to know the law.

2 MR. MEYER: Jennifer Carlin  
3 testified it wasn't. We can argue that  
4 point. But as long as we get the  
5 directions.

6 THE COURT: The bottom line is:  
7 You can get up there and argue -- because  
8 you haven't argued yet -- that, you know,  
9 the requirement isn't that you have to  
10 know that you're doing is a crime. The  
11 requirement is that you have to know what  
12 you're doing. And if what you're doing  
13 happens to be a crime, then you can be  
14 held responsible for it. Okay.

15 MR. MEYER: Yep.

16 THE COURT: So you're really --  
17 it's not really about, do I believe I'm  
18 committing a crime; it's, do I believe I'm  
19 transporting scrap tires without a  
20 license?

21 MR. MEYER: Yes.

22 THE COURT: So you can argue that.  
23 I don't know that I have to make  
24 any sort of instruction on that.

25 MS. MONTELL: Is there an OJI

1 instruction?

2 THE COURT: About?

3 MR. MEYER: Ignorance of the law?

4 MS. MONTELL: Yeah.

5 MR. MEYER: I was thinking there  
6 was one. That's why I was suggesting it,  
7 that there's no mistake of the law  
8 defense.

9 THE COURT: I mean, what evidence  
10 is there that there's an ignorance of the  
11 law? He didn't testify.

12 MS. MONTELL: He was just saying  
13 the -- just three different guys.

14 THE COURT: Because the guys let  
15 him go. He was arguing the fact that they  
16 let him go.

17 MS. MONTELL: He was saying he  
18 thought he was creating aggregate.

19 MR. MEYER: I think there's an OJI  
20 instruction on ignorance of the law.  
21 That's what I would ask for.

22 THE COURT: What did you say? Did  
23 you say that you --

24 MR. GREVEN: Let me grab the jury  
25 instructions real quick.

1 THE COURT: Okay. Sometimes you've  
2 just got to argue it.

3 Did I read anything about  
4 aggregates? I don't think I did.

5 MR. GREVEN: No.

6 MS. MONTELL: No, because it's not  
7 in the jury instructions.

8 THE COURT: Right.

9 MR. GREVEN: There was testimony  
10 about it.

11 THE COURT: That's true, there was.

12 MR. GREVEN: I talked about the  
13 length of the aggregates is between 2 and  
14 12 inches, but it's nowhere to be found.

15 MR. MEYER: I think we have to  
16 argue that point. I don't think that's  
17 for instructions, but I think ignorance of  
18 the law is.

19 THE COURT: All right. So I'm not  
20 sure what you're asking me to do.

21 MR. GREVEN: I don't remember  
22 saying that. If I did, I apologize. I  
23 didn't think I made --

24 MS. MONTELL: He said: Joseph Senk  
25 had to know that it was illegal when you

1           were reading the definition.

2                   MR. MEYER:   You said he had to know  
3           that he was committing a crime.   That was  
4           your exact words.

5                   THE COURT:   But you understand you  
6           can just point to the instructions and say  
7           where in the elements does say he has to  
8           know it's a crime?   It just says you have  
9           to prove he did this.   That's all we have  
10          to prove.

11                   MS. MONTELL:   Okay.

12                   THE COURT:   We don't have to prove  
13          that he did it and that he knew it was a  
14          crime.

15                   But the fact is, ladies and  
16          gentlemen, we did prove that he knew it  
17          was a crime because he was warned ten  
18          times.

19                   MS. MONTELL:   I was worried.   I  
20          felt he was misstating the law.   That's  
21          all.   I didn't think it was fair.

22                   THE COURT:   Well, it's tricky, you  
23          know, giving new instructions, be tempted,  
24          to have to give them all over again, is  
25          that what you want me to do?

1 MS. MONTELL: No. We're fine.  
2 We'll move on.

3 MR. MEYER: Supplementals.

4 THE COURT: We can add those  
5 definitions and I will add those. You  
6 want me to do it before you do the  
7 rebuttal or after?

8 I'm going to say after. But you  
9 can refer to it, and then I'll just say:  
10 Yeah, I'm going to give you an additional  
11 instruction.

12 MS. MONTELL: That sounds good.

13 MR. GREVEN: That's fine.

14 MS. MONTELL: Thank you.

15 (The following proceedings were had  
16 in open court:)

17 MS. MONTELL: Thank you, Your  
18 Honor.

19 Ladies and gentlemen of the jury,  
20 sorry for the delay. We were discussing  
21 over there some of the terms that he said  
22 are not defined -- are defined in the Ohio  
23 Revised Code.

24 So when he talked about the  
25 definition of disposal, I have some

1 further definitions for you that the Judge  
2 will also instruct you on.

3 But storage is defined in Ohio law.  
4 It says: When used in connection with  
5 scrap tires, storage means the holding of  
6 scrap tires for a temporary period, okay,  
7 temporary period in such a manner that  
8 they remain retrievable; and at the end of  
9 that period, are beneficially used, stored  
10 elsewhere, placed in a scrap tire monocell  
11 or monofill facility, licensed under  
12 Section 3734(A)(1) of the Revised Code.

13 Process of scrap tire recovery  
14 facility licensed under that section or a  
15 solid waste incineration or energy  
16 recovery facility subject to regulation  
17 under this chapter, or transported to a  
18 scrap tire monocell, monofill recovery  
19 facility, any other solid waste facility  
20 authorized to dispose of scrap tires or a  
21 facility that will beneficially use the  
22 scrap tires as located in another state  
23 and is operating in compliance with the  
24 laws in the state in which the facility is  
25 located.



1                   So we did not hear any proof that  
2                   these tires were stored for a temporary  
3                   period and, at the end, taken to a  
4                   licensed facility.

5                   So we know that that's not  
6                   applicable here.

7                   And we know they weren't  
8                   temporarily stored because they were put  
9                   there in the summer of 2018. And we have  
10                  pictures that they were still there, at  
11                  152 Sagamore Road, almost two years later  
12                  in 2020. Is that temporary storage?

13                  And at the end of that period,  
14                  were they taken to a licensed facility by  
15                  Mr. Senk, or were they taken back to his  
16                  house at Beech Street, or were they taken  
17                  back to a warehouse, or were they taken  
18                  back to a junkyard that crushed them in a  
19                  vehicle illegally? We don't know.

20                  Beneficial use is also defined in  
21                  Ohio Revised Code. Beneficial use  
22                  includes, with regard to scrap tires, to  
23                  use a scrap tire in a manner that results  
24                  in a commodity for sale or exchange or in  
25                  any other manner authorized as the

1           beneficial use in the rules adopted by the  
2           director in accordance with Chapter 119 of  
3           the Ohio Revised Code.

4                     The beneficial use rules, they are  
5           defined. They are in the Ohio Revised  
6           Code. They're in the Ohio Administrative  
7           Code. And these are special rules that  
8           allow you to use a tire in certain number  
9           of circumstances, so in a manner that  
10          results in a commodity for sale.

11                    We did not receive any evidence,  
12          over the last two days, that Mr. Senk used  
13          tires as a commodity for sale or exchange  
14          in any other manner authorized in the  
15          beneficial use rules, which we didn't get  
16          into over the last two days.

17                    So we have received no evidence  
18          that he stored or beneficially used scrap  
19          tires.

20                    So what are we left with for the  
21          definition of disposal? Disposal means  
22          the discharge, deposit, injunction --  
23          injection, dumping, spilling, leaking, or  
24          emitting, or placing of any solid waste or  
25          hazardous waste into or out of the land or

1 ground or surface water or into the air,  
2 except if it constitutes storage or  
3 beneficial use, which we know don't apply.

4 So here we have proven, beyond a  
5 reasonable doubt, that Joseph Senk  
6 disposed of scrap tires by open dumping  
7 them.

8 And it specifically states on the  
9 ground or in the surface water, and both  
10 of those occurred at 152 Sagamore Road.  
11 He dumped them on the ground, and he  
12 dumped them in the surface water. And  
13 they were dumped there, and they were kept  
14 there for over two -- almost two years  
15 before a number of individuals cleaned  
16 them up.

17 As far as Mr. Senk, if I'm  
18 understanding it correctly, I think  
19 Mr. Senk's attorney is saying that he  
20 should have been arrested on March 20,  
21 2019. But this is a discretion that's  
22 given to the officers on scene. And there  
23 could be a number of reasons that can go  
24 into the decision of whether or not to  
25 arrest a Defendant.

1                   But what I do know is Mr. Senk was  
2                   not told to let go. He was not told he  
3                   could leave without knowing whether or not  
4                   what was done was a crime, because we know  
5                   Richard Brownley went up to Joseph Senk,  
6                   he opened the truck door, and talked to  
7                   him.

8                   And he told him: You need a  
9                   registration certificate to transport  
10                  scrap tires. And you have to take these  
11                  scrap tires to a licensed disposal  
12                  facility. You cannot take them back to  
13                  your house and dump them on the ground.

14                  So when he argues that he was let  
15                  go, and he didn't know whether or not he  
16                  was committing a crime, I argue that is  
17                  false, because Richard Brownley testified,  
18                  Special Agent Brownley testified he told  
19                  everybody, all three, that what they did  
20                  was illegal, and that they couldn't open  
21                  dump the scrap tires in the future.

22                  Now, I -- I want you to take a  
23                  close look at the jury instructions  
24                  because there are some things that the  
25                  defense attorney is asking you to consider

1           that are -- we are not required to prove.

2           So take a close look at the  
3           requirements for illegal transportation of  
4           scrap tires.

5           It does not say we have to prove  
6           that he was make -- that he was not -- not  
7           making aggregates for his personal use.  
8           That is not our burden here.

9           Our burden was that he knowingly  
10          transported scrap tires without first  
11          obtaining a registration certificate from  
12          Ohio EPA.

13          There's nothing in these  
14          instructions that advises on aggregates or  
15          any burden of proof on aggregates.

16          And Mr. Senk here is presumed to  
17          know the law. It is not a defense to say  
18          he did not know the law.

19          What he needed to know was that he  
20          transported the scrap tires.

21          Did he know he was transporting  
22          scrap tires and did he know that he did  
23          not have a registration certificate?

24          And we proved that he knew he was  
25          transporting scrap tires. He was in

1 charge. He was directing everybody where  
2 to go, what to do, where to take them,  
3 where to pick them up. He made all of  
4 those decisions.

5 He asked his buddies that day:  
6 Hey, hop in this truck. Can you help me?  
7 Can you help me pick up some scrap tires?

8 He knew he was transporting scrap  
9 tires.

10 He got pulled over. And he -- you  
11 know, Special Agent Brownley walks up to  
12 the truck. Who -- you guys have a  
13 registration certificate for this? He's  
14 asking the whole group.

15 And Mr. Senk calls out, he's the  
16 one that answers because he's the one in  
17 charge. He says: These are for my own  
18 personal use. These are for my own  
19 business personal use. He says it twice.

20 He is addressing Special Agent  
21 Brownley as the man in charge of this  
22 operation here.

23 He knew they were transporting  
24 scrap tires. He knew there was a  
25 registration certificate requirement, and

1 he knew he did not have a registration  
2 certificate.

3 He knowingly transported scrap  
4 tires without first obtaining the  
5 registration certificate.

6 He is presumed to know the law, as  
7 it's stated in these jury instructions.

8 If you're looking, I want to show  
9 you the timeline of the pictures.

10 You've got Exhibit 14 up here. Can  
11 you go to Exhibit 3? 3 and 4? 3 first.

12 Here's the pictures in 20 -- or the  
13 photographs, pictures at 152 Sagamore in  
14 2019.

15 And Exhibit 4A, please.

16 Can you zoom in on the pile of  
17 tires?

18 This is up on top of the hill at  
19 152 Sagamore Road. This is 2019.

20 And then to Exhibit 14. This is  
21 July of 2020, almost a year later.

22 This, 14J, this is the same pile  
23 almost a year later.

24 These tires were dumped. He  
25 disposed of them here at 152 Sagamore

1 Road.

2 They were there for a long period  
3 of time, not a temporary period. And they  
4 were not beneficially used at the end of  
5 this period where they were dumped on the  
6 property.

7 Joe Senk knew the law here. He  
8 made a choice, and today he faces the  
9 consequences.

10 He had an entire illegal scrap tire  
11 operation where he illegally transported  
12 scrap tires.

13 And you heard from Grant Rose  
14 today. This was not the first time that  
15 Joe Senk had picked up scrap tires from  
16 his business. He testified he's been  
17 using Joseph Senk for a couple years -- or  
18 sorry -- he said All Treads. All Treads  
19 had been picking up tires from Grant  
20 Rose's business for a couple of years.

21 And he thought that Joseph Senk  
22 had -- was properly licensed to take these  
23 scrap tires because he testified: Joseph  
24 Senk, All Treads told me that they were  
25 licensed to take these scrap tires.



1                   They took him for his word for it,  
2                   took him at his word for it.

3                   So he regularly transported scrap  
4                   tires after being told, more than once,  
5                   that he needed a registration certificate.

6                   He was in charge. He made all the  
7                   decisions, told everybody what to do,  
8                   where to go; and he committed both crimes.

9                   So I ask you, fairly evaluate the  
10                  evidence. Keep an open mind. Carefully  
11                  read the jury instructions.

12                  And find the Defendant guilty of  
13                  all charges. Thank you.

14                  THE COURT: All right. Would you  
15                  bring me that piece of paper that the  
16                  definitions are on?

17                  MS. MONTELL: Oh, yes.

18                  THE COURT: All right. Ladies and  
19                  gentlemen, in the world of being a judge,  
20                  dealing with the law and lawyers, there  
21                  are many terms that are defined, some are  
22                  included in the instructions, some are  
23                  not, in an effort to be concise and brief.  
24                  But clearly, there's a couple definitions  
25                  that the Court should have included and

1 did not.

2 So I'm going to include those to  
3 you now in the proper place, which is  
4 under the open dumping solid waste count.  
5 Because I'm giving -- I'm not going to  
6 read the entire instructions to you all  
7 over again. But you're not to -- I don't  
8 need to overemphasize these instructions  
9 over the rest. You have to take them in  
10 context with the rest of the other  
11 instructions.

12 But once again, I have to read them  
13 to you; and then we'll have them typed in  
14 there.

15 But under the open dumping, in  
16 order to find the Defendant guilty, you  
17 must find, beyond a reasonable doubt, that  
18 on or about the beginning of summer 2018,  
19 and continuing thereafter, in Summit  
20 County, Ohio, the Defendant recklessly  
21 disposed of solid waste by open dumping,  
22 and the solid waste consisted of scrap  
23 tires.

24 I already defined recklessly to  
25 you.

1 I defined scrap tire.

2 The issue is the definition of  
3 disposal, which you read disposal, and  
4 then there's all kinds of definitions of  
5 the terms that are in the definition of  
6 disposal. That's just the way it works.  
7 So I'm going to add a couple more  
8 definitions to that.

9 Disposal means the discharge,  
10 deposit, injection, dumping, spilling,  
11 leaking, emitting, or placing of any solid  
12 waste or hazardous waste into or on any  
13 land or ground or surface water or into  
14 the air, except if the disposition or  
15 placement constitutes storage or  
16 treatment; or if the solid waste consists  
17 of scrap tires, the disposition or  
18 placement constitutes a beneficial use or  
19 occurs at a scrap tire recovery facility  
20 licensed in accordance with the Revised  
21 Code.

22 And so let me define storage and  
23 beneficial use.

24 Storage, when used in connection  
25 with scrap tires, storage means the

1 holding of scrap tires for a temporary  
2 period in such a manner that they remain  
3 retrievable. And at the end of the  
4 period, are beneficially used, stored  
5 elsewhere, placed in a scrap tire monocell  
6 or monofill facility licensed under the  
7 Revised Code, processed at a scrap tire  
8 recovery facility licensed under the  
9 Revised Code, or a solid waste  
10 incineration or energy recovery facility  
11 subject to regulations under the same  
12 Revised Code, or transported to a scrap  
13 tire monocell, monofill or recovery  
14 facility, any other solid waste facility  
15 authorized to dispose of scrap tires or a  
16 facility that will beneficially use the  
17 scrap tires that's located in another  
18 state but is operating in compliance with  
19 the laws of this state.

20 Beneficial use includes, with  
21 regard to scrap tires, or means to use a  
22 scrap tire in a manner that results in a  
23 commodity for sale or exchange or in any  
24 other manner authorized as a beneficial  
25 use in the rules adopted in accordance

1 with the Ohio Revised Code.

2 And so I'll add that in there for  
3 you.

4 I'm going to additionally instruct  
5 you that in your deliberations, you must  
6 not consider the subject of punishment.

7 Your duty is confined to the  
8 determination of guilty or not guilty.

9 In the event that you find the  
10 Defendant guilty, the duty to determine  
11 punishment is decided -- placed, it's  
12 placed upon me to make that decision as  
13 the Court.

14 You must not be influenced by any  
15 consideration of sympathy or prejudice.

16 It is your duty to carefully weigh  
17 the evidence, to decide all the disputed  
18 questions of fact, to apply the  
19 instructions of the Court to your finding,  
20 and to reach your verdict accordingly.

21 In fulfilling your duty, your  
22 efforts must be to arrive at a just  
23 verdict.

24 Consider all of the evidence and  
25 make your finding with intelligence and

1           impartiality, without bias, sympathy, or  
2           prejudice, so that the State of Ohio and  
3           the Defendant will each feel that their  
4           case was fairly and impartially tried.

5                       Now, if during the course of the  
6           trial I have done anything that you  
7           consider an indication of the Court's view  
8           of this matter, you're instructed to  
9           disregard it.

10                      Remember, I'm the referee.

11                     Now, your initial conduct upon  
12           entering the jury room is a matter of some  
13           importance. It is not wise to immediately  
14           express a determination or to insist upon  
15           a certain verdict. Because if your sense  
16           of pride is aroused, you may hesitate to  
17           change your position even though you  
18           become convinced it was wrong.

19                     Consult with one another, consider  
20           each other's views, and deliberate with  
21           the objective of reaching an agreement, if  
22           you can do so without disturbing your  
23           individual judgment.

24                     Each of you must decide this case  
25           for yourself, but you should do so only

1           after considering the case with your  
2           fellow jurors.

3                     Do not hesitate to change your  
4           opinion if you're convinced it is wrong;  
5           however, you should not surrender honest  
6           conviction in order to be congenial or  
7           friendly or to reach a verdict solely  
8           because of the opinion of the other  
9           jurors.

10                    Now, the Court is going to place in  
11           your possession the exhibits admitted  
12           during the trial, some verdict forms, and  
13           several copies of the jury instructions.

14                    One of your first tasks, when you  
15           go to the jury room for deliberations, is  
16           to elect a foreman. The foreman can be a  
17           foreman or a forewoman, okay?  
18           Interchangeable term there.

19                    The foreman that you elect will  
20           return the exhibits and verdict forms to  
21           the courtroom after you have reached a  
22           verdict or at the end of the day. The  
23           foreman will also read the verdicts in  
24           open court.

25                    The foreman will see that your

1 discussions are orderly and that each  
2 juror has the opportunity to express his  
3 or her views.

4 Otherwise, the foreman's  
5 responsibility or authority is the same as  
6 that of any other juror.

7 Until your verdict is announced in  
8 open court, you are not to discuss with  
9 anyone else the status of your  
10 deliberations or the nature of your  
11 verdict.

12 And so after you've retired, select  
13 a foreman. And whenever all 12 of you,  
14 and I repeat, it must be unanimous, all 12  
15 of you agree upon a verdict, then you're  
16 to sign the verdict forms in ink and  
17 advise Shay by ringing the bell in the  
18 jury room.

19 And so now I will go over the  
20 verdict forms with you.

21 And so we're going to start with  
22 Count 1, illegal transport of scrap tires.

23 These are very similar. There's a  
24 certain formula you have to go through.

25 There's a case caption. It has a



1 case number. It has the name of the  
2 Defendant, the name of the judge.

3 And then it says: Verdict Count 1,  
4 and I list what the name of the charge is,  
5 illegal transport of scrap tires, so you  
6 know which count you're talking about.

7 And then under here it says: We  
8 the jury, being duly impaneled, sworn and  
9 affirmed do hereby find the Defendant,  
10 Joseph Senk, with an asterisk, blank, of  
11 the offense of illegal transportation of  
12 scrap tires in violation of certain  
13 statutes.

14 Then what you do is you are to  
15 insert, in ink, the word either that you  
16 find him guilty, the words that you find  
17 him not guilty, okay? It has to be  
18 written on that line in ink.

19 Okay. And then it also then says:  
20 We render this -- we have to change the  
21 language here -- we do so render our  
22 finding upon the concurrence of 12 members  
23 of our said jury.

24 And then you have to give the date.  
25 You have to write the date there. Then

1           there have to be 12 signatures, different  
2           signatures. But it doesn't have to be in  
3           any particular order. You don't have to  
4           sign by juror number. You just have to do  
5           12 different signatures on there, all in  
6           ink, all right?

7                       And then there's a Count 2. And  
8           Count 2 is very similar, except it's got a  
9           different, you know, it's Count 2, open  
10          dumping solid waste.

11                      It says: We do hereby find the  
12          Defendant, Joseph Senk, with an asterisk,  
13          either your finding of not guilty or  
14          guilty, you put the word or words in  
15          there, of the offense of open dumping  
16          solid waste; then gives the statute  
17          number. Then you have to put the date,  
18          and there have to be 12 signatures.

19                      In addition, there's something  
20          stapled to this because you're being asked  
21          to make another more specific finding.  
22          And you only need to do that if you find  
23          him guilty, okay? Hence the line that  
24          says: Having found the Defendant guilty  
25          of Count 2, we then further find that the

1 item dumped either, in ink, was or was not  
2 scrap tires, okay?

3 So you're just making a specific  
4 finding there. But you would only come to  
5 this page if you find the Defendant  
6 guilty. If you find him not guilty, you  
7 make that finding here, and you would  
8 leave this page blank, okay?

9 And the hint-hint is, when it says,  
10 "Having found him guilty," you would read  
11 that and say: Oh, well, we didn't find  
12 him guilty so we'll leave it blank, so  
13 just remember that.

14 If you find him guilty, then you do  
15 have to fill it out, has to have a date,  
16 and have to have 12 signatures.

17 Okay. So what that means is I want  
18 to give you a little bit of additional  
19 information based on -- my suggestion is  
20 when you go back to the jury room --  
21 excuse me -- that you select a foreman  
22 right away.

23 And then you decide if you want to  
24 take a bit of a break or not. You can,  
25 you know, take a break. You just have to

1           let Shay know that you're actually going  
2           to take a break or if you're going to  
3           stretch for a few minutes. You have to  
4           let Shay know one way or another. She  
5           always has to know where you are.

6                     If do you take a break, when you  
7           come back from the break, we'll make sure  
8           all the evidence, the exhibits, the jury  
9           instructions, and the verdict forms will  
10          be in the room, okay?

11                    And then you can now take your  
12          notepads back there with you.

13                    And then you all do look healthy,  
14          like, you're ready to go.

15                    So that means, Mr. Doles, our  
16          backup quarterback, doesn't look like  
17          you're going to be deliberating today.

18                    But I will tell you that the Court  
19          has to leave today. I cannot stay late  
20          today. So I have to leave.

21                    This is not to put any pressure on  
22          you because, you know, you just come back  
23          tomorrow if there's no decision. I'm not  
24          expecting you will have a decision. I'm  
25          making sure you understand that I have to

1           leave no later than 4:30, so we will check  
2           back with you around 4.

3                   And unless you were to tell the  
4           bailiff: Oh, yeah, we're really, really  
5           close, then we're probably going to let  
6           you go and come back tomorrow morning at  
7           9, okay?

8                   I will give you fair warning,  
9           however, I'm going to have a lot of  
10          hearings going on in the courtroom all day  
11          tomorrow, some on video, some live. It  
12          will be busy. It will be loud.

13                  But you will be alone in that jury  
14          room, so that's not going to be a problem,  
15          okay?

16                  Shay will be busy; but my other  
17          staff will help you, all right?

18                  So thank you, Mr. Doles.

19                  When you go back after the break,  
20          give Shay your notepad, also give her your  
21          badge, and then also give her some contact  
22          information because, goodness gracious,  
23          hopefully, it doesn't happen, but if  
24          somebody gets sick tonight and doesn't  
25          come in, then you would be activated,

1           which means that you cannot still talk  
2           about the case. You are still under the  
3           admonitions not to discuss the case.

4                     And so what will happen is,  
5           assuming nothing happens like that, then  
6           if and when there's a verdict rendered in  
7           open court, Shay will then call you.  
8           She'll tell you what the verdict is  
9           because you'll probably be curious. Then  
10          she will also say you're released from the  
11          admonition and you can talk about it,  
12          okay?

13                    All right. I'm going to send you  
14          all back there then. Just let her know  
15          how long you want to take a break, and  
16          we'll get that information to you as soon  
17          as possible.

18                    (Whereupon, the jury retired to the  
19                   jury room to commence its deliberations  
20                   and the following proceedings were  
21                   had.)

22                    THE COURT: Before you walk out,  
23          one second.

24                    Let's go to sidebar with the  
25          lawyers real quick.

1                   (Whereupon, a sidebar discussion  
2                   was held between Court and Counsel  
3                   off the record.)

4                   THE COURT: On the record.

5                   The lawyers indicated no  
6                   objections, corrections, or additions to  
7                   the jury instructions as were read by the  
8                   Court.

9                   Yeah. There was another matter.  
10                  My judicial attorney noticed and brought  
11                  to my attention, so my understanding is  
12                  you wanted to make a motion on that.

13                  MS. MONTELL: The State of Ohio  
14                  moves to amend Count 2 of the indictment  
15                  just to read the charge is open dumping  
16                  solid waste, not just open dumping, which  
17                  is consistent with the name of the statute  
18                  charged.

19                  THE COURT: And so when it was  
20                  typed in the actual title of the statute  
21                  cited --

22                  The statute is correct in the  
23                  indictment?

24                  MS. MONTELL: Yes.

25                  THE COURT: Okay. And so the

1           actual title is supposed to be open  
2           dumping solid waste?

3                       MS. MONTELL:   Yes.

4                       THE COURT:   Not just open dumping.

5                       MS. MONTELL:   Correct.

6                       THE COURT:   Okay.   So to me, that's  
7           a clerical error.   But you can object for  
8           the record, Mr. Greven.

9                       MR. GREVEN:   Scribner's error,  
10          isn't that what we used to call it?

11                      No objection.

12                      THE COURT:   All right.   So we'll do  
13          that.

14                      (Whereupon, court was adjourned.)

15                               - - -

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C E R T I F I C A T E

I, Cynthia S. Kline, Official Shorthand Reporter,  
Court of Common Pleas, Summit County, Ohio, duly  
appointed therein, do hereby certify that I reported  
in Stenotypy the proceedings had and testimony taken  
in the foregoing-entitled matter consisting of (524)  
pages, together with exhibits (if applicable), and I  
do further certify that the foregoing-entitled  
TRANSCRIPT OF PROCEEDINGS conducted before the  
Honorable Alison McCarty, Judge of said court, is a  
complete, true, and accurate record of said matter and  
TRANSCRIPT OF PROCEEDINGS.

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CYNTHIA S. KLINE, RPR  
Official Court Reporter

Dated: January 16, 2024  
AKRON, OHIO