

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

Opening Statements

By Ms. Montell	158
By Mr. Greven	167

STATE'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

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	---	---

Closing Arguments

By Mr. Meyer	469
By Mr. Greven	480
By Ms. Montell	498

JURY CHARGE: 453/508

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: (Admitted Page 447)

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

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:)

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 --

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

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.

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.

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.

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

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

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

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

23 He had been warned multiple times..

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.

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

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

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.

10 Jennifer Carlin, the Ohio EPA.

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.

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

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.

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.

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.

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.

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.

15 MR. MEYER: Yep.

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.

5 MR. GREVEN: No.

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

8 THE COURT: Right.

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.

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.

11 MS. MONTELL: Okay.

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.

1 MS. MONTELL: No. We're fine.

2 We'll move on.

3 MR. MEYER: Supplements.

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.

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.

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

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.)

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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.

CYNTHIA S. KLINE, RPR
Official Court Reporter

Dated: January 16, 2024
AKRON, OHIO