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STATE OF MICHIGAN
30th JUDICIAL CIRCUIT FOR THE COUNTY OF INGHAM
CRIMINAL DIVISION

THE PEOPLE OF THE
STATE OF MICHIGAN

v

Case No. 14-1380-FH
Hon. James S. Jamo

JOHN C. KELSEY II,

Defendant.

_____ /

JURY TRIAL - VOLUME 8

BEFORE THE HON. JAMES S. JAMO, CIRCUIT JUDGE

Ingham County, Michigan - Monday, June 8, 2015

APPEARANCES:

For the People:

JONATHAN C. ROTH (P72030)
Assistant Prosecuting Attorney
Ingham County Prosecutor's Office
303 W. Kalamazoo Street, 4th Fl.
Lansing, MI 48933

For the Defendant:

BRIAN P. MORLEY (P58346)
Fraser Trebilcock Davis & Dunlap, PC
124 W. Allegan Street
Suite 1000
Lansing, MI 48933

ALSO PRESENT:

John C. Kelsey II, Defendant
Detective Sergeant Kyle McPhee
Detective Trooper Troy Johnston

REPORTED BY:

Melinda I. Dexter, RMR, CSR-4629
NCRA Realtime Systems Administrator
Official Court Reporter
313 W. Kalamazoo
P.O. Box 40771
Lansing, MI 48901-7971

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

PAGE

Closing argument by Mr. Roth	5
Closing argument by Mr. Morley	35
Rebuttal argument by Mr. Roth	51
Final instructions by the Court	62

WITNESSES:

None

EXHIBITS:

None

1 Ingham County, Michigan
2 Monday, June 8, 2015 - At 9:03 a.m.
3 THE COURT: You can be seated, please. Back on
4 the record in the matter of People versus John Kelsey.
5 It is File No. 14-1380-FH. And counsel and I have had
6 discussions about the jury instructions and exchanged
7 e-mails and met about them. And, as I understand it, we
8 are in a position at this point to put a stipulation on
9 the record that both are in agreement to the jury
10 instructions as currently formulated, including both
11 content and order of the instructions.
12 Mr. Roth?
13 MR. ROTH: That's correct, Your Honor, and that
14 specifically deals also with the language.
15 THE COURT: With it -- right, the content the
16 language of it specifically has been agreed upon.
17 MR. MORLEY: That's accurate, Your Honor.
18 THE COURT: All right. And then as I also
19 understand it, you want to put a stipulation on the
20 record as to the remaining witnesses, Mr. Roth?
21 MR. ROTH: Thank you, Your Honor. It's my
22 understanding that both parties are stipulating to
23 excusing the balance of the witnesses on both witness
24 lists.
25 MR. MORLEY: That's accurate, Your Honor.

3

1 THE COURT: Okay. Then the final thing --
2 although we can deal with this really after the closing
3 arguments and the instructions, but the final issue was
4 how we would handle exhibits with the jury. And it's my
5 understanding that after the arguments and the
6 instruction, when they go back to deliberate, we're just
7 going to immediately send all of the exhibits back rather
8 than waiting for them to ask for any particular exhibit.
9 And then the only issue we would have would be
10 if they wanted to play the DVD, then we'll confer about
11 that and decide how to proceed.
12 MR. ROTH: Yes, Your Honor.
13 MR. MORLEY: That's accurate, Your Honor.
14 MR. ROTH: I will also note that obviously the
15 803(5) exhibits, 1001 and 1002, will be not be put in the
16 binder so they do not go back.
17 MR. MORLEY: That's accurate, Judge.
18 THE COURT: All right. So with that, are we
19 ready for the jurors and your closing arguments?
20 MR. ROTH: Yes, Your Honor.
21 MR. MORLEY: Yes, sir.
22 THE COURT: Okay. Let's bring them in.
23 (At 9:06 a.m., the jury entered
24 the courtroom.)
25 THE COURT: Be seated.

4

1 Good morning, Ladies and Gentlemen of the Jury.
2 VARIOUS JURORS: Good morning.
3 THE COURT: I hope you had a great weekend. We
4 are ready to proceed this morning with the prosecutor's
5 closing argument.
6 Mr. Roth?
7 MR. ROTH: Thank you, Your Honor.
8 Good morning, Ladies and Gentlemen. When this
9 trial began, I told you that by the end you would have
10 the facts and evidence necessary to finish what
11 Deputy Hoeksema and Deputy Whitaker began on
12 December 7th, 2014, and now you do. In fact, you have it
13 several times over.
14 First, you have the statements, the confession
15 that the Defendant made to his friends, Brian
16 Hildabridle, Tony Hildabridle, and Sandie Hale.
17 And, second, you have video evidence and
18 witness testimony tracking one and only one white SUV
19 speeding from the Dam Site Inn down the road to
20 Stockbridge and ultimately to the Marathon station where
21 the fatal chase began.
22 And, third, finally, and most obviously to the
23 question that everyone is thinking: Where is your car?
24 Where did it go?
25 You heard three interrelated segments of

5

1 evidence through the two weeks of this trial:
2 The first one, that high speed chase that led
3 to the fatal and tragic moment.
4 Second, the Michigan State Police investigation
5 and identification of the driver that Deputies Hoeksema
6 and Whitaker were pursuing that night.
7 Third, and finally, a recreation of the
8 Defendant's night on December 6th, 2014, into the early
9 morning hours of December 7th, 2014. And that night
10 ultimately illustrated his motive for fleeing from the
11 police that day.
12 On December 7th, 2014, at 2:02 a.m., Ingham
13 County Sheriff's Uniformed Deputies Grant Whitaker and
14 Rick Hoeksema were parked at the Mugg & Bopps Marathon
15 station in the village of Stockbridge, Ingham County,
16 Michigan. Deputy Whitaker was in a fully-marked Ingham
17 County Sheriff's Office patrol car facing away from the
18 road. Deputy Hoeksema in a semi-marked Ingham County
19 Sheriff's Department traffic vehicle parked facing
20 towards the road window to window with Deputy Whitaker.
21 The sheriff's logo, as you see in the picture,
22 was visible to the east, and it was in that direction --
23 from that direction that Deputy Hoeksema saw a large
24 white SUV speeding, approaching.
25 I don't want to steal Mr. Morley's thunder, but

6

1 Deputy Hoeksema didn't see the driver, couldn't see
2 inside the compartment of the vehicle, and wasn't exactly
3 sure what kind of vehicle it was. He knew it was large
4 and white and thought it was probably an SUV, maybe a
5 Suburban. Deputy Hoeksema estimated that it was
6 traveling between 55 and 60 miles per hour initially in a
7 35 mile per hour zone. He looked at Deputy Whitaker and
8 said "Let's go."
9 Deputy Hoeksema pulled out first, immediately
10 activating his car's siren and lights. And the lights in
11 that semi-marked vehicle were on the exterior of the
12 mirrors, they're in the grill, and in the window. You
13 can see the lights icon go red as well as the reflection
14 of those lights inside the car. When and if you watch
15 Deputy Hoeksema MVR, his in-car camera, you'll see how
16 quickly those went on as he turned out.
17 As soon as he entered the roadway, the white
18 SUV accelerated to more than 80 miles per hour. Deputy
19 Whitaker was simultaneously pulling his vehicle around,
20 pulling out onto Morton Road to follow in pursuit also
21 with his lights and sirens activated.
22 The pursuit began going west on Morton Road.
23 The white SUV turned right when Morton Road ended, and it
24 went north onto Chapman. Didn't turn until the road
25 ended and then went north on Chapman. On Chapman Road

7

1 the deputies accelerated to more than 100 per hour but
2 gained little to no ground on the white SUV. Never in
3 their pursuit were they able to get close enough to
4 observe the driver or the license plate.
5 On Chapman Road, following the department
6 policy, Deputy Hoeksema slowed down and allowed Deputy
7 Whitaker to pass him because Deputy Whitaker was driving
8 a fully marked vehicle. Once Deputy Whitaker was in
9 front, Deputy Hoeksema assumed the responsibility of
10 calling out the chase, describing it to his command
11 officer, Sergeant Every, and to the dispatch personnel
12 where they were going, how fast, what direction. It
13 allowed Deputy Whitaker to focus on the road and the
14 vehicle in front of him.
15 When Chapman Road ended and not before, the
16 deputies followed the white SUV onto a straightaway on
17 Catholic Church Road. When that road ended, and, again,
18 not before, they all turned right onto Dexter Trail.
19 As we learned throughout this trial, for those
20 not familiar with Stockbridge, Dexter Trail has a number
21 of sharp and dangerous turns compromising the driving
22 conditions and the visibility. Deputy Hoeksema lost
23 sight of the white SUV and Deputy Whitaker around that
24 time, though stayed in contact via the dispatch radio.
25 Sergeant Every testified that he was relieved

8

1 when they got out of those turns and onto the
2 straightaway on Dexter Trail. As he described for you,
3 these were the safest possible conditions for the pursuit
4 away from the residential area, a straightaway so there
5 was no visibility concerns.
6 Sergeant Every contacted Livingston County
7 Sheriff to warn them that this pursuit was headed their
8 way so that they could lay down stop sticks when it got
9 to the Livingston County area. You heard, Deputy
10 Hoeksema heard, Sergeant Every heard that Deputy Whitaker
11 briefly lost sight of that white SUV but then picked him
12 up again traveling east past Adams Road.
13 When Deputy Whitaker passed Cattle Drive, which
14 is the Samulak residence, the Samulak camera, Deputy
15 Whitaker was now only 13 seconds behind the white SUV.
16 Deputy Whitaker radioed one last time when he saw the
17 Defendant, the white SUV, pass Brogan Road. That was the
18 last thing anybody ever heard from Deputy Grant Whitaker.
19 Deputy Hoeksema continued east on Dexter Trail
20 passing an exhaust system just before Brogan Road. Still
21 not seeing the white SUV, Deputy Whitaker not responding
22 on the radio, he turned around at Brogan and returned to
23 the exhaust system. He frantically got out of his patrol
24 car calling for his partner, calling Grant's name over
25 and over trying to find him. He found Deputy Whitaker's

9

1 patrol car in three pieces to the north of the road.
2 Eventually he found Deputy Whitaker in the vehicle non-
3 responsive, no pulse, no vital signs.
4 Sergeant Every called for medics who arrive but
5 were unable to resuscitate Deputy Whitaker. They
6 transported him to Sparrow Hospital where he was
7 pronounced deceased at 3:07 a.m.
8 Michigan State Police Accident Investigator
9 Allan Avery quickly responded and began his
10 investigation. He was unable to determine anything about
11 the white SUV that was being pursued. But between the
12 event data recorder that he described for you and the
13 skid marks on the road, he was able to calculate that
14 Deputy Whitaker was driving almost 120 miles per hour on
15 the roadway.
16 When he went over one of the bumps, he
17 explained the suspension in the vehicle loaded freezing a
18 small left steering input or correction when he came off
19 the bump and causing him to lose control off the roadway.
20 The car began rotating counterclockwise as he went into
21 the grass on the left shoulder, and he then hit a large
22 tree splitting and shearing the patrol car killing Deputy
23 Whitaker almost instantly.
24 Mr. Morley ended testimony on Friday by very
25 dramatically recalling Deputy Hoeksema to remind you that

10

1 he did not see the vehicle, the license plate, or the
2 driver as if that matters. And the reason to emphasize
3 that testimony by Deputy Hoeksema, though, is that it
4 distracts from the massive and detailed investigation
5 that the Michigan Police began almost immediately to
6 identify the vehicle and driver that were involved in the
7 pursuit.

8 They started by putting out a release through
9 the media asking for the public's help with the picture
10 as you see of the white SUV taken from the L & B just a
11 moment before the pursuit began, just before it passed
12 the Marathon station. They received a number of tips and
13 information about the vehicle, some implicating the other
14 people. And as you heard throughout this trial each tip,
15 every tip was thoroughly investigated with no
16 preconceived notions about who was involved. Every tip
17 was investigated, and those about other people were
18 determined to be not related.

19 Some of them were just about random white SUV's
20 with no information that they were involved in the
21 pursuit. Simply that there was somebody in the area that
22 had a white SUV. And there were several, more than
23 several that implicated the Defendant, John Kelsey.

24 Here is something to remember when you think
25 about those tips. None of the investigators knew about

11

1 John Kelsey, knew who he was at the beginning of this
2 investigation. There was no reason to assume or to blame
3 him for this. It is simply where the investigation and
4 all of the evidence, every piece of it, led. It started
5 broad, just that he owned a white SUV that was then not
6 seen after the accident, but then it got more detailed.

7 That evidence alone, that he had a white SUV
8 frequently and then didn't see it for a few days
9 afterwards, by itself wouldn't mean much and we wouldn't
10 be here if that's all it was, but that was just the
11 beginning.

12 We had testimony from the Defendant's
13 neighbors. They testified that they previously and
14 routinely saw him driving what looked like a matching
15 white SUV. And that in the week after the accident, most
16 importantly, they did not see that white SUV again with
17 the Defendant or anywhere. In fact, they never saw it
18 again.

19 A woman, who had a remote family relation to
20 the Defendant who routinely several times a week saw him
21 at the school, recognized that white SUV as well and also
22 testified that in the week after and after that, never
23 saw him with that white SUV again.

24 You also heard from two young women who worked
25 at the Marathon station in Stockbridge where the pursuit

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1 began just a half-mile from the Defendant's house who
2 said that he shopped there often, confirmed by the Mugg &
3 Bopps card found in the Defendant's pocket on
4 December 12th.

5 Both said that they remember him routinely
6 driving a large white SUV, each saying that they thought
7 it matched the flyer that they had seen around town and
8 on the media. They even remembered the specific kind of
9 cigarette that the Defendant used to buy from them.

10 Testified that they never saw that white SUV or the
11 Defendant the week after the crash, and also that nobody
12 bought those cigarettes after the crash.

13 Ms. Uttermark, you see in 55, was able to find
14 a video of his last transaction at the Mugg & Bopps, of
15 his large with the dirty rear window pulling in. The
16 Defendant getting out in 61 and going in the store
17 December 5th, 2014, two days before the crash.

18 From that, the police, the investigators are
19 able to check Secretary of State records, and they found
20 a white 2003 GMC Yukon Denali XL registered to the
21 Defendant's father. The vehicle matched the one shown on
22 the L & B video. It matched what all of the witnesses
23 described and said that they saw. It matched the
24 Marathon video from two days earlier.

25 The investigators learned that this vehicle was

13

1 insured with AAA. AAA believed that that vehicle was in
2 storage although they never received any details or
3 confirmation of that fact. We know that's not true for a
4 couple of reasons:

5 First, we see the Defendant driving that very
6 vehicle on the night at the Dam Site and two days earlier
7 at the Mugg & Bopps. We also know that it's not in
8 storage. That that was a lie because there is no
9 receipts, no documentation of any storage facilities at
10 either of the residences, the Defendant's or his
11 parents'.

12 In Exhibit 45, investigators learned that the
13 Defendant's license was suspended. And you have numerous
14 copies -- I apologize, you have copies of numerous
15 letters, I should say, that the Secretary of State mailed
16 to the Defendant by Certified Mail. And you see that
17 documentation in here. You can read it and get all those
18 details for all of his numerous open suspensions.

19 They also found records that revealed that the
20 Defendant now lived at 4109 Morton Road in Stockbridge,
21 just one-half mile west of where the pursuit began on a
22 direct route where that vehicle is traveling from the Dam
23 Site Inn when the pursuit began.

24 Based on a tip, as well as the time of night
25 that the vehicle -- excuse me, that the pursuit began and

14

1 the direction the vehicle was coming from, the
2 investigators began showing the Defendant's picture at
3 bars throughout the Washtenaw and Livingston County area.
4 Two bars confirmed that the Defendant was there the
5 evening of December 6th, early morning hours of
6 December 7th, 2014.

7 The first the Alley Bar. Two waitresses
8 remembered that the Defendant was there December 6th with
9 Brian Hildabridle, Sandie Hale, Tony Hildabridle, and a
10 group of other people associated with them. The manager
11 was able to put the receipts from everyone in that group.
12 In 86, you have those receipts. One of the waitresses
13 told you that she thought she had talked to the Defendant
14 that night about him living in Stockbridge because she
15 was from there as well.

16 She remembered that the Defendant's tab from
17 that night was either under the name Black Hat or John.
18 That shows how well she remembered the Defendant because
19 as we found out throughout this trial in 168, he was
20 always wearing a black stocking hat.

21 We know that was not his tab from that night,
22 though, because she described the black hat as being a
23 baseball hat with a brim. That Tony Hildabridle
24 remembers owning a baseball hat that was black, although
25 he doesn't recall if he wore it that night. She

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1 confirmed that black hat was also the guy with tattoos on
2 his arms. Black Hat is not the Defendant. Black Hat is
3 Tony Hildabridle.

4 The Defendant's tab is the one labeled John,
5 which makes sense because he was the only John in that
6 group that night. He had five Budweiser beers at the
7 Alley Bar. From the Alley Bar everybody, except for Tony
8 and Sandie, went to the Dam Site Inn. You see him arrive
9 at the Dam Site Inn in his white 2003 GMC Yukon Denali
10 XL, 23:46:49, 11:46 at night. He then goes inside with
11 Brian Hildabridle, the man that he rode there with.

12 As soon as he gets in, he goes to the bar, and
13 he gets more beer. 93, 97, 98, 105. And while you can't
14 tell how many beers he drinks at the Dam Site Inn,
15 throughout the night he always has a beer with him.
16 Always has a can of Budweiser. 96, 99, 102. In under
17 two hours, goes to the bathroom three times.

18 He exits the bar at 1:47 a.m., beer still in
19 hand. Brian told you that he thinks that he did not in
20 that moment think his friend should be driving, and he
21 thought he might have tried to talk him out of it; to get
22 him not to drive home. But the Defendant, still holding
23 his beer, kicks the door open and leaves.

24 From there, he went to his vehicle and was soon
25 met by Brian and Justin where they smoked marijuana by

16

1 the car. You can clearly see in that vehicle the dog
2 that Justin and Brian described being in the Defendant's
3 car that night. But, more importantly, what you can see
4 is that the Defendant is the only person and to the
5 extent that these still photos don't do enough justice,
6 you can watch the video. Only one man gets in the white
7 SUV; the Defendant. He gets in the driver's side,
8 driver's seat, and he is the one that drives out of the
9 Dam Site Inn that night.

10 The bartender, Amber Peek, remembered the
11 Defendant peeling out fast and going west on Patterson
12 Lake Road towards Stockbridge, and that was confirmed in
13 the video. He left the parking lot at 1:53 a.m.
14 traveling west.

15 Before he left, Kathryn Stein had noticed the
16 large white SUV in the parking lot because of the salt
17 splash, salt spray, I think she described it, on the back
18 and side windows of the vehicle. She testified that the
19 reason that stood out to her was because the weather that
20 we had in early December didn't seem like there would be
21 that much salt on the road to be on the vehicle like
22 that. It jumped out to her.

23 The Steins left the Dam Site Inn at 1:52. You
24 can see that on Exhibit 111 in the background. They
25 headed west on Patterson Lake Road as well ahead of the

17

1 Defendant's vehicle.

2 Mr. and Mrs. Stein both testified that as they
3 were driving, before they came to the big left bend
4 towards Doyle Road down in this area, the Defendant came
5 flying up behind them in that white SUV with that white
6 salt spray around the back and side windows, initially
7 tailgated them for a bit, scared them both by how
8 aggressive he was driving, and then passed them against a
9 double yellow line.

10 Mr. Stein, the one that was driving, testified
11 that when he turned left down Unadilla Road, the last
12 place he saw that white SUV was near Unadilla Drive one
13 or two roads up still traveling west speeding at, I
14 believe he said, about 80 miles per hour towards the
15 Stockbridge area along by far what is the fastest and
16 most direct route from the Dam Site Inn to the
17 Defendant's house.

18 After the Steins lost visual contact with him,
19 that white SUV, the Defendant's vehicle, first passed the
20 Topping residence camera and then he passed through
21 downtown Stockbridge, and in quick succession passed the
22 Shell gas station, the L & B Outlet, and finally the
23 Marathon station where the deputies were parked and the
24 pursuit began.

25 Detective Sergeant Jim Young looked at all

18

1 these videos and compared them all to each other. And
2 while he can't say 100 percent it's the same vehicle in
3 each one, he was able to tell you that there is nothing
4 inconsistent about them, which is important because each
5 time Mr. Morley showed a witness, an officer a different
6 white SUV, they're able to detail what the differences
7 were. Where the different pillars were. What color the
8 handles were. All of these different variations on SUVs
9 that are out there, he could not find one distinction
10 between all of these white SUVs, but he did identify a
11 number of common traits between all of these.

12 The most important one, though, is that the
13 white SUV that the Defendant gets into on the fifth at
14 the Marathon station, the white SUV that he drives from
15 the Dam Site Inn that night, and the white SUV that
16 speeds past the Topping camera all have that very
17 noticeable, very distinct white salt splash or spray
18 along the back window.

19 The deputies put on their lights and sirens at
20 the Marathon station. And in that moment, the Defendant
21 had a decision to make. As Sergeant Every told you,
22 people with nothing to hide don't run from the police.
23 The driver of that white SUV, the Defendant, obviously
24 had something to hide. We know he had been drinking that
25 night quite a bit. We know he had been smoking

19

1 marijuana. We know that his driver's license was
2 suspended.

3 So taking into consideration all of those
4 things, he decided to flee. He decided to run
5 endangering the deputies, everybody in the community
6 along that path, and most importantly and most of all
7 himself. Fled from the police at speeds in excess of
8 100 miles an hour.

9 That risk went through the roof when he turned
10 off his headlights to try and avoid being seen by the
11 deputies. In the Samulak picture, you can see the
12 Defendant's vehicle. You can see the wheel wells and the
13 pillars, and most importantly you can see there are no
14 headlights on.

15 The pursuit began just before 2:03 a.m. Deputy
16 Whitaker's final transmission was at 2:08 a.m. At
17 2:10 a.m., the Defendant made a call using the tower
18 southeast of the crash site. He called Tony Hildabridle.
19 And as you heard from both Sandie and Tony's recorded
20 statement, Tony was asleep, and Sandie answered the
21 phone. She testified that the Defendant was on the other
22 end and that he said he had just run from the police.

23 At a minimum, he told that he had just run from
24 the police because we know that that phone call was more
25 than two and a half minutes. More must have been said

20

1 during that conversation, but like other people in this
2 case, she's trying to not point the finger at the
3 Defendant any more than she absolutely has to.

4 At 2:10 -- excuse me, 2:18 a.m., using a tower
5 even further east, the Defendant called Brian
6 Hildabridle. Brian Hildabridle testified, he told you,
7 that the Defendant sounded scared. Again, at a minimum,
8 because we know this conversation was more than four
9 minutes long, he said that the Defendant told him that he
10 thinks the police had just been chasing him. Not just
11 that but the Defendant said it was in the back roads of
12 Stockbridge, exactly where this pursuit had just
13 happened.

14 The Defendant's phone then goes silent until
15 the following morning. Starting early on, calls in very
16 quick succession that morning. Over 20 calls in the next
17 two days to Tony Hildabridle. I wonder what they were
18 talking about. Numerous calls to Brian Hildabridle that
19 day. Brian described that on the first call that
20 morning, the Defendant sounded freaked out. You heard in
21 Tony's recorded statement that the Defendant told him
22 that he felt responsible for that accident and that he
23 understands what he has done.

24 When arguments are over, the judge is going to
25 read to you a series of instructions, and they're meant

21

1 to help you understand and apply the evidence. One of
2 them is about witness credibility. There's a series of
3 questions to ask yourselves and each other to help you
4 determine what witnesses you believe and why you believe
5 them.

6 Two of the things that he's going to ask you to
7 consider are, first, does the witness have any bias,
8 prejudice, or personal interest in how this case is
9 decided?

10 Secondly, how did the witness look and act
11 while testifying? Did the witness seem to be making an
12 honest effort to tell the truth, or did the witness seem
13 to evade the questions or argue with the lawyers?

14 You saw Tony Hildabridle testify. You know
15 about his long-term, very personal relationship with the
16 Defendant. If he simply had no information to provide
17 implicating the Defendant, if he didn't know about those
18 statements, then why would he act like that on the stand?
19 Why would he claim he can't remember a single thing; that
20 he has some sort of mysterious condition that even he
21 can't understand?

22 And the answer is because he does know those
23 things, and he can't bring himself to point the finger at
24 him with him in the room. But you heard how much more
25 cooperative he was shortly after this incident when the

22

1 Defendant wasn't there, when he was more honest with the
2 officers. He told them about the conversations he had
3 had with the Defendant.
4 With Brian Hildabridle, this is the same thing.
5 This is his friend of more than ten years. And while
6 Brian was much more cooperative on the stand, it was
7 still like pulling teeth because for him it was just as
8 hard to point the finger at his friend. If they didn't
9 have something to hide, if they didn't feel so bad about
10 having this knowledge of the Defendant's guilt, it
11 wouldn't have been so difficult for them.
12 In that way, the reason that you know that they
13 have something to hide, that you can also believe that
14 statement. Why would they say that the Defendant, their
15 friend, said these things unless he did? Why would they
16 unnecessarily implicate their friend?
17 Also remember that their testimony is
18 corroborated by the phone records as well as the fact
19 that both Brian and Tony both wiped their phones clean
20 shortly after the crash and these conversations.
21 The Defendant went one step further, though,
22 and got a new iPhone without transferring any of his
23 information from the old one, any of the conversations,
24 contacts; anything like that. He even got a new Boost
25 phone on December 12th, 2014. So what are the odds that

23

1 these three friends all get rid of all of the information
2 on their phone the week after this crash unless they're
3 hiding something, unless they're conspiring to get rid of
4 the evidence against the Defendant?
5 We also know that on the morning after the
6 crash, Calls No. 149 and 153 in Exhibit 186, the
7 Defendant calls Jerry Strunk. And what does Jerry Strunk
8 do? He's a scraper. As Brian tells you, breaks down
9 metal and sells it. Gets rid of it.
10 So why does the Defendant go to this automotive
11 graveyard the day after the crash? Brian told you he was
12 swapping out a vehicle. He was swapping out an SUV. And
13 while Brian went back and forth about which SUV it was,
14 whether it was a tan Blazer or the white one he was
15 driving to the Dam Site, we know it wasn't the tan Blazer
16 because that day at Jerry Strunk's was December 7th,
17 2014.
18 When the police searched the Defendant's Morton
19 Road residence on December 16th, what was in the front
20 yard? That tan Blazer. So we know that could not have
21 been the SUV that he swapped out a week earlier at Jerry
22 Strunk's house. Only one vehicle is missing, and that's
23 the Defendant's white 2003 GMC Yukon Denali XL. That's
24 the vehicle that he swapped out at Jerry Strunk's that
25 day.

24

1 Additionally on the side of the house they
2 found a red Special Vehicle Team Mustang. Detective
3 Sergeant Yonker explained that this was a high
4 performance racing style of Mustang. You remember what
5 Brian Hildabridle told you that him and his friends like
6 to do? Mud bogging. They take trucks and cars, they
7 soup them up, and they race them.
8 Between that, the Defendant's familiarity with
9 the area, his ability to drive fast and knowing the
10 roads, that's why he felt that he should and could run
11 from the police that night.
12 On the same day December 16th, 2014,
13 investigators searched the Defendant's parents' house.
14 And in it, they found documentation of the 2003 white GMC
15 Yukon Denali XL.
16 The Defendant's parents were home. His sisters
17 came home while the investigators were there, but nobody
18 could tell them the current whereabouts. Nobody could or
19 would tell them the current whereabouts of that 2003
20 white GMC Yukon Denali XL.
21 The picture of that vehicle had been in the
22 media, in the newspapers, around town. Its importance to
23 both the investigation and to the Defendant because he
24 had already been charged was obvious to everybody. But
25 despite all that, nobody could or would say where that

25

1 vehicle was. That is because that vehicle was gone.
2 That white SUV was never found or seen again not
3 anywhere, not ever because the Defendant got rid of it.
4 He felt that was the most important piece of evidence
5 tying him to this senseless crime.
6 Now let's talk about the most important
7 question in this case. How do we know that the Defendant
8 was the one in that white SUV driving that night? How do
9 we know he is the one that the deputies were pursuing
10 when Deputy Whitaker was killed?
11 The judge is going to read to you an
12 instruction about identification. Among other things,
13 he's going to tell you to consider whether the witness
14 had seen or known the offender before. He's going to
15 tell you to consider whether the other evidence supports
16 that identification because then it's more reliable.
17 In this case the evidence that the Defendant
18 was driving that white SUV is overwhelming. Throughout
19 this trial defense counsel has suggested to you that
20 because Deputy Hoeksema couldn't identify the driver or
21 this specific vehicle, the license plate, that you
22 wouldn't be able to either.
23 In opening statements he asked you to consider
24 why the police, why the investigators settled on the
25 Defendant to blame for this crime, not somebody else who

26

1 owned a white SUV. And if this were a one-day trial, if
2 we had stopped last Thursday after hearing Deputy
3 Hoeksema's testimony, he would have a point. In that
4 circumstance, you would have to acquit the Defendant, but
5 we didn't stop trial then. To say that would be to say
6 that every moment you have spent in this courtroom
7 listening to witness after witness voluminous testimony
8 about this would have been wasted, but it wasn't. It
9 cannot be because all of it had a very specific point.

10 You heard from almost 40 witnesses. You know
11 this case is so much more and that all of the evidence
12 pointed to the Defendant. Everything. And while we
13 start with that picture of the SUV taken from the L & B
14 outlet just before it began the pursuit, the other pieces
15 of evidence are overwhelming. You think of all of the
16 pieces of evidence that seamlessly confirm what your eyes
17 and common sense have already told you. The way that
18 they all fit together. The L & B car matches the
19 Marathon one, matches the Dam Site Inn, matches the
20 Topping one, the Shell one. It even matches that dark
21 Samulak vehicle video. And that vehicle also matches the
22 2003 white GMC Yukon Denali that was registered to the
23 Defendant's father.

24 It's the same vehicle that numerous witnesses,
25 the girls from the Marathon station, the neighbors

27

1 testified that the Defendant always drove right up until
2 this accident because then it was never seen with him
3 again. We know that the salt spray on the Dam Site
4 video, the Topping video, and the Marathon video from two
5 days before all matches.

6 The Defendant's address, intoxication, and
7 timing. So also think about this: The Defendant had to
8 go home from the Dam Site Inn that night. He had to
9 travel west to do that. So if it's not him in these
10 videos, how did he get home? We know he went west in the
11 Stockbridge area. Everybody testified -- and you'll have
12 the ability to check for yourselves. There are no other
13 white SUVs travelling in that direction that night during
14 this time. So if not him, "Where did you go?"

15 The timing fits as well. We had testimony from
16 the Steins, as well as Deputy Hoeksema, about the speed
17 the Defendant was traveling, about 65 to 70 miles per
18 hour. That is almost exactly what Sergeant Avery told
19 you would be the average speed going from the Dam Site
20 Inn to the Marathon station over that period of time.

21 It all fits together with the intoxication
22 because it's not just a white SUV that gets pulled over.
23 It's a white SUV containing somebody who has something to
24 hide, somebody whose license is suspended or has been
25 drinking or smoking marijuana. All of the above.

28

1 The fact that the Defendant suddenly needs to
2 call Jerry Strunk twice the next morning and then go to
3 his place and swap out a vehicle just happens to be the
4 next day. The testimony of Brian, Tony, and Sandie,
5 three close friends of the Defendant, especially Brian
6 and Tony, testify that he gives these statements, these
7 inculpatory statements about what he did, he personally.

8 And all these people, Brian, Tony, and the
9 Defendant, all wipe out their phones that week as well.
10 Connected also to the phone testimony, the timing of the
11 phone calls. Keep in mind when he calls Tony and Sandie
12 picks up, when he calls Brian that night, he's calling at
13 2:10 and 2:18. 2:08 is when Deputy Whitaker makes his
14 last transmission. So suddenly he's got something urgent
15 to talk to these guys about two minutes later.

16 And then the location of those phone calls.
17 You see the towers. The first one is in Stockbridge on
18 the east, and then it's off of a tower that's -- excuse
19 me, on the west. And the second one is in Stockbridge
20 further west traveling in the opposite direction but
21 consistent with the direction that that white SUV fled.

22 When each of these pieces of the puzzle and of
23 the evidence were presented, Defense Counsel countered
24 with suggesting lots of people have white SUVs, lots of
25 people make phones calls, lots of people drink at bars,

29

1 lots of people live in and around Stockbridge. He's
2 correct in that any one of these pieces by itself, if you
3 took it out of the puzzle and held it up, you lack the
4 context to know and understand it. It's weak. It's
5 fallible by itself.

6 But you look at how all of these pieces fit
7 together. And to say that they are all coincidences,
8 it's the same as believing that you could randomly reach
9 into 15 different puzzle boxes, pull out one piece from
10 each, and they happen to fit together seamlessly with one
11 picture on the top. And it's simply impossible unless
12 they all do fit together that way.

13 Reason and common sense tells you that the
14 pieces fit together in this case all of them implicating
15 the Defendant. Not out of chance but because he was the
16 driver of the white SUV that night.

17 As a result of his actions, the Defendant is
18 charged with two crimes. Each crime is made up of
19 elements. And elements are a checklist for you to keep
20 in your mind or on your notepad. When you can check off
21 each element of the crime, you must find the Defendant
22 guilty of that crime.

23 The first crime that the Defendant is charged
24 with is fleeing and eluding in the first degree. The
25 first element is that a police officer was in uniform and

30

1 was performing his lawful duty and that any vehicle
2 driven by the officer was adequately marked as a law
3 enforcement vehicle.

4 You know that to be true in this case with
5 Deputy Hoeksema and Deputy Whitaker both in full
6 uniforms. Deputy Whitaker in a fully-marked vehicle.
7 Deputy Hoeksema in a semi-marked but certainly with the
8 lights and sirens adequately marked.

9 Second element is that the Defendant was
10 driving a motor vehicle.

11 For all the reasons we've already talked about
12 but most significantly we know he's the driver by the
13 fact that we see him get into the driver's seat and drive
14 away in the Dam Site video, but also because of his
15 statements to his friends, Sandie and Tony and Brian,
16 where he says he was responsible. He ran from the
17 police. He fled from the police.

18 The third element is that the officer ordered
19 that the Defendant stop his vehicle.

20 And as everybody knows, you order somebody to
21 stop their vehicle by turning on lights and sirens. As
22 you see in the in-car camera, as you see in the Samulak
23 video lights and sirens activated almost throughout
24 almost immediately.

25 Third -- I apologize. Fourth, that the

31

1 Defendant knew of the order.

2 How do we know that the Defendant knew the
3 police were chasing him trying to pull him over? In a
4 number of ways. He accelerated to more than 80 miles per
5 hour as soon as the police pulled out of the driveway.
6 That he passed his house on Morton Road and kept going.
7 That he ran every road (verbatim) until the end before he
8 turned. Didn't stop at stop signs. Turned off his
9 headlights. And by the time he got to the Samulak
10 residence, the officer -- excuse me, Deputy Whitaker was
11 only 13 seconds behind him.

12 Fifth, that the Defendant refused to obey that
13 order by trying to flee or avoid being caught. Did he
14 stop for the police? And the answer is obviously not,
15 not at any point, not even to slow down.

16 Sixth, and finally, that the violation resulted
17 in the death of another individual; in this case, Ingham
18 County Sheriff's Office Deputy Grant Whitaker. Notice
19 the word result. The law does not require that the
20 Defendant hit the vehicle with his car or rammed it off
21 of the road or anything like that. Simply that the act
22 of fleeing and eluding resulted in the death of another.

23 The second crime the Defendant is charged with
24 is driving while license suspended or revoked causing
25 death. Four elements to this crime:

32

1 First, that the Defendant was operating a motor
2 vehicle.

3 We've already talked about all of the testimony
4 confirming and corroborating that fact.

5 Second, that the Defendant was operating that
6 vehicle on a highway or place open to the public. In
7 this case, it was Morton Road, Chapman Road, Catholic
8 Church Road, Dexter Trail.

9 Third, that at the time the Defendant's license
10 was suspended.

11 And, again, you'll have that documentation from
12 the exhibits and the letters that were sent to the
13 Defendant by Certified Mail informing him of that
14 suspension. You can read those in the jury room.

15 Fourth, that the Secretary of State gave notice
16 of the suspension or revocation by First Class Mail,
17 United States Postal Service Mail addressed to the
18 Defendant at the address shown by the record of the
19 Secretary of State at least five days before the date of
20 the alleged offense.

21 In this case, it was actually years before he
22 had all of these suspensions. First when he lived at the
23 Teahen address when he lived with his parents. They
24 mailed them all there. None of them being resolved.

25 He moved to the Stockbridge area well in excess

33

1 of five days. He had notice of these suspensions.

2 Fifth, and finally, that the Defendant's
3 operation of the vehicle caused the victim's death,
4 caused Deputy Whitaker's death. And when we think of
5 caused, it means something different in this case. And
6 the judge will explain that to you.

7 To cause the victim's death, the Defendant's
8 operation of the vehicle must have been a factual cause
9 of death. That is, but for the Defendant's operation of
10 the vehicle, the death would not have occurred. So it
11 doesn't matter how he's driving. As a suspended driver,
12 it's simply that he's driving.

13 So we look at the test that's laid out for us:
14 But for the Defendant's operation of the vehicle, the
15 death would not have occurred. But for the fact that the
16 Defendant was driving that night, Deputy Whitaker would
17 not have died.

18 And there is a second prong to this test.

19 In addition, operation of the vehicle must have
20 been a proximate cause of death. That is, death or
21 serious injury must have been a direct and natural result
22 of operating the vehicle.

23 The only time it's not a direct and natural
24 result, the judge will tell you, is if there was an
25 intervening and unforeseeable cause on the part of the

34

1 victim. So not something in the roadway but something
2 that the victim actually does if that was unforeseeable.
3 In this case it was obviously foreseeable that
4 the deputy would follow the Defendant. The two most
5 important factors that caused Deputy Whitaker to lose
6 control of his vehicle and drive off the road and die
7 that night, the speed and the terrain, both of which were
8 dictated by the Defendant. He chose where they were
9 going and how fast they were going.
10 Ladies and Gentlemen, I'm going to have one
11 more time to speak to you after defense counsel does.
12 And at the end of that, I'll ask you to find the
13 Defendant guilty of fleeing and eluding in the first
14 degree and driving while license suspended or revoked
15 causing death.
16 Thank you, Your Honor.
17 THE COURT: Thank you, Mr. Roth.
18 Mr. Morley, you may present your closing
19 arguments, sir.
20 MR. MORLEY: Thank you, Judge.
21 Ladies and Gentlemen of the Jury, good morning.
22 VARIOUS JURORS: Good morning.
23 MR. MORLEY: There was a phrase made, and there
24 was a lot of reference to me, but there was a phrase made
25 "I don't want to steal Mr. Morley's thunder." And I need

35

1 to focus on that for a minute because this isn't about
2 me. You'll remember two, two and a half weeks ago I said
3 this is a tragic event. This is sad for a lot of people.
4 It's sad for everybody in this courtroom. This is not my
5 thunder. This is not some game.
6 It's an issue of whether or not you can find as
7 jurors beyond a reasonable doubt, not at a reasonable
8 doubt but beyond a reasonable doubt. I'm going to go
9 through it. I'm going to hit you with bullet points.
10 There are some things I would like to address at the
11 outset.
12 You heard about 151 tips. I'd ask how many you
13 heard about John Kelsey. I remember one trooper
14 testifying about a tip relating to Kelsey. A neighbor
15 testified that they may have seen him driving out of the
16 driveway. But how many tips did you hear about
17 John Kelsey? All of a sudden we went to Trooper
18 Rochefort saying -- we went from this crash -- "Something
19 has happened" -- to "Okay. Then we started investigating
20 John Kelsey." Where is the middle? Where is the middle
21 ground? "We went to Kelsey."
22 What about Bettelon? What about the bar fight?
23 What about the other car on Morton Road? You weren't
24 presented with evidence regarding tips to Kelsey. You
25 got a couple references to it, but there was no real

36

1 evidence about it.
2 These bar tabs at the Alley Bar in Pinckney,
3 mind you, and as I said at the outset, these are a group
4 of guys who went out for dinner at the Alley Bar. The
5 waitress -- both waitresses testified. The one, Lori
6 Brooks, said, "Gosh, I wish you guys would have come
7 found me earlier. She was not interviewed until April.
8 April 2nd, I believe, from a December 7th -- December 6th
9 night at the bar. So she's being asked to remember
10 January, February, March, April. Almost -- it was
11 April 2nd. Almost exactly four months. And she said a
12 few times, "Gosh. I wish you guys would have come found
13 me then." And she said, "I just don't remember. I'm
14 sorry. I just don't remember."
15 The credibility of witnesses has been
16 questioned in front of you. The credibility of
17 Brian Hildabridle, Tony Hildabridle, and Sandie Hale has
18 been questioned in front of you. The phone calls were
19 longer. Something more had to have happened. There had
20 to be more substance to it.
21 Those weren't my witnesses. I didn't call
22 them. Prosecutor did. The prosecutor said, "Tell us
23 what you know." But the Prosecution is telling you,
24 "Hmm, some of it is true, some of it's not. Pick and
25 choose. Some is true, some not." They're not my

37

1 witnesses. I didn't put them up there.
2 There was elaborate and a flourishing reference
3 to "Where did you go? Where did you go after the chase
4 you may or may not have been in?" Well, if you remember,
5 we have testimony that there was no check of Mr. Kelsey's
6 residence for quite a while. Several days. If it was
7 checked that night, "Where did you go?" Don't know.
8 I told you at the outset it was going to be
9 who, what, why. I'm going to go through those again;
10 who, what, why. I also told you there would be one
11 witness. There is one witness to all of this; Deputy
12 Hoeksema, who strongly testified. I respect the heck out
13 of Deputy Hoeksema because he testified to what he knew,
14 and he testified to what he didn't know. And he stood up
15 there, and he answered questions all the way around.
16 The last words that Deputy Hoeksema said on
17 Friday afternoon were, quote:
18 We had absolutely no idea who we
19 were chasing that night.
20 Close quote. Reasonable doubt? He was there.
21 I asked him:
22 Can you identify John Kelsey as
23 the driver?
24 His quote:
25 No. I don't know.

38

1 The one witness, Brian Hildabridle, that I
2 touched on briefly testified -- and we got to remember
3 this: He testified that he had at least 15 beers and
4 eight joints of marijuana. 15 beers and eight joints in
5 an evening. It boggles the mind. He was testifying
6 pursuant to a grant of immunity that was never fleshed
7 out, but he was given immunity. You know that he lied to
8 the police previously. We know from the Prosecution's
9 assertion today that he was probably less than candid on
10 the stand. But, still, the argument's being made "Use
11 him. He's a reliable kid. He's drunk, stoned, lying and
12 testifying to immunity, but..." Come on, people.

13 Sandie Hale. Again, testimony was that this
14 was a four-and-a-half-minute conversation. Her testimony
15 was "I thought it was a joke. I took it as a joke." She
16 also testified that she was extremely intoxicated. As I
17 recall the testimony was that the phone call lasted
18 almost instantaneously. Took it as a joke, and then "I
19 didn't tell Tony about it, hung up, and went back to
20 sleep."

21 Again, question whether or not she's telling
22 the truth because it was told four and a half minutes of
23 testimony. "I want you to believe it. I just don't want
24 you to believe all of it. Believe parts of it."

25 Tony Hildabridle. Tony Hildabridle was an

39

1 atrocity and an embarrassment to the system. I say that
2 unequivocally. His testimony was disrespectful to our
3 court system, and for anything to be taken out of his
4 testimony is a miscarriage. It shouldn't happen. That
5 guy got up there, and I don't know -- I don't know what
6 he was thinking. I don't know what we gleaned from him.
7 Those of your three witnesses. "Believe some, but not
8 all."

9 In none of this testimony is anybody -- anybody
10 identified Mr. Kelsey as the driver of a vehicle. Brian
11 Hildabridle said he don't know. "He might have been."
12 He don't know. Hoeksema don't know. Hildabridle don't
13 know. But you're supposed to know.

14 Just because "We told you. We zeroed in on
15 Kelsey," law enforcement is telling you so. "You got to
16 take it. Why would we -- why would we make this up? You
17 got to accept it."

18 The cell phone tower expert tried to testify
19 that "No, these phone calls came from Stockbridge."
20 If you recall, I said, "Well, there is a tower
21 up over here."
22 Stockbridge was in the upper left corner.
23 There was a tower over in the far right, which would
24 presumably be the far east side of Stockbridge. There
25 was a cell phone tower in Washtenaw, and there was a cell

40

1 phone tower in Livingston County. And I said, "But I
2 thought you said it was in Stockbridge?"
3 "Well, Stockbridge area."
4 I said, "What's the area?"
5 "Ten miles."
6 I said, "Well, you'd agree with me that's three
7 different counties."
8 "Yeah."
9 And then I said, "Aren't there -- aren't there
10 cell phone towers in Stockbridge?"
11 "Yes."
12 I'm not -- I'm not technologically adept, but
13 if there are cell phone towers in Stockbridge, why
14 weren't cell phone towers in Stockbridge checked? There
15 is technology out there. Why wasn't things triangulated
16 or pinged? Why were you giving this "It could have been
17 Washtenaw, Ingham Reg -- excuse me, Washtenaw, Ingham, or
18 Livingston County, or it could have been somewhere in the
19 entire area of Brighton"? That's the who.

20 The what. What vehicle? We don't have a
21 vehicle. We don't have a license plate. Again, "Deputy
22 Hoeksema, what is the license plate?"
23 "Don't know."
24 "Who was driving?"
25 "Don't know."

41

1 "Make and model?"
2 "Don't know."
3 We have a lot of pictures in evidence and
4 videos of prior to the chase, but this is what we have
5 from the chase. That's our vehicle. That's what you
6 have. And I told you "I'm going to show you. You're
7 going to see. Nothing identifiable after this traffic
8 stop starts."
9 That's it. Every other picture you have seen
10 except for the what I call a sonogram at the Samulak
11 residence, you got to want to figure out what that is and
12 take a look at it in your deliberations. You're going to
13 get all of this, but this is our suspect vehicle. That
14 right there. All these other pictures, everything else
15 that's in this huge binder are prior to where there is no
16 wrong being done.

17 Deputy Hoeksema testified that he was, I think
18 he said, on a scale of five to ten, I'm about a five. I
19 think I followed up.
20 "You're about 50 percent sure?"
21 "Yes."
22 "50 percent sure that it could have been a
23 Suburban?"
24 "Could have been a pickup with a topper on it."
25 You'll recall, as an aside, that one of the

42

1 tips was pickup with a topper on it, but --
2 MR. ROTH: Your Honor, I'm going to object.
3 There is a very clear ruling by the Court that this may
4 not be offered for the truth of the matter asserted.
5 MR. MORLEY: That's fair. I'll withdraw it.
6 Disregard it.
7 And if you need to instruct the jury, I
8 apologize.
9 THE COURT: Go ahead, Mr. Morley.
10 MR. MORLEY: I apologize.
11 "And could have been a Ford Flex."
12 You had GM testimony and testimony from
13 Sergeant Young that all of these pictures seen before --
14 we tried to zero in. We did this overlay thing that I
15 didn't fully grasp. We took a lot of different pictures.
16 There were a lot of arrows, but then I asked both Young
17 and our GM guy, "I'm right, aren't I, that this could
18 have been a GM vehicle between the model years of 2001 to
19 2006?"
20 "Yeah, you're right."
21 2001 to 2006 in the State of Michigan. The GM
22 guy couldn't even give us an estimate of how many
23 vehicles a Suburban, Denali, anything like that in
24 Michigan. This is an auto manufacturing state. We all
25 know that. We live in a GM town. And somehow or another

43

1 you're being asked that even though it covers 2001, 2002,
2 2003, 2004, 2005, and 2006, it's this one. I'm not sure
3 what it is, but it's this one. There are hundreds of
4 thousands of these.
5 Jerry Strunk is a fun little red herring. Did
6 we hear from Jerry Strunk? No. Jerry Strunk, because he
7 scraps; ergo, must have scrapped a car. Again, how did
8 we get there? You'll recall, Sergeant Johnston
9 testified, I said, "You went out there in May, and you
10 found absolutely no evidence of any car related to this
11 matter? Am I right?"
12 "Yes, you're right."
13 But here you're being told, "Hey, he called him
14 twice the next day. So there must be something because
15 Strunk scraps cars." An impermissible leap.
16 Let's not glaze over the fact because it was
17 tried with Sergeant Young. Sergeant Young said, "My
18 expert opinion is inconclusive. My expert opinion is
19 inconclusive."
20 You're being asked to decide beyond a
21 reasonable doubt.
22 "My expert opinion -- I'm smarter than you
23 guys. I know this stuff. This is what I do -- is
24 inconclusive."
25 "Well, Sergeant, isn't it true that you've only

44

1 been positive once or twice?"
2 "Yes. I've only been positive once or twice,
3 but my expert opinion is inconclusive."
4 Did we hear, "Is that less than 50 percent?
5 Does that mean 10 percent? Does that mean I'm kind of
6 sure, kind of not? Does it mean it could have been this
7 kind of car; it could have been another?"
8 Inconclusive. His words. I didn't make it up.
9 I didn't force it on him. The only vehicle investigated
10 as it relates to why we're here today is registered to an
11 address in Brighton, Michigan, and was in storage at the
12 time that this alleged incident happened. That's what we
13 had. You heard it. Again, not my witnesses.
14 "August 22nd of '14 --" I believe the AAA
15 insurance guy testified "-- am I right that after -- from
16 August 22nd, until you sit here today, that that vehicle,
17 at least as far as AAA knows, is in storage?"
18 "Yes."
19 There is our what.
20 "Who's driving?"
21 Hoeksema: "Don't know."
22 "Believe the three knuckleheads, but don't
23 believe all of it."
24 The what. What car? Now the why, and the why
25 is a two-part. Why? Why John Kelsey? How did we get

45

1 there? How did we all of a sudden go to "Please state
2 your name."
3 "I'm Trooper Rochefort. I'm working
4 undercover. I was asked to investigate John Kelsey."
5 Okay. Was it because he was at the bar that
6 night? It was Christmastime. I'm not making light when
7 I say this, but there's probably a lot of people at the
8 bar that night. We don't have evidence of him consuming
9 numerous amounts of beer. We don't have that. He's at
10 the bar that night. He's having dinner at the bar that
11 night.
12 There were a number of other tips. There was
13 limited information about whether or not they were
14 investigated. We don't know. Some were just -- we
15 already had our suspect.
16 The alleged reenactment of the trip from the
17 Dam Site Inn to Stockbridge is fatally flawed for two
18 reasons: Its time stamps are all over the place. Again,
19 this is court. This is serious specific stuff. This is
20 detail oriented. I need to know what happened, what day,
21 when, and why. Every single one of these alleged videos
22 is time off. Some two hours. Some a couple minutes.
23 They're all off, but we have this strict -- strict
24 timeline:
25 1:53, Defendant leaves the bar. 2:03, it

46

1 happens. 11.3-mile trip from the Dam Site to
 2 Stockbridge. "Do me a favor. Blur the lines about the
 3 time stamps on these and just listen to or follow my
 4 timeline."
 5 And then really important, perhaps the most
 6 important thing in this entire case: Amber Peek was a
 7 bartender at the Dam Site. Amber Peek said she saw the
 8 Defendant, she said, peeling out. Amber Peek said, "I
 9 also saw the Defendant come back after 2 o'clock." Chase
 10 started at 2:03. "I saw him come back at 2 o'clock."
 11 Amber Peek said, "I saw the vehicle come back after
 12 2 o'clock. I had called last call."
 13 "Sure it was after 2 o'clock?"
 14 "Oh, yes."
 15 I don't care about time stamps with that.
 16 Traffic stop was initiated at 2:03, 11.3 miles away as
 17 the crow flies.
 18 MR. ROTH: No, Your Honor. I'm going to object
 19 to that. It was by road. There was no testimony it was
 20 as the crow flies. It was expressly clear it was on the
 21 most direct route.
 22 MR. MORLEY: That's not accurate, Judge.
 23 Sergeant Avery --
 24 THE COURT: Hold on. I'm going to overrule the
 25 objection. This is closing argument.

1 The jury will determine what the testimony or
 2 evidence was. They'll be instructed that this is
 3 argument.
 4 MR. MORLEY: This is just argument. Again,
 5 this just goes back to it's not my thunder or my show.
 6 Sergeant Avery said, "I was given 11.3 miles
 7 and told to figure out various speeds and various times."
 8 And let's go back so it's not forgotten because
 9 this is crucial. Amber Peek -- not one of those you're
 10 being asked to remember some but not all. Amber Peek is
 11 an objective outside "I don't care. I'm a bartender."
 12 Probably doesn't even want to be here.
 13 "I saw the Defendant's vehicle back after
 14 2 o'clock."
 15 The traffic stop happened at 2:03, 11.3 miles
 16 away. It cannot be the same vehicle.
 17 And the harshest question that has to be asked
 18 within the why is why was Deputy Whitaker traveling
 19 117 miles an hour on a bumpy country road after a vehicle
 20 that he could not see or identify? You'll remember my
 21 very first exhibit is the Ingham County Sheriff's Office
 22 policy and procedure. The heading is: Operation of
 23 Motor Vehicles. Right here. I want you to focus on
 24 this. This is the front page of their very own policy
 25 and procedure. 240.02, subparagraph:

1 Discontinuing a pursuit is not --
 2 Underlined.
 3 -- not a reflection of a lack of
 4 courage or ability. In most
 5 cases, if an apprehension cannot
 6 be made quickly and at a
 7 reasonable speed, the most
 8 intelligent action is to break
 9 off the pursuit.
 10 And then look at the last line.
 11 This is the professional
 12 approach.
 13 This is the professional approach. You heard
 14 testimony that "No. I didn't need to call the chase
 15 off." Sergeant Every said that. Deputy Hoeksema tried
 16 to call the chase off. At one point, he said -- and you
 17 can see it in the transcripts, he said to Deputy
 18 Whitaker, "Do you still have eyes?" or "Do you still have
 19 visual?"
 20 "Negative. I lost him. I'm not sure if he
 21 took Adams Road."
 22 Sergeant Every testified that "The dips in the
 23 road were substantial, but it's not like anyone driving
 24 them would lose control."
 25 Well, but Sergeant Every also said -- I said,

1 "Sergeant, that's at 55 miles an hour, the posted speed,
 2 right?"
 3 "Yes."
 4 I said, "If it's 117, are these dips a factor?"
 5 "Yes."
 6 There are no signs that marks these dips in the
 7 road. We've heard from both experts. We've heard from
 8 Sergeant Avery and Dr. Funk. It was dips in road and the
 9 speed were the cause of the crash. Loss of control and
 10 the speed.
 11 Dr. Funk testified, "In the 500 to 1,000
 12 accidents I've looked at, this is the worst crash I've
 13 seen."
 14 I said, "Why?"
 15 And he turned and he looked, and he said,
 16 "Well, it's because of the speed at the time."
 17 It's because of the speed after a Motor Vehicle
 18 Code violation; a speeding ticket. An eight-mile chase
 19 that went on in the hundreds of miles an hour on an
 20 unidentified vehicle that was lost. It was never
 21 identified by any law enforcement personnel as to "This
 22 is the plate of the car we're following. This is the
 23 driver we're following. This is the type of the car.
 24 This is the number of occupants."
 25 Ladies and Gentlemen, the Prosecution has not

1 carried its burden that Mr. Kelsey was operating or
2 driving this vehicle or even involved in any way in this
3 matter, and I'd ask to you so decide. Thank you.
4 THE COURT: Thank you, Mr. Morley.
5 Mr. Roth, you may present your rebuttal
6 argument.
7 MR. ROTH: Thank you, Your Honor.
8 When Mr. Morley questioned witnesses, police
9 witnesses about tips, he asked them, "Did you receive a
10 tip about this person? Did it say this thing about
11 somebody else?"
12 He didn't call in any of these people that made
13 these tips. And while the Defendant doesn't have the
14 burden, you saw they're able to call in witnesses as
15 well. You didn't get any of the substance of those tips
16 because unlike the evidence against the Defendant, it all
17 disintegrates when you look too hard at it. He said the
18 police didn't look at any other white SUVs, but that
19 simply is not true, and you heard extensive testimony
20 during this trial about the numerous white SUVs that were
21 examined and disproven.
22 The first of which was minutes after the crash.
23 Detective Sergeant McPhee said he had a white SUV that
24 was pulled over in Meridian Township. No other
25 information implicating who was involved in this crash.

51

1 If we were just looking for a scapegoat, that was the
2 number one.
3 But Detective Sergeant McPhee said that he
4 looked at that vehicle, interviewed the people,
5 geographically, physically, and based on interviewing
6 them, it could not have been involved. Lots of other
7 white SUVs. Lots of other people were looked at, but
8 none of it could be confirmed or corroborated except for
9 one person.
10 And now Mr. Morley says, "You didn't hear any
11 tips about the Defendant." Well, start with the one that
12 Trooper Adamczyk told you. That he took a tip from
13 somebody over the line saying that they wanted to remain
14 anonymous, but the day after the accident, the Defendant
15 was supposed to go to a football party or a football
16 game, something like that, and failed to appear. Said
17 that the Defendant is normally driving a white SUV. I
18 think they said he normally drives fast. And that he had
19 been driving -- excuse me -- he had been at Pinckney bar
20 that very night.
21 Not only did you just hear from the troopers
22 that took the tips. We actually brought you in the
23 people that made the tips; the neighbors, the employees,
24 the family member, who said the Defendant has this white
25 SUV, a matching white SUV. But after this crash, never

52

1 again. You got to hear from the tipsters themselves, not
2 just the very surface.
3 Mr. Morley makes an issue of the fact that the
4 pictures that you see on the videos other than the
5 Samulak one are from after -- excuse me, before the
6 chase, not after. But you must ask yourself, why does
7 that matter? We have a string of videos: Shell, L & B,
8 Marathon where you can clearly see it goes from Shell to
9 L & B to Marathon, and from Marathon you see the pursuit
10 begin.
11 There is no doubt, none whatsoever, that the
12 vehicle shown in those three is the one that the pursuit
13 that involves. So whether you see it before or after,
14 its purpose is to give you a better understanding of what
15 that vehicle was.
16 Mr. Morley talks about the fact that there are
17 other GMC Yukon Denali out there from 2003 and other
18 surrounding years. "Why not them? Why couldn't it be
19 them?"
20 Well, the answer is, no one confessed to their
21 friends that they did it. None of those people were seen
22 leaving a bar in their vehicle immediately before the
23 pursuit. And, most importantly, as with all of the other
24 white SUVs that were brought up during this case, all of
25 those people can tell us where they are. None of those

53

1 people have lost their white GMC Yukon Denali since then.
2 Isn't that conspicuous?
3 Mr. Morley makes an issue of the fact that
4 we're asking you to assume that the Defendant scrapped
5 the car at Jerry Strunk's, but that's not what we're
6 asking you to do. Brian Hildabridle, the Defendant's
7 friend, I think Jerry's friend as well, he testified, was
8 there that day and told you that the Defendant swapped
9 out his SUV there. So that leads us to what Mr. Morley
10 is asking you to consider, to simply, as he says, pick
11 and choose what to believe.
12 This is so common that the law takes it into
13 account, and the judge will word for word read this to
14 you:
15 If you think the witness lied
16 about some things but told the
17 truth about others, you may
18 simply accept the part you think
19 is true and ignore the rest.
20 So consider this: Brian Hildabridle,
21 Sandie Hale, Tony Hildabridle all give some information
22 that implicates the Defendant, all of them trying to
23 describe themselves as drunk and high and trying to
24 negate their memory because they're doing what they can
25 to try and minimize the impact on their friend to try and

54

1 help their friend, to walk it back from their initial
2 statements when they didn't understand the magnitude of
3 what he had done.

4 That's why they say they were drunk and they
5 were high although the evidence doesn't support that.
6 You remember that the waitresses said that when Sandie
7 Hale came back, she didn't even drink very much of her
8 drink, let alone the three Long Islands she claims she
9 threw back in 45 minutes and safely drove home on. Other
10 than that, she has a pretty good memory of the night.

11 Brian Hildabridle. Same thing. He claims he
12 was stoned out of his mind, drunk out of his mind except
13 you see in the video he's not falling down. He's walking
14 around just fine. He's able to remember the innocuous
15 details, the things that don't matter just fine about
16 that night. It's only when asked to provide details
17 against his friend that he claims "Whoa. I don't
18 remember."

19 Same with Tony Hildabridle who apparently can't
20 remember anything in the world. If he didn't have facts,
21 if he didn't have information and statements that
22 implicated his friend, the Defendant, John Kelsey,
23 wouldn't he have just sat up there and cooperated and
24 told the truth? The only reason to hide in the way that
25 he did is because he did not want to point across the

55

1 room at his friend. And you heard that. When asked to
2 simply identify who John Kelsey was, "Do I have to?"

3 They were doing what they could to walk back
4 their initial statements and not hurt their friend more
5 than they had to.

6 Mr. Morley said that Brian Hildabridle had a
7 grant of immunity as if that provides him some reason to
8 lie. As he told you or acknowledged, the immunity was
9 simply for the things that he talked about. And the only
10 crime he talked about was using marijuana, which in many
11 places isn't even a crime requiring immunity anymore.

12 Mr. Morley emphasized that Detective Sergeant
13 Young's opinion after looking at the vehicles was
14 inconclusive and, therefore, how could you be any more
15 sure than him? Detective Sergeant Young has one very
16 narrow responsibility: To look at pictures; to compare
17 them forensically; to see the common attributes.

18 He can only make a conclusive determination if
19 there is a unique factor on each of them. He said that
20 if each one had a bumper sticker, that wouldn't be
21 enough. It would have to be a constellation of bumper
22 stickers. So what his purpose is, is to layout the
23 information for you to see in the most visually helpful
24 way possible. It is one piece of the puzzle for you to
25 think about when you make your decision. He doesn't have

56

1 the statements by Brian and Tony and Sandie. He doesn't
2 have all of the other information that goes into this
3 case. His only responsibility, the only thing that that
4 inconclusive decision relates to is comparing those
5 pictures and those videos not to the investigation as a
6 whole.

7 Mr. Morley talks about all the time stamps
8 being off, and this rolls into this argument that the
9 Defendant was still at the Dam Site at the time of the
10 pursuit.

11 First of all, the Dam Site Inn video was
12 calibrated correctly. You heard testimony from Trooper
13 Beimers. He went to the Dam Site. And it was correct as
14 to the minute. He said he couldn't testify to the
15 seconds because the cell phone doesn't show seconds, but
16 it was correct as to the minute.

17 And in the video you clearly see, as Amanda
18 Peek says -- Amber Peek says, excuse me, that the
19 Defendant peels out and goes on Patterson Lake Road.
20 We're misconstruing what it is she testified when he
21 comes back. She said he left the bar. She expressed
22 some confusion about somebody came back and was causing
23 trouble. She thought maybe it was the Defendant, and
24 then she sees the Defendant peel out.

25 What she sees with the troublemaker is when

57

1 Brian Hildabridle comes back and throws ice at his
2 sister. This is a very easy issue for you to resolve.

3 You have the Dam Site Inn video. So if Mr. Morley claims
4 that his client is there, put on the video and show where
5 he is. You'll have the video. You can go back and look
6 at it. The answer is that he's not there because he left
7 at 1:53 a.m., the exact amount of time it takes to get to
8 the Marathon station at the time when the pursuit begins.

9 We also know that's confirmed by the testimony
10 of Bruce and Kathryn Stein; that that vehicle leaves
11 before them, and that's again confirmed with the video --
12 I'm sorry, leaves after them and then catches them from
13 behind on that drive home.

14 Now we get to maybe the most important issue
15 that Mr. Morley discussed, and that is why is Deputy
16 Whitaker driving so fast? And he puts on the policy.
17 And from the go, let's use our common sense. A police
18 officer in that circumstance cannot let somebody go. The
19 person who was driving more than 100 miles per hour in
20 what begins as a residential community. Officer told you
21 that often these stops a little after 2 in the morning
22 can turn into drunk driving investigations.

23 So let's look at the totality of what we know
24 about this vehicle. Suspended driver. Drunk driver.
25 High driver. Turns his headlights off at some point.

58

1 Speeds in excess of 100 miles per hour crossing double
2 lines tailgating the Steins.
3 That person is a missile to anybody else on the
4 road, to the officers; most importantly, to himself.
5 It's a miracle that he lived through that. If you read
6 the next morning that the officer had quickly
7 discontinued pursuit, said, "Whoa, that vehicle is going
8 80. That is too fast. We're going to let it go," and
9 then he T-bones somebody on that drive home, how
10 displeased would you be? How disappointed would you be?
11 The officers maintained pursuit in the safest
12 way they could. When they went through those dangerous
13 turns, they remained in communication with each other,
14 describing the obstacle, helping each other. And they
15 got through all of the turns safe. They accelerated when
16 they got to the straightaway on Dexter Trail, which
17 Sergeant Every told you he was relieved when they did
18 because that was the safest place to accelerate and
19 pursue the vehicle, funnel it towards Livingston County
20 where the stop sticks could be laid down. They went
21 about this pursuit in the safest way they could.
22 Additionally, you heard the radio dispatch.
23 It's not like they're a couple cowboys out there yipping
24 it up on the radio. They remained calm. They remained
25 communicative throughout.

59

1 But here is the bigger issue: It doesn't
2 matter. Even if you think that Deputy Whitaker should
3 have stopped, even if you think that Deputy Whitaker was
4 going too fast, that's not a defense to this crime.
5 First of all, it's not a defense at all to
6 fleeing and eluding in the first degree. That doesn't
7 mean that the accident didn't -- excuse me, that the
8 death didn't result from fleeing and eluding.
9 Secondly, as to driving while license suspended
10 causing death, we look at the causation element, the
11 fifth one down. The first question is but for the
12 Defendant's operation of the vehicle, the death would not
13 have occurred.
14 Whether the Deputy is driving 100 or less
15 doesn't matter. But for the Defendant operating that
16 vehicle, the Deputy wouldn't have died. He can pursue it
17 however he wishes under this element. Whether he gets in
18 trouble with his supervisor, that's a question for a
19 different day and not for a jury. It doesn't make it
20 illegal. But for the Defendant operating his vehicle,
21 the deputy would not have driven at that speed and would
22 not have died.
23 Secondly, operation of a vehicle must have been
24 a proximate cause of death. That is, that death or
25 serious injury must have been a direct and natural result

60

1 of operating the vehicle. The judge will then explain
2 that death or serious injury is not a direct or natural
3 result if there was an intervening or unforeseeable cause
4 on the part of the victim.
5 Whether you think the deputy is going too fast
6 or not, it's certainly not unforeseeable that he was
7 going that speed. Somebody, an officer gets behind you,
8 and you're going 55 in a 45, nobody ever thinks to
9 themselves "If I go 100, he'll just give up and go home."
10 Nobody thinks that. That's how foreseeable it is.
11 That's how laughable it is to say that. Whether you
12 think the deputy was going too fast or not does not have
13 any legal significance in this case.
14 At the beginning of this trial and again in his
15 closing statement Mr. Morley said that everybody in this
16 room was sorry about what happened to Deputy Whitaker.
17 He even said that his client was sorry about it, but
18 there was not one piece of evidence, not one piece of
19 testimony that supported that.
20 Instead, you heard about in the week after this
21 crime he went out of his way to conspire with his
22 friends, pull them into the crimes that he was
23 committing, to hide evidence, to get rid of evidence, to
24 get away with what he did knowing that that officer died
25 because of him.

61

1 You have seen and heard about the Defendant's
2 actions on that night; smoking marijuana, drinking and
3 driving. You heard about the reckless way that he left
4 the bar that night drunk and high speeding, total
5 disregard for everybody else on the road, and that only
6 went higher when the pursuit began.
7 And to the only extent possible, you met the
8 man who gave his life trying to stop that. It's now your
9 responsibility to pick up where Deputy Hoeksema and
10 Deputy Whitaker left off. To render the only verdict
11 supported by the evidence and demanded by justice:
12 Guilty of fleeing and eluding in the first
13 degree. Guilty of driving while license suspended
14 causing death. Don't let him get away again.
15 I have nothing further, Your Honor. Thank you.
16 THE COURT: Thank you, Mr. Roth.
17 Members of the Jury, the evidence and arguments
18 in this case are finished, and I will now instruct you on
19 the law. That is, I will explain the law that applies to
20 this case.
21 Remember that you have taken an oath to return
22 a true and just verdict based only on the evidence and my
23 instructions on the law. You must not let sympathy or
24 prejudice influence your decision. As jurors, you must
25 decide what the facts of the case are. This is your job

62

1 and nobody else's.
2 You must think about all of the evidence and
3 then decide what each piece of evidence means and how
4 important you think it is. This includes whether you
5 believe what each of the witnesses said. What you decide
6 about any fact in this case is final.
7 It is my duty to instruct you on the law. You
8 must take the law as I give it to you. If a lawyer says
9 something different about the law, follow what I say.
10 At various times, I have already given you some
11 instructions about the law. You must take all of my
12 instructions together as the law you are to follow. You
13 should not pay attention to some instructions and ignore
14 offense. To sum up, it is your job to decide what the
15 facts of the case are, to apply the law as I give it to
16 you and, in that way, to decide this case.
17 A person accused of a crime is presumed to be
18 innocent. This means that you must start with the
19 presumption that the Defendant is innocent. This
20 presumption continues throughout the trial and entitles
21 the Defendant to a verdict of not guilty unless you are
22 satisfied beyond a reasonable doubt that he is guilty.
23 Every crime is made up of parts called
24 elements. The prosecutor must prove each element of the
25 crime beyond a reasonable doubt. The Defendant is not

63

1 entitled -- I'm sorry, the Defendant is not required to
2 prove his innocence or to do anything. If you find that
3 the Prosecutor has not proven every element beyond a
4 reasonable doubt, then you must find the Defendant not
5 guilty.
6 A reasonable doubt is a fair, honest doubt
7 growing out of the evidence or lack of evidence. It is
8 not merely an imaginary or possible doubt but a doubt
9 based on reason and common sense. A reasonable doubt is
10 just that, a doubt that is reasonable after a careful and
11 considered examination of the facts and circumstances of
12 this case.
13 Every Defendant has the absolute right not to
14 testify. When you decide the case, you must not consider
15 the fact that he did not testify. It must not affect
16 your verdict in any way.
17 When you discuss the case and decide on your
18 verdict, you may only consider the evidence that has been
19 properly admitted in this case. Therefore, it is
20 important for you to understand what is evidence and what
21 is not evidence. Evidence includes only the sworn
22 testimony of witnesses, the exhibits admitted into
23 evidence, and anything else I told you to consider as
24 evidence. Many things are not evidence and you must be
25 careful not to consider them as such.

64

1 I will now describe some of the things that are
2 not evidence:
3 The fact that the Defendant is charged with a
4 crime and is on trial is not evidence. Likewise, the
5 fact that he's charged with more than one crime is not
6 evidence. The lawyers' statements and arguments are not
7 evidence. They are only meant to help you understand the
8 evidence and each side's legal theories. You should only
9 accept things that the lawyers say that are supported by
10 the evidence or by your own common sense and general
11 knowledge.
12 The lawyers' questions to the witnesses and my
13 questions to the witnesses are also not evidence. You
14 should consider these questions only as they give meaning
15 to the witness's answers.
16 My comments, rulings, questions, and
17 instructions are also not evidence. It is my duty to see
18 to it that the trial is conducted according to the law
19 and to tell you the law that applies to this case.
20 However, when I make a comment or give an instruction, I
21 am not trying to influence your vote or express a
22 personal opinion about the case. If you believe that I
23 have an opinion about how you should decide this case,
24 you must pay no attention to that opinion.
25 You are the only judges of the facts, and you

65

1 should decide this case from the evidence. At times
2 during the trial I have excluded evidence that was
3 offered or stricken testimony that was heard.
4 Do not consider those things in deciding the
5 case. Make your decision only on the evidence that I let
6 in and nothing else. Your decision should be based on
7 all of the evidence regardless of which party produced
8 it.
9 You should use your own common sense and
10 general knowledge in weighing and judging the evidence,
11 but you should not use any personal knowledge you may
12 have about a place, person, or event. To repeat once
13 more, you must decide this case based only on the
14 evidence admitted during the trial.
15 As I said before, it is your job to decide what
16 the facts of the case are. You must decide which
17 witnesses you believe and how important you think their
18 testimony is. You do not have to accept or reject
19 everything a witness said. You are free to believe all,
20 none, or part of any person's testimony.
21 In deciding which testimony you believe, you
22 should rely on your own common sense and everyday
23 experience. However, in deciding whether you believe a
24 witness's testimony, you must set aside any bias or
25 prejudice you may have based on the race, gender, or

66

1 national origin of the witness.
2 There is no fixed set of rules for judging
3 whether you believe a witness, but it may help you to
4 think about these questions:
5 Was the witness able to see or hear clearly?
6 How long was the witness watching or listening?
7 Was anything else going on that might have
8 distracted the witness?
9 Did the witness seem to have a good memory?
10 How did the witness look and act while
11 testifying?
12 Did the witness seem to be making an honest
13 effort to tell the truth, or did the witness seem to
14 evade the questions or argue with the lawyers?
15 Does the witness's age or maturity affect how
16 you judge his or her testimony?
17 Does the witness have any bias, prejudice, or
18 personal interest in how this case is decided?
19 Have there been any promises, threats, or
20 suggestions or other influences that suggested how the
21 witness testified?
22 In general, does the witness have any special
23 reason to tell the truth or any special reason to lie?
24 All in all, how reasonable does the witness's
25 testimony seem when you think about all the other

67

1 evidence in the case?
2 Sometimes the testimony of different witnesses
3 will not agree, and you must decide which testimony you
4 accept. You should think about whether the disagreement
5 involves something important or not and whether you think
6 someone is lying or is simply mistaken.
7 People see and hear things differently and
8 witnesses may testify honestly but simply be wrong about
9 what they thought they saw or remembered.
10 It is also a good idea to think about which
11 testimony agrees best with the other evidence in the
12 case. However, you may conclude that a witness
13 deliberately lied about something that is important to
14 how you decide the case. If so, you may choose not to
15 accept anything that witness said.
16 On the other hand, if you think the witness
17 lied about some things but told the truth about others,
18 you may simply accept the part you think is true and
19 ignore the rest.
20 When you go to the jury room, you will be
21 provided with a written copy of the final jury
22 instructions. You should first choose a foreperson. The
23 foreperson should see to it that your discussions are
24 carried on in a businesslike way and that everyone has a
25 fair chance to be heard. During your deliberations,

68

1 please turn off your cell phone or other communications
2 equipment until we recess.
3 A verdict in a criminal case must be unanimous.
4 In order to return a verdict, it is necessary that each
5 of you agrees on that verdict. In the jury room you will
6 discuss the case among yourselves, but ultimately each of
7 you will have to make up your own mind. Any verdict must
8 represent the individual considered judgment of each
9 juror.
10 It is your duty as jurors to talk to each other
11 and make every reasonable effort to reach agreement.
12 Express your opinions and the reasons for them but keep
13 an open mind as you listen to your fellow jurors.
14 Rethink your opinions and do not hesitate to change your
15 mind if you decide you were wrong. Try your best to work
16 out your differences.
17 However, although you should try to reach
18 agreement, none of you should give up your honest opinion
19 about the case just because other jurors disagree with
20 you or just for the sake of reaching a verdict. In the
21 end, your vote must be your own, and you must vote
22 honestly and in good conscience.
23 In this case, there are several different
24 crimes that you may consider. When you discuss Count 2,
25 you must first consider driving while license suspended

69

1 or revoked causing death. If you all agree that the
2 Defendant is guilty of that crime, you may stop your
3 discussions and return your verdict.
4 If you believe the Defendant is not guilty of
5 driving while license suspended or revoked causing death
6 or if you cannot agree about that crime, you should
7 consider the less serious crime of driving while license
8 suspended or revoked. You decide how long to spend on
9 driving while license suspended or revoked causing death
10 before discussing driving while license suspended or
11 revoked. You can go back to license suspended causing
12 death after discussing license suspended or revoked, if
13 you want to.
14 If you have any questions about the jury
15 instructions before you begin deliberations or questions
16 about the instructions that arise during deliberations,
17 you may submit them in writing in an envelope to the
18 bailiff.
19 Possible penalty should not influence your
20 decision. It is the duty of the judge to fix the penalty
21 within the limits provided by law.
22 If you want to communicate with me while you
23 are in the jury room, please have your foreperson write a
24 note and give it to the bailiff. It is not proper for
25 you to talk directly to the -- with the judge, lawyers,

70

1 court officers or other people involved in the case.
2 As you discuss the case, you must not let
3 anyone, even me, know how your voting stands. Therefore,
4 until you return with a unanimous verdict, do not reveal
5 this to anyone outside the jury room.
6 When you go to jury room to deliberate, you may
7 take your notes and full instructions. If you want to
8 look at any or all of the reference documents or exhibits
9 that have been admitted, just ask for them. In fact,
10 what we're going to do is send all of the exhibits back
11 into the jury room with you at the beginning so you won't
12 have to separately ask for them. If you want, you'll
13 have those available for you.
14 When you go to the jury room, you will be given
15 a written copy of the instructions you have just heard,
16 as I said. As you discuss the case, you should think
17 about all of my instructions together as the law you are
18 to follow.
19 The Prosecution has introduced evidence of a
20 statement that it claims that the Defendant made. Before
21 you may consider such an out-of-court statement against
22 the Defendant, you must first find that the Defendant
23 actually made the statement as given to you.
24 If you find that the Defendant did make the
25 statement, you may give the statement whatever weight you

1 think it deserves. In deciding this, you should think
2 about how and when the statement was made and think about
3 all the other evidence in the case. You may consider the
4 statement in deciding the facts of the case.
5 Facts can be proven by direct evidence from a
6 witness or an exhibit. Direct evidence is evidence about
7 what we actually see or hear. For example, if you look
8 outside and see rain falling, that is direct evidence
9 that it is raining.
10 Facts can also be proved by indirect or
11 circumstantial evidence. Circumstantial evidence is
12 evidence that normally or reasonably leads to other
13 facts.
14 So, for example, if you see a person come in
15 from outside wearing a raincoat covered with small drops
16 of water, that would be circumstantial evidence that it
17 is raining. You may consider circumstantial evidence.
18 Circumstantial evidence by itself or a combination of
19 circumstantial evidence and direct evidence can be used
20 to prove the elements of a crime. In other words, you
21 should consider all of the evidence that you believe.
22 Evidence has been offered that one or more
23 witnesses in this case previously made statements
24 inconsistent with their testimony at this trial. You may
25 consider such earlier statements in deciding whether the

1 testimony at this trial was truthful and in determining
2 the facts of the case.
3 You may consider whether the Defendant had a
4 reason to commit the alleged crime, but a reason by
5 itself is not enough to find a person guilty of a crime.
6 The prosecutor does not have to prove that the
7 Defendant had a reason to commit the alleged crime. He
8 only has to show that the Defendant actually committed
9 the crime and that he meant to do so.
10 You should not decide this case based on which
11 side presented more witnesses. Instead, you should think
12 about each witness and each piece of evidence and whether
13 you believe them. Then you must decide whether the
14 testimony and evidence you believe proves beyond a
15 reasonable doubt that the Defendant is guilty.
16 You have heard testimony from a witness,
17 Allan Avery, who has given his opinion as an expert in
18 the field of accident investigation and reconstruction.
19 You have heard testimony from a witness,
20 James Young, who has given you his opinion as an expert
21 in the field of forensic video analysis.
22 You have heard testimony from a witness,
23 Charles Funk, who has given you his opinion as an expert
24 in the field of accident reconstruction and mechanical
25 engineering.

1 Experts are allowed to give opinions in court
2 about matters they are experts on. However, you do not
3 have to believe an expert's opinion. Instead, you should
4 decide whether you believe it and how important you think
5 it is.
6 Whether you decide -- when you decide whether
7 you believe an expert's opinion, think carefully about
8 the reasons and facts he or she gave for his or her
9 opinion and whether those facts are true. You should
10 also think about the expert's qualifications and whether
11 his or her opinion makes sense when you think about the
12 other evidence in the case.
13 You have heard testimony from witnesses who are
14 police officers. That testimony is to be judged by the
15 same standards you use to evaluate the testimony of any
16 other witness.
17 One of the issues in this case is the
18 identification of the Defendant as the person who
19 committed the crime. The prosecutor must prove beyond a
20 reasonable doubt that the crime was committed and that
21 the Defendant was the person who committed it.
22 In deciding how dependable an identification
23 is, think about such things as how good a chance the
24 witness had to see the offender at the time, how long the
25 witness was watching, whether the witness had seen or

1 known the offender before, how far away the witness was,
 2 whether the -- whether the area was well-lighted, and the
 3 witness's state of mind at that time.

4 Also think about the circumstances at the time
 5 of the identification, such as how much time had passed
 6 since the crime, how sure the witness was about the
 7 identification, and the witness's state of mind during
 8 the identification.

9 You may also consider any times that the
 10 witness failed to identify the Defendant or made an
 11 identification or gave a description that did not agree
 12 with his or her identification of the Defendant during
 13 trial.

14 You should examine the witness's identification
 15 testimony carefully. You may consider whether other
 16 evidence supports the identification because then it may
 17 be more reliable. However, you may use the
 18 identification testimony alone to convict the Defendant
 19 as long as you believe the testimony and you find that it
 20 proves beyond a reasonable doubt that the Defendant was
 21 the person who committed the crime.

22 The Defendant is charged with two counts; that
 23 is, with the crimes of police officer fleeing and eluding
 24 in the first degree and operating - license suspended,
 25 revoked, or denied causing death.

1 These are separate crimes, and the prosecutor
 2 has charged -- is charging the Defendant committed both
 3 of them. You must consider each crime separately in
 4 light of all the evidence in the case. You may find the
 5 Defendant guilty of all or one of these crimes or not
 6 guilty.

7 The Defendant is charged with the crime of
 8 police officer - fleeing and eluding in the first degree.

9 To prove this charge, the prosecutor must prove each of
 10 the following elements beyond a reasonable doubt:

11 First, that a police officer was in uniform and
 12 was performing his lawful duties and that any vehicle
 13 driven by the officer was adequately marked as a law
 14 enforcement vehicle.

15 Second, that the Defendant was driving a motor
 16 vehicle.

17 Third, that the officer ordered the Defendant
 18 to stop his vehicle.

19 Fourth, that the Defendant knew of the order.

20 Fifth, that the Defendant refused to obey the
 21 order by trying to flee or avoid being caught.

22 Sixth, that the violation resulted in the death
 23 of another individual.

24 The Defendant is charged with driving while his
 25 operator's license is suspended or revoked causing death.

1 To prove this charge, the prosecutor must prove each of
 2 the following elements beyond a reasonable doubt:

3 First, that the Defendant was operating a motor
 4 vehicle. Operating means driving or having actual
 5 physical control of the vehicle.

6 Second, that the driver -- that the Defendant
 7 was operating that vehicle on a highway or other place
 8 open to the general public.

9 Third, that at the time the Defendant's
 10 operator's license was suspended or revoked.

11 Fourth, that the Secretary of State gave notice
 12 of the suspension or revocation by First-Class United
 13 States Postal Service Mail addressed to the Defendant at
 14 the address shown by the record of the Secretary of State
 15 at least five days before the date of the alleged
 16 offense.

17 That the Defendant's operation of the vehicle
 18 caused the victim's death. To cause the victim's death,
 19 the Defendant's operation of the vehicle must have been a
 20 factual cause of the death. That is, but for the
 21 Defendant's operation of the vehicle, the death would not
 22 have occurred.

23 In addition, operation of the vehicle must have
 24 been a proximate cause of death. That is, death or
 25 serious injury must have been a direct and natural result

1 of operating the vehicle.

2 Death or serious injury is not a direct or
 3 natural result if there was an intervening or
 4 unforeseeable cause on the part of the victim.

5 You may also consider whether the Defendant is
 6 guilty of the less serious crime known as driving while
 7 license suspended or revoked. To prove this less serious
 8 crime, the prosecutor must prove the following elements
 9 beyond a reasonable doubt:

10 First, that the Defendant was operating a motor
 11 vehicle. Operating means driving or having actual
 12 physical control of the vehicle.

13 Second, that the Defendant was operating that
 14 vehicle on a highway or other place open to the general
 15 public.

16 Third, that at the time the Defendant's
 17 operator license was suspended or revoked.

18 Fourth, that the Secretary of State gave notice
 19 of the suspension or revocation by First-Class United
 20 States Postal Service Mail addressed to the Defendant at
 21 the address shown by the record of the Secretary of State
 22 at least five days before the date of the alleged
 23 offense.

24 The prosecutor must also prove beyond a
 25 reasonable doubt that the crime occurred on or about

1 December 7th, 2014, within Ingham County.
2 I have prepared a verdict form listing the
3 possible verdicts. You will receive and have for you to
4 use back in the jury room a copy of this verdict form.
5 Actually, you'll have several copies back there so you
6 can work from them, from the copies.
7 However, when you reach a verdict, the
8 foreperson should complete just one verdict form, and the
9 verdict form is to be signed and dated by the foreperson.
10 So even though you'll have several copies, you just
11 complete one verdict form at the conclusion. And the
12 verdict form instructs that you may return only one
13 verdict for each verdict on -- count on this sheet.
14 So for Count 1, fleeing and eluding first
15 degree, it has the choices to mark either not guilty or
16 guilty.
17 And, Count 2, driving while license suspended
18 or revoked causing death, it has places for you to mark
19 either not guilty or guilty, or, alternatively, guilty of
20 the lesser offense of driving while license suspended or
21 revoked and then a place of signature for the foreperson
22 and dated.
23 All right. We will now have the clerk of the
24 Court draw off the two alternate jurors.
25 THE CLERK: Juror No. 11, Zachary Wilson, may

79

1 be excused.
2 THE COURT: Thank you, sir. You are excused at
3 this time. If you would go with Ms. Liles, we will allow
4 you to collect your things.
5 Then we'll draw off the second juror.
6 Go ahead.
7 THE CLERK: Juror No. 14, Susan Pelkey, may be
8 excused.
9 THE COURT: Thank you, ma'am, for serving on
10 the jury.
11 JUROR NO. 14: Thank you.
12 THE COURT: You are excused. Now you may
13 discuss the case with anyone you wish at this point.
14 JUROR NO. 14: Okay. Thank you.
15 (At 10:55 a.m., Jurors 11 and 14
16 left the courtroom.)
17 THE COURT: We'll now have the clerk of the
18 court swear the bailiff, please.
19 THE CLERK: You do solemnly swear or affirm
20 that you will, to the utmost of your ability, keep the
21 persons sworn as jurors on this trial from separating
22 from each other. That you will not communicate with
23 them, or to any of them, orally or otherwise. That you
24 will not communicate with them, or any of them, orally or
25 otherwise, except upon further order of this Court or to

80

1 ask them if they have agreed upon a verdict until they
2 shall be discharged. And that you will not, before they
3 render their verdict, communicate to any person the state
4 of their deliberation or the verdict they have agreed
5 upon, so help you God?
6 THE BAILIFF: I do.
7 THE COURT: All right. Ladies and Gentlemen of
8 the Jury, at this time we are going to have you go with
9 Mr. Adkins to the jury room, and you will begin your
10 deliberations.
11 THE BAILIFF: All rise.
12 (At 10:56 a.m., the jury left the
13 courtroom.)
14 THE COURT: Are there any objections or
15 anything that needs to be placed on the record by either
16 side as to the jury instructions?
17 MR. ROTH: No, Your Honor.
18 MR. MORLEY: No, sir.
19 THE COURT: Okay. If you could collect the
20 exhibits and put them in the form that we need to put
21 them together so we can send those back to the jurors,
22 and we'll stand in recess.
23 MR. ROTH: Thank you, Your Honor.
24 (At 10:56 a.m., recessed;
25 reconvened at 1:30 p.m.)

81

1 THE COURT: Are you ready for us to bring the
2 jurors in?
3 MR. ROTH: Yes, Your Honor.
4 THE COURT: Mr. Morley?
5 MR. MORLEY: Yes, Your Honor.
6 THE COURT: All right.
7 (At 1:31 p.m., the jury entered
8 the courtroom.)
9 THE COURT: Please be seated.
10 The record should reflect that all 12 jurors
11 are back in the courtroom, along with the Defendant,
12 prosecutor, and the defense counsel.
13 You have submitted a couple of questions that I
14 want to address, and I'm going to take the most recent
15 one first. I received a communication from you that --
16 that discloses the status of your deliberations with some
17 detailed information regarding the reason for the state
18 of your deliberations.
19 And I wanted to address that, essentially, in
20 two parts. First is, I want to remind you the
21 instruction pertaining to communications with the Court.
22 The first part of it, it has two subparts to it. The
23 first part of it indicates that if you want to
24 communicate with me while you are in the jury room, you
25 would have your foreperson write a note and submit to the

82

1 bailiff. You're doing fine with that. That's what has
2 occurred so far.

3 The part I want to reiterate is subpart two,
4 which reads as follows:

5 As you discuss the case, you must not let
6 anyone, even me, know how your voting stands. Therefore,
7 until you return with a unanimous verdict, do not reveal
8 this to anyone outside of the jury room. I'll just
9 remind you of that. So that's the first part of the
10 communication that I received most recently from you.

11 I want to address the second part of it,
12 however, as well, and that has to do with the reasons
13 that you have indicated as to the state of your
14 deliberations, and I want to address that in two ways.

15 One is to go back to the beginning of the final
16 instructions that I read to you this morning. And that
17 is the instruction pertaining to duties of the judge and
18 jury. I'm just going to reread this to you and have you
19 consider that and hope that it helps in the issue that
20 you have raised.

21 Members of the Jury, the evidence and arguments
22 in this case are finished, and I will now instruct you on
23 the law. That is, I will explain the law that applies to
24 this case. Remember that you have taken an oath to
25 return a true and just verdict based only on the evidence

83

1 and my instructions on the law. You must not let
2 sympathy or prejudice influence your decision.

3 As jurors, you must decide what the facts of
4 this case are. This is your job and nobody else's. You
5 must think about all the evidence and then decide what
6 each piece of evidence means and how important you think
7 it is. This includes whether you believe what each of
8 the witnesses said. What you decide about any fact in
9 this case is final.

10 It is my duty to instruct you on the law. You
11 must take the law as I give it to you. If a lawyer says
12 something different about the law, follow what I say. At
13 various times I have already given you some instructions
14 about the law. You must take all of my instructions
15 together as the law you are to follow.

16 You should not pay attention to some
17 instructions and ignore others. To sum up, it is your
18 job to decide what the facts of the case are, to apply
19 the law as I give it to you, and in that way to decide
20 the case.

21 In addition, I'm going to remind you of what
22 evidence is and, therefore, what you can consider in
23 deciding the case. When you discuss the case and decide
24 on your verdict, you may only consider the evidence that
25 has been properly admitted in this case. Therefore, it

84

1 is important for you to understand what is evidence and
2 what is not evidence.

3 Evidence includes only the sworn testimony of
4 witnesses, the exhibits admitted into evidence, and
5 anything else I told you to consider as evidence. Many
6 things are not evidence, and you must be careful not to
7 consider them as such.

8 I will now describe some of the things that are
9 not evidence. The fact that the Defendant is charged
10 with a crime and is on trial is not evidence. Likewise,
11 the fact that he's charged with more than one crime is
12 not evidence. The lawyers' statements and arguments are
13 not evidence. They are only meant to help you understand
14 the evidence and each side's legal theories.

15 You should only accept things lawyers say that
16 are supported by the evidence or by your own common sense
17 and general knowledge. The lawyers' questions to the
18 witnesses and my questions to the witnesses also are not
19 evidence. You should consider these questions only as
20 they give meaning to the witness's answers.

21 My comments, rulings, questions, and
22 instructions are also not evidence. It is my duty to see
23 that the trial is conducted according to the law and to
24 tell you the law that applies to this case. However,
25 when I make a comment or give an instruction, I am not

85

1 trying to influence your vote or express a personal
2 opinion about the case. If you believe that I have an
3 opinion about how you should decide this case, you must
4 pay no attention to that opinion.

5 You are the only judges of the facts, and you
6 should decide the case from the evidence. At times
7 during the trial, I have excluded evidence that was
8 offered or stricken testimony that was heard. Do not
9 consider those things in deciding the case.

10 Make your decision only on the evidence that I
11 let in and nothing else. Your decision should be based
12 on all of the evidence regardless of which party produced
13 it. You should use your own common sense and general
14 knowledge in weighing and judging the evidence, but you
15 should not use any personal knowledge you may have about
16 a place, person, or event. To repeat once more, you must
17 decide this case based only on the evidence admitted
18 during this trial.

19 So I hope that helps with regard to that latest
20 question that you submitted. Now I want to address the
21 question that you submitted before that, and that is --
22 as written it reads:

23 We need the transcript of Tony
24 being recorded while being
25 interviewed by the police.

86

1 And what we are going to do is we will play the
2 audio that you heard, show the transcript of that audio
3 on the overhead at the same time that it is being played,
4 which, in essence, is what you saw and heard during the
5 trial. So we're going to do that right now.
6 You should not make any comment about it.
7 We're not going to make any comment to you about it.
8 We'll just play it and show it to you. And then you can
9 go back to the jury room. And if you have further
10 questions, you'll let me know, I'm sure.
11 And with that, Mr. Roth, will you please do
12 that?
13 MR. ROTH: Thank you, Your Honor.
14 This is the Disk 1001 and Transcript 1002.
15 (Playing of 1001 excerpts.)
16 THE COURT: All right. So with that, Ladies
17 and Gentlemen, we'll have you go back to continue your
18 deliberations.
19 THE BAILIFF: All rise.
20 (At 1:42 p.m., the jury left the
21 courtroom.)
22 THE COURT: Mr. Roth, anything you want to put
23 on the record about either of the issues we just took up
24 with the jury?
25 MR. ROTH: The only thing that I think is worth

87

1 noting, Your Honor, is that both counsel were in
2 agreement with how to proceed with what the Court
3 ultimately did.
4 MR. MORLEY: That's accurate, Your Honor. And
5 I don't have anything else to add.
6 THE COURT: All right. I will just indicate
7 for the record that I have not disclosed to counsel the
8 entire statement that was sent by the jury. And we
9 discussed that in chambers, and that's how we came up
10 with this approach to the further instruction to the
11 jury.
12 Correct, Mr. Roth?
13 MR. ROTH: That's correct, Your Honor.
14 MR. MORLEY: That's accurate, Your Honor.
15 THE COURT: And the only other thing while
16 we're on the record, I'll just put on, is that the first
17 question that we received from the jury was not really a
18 question. It was a request to be able to review the
19 video of Exhibits 88-A and B.
20 And in conference with counsel, it was decided
21 that we would send a player back into the jury room so
22 they could play it themselves, but that necessitated us
23 removing from the jury room Exhibit 21 because that
24 exhibit was played in a redacted version during the
25 trial, and we were unable -- the prosecutor's office was

88

1 unable to make a redacted version that we could give to
2 the jury.
3 So we agreed we would just take that exhibit
4 out and give them a note, which we did, which if they
5 wanted to play that particular exhibit, 21, they would
6 need to let us know so we could make arrangements to do
7 that.
8 MR. ROTH: All correct, Your Honor.
9 MR. MORLEY: That's all accurate, Your Honor.
10 THE COURT: Okay. Thank you.
11 MR. ROTH: Thank you, Your Honor.
12 MR. MORLEY: Thank you, Judge.
13 (At 1:45 p.m., recessed;
14 reconvened at 4:54 p.m.)
15 THE COURT: All right. We're back on the
16 record in the matter of People versus John Kelsey.
17 Consistent with my discussion with counsel a
18 few moments ago, I sent a note into the jurors asking
19 whether they wanted to continue deliberating past 5 p.m.
20 or whether they prefer to go home for the evening and
21 return in the morning to continue deliberating. They
22 responded in writing that they wanted to go home and
23 continue in the morning. So I'm going to bring them into
24 the courtroom and dismiss them for the night.
25 Anything you want to put on the record about

89

1 any of that, Mr. Roth?
2 MR. ROTH: No, Your Honor.
3 THE COURT: Mr. Morley?
4 MR. MORLEY: No, sir. Thank you.
5 THE COURT: All right.
6 Let's bring them in.
7 (At 4:57 p.m., the jury entered
8 the courtroom.)
9 THE COURT: Please be seated.
10 Ladies and Gentlemen of the Jury, consistent
11 with your -- the option that you selected of the options
12 I gave to you regarding continuation of your
13 deliberation, I am going to release you for the evening
14 and have you come back tomorrow morning to continue your
15 deliberation.
16 So if you will please report here by 8:30,
17 Mr. Adkins will come down about 8:30 and bring you up to
18 the jury room. When you are all here and he brings you
19 up to the jury room, you can continue your deliberations
20 at that time. You don't need to wait for me. You're not
21 going to receive any further instruction. Just once you
22 are all here, you can continue.
23 And as with the previous instructions that I
24 have given to you, you are instructed not to discuss the
25 case with anyone, even amongst yourselves when you're not

90

1 in the jury room, but certainly no one else, whether it
2 be at home with your family or friends or anything at all
3 and no communicating about it by way of any electronic
4 means, texting or anything.

5 Do not watch, read, listen to any media reports
6 or conduct any investigation on the Internet or otherwise
7 while we are in recess until tomorrow. So have a good
8 evening. We'll see you in the morning.

9 THE BAILIFF: All rise.

10 (At 4:59 p.m., the jury left the
11 courtroom.)

12 THE COURT: Anything for the record, Mr. Roth?

13 MR. ROTH: No, Your Honor. Thank you.

14 THE COURT: Mr. Morley?

15 MR. MORLEY: No, sir. Thank you.

16 THE COURT: Okay. We'll see you all tomorrow.

17 (At 4:59 p.m., the matter was
18 concluded for the day.)

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1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF INGHAM)

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CERTIFICATE OF REPORTER

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I, Melinda I. Dexter, Certified Shorthand Reporter, do hereby certify that the foregoing **91 pages** comprise an accurate, true, and complete (Volume 8 of 9) transcript of the proceedings and testimony taken in the case of the **People of the State of Michigan** versus **John C. Kelsey II**, **Case No. 14-1380-FH**, on **Monday, June 8, 2015**.

I further certify that this transcript of the record of the proceedings and testimony truly and correctly reflects the exhibits, if any, offered by the respective parties. WITNESS my hand this the twenty-ninth day of November 2015.



Melinda I. Dexter, RMR, CSR-4629
NCRA Realtime Systems Administrator
Official Court Reporter
313 West Kalamazoo
P.O. Box 40771
Lansing, Michigan 48901-7971