

1 • Honor. (10:50 a.m.)

2 • THE COURT: Thank you.

3 • The evidence and arguments in the case
4 • are now finished and it is my job at this
5 • point to decide what the facts of the case
6 • are and then to apply the law to those facts
7 • and in that way to decide the case.

8 • The Defendant, of course, is accused of
9 • a crime and is presumed to be innocent.

10 • This means that the Court must start with
11 • the presumption that the Defendant is
12 • innocent, and this presumption continues
13 • throughout the trial and entitles the
14 • Defendant of a verdict of not guilty less
15 • the Court is satisfied beyond a reasonable
16 • doubt that he is guilty.

17 • Every crime is made up of parts called
18 • elements, and the Prosecutor must prove each
19 • element of the crime beyond a reasonable
20 • doubt. The Defendant is not required to
21 • prove his innocence or do anything. If the
22 • Court finds the Prosecutor has not proven
23 • each and every element beyond a reasonable
24 • doubt then the Court must find the Defendant
25 • not guilty.

A reasonable doubt is a fair honest doubt growing out of the evidence or out of the lack of evidence. It is not merely an imaginary or possible doubt but a doubt based on reason and common sense. A reasonable doubt is just that, a doubt that is reasonable after careful and considered examination of the facts and the circumstances of the case.

In this case the Defendant has elected not to testify and the Court must not consider the fact that he did not testify in any way in deciding the outcome of the trial. The Court, of course, must assess, as both counsel have acknowledged, the credibility of the testimony, the witnesses who have offered testimony here. The Court is free to believe all, none or part of any person's testimony, and in deciding which testimony to believe I should rely on common sense and every day experience. However, in deciding whether to believe a witness' testimony the Court must set aside any bias or prejudice he may have based on the race, gender and national origin of the witness.

There are no fixed set of rules for judging whether to believe a witness, but should think about whether the witness was able to see or hear clearly, how long was the witness watching or listening, and whether anything else was going on that might have distracted the witness; did the witness seem to have a good memory, how the witness looked and act while testifying, did the witness seem to be making an honest effort to tell the truth or seem to evade the question or argue with the lawyers, whether the witness' age and maturity affect how his or her testimony is judged, whether there have been any other influences that affected how the witness testified, whether the witness had any special reason to tell the truth or any special reason to lie, and then how reasonable that witness' testimony seems when all of the other evidence in the case is considered.

Sometimes the testimony of different witnesses will not agree and the Court has to decide what testimony will be accepted. The Court should think about disagreements

in the testimony involving something important or not, whether the Court thinks someone is lying or simply mistaken. People do see and hear things differently and what witnesses may testify honestly but simply be wrong about what they thought they saw or remember. It is also a good idea to think about what testimony agrees best with the other evidence of the case. If, however, the Court concludes that a witness is lying about something that is important as to how the case is decided, under those circumstances, the Court may disregard everything the witness said. On the other hand, if the Court concludes the witness lied about some things but told truth about others, the Court may simply accept the part it believes to be true and ignore the rest.

In this case the Court heard testimony and evidence concerning the Defendant's statements made to Detective Van Sice at the time of his interview, and the prosecution has introduced evidence of that statement. The Court cannot consider such an out of Court statement as evidence against the

Defendant unless I do the following: First, I have to find that the Defendant actually made the statement as it was provided to me. If I find the Defendant did not make the statement at all, then I shouldn't consider it of course. If I find he did make part of the statement I can consider that as part of the evidence. If I find the Defendant did make the statement I have to decide whether the whole statement or any part of it is true. When I think about whether that statement is true, I should consider how and when the statement was made as well as all the other evidence in the case. The Court may give the statement whatever importance it thinks it deserves. I may decide it was very important or not very important at all. In deciding this the Court should think again about how and when that statement was made and about all the other evidence in the case.

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we all see or hear. For example, if we look out and

1 see rain falling, that's direct evidence
2 that it is raining.

3 Facts can also be proved by indirect or
4 circumstantial evidence. Circumstantial
5 evidence is evidence that normally or
6 reasonably lead to other facts. If you see
7 a person coming in from outside wearing a
8 rain coat covered with small drops of water
9 that would be circumstantial evidence that
10 it's raining. The Court may consider
11 circumstantial evidence and circumstantial
12 evidence by itself or a combination of
13 circumstantial and direct evidence can be
14 used to prove the elements of a crime. In
15 other words, the Court should rely on all
16 the evidence that it believes.

17 In this case, of course, there is both
18 circumstantial and direct evidence advanced
19 by the Prosecutor to prove the elements.
20 Direct evidence includes both the
21 identification testimony, the Complainant,
22 as well as the confession put into evidence
23 by the Defendant. The indirect evidence or
24 circumstantial evidence relied upon by the
25 Prosecutor includes the hair that was

recovered and the circumstances of the arrest of the Defendant and where he was found in the vehicle, taken from the complaining witness three days before.

The Court has received a stipulation in relation to the DNA testing that was completed. When lawyers degree on statements of fact such as these are called stipulations of fact. The Court may regard these stipulated fact as true but is not required to do so.

And in connection with that, the Defendant's Exhibit A sets forth both the stipulation that has been read into the evidence along with the laboratory report summarizing the findings in connection with the DNA testing.

The Court may consider whether the Defendant had a reason to commit the alleged crime, but reason by itself is not enough to find him guilty of the crime. The Prosecutor does not have to prove that the Defendant had a reason to commit the crime, only has to show the Defendant actually committed it and he meant to do so.

1 Rather than to go through all of the
2 various charges in this case, it has been
3 acknowledged that the testimony received
4 from the complaining witness established the
5 elements of the offenses that are the
6 subject of this Information, and the Court
7 notes the only potential argument that I
8 believe might have been advanced in relation
9 to these elements came in relation to
10 whether or not the Defendant was armed or
11 the perpetrator was armed at the time of the
12 robbery, and generally the case law requires
13 the use of a object that is fashioned for
14 use to lead the complainant to reasonably
15 believe it is a weapon capable of inflicting
16 great bodily harm or death, and I will
17 return to that element of that charge in
18 passing on some of the other evidence of the
19 case, and would note the statements received
20 from the Defendant acknowledged his
21 possession of a gun, if the Court accepts
22 that testimony, that evidence, in
23 determining the outcome of the charges.

24 In reviewing the evidence presented,
25 the Court did hear the identification

1 testimony of Mrs. [REDACTED], in pointing
2 out the Defendant as the person who
3 committed this series of offenses. There
4 are some limitations on the value of that
5 identification testimony, as pointed out by
6 Ms. Austin, given the repeated admonishment
7 to her to avoid looking at the perpetrator,
8 and she described in detail the looks that
9 she had at the person she had of the person
10 committing the offense. Most importantly
11 she described her face to face observations
12 of the perpetrator as he got on top of her
13 in the passenger seat of the front of that
14 vehicle, and although she described the
15 conditions at that time as dark, the Court
16 did find her testimony credible and reliable
17 with respect to the details of the
18 occurrences on that evening and would find
19 the identification testimony of the
20 Defendant therefore to be dependable as
21 well.

22 I will acknowledge not only the
23 limitations that came from the circumstances
24 of the identification that were very capably
25 pointed out by Ms. Austin, the absence of a

1 line-up in this case also might be argued to
2 limit the value of that testimony, never the
3 less the Court found the identification
4 testimony of significance in determining the
5 outcome of the trial.

6 The hair sample which was recovered and
7 subject of testimony by the lady from the
8 Crime Lab --

9 MR. KAISER: Ms. Jackson.

10 THE COURT: Melinda Jackson, was
11 certainly significant circumstantial
12 evidence to consider as well. The witness
13 indicated there were 13 points of comparison
14 which matched between the sample found in
15 the area of the penal penetration described
16 by the witness and the known sample
17 recovered from the Defendant, and although
18 it is not conclusive identification
19 testimony it is certainly, again,
20 significant circumstantial evidence that
21 should be considered by the Court.

22 The fact that the Defendant was
23 arrested in the vehicle three days after
24 this offense is likewise significant
25 circumstantial evidence of the violation.

1 Most importantly the statements made by the
2 Defendant to Detective Van Sice were heard
3 by the Court in an audio recording of the
4 statement, and so I had an opportunity to
5 hear not only the substantive responses made
6 to the questions posed, but I also got an
7 opportunity to hear the manner of speaking
8 both on the part of the questioner,
9 Detective Van Sice, and on the part of the
10 Defendant, Mr. Hatchet, who was responding
11 to those questions, and it was apparent from
12 listening to the tape recording that the
13 questions were given to him in a
14 professional and non-threatening manner.
15 There was no hint of abuse or pressure in
16 the manner of questioning on the part of
17 Detective Van Sice, and in the responses
18 given by Mr. Hatchett, there was likewise no
19 suggestions of anything other than free and
20 voluntary offering of statements, and as the
21 instructions here direct the Court, in
22 evaluating the statements made the Court
23 should look to see whether the facts in that
24 statement are corroborated by other evidence
25 presented, and in this case there is an

1 abundance of corroboration for the
2 statements made by Mr. Hatchett to the
3 police after his arrest, about what happened
4 during the assault on Mrs. [REDACTED] as
5 well as what happened afterwards with the
6 property, the keys, his punching of the
7 ignition and the Court finds the statements,
8 therefore, to be of overwhelming importance
9 in determining the outcome of the trial.

10 The Court also heard the testimony
11 offered from four -- three, I'm sorry,
12 Defense witnesses. Ms. Fisher testified
13 that she was at the Defendant's residence on
14 the evening of the 11th and into the early
15 morning hours of the 12th; that she had been
16 in a truck for most of that time out in
17 front of the Defendant's residence; that she
18 saw the Defendant, saw him re-enter the home
19 and he was there continually throughout her
20 presence in front of his home until she left
21 sometime after one o'clock in the morning.
22 She acknowledged that she had given contrary
23 information, critically contrary information
24 to the police in her statement to the police
25 on an earlier occasion.

Mr. Kiekens' version of that same evening was totally contradictory, and if anything, I thought he was offering some inculpatory information which may be considered against the Defendant. He said that he was there during the same period described by Ms. Fisher, but that he left during that period, contradictory to Ms. Fisher's testimony, to pick the Defendant up, and he recalled the time as having been sometime before midnight, but that he went to pick him up because he was told by the Defendant's mother that the Defendant was in a stolen vehicle, and that he got to the location of Georgia and Iriquois Street to pick him up and take him back home, and that he had, indeed, been in a stolen vehicle which he identified as a Chrysler, and although he denied that vehicle involved was the one depicted as the car owned by Mrs. Ventimiglia, he had described it as a gray vehicle, gray Chrysler, and acknowledged his role in retrieving the Defendant from the stolen vehicle on the very night he is accused of having stolen Mrs. [REDACTED] s

Chrysler vehicle.

In this incident, Mr. Bunch was barely coherent, and it was apparent during cross examination of Mr. Bunch that he was unable to offer any significant evidence concerning the night of this occurrence.

The report from the laboratory analysis and stipulation offered as Defendant's Exhibit A reveals that the laboratory received known samples of blood from both Defendant and the Complainant; that it took to examine four vaginal swabs and a stained piece of clothing identified as the panties worn by Mrs. [REDACTED]. The results are, as characterized by the argument of Counsel in this case and the male fraction, which was successfully obtained for two loki were found to exclude Mr. Hatchett as the donor. The loki that were successfully obtained for the stain on the panties worn by Mrs. [REDACTED], likewise, for those six loki excluded the Defendant as the donor of those, of that stain, that certainly presents a possible doubt under the circumstances of the evidence in the case.

1 . However, in light of the overwhelming
2 . evidence that the Court has, at least
3 . partially summarized here in the Plaintiff's
4 . case, it can, and given the multiple
5 . explanations that may present for the test
6 . results received on this examination, it can
7 . hardly be found to represent a reasonable
8 . doubt considering all of the evidence in the
9 . case and the Court does not find that the
10 . laboratory analysis is a fact which would
11 . lead to a verdict of acquittal.

12 . Under these circumstances, it is my
13 . judgment that the evidence of guilt in
14 . connection with all six of the counts laid
15 . against the Defendant is overwhelming, and
16 . accordingly, that he will be found guilty of
17 . Carjacking, Armed Robbery, Kidnapping and
18 . three counts of First Degree Criminal Sexual
19 . Conduct.

20 . All that is left for us to do then is
21 . to schedule the sentencing in the case, and
22 . I will put this on our docket for that
23 . purpose.

24 . And I do want to indicate, I
25 . appreciate --

1 DEFENDANT'S FATHER: What happened to
2 the original picture they had identified
3 here? (Disruption by Defenant's family.)

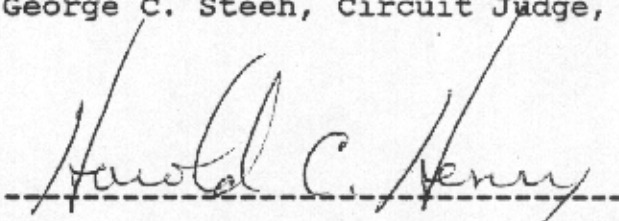
4 DEFENDANT'S FATHER: If this lady dies.
5 (Referring to Defendant's mother.)

6 (Further disruptions, summoning of
7 Sheriff Deputies, proceedings discontinued
8 at 11:25 a.m.)

1 ° STATE OF MICHIGAN)

2 ° COUNTY OF MACOMB) ss.

3 ° I, Harold C. Henry, Official Court Reporter for the 16th
4 ° Judicial Circuit for the County of Macomb State of Michigan,
5 ° certify this transcript as being a complete transcription of my
6 ° notes taken in the above-entitled matter before the Honorable
7 ° George C. Steeh, Circuit Judge, on March the 3rd, 4th and 6th
8 ° of 1998, before the Honorable George C. Steeh, Circuit Judge,
9 ° without jury.

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Harold C. Henry, Court Reporter

CSR-0225

13 °
14 °
15 ° Dated: September 11, 1998

16 ° Mt. Clemens, Michigan.
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