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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
COUNTY OF PENNINGTON) SEVENTH JUDICIAL DISTRICT

FILE NO. CRI 09-3953

THE STATE OF SOUTH DAKOTA)
)
)
Plaintiff,)
)
VS.)
)
JOHN GRAHAM,)
)
)
Defendant.)

TRANSCRIPT OF
JURY TRIAL

VOLUME 8 OF 10

* * * * *

BEFORE: THE HONORABLE JOHN J. DELANEY,
Circuit Court Judge
Pennington County Courthouse
Rapid City, South Dakota
DECEMBER 8, 2010

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1 * * P R O C E E D I N G S * *

2 **THE COURT:** Okay.

3 Gentlemen?

4 **MR. JACKLEY:** The state is, Your Honor.

5 **MR. MURPHY:** Yes, Your Honor.

6 **THE COURT:** All right.

7 Unless I am mistaken, where we were is the
8 state has closed its case in chief.

9 And Mr. Murphy, have you made a decision as
10 to how you are going to proceed?

11 **MR. MURPHY:** Yes, Your Honor. The defense
12 rests.

13 **THE COURT:** All right.

14 That should set us up for closing the case
15 out; is that correct?

16 Do you have anything further, Mr. Jackley?

17 **MR. JACKLEY:** The state does not, Your Honor.

18 **THE COURT:** All right.

19 Ladies and gentlemen, what that means is you
20 are here for about three minutes this morning. And at
21 this point I am going to have you leave because we
22 have functions amongst the counsel and the Court to
23 settle jury instructions for a complicated case. And
24 it will likely take us the bulk of a day. And you
25 will be called back at 8:30 tomorrow morning and I

1 would expect at that time we would present the jury
2 instructions to you. I have to read them. So you
3 will also get copies in the -- to take with you during
4 deliberations.

5 And following that, counsel will make their
6 closing arguments. That will be Mr. Jackley, or one
7 of the State's Attorneys, will make their closing
8 argument, followed by Mr. Murphy, and the state will
9 have a rebuttal. That is normally the procedure.

10 At that point, you will go to the
11 deliberation room. You will have the exhibits with
12 you and my instructions. I will read them -- you will
13 get them in more detail tomorrow morning.

14 In the meantime, once again, I need to tell
15 you that, particularly now, that you should not form
16 any opinions whatsoever in this case until you have
17 heard the closing arguments. Those arguments are not
18 evidence. But they are efforts on the part of the
19 respective parties to -- on how they believe the
20 evidence should be construed and what the verdict
21 should be. So that will be their presentation and you
22 bear that in mind when you go through your
23 deliberations.

24 If you form opinions tonight you've kind of
25 made up your mind no matter what the arguments say and

1 that's inappropriate.

2 You are not to talk to anybody or allow
3 anybody to talk to you about this case until after we
4 have had your verdict.

5 Please refrain during the day from news
6 broadcasts, newspaper accounts, or internet accounts
7 or any other media that may address this trial.

8 You are here to decide the case solely and
9 exclusively on the evidence you have heard from the
10 witness stand and the exhibits that have been
11 admitted. And viewing those things or getting outside
12 input after days of hearing evidence may lead you to
13 not be able to be certain of where your recollection
14 of certain information or evidence comes from.

15 You will have your notes and your
16 recollections of what transpired. And we will go from
17 there.

18 So I thank you again for coming in this
19 morning and for your attention throughout the
20 evidentiary phase. I trust this will leave you alert
21 and refreshed tomorrow morning.

22 Thank you very much.

23 (Whereupon, the following proceedings were
24 had in open court and outside the presence of the
25 jury.)

1 **THE COURT:** Do we have further proceedings
2 outside the presence of the jury, Mr. Jackley?

3 **MR. JACKLEY:** Nothing further, Your Honor.

4 **THE COURT:** Mr. Murphy?

5 **MR. MURPHY:** Your Honor, I would renew the
6 motion I made yesterday for judgment of acquittal on
7 both counts incorporating the same arguments I made
8 yesterday, asking the Court to reconsider its
9 decision.

10 **THE COURT:** And I recall those. I frankly
11 thought about them at some length over the evening
12 time. I am going to keep the same ruling that I made
13 yesterday.

14 **MR. JACKLEY:** Thank you, Your Honor.

15 **THE COURT:** Okay.

16 So ladies and gentlemen, we are in recess.
17 Please leave our jurors the opportunity to get the
18 rest of the food out of the jury room and out of the
19 building. I can't keep you here but I would ask your
20 cooperation.

21 Thank you.

22 **MR. MURPHY:** Judge, what -- when do we need
23 to meet?

24 **THE COURT:** Why don't you give me until
25 ten o'clock and then we'll try and hassle out jury

1 instructions and go from there.

2 Thank you.

3 (Whereupon, the proceedings in this matter
4 were then concluded.)

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1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)

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I, TINA RAE PRUSS, Official Court Reporter
 and Notary Public in and for the County of Pennington,
 State of South Dakota,

DO HEREBY CERTIFY that the foregoing
 transcript is a true and accurate transcript of the
 questions asked, the testimony given, and of the
 proceedings had.

I FURTHER CERTIFY that I am not of kin or in
 any way associated with any of the parties to said
 cause of action, or their counsel; and that I am not
 interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my
 hand this 3rd day of May, 2011.

COPY

Tina Rae Pruss
 Official Court Reporter and
 Notary Public
 Pennington County, South Dakota
 My Commission expires: 10-04-2012