

1 gotten five fingerprints back. Not just baggies, all of
2 the items that he sent.

3 So they say in law, in the practice of law that
4 if you don't have the facts, you argue the law. And if
5 you don't have the law, then you argue the facts. And
6 if you don't have either, you bang the table because
7 it's a distraction. It distracts you away from what's
8 being said on the witness stand. It distracting you
9 away from the evidence as admitted in this case.

10 This argument about fingerprints is table
11 banging. It's trying to distract you from the testimony
12 you heard, from the evidence that was admitted in this
13 case.

14 I ask you to use reason and common sense in
15 determining what happened on August 21st, 2013. Use
16 reason and common sense in assessing the charges and Mr.
17 Walker's responsibility for them. And I submit to you
18 that if you are using reason and common sense, you'll
19 come back with a verdict of guilty.

20 Thank you.

21 JURY INSTRUCTIONS

22 THE COURT: All right. Ladies and gentlemen,
23 members of the jury, the evidence and the arguments in
24 this case are now finished and I'm going to instruct you
25 on the law. That is, I'm going to tell you the law that

1 applies to this case.

2 Please remember that you have taken an oath to
3 return a true and just verdict based only on the
4 evidence and my instructions on the law. You are not to
5 let sympathy or prejudice influence your decision.

6 As jurors, you must decide what the facts of
7 the case are. You have to decide what happened, in
8 other words. And this is your job, and one else's. And
9 in doing so think about all of the evidence and then
10 decide what each piece of evidence means to you and how
11 important you think it is. And this includeds whether
12 you believe what each of the witnesses said. In the
13 end, what you decide about any fact in this case is
14 final.

15 Meanwhile, it is my duty to instruct you on the
16 law. And you must take the law as I give it to you. At
17 various times, I've already given you some instructions
18 about the law. You are to take all of my instructions
19 together as the law you're to follow. So in other
20 words, you should not pay attention to some instructions
21 and ignore others.

22 So to sum up, it's your job to decide what the
23 facts are, to apply the law as I give it to you to those
24 facts, and, in that way, to decide the case.

25 Remember that a person accused of a crime is

1 presumed to be innocent. And this means that you must
2 start with the presumption that the defendant is
3 innocent. And this presumption continues throughout the
4 trial and entitles the defendant to a verdict of not
5 guilty unless or until you're satisfied beyond a
6 reasonable doubt that he is guilty.

7 Every crime is made up of parts called
8 elements. I'll tell you about the elements of these
9 crimes in a few minutes. The People are obligated to
10 prove each element of each crime beyond a reasonable
11 doubt. The defendant is not required to prove his
12 innocence or to do anything. So in the end, if you find
13 the prosecutor has not proven every element beyond a
14 reasonable doubt, then you must find the defendant not
15 guilty.

16 And, again, a reasonable doubt is a fair,
17 honest doubt growing out of the evidence or lack of
18 evidence. It is not merely an imaginary or a possible
19 doubt. It's a doubt based on reason and common sense.
20 So a reasonable doubt is just that, a doubt that is
21 reasonable, after a careful and considered examination
22 of all of the facts and circumstances of this case.

23 Now, when you discuss the case and decide on
24 your verdict, you may only consider the evidence that
25 has been properly admitted in this case. And,

1 therefore, it's important for you to understand what is
2 evidence and what is not evidence.

3 Evidence here only includes the sworn testimony
4 of witnesses and the exhibits admitted into evidence.

5 There were exhibits, right? Are there? There
6 were some exhibits?

7 MS. DEYOUNG: 20, 22.

8 THE COURT: That's right. 20, yeah. Okay.

9 Many things are not evidence. Things that you
10 might have thought of as evidence are actually not
11 evidence.

12 For example, the mere fact the defendant is
13 charged with a crime and is on trial is not evidence of
14 his guilt.

15 Likewise, the lawyers' statements and arguments
16 and -- are not evidence. They're only meant to help you
17 understand the evidence and each side's legal theories.
18 You should only accept things the lawyers have said that
19 are supported by the evidence or by your own common
20 sense.

21 Even my questions to witnesses are not
22 evidence. Nor are the lawyers. You should consider
23 these questions only as they give meaning to the
24 witnesses' answers.

25 My comments, rulings, and questions and even my

1 instructions that I'm giving now are not evidence. It
2 is my duty to see that the trial is conducted according
3 to the law and to tell you the law that applies to the
4 case. However, when I make a comment or give an
5 instruction, I'm not trying to influence your vote or
6 express a personal opinion about how you should decide
7 the case. You are the only judges of the facts, and you
8 must decide this case only from the evidence itself.

9 Now as I said earlier, I think we -- this came
10 up on the day of jury section, but bears repeating. It
11 is your job to decide the facts of the case. And in
12 doing so you often have to decide which witnesses you
13 believe and how important you think their testimony is.
14 You do not have to accept or reject everything a witness
15 says. You are free to believe all, or none, or any part
16 of any witness' testimony.

17 And in deciding which testimony you believe,
18 rely on your own common sense, but set aside any bias or
19 prejudice that you may have based on the race, gender,
20 or national origin of the witness.

21 Now, there's no fixed set of rules for judging
22 whether to believe a witness, but it may help you to
23 think about certain factors such as was the witness able
24 to see or hear clearly? How long was the witness
25 watching or listening? Was there anything else going on

1 that might have distracted the witness?

2 Another thing to keep in mind is did the
3 witness seem to have a good memory?

4 Also, how did the witness look and act while
5 testifying? Did the witness seem to be making an honest
6 effort to tell the truth or did the witness seem to be
7 evading questions or arguing with the lawyers?

8 Does the witness' age or maturity affect how
9 you judge his or her testimony?

10 Also, does the witness have any bias, or
11 prejudice, or personal interest in how this case is
12 decided?

13 In general, does the witness have any special
14 reason to tell the truth or any special reason to lie?

15 And, all in all, how reasonable does the
16 witness' testimony seem to you when you think about all
17 of the other evidence in the case?

18 Now, sometimes the testimony of different
19 witnesses will not agree, and then you have to decide
20 which testimony to accept. And in doing so, think about
21 whether the disagreement involves an important point or
22 not and whether you think someone is lying or simply
23 mistaken. People do, after all, do see and hear things
24 differently, and witnesses may testify honestly but
25 simply be wrong about what they thought they saw or

1 remembered. And it's always a good idea to think about
2 which testimony agrees best with all of the other
3 evidence in the case.

4 You may conclude, however, that a witness
5 deliberately lied about something that is important to
6 how you decide the case. And, if so, you may choose not
7 to accept anything that witness said. On the other
8 hand, if you think the witness lied about some things
9 but told truth about others, you may simply accept the
10 part you think is true and ignore the rest.

11 Now, facts can be proven by direct evidence
12 from a witness or an exhibit. And direct evidence is
13 evidence of something that we actually see or hear.

14 So to use the common example that we use around
15 here, if you were to look outside and see it raining
16 outside, that would be direct evidence that it was
17 raining outside.

18 But facts can also be proven by indirect, or
19 what we call circumstantial evidence. And
20 circumstantial evidence is simply evidence that leads to
21 certain inevitable conclusions. So maybe you don't
22 actually see it raining from a -- raining outside, but
23 you see someone walk in the courtroom wearing a raincoat
24 and carrying an umbrella all covered with small drops of
25 water, well, that would be circumstantial evidence that

1 it's raining outside. That would also be very welcome
2 evidence given the weather we're having right now.

3 And you may consider circumstantial evidence.
4 Circumstantial evidence by itself, or together with
5 direct evidence, can be used to prove the elements of a
6 crime.

7 Now, if you believe that witness a previously
8 made a statement inconsistent with his testimony here at
9 the trial, the only purpose for which that earlier
10 statement can be considered by you is in deciding
11 whether the witness testified truthfully here in court.

12 Now, you heard some evidence during the course
13 of the trial that show that the defendant had been
14 convicted of other drug offenses in the past.

15 So if you believe that evidence, you must be
16 very careful only to consider it for certain purposes.
17 And in this case it was introduced not to show that the
18 defendant is a bad person, or that he has a propensity
19 to commit offenses involving the selling of drugs, it
20 was introduced for a couple of limited purposes. First
21 of all, to, to show or to answer the charge that the
22 defendant made or implied that Detective Schwein was
23 sort of piling on evidence against the defendant because
24 of some prior beef the that Detective Schwein had with
25 him relating to his refusal to testify as a witness in a

1 homicide case.

2 And then it was also offered to answer the
3 testimony that the defendant gave that he had been to
4 drug rehabilitation after one of his offenses in 2008.
5 And that his going to drug rehabilitation, I'm not sure
6 what that was meant to prove or suggest. But in any
7 event his, his offenses, his drug offenses subsequent to
8 that were offered to undercut that claim.

9 You must not consider this evidence from -- for
10 any other purpose. For example, you must not decide
11 that it shows the defendant is a bad person, as I said,
12 or that he's likely to commit crimes. You must not
13 convict the defendant here because you think he's guilty
14 of some other bad conduct. All of the evidence that you
15 consider must convince you beyond a reasonable doubt
16 that the defendant committed the crimes alleged here in
17 this case, or you must find him not guilty.

18 Also -- as a technical matter the People are
19 obligated to prove that the crimes charged in this case
20 occurred in Wayne County, and that they occurred on or
21 about August the 21st, 2013.

22 Now, you should not decide this case based on
23 which side presented more witnesses. Instead, you
24 should think about each witness and each piece of
25 evidence and whether you believe them. And then you

1 must decide whether the testimony and the evidence that
2 you believe proves beyond a reasonable doubt that the
3 defendant is guilty or not.

4 You heard testimony from police officers during
5 the course of this trial. As I mentioned to you during
6 jury selection, the testimony of a police officer is to
7 be judged by the same standards that you would use to
8 judge the testimony of any other witness.

9 You also heard from an expert witness in this
10 case; that was Tiffany Staples. She testified as a
11 Forensic Scientist with Michigan State Police about the,
12 the content of the drug evidence, the testing that she
13 did and the measuring that she it. She gave you her
14 expert opinion in that field. Experts are allowed to
15 give opinions in court about matters they are experts
16 on.

17 However, you don't have to believe an expert's
18 opinion. Instead, you should decide whether you believe
19 it and how important you think it is. When you decide
20 whether you to believe an expert's opinion, think
21 carefully about the reasons and the facts that she gave
22 for her opinions and whether those facts are true. And
23 then you should also think about the expert's
24 qualifications and whether her opinion makes sense when
25 you think about all of the other evidence in the case.

1 All right. Now, when you go to the jury room
2 to begin deliberating in the case you're going to
3 receive something calling a form of verdict. And it is
4 essentially a ballot. And it gives you your voting
5 options on the various charges that have been lodged
6 against the defendant in this case. Two page form of
7 verdict.

8 And let me explain the form of verdict first
9 and say a little something about your voting options and
10 then I'll define the crimes that are contained in the
11 form of verdict and tell you what elements must be
12 shown.

13 I did do all a little compressing and modifying
14 here. I think as I mentioned to you at the beginning of
15 the trial the defendant was charged in Count 1 with a
16 possession with intent to deliver between 50 and 449
17 grams of cocaine. And in Count 2 he's charged with
18 possession with intent to deliver less than 50 grams. I
19 kind off merged those two counts in here as you'll see.

20 And so for Count 1, which is what the header
21 says on the vert -- verdict form, you are to consider
22 the crime of possession with intent to deliver cocaine
23 more than 50 grams. And you vote for one of these four
24 options. Either not guilty or guilty of possession with
25 intent to deliver greater than 50 grams, or guilty of

1 possession with intent to deliver less than 50 grams, or
2 guilty of mere possession of less than 25 grams of
3 cocaine.

4 Now, you are permitted to, and in deciding the
5 cocaine case, to add the aggregate of the cocaine that
6 was put into evidence in this case. It is within the
7 range of your -- the -- within the parameters of your
8 findings as a jury to, to either believe or disbelieve
9 that the defendant had possession of the larger amount
10 of cocaine, the cocaine that was found on the floor by
11 his, according to some of the testimony, near the
12 defendant's feet and add that to the cocaine that was
13 found in his pocket.

14 So you can add those two things together so
15 long as you conclude that he was in possession of both
16 or all three of those stashes.

17 And as far as the measurement goes, you heard
18 the witness testify how she came to conclude that the
19 aggregate amount of cocaine was, I think, a little over
20 52 grams. And you can accept that as a, as a viable
21 estimate. It was her opinion that it was or not. I
22 mean that's entirely up to you.

23 But in any event, the, the, initial charge in
24 Count 1 is possession with intent to deliver more than
25 50 grams of cocaine. And you can find the defendant

1 either not guilty or guilty as charged of possession
2 with intent to deliver greater than 50 grams or guilty
3 of possession to deliver less than 50 grams or simple
4 possession of less than 25 grams.

5 Then in Count 3, since I merged one and two
6 together, you are to consider the crime of possession
7 with intent to deliver heroin less than 50 grams. Your
8 voting options are either not guilty or guilty on that
9 charge.

10 And then in Count 4, possession with intent to
11 deliver Vicodin, either not guilty or guilty.

12 Count 5, possession with intent to deliver
13 Xanax, not guilty or guilty.

14 And finally possession of marijuana, not guilty
15 or guilty.

16 Now, let me give you the elements of these
17 offenses. And this -- these jury instructions will be
18 sent in to you along with the jury verdict form, by the
19 way, so you can have them for your, for your reference.

20 So in Count 1 the defendant, as I said, is
21 charged with the crime of illegally possessing with
22 intent to deliver cocaine, a controlled substance. And
23 to prove this charge the prosecutor must prove each of
24 the following beyond a reasonable doubt:

25 First, that the defendant knowingly possessed a

1 controlled substance. Here namely cocaine.

2 Secondly, that the defendant intended to
3 deliver this substance to someone else.

4 Third, that the substance possessed was cocaine
5 and the defendant knew it was.

6 And then for the primary charge it would be,
7 fourth, that the substance was in a mixture that weighed
8 50 grams or more.

9 But as I said, you can also consider the lesser
10 offense of guilty with a -- possession with intent to
11 deliver less than 50 grams or simple possession without
12 the intent to deliver element of less than 25 grams.

13 All right. Then in Count 3 he's charged with
14 possession with intent to deliver heroin. And to prove
15 this charge the prosecutor again must prove each of the
16 following:

17 That the defendant knowingly possessed heroin.

18 Secondly, that the defendant intended to
19 deliver this substance to someone else.

20 Third, that the substance possessed was heroin
21 and the defendant knew it was.

22 And, fourth, that the substance was in a
23 mixture that weighed less than 50 grams.

24 And in Count 4 he's charged with unlawful
25 possession of intent to deliver Vicodin. And to prove

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

3 First, that the defendant knowingly possessed
4 Vicodin.

5 Second, that the defendant intended to deliver
6 this substance to someone else.

7 And, third, that the substance possessed was
8 hydrocodone or Vicodin and the defendant knew it was.

9 There's no amount necessary for you to find in
10 that count. And, and that's also true of Count 5, the
11 Xanax. There's no particular amount threshold.

12 In order to find the defendant guilty of Count
13 5 where he's charged with possession with intent to
14 deliver Xanax, the People have to prove first that the
15 defendant knowingly possessed Xanax, a controlled
16 substance.

17 Secondly, that the defendant intended to
18 deliver this substance to someone else.

19 Third, that the substance possessed was Xanax
20 or it's generic name is Alprazolam and the defendant
21 knew it was.

22 And finally in Count 6, the defendant is
23 charged with the crime of knowingly or intentionally
24 possessing marijuana. And to prove that the People must
25 show first that the defendant possessed marijuana and

1 that the defendant knew he was possessing marijuana.

2 Now you may ask, well, what does possession
3 mean. And there is a legal definition of possession
4 that's important for you to know.

5 Possession does not necessarily mean ownership.
6 Possession means either that the person has actual
7 physical control of the substance. And I have an
8 example as like I do this piece of paper that I'm
9 holding up in my right hand which happens to be
10 something I own because I bought the pad. But so I own
11 the paper and I possess it but I don't own this
12 microphone, but I possess it.

13 So owner -- possession doesn't necessarily
14 require ownership. It means that the person has actual
15 physical control of the substance or the thing, or that
16 the person has a right to control the substance even
17 though it may be in a different room or a different
18 place.

19 Possession may be sole, where one person alone
20 possesses it, or it can be joint where two or more
21 people share possession.

22 It is not enough if the defendant merely knew
23 about the controlled substances. The defendant
24 possessed the controlled substances only if he had
25 control over them or the right to control them either