

REPORTER'S RECORD

VOLUME 1 of 1 VOLUME
CAUSE NO. JD-38353-W

IN THE MATTER OF: COURT	X	IN THE DISTRICT
	X	
TEXAS	X	OF DALLAS COUNTY,
	X	
DANIEL XXX DISTRICT	X	304TH JUDICIAL

FINAL ARGUMENTS

On the 2nd day of July, 1998, proceedings came on to be heard in the presence of a jury in the above-entitled and numbered cause, and the following proceedings were had before the Honorable Harold C. Gaither, Jr., presiding, held in Dallas, Dallas County, Texas:

DAVID CHANCE
CSR No.1006
Official Court Reporter

304TH JUDICIAL DISTRICT COURT
2600 Lone Star -3rd Floor
Dallas, Texas 75212
Telephone: 214/698-4952

APPEARANCES

MR. CHARLES MARTIN, Attorney at Law
S.B.O.T. No.13057600
and

MS. DENISE HALE
S.B.O.T. No.00784192
Henry Wade Juvenile Justice Center
2600 Lone Star Drive
Dallas, Texas 75212
Telephone No.214-698-2285

APPEARING FOR THE STATE

MR. DAVID SCOGGINS, Attorney at Law
S.B.O.T. No.17885300
18601 L.B.J. Freeway
Suite No.620
Mesquite, Texas 75150
Telephone No.972-270-5448

APPEARING FOR THE

RESPONDENT

1 PROCEEDINGS

2

3 THE COURT: Ladies and gentlemen, that concludes
4 the reading of the Court's Charge. These are the final
5 instructions that you will get in this case. We'll now allow
6 the attorneys to present their final arguments to you. Each
7 side has been allotted eighteen minutes.

8 Mr. Martin, I understand that you're going to
9 open for the State, so, if you have any comments, you may make
10 them at this time.

11 MR. MARTIN: Yes, Your Honor. If it please the
12 Court. Mr. Scoggins. Ladies and gentlemen of the jury, I want
13 to thank you for your time in this case. Boy, how did you all
14 get so lucky as to get jury duty and get picked on this case?
15 I don't know, but you all must be the luckiest people in the
16 world.

17 It is 10:00 o'clock. Do you know where your
18 children are? Did you know they were out in a field in
19 Richardson at midnight engaging gang members in a big mass
20 rumble and possibly getting their brains bashed in and their
21 eyes gouged out? Did you know that?

22 I don't think any of these parents, who are in
23 the courtroom, knew that that day. Nobody watches their kids
24 close enough as they should these days, but that happens in
25 every juvenile case. Every juvenile case couldn't happen if

1 the parents just watched their kids a little more closely, but
2 that's not what we're here to comment on, the parents. We're
3 going to comment on Daniel XXX and judge his conduct that
4 day and say whether or not he did right or wrong.

5 Let's cut to the chase. He told you, based on
6 his own testimony, that he did it. He's just saying, because
7 of self-defense, he's not guilty. He admits that he gouged
8 Jason XXX's eyes, but he wants you to believe that he had
9 to, that he had no other choice. He wants you to believe this
10 incredible chain of events beginning with leaving his friend's
11 house in the Caravan or the Suburban and cruising to the
12 McDonald's; that this incredible chain of events happened
13 culminating in him throwing up, blood all over his hands,
14 saying prayers for Jason XXX back at his home with his
15 friends; that all of that was just out of his control; that he
16 had no choice but to do what he did.

17 Now, we're supposed to use our common sense, as
18 the Judge told us, in this case. Common sense, when you're
19 deciding whether self-defense applies or not, you apply the
20 reasonable prudent standard, what would a reasonable and
21 prudent person do in Danny XXX's situation out there that
22 night of that fight.

23 If you think Danny XXX did the right thing,
24 if you think Danny XXX had no other choice than to do what
25 he did, if you approve of his conduct, if you would have done

1 the same thing, if the reasonable and prudent person would have
2 done the same thing, then say by your verdict "We do not think
3 he engaged in delinquent conduct." If you think he went beyond
4 the line, went too far like all his own friends said, went too
5 far, flipped out, lost control, crossed the line of self-
6 defense and seriously scarred Jason XXX for the rest of
7 his life, gouging his eyeballs out of his eyes, then you should
8 answer the question "We do find that he engaged in delinquent
9 conduct."

10 It wasn't exactly a fair fight out there that
11 night. Danny wanted to fight. He went there wanting to fight.
12 He had all this background with Jason XXX. He couldn't
13 wait to get his hands on Jason XXX, especially in a
14 situation where he's got him outnumbered twenty to four or
15 fifteen to four or fifteen to two. Whatever numbers you want
16 to believe, they're still incredibly lopsided.

17 Imagine being Jason XXX for the rest of your
18 life, not being able to see, having a guy with his fingers in
19 your eyes. Imagine being out there that night and a guy from

20 behind is dragging your head up and he's sticking his fingers
21 in your eyes as hard as he can, you're begging for help,
22 "Please stop," "Let me go," "I just want to run away," "Man,
23 I'm in a wrong situation here," "Let me go."
24 What Danny XXX did to Jason XXX, I can't
25 think of a more intentional thing you can do to somebody.

1 Shooting a gun and killing somebody, that takes a split second.
2 You get mad, a guy is provoking you (snaps fingers) , shoot him.
3 The thing he did, a five-minute encounter at least with Jason
4 XXX, suffocating him, choking him to death, making him
5 pass out, getting back on him, a helpless man on the ground
6 just limp and gouging your fingers in his eyes, that's
7 intentional. That's not self-defense.

8 He's missing the reasonable and prudent person
9 thing in his mind that we all have. What he did would make our
10 stomach turn. We all said on voir dire and you all committed
11 to this, that you would defend yourself by any means necessary.
12 I believe everybody was pretty unanimous on that decision.

13 THE COURT: Five minutes.

14 MR. MARTIN: Was it necessary to do what Danny
15 XXX did to Jason XXX that day? I don't think so. Is
16 it reasonable to keep saying your life is in danger just
17 because the guy is moving or shaking a little, convulsing on
18 the ground? No. Defend yourself by any means necessary, but
19 don't do what Danny XXX did. Thank you.

20 THE COURT: Thank you, Mr. Martin. You used five
21 minutes and thirty-three seconds. Ms. Hale will have a little
22 less than thirteen minutes to reply --about twelve and a half
23 minutes to reply to anything Mr. Scoggins may raise in his
24 final argument.

25 Mr. Scoggins, you have requested a three-minute

1 warning. You have eighteen minutes. When you have used
2 fifteen, I'll give you that three-minute warning.

3 MR. SCOGGINS: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. SCOGGINS: Danny XXX. Ms. XXX. Mr.
6 XXX. State's attorneys. Ladies and gentlemen of the jury,
7 I'm not here to make any friends and I'm not here to be nice
8 because we've had enough.

9 When we started this case, we told you not true.
10 We're still here saying not true. You heard both sides
11 of it. We got our say and we're glad we finally did. We said
12 not true and we're not backing off from it.

13 This young man has courage. How many of you have
14 courage. In a crowd of twenty-four or twenty-five out there at
15 the scene, how many had courage? Two men of courage. Two men
16 of courage.

17 Bryan XXX, he stepped up and he protected his
18 brother. That is a man of courage. Dan XXX stepped up.
19 That is a man of courage. He protected himself and he
20 protected his friends.

21 (Facing the audience) All you Third Power people stand up. Stand up.
22 Stand up. I come to you and I look in your face. My name is
23 David Scoggins. I live at 504 Meadowlake. You come to
24 my house. You threaten my life. You threaten my family. I'll
25 put you blind. You don't come to my house and threaten the

1 lives of my family, not my children. You don't do it.(Facing the jury) You
2 have courage? I see it in you. You have courage. God bless
3 you.

4 The State started this case. They had the burden
5 of proof in this case. They had the burden of proving to you
6 everything that they had to prove in this case. They didn't do
7 it.

8 What all did they bring you? Did we hear from
9 Derek XXX? Where is that great piece of humanity? Did you
10 hear from him? Did you hear from all these kids from J.J.
11 Pearce? Did you hear from their side of this case? Did you
12 get the video tape during the State's case? Where did you get
13 this? Where did you see it? Is that the way it is supposed to
14 operate?

15 Detective's supposed to get these Third Power
16 tattoos off of them before the trial date. Do you approve of
17 that? You don't put up with it, do you?

18 Did it happen? Yes, it happened. It sure did
19 happen. It's a bad thing that happened. It sure was a bad
20 thing. It wasn't a good thing in any way, but it was right
21 because our law allows it and it happened because Jason
22 XXX created a situation of intimidation, violence and fear
23 so that, when he is approached by a man of courage, he has
24 consequences.

25 Tell me all the bad things that Danny XXX did

1 in this event. Tell me all the bad things that he did. One,
2 he won the fight, and he won it with a force of violence.
3 That's the only thing he did wrong --the only thing he did

4 wrong, but the law justifies it.
5 On the other hand, let's talk and let's think about
6 what did Jason XXX and the Third Power guys did wrong.
7 There's a whole chain of events here that they created in force
8 and intimidation. Do you know what they want? They want to
9 get these kids that think they're big-time football players,
10 J.J. Pearce and the little rich kids that are doing just fine,
11 living soft lives --they like to get them out in a dark field
12 and make them run. They like to get them out there where
13 they've got just a few of them and a bunch of them and they get
14 all those little soft boys out there and they pull out their
15 crowbars and their axes and their chains and they like to see
16 those boys run and they came back and laughed and smoked a
17 joint. They just love it.
18 Can I talk to you about big lies? Let's talk
19 about some lies. Let's talk about the Third Power. The
20 psychologist tells us that people operate on primacy and
21 immediacy. They believe the first thing they hear and they
22 remember it. Who is the first person you hear from? Jason
23 XXX. How disgusting.
24 It may be that you went home that night and you
25 were convinced by this poor boy. Of course, the Judge has told

1 you, in the first part of his instructions to you, that
2 sympathy is not a factor in your case. You are not to consider
3 sympathy in any way, but I have no doubt that the State will
4 get up here and whine about how bad Jason got hurt. Well,
5 Jason got hurt because Jason XXX sets up situations where
6 he's willing to hurt, but, when he gets hurt, he's whining and
7 crying about it; he wants to come down to the old courthouse.
8 Do you know what the law is? The law is a
9 shield. The law is a shield to you against people like the
10 Third Power. Do you know what Jason XXX wants it to be?
11 He wants it to be a sword in his hands. You know the
12 difference between a shield and a sword. You know the
13 difference.
14 He creates situations where good and honorable
15 young men end up with criminal cases and he's the victim. How
16 disgusting. How pitiful.
17 I guess I could talk to you for eighteen minutes
18 about the lies that Jason XXX told you. The first story
19 that the Third Power tells the police --of course, they don't
20 cooperate with the police. The first story they tell the
21 police --it's all a big lie --they're walking through the
22 field one day and some guys are yelling at them. They say,

23 "What's up?" The guys jump them and beat them up. The big
24 lie. Where's the evidence? There's a crowbar. There's a
25 chain. Where is it? Where is it?

1 I'm going to talk to you about one witness that
2 the State didn't put on. I'm going to read to you his
3 statement. I know it's kind of short, but this statement
4 matters. This is the State's witness. You understand that the
5 police went to the Richardson schools and got these kids
6 without their parents, without their parents knowing, without
7 lawyers and had them all write out their statement.
8 Of course, the police go to your child's school
9and

10 knowing about it, maybe you don't like that. I don't know.
11 Maybe you think that's fine.
12 Nonetheless, "April 21, 1998. I, Chris XXX,
13 was there on the night of the 18th when the fight occurred. It
14 occurred at midnight behind Chuck E Cheese's in a large field.
15 About fifteen of my friends were there including Jon XXX
16 who was the one who was supposed to fight Derek. When we got
17 there, I saw Jason, Derek and two or three of his friends I
18 didn't recognize. Both groups of people then walked back to
19 the field for Jon and Derek to fight. When we got back to the
20 field, Jason and his friends started saying 'Who was Jon?',
21 but he was scared to step up at first.
22 While we were waiting for Jon to step forward, I
23 noticed Jason was holding a chain about three feet or so long
24 in his hand. I also saw one of his friends with a pipe in his
25 hand. They then said that after Jon steps up and the fight

1 breaks out, the first person to jump in was to get beaten with
2 the chain or pipe. Jason then exclaimed he wasn't afraid of us
3 jumping in and said, if we did, his friends would take care of
4 us later.

5 While all of this is going on, Jason asks us if
6 one of us had a paper to roll a joint with. After he said
7 this, one of his other friends said, 'Jason, you don't need to
8 smoke a joint. You're ahead on crack.' Jason just laughed.
9 Jon then stepped forward and told them that he was Jon. When
10 Jon did this, Jason and his friends started to approach Jon
11 asking him if he was Jon. He said, 'Yes'."

12 This almost sounds biblical, doesn't it? Jon
13 steps forward. He said, "Yes." "Then Derek started to
14 approach Jon. He then ran up to him swinging and knocking him
15 down. After Bryan, his older, saw Jon getting beat up, Bryan
16 tried to pull Derek off of Jon. Once Jason saw Bryan on Derek,
17 he went crazy and started swinging the chain.
18 Danny took Jason down to the ground to avoid him
19 hitting Bryan or anyone else with the chain. Jason and Danny
20 were fighting each other for a while when Jason finally ran out
21 of energy, I guess, and just laid there not moving so much.
22 By this time, Derek's and Jon's fight had broken
23 up and Jason's other friends had backed off. My other friends
24 and I didn't realize the extent of Jason's injuries until we
25 saw his face. My friend, Cliff, then pulled Danny off of

1 Jason. He asked Danny why he went so crazy and he replied, 'I
2 just snapped and couldn't come back to reality.'

3 Danny was very quiet the rest of the night and
4 had thrown up a couple of times realizing what he had done to
5 Jason. The whole fight lasted for probably 15 minutes. Chris
6 XXX."

7 You take this to the jury room and read it again.
8 We know then that Danny wept. It is occasioned from time to
9 time, when it is possible in human events, for humans to
10 come to justice. It cannot always be done because the consequences
11 are out of our hands. When those occasions come, you have to
12 have courage and you must choose and the choice you've got to
13 make is to choose to help the Third Power --help the Third
14 Power.

15 Look at the quality of these Third Power people.
16 They are a criminal street gang. You go back there and you
17 stand up for Jason XXX. You go do it and you go home
18 tonight and you think about it next week, next month, next
19 year. Jason XXX was headed to the Texas Department of
20 Corrections. Danny XXX was headed to college. Who created
21 the events by which this has twisted around in such an ugly
22 fashion? Jason XXX did it.

23 What is Danny's point of view? What's his state
24 of mind? That's what matters here. His state of mind is they
25 had come to his house. They had threatened his life. They

1 have threatened his family's life. He knows about David
2 XXX being attacked, harassed and threatened. He knows
3 about the XXXs receiving these phone calls from the Third

4 Power and Jason XXX. His state of mind is that he is
5 afraid, and that is a reasonable man.
6 The State may argue to you that a reasonable man
7 will run, but occasionally, among a dozen, there will be a man
8 of courage, a man who will, even though age sixteen, tackle the
9 one who is the perpetrator. He will tackle the one who is
10 trying to injure him. He will tackle the one who is with the
11 chain. That is that man of courage. Are you going to stand up
12 for him?
13 I've got a whole list of things about the
14 credibility of Jason XXX, but I'm not even going to tell
15 them to you. Lord, you watched this tape, didn't you? You
16 have to be paying attention. It's so funny, isn't it? The
17 detective on there thinks nobody is ever going to see this
18 tape. He doesn't think so. He's criticizing the judge. He's
19 criticizing and bad-mouthing lawyers. They don't think we're
20 going to see this tape, but we did and you saw it, too. What a
21 shocking surprise.
22 Jason XXX is on there, "Oh, man, it's a big
23 chain. It's a big chain and I was going to hit somebody. I'm
24 not going to lie to you. I was going to hit somebody with it."
25 He gets up there and tells you that "I dropped the chain." You

1 must be foolish people if he thinks you all are going to
2 believe that.
3 The police tell you they weren't there. Danny
4 XXX was there. He was alone there in the dark struggling
5 with probably the most vicious and evil person aged sixteen in
6 Richardson, Texas. He was there alone in that struggle.
7 Think about this point: Think about his mind.
8 This guy doesn't quit and he doesn't follow the rules. He
9 doesn't stay within the boundaries. He struggles and he fights
10 and he never gives up.
11 On the video tape, Jason XXX made a choice.
12 He made a choice. The choice he made was he gave up his eyes.
13 Do you not recall on that video tape when Jason XXX said
14 he only had one hand and he would claw at my eyes, but I wasn't
15 going to pass out. I quit covering up my eyes because I wasn't
16 going to pass out. This man is foolish beyond understanding.
17 This is a man who fights as an animal must fight. He accepted
18 the consequences then. He accepted the consequences the next
19 day at Parkland Hospital on the audio tape where the detective
20 wanted to see if he wanted to press charges. He said, "No, we
21 were being dumb. It was our fault. I don't want to go to
22 court."

23 Now he's the victim. He lost the fight and he
24 lost big and it's ugly. Now he's the victim and you all are
25 supposed to do good for him.

1 I don't think there is any more that I can say to
2 you. You're either going to do what is right or you're not.
3 You're either going to do for Danny XXX what the law
4 permits and the law says that he has a right to do. It may not be
5 good, but he has a right to protect himself from an attack. He
6 has the right to protect himself from an attempted attack. He
7 has the right to protect third persons who are being attacked.
8 He has that right. You may not like how this has ended up, but
9 he has that right. I'm telling you and I'm asking you to give
10 it to him. I'm asking that, of this dozen, there be someone of
11 courage. I'm going to leave Danny XXX in your hands and
12 I'm going to sit down. I'm going to ask you to have courage.
13 THE COURT: All right, Mr. Scoggins. Thank you,
14 sir. Ms. Hale, your side has used already five minutes and
15 thirty-three seconds. You may use the remainder of the time up
16 to eighteen minutes to reply to anything that Mr. Scoggins has
17 raised in his final argument. I'll give you a two-minute
18 warning when your side has used sixteen minutes and you will
19 have two minutes remaining.
20 MS. HALE: May it please the Court. Mr.
21 Scoggins. Mr. Martin. Ladies and gentlemen of the jury, is
22 this a man of courage or is this a man you should fear?
23 He went into that field. They all did. Nothing good
24 comes after midnight. It's an old saying. In Richardson,
25 there is even a curfew that says you shouldn't be out there.

1 Jason XXX, he is what he is. He's not as
2 educated. His friends, they are what they are. You had no
3 evidence that Jason XXX was headed toward TDC or anywhere
4 else. He is what he is and now he is blind in one eye with
5 twenty-fifty vision in the other. Why? Because of this man of
6 courage, this man who told you that he could not call 9-1-1,
7 he could not do anything other than put Jason XXX --who
8 is clearly not an athlete because he's not in school. You've
9 seen the medical records. He wasn't on crack or anything else
10 except for marijuana, so he's not acting with some inhuman
11 strength.
12 Danny XXX repeatedly put him into wrestling
13 holds. Danny XXX is an athlete. Didn't hear. Didn't
14 heed. Didn't care about Jason XXX's pleadings for help.

15 His friends --his own friends pleading for him to stop,
16 "That's enough." This man of courage who, when pulled off once
17 by his own friends, returns to continue to gouge at the eyes of
18 Jason XXX. He's pulled off again. He returns again, by
19 his own words, to continue. And why? Because he was still
20 moving.

21 One of the times when he says he got off, Jason
22 XXX reached up. This was after the man has been pleading,
23 after he's been in wrestling holds, choking holds. Was there
24 any possibility that he could have been raising his hand for
25 help just as he had been asking for?

1 You saw the Richardson students who came and
2 testified. These are not little guys. These are not wimpy
3 guys. These are guys who will get out on a football field and
4 crash into each other, but you're to believe that night there
5 was no other man of courage out there on that field.

6 First of all, this man of courage tells you he
7 didn't know there was going to be a fight. He didn't want to
8 go. He wanted to go home. He got in the car and he thought
9 they were going home except all those other friends who rode
10 out there with him. They got on the stand and they knew where
11 they were going. HXXXXX was driving. They got to the field,
12 so he must have known where he was going, and it was from his
13 house that they left. There's a party going on, his parents
14 are out of town, and all these boys decide to go to the field.
15 Any chance they didn't know what might happen there?

16 These Third Power guys that they're so afraid of,
17 they voluntarily go into that field. Where's the fear?
18 They're scared to call the police, don't go to the field. They
19 went there. They began to fight, Derek and Jon. Bryan steps
20 in.

21 A man of courage, a man who got up here and bold-face
22 lied to you that he saw this chain around Danny XXX's neck
23 choking him, this chain that gets longer and longer as the
24 testimony goes on, but Officer Ridley told you it was still
25 attached at both ends to the wallet and it was two feet long

1 when it is looped like that.

2 Jason XXX talks trash. He said it was huge.
3 Watch the tape. That's fine. Jason XXX is what he is and
4 now he's that person blind. He talks trash, the prior incident
5 that put all this fear into Danny XXX's mind with this
6 other boy who took ten of his friends to fight and went to

7 where Jason XXX and his friends apparently were. Then
8 this guy went and did a drive-by because he was injured? No.
9 Because any of his friends were injured? No.
10 If these boys, this Third Power group, wanted to
11 harm these people when they had those crowbars out there at
12 that other incident, then why did they smash the windows of the
13 car? Yes, there's some intimidation there, but they're not
14 going after people.
15 And he retreated when a reasonable person would
16 retreat. Apparently crowbars are being swung and a hatchet out
17 there at that other incident, but they were able to retreat.
18 They were able to leave. If Danny XXX knew about that
19 incident, then he knew he could retreat, a reasonable person,
20 in the position of this man on that night.
21 What would it take? What kind of rage does it
22 take for you to lay hands on another person in anger? What
23 kind of rage would it take for you to hit, punch, choke, put in
24 a wrestling move after wrestling move? What kind of rage would
25 it take for a reasonable person to gouge someone's eyes
until

1 the point that an eyelid is behind the eye and the eye is
2 bulging out? What kind of rage does that take? Is he acting
3 out of courage or is he acting out of adrenaline, anger,
4 whatever, that's causing him to take it way past the point of
5 self-defense? Once you go past that line of self-defense, you
6 become the aggressor.

7 If you say, by your verdict, "We do" --and I
8 expect you will --you're not saying "Jason XXX, we
9 approve of your lifestyle." What you're saying --because
10 Jason XXX is not the one on trial here. What you're
11 saying is Danny XXX --put the focus back where it is in
12 a case that's a criminal case. It's on the person accused.
13 You say, "Danny XXX, your acts that night were not
14 reasonable. Your acts that night do not comport with the law.
15 You decided to charge, to tackle, to wrestle, to gouge of your
16 own free will.

17 There were ten, fifteen, how many of his friends
18 out there? Did he call on any of them for help, those guys who
19 were willing to get on a football field or a wrestling mat and
20 become engaged in physical contact? Did he call on any of
21 them, "Help me"? No. Who was calling for help? Jason
22 XXX was calling for help. Jason XXX, who was willing
23 to curl up in a ball on the ground and expected to get hit and
24 kicked, who was willing to accept that, he told you that. Is
25 that what happened?

1 Then Danny XXX leaves. He knows what he has
2 done. And how do you know that he knows? He asks his friends
3 to pray for Jason. Now, if he didn't know the kind of damage
4 that he had done, what need would there be for his friends to
5 pray for Jason? If he didn't fear coming to court, being
6 charged with the crime, what need was there for his friends to
7 pray for him?

8 THE COURT: Two minutes.

9 MS. HALE: Thank you, Your Honor. It was said
10 that it would turn the stomachs of a reasonable person to do
11 what was done out there. He threw up. He was shaking. He was
12 crying. He knew what he had done. His friends said it went
13 too far. His own actions said it went too far.

14 I'm not saying that he hasn't had a life where he
15 was going to school, going to classes, participating in
16 football. This case is about April 18th, April 19th, the
17 midnight hours when they should have been home. All of them
18 should have been home. When Danny XXX decided to blind
19 Jason XXX, would a reasonable person do that? All of the
20 elements of this offense have been admitted. The only question
21 you now have is would a reasonable person go that far.

22 Take your common sense into the jury room with
23 you. Consider where a reasonable person could have retreated.
24 First of all, he could have stayed in the car if he didn't want
25 to be there. He could have called the police. Could have

1 gotten help from friends. Could have gone to one of those
2 businesses that were obviously all around there. Look at the
3 damage that was done to this boy's eyes --an eyelid behind the
4 eyeball, ninety-five percent vision loss in the left eye.

5 You go back there and you turn to the question in
6 the jury charge. You don't say I'm having sympathy for Jason
7 XXX.

8 THE COURT: Ms. Hale, your time is up.

9

10 (PROCEEDINGS DIRECTED TO BE TRANSCRIBED CONCLUDED)

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