OCTOBER 23, 1998 P.M. SESSION

(Jury brought in at 1:56 P.M.)

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THE COURT: The heat still doesn't work in here.

Mr. Foreman, I have your note. Let me address your last comment first in that you're inquiring as to whether a transcript, or police reports are available for your review. They are not. These are not matters of evidence. They were used solely for impeachment purposes and explaining testimony during the course of trial. They are not evidence and cannot be submitted to you.

As to your inquiry regarding "reasonable doubt," I'm happy to re-explain that to you, if I can. And, I would remind you that I started my explanation to you regarding reasonable doubt by telling you it is not easy to define or explain. And, I think I began by telling you what a reasonable doubt does not mean, or what it does not encompass. I think I told you that the State's obligation to prove something beyond a reasonable doubt does not mean the State has to prove guilt beyond all possible doubt, or beyond a shadow of a doubt. To be that certain we all would have had to have been eyewitnesses. No, the State's burden is not that great. On the other hand, reasonable doubt is not a whimsical, or fanciful, or passing doubt. And it is not a doubt

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which is prompted by sympathy, either sympathy for Lisa Lupino or sympathy for the defendant. Sympathy does not play a part in assessing reasonable doubt. I think I also told you that you cannot convict a defendant simply because of mere suspicion, or conjecture, or surmise. The State has to present to you evidence which, upon your examination, you find to be so convincing and compelling as to leave in your minds no reasonable doubt about the defendant's guilt.

I think I also told you that you know from your own experience what a doubt is, and you know from your own experience when something is reasonable or unreasonable. And the term "reasonable doubt," by definition, means a doubt that is based upon reason and not conjecture or speculation. Reasonable doubt is a doubt based upon evidence or lack of it. And, I concluded by telling you that proof beyond a reasonable doubt exists when, after you have thoroughly considered and examined all of the evidence that is before you, you have a firm belief that the defendant is guilty as charged.

Does that re-instruction assist you, ladies and gentlemen? I hope it does. Is there anything else that we can do for you in order to assist you in your deliberations? Ready to go back to work? Okay.

(Jurors excused at 2:00 P.M.)