

STATE OF NEW HAMPSHIRE  
ROCKINGHAM COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE, . Case No. 09-S-0319  
 .  
Complainant, . Supreme Court No. 2010-0262  
 .  
vs. . Brentwood, New Hampshire  
 . Wednesday, November 18, 2009  
 .  
JESSE BROOKS, .  
 .  
Defendant. . Volume 15 of 16. Pages 3027-3153  
 . . . . .

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE TINA L. NADEAU  
SUPERIOR COURT JUSTICE  
AND A JURY

APPEARANCES:

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(Appearances Continued)

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1 you must decide the case for yourself, but do so only after  
2 impartial consideration of all of the evidence with your fellow  
3 jurors.

4 And in the course of your deliberations, do not  
5 hesitate to reexamine your views and change your mind if you  
6 think you're wrong.

7 But do not surrender your honest conviction as to the  
8 weight or effect of the evidence solely because of the opinion of  
9 your fellow jurors or merely for the purpose of returning a  
10 verdict.

11 And I will have just a few final instructions for you,  
12 if I could see counsel briefly.

13 (At sidebar.)

14 THE COURT: I think we need to make Number 12 an  
15 alternate because he slept through my instructions. But he's  
16 still been sleeping off and on.

17 MS. RUNDLES: Uh-huh.

18 MR. KETTLEWELL: Which one is that?

19 THE COURT: Number 12.

20 MR. KETTLEWELL: Which one?

21 THE COURT: Large one in the back with the glasses.

22 MR. KETTLEWELL: Well, all right. I didn't notice  
23 that, but I wasn't watching.

1 THE COURT: Okay.

2 MR. KETTLEWELL: He was awake during the closings, I  
3 know that.

4 THE COURT: Yeah. No. No. Yeah.

5 MR. KETTLEWELL: I watched them very carefully.

6 MS. RUNDLES: He might have been awake during yours.

7 THE COURT: Yeah.

8 MS. RUNDLES: And I noticed him sleeping during mine.

9 THE COURT: Yeah. I -- so I think I need to make him  
10 an alternate.

11 MR. KETTLEWELL: Well, I think we're going to object to  
12 that, Your Honor. I don't see a need for that at this time.

13 THE COURT: Sleeping through testimony?

14 MR. KETTLEWELL: Well, it wasn't testimony.

15 THE COURT: Well --

16 MR. KETTLEWELL: And you're going to have the written  
17 charge in the jury room, I take it.

18 THE COURT: Right.

19 MR. KETTLEWELL: And there are 11 other jurors who --

20 THE COURT: He -- right. He slept through a lot of  
21 testimony. I mean, he wasn't as bad as the juror we excused, but  
22 he slept through testimony.

23 MR. ANDERSON: Isn't he the one that said that he

1 closed his eyes to concentrate?

2 THE COURT: No. That was --

3 MR. KETTLEWELL: No. That was the little guy in the  
4 front row.

5 THE COURT: -- that's the one with the tie at the end.

6 MR. ANDERSON: I'm sorry.

7 THE COURT: Yeah.

8 MR. KETTLEWELL: It was a different guy.

9 THE COURT: Yeah.

10 MS. RUNDLES: Well, I do think that Number 12 has been  
11 sleeping on and off throughout the entire trial. And as I  
12 mentioned, I wasn't watching him during the defense closing, but  
13 during my closing I noticed that he appeared to be sleeping. And  
14 I know that the Court just noticed he was sleeping during  
15 instructions, so I think that it's probably a good idea to make  
16 him an alternate.

17 I also think we need to talk about --

18 THE COURT: Number 9.

19 MS. RUNDLES: Yes.

20 THE COURT: She has a plane ticket for Monday.

21 MR. KETTLEWELL: Yeah. But this is Wednesday, Judge.

22 MR. ANDERSON: My understanding of the statute, Your  
23 Honor, and I specifically to RSA 500-A:8 and 14, is that once