

1 THE COURT: Thank you, Counsel.

2 Defense may proceed with their closing
3 argument.

4 MR. RICHARDS: Thank you, your Honor.

5 CLOSING ARGUMENT

6 BY MR. RICHARDS:

7 Good afternoon, ladies and gentlemen.

8 I agree. It's been a short but a
9 jam-packed trial. And it's been packed with a lot of
10 witnesses, a lot of evidence, and as the AG just told
11 you, attorney general, contradictory evidence;
12 evidence that doesn't fit, it doesn't make sense. A
13 whole slough of different versions, different facts,
14 people facing one way, the other way, saying things,
15 not saying things, et cetera.

16 So you may feel a little bit overwhelmed
17 about how you sort this all out. But before I say
18 anything else, there's one principle which is going
19 to help you a lot, and it's the same principle that
20 Mr. Chimera just alluded to. The principle is called
21 reasonable doubt.

22 They have to prove their case beyond a
23 reasonable doubt. And that means proving each and
24 every element. It means disproving self-defense, it

1 means disproving defense of mistake as to one of the
2 counts. The burden of proof never shifts; always on
3 them.

4 So if the evidence comes out where there's
5 conflicts, confusion, you don't know exactly what
6 happened, the party that bears the burden of that is
7 right over here (indicating) just by definition
8 because that's how the legal system is set up. So
9 keep that in mind as you think about the evidence, as
10 you think about this case.

11 But I'd also like to go through, first,
12 each of the charges, because some of the charges are
13 relatively easy to decide.

14 The easiest charge to decide in this case,
15 and the one I suggest you go to first, is the charge
16 of resisting or obstructing a peace officer. What
17 does that require them to show? They must show that
18 Craig Mateck was a peace officer. No problem. He's
19 a peace officer.

20 Second proposition, that the defendant,
21 Henry Hams, knew Craig Mateck was a peace officer.
22 Big problem with that proposition.

23 Third proposition, that the defendant
24 knowingly resisted or obstructed the performance by

1 Craig Mateck, whose authorized act was in official
2 capacity. Big problem with that proposition as well.

3 Fourth proposition, the defendant's action
4 was the proximate cause of injury to Craig Mateck.
5 Maybe, but you don't even need to get there.

6 And, fifth proposition, that the defendant
7 was not mistaken as to the matter of fact that would
8 show that he did not have the knowledge that served
9 for the defense charged.

10 This is the defense of mistake. Again,
11 they have to disprove it beyond a reasonable doubt.
12 Have they done that? Not even close. Their own
13 witnesses, their own evidence proved the exact
14 opposite.

15 Tommy Turner, their witness, says he wasn't
16 seeing or hearing. He knew from the demeanor of
17 Henry Hams that he's so focused on McCormick that he
18 doesn't know these people are officers. They're
19 behind him, not in front of him.

20 And they -- they also say -- they don't say
21 they announce their office, they don't say they said,
22 Sheriff's police. All they say, the two of them, is,
23 Stop, things like that.

24 And Turner says, from his vast experience

1 as a military person, a trainer in de-escalating
2 situations, all of this, he says this guy doesn't
3 know what's happening. Their witness provides
4 conclusive evidence that Henry Hams didn't knowingly
5 resist these officers. They made our entire case
6 with that one witness on that count.

7 Now, the other problem is, even if you
8 assume that Mateck and Turner have accurate memories
9 of the events, and you have to assume that to believe
10 they proved their case, is that really true?

11 Mateck and Turner both describe Henry Hams
12 facing McCormick with his hands around his neck, and
13 there's a variation. One says McCormick's on his
14 knees, the other says McCormick is standing up. But
15 that contradicts the testimony of nearly every other
16 witness who all, McCormick and Hams included, who all
17 say that's not the way it was. Hams was behind
18 McCormick and holding McCormick down.

19 So is there some big conspiracy here? No.
20 Turner and Mateck were acting -- they were doing
21 their duty. They were immediately going to diffuse
22 the situation. Are they going to remember accurately
23 every detail of what happened? Obviously not. If
24 they did remember accurately, everybody else,

1 including Henry, Michael McCormick, Joshua Sachs,
2 Betty Williams, every other single witness is
3 mistaken.

4 That, I would suggest to you, ladies and
5 gentlemen, is not reasonable. So this charge goes.
6 No evidence for it; clearly hasn't been proved beyond
7 a reasonable doubt.

8 Now let me then next go to the next charge,
9 or the next set of charges.

10 First of all, it is not true that the only
11 defense he's charged with is self-defense. That's
12 not true at all. There's three charges of aggravated
13 battery.

14 The first, one of the elements is that
15 Henry Hams knowingly caused great bodily harm to
16 Michael McCormick. Not that Michael McCormick
17 suffered great bodily harm as a proximate cause; that
18 Henry Hams knowingly caused that.

19 Now, we just heard a big dog and pony show
20 from the medical people about Michael McCormick's
21 injuries, his preexisting conditions, his surgeries,
22 complete with the spinal cord and everything else.

23 But ask yourself this question: Would
24 Henry Hams know that doing that particular throw move

1 and putting Michael McCormick on the ground would
2 cause great bodily harm? Well, maybe, if somebody
3 had whispered in Henry's ear, Oh, by the way, Henry,
4 this guy has a narrowed spinal cord, he has
5 preexisting injuries, he's got degenerative disease,
6 obviously.

7 And the fact is clear, Henry Hams didn't
8 know any of that. Henry Hams thought he was dealing
9 with somebody like him, of a similar age, and he was
10 acting reasonably to prevent that person from
11 attacking him. There's absolutely no evidence that
12 he knew his actions would cause either great bodily
13 harm or bodily harm.

14 And, in fact, you know that his actions did
15 not cause bodily harm because what are McCormick's
16 injuries? Does he have bruises? Does he have
17 bleeding? Does he have a black eye? Does he have
18 broken teeth? Does he have scrapes on his hands?
19 Does he have anything? No. Maybe a bruised knee, to
20 which no one else testifies.

21 No visible evidence of injury. No visible
22 evidence of bodily harm. The bodily harm that is
23 caused is caused, according to the doctors, maybe by
24 the twisting of the neck of somebody who has a

1 preexisting condition, which Henry Hams isn't aware
2 of.

3 So, even with that, considering self-
4 defense, leave self-defense aside, Counts 1 and 2
5 fail just because they haven't proved knowledge
6 beyond a reasonable doubt.

7 Let's go to Count 3. They've only got one
8 left. Count 4 already went out.

9 Count 3 is that Henry Hams knowingly made
10 an insulting or provoking contact with Michael
11 McCormick. What insulting or provoking contact?
12 Well, I've been trying to figure that out throughout
13 the course of the trial. Because I think different
14 things are being alleged.

15 Was it insulting and provoking contact to
16 tap him on the shoulder? Was it insulting and
17 provoking contact after he had been touched to hold
18 him and put him down? I would suggest in this
19 circumstance not -- that he didn't know he was making
20 insulting or provoking contact.

21 For one thing, the balance of the evidence,
22 and that is what you should look at, is that when
23 there were words exchanged, there were two people who
24 were talking about fighting; there were two people

1 who were challenging; there were two people who were
2 involved. This is not insulting and provoking
3 conduct. This is not one person getting into another
4 person's face and the other person backing away like
5 a wilting violet. That did not happen. That's not
6 the bulk of the evidence. That's not what the
7 witnesses testified to.

8 Now, let me just say that one thing you
9 could do just to make things simple, although you may
10 not want to, is throw out for a moment everybody's
11 testimony except Henry Hams and Michael McCormick and
12 just decide between the two of them.

13 Because, somehow, everybody else is looking
14 away at the critical moment of contact. When the
15 fracas, the fight, the *mêlée*, whatever you want to
16 call it, starts, Enrique's looking for the sheriffs,
17 Joshua Sachs is looking for the sheriffs, Mateck is
18 turning to Turner to say, Let's go down there, so he
19 doesn't see what happens at first. Lynn McCarthy is
20 from a very distance away. She is also looking for
21 the sheriffs. She also doesn't see necessarily what
22 happens at first, and her account isn't, by the way,
23 consistent with McCormick's either.

24 So let's just put McCormick and Henry in

1 isolation for a moment. Let's put them in a little
2 tank. Let's put them up against each other. Let's
3 say it's a context of credibility.

4 McCormick is a very interesting guy. Very,
5 very interesting. For one thing, he's a hell of a
6 lawyer. He's superb. He was superb on that witness
7 stand, he was superb in this little transcript -- and
8 I'll explain why in a moment -- and he was superb in
9 his whole reaction to the situation.

10 Why? Well, McCormick has a beef against
11 Henry Hams. If he didn't have one before, he has now
12 because he has a civil suit pending and he wants to
13 win. He wants compensation. He believes he's been
14 injured.

15 But look at the performance he gave on that
16 witness stand and look at what he testified to.
17 First of all, he testifies, other witnesses testify,
18 including their witnesses, these two people getting
19 in each other's face, going toward each other, not
20 backing off. Not backing off when Enrique Abraham
21 tries to separate them, not backing off when Joshua
22 Sachs tries to separate them.

23 But that's not what he says on the witness
24 stand. It's, Oh, my knees were trembling; Oh, I was

1 backing away; Oh, I was scared, et cetera, et cetera.
2 It's an act, it's a lie, and you should not believe
3 it.

4 But other things he says, this shows his
5 knowledge as a lawyer. No other witness testified
6 that people cried out, Sheriff's deputies, Sheriff's
7 police. Only one witness said that. The sheriffs
8 didn't say that, and they were there; they were the
9 people who were talking. Joshua Sachs didn't say
10 that. No witness said it except for Michael
11 McCormick. The only witness who says it.

12 Why does he say it? Because he knows the
13 law. He wants to get Henry Hams, and he knows that
14 to prove the charge of resisting, there had better be
15 evidence of the sheriffs saying, Sheriff's police,
16 because that's the only way you can prove Henry Hams
17 knew the people behind him were sheriff's police, or
18 Cook County sheriffs. Very clever. But nobody backs
19 it up. Got on that witness stand, told a lie.

20 Another lie, the *coup de grâce*: He knows
21 that there's a defense here. He knows there may be
22 self-defense. He knows that he's at fault. So what
23 does he have to say? He says Henry Hams, after he
24 threw me to the ground, he said, That's what you get

1 for fucking with me. In other words, he is a lawyer
2 who knows the best evidence against the defendant is
3 a statement, a confession, something that shows the
4 defendant's mental state.

5 Unfortunately, there's nothing like that
6 here because no other witness testified to that
7 statement, and they were inches away. That statement
8 was supposedly made after he takes McCormick to the
9 ground.

10 Does Mateck testify to it inches away? No.
11 Does Turner testify to it inches away? No. Does
12 Enrique testify to it? No. Does Lynn McCarthy
13 testify to it? No. Does Joshua Sachs testify to it?
14 No. Does Betty Williams testify to it? No.

15 How did all these people not hear this
16 shocking statement? One answer: it was never said.
17 McCormick lied on the stand in an attempt to get
18 Henry Hams.

19 Now, every victim of a crime is entitled
20 to justice. And McCormick -- the AG is entitled to
21 bring this prosecution, they're entitled to put it
22 before you, they're entitled to try and prove it
23 beyond a reasonable doubt, and Michael McCormick is
24 entitled to testify in support of it.

1 But I would suggest to you that if you seek
2 justice in the criminal justice system, you should do
3 justice. You should not take a stand and lie under
4 oath.

5 Now, there's other aspects of
6 Mr. McCormick's performance that bear commenting on.
7 He didn't need to be cross-examined a lot. He cross-
8 examined himself.

9 In fact, you saw that when Mr. Goodfriend
10 was trying to elicit answers from him, this guy can't
11 even give the answers. And Goodfriend had to reprove
12 him, I need you to answer my questions. He needs to
13 be brought up short by the people who are trying to
14 vindicate his rights because he wants to say what he
15 wants to say. He wants to talk about what he wants
16 to talk about.

17 Does this man strike you as a shrinking
18 violet who is running in terror from Henry Hams, a
19 lawyer in a suit and a tie? No. He put on an act,
20 and it should fool no one, absolutely no one.

21 So I would suggest to you, insofar as the
22 State's case rests on his credibility, there is no
23 State's case because he has no credibility, none
24 whatsoever.

1 It is tragic and horrible that he was
2 injured, and the pain and suffering is something he
3 fully can vindicate. But just because somebody is
4 injured doesn't mean there's a criminal case. The
5 two things are separate. Somebody acting in
6 self-defense, if the person he acts in self-defense
7 toward is injured, so what? That's not a criminal
8 case. A criminal case is proof beyond a reasonable
9 doubt as to the elements charged, and nothing else.
10 And to the extent that his injury was proved, it was
11 proved. But it doesn't prove that it was knowingly
12 caused by Henry Hams.

13 Now, the AG talked a lot about
14 reasonableness of behavior, and we can all agree this
15 is a tragic, unfortunate situation which should never
16 have happened. But let's talk a little bit about why
17 it did happen.

18 A cold transcript could never exactly show
19 what's happening, and I suggest you read this
20 transcript or try to read it with something of a
21 lawyer's eye. Because what happens is it's not quite
22 the vanilla little proceeding that's been put forth.

23 As Henry told you, as to Henry Hams, maybe
24 not as to other lawyers, McCormick was not

1 cooperative. He's not the kind of guy who says -- or
2 exhibits the kind of behavior you might say that I
3 have seen throughout this trial from the attorney
4 generals and I hope they've seen from me, that we're
5 not fighting about small things, we're just
6 litigating our case.

7 This is a guy who likes to fight about
8 small things, and you can see it in the transcript
9 they've presented, because something is going on.

10 First of all, he's filed a motion. He
11 filed it two months ago; Henry got it two weeks ago.
12 Why? Any explanation? No.

13 And then, before Henry has a chance to
14 respond, he wants to set it for not Henry's response
15 but a hearing for August 5th.

16 In other words, what he's trying to do is
17 hurry things along. Let's get it done. It's stupid.
18 Let's get it over with. Let's get it dismissed.
19 Let's throw it out. Who cares? Nothing to it.
20 That's his attitude.

21 And so then what he says is, Oh, and by the
22 way, I have some other documents I've been lying on,
23 but they're not attached here, but Henry can go and
24 ask me about them.

1 So, in other words, Henry's being asked to
2 ask about documents which he hasn't been tendered and
3 which he doesn't know what the State is talking
4 about.

5 This is called slick lawyering. It's the
6 kind of lawyering that Mr. McCormick exhibited from
7 the witness stand. It's trying to put the other side
8 in a bad position. And you can see from the
9 transcript Henry has to argue, No, on August 5th,
10 we're not having a hearing. By August 5th, when I've
11 gotten all this guy's documents, then I'll respond.
12 Then I'll tell you in writing what I think of it.

13 So this whole setup which seems so
14 innocent, no, it's not.

15 Now, Henry had every right to go over and
16 say, you know, Where's the stuff? Now, McCormick,
17 of course, says, Goddamn documents. No one else
18 testifies to that. Again, that's a clear
19 exaggeration.

20 Everybody else -- Sachs, Enrique Abraham --
21 and, in fact, Enrique Abraham makes a point of this
22 that Henry is just coming over and politely asking
23 for the documents. Who starts things? Who provokes
24 things? Who escalates things?

1 What, Henry, no hello? I'm speaking to
2 these people. Why are you interrupting me? Why are
3 you trying to do your job? I'm the state's attorney.
4 I get to talk to who I want to. I don't want to talk
5 to you. I don't like you.

6 The man who starts it is McCormick. And
7 McCormick -- according to Henry, McCormick goes up in
8 Henry's face. And according to Betty Williams, when
9 at the point in which McCormick is running in terror
10 for his life, she says that McCormick goes within
11 four inches of Henry's face and puts his chin up and
12 his chest out. This is not a guy who's running in
13 fear; this is a guy who is engaging in a verbal
14 confrontation and who, from his words and actions, it
15 can be reasonably assumed that he's in it for
16 physical confrontation as well.

17 Now, it may be, and it probably is, that
18 Mike McCormick didn't really want to fight. But he's
19 one of these people and one of these, if I may say,
20 lawyers or state's attorneys, who think that if you
21 go up into somebody's face a few inches away and yell
22 at them just short of the point where you can be
23 charged with any crime, you are going to get somebody
24 to back down because you're in their face. And

1 that's what he does. He is the one who starts the
2 hostile, aggressive words.

3 Now, the words escalate and there's words
4 back and forth. Again, this is a situation where,
5 you know, it's sort of like something like the
6 movie -- Jasmine's movie Rashman (phonetic) where
7 everybody tells the story from a different point of
8 view or different narrators; that's one thing going
9 on here.

10 Another thing going on is, you know, nobody
11 saw nothing. Nobody wants to be involved. It's an
12 ugly, stupid incident. Enrique says as little as
13 possible. And the things that he said originally
14 about them being in each other's faces and calling
15 names he wants to take back. He wants to wash his
16 hands of the whole thing. Everybody wants to wash
17 their hands of the whole thing.

18 So the only two people we have as to what
19 the version of the conversation we have, a detailed
20 version, is, one, McCormick's, and, two, Henry Hams'.

21 According to McCormick, he is the soul of
22 reasonableness. Sweet reason, light. Oh, Henry,
23 what's your problem? I didn't do anything. What?

24 Henry is the only one who's honest that

1 there's a back and forth. There's a back and forth.
2 McCormick is saying, Come on, tough guy, you want to
3 fight? And Henry responds, No, I don't want to fight
4 you because I'm a boxer and I'd hurt you.

5 Now, it was interesting that the AG
6 realized that there's a hole in the case, the case of
7 Henry Hams as the violent boxer aggressor because
8 Henry Hams never hit Michael McCormick. If he's a
9 boxer enraged, why in the world doesn't he ball up
10 his fist and hit him?

11 Now, the only theory that they can come up
12 with to explain that is that Henry Hams is thinking,
13 Oh, boy, I want to beat up Michael McCormick, but
14 I don't want to get charged, and I'm going to be
15 raising self-defense, so, if so, I would better --
16 I'm better off not hitting him, I'm just better off
17 choking him, because I'm going to get away with
18 choking him, but I'm not getting away with hitting
19 him.

20 There is a word for this theory. There's a
21 word for this view of events, and the word is silly.
22 It's silly. It didn't happen that way. Nobody
23 thinks that way. Henry Hams didn't think that way.

24 The reason Henry Hams didn't use any boxing

1 skills and didn't hit McCormick was he was acting in
2 self-defense. He wasn't trying to hurt McCormick; he
3 was trying to minimize McCormick's threat to him.

4 Now, the attorney general says there is a
5 principle called -- which properly is called no duty
6 to retreat, but it's set forth in an instruction,
7 which is the most important instruction in the case,
8 in my view, although they're all important.

9 A person who has not initially provoked the
10 use of force against himself has no duty to attempt
11 to escape the danger before using force against the
12 aggressor.

13 In other words -- first of all, let's just
14 deal with some other things. If I as one attorney go
15 to another attorney and he gets in my face and starts
16 yelling at me and calling me names and accusing me of
17 doing bad things, would it be -- is it a good thing
18 to do or wise thing to do to just walk away? Sure.
19 Is it always something that everybody does? No.
20 Would certain people not do it, particularly male
21 attorneys, if they thought it might be viewed as a
22 sign of weakness? Sure. I mean, if somebody is
23 abusing you or calling you names or yelling at you in
24 a public place, are you really required under the law

1 to turn tail, to creep away, to go away on little cat
2 feet and say, Oh, I'm sorry I upset you? No.

3 For one thing, Henry Hams is not just
4 representing Henry Hams. Henry Hams is representing
5 Derek Neal. Henry Hams is standing up for his
6 client. The only person representing his client.
7 The only person representing this person filed a
8 postconviction petition, which the State wants
9 dismissed, throw in the trash can, is Henry Hams.

10 And Henry Hams says, No, I'm not gonna --
11 just because he yells at me or calls me names doesn't
12 mean I'm gonna walk away. I'm going to stand here.
13 And he made physical threats. I'm not going to walk
14 away. I am going to stand here. And if I perceive
15 that he is attacking me, I am going to prevent him
16 from attacking me. And that's all that Henry Hams
17 did.

18 Now, the State went through -- there must
19 have been ten questions on cross-examination about,
20 oh, you could have gone away then, you could have
21 gone away then, you could have run away.

22 Every single one of these questions,
23 we submit, ladies and gentlemen, violates the
24 instruction you will be given. Because the law is he

1 doesn't have to run away. He can stand his ground,
2 he can be right there and talk to this person, argue
3 with him, whatever he wants. It's a public place.
4 The courthouse isn't owned by the state's attorneys
5 or by Michael McCormick. It's owned by the public.
6 It's public property. Henry Hams has every right to
7 be there representing his client and talk to the
8 opposing counsel if he so chooses.

9 Now, we're not asking for sympathy. We're
10 asking you to put sympathy, prejudice, anything like
11 that aside.

12 This is a simple case. They have not
13 proved their case beyond a reasonable doubt. They
14 have not disproved self-defense beyond a reasonable
15 doubt. They haven't come close.

16 I suggest to you that you deliberate,
17 listen to each other, discuss the instructions and
18 the facts and everything else. But the clear and
19 simple answer here is that the State has not proved
20 their case beyond a reasonable doubt.

21 Go to a dictionary -- don't do this --

22 MR. GOODFRIEND: Objection, Judge.

23 THE COURT: Sustained.

24 Do not go to a dictionary.

1 MR. RICHARDS: Do not literally go to any
2 dictionary.

3 But it strikes me that you would have to
4 tear the word "maybe" out of any dictionary before
5 you could find the defendant guilty on these facts.

6 If you believe him, he is not guilty. If
7 you disbelieve Michael McCormick, he is not guilty.

8 MR. CHIMERA: Objection, Judge.

9 THE COURT: Overruled. This is argument; it's
10 not evidence.

11 MR. RICHARDS: If you don't know who to
12 believe, it is our strong suggestion that he's not
13 guilty. And in this state of the evidence, that's
14 precisely the verdict which we are asking you to
15 render. Thank you.

16 THE COURT: State, you may proceed with the
17 rebuttal close.

18 REBUTTAL CLOSING ARGUMENT

19 BY MR. GOODFRIEND:

20 Ladies and gentlemen of the jury, what
21 would have happened to Mike McCormick if Deputy
22 Turner and Sergeant Mateck were not standing 30 feet
23 away? What if their post wasn't there? What would
24 have happened to Mike McCormick if Deputy Turner and