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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH JORDAN BELL,

APPELLANT

APPELLANT CASE NO. 2013-001841

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2013-GS-26-01335,01337,01339,01340
STATE OF SOUTH CAROLINA,)
Plaintiff,) **Transcript of Record**
vs.)
KENNETH JORDAN BELL,) August 12-15, 2013
Defendant.)

B E F O R E:

Honorable Roger L. Couch
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

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Circuit Court Reporter

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BY THE COURT

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1 **(August 12, 2013)**

2 THE COURT: All right. Good morning, ladies and
3 gentlemen, I haven't had the opportunity of meeting you yet
4 this morning. My name is Roger Couch. I am a Circuit Court
5 Judge and -- I am a Circuit Court Judge, a resident judge in
6 the Seventh Judicial Circuit. The Seventh Judicial Circuit is
7 made of Spartanburg and Cherokee Counties. It's my pleasure
8 to be a visiting judge here in the Fifteenth Circuit this week
9 and I'm conducting a one-week term of General Sessions Court.
10 General Sessions Court is the Criminal Division of the Circuit
11 Court. So the cases that I'll be trying this week involve
12 situations where citizens have been charged with a commission
13 of a crime.

14 We're about to begin the trial of in the case of The
15 State of South Carolina versus Kenneth Jordan Bell and our
16 purpose at this point in time, is to go through some matters
17 with you, to gather some information concerning this case and
18 about perhaps your knowledge of this case, so that the
19 attorneys will be in a position to exercise the strikes that
20 they're allowed to strike by law in selecting a jury in this
21 case.

22 Now there's a couple of things I want to go over with you
23 before we begin the jury selection process or the inquiries
24 into your qualifications. The first thing I'm going to do is
25 go over the indictments that have been handed to me. The, let

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BY THE COURT

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1 me explain, are the documents that bring this case into this
2 courtroom. They explain or tell the Court or inform the Court
3 of the charges that have been lodged in the case and
4 therefore, the charges that are to be tried. They also inform
5 the Defendant of the charges that have been lodged against the
6 Defendant. Now I will tell you that the indictments cannot be
7 used by a jury in any manner whatsoever in determining the
8 guilt or the innocence of the Defendant. Again, they're
9 simply the documents that bring the case before the Court and
10 I'm going to go over them with you at this time because you
11 need some information so as to more fully answer the questions
12 that I'm about to ask you concerning this case.

13 The first indictment that I will go over with you in this
14 matter is Case Number 13-GS-26-1340. The indictment is for
15 the offense of criminal conspiracy. The indictment states
16 that the Defendant, Kenneth Jordan Bell, did in Horry County,
17 while acting in concert with others, on or about February the
18 2nd of 2013, combined with Christopher Bell and Tony Pasquale
19 and/or other persons for the purpose of accomplishing a
20 criminal or unlawful object or an object that is neither
21 criminal nor lawful through criminal or unlawful means, to
22 wit, a burglary in the first degree in violation of the Code
23 Sections 16-17-410 of the Code of Laws of South Carolina,
24 1976, as amended, against the peace and dignity of the State
25 and contrary to the statute in such case made and provided.

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BY THE COURT

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1 The second indictment that I've been presented with is
2 Case Number 2013-GS-26-1339. That indictment is for the
3 offense of armed robbery. The indictment states that Kenneth
4 Jordan Bell, did in Horry County, while acting in concert with
5 others, on or about February 2nd of 2013, while armed with a
6 deadly weapon, to wit, a handgun, did take and carry away
7 personal property of Paul Degruccio from or in the immediate
8 presence of Paul Degruccio -- am I pronouncing that right,
9 Degruccio?

10 MS. LIVESAY: Yes, sir, Your Honor.

11 THE COURT: With intent to deprive Paul Degruccio of
12 possession by use of force, threats or intimidation in
13 violation of Code Section 16-11-338 of the Code of Laws of
14 South Carolina, 1976, as amended, against the peace and
15 dignity of the State and contrary to the statute in such case
16 made and provided.

17 The next indictment is for possession of a weapon during
18 the commission of a violent crime. That's Case Number 2013-
19 1337. It states that the Defendant, Jordan Bell, Kenneth
20 Jordan Bell, did, in Horry County, while acting in concert
21 with another, on or about February 2nd of 2013, possess a
22 firearm or visibly display a, what appeared to be, a firearm
23 or visibly displayed a knife during the commission or
24 attempted commission of a violent crime in violation of Code
25 Section 16-23-490 of the Code of Laws, 1976, as amended,

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1 against the peace and dignity of the State and contrary to the
2 statute in such case made and provided.

3 The next indictment is Case Number 2013-1336 for
4 kidnapping. The indictment states that Kenneth Jordan Bell,
5 did, in Horry County, while acting in concert with others, on
6 or about February 2nd, 2013, unlawfully seized, confined,
7 inveigled, decoy, kidnap, abduct or carry away with one, one
8 Paul Degruccio, without authority of law in violation of
9 Section 16-3-910 of the Code of Laws, 1976, as amended,
10 against the peace and dignity of the State in contrary to such
11 case made and provided.

12 The final indictment is 2013-1335 for burglary in the
13 first degree and it states that Kenneth Jordan Bell, did, in
14 Horry County, while acting in concert with another, on or
15 about February 2nd of 2013, enter the dwelling of Paul
16 Degruccio without consent and with the intent to commit a
17 crime therein and when in affecting entry or while in the
18 dwelling or in immediate flight, was armed with a deadly
19 weapon. He or another participate in the crime displayed what
20 appeared to be a knife or firearm in violation of Section 16-
21 11-311(a) of the South Carolina Code of Laws, 1976, as amended
22 against the peace and dignity of the State and contrary to the
23 statute and such case made and provided.

24 Those are the indictments in this case that have been
25 presented to the Court and the cases that we'll be trying in

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BY THE COURT

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1 this matter. And again, I've gone over those for the purpose
2 of you understanding what this case is about perhaps and being
3 able to more fully answer some questions that I'm about to ask
4 you. Before I begin to do that, I want the attorneys to
5 introduce themselves to you in this matter. First of all for
6 the State?

7 MS. LIVESAY: Thank you, Your Honor. I'm Nancy Livesay.
8 I am a prosecutor for the Fifteenth Judicial Circuit.

9 THE COURT: And for the Defense?

10 MR. MCCOLLUM: Thank you, Your Honor. May it please the
11 Court, my name is Greg McCollum. I'm a lawyer. I practice
12 law in this county, Georgetown and surrounding counties. My
13 office is in Myrtle Beach. I'm known as a sole practitioner,
14 I work solely with my staff. I'm the only attorney in my
15 office.

16 THE COURT: And is the Defendant present?

17 MR. MCCOLLUM: Yes, he is, Your Honor.

18 THE COURT: Would you introduce him to the Jury as well?
19 Sir, if you'll stand and face the jury panel for me, thank
20 you?

21 MR. BELL: My name is Kenneth Bell.

22 THE COURT: Thank you. You can be seated.

23 Now before I begin to ask questions concerning this case,
24 I'm going to ask that the Clerk swear you concerning the
25 responses that you're about to give to this Court.

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1 MS. LIVESAY: Just one, Your Honor,

2 MOTIONS:

3 MS. LIVESAY: There is an issue as to a -- the record of
4 the victim. This incident, when the victim gave his
5 statement, it was that the codefendant, Chris Bell, he owed
6 Chris Bell some money. He had gotten some weed from Chris
7 Bell to sell for him. He was arrested and charged with PWID
8 marijuana and has already pled guilty to that. But I believe
9 the premise is that Chris and Kenneth went over there to
10 basically get money or things of value that they felt were
11 owed to them because of this money or marijuana that the
12 victim didn't have. It's my understanding -- I think Greg is
13 gonna question the victim regarding this PWID marijuana and
14 selling marijuana for the codefendant, Chris Bell. The
15 State's gonna ask that he not be allowed to inquire into that.
16 It's not relevant into this case.

17 I pulled a case, State v. Lyle, that says even if it's
18 factual testimony, that the victim had sold drugs out of their
19 apartment, it's not a defense to murder or robbery nor does it
20 excuse or mitigates the Defendant's actions and even relevant,
21 such testimony is inadmissible as to being unfairly
22 prejudicial. And I think that's what we got in this case,
23 Your Honor. And even besides that, there is no relationship
24 at all between the victim and this Defendant. The victim had
25 never met this Defendant until he broke into the house that

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1 day.

2 THE COURT: Do you have a copy of that case you can pass
3 up to the Court?

4 MS. LIVESAY: I do, Your Honor.

5 MR. MCCOLLUM: Can I get the site, Your Honor?

6 MS. LIVESAY: I certainly can. Here. Sorry I was coming
7 around to -- I was a little longer that I expected.

8 Here you go, Judge.

9 THE COURT: Thank you.

10 All right. I'll hear from Counsel.

11 MR. MCCOLLUM: Your Honor, it's, it's my understanding
12 that the Solicitor is saying that any allegation that the, one
13 of the alleged victims had previously sold drugs or conducted
14 drug transactions with the codefendant of Mr. Bell, she's
15 asking the Court to exclude that?

16 THE COURT: Yes, sir.

17 MR. MCCOLLUM: Your Honor, in this particular case, I
18 would submit that as part of the, first of all, let me say at
19 this stage, we're not offering witnesses to make ---

20 THE COURT: I think this is in the form of a Motion in
21 Limine; is that what we're, I'm hearing?

22 MS. LIVESAY: I'm sorry, Your Honor.

23 THE COURT: This, you're, this is a Motion in Limine
24 concerning the ---

25 MS. LIVESAY: Yes, sir, Your Honor.

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1 THE COURT: --- the possible introduction of that
2 evidence.

3 MR. MCCOLLUM: The Lyle case that she cites was a
4 situation where the Defense, in a murder case, was going to
5 call witnesses to allege that -- I guess the, the victim or
6 the decedent had previously sold drugs some months earlier.

7 THE COURT: From that apartment, I think is the ---

8 MS. LIVESAY: I'm sorry, Your Honor?

9 THE COURT: Wasn't there, if they were going to show
10 evidence that the drugs were sold from that apartment -- and
11 apparently I think I saw that there were drugs found next to
12 the deceased's body. It was a murder, it was an armed
13 robbery/murder case.

14 MR. MCCOLLUM: Like a small partially smoked marijuana
15 cigarette.

16 THE COURT: The illegal drugs found next to the body,
17 that's what I read.

18 MR. MCCOLLUM: Your Honor, in this particular case, I
19 would submit that the fact that the Codefendant, Christopher
20 Bell, participated in drug transactions with, I think, Paul
21 Degruccio, if I'm saying that correctly, was the purpose for
22 Christopher Bell in taking others to go to the apartment to
23 get his money that was owed to him or, or settle the debt or
24 something of that nature. So we would submit the fact that I
25 think the evidence would establish that Mr. Christopher Bell

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1 and Mr. Paul Degruccio had transacted illegal drug
2 transactions in the past. There was a debt owed by Mr.
3 Degruccio, if I'm saying that correctly, to the Codefendant,
4 Christopher Bell and that was the reason, along with other
5 factors, why Mr. Christopher Bell went to the apartment in the
6 first place and then took his brother with him. I would
7 submit there are several factors here. One is that the --
8 we're talking about cross examination here, is the way I see
9 this coming up. Kenneth Bell has the right -- obviously under
10 the right to confront witnesses, has the right to a full and
11 complete confrontation of the witnesses. It can go to the
12 bias of the witness. It can go to the reason for being there
13 and ultimately, could go to the res gestae or the purpose of
14 the crime. Now, there are situations where drug use has been
15 excluding to protect the Defendant or the person on trial, but
16 even those situations it's been allowed if it were determined
17 to me part of the crime or, as the Court usually uses the
18 term, res gestae. So we would submit under those reasons if
19 Mr. Paul Degruccio testifies that that would be a proper
20 subject for cross examination -- and I assume, Your Honor,
21 that we're not even talking about the impeachment aspect of
22 the prior conviction; we're just talking ---

23 THE COURT: No, I don't think she's talking about
24 impeachment. Of course, I'm not sure it could be used for
25 impeachment anyway.

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1 MR. MCCOLLUM: Okay. That's the Defendant's position.

2 THE COURT: I don't think it goes, I don't know if it
3 goes to truthfulness. But let me ask you, apparently, the
4 defense -- and I know a lot less about this case than either
5 of you know about it at this point in time. Apparently, the
6 defense is that they felt like there was some debt that was
7 owed, apparently because of a drug transaction, but they claim
8 that there was a debt owed and they went there for the purpose
9 of collecting their money on the debt. You're not objecting
10 to that testimony?

11 MS. LIVESAY: What I'm saying, Your Honor, is: (A) Any
12 transaction regarding drugs or illegal sale of drugs, (A), has
13 nothing to do with Kenneth Bell. There was no relationship
14 between that victim and Kenneth Bell. There was no debt owed
15 to Kenneth Bell regarding any drugs.

16 THE COURT: I understand that but he's allegedly going
17 there with his brother to collect a debt owed to his brother.

18 MS. LIVESAY: The testimony or what the victim says is
19 that months prior to this incident, months, not a day before,
20 not a week before, months prior he had seen Christopher Bell,
21 the Codefendant, and he just basically said look, I know I owe
22 you some money, let's call it even. The police -- I never
23 ratted you out. That was the last time he saw Christopher
24 Bell was months prior to this incident. There had been no
25 contact between him and the victim for months and no contact

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1 between him and Kenneth Bell ever. He had no idea that these
2 two Defendants were coming over. What Mr. McCollum is
3 referring to is when they set up a drug deal and somebody
4 shows up with a gun and shoots somebody. That's not what we
5 have. There was a third Codefendant in the vehicle, a woman,
6 who calls and texts the victim and says, look let's get
7 together, where are you at. He had no idea that she was in
8 the car with these two Codefendants. He had no idea these two
9 Codefendants were coming over. She was asking which apartment
10 are you in? Is there anybody over there? He said I'm in this
11 apartment, it's two doors to the left, I'll crack the door.

12 THE COURT: I understand what you're saying, but you know
13 maybe you're missing the point of my question. My question is
14 that your objection is reference to drug deals. You don't
15 think -- you think that's, that the prejudicial effect of that
16 testimony ---

17 MS. LIVESAY: Yes.

18 THE COURT: --- would outweigh any probative value that
19 the fact that this stems from a drug deal would have?

20 MS. LIVESAY: Yes, sir.

21 THE COURT: And I tend to agree with you. However, the
22 Defense does have a right to confront and present whatever
23 defenses they have. Again, it's -- your objection goes to
24 characterizing the transaction as a drug deal. If we don't
25 characterize the transaction, the testimony is limited to say,

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1 well, I felt like I was owed some money and I went over there
2 to collect it for whatever reason -- it could've been for a
3 car, it could've been for whatever reason.

4 MS. LIVESAY: I understand.

5 THE COURT: Your objection does not go to that type of
6 testimony, I take it? I'm trying to find out.

7 MS. LIVESAY: My objection is just that this victim had
8 any idea or to even insinuate that this victim had any idea
9 that these two boys were ---

10 THE COURT: At this point in time, I can't decide whose
11 testimony weighs the most or who ought to be allowed to
12 introduce any particular evidence. The question I have to
13 decide is whether the testimony's prejudicial effect outweighs
14 its probative value. So, I will -- is there any reason why
15 this has to be characterized as a drug deal in testifying
16 about the fact that you went there to collect a debt or your
17 client or his brother went there to collect a debt?

18 MR. MCCOLLUM: Your Honor, on the day of the -- the day
19 of the indictment, there's no statement from the Defense that
20 that was a drug deal.

21 THE COURT: I understand that. I'm just asking you is
22 there any reason why it has to be characterized as a debt owed
23 for a drug deal as part of your defense? I'm trying to find
24 out if that's essential somehow to -- I'm trying to determine
25 whether the prejudicial effect of that outweighs its probative

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1 value. Does that have any probative value, the fact that
2 you're claiming it was from a drug deal? Does that have any
3 probative value to your defense is my question?

4 MR. MCCOLLUM: Your Honor, it's -- I think that it does
5 and the way I thought about it in preparing the case, I would
6 have thought that would be something that was admissible. The
7 fact that the Codefendant claimed he was owed money from
8 someone selling drugs for him to have not paid him.

9 THE COURT: All right. What defense does that go to?
10 I'm trying to figure out what that would go to.

11 MR. MCCOLLUM: It goes to the, at the very least, and
12 this -- Kenneth Bell is one step removed from it, but it at
13 least goes to some type of intent in terms of the burglary and
14 the armed robbery. Okay?

15 THE COURT: Again though, if he intends to collect a
16 debt, if that's the intent, why do we care what it was for?

17 MR. MCCOLLUM: I think there's some difference if it was,
18 it was lawful debt or an unlawful debt.

19 THE COURT: Well, if it was an unlawful debt, nobody has
20 a right to collect it and then it goes against your defense.
21 Am I right or wrong?

22 MR. MCCOLLUM: If it were -- if it were derived -- it's
23 my -- Your Honor, I understand you have the ability to rule on
24 this. It's the Defense position that that is a relevant part
25 of the crime charged. That's what was really going on.

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1 That's what happened. Therefore, it's relevant. We would
2 submit that it's not unduly prejudicial to the State's case to
3 prove the truth of what happened in the case as part of the
4 reasoning of the case and the res gestae and the true facts of
5 the case, Your Honor. That's the Defense' position.

6 THE COURT: All right. I'm gonna, I'm gonna rule in your
7 favor to the extent that I'm going to limit them from
8 characterizing the debt as stemming from any type of illegal
9 activity or drug, drug transaction. I will not prevent them,
10 however, from testifying to the fact that the purpose, their
11 intent at the time they went over there was to collect a debt;
12 that goes to an element of the crime and I find that that
13 would be admissible if they did go there for the purpose of
14 collecting a debt, not to commit any type of robbery. So I'll
15 allow that to come in, but I find that characterizing it as a
16 debt stemming from a drug transaction, the prejudicial effect
17 of that would outweigh the probative value of that information
18 so I'm excluding it to that extent.

19 MS. LIVESAY: Your Honor, my only concern with that is
20 that once we allow them to go into a debt, my fear is that it
21 is definitely insinuating that he has the right to go in and
22 collect that debt, which that's not a defense. I don't
23 believe you can break into somebody's house and burglarize
24 them and that is essentially ---

25 THE COURT: No, but burglary -- burglary is entering a

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MOTIONS

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1 home with the intent to commit a crime therein. Now, if at
2 the time they entered the home they did not have the intent to
3 commit a crime, that's an element of the offense -- you've got
4 to prove that when they went in, they had the intent to commit
5 a crime therein. So I'm gonna let them put in what their
6 intent was when they went in the place. If they, if they
7 testify, I don't know what evidence they're gonna present, but
8 I'm not gonna exclude it because that goes to one of the
9 elements of the crime. That's what burglary is. I mean, if I
10 go into someone's home for the purpose of drinking lemonade
11 and then later on I commit a crime, that may not be a burglary
12 when I entered without the intent to commit a crime. That's
13 my ruling.

14 Any further motions from the State?

15 MS. LIVESAY: No further motions from us, Your Honor.

16 THE COURT: Defense motions?

17 Ma'am, you need to come forward?

18 MS. KNOWLES: I do, Your Honor.

19 THE COURT: Okay. Come on up.

20 MS. KNOWLES: I'm sorry.

21 THE COURT: That's quite all right.

22 (REPORTER'S NOTE: A bench conference was held off the record
23 in an unrelated case.)

24 THE COURT: Go ahead. Defense motions?

25 MR. MCCOLLUM: Thank you, Your Honor.

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OPENING BY LIVESAY

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1 THE COURT: Any objection from the Defense?

2 MR. MCCOLLUM: No objection from the Defense, Your Honor.

3 THE COURT: All right. Now I told you that the State has
4 the burden of proof in this case and since the State has the
5 burden of proof, they're allowed to go first with their
6 opening statement followed by the Defense. In the
7 presentation of evidence to you, again, the State is allowed
8 to go first again followed by the Defense if the Defense
9 wishes to call any witnesses. And then once the, all the
10 evidence has been put in, the attorneys will again be allowed
11 to address you directly and then at the close of that, I will
12 charge you concerning the law. So we'll go opening
13 statements, evidence, closing statements and charge on the
14 law. So that's the way we'll move through the trial. So at
15 this point in time, I'll allow the attorneys to proceed with
16 their opening comments to you. The State may proceed at this
17 time.

18 MS. LIVESAY: Thank you, Your Honor.

19 OPENING BY MS. LIVESAY:

20 MS. LIVESAY: Ladies and gentlemen of the Jury, I'm Nancy
21 Livesay. I am the prosecutor in this case. I'm the
22 prosecutor for Horry County and Georgetown. You are here
23 today to hear a burglary first, kidnapping, armed robbery,
24 criminal conspiracy and unlawful possession of a weapon during
25 a violent offense. Now, that seems like a lot of charges, so

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OPENING BY LIVESAY

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1 I want to go over just briefly what it takes for me to prove
2 these charges. So when you're listening to the testimony, you
3 can be checking these things off in your minds.

4 Burglary first is just what you would think. It is
5 breaking and entering into someone's home without their
6 permission to commit a crime when you're in possession of a
7 weapon. That's what burglary first is.

8 Kidnapping is exactly what you would think it is.
9 Assuming someone no longer has the right to leave when they
10 want to leave, at that time, they are being kidnapped.
11 Whether they're being held at gunpoint or knifepoint, when
12 they lose that ability to leave when they're ready to leave,
13 at that point, kidnapping has been committed.

14 Armed robbery is exactly what you would think it is. It
15 is when someone takes someone else's items, whether it be a
16 laptop, money, a camera, from their possession at gunpoint or
17 knifepoint. When they are armed with a weapon and they are
18 using that weapon as a way to gain possession over someone
19 else's items.

20 Now criminal conspiracy is what you have when you have
21 multiple people coming together to commit that crime. Now
22 what you're gonna find out very quickly is we only have one
23 Defendant here today to try. But what I want you to know is
24 there are multiple Defendants involved in this incident.
25 Don't bother yourself with what's going on with those other

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OPENING BY LIVESAY

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1 Codefendants. Today is Kenneth Bell's day in Court. Those
2 other people will have their day in Court. This is his day.
3 But there are multiple Codefendants and what you're gonna see
4 is, these Codefendants got together and came up with a plan
5 and committed these incidences and they were armed with a
6 weapon when they did it.

7 Now whether they -- you're gonna find out that Kenneth
8 Bell along with his Codefendants, which are not on trial
9 today, went into a home, an apartment, that belonged to Paul
10 Degruccio and his roommate, Tanner Clark. Now as soon as they
11 busted in the door, they didn't have permission. And then
12 what you're gonna find out is when they busted into that door,
13 they had a handgun. Kenneth Bell had a handgun. And you're
14 gonna find his Codefendant, Chris Bell, had a tire iron.
15 You're also gonna hear from the three witnesses that are in
16 that apartment, Paul Degruccio, Tanner Clark and Erik Meijer.
17 What you're gonna hear is those boys busted into that
18 apartment, they were wearing black hoodies, jeans and a mask.
19 One had a weapon and one had a tire iron. You're gonna find
20 out from these three boys that they busted in.

21 Now one, Tanner Clark, called 911. You're gonna hear
22 that 911 tape. He's in his bedroom as this is going on
23 telling the 911 operator what's going on. And what you're
24 gonna find out from their testimony and that tape is two guys
25 busted in with a handgun, a black-and-silver handgun, and a

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OPENING BY LIVESAY

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1 tire iron wearing masks and black hoodies. That's what you're
2 gonna find out right from the get-go and they came in
3 demanding valuables from Paul Degruccio at gunpoint.

4 Now there's some other evidence you're not gonna hear
5 from these three guys because they didn't notice it yet.
6 Tanner is on the phone with 911. Kenneth Bell and his
7 Codefendant, are taking a laptop and camera and looking at
8 anything that's valuable. Then you're gonna find out Tanner
9 Clark looks out the window. As he's looking out of his
10 window, what does he see? Kenneth Bell and the Codefendant
11 leaving getting in their car. But what else does he see?
12 Natalie Boyd drive up. Now when Natalie Boyd drives up, what
13 does she see? She sees Kenneth Bell and Christopher Bell in a
14 black hoodie and jeans but she actually notices something that
15 these three boys don't that catches her attention. They've
16 got white socks over their shoes in the parking lot.
17 Immediately when she sees this, she tells them to get down on
18 the ground. They're wearing black hoodies, jeans and white
19 socks over their shoes. Get down on the ground.

20 Then you're gonna hear from Natalie Boyd and Officer
21 Cast, who arrive on the scene, who apprehend Kenneth Bell and
22 Christopher Bell and then you're gonna find out what were
23 these boys in possession of. They were in possession of a
24 laptop and a camera that belonged to this victim, Paul
25 Degruccio. What else were they in possession of? A tire

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OPENING BY LIVESAY

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1 iron and semi-automatic weapon that was black-and-silver.

2 That's what you're gonna find out.

3 The police arrived and apprehended the two boys that
4 broke into that apartment right as they were walking out of
5 the apartment with black hoodies, this victim's stuff, a
6 handgun and a tire iron. They're also gonna tell you, well we
7 had to inventory the car. What did you take as evidence?
8 What you're gonna find is they found gloves in the front seat
9 -- no, I'm sorry -- under the vehicle where Christopher Bell
10 got down and then a set of gloves in the backseat along with
11 that semi-automatic weapon. You're not gonna hear anything
12 about fingerprints, which is why defendants wear gloves. It
13 keeps us from being able to gain a fingerprint. And you're
14 gonna learn that it's difficult to get fingerprints and DNA
15 and evidence when they're wearing gloves and they're wearing
16 socks over their shoes and you're gonna find those Defendants
17 were.

18 Now, how do we know there was a criminal conspiracy?
19 Here's how we know. Those boys rode there together. They
20 already knew what was gonna happen and we already know they
21 knew what was gonna happen because they already had a weapon,
22 not just a weapon, a loaded weapon. They had four in the
23 magazine and one live round in the chamber. They had socks
24 over their shoes when they went in there. They had on black
25 hoodies and they had on masks. This was not a spur-of-the-

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OPENING BY MCCOLLUM

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1 moment let's break into an apartment. This was a planned out,
2 I'm wearing gloves, I'm wearing a black hoodie, I'm covering
3 my shoes, I'm covering my face; that's what this crime was.
4 And you're gonna hear the testimony from the three boys that
5 were in the apartment. Then you're gonna hear the evidence
6 from the officers including Natalie Boyd that rolled up when
7 that Defendant was walking out of that apartment.

8 I'm gonna come to you at the end of all the evidence and
9 go back over exactly what burglary is, what kidnapping is,
10 what armed robbery is and what criminal conspiracy is. And
11 I'm gonna submit to you that once you hear all the evidence,
12 there's not gonna be a doubt in your mind that Kenneth Bell
13 broke into that victim's house with a semi-automatic weapon, a
14 mask over his face, a black hoodie, and socks over his shoes
15 and gloves on his hands.

16 Thank you for your time.

17 THE COURT: For the Defense, you may proceed.

18 MR. MCCOLLUM: May it please the Court?

19 THE COURT: Yes, sir.

20 OPENING BY MR. MCCOLLUM:

21 MR. MCCOLLUM: Ladies and gentlemen, I introduced myself
22 to you earlier. I'm Greg McCollum. I'm a lawyer. I practice
23 here in town and today I have the opportunity and duty of
24 defending Kenneth Bell, who is that young man who sits right
25 over there.

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OPENING BY MCCOLLUM

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1 And this, you have already discovered and learned that
2 the charges in this case are as serious as they can be. They
3 are serious felonies, multiple felonies, where he's accused of
4 doing something in the course of a few minutes that will
5 change his life for decades to come. It's a very sad and
6 disturbing tale and one of the things that you were asked as
7 part of your jury selection is if any of you had raised
8 children to teenage years or adulthood because it's striking
9 for parents who raise good children to sometimes raise
10 children who don't turn out good, that somebody could be
11 involved in something that just causes disbelief, that you
12 could not believe that the child that you had personally
13 raised could get involved with another relative and that
14 person's girlfriend and others who could drag them down to
15 places so low. And what I want you to consider here is that
16 when somebody commits a crime versus merely being present or
17 when somebody harms somebody by accident, the important part
18 that you look at under the law -- and His Honor, will tell you
19 this as we go through the trial and at the end of the trial
20 specifically he'll give you what is known as jury
21 instructions. Criminal acts are done with the intent to
22 commit the crime. In other words, if someone unlawfully
23 enters somebody else's dwelling or residence, for it to be a
24 burglary, they do so if they have the intent of committing a
25 crime. Now, in the old days, not really that old, but a few

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OPENING BY MCCOLLUM

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1 years ago, a burglary was intent -- entering a dwelling at
2 night in an attempt to steal. It's been changed and modified
3 and now it's entering a dwelling with intent to commit a crime
4 and then there are other factors which would cause it to be
5 elevated to a burglary in the first degree, which is the most
6 serious type of burglary there is. It's as serious a felony
7 as you can have.

8 The crime of armed robbery is robbing somebody. And
9 robbing somebody consists of two things -- it's assault. In
10 other words, you threaten somebody and then you commit larceny
11 by taking property from them that you intend to keep and
12 deprive them of it.

13 Kidnapping is when you just as you would think, when you
14 confine somebody, kidnap them, hold them against their will.

15 Now, if a person is merely present when a crime is
16 committed, the person is not guilty. The way you determine
17 what somebody's doing or what somebody's up to is their state
18 of mind and their intent. What did they intend to do? Why
19 were they present? What were they up to? What was their
20 purpose for being there? Was it their intention to go there
21 to take property? Was it their intention to go there and rob
22 someone or not?

23 Now you've been here I guess most of the day. And I know
24 that it's taken some time for this case to start and I want to
25 take this time to thank you for being here. And I know and

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1 everyone knows and the prosecutor knows and the Judge, that no
2 one volunteered to be here today, that nobody liked the idea
3 of coming here today, that probably nobody wanted to be picked
4 on a jury. We also know that you're being held here against
5 your will, okay, and that you have to perform that service.
6 And I just want you to know that we, me and Mr. Bell, his
7 mother is seated there, Wendy Jaworski, and his brother, Buddy
8 Bell, along with my assistant, Cathy, we're all very grateful
9 and I mean that sincerely. We're very grateful that you have
10 the opportunity here and the willingness to listen to the case
11 and listen to the evidence.

12 Now in this case, what you find is that two people as Ms.
13 Livesay stated, are not on trial here and for several reasons,
14 I wish that they were. Christopher Bell, who's the brother of
15 Kenneth Bell, is not here and I wish he were. And Tonie Ann
16 Pasquale, if I'm saying that correctly, Christopher Bell's
17 girlfriend, I believe, she's not here and I wish they were.

18 Now, I ask you to, to listen carefully, listen to the
19 evidence, which I know that you will. Listen to the points
20 that are being made in the case and I warn you that some of
21 the evidence that you're gonna hear is, is going to be
22 disturbing at some point. There's no question about that.
23 And I ask you to keep an open mind, focus on the issue that we
24 were gonna focus on.

25 And again, I thank you. I appreciate your service here

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1 very much and I ask you to just carefully listen to the
2 evidence in the case. And at the close of the case, I will
3 come back to you and ask you for verdicts of not guilty of
4 burglary in the first degree, not guilty of armed robbery and
5 not guilty of kidnapping.

6 Thank you.

7 THE COURT: All right. Ladies and gentlemen, that
8 completes the opening arguments made by Counsel. There are
9 some matters that we do have to get straightened out before we
10 actually begin the testimony in this case. So I'm going to
11 release you for the remainder of the afternoon, ask that you
12 be back in the jury room by 9:30 in the morning. At that
13 point in time, we should be in a position to resume the case.

14 The same instructions I gave you when you left earlier, I
15 will give them to you every time you step out of the
16 courthouse. Don't attempt to gather any information on your
17 own. Do not discuss the case with anyone and do not allow
18 anyone to discuss the case with you. Don't listen to, watch
19 or read media reports concerning this case.

20 I hope you have a great evening and the Bailiff will tell
21 you where to report -- they're gonna report back down to the
22 assembly room downstairs in the morning so you want be coming
23 to the jury room. Bailiff will explain that to you, you need
24 to go back to the assembly room in the morning and then you
25 will be brought up here once we're ready for you.

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MARTHA CARMICHAEL - CROSS BY MCCOLLUM

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1 Q: Okay. And do you know where is today?

2 A: Probably home asleep. She worked last night.

3 Q: Okay. Thank you, that's all I have, Your Honor.

4 THE COURT: Anything further from the witness?

5 MS. LIVESAY: No, sir, Your Honor.

6 THE COURT: Ma'am. You may step down.

7 Do you wish to excuse the witness?

8 MS. LIVESAY: Yes, sir.

9 THE COURT: Any objection to her being excused?

10 MR. MCCOLLUM: No objection, Your Honor.

11 THE COURT: Ma'am, you may step down and you're free to
12 go. Thank you very much.

13 A: Thank you.

14 THE COURT: You may call your next witness.

15 MS. LIVESAY: Your Honor, at this time, the State calls
16 Tanner Clark to the stand?

17 THE COURT: Come forward and be sworn, sir.

18 CHRISTOPHER TANNER CLARK, HAVING
19 BEEN SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated.

21 THE COURT: Sir, have a seat on the stand and once you're
22 comfortable, state your name please.

23 MR. CLARK: Christopher Tanner Clark.

24 THE COURT: Counselor, your witness.

25 MS. LIVESAY: Thank you, Your Honor.

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 DIRECT EXAMINATION OF CHRISTOPHER TANNER CLARK BY MS. LIVESAY:

2 Q: If you don't mind, tell the Jury how old you are?

3 A: I'm twenty-five.

4 Q: And tell them, are you currently working?

5 A: Yes.

6 Q: Where are you working?

7 A: I work at Hamburger Joe's in Surfside Beach.

8 Q: Okay. And where did you live on or around February the
9 2nd of this year?

10 A: [REDACTED] Apartment F where I'm still currently
11 residing.

12 Q: And did you have any roommates at the time?

13 A: Yes.

14 Q: Okay. And who were your roommates?

15 A: Paul Degruccio and another roommate who was asleep, his
16 name is Scott McDonald. He had no idea that anything was
17 going or happened.

18 Q: Okay. And about how long had you lived there?

19 A: It's been about -- well, at that time, it was about a
20 year.

21 Q: Okay. And if you don't mind, tell the Jury how many
22 bedrooms or bathrooms were in the apartment?

23 A: There was three bedrooms and two baths.

24 Q: Okay. And was this an upstairs apartment or on the first
25 floor?

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 A: It's a second-floor apartment.

2 Q: Okay. So you had to go the steps to get into your
3 apartment door?

4 A: Yes, ma'am.

5 Q: And do you remember what happened on February 2nd of this
6 year?

7 A: Yes, I remember everything.

8 Q: And did you have an occasion to call 911?

9 A: Yes.

10 Q: Okay. (To the Court) Can I approach the witness?

11 THE COURT: You may.

12 MS LIVESAY: Thank you, Your Honor.

13 BY MS. LIVESAY:

14 Q: I'm showing you, Mr. Clark, what's been marked as State's
15 Evidence Number One. Do you recognize what I'm showing you?

16 A: Yes, ma'am.

17 Q: And what is that, tell the Jury.

18 A: It's the, the recording of the 911 call that I made on
19 February 2nd.

20 Q: Okay. And if you don't mind, tell the Jury exactly when
21 you called 911?

22 A: I'm not exactly sure what time it was. During the day,
23 February 2nd middle of the day. I'm not sure exactly what
24 time it was, but ---

25 Q: Okay. And what caused you to call 911?

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 A: I heard a commotion out in leaving room, so I just. -- I
2 poked my head out and immediately saw two guys coming in. I
3 saw one with a gun. The other guy was kind of standing behind
4 him to where I couldn't see. Both of them had black, black on
5 and blue jeans and I immediately shut my door and called 911.

6 Q: Okay. So as soon as two guys busted in, you shut your
7 door and called 911?

8 A: Yes, ma'am.

9 Q: Was your door locked at that time?

10 A: I don't believe so. My bedroom door was locked. The
11 front door was not locked.

12 Q: Okay. And if you don't mind, tell the Jury how you felt
13 when you called 911?

14 A: Well, I saw two guys coming into my house, one with a gun,
15 and I was terrified. I had no idea what to do but to call
16 911. But yeah, I was very, very scared.

17 Q: And tell the Jury what were you telling the 911
18 dispatcher?

19 A: I basically told her it was a play-by-play of what was
20 happening, what I could hear and what I saw, like immediately
21 like when they came in. But I told her, you know, there's two
22 guys in my house. They just busted in. One with a gun that I
23 saw. I saw them put the gun to my roommate's face and tell
24 him to sit down in the chair. And then I heard, I heard them
25 take Paul back to his room and arguing with him in his room.

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 Other than that, I didn't see anything. I just heard
2 everything going on.

3 Q: And when did the call end from 911? When did you hang up
4 the phone?

5 A: It wasn't until after the police arrived and I saw them
6 through my window, like telling them to get on the ground and
7 everything like that.

8 Q: So you hung that phone up when you saw the police arrest
9 the two guys that were in your apartment?

10 A: Yes, ma'am.

11 Q: Okay. And you made the call when they busted into the
12 apartment?

13 A: Yes, ma'am.

14 Q: So just so I'm clear and the Jury's clear, you're talking
15 to the dispatcher as this is going on?

16 A: Yes, ma'am.

17 Q: Okay. And are you relaying to the dispatcher what's
18 happening while these two guys or in the apartment?

19 A: Yes, ma'am.

20 Q: Have you heard that tape this morning?

21 A: Yes, ma'am.

22 Q: Okay. Has anything you told that dispatcher been altered
23 or redacted in any way?

24 A: Other than what the, the Judge had redacted, no,
25 everything is ---

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 Q: So everything you said to that caller is on that tape?

2 A: Yes, ma'am.

3 MS. LIVESAY: Your Honor, at this time, I wish to play
4 State's Evidence Number One for the Jury.

5 THE COURT: Any objection?

6 MR. MCCOLLUM: None, just the same objection.

7 THE COURT: All right. Your objection continues, I will
8 allow you to publish that exhibit.

9 MS. LIVESAY: Thank you, Your Honor.

10 THE COURT: It's already in evidence. I don't have to
11 admit it. And to be clear, that's marked as State's Number
12 One and Court's Number Two; is that correct?

13 MS. LIVESAY: I think this is State's evidence Number
14 One, Your Honor.

15 THE COURT: Number One. Okay. Then I will admit State's
16 Evidence Number One, I've admitted the Court's -- and that's
17 subject to your prior objection, Mr. McCollum.

18 MS. LIVESAY: Thank you.

19 THE COURT: Before you start that, I'd asked the
20 attorneys to approach the bench briefly.

21 MS. LIVESAY: Your Honor, you want me to wait one second
22 before I play it?

23 THE COURT: Yes, please. Thank you.

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of the Jury but out of hearing of the Jury.)

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1 THE COURT: Ms. Livesay, you may publish to the Jury.

2 MS. LIVESAY: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 *****OFF THE RECORD*****

5 (REPORTER'S NOTE: State's Exhibit Number played for the Jury.

6 Recording not transcribed herein.)

7 (On the Record.)

8 BY MS. LIVESAY:

9 Q: Mr. Clark, is that your call to 911?

10 A: Yes, ma'am.

11 Q: And is that your voice on the tape?

12 A: Yes, ma'am.

13 Q: And is that you relaying what was going on at that time?

14 A: Yes.

15 Q: Now if you don't mind, I would like to go back to that

16 date, which was February the 2nd of this year. Tell the Jury

17 who all was in that apartment that day?

18 A: Erik Meijer was in the living room with his computer. We

19 were all playing video games; it was Erik in the living room,

20 me in my room and Paul Degruccio in his room and Scott

21 McDonald was in his room asleep and had no idea this was going

22 on.

23 Q: Okay. And to your recollection, what were y'all doing in

24 the apartment that day?

25 A: We were all playing video games and linked up together.

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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- 1 Q: Okay. And who lived in the apartment at that time?
- 2 A: Me, Paul and Scott.
- 3 Q: And is Paul here today?
- 4 A: Yes, he is.
- 5 Q: Okay. And is -- can you point him out to the Jury?
- 6 A: Right there with the glasses behind you.
- 7 Q: And he was one of your roommates at the time?
- 8 A: Yes.
- 9 Q: Okay. Now what happened that day to cause you to stick
- 10 your head out of your bedroom?
- 11 A: I heard a commotion in the living room and just naturally
- 12 was wondering what was going on. So I just opened my door
- 13 slightly, poked my head out and saw that was going on.
- 14 Q: Okay. And to your -- did you have a weapon in your
- 15 bedroom at that time?
- 16 A: No, ma'am.
- 17 Q: To your knowledge, was there a weapon anywhere in that
- 18 apartment you lived?
- 19 A: No, ma'am, other than in their hands.
- 20 Q: Okay. So you hear a commotion, you stick your head out
- 21 the door, but you, do you ever completely come out of the
- 22 room?
- 23 A: No, ma'am.
- 24 Q: Okay. And then you immediately go back into the room; is
- 25 that right?

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CHRISTOPHER TANNER CLARK - DIRECT BY LIVESAY

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1 A: Correct.

2 Q: Okay. Now describe the guys you saw that came into the
3 apartment?

4 A: I saw a black hoodie, blue jeans and a gun and, and that
5 was pretty much it before I closed my door and locked it.

6 Q: Could you see their face?

7 A: No, I could not.

8 Q: Okay. Could you tell if they were white or black or
9 Hispanic?

10 A: I couldn't tell if they were white; I think their necks
11 and both hands and everything.

12 Q: Now had you invited anybody over?

13 A: No, ma'am.

14 Q: Okay. And when they came in, at what point did you see
15 the gun?

16 A: As soon as I, as soon as I looked out my door, they were
17 like walking in the front door and he had the gun to his side
18 and then I saw him like pull it up to my roommate's head and
19 tell him to sit down in the chair and that's as soon as I
20 closed my door. That was happening while I was closing my
21 door.

22 Q: Okay. Show the Jury how he was holding the gun?

23 A: He walked in the house and he had the gun like here and my
24 room is to the left of me and he's, our front door is facing
25 this way and then you go down the hallway and I see the gun

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1 right here in his left hand.

2 Q: Did you ever see him point the gun?

3 A: Yes.

4 Q: Okay. And how did he point the gun?

5 A: In my roommate's face, just straight up and told him to
6 sit down in the chair kind of like motion and pushed him back
7 into the chair, didn't really touch him or anything.

8 Q: Okay. And could you describe the gun?

9 A: It was black-and-silver and that was all that I saw the
10 brief second that I saw it.

11 Q: Okay. Let me ask you, when he came in and you saw that
12 gun, did you feel like you were free to leave?

13 A: No, not at all.

14 Q: Okay. Did it appear to you when you stuck your head out
15 that those people had permission to come into the house?

16 A: No, not at all.

17 Q: Now, did you hear the two guys with the black hoodies, the
18 two Defendants, did you hear their voices?

19 A: I did.

20 Q: Okay. Could you recognize either one of their voices?

21 A: Possibly, like in that situation, I was more focused on
22 talking to the 911 operator and trying to get the cops there
23 and that's what I was focused on, but I did hear, at one
24 point, somebody say we got a gun, Kenny or let's go, Kenny.

25 Q: So you could, could you decipher the two Defendants'

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1 voices from the voices of your roommate and the friend that
2 was over there?

3 A: Yes, most definitely, yes.

4 Q: Okay. So you could definitely tell who's saying what?

5 A: Right. Correct.

6 Q: Now, on the 911 tape, just so I understand, you say one of
7 the boys yells out, Kenny?

8 A: Correct.

9 Q: Okay. Could you decipher whether or not that was your
10 roommate's voice or a friend's voice?

11 A: Yes, I could.

12 Q: Okay. Was that a, was that the Defendants' voice or was
13 that your roommate's voice that called out Kenny?

14 A: It was not my roommate's voice. I heard, We need to go,
15 Kenny or let's go Kenny, something of that sort.

16 Q: Okay. Now, tell the Jury exactly, they come into the
17 house; what do you hear go on at that point?

18 A: Well, I hear them come in, I hear a commotion out in the
19 living room, I hear arguments from Paul and them and then
20 that's after they go back into the room and I just hear Paul
21 arguing with them like -- but really like what, you know,
22 what's like, why are you doing this, something like that; he's
23 just arguing with them and, and I'm on the phone with the 911
24 operator the whole time.

25 Q: Okay. Now the Defendant sitting at that table, Kenneth

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1 Bell, do you know him?

2 A: No.

3 Q: Okay. So you have no idea who he is?

4 A: No, ma'am.

5 Q: Okay.

6 A: Other than through this case -- before, before February
7 2nd, I had no idea who he was.

8 Q: So you definitely did not invite them to your house?

9 A: Definitely not.

10 Q: Okay. Now when you're on the 911 tape, you are relaying
11 basically everything that happens from the time they bust in
12 until the time the cops arrest them?

13 A: Yes, ma'am.

14 Q: And then you end the call; is that correct?

15 A: Correct.

16 MS. LIVESAY: Can you mark these for me please? Thank
17 you.

18 Your Honor, can I approach the witness?

19 THE COURT: You may.

20 MS. LIVESAY: Thank you.

21 BY MS. LIVESAY:

22 Q: Mr. Clark, I'm showing you what's been marked State's
23 Exhibit Number Two; do you recognize that?

24 A: Yes, it's my apartment building.

25 Q: Okay. And is that a fair and accurate depiction of what

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1 it looks like?

2 A: Yes.

3 Q: And is that a picture of the building you were living on
4 February 2nd, 2013?

5 A: Yes, it is.

6 MS. LIVESAY: Your Honor, at this time, the State wishes
7 to place into evidence State's Exhibit Number Two?

8 THE COURT: Any objection?

9 MR. MCCOLLUM: That's the exterior, Your Honor?

10 THE COURT: It is.

11 MR. MCCOLLUM: I don't have any objection to either
12 photograph.

13 THE COURT: All right. You want to go ahead and put the
14 other one in then?

15 MS. LIVESAY: Thank you, Your Honor. At this time, I'll
16 publish it to the Jury?

17 THE COURT: All right. I'll admit that's Two and Three;
18 is that what you're doing?

19 MS. LIVESAY: Two and Three, yes, sir, Your Honor.

20 THE COURT: All right. He said he had no objection to
21 either, so I'll admit them both as State's Exhibits and then
22 you may publish.

23 MS. LIVESAY: Thank you.

24 THE COURT: Thank you.

25 STATE'S EXHIBIT TWO AND THREE

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ADMITTED INTO EVIDENCE

BY MS. LIVESAY:

Q: And for the Jury, State's Evidence Number Three, what is that a picture of?

A: That's looking down my hallway of my apartment building.

Q: Okay. And is that a fair and accurate depiction of what it looked like February the 2nd?

A: Yes.

Q: Now is this your apartment here?

A: Yes, it is.

Q: Which window is showing your apartment?

A: This one right here is the foyer area; the door is right behind that where they came in.

Q: Okay. And what window were you looking out?

A: It's not shown on this picture. It's over here to the right, my bedroom window.

Q: Okay. And is that looking out to the parking lot?

A: Yes, ma'am.

MS. LIVESAY: Your Honor, can I ask him to step down?

THE COURT: Yes, you may step down so you can indicate on the photos as you're testifying.

BY MS. LIVESAY:

Q: We're showing the Jury State's Evidence Number Three. Now tell the Jury what that's a picture of?

A: It's a picture of, looking down the hallway at my

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1 apartment building from the ---

2 THE COURT: Sir, I'm gonna get you to speak up. You're
3 not facing us and she has to take down everything you say. So
4 please speak up.

5 COURT REPORTER: Nancy, can you put him ---

6 A: It's a picture of my apartment building looking down my
7 hallway from the living room.

8 BY MS. LIVESAY:

9 Q: Okay. And is this showing all the doors to the bedrooms
10 in your apartment?

11 A: Yes, it is.

12 Q: Okay. And if you don't mind, point out to the Jury which
13 door is your, your bedroom?

14 A: It's the first one on the right right here.

15 Q: Okay. And which door leads to Paul Degruccio's room?

16 A: It's the second door on the right. You can just see the
17 door jamb right there.

18 Q: Okay. So his room, am I correct, is basically right
19 across the hall?

20 A: It's not right across the hall; it's right next to my
21 room.

22 Q: Right next to your room?

23 A: Yeah.

24 Q: Okay. So it's your room and then his room is directly
25 next door?

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1 A: Correct.

2 Q: Okay. And if you don't mind, I'm showing you State's
3 Evidence Number Two. If you don't mind, tell the Jury what
4 that's a picture of?

5 A: It's a picture of the, the breezeway walking up into my
6 apartment building.

7 Q: Okay. And is the parking lot in front of these two
8 windows?

9 A: Yes, it is.

10 Q: Okay. Now does your bedroom window face the parking lot
11 like these windows?

12 A: It does, yes.

13 Q: Okay. And can you see people coming from these steps into
14 the parking lot from your bedroom window?

15 A: Yes, you can.

16 MS. LIVESAY: Your Honor, at this time, I'd ask the
17 witness to have a seat back in the witness stand.

18 THE COURT: Sir, you can have a seat back in the witness
19 stand. Thank you.

20 BY MS. LIVESAY:

21 Q: So if your room is right beside Paul's room in the
22 apartment building, you didn't have any trouble hearing what
23 was going on in that bedroom?

24 A: Correct.

25 Q: Okay. And your bedroom window faces out into that parking

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1 lot; is that correct?

2 A: Yes, ma'am.

3 Q: Okay. Now describe the car to the Jury that you saw the
4 two Defendants walking to.

5 A: It was red Mitsubishi Galant, I believe, or ---

6 Q: Okay.

7 A: --- just a red Mitsubishi newer model car.

8 Q: Okay. And the two guys that you saw Ms. Boyd arrest,
9 where were they arrested?

10 A: Right near the car. I saw her get them or tell them to
11 get on the ground right near the car.

12 Q: Okay. Now were the guys that you saw in that apartment
13 the same guys that you saw Ms. Boyd arrest?

14 A: Yes, ma'am.

15 Q: Had you ever seen that red Mitsubishi before that day?

16 A: No, never.

17 Q: Okay. Was that a car that you, so you never saw that car
18 in that parking lot ever before that day?

19 A: No, ma'am.

20 MS. LIVESAY: No further questions, Your Honor.

21 THE COURT: Your witness, Mr. McCollum.

22 MR. MCCOLLUM: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MCCOLLUM: May it please the Court?

25 THE COURT: Yes, sir.

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1 CROSS EXAMINATION OF CHRISTOPHER TANNER CLARK BY MR. MCCOLLUM:

2 Q: Good morning, Mr. Clark.

3 A: Good morning.

4 Q: You go by Tanner?

5 A: Yes, sir.

6 Q: Okay. Now on this particular day, you said that you were,
7 you were in your bedroom, right?

8 A: Correct.

9 Q: And Paul Degruccio was in his bedroom?

10 A: Correct.

11 Q: Correct. And that Scott McDonald, is that is name?

12 A: Yes.

13 Q: He was in his bedroom?

14 A: Correct.

15 Q: And then Erik Meijer was in the living room?

16 A: Correct.

17 Q: And Scott McDonald, to your knowledge, was sleeping?

18 A: Correct.

19 Q: Was his door open or closed or do you know?

20 A: It was closed.

21 Q: All right. And Paul Degruccio, was his, his door, was his
22 bedroom door open or closed?

23 A: It was open.

24 Q: And your bedroom door was closed or open prior to the
25 individuals coming into the apartment?

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1 A: It was closed before. I was trying to activate my cell
2 phone and I heard commotion and then I opened it and saw what
3 was going on and closed it and locked it.

4 Q: So the three of you, Erik Meijer, Paul Degruccio and you,
5 were playing a video game where you were linked to each other?

6 A: Correct.

7 Q: And you were doing that with your door, your bedroom door
8 closed?

9 A: Well, it's wireless internet.

10 Q: Okay. But you had your door closed while you were doing
11 that?

12 A: Well, I was -- actually, at the time I was activating my
13 cell phone. We had all just gotten on group something or Erik
14 had just gotten there and we were getting all set up and
15 everything.

16 Q: But you weren't in your room with the door locked while
17 you were playing your video game?

18 A: No. No, I just closed my door so I could talk to the lady
19 to activate my cell phone.

20 Q: All right. So activating your cell phone, that didn't
21 have anything to do with playing a video game, right?

22 A: No.

23 Q: And was, did anyone ever threaten you?

24 A: No, sir.

25 Q: Did anyone ever show you or point a gun at you?

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- 1 A: No, sir.
- 2 Q: Did anybody take any property from you?
- 3 A: No, sir.
- 4 Q: Did you have valuables there that day?
- 5 A: Yes, sir.
- 6 Q: You had, you had a television in your bedroom?
- 7 A: Correct.
- 8 Q: A flat screen?
- 9 A: Correct.
- 10 Q: You had your, your computer?
- 11 A: Correct.
- 12 Q: Did you have a smart phone?
- 13 A: Yes.
- 14 Q: An iPhone?
- 15 A: No, it's an Android.
- 16 Q: It's valuable?
- 17 A: Yes.
- 18 Q: Did you have any, any, any gold or any jewelry?
- 19 A: No, sir.
- 20 Q: Did you have any money?
- 21 A: No, sir.
- 22 Q: Zero?
- 23 A: Just, I just had my card on me, my bankcard. I usually
- 24 don't carry cash.
- 25 Q: Okay. But you had your bankcard?

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- 1 A: Yes, sir.
- 2 Q: Do you have a credit card?
- 3 A: No, sir.
- 4 Q: Okay. And during this incident, no one attempted to come
5 into your room, correct?
- 6 A: Correct.
- 7 Q: And no one even tried the lock, no one even jiggled the
8 door handle, right?
- 9 A: Correct.
- 10 Q: And no one -- well let's -- Scott McDonald was, is in his
11 room asleep?
- 12 A: Correct.
- 13 Q: Had he worked the night before?
- 14 A: I'm sure, yes.
- 15 Q: Do you know where he works?
- 16 A: He works with a -- well, he's actually worked at a couple
17 of different places in the past like year, so he's actually
18 moving to a new shop up in North Myrtle Beach.
- 19 Q: Does Scott McDonald, does he have valuables in his room?
- 20 A: Yes.
- 21 Q: Does he have a television?
- 22 A: Yes.
- 23 Q: Does he have a computer?
- 24 A: Yes.
- 25 Q: Does he have a smart phone?

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- 1 A: Yes.
- 2 Q: Did he have any money to your knowledge?
- 3 A: Not that I know of.
- 4 Q: During this time, while he was in the room sleeping, did
- 5 anyone, to your knowledge, try to enter his room?
- 6 A: I don't know; I wasn't out to see anything.
- 7 Q: After the police arrived, did Scott McDonald wake up then?
- 8 A: Yes, sir.
- 9 Q: Did you wake him up?
- 10 A: I was knocking on his door and he came out, you know, like
- 11 what's going on.
- 12 Q: So after the police were called, you went and knocked on
- 13 his door to wake him up?
- 14 A: After they had arrested them.
- 15 Q: And did you have to knock loudly to wake him up?
- 16 A: I probably was because I was so flustered and scared.
- 17 Q: Okay. Now Erik Meijer, am I saying that correctly?
- 18 A: Yes.
- 19 Q: Erik Meijer was seated in the living room or, or I'll call
- 20 it the living room; what do you call it?
- 21 A: The living room.
- 22 Q: And there's, there's one living room in the apartment?
- 23 A: Correct.
- 24 Q: Is that connected to the kitchen?
- 25 A: Yes.

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- 1 Q: All right. And Erik Meijer was seated in the living room,
2 correct?
3 A: Correct.
4 Q: And he was playing video games on his computer, right?
5 A: I'm not sure if he was actually playing the game or if we
6 were all just getting set up at that point.
7 Q: To your knowledge, did anybody take anything from Erik
8 Meijer?
9 A: No, sir.
10 Q: No one took anything from Erik Meijer?
11 A: No, sir.
12 Q: Okay. And Erik Meijer, does he have, there are four
13 people in the apartment, right?
14 A: Correct.
15 Q: Does Erik Meijer, does he live there?
16 A: No, he does not.
17 Q: Okay. So he doesn't have a room there?
18 A: Correct.
19 Q: Whatever valuables he had, he would have just had with him
20 there?
21 A: Right.
22 Q: Okay. And you own a car, right?
23 A: Yes, sir.
24 Q: And you had your car keys there, correct?
25 A: Yes, sir.

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1 Q: And Erik Meijer owns a car, right?

2 A: Yes, he didn't at the time though.

3 Q: At the time, he didn't?

4 A: Correct.

5 Q: And then same for Scott McDonald, he had a car and car
6 keys, right?

7 A: No.

8 Q: He did not?

9 A: I'm the only one with a car in the apartment.

10 Q: Okay. Thank you. Now you described the incident, now
11 when the individuals you say came into the apartment, you did
12 not see them come in, correct?

13 A: I did see them come in -- well, I -- I heard the door open
14 and saw them, I immediately opened my door and saw them
15 walking in.

16 Q: Okay. And how far away were you from the doorway when you
17 saw that?

18 A: Probably from my, from the living room to my room is
19 probably twenty feet.

20 Q: All right. If I want -- what I would like to do is I
21 would like to back up and, you may not know exactly, but to
22 give us an idea how far you were in your, the bedroom doorway,
23 your bedroom doorway to the front door when you saw the
24 individuals come in?

25 A: About right where you are right now.

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1 Q: And you would describe that as about twenty feet?

2 A: Yeah, I guess.

3 Q: Now at the time that you look out your bedroom door, this
4 was, what time of day was it?

5 A: Middle of, middle of the afternoon.

6 Q: So it was -- the sun was shining?

7 A: Correct.

8 Q: And if you're in your, and you -- how long have you been
9 in that apartment? Prior to February of 2013, how long had
10 you lived there?

11 A: About a year.

12 Q: About a year. Okay. So when you're in that apartment
13 during the daytime, is it an apartment that's dark and you
14 have turn on lights or is it well illuminated by the daylight?

15 A: It's pretty well lit.

16 Q: Okay. And when you put your head outside of the door,
17 your doorway, your bedroom door, how much of your head was,
18 was looking down the hallway; in other words, did you just
19 peep a little bit like this or did you, did you stick your
20 head out so that the upper part of your body was exposed?

21 A: Probably just my head but I did stick my head out the
22 door.

23 Q: All right. When you did that, did your eyes meet the eyes
24 of anyone else?

25 A: No.

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1 Q: All right. And you, and at that time, when you saw the
2 two individuals, where, if you know, was Paul Degruccio?

3 A: He was at the door looking out the window and they came in
4 right behind him.

5 Q: Okay. So he was at -- and there's only one door, right?

6 A: Correct.

7 Q: There's only one exit door to the apartment?

8 A: Correct.

9 Q: And that exit door opens onto a landing, a second-story
10 landing, right?

11 A: Correct.

12 Q: When you say he was looking out the window, is there a
13 window in the door?

14 A: No, just the window of the foyer area.

15 Q: All right. I'm gonna hand you State's Exhibit Number
16 Three. Now is that, that's a picture of the door, correct?

17 A: No, this is a picture of the hallway down to the bedrooms.

18 Q: So this doesn't show your doorway?

19 A: No.

20 Q: Okay. Thank you. So this is, this would be the view that
21 once someone entered the apartment, they would be looking down
22 towards your bedroom?

23 A: Correct.

24 Q: And your bedroom, if I do this right. If you're standing
25 here, if I'm standing here and that's my view and I'm looking

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1 down the hallway, your bedroom door would be on my right?

2 A: No, my bedroom door is on your -- let's see -- it's on
3 your left right now from in that picture. But if you're
4 looking down the hallway facing the way that picture is taken,
5 it's on your right-hand side.

6 Q: All right. And I know you testified to this, but if, if a
7 person is standing here with the, the entryway door to my
8 back, okay -- in other words, if I had just walked in the
9 entryway door and was coming down this hallway or in the
10 living room rather, and I was looking down toward your
11 bedroom, your door would be on my left?

12 A: On the right-hand side; the first door on the right.

13 Q: On the right; okay. Thank you. Now the window that the,
14 the doorway where you come into your apartment, does it have
15 those side windows, those side lights?

16 A: No, sir.

17 Q: Does the doorway have a window in it? You described a
18 window in the foyer?

19 A: Correct. You see the window in that picture right there
20 looking out above the parking lot.

21 Q: So looking at State's Exhibit Number Two, this is a --
22 there's a window next to the doorway on the first floor,
23 right?

24 A: Correct.

25 Q: Does your doorway -- is it built the same way on the

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1 second floor?

2 A: No, it's not.

3 Q: Okay. Can you just show me in, in the picture there where
4 the foyer window is?

5 A: Right here.

6 Q: So is that, so that second story window right there?

7 A: Correct.

8 Q: Okay. So if someone's looking out that window, they
9 wouldn't necessarily see somebody coming at the door, right?

10 A: Right, yeah, the door is behind, you know, if you're
11 looking out the window ---

12 Q: All right.

13 A: --- then you can't see coming up the stairs or anything.

14 Q: And can you -- with the Court's permission?

15 THE COURT: Yes, sir.

16 BY MR. MCCOLLUM:

17 Q: Can you demonstrate how you describe the person holding
18 the gun toward Paul Degruccio?

19 THE COURT: You may stand up, whatever you need to do to
20 demonstrate; he asked you to demonstrate.

21 MR. MCCOLLUM: Thank you, Your Honor.

22 A: What I saw was when they came into the house, I
23 immediately, the gun was to his left side and then he held the
24 gun up and said, you know, sit down or move back this way,
25 just motioned him like back this way and that's the last I

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1 saw. I closed the, closed the door to my room and locked it.

2 BY MR. MCCOLLUM:

3 Q: Okay. Thank you. Please be seated. So, are you right-
4 handed or left-handed?

5 A: Left or right handed.

6 Q: So the person that was holding the weapon, the firearm,
7 you say it was in that individual's left hand?

8 A: I believe so.

9 Q: You testified to it twice. Is it -- is that wrong?

10 MS. LIVESAY: Your Honor, I think he testified to how the
11 gun was being held. I don't think he ever testified as to
12 which hand the gun was in.

13 THE COURT: Is that an objection? Is there something for
14 me to rule on there?

15 MS. LIVESAY: I'm just objecting to the question being
16 asked if the question is which hand is being held in and I'm
17 fine with that, but the question ---

18 THE COURT: He's on cross examination. I'll allow him to
19 ask questions and you can redirect if you think there's
20 something that needs to be cleared up that's been brought out
21 on cross. You may proceed Mr. McCollum.

22 MR. MCCOLLUM: Thank you, Your Honor.

23 BY MR. MCCOLLUM:

24 Q: So your testimony is that whoever held the gun, held the
25 gun in his left hand, correct?

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1 A: I believe so, yeah, because of the way that they were
2 facing when they walked in the door, that was the first thing,
3 I saw. I don't know if like my eye just caught the silver of
4 the gun and that's, you know, but at that time, I was very
5 flustered, like wanting, you know ---

6 Q: And the person that you said was holding the gun, was that
7 person standing next to the other person in the black hoodie,
8 standing -- Well, let me just, let me rephrase that, I'm
9 sorry. Were the two individuals that entered the apartment,
10 were they standing one in front of the other?

11 A: They were standing side by side when they entered.

12 Q: Side by side?

13 A: Correct.

14 Q: Okay. And the individual that you said was holding the
15 gun was standing -- as you faced him, was he standing to the
16 right or to the left?

17 A: I believe, well the way that I was facing and the way that
18 they came in, I could see, I could only see, I could see the
19 one with the gun and then his friend or accomplice behind him,
20 but I saw them from the side like as they walked in the front
21 door, I'm looking out my hallway and I see them walking from
22 the side and this is what I see. So I see another guy behind
23 him to his right side.

24 Q: And the guy in the back had the gun or the guy in the
25 front had the gun?

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1 A: The guy in the front, I believe, the guy that I saw
2 closest to me.

3 Q: And did you know a man by the name of Christopher Bell?

4 A: No, sir.

5 Q: Did you know a woman named, I think it's if I've got the
6 name right, Tonie Ann or Tonie Ann Pasquale?

7 A: I, I hadn't met her before, just from ---

8 Q: You hadn't met her?

9 A: Yes.

10 Q: But you had never met Christopher Bell?

11 A: No, sir.

12 Q: Did you know a woman by the name of Jasmine?

13 A: No, sir.

14 Q: How long back on February 2nd of 2013, how long had you
15 known Paul Degruccio?

16 A: Years. It's been four or five years at least.

17 Q: At the time of this incident in February of 2013, was Mr.
18 Degruccio, was he employed?

19 A: Yes.

20 Q: Where did he work, if you know?

21 A: Hamburger Joe's with me.

22 Q: Okay. Does he still work there?

23 A: Yes.

24 Q: And at the time that he worked at Hamburger Joe's, had he,
25 do you know how long he had worked there?

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1 A: I'm not sure, not very long.

2 Q: Now, you certainly did not owe Christopher Bell any money,
3 correct?

4 A: No, sir.

5 Q: And Erik Meijer didn't owe him any money, did he?

6 A: No, sir.

7 Q: And Scott McDonald did not owe him any money, right?

8 A: No, sir.

9 Q: To your knowledge, did Paul Degruccio owe Christopher Bell
10 money?

11 A: Not to my knowledge.

12 Q: And since that time, have you learned in any fashion that
13 Christopher Bell owed money, was owed money by Paul Degruccio?

14 A: Yes.

15 Q: Okay. And the items that were taken, you were asked on
16 the 911 tape what was taken and you said what, a computer?

17 A: A laptop and a digital camera. After I found out what had
18 been taken.

19 Q: And you didn't know what was taken, did you?

20 A: Correct.

21 Q: You were asking someone what was taken?

22 A: Correct.

23 Q: And you were asking who?

24 A: Paul.

25 Q: And Paul said those things and what else did he say was

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1 taken?

2 A: That was all that I heard.

3 Q: Okay. Now in terms of, you said that, I think you
4 testified and you also stated or we heard on the 911 call,
5 that the people that had come in the apartment, you used the
6 term arguing, were arguing with what you referred, or who you
7 referred to as Paulie, correct?

8 A: Correct.

9 Q: So they were arguing with him, correct?

10 A: Correct.

11 Q: And they were not arguing with anyone else, were they?

12 A: No. Well, only one was arguing with him; the other one
13 was watching Erik in the living room making sure he didn't go
14 anywhere or do anything.

15 Q: All right. And Christopher Bell was arguing with Paulie,
16 right?

17 A: I'm not sure who was who in that situation.

18 Q: But Paulie was arguing back, right?

19 A: Correct.

20 Q: And could you tell what they were arguing about?

21 A: Paul was just mad, you know, that this was, you know,
22 happening.

23 Q: So while this was taking place, as you listened to it,
24 Paul seemed to be mad that it was taking place?

25 A: He was upset, yes.

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1 Q: And he was arguing with the person that was there to take
2 his valuables?

3 A: Correct.

4 Q: And everybody else -- you were on the phone with to the
5 police, right?

6 A: Correct.

7 Q: Scott was asleep?

8 A: Yes.

9 Q: And Erik Meijer was just sitting in the living room?

10 A: In the living room, yes.

11 Q: And then the individuals left and were arrested?

12 A: Correct.

13 Q: After they were taken into custody, did you go outside?

14 A: I did.

15 Q: Did you go anywhere near where the individuals were that
16 were being arrested?

17 A: No, sir. I walked up to the cop who was walking up to me,
18 but it wasn't near them or anything; they already had them in
19 the cars.

20 Q: Did -- how about Mr. Degruccio or Paul, did he go over
21 there?

22 A: No, sir.

23 Q: And how about Mr. Meijer?

24 A: No, sir.

25 Q: When, when somebody comes in your apartment and they're

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- 1 gonna open the door -- so, if I -- for example, if I'm
2 standing here and I'm opening the door, does the swing to the
3 right or to the left?
4 A: Yes, it swings to the right.
5 Q: And it swings in, right?
6 A: Correct.
7 Q: Is there, is there a storm door or a screen door or
8 anything on it?
9 A: No, sir.
10 Q: Does the door, it has a lock on the doorknob, right?
11 A: Correct.
12 Q: And it has a deadbolt lock on it ---
13 A: Yes.
14 Q: --- on the top, correct?
15 A: Yes.
16 Q: Does it have any other type of locks?
17 A: No, sir.
18 Q: And I think you testified that you don't know or maybe --
19 correct me if I'm wrong -- you don't know if the door was open
20 or locked at the time that the individuals came to the
21 apartment?
22 A: At that time, I did not know, but I found out later on
23 that, that it was open and Paulie was waiting on this girl he
24 thought was Jasmine to come and, you know, hang out with him.
25 Q: Okay. All right. Thank you, sir.

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1 A: You're welcome.

2 MR. MCCOLLUM: That's all the questions I have, Your
3 Honor.

4 THE COURT: Redirect?

5 MS. LIVESAY: Thank you, Your Honor. Just a few quick
6 ones.

7 THE COURT: Yes, ma'am.

8 REDIRECT EXAMINATION OF CHRISTOPHER TANNER CLARK BY MS.

9 LIVESAY:

10 Q: Mr. Clark, Mr. McCollum asked you if you felt threatened.
11 Let me ask you, do you normally sit in your apartment with the
12 door locked in your bedroom?

13 A: No.

14 Q: Okay. Why did you go in there and lock the door this
15 time?

16 A: Because I saw two men coming in. I saw a gun and mask and
17 black hoodies and ---

18 Q: Let me ask you, when you saw that guy come in with the
19 gun; how did you feel?

20 A: I was terrified.

21 Q: Okay. Why didn't you just walk out the door and leave?

22 A: Because I didn't think I could. They, they, they, they
23 made Erik, you know, sit down or told him to stay where he was
24 and they had somebody, or the other kid, I'm not sure who was
25 who at this point in time, but was watching him making sure he

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1 didn't do anything.

2 Q: Did you feel like you could've just walk out of that front
3 safely?

4 A: No, ma'am.

5 Q: Okay. And even though nobody put the gun in your face,
6 did you feel like you could leave?

7 A: No, ma'am.

8 Q: Okay. And did you leave?

9 A: No, ma'am.

10 Q: When you saw that gun, did you ever unlock that bedroom
11 door?

12 A: Never, no.

13 Q: Until you saw the police arrest them?

14 A: Exactly.

15 Q: The people that were in that apartment while this was
16 going on, did any of them at any point leave that apartment
17 ---

18 A: No, ma'am.

19 Q: --- while this incident was going on?

20 A: No, ma'am.

21 Q: So it was pretty crystal clear when he came in that you
22 weren't going anywhere?

23 A: Exactly.

24 Q: Unless he was gonna let you go somewhere?

25 A: Yes, ma'am.

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1 MS. LIVESAY: No further questions, Your Honor.

2 THE COURT: Recross?

3 MR. MCCOLLUM: No, Your Honor.

4 THE COURT: All right, sir. You may step down.

5 Any objection to the witness being free to go, from the
6 State?

7 MS. LIVESAY: None, Your Honor. Thank you.

8 THE COURT: Any from the Defense?

9 MR. MCCOLLUM: No, Your Honor.

10 THE COURT: All right. You're free to go. You're also
11 free to stay, sir.

12 You may call your next witness.

13 MS. LIVESAY: Thank you, Your Honor. At this time the
14 State calls Paul Degruccio.

15 THE COURT: Come forward, sir, to be sworn please.

16 PAUL DEGRUCCIO, HAVING BEEN

17 SWORN TESTIFIES AS FOLLOWS:

18 THE COURT: Sir, have a seat in the witness stand
19 and once you're seated please state your name?

20 MR. DEGRUCCIO: My name is Paul Degruccio.

21 THE COURT: Thank you.

22 Counsel, your witness.

23 MS. LIVESAY: Thank you, Your Honor.

24 DIRECT EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:

25 Q: How old are you, Paul?

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1 A: I'm twenty-three.

2 Q: And are you currently working anywhere?

3 A: Yes, I'm employed at Hamburger Joe's in Surfside Beach.

4 Q: Okay. And where were you living February 2nd of 2013?

5 A: [REDACTED]

6 Q: Okay. And who were your roommates?

7 A: Tanner Clark and Scott McDonald.

8 Q: Okay. And do you remember what happened February the 2nd?

9 A: Yes, I do.

10 Q: And how long had you been living in that apartment?

11 A: About a year or so.

12 Q: Okay. And if you don't mind, tell the Jury what happened
13 that day?

14 A: Well, it started off kind of like a normal day. I woke up
15 from a phone call from a female who identified herself as
16 Jasmine, who is a friend of mine. That's who I thought it was
17 at first; that's who they claimed to be and they were ---

18 MR. MCCOLLUM: Your Honor?

19 THE COURT: Yes, sir.

20 MR. MCCOLLUM: I'm gonna raise an objection here.

21 THE COURT: Yes, sir.

22 MR. MCCOLLUM: Just as to the hearsay nature of whatever
23 Jasmine said.

24 THE COURT: Well, I'm gonna instruct the witness not to
25 quote what other individuals said other than perhaps the

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1 Defendant, if you'd like to or have a reason to quote him.
2 Unless your lawyer believes there's a specific exception to
3 the hearsay rule, and then I'm sure she will ask the questions
4 that might elicit that response, but try not to quote what
5 non-parties to this litigation may have said to you. That
6 violates a rule of evidence.

7 You may proceed.

8 MS. LIVESAY: Thank you, Your Honor.

9 BY MS. LIVESAY:

10 Q: Paul, did you expect somebody to come over to your
11 apartment that day?

12 A: I expected a female to come over.

13 Q: What is her name?

14 A: Her name is Jasmine.

15 Q: Okay. And why did you expect her to come over?

16 A: Well I had received a phone call from who I thought was
17 her and ---

18 MR. MCCOLLUM: Your Honor?

19 BY MS. LIVESAY:

20 Q: So there had been some conversations ---

21 THE COURT: Just one second, ma'am.

22 MR. MCCOLLUM: I think she moved away from it.

23 THE COURT: Okay. Thank you.

24 MS. LIVESAY: Thank you, sir.

25 THE COURT: You may proceed.

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1 BY MS. LIVESAY:

2 Q: So there had been some phone conversation and texts
3 between you and Jasmine?

4 A: Yes, ma'am.

5 Q: Okay. And so you were expecting her to come over?

6 A: Yes, ma'am.

7 Q: Okay. And had you invited anybody else over that day?

8 A: No, ma'am.

9 Q: Okay. Had you talked to anyone else about coming over
10 that day?

11 A: No, ma'am.

12 Q: Okay. Tell me about what happened once you thought
13 Jasmine was the one coming over?

14 A: Well, I had honestly felt a little bit fishy about the
15 situation. I had mentioned to Erik that, you know, I knew
16 that girl and I knew who she was or whatever, but we were
17 never really that close and she was acting a little bit too
18 friendly. So I said to him, you know, I don't -- I didn't
19 know if I wanted to really hang out with her. I didn't know
20 what her true intentions were. And he told me, you know, that
21 I'd been cooped up in the house too much, that I needed to get
22 out. So, you know, he convinced me that I should hang out
23 with her. So I told her to come over and ---

24 Q: Okay. And what did you do when you were expecting her to
25 come over?

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1 A: Oh, all I just ---

2 Q: I'm sorry, Paul. Before I ask you that question, I
3 apologize. Did she know how to get to your apartment?

4 A: Not at first until she asked me for directions.

5 Q: Okay. And did you tell her how to get to your apartment?

6 A: Yes, I did.

7 Q: Okay. And when you were expecting her to come, you had
8 told her where your apartment was, did you do anything further
9 to show her where your apartment was?

10 A: Other than texting her the directions, I don't -- no.

11 Q: Okay. So you told her exactly which apartment it was?

12 A: Yes.

13 Q: Okay. And what happened after you told this person you
14 think is Jasmine where your apartment was?

15 A: Well, some time had passed and I was basically waiting for
16 her to come over and then I received a text that she was here
17 and so I went and cracked the door -- she had asked me to and
18 I was just basically looking down the, into the parking lot
19 out the window looking for somebody, but I didn't see anyone
20 until after the door had been busted open and there was two
21 individuals behind me, one with a tire iron and one with a
22 gun.

23 Q: Okay. Now, the text message you received on here, who did
24 you think that was from?

25 A: From Jasmine.

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1 Q: Okay. During these texts and conversations with Jasmine,
2 did you ever hear a male voice of any kind in the background?

3 A: No, ma'am.

4 Q: Did a male voice ever get on the phone?

5 A: No, ma'am.

6 Q: Did she ever mention that she was bringing a guy over with
7 her?

8 A: No.

9 Q: Did she indicate anything other than, to you, than she was
10 coming?

11 A: No, she actually specifically asked me if there was
12 anybody at my house so that we could be alone.

13 Q: Okay. So she was actually wanting -- or you, it was your
14 understanding, she wanted to be alone with you?

15 A: Yes, ma'am.

16 Q: Okay. And in fact, she was saying things to try to get
17 you by yourself?

18 A: Yes.

19 Q: Okay. Did you tell her that there were other people in
20 that apartment?

21 A: Yes, I had actually been -- my friend, Erik, had slept
22 over the night before and I, I had told her that, you know,
23 I'm hanging out with my friend and that if she wanted to come
24 over, that was cool.

25 Q: Okay. So she knew that your friend was not leaving?

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1 A: Yes.

2 Q: And then when -- if she was coming over or anybody was
3 coming over, then other people would be in that apartment
4 other than just you?

5 A: Yes.

6 Q: Okay. What happened once you went to the door?

7 A: I cracked the door and I looked out the window for maybe a
8 moment or two and then behind me I heard the door kind of
9 crash open because I had only had it cracked just a little bit
10 and the door kind of like slammed into the wall and there was
11 two individuals, one with a gun and another with a tire iron,
12 both masked.

13 Q: Okay. And did you invite either one of those two guys
14 over?

15 A: No, I did not. I was actually kind of in shock at first,
16 kind of seeing two masked people at my door and I kind of just
17 stood there for a second without saying anything until they
18 instructed me to sit down.

19 Q: Okay. Did you, at any point, give them permission to come
20 into your apartment?

21 A: No, ma'am.

22 Q: If you don't mind, describe to the Jury what you can
23 remember that they were wearing?

24 A: I don't really remember their clothes. I just remember
25 that they were wearing masks and one had a gun and one had a

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1 tire iron. Those are basically the only things that I truly
2 remember a hundred percent.

3 Q: Okay. Now what were they asking for?

4 A: They didn't really ask for anything specific and, pardon
5 me cursing, but just said give me all your shit, basically.

6 Q: Okay. Now were both of them talking to you?

7 A: No, only the one with the tire iron and when I heard his
8 voice, I recognized the voice.

9 Q: Okay. And tell the Jury what voice you heard?

10 A: I heard Christopher Bell's voice and I identified him. I
11 didn't say anything other than his name but he could tell that
12 I was kind of in a questioning manner and he took off his mask
13 revealing himself and he told me that he wanted me to know
14 that it was him.

15 Q: Okay. And so when he took off the mask, you then knew who
16 that person was?

17 A: Yes, ma'am.

18 Q: Okay. And that person was Christopher Bell?

19 A: Yes.

20 Q: Okay. Now let me ask you, once he took off his mask and
21 you knew who he was, which weapon was he holding?

22 A: He was holding the tire iron.

23 Q: So the other guy was holding the gun?

24 A: Yes.

25 Q: Okay. Now when they came in, did you feel like you were

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1 free to leave when you were ready to leave?

2 A: Not at all.

3 Q: Okay. Did anybody ever, did he, not just anybody, I'm
4 sorry. Did that Defendant with the gun ever point that gun at
5 you?

6 A: Yes, he did, several times.

7 Q: Okay. And when he did that, was it clear to you that you
8 were not free to leave?

9 A: Quite clear.

10 Q: Okay. And who else was in the room when Christopher Bell
11 and his Codefendant, busted in your door?

12 A: The only other person in the room at that time was Erik,
13 who was on the couch.

14 Q: Okay. Now when this happened, did Erik get up and just
15 leave?

16 A: No, he kind of froze up as I did.

17 Q: Okay. And what happened next once they held you at
18 gunpoint and Christopher Bell was holding the tire iron; what
19 did they do next?

20 A: Well, after I had identified him and he took his mask off,
21 he basically, first he kind of pushed me into the chair and
22 after they kind of had the situation under control or whatever
23 and they took me, Chris took me to my room just basically
24 telling me that I was gonna give him whatever I had and the
25 other individual with the gun, who was still masked at the

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1 time, stood in the living room, had the gun trained on Erik so
2 that he couldn't leave.

3 Q: And did he ever come back into the bedroom, the guy with
4 the gun, the Defendant?

5 A: Yes, he did. After me and Chris went into my room, he was
6 kind of rummaging through my stuff throwing my things
7 everywhere and I kind of was a little upset about the
8 situation, kind of our past and everything, I was like talking
9 to him, you know. I had owed him money for something and the
10 situation, whatever -- I was basically, we had talked a couple
11 of months back about this and ---

12 Q: Without telling me about that situation yet, did the guy
13 with the gun ever come back in that room?

14 A: Yes, I was arguing with Chris about our past and whenever
15 I was doing that, the other individual with the gun came into
16 my room, stuck the gun in my face, told me to sit down and
17 pardon my cursing again, but he said I'm not a bitch like him
18 and was talking about Chris and he told me to sit down and you
19 know, I was basically gonna do what he said.

20 Q: Okay. So the guy with the gun came back in there and said
21 I'm not a bitch?

22 A: Yes, ma'am.

23 Q: Okay. What did you take that to mean because did you sit
24 down?

25 A: Yes, I did.

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1 Q: Okay. So what did you take that to mean? You obviously
2 complied with what he told you.

3 A: I took it to mean that the situation was under their
4 control and not mine and that I should do what they say.

5 Q: Okay. And out of those two guys that were in there, who
6 was running the show?

7 A: I don't really know if either of them was leading the
8 situation.

9 Q: Both of them -- were both of them equally participating?

10 A: Yes, ma'am.

11 Q: Okay. So he holds the gun to you and says shut up, I'm
12 not a bitch -- or what exactly did he say to you?

13 A: Well, I was arguing with Chris and it was getting a little
14 bit heated. He was kind of throwing a couple of my papers
15 around and stuff like that. And he came into my room and he
16 stuck the gun in my face and he said I'm not a bitch like him,
17 sit down. Basically, because Chris, I guess wasn't being
18 aggressive enough with me, so he felt he had to be aggressive
19 to sit me down.

20 Q: Okay. Now you said you recognized Christopher Bell's
21 voice. Did you recognize the other guy's voice?

22 A: No, ma'am.

23 Q: You had no idea who he was?

24 A: No, I did not.

25 Q: Okay. Now this is Kenneth Bell here; do you know him?

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1 A: No, I do not.

2 Q: You don't know him?

3 A: Only from this incident.

4 Q: Okay. So before that day, you had never talked to him,
5 never seen him, had any dealings with him at all?

6 A: Never.

7 Q: Okay. So there is no question in your mind you definitely
8 had never invited him over to that apartment?

9 A: Not a question in my mind.

10 Q: Okay. And you definitely had never had any dealings
11 whatsoever in any form or fashion with this Defendant?

12 A: No, I did not.

13 Q: Never even talked to him?

14 A: Never.

15 Q: Okay. So we're gonna come back to that about the
16 argument, but first I want you to tell the Jury -- so he comes
17 in and holds the gun, you then shut up. And then what happens
18 after that; is any of your stuff taken?

19 A: Yes, Chris asked me -- because he knew that I had played
20 computer games and things like that, so he was asking me where
21 my computer was and stuff like that. And so I gave him my
22 laptop and my camera and he basically rummaged through my room
23 for a few more minutes until I guess they felt that they had
24 been there too long and they agreed that it was time to leave.
25 So they rushed out of the house.

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1 Q: All right. And what did they leave with?

2 A: With my laptop and my camera.

3 Q: Okay. And did you ever give them permission to take the
4 computer or the camera?

5 A: No, I did not.

6 Q: Okay. Would you have ever given them these items if they
7 were not threatening you with a gun and a tire iron?

8 A: No.

9 Q: Okay. So there's no doubt they got these items by holding
10 you at gunpoint?

11 A: Yes.

12 Q: So they then leave with your laptop and camera; is that
13 correct?

14 A: Yes, ma'am.

15 Q: Okay. Now did you ever go outside once the police had
16 gotten there?

17 A: I had gone downstairs after a few minutes had passed and
18 all the individuals had been arrested.

19 Q: Okay. Could you see who was arrested?

20 A: Yes, I did.

21 Q: You did? Okay. Were the two guys that were arrested the
22 same ones that were in your apartment?

23 A: Yes.

24 Q: Okay. Now how many guys -- because you were the one that
25 they were mainly focused on; is that correct?

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- 1 A: Yes, ma'am.
- 2 Q: Okay. Everybody -- there's no doubt everybody was
3 complying with what they were saying; is that right?
- 4 A: Yes.
- 5 Q: And that nobody left until they left?
- 6 A: Yes.
- 7 Q: Okay. Did you see any more than two guys in that
8 apartment?
- 9 A: No, I did not.
- 10 Q: Okay. So the entire time, there were two guys; one with a
11 gun and one with a tire iron?
- 12 A: Yes.
- 13 Q: Okay. And when you walked downstairs, how many people
14 were arrested?
- 15 A: I believe there might've been a female arrested there, but
16 I'm not a hundred percent sure about that, but I know there
17 was two males who were arrested downstairs.
- 18 Q: Okay. And the two males that were arrested were Kenneth
19 Bell and Christopher Bell; is that right?
- 20 A: Yes.
- 21 Q: And those were the same two guys from your apartment?
- 22 A: Yes.
- 23 Q: Okay. Now did you ever call the police?
- 24 A: No, I did not.
- 25 Q: Why not?

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1 A: Because they took my phone and were basically keeping me
2 from doing anything.

3 Q: So you didn't have any way to call the police?

4 A: No.

5 Q: Okay. Now we talked about, a little bit about before that
6 there was discussion between you and Chris about money that he
7 felt like you owed; is that correct?

8 A: Yes, ma'am.

9 Q: Okay. Without going into the specifics of what that was
10 about, when was the last time you had discussed you owing him
11 any money?

12 A: It was several months ago, I ran into him at the Food Lion
13 that is close to my house. I saw him there at the line; he
14 didn't see me. I walked straight up to him, never tried to
15 avoid him, and you know, I apologized to him for what had
16 happened. It was kind of a bad situation. I did whatever I
17 could to try and help him, but I just didn't have the money or
18 the means to pay him back. So ---

19 Q: Okay. And at that time, did he threaten you?

20 A: No.

21 Q: Okay. At that time, did you feel like there was any
22 hostility between you and him?

23 A: No.

24 Q: Okay. And that was months prior to this incident?

25 A: Yes, ma'am.

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1 Q: Okay. Now did he ever try to contact you between that
2 time and when they busted into your house?

3 A: No.

4 Q: Okay. Had he ever indicated to you between that time and
5 when he busted into your house, look, you owe me some money;
6 I'm gonna have to get this money back? Did he ever try to
7 resolve it in any form or fashion?

8 A: No.

9 Q: Okay. When you saw him there at the Food Lion, did he
10 ever try to resolve this situation?

11 A: No.

12 Q: Okay. Did he ever threaten you at that point?

13 A: No.

14 Q: Okay. So when you walked out, you didn't feel like there
15 was any animosity between you and him?

16 A: No.

17 Q: Okay. Did he tell you then, I'm coming to get my money?

18 A: No.

19 Q: Okay. Did he, at that time, indicate that he still wanted
20 his money?

21 A: No, he indicated that he felt kind of bad about it, but he
22 didn't really pressure me into doing anything drastic for the
23 money.

24 Q: Okay. But he just said, look, I'd like the money?

25 A: Yes.

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- 1 Q: But he didn't threaten you at that time?
- 2 A: No, ma'am, he did not threaten me.
- 3 Q: Okay. Now how long had you known Christopher Bell?
- 4 A: A couple of years maybe.
- 5 Q: Okay. Have you ever carried a weapon?
- 6 A: No.
- 7 Q: At any point in time?
- 8 A: No, ma'am.
- 9 Q: Okay. Did you have a weapon in the apartment?
- 10 A: Other than maybe some kitchen knives or like a pocket
- 11 knife or something; other than that, no.
- 12 Q: Did you have a gun in the apartment?
- 13 A: No, ma'am.
- 14 Q: Okay. Have you ever carried a gun?
- 15 A: No, ma'am.
- 16 Q: Okay. Have you got a gun registered in your name somehow?
- 17 A: No, ma'am.
- 18 Q: Okay. And you've known Chris for two years; is that
- 19 correct?
- 20 A: I'm not exactly sure of the number but it's over a year,
- 21 but not too ---
- 22 Q: Okay.
- 23 A: --- much longer than that.
- 24 Q: During the time that you knew Chris, had he ever seen you
- 25 with a gun?

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- 1 A: No, ma'am.
- 2 Q: Would anybody have any reason to believe that you had a
3 gun?
- 4 A: No, ma'am.
- 5 Q: Okay. Now you had known Christopher Bell; is that
6 correct?
- 7 A: Yes, ma'am.
- 8 Q: Did you even know he had a brother?
- 9 A: I knew that he had brothers.
- 10 Q: Okay. Did you know their names?
- 11 A: No.
- 12 Q: Okay. So you didn't even know their names?
- 13 A: No, ma'am.
- 14 Q: Okay. When you had had past contact with him regarding
15 this debt, did he ever mention Kenneth Bell's name?
- 16 A: No, ma'am.
- 17 Q: Was Kenneth Bell with him in the grocery store?
- 18 A: No, ma'am; he was alone.
- 19 Q: Okay. So this is the first time you've seen him without a
20 mask on and the police not arresting him; is that correct?
- 21 A: Yes, ma'am.
- 22 Q: About how long was it --I think you told me, but I wanted
23 to make sure I'm correct on it -- how long was it between when
24 you saw him in the Food Lion and when he busted into your
25 apartment?

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1 A: Maybe two, three months.

2 Q: Okay. He had had no contact with you during that time
3 period?

4 A: No, ma'am.

5 Q: Did he know where you lived?

6 A: No, I don't believe he knew where I lived, but I
7 definitely had the same phone number that he always knew that
8 I had.

9 Q: Okay. So he didn't know exactly where you lived?

10 A: No, ma'am.

11 Q: Did he have your phone number?

12 A: Quite possibly. I knew him for a while and he had called
13 me on the same number for years. I've had the same number,
14 phone number for many years now.

15 Q: Okay. So he could have called you and said, Look, we're
16 gonna have to work this out; you owe me some money?

17 A: Yes, ma'am.

18 Q: Did he ever do that?

19 A: No.

20 Q: Okay. Did he ever have anybody else contact you regarding
21 the money?

22 A: No, ma'am.

23 Q: Now, there was, you said that, that there were three
24 people in the car; is that correct or am I misunderstanding?
25 When you walked downstairs after this incident, do you know

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1 how many people were in the car?

2 A: I know that there was two males that were arrested and
3 there might've been a third, but I'm not a hundred percent
4 sure about that. Whenever I went downstairs, I talked to the
5 police; I didn't try to ---

6 Q: Look them up.

7 A: Yes, exactly.

8 Q: Now the third person in the car, Tonie Pasquale, the
9 woman, did you know her?

10 A: No, ma'am; I did not.

11 Q: You had no idea who Tonie Pasquale was?

12 A: No.

13 Q: Did you see the car they were in?

14 A: I saw their -- the red Mitsubishi parked out there
15 whenever I went downstairs, but I never saw them in it or
16 anything.

17 Q: Had you ever seen that car before?

18 A: Maybe on the street, but not him driving it or anything.

19 Q: Okay.

20 A: Not that specific car.

21 Q: Okay. So you wouldn't have known if he drove up if that
22 was the car he'd be driving?

23 A: No, I wouldn't.

24 Q: Okay. And the third girl that was in the car, Tonie
25 Pasquale, you had no idea who she was?

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- 1 A: No, I did not know her at all.
- 2 Q: Okay. Had never seen her before?
- 3 A: Never.
- 4 Q: Does that name even ring a bell?
- 5 A: Now it does, but then I wouldn't have known.
- 6 Q: Okay. So you definitely would not have invited her over
- 7 to your apartment?
- 8 A: No, I wouldn't have.
- 9 Q: Okay. And would you have told her where you lived?
- 10 A: No.
- 11 Q: Okay. So without a doubt, you didn't invite Christopher
- 12 Bell, Kenneth Bell or Tonie Pasquale into your apartment?
- 13 A: No, I did not invite any of them.
- 14 Q: Okay. And at no point, did you ever give them permission
- 15 to enter that apartment?
- 16 A: No, I did not.
- 17 Q: Okay. Would you have told Tonie Pasquale where you lived?
- 18 A: No.
- 19 Q: Okay. Now there's been some talk about Jasmine. You did
- 20 know a girl named Jasmine; is that correct?
- 21 A: Yes.
- 22 Q: Okay. And you would have felt comfortable inviting her
- 23 over; is that right?
- 24 A: Like I said before, I felt a little weird about the
- 25 situation because I do know Jasmine. She is a friend of mine,

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1 but she's not a good friend of mine.

2 Q: Uh-huh (affirmative response).

3 A: And she was acting too friendly.

4 Q: Right.

5 A: So even her coming over, I felt a little weird about.

6 Q: Okay. Now would any of the three people in that car know
7 that you knew Jasmine?

8 A: I suppose they must have.

9 Q: Okay. Because you would have never invited -- you didn't
10 invite the three of them over, did you?

11 A: No, I did not.

12 Q: Okay. And you never spoke on the phone that day to
13 Christopher Bell or Kenneth Bell?

14 A: No, I did not.

15 Q: Okay. And in fact, you didn't even know that you were
16 talking to Tonie Pasqual.

17 MR. MCCOLLUM: Your Honor, I object to leading.

18 THE COURT: I'll sustain the objection and ask Counselor
19 not to lead the witness.

20 MS. LIVESAY: Thank you, Your Honor.

21 BY MS. LIVESAY:

22 Q: So, who was the only person that you were gonna allow into
23 the apartment?

24 A: My friend, Jasmine.

25 Q: When you came downstairs, did you see the computer and

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1 camera that the police collected from around that red car,
2 that red Mitsubishi?

3 A: Yes, ma'am, I did.

4 Q: Okay. Did you recognize those items?

5 A: Yes, I recognized them as my own.

6 Q: Okay. So the, the laptop and the camera that was
7 collected by that red Mitsubishi belonged to you?

8 A: Yes, ma'am.

9 MS. LIVESAY: No further questions, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the Jury,
11 we're gonna take a short break at this time, give you a chance
12 to stretch your legs and collect your thoughts before we
13 proceed with the cross examination of this witness.

14 As you leave the courtroom and go to the jury room,
15 you're gonna hear me say every time you do that and I'll
16 instruct you, don't be getting in any discussions about
17 anything involving this case until I ask you to begin your
18 deliberations. You may retire to the jury room at this time.
19 (REPORTER'S NOTE: The Jury exits courtroom. 10:57 A.M.)

20 THE COURT: All right. I'll instruct the witness that
21 during the break, you are not to discuss your testimony with
22 anyone. That would include discussions of what you've already
23 testified to, what you might be testifying to at the present
24 time or you might testify about in the future. So don't
25 discuss your testimony with anyone during the break. You

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1 understand?

2 MR. DEGRUCCIO: Yes, Your Honor.

3 THE COURT: All right. You're free to move about the
4 courtroom. Court will be in recess for about five to ten
5 minutes. Thank you.

6 (RECESS - 10:58 A.M.)

7 *****OFF THE RECORD*****

8 (On the Record - 11:18 A.M.)

9 THE COURT: The State ready to resume?

10 MS. LIVESAY: Yes, sir, we are.

11 THE COURT: Defense ready?

12 MR. MCCOLLUM: Yes, Your Honor.

13 THE COURT: All right. Bring the Jury in.

14 (REPORTER'S NOTE: Jury enters courtroom. 11:19 A.M.)

15 THE COURT: All right. The record will reflect the Jury
16 has returned to the courtroom.

17 And when we took our break, the State had completed its
18 direct examination of the witness. At this time, the Defense
19 may cross examine.

20 Mr. McCollum, you may proceed.

21 MR. MCCOLLUM: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

24 Q: Mr. Degruccio, am I saying that correctly?

25 A: Yes.

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1 Q: And your name is Paul Degruccio?

2 A: Yes.

3 Q: And where are you from originally, Mr. Degruccio?

4 A: I'm originally from New Jersey but I've lived here for a
5 while now.

6 Q: About how long?

7 A: Over a decade.

8 Q: And so you grew up and went to high school here?

9 A: Yes, sir.

10 Q: Okay. Where did you go to high school?

11 A: Socastee.

12 Q: Okay. Did you finish high school?

13 A: No, I did not.

14 Q: How far did you go?

15 A: To my last semester.

16 Q: All right. So you went to the last semester of your
17 senior year?

18 A: Yes, sir.

19 Q: Okay. And ---

20 THE COURT: Mr. Degruccio, you can pull that microphone
21 down a little bit and it will make you more comfortable.

22 There we go. Thank you. I'm sorry. Go ahead.

23 MR. MCCOLLUM: Thank you, Your Honor.

24 BY MR. MCCOLLUM:

25 Q: Was there any precipitating event that caused you not to

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1 finish?

2 A: Yes.

3 Q: And what was that?

4 A: I was arrested.

5 Q: Okay. And did you -- have you gone and gotten like a high
6 school equivalency or I think there are several different
7 versions of GED and different types of diplomas; have you done
8 anything like that?

9 A: I'm actually in the process of getting my GED now.

10 Q: Okay. And have you gone to -- you're doing that through a
11 technical school or through the high school program?

12 A: Through taking a test; you sign up and then take a test
13 and they give it to you.

14 Q: Okay. So from the, from the year that you were in the, in
15 the twelfth grade until now, where have you worked -- in other
16 words, now let me rephrase that so it's a little more
17 specific. You work at Hamburger Joe's now?

18 A: Yes, sir.

19 Q: And what do you do there?

20 A: Cook.

21 Q: You cook hamburgers?

22 A: Yes, sir.

23 Q: The hamburgers at Hamburger Joe's are pretty good, aren't
24 they?

25 A: I guess that's a matter of opinion.

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1 Q: And how long have you been cooking at Hamburger Joe's?

2 A: A couple of months maybe.

3 Q: Okay. At the time -- and is that the only job you've had
4 at Hamburger Joe's is as a cook?

5 A: Yes, sir.

6 Q: Okay. And it's now August 2013. You said you'd worked
7 there for a couple of months; do you know what month you
8 started?

9 A: I'm not exactly sure. I worked there before, took a break
10 and now I'm working there again; I started back again this
11 summer.

12 Q: And when you worked there before, how long did you work
13 there?

14 A: I'm not exactly sure; a few months.

15 Q: And that was your -- as a cook?

16 A: Yes, sir.

17 Q: Okay. And prior, so let's go back to February of 2013,
18 were you working at Hamburger Joe's as a cook at that time?

19 A: Yes, sir.

20 Q: And you stopped working there; do you know the particular
21 month?

22 A: I'm not exactly sure which month it was.

23 Q: Was it around the time of this incident or was it several
24 months later?

25 A: I really don't want to say a certain date or anything

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1 because I don't remember.

2 Q: Okay. Well say, it's safe to say -- it's safe to say I
3 don't know, okay?

4 A: I don't know.

5 Q: And prior to working at Hamburger Joe's, did you work
6 somewhere else?

7 A: I've had several jobs over the years, yes.

8 Q: Okay. And what job did you have prior to Hamburger Joe's?

9 A: Well, I remained unemployed for a while, but before then,
10 I was a lifeguard. I worked at Sonic; just several places.

11 Q: What's the longest period of time you've worked somewhere?

12 A: Maybe a year.

13 Q: And where was that?

14 A: Lifeguarding.

15 Q: All right. Were you lifeguarding at an indoor pool?

16 A: At a waterpark.

17 Q: Okay. And the waterpark, was that in, in the Surfside
18 area?

19 A: Yes.

20 Q: Okay. And when you say that you worked there for a year,
21 you don't mean that you worked there through the fall and the
22 winter and the spring, do you?

23 A: Well, I worked there during the summer and they kept me on
24 and then they let you work again during the summer, but they
25 pay certain people during the winter whenever the place isn't

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1 actually open.

2 Q: So you got paid through the winter?

3 A: Yes.

4 Q: Okay. Did you have a job that you did there while you
5 were getting paid there during the winter?

6 A: No, they just, they basically keep you on. They let you
7 know that you're gonna have a job for sure whenever you come
8 back during the summer.

9 Q: So they don't actually pay you, they just tell you you're
10 gonna be rehired?

11 A: Yes.

12 Q: And then you're eligible for unemployment that way?

13 A: I never received unemployment, but maybe.

14 Q: Now you know Christopher Bell, right?

15 A: Yes.

16 Q: And I'd like to clarify some things, because you had
17 testified, if I understood correctly, you testified that you
18 knew him about a year; is that a fair statement?

19 A: Yes, I may have known him longer than that; I don't really
20 know how long I've known him.

21 Q: And of course you also testified, if you recall, about
22 your phone number. You said that he had been calling you on
23 that number for several years, right?

24 A: I believe I testified that I've had the same phone number
25 for several years and that he has called me on it, but not for

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1 years he has called me, but I've had the same phone number for
2 years.

3 Q: So you've had the same phone number for years?

4 A: Yes, sir.

5 Q: Correct. Do you know how many years you've had the same
6 phone number?

7 A: Maybe five.

8 Q: And how many times or how many, over how many years has
9 Paul, has Christopher Bell called you on that phone?

10 A: Maybe twenty, I don't know.

11 Q: No, I'm sorry. I'm talking about the length of time. In
12 other words, did he call you on it two years ago or three
13 years ago or has he been calling you -- if you've only known
14 him two months ---

15 A: I mean, I haven't talked to him in over a year. He didn't
16 call me that much.

17 Q: So you hadn't talked to him in over a year on the phone,
18 right; correct?

19 A: I'm not exactly sure on how, how much time had passed that
20 we hadn't talked. I really don't know.

21 Q: Fair enough. How long did you know him -- well, let me
22 back up. How would you characterize your relationship or
23 friendship or business relationship, whatever it is, how would
24 you characterize that relationship between you and Christopher
25 Bell?

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1 A: I would have said that we were friends at one point.

2 Q: Friends. And how long were you friends?

3 A: A couple of months, a year; I'm not sure; I don't know.

4 Q: So you could have been friends a couple of months or you
5 could have been friends for a year?

6 A: Yes.

7 Q: Okay. And how many times, and I'm -- and this is just,
8 I'm just asking for like an approximation. I know that you
9 don't keep up with how many times you see a particular person,
10 but in the terms of Christopher Bell, did you see him a lot
11 when you were friends; did you see him weekly?

12 A: Maybe once or twice a week.

13 Q: And when you would see him once or twice a week, how long
14 -- how much time did you spend together?

15 A: A few hours.

16 Q: Okay. Would you go to the movies or the store and things
17 like that together?

18 A: We never saw a movie together, but we would hang out at
19 his house, play video games.

20 Q: So you would go to his house and play video games?

21 A: Yeah.

22 Q: Okay. Now you had indicated that, that you owed
23 Christopher Bell some money, right?

24 A: Yes.

25 Q: And you indicated that you had neither the, I think the

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1 money or the means with which to repay him, correct?

2 A: Yes, sir.

3 Q: Was it a substantial amount of money that you owed him?

4 A: It was under a thousand dollars.

5 Q: Under a thousand. And do you know how much it was; was it
6 an exact amount?

7 A: Maybe like \$800; I'm not exactly sure.

8 Q: And this money that you owed him, did that debt come about
9 say from one transaction or was it an accumulation of that
10 debt?

11 A: It was a one transaction.

12 Q: Okay. Now correct me if I'm wrong, but right now, you
13 have a felony conviction, right?

14 A: Yes, I have a conviction.

15 MS. LIVESAY: Your Honor, I'd like to object and I've got
16 ---

17 THE COURT: Ladies and gentlemen of the Jury, at this
18 point in time, I'm going to ask you to step to the jury room.
19 Don't be getting in discussions about the case during the
20 break. There's some matters I have to take up with the
21 lawyers. Thank you very much.

22 (REPORTER'S NOTE: The Jury exits courtroom. 11:28 A.M.)

23 THE COURT: Yes, ma'am.

24 MS. LIVESAY: Your Honor, I'm not sure how that's
25 admissible, whether or not he has a felony conviction. The

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1 conviction is for PWID marijuana, which is the transaction
2 that involves Christopher Bell, which I thought we had already
3 ruled on that transaction was not coming in, nor does it have
4 anything to do with the truthfulness, nor has he said anything
5 that would indicate that Mr. McCollum has the right to impeach
6 him regarding his prior statement. He's already admitted to
7 the transaction. There's nothing to indicate that he said
8 anything untruthful to impeach him about. I'm not sure of the
9 relevance that the victim has a felony conviction for PWID
10 marijuana, which has nothing to do with his truthfulness which
11 stem from the incident with Christopher Bell is relevant in
12 any way and it has no probative value. The only reason it was
13 brought up was to prejudice this victim.

14 Mr. McCollum came over to me during the break and said --
15 asked me about that conviction. I told him then that I did
16 not think it was admissible for impeachment purposes or for
17 anything else.

18 THE COURT: All right. Well let me hear from ---

19 MS. LIVESAY: Now it's already been brought up in front
20 of the Jury. He knew that I was -- had an issue with that
21 before he brought it up.

22 THE COURT: Mr. McCollum?

23 MR. MCCOLLUM: May it please the Court, Your Honor?

24 THE COURT: Sir?

25 MR. MCCOLLUM: It's my understanding that a witness who's

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1 testifying in Court is subject to impeachment and there's a
2 long line of cases as Your Honor is well aware dealing with
3 crimes of moral turpitude and there are a list of those things
4 and there are certain standards. But in addition to that,
5 then we have the, the change of the Rules of Evidence, which
6 occurred while I've been practicing and while Your Honor's
7 been practicing. And I think that Rule 609, the rule
8 regarding impeachment Rule 609, South Carolina Rules of
9 Evidence, clearly would indicate that that conviction would be
10 admissible for impeachment purposes if the witness is
11 testifying.

12 THE COURT: Just one second.

13 MS. LIVESAY: Your Honor, if I may, please, regarding to
14 impeachment, I'm looking over impeachment now. It does go
15 into evidence of character. But to my knowledge, that is only
16 appropriate when we're in a issue where self-defense or some
17 other defense makes it probative as to this victim's
18 character. This is not that kind of case. There's no defense
19 that would ---

20 THE COURT: Just one second, let me be sure I understand
21 what he's talking about. Rule 609, subsection; what are you
22 referring to?

23 MR. MCCOLLUM: The, the entire rule, Your Honor. The
24 beginning of the rule, I believe, is where it starts out.
25 Making sure I can pull it up here.

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1 THE COURT: Well, what -- there's been several recent
2 cases, Mr. McCollum, concerning whether or not the probative
3 value of admitting the evidence outweighs it's prejudicial
4 effect as referred to in Sub-Rule (a)(1) and it says that
5 those cases deal with whether or not the crime goes towards
6 someone's truthfulness, a crime that would involve dishonesty
7 in other words. Such as giving false information to a police
8 officer is probably the classic example of someone who is
9 convicted of a crime that involves dishonesty. And of course,
10 subsection (a)(2) says evidence that a witness has been
11 convicted of a crime shall be admitted if it involved
12 dishonesty or false statement regardless of the punishment.
13 So first of all, apparently and I don't know, convicted of
14 PWID marijuana -- is that right -- which carries a possible
15 sentence of more than one year?

16 MS. LIVESAY: I'm sorry, Your Honor, one more time?

17 THE COURT: Was he convicted of possession with intent to
18 distribute marijuana which carried a penalty of more than one
19 year?

20 MS. LIVESAY: This victim is only pled guilty to the PWID
21 marijuana charge from the marijuana transaction.

22 THE COURT: Well, I understand that, but that did carry
23 more than one year; that potential ---

24 MS. LIVESAY: It carries more than a year.

25 THE COURT: That's right. I just wanted to confirm that.

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1 MS. LIVESAY: Yes, sir.

2 THE COURT: That's what he pled to?

3 MS. LIVESAY: Yes, sir.

4 THE COURT: Now and you are arguing what, that the crime
5 involves dishonesty or false statements?

6 MR. MCCOLLUM: I'm saying, Your Honor, that it carries
7 over one year.

8 THE COURT: Okay. So, then the question becomes whether
9 the probative value outweighs its prejudicial effect; is that
10 correct under Subsection (a) (1)?

11 MR. MCCOLLUM: So that's -- Your Honor, I understand
12 there may be an analysis or a balancing that the Court would
13 apply.

14 THE COURT: Yes, sir, because again, I don't think you're
15 alleging that just the possession of marijuana with the intent
16 to distribute involves dishonesty somehow or a false
17 statement. See I don't know the circumstances under which the
18 conviction -- you can bring in evidence as to the underlying
19 facts as to the conviction to show that the crime did involve
20 a false statement or some type of dishonesty. But I haven't
21 heard the underlying facts in this particular, of this
22 particular conviction. If you're gonna argue those underlying
23 facts saying that particular crime did involve a false
24 statement or dishonesty, I need to hear that. If you're just
25 simply arguing he has a conviction, but it may be a crime of

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1 moral turpitude of some kind and it carried more than one year
2 and you're not arguing that involved in this was a false
3 statement or, for example, if, if the conviction included a
4 set of facts that he admitted to that he had lied to an
5 undercover agent to come to some location to do a drug test
6 and that crime involved a false statement or dishonesty, then
7 that crime could be a crime that would come under Subsection
8 (2), but I'm not hearing your argument in the underlying facts
9 in this case so the only issue is whether a crime that carries
10 more than one year, whether the probative value of that as to
11 his honesty would outweigh the prejudicial effect of admitting
12 it in this case.

13 MR. MCCOLLUM: And to answer Your Honor's question.

14 THE COURT: Yes, sir.

15 MR. MCCOLLUM: The Rule 609, South Carolina Rules of
16 Evidence, Section (a) says the general rule, obviously, Your
17 Honor.

18 THE COURT: Yes, sir.

19 MR. MCCOLLUM: And Subsection (1) says evidence that a
20 witness other than an accused has been convicted of a crime
21 shall be admitted, that's subject to Rule 403, if the crime
22 was punishable by death or imprisonment in excess of one year
23 under the law under which the witness was convicted, and such
24 evidence shall be admitted if the Court determines that the
25 probative value outweighs its prejudicial effect to the

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1 accused. It says that if it, it outweighs its prejudicial
2 effect to the accused.

3 THE COURT: Yes, sir.

4 MR. MCCOLLUM: And then -- and Subsection (2) states that
5 evidence that any witness has been convicted of a crime shall
6 be admitted if it involved dishonesty or false statement.

7 So -- and that's regardless of punishment. So what I
8 take that to ---

9 THE COURT: Yes, sir. I'm just saying, just answer my
10 question first of all. Are you alleging that in committing
11 the crime that you're attempting to introduce that somehow
12 this witness was involved in either dishonesty or a false
13 statement and if so, what was it?

14 MR. MCCOLLUM: Your Honor, I don't want to answer that
15 question. I want to answer another question.

16 THE COURT: Well, I want the answer to my question then
17 we'll go on to something else.

18 MR. MCCOLLUM: Then I can answer the other question?

19 THE COURT: Yes, sir, you can.

20 MR. MCCOLLUM: I think that in the analysis of moral
21 turpitude and the offenses that are listed and are not listed
22 -- for example, even possession of cocaine was listed as
23 involved in dishonesty because it violates the societal
24 standards. It, it breaches the duty one human being owes to
25 another. I would say that clearly what we've been through in

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1 this country, for a number of decades, that all the scholarly
2 opinions and all the judicial opinions that have cited on
3 enumerable occasions ---

4 THE COURT: I'm gonna get to that argument in just a
5 minute. I want the answer to my question once again. I'm
6 gone restate it one more time.

7 MR. MCCOLLUM: I understand the question; I'll answer it.

8 THE COURT: Thank you.

9 MR. MCCOLLUM: In order for an individual to sell drugs
10 or possess drugs with intent to distribute them, involves
11 dishonesty because that person is required to keep those
12 things a secret, not be truthful about it, not admit it to
13 other people, to hide it and see ---

14 THE COURT: Well, sir, the crime you're talking about is
15 possession of a contraband and because of the amount we
16 presume there's an intent to distribute, that's the crime I
17 think we're talking about. And I have run into honest drug
18 dealers in this job. They'll tell you the truth about
19 everything. They won't lie about a thing. And so I have -- I
20 understand what you're saying that to commit the crime, you're
21 violating a statute or a, a public policy or public statement
22 of policy through the statute. I understand that. And that's
23 I think comes under Subsection (1). I'm just trying to be
24 sure what I'm ruling on here and I think I've got my answer.
25 You haven't told me that the facts that he had admitted to in

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1 this, that case, that there was allegation that he made to
2 someone a false statement or was dishonest. I think, I don't
3 think you're alleging that, are you?

4 MR. MCCOLLUM: And I don't know that, Your Honor, I don't
5 know ---

6 THE COURT: So you don't know the underlying facts.

7 MR. MCCOLLUM: I don't know those, no, sir.

8 THE COURT: All right. That answers my question. Now
9 let's move on to our analysis under Subsection (a) or (a)(1)
10 excuse me, instead of A(2).

11 Now we can talk about the other argument.

12 MR. MCCOLLUM: Thank you, Your Honor.

13 THE COURT: Yes, sir. Thank you.

14 MR. MCCOLLUM: I'm not trying to be contrite.

15 THE COURT: I know you're not, but I'm trying to be sure
16 I'm ruling on the issue that you want me to rule on and I try
17 to get lawyers to state what their objections are and why they
18 want me to rule on a certain thing so that I rule on the issue
19 they're presenting to me.

20 MR. MCCOLLUM: That seems reasonable.

21 THE COURT: Yes, sir. So I, I'm, I'm now willing to
22 discuss the general rule, which is (a)(1) ---

23 MR. MCCOLLUM: Thank you.

24 THE COURT: --- not (a)(2) because I don't think you're
25 alleging that he made a specific statement or false statement

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1 or was dishonest.

2 MR. MCCOLLUM: That's correct.

3 THE COURT: Okay. Thank you.

4 MR. MCCOLLUM: So I think that under the general rule,
5 Rule (1), I think it speaks for itself. I think that these
6 are things that have, you know, been admitted for decades when
7 someone's testifying. It's just an impeachment; it's just the
8 fact that you, you admitted the crime; it's a felony and this
9 is the crime. I think that we're allowed to do that.

10 THE COURT: All right. Ma'am?

11 MS. LIVESAY: Thank you, Your Honor. Just very briefly,
12 under (a)(1), the rule reads that if admitting the evidence
13 substantially outweighs the danger of unfair prejudice,
14 confusion of the issues on misleading the Jury. There's not
15 one shred of relevance to the fact that this victim has pled
16 guilty to PWID marijuana. There's nothing probative about it
17 and it is extremely prejudicial. There is no reason other
18 than to slander this victim, than to bring up that this person
19 has pled guilty to a felony. There's no relevance, no
20 probative value, has nothing to do with his truthfulness,
21 there's nothing in his testimony to implicate that he's been
22 untruthful. This is nothing but a way to slander his
23 character in front of the Jury. It is nothing but to lead
24 them to believe that because he's been convicted of a felony,
25 actually pled guilty to it, that what he has to say is not

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1 trustworthy. When the truth is, there's nothing to implicate
2 that what he has said is not been untrustworthy. He has
3 complied since the very beginning.

4 THE COURT: All right. The way I, I view it, the rule
5 does talk about the prejudicial effect, the probative -- it
6 talks about weighing probative value against the prejudicial
7 effect and it does say to the accused. It does not mention to
8 the victim in there and, of course, credibility is always an
9 issue to be decided by as to any witness in this case.

10 It'll be my finding that the probative value does, does
11 not outweigh its prejudicial effect of the accused. I'll
12 allow you to ask about it but I'm not going to allow you to
13 connect the conviction to this transaction or between these
14 two parties. I've already made a ruling on that as well. You
15 understand what I'm saying, Mr. McCollum?

16 MR. MCCOLLUM: Yes, sir, and let me ask you this
17 question, Your Honor. You've made that clear and I've, I've
18 argued that. And you've ruled.

19 THE COURT: Yes, sir, I have ruled.

20 MR. MCCOLLUM: And I understand that. Ms. Livesay did
21 ask him a series of questions about owning a gun as to does he
22 have a gun, does he have a gun now, does he have a gun
23 registered to him.

24 THE COURT: She did.

25 MR. MCCOLLUM: Now based on the conviction that he has,

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1 he is prohibited as a violent felon from owning a gun. That
2 would be a federal crime.

3 THE COURT: Well, now I didn't recall that her questions
4 were time oriented as to when he owned the gun or when he
5 possessed it. I would assume that his conviction in this case
6 is subsequent to this crime?

7 MS. LIVESAY: Your Honor, he pled guilty, I think it was
8 a month ago.

9 THE COURT: Okay. That's what I'm thinking. She was
10 talking in reference to at the time of the break-in, which was
11 in February. I believe the questions were was there a gun
12 present in the house, was a weapon present in the condo or
13 apartment, did you own one; so that was the, the, the thrust
14 of that questioning. I don't know where you're going with
15 this, but he's pled subsequently to the felony. He's not been
16 convicted or charged, I don't think, with possession of a
17 firearm by a felon, has he?

18 MS. LIVESAY: No, sir.

19 MR. MCCOLLUM: The, I'm just, I'm ---

20 THE COURT: I'm not gonna let you go on a fishing
21 expedition on that, if you, if you're going to ask him about
22 possession of a gun subsequent to his plea; is that what you
23 want to ask him about?

24 MR. MCCOLLUM: Well, I'm saying that I believe, if you
25 listen to the record, that she asked him about the past and

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1 the present and that she specifically asked him did he go, did
2 he go and get a gun or does he have a gun now. I believe that
3 she asked that and he said no.

4 THE COURT: Yes.

5 MR. MCCOLLUM: So if that's true, then I would like to be
6 able to say, well you couldn't own a gun now because the law
7 prohibits you ---

8 THE COURT: What does whether he could own a gun or
9 possess a gun in August of 2013 got anything to do with what
10 happened in February of 2013?

11 MR. MCCOLLUM: One of the elements of the offense
12 obviously, Your Honor, is the, is the, his state of mind, his
13 fear. When she goes through that, that he doesn't have a gun,
14 to this day he doesn't have a gun, it, it, it could be
15 interpreted different ways I suppose, but I, it seems that
16 that would trigger or allow me to be able to go into the fact
17 that he can't have one; that's all I'm saying, Your Honor.

18 THE COURT: No, sir. I overrule that. I won't allow you
19 to do that.

20 MR. MCCOLLUM: Now I ask him about the conviction?

21 THE COURT: I'm gonna allow you to ask him about the
22 conviction. If he admits to the conviction, then there won't
23 be any extrinsic evidence introduced; that's the end of the
24 inquiry.

25 MR. MCCOLLUM: And ---

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1 THE COURT: In other words, again I'm gonna stick with my
2 ruling, Mr. McCollum, that the fact there may have been a drug
3 transaction out of which a debt sprang that was the
4 justification for your client for this, this act. How it
5 arose is not relevant and I've ruled that the prejudicial
6 effect of admitting that would outweigh its probative value.
7 So that's not going to be allowed.

8 MR. MCCOLLUM: I'm not, I don't think I'm trying to --
9 I'm not talking about that, Your Honor. I understand that.

10 THE COURT: Well, what I just said was, Mr. McCollum, is
11 if he admits to having a felony conviction, which he does --
12 you ask him about it and he admits it for possession of
13 marijuana with intent to distribute, that's the end of the
14 inquiry. He's admitted it. I'm not gonna let you go into the
15 underlying facts, which complies with my former ruling that
16 said the underlying facts that involve these parties or
17 somehow involved a debt that grew out of that, I'm not gonna
18 allow that in. I'm just gonna stick with my rulings.

19 What do you want to ask him about, tell me?

20 MR. MCCOLLUM: I want to ask him when he was convicted.
21 I would like to ask him when he was charged with that. I
22 would like to ask him what his sentence is.

23 THE COURT: Well, does that go to credibility? That's
24 what you're getting it in for is on credibility.

25 MR. MCCOLLUM: Your Honor ---

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1 THE COURT: I know where you're going with it, but I've
2 told you, I'm not gonna let you go there.

3 MR. MCCOLLUM: All right. With all due respect, you
4 asked me what I want to ask him.

5 THE COURT: I understand that and that's the reason I'm
6 trying -- I said, if he admits having a felony conviction, the
7 purpose you're getting it in for is for credibility purposes,
8 not to try to prove there was a transaction that took place
9 back there in the past; that's where you're trying to go and
10 I'm not gonna let you go there. That's the reason I said,
11 once he admits he has the conviction, you've impeached him for
12 credibility purposes in front of the Jury. They know he's a
13 convicted felon for whatever purpose that serves.

14 MR. MCCOLLUM: But I can state the crime that he's
15 convicted of?

16 THE COURT: Yes, sir, I'm gonna let you ask him if he has
17 a felony conviction for possession of marijuana with intent to
18 distribute.

19 Yes, ma'am? I'm sorry.

20 MS. LIVESAY: It's okay, Your Honor. I'm not sure what
21 -- the fact that it's PWID marijuana has to do with it. I
22 think the rule only allows us to say, have you been convicted
23 of a felony; once they say yes, that's it. Normally, I've
24 never -- I don't know what ---

25 THE COURT: Well I've got into splitting that hair before

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1 when like, for example, the crime that was charged here is a
2 drug offense as well. When they're similar, so similar in
3 nature, I quite often have limited the lawyer from asking what
4 was the conviction for. Here the crime is armed robbery. I
5 don't hear any drug offenses in any of this stuff.

6 MS. LIVESAY: And I understand that. My only concern is
7 it gets very unduly prejudicial when we're talking about a
8 transaction between him and Christopher Bell. They never ---

9 THE COURT: But the Jury is not gonna know that. The
10 Jury's not gonna know that unless you open that door.

11 MS. LIVESAY: I, I think my concern is, I'm just -- once
12 we get into the fact that he has a PWID marijuana charge, the
13 assumption is gonna be the transaction between him and Chris
14 Bell was a, a drug transaction obviously because it's gonna
15 come in that he has -- and I think in some circumstances, it
16 would be probative but, when I think you look at the fact that
17 we're talking about a transaction that has led to an armed
18 robbery and burglary first, I think it's very quick for them
19 to jump to this transaction obviously had drugs involved.

20 THE COURT: Well, ma'am, again, I am not going to allow
21 him to go into any of the extrinsic circumstances involved in
22 the conviction, simply that there is a conviction. It's a
23 matter of record. I do not see that that particular
24 transaction in any way relates to these charges ---

25 MS. LIVESAY: Okay.

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1 THE COURT: --- unless someone tries to make that
2 connection. And I've instructed him that I'm not gonna let
3 him go there to try to hook that up because I've made a ruling
4 already on the other and I'm gonna stick by that ruling. But
5 I will allow him to ask if he has a conviction and what it's
6 for. Now if you want to get back up and examine him further
7 and perhaps open the door as to what the extrinsic
8 circumstances are, that would be up to you to decide how to
9 handle your case.

10 MS. LIVESAY: Yes, sir, Your Honor.

11 THE COURT: You understand where we are, Mr. McCollum?

12 MR. MCCOLLUM: I understand where we are, Your Honor, and
13 I ask -- I mean, I would ask one thing from Your Honor.
14 There's been a reference in here in camera that this
15 transaction or this drug offense actually was between him and
16 Christopher Bell. I'm not, I'm not aware of that. I would --
17 I am interested in that and, just for the record, I don't know
18 what the facts of that are. If he could just state that or
19 Your Honor could ask him to, to tell us because that could be
20 relevant in, in, in the ruling.

21 THE COURT: How?

22 MR. MCCOLLUM: Well, when you're talking about, you know,
23 the, the, the felony where he's involved in it, I think that
24 the motivation, or the purpose, or prior dealings they had
25 with each other, I mean, it seems relevant to me, Your Honor.

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1 But even if Your Honor says it's not relevant, I'm simply
2 asking that we have the opportunity to just flush that out a
3 little bit to see what we're talking about because I just
4 assumed that he had a separate offense. I didn't know that it
5 involved one of the Codefendants in this case and I'm merely
6 requesting that, Your Honor. All I can do is ask obviously.
7 I understand ---

8 THE COURT: You want to make a proffer?

9 MR. MCCOLLUM: Yes, sir.

10 THE COURT: Go ahead. I said go ahead.

11 MR. MCCOLLUM: May it please the Court?

12 THE COURT: I said go ahead.

13 PROFFER EXAMINATION BY MR. MCCOLLUM:

14 Q: Mr. Degruccio, when you were arrested and charged with
15 possession with intent to distribute marijuana, was anyone
16 arrested with you?

17 A: Yes.

18 Q: How many individuals?

19 A: Just one.

20 Q: And what was that person's name?

21 A: I'm not sure what his last name was. His first name was
22 James. I think his last name is pronounced Brimer.

23 Q: Brimer. And that was not -- did that involve Christopher
24 Bell in any way, shape or form?

25 A: The drugs that were taken, were given to me by Christopher

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1 Bell and that's the money that I owed him and that's why he
2 came to my house to rob me.

3 Q: And the drugs that were referred to was marijuana, right?

4 A: Yes, sir.

5 Q: And do you know an approximate quantity of marijuana?

6 A: A quarter pound.

7 Q: A quarter pound of weed or marijuana and for, you were
8 supposed to pay Christopher Bell about \$800 for that?

9 A: Well, I only owed him for two of them. I had a QP; that's
10 what I got arrested with. I only owed him for half of that.

11 Q: So you had a QP; you're saying had a quarter-pound that
12 you were arrested with, correct?

13 A: Yes.

14 Q: And you were supposed to pay him \$800 for half of a
15 quarter-pound?

16 A: Yes.

17 Q: Okay. And was there any reason why you were only supposed
18 to pay him for half of it?

19 A: Yes, because I only owed him for half of it.

20 Q: So you had paid the other half?

21 A: Yes.

22 Q: So you had paid him about 800 and you owed him another
23 800?

24 A: Yes.

25 Q: But you were unable to pay him because you got busted with

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1 it and got arrested and the police seized the marijuana?

2 A: Correct.

3 Q: And the incident that, if, if you know, the month that you
4 were arrested, the month and the year?

5 A: I'm not exactly sure. I don't want to say the wrong date.
6 I'm sure it's on record though.

7 Q: But, it was obviously prior to February of 2013, right?

8 A: Over a year before then.

9 Q: So sometime in maybe 2012; maybe as early as 2011?

10 A: Yes.

11 Q: Is that a fair statement?

12 A: Yes.

13 Q: And is that the first time that you bought marijuana from
14 Christopher Bell?

15 A: No.

16 Q: Approximately, how many times did you ---

17 MS. LIVESAY: Your Honor, I think we're getting outside
18 of the scope of what the victim ---

19 THE COURT: This is a proffer.

20 BY MR. MCCOLLUM:

21 Q: About how many times did you purchase marijuana from
22 Christopher Bell?

23 MS. LIVESAY: Your Honor, my concern is that he is now
24 incriminating himself on other crimes. He doesn't have an
25 attorney here. He's not under arrest.

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1 THE COURT: I think we're heading into that territory,
2 you want me to warn the witness that he has the right to
3 remain silent, that anything he says can and will be used
4 against him in a Court of law, that he's entitled to the
5 rights, to, to the advice of an attorney and if he wishes to
6 have an attorney, he needs to let us know and the
7 interrogation will stop until he is represented.

8 MR. MCCOLLUM: Thank you, Your Honor.

9 THE COURT: You want to go into that?

10 MR. MCCOLLUM: I would like to.

11 THE COURT: It may be incriminating your client as well.

12 MR. MCCOLLUM: I don't see how things could get much
13 worse.

14 THE COURT: Well, then I will have to advise you that you
15 have the right to remain silent. Anything that you can and
16 say will be used against you in a court of law. You have a
17 light -- right to legal representation. If you wish to have
18 an attorney, you have the right to do so and the interrogation
19 will stop if you wish to have an attorney until such time as
20 you get legal advice concerning these matters. Do you wish to
21 answer these questions?

22 A: No, Your Honor.

23 THE COURT: You're invoking your right to, to refuse to
24 answer on the grounds that they may incriminate you; is that
25 correct?

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1 A: Yes, Your Honor.

2 THE COURT: All right. He's refused to answer.

3 MR. MCCOLLUM: Thank you, Your Honor.

4 That would be the proffer. That's what I didn't know
5 that I was trying to learn, Your Honor.

6 THE COURT: All right.

7 MS. LIVESAY: I guess my question is, is how much of this
8 are we gonna let in? Are we gonna let him inquire into this
9 entire conviction and how it went down or is he ---

10 THE COURT: I've already said that I wouldn't. Now
11 there's been a proffer and I will allow him to argue why I
12 should change my mind. I've heard the proffer.

13 MR. MCCOLLUM: Yes, sir. May it please the Court?

14 Your Honor, I think it's part of the crime, the body of
15 the crime, the res gestae, whatever the terminology is. I
16 think it explains the, the motive of Christopher Bell. Now
17 Kenneth Bell, for reasons that we'll get into, felt the need
18 to, to protect or, or, or safeguard his brother, whether
19 that's effective in this case or not, but that's ultimately
20 where we're going with this. I would submit that that has
21 relevance for those reasons. There are these prior dealings
22 with each other and there's been evidence that no one else in
23 terms of robbery and a theft, no one else was, was -- and I
24 understand the legal part of it. He was the target, if you
25 will, of the actions of Christopher Bell in the alleged

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1 actions of Kenneth Bell. So I think it's relevant, obviously,
2 Your Honor, you know, I'm defending him.

3 THE COURT: The issue here is not relevance. The issue
4 is whether or not its prejudicial effect. When you have
5 relevant evidence, then the Court can inquire as to whether or
6 not the prejudicial effect of admitting that relevant
7 evidence, outweighs its probative value in the case. I think
8 that's where we are.

9 MR. MCCOLLUM: Okay. So the Court agrees with me that
10 it's relevant?

11 THE COURT: I'm saying that it could be relevant. It
12 could bear on some question in the case.

13 MR. MCCOLLUM: And I understand the fact, the facts
14 alleged. I think it goes to the intent on behalf of at least
15 the Codefendant and may be separate intent regarding the
16 Defendant here on trial. Obviously, Your Honor, I think I
17 should be allowed to go into it. Okay. I think it is not
18 unduly prejudicial. Most cases that deal with prejudice are,
19 are the Court's taking care not to unduly prejudice the
20 Defendant so that he receives due process and receives a fair
21 trial. As I understand the role of our system and the
22 advocate, the role that I have, is I am supposed to question
23 the, the bias and the ability of the witness to be truthful
24 or, or any, any way, shape or form and I think ---

25 THE COURT: I've allowed you to bring out a questionable

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1 conviction. So I've ruled in your favor on that.

2 MR. MCCOLLUM: Well, thank you.

3 THE COURT: I guess my question is now, Do you want to
4 get into the facts and circumstances of that conviction?

5 MR. MCCOLLUM: Clearly, Your Honor, and you were asking
6 me why I should be able to and I was attempting to explain
7 that.

8 THE COURT: Well, I understand that and, so far, I'm not
9 convinced that we should go in and try that case. Again, the
10 issue here and the Jury knows that there was an alleged debt.
11 The Jury's been made aware that there was a controversy over
12 whether money was owed. Whether that debt arose as a matter
13 of an honest legal transaction, they bought and sold a car,
14 traded other property, which is entirely legal or whether it
15 was for an illegal substance. I'm not sure it justifies the
16 allegations of what happened in this case. I don't see how
17 that bears on this.

18 MR. MCCOLLUM: I know, Your Honor.

19 THE COURT: And so that's gonna be my ruling pretty much
20 consistently as we move along. You certainly have a right to
21 make your record. You certainly have a right to challenge
22 that ruling. You have done so adequately, I think, but my
23 ruling is going to remain the same.

24 MR. MCCOLLUM: Okay.

25 THE COURT: My ruling is that I will allow you to ask him

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1 about the conviction. I will not allow you to go into the
2 extrinsic facts and circumstances of that conviction.

3 MR. MCCOLLUM: Your Honor, I understand the ruling.

4 THE COURT: Since they not involve, as I can tell, an act
5 of dishonesty or a false statement.

6 MR. MCCOLLUM: It's -- you just gave me a glimmer of hope
7 when I did the proffer.

8 THE COURT: And again, you certainly have a right to make
9 the proffer and I have -- and we've allowed you to do so. The
10 record is preserved. And then you can, you know, take it on
11 up if you'd like; that's fine. That's what they're there for.

12 MR. MCCOLLUM: Thank you, Your Honor.

13 THE COURT: All right.

14 MS. LIVESAY: Thank you, Your Honor.

15 THE COURT: Yes. Bring the Jury in.

16 (REPORTER'S NOTE: The Jury enters courtroom. 12:24 P.M.)

17 THE COURT: Let the record reflect the Jury has returned
18 to the courtroom. I have overruled a State's objection and
19 given the attorneys some instruction as to how to proceed
20 under the rules. You may proceed, Mr. McCollum.

21 MR. MCCOLLUM: Thank you, Your Honor. May it please the
22 Court?

23 THE COURT: Yes, sir.

24 CONTINUATION OF CROSS EXAMINATION BY MR. MCCOLLUM:

25 Q: Okay. Mr. Degruccio, before the break, I had asked you if

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1 you had been convicted of a felony; do you recall that?

2 A: Yes, I do.

3 Q: And you have, correct?

4 A: Yes.

5 Q: And that felony that you were convicted of is possessing
6 marijuana with intent to distribute it or sell it, right?

7 A: Yes.

8 Q: Okay. Thank you. Now, when, when Christopher Bell --
9 Christopher Bell, you, you admit knowing him, correct?

10 A: Yes.

11 Q: And in fact, your testimony is that when Christopher Bell
12 was in your apartment, that you recognized him, right?

13 A: Yes, I recognized his voice.

14 Q: And he was standing in your apartment and he was wearing a
15 mask, right?

16 A: Yes.

17 Q: And when you said something like, Chris? Is that the way
18 you said it?

19 A: Similar to that, yes.

20 Q: You said, Chris? Right? And he said -- he took his mask
21 off, right?

22 A: Yes.

23 Q: And the reason you knew it was Chris is because when he
24 was referring to money that you owed him, you knew that made
25 you know who it was, right?

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- 1 A: I recognized his voice, that's how I knew who it was.
- 2 Q: Okay. But did you owe other individuals money?
- 3 A: No.
- 4 Q: So the fact that he was -- did he say give me the money
- 5 you owe me?
- 6 A: He said, Give me all your shit.
- 7 Q: He didn't say give me back the money you owe me?
- 8 A: No.
- 9 Q: Okay. And when he said that, you said, Chris, and then he
- 10 -- you say he took off his mask and then -- is that correct?
- 11 A: Yes.
- 12 Q: All right. And then is it true that you argued with him?
- 13 A: I don't know if you would call it an argument but we had
- 14 words.
- 15 Q: You had words, right?
- 16 A: Yes.
- 17 Q: And what -- can you describe for us, if you will, what
- 18 that means to have words, like you and I right now, we're not
- 19 having words, are we?
- 20 A: No, not really.
- 21 Q: When you say we had words, does that mean that you
- 22 threatened him?
- 23 A: No, I did not threaten him. It was more like a heated
- 24 discussion, not really an argument.
- 25 Q: So while this guy is in your apartment, you're having a

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- 1 heated discussion with him, correct?
- 2 A: Yes.
- 3 Q: And what was the nature of the heated discussion?
- 4 A: He was robbing me and I was a little upset about it.
- 5 Q: Okay. Did you push him?
- 6 A: No, I never touched him, but he pushed me.
- 7 Q: Did you grab him?
- 8 A: No.
- 9 Q: Now did have words or did he have any heated discussion
- 10 with Erik Meijer?
- 11 A: No.
- 12 Q: What's the other fellows name that was sleeping, Scott
- 13 McDonald?
- 14 A: Nobody talked to him.
- 15 Q: And then Mr. Tanner?
- 16 A: He was locked in his room so nobody talked to him either.
- 17 Q: His name slipped me, what's his name?
- 18 A: Tanner Clark.
- 19 Q: Tanner Clark. So Christopher Bell did not have words with
- 20 those individuals, right?
- 21 A: No.
- 22 Q: Only with you, correct?
- 23 A: Yes.
- 24 Q: And you in fact had property taken from you, right?
- 25 A: Yes.

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- 1 Q: And Christopher Bell took that property, right?
- 2 A: Yes.
- 3 Q: And no one took property from Erik Meijer, right?
- 4 A: No.
- 5 Q: No one took property or even talked to Scott McDonald,
- 6 right?
- 7 A: Right.
- 8 Q: And no one took property from Mr. Tanner?
- 9 A: Correct.
- 10 Q: Mr. Clark, I'm sorry, Tanner Clark. It was only you,
- 11 right?
- 12 A: Yes.
- 13 Q: Were you, were you injured that day?
- 14 A: No.
- 15 Q: So you did not receive any injuries?
- 16 A: Not physically.
- 17 Q: Now this Christopher Bell, you've known him for some time,
- 18 right?
- 19 A: Yes.
- 20 Q: And are you familiar with an accident he had where he was
- 21 severely injured?
- 22 A: I believe he was in a car crash.
- 23 Q: And are you familiar with the condition of his right arm?
- 24 A: I believe his arm is a little messed up, yes.
- 25 Q: It's quite messed up, isn't it?

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BY THE COURT

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1 A: I am not exactly sure on the condition of his arm, but I
2 know he is injured.

3 Q: Are you -- do you know which arm is injured, whether it
4 was the right or the left?

5 A: No.

6 Q: If you I show you a picture of it, do you think you could
7 identify that?

8 A: I could try.

9 MS. LIVESAY: Your Honor, I have an objection to both --
10 all these pictures.

11 THE COURT: All right. Ladies and gentlemen of the Jury,
12 again I'm gonna ask you to step back to the jury room. Don't
13 get in any discussions until such time as I've had an
14 opportunity to ask you to begin your deliberations. You may
15 retire at this time.

16 (REPORTER'S NOTE: The Jury exits courtroom. 12:26 P.M. The
17 following takes place outside the presence of the Jury.)

18 THE COURT: I didn't know how we could discuss the photos
19 without talking about what's in them. So, I sent the Jury
20 out.

21 Yes, ma'am?

22 MS. LIVESAY: Thank you, Your Honor. The, the photos are
23 obviously, A, they don't involve Kenneth Bell, who is on trial
24 here today; B, they don't involve anything regarding the
25 incident. There's nobody that can identify if this is, A,

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1 what Christopher Bell looked like at the time; and B, what a
2 picture of him and his family together have anything to do
3 with this case and it is obviously to do nothing but bolster
4 these ---

5 THE COURT: Can I see -- can I see the pictures, please?

6 MR. MCCOLLUM: She has the second copy, Your Honor.

7 THE COURT: Okay. All right. The -- what is the
8 probative value of the pictures?

9 MR. MCCOLLUM: The, the, the Codefendant, Christopher
10 Bell, had a debilitating injury from a car accident, where
11 he's -- his right arm was injured. It hangs limp. I've been
12 told that he could, he could hold something with it. For
13 example, he could grasp something, but he can't lift anything.
14 So, for instance, if he was holding a can of soda or
15 something, he could hold that, but he would have to pick it up
16 with the other hand to drink it. So, he has some -- he's not
17 -- he doesn't have one arm, but he only doesn't really have
18 any use of it, and that's the, that's the reason that I
19 offered the picture. He says that he knows ---

20 THE COURT: The photo I've been given, there's one
21 involving a family grouping where I assume that's Mr. Bell
22 wearing the tie. And then there's a photo of just -- it
23 appears to be him in a kitchen. In both pictures, you can see
24 the sling, I believe. Am I correctly describing?

25 MR. MCCOLLUM: Yes, sir.

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1 THE COURT: And your purpose is to show the sling?

2 MR. MCCOLLUM: Well, it's just to document -- I want to
3 talk about the injury later in the trial and possibly call
4 other witnesses but, yeah, I just want to document that, that
5 he has that injury.

6 THE COURT: And your objection is that the top photo may
7 involve some sympathy or something of that nature?

8 MS. LIVESAY: Well, my first objection is to the
9 relevance because I'm not trying them together. I'm only
10 trying Kenneth Bell.

11 THE COURT: I understand that, but there was some
12 testimony, Ms. Livesay, about the fact that the perpetrator,
13 one of the perpetrators carried the weapon in his left hand.

14 MS. LIVESAY: Right, my first is to relevance. My second
15 is there's nothing about this picture that shows anything
16 about an injured arm; that's my second thing. My third thing
17 is I don't have one ounce of evidence, other than Mr.
18 McCollum. I don't have one medical record; I don't have one
19 person here that can tell me that there's any truth that there
20 was any injury and to the extent of the injury. So, now we're
21 gonna have to have Mr. McCollum testify, I guess both as a
22 lawyer and a doctor and laying the foundation for this injury
23 and to the extent of the injury.

24 THE COURT: Well, no, ma'am, I'm not gonna let him
25 testify; that's not what he's trying to do. He's asking, he's

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BY THE COURT

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1 asking about these, gonna ask about these photos, I suppose,
2 to identify if that was the other perpetrator.

3 MS. LIVESAY: My objection is there's no way he can ask a
4 question to this witness, who has no idea about the injury --
5 he has no way to ask this witness or to lay a foundation about
6 this injury because they don't have any knowledge. He's not a
7 doctor, he cannot testify -- so, it is solely gonna be Mr.
8 McCollum discussing this injury and telling us that this
9 Defendant cannot hold a drink or hold a pencil, hold anything
10 in his arm.

11 THE COURT: Well, I'm going to not allow the top photo.
12 I will allow the bottom photo of these two, if it's to show
13 the picture of the other alleged perpetrator and it also does
14 show the sling, I think you said that was the reason you
15 wanted to put it in. So, I think that would accomplish that
16 purpose.

17 MR. MCCOLLUM: Is, is the problem that it shows other
18 people in the picture.

19 THE COURT: Well, it could, it could confuse the Jury.
20 It may involve other issues that are not on trial in this
21 case.

22 MR. MCCOLLUM: Can I cut the picture?

23 THE COURT: Yes, sir, I'm gonna allow you to -- I'm gonna
24 allow you to separate them.

25 MR. MCCOLLUM: But can I cut this other picture? In

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1 other words, can I just cut the other people out of the other
2 picture? I'm sorry, Your Honor, I thought it was okay to
3 approach.

4 THE COURT: I beg your pardon?

5 I'll allow you to cut it.

6 MR. MCCOLLUM: Thank you.

7 MS. LIVESAY: Your Honor, are we allowing this picture to
8 come in?

9 THE COURT: I don't know. He hasn't laid a very good
10 foundation for it yet. And so while we've got the Jury out
11 ---

12 MS. LIVESAY: I understand, Your Honor.

13 THE COURT: --- I'll allow him to lay a foundation on the
14 things you were talking about, whether or not it is an
15 accurate representation of the other alleged perpetrator,
16 whether or not it does appear to, to show him as he appeared
17 at that time; those are all relevant matters that the Court
18 would have to know before I would know whether the, the
19 photograph would be admissible. Finally, your objection, I
20 believe, was as to any relevance whatsoever?

21 MS. LIVESAY: Exactly, Your Honor, and the sympathy.
22 Obviously, this picture is tearing for sympathy by showing him
23 with his family ---

24 THE COURT: I've just eliminated the family; they're out
25 of the picture.

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BY THE COURT

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1 MS. LIVESAY: Your Honor, he's obviously standing in his
2 house. I mean, I don't know how you can ---

3 THE COURT: I'm not gonna make him produce a picture ---

4 MS. LIVESAY: --- we can make that relevant that he's
5 standing in that home smiling looking like a nice guy.

6 THE COURT: Well, everybody gets their picture taken
7 somewhere. I'm not sure whether if it's in their home
8 matters.

9 MS. LIVESAY: It's relevant in this trial. This is ---

10 THE COURT: Ma'am, you brought up the fact in your
11 examination that the perpetrator that came in with the gun had
12 it in his left hand. I don't know where this is going, but I
13 suspect from what I've been told, that this particular person,
14 who is another one of the people arrested at the scene, has a
15 problem with his right hand that prevents him from picking up
16 things. Now, this gentleman has acknowledged that he was
17 aware he had car accident, he was aware that he had an injury
18 to his arm, and he used the word, I think it's messed up, was
19 the word that he used in his testimony. Now, he has a
20 photograph of this person wearing some type of a sling on that
21 arm. I'm gonna give him a right, the right to make a proffer
22 with this witness as to whether or not those photos accurately
23 show this individual. He saw him in a lot of different
24 settings other than with a mask on his face. They knew each
25 other for some period of time. So, I'm gonna let him try to

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1 set a foundation to get it in. Then -- you've observed your
2 objection; you can make it when he finishes the foundation.

3 MS. LIVESAY: I will, Your Honor.

4 THE COURT: Now, Mr. McCollum, if you would please ask
5 the witness if he has, if he recalls how the gentleman looked
6 and whether that's an accurate representation of how he
7 looked.

8 DEFENDANT'S EXHIBIT NUMBER ONE

9 MARKED FOR IDENTIFICATION

10 PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

11 Q: Mr. Degruccio, at this time, I would like ask you to look
12 at what's been marked as Defense Exhibit Number One for
13 identification, okay; can you look at that for me, please,
14 sir? Have you had a chance to look at it?

15 A: Yes.

16 Q: Okay. Do you know who's in that picture?

17 A: It's Christopher Bell.

18 Q: And do you know any, do you have information about
19 Christopher Bell having an injury to his right arm?

20 A: Other than that I knew his arm was injured. I mean, I
21 don't know the specifics of the injury.

22 Q: I understand. I'm not asking you for the specifics?

23 A: I know his arm was injured; that's all I know.

24 Q: In those two photographs in Defense Exhibit One for
25 Identification, he's depicted in both of those?

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- 1 A: Yes.
- 2 Q: And there's a sling on which arm?
- 3 A: On his right arm.
- 4 Q: And that's in both photos?
- 5 A: Yes.
- 6 Q: Did you ever see him wearing a sling?
- 7 A: No.
- 8 Q: Did you ever see him favoring his right arm?
- 9 A: No.
- 10 Q: Okay. Have you -- did it ever come to your attention --
- 11 did you ever see him lift his right arm above his head or did
- 12 he ever -- did anything ever draw your attention to it?
- 13 A: No.
- 14 Q: Okay. Did you have any independent knowledge when he was
- 15 in -- that he had been in a car accident?
- 16 A: I knew it because Chris told me himself.
- 17 Q: So, he told you that he had been in an accident?
- 18 A: Yes.
- 19 Q: Okay. And as a result of that, did he tell you that he
- 20 had received an injury to his arm?
- 21 A: Yes.
- 22 Q: Did he tell you that he couldn't lift his arm above his
- 23 ---
- 24 A: It wasn't something that we talked about. He never went
- 25 into details about it.

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1 Q: All right.

2 MR. MCCOLLUM: Thank you, Your Honor.

3 MS. LIVESAY: May I ask him a couple of questions, Your
4 Honor?

5 THE COURT: Yes, ma'am. Please do.

6 MS. LIVESAY: Thank you.

7 REPLY PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:

8 Q: Paul, when was the accident?

9 A: I have no idea when his car accident was.

10 Q: Okay. Could it have been after February the 2nd?

11 A: No.

12 Q: Okay. It was before February the 2nd?

13 A: Yes.

14 Q: How do you know about the car accident?

15 A: I mean, we were friends, I just -- it just came up. I
16 don't really remember the first time when he said it. I just
17 knew.

18 Q: So he mentioned it to you?

19 A: Yes.

20 Q: Okay. And do you know when he mentioned it to you?

21 A: No.

22 Q: Okay. And did you notice him having in trouble with his
23 arms at all?

24 A: He always seemed to do everything fine. I mean he didn't
25 use his injured obviously, but he seemed to be capable in

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- 1 doing anything.
- 2 Q: Did he still drive a car?
- 3 A: Yes.
- 4 Q: Now, do you know the extent of the injury?
- 5 A: No.
- 6 Q: Okay. So you have no idea really the extent of the
- 7 problem with the arm?
- 8 A: No.
- 9 Q: But there's nothing that would lead you to believe that it
- 10 hampers him in any form or fashion?
- 11 A: No.
- 12 Q: Okay. So, when you were around him, he didn't look in any
- 13 way impaired not to be able to do what he normally did?
- 14 A: He seemed capable in any way.
- 15 Q: And could he drive a car?
- 16 A: Yes.
- 17 Q: Were you around him when he would eat and drink?
- 18 A: Yes.
- 19 Q: Okay. Could he do those things?
- 20 A: Yes.
- 21 Q: Could he open doors?
- 22 A: Yes.
- 23 Q: Did he carry things with his arms?
- 24 A: Yes.
- 25 Q: Okay. Now, that picture that Mr. McCollum showed you,

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- 1 there's something on his arm; did you see something on his
2 arm?
- 3 A: No. In the picture, yes, but not whenever we ---
- 4 Q: Okay. So, this picture, show me what you're looking at
5 that you see on his arm, so I'll know.
- 6 A: This white thing on his hand right here.
- 7 Q: Okay. And would you say that's his arm or would you say
8 that's his wrist?
- 9 A: I guess it's a little bit closer to his wrist.
- 10 Q: Okay. And let me ask you this much, is he wearing long
11 sleeves or short sleeves?
- 12 A: Long sleeves.
- 13 Q: So, really can you see if there's anything on his arm?
- 14 A: No.
- 15 Q: And is there anything in this picture that looks like
16 there's a brace or anything else on his arm?
- 17 A: Besides what's on his hand, there's really nothing else
18 you can see.
- 19 Q: Okay. So, really, can you see his arm?
- 20 A: No.
- 21 Q: Okay. So, you don't know if there's a brace on his arm or
22 not?
- 23 A: I do not.
- 24 Q: Okay. And could you testify from this picture that there
25 was anything wrong with his arm?

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1 A: No.

2 Q: Could you testify that there's a brace on his arm?

3 A: No.

4 Q: Now, but there does appear to be something on his wrist;
5 is that correct?

6 A: Yes.

7 Q: Okay. And had you ever seen that before?

8 A: No.

9 Q: Okay. So, this picture, you've known him for how long?

10 A: A year or two.

11 Q: Okay. And during the time, that year or two, he told you
12 about his accident?

13 A: Yes.

14 Q: But ironically, this is the only time you've ever seen
15 that on his hand?

16 A: Yes.

17 THE COURT: Anything further, Mr. McCollum?

18 MR. MCCOLLUM: Not on that issue, Your Honor.

19 THE COURT: All right.

20 MR. MCCOLLUM: One, one thing does come to mind.

21 THE COURT: Yes, sir.

22 MR. MCCOLLUM: And quickly before the Jury comes back so
23 -- I don't want them to have to go back and I have to finish
24 my cross examination.

25 THE COURT: Oh, I understand.

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1 MR. MCCOLLUM: I would just like to ask him if he's, and
2 this has to do with drugs, because when, when the police got
3 to the scene, I believe that there was marijuana found and a
4 bong or something of that nature and I believe that it was
5 stolen from him. And I think on the 911 tape, when he's
6 talking to Mr. Tanner Clark, if that's his name, when they
7 were asking what did you get, I believe he said he got my weed
8 or he got my weed and a bong. I'd just like to ask him about
9 that.

10 MS. LIVESAY: I didn't hear that.

11 THE COURT: I didn't hear that either.

12 MR. MCCOLLUM: Well ---

13 THE COURT: It's in evidence. You want to play it?

14 MR. MCCOLLUM: Well, I listened to it multiple times
15 trying to pick up on that.

16 THE COURT: Did you pick up on it?

17 MR. MCCOLLUM: Some of us believe that we did, but I, I
18 was having trouble hearing it. Okay. But ---

19 THE COURT: I wasn't listening for it, but I just didn't
20 hear that.

21 MR. MCCOLLUM: I'd simply like to ask him if I may be
22 permitted?

23 THE COURT: All right. Go ahead.

24 PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

25 Q: Did you say that they got your weed?

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BY THE COURT

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1 A: No, I did not.

2 Q: And did you say that they took my bong?

3 A: No, I did not.

4 Q: Did you have marijuana and a smoking pipe or a bong stolen
5 from you?

6 A: No.

7 Q: Okay. So, if drugs were found beside the car, those did
8 not belong to you?

9 A: Correct.

10 Q: Okay. I just -- all right.

11 MS. LIVESAY: I just want to know if these questions are
12 gone be asked when the Jury's back out?

13 BY THE COURT:

14 THE COURT: I'm not gonna allow it.

15 MS. LIVESAY: Okay. Thank you, Your Honor.

16 THE COURT: Unless it's on -- if it's on the tape or the
17 recording, we can talk about it, but I didn't hear that. If
18 you want to play it back to me, I'll be glad to listen to it
19 again. If you think I should, I mean ---

20 MR. MCCOLLUM: I don't know how we can hear it. We've
21 listened to the tape four or five times.

22 THE COURT: Yes, sir. I've listened to it now at least
23 three times.

24 MR. MCCOLLUM: I guess out of an abundance of caution,
25 Your Honor, I ---

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BY THE COURT

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1 THE COURT: Why don't I send the Jury out to lunch
2 because this is gonna take a while and ---

3 MR. MCCOLLUM: I'm sorry, Judge.

4 THE COURT: That's quite all right.

5 MS. LIVESAY: You want me to play the tape, Your Honor,
6 for the Court record.

7 THE COURT: I'm gonna send the Jury out and then we're
8 gonna deal with this while the Jury's out to lunch. There's
9 no need in keeping them in a jury room while we talk about
10 this and it's already 12:30.

11 Bring the Jury in.

12 (REPORTER'S NOTE: The Jury enters courtroom. 12:24 P.M.)

13 THE COURT: All right. Ladies and gentlemen, it's come
14 to my attention that my discussion concerning evidentiary
15 questions is gonna take a little longer than I thought it was
16 going to take and it's already about 12:30, so I'm gonna let
17 you folks go on to your lunch. I'll give you the same
18 instructions that I give you every time you leave the
19 courthouse and, again, that is don't try to gather any
20 information about the case on your own, don't listen to, watch
21 or read media reports, don't discuss the case with anyone,
22 don't allow anyone to discuss it with you and if anyone
23 attempts to do so, please report them upon your return. I'll
24 ask you to be back in the -- are they coming back to, the
25 assembly room downstairs? Be there by 2 o'clock this

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BY THE COURT

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1 afternoon. So, at this time, you're free to go to lunch. I
2 hope you have a good one and I'll check on you when you come
3 back. Thank you.

4 (REPORTER'S NOTE: The Jury exits courtroom. 12:26 P.M. The
5 following takes place outside the presence of the Jury.)

6 THE COURT: All right, ma'am, could you get the CD and
7 let's cue it up and I believe what you were referring to was
8 the point in time in which the 911 operator was asking the
9 gentleman what was taken and he was asking someone else and
10 they were responding; is that the part that you're referring
11 to?

12 MR. MCCOLLUM: Yes, sir.

13 THE COURT: All right. If you'll try to cue it to that
14 location.

15 (REPORTER'S NOTE: Portion of Plaintiff's Exhibit One played
16 for the Court outside the presence of the Jury. Not
17 transcribed herein.)

18 THE COURT: Play that section one more time? Can you
19 tell me specifically when you think he says it? Play that
20 section again.

21 MS. LIVESAY: You want me to play it again, Your Honor?

22 THE COURT: Yes.

23 MS. LIVESAY: The whole thing or just that ---

24 THE COURT: Just that last little section where she's ---

25 MR. MCCOLLUM: I think it's on there -- it's after

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BY THE COURT

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1 they're asking about the cash, was money taken or cash or
2 something.

3 THE COURT: All right.

4 MR. MCCOLLUM: I can't hear it, Your Honor.

5 THE COURT: I don't hear it either, but I'll sure listen
6 one more time.

7 MS. LIVESAY: I'm getting it, Your Honor.

8 THE COURT: Thank you.

9 (REPORTER'S NOTE: Portion of Plaintiff's Exhibit One played
10 for the Court outside the presence of the Jury. Not
11 transcribed herein.)

12 THE COURT: Is that it? Turn it off.

13 MR. MCCOLLUM: Your Honor, I don't know what to do. My
14 assistant, Cathy, punched me and says that it says, they took
15 my weed, okay. I don't hear it, okay, so I'm really ---

16 THE COURT: I don't hear it either.

17 MR. MCCOLLUM: I feel like that it's something that I
18 should address if it's on there and I appreciate Your Honor
19 playing it.

20 THE COURT: Well, let me ask this question. Did the
21 police recover drugs at the scene?

22 MS. LIVESAY: I'm sorry, Your Honor. What was that?

23 THE COURT: Did the police recover drugs at the scene?

24 MS. LIVESAY: They did, Your Honor, I believe. Was it
25 marijuana?

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BY THE COURT

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1 OFFICER BOYD: Marijuana.

2 MS. LIVESAY: From the car?

3 OFFICER BOYD: No, from Chris Bell.

4 MS. LIVESAY: From Chris Bell; where at on Chris Bell?

5 OFFICER BOYD: I believe Officer Langlais took it from
6 his person.

7 MS. LIVESAY: I don't think it was ever tested, was it?

8 OFFICER BOYD: I don't have the results of the testing.

9 MS. LIVESAY: My understanding was there some marijuana
10 recovered, and correct me if I'm wrong, from the front of the
11 car.

12 MR. MCCOLLUM: There's some photographs, Your Honor,
13 which are not in evidence at this time, that show that
14 something, some glass object was broken, I think, near the
15 left front wheel of the vehicle that they were arrested at
16 and, and ---

17 MS. LIVESAY: So was that found on him or by the car?

18 OFFICER BOYD: You would have to ask ---

19 MR. MCCOLLUM: And maybe I should just ask the officer
20 that seized the drugs at the appropriate time in the case and
21 then we'll revisit this if it's appropriate.

22 MS. LIVESAY: The two issues I have is, to my knowledge,
23 the marijuana has never been tested. So, I don't know who's
24 gonna get up here and say it's marijuana. My second concern
25 is I've got ---

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BY THE COURT

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1 THE COURT: A green leafy substance is probably how it
2 would be described.

3 MS. LIVESAY: It was a green leafy substance. I don't
4 even think it was field tested at the scene so I'm not sure
5 who's gonna testify that it's marijuana. I wasn't gonna bring
6 it in. There's a picture there, but they're not charged with
7 any drug offenses and I told Greg I have no intentions of
8 bringing up anything about drugs paraphernalia or drugs being
9 around the car. They're not charged with that offense; I have
10 no intentions of bringing that up and I told him that when we
11 reviewed the evidence. So again, I don't know, the only
12 relevance is for him again to try to say that my victim had
13 marijuana in the house when nobody has said that, there's no
14 proof to that and, again, it's not relevant. I think we've
15 gone so far now, I want to put Mr. Bell in the back and put
16 Paul Degruccio over there in that chair. I think we are
17 getting to that point. I think we are losing what he's
18 charged with and who and what's probable and what's not as to
19 the armed robbery, burglary first and kidnapping and the
20 charges that he's charged with. None of those have anything
21 to do ---

22 THE COURT: Well, what, what I'm gonna do at this point
23 in time -- I've listened to the tape. I can't hear what I'm
24 being urged to hear. So, I don't hear that. What I will do
25 is when I -- I'm not gonna let you inquire of this witness

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BY THE COURT

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1 into that at this point in time. He'll subject to recall if
2 you'd like to recall him once we get further into the case.
3 If there is some evidence because of the proffer -- he's
4 denied that he had any taken, that he had any in his
5 possession. If there is evidence from other witnesses that
6 that was in fact taken as part of the robbery or whatever that
7 was, then it may become relevant at that point in time, but I
8 haven't heard anything yet. There's no evidence that I heard
9 on the recording and he has denied that anything was taken
10 from him or that he said those things. So, later on if
11 there's, for example, another person in the, in the apartment
12 heard him say that, then it may even become relevant as to his
13 credibility.

14 MR. MCCOLLUM: Thank you, Your Honor.

15 THE COURT: So, we'll see where we go with that. But
16 right now, I don't hear a foundation for it.

17 MR. MCCOLLUM: I understand, Your Honor.

18 THE COURT: Okay.

19 MS. LIVESAY: Thank you, Your Honor.

20 THE COURT: All right. We're in recess until 2 o'clock.

21 Sir, you're gonna be stepping down again. My same
22 instructions would hold true now. You should not discuss your
23 testimony with anyone during the break. You understand?

24 MR. DEGRUCCIO: Yes, Your Honor.

25 THE COURT: All right. We're in recess then until 2

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

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1 o'clock. Thank you.

2 MR. MCCOLLUM: Thank you, Your Honor.

3 (RECESS - 12:38 P.M.)

4 *****OFF THE RECORD*****

5 (On the Record - 2:00 P.M.)

6 THE COURT: The State ready?

7 MS. LIVESAY: Yes, sir, we are.

8 THE COURT: Defense ready?

9 MR. MCCOLLUM: Yes, sir, we are.

10 THE COURT: Bring the Jury in.

11 (REPORTER'S NOTE: The Jury enters courtroom. 2:01 P.M.)

12 THE COURT: The record will reflect the Jury has returned
13 to the courtroom. If any juror had any difficulty in
14 complying with my instructions during your absence from the
15 courthouse, please stand. It appears that everyone's been
16 able to comply with those instructions.

17 I've completed my discussion with the attorneys on some
18 evidentiary matters and at this time, you may resume your
19 cross examination, Mr. McCollum.

20 MR. MCCOLLUM: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CONTINUATION OF CROSS EXAMINATION OF PAUL DEGRUCCIO BY MR.

23 MCCOLLUM:

24 Q: Mr. Degruccio, first of all, we've taken several breaks
25 here so if I repeat myself or ask you questions I've already

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

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1 asked, I apologize.

2 Now, you testified earlier that when you saw Christopher
3 Bell, you had apologized for what had happened; do you
4 remember saying that?

5 A: Yes, I saw him at Food Lion.

6 Q: And you had said you had apologized for what had happened,
7 right?

8 A: I don't know if that's exactly what I said, but I know I
9 went up to him and we talked about it.

10 Q: And earlier, you and I, we had discussed this debt that
11 was owed and you said it was about \$800, right?

12 A: Yes.

13 Q: Do you remember it being 3200?

14 A: No.

15 Q: So you, you would deny that and say it was not \$3200?

16 A: Yes.

17 Q: Okay. Are you sure about that?

18 A: I'm pretty sure.

19 Q: Are you positive?

20 A: Ninety-nine percent sure.

21 Q: All right. Now, clearly you were arguing with Christopher
22 Bell, right, inside the house on February the 2nd, right?

23 A: Yes.

24 Q: And you had testified that you were angry with him and
25 upset with him, right?

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1 A: Yes.

2 Q: Okay. And at some point, did the other individual come
3 and separate the two of you?

4 A: No, he didn't separate us, but he did come into the room
5 and sit me down, yes.

6 Q: All right. And did you, did you -- how tall are you?

7 A: 5'2", I guess.

8 Q: And how much do you weigh?

9 A: About 115 pounds.

10 Q: All right. And you felt comfortable standing up to
11 Christopher Bell?

12 A: I wouldn't say that it was a comfortable situation, no.

13 Q: But you, you felt angry enough or upset enough that you
14 stood up for yourself, right?

15 A: I don't know if it was the anger, but I believe any person
16 stands up for themselves in a situation like that.

17 Q: Okay. There, there's, and there's no question but that
18 whatever the debt was that you owed, you owed it to
19 Christopher Bell and not another individual, right?

20 A: Yes.

21 Q: All right. And on this particular day, this was a
22 Saturday morning?

23 A: I'm not sure what day it -- what the day was?

24 Q: Well, when you work, do you normally, do you work all
25 seven days?

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- 1 A: I usually get one or two days off.
- 2 Q: So you could be off any time during the week, right?
- 3 A: Yeah, the schedule is always different.
- 4 Q: Okay. So, so the fact that you were home that morning
- 5 playing video games because of the nature of your job, that
- 6 wouldn't indicate whether it was a weekend or weekday, right?
- 7 A: No, it wouldn't.
- 8 Q: Those days just tend to run together?
- 9 A: I can have off on the weekend or I can have off on the
- 10 weekdays; it's just whatever they schedule me.
- 11 Q: In that, in that particular place that you lived in, I
- 12 take it that you and your roommates rented that?
- 13 A: Yes.
- 14 Q: And how many people were paying rent, three?
- 15 A: Four, including my roommate's girlfriend.
- 16 Q: Okay. And how much is the total rent for say a month, how
- 17 much is the rent for a month?
- 18 A: I think it's 625.
- 19 Q: Okay. So you had to pay a fourth of that?
- 20 A: Yes.
- 21 Q: And did you have, you had other bills, right?
- 22 A: Yes.
- 23 Q: In fact, I think you said you had a, a flat screen
- 24 television, right?
- 25 A: I don't believe I said that, but yes, I do own one.

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- 1 Q: Okay. Well, I'm sorry. Do you have a flat screen TV?
- 2 A: Yes.
- 3 Q: And if you know, what size is it?
- 4 A: A 32-inch maybe.
- 5 Q: All right. And that's just hanging in your bedroom?
- 6 A: Yes.
- 7 Q: And you have cable television or do you have the dish?
- 8 A: I don't have cable or anything TV hooked up in my room. I
- 9 don't like to watch TV.
- 10 Q: Okay. But you had cable at the apartment, right?
- 11 A: Yes, in other rooms, but not in my room.
- 12 Q: And so you paid your share of that, right?
- 13 A: Yes.
- 14 Q: And you paid your share of the electric bill, right?
- 15 A: Yes.
- 16 Q: And I guess water, is water included?
- 17 A: Water is included.
- 18 Q: And did you own a car at that time?
- 19 A: No, I've never owned a car.
- 20 Q: Okay. And if you're going somewhere, given the
- 21 circumstances here in this county, how would you travel; in
- 22 other words, if you were gonna go to work, how would you get
- 23 there?
- 24 A: My roommate would give me a ride.
- 25 Q: So, if you went to work at Hamburger Joe's for example to

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

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1 cook, what typically would you go in in the morning or the
2 afternoon or would they open at night; what would the work
3 schedule be like?

4 A: I usually either work from 10:00 to 4:00 or from 4:00 to
5 10:00.

6 Q: So if you work from 4:00 to 10:00, would your roommate
7 come and pick you up from the restaurant and bring you back
8 home?

9 A: Yes, usually we work together on the same days because
10 they know that we live together.

11 Q: So, the restaurant would tend to try to schedule it so
12 that you could -- they would accommodate you, I guess is the
13 right phrase?

14 A: Correct.

15 Q: And on the, the flat screen TV, that's yours?

16 A: Yes, it was a gift.

17 Q: Somebody gave it to you?

18 A: Yes.

19 Q: So, you didn't purchase it?

20 A: No.

21 Q: Who gave it to you?

22 A: My brother.

23 Q: And, and he just, was it for a birthday present?

24 A: It was for Christmas.

25 Q: Okay. And do you have an idea like to, and I may be

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

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1 saying this wrong, but on the flat screen TV there's this
2 thing called 1020 and 780, right?

3 A: 720, 1080.

4 Q: 780 or 1020; the 780, which do you have; do you have 780
5 or 1020?

6 A: It's 1080p.

7 Q: I'm sorry; I can't get it right. But you have the good
8 one?

9 A: Yes.

10 Q: All right. And do you know how much that television
11 costs?

12 A: My brother never told me how much it costs.

13 Q: How old is your brother?

14 A: He's twenty-five or twenty-six.

15 Q: Does he live in Horry County?

16 A: Yes, he does.

17 Q: What kind of work does he do?

18 A: He buys and sells currency.

19 Q: So, he's a currency trader?

20 A: Yes.

21 Q: Does he do that for other people or for himself?

22 A: Probably both.

23 Q: All right. And does he, is he registered as a broker or
24 something like that?

25 A: I'm not really sure. I don't really talk to my brother

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

1 too much.

2 Q: You don't? Why is that?

3 A: Just because he has kids now and I just barely see him.

4 He has lots of things going on.

5 Q: All right. And you say it was, you got it for your
6 birthday or for Christmas?

7 A: For Christmas.

8 Q: All right. And how, which Christmas was it; was it this
9 past Christmas?

10 A: It was two or three years ago.

11 Q: And that's a pretty nice present, right?

12 A: Of course.

13 Q: Do you normally get those kinds of presents from your
14 brother?

15 A: No.

16 Q: Was this a one-time occurrence?

17 A: Yes.

18 Q: Now in the past, and I apologize if we went through this,
19 but in the past year or so, would you say that you worked more
20 months or that you were unemployed more months?

21 A: Probably unemployed.

22 Q: Okay. And you were able to make your monthly payments and
23 do that sort of thing?

24 A: I had help from people.

25 Q: Okay. From the same brother?

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PAUL DEGRUCCIO - CROSS BY MCCOLLUM

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- 1 A: From my brothers and my parents, my roommates.
- 2 Q: So you have other brothers?
- 3 A: I have two brothers.
- 4 Q: Are they older or are they younger than you?
- 5 A: One is older and one is younger.
- 6 Q: How old is the younger one?
- 7 A: He's twenty-two.
- 8 Q: All right. And do they give you money to live on?
- 9 A: They would let me borrow money, but they never just gave
- 10 it to me.
- 11 Q: So, for instance, your younger brother, did he loan you
- 12 money?
- 13 A: Yes.
- 14 Q: How much did he loan you?
- 15 A: Just enough to pay the cable bill once.
- 16 Q: So, small amounts?
- 17 A: Yes.
- 18 Q: How about the other brother that we're talking about, not
- 19 the one that bought you the TV, but the other older brother;
- 20 did he loan you money?
- 21 A: I only have one older brother and he is the one who gave
- 22 me the TV.
- 23 Q: Okay.
- 24 A: And he did loan me money once, yes.
- 25 Q: Was that a significant amount of money?

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PAUL DEGRUCCIO - REDIRECT BY LIVESAY

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1 A: Just enough to pay one month's rent.

2 Q: Okay. And you don't like watching television, right?

3 A: I don't like the commercials.

4 Q: I understand. So what do you watch on the TV, movies and
5 things like that?

6 A: Sometimes. I mainly use it for computer.

7 MS. LIVESAY: At this time, I have to object it goes to
8 relevance and where this is going.

9 THE COURT: Relevance, Counselor?

10 MR. MCCOLLUM: I'll stop, Your Honor.

11 THE COURT: Thank you.

12 BY MR. MCCOLLUM:

13 Q: Finally, last question, last point. The only items that
14 were taken were items that belonged to you, correct?

15 A: Yes.

16 Q: All right. Thank you. That's all I have, Your Honor.

17 THE COURT: Redirect?

18 MS. LIVESAY: Just a couple, Your Honor.

19 THE COURT: Yes, ma'am.

20 REDIRECT EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:

21 Q: Now, Paul, we've talked a lot about Christopher Bell and
22 the fact that he was in the apartment that day; is that
23 correct?

24 A: Yes.

25 Q: You see him here today?

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PAUL DEGRUCCIO - REDIRECT BY LIVESAY

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- 1 A: Yes, I do.
- 2 Q: Could you point him out to the Jury?
- 3 A: He's over there. Yellow shirt.
- 4 Q: What color shirt?
- 5 A: Yellow.
- 6 Q: Okay. So that's him sitting behind Kenneth Bell?
- 7 A: Yes, ma'am.
- 8 Q: Okay. Now, you saw how many guys in there that day?
- 9 A: Two.
- 10 Q: Okay. And you recognized one of them; is that right?
- 11 A: Yes, by his voice.
- 12 Q: Now, do you know that Christopher Bell was arrested that
- 13 day?
- 14 A: Yes, I do.
- 15 Q: And are you aware that the guy that was with him was
- 16 arrested that day?
- 17 A: Yes.
- 18 Q: And do you know who that was?
- 19 A: It was Kenneth Bell.
- 20 Q: Okay. Now since you know Christopher Bell and obviously
- 21 now Kenneth Bell, tell the Jury who had the gun the day that
- 22 they came in your apartment?
- 23 A: It was Kenneth Bell.
- 24 Q: Okay. And tell the Jury, did you owe him any money or
- 25 have any relationship with him?

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ERIK MEIJER - DIRECT BY LIVESAY

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1 A: I never met him until that day.

2 MS. LIVESAY: No further questions, Your Honor.

3 THE COURT: Recross?

4 MR. MCCOLLUM: Nothing further, Your Honor.

5 THE COURT: All right, sir, you may step down.

6 You may call your next witness.

7 MS. LIVESAY: Could we excuse him, Your Honor, if he
8 wishes to be excused?

9 THE COURT: Any objection from the Defense?

10 MR. MCCOLLUM: Yes, Your Honor, at this time.

11 THE COURT: All right then, he'll have to stay.

12 MS. LIVESAY: The next witness then, Your Honor, would be
13 Erik Meijer.

14 THE COURT: Come forward and be sworn please, sir.

15 ERIK MEIJER, HAVING BEEN SWORN
16 TESTIFIES AS FOLLOWS:

17 THE COURT: Sir, once you're seated, I'd ask that you
18 state your name, please?

19 MR. MEIJER: My name is Erik Meijer.

20 THE COURT: Ms. Livesay, your witness.

21 DIRECT EXAMINATION OF ERIK MEIJER BY MS. LIVESAY:

22 Q: Mr. Meijer, tell the Jury how old you are?

23 A: I'm twenty-five.

24 Q: And are you working or in school?

25 A: I'm kind of working, taking a break from school to help my

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ERIK MEIJER - DIRECT BY LIVESAY

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- 1 mom out.
- 2 Q: Okay. And where are you working?
- 3 A: Anytime Fitness in Georgetown. I'm a personal trainer.
- 4 Q: Okay. And do you remember what happened February 2nd of
- 5 this year?
- 6 A: Yes.
- 7 Q: And do you know Tanner Clark and Paul Degruccio?
- 8 A: I do.
- 9 Q: And were you at their apartment that day?
- 10 A: Yes.
- 11 Q: Or did you live there?
- 12 A: No, I just stay the night there every once in a while.
- 13 Q: Okay. Now, if you don't mind, tell the Jury what happened
- 14 that day you were at the apartment?
- 15 A: It started out, I was hanging out with Paulie in his room,
- 16 we were gaming and he got a text from whatever that girl's
- 17 supposed to be. And eventually he ushered me out of the room
- 18 when she was supposed to be arriving, which is why I was in
- 19 the living room. And we j just sat out there. He had
- 20 unlocked the door and lightly cracked it and was checking out
- 21 the front window and then out of the blue, two people busted
- 22 through the door with masks, one with a gun and one with a
- 23 tire iron.
- 24 Q: Okay. Now before we get too far, were you in that den
- 25 that had the front door in it?

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ERIK MEIJER - DIRECT BY LIVESAY

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- 1 A: Yes.
- 2 Q: Okay. And who else was in that room with you?
- 3 A: Paulie, he was by the front door waiting.
- 4 Q: Okay. So, the front door opens up right into that living
- 5 room where you were sitting?
- 6 A: Yes.
- 7 Q: Okay. And so whoever came in the front door, you had a
- 8 clear shot?
- 9 A: Yes.
- 10 Q: Okay. Did you see anybody let those two guys in or invite
- 11 them in?
- 12 A: No.
- 13 Q: Okay. To your knowledge, did anybody in that apartment
- 14 know they were coming?
- 15 A: No, we were just expecting one woman.
- 16 Q: If you don't mind, describe to the Jury again what those
- 17 two guys looked like?
- 18 A: I mean, you know, I briefly noticed just the black and the
- 19 masks and the silver of the gun. I mean, I wasn't, my mind
- 20 doesn't work on details at that point. The moment I saw that,
- 21 I went into survival mode and I was just thinking of
- 22 situations and how I would possible act. So, I wasn't paying
- 23 too much detail to what they were wearing.
- 24 Q: Okay. Let me ask you this, did you ever see that gun get
- 25 pointed at anyone?

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ERIK MEIJER - DIRECT BY LIVESAY

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1 A: Yes.

2 Q: Who was the gun pointed at?

3 A: It was mostly pointed at Paul. It made a quick pass by
4 me.

5 Q: Okay. Where did they go after they came into the
6 apartment?

7 A: Initially, they seated Paul down in the seat. After
8 Paulie identified Chris, he took his mask off and led him back
9 to Paul's room while Kenneth stayed where he could look down
10 the hallway and watch me at the same time. So ---

11 MS. LIVESAY: If you don't mind, Your Honor, can I
12 approach the witness?

13 THE COURT: You may.

14 MS. LIVESAY: Thank you.

15 BY MS. LIVESAY:

16 Q: Mr. Meijer, I'm gonna show you what's in State's evidence
17 as Number Three; do you recognize that picture?

18 A: Yes.

19 Q: Can that -- can you show the Jury on that picture where
20 Kenneth was standing, the Defendant?

21 A: He was standing right there on the hardwood floor.

22 Q: I'm sorry, hold on.

23 A: On the hardwood floor. If you can look straight ahead,
24 you'll see couch and obviously you can see down the hallway.

25 Q: So, was he standing here on the wood floor?

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ERIK MEIJER - DIRECT BY LIVESAY

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- 1 A: Yes.
- 2 Q: Okay. And at any point, he lose control of that gun?
- 3 A: No.
- 4 Q: And how was he holding the gun when he was standing there
- 5 in the hallway?
- 6 A: While he was standing in the hallway, most of the time, he
- 7 was just kind of had his arms crossed. He didn't point it at
- 8 me the entire time but he was definitely watching.
- 9 Q: Okay. So, were you free to leave?
- 10 A: No.
- 11 Q: Did you ever get up to leave?
- 12 A: No.
- 13 Q: Why not?
- 14 A: Obviously, he would have reacted if I attempted to leave.
- 15 Q: Okay. So he was standing in a position where he could see
- 16 everything that was going on in the apartment?
- 17 A: Yes.
- 18 Q: Okay. So, if anybody did try to leave, he had a clear
- 19 shot at them?
- 20 A: Yes.
- 21 Q: Okay. So, if anybody wanted to leave from any of the
- 22 bedrooms, they would have to walk past him; is that correct?
- 23 A: Yes.
- 24 Q: Okay. And he had his eye on you most of the time; is that
- 25 correct?

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ERIK MEIJER - DIRECT BY LIVESAY

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- 1 A: Yes.
- 2 Q: Okay. So, you, you did not leave?
- 3 A: No.
- 4 Q: Okay. Now, were you present when Christopher Bell took
- 5 his mask off?
- 6 A: Yes.
- 7 Q: Okay. Do you remember what he looked like?
- 8 A: Yeah, it was the first time I ever met him, you know.
- 9 Q: Okay. Did you know Christopher Bell?
- 10 A: No.
- 11 Q: Had you ever met him before that day?
- 12 A: No.
- 13 Q: Now, Kenneth Bell, do you know him?
- 14 A: No.
- 15 Q: Had you ever met him before that day?
- 16 A: No.
- 17 Q: Okay. Now could you hear anything that was going on?
- 18 A: Not really, I mean, I just heard elevated voices. I
- 19 couldn't really distinguish what was being said.
- 20 Q: Did anyone ever try to take that gun from the Defendant?
- 21 A: No.
- 22 Q: Okay. And did you see whether or not Chris Bell had a
- 23 weapon.
- 24 A: A tire iron.
- 25 Q: Okay. And you saw that when they came in?

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- 1 A: Yes.
- 2 Q: Did you ever leave that living room?
- 3 A: No.
- 4 Q: Okay. Did you see the two Defendants walk out the front
5 door?
- 6 A: Yes.
- 7 Q: When you saw them walk out the front door, did you see
8 anything in their hands?
- 9 A: Yes, the two items already mentioned, the laptop and the
10 camera.
- 11 Q: So, you saw them walk out with that?
- 12 A: Yes.
- 13 Q: Did you have a weapon?
- 14 A: No.
- 15 Q: Okay. To your knowledge, was there a weapon in that
16 apartment?
- 17 A: No.
- 18 Q: Could you recognize Chris Bell now?
- 19 A: Probably. I just -- the most I got was like a quick
20 glance and a mug shot pictures on the internet. So, I'm not
21 sure if I'd be able to recognize ---
- 22 Q: So, you didn't get a look -- a good look at him that day?
- 23 A: No.
- 24 Q: Did you make eye contact with either one of them?
- 25 A: For a moment. I mean, as far as being guarded, I made eye

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1 contact several times.

2 Q: Were you intentionally not looking at him?

3 A: Yeah, most of the time, but I was still like scoping and
4 planning.

5 Q: Okay. Did you have a phone with you?

6 A: No, Tanner had my phone in his room.

7 Q: Okay. So, you had no way to call 911?

8 A: No.

9 Q: Okay. Did you recognize either one of their voices?

10 A: No, I had never met them before.

11 Q: Okay. And how many men were in that apartment that day?

12 A: Two uninvited and ones.

13 Q: Okay. So, the entire time, just the two guys, one with a
14 tire iron and the other had the gun?

15 A: Yes.

16 Q: Did anyone in that apartment to your knowledge ever try to
17 take the tire iron or big gun away from those two Defendants?

18 A: No.

19 MS. LIVESAY: No further questions, Your Honor.

20 THE COURT: You may cross examine.

21 MR. MCCOLLUM: Thank you, Your Honor.

22 THE COURT: Mr. McCollum.

23 CROSS EXAMINATION OF ERIK MEIJER BY MR. MCCOLLUM:

24 Q: Is it Meijer? Meijer?

25 A: Meijer.

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1 Q: It's pronounced Meijer.

2 A: Yeah, like mayor of the city.

3 Q: All right. Thank you.

4 Prior to the day, February 2nd, 2013, did you know
5 Christopher Bell?

6 A: No.

7 Q: Never seen him before?

8 A: No.

9 Q: All right. How long have you known Paul Degruccio?

10 A: I'd met him for the first time and years ago. We grew up
11 in the same area, but I knew him mostly through World of
12 Warcraft and I knew him personally through the last couple of
13 years.

14 Q: Okay. Now World of Warcraft, that's a video game?

15 A: Yes.

16 Q: You play it on-line?

17 A: Yes.

18 Q: It's somewhat addictive?

19 A: For the weak-minded, I suppose.

20 Q: Okay.

21 A: It's kind of hard to be a personal trainer and be addicted
22 to World of Warcraft.

23 Q: How long have you been a personal trainer?

24 A: Four years.

25 Q: Okay. And you have clients that you train?

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- 1 A: Yes, recently here, started in D.C., was brought to
2 Barbados as a private trainer. So, I've had numerous training
3 opportunities.
- 4 Q: So, you've been -- are you from Washington D.C.?
- 5 A: No, I grew up here.
- 6 Q: You grew up here in Myrtle Beach?
- 7 A: I graduated from Waccamaw.
- 8 Q: You graduated from Waccamaw High School. What year was
9 that?
- 10 A: '06.
- 11 Q: All right. How long have you been a personal trainer, I
12 think you said four years?
- 13 A: Yes.
- 14 Q: So, that was 2009, right?
- 15 A: '8, end of '8, '9.
- 16 Q: And do you have a certification for that?
- 17 A: International Academy of Sports Medicine.
- 18 Q: Okay. And did you go to school to study to be a personal
19 trainer?
- 20 A: Some. Like I said, I'm currently taking a break because
21 I'm back here trying to help my mom out.
- 22 Q: All right. So, you've been quite successful as a personal
23 trainer?
- 24 A: Yes.
- 25 Q: And when you indicated that you trained clients in

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1 Washington D.C., that's where the client lived and they, you
2 traveled up there and trained them?

3 A: I went to school at the University of Maryland, so I was
4 living in the D.C. area.

5 Q: Okay. And then you said that someone flew you to Barbados
6 to train them?

7 A: Yes, I lived there for a period of time.

8 Q: So somebody ---

9 A: My services were good enough to be brought to Barbados, so
10 they had me there.

11 Q: And how long were you there?

12 A: Six months on her dime and spent another three months
13 there living with a friend and their family.

14 Q: All right. So, if I heard you correctly, you said six
15 months on her dime?

16 A: Yes.

17 Q: So, you're referring to your client that you were
18 training?

19 A: Yes.

20 Q: And you were only training one person?

21 A: Yes.

22 Q: Okay.

23 A: And then I had a side job in Barbados but ---

24 Q: So, I take it this individual was fairly wealthy?

25 A: Yes.

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1 Q: And you, have you had -- and I'm not asking for names or
2 anything -- but do you have celebrity clients and sports
3 figures and people like that that you train?

4 A: Just that one, I mean, it wasn't that -- I didn't actually
5 train the celebrity, I trained the wife.

6 Q: Okay.

7 A: And no, I didn't have any relations during the Barbados
8 time. That goes strongly against my morals, especially since
9 I had met the husband, since that's what most people infer
10 happened with my trip.

11 Q: Okay. Back on February the 2nd, though, you weren't in
12 Barbados; you were sitting in your friends or your apartment,
13 right?

14 A: No, I don't live with them.

15 Q: I'm sorry. I messed that up. Back on February the 2nd of
16 2013, you were in Paul Degruccio's apartment playing video
17 games, right?

18 A: Yes.

19 Q: And I think you indicated in your statement that you had
20 what was described as a valuable laptop or a valuable
21 computer, right?

22 A: Yeah, it's a fairly big laptop that would require somebody
23 to grab it to probably set down their means of their defense.

24 Q: All right. And you also had other valuables with you?

25 A: No, just my laptop.

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- 1 Q: Okay. Did you have a wallet with you?
- 2 A: Yeah, but I didn't have any money at that time.
- 3 Q: So, you had an empty wallet with no money in it. Did you
- 4 have an expensive piece of jewelry or watch or anything?
- 5 A: No.
- 6 Q: Did you have a car?
- 7 A: No.
- 8 Q: You had the computer and a charger, right?
- 9 A: Yeah, for the computer.
- 10 Q: You had the laptop. And you said it was an expensive
- 11 laptop, right?
- 12 A: Yes.
- 13 Q: All right. Can you describe it or give us some idea of
- 14 how much or how valuable it is?
- 15 A: Asus G73; it's about 1300 bucks.
- 16 Q: All right. And was it fairly new?
- 17 A: I guess, a year and a half.
- 18 Q: And you did not -- you didn't owe anybody any money,
- 19 right?
- 20 A: No.
- 21 Q: And nobody took anything from you that day, right?
- 22 A: Like I said, no.
- 23 Q: Nobody took any valuables from you, right?
- 24 A: No.
- 25 Q: And in fact, I think you said at one point, you took the

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1 laptop and stored it under the sofa, right?

2 A: Yes.

3 Q: All right. And the only person that Christopher Bell was
4 dealing with or talking to was Paul Degruccio, right?

5 A: Yes, mostly.

6 Q: And did you know of any prior dealings between Paul
7 Degruccio and Christopher Bell?

8 A: No.

9 Q: So, you unaware of any of that?

10 A: Yes.

11 Q: Okay. Now, do you remember the time when the other
12 individual, the one other than Chris, left you in the living
13 room alone?

14 A: Yes, for the moment that he went to, I guess, point a gun
15 in Paulie's face and tell him to sit down.

16 Q: And do you remember him coming back into the living room
17 and saying that he was surprised that you were still there?

18 A: No, I think he expected me to be there.

19 Q: You don't remember him saying something to the effect that
20 ---

21 A: Absolutely not. He was there -- he went into the room for
22 a total of fifteen seconds. He was not giving me an
23 opportunity to leave.

24 Q: And he didn't say that to you?

25 A: No, he did not say, excuse me, you may leave now as I go

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1 talk to this person.

2 Q: But when he came back he didn't say he was surprised that
3 you were still there?

4 A: No, he wasn't the least bit shocked.

5 Q: And he didn't say that if you had tried to leave he
6 wouldn't stop you?

7 A: No.

8 Q: Okay. And when you -- when Ms. Livesay asked you if
9 things were taken, she used the word they, but when you wrote
10 your statement you said that you saw Chris walking out with a
11 laptop and digital camera, right?

12 A: Yes.

13 Q: So, Chris is the one that took Mr. Paul Degruccio's
14 things, property, right?

15 A: Yes, Chris took them while Kenneth held everyone hostage.

16 Q: Okay. And you, were you physically harmed?

17 A: No.

18 Q: And during this, what's, what's the fellow's name that was
19 asleep in the other room?

20 A: Scott.

21 Q: And Scott never woke up?

22 A: No.

23 Q: And nobody tried to enter Scott's room?

24 A: No, they apparently asked -- inquired about him, but they
25 were lied to and said he wasn't home.

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1 Q: All right. So, the only person that lost -- that property
2 was taken from was Paul Degruccio?

3 A: Yes.

4 Q: All right. Thank you, sir.

5 That's all I have, Your Honor.

6 THE COURT: Redirect?

7 MS. LIVESAY: Nothing from the State, Your Honor.

8 THE COURT: All right. Any objection to the witness
9 being excused if he'd like?

10 MR. MCCOLLUM: No, Your Honor.

11 THE COURT: All right, sir. You may step down. You're
12 free to go. If you like, you're free to stay.

13 You may call your next witness.

14 MS. LIVESAY: Thank you, Your Honor. At this time, the
15 State calls Officer Natalie Boyd.

16 THE COURT: Come forward, please, ma'am, and be sworn.

17 OFFICER NATALIE BOYD, HAVING
18 BEEN SWORN TESTIFIES AS FOLLOWS:

19 THE COURT: Ma'am, once you're seated, state your name
20 please?

21 MS. BOYD: Natalie Boyd.

22 THE COURT: I'd ask the attorneys to approach briefly.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the Jury but out of hearing of the Jury.)

25 THE COURT: You may proceed, Counselor?

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1 MS. LIVESAY: Thank you, Your Honor.

2 DIRECT EXAMINATION OF NATALIE BOYD BY MS. LIVESAY:

3 Q: Ms. Boyd, tell the Jury where you currently work?

4 A: For the Horry County Police Department.

5 Q: Okay. And how long have you worked there?

6 A: Since 2004.

7 Q: Okay. And what kind of training have you undergone with
8 the police department?

9 A: I attended the South Carolina Criminal Justice Academy.
10 I, I also am certified ---

11 THE COURT: Slide your chair just a little closer, ma'am.
12 There we go. Thank you.

13 A: I am also certified on radar, Datamaster, on the bicycle
14 and I have advanced criminal enforcement training, and we also
15 have training -- in-service training once a year and legal
16 update training.

17 BY MS. LIVESAY:

18 Q: And what are your present responsibilities at the Horry
19 County Police Department?

20 A: I work the -- Outreach Team. We're a team that we do
21 quite a few different functions to include backing up patrol,
22 the calls -- the -- gets held up or if there's an in-progress
23 call and we're in the area.

24 Q: And what were your responsibilities on or around February
25 the 2nd of this year?

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1 A: They were the same.

2 Q: Okay. And at that time, were you still wearing a uniform?

3 A: Yes.

4 Q: Okay. Did you drive a marked car?

5 A: Yes, I did.

6 Q: Okay. On February the 2nd, did you have an occasion to
7 investigate a crime that occurred on Hopkins Circle?

8 A: Yes, I did.

9 Q: Is Hopkins Circle in Horry County?

10 A: Yes, it is.

11 Q: Okay. And if you don't mind, tell the Jury first a little
12 bit about the procedure of how you respond to a call. How do
13 you even know to respond to that location?

14 A: When we hear it dispatched over our radios, our in-car
15 radio.

16 Q: Okay. And in this case, were you dispatched to that
17 location?

18 A: I heard the call come out. It wasn't specifically
19 dispatched to me. However, I was in the area of the call and
20 it was in-progress and there was a weapon involved. So, of
21 course, it takes more than -- it takes a few officers to
22 respond to a call like that.

23 Q: Okay. And if you don't mind, tell the Jury what kind of
24 call you were responding to at Hopkins Circle?

25 A: It came out that the complainant was, was hiding in, in

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1 his room and that he could see that there was two masked men
2 in his apartment with a weapon in his roommate's face and
3 those were the details that I got over the phone.

4 Q: And when you were dispatched out there, were you told
5 whether or not a weapon was involved?

6 A: Yes, we were.

7 Q: Okay. And was a weapon involved?

8 A: Yes, there was.

9 Q: Okay. Now, tell the Jury about what time of day it was
10 that you responded to that call?

11 A: It was approximately 2 o'clock in the afternoon.

12 Q: Okay. And if you don't mind, tell the Jury, was it --
13 what the weather was like; was it raining, sunny?

14 A: It was sunny out.

15 Q: So, there was nothing to impair your view?

16 A: No.

17 Q: Okay. If you don't mind, tell the Jury what you saw when
18 you entered that complex and what happened as far as your
19 investigation?

20 A: When I entered the complex, the dispatcher had, had
21 communicated to me that it was the second, second building on
22 the left. And when I first entered, I started to go to the
23 left, but then realizing there weren't apartments on the left,
24 I turned to the right. As I turned, I saw two subjects
25 crossing the parking lot coming from the, from the victim's

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1 location -- building location and heading towards a red-in-
2 color vehicle.

3 Q: And at that time, did you know what kind of vehicle you
4 were looking for?

5 A: I, I knew that, that it was a red-in-color vehicle that
6 was communicated and also that the subjects were wearing black
7 hoodies and blue jeans.

8 Q: Okay. Describe the two guys you saw leaving the victim's
9 apartment and going to that red car?

10 A: They were both wearing black hoodies, blue jeans and what
11 at first appeared to me to be white sneakers. When I got
12 closer to the subjects, I realized they had socks over their
13 shoes.

14 Q: Okay. And did that match the description that dispatch
15 had told you?

16 A: Yes.

17 Q: And at that point, what did you do?

18 A: I stopped my patrol car and I told them to stop where they
19 were and to get on the ground.

20 Q: Okay. And when you're normally out patrolling, do you see
21 people with socks over their shoes?

22 A: Never.

23 Q: Okay. So, did that draw even more of a heightened
24 attention?

25 A: Yes, it did.

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1 Q: Okay. So, if you don't mind, you get out of the car, tell
2 the Jury what happens next?

3 A: I ordered the subjects to get on the ground. I could see
4 the subject -- both subjects started to enter the vehicle at
5 the same time, one into the driver's door and one into the
6 back passenger seat. I also observed that there was a female
7 already seated in the vehicle in the front passenger seat.
8 The back passenger had closed the door and the only way I
9 could tell that he was complying with, with me telling him to
10 get on the ground was I could see his feet facing down.
11 However, I could not see the driver of the vehicle. I lost
12 sight of the driver because there was also a civilian walking
13 by at the time that, that I was concerned about that civilian
14 being in the close proximity of the subjects. And so at that
15 point, I had asked the driver to stand up with his hands up
16 and I still did not get any compliance from the driver. I
17 repeated it and at that time, the, the suspect that was in the
18 back of the vehicle that had complied with me started to move.
19 He actually turned his body around so that he was facing me.
20 He was still -- he remained on the ground but his face was
21 looking at me. And, at the same time, the female exited the
22 vehicle. I yelled at her to get on the ground as well and
23 that is when a backup officer arrived.

24 Q: Come real close to the mic, if you don't mind; I'm sorry.
25 Go ahead.

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1 A: When the backup officer arrived, I had held my position in
2 the door jamb of my patrol car because I, I did get the
3 information that a weapon was involved. The backup officer
4 came around the front of the suspect vehicle as I approached
5 around the back. And, at that point, we realized that we had
6 both subjects prone on the ground and they were both placed in
7 handcuffs and the backup officer then placed the female in
8 handcuffs.

9 Q: Now, you said you wanted to see the subject's hands that
10 was in the front of the car; is that correct?

11 A: Yes, I ---

12 Q: Is that because you were dispatched that a weapon was
13 involved?

14 A: Yes, I had, for safety reasons -- I don't -- I didn't know
15 where he was. I, I did know there was a weapon involved. I
16 did pause at one moment to see if I could hear where he was.
17 And at that moment, I heard glass shatter at the front of the
18 vehicle and that was when I knew where the driver's location
19 was. However, he still was not, as far as I could see,
20 complying with my commands.

21 Q: Okay. So at that time, you knew a weapon was involved,
22 but you had no idea where that weapon was?

23 A: Correct.

24 Q: Okay. And that made for a automatic safety issue?

25 A: Yes, absolutely.

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1 Q: For your safety and I guess other's safety?

2 A: Yes. As I said, there was a civilian passing by as well
3 that was in close proximity to where the subjects were.

4 Q: Now this arrest, where did it take place exactly?

5 A: At Hopkins Circle right in ---

6 Q: Where?

7 A: At Hopkins Circle. It is [REDACTED] right in
8 front of the ---

9 Q: And is that the apartment complex?

10 A: Yes, ma'am.

11 Q: Okay. And when you told them to get down on the ground,
12 were they in an open area?

13 A: Yes.

14 Q: Where were they?

15 A: They were right near the vehicle.

16 Q: Okay. In the parking lot of the apartment complex?

17 A: In the parking lot.

18 Q: Okay.

19 A: The vehicle was parked in a parking space facing the wood
20 line. So, it was facing away from the building.

21 Q: Okay. Now, did this apartment complex have multiple
22 buildings?

23 A: Yes, it does.

24 Q: Okay. So, when this took place and you arrived, you're
25 still not clear -- and I've got a picture. When you arrived,

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- 1 you arrive at an apartment complex, multiple buildings?
- 2 A: Uh-huh (affirmative response).
- 3 Q: You know a gun is involved, okay, but you have no idea
- 4 where the gun is?
- 5 A: Correct.
- 6 Q: When you were there, did you see people walking around; I
- 7 think earlier you said you tried to wait until ---
- 8 A: I did. As I said, there was a civilian walking. The
- 9 subjects were walking in this direction. The civilian was
- 10 actually walking away from where my location is.
- 11 Q: Okay.
- 12 A: But I did want to give that civilian a moment to kind of
- 13 clear out of the area where the subjects were.
- 14 Q: And would you say, not knowing where this gun was, was a
- 15 issue for you and everybody else in that parking lot?
- 16 A: Absolutely.
- 17 Q: Now, did you -- you said earlier you had a backup police
- 18 officer come; is that true -- is that right?
- 19 A: That's correct.
- 20 Q: Who was that?
- 21 A: That was Officer Dave Langlais.
- 22 Q: And did anybody else show up, any other officers?
- 23 A: Officer Tim Cast and Officer Johnson.
- 24 Q: And were you able to detain the two Defendants at the car?
- 25 A: Yes.

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- 1 Q: Okay. And you said there was a third person in the car;
2 is that correct?
3 A: That is correct.
4 Q: And when we say car, we're talking about the red
5 Mitsubishi; is that correct?
6 A: Correct.
7 Q: Okay. Now, as part of your investigation, did you find
8 out who those two guys were and the girl that was sitting in
9 the car?
10 A: I did.
11 Q: Okay. If you don't mind, tell the Jury who was in the
12 front getting in the driver's seat?
13 A: That was Christopher Bell.
14 Q: Okay. And was he wearing a black top and jeans?
15 A: He had like a black hoodie, yes and jeans.
16 Q: And socks over the shoes?
17 A: Socks over the shoes, correct.
18 Q: So this is Christopher Bell, socks over his shoes, jeans
19 and some sort of black type sweatshirt type thing?
20 A: Uh-huh (affirmative response).
21 Q: Were you able, through your investigation, to find out who
22 the guy was that was right behind him getting in the back
23 seat?
24 A: Yes, I was.
25 Q: Who was that?

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- 1 A: That was Kenneth Bell.
- 2 Q: Okay. And if you don't mind, tell the Jury what Kenneth
- 3 Bell was wearing?
- 4 A: He was wearing the same; a black hoodie, like sweatshirt
- 5 type and blue jeans and socks over his shoes.
- 6 Q: Okay. Did you see anybody else, any other guys come out
- 7 from that apartment building that had socks on their shoes and
- 8 was wearing a black hoodie?
- 9 A: No, I did not. There was actually only one other person
- 10 that I seen in the parking lot at all and that was the
- 11 civilian that was walking away from, from where, where the
- 12 subjects were coming out. They were kind of down, I think,
- 13 about one more building past where the suspects came out of.
- 14 Q: Were you able, through your investigation, to find out who
- 15 that girl was that was sitting in the front seat?
- 16 A: Yes, it was ---
- 17 Q: Who was that?
- 18 A: Tonie Pasquale, if I'm saying it right.
- 19 Q: Pasquale?
- 20 A: Pasquale.
- 21 Q: Okay. Was there a girl named Jasmine anywhere in the car?
- 22 A: No.
- 23 Q: Okay. Were there any other men in that car?
- 24 A: No.
- 25 Q: Okay. Now, when you arrived had the two, Christopher Bell

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1 and Kenneth Bell, had they gotten into the car yet or had they
2 just opened the door? Where were they?

3 A: They were crossing the parking lot when I arrived and ---

4 Q: So, you saw them walking across?

5 A: I did, I saw them and I hesitated, like I said, for a
6 moment with that civilian there and I also asked dispatch to,
7 to give me a description, not for myself, I had already gotten
8 the description, but sometimes when we arrive on a scene as
9 soon as a suspect sees a police vehicle, they'll flee. And so
10 it was more for incoming units. Had one of them decided to
11 flee, those incoming units would have absolutely heard the
12 description of what they were looking for.

13 Q: Okay. Were there items outside of that vehicle that you
14 saw?

15 A: Yes.

16 Q: Okay. Now, who assisted you in collecting the evidence
17 from this case as part of your investigation?

18 A: Office Tim Cast and also Officer Langlais helped with the
19 logging of that.

20 Q: Okay. So, basically you and Officer Cast are collecting
21 the evidence you found from that car and immediately outside
22 the car?

23 A: Correct.

24 Q: Okay. Now and who -- did Officer Cast take the pictures
25 that were taken?

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- 1 A: Most of them, I did -- I was the one who took the picture
2 of the victims' windows and ---
3 Q: I'm sorry, what?
4 A: I took the picture of the victims' window ---
5 Q: Okay.
6 A: --- in the apartment complex and the victims themselves.
7 Officer Cast took the remainder of the pictures.
8 Q: Okay. So, the red car and anything around it and in it,
9 Officer Cast took those pictures?
10 A: That is correct.
11 Q: But you were there to see what was around and inside that
12 car?
13 A: Yes, I was.
14 Q: Okay. So, when you get on the scene, you see Christopher
15 Bell and Kenneth Bell both wearing basically the same clothes,
16 getting into that red car?
17 A: Correct.
18 Q: Okay. But they never quite made it in; is that right?
19 A: That is right.
20 Q: Okay. If you don't mind, tell the Jury what you saw
21 directly outside of the car at the front driver's door?
22 A: Near the front tire, I noticed there was broken glass,
23 which I assumed was the noise that I heard when I stopped to
24 listen. I noticed the laptop, a -- some sort of a black bag
25 with a cord coming out of it and that was what I immediately

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- 1 noticed. Later on, of course, we seen that there was a camera
2 underneath the hood of the car and some other items.
- 3 Q: Okay. Did you see a tire iron?
- 4 A: I did; I also a black tire iron, yes.
- 5 Q: And that was up towards the front of the car?
- 6 A: Yes, it was up near the front driver's wheel?
- 7 Q: Okay. Now, if you don't mind, were you able, through your
8 investigation, to find out who the laptop and the camera
9 belonged to?
- 10 A: Yes, I did.
- 11 Q: Tell the Jury who it belonged to?
- 12 A: To Paulie, the subject in the black jacket.
- 13 Q: Okay. And did you meet with him that day?
- 14 A: I did.
- 15 Q: Okay. And did he confirm that that was his laptop and his
16 camera?
- 17 A: Yes, he did.
- 18 Q: And you took them into evidence; is that correct?
- 19 A: Yes, we did.
- 20 Q: Now, did you put on your blue lights to get to the scene?
- 21 A: I did. I initially activated my blue lights and siren,
22 but once I arrived on Glens Bay Road, I, I did leave the blue
23 lights on, I believe part of the way to get through traffic,
24 but I did turn off the siren because, of course, I didn't want
25 the suspects that I was arriving and put the victims in any

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1 kind of danger.

2 Q: So, basically the siren, if they hear it, they're gonna
3 probably run from that?

4 A: Correct.

5 Q: Okay. And as part of turning on your blue lights, do you
6 have a in-car camera?

7 A: I do.

8 Q: And does your -- was your in-car camera turned on when the
9 blue lights were turned on?

10 A: It automatically will activate when we initiate our blue
11 lights.

12 Q: Okay. And do you have a audio recording device also that
13 comes on when the camera and the blue lights come on?

14 A: Yes, we do.

15 Q: Okay. And did your camera come on in this case?

16 A: Yes, it did.

17 Q: Okay. And did it capture what you've told us about today?

18 A: Yes, it did.

19 Q: Okay. Right from the time you ignited your blue lights to
20 the time there was an arrest?

21 A: Correct.

22 STATE'S EXHIBIT NUMBER FOUR

23 MARKED FOR IDENTIFICATION

24 Q: Officer Boyd, I'm showing you what's been marked as
25 State's Exhibit Number Four. Do you recognize that?

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1 A: Yes, I do.

2 Q: And tell the Jury and the Court what that is?

3 A: This is a recording from my in-car camera. It's a Coban
4 System and what we do we our -- we have a hard drive in the
5 system that we remove and we upload and it will upload all of
6 the recordings on that.

7 Q: And have you see that video?

8 A: Yes, I have.

9 Q: And is that an exact recording of what happened that day?

10 A: Yes, it is.

11 Q: Okay. Has it been tampered with in any form or fashion?

12 A: No, it has not.

13 MS. LIVESAY: Your Honor, at this time, I will ask to put
14 State's Exhibit Number Four into evidence?

15 THE COURT: Objections?

16 MR. MCCOLLUM: Just the issues that were raised earlier,
17 Your Honor.

18 THE COURT: All right. May I ask you to approach just a
19 minute.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of the Jury but out of hearing of the Jury.)

22 THE COURT: All right. Ladies and gentlemen of the Jury,
23 there is one matter I have to rule on concerning that video
24 and I'll have to do that out of your presence. So as usual,
25 I'm gonna ask you to step back to the jury room and as always,

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1 so.

2 MR. MCCOLLUM: Thank you. That's why I'm doing it.

3 THE COURT: I understand.

4 (REPORTER'S NOTE: The Jury enters courtroom. 3:17 P.M.)

5 All right. The record will reflect the Jury has returned
6 to the courtroom and, ladies and gentlemen, while you were
7 out, we've set up some equipment. Hopefully, technology won't
8 fail us in this situation. I have admitted a copy of the, of
9 actually the DVD of the in-car video. That has been admitted
10 as an exhibit during our, our motion hearing.

11 All right. Ma'am, you can proceed with this witness.

12 MS. LIVESAY: Thank you, Your Honor.

13 CONTINUATION OF DIRECT EXAMINATION OF NATALIE BOYD BY MS.

14 LIVESAY:

15 Q: And the video we're getting ready to watch, Ms. Boyd, that
16 is the video from your in car camera?

17 A: Yes, it is.

18 Q: And it hasn't been altered in any way?

19 A: No, it has not.

20 (REPORTER'S NOTE: State's Exhibit Number Four played for the
21 Jury. Not transcribed herein.)

22 MR. MCCOLLUM: Your Honor, at this time, I renew the
23 objection.

24 THE COURT: Objection is noted; same ruling.

25 BY MS. LIVESAY:

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1 Q: Ms. Boyd, was that an accurate depiction of what happened
2 that day?

3 A: Yes.

4 Q: And was that the recording from your in-car camera?

5 A: Yes, it is.

6 Q: Okay. Now, I heard you ask, the person that you cuffed,
7 who was that?

8 A: The Defendant in the courtroom; that was Kenneth Bell.

9 Q: Okay. And who was the person that was cuffed from the
10 driver's seat?

11 A: Christopher Bell.

12 Q: Okay. And do you remember what both of them looked like?

13 A: I do.

14 Q: Okay. And could you point them out to the Jury?

15 A: Kenneth Bell is seated at the table here, and Christopher
16 Bell is in the back with a yellow shirt on.

17 Q: Now, did you -- is it usual protocol to pat the Defendant
18 down or the person that's been arrested for officer safety?

19 A: Absolutely. The fact that they're handcuffed doesn't mean
20 that we're secure.

21 Q: Come a little closer to the mic; I'm sorry.

22 A: The fact that the suspect is handcuffed does not mean that
23 our scene is secure. If there's a weapon involved, it's still
24 a safety issue for us.

25 Q: And you cuffed Kenneth Bell?

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1 A: Correct.

2 Q: Okay. And did you pat him down?

3 A: Yes, I did.

4 Q: Thank you. Now, I heard you ask was there a weapon and is
5 that for public safety?

6 A: Yes.

7 Q: Okay. And who did you ask that to?

8 A: To Kenneth Bell.

9 Q: And what did he tell you?

10 A: He told me he did not.

11 MR. MCCOLLUM: Same objection, Your Honor.

12 THE COURT: Objections renewed; same ruling. You may
13 proceed.

14 MS. LIVESAY: Thank you, Your Honor.

15 BY MS. LIVESAY:

16 Q: I'm sorry, what did he tell you, Officer Boyd?

17 A: That he did not have a weapon.

18 Q: Okay. Did he indicate that there was a weapon at all?

19 A: No, he did not.

20 Q: Okay. Did you ultimately find a weapon through your
21 investigation?

22 A: Yes. Yes, we did.

23 Q: Okay. And before we get into that, you testified earlier,
24 just so I'm clear, that the tire iron was found under the
25 front wheel of the car by the driver's door?

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1 A: It was right on the ground near the driver's side of the
2 vehicle.

3 Q: And that was where Christopher Bell was getting in?

4 A: That's correct.

5 Q: Okay. And where did you find the gun?

6 A: It was in plain view and the back floor board had a hump
7 in the middle and that's where the weapon was found with the
8 handle facing up as if it was tossed there.

9 Q: Okay. So, it was in the back seat area of the vehicle?

10 A: Back floorboard area. There's a hump in the middle of the
11 floorboard in that ---

12 Q: It was sticking out in plain view for you to see?

13 A: Yes, it was.

14 Q: Okay. Now, if you don't mind, tell the Jury what you
15 collected off of Kenneth Bell that day from his pockets or
16 from off his immediate person?

17 A: I believe it was sunglasses, a cell phone and a .45 auto
18 round. Let me check here and make sure I didn't miss
19 anything. And I also did, off of his person, yes, that is it,
20 brown sunglasses.

21 Q: I'm showing here what's been marked as State's Exhibit
22 Number Five?

23 A: Yes, those are the items that were taken from him.

24 Q: Okay. And are those items you collected from Kenneth Bell
25 that day?

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1 A: Correct.

2 Q: And are those the only items that you collected off his
3 direct person?

4 A: No, I also took his shoes that were covered with socks for
5 evidence.

6 Q: Okay.

7 MS. LIVESAY: Your Honor, at this time, I'm gone ask that
8 we place State's Exhibit Number Five into evidence and publish
9 it to the Jury?

10 THE COURT: Any objection?

11 MR. MCCOLLUM: Could she hold it up for me?

12 The same objection I raised earlier, Your Honor.

13 THE COURT: As to that?

14 MR. MCCOLLUM: Yes, just as to that photo, but not the
15 other two.

16 MS. LIVESAY: I'm sorry, Your Honor, this is a new
17 objection. I couldn't -- it could be my fault, but can we
18 clear it up?

19 THE COURT: Yes. I don't recall an objection to that
20 particular exhibit.

21 MR. MCCOLLUM: May I approach?

22 THE COURT: Please do.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the Jury but out of hearing of the Jury.)

25 THE COURT: All right. My ruling would continue to be

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1 the same. I rule that that is admissible. What is the
2 exhibit number?

3 MS. LIVESAY: Thank you, Your Honor. Yes, it's State's
4 Exhibit Number Five.

5 THE COURT: All right. It's into evidence.

6 MS. LIVESAY: Thank you, Your Honor.

7 THE COURT: Subject to the prior objections.

8 STATE'S EXHIBIT NUMBER FIVE

9 ADMITTED INTO EVIDENCE

10 MS. LIVESAY: Thank you, Your Honor.

11 BY MS. LIVESAY:

12 Q: Now, I always say bullet, but the correct word is
13 cartridge; is that right?

14 A: Yes.

15 Q: Is it gonna offend you if I say bullet?

16 A: No.

17 Q: Okay. What kind of bullet is that in this picture; do you
18 know?

19 A: It's .45.

20 THE COURT: Ma'am, get a little closer to the microphone.

21 A: It's a .45 caliber.

22 THE COURT: Thank you, ma'am.

23 BY MS. LIVESAY:

24 Q: And where was that bullet found?

25 A: In the left pocket.

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1 Q: In who's left pocket?

2 A: Kenneth Bell.

3 Q: Okay. And what kind of gun was found in the backseat of
4 that car?

5 A: It was a .45 caliber Ruger, I believe it was. Yeah,
6 Ruger, P97DC pistol.

7 Q: Now, I'm showing you what's been marked as State's Exhibit
8 Number Six. Who is that in that picture?

9 A: That is Kenneth.

10 Q: Okay. And is that what he was wearing that day?

11 A: Yes, it is.

12 Q: Okay. And in fact, is that him in the car?

13 A: Yes.

14 Q: Okay. And nothing at this time has been, he hadn't taken
15 a shirt off, added a shirt, nothing, this is exactly how he
16 was taken into custody?

17 A: That is correct.

18 MS. LIVESAY: Your Honor, at this time, I wish to place
19 State's Exhibit Number Six into evidence and publish it to the
20 Jury?

21 THE COURT: Subject to your prior objections, Mr.
22 McCollum?

23 MR. MCCOLLUM: Yes, sir, Your Honor.

24 THE COURT: All right.

25 MR. MCCOLLUM: That's Number Six?

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1 THE COURT: That's Number Six.

2 MR. MCCOLLUM: I raise that for the reasons stated at the
3 bench.

4 THE COURT: Yes, sir. It's overruled; it will be
5 admitted.

6 STATE'S EXHIBIT NUMBER SIX

7 ADMITTED INTO EVIDENCE

8 BY MS. LIVESAY:

9 Q: And this is Kenneth Bell?

10 A: Yes.

11 Q: At the time he was detained?

12 A: Yes, it is.

13 Q: Okay. So, he's wearing the dark-colored hoodie and jeans?

14 A: Yes.

15 Q: Now, I'm showing you what's been marked as State's Exhibit
16 Number Seven. Is this a accurate depiction of what Kenneth
17 Bell's shoes looked like that day?

18 A: Yes.

19 Q: Okay. And was this picture taken that day?

20 A: Yes, it was.

21 Q: Okay. So nothing has been added or removed; this is just
22 a picture of what it looked like that day?

23 A: That is correct.

24 MS. LIVESAY: Your Honor, at this time, I'd like to put
25 in State's Exhibit Number Seven into evidence and publish it

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1 to the Jury.

2 THE COURT: Objections, Mr. McCollum?

3 MR. MCCOLLUM: None, Your Honor.

4 THE COURT: All right. It'll be admitted as marked. You
5 may publish it to the Jury.

6 When we say publish, we mean they may show it to you;
7 that's what we say in the legal business.

8 STATE'S EXHIBIT NUMBER SEVEN

9 ADMITTED INTO EVIDENCE

10 By MS. LIVESAY:

11 Q: So, these shoes are how they appeared that day?

12 A: Yes.

13 Q: With socks over them?

14 A: That is correct.

15 Q: And he was wearing this -- these clothes, a black hoodie
16 or a dark hoodie and some jeans?

17 A: Correct.

18 Q: Now I, I realize Timothy Cast took in a lot of the items,
19 from the car because he was inventorying the car and assisting
20 you, but if you don't mind, tell the Jury, because you were
21 there, you were present to see what was in the vehicle and
22 what was inventoried from the vehicle?

23 A: You don't mind if I look at my sheet, do you, because it's
24 a long list.

25 Q: If you don't mind, tell the Jury what was inside that car.

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1 THE COURT: Ma'am, you have the right to look at your
2 notes to refresh your memory, but you must testify from your
3 memory, but you can refresh your memory by looking at your
4 notes.

5 A: Well, of course the, the -- it was a black-and-silver
6 handgun that was in the back floorboard on the hump with the
7 handle up; that was taken from the car. There was also, there
8 was -- you want just in the car or including around the car?

9 Q: If you don't mind, let's start outside the car. What
10 items were found immediately outside the car?

11 A: Outside the car there was a camera underneath the car.
12 There was a black bag with some -- I believe it was a computer
13 cord in it. There was a black in color tire iron. There was
14 a pair of gloves and a black t-shirt that was kind of rolled
15 up in a unusual manner.

16 Q: And all of that was found right outside the car?

17 A: That was found on the driver's side, either directly next
18 to where the driver's tire was or there was a few items that
19 were just underneath the hood of that area of the vehicle and
20 that would've been the camera, the gloves and I believe a
21 plastic container.

22 Q: Okay. And the camera and the laptop belonged to Paul
23 Degruccio; is that right?

24 A: That is correct.

25 Q: And then there was the tire iron and a pair of gloves?

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- 1 A: Correct.
- 2 Q: And a cord for the laptop?
- 3 A: Correct, inside of a black bag.
- 4 Q: Okay. Now, what items were inventoried from that car,
5 inside that car, that you took in as evidence against Mr.
6 Kenneth Bell?
- 7 A: From inside the car, again as I said, the black-and-silver
8 weapon was taken from the vehicle and that weapon, of course,
9 had -- was loaded. It had four rounds in it and one round in
10 the chamber. There was -- and I'm sorry, I left out, on top
11 of the hood there was also a silver knife that we collected.
12 A weighing scale, also, that was underneath the vehicle.
13 There was -- there was also a black Samsung phone that was
14 underneath the console inside of the vehicle, a package of
15 latex gloves on the passenger floorboard. The rest of it I
16 already mentioned that was underneath the vehicle.
- 17 Q: How long have you been in law enforcement?
- 18 A: For nine years.
- 19 Q: How many?
- 20 A: Nine years.
- 21 Q: Okay. And you found one pair of gloves on the driver's
22 side and one pair of gloves in the back seat; is that correct?
- 23 A: Correct.
- 24 Q: Okay. And in your experience in investigating crimes, why
25 do people normally put on gloves?

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1 A: To hide any DNA. If they -- they don't want to leave
2 anything behind for us to use as evidence, fingerprints,
3 footprints, anything of that nature.

4 Q: Okay. And taking fingerprints is part of investigation;
5 is that correct?

6 A: Usually, if we're aware that they're wearing gloves, then
7 obviously we're not going to, to be able to obtain any latent
8 prints.

9 Q: So, gloves keep the police from able to obtain a
10 fingerprint off the inside of an apartment or off a weapon or
11 anywhere ---

12 A: That is correct.

13 Q: Okay. And you found two pair of gloves?

14 A: Correct.

15 Q: Okay. Now, in your experience, why would someone wear
16 socks over their shoes?

17 A: For the same reasons, to not leave DNA behind, not leave a
18 footprint behind that we could get a picture of to make a
19 comparison, to make a mold of.

20 Q: Okay. And is it true in some investigations you do
21 photograph shoe prints in investigating?

22 A: Absolutely.

23 Q: What building was Chris Bell and Kenneth Bell coming out
24 of?

25 A: It was 80 -- 8650 -- 8566, I'm sorry; it was the second

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1 building on the left.

2 Q: Okay. And is that the same buildings the victims lived
3 in?

4 A: That is correct.

5 MS. LIVESAY: Okay. No further questions, Your Honor.

6 THE COURT: McCollum, your witness?

7 MR. MCCOLLUM: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION OF OFFICER NATALIE BOYD BY MR. MCCOLLUM:

10 Q: Officer Boyd, how are you today?

11 A: Good.

12 Q: When you testified that once you arrived and were telling
13 the individuals to lay down on the ground; you heard glass
14 shattering in front of the vehicle?

15 A: Not when I very first arrived, no.

16 Q: At some point, did you hear glass shatter?

17 A: At some point, I did.

18 Q: Did you find glass in front of the vehicle or on the side
19 of the vehicle?

20 A: At the front of the vehicle, yes, I did.

21 Q: Do you know what that was?

22 A: I believe I had, had asked Christopher what that was and
23 he had replied that he had broke -- shattered a bong.

24 Q: That he had shattered a bong?

25 A: Uh-huh (affirmative response).

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1 Q: And were you able to look at it and see how big it was?

2 A: No, I was not. It was, the only thing I observed was
3 broken glass.

4 Q: Was that stuff -- was that collected as evidence?

5 A: No, it was not.

6 Q: It was on the ground in the parking lot, right?

7 A: Yeah, it was kind of towards the front of the vehicle,
8 correct.

9 Q: And so it was -- and the parking lot was paved asphalt, I
10 guess, is what it's called, right?

11 A: Yes.

12 Q: Okay. And so was that stuff swept up?

13 A: I, I really did not pay attention -- normally, when we
14 called for a vehicle to be towed, the tow company takes care
15 of that for us, but I cannot say that I paid attention as to
16 whether it was swept up or not.

17 Q: Do you know, do you know where the bong -- you say it was
18 a bong?

19 A: I, I don't know. It was unidentifiable to me. The only
20 thing that I observed was broken glass.

21 Q: All right.

22 A: It was shattered and I couldn't identify it.

23 Q: It was there -- when you say shattered and maybe you don't
24 remember, was there a lot of glass on the ground?

25 A: I wouldn't say a lot, no. I don't know what your

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1 definition of a lot is, no.

2 Q: Okay. Were there any other pieces that you saw in
3 addition to the glass?

4 A: Pieces other than what I've mentioned here?

5 Q: Yes, ma'am.

6 A: Not that I recall.

7 Q: Was the glass -- did it have a color to it?

8 A: Not that I recall.

9 Q: All right. And so at some point, you put, on the scene
10 usually there's a ranking officer who's making decisions about
11 what to do, right? Once the people are in custody as far as
12 gathering evidence, what -- one officer is directing other
13 officers to do certain things, correct?

14 A: We usually work together, but yes, there usually is -- the
15 first officer that's on the scene will take care of handling
16 that.

17 Q: And that's you, correct?

18 A: On most decisions. Sometimes we need to contact the
19 supervisor by, by telephone or by radio.

20 Q: And what I'm asking is, there's -- you've got information
21 that a suspect is shattering glass in front of the car, right,
22 or beside the car?

23 A: No, I didn't get information. I was telling them to get
24 on the ground and when he didn't comply with my, my orders, I
25 stopped for a moment so that I could listen to try to figure

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1 out where this suspect was because I was concerned. Somebody
2 has a weapon and I don't know where he is. So, I stopped to
3 listen. At that point is when I heard the glass shatter was
4 when I stopped to listen.

5 Q: And at some point, you or another officer at the scene
6 made some decision that that glass was not gonna be taken into
7 evidence, correct?

8 A: No, as I said, usually if there's a situation like that,
9 the tow company would, would sweep that up for us and ---

10 Q: So, at some point, you made a decision that you didn't, as
11 we say, need that or want to collect that glass, right?

12 A: I assume so. If we did not take it, it was as I, as I
13 explained to you, it was unidentifiable.

14 Q: All right.

15 A: There wasn't any way for me to identify what, what that
16 was prior to it being shattered.

17 Q: All right. And at some point, did you gather information
18 about what type of items were taken from the apartment?

19 A: I'm sorry; can you repeat that?

20 Q: At some point through your investigation, did you get
21 information or try to collect information about what items
22 specifically were taken from Paul Degruccio?

23 A: I did speak to the victims, yes.

24 Q: Okay. And from your investigation, what was your
25 understanding of the items that were taken?

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1 A: Well, shortly after I arrived, it did come across our
2 radio that it was communicated to our dispatcher that a camera
3 and a laptop was taken.

4 Q: All right. And to your knowledge, from doing your
5 investigation, were any other items taken?

6 A: Not that I recall, no, just the laptop and the, the camera
7 is the only thing that I recall.

8 Q: Okay. Now, did you ever -- did you ever get any
9 information or have any kind of, of -- did you ever get any
10 information -- let me back up. At the, at the scene, you told
11 individuals to, quote, get on the ground, right?

12 A: Correct.

13 Q: And Kenneth Bell laid down on the ground, correct?

14 A: He did comply. I could see his feet and I could see that
15 they were facing downward. So, I knew, at that point, that he
16 did comply with me. However, I did not have a visual on the
17 other suspect.

18 Q: And in fact, I think you said that Kenneth Bell turned
19 around to be more compliant so you could see his face?

20 A: He did not immediately turn. He turned somewhere in the
21 middle of me trying to, to get a visual on this other subject.
22 He turned and actually faced me and then I -- to an officer,
23 when we tell you to get down on the ground and don't move,
24 don't move, it's more of a threat to us for somebody to
25 actually face and look at us. Had he had a weapon on him at

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1 that time, then it could've turned into a bad situation.

2 Q: So, when you say get down on the ground and you don't want
3 the person to move even if you can't see their hands?

4 A: I'm like if -- if I already have you down on the ground
5 and I have a visual on you, then yes, I do not want you to
6 move. If I don't have a visual on you and I'm instructing
7 you, stand up for that very reason, then I, of course, I want
8 you to stand up and comply with what I'm telling you.

9 Q: Now the other individual you couldn't see and you wanted
10 him to raise his hands -- let me skip to this -- and did you
11 ever learn that he's unable to raise one of his hands?

12 A: No, I did not.

13 Q: All right. Thank you.

14 MR. MCCOLLUM: Your Honor, that's all I have.

15 MS. LIVESAY: Redirect?

16 MS. LIVESAY: No questions, Your Honor.

17 THE COURT: All right, ma'am, you may step down. Thank
18 you very much.

19 BY THE COURT:

20 THE COURT: Ladies and gentlemen of the Jury, I know
21 you've had a couple of breaks, but not everyone in the
22 courtroom has had a break when you have one. So, we're gonna
23 take a short break at this time. I'll ask you to step back
24 into the jury room. Don't begin any discussion until I've
25 asked you to do so. Thank you. Thank you very much.

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1 (REPORTER'S NOTE: The Jury exits courtroom. 3:56 P.M. The
2 following takes place outside the presence of the Jury.)

3 THE COURT: All right. Court will be in recess for about
4 ten to fifteen minutes. Thank you very much.

5 (RECESS - 3:56 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 4:10 P.M.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: All right. We're back on the record. Mr.
11 McCollum, we had a discussion at the side bar where you raised
12 an objection. I told you I'd give you an opportunity to put
13 that on the record. You wish to go ahead and state the
14 objection?

15 MR. MCCOLLUM: Your Honor, I think it's the same if I, I
16 remember correctly, the same continuing objection. I think
17 that you ruled it was a public safety exception. There were
18 some other items, the gun, the bullet was testified to. I
19 think I objected to that. There's a photo ---

20 THE COURT: I think the bullet was mentioned by him in
21 response to the question by the police officer. And then the
22 bullet was later taken into evidence after they cleared his
23 pockets.

24 MR. MCCOLLUM: And Officer Boyd had testified that she
25 had located the .45 caliber cartridge ---

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1 THE COURT: Yes, sir.

2 MR. MCCOLLUM: --- off of him.

3 THE COURT: My, my -- excuse me. Go ahead.

4 MR. MCCOLLUM: And then there's a photograph that -- just
5 a photograph of the bullet, so I was just continuing to object
6 to those items.

7 THE COURT: And I believe you also raised the objection
8 as to him being shown in cuffs in the backseat of the car.

9 MR. MCCOLLUM: Yes, I'm sorry, Your Honor, you're right.
10 The -- there is a photograph that was admitted into evidence
11 and it's Number -- it's State's Number Six?

12 THE COURT: Yes, sir.

13 MR. MCCOLLUM: Which is simply a photograph of him, the
14 Defendant, Kenneth Bell, seated in the back of a patrol car
15 with his hands handcuffed behind his back and I objected to
16 the depiction of him in handcuffs.

17 THE COURT: All right. And my ruling was that the
18 probative value of that piece of evidence outweighed any
19 prejudicial effect that might have existed from the fact that
20 he was in handcuffs, since it had already been testified to
21 and shown on the video that he was placed under arrest, and
22 this photo obviously shows the hoodie, the blue jeans, you
23 know, the clothing he was wearing that day by which he was
24 identified and then the subsequent photo I think is part of
25 that showed the shoes with the socks over them. So, I've

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1 ruled that it was admissible. I wanted you to be able to put
2 that on the record.

3 MR. MCCOLLUM: Thank you, Your Honor.

4 THE COURT: All right. We ready for the Jury?

5 MS. LIVESAY: Yes, sir.

6 MR. MCCOLLUM: Your Honor, before they come back ---

7 THE COURT: Yes, sir.

8 MR. MCCOLLUM: --- seated in the courtroom is the
9 Codefendant, Christopher Bell.

10 THE COURT: Yes, sir.

11 MR. MCCOLLUM: He's actually Kenneth Bell's half-brother.
12 He is represented by an attorney, I think in Williamsburg
13 County, named Legrand Carraway. I spoke to Mr. Carraway
14 today. I told him, I said there is some chance that the
15 Defense may call him as a witness so I alerted him to that.
16 So that -- he says if that happens, he can probably be here in
17 about an hour to an hour and a half. So, I just want to make
18 the Court aware of that.

19 THE COURT: All right. I am aware of it. I don't think
20 there's a chance he'll be called today, but you need to make
21 that attorney aware that that could happen tomorrow.

22 MR. MCCOLLUM: I did that, Your Honor.

23 THE COURT: Okay. Very good. Bring the Jury in.

24 (REPORTER'S NOTE: The Jury enters courtroom. 4:15 P.M.)

25 THE COURT: The record will reflect the Jury has returned

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1 to the courtroom and when we had our break, we completed
2 another witness for the State and the State at this time has
3 the right to call its next witness.

4 Ma'am, you may call your next witness.

5 MS. LIVESAY: Thank you, Your Honor. At this time, the
6 State calls Timothy Cast.

7 THE COURT: Come forward, sir, and be sworn please?

8 TIMOTHY CAST, HAVING BEEN SWORN
9 TESTIFIES AS FOLLOWS:

10 THE COURT: Sir, once you're seated, I'm gonna ask that
11 you state your name, please?

12 MR. CAST: My name is Timothy Cast.

13 THE COURT: Thank you. Your witness, Counselor.

14 MS. LIVESAY: Thank you, Your Honor.

15 DIRECT EXAMINATION OF OFFICER TIMOTHY CAST BY MS. LIVESAY:

16 Q: And Officer Cast, how long have you been with the Horry
17 County Police Department?

18 A: Since 2007.

19 Q: And what kind of training have you undergone?

20 A: The basic Criminal Justice Academy Training, which is the
21 nine weeks as well as a Field Training Officer Certification.

22 Q: Okay. And have you always been a road officer?

23 A: Yes.

24 Q: So, what are your responsibilities?

25 A: On the road active patrol as well as an active field

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1 training officer.

2 Q: Okay. And are you familiar with the incident we're here
3 today for?

4 A: Yes.

5 Q: Okay. And did you assist Officer Boyd in investigating
6 that incident?

7 A: I did.

8 Q: And if you don't mind, first, just tell the Jury what you
9 saw when you arrived on the scene?

10 A: When I arrived on the scene, I saw three subjects that
11 were actually detained, Kenneth Bell, Christopher Bell as well
12 as Tonie Anne Pasquale, detained and they were all around the
13 red in color Mitsubishi vehicle. I also saw Officer Natalie
14 Boyd, as well as Officer Langlais, and they were actually
15 detaining them.

16 Q: Okay. And what did you do to assist in the investigation?

17 A: I basically took the majority of the photos on scene, as
18 well as helped inventory the vehicle, as well as collect the
19 evidence around the actual vehicle.

20 Q: Okay. And did you inventory the car for evidence that is
21 in this case?

22 A: Yes.

23 Q: Okay.

24 MS. LIVESAY: Can I approach the witness, Your Honor?

25 THE COURT: You may.

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1 MS. LIVESAY: Thank you, Your Honor.

2 BY MS. LIVESAY:

3 Q: And I've already shown these to Mr. McCollum. Now if you
4 don't mind, tell the Court what State's Exhibit Number Fifteen
5 is a picture of?

6 A: This is a picture of the actual vehicle when I arrived on
7 the scene as the subjects were ---

8 Q: Don't show it yet.

9 A: --- were around.

10 Q: Okay. And is that an accurate depiction of what the car
11 looked like on that date?

12 A: Yes, that is the vehicle.

13 Q: Okay. And everything you collected was it either around
14 that vehicle or in that vehicle?

15 A: Yes.

16 Q: Okay.

17 MS. LIVESAY: Your Honor, at the time, I wish to place
18 State's Exhibit Number Fifteen into evidence and publish it to
19 the Jury?

20 THE COURT: Any objection?

21 MR. MCCOLLUM: No, Your Honor, and to hurry this along,
22 if I could just ---

23 MS. LIVESAY: Yeah.

24 MR. MCCOLLUM: Your Honor, there's no objection to any of
25 them. There may be an issue with Number Nine.

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1 THE COURT: All right. The ones that there are no issue
2 with, would you call those numbers out, please?

3 MS. LIVESAY: I only have this copy, Your Honor.

4 THE COURT: With the exception of Number Nine.

5 MS. LIVESAY: Right. It is my understanding ---

6 THE COURT: There's a potential objection there.

7 MS. LIVESAY: Yes, sir, Your Honor.

8 THE COURT: Those others will be admitted into evidence.

9 MS. LIVESAY: Thank you, Your Honor.

10 THE COURT: Without objection. You may proceed.

11 STATE'S EXHIBIT NUMBER EIGHT, TEN, ELEVEN, TWELVE

12 THIRTEEN, FOURTEEN AND FIFTEEN ADMITTED INTO EVIDENCE

13 MS. LIVESAY: Thank you, Your Honor.

14 BY MS. LIVESAY:

15 Q: Tell the Jury -- if you don't mind, Your Honor, can I ask
16 the witness to step down?

17 THE COURT: You may do so.

18 Q: I'm gonna go through these pictures with you and if you
19 don't mind, tell the Jury what they're pictures of. I'm
20 showing now what's State's Evidence Number Fifteen; what is
21 that a picture of?

22 A: That's a picture of the vehicle the suspects were around.

23 Q: Okay. And was all the evidence collected either
24 immediately around this car or in it?

25 A: Yes.

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1 Q: Okay. Now, I'm showing you what's been marked as State's
2 Evidence Number Eight.. What, what is that a picture of?

3 A: That's a picture of a silver in color knife and a black
4 Toshiba Laptop.

5 Q: Okay. And where was that knife found?

6 A: The actual knife was found exactly where it is.

7 Q: Okay. And where was the laptop found?

8 A: The laptop was underneath the vehicle and it was placed on
9 top of the vehicle to get a photo of the actual laptop.

10 Q: Okay. And I'm showing now what's State's Evidence Number
11 Fourteen. Tell the Jury what that's a picture of.

12 A: That's a picture of a far distance of the actual, the
13 vehicle as you can see all of the evidence kind of underneath
14 it and then the knife on the hood.

15 Q: Okay. I'm showing you now what's been marked as State's
16 Evidence Number Thirteen. Tell the Jury what that's a picture
17 of?

18 A: That's a picture of the same vehicle with a front angle of
19 it with all the evidence around the front left tire as well as
20 the laptop as well.

21 Q: Okay. And has anything been moved in this picture?

22 A: No.

23 Q: Okay. So, if you don't mind, I'm gonna look at it a
24 little bit with you. What is this a picture of here?

25 A: That's actually the black tire iron.

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- 1 Q: Okay. And was that collected?
- 2 A: Yes.
- 3 Q: Okay. And what is this a picture of?
- 4 A: That's the black -- it almost appeared to be like a black
- 5 case.
- 6 Q: And what's inside of it?
- 7 A: That's actually the laptop charger.
- 8 Q: Okay.
- 9 A: And the cord.
- 10 Q: And what is this a picture of here; it looks like, it
- 11 looks like -- is that a picture of the gloves there?
- 12 A: Yes. Yeah, that's actually a picture of a latex glove.
- 13 Q: And is this a picture of how it was found on the scene?
- 14 A: Yes.
- 15 Q: And nothing's been moved at this point?
- 16 A: No.
- 17 Q: I'm showing you what's been marked as State's Evidence
- 18 Number Twelve. Tell the Jury what that's a picture of.
- 19 A: That's the black tire iron that was found on the front
- 20 left tire.
- 21 Q: Okay. And is this taken just the way you found it?
- 22 A: Yes.
- 23 Q: I'm showing you what's been marked as State's Evidence
- 24 Number Eleven?
- 25 A: Yes.

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1 Q: And what is that a picture of?

2 A: That's the actual black-and-silver handgun.

3 Q: And where was that found?

4 A: It was actually behind the driver and passenger seat kind
5 of in the floorboard; there was a few clothing items that it
6 was set on top of it.

7 Q: Okay. I'm showing you now what is State's Evidence Number
8 Ten. Tell the Jury what that's a picture of.

9 A: That's actually a latex glove in the rear of the vehicle;
10 it's literally right by the gun.

11 Q: Okay. And had any of this stuff been moved or touched or
12 is this a picture of just the way you found it?

13 A: Yes.

14 Q: Okay. If you don't mind, have a seat, Officer Cast.

15 MS. LIVESAY: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 MS. LIVESAY: Is there any objections?

18 MR. MCCOLLUM: I don't think so.

19 BY MS. LIVESAY:

20 Q: If you don't mind, Officer Cast, look in that bag and tell
21 me what those items are?

22 A: A black in color iPhone.

23 Q: If you don't mind, before you start showing them to the
24 Jury, just take a look at it and tell me what's in that?

25 A: A black in color iPhone, a pair of sunglasses, an actual

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1 package with, with a round in it and a pair of shoes with
2 white socks on them over the shoes.

3 Q: Okay. Are these all the items that came off of Kenneth
4 Bell?

5 A: They sure are.

6 Q: Okay. And is that the way they looked when you took them
7 into evidence?

8 A: Yes.

9 MS. LIVESAY: Your Honor, at this time, I'm asking to
10 admit these items into evidence and publish them to the Jury.

11 THE COURT: Any objection?

12 MR. MCCOLLUM: No, Your Honor.

13 THE COURT: Without objection, they'll be marked and
14 admitted. Has that been marked as an exhibit?

15 MS. LIVESAY: It has not, Your Honor.

16 THE COURT: Please take care of that for me.

17 COURT REPORTER: Mark them as a group?

18 MS. LIVESAY: You can mark it all as one, if you don't
19 mind. It all came from the same ---

20 STATE'S EXHIBIT NUMBER SIXTEEN

21 ADMITTED INTO EVIDENCE

22 MS. LIVESAY: I'm gonna show this to the Jury.

23 BY MS. LIVESAY:

24 Q: Are these the shoes that came off Kenneth Bell?

25 A: They are.

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1 Q: And is this exactly how they came off of him?

2 A: Yes.

3 Q: Okay. These are the sunglasses?

4 A: Yes.

5 Q: The phone?

6 A: Yes.

7 Q: And where did this one round come from?

8 A: It was actually in Kenneth Bell's pocket. It was on his
9 person.

10 Q: That came from the pocket of Kenneth Bell?

11 A: Yes.

12 MR. MCCOLLUM: Your Honor, same objection.

13 THE COURT: All right. The objection is noted; rulings
14 would be the same.

15 You may proceed, Ms. Livesay.

16 BY MS. LIVESAY:

17 Q: You know what kind of round this is?

18 A: It's a .45, .45 caliber round.

19 MS. LIVESAY: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MS. LIVESAY:

22 Q: If you don't mind, tell the Court and the Jury what this
23 is.

24 A: That's the black-and-silver in color .45 caliber gun that
25 was actually found in the back of the vehicle.

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1 Q: Okay. And is this the way it appeared on that day other
2 than obviously the safety precautions?

3 A: Yes.

4 Q: Okay. And what is this?

5 A: That's the actual magazine that was located in the actual
6 weapon.

7 Q: Okay. And what are these?

8 A: There's a total of five rounds in there. There was four
9 in the clip that were taken out for safety reasons and there's
10 actually one in the chamber that was taken out as well in the
11 packaging of the evidence.

12 MS. LIVESAY: Your Honor, at this time, the State wishes
13 to place State's Exhibit Number Seventeen into evidence and
14 publish it to the Jury?

15 THE COURT: Any objection?

16 MR. MCCOLLUM: No, Your Honor.

17 THE COURT: Without objection, it'll be admitted as it's
18 been marked. You may publish.

19 STATE'S EXHIBIT NUMBER SEVENTEEN

20 ADMITTED INTO EVIDENCE

21 MS. LIVESAY: Thank you, Your Honor.

22 BY MS. LIVESAY:

23 Q: So, this is the handgun that was found in the back of the
24 car?

25 A: Yes.

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- 1 Q: And this is a .45?
- 2 A: That's a Ruger .45.
- 3 Q: And this clip was inside the gun?
- 4 A: It was.
- 5 Q: Okay. Now, where did these bullets come from?
- 6 A: The bullets actually came out of the gun.
- 7 Q: Okay. And this one came from Kenneth's pocket?
- 8 A: Front pocket, yes.
- 9 Q: And what kind of round is this?
- 10 A: A .45. They're all the same round.
- 11 Q: And the rounds you found in this .45, what kind were they;
- 12 is this a .45?
- 13 A: Yes, they're all .45 caliber rounds.
- 14 Q: And these came out of the black-and-silver handgun?
- 15 A: Yes.
- 16 Q: All of them?
- 17 A: Well, the one, excluding the one that was found on Kenneth
- 18 Bell's person.
- 19 Q: I'll turn it this way; sorry about that. Now, we noted
- 20 that those came of the gun. I think, I think it's important
- 21 to explain how you found them. How many rounds were just in
- 22 this magazine?
- 23 A: A total of four.
- 24 Q: Okay. And was there a live round in this .45?
- 25 A: There was one chambered, yes.

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1 Q: Okay. And if you don't mind, tell the Jury what that
2 means when there's a round in the chamber?

3 A: That you're ready to shoot that gun and you don't have to
4 rack it. It's an extra step you have to take to rack a gun.

5 Q: Okay. So, that gun is ready to fire as soon as you pull
6 the trigger?

7 A: It's ready to fire. When you actually -- on that specific
8 gun, when you actually rack the rail, it cocks the trigger on
9 the rear of the gun.

10 Q: Okay. And when you mean rack it, you mean pull it back
11 like this?

12 A: Right.

13 Q: Okay. But when you took this gun and you inventoried it,
14 there was already a live round; is that right?

15 A: Yes, the round was actually taken out for safety measures.

16 Q: Okay. And what that means is as soon as you pull the
17 trigger, this gun goes bang?

18 A: Yes, it would have, yeah.

19 Q: Okay. Now, when there's not a live round, that means you
20 have to rack the gun; is that correct?

21 A: Uh-huh (affirmative response).

22 Q: Which means pull it back and then the round then comes
23 into the chamber; is that correct?

24 A: Yeah, chambering a round is basically the term for it.

25 MS. LIVESAY: You want to mark these? You want me to put

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1 them in something, like a folder or something? One second,
2 Your Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. LIVESAY:

5 Q: I'm showing you now what's been marked as State's Number
6 Eighteen. What is it?

7 A: That's a pair of latex gloves.

8 Q: And where did you find the two pair of latex gloves?

9 A: There was a pair under the front of the vehicle and there
10 was also a pair in the rear of the vehicle in the prior
11 pictures we were showing.

12 Q: Okay.

13 MS. LIVESAY: At this time, I make a motion to put
14 State's Exhibit Number Eighteen into evidence and show it to
15 the Jury.

16 THE COURT: Any objection?

17 MR. MCCOLLUM: No, Your Honor.

18 THE COURT: Without objection, they'll be admitted as
19 they've now been marked.

20 STATE'S EXHIBIT NUMBER EIGHTEEN

21 ADMITTED INTO EVIDENCE

22 BY MS. LIVESAY:

23 Q: Okay. So you got two pair of gloves; one found in the
24 front by the tire, which the picture showed, and then one
25 found in the back seat. Is that correct?

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1 A: That is correct.

2 Q: Okay. If you don't mind me asking, what -- where was the
3 pair of gloves in the backseat in relationship to the gun; do
4 you remember?

5 A: Yes, I do. The gloves were located on the backseat
6 literally a foot, a foot and a half from the actual gun; the
7 gun being on the floorboard in between the seats and the
8 gloves being on top of the backseat, on top of the clothing as
9 well.

10 Q: Okay. And as a road officer, do you get any training in
11 kind of on-the-scene investigation like taking pictures,
12 taking fingerprints, collecting evidence?

13 A: We do. You get your basic training in the actual Academy
14 and through the Field Training Program. When you're first
15 released from Basic Training, you have a twenty-eight shift
16 training program that you actually have to pass every day; you
17 have to pass or fail every day.

18 Q: Okay. So you're trained, if need be, to dust for
19 fingerprints?

20 A: Yes.

21 Q: Okay. Now, as a police officer, in your experience, why
22 do people wear gloves?

23 A: Basically that so DNA doesn't get on any type of evidence
24 or items as well as hiding fingerprints.

25 Q: Let me ask you this, When you go and officers go to the

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1 scene to collect evidence, like a murder scene or any kind of
2 scene, do they wear gloves?

3 A: Yes.

4 Q: And why is that?

5 A: Basically, not to contaminate evidence as well.

6 Q: Okay.

7 A: It's kind of like what we're doing now.

8 Q: So, you don't want your DNA on the evidence either?

9 A: Exactly.

10 Q: I'm gonna show you what's in State's Exhibit Number
11 Nineteen. If you don't mind just take a look inside and tell
12 me what's in there and where it was collected from?

13 A: Okay. There's a black t-shirt in a knot that was located
14 under the fender of the vehicle. There's a, a plastic latex
15 glove package, an empty package that was found the front
16 floorboard of the passenger side of the vehicle. There's a
17 black in color, kind of like a vinyl case, canvas case, with a
18 Toshiba cord in it, the charger as well as a pistol -- a
19 cleaning rod and some -- a cleaning kit, as well as a, a Sanyo
20 camcorder, a HD camcorder, and as well as the silver in color
21 Toshiba laptop that was located underneath the vehicle moved
22 to the front of the vehicle and took a picture.

23 MS. LIVESAY: Your Honor, at this time, can the State
24 place State's Exhibit Number Nineteen into evidence and
25 publish it to the Jury?

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1 THE COURT: Any objection?

2 MR. MCCOLLUM: No, Your Honor.

3 THE COURT: Without objection, it'll be so marked and you
4 may publish the items contained therein to the Jury.

5 THE COURT: Thank you, Your Honor.

6 STATE'S EXHIBIT NUMBER NINETEEN

7 ADMITTED INTO EVIDENCE

8 BY MS. LIVESAY:

9 Q: And where was this laptop found?

10 A: It was actually under the vehicle.

11 Q: Okay. Under which vehicle?

12 A: Under the red in color Mitsubishi vehicle.

13 Q: Okay. And where again was this camera found?

14 A: That was under the vehicle as well.

15 Q: Did you know who those items belonged to?

16 A: Yes.

17 Q: Who?

18 A: The actual victim.

19 Q: Okay. So, they didn't belong to Kenneth Bell or
20 Christopher Bell?

21 A: No.

22 Q: Okay. And where did you find this?

23 A: That was actually in the black in color case.

24 Q: Okay. And what is this?

25 A: It's actually a pistol cleaning rod. Actually, it's a

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1 part of a cleaning kit to clean a handgun.

2 Q: And you keep a cleaning -- you keep your pistol clean for
3 what purpose?

4 A: Well, it can actually, you can have a misfire where it
5 doesn't work, but you actually have to keep the gun clean or
6 it will rust as well.

7 Q: Okay. So, you clean the gun to make sure it goes bang
8 every time?

9 A: Yes.

10 Q: Especially, when it comes to a semi-automatic gun; is that
11 right?

12 A: Yes.

13 Q: Okay. Do you keep your gun cleaned regularly?

14 A: Yes, we have to.

15 Q: Okay. Because the chances of a misfire up when it's not
16 clean; is that correct?

17 A: That's correct.

18 Q: And where was this found?

19 A: It was found underneath the vehicle between the two front
20 tires.

21 Q: And what is this?

22 A: That's the latex glove package, an empty package.

23 Q: Okay. And where was this found?

24 A: That was found in the front of the vehicle on the
25 passenger-side floorboard.

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- 1 Q: Okay. Was it visual as soon as you looked into, into the
2 car; as soon as you looked in the front seat, was it visible?
3 A: Not at first, it was not.
4 Q: Okay. But you found it in the car?
5 A: Yes, it was in the vehicle.
6 Q: Okay. And it's for latex gloves?
7 A: Yes, ma'am.
8 Q: Like these right here?
9 A: Yes.
10 Q: Now, what is this and where was it found?
11 A: Some type, some type of black case and that was found on
12 the ground by the vehicle.
13 Q: And how about what's inside?
14 A: That's the actual, the laptop cord and actual charger for
15 the laptop.
16 Q: Now, were all these items found either in the car, near
17 the car or on Kenneth Bell?
18 A: Yes.
19 Q: Okay. Were any of these items found from inside the
20 apartment?
21 A: The items that I found were actually around the actual
22 vehicle. Everything you see was collected around the actual
23 vehicle.
24 Q: Okay. So the gun, the bullets, all of that, the gloves,
25 were in the car?

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1 A: Yes.

2 Q: Okay. And the shoes with the socks over them belonged to
3 Kenneth Bell?

4 A: Yes, he was actually wearing them; we took them off his
5 feet.

6 Q: Okay. So, he actually still had those shoes on when you
7 showed up?

8 A: Yes, he did.

9 Q: Okay.

10 A: He was actually sitting in the back of the patrol car with
11 the shoes on when we removed them.

12 Q: Okay. And why do you see something like that; socks over
13 the shoes?

14 A: It's basically the same thing as wearing gloves. It's
15 like wearing gloves on your feet. We make a lot of cases with
16 shoe prints, believe it or not. Suspects wear the same pair
17 of shoes then burglarize residences and we can, we can link a
18 suspect to a shoeprint.

19 Q: And part of patrolling is just kind of patrolling the
20 community of Horry County; is that right?

21 A: Yes, picking up 911 call responses is technically patrol.

22 Q: Okay. And how many times when you're just patrolling, do
23 you see people with socks over their shoes?

24 A: It's extremely rare.

25 Q: Okay. Have you ever seen anybody walking around with

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- 1 socks over their shoes that you didn't consider a suspect?
- 2 A: No.
- 3 Q: Now, do you remember seeing Kenneth Bell that day?
- 4 A: Yes, I do.
- 5 Q: Okay. And did you take a picture of him?
- 6 A: I believe Officer Boyd took the actual photo when he was
- 7 sitting in the back of the vehicle, yes.
- 8 Q: Okay. And is this how you saw him when you came?
- 9 A: Yes, it is Kenneth Bell.
- 10 Q: Okay. Was he wearing glasses that day?
- 11 A: No, he wasn't.
- 12 Q: Okay. Did you find any eyeglasses?
- 13 A: Yeah, he did have a pair of sunglasses on him.
- 14 Q: Okay. Sunglasses?
- 15 A: Yeah.
- 16 Q: How about just regular glasses?
- 17 A: No.
- 18 Q: Okay. Like the pair he's wearing today?
- 19 A: He didn't have sunglasses -- those type of glasses on, no.
- 20 Q: Okay. And is this the shoes you took off his feet?
- 21 A: Those are his shoes.
- 22 Q: So, those are the actual shoes that he was wearing that
- 23 day?
- 24 A: Yes.
- 25 Q: One more question, Officer Cast. When you were out there

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1 around that car, did you see some broken glass around that
2 car?

3 A: I did.

4 Q: Okay. So, the glass was definitely shattered?

5 A: Yeah, it was shattered. Honestly, it was unidentified.
6 We didn't know what it was at first.

7 Q: Okay. So, you couldn't say for sure what that item was?

8 A: I could not. I could not testify to what that was.

9 Q: You could not?

10 A: I couldn't, no.

11 Q: Okay. So, it was just shattered glass out there?

12 A: Yes.

13 Q: Okay. And you didn't take it into evidence?

14 A: No.

15 Q: And why didn't you take it into evidence?

16 A: There was honestly nothing to collect. We didn't know
17 what it was to take it into evidence.

18 Q: Okay. It was just some broken glass out by the wheel of
19 the car?

20 A: Correct.

21 Q: Was there anything else when you were out there that you
22 thought was of evidentiary value that you did not collect?

23 A: No.

24 Q: Okay. So, you collected everything you thought was
25 evidence in this case?

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1 A: Yes, to be exact, it was seventeen items that I collected
2 personally.

3 Q: And if there had been other evidence out there, would you
4 have collected it?

5 A: Yes.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: Ma'am, this photo is still here. It has not
8 been ---

9 MS. LIVESAY: I'm not gonna submit it in.

10 THE COURT: Then you need come get it.

11 MS. LIVESAY: I will get it, Your Honor.

12 THE COURT: Thank you, ma'am.

13 Thank you.

14 MS. LIVESAY: I think I marked it as an exhibit.

15 THE COURT: It's been marked. Thank you. All right.

16 Counsel, you may cross examine.

17 MR. MCCOLLUM: Thank you, Your Honor.

18 CROSS EXAMINATION OF OFFICER TIMOTHY CAST BY MR. MCCOLLUM:

19 Q: Officer Cast, how are you today?

20 A: Fantastic.

21 Q: The, the items that you found in terms of the -- well,
22 they're all mixed up now, but the, the bag and the, the broken
23 glass and the knife, all of those items were found at the, say
24 the driver's side front of the car, right?

25 A: Yes.

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1 Q: Okay. Is that, that's the area where Christopher Bell
2 was?

3 A: Yes, it was.

4 Q: And the, the, the knife, the silver or chrome knife, is
5 that in evidence?

6 A: Yes, it is.

7 Q: And where was it you located that?

8 A: The actual knife, when I saw it, was on the actual hood of
9 the vehicle.

10 Q: Is that where Christopher Bell put it?

11 A: They were already detained when I arrived on scene.

12 Q: So, you got there a little late and they were already
13 there on ---

14 A: Correct.

15 Q: Okay. Now in terms of the, the .45 caliber gun, there
16 were how many bullets in the gun?

17 A: There was a total of four in the actual magazine and one
18 in the chamber.

19 Q: And are you familiar with that the clip? I'm gonna hand
20 you the clip -- it's not marked, Your Honor.

21 THE COURT: It's marked as part of a larger exhibit. It
22 was in the box with the gun, which was -- how was that marked?

23 COURT REPORTER: Seventeen.

24 THE COURT: Number Seventeen, it's part of Seventeen.

25 MR. MCCOLLUM: Thank you, Your Honor.

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1 BY MR. MCCOLLUM:

2 Q: Let me hand that to you if it's all right. Do you know
3 how many rounds that clip holds?

4 A: Usually, a clip has a number on it that tells you how many
5 rounds it holds, but this one does not.

6 Q: Can you tell by either looking at it or by your experience
7 with weapons how many it would hold?

8 A: I can, I can guesstimate it will hold approximately nine
9 rounds, one in the chamber; so, probably ten total in the .45.

10 Q: So, you think the clip would hold nine rounds?

11 A: Roughly yes, that's approximating.

12 Q: And it had about, the actual clip, your testimony is it
13 had four rounds in it?

14 A: Yes.

15 Q: And you said there was a round in the chamber, right?

16 A: There was a round in the chamber, yes.

17 Q: All right. Now, if I, if I took that gun and it had the,
18 the clip in it and it wasn't cocked and I handed it to you
19 and, and you took it from me, would you know if there, well,
20 two questions. One, would you know how many rounds were in
21 it?

22 A: By holding the gun?

23 Q: Yes, sir.

24 A: No.

25 Q: If, if I handed it to you and the clip was in it, could

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1 you tell from me handing it to you whether or not it was
2 loaded?

3 A: No.

4 Q: If, if I handed you the gun, what, what would be the first
5 thing that you would do with it?

6 A: That's a wide -- that's a broad question there, but you
7 talking about unloading it, making it safe or ---

8 Q: Well, yeah, I guess I -- maybe I'm not asking it right.
9 What would you do to determine -- if I handed it to you, what
10 would you do to determine whether or not it was loaded?

11 A: First, you actually look at the gun. If there's a hammer
12 on the rear of the gun, if it's cocked, that means the slide
13 was actually released back to actually cock the gun. So, you
14 check -- the first thing you do is you check to see if it's
15 actually cocked.

16 Q: So you just look at it and you'd know if it were cocked,
17 okay?

18 A: Yeah, you can actually, you can see it on that gun; it
19 actually cocks at the back of the gun.

20 Q: But if it were not cocked, what would you do to see if it
21 were loaded?

22 A: The first thing you do is you actually drop the magazine,
23 you take the magazine out and you would slide the rail back.

24 Q: All right. So, when you say drop the magazine, that's the
25 part that slides in the handle, right?

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1 A: Yes, dropping the magazine is when the magazine is
2 released, the magazine falls from the actual weapon.

3 Q: All right. So, then you would know that there were no
4 bullets in that part of the gun, correct?

5 A: In the actual magazine, but there would still be one,
6 there still could be one in the chamber, yes.

7 Q: And if there's one in the chamber, how do you take it out
8 of the chamber?

9 A: You actually slide the rail back and the round will
10 actually shoot out on the spring.

11 Q: And when it shoots out, does it, does it land on the
12 ground or does it just pop up?

13 A: It all depends on your experience in ejecting rounds. If
14 you slide your hand over the actual, over the rail, you can
15 actually catch it or you can actually release it.

16 Q: So, if you're someone with your experience was doing it,
17 you could slide the rail back and put your hand there and
18 remove the round, right?

19 A: Correct. With this specific, with this specific gun, you
20 basically just tilt it and you slide the rail back and the
21 round actually falls out.

22 Q: And you can catch it?

23 A: Yes, potentially you could.

24 Q: All right. And if I handed you that gun and there were
25 rounds in the clip and you wanted to take bullets out of the

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1 gun the way you just described out of the top of the gun or
2 out of the chamber, every time you removed a bullet, the other
3 round would slide into the chamber, right?

4 A: If the magazine was still in the gun, yes.

5 Q: Yeah, I'm sorry, I left that out. If the magazine was
6 still in the gun and the gun did not have a round in the
7 chamber, but you decided to unload the gun the way we
8 described, every time you pulled the slide back -- am I using
9 the right term?

10 A: Yeah. I didn't know if that was a question or not.

11 Q: I'm sorry. I'm asking you if I'm saying the right word or
12 not?

13 A: You can use, what did you say, rail?

14 Q: I said slide?

15 A: You can use slide, yes.

16 Q: Slide's correct?

17 A: Yes.

18 Q: So every time -- if I handed you the gun and you wanted to
19 unload the gun but you didn't want to pull the clip out, you
20 just wanted to quietly unload the gun, that would be --
21 continue to move rounds in the chamber, right?

22 A: Yes.

23 Q: And we would never know at that point, if -- well, you
24 would know when you first did it whether there was a round,
25 when you first slid the rail back, you would know if there was

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1 one in the chamber at that point or not, right?

2 A: Yes.

3 Q: Okay. But nobody else would know?

4 A: Right, there's actually another way you can actually peak
5 -- you can slide the rail back just a small bit, you can
6 actually see the round in the chamber. That's another way.
7 There's multiple ways to check if the gun's loaded.

8 Q: But there's no question but that if an individual were in
9 the process of unloading a gun and wanted to do it discreetly,
10 you could be -- you could do it the way we described?

11 A: There's multiple ways to do it, yes.

12 Q: And then if that person were in the process of unloading
13 the weapon and for whatever reason didn't get to finish, then
14 that would leave a round in the chamber, right?

15 A: I don't understand your question.

16 Q: I'm sorry. If the, if the clip is in the, in the handle of
17 the gun -- it's spring loaded, right; if I'm saying that
18 right. So, if someone were unloading the gun because they
19 didn't want the gun to be loaded anymore, but they didn't get
20 to finish then when the gun was located, it would then, quote,
21 have a round in the chamber, right?

22 A: That's not, I just don't understand your direct question
23 here.

24 Q: I'm sorry. If there are rounds in the chamber, excuse me.
25 If there were rounds in the clip and the clip is in the gun

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1 ---

2 A: Uh-huh (affirmative response).

3 Q: And you're taking bullets out of the chamber, there would
4 always be another bullet going into the chamber until the clip
5 was completely empty, right?

6 A: Correct.

7 Q: And is there any way to unload the gun by taking the
8 bullets out of the chamber and prevent the bullet in the clip,
9 the next bullet going up into the chamber?

10 A: If you continue to rack the gun each full round will come
11 up, will continue to come out of the actual the barrel if
12 that's what you're looking for.

13 Q: And by racking the gun, that's the way you can take
14 bullets out?

15 A: Potentially that's not -- that's pretty much an amateur
16 way to take bullets out of a gun.

17 Q: So, you wouldn't recommend it?

18 A: No, you actually drop the magazine first and then you take
19 the rounds out of the actual chamber.

20 Q: That's the preferred method?

21 A: Yes, because a round will still come in the chamber when
22 you rack the gun.

23 Q: Right, because they keep coming in and then you have to
24 take them -- and that's a yes?

25 A: Yes, but you can -- you can still unload the gun, like I

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1 said, multiple ways. You can continue racking it until all
2 the rounds are actually out of the gun as well.

3 Q: All right. Now did, did you search Christopher Bell's
4 person -- and by his person, I mean his clothing or something
5 that he was holding?

6 A: I did not.

7 Q: Do you know who did?

8 A: It should have been Officer Langlais; it wasn't me. I
9 can't testify to who, who searched him, but it was not me, no.

10 Q: All right. Thank you.

11 Just one minute, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. MCCOLLUM:

14 Q: Now, I think you may have already testified about this, in
15 terms of the broken glass that was near the, say the left
16 front tire of the vehicle, did you have an opportunity to
17 observe that?

18 A: Yes, it's actually in the photo.

19 Q: And do you know what that broken glass object was?

20 A: No, I do not.

21 Q: So, I'm gonna hand you State's Thirteen, is that the photo
22 you're referring to?

23 A: Yes, it is the photo.

24 Q: Okay. And so you see broken glass here in the area of the
25 left front tire?

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1 A: Yes.

2 Q: And then there's another object, small object, there next
3 to the tire iron. Can you tell me what that is or do you know
4 what that was?

5 A: I do not. It looks like a piece of glass.

6 Q: Did you -- how close did you get to that area where the
7 glass was broken in terms of, did you stand next to it or did
8 you -- were you crawling around on the ground? Did you ever
9 even go on that side of the car?

10 A: Where you see me taking the photos that's a distance.

11 Q: So you, you took the photos so you were standing and
12 looking at it?

13 A: Yes.

14 Q: And, and so you examined it closely enough to take the
15 photos?

16 A: Uh-huh (affirmative response).

17 Q: But you don't know what it was?

18 A: It was glass; that's all I can testify to.

19 Q: Was there anything unusual about it?

20 A: That was clear that it was glass.

21 Q: Okay. And did it have a liquid in it?

22 A: No, not that I -- not that I know of.

23 Q: All right. And either you or Officer Boyd or somebody
24 made a determination that that was not anything that anybody
25 needed to collect, right?

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TIMOTHY CAST - REDIRECT BY LIVESAY

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- 1 A: Correct.
- 2 Q: Now this, this red -- what I call I guess a Tupperware
3 lid, for lack of a better term, was that collected?
- 4 A: Yes, it was.
- 5 Q: Do you see that here? Do you see it in the courtroom?
- 6 A: The actual lid?
- 7 Q: Yes, sir?
- 8 A: Yes, it was. We had it in the box.
- 9 Q: Okay. So you collected that?
- 10 A: Yes.
- 11 Q: All right.
- 12 A: That was an unidentified object.
- 13 Q: Thank you. All right.
- 14 That's all I have, Your Honor.
- 15 THE COURT: Redirect?
- 16 MS. LIVESAY: Yes, Your Honor, just a few.
- 17 REDIRECT EXAMINATION OF TIMOTHY CAST BY MS. LIVESAY:
- 18 Q: Timothy, I want to ask you a few questions about the
19 workings of this gun because I think I'm confused. I want to
20 get it cleared up. Now, this is, this is the chamber to the
21 gun; is that correct?
- 22 A: Right, or the rail.
- 23 Q: Okay. When, when I want a bullet in the chamber and I put
24 the clip in, the first thing I do is rack the gun; is that
25 correct?

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1 A: That's correct.

2 Q: Okay. So, that bullet does not automatically go into this
3 chamber until I rack it; is that correct?

4 A: No, it doesn't. You actually have to rack it to load a
5 round in the actual chamber.

6 Q: That's right. So, when I load my clip and I put it in
7 here, if I go like this it's not gonna go bang?

8 A: No, it won't.

9 Q: That's right. I got to rack it. And when I rack it, this
10 pulls the bullet from the magazine or the clip into this
11 chamber; is that correct?

12 A: Yes. Uh-huh (affirmative response).

13 Q: And then it goes back?

14 A: Uh-huh (affirmative response).

15 Q: So, when you put the magazine in, in this gun right here,
16 it's not gonna go back; is that correct?

17 A: That's correct.

18 Q: Not until I intentionally pull this magazine back or pull
19 this, this back, that then puts a round into that chamber; is
20 that correct?

21 A: That is correct.

22 Q: Okay. So, you have to make an intentional act to get that
23 round from the magazine into this chamber?

24 A: Yes.

25 Q: Okay. Now, we got that clear. Now, when you're loading

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1 the magazine or the clip or however you want to call it, let's
2 see, I think it's ---

3 THE COURT: The clip is on the bar in front of the
4 witness.

5 Q: I actually have a weapon similar to this and I tell you, I
6 hate it. Now let me ask you this, as you're loading these
7 rounds into this clip, does it get easier or more difficult as
8 you're pressing down on this part?

9 A: It's a spring so when you get to the actual bottom when
10 you start putting a lot of rounds in it, it's tough.

11 Q: Okay.

12 A: The last two or three rounds are really tough.

13 Q: That's right. Sometimes people have trouble filling up
14 this magazine, don't they?

15 A: Oh yeah. Yeah, when you get to the last round, it's
16 actually very tough. You feel like one is ---

17 Q: You see people sometimes bearing down like that; is that
18 correct?

19 A: Yes, that's correct.

20 Q: So, really as you're filling this magazine up with
21 bullets, that last one that goes in there is the hardest to
22 load, would you say?

23 A: It is.

24 Q: Okay. Now, when you load this magazine, you would say --
25 about how many does it hold?

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TIMOTHY CAST - REDIRECT BY LIVESAY

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1 A: I'm gonna say approximately, don't quote me on it, but
2 nine, roughly ten.

3 Q: How many?

4 A: Nine to ten.

5 Q: Okay. Nine to ten. Okay. And as you're loading it, it's
6 getting harder and harder?

7 A: Yeah, that last round, especially in a .45, the larger the
8 bullet, the harder it is to, to actually put in the actual
9 magazine.

10 Q: Okay. Now, there was something else I was gonna ask you.
11 If somebody handed you this gun and you wanted to see whether
12 or not it was loaded, correct me if I'm wrong, because I think
13 I may have misunderstood, what would be the first thing you
14 would do to see whether or not this gun was loaded?

15 A: There's multiple things you can do. On that specific
16 particular gun, it has an actual trigger on the back of it, an
17 actual cocking mechanism. So, when the cocking mechanism ---

18 Q: It's right there.

19 A: --- is back, the actual slide rail, when you cock it,
20 pushes down on the pin.

21 Q: So, it has an aspect like a revolver when this is cocked
22 back, then you know it's loaded?

23 A: Yes.

24 Q: Okay. Now, let me ask you this much. If there's a live
25 round in this gun and I take the clip out, is it still gonna

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1 say bang?

2 A: It's still gonna fire.

3 Q: That's correct. So the most important thing to do would
4 be to pull this shaft back and see if there's a live round in
5 it?

6 A: Right. It's, we call it peeking.

7 Q: This is about as close as I can get to ---

8 A: Right.

9 Q: So when you -- (To the Court) Can I have him step down,
10 Your Honor?

11 THE COURT: You may.

12 MS. LIVESAY: Thank you.

13 BY MS. LIVESAY:

14 Q: This is about close to what it looks like when this it's -
15 - when this shaft is fully closed; obviously, this is center-
16 ways; is that correct?

17 A: Yes.

18 Q: Now, I'm gonna turn this back to the Jury so they can see
19 it. This has an aspect like a revolver -- is that correct --
20 and it has a hammer?

21 A: It does: Yeah, a hammer; that is correct.

22 Q: When this hammer's back and you pull the trigger, it goes
23 bang?

24 A: Yes.

25 Q: Is that correct? In fact, there's some holsters that

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1 actually have a piece that go between this hammer and the gun;
2 is that correct? It's like a safety mechanism?

3 A: Yes, that is true.

4 Q: Okay. Now, when you're looking at this gun like this and
5 you want to know if there's a live round in the chamber, would
6 you pull it back -- would you see that round in the chamber?

7 A: Yes, you would.

8 Q: And that's how you check to see if it's a live round; is
9 that correct?

10 A: Yes, it is.

11 Q: Okay. So, this is a pretty deliberate action, wouldn't
12 you say?

13 A: Yeah, it is.

14 Q: Okay. Now, you can actually -- when you pull it back,
15 depending upon the type of gun, you can take that live round
16 out; is that correct?

17 A: Yes.

18 Q: Okay. If you had -- you found how many in the clip, four
19 and a live round in the chamber?

20 A: Four.

21 Q: And when you found this gun, the clip was in the weapon;
22 is that correct?

23 A: Yes, the weapon was fully loaded. And what we mean by
24 fully loaded is one in the actual chamber and a magazine
25 actually in the gun with rounds in it.

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- 1 Q: Okay. Have you ever seen anybody unload a gun by taking
2 it like that and popping the bullet out five times?
3 A: No.
4 Q: Okay. Cause this is pretty loud, isn't it?
5 A: Yes.
6 Q: Okay. In fact, a lot of people do this to intimidate
7 people?
8 A: Right.
9 Q: Okay. Now, let me ask you this much, when you take a live
10 round out like that ---
11 A: Uh-huh (affirmative response).
12 Q: --- and there's four left, okay, is that gun gonna go
13 bang?
14 A: If there's four in the clip and one actually goes back
15 into the chamber if you take a round out.
16 Q: That's right, but you have to do that?
17 A: Right.
18 Q: Okay. If there's not a live round in this gun and this
19 has never been racked, is it ever gonna go bang?
20 A: No, you actually have to rack the gun to put one in the
21 actual chamber.
22 Q: So there's no if, ands, and buts about it, there has to be
23 a deliberate action for this gun to go bang?
24 A: Yes.
25 Q: Okay. And there has to be a deliberate action for there

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TIMOTHY CAST - REDIRECT BY LIVESAY

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1 to be a round in this chamber?

2 A: Uh-huh (affirmative response).

3 Q: Okay. Have a seat, Officer Cast.

4 Now, Mr. McCollum asked you about if you wanted to
5 quietly unload this gun, you would just pull it back like
6 that, okay. Let me ask you this, when you rack a gun and the
7 bullet comes out, it makes a mark on that bullet; is that
8 correct, like a strike mark?

9 A: Yes, it does.

10 Q: Okay. Because there's friction between this shaft and the
11 bullet; is that correct?

12 A: It does, it scratches the outside of the actual shell.

13 Q: Okay. And is it true, that different guns make different
14 strike marks?

15 A: That is true.

16 Q: Okay. Because some bullets, when you rack it, pop out
17 pretty far; is that correct?

18 A: Yes.

19 Q: Okay. And do you know how far the bullet would pop out of
20 this gun when it was racked?

21 A: I have no idea.

22 Q: Okay. But what you do know is when you found it -- this
23 is a safety measure; is that correct, to keep it like this?
24 That's a safety measure and that's why this is on it. When
25 you found it, was the shaft back like that?

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BY THE COURT

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1 A: No, it was forward with one in the chamber and a magazine
2 in the actual body of the gun.

3 Q: Okay. So, as soon as you picked it up, it could've went
4 bang?

5 A: Oh yeah.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: Would you like to cross examine, recross?

8 MR. MCCOLLUM: No, Your Honor.

9 THE COURT: All right, sir, you may step down.

10 BY THE COURT:

11 THE COURT: Ladies and gentlemen of the Jury, at this
12 time, we're going to break for the evening. I'll give you the
13 same instructions I've given you each time you've left the
14 courthouse and that is not to gather any information on your
15 own, don't listen to, watch or read media reports, don't
16 discuss this case with anyone and don't allow anyone to
17 discuss the case with you. I'll ask that you be back in the
18 downstairs room at 9 o'clock in the morning. We should be
19 able to begin shortly thereafter. I hope everyone has a good
20 evening. If you'll just move that one piece of evidence off
21 that rail so that we can open the door and just leave
22 everything else sitting where it is. At this time, I hope you
23 have a good evening. You're free to go.

24 (REPORTER'S NOTE: The Jury exits courtroom. 5:05 P.M.)

25 THE COURT: I'll caution the Defendant, we'll resume the

1 WENDY JAWORSKI, HAVING BEEN SWORN

2 TESTIFIES AS FOLLOWS:

3 | CLERK: Thank you. Please be seated.

4 THE COURT: Ma'am, have a seat in the witness stand,
5 please. Once you're seated, state your name?

6 MS. JAWORSKI: Wendy Jaworski.

7 THE COURT: Thank you, Counselor, your witness.

8 MR. MCCOLLUM: Thank you, Your Honor.

9 DIRECT EXAMINATION OF WENDY JAWORSKI BY MR. MCCOLLUM:

10 Q: Ms. Jaworski, good morning.

11 A: Good morning.

12 Q: You've been here since the beginning of the trial, right?

13 | A: Yes.

14 Q: All right. And are you -- are you the, the mother of
15 Kenneth Bell?

16 A: Yes, I am.

17 Q: All right. And are you the mother of his brother, Buddy?

18 | A: Yes, I am.

19 Q: All right. Where do you currently reside?

20 A: Pittsburgh, Pennsylvania.

21 Q: And have you lived there for a number of years?

22 | A: All my life.

23 Q: And are you presently married?

24 | A: Yes, I am.

25 Q: What is your husband's name?

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- 1 A: Robert Jaworski.
- 2 Q: And is, is he presently employed?
- 3 A: Yes, he is.
- 4 Q: And where is he today?
- 5 A: He is currently at work and it's killing him not to be
- 6 here.
- 7 Q: What kind of work does he do?
- 8 A: He is a mechanic.
- 9 Q: How many children do you have?
- 10 A: My husband and I have raised five.
- 11 Q: Five children?
- 12 A: Uh-huh (affirmative response).
- 13 Q: And in terms of Kenneth, is he the youngest or is he in
- 14 the middle?
- 15 A: He is in the middle. Buddy is the oldest. They have a
- 16 step-sister, Amanda, she's in the Air Force; and there's
- 17 Kenneth; then there's Jessie, who is the mamma of a two-year-
- 18 old; and there's Haley, who is currently going to Empire
- 19 Beauty School. That's another reason why my husband couldn't
- 20 be here. She has to be taken back and forth to school. She
- 21 doesn't drive.
- 22 Q: Briefly, I want to touch on this, throughout the trial,
- 23 we've been talking about the Codefendant, Christopher Bell.
- 24 Do you know Christopher Bell?
- 25 A: Yes, I do.

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1 Q: And have you heard me refer to him as Kenneth's brother?

2 A: Yes.

3 Q: And tell me about that. How do you -- how does that
4 affect you?

5 A: Christopher Ryan is his half-brother. Buddy, Kenny, Shawn
6 and Chris all have the same father, but not the same mothers.

7 Q: So you're not the mother of Christopher?

8 A: No.

9 Q: Now at the time of say leading up to February of 2013, to
10 your knowledge, was Christopher Bell living in this area, in
11 the Myrtle Beach area, the Horry County area?

12 A: Yes.

13 Q: And you were familiar with that, that he was living here?

14 A: Yes.

15 Q: And going back to Kenneth, how old is Kenneth?

16 A: Kenny, he just turned twenty-two.

17 Q: And you raised Kenny from birth?

18 A: Yes.

19 Q: And did he do well in school?

20 A: Straight A's through high school from elementary to high
21 school; almost Valedictorian.

22 Q: How big was the high school he attended?

23 A: We, we live in a predominantly black area. My kids, my
24 boys were the only two that went to that high school. And it's
25 not an exaggeration, they were the only two white children in

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1 the school. I mean, that to me is perseverance that -- and
2 everybody loved them.

3 Q: Now, Kenneth, did he play sports?

4 A: Yes.

5 Q: What sports did he play?

6 A: He was captain of the football team, junior high and high
7 school and captain of the baseball team. They -- the school
8 district lost their baseball team and when Kenny was in tenth
9 grade, they restarted it. He actually helped to restart the
10 baseball team back up and he was captain of the baseball team
11 as well.

12 Q: In terms of the football playing, what -- do you know what
13 position he played?

14 A: He played both offense and defense. I believe defensive
15 end.

16 Q: All right. And did he have any possibility or prospects
17 of having any kind of college scholarship as a result of
18 playing football?

19 A: Yes, he did. Allegheny University, which is a very
20 prestigious school in Pennsylvania wanted him very badly. The
21 problem was is that his football coach, who was doing some
22 deceitful things that we didn't know about, didn't send the
23 disc of the plays that would involve Kenny and because of
24 that, Kenny got turned down.

25 Q: All right. Now, at some point -- well, let me back up a

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1 minute. When, when Kenny, as you call him, was, was growing
2 up, did he attend church?

3 A: Yes.

4 Q: And what faith?

5 A: He's Methodist.

6 Q: All right. In terms of other things he's done, has he
7 worked?

8 A: Since sixteen years of age. Actually, he asked me -- I'm
9 sorry, my husband is his father; that's who we refer to as his
10 father. My current husband has raised him since five years of
11 age. So, to us, that's his dad. He begged us at fifteen to
12 work and my husband said no. At sixteen, he brought home a
13 work permit and said, please, I want to work; I just want to
14 work. So, he started, he was a cashier at a food store. He
15 worked there for from sixteen to nineteen years of age. They
16 were putting him in a gas station where more than three people
17 were on the register and the thing was coming up short. So I
18 suggested that he quit so it wouldn't incriminate him on
19 anything. He went straight from there, I believe, a week
20 later he was working for a clothing store called Marshalls.
21 He worked there for about six or eight months. He was being
22 overworked so he thought ---

23 Q: Is this while he was in high school?

24 A: Yes, and then right after graduating.

25 Q: So, so when he was in high school, he made good grades,

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- 1 correct?
- 2 A: Yes.
- 3 Q: He worked?
- 4 A: Yes.
- 5 Q: And played multiple sports?
- 6 A: Yes.
- 7 Q: Okay. Is it safe to say that you were proud of him?
- 8 A: Oh yes.
- 9 Q: Now at some point after he finished high school, did he
- 10 join the Air Force?
- 11 A: Not right away. He wanted to come right out of high
- 12 school and go to the Marines and I begged him not to because
- 13 it -- we were at war at that time and I didn't want to see him
- 14 on the front lines. And so I asked him to take one year, try
- 15 college, so he attended CCAC in Monroeville. He did not like
- 16 that at all. It reminded him too much of high school. So
- 17 after the one year, I told Kenny, I said okay, your one year
- 18 is up. You, you can join the service and he went to the air
- 19 -- he decided on the Air Force.
- 20 Q: And did he enlist in the Air Force?
- 21 A: Yes, he did.
- 22 Q: And was he accepted in the Air Force?
- 23 A: Yeah.
- 24 Q: And when was that in terms of what year was that?
- 25 A: January 17th, 2012.

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1 Q: And do you know where he reported to?

2 A: He reported to the Air Force recruiting center in
3 Monroeville.

4 Q: And was he accepted into basic training?

5 A: Yes, one of the proudest moments in my life, actually.

6 Q: And did he complete basic training?

7 A: He did not.

8 Q: And why is that?

9 A: About three or four weeks into basic training, his liver
10 swelled. They said that he had overstress and not enough
11 water intake and while he was in the medical center, he got
12 that cleared up, the cameras that they have in the medical
13 center caught him sleepwalking. So, they had to send him
14 home, but he can always re-enlist.

15 Q: Now, the medical condition that the Air Force took him out
16 of basic training on, is that, to your knowledge has that been
17 resolved?

18 A: Yes.

19 Q: So, if there were not other obstacles, he would be
20 eligible to re-enlist?

21 A: Yes.

22 Q: All right. At some point, when he was growing up, did you
23 have a conversation with him about his personal appearance and
24 specifically I mean with the idea that he may enlist or do
25 something -- did you have a conversation with him about any

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1 tattoos or piercings or things of that nature?

2 A: It's not just with him. Like I said, we raised five
3 children and we've always stressed that at such a young age,
4 kids want to go out and they want to get tattoos as soon as
5 they turn eighteen. And my oldest son, Buddy, went to Canada
6 and got a tattoo. He's the only one out of five that has no
7 markings. He's listened to me one hundred percent. Please
8 don't get a tattoo until you know what your career is going to
9 be. Once you make that career, you can get whatever you want
10 wherever you want. Kenny has good credit because he listens.
11 I guess you could say I've protected him.

12 Q: All right. Were there ever any opportunities in his, in
13 his young life where he worked to support other people?

14 A: Yeah. Yes, about 2008 my husband and I both lost our
15 jobs. We were working for the same company and it sold out
16 and Kenny was working, like I said, as a cashier at a grocery
17 store and he actually paid the bills for about six months to a
18 year.

19 Q: Now, when, when he made the decision after he was no
20 longer in the Air Force basic training to travel, did he
21 decide to move to this area here, the Myrtle Beach area?

22 A: No. Coming out of basic training, he went, one week later
23 he had a job. He came home, one week later he got his old job
24 back at the gas station down the street. Then my son, Buddy,
25 had a little boy in September, September 27th of last year and

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WENDY JAWORSKI - DIRECT BY MCCOLLUM

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1 my mom and I had already had plans on coming down to see the
2 baby once it was born.

3 Q: Let me stop you there. So, where does -- where does Buddy
4 live or where did Buddy live when the baby was born?

5 A: Buddy resides here in Surfside.

6 Q: Thank you. So then you, you came down to see the baby,
7 the grandbaby?

8 A: Yes.

9 Q: Okay. And about when was that?

10 A: Well, the baby was born September 27th, 2012. So we came
11 down a couple of days later, like a day or two later.

12 Q: And did Kenny come with you?

13 A: Yes, Kenny and Haley both came.

14 Q: At some point, did Kenny make a decision just to stay here
15 and live in this area?

16 A: Well, we came down and their oldest brother, Shawn, got
17 married that weekend also. I believe it was like October 6th.
18 So he also came down for the wedding and he had never been
19 around all of his brothers. I've basically kept him away from
20 the, what I call the Bell family, for reasons. Their dad,
21 he's -- up until last year, he's never been around his dad
22 except for I think when he was four. He's basically always
23 been with me. I've never let him around that family.

24 Q: And then at some point, did, did Kenny live in this area
25 with his brother, Buddy?

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1 A: Yes, he asked me if he could try it. I told him I didn't
2 think it was a good idea but he was twenty-one years old; what
3 can I say? I can't, I can't keep telling him what to do.

4 Q: At this point, did you want him or think it was a good
5 idea to associate with, with Christopher?

6 A: No. No, I left him down here thinking he was staying with
7 Buddy. From what I understand -- I didn't know Shawn would
8 come around and then I had learned that he went and seen his
9 dad and I told him I didn't like that at all, but he did and
10 there's nothing I, like I said, he's twenty-one; there's
11 nothing I can do.

12 Q: All right. So, when you learned that he had been arrested
13 and charged with these multiple felonies, was that something
14 that you would have ever expected?

15 A: No. No, and to this day, it -- my husband and I, it blows
16 our minds away. It's, it's, it's more than a three-sixty;
17 it's double a three-sixty.

18 Q: You consider your son to be somebody who has what we call
19 good character or has a reputation of good character?

20 A: Yeah.

21 Q: Do you consider him somebody to be a person who's
22 truthful?

23 A: Yeah.

24 Q: Do you know anything about Christopher in terms of his
25 physical condition?

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WENDY JAWORSKI - DIRECT BY MCCOLLUM

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1 A: I know he was in a car accident and I know that because
2 the day it happened, my son, Buddy, had called me and told me
3 Chris was at that time critical and I believe he was in
4 Charleston Hospital for a little while. Buddy was there with
5 him.

6 Q: All right. And so you really, you haven't really had --
7 well, let me ask you this, Have you had any dealings with
8 Christopher?

9 A: Not many. After the incident, he always wanted to come
10 around and he kept apologizing to me. And at first, I told
11 him I, I didn't want to hear it because I just didn't want to
12 hear it. I mean, I left a perfectly, I don't want to say
13 perfect, but never had any run-ins with the law, never even
14 had so much as a parking ticket, never had anything on his
15 driver's license, had good credit and he was only twenty-one
16 years of age. For somebody to involve a person in your things
17 like that blows my mind. I, I could never imagine asking
18 somebody to do things like that.

19 Q: Do you think that Kenneth would try to be protective of
20 Christopher?

21 A: When it comes to family, Kenny will -- he'll give you his
22 arm; he'll give you a leg.

23 Q: So is that, are you describing that he's loyal?

24 A: Very much. If you were family -- like I said, he doesn't
25 know Chris that well. He didn't know Shawn. He hadn't seen

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WENDY JAWORSKI - DIRECT BY MCCOLLUM

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1 Shawn in, I think, he was three years old last time he saw his
2 oldest brother, but if you are family, he will give his arm,
3 his tooth, his eye; family is family.

4 Q: Now in terms of the medical condition that caused him to
5 have to leave the Air Force, is that to your knowledge, is
6 that cleared up?

7 A: Yeah, he went to see his primary care physician like the
8 Air Force needed. His PCP is Dr. Lavarie (spelled
9 phonetically). Dr. Lavarie issued two sleeping tests. He
10 went and had those done. The Sleep Center said he only, he
11 didn't need the second one; the first one was fine and Dr.
12 Lavarie had one more session to talk with him and sign the
13 papers and he could go back to the Air Force.

14 Q: All right.

15 MS. LIVESAY: Your Honor, obviously, at this point, even
16 Mr. McCollum knows that that's inappropriate.

17 MR. MCCOLLUM: I know, Your Honor, and I'll stop with
18 that.

19 THE COURT: Yes, sir. Hearsay is not admissible in the
20 courtroom.

21 BY MR. MCCOLLUM:

22 Q: As far as on that issue, if he had not had the medical
23 condition, would you have expected him to still be in the Air
24 Force?

25 A: Yes.

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WENDY JAWORSKI - CROSS BY LIVESAY

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1 Q: Do you love your son?

2 MS. LIVESAY: Your Honor, again, I think Mr. McCollum is
3 continuously going down this path that, (A), it's already been
4 gone down; and (B) it's inappropriate.

5 THE COURT: Well, it's -- it's already been testified to
6 and the question then was would she have expected him to still
7 be in the Air Force; she can answer that question so
8 overruled.

9 MR. MCCOLLUM: Thank you, Your Honor.

10 THE COURT: But we have gone a little afield on
11 character.

12 MR. MCCOLLUM: Thank you.

13 THE COURT: Thank you.

14 BY MR. MCCOLLUM:

15 Q: So if he had not had the medical condition, would you
16 expect him to still be in the Air Force?

17 A: Yes.

18 Q: All right. All right. Thank you, Your Honor. Please
19 answer any questions Ms. Livesay may have.

20 THE COURT: Your witness, Counsel.

21 MS. LIVESAY: Thank you, Your Honor. Just a few.

22 CROSS EXAMINATION OF WENDY JAWORSKI BY MS. LIVESAY:

23 Q: Now you are Kenneth Bell's mom; is that correct?

24 A: Yes.

25 Q: Okay. And you have been here for the entire trial; is

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BUDDY BELL - CROSS BY LIVESAY

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1 A: Uh-huh (affirmative response).

2 Q: Let me ask you -- this is something I'd like to know.

3 Where did he get this gun from?

4 A: Where?

5 Q: Uh-huh (affirmative response) or who, who did he get it
6 from?

7 A: He got from Chris.

8 Q: He got it from who?

9 A: Chris.

10 Q: He got it from Chris?

11 A: Chris had given it to Kenny.

12 Q: How'd you know that; did you see it?

13 A: No, Chris had told me he gave it to him.

14 Q: Did, did you see Chris give him this gun?

15 A: Did I see it, no.

16 Q: Okay.

17 A: But I was told.

18 Q: But you didn't see him give him the gun? Okay. And Chris
19 is your brother too; is that correct?

20 A: Yeah.

21 Q: Okay. So, there's not a doubt in your mind when Kenneth
22 went in that apartment, he had this gun?

23 A: From what I was told, he had it.

24 Q: Okay. So, when he went into the apartment, he was the one
25 in control of this weapon?

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CLOSING BY MCCOLLUM

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1 will be going first.

2 You may proceed. Ms. Livesay, you may proceed.

3 MS. LIVESAY: Your Honor, I will reserve the right to
4 close last?

5 THE COURT: All right. Then I'll pass to you, sir.

6 MR. MCCOLLUM: Thank you, Your Honor.

7 THE COURT: You may proceed, Mr. McCollum.

8 MR. MCCOLLUM: May it please the Court?

9 THE COURT: Yes, sir.

10 CLOSING BY MR. MCCOLLUM:

11 MR. MCCOLLUM: Ladies and gentlemen, again, I want to
12 thank you for your service here. I want to thank you for
13 listening to this case. I want to thank you for being patient
14 and I want to thank you for being patient with me at times as
15 I defended and continue to defend Kenneth Bell.

16 This is -- when you look at our criminal courts and you
17 look at our justice system, sometimes you, you, it take, it's
18 hard, it's hard to see that. You're in this seat now -- and I
19 don't know if any of you have ever been in this position
20 before -- but you have a situation where you see something
21 that's exceedingly tragic. You have heard from Kenneth Bell's
22 mother, you have heard information about his character, about
23 the kind of person he is. You heard some information about
24 his brother, half-brother, and to some extent, you had some
25 ability to weigh that.

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CLOSING BY MCCOLLUM

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1 Now, in a trial -- and I've been doing this a long time,
2 I guess I started practicing in the Criminal Courts in 1988,
3 first as a public defender and then I worked for about five
4 and a half years as a felony prosecutor like Ms. Livesay. I
5 wasn't in this courthouse; we were in the old courthouse
6 across the street. And since that time, I've continuously
7 since about, I guess, 1994, defended people charged with a
8 crime and seriously in this situation, you know, this, this,
9 you've heard evidence -- you've heard evidence of what appears
10 to be a serious crime. When you step back and you look at
11 these matters as we, you know, we read the paper, we watch the
12 news, we see stuff and nobody -- nobody I've ever met is in
13 favor of crime, yet, there's always a story underneath the
14 allegation or what you may read in the paper. Now, you're in
15 the, you're in the unique position, though you never asked to
16 be, to weigh that because ultimately what we seek is fairness,
17 justice, appropriate punishments, where they're deserved. And
18 there are things in a case that -- some things I can tell you,
19 some things I can't, depending on the facts, depending on the
20 judge's rulings because as His Honor told you at the beginning
21 of this trial, he has certain -- His Honor has certain ethical
22 obligations, certain rules he has to conduct himself by and
23 he's done that quite admirably. In that, Ms. Livesay and I
24 also are bound by certain rules. There may be things that I
25 think I should be able to tell you, but I'm not the ultimate

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CLOSING BY MCCOLLUM

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1 person who gets to decide that. I've taken an oath to defend
2 Kenneth Bell. I've also taken an oath as an Officer of the
3 Court to obey the Court. And while I may personally disagree
4 with some of that, as a member of the bar, as an Officer of
5 the Court, I have the duty and I do show respect for the Court
6 and I show respect for His Honor, Judge Couch, I show respect
7 for Ms. Livesay, I show for respect for the police officers
8 and even these individuals who accuse or brought the charges
9 of, of these charges against Kenneth Bell.

10 Your role here, as His Honor will tell you, is not to
11 determine sentence because that's the Court's job. Your job
12 is to determine facts in the case. At the same time, you are
13 under the Constitution, under the case law, under the
14 statutes, under all law, you are the Jury. You are the
15 ultimate deciders of this case. There is nobody, there is
16 nobody more qualified to you, than you. There is nobody who's
17 taken an oath to hear this case and decide it other than you.
18 Also as jurors, each and every one of you is an individual
19 juror, you're a separate entity. There are twelve of you plus
20 an alternate. No one can interfere with you personally in
21 your decision on the case. You are, each one of you, a
22 sovereign juror. You're not brought together as a team to try
23 to solve something. You're not brought together as a team to
24 try to do the State's work for it. You're not brought
25 together to even work together as a team. You're brought

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CLOSING BY MCCOLLUM

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1 together on individual charges. Each case, each charge must
2 be decided independently, and His Honor will tell you this.
3 So, on the defense of say burglary, you could individually
4 vote guilty or not guilty of burglary in the first degree, if
5 you desire that. That's each one your decision.

6 On the charge of armed robbery, each one of you could
7 vote guilty or not guilty on the charge of armed robbery. You
8 could legally find the Defendant, Kenneth Bell, not guilty of
9 burglary and armed robbery and find him guilty of conspiracy.
10 You could find him guilty of conspiracy to commit burglary but
11 find him not guilty of the greater charge of burglary. You
12 have that ability.

13 Now, in this case, you have something that very rarely
14 occurs. You have a young man, who has no criminal past
15 whatsoever and that I would tell you, if you ask anybody that
16 works in this courthouse, it's exceedingly rare, almost
17 unheard of. And then you look at why in the world would
18 Kenneth Bell participate in something like this with his
19 brother? Why would his brother cajole him or try to get him
20 to do something like this and why would he go along with it?
21 You ask yourself, well, is it because he's loyal -- they
22 testified that he's loyal -- because he loves his brother,
23 because he wants to protect his brother?

24 Now, in that sense of, of viewing it, you still have a
25 situation where the crime is alleged to have occurred. Now,

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1 there are other people charged with this offense, with these
2 offenses. I think there are five charges. There's
3 Christopher Bell, that I've spoken about over and over and
4 then there's a woman I believe we mentioned, Tonie Anne
5 Pasquale. As you can see, they're not here today. They're
6 not on trial. The State, for whatever reasons, and they're
7 allowed to do this, has elected, chosen to call the
8 indictments against Kenneth Bell and has asked you to make
9 those determinations.

10 Now, one of the things that you will hear His Honor talk
11 about when he gives you the jury instructions is that when a
12 person is accused of committing a crime, one of the
13 requirements is that the person has criminal intent. In other
14 words, the state of mind is to commit a crime. If I, if I'm
15 driving my car and I have an accident, it's conceivable that I
16 could have seriously injured somebody or, or, or, you know,
17 even in the situation where an accident sometimes is fatal,
18 doesn't make it a crime. You have a terrible outcome but it's
19 not a crime; it's an accident.

20 The other things that happened where a person goes into a
21 situation for perhaps the wrong reason and does not go into it
22 with a criminal intent to carry out the crime. And what I'm
23 referring to is this, he's charged with burglary in the first
24 degree, okay, which is going in the house to steal. They will
25 say going in the house with the intent to commit the crime,

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1 not being invited in. They'll say it doesn't matter if the
2 door is open or closed because the law is the law; so that's a
3 burglary. Robbery is going in the house to take valuables
4 from the occupants of the house. Conspiracy is to aid and
5 abet or conspire with other people to do this. And then
6 kidnapping is -- there are several words that you'll hear,
7 decoy, inveigle, carry away, these type things. But when you
8 look at this case and this case is what we call in regular --
9 it's a home invasion, a home invasion/robbery.

10 Now, what I submit to you is this, what's odd about this
11 case as it relates to Kenneth Bell is that what you expect to
12 have happen is for the people in the house to be robbed.
13 Scott McDonald, Erik Meijer, Tanner Clark, they all testified
14 -- well, they didn't all testify, but the testimony is that
15 they all had a computer, they all had a smartphone, some of
16 them had money, well, not much money, but certainly a wallet
17 and a credit card or debit card, things are routinely stolen.
18 They had flat screens in every room. And when you look at the
19 criminal intent or the lack of intent for Kenneth Bell, what
20 you have is a terrible situation of a misguided brother being
21 drawn into something by somebody with criminal intent,
22 certainly to go in the house. Now he didn't really even talk
23 to anybody other than Paul Degruccio or Paulie, who admits
24 reluctantly that he owed Christopher Bell money. One of the
25 witnesses said that, you know, that he heard them arguing.

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CLOSING BY MCCOLLUM

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1 Mr. Degruccio even admitted arguing, okay? Now I submit to
2 you and tell you that is not what you call a normal robbery.

3 The other thing is when Christopher Bell went there, the
4 only person he was even confronting or approaching was Paul
5 Degruccio. He said there was arguing about this debt. Now,
6 prior to going in the house, Kenneth Bell wouldn't know what
7 to expect. He wouldn't know if his, if his brother were
8 walking into some dangerous set of circumstances and granted,
9 he would have created it himself and given the choice,
10 certainly Kenneth Bell could have deserted his brother,
11 could've called the police, could've simply run away and that
12 argument will probably be made. And I don't disagree with
13 that for a minute nor does he. I'm fifty-three years old.
14 I've been involved in probably over a thousand cases, probably
15 two or three thousand. I know what I would do. It wouldn't
16 matter, though it might be painful if it were my father or my
17 brother or my child, I know what I would do but, sometimes,
18 young people don't. My father had said that telling me
19 growing up that nothing good happened after midnight and I can
20 get in more trouble in fifteen minutes that I can get out of
21 in fifteen minutes. Okay. Good advice.

22 But I what I want you to look at -- and, again, I thank
23 you so much for your patience and your willingness to serve
24 here. What I want you to look at is why wasn't Kenneth Bell
25 helping himself to valuables? If he's there doing the

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1 robbery, if he's there doing the burglary; if he's there doing
2 the kidnapping; if he's there using a gun doing a violent
3 crime and that's what he intends to do, why is he not helping
4 himself to valuables. Every situation, whether it's in real
5 life or fictional life, you always see the, the thieves
6 getting the money. Many times fighting over it, having
7 disputes with themselves because their state of mind is such
8 that they rob to get the money. They go to do the thing to
9 enrich themselves. They go into the incident because they
10 have no morals, have no honesty, have no scruples and want to
11 unlawfully enrich themselves. In this case, every possible
12 witness agrees that the only person that anything was taken
13 from was Paul Degruccio and the only person that took anything
14 was Christopher and that Kenneth Bell was merely present there
15 on a terrible errand with his brother, but we find ourselves
16 here and Kenneth Bell is the one who is on trial.

17 Now I understand to some extent the position that you're
18 placed in and I would submit to you this; that you consider
19 this. I believe His Honor will tell you that the character
20 and good character of Kenneth Bell can be considered, but I
21 ask you to carefully consider this, because this is, these are
22 as serious of felony charges as exists. Okay. I ask you to
23 seriously consider his lack of intent and seriously consider
24 find him not guilty of burglary in the first degree, not
25 guilty of armed robbery and not guilty of kidnapping. And no

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1 question this has been a life changing event for him, but we
2 don't know how much at this point. If you find, and the
3 indictment alleges that he, for whatever wrong reason,
4 conspired with his half-brother, conspired with this other
5 woman, Ms. Pasquale, then find him guilty of conspiracy, a
6 felony.

7 One of the things that occurs in the criminal justice
8 system -- and again, I -- it's, it's the consequences being
9 proportional to that individual and to the circumstances. Now
10 without trying to minimize what you've heard, without trying
11 to detract from that, in the most respectful way that I can
12 say it, I would point out -- and I'm not minimizing this in
13 any way, shape or form, there are other people that should and
14 will stand trial for this. The individuals in the apartment
15 -- there's been talk about the weapon -- and it's a deadly
16 weapon, it's a dangerous weapon, clearly had obviously. No
17 one was smacked around with it; no one was beaten; nobody was
18 held on the ground; no one was shot; no one was stabbed -- and
19 those are things that happen in these type of incidents, when
20 individuals go in there and go in there to commit the robbery.
21 The other thing that's unique, and I've touched on this
22 already, is the, the unique nature of Paul Degruccio, who's
23 5'2" he says, standing up to them, arguing with them, saying
24 Chris and arguing with him and saying that, you know, they're
25 in there having a discussion; they're in there having an

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1 argument and, and Phillip Bell, excuse me, Kenneth Bell is, is
2 present.

3 His Honor will tell you that before you can find a person
4 guilty, you must show proof beyond a reasonable doubt. His
5 Honor will tell you that Kenneth Bell is presumed innocent.
6 His Honor will tell you there are certain inferences you can
7 draw in determining criminal intent and you're free to draw
8 those inferences or not. You've heard witnesses testify,
9 you've heard all the witnesses, Paul Degruccio, the other
10 fellow, Erik Meijer. You've heard Tanner Clark. Clearly, you
11 have the ability to weigh that testimony as to how believable
12 they are, credible, you know, if somebody were going to do a
13 business transaction with Paul Degruccio, if somebody was
14 gonna trust him in some trust fashion whether you would do
15 that based on his demeanor and how he answered his questions
16 and that applies to all witnesses.

17 So, I want to thank you for your patience in this case.
18 It's my pleasure to appear here. I can't overstate how
19 grateful we are for your sacrifice and willingness to serve
20 here. I will not have another -- gratefully probably for you,
21 I want have another opportunity to talk. Ms. Livesay will
22 make a final argument and then His Honor will give the jury
23 instructions. I simply ask you to carefully consider finding
24 him not guilty of burglary in the first degree, not guilty of
25 armed robbery and not guilty of kidnapping. Thank you.

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1 THE COURT: Ms. Livesay, for the State.

2 MS. LIVESAY: Thank you, Your Honor.

3 CLOSING BY MR. LIVESAY:

4 MS. LIVESAY: Ladies and gentlemen of the Jury, you have
5 been here now for three days so I'm gonna try to make this
6 brief, but I do want to go over with you the charges again and
7 a little bit of the evidence that we heard over these three
8 days.

9 Now he's charged with five indictments and we'll go
10 through very briefly what those charges are and what you have
11 to find to find him guilty and what facts have come out in
12 this case to show that Kenneth Bell is guilty.

13 The first thing he's charged with is conspiracy.

14 Excuse me, Your Honor.

15 Now, conspiracy is just what you would think it is. It
16 is a plan. It is co-conspirators just like Mr. McCollum told
17 you, people coming together with a plan to commit a crime.
18 Now, what evidence do we have today that there was a plan?
19 The first evidence we have is preparation. Like any plan that
20 you have whether it be taking a trip or going to the grocery
21 store. A lot of times we plan these things out; we plan our
22 flight; we plan our luggage; we call the motel room and
23 reserve Monday through Friday or whatever it is we're gone
24 stay; we've got a plan; things are laid out before we go on
25 that trip. Like people make lists before they go to the

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1 grocery store. These things -- there is a plan before we
2 leave the house.

3 Kenneth Bell and Christopher Bell had a plan when they
4 got in that car. The first way we know was because Jasmine.
5 It is so important to look back at that evidence and know
6 Kenneth Bell never called that victim. Christopher Bell never
7 called that victim. Tonie Pasquale called acting like she was
8 Jasmine. These three people had a plan. That shows right
9 there they were planning something. They knew that Paul
10 Degruccio would not have let them come over or he would have
11 been prepared when they did come over if Christopher or
12 Kenneth called and said look, man, I'm coming over. They
13 didn't do that. Right here is the plan part, okay? They had
14 Christopher, they had Paul Degruccio's phone number because
15 they were calling him and texting him saying I'm Jasmine.
16 That right there shows you criminal intent. When you have
17 three people in the car; one posing as someone else saying
18 hey, where do you live; are you alone; show me where that
19 apartment is; that's a plan. If they didn't have bad
20 intentions and they didn't have a criminal intent, Christopher
21 knew Paul Degruccio; had just seen him at the grocery store
22 months before; call him up and say look, I'm coming to your
23 house; you owe me some money; I want to talk to you, but
24 that's not what they did. Right off the bat, they're up to no
25 good. Right off the bat, they've got a plan.

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1 Now, Mr. McCollum wants you to believe this was all just
2 spur of the moment and Kenneth got wrapped up in this last-
3 minute decision. This was not a last-minute decision.
4 They've already got this idea on board, call and find out
5 where he lives, okay?

6 The second way we know that there's a plan, when they got
7 out of the car, they had these on, socks over their shoes.
8 That right there is a plan. That's thought out. Nobody comes
9 up with this idea at the spur of the moment. This had to be
10 done in the car before they ever got out. That right there
11 shows you a plan. Right there shows they're thinking. This
12 was planned out. They got this act together before they ever
13 got out of the car.

14 The second way you know there's a plan, both of them had
15 on gloves. This was not a spur-of-the-moment action. Both of
16 them had on gloves, both of them had socks over their shoes.
17 This is not something that was not well thought out and well
18 planned out. This right here shows you criminal intent. If
19 you don't have criminal intent and you're not in there to do
20 something you shouldn't be doing, then why are you wearing
21 gloves and why are wearing socks over your shoes? Look over
22 there now; he ain't wearing gloves now, he ain't wearing socks
23 over his shoes today.

24 There's something else, you know this is a plan because
25 they had this weapon. And they didn't just have it, he had it

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1 loaded and a round in the chamber. This was not something he
2 got together spur of the moment. He had a weapon. He had
3 already loaded it and he put one round in the chamber. This
4 right here shows you there's a plan. He didn't walk in there
5 with no gloves on, shoes, it shows you there's a plan. It
6 shows you there's criminal intent.

7 Now, the second charge is burglary first. Now burglary
8 first is to break into somebody's house. Just like Mr.
9 McCollum told you, it doesn't matter if the door is open,
10 closed, locked, unlocked. If you come in and you don't have
11 permission to come in, then you're breaking and entering.
12 Okay. Both of these boys and the third witness said nobody
13 invited them over. Nobody gave them permission to come in.
14 Okay. If they had permission to come in, they wouldn't need a
15 tire iron and they wouldn't need a firearm. Nobody gave them
16 permission and they knew they weren't getting permission and
17 that's why they had that weapon. Nobody gave them permission
18 to come into that house. That's why they broke in and busted
19 open with that weapon.

20 Now you've got to have an intent to commit a crime.
21 Again, all this shows intent to commit a crime. That's all we
22 got to have is the intent to commit a crime and have a weapon.
23 In this case, it wasn't just the intent. They committed a
24 crime. When they took that gun and they had it in there and
25 those people were not free to leave, that's kidnapping checked

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1 off the list right there. When you are not free to leave
2 because somebody is holding you against your will, you are
3 being kidnapped, so that one is checked off the list.

4 The second one is armed robbery. When they went in there
5 and they walked out with this laptop and this camera; that's
6 armed robbery. They just didn't go in there with the intent
7 to commit a crime; they went in there and committed a crime.
8 So, we know we got burglary first when they came in there
9 without permission and they committed those crimes with that
10 weapon, that right there is burglary first. There's no doubt
11 about it.

12 And the next one is armed robbery. Now, how do we know
13 we have an armed robbery? Armed robbery is when you take
14 something from somebody's person or within their control,
15 their custody or control, and you're doing it while you're
16 armed, that's armed robbery. When they came in there with
17 that tire iron and that gun and they took that stuff; that was
18 armed robbery.

19 Let me clear something up. Kenneth Bell didn't walk out
20 with that stuff, but conspiracy is a plan and what that means
21 is, hand of one is hand of all. Hand of one is hand to all
22 because they're both working together. Kenneth Bell was the
23 one that was holding everybody back with that weapon, which
24 allowed Christopher Bell to go in there and take that stuff.
25 In fact, Paul Degruccio did get in a heated argument with

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1 Christopher Bell and you know who came in? Kenneth Bell.
2 That's the guy that came in with that weapon. And you heard
3 Paul Degruccio testify. What did he say to Paul Degruccio? I
4 ain't no bitch like Chris, that's what he said. That's
5 exactly why Kenneth Bell was there, to make sure it went
6 exactly the way they wanted it to go. That's why it's hand of
7 one, hand of all. There were three, there were four other
8 guys in there just like Mr. McCollum told you; Erik, Paul,
9 Tanner and Scott, four other males were in there. I would
10 submit to you that if Chris Bell had went in there by himself,
11 things would not have went that smooth. That's why he brought
12 Kenneth with a weapon. Hand of one, hand to all. That's why
13 it went that way. If he walked in there with four males with
14 that tire iron, I would submit to you, things would go
15 differently. That's why when you see somebody walk into a
16 bank and rob it and there's fifteen people in there, if they
17 got a gun, fifteen people will lay on the ground. It's having
18 a gun changes the dynamic of everything. It's hand of one,
19 hand to all. Kenneth did not have to walk out with that
20 laptop in his hand. He was the one holding the rest of these
21 boys at gunpoint, which allowed Chris to walk out with it.
22 Now, he wants to tell you Kenneth, which is there, Kenneth was
23 standing -- picture -- Erik Meijer testified that Kenneth was
24 standing on the wood floor right here. I know it's been three
25 days of long testimony, but it's important that Erik testified

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1 none of the boys were coming out of these rooms unless they
2 had to pass Kenneth Bell, none of them are leaving. And we
3 know the one boy that was sitting in the den did not leave
4 because that's Erik Meijer. He was standing here to keep his
5 eye on the one boy that was in the den and make sure none of
6 these other boys got out of there. That was the guy that was
7 in control the entire time.

8 Mr. McCollum wants to blame everything on Christopher
9 Bell. Christopher Bell was such a bad seed. His guy had the
10 gun. He was the one guy in charge that could have changed all
11 of this. Now, he's telling you well the State's only
12 prosecuting my guy. That's not true. Christopher Bell is
13 charged for the same thing and all those charges are pending
14 and he will have his day in Court and so is Tonie Pasquale,
15 the woman in this case, charged with the same thing and
16 they're all pending. She's waiting for her day in court. So,
17 don't get caught up with what's going on with those two.
18 Today is Kenneth Bell's day.

19 Now he wants to tell you Kenneth Bell got wrapped in a
20 bad situation and all this lies on Christopher Bell. That's
21 what he wants you to believe. Because I don't think there's
22 any doubt we got a burglary first, a kidnapping, a armed
23 robbery and a criminal conspiracy.

24 The last charge is unlawful possession of a weapon during
25 a violent offense. As soon as you possess one of these,

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1 during a crime, you're in unlawful possession.

2 Now he wants to tell you that Kenneth didn't have any
3 criminal intent and his mom testified and his brother
4 testified about what a great guy he was and how he never lied
5 and he was just a wonderful all-American guy. First thing is
6 Kenneth Bell, the first, first decision he made was to get in
7 that car with Chris Bell and Tonie Pasquale and figure out
8 where the victim lived. Now the second decision he made --
9 nobody's forced him to do any of this -- is put these socks on
10 his shoes. The third thing he did was put these gloves on his
11 hands.

12 This was not something that he didn't have time to think
13 about and say, whoa, this is a bad idea here; I don't want any
14 part of that; this is a bad idea. He's going through this
15 process. He's making these decisions. Now, then he put on a
16 black hoodie, which you see him wearing in the police car,
17 black hoodie, jeans, socks over his shoes and a mask. Then he
18 had a handgun. He just didn't have a handgun; he then loaded
19 the handgun and made a very deliberate action to put one in
20 the chamber. These are all decisions he's making before he
21 even gets out of the car. I'm gonna submit to you, all this
22 is done and he hadn't even got out of the car yet. He's
23 covered his shoes, got his gloves, loaded his weapon, then he
24 makes the choice to get out and hold these people at gunpoint.
25 These are all decisions Kenneth Bell made to lead him where

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1 he's at today. Very deliberate, thought out, actions, every
2 single one of them, deliberate and thought out.

3 Now there was an issue about the gun during Officer
4 Cast's testimony. Mr. McCollum wanted to bring out, can't you
5 unload the gun by letting that bullet come out of here -- I
6 don't know if y'all remember that testimony or not. He was
7 trying -- oh, couldn't he -- couldn't somebody unload the gun
8 at that time. When we found this gun and it was inventoried,
9 there was four in the magazine and one in the chamber and he
10 testified when you put that clip in, does it automatically go
11 back; no. He said you got to rack it one time to push one
12 into the chamber. So, when Kenneth Bell had this gun -- it's
13 a deliberate action to load this magazine. It's a deliberate
14 action. One by one he put four bullets in there -- actually
15 he put five -- one by one he put five bullets in there. Then
16 he racked one and put one in the chamber. And I made this
17 point because all of this goes to show how deliberate every
18 decision he made was. It takes time to load this clip because
19 you load it one bullet at a time. It takes time to pull this
20 back and rack it and put one in the chamber. He made all
21 these decisions very deliberately with intent to commit a
22 crime.

23 Now the one thing that we saw on the video was he, he was
24 arrested, all this was gotten off of him including this out of
25 his left pocket. This was gotten out of his left pocket. If

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1 you do not remember or you did not hear, I ask you to watch
2 the video again. Natalie Boyd asked him is there a weapon.
3 He distinctly on the video says no. She asked again, Where's
4 the weapon? He distinctly again says there is no weapon. And
5 this is somebody that his mom and brother wants you to believe
6 has such a reputation for honesty. As soon as he got
7 arrested, his first instinct, as soon as they put those cuffs
8 on him, his first instinct is to tell a lie to this officer.
9 That's the first thing he does. You don't hear him say the
10 weapon is in the back of the car. He knew where the weapon
11 was; he put it there. He was at the back of the car. He's
12 the one that dropped that handgun in the car and dropped these
13 gloves in the back of the car. Kenneth Bell did. He knew
14 where that weapon was. He had a chance then, this honest guy
15 that's been so honest all his life and never did anything
16 wrong, and his first reaction is to tell a lie to this
17 officer, not to say the guns in the back of the car. There's
18 a loaded weapon in the back of the car; it's a huge safety
19 issue now. And there's no disagreement, the brother testifies
20 I don't even keep a gun in my house. Obviously, a huge safety
21 issue and his first instinct is to tell a lie.

22 Now this cartridge/bullet is found in his left pocket.
23 That's a .45. That was testified to by the officer. Now
24 ironically, this is a .45 and these were the cartridges taken
25 out. Let's see, it's one, two, three, four, five. You don't

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1 have to be an expert to see this one he -- matches these.

2 Kenneth Bell had bad intentions that day. He had bad
3 intentions and they want to pin it on Chris and they want to
4 pin it on Tonie Pasquale. Nobody's here to say Chris is not
5 guilty. Nobody's here to say Tonie Pasquale didn't play her
6 part. But we're here to say today -- it's Kenneth's day. And
7 the one person that had the most power in that situation was
8 Kenneth. He had the weapon. He walked in that room, he
9 participated, he was the one in control the entire time.

10 Now, I made a comment about his appearance today in court
11 because this happened in February, which has not been that
12 long ago, but this picture will go back with you. This is
13 what he looked like that day with that black hoodie on and
14 those jeans and the socks over his shoes. I don't think
15 there's any dispute that he looked a lot different then than
16 he looks today and it has not been that long ago. But this is
17 what he looked like when he busted into that house with these
18 socks on his shoes. He didn't look like what he looks like
19 now sitting over there with his glasses on. He looks like
20 he's lost some significant weight by looking at his face in
21 this picture. So, when you're thinking about what he looked
22 like that day; this is it, not over there.

23 Now, Mr. McCollum said something earlier about he has no
24 prior record. He has no prior record. He has no prior
25 record. That is extremely rare; that's what he told you. I

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1 cannot tell you that is extremely rare. I can tell you
2 without a doubt that this is not the first young man that's
3 been in his twenties with no prior record sitting at that
4 table charged with the same offense and I was sitting here
5 talking to a jury of twelve people telling them it doesn't
6 matter. This is not the only young boy with no prior record
7 that has made fatal decisions, fatal decisions, that could
8 have cost one of these boys their lives. I don't think
9 anybody would disagree when a gun is involved, it amps things
10 up substantially. I asked the brother and the mom, this thing
11 that came out of your son, your brother, Kenneth's pocket --
12 this is the one that came out of his pocket that was in that
13 gun. I asked both of them how many does it take of these to
14 take somebody down. Both of them said just one. That's all
15 it takes and the brother even went on to say a .45, that's a
16 high caliber gun, that's a powerful gun, just one.

17 Burglary is serious. Kidnapping is serious. It should
18 be. If somebody in the State of South Carolina has a weapon
19 and they loaded and put a gun in the chamber and they hold
20 people at gunpoint, that is serious. It should be serious
21 because that says a lot about that person and what they will
22 do.

23 Mr. McCollum told you, he's what, twenty-two? His mom
24 told me twenty-two, twenty-three years old. He's already
25 ready to hold a loaded gun on these boys. That is serious.

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1 It should be serious because all it takes is one small move
2 that could've changed this and made it into a detrimental
3 situation. That's why you saw the testimony so much about how
4 this gun works. That's why you heard all that testimony.
5 That's why you heard testimony about this (indicating).
6 That's why, why do you keep a semi-automatic weapon clean -- I
7 asked both officers and I asked Buddy, his brother, Why do you
8 keep them clean? And what did they say? To make sure they go
9 bang every single time. That's why these are made because
10 semi-automatic guns, if they're not clean, just like that
11 officer said, will misfire. This was found in that car. This
12 was found in there. And it was in there, I am gonna submit to
13 you, they cleaned this gun before they went over there.
14 That's why it's in there. This is what it's used for; to
15 clean this gun to make sure it goes bang every single time.
16 That's why this was in that car. They didn't want to just
17 make sure that their feet were covered, they didn't want to
18 make sure just their hands were covered, they had masks on.
19 They didn't want to make sure just their face was covered.
20 This was used to make sure this gun went bang if they needed
21 it to, every single time.

22 They are charged -- he is charged with a serious offense,
23 so is Christopher Bell, so is Tonie Pasquale, but they're
24 charged with a serious offense because this is serious.
25 Loading this weapon and breaking into somebody's house and

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CLOSING BY LIVESAY

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1 taking their stuff while you got a mask on, socks on your
2 shoes; that is serious. This gun was loaded, cleaned and one
3 in the chamber. All it took was that and it goes bang.

4 Now Mr. McCollum point out, well there was no scuffle,
5 there was no scuffle. Why would there be a scuffle? This boy
6 here never moved off the couch. The other boy who called 911
7 never came out of his room. When there was a thought of being
8 a scuffle, this calmed it right down. That's why there was no
9 scuffle.

10 Kenneth Bell broke into that house and his hands, his
11 feet and his face covered. He broke in with a loaded weapon
12 so his brother could take whatever he wanted from that house.
13 They were working together. Hand to one is hand to all. They
14 were both working together.

15 Now the Judge is gonna read the jury instructions.
16 Beyond a reasonable doubt is not beyond all doubt. He's gonna
17 tell you that. There are very few things in this world that
18 we can be one hundred and ten percent sure. So, what is a
19 reasonable doubt? He's gonna tell you in his jury instruction
20 a reasonable doubt is something that makes you hesitate to
21 act. A reasonable doubt is if you hesitate to act. I'm gonna
22 submit to you today with all the evidence that has been
23 presented, the testimony, the video, his brother telling you
24 what he told you, there's no reason to hesitate to act.
25 Kenneth Bell is guilty of burglary first. He is guilty of

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BY THE COURT

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1 kidnapping. He's guilty of criminal conspiracy, armed robbery
2 and possession of that weapon. I'm gonna ask you to find him
3 guilty of all those indictments and I submit to you, there
4 should be no reason to hesitate to act. This is not just
5 Kenneth Bell's day; this is Paul Degruccio and Erik Meijer and
6 Tanner Clark's day.

7 Thank you for your time.

8 MR. MCCOLLUM: Your Honor?

9 THE COURT: Yes, sir?

10 MR. MCCOLLUM: I have a matter I'd like for you to hear,
11 possibly at the bench?

12 BY THE COURT:

13 THE COURT: All right. Ladies and gentlemen of the Jury,
14 I'll ask you to step back to the jury room. Don't be getting
15 in any discussions until I've asked you to do so. You may
16 retire.

17 (REPORTER'S NOTE: The Jury exits courtroom. 2:33 P.M. The
18 following takes place outside the presence of the Jury.)

19 THE COURT: Yes, sir.

20 MR. MCCOLLUM: Just briefly, Your Honor.

21 Ms. Livesay, in her closing argument, she said that the
22 Defendant had loaded the gun one bullet at a time, that it
23 takes that specific technique, and she used it in her argument
24 for criminal intent saying that he took the gun, he loaded the
25 gun one bullet at a time and then made sure that he put a gun

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BY THE COURT

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1 or, excuse me, a round in the chamber. I simply say that I
2 think those facts are in evidence and I'd just like to ask for
3 some type of curative instruction that if the Solicitor argues
4 facts that are not in evidence to somehow point that out.

5 THE COURT: I'll hear from the State as to whether or not
6 that is in the evidence.

7 MS. LIVESAY: Your Honor, I believe what I said was
8 everything I started with was I submit to you, I submit to
9 you. Closing arguments aren't evidence; they're my theory of
10 the case. And normally, at the close of my closing argument
11 or before, that's normally stated to the Jury. These are the
12 closing arguments to the Jury -- I'm now gonna read you the
13 law, if you've heard anything else different -- this is their
14 theory of the case. I'm reading now the law; you must put
15 that aside and go by what I'm reading.

16 THE COURT: Well, I don't know that I've heard any
17 evidence in the case as to who specifically loaded the gun. I
18 don't have any problem with instructing the Jury that if there
19 was anything said in the arguments by Counsel that is not
20 supported by the evidence, that they should disregard that
21 argument in its entirety. Is that what you're asking me to
22 do?

23 MR. MCCOLLUM: Your Honor, whatever is appropriate. I
24 was asking for a specific instruction as to those facts are
25 not in evidence. In the alternative, if there ---

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BY THE COURT

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1 THE COURT: Well, there was evidence to the effect that
2 in order to load the gun, it required a specific -- in other
3 words, you've got to chamber a bullet -- I don't know how many
4 times I heard testimony about how you go about chambering a
5 bullet. So -- and there was evidence, testimony that that
6 requires a specific act. You have to do that to get a bullet
7 in the gun. Now as to who may have done that, I didn't hear
8 any evidence as to who in fact did that. So, you're asking me
9 to say that any statement that this Defendant may have done
10 that was not supported in the evidence?

11 MR. MCCOLLUM: Something of that nature is what I was
12 asking for, Your Honor.

13 MS. LIVESAY: Your Honor, my problem with that is, (A),
14 nobody testified that they saw Kenneth Bell put those socks on
15 his shoes, are we now gonna go so far as to say that I can't
16 mention that because that's not ---

17 THE COURT: No, no, no, that's not a question of not
18 mentioning that. You can mention the fact that the loading or
19 the chambering of a round required a specific act; you can
20 argue that all you want to. I didn't hear anything though
21 from the testimony and I'm not sure you can infer that because
22 he has a gun and it's loaded and chambered, that he is the one
23 who did that.

24 MS. LIVESAY: Your Honor, my thing is, that is my, my
25 theory -- well, here's my issue with it. That's my theory of

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BY THE COURT

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1 the case, just like it's my theory that he put the socks over
2 his shoes, he put the gloves on his hands, he wore the hooded
3 sweatshirt. I don't have one person that can say Kenneth Bell
4 put the socks on his shoes. That is the theory from the
5 evidence.

6 THE COURT: Well, you know, what I intend to charge the
7 Jury -- and what I'll do, I'm not gonna specifically comment
8 on one fact. What I'll do is simply say that if there was any
9 argument that was made by Counsel that's not supported by
10 evidence, they should disregard that argument in its entirety.

11 She is allowed to argue inferences that can be drawn from
12 the evidence. I would submit to you, ma'am, that putting on
13 one's clothes is more than likely that someone puts on their
14 clothes themselves then that they may have loaded a gun that
15 might've been in their possession when there's three people
16 involved in the robbery. So I don't know if that's an
17 inference that can be reasonably drawn or not; that's for them
18 to decide. So, I'm gonna say that if the attorneys have the
19 right to argue inferences, but if they'd argued anything
20 that's not supported by the law or the evidence, that should
21 be disregarded by the Jury in its entirety.

22 MR. MCCOLLUM: Thank you, Your Honor.

23 All right. Anything else?

24 MR. MCCOLLUM: No, Your Honor.

25 THE COURT: Before we bring the Jury back in, let's get

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BY THE COURT

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1 this evidence back to the appropriate locations, please.

2 I will let the attorneys know that I'm not going to allow
3 the cartridges, any of them, to go back to the jury room with
4 the gun. If the Jury would like to see the cartridges, then
5 I'll ask them to surrender the gun while they look at the
6 cartridges. I don't want anyone to be tempted to load a gun
7 and see if it works or anything of that nature in the jury
8 room.

9 MS. LIVESAY: Your Honor, I'm assuming as well in the
10 video because I have stopped it where we left out here.

11 THE COURT: The videos, the video, I will tell them it's
12 available to them. That has to be shown, I take it, in the
13 courtroom; there's nothing in the jury room that will allow
14 them to show it I assume. I'll instruct them that's available
15 to them.

16 I do intend to charge a version of the charge concerning
17 the character evidence. Not exactly the way you submitted it,
18 I took it out of a case.

19 MR. MCCOLLUM: Thank you, Your Honor.

20 MS. LIVESAY: Thank you, Your Honor.

21 THE COURT: While the Jury is out, I'll ask the attorneys
22 to approach the bench, please.

23 I have a proposed verdict form. I'll let you be
24 reviewing that while we're working with the evidence.

25 MR. MCCOLLUM: Your Honor, there's no objection on behalf

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BY THE COURT

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1 of the Defendant.

2 THE COURT: Thank you.

3 I have looked at the indictments. I don't see that
4 there's any reason why they cannot be given to the Jury.
5 Sometimes it talks about prior offenses and things of that
6 nature and I do intend to submit them to the Jury unless
7 someone objects.

8 MR. MCCOLLUM: Your Honor, there's no objection on behalf
9 of the Defense.

10 THE COURT: All right.

11 MS. LIVESAY: No objection.

12 THE COURT: Thank you.

13 All right. I'll put on the record that the parties have
14 reviewed the verdict forms as prepared by the Court; there
15 were no objections lodged and there's no objection as to the
16 indictments being submitted to the Jury for their
17 consideration.

18 You can bring the Jury back.

19 (REPORTER'S NOTE: The Jury enters courtroom. 2:45 P.M.)

20 THE COURT: The record will reflect the Jury has returned
21 to the courtroom.

22 At the beginning of the trial, I went over with you the
23 fact that the statements made by lawyers in the court do not
24 constitute evidence and can't be used directly by a jury in
25 determining the guilt or the innocence of the Defendant. The

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CHARGE TO JURY

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1 attorneys have the right to argue the evidence that's in the
2 record and any inferences that can be reasonably drawn from
3 that evidence. If any of the attorneys during their closing
4 arguments argued any matters that you had determined or you
5 determine to be not in the record or not supported by the
6 evidence or not a reasonable inference to be drawn from the
7 evidence, then you should disregard that argument in its
8 entirety.

9 CHARGE TO JURY:

10 Now, it's my responsibility at this point in time to
11 instruct you concerning the law to be applied in this case. I
12 began this trial by going over with you the indictments that
13 are in this case. The indictments are the documents that
14 bring the case before the Court. I told you then that they
15 inform the Court of the charges to be tried. They inform the
16 Defendant of the charges that have been lodged against the
17 Defendant. The indictments, I will give to you to take back
18 into the jury room for you to consider because I'm going to
19 explain some things to you, to you about the indictments, but
20 I will go over with you the indictments in this case by title.

21 First of all, Case Number 2013-1335, it is for burglary
22 in the first degree; that's the indictment. I'll be giving
23 the indictment to you. You can read the body of the
24 indictment during your deliberations. The next indictment is
25 in Case Number 2013-1336. This is for the offense of

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1 kidnapping. The next indictment is indictment number 2013-
2 1337. That's for the offense of possession of a weapon during
3 the commission of a violent crime. The next indictment is
4 2013-1339. That is for the offense of armed robbery. Final
5 indictment is in Case Number 2013-1340. That indictment is
6 for criminal conspiracy.

7 Now I'm going to remind you that the fact that a
8 Defendant has been arrested, charged and indicted in the case
9 is not evidence in this case and can't be considered by you as
10 evidence of guilt in this case nor does the fact that any of
11 those events occur create any presumption or inference of
12 guilt. Again, the documents I just talked to you about are
13 the formal written instruments that contain the charges made
14 against the Defendant. Those are the documents that bring
15 this case to this Court.

16 Now in any case where there are multiple charges, the
17 indictments in this case allege several different offenses
18 against the Defendant. Each indictment is a separate and
19 distinct offense. You, the Jury, must decide each indictment
20 separately on the evidence and the law applicable to it
21 uninfluenced by your decision as to any other indictment
22 presented in the case. The Defendant therefore can be
23 convicted or acquitted on either or all of the offenses
24 charged and you'll be asked to write a separate verdict of
25 guilty or not guilty for each indictment and each charge

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1 that's before the Court.

2 I told you at the beginning of the trial, the Defendant
3 has pled not guilty to the indictments that are before the
4 Court and that plea puts the burden on the State. That burden
5 is the burden to prove the Defendant guilty. A person charged
6 with committing a criminal offense in South Carolina is never
7 required to prove himself innocent. I charge you that it's an
8 important rule of law that a Defendant in a criminal case, no
9 matter what the seriousness of the crimes might be, will
10 always be presumed to be innocent of the crime for which an
11 indictment has been issued unless guilt has been proven to
12 you, the Jury, by evidence satisfying you of that guilt beyond
13 a reasonable doubt.

14 Now, the presumption of innocence doesn't end when you
15 begin your deliberations. It accompanies the Defendant
16 throughout the case and into your deliberations. It remains
17 with the Defendant until such time as you reach a verdict of
18 guilt and that must be based on evidence that satisfies you of
19 that guilt beyond a reasonable doubt.

20 Now, to give you a visual idea of what I'm talking about,
21 many people describe this presumption of innocence that the,
22 that the Defendant is entitled to somewhat like the robe that
23 Judge's wear into the courtroom. It remains about the
24 Defendant's shoulders throughout the trial. It accompanies
25 the Defendant into your deliberations. It remains about the

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1 Defendant's shoulders until such time as it is stripped from
2 him by evidence that satisfies you of the Defendant's guilt
3 beyond a reasonable doubt. Now, I'll tell you the presumption
4 of innocence is not just a legal phrase and it's not just a
5 legal theory. It's a substantial right that every Defendant
6 is entitled to unless you, the Jury, are satisfied from the
7 evidence of the Defendant's guilt beyond a reasonable doubt.

8 Now, you've heard me use that phrase of proof beyond a
9 reasonable doubt about four or five times already in my charge
10 and you probably realize that the concept of someone being
11 proven guilty beyond a reasonable doubt is an important
12 concept in our criminal law and you may be asking yourself,
13 what is meant by or what is a reasonable doubt. I'll tell you
14 that a reasonable doubt is that kind of doubt that would cause
15 a reasonable person to hesitate to act. The State has the
16 burden of proving the Defendant guilty beyond a reasonable
17 doubt.

18 Now, I don't want you to get confused here, so let me
19 explain one thing to you so you can put this out of your mind.
20 In some cases you may have been involved in or be aware of,
21 civil cases, where someone is seeking monetary damages and
22 they could be asking for monetary damages because someone
23 didn't pay a debt or someone has been injured by someone else.
24 So those are the kinds of things where people seek monetary
25 damages and those cases are called civil cases. The standard

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1 of proof in those cases is proof by the greater weight of the
2 preponderance of the evidence. That means the scales of
3 justice just tilting ever so slightly one way or the other.
4 would entitle that side to a verdict. That's in a civil case.
5 That does not apply to this case. The standard of proof in a
6 criminal case is more powerful than that. It must be proof
7 beyond a reasonable doubt. Proof beyond a reasonable doubt is
8 that kind of proof that leaves you firmly convinced of the
9 Defendant's guilt.

10 Now, there's very few things that go on in this world
11 that can be proven beyond any doubt whatsoever and that's not
12 the burden of proof that the State has. They're not required
13 to overcome every possible doubt. I will tell you that if
14 based on your consideration of the evidence, if you are firmly
15 convinced the Defendant is guilty of the crime charged, then
16 you must find the Defendant guilty. However, on the other
17 hand, if you think there's a real possibility that the
18 Defendant is not guilty, you must give the Defendant the
19 benefit of the doubt and find him not guilty.

20 Now, I reminded you at the beginning of the trial, I drew
21 some distinctions between the duties that you and I have as
22 participants in this trial and as Trial Judge, it's been my
23 responsibility to preside over the trial. I've had the duty
24 of ruling on the admissibility of evidence or the
25 appropriateness of questions that were asked by the attorneys.

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1 I will tell you that you are to consider only the competent
2 evidence that was placed into the record of the case and if
3 there was anything that was excluded or taken from the record,
4 those matters should be disregarded by you in their entirety.
5 Again, you must only consider the testimony which has been
6 placed into the record and any exhibits and other evidence
7 that went into the record through the testimony of the
8 witnesses who testified in this case and any agreements as to
9 evidence that were made by the attorneys.

10 I have the additional duty of charging you as to the law
11 now and I told you at the beginning of the trial, I am the
12 sole judge of the law in this case. It's your duty as jurors
13 to accept the law and apply the law as I state it to you.
14 Again, if you had an idea as to what the law is or have a
15 belief as to what the law ought to be, leave those notions
16 outside of the jury room. It's your obligation under your
17 oath to take the law as I give it to you and then apply that
18 to the facts as you determine those facts to be.

19 In every case tried in this Court before a jury, the jury
20 is the sole and exclusive judges of the facts. I told you at
21 the beginning of the trial that you should not take from
22 anything that I do or anything that I might say, including
23 during this charge concerning the law, to somehow to indicate
24 to you that I have an opinion one way or the other as to how
25 you determine the facts in this case. You're the sole judges

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1 of the facts in this case. I have no opinion as to how you
2 determine the facts in this case. The law does not allow me
3 an opinion on that subject and I do not have an opinion as to
4 how you should determine the facts in this case. This is a
5 matter solely for you, the Jury, to determine as to the facts.
6 It's your duty to determine the effect, the value and the
7 weight and the truth of the evidence that you've heard during
8 the trial.

9 Now, in considering the evidence, I will tell you that
10 you have the right to consider two types of evidence in the
11 case and you may say, well, what do you mean by types of
12 evidence and I'll try to explain that to you. The law divides
13 the evidence into two basic types of evidence; that is what we
14 call direct evidence; the other type of evidence we call
15 circumstantial evidence.

16 Direct evidence is testimony of a person who claims to
17 have actual knowledge of a fact, such as an eyewitness. It is
18 evidence which is given and to immediately establish the main
19 fact, which is sought to be proven. That's direct evidence.

20 The other kind of evidence that we, that you can consider
21 in reaching a verdict is what we call circumstantial evidence.
22 Now circumstantial evidence is proof of a chain of facts or
23 circumstances indicating the existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact might be reasonably inferred. Now that's

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1 pretty fancy lawyer language and I like to use a very simple
2 example to, to give you an example of what's meant of proof of
3 the fact by circumstantial evidence. I'll say last night,
4 let's say before you went to bed, you went to the window in
5 your bedroom and you looked outside. The stars might have
6 been shining and it may have been a pretty night so you went
7 to bed and you slept well all night, didn't wake up at all.
8 The next morning, you walked to the very same window, you
9 looked outside and while the sun was coming up, you noticed
10 that there was water dripping from all the trees, there were
11 large puddles in the road or driveway in front of your house,
12 so everything outdoors was wet. Now during the night, you
13 didn't wake up so you didn't see it rain, you didn't hear it
14 rain, but from the collateral facts that you know to be true,
15 the wet -- water in the trees, the puddles in the road, the
16 everything being wet outside, you could reasonably infer that
17 at some time during the night it did in fact rain. So that's
18 what we mean by proof of a fact by collateral facts from which
19 another fact might be reasonably inferred.

20 Now, circumstantial evidence therefore is based on
21 inference. It's not based on personal knowledge or
22 observation and the law makes no distinction between the
23 weight of the value that you, the Jury, can give to either
24 direct or circumstantial evidence, nor is there a greater
25 degree of certainty required of circumstantial evidence than

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1 that of direct. As a jury, you should weigh all of the
2 evidence, both direct and circumstantial. And I will tell
3 you, if after weighing all of the evidence, if you're not
4 convinced of the Defendant's guilt beyond a reasonable doubt,
5 you must find the Defendant not guilty. However, on the other
6 hand, if you are firmly convinced of the Defendant's guilt
7 beyond a reasonable doubt, then you must find the Defendant
8 guilty.

9 In doing your jobs as the determiners of facts, it's
10 gonna be necessary for you to determine the credibility of the
11 witnesses who testify during the trial, and that's what
12 credibility means, it means believability. It's your duty as
13 jurors to analyze and evaluate the evidence, determine which
14 evidence convinces you of its truth in determining
15 believability of witnesses who testified. I will tell you as
16 the sole judges of the fact, you have the right to believe all
17 of, part of or none of what a witness may have told you. You
18 can believe one witness against all the others or all the
19 others against one. You're the sole judges of the facts; that
20 makes you the sole judges of the credibility and believability
21 of the testimony you've heard as well as the weight that you
22 -- and effect that you choose to assign to the testimony that
23 you've heard. You have a right to consider such factors as
24 whether or not a witness has an interest, bias or prejudice or
25 other motive in testifying. You may also consider the

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1 appearance and manner of a witness when testifying on the
2 witness stand.

3 Now under the Rules of Evidence, a Defendant may
4 introduce evidence of his good character. Evidence of good
5 character or good reputation may in and of itself create a
6 doubt as to guilt. This evidence should be considered by you
7 by the Jury -- by you, the Jury, along with all the other
8 evidence in determining the guilt or innocence of the
9 Defendant. The good reputation or character of the accused
10 may be taken into consideration by the Jury along with all the
11 other evidence in the case in determining whether or not the
12 Defendant committed the crime charged. As the sole judges of
13 the facts, you give the evidence, all of the evidence, the
14 weight and effect you think that it deserves.

15 Also I'm going to instruct you and I'm going to emphasize
16 to you that the fact that the Defendant did not testify in
17 this case is not a factor to be considered by you in any way
18 in your deliberations and in your consideration of the
19 question of guilt or innocence of the Defendant. It must not
20 be considered by you in any manner whatsoever. A Defendant
21 has a constitutional right to remain silent. The assertion of
22 this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are to draw no
24 conclusions whatsoever from the fact that the Defendant did
25 not testify in this case. The fact that the Defendant did not

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1 testify should not even be discussed by you in the jury room.
2 The burden of proof is upon the State and only upon the State
3 in this case as I have told you. The Defendant is not
4 required to prove his innocence. The burden of proof remains
5 upon the State to prove the Defendant's guilt beyond a
6 reasonable doubt throughout the trial.

7 Now I'm going to charge you that a person who was present
8 at the scene of a crime and intentionally or through a common
9 plan and aided, abetted, or assisted in the commission of that
10 crime through some overt act is guilty as an accomplice. To,
11 to be liable as an accomplice, the Defendant must have
12 knowledge of the principal's criminal conduct, mere presence
13 at the scene of a crime is not sufficient to establish guilt
14 as an accomplice. Now, when we say intentionally in this
15 case, that means willfully intending the result, which
16 actually occurs, not accidentally or involuntarily. I will
17 also tell you that in the State of South Carolina, if a crime
18 is committed by two or more people, who are acting together in
19 committing a crime, the act of one is the act of all. A
20 person who joins with another to commit an unlawful act is
21 criminally responsible for everything done by the other
22 person, which happens as a probable or natural consequence of
23 the acts done in carrying out the common plan and purpose.
24 For example, two people can be guilty of killing another
25 person when only one of them had a gun and there was only one

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1 bullet and only one of the two fired the shot that caused the
2 death. If two or more people are acting together and are
3 together assisting each other in committing the offense, the
4 act of one is the act of all or it is sometimes said, the hand
5 of one is the hand of all.

6 Prior knowledge that a crime is going to be committed
7 without more is not sufficient to make a person guilty of the
8 crime. The fact that someone has mere knowledge that another
9 person is going to commit a crime, even if the Defendant was
10 present when the crime was committed, is not sufficient to
11 convict the Defendant as a principal. Guilt as a principal is
12 shown by actual or constructive presence at the scene as a
13 result of a prior arrangement. Therefore, a finding of a
14 prior arranged plan or common scheme is necessary for a
15 finding of guilt as a principal. The State must prove beyond
16 a reasonable doubt by competent evidence, the theory of the
17 hand of one is the hand of all.

18 A principal in a crime is one who either actually commits
19 the crime or is present, aiding, abetting or assisting in the
20 committing of the crime. When a person does an act in the
21 presence of and with the assistance of another, the act is
22 done by both. Where two or more acting with a common plan or
23 intent are present at the commission of a crime, it does not
24 matter who actually commits the crime. All are guilty. The
25 hand of one is the hand of all.

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1 Present at the commission of a crime means to be
2 sufficiently near to, aid and abet and assist in the
3 commission of the crime. Again, however, the mere presence at
4 the scene of a crime is not sufficient to convict one as a
5 principal on the theory of aiding and abetting.

6 Intent is also a necessary element. For there must have
7 been a common design or intent to commit the crime and the
8 crime must have been committed pursuant thereto with a person
9 aiding and abetting by some overt act. Intent means intending
10 the result, which actually occurs, not accidentally or
11 involuntarily. Intent can be shown by acts and conduct of the
12 Defendant and other circumstances, which you may naturally and
13 reasonably infer intent. The State must prove these elements
14 beyond a reasonable doubt.

15 Now you've heard me talk about criminal intent already
16 and let me talk to you a little more about that. In order to
17 establish criminal liability, criminal intent is required.
18 For example, the mental state that is required to be proven
19 for any particular crime and those intents might be purpose;
20 intent, knowledge, recklessness, or criminal negligence. So
21 as I go over the various crimes with you that have been
22 alleged in this case, listen for the required intent that,
23 that the law requires for any, any one of these crimes to
24 exist.

25 Criminal intent is always a matter, however, that must be

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1 determined by the Jury from the facts surrounding the
2 situation. You see there's no way to prove what someone
3 intended to do with any mathematical certainty or any
4 scientific measure. We can't open someone's head and look at
5 their brain while they're doing something and tell what they
6 intended to do. So it can't be proven by any scientific
7 measure. So the law says that criminal intent may be inferred
8 from the circumstances that are shown to have existed. That's
9 how you make a determination as to whether or not the element
10 of any crime requiring intent was present. It's not necessary
11 to establish intent by direct or positive evidence, but intent
12 may be established by inference in the same way as any other
13 fact; taking into consideration, the acts of the parties and
14 all the facts and circumstances of the case.

15 Criminal intent is a mental state. It's a conscious
16 wrongdoing and it's up to you to determine what a Defendant
17 intended to do based on the circumstances that we're shown to
18 have existed at the time of the commission of the event.

19 Now the crimes that have been charged in this case, the
20 first one I will go over with you is first degree burglary.
21 The Defendant is charged with first degree burglary. The
22 State must prove beyond a reasonable doubt that the Defendant
23 entered a dwelling without consent. A dwelling is any
24 building or portion of a building in which a person ordinarily
25 sleeps. In order to prove that the Defendant entered a

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1 dwelling, the State does not have to show that the Defendant's
2 entire body entered the dwelling. Even the smallest entry is
3 sufficient. It may be even a part of a body, such as a hand
4 or a foot, but there does have to be an entering into the
5 dwelling. If a person enters a dwelling by using deception,
6 artifice, trick or misrepresentation to get consent, this
7 would be entry without consent.

8 Now, the next thing the State must prove in first degree
9 burglary is that the State must prove beyond a reasonable
10 doubt, that the Defendant intended to commit a crime, either a
11 felony or a misdemeanor, at the time of the entry into the
12 building. Mere entry into a dwelling without consent is not a
13 burglary. Now, if the intent to commit a crime is formed
14 after the entry, it is not a burglary. On the other hand, if
15 the Defendant intended to commit a crime at the time of the
16 entry, it is a burglary even if that intent was later
17 abandoned after the entry. It does not matter that the
18 intended crime was not completed. Now intent may be shown by
19 acts and conduct of the Defendant and other circumstances from
20 which you may naturally and reasonably infer intent.

21 Now, the final thing that the State must prove beyond a
22 reasonable doubt is that when entering the building or when in
23 fleeing, the Defendant or an accomplice was armed with a
24 deadly weapon. A deadly weapon is any article, instrument or
25 substance, which is likely to cause death or great bodily

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1 harm. Now whether an instrument has been used as a deadly
2 weapon depends upon the facts and circumstances of each case.
3 Ordinary objects may become deadly weapons when the facts show
4 that they've been used to inflict serious bodily harm and/or
5 death. Or the State may prove that when entering or while in
6 the dwelling or when fleeing, the Defendant or an accomplice
7 used or threatened the use of a dangerous object or the State
8 may show that when entering or while in the dwelling or when
9 fleeing, the Defendant or an accomplice displayed what was or
10 appeared to be a knife, pistol, revolver, rifle, shotgun,
11 machine gun or other firearm or other deadly weapon.

12 The next crime that I will go over with you is armed
13 robbery. The Defendant is charged with armed robbery. In
14 order to prove this offense, the State must prove beyond a
15 reasonable doubt that the Defendant took personal property,
16 property from the person or the presence of another person.
17 Property is in the presence of a person if it's within that
18 person's reach, inspection, observation, or control. So that
19 person could, if not overcome by violence or prevented by
20 fear, keep possession of the property. The State must also
21 prove beyond a reasonable doubt that the Defendant carried the
22 property away intending to permanently deprive the owner of
23 the property and to keep the property for the Defendant's on
24 use. The slightest removal of property or the complete
25 possession of the property, even if for just an instant, by a

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1 Defendant is sufficient to show a taking and carrying away of
2 the property. The taking and carrying away of the property
3 must have been done with violence or by putting the owner of
4 the property in fear of violence. Finally, the State must
5 prove beyond a reasonable doubt, that the Defendant was armed
6 with a deadly weapon during the robbery. A deadly weapon
7 again is any article, instrument, or substance, which is
8 likely to cause death or great bodily harm. And whether an
9 instrument has been used as a deadly weapon depends upon the
10 facts and circumstances of each case. The question of whether
11 or not an item is a deadly weapon is a factual question for
12 you, the Jury, to decide.

13 The next offense I'll discuss with you is the alleged
14 offense of kidnapping. The Defendant is charged with
15 kidnapping. The State must prove beyond a reasonable doubt,
16 that the Defendant knowingly and unlawfully seized, confined,
17 inveigled, decoyed, kidnapped, abducted or carried away
18 another person without the authority of law. To do a thing
19 unlawfully is to do it willfully against the law. Knowingly
20 means with knowledge, consciously, not accidentally. Seize
21 means to take hold of suddenly or forcibly. Confine means to
22 limit, restrict or enclose within bounds, imprison or to shut
23 or keep in. Inveigle means to lure, entice or lead astray by
24 false representations, promises or other deceitful means.
25 Decoy means to lure by or as if by decoy a decoy is something

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1 to entice a person into a trap. Kidnap is to remove a person
2 against his will by unlawful force or by fraud. Abduct means
3 to carry off secretly by force for an illegal purpose. Carry
4 away means to remove. Now, the State doesn't have to prove
5 all of these things. Instead, if you find beyond a reasonable
6 doubt that the Defendant did any of these things, you may find
7 the Defendant guilty of kidnapping.

8 Now if something is done without the authority of law is
9 something which the law does not sanction, permit, allow,
10 condone, or provide justification for. Kidnapping does not
11 have to be for any personal or monetary gain or for any
12 illegal purpose; it can be for any reason whatsoever.

13 Now the next charge that I'll go over with you is the
14 charge of conspiracy. The Defendant is charged with
15 conspiracy and the State must prove beyond a reasonable doubt
16 that the Defendant combined with one or more persons for the
17 purpose of committing an unlawful act, or for the committing,
18 committing a lawful act, done by unlawful means. Now there
19 must be a mutual understanding, an agreement, a common
20 intention and plan. Mere passive knowledge of or consent to
21 criminal conduct of another does not make a person a
22 conspirator. There must be guilty knowledge and
23 participation. Similarly, the mere fact that a person may
24 have associated with another person or met with another person
25 and discussed common aims or interests does not necessarily

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1 establish proof of the existence of a conspiracy or that the
2 Defendant was involved in a conspiracy. On the other hand, it
3 is not necessary that the agreement be a formal one, that it
4 be in writing or that the people hold a meeting and expressly
5 state the terms of the common plan or that the agreement be
6 stated in words between them. The agreement of a criminal
7 conspiracy may come into being through an implied, a mutual
8 understanding, the willful intention and knowledge of adoption
9 by two or more persons for a common plan is sufficient. No
10 overt acts need to be shown to establish a conspiracy. A
11 conspiracy may be shown by circumstantial evidence and the
12 conduct of the parties. In order to convict the Defendant of
13 conspiracy, the State must prove beyond a reasonable doubt,
14 not only that the Defendant knew of the unlawful conduct, but
15 that the Defendant agreed to combine with the other person for
16 the purpose of accomplishing unlawful conduct.

17 Next, the Defendant has been charged with the possession
18 of a weapon during the commission of a violent crime. The
19 Defendant is charged with the possession of a weapon during
20 the commission of or the attempt to commit a violent crime.
21 In proving that charge, the State must prove beyond a
22 reasonable doubt that the Defendant was in possession of a
23 firearm or visibly displayed what appeared to be a firearm
24 during the commission of a violent crime. A firearm means a
25 machine gun, automatic rifle, revolver, pistol or any weapon,

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1 which will and is designed to or may be readily converted to
2 expel a projectile. In order to find the Defendant guilty of
3 possession of a weapon during the commission of a violent
4 crime, you must find the Defendant guilty of either committing
5 a violent crime or attempting to commit a violent crime.
6 I will tell you that under the law of this State, armed
7 robbery, burglary in the first degree and kidnapping are
8 classified as violent crimes. The State must prove beyond a
9 reasonable doubt that the weapon furthered, advanced, or
10 helped the commission of the crime.

11 All right. Ms. Michele Ramont, will you raise your hand
12 please?

13 You're going to be the foreperson of the Jury. That
14 means that you will be the person who will be responsible to
15 conduct the discussions of the Jury. If the Jury has any
16 questions during your deliberations, it will be your job to
17 write that on a piece of paper, submit that to the Bailiff;
18 that'll be brought to me for my consideration. I cannot
19 answer each and every question that the Jury might have in
20 trying to reach a verdict in this case because I've already
21 told you, I can't get involved in your decisions on the facts,
22 but I'm not asking you to edit any question the Jury might
23 have, you write it down, give it to me and I'll decide the
24 appropriate answer. Also it will be your job to fill out the
25 verdict form once the verdict has been reached. I'll give you

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1 that form in just a moment and go over the form with you so
2 that I'm sure you understand it.

3 Now each question that I give you must be decided by you
4 unanimously. Each and every verdict you reach must be agreed
5 upon by all of you before it is the verdict of the Jury. So
6 again, no juror has any greater say in the outcome of the case
7 than any other juror. All of you must agree upon the verdicts
8 before they become the verdict of the jury in this case.

9 I've gone over a lot of material with you in my charge.
10 There's a good bit of evidence that will be going back to the
11 jury room with you. We're going to set that information aside
12 so I'm going to ask you this one last time to go back to the
13 jury room. Ma'am, do not allow any discussions about the case
14 to begin until I ask you to begin your deliberations. I'll
15 bring you back to the courtroom for final instructions in just
16 a moment. You may retire to the jury room.

17 (REPORTER'S NOTE: The Jury exits courtroom. 3:17 P.M.)

18 THE COURT: Is the door closed? Objections to the charge
19 from the State?

20 MS. LIVESAY: No, sir.

21 THE COURT: Any from the defense?

22 MR. MCCOLLUM: None from the Defendant, Your Honor.

23 THE COURT: All right. If you'll step up and let's
24 gather the exhibits with the exception of the bullets in one
25 place so that I know we've agreed on what's going to the Jury.

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1 MR. MCCOLLUM: Your Honor, I don't know how significant
2 it is, but the indictments indicate that the attorney for the
3 Defendant is Randall K. Mullins. I don't know if that's
4 significant or not.

5 THE COURT: Do you want me to address that with the Jury;
6 I'll be glad to.

7 MR. MCCOLLUM: I don't want you to address it with them,
8 but I just want ---

9 THE COURT: I see that.
10 (REPORTER'S NOTE: Counsel agrees to exhibits to be submitted
11 to Jury.)

12 THE COURT: We're ready for the Jury.
13 (REPORTER'S NOTE: The Jury enters courtroom. 3:23 P.M.)

14 BY THE COURT:

15 THE COURT: All right, Mr. Bailiff, if you'll step over
16 here please, sir. Hand these documents to the forelady.

17 Ma'am, I'm having the Bailiff hand you the thing that's
18 on top is the verdict form that we're going to be using in the
19 case. If you'll follow along with me at the top it states the
20 County and State that we're in. It states the name of the
21 case and over to the right, it lists all the numbers of the
22 indictments that are involved. Now, as to each indictment to
23 the case, there's a separate question and each question will
24 be for example, as to armed robbery or burglary in the first
25 degree, there are two choices under each question and again,

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1 it requires a unanimous finding by the Jury, one way or the
2 other, either guilty or not guilty. I think in the order on
3 the form, they're not guilty on top and guilty second. Once
4 the verdict has been reached unanimously on that particular
5 issue by the Jury, you'll either put an X or a check in the
6 blank beside the appropriate verdict and then move on to the
7 next question to be answered. Once you've completed answering
8 all of the questions for each indictment, then you will sign
9 the document indicating that a final verdict has been reached.
10 Knock on the door and inform the Bailiff that that verdict has
11 been reached and you'll be brought back into the courtroom to
12 deliver the verdict.

13 Do you understand the form first of all?

14 JUROR 256: I do.

15 THE COURT: All right. Underneath that are the
16 indictments themselves. Those are the documents for you to
17 review concerning the charges so that you understand what the
18 State was required to prove. The State's required to prove
19 the allegations contained in those indictments by proof beyond
20 a reasonable doubt.

21 Now, the exhibits will be given to you to take back into
22 the jury room. I'm going to ask that you try to keep those in
23 the proper form. For example, the box there will have several
24 things in it. Try to keep that all together; don't mix those
25 up if you can. We've made a list of what's in there, but I'd

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1 prefer that you keep it together in the exhibits. Now the
2 exceptions are, I do not send bullets back to a jury room or
3 cartridges to a jury room with a gun. If the Jury wishes to
4 view the cartridges, we have those; you'll need to send the
5 gun out and we'll send the cartridges in. So, you have a
6 right to review any and all of the evidence that's in the
7 case. I just think for safety purposes, in order for people
8 not to try to load a gun or see how it works with actual live
9 ammunition, we'll leave the ammunition outside; do you
10 understand how that will be handled?

11 JUROR 256: I do.

12 THE COURT: Okay. Now the next thing I will tell you,
13 the video recording as well as the audio recording of the 911
14 call, those are available to you to review and listen to
15 during your deliberations as well. However, the equipment to
16 play those is in the courtroom. So, if you feel the need that
17 you do need to review that evidence again, just let us know.
18 We'll set it up, get you back into the courtroom as soon as we
19 can and let you review that evidence in the courtroom.

20 Now, ma'am, do you understand how we're going to handle
21 those things?

22 JUROR 256: I do.

23 THE COURT: Again, if the Jury has any question during
24 deliberations, write the question on a piece of paper, submit
25 it through the Bailiff to me. I'll determine the appropriate

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1 response to whatever question you might ask.

2 All right. Now, at this point in time, I'm going to ask
3 the jury panel with the exception of the alternate to step
4 back into the jury room to begin your deliberations. You can
5 begin your discussions at this time.

6 (REPORTER'S NOTE: The Jury exits courtroom. 3:27 P.M.
7 Deliberations begin.)

8 THE COURT: Sir, you can have a seat for just a second.

9 JUROR 145: Thank you.

10 THE COURT: All right. You must be Christopher Hite?

11 JUROR 145: Yes, sir.

12 THE COURT: Okay. Then I've got the right gentleman.
13 Sir, you've been serving as the alternate in this case and at
14 this point in time, the Jury itself has retired and begun
15 deliberations. The law says that when they do that, you are
16 no longer have any responsibilities in the case. So I'm going
17 to release you from any other responsibility in this case at
18 this time. That doesn't mean you're off the Jury panel,
19 you're still on the Jury panel. The Jury panel will be
20 calling in after 6 o'clock this evening for additional
21 instructions. So be sure you have that number with you to
22 make the call in and call that number this evening.

23 I want to thank you for your help on this case. Had any
24 of the jurors not been able to go into deliberations or
25 complete the trial, you would have been asked to step in their

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1 place so we could continue. So thank you for your help in
2 this case. If you'll step out, see the Bailiff in the
3 hallway; he'll take care of you. Thank you, sir.

4 Are there any objections to my final instructions from
5 the State?

6 MS. LIVESAY: No, sir, Your Honor.

7 THE COURT: Any from the Defense?

8 MR. MCCOLLUM: None from the Defense, Your Honor.

9 THE COURT: All right. We're in recess in this case
10 until such time as a verdict has been reached. I'll ask the
11 attorneys in the next case to approach the bench.

12 MS. LIVESAY: Thank you, Your Honor.

13 (RECESS - 3:29 P.M.)

14 *****OFF THE RECORD*****

15 (On the Record - 4:12 P.M.)

16 COURT'S EXHIBIT NUMBER FOUR

17 MARKED FOR IDENTIFICATION

18 THE COURT: All right. We're back on the record in the
19 Bell case, State v. Bell. I've received an inquiry from the
20 forelady that asks, What is the legal definition of armed
21 robbery? and explain the hand of one is the hand of all. It
22 is my intention to recharge the requested sections. Any
23 objection to my doing so from the State?

24 MS. LIVESAY: No, sir, Your Honor.

25 THE COURT: Any from the Defense?

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1 MR. MCCOLLUM: Your Honor, does that charge include the
2 other statements about mere presence and those things?

3 THE COURT: I think it does, but just let me see what it
4 says.

5 What the hand of one charge says about that, it says
6 prior knowledge that a crime is going to be committed without
7 more is not sufficient to make a person guilty of that crime.
8 Mere knowledge that another person is going to commit a crime
9 even if the Defendant is present when the crime is committed
10 is not sufficient to convict the Defendant as a principal.
11 Guilt as a principal is shown by actual or constructive
12 presence at the scene as a result of a prior arrangement.
13 Therefore, a prior arranged plan or common scheme is necessary
14 for a finding of guilt as a principal. The State must prove
15 beyond a reasonable doubt by competent evidence the hand of
16 one is the hand of all. A principal in a crime is one who
17 either actually commits the crime or who is present, aiding,
18 abetting or assisting in the commission of a crime. When a
19 person does not act in the presence of and with the assistance
20 -- when a person does an act in the presence of and with the
21 assistance of another, the act is done by both. Where two or
22 more are acting with a common plan or scheme are present at
23 the commission of a crime, it does not matter who actually
24 commits the crime, all are guilty. The hand of one is the
25 hand of all. Present at the crime, commission of a crime

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1 needs to be sufficiently near so as to aid, abet, assist in
2 the commission of the crime. However, mere presence at the
3 scene of a crime is not sufficient to convict one as a
4 principal on the theory of aiding and abetting.

5 MR. MCCOLLUM: Okay. Thank you, Your Honor. The only
6 other thing I would request is it's possibly a criminal intent
7 charge -- I understand the Jury has asked for that particular
8 charge. That charge is fairly comprehensive.

9 THE COURT: Well, it goes on. I didn't finish it. You
10 asked me about mere presence. It does say there must have
11 been a common design or intent to commit the crime and the
12 crime must have been committed pursuant thereto with the other
13 person aiding, abetting, by some overt act. Intent means
14 intending the result which actually occurs, not accidentally
15 or involuntarily. Intent may be shown by acts and conduct of
16 the Defendant and other circumstances from which you may
17 naturally and reasonably infer intent. The State must prove
18 these elements beyond a reasonable doubt. So it goes on to
19 talk about it then. You asked about mere presence, if that
20 was in there.

21 MR. MCCOLLUM: And what you read, the entirety that's
22 your charge that you're going to ---

23 THE COURT: I ended up reading the whole thing. Yes,
24 sir, I did.

25 MR. MCCOLLUM: Thank you.

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1 THE COURT: That's what I charged before.

2 MR. MCCOLLUM: I know. Okay.

3 MS. LIVESAY: Your Honor, the hand of one will include, I
4 mean since there's a question about it, the jury instructions
5 will include the example again just because one person pulls
6 the trigger ---

7 THE COURT: That's at the very beginning. He was asking
8 about mere presence. Y'all want to come up and read the whole
9 charge; I'll be glad to let you read the whole charge. I
10 intend to charge it exactly the way I read it the first time.

11 MS. LIVESAY: Thank you, Your Honor.

12 MR. MCCOLLUM: Thank you, Your Honor.

13 THE COURT: And the same is true for armed robbery. I'll
14 go over it exact, the only concern I would have, I have is
15 whether or not this might unduly emphasize one part of the
16 charge or the other, but this is what they've actually asked
17 about. So that's what I intend to do.

18 MS. LIVESAY: Okay.

19 THE COURT: So again, is there any objection to my
20 approaching it from that fashion?

21 MS. LIVESAY: No, sir, Your Honor.

22 THE COURT: Any objection, Mr. McCollum?

23 MR. MCCOLLUM: Your Honor, I can't think of any
24 reasonable ---

25 THE COURT: Obviously, you reserve your right to object

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1 after I finish and I'll try to correct any problem that there
2 might exist at that time.

3 MR. MCCOLLUM: Thank you.

4 THE COURT: Bring the Jury in.

5 (REPORTER'S NOTE: The Jury enters courtroom. 4:18 P.M.)

6 THE COURT: All right. The record will reflect that the
7 Jury has returned to the courtroom. I'm going to go over the
8 questions that have been presented to me.

9 The first question is, What is the legal definition of
10 armed robbery? and explain the hand of one is the hand of all.

11 I'll go over those two charges with you again and I'm
12 going to start with the hand of one is the hand of all. And
13 my charge to you earlier was that if a crime is committed by
14 two or more people, who are acting together in committing a
15 crime, the act of one is the act of all. A person who joins
16 with another to commit an unlawful act is criminally
17 responsible for everything done by the other person, which
18 happens as a probable or natural consequence of the act done
19 in carrying out the common plan and purpose. For example, two
20 people can be guilty of killing another person when only one
21 of the two had a gun and there was only one bullet and only
22 one of the two fired the shot that caused the death. If two
23 or more people are acting together, are together, excuse me,
24 and acting together, assisting each other in committing the
25 offense, the act of one is the act of all or as it is

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1 sometimes said the hand of one is the hand of all. Now, prior
2 knowledge that a crime is going to be committed without more
3 is not sufficient to make a person guilty of that crime. Mere
4 knowledge that another person is going to commit a crime, even
5 if the Defendant is present when the crime is committed, is
6 not sufficient to convict the Defendant as a principal. Guilt
7 as a principal is shown by actual or constructive presence at
8 the scene as the result of a prior arrangement. Therefore, a
9 finding of a prior arranged plan or common scheme is necessary
10 for a finding of guilt as a principal. The State must prove
11 beyond a reasonable doubt by competent evidence the theory of
12 the hand of one is the hand of all.

13 Now a principal in a crime is one who either actually
14 commits the crime or who is present, aiding, abetting, or
15 assisting in the committing, in committing the crime. When a
16 person does an act in the presence of and with the assistance
17 of another, the act is done by both. Where two or more acting
18 with a common plan or intent are present at the commission of
19 a crime, it does not matter who actually commits the crime.
20 All are guilty. The hand of one is the hand of all.

21 Present at the commission of a crime means to be
22 sufficiently near so as to aid and abet and assist in the
23 commission of a crime. However, mere presence at the scene of
24 a crime is not sufficient to convict one as a principal on the
25 theory of aiding and abetting. Intent is also a necessary

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1 element. For there must have been a common design or intent
2 to commit the crime and the crime must have been committed
3 pursuant thereto with a person aiding and abetting by some
4 overt act. Intent means intending the result, which actually
5 occurs, not accidentally or involuntarily. Intent may be
6 shown by acts and conduct of the Defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent. The State must prove these elements beyond a
9 reasonable doubt.

10 I'm going to move on to the charge on armed robbery. The
11 Defendant is charged with armed robbery. In order to prove
12 this offense, the State must prove beyond a reasonable doubt
13 that the Defendant took personal property from the person or
14 presence of another person. Now property is in the presence
15 of another person if it is within the person's reach,
16 inspection, observation or control so that a person could, if
17 not overcome with violence or prevented by fear, keep
18 possession of the property. The State must also prove beyond
19 a reasonable doubt that the Defendant carried the property
20 away intending to permanently deprive the owner of the
21 property and to keep the property for the Defendant's own use.
22 The slightest removal of the property or the complete
23 possession of the property, if even for an instant, by the
24 Defendant is sufficient to show a taking and carrying away of
25 the property. The taking and carrying away of the property

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1 must have been done with violence or by putting the owner of
2 the property in fear of violence. Finally the State must
3 prove beyond a reasonable doubt that the Defendant was armed
4 with a deadly weapon during the robbery. A deadly weapon is
5 any article, instrument or substance, which is likely to cause
6 death or great bodily harm. Whether an instrument has been
7 used as a deadly weapon would depend upon the facts and
8 circumstances of each case. And whether an object is used as
9 a deadly weapon is a factual question for you to determine
10 from the facts and circumstances as shown in the case.

11 So that's the charge that I gave you on the hand of one
12 is the hand of all and the charge that I gave you on armed
13 robbery.

14 Madame foreperson, does that respond to your question?

15 JUROR 256: I believe it does.

16 THE COURT: Okay. Then you may retire to the jury room
17 and resume your deliberations. Wait one second before you do
18 that. I note that we're heading toward 5 o'clock. My
19 practice is to allow the Jury to continue deliberations.
20 About 5:30 if it looks like you're going to continue, we'll
21 get phone numbers from you to call anyone you'd like us to
22 call and let them know where you are and what you're doing so
23 that the people want be concerned about you. So, if you would
24 -- if you do wish for us to make that phone call, if you would
25 get a list of people for us to call if we get to that point,

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1 the Bailiff would then get that number and we'd have someone
2 in the Clerk's Office make those phone calls.

3 All right. At this time, you can retire and continue
4 your deliberations. Thank you very much.

5 (REPORTER'S NOTE: The Jury exits courtroom. 4:26 P.M. The
6 following takes place outside the presence of the Jury.)

7 THE COURT: Any objection to my response from the State?

8 MS. LIVESAY: No, sir.

9 THE COURT: Any from the Defense?

10 MR. MCCOLLUM: No objection from the Defense, Your Honor.

11 THE COURT: All right. I'm gonna ask the attorneys to
12 approach briefly.

13 (REPORTER'S NOTE: A bench conference was held off the record
14 outside the presence of the Jury.)

15 THE COURT: All right. While the Jury was in, I was
16 approached by the Bailiff that's handling the Jury. I was
17 handed a, what I'll call a cartridge. He was informed that
18 that cartridge was obtained from the black folio that's been
19 variously described as a gun case or the holder of a computer
20 cord. I've had that particular item marked as a part of that
21 exhibit because I was informed it was contained within that
22 exhibit. The Jury passed it out because they knew I had told
23 them not to have cartridges present with a gun. So it has
24 been marked, it's been segregated, it will be made a part of
25 that exhibit. Since it was contained in an exhibit, it was in

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1 evidence as part of the evidence in the case.

2 COURT REPORTER: That was Nineteen.

3 THE COURT: It's Number Nineteen. So it's been made a
4 part of Exhibit Number Nineteen for the State.

5 All right. We're in recess until such time as the
6 verdicts reached.

7 MS. LIVESAY: Thank you, Your Honor.

8 (RECESS - 4:30 P.M.)

9 *****OFF THE RECORD*****

10 (On the Record - 5:28 P.M.)

11 THE COURT: All right. I have received -- we're back on
12 the record in the case, the -- I received an inquiry from the
13 Jury and let me read it to the attorneys. It says can we
14 listen to the 911 call again in the jury room or can we listen
15 to it by ourselves. Signed by the foreperson.

16 MS. LIVESAY: I don't have a problem with them listening
17 to the jury room with maybe a Bailiff to hit play. I mean
18 there is stuff on my computer that ---

19 THE COURT: That's what I'm concerned about is sending
20 any computer into the jury room that's not clean. In
21 Spartanburg we have a computer that's clean and all it has is
22 media players on it; that's all it'll do.

23 MS. LIVESAY: I can set it up in here. If Bobby wants to
24 take it back there and just hit play and let them hear it and
25 then close it.

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1 THE COURT: I don't know if I approve of that or not.

2 MR. MCCOLLUM: Your Honor, I think obviously that's your
3 call. I am asking though what the Court's intention is. It
4 seems like that Your Honor is in trial in another case. I can
5 be back here tomorrow.

6 THE COURT: Well, what I would do, my intention is always
7 to do whatever the Jury thinks they ought to do. So, it's
8 their deliberations. If they want to stay and continue
9 deliberations; I'll allow them to do so. We'll order supper.
10 If they want to break and come back in the morning, I'll allow
11 them to do that as well. So I don't ever cram it down on them
12 one way or the other. As it stands right now, they're still
13 deliberating.

14 What I would like to do is deal with this right now and
15 let's get this handled and then let them make a decision as to
16 whether they want to continue deliberations or not. I don't
17 how close they are. I'm not even gonna ask them; it's none of
18 my business. But I do, I'll do whatever they think is best.

19 I just have a problem with sending anything into that
20 jury room that has information on it. It may even pertain to
21 this case.

22 MS. LIVESAY: Correct.

23 THE COURT: That they might somehow push the wrong
24 button, it comes up and I've mistried the case. So I'll try
25 to explain that to them. I don't suppose we have any player

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1 that would just play that audio.

2 MS. LIVESAY: It plays on media player because we had to
3 redact so we can't play it on a DVD.

4 THE COURT: All right. Okay.

5 MS. LIVESAY: I can try to see if we've got another
6 laptop downstairs.

7 THE COURT: Well, let's just go ahead and I'll bring them
8 in and tell them how we can do it. They can either listen to
9 it in here and if they do that, everyone has to be present in
10 the courtroom for them to listen to it because we don't have a
11 player that doesn't have other information on it and I can't
12 send it back.

13 MS. LIVESAY: Okay. Just give me one second and I'll get
14 it geared up.

15 THE COURT: All right. Why don't you get it geared up;
16 if they want to listen to it, we'll play it.

17 Are you ready?

18 MS. LIVESAY: Uh-huh (affirmative response).

19 THE COURT: All right. Bring the Jury in.

20 (REPORTER'S NOTE: The Jury enters courtroom. 5:45 P.M.)

21 THE COURT: The record will reflect, the Jury has
22 returned to the courtroom.

23 I received an inquiry from the Jury. The inquiry reads,
24 can we listen to the 911 call again in the jury room or can we
25 listen to it by ourselves.

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1 I've got a little problem in that regard, Madame
2 Forelady, and let me explain to you our situation. The only
3 means that we have to play that recording is on the computer
4 that belongs to the State. That computer may have information
5 on it that you should not see or be in your presence. If I
6 simply send j observe what goes on with that, that would be
7 grounds for the case being mistried. So, I can't allow
8 information into the jury room with free access to it and
9 that's our type of situation. So, the only way I can play it
10 is on that machine in this location. Now, so I can't, I can't
11 comply with your request to be allowed to hear it in the jury
12 room or by yourselves. When you're in the courtroom, the
13 parties are, have the right to be present and hear what I talk
14 with you about so that they understand what I'm saying and you
15 can react to that sort of thing. So, I'm kind of in a
16 situation where I can't really reply with your request. I can
17 play the, the recording for you as many times as you would
18 like. It's in evidence, you have the right to, to consider it
19 and look at it and if you wish to then go back into the jury
20 room and discuss what you've heard, you can, I would urge you
21 to do that. I don't want you to conduct any deliberations in
22 open Court. That's not the purpose of this. So, do you
23 understand where we are and what we're capable of doing about
24 this?

25 JUROR 256: Can I ask one question?

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1 THE COURT: Yes, ma'am.

2 JUROR 256: Is there a way, whoever is gonna do the
3 operating, could they stop it at a point if we ask them to?

4 THE COURT: Yes, ma'am, we can, we can stop it and play
5 it however you want to, but I want to be sure it's a request
6 from the Jury and not a request from any particular juror. So
7 if you want to go back and formulate what you want to listen
8 to, we'll be glad to comply with your request or I can just
9 play the whole thing for you as many times as you want to hear
10 it. So you want me to just play it at this time?

11 JUROR 256: Yes.

12 THE COURT: All right. Then I'm gonna instruct the
13 Solicitor to begin the recording. Please listen to it and
14 once it's over, I'll be glad to do that again if you'd like.

15 *****OFF THE RECORD*****

16 (REPORTER'S NOTE: State's Exhibit Number One played for the
17 Jury. Not transcribed herein.)

18 (On the Record.)

19 THE COURT: Do you want to hear it again; should it be
20 played again?

21 JUROR 256: I think we're good.

22 THE COURT: All right. Now, Madame Forelady, I'm going
23 to, it's six, it's almost 6 o'clock in the evening. If the
24 Jury would like to suspend deliberations and begin again in
25 the morning, I will give you that opportunity or you can

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1 continue your deliberations if you think you're making
2 progress. If it's going to go on much longer, then of course
3 we could provide dinner for you. If we order dinner, it'll
4 take about an hour for it to get here. So, the reason I'm
5 bringing it up now is if you want to stay and continue
6 deliberations and have a meal, we need to order that to get it
7 here at a reasonable time. If you want to suspend
8 deliberations and come back in the morning, I'll be glad to
9 make arrangements for you to do that. So, I'll ask you, if
10 you would inform the Bailiff as to how you wish to proceed
11 once you've had a chance to discuss it among yourselves -- I'm
12 not trying to put pressure on you one way or the other.
13 However you'd like to do it, we'll be glad to accommodate you
14 so that you can continue your deliberations. So if you'll let
15 him know, then we'll take the appropriate action. You may
16 retire and continue your deliberations. Thank you very much.
17 (REPORTER'S NOTE: The Jury exits courtroom. 5:57 P.M.)

18 THE COURT: All right. Any objection to my response from
19 the State?

20 MS. LIVESAY: No, sir, Your Honor.

21 THE COURT: Any from the Defense?

22 MR. MCCOLLUM: No objection, Your Honor.

23 THE COURT: All right. This inquiry was Court's Exhibit
24 Number Five will be put into the record and we'll be in recess
25 until we reach a verdict or we hear from the Jury.

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1 COURT'S EXHIBIT NUMBER FIVE

2 MARKED FOR IDENTIFICATION

3 MR. MCCOLLUM: Your Honor, do you think that they
4 understand that if they suspend deliberations that they'll be
5 able to go home? Do you think that there's any chance that
6 they think that we make arrangements for them and will
7 accommodate them that that means they'll be ---

8 THE COURT: I thought I made it clear they could go home.

9 MR. MCCOLLUM: It's clear to me.

10 THE COURT: I would think so. You want me to bring the
11 Forelady in and be sure that she understands they can go home?

12 MR. MCCOLLUM: It may -- it's a suggestion and it doesn't
13 matter how they're told whether it's a Deputy or ---

14 THE COURT: I don't communicate unless it's done on the
15 record. So, I'll be glad to bring her in and communicate with
16 her if you'd like for me to.

17 MR. MCCOLLUM: If, if, I just want to make sure that they
18 know that.

19 THE COURT: I thought I made that clear, but ask the
20 Forelady to step back in. There's probably one other thing
21 that I need to address with her anyway on the record.

22 (REPORTER'S NOTE: Forelady enters courtroom. 5:59 P.M.)

23 THE COURT: Ma'am, just have a seat in your normal seat
24 for me. Thank you.

25 One thing I didn't address with you while we were in.

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1 The Bailiff brought to me a -- what I would describe as a
2 cartridge that apparently was discovered by the Jury during
3 your deliberations.

4 JUROR 256: Oh, yes.

5 THE COURT: While looking at a particular piece of
6 evidence.

7 JUROR 256: Uh-huh (affirmative response).

8 THE COURT: Can you tell me the circumstances under which
9 you located that item.

10 JUROR 256: One of the women opened up the gun case.

11 THE COURT: The black thing?

12 JUROR 256: The black, yeah, and inside, I guess, where
13 the gun would go. I don't know much about guns, but I'm
14 guessing where the gun would go.

15 THE COURT: Right.

16 JUROR 256: And it was like stuck down in the seam.

17 THE COURT: So it was contained inside of that case?

18 JUROR 256: Yeah, it was in the case.

19 THE COURT: Okay. And you turned that over to the
20 Bailiff and asked and he has brought it to me. So I just
21 wanted to be sure that we confirmed on the record where that
22 came from.

23 JUROR 256: Uh-huh (affirmative response).

24 THE COURT: And, ma'am, I want to be sure you understand
25 by suspending deliberations, I'm talking about you have the

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1 right to go home and come back in the morning and resume
2 deliberations. Do you understand what I mean by that?

3 JUROR 256: Yes.

4 THE COURT: Okay. You may retire and let the Bailiff
5 know how you wish to proceed.

6 JUROR 256: Okay.

7 THE COURT: Thank you, ma'am.

8 (REPORTER'S NOTE: Forelady exits courtroom. 6:00 P.M.)

9 THE COURT: All right. Concerning the cartridge, I have
10 instructed the Court Reporter to have that marked as a part of
11 the exhibit in which that case was contained. I believe it's
12 Exhibit Nineteen for the State. So, it has been categorized
13 and classified. I had asked the Jury not to have the gun
14 present with cartridges. So they returned it to us. So it is
15 part of the record and is part of that exhibit.

16 All right. We'll be in recess until such time as we hear
17 from the Jury as to how they wish to proceed.

18 MS. LIVESAY: Thank you.

19 MR. MCCOLLUM: Thank you, Your Honor.

20 THE COURT: Uh-huh (affirmative response). Thank you.

21 (RECESS - 6:01 P.M.)

22 *****OFF THE RECORD*****

23 (On the Record - 6:59 P.M.)

24 (REPORTER'S NOTE: The following takes place outside the
25 presence of the Jury.)

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1 THE COURT: All right. I have received another inquiry
2 from the Jury. This inquiry says can you please describe the
3 charge of armed robbery again. Then they ask can we have a
4 copy of your instructions to us. I have prepared what I think
5 will work. I think I'm just gonna give them the entire
6 instruction in writing rather than have them keep popping in
7 and out and asking questions. I'm gonna e-mail it to the
8 Clerk. Once we've got it printed, I'll let you take a look at
9 it before I submit it to the Jury. Give me just a minute.

10 I have sent it.

11 Pass it over and let Mr. McCollum look at it and then if
12 you'll let Ms. Livesay look at it and see if there's ---

13 MS. LIVESAY: Are you printing us a copy, too, Heather?

14 THE COURT: It's pretty voluminous. Why don't you just
15 look on with each other if you don't mind. If you need a copy
16 then we'll do it. It's a lot of pages.

17 MR. MCCOLLUM: I don't know why we're reading it; I've
18 already heard it. So ---

19 THE COURT: The only thing I did -- I don't -- when I
20 charge it, there's a part of the charge that as to deadly
21 weapons, the standard charge that a lot of judges use say a
22 gun and a knife and a dirk and they use all these different
23 phrases or examples of deadly weapons. I take that out
24 because that's a comment on the facts. That's the only change
25 that I really made to the standard charges.

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1 So, is there any objection to me submitting this. I'll
2 have it made an exhibit to the ---

3 MR. MCCOLLUM: There's no objection to submitting the
4 written instructions on behalf of the Defendant.

5 THE COURT: All right. Any objection from the State?

6 MS. LIVESAY: No, sir.

7 THE COURT: All right. I'm gonna have this marked as a
8 Court's Exhibit. I'll staple it together because the pages
9 aren't numbered and they'll mix them up as soon as they get it.

10 COURT REPORTER: Can we mark the note as Six and then
11 we'll mark the ---

12 THE COURT: Please do.

13 COURT REPORTER: And then the charge themselves will be
14 Seven.

15 THE COURT: Seven, Court's Exhibit.

16 That's pretty thick.

17 COURT'S EXHIBITS SIX AND SEVEN

18 MARKED FOR IDENTIFICATION

19 THE COURT: All right. Bring the Jury in please.

20 (REPORTER'S NOTE: The Jury enters courtroom. 7:07 P.M.)

21 THE COURT: I received an inquiry from the Jury asking
22 that I charge armed robbery again and I have also -- that
23 inquiry asked if you could have the charge in writing. So
24 rather than my reading that to you again, I have decided to
25 give you the entire charge that I gave you in writing. It's

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1 Court's Exhibit Number Seven. I don't read these exactly like
2 they are printed, but it does, it does contain all of the
3 charges that I gave. So I'm going to submit it to you. This
4 is an exhibit now in the case. It needs to be returned with
5 the other exhibits since it is now part of the record.

6 Pass this over to the Forelady.

7 You may retire to the jury room and resume your
8 deliberations.

9 (REPORTER'S NOTE: The Jury exits courtroom. 7:08 P.M. The
10 following takes place outside the presence of the Jury.)

11 THE COURT: Any objections to the response from the
12 State?

13 MS. LIVESAY: No, sir.

14 THE COURT: Any from the Defense?

15 MR. MCCOLLUM: None from the Defense, Your Honor.

16 THE COURT: All right. We'll stay in recess until a
17 verdict is reached. Thank you.

18 (RECESS - 7:08 P.M.)

19 *****OFF THE RECORD*****

20 (On the Record - 7:52 P.M.)

21 THE COURT: Get the Jury for me please.

22 (REPORTER'S NOTE: The Jury enters courtroom. 7:52 P.M.)

23 THE COURT: Madame Forelady, the Bailiff has informed me
24 that you, the Jury, would like to retire for the evening and
25 return in the morning; is that correct?

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1 JUROR 256: Yes.

2 THE COURT: All right. What I will do is we will suspend
3 the deliberations at this point in time. As you leave the
4 courthouse, I will give you the same instructions that I have
5 given you in the past. Don't try to gather any information on
6 your own about the case. Don't discuss the case with anyone
7 and don't allow anyone to discuss it with you and should
8 anyone attempt to contact you about your service on the Jury,
9 please report that upon your return to the courthouse. I'm
10 going to ask that you reassemble. The Bailiff will show you
11 where to go at 9 o'clock in the morning. Now as you
12 reassemble in the jury room, do not begin any discussions
13 about the case until you have come into the courtroom and I
14 have instructed you to resume your deliberations. I don't
15 want you discussing anything about the case until everyone is
16 present and all jurors will be present for the discussions as
17 they resume.

18 Do you understand my instructions, ma'am?

19 JUROR 256: Yes.

20 THE COURT: All right. At this time, I'm going to
21 release you for the evening. Be back in the room as
22 instructed by the Bailiff at 9 o'clock in the morning. We
23 should resume shortly thereafter.

24 You may retire. I hope you have a good evening.

25 (REPORTER'S NOTE: The Jury exits courtroom. 7:54 P.M.)

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1 THE COURT: Any objections to my instructions from the
2 State?

3 MS. LIVESAY: No, sir, Your Honor.

4 THE COURT: And from the Defense?

5 MR. MCCOLLUM: No objection from the Defense, Your Honor.

6 THE COURT: All right. We will resume at 9 o'clock. At
7 that time, I will instruct the Jury when they are all present
8 to resume deliberations.

9 We are adjourned until in the morning.

10 Sir, I will again point out to you, we will start your
11 case again at 9 o'clock in the morning. Should you fail to
12 appear at that time, a bench warrant would be issued for your
13 arrest and we will continue the trial in your absence. Do you
14 understand that, sir?

15 MR. BELL: Yes, Your Honor.

16 THE COURT: All right. Thank you very much. Good
17 evening.

18 (RECESS - 7:55 P.M.)

19 *****OFF THE RECORD*****

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21 (On the Record - 9:03 A.M.)

22 THE COURT: Thank you very much. You can be seated.
23 Good morning.

24 MR. MCCOLLUM: Good morning.

25 THE COURT: All right. It appears the State is here and

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BY THE COURT

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1 the Defense has appeared. You may bring the Jury panel in.

2 (REPORTER'S NOTE: The Jury enters courtroom. 9:04 P.M.)

3 THE COURT: The record will reflect that the Jury has
4 returned to the courtroom. It appears that all twelve of you
5 have arrived and I will inquire of you if any of you had any
6 difficulty with complying with my instructions concerning your
7 behavior while you were away from the courthouse, please
8 stand?

9 It appears that all jurors have been able to comply with
10 my instructions.

11 Madame Forelady, at this time, I will ask the Jury to
12 retire to the jury room to resume your deliberations. You may
13 proceed at this time. Thank you.

14 (REPORTER'S NOTE: The Jury exits courtroom. 9:05 A.M.)

15 THE COURT: All right. Any objections from the State?

16 MS. LIVESAY: No, sir, Your Honor.

17 THE COURT: From the Defense?

18 MR. MCCOLLUM: There are no objections from the Defense.

19 THE COURT: All right. I'd ask the attorneys to approach
20 briefly.

21 (RECESS - 9:06 A.M.)

22 *****OFF THE RECORD*****

23 (On the Record - 10:03 A.M.)

24 THE COURT: All right. Attorneys are present in the Bell
25 case. I have received an inquiry from the Jury. The Forelady

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1 asks, What happens if there is one charge that the Jury cannot
2 agree on? It appears to the Court that as to that charge an
3 Allen Charge would now be appropriate. Does the State agree?

4 MS. LIVESAY: Yes, sir, Your Honor.

5 THE COURT: The Defense agree?

6 MR. MCCOLLUM: Yes, sir, Your Honor.

7 THE COURT: All right. Let's bring the Jury in.

8 (REPORTER'S NOTE: The Jury enters courtroom. 10:04 A.M.)

9 THE COURT: I'll ask the attorneys to approach.

10 (REPORTER'S NOTE: A bench conference was held off the record
11 in the presence of the Jury but out of hearing of the Jury.)

12 THE COURT: The record will reflect the Jury has returned
13 to the courtroom.

14 COURT'S EXHIBITS NUMBER EIGHT AND NINE

15 MARKED FOR IDENTIFICATION

16 THE COURT: All right. Madame Forelady, I have received
17 two communications from the Jury. Let me go over these with
18 you and let me find out exactly where I think we, what I, I
19 know where I think we are, but I want you to tell me where we
20 are.

21 And the first one is, What happens if there is one charge
22 that the Jury cannot agree on? The second one is, Can we see
23 the video again, the part from when the police arrived at the
24 complex on and is there any way to slow the video?

25 Now, ma'am, the first question would have indicated to me

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1 that there was some type of a deadlock on the Jury. The
2 second question would indicate to me that perhaps in reviewing
3 evidence, the Jury might be able to continue deliberations and
4 might be able perhaps to reach a, a final verdict on all
5 issues. Do you believe that the playing of the video again
6 would assist you in your continuing deliberations?

7 JUROR 256: I believe so.

8 THE COURT: Okay. Well, then I'm not going to, I'm not
9 going to refer to what's been marked as Court's Exhibit Number
10 Eight, which is the what happens if you don't, cannot reach an
11 agreement on a verdict and I'm gonna proceed to get the video
12 ready and we'll play it. My understanding is that it can be
13 slowed down and perhaps even stopped. I don't know if
14 specifically what you're wanting to view other than from the
15 time the police arrive at the, at the complex to the end of
16 the video. I'll get that ready. Perhaps if there's something
17 specific you'd like to have it stopped at or something of that
18 nature, when you come back into the jury room and we have it
19 ready for, I mean in the courtroom, perhaps you could let me
20 know if there's some specific thing that the Jury would like
21 to view as to that evidence.

22 So at this time, I'll ask you to step back into the jury
23 room. We'll get this ready for you and then we'll be calling
24 you back shortly. Thank you.

25 (REPORTER'S NOTE: The Jury exits courtroom. 10:09 A.M.)

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1 THE COURT: All right. If you can get that ready for us;
2 I guess we'll need to get the screen down.

3 Is that disc in the jury room?

4 COURT REPORTER: Yes, sir.

5 THE COURT: It's in the jury room. So, the disc is in
6 the jury room.

7 MS. LIVESAY: Yes, sir.

8 THE COURT: We're gonna need to get that disc.

9 MS. LIVESAY: I've got to wait for that. I'm just gonna
10 play it right from the beginning where she gets there. Isn't
11 that what they wanted?

12 THE COURT: What they want is from when the ---

13 MS. LIVESAY: The police get to that complex.

14 THE COURT: To the complex.

15 MS. LIVESAY: Yeah. Okay.

16 THE COURT: And I don't know, I asked her to let us know
17 where they want it slowed or stopped. So they're gonna come
18 back in and tell me that.

19 MS. LIVESAY: It's hard to mess with that --

20 THE COURT: That's okay.

21 Can you make it full screen; there's a bigger size than
22 that.

23 MS. LIVESAY: I'm sorry, Your Honor.

24 THE COURT: There's a bigger size than that.

25 MS. LIVESAY: Oh, yeah, I've put it on that.

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1 THE COURT: Can you put it on full screen?

2 MS. LIVESAY: The only thing I can do is put this on full
3 screen?

4 THE COURT: Right and I understand that.

5 MS. LIVESAY: And I'll do it as soon as I hit play.

6 THE COURT: Okay. All right. We're ready for the Jury;
7 bring them in.

8 MR. MCCOLLUM: Judge, when it's playing I'm just gonna
9 move him over here.

10 THE COURT: That'll be fine, yeah. We'll let him have a
11 chance to look at it as well.

12 (REPORTER'S NOTE: The Jury enters courtroom. 10:18 A.M.)

13 All right. The record will reflect the Jury has returned
14 to the courtroom. Madame Forelady, we have gotten it to the
15 point where the -- it appears that the cars about to turn so
16 this will be the beginning, I think, of what you requested; is
17 that correct?

18 JUROR 256: Yes.

19 THE COURT: All right. Now if there's some point in time
20 that you would like it slowed and/or stopped, I'll ask you,
21 ma'am, to just let us know and we'll try to comply with your
22 request.

23 JUROR 256: Thank you.

24 THE COURT: Well, whatever, it's your request to see it
25 so you tell me what you'd like to see.

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BY THE COURT

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1 JUROR 256: Well, at the point where the suspects are
2 coming across the parking lot to their car?

3 THE COURT: Yes, ma'am.

4 JUROR 256: If we could have it paused at that point.

5 THE COURT: All right. We'll start the playing and when
6 we get to that point, we will pause it at that point.

7 MR. MCCOLLUM: Your Honor, is this lectern, do I need to
8 move that; is that blocking ---

9 THE COURT: Is this blocking anybody's view?

10 JUROR 256: Just the microphone is.

11 THE COURT: Put the microphone down and that will take
12 care of it.

13 JUROR 256: Uh-huh (affirmative response).

14 Okay. Everyone have a good view once the Solicitor sits
15 down?

16 JUROR 256: Uh-huh (affirmative response).

17 THE COURT: Okay. You may need to pull up a chair to get
18 close enough to push your button.

19 Okay. All right. You may begin.

20 (REPORTER'S NOTE: State's Exhibit Number Four played for
21 Jury. Audio not transcribed herein.)

22 THE COURT: I'm going to back that up. Ma'am, can you
23 reverse it, back it up? They want to pause it.

24 Ma'am, if you'll say pause when you want her to stop it.

25 You want to step over to the side so that they can all

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BY THE COURT

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1 see.

2 MS. LIVESAY: I'm sorry about that.

3 JUROR 256: There's no way you can ---

4 THE COURT: I believe we placed it on full screen; is
5 that right; is it as big as it can be?

6 MS. LIVESAY: Yes, sir.

7 THE COURT: That's as big as we can show it.

8 JUROR 256: Can you go a little more forward, just a
9 little bit.

10 MS. LIVESAY: You want it back?

11 JUROR 256: No, forward till they get to the car, as they
12 approach the car.

13 MS. LIVESAY: Okay.

14 THE COURT: And I am told that if we turn all the lights
15 off, you might be able to see it more clearly. Turn all the
16 lights off.

17 JUROR 256: Can you back it just a hair?

18 Can you back it just a little bit?

19 BAILIFF: Judge, they want to know if they can walk up
20 and look at it closer?

21 THE COURT: Yes. Anyone who wants a closer view can step
22 up; just don't communicate with any of the parties or the
23 attorneys.

24 MS. LIVESAY: You want me to hit play?

25 JUROR 256: Just, yeah, just a little bit more.

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BY THE COURT

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1 MS. LIVESAY: Hit play and then pause?

2 JUROR 256: Yeah.

3 MS. LIVESAY: Play?

4 JUROR 256: Just a little ---

5 MS. LIVESAY: Right there?

6 THE COURT: Is there anything else that you'd like?

7 JUROR 256: Just a little more.

8 THE COURT: All right. Play it on. Play it further.

9 JUROR 256: Can you pause it?

10 MS. LIVESAY: Right there?

11 THE COURT: Does that answer your inquiry?

12 JUROR 256: Yeah.

13 THE COURT: All right. You may retire to the jury room
14 to continue your deliberations.

15 (REPORTER'S NOTE: The Jury exits courtroom. 10:31 A.M.)

16 THE COURT: Any objections from the State to the Court's
17 response to the inquiries?

18 MS. LIVESAY: No, sir, Your Honor.

19 THE COURT: Any from the Defense?

20 MR. MCCOLLUM: There are no objections from the Defense,
21 Your Honor.

22 THE COURT: All right. We'll be in recess then until
23 such time as a verdict is reached.

24 I'm gonna take a short recess in both cases at this point
25 in time and step off the bench. Thank you.

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BY THE COURT

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1 (RECESS - 10:32 A.M.)

2 *****OFF THE RECORD*****

3 (On the Record - 11:14 A.M.)

4 (REPORTER'S NOTE: Jury enters courtroom. 11:15 A.M.)

5 COURT'S EXHIBIT NUMBER TEN

6 MARKED FOR IDENTIFICATION

7 THE COURT: The record will reflect the Jury has returned
8 to the courtroom and ladies and gentlemen, I've received what
9 has now been marked as Court's Exhibit Number Ten. The
10 inquiry that says, What happens if we deadlock on one charge?
11 ALLEN CHARGE BY THE COURT:

12 Now, ladies and gentlemen, you've stated to me that
13 you've been unable to reach a verdict as to one of the charges
14 in this case and as I instructed you earlier, a verdict in any
15 of the charges must be unanimous. I'll tell you that when a
16 matter is in dispute, it isn't always easy for even two people
17 to agree. So when twelve people must agree, it becomes even
18 more difficult to reach agreements. In most cases, absolute
19 certainty cannot be reached or even expected. However, you
20 have a duty to make every reasonable effort to reach a
21 unanimous verdict. In doing this, you should consult with one
22 another, express your own views and listen to the opinions and
23 views of your fellow jurors. Tell each other how you feel and
24 why you feel that way. Discuss the differences you have with
25 open minds. Although the verdict of the Jury must be

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BY THE COURT

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1 unanimous, every one of you has a right to follow your own
2 opinion. The verdict you agree to must be your own verdict in
3 the final analysis. The result of your own convictions and
4 you should not give up your firmly held beliefs merely to be
5 in agreement with your fellow jurors. I would ask that the
6 majority should consider the minority's position. I would
7 also ask the minority to consider and reflect upon the
8 majority's opinion or position. You should carefully consider
9 and respect the opinions of each other and re-evaluate your
10 position for reasonableness, correctness and impartiality.
11 You should lay aside all outside matters and re-examine the
12 questions before you based upon the law and the evidence
13 presented in this case.

14 If you do not agree on a verdict in this case, on one of
15 the charges in that case, it would be my duty to declare what
16 is referred to as a mistrial. In that case, it does not mean
17 that anybody wins; it just means that at some future time
18 either I or some other judge will try this case with some
19 other jury sitting where you now sit. The same participants
20 will come, perhaps the same lawyers will ask basically the
21 same questions and get basically the same answers and we will
22 then go through this whole process again.

23 Now, you were selected in the same manner and from the
24 same source as any future jury in this case would be chosen
25 and there's no reason for me to believe or suppose that the

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BY THE COURT

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1 case will ever be submitted to twelve more intelligent or
2 impartial or conscientious or competent jurors than you, or
3 that any more clearer evidence will be produced by one side or
4 the other. So, what I'm going to ask you to do is to return
5 to your deliberations. Consider what I've just said to you
6 and again re-examine the positions in light of my charge in
7 this matter. So, I'm gonna ask you to return to the jury room
8 and continue your deliberations. Thank you very much.

9 (REPORTER'S NOTE: The Jury exits courtroom. 11:22 A.M.)

10 THE COURT: Any objections from the State?

11 MS. LIVESAY: No, sir, Your Honor.

12 THE COURT: Any from the Defense?

13 MR. MCCOLLUM: One point comes to mind, Your Honor.

14 THE COURT: Yes, sir.

15 MR. MCCOLLUM: Mr. Bell, is subject to multiple
16 indictments. If the Jury reaches verdicts, whether they be
17 guilty or not guilty, on all those indictments with the
18 exception of the one they seem to be referring to, could the
19 Defendant be tried again?

20 THE COURT: I haven't gone there and that's not really
21 before me to decide.

22 MR. MCCOLLUM: Well, it just comes to mind in terms of
23 the Allen Charge because -- and I understand the Allen Charge
24 is well-grounded as the appropriate response, but I just raise
25 that.

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1 THE COURT: I haven't researched it. I would think since
2 each indictment stands on its own and charges and separate and
3 distinct offense with different elements, I would not think
4 that double jeopardy would apply if the Jury deadlocked and
5 mistrial was declared. But I would research that; I don't
6 know.

7 MR. MCCOLLUM: So, that's all I'm raising.

8 THE COURT: All right. It would seem to me -- now, if
9 you have some law as to that, I'll be glad to take a look at
10 it.

11 MR. MCCOLLUM: Well, it just occurred to me.

12 THE COURT: Again, I would think that since each
13 indictment, and we charged them at the beginning of the
14 charge, that they should decide each indictment separately and
15 distinct from the decision that they make in every other
16 indictment. That was the charge they were given at the
17 beginning of their deliberations. So, they are to weigh each
18 offense separately and the fact that they find someone guilty
19 on one charge should not influence their decision in deciding
20 the other charges.

21 MR. MCCOLLUM: Maybe it's more of a practical
22 consideration.

23 THE COURT: So, it would seem to me that since each one
24 alleges separate and distinct offenses with different
25 elements, then I think they each stand alone; that's the way I

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VERDICT OF THE JURY

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1 understand it.

2 MR. MCCOLLUM: All right. Okay.

3 (RECESS - 11:22 A.M.)

4 *****OFF THE RECORD*****

5 (On the Record - 2:50 P.M.)

6 THE COURT: All right. I've been informed by the Bailiff
7 that a verdict has been reached. Is the State ready to
8 receive the verdict?

9 MS. LIVESAY: Yes, sir.

10 THE COURT: Defense ready?

11 MR. MCCOLLUM: Defense is ready, Your Honor.

12 THE COURT: Ask the Bailiff to bring the Jury in.

13 (REPORTER'S NOTE: The Jury enters courtroom. 2:52 P.M.)

14 VERDICT OF THE JURY:

15 THE COURT: All right. Madame Forelady, I've been
16 informed by the Bailiff that a verdict has been reached on all
17 counts; is that correct?

18 JUROR 256: Yes, sir.

19 THE COURT: If you would pass the form to the Bailiff
20 please. Thank you, ma'am.

21 Madame Clerk, you may publish the verdict.

22 CLERK: State of South Carolina, County of Horry, versus
23 Kenneth Jordan Bell, We, the Jury, unanimously find the
24 Defendant, Kenneth Jordan Bell, concerning the offense of
25 burglary first degree, Indictment Number 2013-GS-26-1335,

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VERDICT OF THE JURY

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1 guilty.

2 We, the Jury, unanimously find the Defendant, Kenneth
3 Jordan Bell, concerning the offense of kidnapping, Indictment
4 Number 2013-GS-26-1336, guilty.

5 We, the Jury, unanimously find the Defendant, Kenneth
6 Jordan Bell, concerning the offense of possession of a weapon
7 during a violent crime, Indictment Number 2013-GS-26-1337,
8 guilty.

9 We, the Jury, unanimously find the Defendant, Kenneth
10 Jordan Bell, concerning the offense of armed robbery,
11 Indictment Number 2013-GS-26-1339, guilty.

12 We, the Jury, unanimously find the Defendant, Kenneth
13 Jordan Bell, concerning the offense of criminal conspiracy,
14 Indictment Number 2013-GS-26-1340, guilty.

15 Signed by Foreperson, Michele Ramont, dated August 15th,
16 2013.

17 Ladies and gentlemen of the Jury, if this is your
18 verdict, so signify by raising your right hand.

19 (REPORTER'S NOTE: All Jury members raise right hand.)

20 THE COURT: Thank you. Anything further from the State
21 before I release the Jury?

22 MS. LIVESAY: No, sir, Your Honor.

23 THE COURT: Anything further from the Defense?

24 MR. MCCOLLUM: Not from the Defense, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of the Jury,

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VERDICT OF THE JURY

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1 this completes your service in this case. I want to thank you
2 very much for your attention to your duties in this matter. I
3 have told you throughout the trial that you should not discuss
4 the case with anyone. I will advise you that you now have the
5 right to do so. You also have the right not to do so. Should
6 anyone in any way try to bother you or harass you concerning
7 your service on this jury panel, please report that to the
8 Clerk's Office or the police. Appropriate action would be
9 taken should that occur.

10 I'm not intending to start another trial this week. I'm
11 in the process of trying a case. Is the Jury needed any
12 further or are they released?

13 CLERK: No, sir, they can be released.

14 THE COURT: Okay. We're releasing you from any further
15 service in the matter. So, the Bailiff will take you back to
16 the jury room. They will see that you're processed out. If
17 you need an excuse for your work, I'm sure the Clerk will
18 provide you an excuse for missing the work and I'm sure
19 they'll make arrangements for you to receive your pay for jury
20 services. Thank you very much for your attention to your
21 duties.

22 Now, ma'am, you're the Forelady. We're gonna need to get
23 you to sign some documents on the indictments with the Clerk.
24 You want her to step over here and bring the indictments?

25 CLERK: Yes, sir.

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POLLING OF THE JURY

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1 THE COURT: All right. I think the indictments may be
2 back in the jury room. So, ma'am ---

3 MR. MCCOLLUM: Your Honor, I'm sorry to interrupt, but
4 when you finish, before they're released, may I approach?

5 THE COURT: Yes, sir. Please do now.

6 (REPORTER'S NOTE: A bench conference was held off the record
7 in the presence of the Jury but out of hearing of the Jury.)

8 THE COURT: All right. I have received a request that
9 the Jury be polled. What that means is that the Clerk is
10 going to call your name individually. When you stand, she'll
11 be asking the question if the verdict is still your verdict
12 and you will need to answer that question as she asks it. So
13 I'm gonna ask that the Jury -- Jury be polled and that'll be,
14 my understanding is the request as to all verdicts; is that
15 correct?

16 MR. MCCOLLUM: Yes, as to all.

17 THE COURT: As a group?

18 MR. MCCOLLUM: Yes, without doing each individual charge.

19 THE COURT: All right. I'll ask the Clerk to please poll
20 the Jury.

21 POLLING OF THE JURY:

22 CLERK: When I call your number, if you will please
23 stand. Juror Number 312. Is this your verdict as to all
24 charges?

25 THE COURT: You have to answer verbally, ma'am.

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POLLING OF THE JURY

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1 JUROR 312: Yes.

2 THE COURT: Thank you. You can be seated.

3 CLERK: 319. Is this your verdict as to all charges?

4 JUROR 319: Yes.

5 CLERK: Thank you.

6 256, is this your verdict as to all charges?

7 JUROR 256: Yes.

8 CLERK: Thank you.

9 266, is this your verdict as to all charges?

10 JUROR 266: Yes.

11 CLERK: Thank you.

12 175, is this your verdict as to all charges?

13 JUROR 175: Yes.

14 CLERK: Thank you.

15 84, is this your verdict as to all charges?

16 JUROR 84: Yes.

17 CLERK: Thank you.

18 162, is this your verdict as to all charges?

19 JUROR 162: Yes.

20 CLERK: Thank you.

21 207, is this your verdict as to all charges?

22 JUROR 207: Yes.

23 CLERK: Thank you.

24 289, is this your verdict as to all charges?

25 JUROR 289: Yes.

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POLLING OF THE JURY

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1 CLERK: Thank you.

2 254, is this your verdict as to all charges?

3 JUROR 254: Yes.

4 CLERK: Thank you.

5 51, is this your verdict as to all charges?

6 JUROR 51: Yes.

7 CLERK: Thank you.

8 115, is this your verdict as to all charges?

9 JUROR 115: Yes.

10 CLERK: Thank you.

11 THE COURT: Does that complete the poll?

12 CLERK: Yes, sir.

13 THE COURT: All right. Anything further before I release
14 the Jury?

15 MR. MCCOLLUM: No, Your Honor.

16 THE COURT: All right. Thank you.

17 All right. Ladies and gentlemen, as I said, the Bailiff
18 will take you back and will process you out.

19 Ma'am, you'll need to see the Clerk before you leave to
20 sign the indictments for us.

21 Again, I want to thank you very much for your service in
22 the jury pool this week and at this time, you are free to go.
23 The Bailiff will instruct you if you would like to attend
24 sentencing in the case -- you have the right to do so, you're
25 not required to do so. That would be your choice.

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MOTIONS

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1 You may take the Jury to the jury room. And, ma'am, if
2 you'll just step right over here beside the Clerk.

3 (REPORTER'S NOTE: The Jury exits courtroom and is released.
4 2:59 P.M.)

5 THE COURT: All right, Mr. Bell, if you'd please stand.

6 MR. MCCOLLUM: Your Honor?

7 THE COURT: Yes, sir.

8 MR. MCCOLLUM: I think I need to make some motions.

9 THE COURT: Please do.

10 MR. MCCOLLUM: Is that all right?

11 THE COURT: Yes, sir. You can be seated.

12 MOTIONS:

13 MR. MCCOLLUM: Your Honor, at this time, on behalf of
14 Kenneth Bell, I would like to renew the motions previously
15 made, renew the motions for directed verdict on each of the
16 five counts.

17 Additionally, Your Honor, at this time, I would renew all
18 objections previously made and all motions previously made and
19 ask that those be granted.

20 THE COURT: All right. Those motions have been
21 considered by the Court. I would make the same rulings that I
22 made during trial and I'll allow the conviction to stand.

23 MR. MCCOLLUM: Finally, Your Honor, at this time, on
24 behalf of the Defendant, Kenneth Bell, the Defense would move
25 for a new trial on each of the five counts without naming them

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SENTENCE OF THE COURT

1 all specifically.

2 THE COURT: The motion is noted and has been heard and
3 the motion is denied.

4 MR. MCCOLLUM: Thank you, Your Honor.

5 SENTENCE OF THE COURT:

6 THE COURT: All right. Mr. Bell, having been found
7 guilty by a jury of your peers of the offenses of burglary in
8 the first degree, criminal conspiracy, armed robbery,
9 possession of a weapon during a violent crime and kidnapping,
10 at this time, the Court is considering sentencing in this
11 matter. I'll first hear from your attorney concerning this
12 matter then I'll give you an opportunity to be heard. I've
13 informed Counsel if members of the family would like to be
14 heard in that regard, I will hear them one at a time. I'll be
15 happy to hear from the attorney first.

16 Yes, sir?

17 MR. MCCOLLUM: Your Honor, may it please the Court? I
18 think Your Honor's fairly familiar with Kenneth Bell as a
19 result of what transpired during the trial. He has no
20 criminal record. I think they stated he never had a traffic
21 violation. He had successfully completed high school, was
22 actually a stellar athlete and had the opportunity to possibly
23 go on and get a college scholarship. There were some things
24 that happened that were outside of his control. He's not
25 really somebody that places blame; he, he, he moved on. But

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SENTENCE OF THE COURT

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1 apparently his football coach had been engaged in some kind of
2 misbehavior. He was ultimately maybe even charged with a
3 crime for doing something with money or doing something
4 inappropriate. But the point of that is that his highlight
5 reels never, were never sent. Apparently he was -- had
6 lettered every year in high school, was an outstanding
7 athlete. He told me he was a running back and had a fantastic
8 career. He was, as his mother said, a straight A student,
9 worked while he was going to high school. In addition to
10 playing at least two sports, football and baseball and doing
11 very well. He was the captain of the football team and I
12 think they were very successful.

13 After that, I think he did go to school a little bit, but
14 in any event, you know, his mother had told him, son, you
15 know, life is long, you're young, you don't know what will
16 happen, so you should do certain things to protect yourself.
17 In other words, if, if, if you don't know about your career,
18 so even something that a lot of people do and certainly
19 there's nothing wrong with it, but getting a tattoo in a
20 visible place or getting piercings or things of that nature;
21 she had cautioned him and advised him against doing that,
22 something that many people do, and he had listened to her and
23 to this day never received anything like that.

24 He then decides to enter the Air Force, is accepted into
25 the Air Force. And I was told at the time he was talking to

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SENTENCE OF THE COURT

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1 the recruiter, the recruiter said well what kind of petty
2 crimes do we have to clean up, let me see your tattoos, and
3 the recruiter made the statement that he was the first kid
4 that they had seen that didn't have any issues to be cleared
5 up. He goes into basic training and unfortunately has this
6 sleep walking issue and the liver function or something of
7 that nature, regrettably. All of that had been cleared up by
8 now and he's clear to re-enter the service, which obviously as
9 he stands here today, that's not possible. So, that's who he
10 is.

11 How he got here and moved out from his brother, Buddy's
12 house and into his other brother's house and, and, and
13 whatever he did during that period of time that caused him to
14 make these kind of fatal judgments, apparently is completely
15 outside of his character from birth until that time.

16 Now I understand that there's certain sentencing
17 restrictions here. From what I have seen, Your Honor, the,
18 the, the youthful offender provision is not available to a
19 violent crime. There are three violent crimes. The
20 enhancement sentence for the firearm, as I read the statute,
21 can be consecutive or concurrent. I understand the armed
22 robbery statute and that, that minimum mandatory, but I think
23 clearly, Your Honor, and I hope Your Honor agrees or takes
24 this into consideration, we have great respect for Your
25 Honor's ability and authority to sentence, but I would ask

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SENTENCE OF THE COURT

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1 Your Honor to please consider, giving his background and the
2 harshness of these sentences as they stand, to consider giving
3 him the mandatory minimum sentences and ask Your Honor, that
4 they be run concurrent.

5 THE COURT: All right, Counsel, let me just go over the
6 sentences with you to be sure we are in agreement with what I
7 think they are.

8 Burglary first degree carries a sentence of fifteen to
9 life. Armed robbery carries a sentence of ten years to thirty
10 years. Possession of a weapon during a violent crime carries
11 a possible five years. Criminal conspiracy carries no more
12 than five years and the sentence cannot be greater than the
13 maximum sentence of the underlying charge. Kidnapping carries
14 a sentence of not more than thirty years.

15 Are you in agreement with those possible sentences?

16 MR. MCCOLLUM: I am, Your Honor. The only, the only
17 question I have is about the conspiracy, but I don't think
18 that's a factor.

19 THE COURT: I really don't think that is. Now I have
20 considered the burglary first charge and it's my understanding
21 from the case of State versus Jacobs, that the mandatory
22 minimum cannot be suspended. That's the case that was decided
23 in 2011. You had discussed that during the trial.

24 All right. Now at this time, I'll be happy to hear from
25 your client, Mr. Bell.

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SENTENCE OF THE COURT

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1 Mr. Bell, this is your opportunity to address the Court.
2 I'll be happy to hear from you concerning this matter.

3 MR. MCCOLLUM: Your Honor, I think he's, he's obviously
4 has been very strong; he's overcome with a strong amount of
5 emotion.

6 THE COURT: I understand.

7 MR. MCCOLLUM: He had said to me that he doesn't know
8 what to say.

9 THE COURT: I understand. Okay. Was there members of
10 the family that did wish to speak on his behalf and I'll give
11 him an opportunity to speak in just a moment.

12 Sir, come forward. If you'll come forward to the Counsel
13 table please, sir? I need for you to state your name and your
14 relationship.

15 MR. BUDDY BELL: Buddy Bell, his brother.

16 THE COURT: Yes, sir, I'll be happy to hear from you.

17 MR. BUDDY BELL: Your Honor, he made a mistake. I've
18 already lost one brother. This is my only brother I have
19 left. I don't want to lose him forever. Forty-five years old
20 -- do the math on a mandatory minimum sentence; that's over
21 forty years. She won't see him outside again. I mean, this
22 isn't no light stuff. I just don't want to lose my only
23 brother I have left. He means everything. I made a promise
24 to my mom when he came down that I would keep him safe and I
25 failed that. He literally wanted to write a letter to these

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1 kids just apologizing, but I said you can't contact them. He
2 followed somebody. He was protecting what he feels is another
3 brother. Anyone, if they know that their brothers needed help
4 or their brother needed protection or their brother -- they
5 could do it, too. If I was in a predicament and if my brother
6 needed help, I would be there. Thank you.

7 THE COURT: Thank you, sir.

8 Any other family members wish to be heard?

9 Ma'am, come forward. For the record, I have to get you
10 to state your name and your relationship. I know who you are,
11 but you'll have to tell me.

12 MS. JAWORSKI: I'm Wendy Jaworski; I'm Kenny Bell's
13 mother.

14 THE COURT: Yes, ma'am.

15 MS. JAWORSKI: As my son already stated, I've lost one
16 son. He was an infant. I'm just asking you to please be as
17 lenient as you can. I'd love to see my -- I can't -- at least
18 some TV screen all the time. He's young; he can still come
19 out and be a -- He made a mistake. And now that it's over,
20 I'm gonna say, that picture you saw, he was on K12, which is a
21 very harsh drug and this is what it's come down to. Your
22 Honor, you couldn't hear that because it wasn't allowed to be
23 said, but he was on drugs. And when he got out on bond, we
24 had to lock him down for thirty days in my house to get him
25 off of them again and that's why he looked so different. But

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SENTENCE OF THE COURT

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1 you wouldn't ---

2 THE COURT: Ma'am, ma'am, ma'am, ma'am, you're not
3 allowed to address anyone in the courtroom at this time but
4 me.

5 MS. JAWORSKI: I'm sorry. Please, Your Honor. Thank
6 you.

7 THE COURT: Thank you, ma'am.

8 MR. MCCOLLUM: Your Honor, thank you. Obviously, they
9 love him very much. They weren't just, without minimizing,
10 frankly the seriousness of the case and the evidence, we just
11 ask for whatever leniency the Court can provide.

12 THE COURT: I'd indicated I'd give Mr. Bell another
13 opportunity to speak.

14 Do you wish to speak, Mr. Bell? You don't have to bend
15 over; it'll pick you up. Speak to me straight up.

16 MR. KENNY BELL: I just wanted to say I'm sorry to my
17 family that I disappointed them. I'm sorry to the victims. I
18 never wanted to be there. I was -- I was supposed to be
19 getting my hair cut and going on a date later that night; I
20 didn't even want to be there.

21 MR. MCCOLLUM: Your Honor, he's got a great deal of
22 remorse. We are where we are and we are ready for sentencing
23 whenever it's appropriate.

24 THE COURT: Thank you. I have been informed he has no
25 prior record; is that correct, from the State?

State v. Bell - 2013-GS-26-1335, 1337, 1339, 1340
SENTENCE OF THE COURT

521

1 MS. LIVESAY: Yes, sir, Your Honor.

2 THE COURT: Thank you. Anything the State would like
3 share with the Court?

4 MS. LIVESAY: Yes, sir, Your Honor. I think the victim
5 does wish to speak.

6 THE COURT: I'll be happy to hear from him.

7 Sir, if you'll stand. I'll need you to state your name.

8 MR. DEGRUCCIO: My name is Paul Degruccio.

9 THE COURT: You don't have to bend over. Just speak to
10 me. Thank you, sir.

11 MR. DEGRUCCIO: I just wanted to offer my condolences to
12 Kenny and his family and I would ask that you show him some
13 leniency and I wouldn't wish this fate on my worst enemy.
14 That's all I have to say.

15 THE COURT: Thank you, sir.

16 I believe he was out on bond. Is he claiming any credit
17 for time served?

18 Oh, I'm sorry, I didn't realize there was another one. I
19 apologize to you, sir. Name please?

20 MR. MEIJER: My name is Erik Meijer.

21 THE COURT: Yes, sir.

22 MR. MEIJER: I as well would like to state my
23 condolences. I wouldn't wish -- I would ask for your
24 leniency. He's already suffering way more charges than the
25 minimum would have, would have been if he had taken that. And

State v. Bell - 2013-GS-26-1335, 1337, 1339, 1340
SENTENCE OF THE COURT

522

1 at the same time, I had thought about reacting; there was a
2 chamber in the bullet so I feel bad, but I definitely do not
3 want him to have maximum sentences. I mean, if I had
4 responded, I could have accidentally been shot. So it's not
5 like this is something that can be overlooked, but please at
6 least give him leniency. I wish he had taken the deal; he'd
7 have been out in two years.

8 THE COURT: Thank you, sir.

9 Anything else from the State?

10 MS. LIVESAY: No, Your Honor, the State just requests the
11 minimum sentence.

12 THE COURT: Thank you.

13 MR. MCCOLLUM: Your Honor, in response to Your Honor's
14 question, I think he was arrested immediately on February the
15 2nd, 2013. It looks like his bond was signed February the
16 11th, 2013.

17 THE COURT: So, the difference the ---

18 MR. MCCOLLUM: Not much.

19 THE COURT: How much?

20 MR. MCCOLLUM: Nine days.

21 THE COURT: Nine days.

22 MR. MCCOLLUM: Does that sound right?

23 THE COURT: All right. You can be seated. It'll take me
24 a moment to complete the sentencing sheets.

25 Mr. Bell, it's unfortunate, sir -- if you'll stand

State v. Bell - 2013-GS-26-1335, 1337, 1339, 1340
SENTENCE OF THE COURT

523

1 please. It's unfortunate that two of the offenses that you've
2 been convicted of carry with them mandatory minimum sentences.
3 The legislature has made a choice in that regard and of
4 course, the Courts are bound by that choice. I respect their
5 abilities to make those laws and it's my responsibility to see
6 that they are properly enforced. Occasionally, cases come
7 along where the Court wishes it had more discretion than is
8 allowed in this situation and this is one of those cases.

9 Before I name -- announce the sentencing, I will tell you
10 that the kidnapping offense carries a possible requirement of
11 sex offender registration. I have noted on the sentencing
12 sheet that this crime did not involve any sex offense;
13 therefore, that question is no longer an issue. I've taken
14 that out of the question.

15 Now, as to the charges, the kidnapping, or excuse me, the
16 armed robbery and burglary as I said, carry mandatory minimum
17 sentences. In the case of burglary first that mandatory
18 minimum sentence is fifteen years. In the case of armed
19 robbery, the mandatory minimum sentence is ten years. In the
20 other cases the criminal conspiracy the sentence is five years
21 and the possession of a weapon the sentence is five years and
22 the kidnapping the sentence is ten years. I have run all of
23 those sentences concurrently and given you credit for the time
24 that you had requested.

25 Sir, I wish you luck.

State v. Bell - 2013-GS-26-1335, 1337, 1339, 1340
SENTENCE OF THE COURT

524

1 MR. MCCOLLUM: Thank you, Your Honor.

2 THE COURT: The Court's adjourned in this matter. Take
3 the Defendant into custody.

4 (ADJOURNED - 3:24.)

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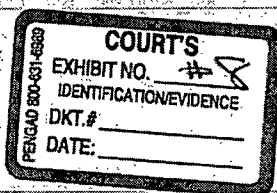
23

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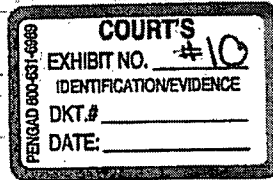
What happens if there
is one charge that the
jury cannot agree on?

Michelle Ransom



What happens if we deadlock on one charge?

Michelle Ransom



376 OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
Kenneth Jordan Bell

AKA:

Race: WHITE Sex: M Age: 22DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Myrtle Beach, SC 29575DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2601335A/W#: M976811Date of Offense: 2/2/2013S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB75159

Livesay, Nancy

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/15/13☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 9 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 09/15/2028

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2135Sentence Date: 8/15/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

377

COUNTY OF Horry
STATE VS.
Kenneth Jordan Bell

AKA:

Race: WHITE Sex: M Age: 22DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Myrtle Beach, SC 29575DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / KidnappingINDICTMENT/CASE#: 2013GS2601336A/W#: M976813Date of Offense: 2/2/2013S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB75159

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 9 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 09/15/2028\$ paid to Public Defender FundOther: Did not involve a sexual offense
Sex offender registration is not required☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2135Sentence Date: 8/15/13

378
JUDICIAL DISTRICT OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
Kenneth Jordan Bell

AKA: _____
Race: WHITE Sex: M Age: 22
DOB: _____ SS#: _____
Address: _____
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2601337
A/W#: M976827
Date of Offense: 2/2/2013
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ SCB75159
Livsey, Nancy SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/15/13
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 9 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk: Melanie Huggins Ward
Court Reporter: Kay Richardson
SCCA/217 (03/2011)

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly install-
pmts. of \$ 25.00 beginning 09/15/2028
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge _____
Judge Code: 2135
Sentence Date: 8/15/13

COUNTY OF
STATE

Horry

VS:

Kenneth Jordan Bell

AKA:

Race: WHITE

Sex: M

Age: 22

DOB:

City, State, Zip: Myrtle Beach, SC 29575

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB75159

Livesey, Nancy

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 9 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.98
TOTAL		\$ 133.98

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS2601339

A/W#: 2013GS2601339

Date of Offense: 2/2/2013

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 9/15/2028

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2135Sentence Date: 8/15/13

380

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Kenneth Jordan Bell

AKA:

Race: WHITE

Sex: M

Age: 22

DOB:

Address:

City, State, Zip: Myrtle Beach, SC 29575

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2601340

A/W#: 2013GS2601340

Date of Offense: 2/2/2013

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB75159

Livsey, Nancy

SC Bar#:

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 9 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2135

Sentence Date: 8/15/13

WITNESSES

B Odom Horry County Police Department

DOCKET NO. 2013-GS-26- 01335**The State of South Carolina**
County of Horry

Nancy Livesay

13H00620

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

ARREST WARRANT NUMBER

M976811

CDR: 0079 16-11-0311

DOA: 2/3/2013

THE STATE

vs.

ACTION OF GRAND JURY

Kenneth Jordan Bell

W/M

Myrtle Beach, SC 29575

Foreperson of Grand Jury

Date: 8/15/13

ATTORNEY: Mullins, Randall K.

VERDICT

Guilty

Indictment for

BURGLARY, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date: 8/15/13

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

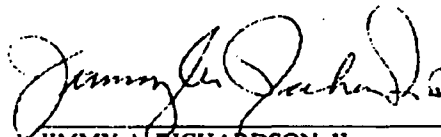
At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Kenneth Jordan Bell did in Horry County, while acting in concert with another, on or about February 2, 2013 enter the dwelling of Paul Degruccio without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, was armed with a deadly weapon, he or another participant in the crime, displayed what was or appeared to be a knife or firearm, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

383

WITNESSES

B Odom Horry County Police Department

ARREST WARRANT NUMBER

M976813

CDR: 0095 16-03-0910

DOA: 2/3/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: *[Signature]*

VERDICT

Guilty

Foreperson of Petit Jury

Date: *8/15/13*

DOCKET NO. 2013-GS-26- 01336

The State of South Carolina

County of Horry

Nancy Livesay

13H00620

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

THE STATE

vs.

Kenneth Jordan Bell
W/ M

ATTORNEY: Mullins, Randall K.

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

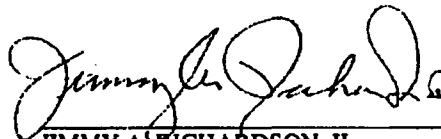
At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Kenneth Jordan Bell did in Horry County, while acting in concert with others, on or about February 2, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Paul Degruccio, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

B Odom Horry County Police Department

ARREST WARRANT NUMBER

M976827

CDR: 0549 16-23-0490

DOA: 2/3/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: *[Signature]***VERDICT***Guilty*

Foreperson of Petit Jury

Date: 8/15/13

DOCKET NO. 2013-GS-26-01337

The State of South Carolina**County of Horry**

Nancy Livesay

13H00620

COURT OF GENERAL SESSIONS**MARCH, 2013 TERM****THE STATE**

vs.

Kenneth Jordan Bell

W/ M

Myrtle Beach, SC 29575

ATTORNEY: Mullins, Randall K.**Indictment for****POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME****Jimmy A. Richardson, II, Solicitor****ORIGINAL**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

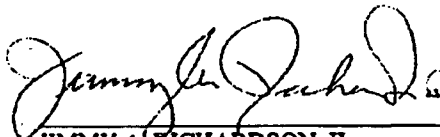
At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Horry County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

CDR: 0549 16-23-0490

That Kenneth Jordan Bell did in Horry County, while acting in concert with another, on or about February 2, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

B Odom Horry County Police Department

The State of South Carolina
County of Horry

Nancy Livesay

13H00620

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

ARREST WARRANT NUMBER

2013GS2601339

CDR: 0139 16-11-0330(A)

DOA: 2/3/2013

THE STATE

vs.

Kenneth Jordan Bell
W/ M

Myrtle Beach, SC 29575

ATTORNEY: Mullins, Randall K.

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8/15/13

VERDICT

Guilty

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date: 8/15/13

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

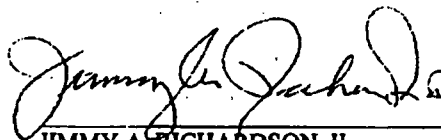
At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Kenneth Jordan Bell did in Horry County, while acting in concert with others, on or about February 2, 2013, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Paul Degruccio from or in the immediate presence of Paul Degruccio with intent to deprive Paul Degruccio of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

B Odom Horry County Police Department

The State of South Carolina

County of Horry

Nancy Livesay

13H00820

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

ARREST WARRANT NUMBER

2013GS2601340

CDR: 0049 16-17-0410

DOA: 2/3/2013

THE STATE

VS.

Kenneth Jordan Bell
W/ M

Myrtle Beach, SC

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty

ATTORNEY: Mullins, Randall K.

**Indictment for
CRIMINAL CONSPIRACY**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury

Date:

8/15/13

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

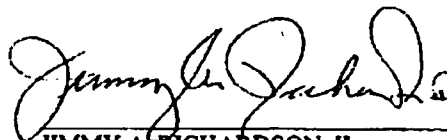
At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Horry County present upon their oath:

CRIMINAL CONSPIRACY

CDR: 0049 16-17-0410

That Kenneth Jordan Bell did in Horry County, while acting in concert with others, on or about February 2, 2013 combine with Christopher Bell and Toni Pasquale, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Burglary 1st Degree, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

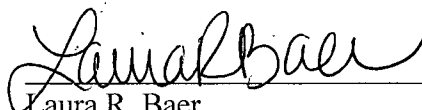


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 29th, 2014

A handwritten signature in cursive script, reading "Laura R. Baer", written over a horizontal line.

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Roger L. Couch, Circuit Court Judge

RECEIVED

DEC 29 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH JORDAN BELL,

APPELLANT

APPELLANT CASE NO. 2013-001841

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 29th day of December, 2014.

Angela Jackson for

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of December, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021