VOLUME I OF II

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

William H. Seals, Circuit Court Judge

KENNETH JORDAN BELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002457

APPENDIX

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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.)	
)	August 12-15, 2013
KENNETH JORDAN BELL,)	
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:

Nancy Livesay, Esquire
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Gregory McCollum, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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(August 12, 2013)

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

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

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

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

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

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

MS. LIVESAY: Yes, sir, Your Honor.

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

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

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

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

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

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

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

THE COURT: And for the Defense?

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

THE COURT: And is the Defendant present?

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

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

MR. BELL: My name is Kenneth Bell.

THE COURT: Thank you. You can be seated.

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

Madame Clerk?

CLERK: Please stand and raise your right hands?

(REPORTER'S NOTE: Jury is duly sworn.)

CLERK: Thank you.

THE COURT: Please be seated. Now if there was any member of the potential jury panel who either failed or refused to take the oath that has just administered by the Clerk, I'd ask that you now please stand. The Court records then will reflect that all jurors have been sworn concerning my questions that I'm about to ask.

VOIR DIRE:

Now, we'll follow a procedure that was similar to the procedure that was used in the jury qualification downstairs. That is I'll be asking you questions. If you have a response to my questions, I'll ask that you stand. When I call on you, I need to get your name and juror number before we discuss your response to my question. That allows us to be able to identify exactly who I'm talking to should someone later read the transcript of this proceeding. So I'll need your name and number before we discuss any response that you might have to the questions that I'm about to ask.

My first question, Has any member of this jury panel ever been related by marriage or are you related by blood to either the Defendant, Kenneth Jordan Bell, or the alleged victim, Toni, excuse me, the alleged victim, let me get his name

right; Paul Degruccio, and that's spelled D-E-G-R-U-C-C-I-O; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of the jury panel that's ever had a close personal or a social relationship with either of those individuals, the Defendant, Kenneth Jordan Bell, or the alleged victim, Paul Degruccio; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Now has any member of this jury panel ever been represented by either of the attorneys involved in this case or have they ever appeared on the other side of some legal matter from you; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Has any member of this jury panel ever been related by marriage or are you related by blood or have you ever had a close social or a personal relationship with either of the attorneys that are involved in this case; if that is true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Now I'm going to go over with you a list of individuals. These people have been identified to me as possible witnesses in this case. There looks like there's going to be about fifteen or sixteen of those people. So listen carefully as I go over the names and then I'll have

some questions concerning these individuals.

First of all, Natalie Boyd, with the Horry County Police Department; Timothy Cast also with the Horry County Police Department; Jack Johnson with the Horry County Police Department; David Langlais and that's L-A-N-G-L-A-I-S, with the Horry County Police Department; Jill Domogauer, D-O-M-O-G-A-U-E-R, with the Horry County Police Department; William Odom, of course we've talked about Paul Degruccio; Erik Meijer and that's M-E-I-J-E-R; Christopher Clark; Buddy Gerard Bell; Tonie Ann Pasquale; Larry Lafferty; Leslie Bell; Christopher Bell; Pat Pendleton; Wendy Jaworski. Now as to the individuals that I just identified as possible witnesses in this case, has any member of the jury panel ever been related by marriage or are you related by blood or have you ever had a close social or a personal relationship with any of the individuals I just named as possible witnesses in the case; if that's true, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Has any member of the jury panel or member of your immediate family or a close friend of yours ever been the victim of a violent crime; if that is true, please stand? I need your name and number, please, ma'am?

JUROR 258: Margaret Ramsey, 258.

THE COURT: Yes, ma'am, your situation is?

JUROR 258: My mother was murdered.

THE COURT: All right, ma'am, would the fact that had occurred in your past, if you were selected to serve on the Jury in this case, would that affect your ability to be both fair and impartial to both the State and the Defense in the case?

JUROR 258: No, Your Honor.

THE COURT: Thank you, ma'am, you can be seated.

Ma'am, I'll need your name and number, please?

JUROR 168: Oh, 168, Pamela Kelly.

MR. MCCOLLUM: Your Honor; Your Honor, may it please the Court; may I approach?

THE COURT: Yes, sir.

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

THE COURT: I'm sorry, ma'am, your name and number again?

JUROR 168: 168, Pamela Kelly.

THE COURT: Ma'am, I don't want you to describe the incident to me, but if you would tell me would the fact that you've had that experience in your past, if you were selected to serve on this Jury, would that affect your ability to be fair and impartial in this case?

JUROR 168: No.

THE COURT: Thank you, ma'am.

Name and number please, ma'am?

JUROR 147: The number is 147; the name is Wilhelmena

Holmes.

THE COURT: Yes, ma'am, and again, I don't need the facts of the matter, but I would like to know if -- since you've had that in your experience, would that affect your ability to be fair and impartial to both sides if you were on the Jury?

JUROR 147: No, sir.

THE COURT: Thank you, ma'am.

Yes, ma'am, name and number?

JUROR 269: Number 269; Kim Richardson.

THE COURT: Yes, ma'am, would the fact that you had an experience like that in your past, would that affect your impartiality if you were on the Jury?

JUROR 269: No, sir.

THE COURT: All right, thank you.

Anyone else?

All right. I would like, the next question, has any member of the jury panel ever raised a child from infancy to adulthood; if that is true, please stand?

JUROR: Would you repeat that please, sir?

THE COURT: I asked has any person on the jury panel ever raised a child from infancy to adulthood; if that's true, please stand?

All right. I'm going to get your names and numbers please as we go from the front. Sir, your name and number?

JUROR 145: I'm Chris Hite; I'm 145.

THE COURT: Ma'am, your name and number?

JUROR 309: Donna Snoke; 309.

THE COURT: All right. I'll start over here; ma'am, your name and number?

JUROR 330: Tammy Vance; 330.

THE COURT: Ma'am, your name and number?

JUROR 44: Susan Cameron; 44.

THE COURT: Yes, ma'am, your name and number?

JUROR 175: Carol Koutroubas; 175.

THE COURT: All right. In the back, your name and number, please, ma'am?

JUROR 241: Rhonda Perry; 241.

THE COURT: Yes, ma'am?

JUROR 256: Michele Ramont; 256.

THE COURT: And yes, ma'am?

JUROR 207: Teresa McKinney; 207.

THE COURT: All right. As to you individuals, would that fact affect your ability to be fair and impartial if you were selected to a juror in this case? If it would affect your ability, please remain standing; if not, you can be seated. And I'll start on this side, the front row. Your name and number please, sir?

JUROR 285: Wendell Sawyer; 285.

THE COURT: Yes, sir?

JUROR 94: Randolph Elvington; 94.

JUROR 168: Pamela Kelly; 168.

JUROR 25: Deborah Blanton; 25.

JUROR 117: Lora Gibson; 117.

THE COURT: Yes, sir?

JUROR 128: Curtis Hancock; 128.

JUROR 196: John Marden; 196.

JUROR 72: Robert Davis; 72.

JUROR 162: Brandy Jones; 162.

JUROR 57: Nancy Collins; 57.

JUROR 147: Wilhelmena Holmes; 147.

JUROR 258: Margaret Ramsey; 258.

THE COURT: Is there anyone else standing back there; there's some tall folks in the front?

JUROR: No, Your Honor.

THE COURT: Okay. Thank you. Now I'm again gonna ask you if that fact might affect your ability to be fair and impartial in this case, remain standing; if not, you can be seated?

(REPORTER'S NOTE: No jurors left standing.)

THE COURT: Thank you. Now is there any member of the jury panel gathered any information or received any information outside of this courtroom, this courtroom setting such that it would have caused you to either form or express an opinion about any matter or issue that might be involved in this trial; if that's true please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of the jury panel who is aware of any bias or prejudice that you might have, either for or against either the State or the Defense in this matter; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: I don't think that this would apply since these indictments were issued in March of this year, but is there any member of the jury panel who may have been a member of the Grand Jury that issued the indictments in this case; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of this jury panel who is a member of or a contributor to a group, which has as its primary concern the promotion of law enforcement and/or victim's rights? These groups would include, but not be limited to, such groups as Mother's Against Drunk Driving, Student's Against Drunk Driving, Citizens Against Violent Crime, the South Carolina Sheriff's Association, the South Carolina Trooper's Association, or other similarly oriented organizations; if that is true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Does any member of this jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed upon

your ability to be both fair and impartial to both the State and the Defense; if that's true, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: Does the State have additional questions for the jury panel?

MS. LIVESAY: No, sir.

THE COURT: Does the Defense have additional questions?

MR. MCCOLLUM: No, Your Honor.

JURY SELECTION:

THE COURT: All right. At this point in time, we, we have a list of potential jurors. I'm going to ask that the Clerk begin to call those names in the order in which they were selected by the random selection program. Now, in this case, the State is allowed five strikes; the Defense is allowed ten strikes. We will pick one alternate with the State having one strike; the Defense having two.

Madame Clerk, you can begin the jury selection process.

When your name is called, if you will please come forward, come right over here in front of the, my bench; turn and face the attorneys, and at that point in time, the attorneys will be in a position to exercise their strikes. If you have personal belonging, a pocketbook or other things, bring those with you, because if you're selected on the jury panel, you'll immediately have a seat over here to my right in the jury box.

Madame Clerk, you can begin.

CLERK: Juror Number 312, Marqie Spivey.

THE COURT: Come forward, please, ma'am, right here in front. Right about there; thank you, ma'am.

CLERK: What say the State?

MS. LIVESAY: Please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

THE COURT: Right over there. Thank you, ma'am.

CLERK: 319, Stephen Swieton.

What say the State?

MS. LIVESAY: Please present this juror.

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

256, Michele Ramont.

THE COURT: Thank you, ma'am.

CLERK: What say the State?

MS. LIVESAY: Please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

266, Lawrence Rice.

What say the State?

MS. LIVESAY: Please present this juror.

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

151, Nancy Hughes.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror on this case.

CLERK: You're excused from this particular case.

175, Carol Koutroubas.

What say the State?

MS. LIVESAY: Could you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

84, Crystal Dickerson.

What say the State?

MS. LIVESAY: Please present this juror.

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

162, Brandy Jones.

What say the State?

MS. LIVESAY: Please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

147, Wilhelmena Holmes.

What say the State?

MS. LIVESAY: Please present this juror.

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror on this case.

CLERK: You're excused from this particular case.

32, Christopher Bradey.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Excuse the juror on this case.

CLERK: You're excused from this particular case.

168, Pamela Kelly.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror.

CLERK: You're excused from this particular case.

321, Cindy Tobin.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror on this case.

CLERK: You're excused from this particular case.

207, Teresa McKinney.

MS. LIVESAY: Heather, what was that number again?

CLERK: 207.

MS. LIVESAY: 207; thank you.

CLERK: What say the State?

MS. LIVESAY: Please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

241, Rhonda Perry.

What say the State?

MS. LIVESAY: Would you please excuse this particular juror.

CLERK: You're excused from this particular case.

94, Randolph Elvington.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror.

CLERK: You're excused from this particular case.

289, David Schull.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

269, Kimberly Richardson.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please excuse the juror.

CLERK: You're excused from this particular case.

254, Donald Rabon.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

309, Donald, Donna Snoke.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

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

THE COURT: Yes, sir.

MR. MCCOLLUM: During the initial jury qualification, I think Ms. Snoke indicated that she was retired from the DA's office in the State of Ohio and would just like to ask, Your Honor, if you could ask her a couple of questions, if that

would affect her impartiality?

THE COURT: Any objection from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: All right. Ma'am, can I ask you -- you're still under oath from answering my questions. The fact that you have worked for a, I assume, a prosecuting agency in the past, would that affect your ability to be fair and impartial if you were to serve on the jury in this matter?

JUROR 309: No, sir.

THE COURT: So it would not affect you one way or the other; you could be fair to both the State and the Defense in the case?

JUROR 309: Yes, sir.

THE COURT: All right, thank you, ma'am. I find that she is qualified to serve.

MR. MCCOLLUM: Thank you, Your Honor. Please excuse the juror.

CLERK: You're excused from this particular case.

51, Tabitha Chapin.

What say the State?

MS. LIVESAY: Would you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

330, Tammy Vance.

What say the State?

MS. LIVESAY: Would you please excuse this particular juror.

CLERK: You're excused from this particular case.

115, Michelle Geertz.

What say the State?

MS. LIVESAY: Could you please present this juror?

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

THE COURT: All right. We are now selecting the alternate.

CLERK: 145, Christopher Hite.

What say the State?

MS. LIVESAY: Please present this juror.

CLERK: Defense?

MR. MCCOLLUM: Please seat the juror.

CLERK: Please be seated in the jury box.

THE COURT: Thank you, Madame Clerk.

Any objection to the jury selection process from the State?

MS. LIVESAY: No, sir.

THE COURT: Any objection from the Defense?

MR. MCCOLLUM: There are no objections from the Defense, Your Honor.

BY THE COURT:

THE COURT: All right. Now to the remaining members of the jury panel, I believe -- do you release them to go back downstairs; is that what they do?

CLERK: If you will tell them to call back tonight after six?

THE COURT: So they're free to go the rest of the day?

CLERK: Yes, sir.

THE COURT: All right. Well, that's good. I am going to release you for the rest of the afternoon. You should have a call in number to call back in to get information concerning your future service. If you don't have that number, go by the Clerk's Office and get it so you can call it. That's for your convenience as well as ours and they're asking that you call that number after 6:00 P.M. this evening. You should receive some additional instructions.

But I want to thank you very much for your cooperation in my courtroom today. At this time, you're free to go. Please go quietly. Thank you very much.

(REPORTER'S NOTE: Remaining jury panel excused and exits the courtroom. 12:49 P.M.)

THE COURT: All right. Ladies and gentlemen, you have been selected as jurors in this matter and I am mindful of the fact it's about 1 o'clock. So, we're not gonna start right into the trial of the case at this point in time. I'm gonna

release you and allow you to go to lunch and then we'll ask you to come back when I think the case will be in a position to begin.

Let me caution you about a couple of things as you leave the courthouse and you'll hear me caution you about these things every time you leave the courthouse or every time you leave the courtroom, I'll be caution -- cautioning you as well. You've been selected as fair and impartial jurors with an open mind concerning the issues that are involved in this case. When you start the trial of this case, you'll be asked to take an oath from the Clerk and from this Court and that oath is that you will swear to decide this case based upon the law and the evidence.

Now the only place you're going to hear evidence is in this courtroom from witnesses who have been sworn to tell the truth and they'll testify from this witness box right over here to my right and the only evidence in the case is the testimony of those witnesses and whatever documents or other pieces of evidence are put into the record through that testimony. The only place you're going to hear the law in this case is from me and I'll explain to you that I am going to be the sole judge of the law in this case and under oath that you've taken as jurors or when you take that oath, your oath is to decide the case based on the law given to you by the Court. For that reason and the reason I'm telling you

this is it would be highly improper for you to try to gather information about this case from any source outside of this courtroom.

I know we live in an information age and with the stroke of a few keyboard pieces, you can get information on just about anything in the world these days. But again, your oath is to decide the case based on the evidence presented in this courtroom. I can assure you that internet sources or news sources or any other sources that may have information about this case will probably have information in them that would not be admissible in a court of law and under the Rules of Evidence that have been developed in our legal system over hundreds of years and therefore, should not be considered by a jury in any fashion whatsoever in determining the guilt or the innocence of someone presented for trial in this Court. So again I'll caution you; don't try to gather any information on your own. If you happen to hear or see or be present when a news report is given about this case, turn it off, walk away, don't listen, don't watch. Again, I'm cautioning you don't attempt to gather any information about this case from any other source. When you come back to this courtroom under the oath that you've taken, I'll ask you about that and see if you've been able to follow my instructions in that regard.

Also I'm going to caution you throughout this trial not to discuss this case with anyone, not even among yourselves,

until I ask you to begin your deliberations. I hope that you can appreciate that even the most innocent conversation that you might have with someone about the issues that are involved in this case or the personalities that are involved in this trial might begin to color your ultimate decision in this case and I'm going to ask you not to do that. I want you to keep an open mind. I don't want you to begin to think about deciding anything in this case until such time as you've heard all the arguments from the lawyers, you've heard all the evidence that's been presented in the, in the case and you've heard my charge concerning the law in this case. Only then will you have all of the pieces that you need to begin an intelligent discussion concerning the issues that are before you during this trial. So don't discuss the case with anyone. Don't allow anyone to discuss it with you. It's okay to tell a friend or a family member you've been selected to serve on a jury and then tell them that you will talk about it once the case is over. Don't say anymore. Talk about the weather, talk about sports, whatever else you want to talk about; don't talk about this case.

One other important thing I want to tell you. Should anyone try to contact you concerning your service on this jury panel, please report that upon your return to the courthouse. tampering is a felony, I take it seriously and if someone attempts to influence your decision in this matter, I want to

know about it because I'll see that the appropriate investigations are begun and that the matter is handled properly.

So again my instructions to you are fairly simple in the long run. Don't try to gather any information on your own, don't discuss the case with anyone in any fashion whatsoever and if anybody tries to talk to you about the case, report it to me or to the Court when you return.

Now I've got some preliminary matters that we're going to go over with the lawyers, we've got to do lunch; so it's gonna be a little longer break than I would normally give the jury for lunch at this point in time. I'm going to ask you to be back in the jury room that's in use for this trial. Don't go back to the assembly room. And the Bailiff will show you where you report back to as you're leaving today. Come back to that location at 3 o'clock this afternoon. We should be in a position then to begin to work on starting the trial.

I want to thank each of you for your willingness to serve on the jury panel and help the Court system today. It's my personal belief that service on a jury panel is the second highest service that a citizen can render to one's government, the first of course being service in the armed military. We're not asking anybody to carry a weapon this week, but we are asking that you provide to service to the State and I want to thank you for your willingness to do so.

The Bailiff will show you out. Be back in the jury room at 3 o'clock. Thank you very much.

(REPORTER'S NOTE: The Jury exits courtroom. 12:56 P.M.)

THE COURT: All right. I'm gonna ask that the -- there was a question raised in chambers and I had a conference, brief conference with both attorneys before beginning jury selection. There was an issue, a point raised by the Defense that there was some discovery that was not -- he was not able to open from an electronic medium. I'm asking that the State make that available to the Defense during the break. I'll ask that the attorneys be available to take up pretrial matters at 2:30 and we will be in a position to resume at that time.

We're in recess till then. Thank you very much.

MS. LIVESAY: Thank you, Your Honor.

(RECESS - 12:57 P.M.)

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

(On the Record. 2:30 P.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Thank you very much. You can be seated.

All right, sir, did you have an opportunity to review the evidence that you'd requested?

MR. MCCOLLUM: I did, Your Honor.

THE COURT: All right. And are there any pretrial motions; first I'll start with the State?

MS. LIVESAY: Just one, Your Honor.

MOTIONS:

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

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

day.

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

MS. LIVESAY: I do, Your Honor.

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

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

Here you go, Judge.

THE COURT: Thank you.

All right. I'll hear from Counsel.

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

THE COURT: Yes, sir.

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

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

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

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

MS. LIVESAY: Yes, sir, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. LIVESAY: Yes.

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

MS. LIVESAY: Yes, sir.

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

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

MS. LIVESAY: I understand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any further motions from the State?

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

THE COURT: Defense motions?

Ma'am, you need to come forward?

MS. KNOWLES: I do, Your Honor.

THE COURT: Okay. Come on up.

MS. KNOWLES: I'm sorry.

THE COURT: That's quite all right.

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

THE COURT: Go ahead. Defense motions?

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. MCCOLLUM: I don't know if, if we can take them up or at the appropriate time depending on what the State introduces, but there's a couple of things. One is, there is a 911 tape, which I heard and on the tape the individual was the subject of or the alleged victim in the robbery, armed robbery and burglary allegation, is on the phone with a 911 operator saying things as they occur. As part of that, in addition, he says things that he heard somebody else say during the commission of the crime and then after that, there's a period of time where the 911 operator is asking him questions and he's asking somebody else in the apartment and then relaying the answer. So, at the outset, I object to all of it saying it's inadmissible hearsay and if we can take that up or however, Your Honor, wants to proceed.

THE COURT: We can argue that much. Is there a sub-motion to this? I take it when you said to begin with, you're gonna make this motion. Apparently, there's some other motion too.

MR. MCCOLLUM: Well, the only other -- I'm just talking about another piece of evidence, Your Honor, on another ---

THE COURT: Well, let's just deal with the 911 tape.

MR. MCCOLLUM: That was my question.

THE COURT: I haven't heard it, so I don't know exactly what's on it, but ---

MS. LIVESAY: You want me to play it, Your Honor?

THE COURT: Well, not necessarily. If my -- my first impression would be if someone's describing something as it happens, that it may fit within the res gestae exception under the hearsay rule.

MR. MCCOLLUM: Your Honor ---

THE COURT: Is that your position, ma'am?

MS. LIVESAY: Yes, sir, and along with that, I think you can tell from listening to the 911 tape that he's visibly shaken. He's actually on the phone as they're breaking in and talking to the victim and he actually says, I think they're leaving now. So he's actually telling 911 what's going on as it's going on. He's in his room with the door locked and he's visibly shaken, upset. He said one of them has a gun and they're wearing black hoodies, they're wearing masks, I don't know who these people are. It's not only res gestae; it's obviously excited utterance when you listen to the tape.

THE COURT: Okay. Do you feel that I should listen to the recording? I'll be happy to.

MR. MCCOLLUM: Your Honor, I'm sure it would be helpful.

THE COURT: All right. Rack it up and let's play it.

Counsel, I assume there's no objection to this being admitted as an exhibit for the purposes of this hearing; is that correct from the State?

MS. LIVESAY: Certainly.

THE COURT: Is that correct from the Defense?

MR. MCCOLLUM: No objection for this hearing, Your Honor.

THE COURT: Okay. Then it'll be admitted as Court's Exhibit for purposes of this hearing. You want to have that jacket marked as such. Thank you.

MS. LIVESAY: Thank you.

COURT'S EXHIBIT NUMBER ONE

MARKED FOR IDENTIFICATION

THE COURT: All right. You may proceed with playing it once you get it ready.

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

(REPORTER'S NOTE: Court's Exhibit Number One played for the Court.)

(On the Record.)

THE COURT: Does that conclude the recording?

MS. LIVESAY: That's the complete 911 tape, Your Honor.

THE COURT: All right. I notice there were some times when it went down and came back; is that just from inaction.

MS. LIVESAY: It's from where the file was so big they had to put together the segments of the call.

THE COURT: I see. Okay. All right. Now I'll hear from the Defense concerning that?

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

THE COURT: Yes, sir.

MR. MCCOLLUM: The Defense objects to the 911 tape on the

basis that it's hearsay. It's the beginning of the motion, Your Honor. I understand that there are other issues that may be involved in that. Now, it may be helpful if Your Honor can give me some idea, in other words, if the Court agrees that it is hearsay and we're solely talking about an excited utterance or if we narrow it down or, or I can go just make an argument without ---

THE COURT: Well, is there some portions -- I mean, there's portions of it that might be considered to be hearsay, but then there's others where someone's describing what he's -- it's a recording of someone describing what they're observing? I'm not sure that's hearsay.

MR. MCCOLLUM: In the, in the, on the tape, there are ---

THE COURT: Now, when he asks someone else a question, did he take any money from you, that could be classified as hearsay when he repeats what somebody has told him. But a good portion of that tape is what he observed looking out the window and trying to describe a car to the person, that's not hearsay. I mean, he's not quoting what anybody told him; he's observing things. That's direct testimony, if you want to look at it that way, a description of what he observed.

MR. MCCOLLUM: Your Honor, I would submit it's, it's a tape recording of a witness. And I would, I would submit that from the Defense position, it's not direct testimony; it's a recording made out of Court by a witness.

THE COURT: But if that witness -- what I'm referring to, if that witness were to testify and say that I made the phone call, that is my phone call, that's what I said that day. I don't know whose gonna present it. I don't know if the 911 officer is gonna present it -- I don't know how it's presented.

MR. MCCOLLUM: Well, at this point, Your Honor, I ---

THE COURT: Do you follow me?

MR. MCCOLLUM: I know. There may be ---

THE COURT: So there is a difference there.

MR. MCCOLLUM: It may just ---

THE COURT: Do you intend to present the gentlemen who made the phone call?

MS. LIVESAY: I do, Your Honor, and, and we could do it one of two ways. I believe it is an excited utterance and I believe it is just his present sense ---

THE COURT: I think there's a good chance that it is too. Let's go on to that argument. Let's assume that -- I'd say at least a portion of it -- portions of it could be classified as hearsay.

MR. MCCOLLUM: Okay.

THE COURT: So, as to those portions, let's talk about that.

MR. MCCOLLUM: But for clarity, the only part that could be considered an excited utterance would be the statement of

the caller, correct?

THE COURT: No, sir, I mean anything that occurs within the res gestae. The way I understand res gestae, it can be as it happens or immediately thereafter, as long as you're within that excited period of time when people don't have the time to reflect and make up stories. That's the idea about that type of exception is that people who are in the process of processing a very exciting or upsetting event, will or are more likely to recall and recount it truthfully than people who have time to reflect and make up a story. So it depends on how long that period of time lasts as to what is the res gestae. It's not just when something's happening; it's a period of time after it happens that res gestae could extend to. That's my understanding of it.

MR. MCCOLLUM: In regard to that, Your Honor, and quoting from State v. Davis, which is 638 S.E.2d 57 or State v. Davis, same case, 371 S.C. 170, excuse me, which is a South Carolina Supreme Court case.

THE COURT: What year?

MR. MCCOLLUM: 2006, Your Honor.

THE COURT: All right. Thank you.

MR. MCCOLLUM: Your Honor, in this particular case, the rationale for an excited utterance, which Your Honor is talking about, is the starting --, is that the starting events suspends the declarants process of reflective thought reducing

the likelihood of fabrication. And then in this particular case, Your Honor, I would submit that an excited utterance is something that someone blurts out. It's something that someone is startled and they say something in response. I would submit that what you hear here, is what I would describe as a frightened set of utterances. While he's afraid, certainly, under the circumstances and he sounds afraid ---

THE COURT: Well you can hear it in his voice.

MR. MCCOLLUM: He's afraid, so he's frightened, but I'm saying there's a difference between frightened and startled to the degree that it's an excited utterance. I would also submit that excited utterances by their very nature are short and very brief. In this particular case, he very methodically goes through answering the questions of the 911 operator. He does that. I would submit that the things that he says in response to her questions are not excited utterances. I would submit that excited utterances ---

THE COURT: Well, there's a little difference between statements made within the res gestae and an excited utterance. Those are two exceptions, not one. Am I not correct?

MS. LIVESAY: Yes, sir.

THE COURT: So I agree that there may have been excited utterances on that tape, but then I also believe that there are statements that are made within the res gestae.

MR. MCCOLLUM: Right and I ---

THE COURT: It may or may not have been excited utterances, but if they fall within that timeframe where someone is excited and still suffering from or feeling the effects of whatever they've observed or seen or happened; that's what we're talking about, within the res gestae; that's that period of time when it happens and for some period of time afterwards, where someone is excited; they're still in, feeling the effects of what happened and they are not, the reason for the exceptions, they're not likely to makeup or fabricate a story during that period of time.

That's what I understand the exception. I can't get online to quote what I've got here, but that's the way I understand it.

MR. MCCOLLUM: The -- so am I taking -- taking from the Court's statement that if they are admitted, they're being offered or, or admitted as the exception through the res gestae, as opposed to excited utterance.

THE COURT: No, sir, both. As I said, portions of that tape are excited utterances that are made while it's happening. Portions of that recording, I believe, still listening to the voice and the quivering in the voice and what I'm hearing are statements made within the res gestae.

MR. MCCOLLUM: Additionally, the Defense would object to statements made by the dispatcher.

THE COURT: I'll hear you on that because she may, at one time said, made the statement, which I found to be somewhat objectionable, it's an armed robbery.

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: Reaching some type of legal conclusion as to -- and I realize that may be a common way of describing what she believes it to be. Can we delete that from the recording?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: All right. I'll sustain your objection as to her inclusion that this is an armed robbery.

MR. MCCOLLUM: Thank you, Your Honor.

And let me know when you've ruled because ---

THE COURT: I just did.

MR. MCCOLLUM: All right. So, so, not to, not to be argumentative after the Court's ruling?

THE COURT: Oh, I understand that. I've ruled that the tape as a whole was, was spoken and said by the person making the phone call within the res gestae and it included excited utterance made, made when he was describing what was occurring. He was observing when it happened. So, I find that it meets that exception.

I'm saying that the dispatcher's conclusion that this was an armed robbery, I am excluding that as the prejudicial effect outweighing it's probative value. Since she didn't observe it; she didn't see it; she reached the conclusion on

he own to that affect. I'll exclude that.

MR. MCCOLLUM: I understand. Oh, I understand, Your Honor. So is Your Honor ruling that the questions and statements made by the 911 operator/dispatcher are those being admitted?

THE COURT: Yes.

MR. MCCOLLUM: And that's based on Your Honor's ruling that that was part of the res gestae and excited utterances?

THE COURT: Well, that's, it's part of the recording itself. I, I don't know under what circumstances the State's gonna offer it. I would suspect they're gonna bring in somebody from 911 to testify that this is the recording that we made that night, it's official record of a governmental agency. And if that's the case, it can come in for that reason as well.

Now again, how are you gonna present it? I guess we're gonna have to go through presenting it; I don't know.

MS. LIVESAY: Your Honor ---

THE COURT: Why don't we just rule on it as we go? That might be the easiest way for me to handle this because I'm having some difficulty in envisioning exactly how this is gonna be going down. I'm trying to handle it as a motion in limine, but maybe I should give up.

MS. LIVESAY: Your Honor, if it makes the Court more comfortable with this, I can bring somebody from 911 instead

of entering it through that witness and just have it entered as business record and then the witness can come up and say this is what happened, that was my 911 tape. And then the 911, the lady that works there can say these are kept in everyday business, ordinary business, that's why it's a recording. And this is kept as a business record in the course of ordinary business. I'll be happy to do that, Your Honor.

THE COURT: Uh-huh (affirmative response).

MS. LIVESAY: And then just have that witness be able to say that is my voice; I'm the caller.

THE COURT: All right.

MR. MCCOLLUM: Just as a point, Your Honor, it's my understanding that that witness wasn't indicated as being called originally, right?

MS. LIVESAY: I'm sorry?

MR. MCCOLLUM: Is, is the 911 ---

MS. LIVESAY: It is.

MR. MCCOLLUM: She's on here?

MS. LIVESAY: She is not on our witness list. She will not be testifying to anything or any evidence or facts. She's just gonna testify, I work at 911, I keep these records as part of the ordinary course of business.

MR. MCCOLLUM: Finally, Your Honor, if the person, if the caller is present in the courtroom whose going to testify, we

would submit that we could avoid all these issues simply by not offering the tape. He can testify as to what happened, what he felt, what he thought and those type things.

THE COURT: I'm not gonna tell her how to try her case. Whatever she wants to offer, if it's relevant information, if it's evidence, if it goes toward something that's in controversy or needs to be proven in this case, she has the right to present relevant evidence as do you. So no, I'm not gonna tell her she can't put it in.

MR. MCCOLLUM: In terms of the statements that where ---

THE COURT: I've denied that motion.

MR. MCCOLLUM: I understand, Your Honor. In terms of the statements that a third-party made, in other words, where the caller says, he said his name is Kenny, I would submit that that's not an excited utterance in that that's coming from someone else.

THE COURT: I've already ruled, I find that to be an excited utterance and I will let it in.

MR. MCCOLLUM: I'm sorry. All right, Your Honor. I would just like to -- if I might be allowed, Your Honor?

THE COURT: Yes, sir.

MR. MCCOLLUM: Just to cite a couple of cases into the record?

THE COURT: As to what?

MR. MCCOLLUM: Just to on this issue.

THE COURT: Well, if you wanted me to consider them, you need to give them before I rule, not afterwards. If you want me to reopen the ruling, tell me why I should?

MR. MCCOLLUM: Your Honor, the reason why I want you to reopen the ruling is because of what I previously argued, but I was just gonna ---

THE COURT: Well, if there's some case that you think I did not consider or I should consider, you've got to give that before I rule, not afterwards for it to be preserved.

MR. MCCOLLUM: Well, primarily, Your Honor ---

THE COURT: That's the way that I've always tried cases is attorneys inform the Court of the law that you want the Court to consider and the Court considers it. You don't put it on the record after I made a ruling, but I, you know, I'm, I'll be fair enough to you. Tell me what you want me to consider; I'll reopen the ruling.

MR. MCCOLLUM: Your Honor, primarily, I'd like to rely on State v. Davis, which is the case that I had previously sited.

THE COURT: Yes, sir, you did mention that case.

MR. MCCOLLUM: 371 S.C. 170. Also, just the U.S. Supreme Court case of Crawford v. Washington.

THE COURT: Tell me what that says; you've got to give me a copy of it or something for me to look at.

MR. MCCOLLUM: Your Honor, can I give it to you in the morning?

THE COURT: Well, if you want me to make a ruling prior to the trial, you've got to give it to me now or I can't -- I'm not gonna consider it. I don't know how else I could do it. You say the Court should be bound or affected by information that was given after I've ruled; is that what you're trying to do?

MR. MCCOLLUM: Your Honor, what I'm trying to do is make a motion so that it's sufficiently clear so that Your Honor can make ---

THE COURT: Then hand me the case.

MR. MCCOLLUM: Your Honor ---

THE COURT: Give me ---

MR. MCCOLLUM: Can I give you the site?

THE COURT: Well, since I can't get -- can you get a clerk to come up here and get this computer on line for me?

MR. MCCOLLUM: I apologize, Your Honor.

THE COURT: I've got it plugged up, but that's not working. I don't know what's going on.

All right. The State Court case that you cited was?

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

THE COURT: Yes, sir.

MR. MCCOLLUM: State v. Davis, 371 S.C. 170, which is a 2006 Supreme Court, S.C. Supreme Court case.

THE COURT: All right. I'm on State v. Davis, what do you want me to consider from that case?

MR. MCCOLLUM: The main thing, Your Honor, and this is, it may be redundant because I think Your Honor has already considered it, it's simply that an excited utterance is statement relating to a startling event brought under the stress of excitement caused by the event and it cites Rule 803 (2) and then the startling events suspends the Declarant's process of reflective thought and that's quoting just another case of State v. Dennis. That's just a quote from Dennis, Your Honor.

THE COURT: All right, sir.

MR. MCCOLLUM: And just to give you that site.

THE COURT: That would not change my ruling.

MR. MCCOLLUM: Dennis is just 337 S.C. 275.

THE COURT: All right.

MR. MCCOLLUM: And I don't want to belabor the argument, but it's the same as what I said before is that it's our position that he, he's in a state of reflection; he's describing what's going on and that's not excited utterance, Your Honor.

THE COURT: Well, again, I'll refer to the fact that as I was listening to the tape, I could hear in the Declarant's voice, nervousness, excitement. The circumstances certainly would have been a situation that would have produced that. He was sounded to me at his wit's end and my ruling wouldn't change.

MR. MCCOLLUM: Thank you, Your Honor.

MS. LIVESAY: Your Honor, just very briefly, because I know there were something as to -- and I could have misunderstood, it was something going as to what the dispatcher, what was saying?

THE COURT: Yes.

MS. LIVESAY: As to what portion is going to be edited out, is there gonna be -- have we ruled there's gonna be ---

THE COURT: I, I ruled that the statement that she made in the course of talking about it, she, and I can't quote her exactly, but she said something to the effect that this is an armed robbery or an armed robbery in progress.

MS. LIVESAY: And you want that portion to come out?

THE COURT: Yes.

MS. LIVESAY: If I may, Your Honor?

THE COURT: I don't know exactly what she said or how long that lasted ---

MS. LIVESAY: I know what you're talking about.

THE COURT: --- but you know what I'm talking about.

MS. LIVESAY: I do. And here's, here's my concern about it. The reason this lady came to the scene and arrested two guys with black hoodies on and jeans is because that's what she was told by the dispatcher.

THE COURT: Uh-huh (affirmative response).

MS. LIVESAY: Have a look out for these guys. Once she -

cuffs these guys, she immediately asked, do you have a weapon? She's asking that question because she was dispatched that this was an armed robbery; that's why she's asking this question. My concern is obviously the issue is ---

THE COURT: Can you help me with one thing? Can you -- in listening to the tape, it sounded as if she was talking to the caller ---

MS. LIVESAY: The dispatcher was talking to the lady that was dispatched ---

THE COURT: --- but was also talking to someone else, who was talking to the police officers. I never heard a police officer talk in this conversation.

MS. LIVESAY: That's right.

THE COURT: They didn't patch him in to this conversation. So I take it that she was relaying information to a third party in the 911 office who was dispatching the police officer.

MS. LIVESAY: Right and you hear on her in-call video, which I'm gonna play, they're dispatching to her that this is an armed robbery.

THE COURT: Well, I'm not ruling on that because that may go to her state of mind as she approached the, that's a whole different issue.

MS. LIVESAY: But we can get into it as far as her testimony, we're not taking out if she can say, my state of

mind was ---

THE COURT: I haven't heard that or have not -- no, I haven't ruled on that. I have ruled that the person talking to the caller ---

MS. LIVESAY: Okay.

THE COURT: --- just characterizing what she was hearing ---

MS. LIVESAY: Okay.

THE COURT: --- as being an armed robbery would be an improper thing to have happen.

MS. LIVESAY: I understand. Okay.

THE COURT: Because that is based on her conclusions, her conjecture. She was not present and was not observing the situation.

MS. LIVESAY: I understand. I'd be taking, I just didn't know how far we were going.

THE COURT: That information would also -- the prejudicial effect on that as to the Defense would outweigh its probative value; so I'm excluding that.

MS. LIVESAY: Okay, so the portion we want is when she's saying that's a armed robbery on ---

THE COURT: Now, there's another issue raised that we need to talk about.

MS. LIVESAY: Okay.

THE COURT: Because the Defense has mentioned the fact

that you did not list the 911 person as a possible witness. However, I'm not sure you anticipated the extent of the objections at this point in time. So let's discuss that. You, you, you -- I think you stated you would bring that person in to testify?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: And I'm gonna find out from the Defense if they're objecting to that now that they've raised the issue through their motions. Yes, sir?

MR. MCCOLLUM: Your Honor, again I mean to the extent that it's appropriate, obviously, we would object to the admission of evidence if the proper protocol or procedure were not followed.

THE COURT: Well, now I'm more concerned about the presentation of a witness that was not on the witness list.

MR. MCCOLLUM: That's what I'm saying.

THE COURT: Well, then is that your objection that you're saying that that person shouldn't be allowed to testify because they weren't on the list?

MR. MCCOLLUM: Yes.

THE COURT: All right. What I'm gonna do is, because I would take it the State did not understand that you would -- that that was gonna be necessary until the objection was raised -- am I correctly stating the situation; is that right?

MS. LIVESAY: Um.

THE COURT: You weren't aware that person might be necessary until the objections have been raised?

MS. LIVESAY: You mean the 911 lady?

THE COURT: Yes.

MS. LIVESAY: Yes, sir. I didn't anticipate calling her.

THE COURT: I'm going, I'm going to allow you to present her. I don't find that that would be prejudicial in the case. However, I will -- you have to make her available to the Defense before she testifies so that they can ask questions. Now, if there's something else that's coming out of her testimony, that they weren't aware of, you can renew your objection at that time.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: I won't allow her to testify today, but I don't think we're gonna get there anyway. So that will give you overnight, if you need to talk to her, to talk to her.

All right. Any other motions before we bring the Jury in?

MR. MCCOLLUM: Your Honor, the only other thing would be as this Officer Boyd, as she's responding, when she's still some distance away, she turns on the video recorder in her patrol car.

THE COURT: Okay.

MR. MCCOLLUM: And so at some point -- and she's driving along with her siren and blue lights on going through traffic

heading to the scene. At some point, I believe in that, there's some talk between her and the 911 dispatcher, which would be the same objection I raised earlier regarding hearsay in that regard. And then finally, when she arrives at the scene, she makes the arrest of Mr. Kenneth Bell, Chris Bell and the other woman, Tonie Pasquale, I think. And so they're, you know, ordered out of the car, ordered to lie down on the ground, she's there alone, other officers are arriving, but they're not there yet.

THE COURT: Uh-huh (affirmative response).

MR. MCCOLLUM: The other officers arrive. She takes Mr. Kenneth Bell and he's lying on the ground, she handcuffs him behind his back, she stands him up. And then she asks questions about him saying, do you have a gun. Is there a gun; do you have a gun? He says something to the effect of there's no gun and then he says in response to her question, I have one bullet in my pocket. So we object to that being introduced simply because as I understand the law, once he's taken into custody, he's being questioned without the benefit of Miranda. We would just object to his statements made right there on the tape.

THE COURT: Ma'am?

MS. LIVESAY: Your Honor, my understanding is it takes both the custodial arrest and an interrogation before it's a violation of his rights. There was no interrogation. This

officer was called out to an armed robbery from two guys with black hoodies and jeans. She arrived, she sees two guys with black hoodies, jeans and socks over their shoes. She then asked them to get down; she makes the arrest. She knows already that the dispatcher has said this is an armed robbery; there's a gun; there's a semi-automatic weapon. She then, for officer safety and everybody else's safety says, Is there a weapon on you? She asks twice, Is there a weapon? The Defendant then responds no, but there is one bullet in my left pocket. That is the only questioning that takes place. She then later puts him in the car, reads the Miranda, she says, Do you want to talk? H says, No, ma'am. That questioning is not an interrogation. That is merely for officer safety and his safety and everybody else's safety in that apartment complex. They were arrested in an apartment complex and in fact, after they're arrested, you see one person was just walking in the parking lot, walking about. Obviously, she's asking for officer safety. She's not asking him, Why are you here? She's not asking him, Did you rob him? Did you take anything? She's not asking any of those questions. It's not an interrogation. It's merely for her safety and everybody else's safety, Does he have a weapon?

THE COURT: Officer safety, you want to argue the point?

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

THE COURT: Yes, sir.

MR. MCCOLLUM: I would just like State v. Easler, which is 322 S.C. 333, and then also -- which I guess is the seminal case on when a person is in custody on a traffic stop arrest. U.S. Supreme Court Berkemer v. McCarty which is 468 U.S. 420. I'm not in any way questioning the officer's procedure. I am not in any way saying that the officer did anything other than what she was required to do. What I'm saying is that to introduce evidence from this Defendant after he was handcuffed. Now clearly when he laying on the ground at gunpoint, you know, he's in custody, he's not free to leave. But in any event, whether even that were not true, Berkemer v. McCarty and State v. Easler, I think any number of cases cited, would say that clearly when an individual is handcuffed, they're under arrest and that, at that point, the Miranda v. Arizona rights come into play. So for them to, I mean, I'm not questioning the procedure of the arrest or anything like that, I'm simply saying that his statements, we're asking that they not be allowed into evidence.

THE COURT: What was the site on Easler?

MR. MCCOLLUM: Your Honor, Easler is 322 S.C. 333; that was I think a felony DUI case.

THE COURT: I've got it at 327 S.C. 121?

MR. MCCOLLUM: Maybe I have it wrong, Your Honor. There may be more than one opinion. What's the site you have, Your Honor?

THE COURT: 327 S.C. 121, 1997, Supreme Court Case.

MR. MCCOLLUM: Okay. That's the Supreme Court site for it.

THE COURT: All right. I'll reserve my ruling on that until I've had a chance to look at some other cases.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Thank you. Anything else?

MS. LIVESAY: Your Honor, I agree with Mr. McCollum that they were in custody; I'm not arguing that they weren't. I'm arguing that it takes both, under Miranda; it takes custodial arrest and an interrogation. My argument is this is not an interrogation.

THE COURT: Well, that's what I'm going to look at because the Easler case involved a felony DUI. The police officers arrived at the scene, the wreck had already happened, it was over. They walked up to two witnesses or two people who identified the gentleman in question as the driver and they began to ask him questions apparently told him to come over here regarding the wreck itself and what happened. That's what happened in Easler.

MS. LIVESAY: That's right.

THE COURT: That's different, I think, I think from what's going on here, but I would like to find some cases that make that distinction and so I'm going to be looking to see if I see those. If you've got something you want to point me

toward, I'd be happy to read them.

MS. LIVESAY: I'll give you some cases on that, Your Honor. I'm sorry I didn't have that with me.

THE COURT: Okay. So if you want to present me with some cases on that point, I do know that officer safety and safety of the scene is an important matter that police are allowed to secure the scene to be sure no one's in danger of being shot or injured. I've got a feeling that there are cases out there that say something to that effect ---

MS. LIVESAY: Yes, sir.

THE COURT: --- and I wanted to take a look at that.

And I don't think you're planning on calling her this afternoon, are you? The arresting officer's not gonna be called this afternoon?

MS. LIVESAY: Ms. Boyd is the arresting officer, Your Honor, she'll be the one testifying regarding ---

THE COURT: Oh, I know that, but you're not planning on calling her as a witness this afternoon, are you?

MS. LIVESAY: Today, Your Honor?

THE COURT: Yes.

MS. LIVESAY: The only problem is the first witness was gonna be the 911 caller, so I'm gone need some time to edit that tape to make that ---

THE COURT: Oh, I understand. Well, we can go ahead though with swearing the Jury, I can make my opening comments

and you certainly could make your opening arguments before 5 o'clock. You want take over till in the morning.

Anything else that we need to take up from the Defense prospective?

MR. MCCOLLUM: Not at this time, Your Honor.

THE COURT: Pretrial?

MS. LIVESAY: Your Honor, and just if I can, after I edit that tape, just for comfortability, I would like to give Mr. McCollum a copy and have him play it.

THE COURT: I'd prefer that you do that and perhaps we'll play it back in Court and be sure that everybody's in agreement before we do that. So I may start a little later in the morning so we can get that taken care of.

MS. LIVESAY: Thank you.

THE COURT: All right. Give me just a minute.

All right. You can bring the Jury in.

MR. MCCOLLUM: Your Honor?

THE COURT: Yes.

MR. DEBUSK: Can I take the Court's exhibit so we can make a copy of it and do the editing process?

THE COURT: Oh, certainly.

MR. DEBUSK: Thank you, Your Honor. I'll try to get that done this afternoon ---

THE COURT: Thank you.

MR. DEBUSK: --- and get it back to the Court. Thank

you.

THE COURT: We'll need that copy back.

MR. DEBUSK: Yes, Your Honor, I will bring it back.

THE COURT: Thank you.

(REPORTER'S NOTE: Jury enters courtroom. 3:39 P.M.)

BY THE COURT:

THE COURT: All right. The record will reflect that the Jury has returned to the courtroom. I trust everyone had a good lunch. I want to thank you for your patience with me this afternoon.

First of all, I want to inquire concerning your behavior when you left the courthouse. Did any juror have any difficulty with complying with my instructions during your absence; if you did, please stand. It appears that all jurors have been able to comply with my instructions during their absence from the courthouse.

I told you that upon your return to the courthouse, it would be necessary that you take an oath. This oath -- you've been sworn several times today concerning your responses to our questions, but this oath has to do with your duties and responsibilities as jurors in this case. So at this time, Madam Clerk, please swear the Jury panel for me.

CLERK: Please stand and raise your right hand?

(REPORTER'S NOTE: Jury is duly sworn.)

CLERK: Thank you.

THE COURT: Please be seated. Now if any juror refused or failed to take the oath just administered by the Clerk, please stand?

(REPORTER'S NOTE: No response.)

THE COURT: And the record will reflect that all jurors have been sworn concerning their responsibilities in this case.

Now before we begin the trial of the case, there's some things that I would like to go over with you and I'm going to go over this, these things with you with the idea that most of you have never been in the position of sitting on a jury in the actual trial of a case. For those of you who have never been in this position before, probably most of which you would know or understand about what goes on in courtrooms and what juries do. You might have learned from television shows you've watched or movies that you've seen, maybe books you've read, perhaps some snippets you see on news reports concerning trials, things of that nature. And while those sources of information are always interesting, I hope you realize that in the case of things like television and movies, those are intended to entertain you. They have very interesting plots and twists and turns in the storyline and it never ceases to amaze me that you can have an event occur and a case be tried and ended in the space of an hour on television. They still have time to stop about four or five times for commercials and

probably you realize from what you've already found out here at the courthouse today that that's not the way real court works. It doesn't move quite that fast and that's because those things are intended to entertain you. They're designed to keep your attention so that you'll watch those commercials that they show you during TV, during on the television. Now what you're engaged in today is intended for anything but your entertainment. What you're engaged in and I hope you realize is a fundamental part of our democracy. If you were to look around the world today at most of the justice systems that exist in the world, you would find that most of those systems do not allow direct participation by citizens in the decision making process that goes on in those courtrooms. Our system is different. It's based on the, the right of an individual to a trial by jury. That right was first embodied in a document called the Magna Charta. That document was written and signed in England in the year 1215. So that means in two years, it will have its eight hundredth birthday. So as you can see, the right to a trial by jury is a longstanding tradition in our legal system and the system upon which our system is based. And that is the direct participation by citizens in the decision making process that goes in our courtrooms.

What you're engaged in is a search for the truth. It's an effort to see that justice is done between the parties that

are before this Court. In this case, The State of South Carolina, which has lodged charges against one of its citizens, the Defendant in this case. Now if I had stopped you in the hallway this morning and told you that you were gonna be engaged in a search for the truth and I had said well what would you expect a search for the truth in any matter to be like. I would suspect you would have said well, if you're searching for the truth, you ought to be slow, you ought to be deliberate, sometimes you ought to go over things two or three times to be sure you get it right and I think that's what you're going to find in this case. That's what a search for the truth should be. It should be slow, it should be deliberate, it should be an effort, again to see that justice is done. Sometimes it'll be repetitive. It's gonna be the exactly the opposite of what you see in the movies and on television.

This courtroom, I can tell you, is a place of honor. It's dedicated to the preservation of citizen's rights under the laws and the constitution, both of this state and of the United States. Some people believe that our justice system is one of the better ones ever devised on the face of this earth and I'm gonna tell you that anything devised and run by man is never exactly always perfect. But again, it's an honest and a sincere effort to see that justice is done in the matters that are going to be placed before you.

Now the attorneys that are involved in this case are here to represent their client's interests. I'm sure they'll do an excellent job in presenting their client's cases before you during this trial. But I will point out to you that first and foremost, these attorneys are also officers of this Court. At some point in time, they appeared before some tribunal in this State and they took an oath. That oath is prescribed by the rules of this Court. It's required to be taken of every attorney who appears in this Court. Part of that oath is that they will assist you in your search for the truth. For that reason, you could expect that they will act in a reasonable and a professional and an ethical manner in the presentation of their client's cases before you during this trial. I'm going to remind each of you that you've come in front of this Court today and you have taken an oath. An oath to decide this case based solely upon the law and the evidence presented in the Court. You're expected to act in a reasonable and a professional and an ethical manner in the discharge of your duties as jurors. I told you earlier and again, it's my firm belief that service on a jury panel is the second highest service that any citizen can render to your government. And again, I want to thank you for your willingness to accept the responsibilities that you've accepted by serving on the Jury this week in Horry County.

Now what I'm telling you now is not intended to be a

charge concerning the law in this case. Once you've heard all the evidence, all the arguments by the lawyers, all of that's been put into the record, at that point in time, I will charge you concerning the law that you're to apply in this matter. I am going to try to explain to you the procedure that we'll follow, what your duties and responsibilities are in trying this case and the duties and responsibilities of the other participants in this trial.

Now earlier I went over with you the indictments in this case. There are several. I'm not going to read them to you again, but I will again explain to you that the fact that there has been an indictment issued in this matter is not evidence in this case, cannot be used by you as evidence of anything in this matter. It's simply the document that informs this Court of the charges to be tried, it informs the Defendant of the charges that have been lodged against the Defendant.

Now the Defendant has pled not guilty to each and every one of those indictments and under the law and the Constitution of this State and of the United States, that plea places the burden of proof solely upon the State. It's the State's obligation in this trial to prove the allegations contained in the indictments by proof beyond a reasonable doubt. At the close of the trial, I'm going to explain those concepts to you in more detail during my charge on the law,

but I will tell you during this trial and I will explain to you later why that's important. Another reason that's important, the burden of proof does lie with the State in this matter.

Your purpose as jurors is to find and determine the facts in this case and I'm going to tell you on several occasions and it's true, you are the sole and exclusive judges of the facts in this case. I'm going to serve as the presiding officer during this trial. It will be my responsibility during the trial from time to time to rule on questions of evidence or the appropriateness of questions that might have been asked. I will caution you now and I will at the close of the trial, don't take from anything that I say or do in the discharge of my duties as the presiding officer in this case, to somehow to indicate to you or suggest to you that I have an opinion one way or the other as to how you determine the facts in this case. I will tell you now and I'll tell you later, the law does not allow me an opinion on that subject and I have no opinion as to how you determine the facts in this case. You are the sole and exclusive judges of those matters. It's your job to determine the facts from the testimony you hear and the other evidence that goes into the record of this case. It's up to you, the Jury, to determine the inferences which you feel can be properly drawn from the evidence that you've heard. And it's especially important that you do your

duty as jurors in this case diligently and conscientiously because under our system of justice, ordinarily there's no means by which an erroneous determinations of fact made by a jury can be corrected.

Now the same law that makes you the sole judges of the facts, makes me the sole judge of the law in this case. The law, as I give it to you at the close of the trial, is the only law that you can use in determining the outcome of this case. For that reason, if you walked into this courtroom today with some idea or notion as to what the law is, or you have some belief as to what the law ought to be, I will tell you that under your oath as jurors, you should leave those ideas and notions outside of the jury room before you begin your deliberations. It's up to you to take the law as I give it to you, then apply that law to the facts as you determine the facts to be. That should put you in a position to discharge your duties as jurors in this case.

I've told you already and I'll remind you every time you leave the courtroom not to begin any discussions about the facts until I ask you to do so and I'll only do that at the close of the trial. So again, don't discuss this case with anyone and don't allow anyone to discuss it with you. And again, don't try to gather any information about this case from any other source.

It's important that you keep an open mind and not decide

any issue in the case until you've heard all the evidence, all the evidence has been presented and the parties have had a chance to make their closing and final arguments and I've instructed you on the law. When the case is turned over to you, it will be your solemn responsibility to determine the guilt or the innocence of the Defendant and your verdict must be based solely upon the evidence as it's presented to you during the trial and the law as I instructed to you during the trial.

Now we're gonna begin the trial in a few minutes and I'm going to allow the attorneys to make what's called an opening argument or statement. At that time, they will explain to you perhaps what they expect to prove or what they think the case is about or the issues they think that you'll be faced with. At the close -- and that's the first time they will be allowed to directly address you, the Jury. At the close of the evidence, once all the evidence has been put in, the attorneys will again have an opportunity to talk directly to you, the Jury, and at that time, they will go over with you their closing or final argument where they'll sum up the evidence that you've heard from their client's perspective. I'm going to tell you now however that statements made by lawyers during a trial do not constitute evidence in the case and cannot be used by you directly in determining the guilt or the innocence of the Defendant. The only evidence that you hear during the

trial is the testimony of witnesses. Those witnesses have to be sworn to tell the truth. They'll testify from the witness stand and whatever documents or other evidence is allowed into the record of the case, through the testimony of those witnesses. That's what we refer to as evidence. There also can be pieces of evidence put into the record by agreement of the counsel. If the attorneys agree that something should go into evidence, then matters can be put into the record in that fashion as well.

Now during the trial, from time to time, there may be some matter concerning the evidence that I believe may result in a discussion of something that may not be admissible under the rules that govern the admissibility of evidence. If I believe that the discussion I have with the lawyers about that issue will go in that direction, I will ask you to leave the courtroom while we discuss those particular issues. Don't take from the fact that I've asked you to leave the courtroom for that purpose, to somehow indicate to you that I have an opinion about the facts. Again, I've got a job and a responsibility and that is to see to it that properly admitted evidence under the rules that govern those matters, is considered by you in reaching a verdict. And again, if we're going to discuss something that may not be admissible and shouldn't be considered by you, I'll ask you to leave the courtroom while we discuss that matter. When we've finished

our discussions and I have made a ruling, I will ask you to come back into the courtroom. I'll announce the ruling and we'll proceed. But again, don't try to take anything from those situations somehow to indicate to you that I have a preference as to how you determine the facts in this case. I told you I do not have a preference or an opinion on that subject.

Now I've told you that you're the sole judges of the facts and in determining what the facts of any case is that's presented to a jury, it's going to be necessary that you decide the credibility and the believability of the testimony that you hear. That's what credibility means; it means believability. I'm going to ask you to use your own good common sense in making that determination. You do that every day. Every single day of your life, you make common, sensible decisions as to what you choose to believe and what you choose not to believe. Serving on a jury is no different than those particular situations because I want you to use your good common sense in deciding the credibility and the believability of the testimony that you hear. You have the right to consider anything that's in the record that will help you evaluate the testimony of the witnesses. That means it's your duty to pay attention during the trial. Pay attention to the witnesses, how they testify. Pay close attention to what goes on the courtroom. For that reason, try not to let your

thoughts wonder, try to pay attention to what's being said and give strict attention to the testimony in the case.

I will tell you that in deciding the credibility or believability of the testimony that you hear, you have the right to consider such factors as whether or not a witness might have a stake in the outcome of the case, whether or not a witness may be biased or prejudice one way or the other, whether or not the witness actually had the ability to know the facts about which that witness testifies. And in every courtroom I've ever been in and I've been in a lot of them in the last thirty-five years, the witness stand is always right in front of the jury box. The reason for that is you can see the witnesses and evaluate how they testify, the way they speak, how they deliver their testimony. Again, you can consider any of those factors in whatever manner your common sense tells you to consider those, but try to pay attention and make an evaluation of the testimony as you hear it. Be in a position to discuss that with your fellow jurors during your deliberations.

Now I do not appoint a foreperson of the jury until such time as I close -- as I give you my charge on the law at the close of the trial. I do that for one reason and actually a couple of reasons. But one reason is I want to stress to you that at the close of the trial, your verdict will have to be unanimous. Each and every one of you must agree on the

verdict before it's the verdict of the Jury. Therefore, there's no one juror that's more important than any other juror. I don't want to appoint a foreperson and another juror take the attitude, well, you must be the smartest guy, I'll let him listen and I want pay attention. I want you to all listen. I want you to all think you might have to lead the discussion of the Jury at the close of the trial. I'll appoint that person at the close of the trial, but even when I do, that person only leads the discussion. All jurors should participate in the decision-making process. That person has no greater say than any other juror in the close of the trial. And that person will be asked to write the verdict. They will also be asked to submit questions for the Court if that's necessary. So if at any time any of you have any problems during the trial, make the Bailiff aware and I'll address those things individually for you if anything comes up. I don't expect that to happen, but I'll appoint the foreperson at the close of the trial during my closing arguments. So, don't think I've forgotten that, that's just the way I've always done it and that's the way I'll do it in this case as well.

Now I want to be sure I haven't violated anyone's rights in what I've told you thus far. Does the State have an objection to my opening comments?

MS. LIVESAY: No, sir.

THE COURT: Any objection from the Defense?

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

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

MS. LIVESAY: Thank you, Your Honor.

OPENING BY MS. LIVESAY:

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

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

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

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

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

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

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

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

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

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

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

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

iron and semi-automatic weapon that was black-and-silver. That's what you're gonna find out.

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

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

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

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

Thank you for your time.

THE COURT: For the Defense, you may proceed.

MR. MCCOLLUM: May it please the Court?

THE COURT: Yes, sir.

OPENING BY MR. MCCOLLUM:

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

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

Thank you very much. You're free to go for the evening. (REPORTER'S NOTE: Jury exits the courtroom. 4:15 P.M. The following takes place outside the presence of the Jury.)

THE COURT: All right. Anything from the State before we break for the evening?

MS. LIVESAY: Nothing from the State.

THE COURT: Anything from the Defense?

MR. MCCOLLUM: No, Your Honor.

THE COURT: I believe the Defendant has been in custody; is that correct, up until this time or has he been out on bond?

MS. LIVESAY: He has not been placed into custody, Your Honor.

MR. MCCOLLUM: He's out on bond, Your Honor.

THE COURT: He is out on bond?

MR. MCCOLLUM: Yes, sir.

MS. LIVESAY: Yeah, he's been out on bond.

THE COURT: Does the State wish for him to be placed in custody at this point?

MS. LIVESAY: I don't have a problem that he's out on bond unless the victims have some sort of -- as long as he understands that he'll be tried in his absence.

THE COURT: Oh, I'm gonna make that clear to him. I understand.

Sir, I'm gonna -- not gonna require that you be in

custody during the trial. I will, however, warn you that your case has begun. We're gonna start at 9 o'clock in the morning to be sure we have that exhibit straightened out. So you need to be here at that point in time. I will tell you that if you fail to appear at that time, we will continue with the trial in your absence. Also you will be subject to the issuance of a bench warrant for your arrest. Do you understand what I've just told you?

MR. BELL: Yes, Your Honor.

THE COURT: All right. You should be in the courtroom then in the morning at 9 o'clock.

MR. BELL: Yes, Your Honor.

THE COURT: Court's in recess till then. Thank you very much.

MS. LIVESAY: Thank you, Your Honor.

MR. MCCOLLUM: Thank you, Your Honor.

(RECESS - 4:17 P.M.)

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

AUGUST 13, 2013

(On the Record. 9:03 A.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Good morning. Have you had an opportunity to review the recording?

MR. MCCOLLUM: Yes, sir.

THE COURT: All right. Are you ready to play it for me so I can hear it?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: I'll be happy to hear it.

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

(REPORTER'S NOTE: Redacted version of 911 recording played for the Court outside the presence of the Jury.)

(On the Record.)

THE COURT: All right. After reviewing the redacted recording, it's my finding that it has been redacted as I requested. It would still be by ruling that this recording would constitute except -- be admissible as an exception to the hearsay rule under both a present sense impression, that is a statement describing or explaining an event or condition made while the Declarant was proceeding the event or condition or immediately thereafter and also as excited utterances, that is a statement relating to a startling event or condition made while the Declarant was under the stress of excitement caused by the event or condition. So, it's my ruling that it would be admissible as an exception to the hearsay rule. For those two reasons, that is provided that it is properly authenticated by the people who were speaking and a recording. So, you'll still have to have those people authenticate that that is an accurate recording of what was done subject to the Court's deletions.

Anything further concerning the recording from the State?

MS. LIVESAY: No, sir. Nothing from the State, Your Honor.

THE COURT: And anything further from the -- concerning the recording from the Defense?

MR. MCCOLLUM: No, other than, Your Honor, that clearly the record shows that I had objected to it. Also, as we're in the trial in front of the Jury, it's my understanding that I'm required to make a contemporaneous ---

THE COURT: Yes, sir. I don't mind you making objections concerning it. The only request is if you make objections and it's based on authority that I receive that authority prior to the time that I'm asked to make a ruling on it.

MR. MCCOLLUM: I understand, Your Honor. When I do the objection, it's just -- I'm not going to -- I'm not asking to argue it further.

THE COURT: No, sir. You have the right to renew your objection and I'll not that on the record.

MR. MCCOLLUM: I'll just do it for the record.

THE COURT: And I do intend to inform the Jury that I have reviewed the recording and have ordered certain corrections in order that comply with the rules as I have found.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: I'll inform them that it has been slightly

altered at my ruling -- based on my ruling.

COURT REPORTER: May we mark it ---

THE COURT: Yes. Let's go ahead and mark that recording as an exhibit for this hearing.

Ms. Livesay, we need to mark that recording as an exhibit for this hearing.

MS. LIVESAY: At this time, could we call Martha Carmichael to the stand, Your Honor?

Do you want to do this in limine or do you want ---

THE COURT: You're talking about authenticating it?

MS. LIVESAY: Yes, sir.

THE COURT: No, I want to do that during the trial.

MS. LIVESAY: Okay.

THE COURT: But I do want to mark that exhibit, the new one for this hearing.

MS. LIVESAY: I will, Your Honor.

THE COURT: You need to bring it up now. She's got the label ready.

MS. LIVESAY: I don't have a sleeve for it. Sorry.

COURT'S EXHIBIT NUMBER TWO

MARKED FOR IDENTIFICATION

THE COURT: All right. Is there anything else we need to take up before we begin with the presentation of evidence? From the State's perspective?

MS. LIVESAY: Not from the State at this time, Your

Honor.

THE COURT: From the Defense?

MR. MCCOLLUM: Not from the Defense, Your Honor.

THE COURT: All right. We'll be in recess then until the Jury is completely present.

Thank you very much.

(Recess - 9:14 A.M.)

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

(On the Record - 9:31 A.M.)

THE COURT: Ms. Livesay, is the State ready to proceed?

MS. LIVESAY: We're ready, Your Honor.

THE COURT: Mr. McCollum, the Defense ready?

MR. MCCOLLUM: Yes, sir Honor.

THE COURT: All right. Bring the Jury in.

(REPORTER'S NOTE: Jury enters courtroom. 9:33 A.M.)

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

I trust everyone had a good evening last night and as always, I will be checking concerning your ability to follow my instructions. If there was any juror who either failed or refused to follow the instructions that I gave you when you left the courthouse yesterday, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. The record will reflect that all jurors have been able to comply with the Court's instructions.

When we finished the day with you yesterday, we had completed the opening statements by the attorneys and at this point in time, the State has the right to present its evidence.

You may call your first witness.

MS. LIVESAY: Thank you, Your Honor. At this time the State calls Martha Carmichael to the stand.

THE COURT: Please come forward, ma'am, if you would, to be sworn. Right here with the Clerk.

MARTHA GENEVA CARMICHAEL, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

CLERK: Thank you. Please be seated.

THE COURT: Ma'am, once you're seated and comfortable, state your name please?

MS. CARMICHAEL: Martha Geneva Carmichael.

THE COURT: Ms. Livesay, your witness.

MS. LIVESAY: Thank you, Your Honor.

DIRECT EXAMINATION OF MARTHA GENEVA CARMICHAEL BY MS. LIVESAY:

Q: Ms. Carmichael, where are you currently employed?

A: Horry County 911 Communications.

Q: And how long have you been employed there?

A: Twenty years.

Q: And what kind of training have you undergone as an employee with 911?

A: I have gone to State 911 Certification with the Criminal

Justice Academy, certified training officer and certified EMD instructor.

Q: And what are your current responsibilities at 911?

A: Currently, I interview and hire new applicants. I train all new perspective employees and I am the records custodian.

Q: And if you don't mind, explain to the Jury what happens when a call is made to 911?

A: When we receive a call in 911, we have ANI and ALI, which it's a computer screen that displays the caller's location as well as the telephone number. If they're calling from a residence, it'll show the subscriber's name for the telephone number as well as the address. If they call from a cell phone, we get a cell phone tower location and telephone number as well as the caller's number. And we will interrogate the caller, see what their needs are and put the information into a CAD system, which is a computerized abled dispatch and then we'll send the appropriate response.

Q: And is every call made to 911 recorded?

A: Yes.

Q: Okay. And are the recordings kept as a business record at 911?

A: Yes.

Q: Okay. And is that part of 911 activity to keep these calls as business records?

A: Yes, it is.

Q: Okay. Now what manner are these calls kept in order to ensure that they are not tampered with?
A: They're recorded on DVD and then they're transferred from the DVD to a hard drive.
Q: Okay. And are records kept as to where the call is made from and at one time the call was made?
A: Yes, it's maintained in our CAD.
MS. LIVESAY: Your Honor, do you mind if I approach the witness?
THE COURT: You may.
MS. LIVESAY: Thank you.
BY MS. LIVESAY:
Q: Ms. Carmichael, I'm showing you what's been marked as Court's Exhibit Number Two. Do you recognize what I'm showing you?
A: Yes.
Q: And if you don't mind, tell the Jury what that is?
A: It's a copy of the recording from the call on February the 2nd.
Q: Okay. And have you listened to that recording?
A: Yes.
Q: Okay. And has it been tampered with at any form or fashion?
A: No.
Q: Okay. And was that call kept, as a usual business record

at 911?
A: Yes
Q: And was it kept in the usual protocol to keep it from being tampered with?
A: Yes.
Q: Okay. Does that tape accurately reflect the call that was made to 911 February the 2nd?
A: Yes.
Q: Okay. And is that the same call that was made from Hopkins Circle?
A: Yes, it is.
Q: And the incident that is on that call, did that incident occur in Horry County?
A: Yes.

MS. LIVESAY: Your Honor, at this time, the State wishes to place the 911 Call into evidence as a business record and play it at a later time?

THE COURT: Mr. McCollum?

MR. MCCOLLUM: Your Honor, I just raise the same issues that I raised earlier.

THE COURT: All right. Subject to your prior objections, I'm going to admit it as it exists.

Ladies and gentlemen, let me explain. There have been some pretrial motion hearings, you're aware of that, that I've been hearing. As part of that I have reviewed the tape -- or

I guess that's not a tape, that's a disc -- and I have ordered some redactions, some things taken from it that I find -- found that did not comply with the Rules of Evidence. Slight changes, but I did order those. So as it has been presented, I am admitting it as an exhibit in the case?

STATE'S EXHIBIT NUMBER ONE

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MS. LIVESAY: Thank you, Your Honor, at this time I have no further questions from Ms. Carmichael.

THE COURT: You wish to cross examine?

MR. MCCOLLUM: Just briefly, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION OF MARTHA GENEVA CARMICHAEL BY MR. MCCOLLUM:

Q: Ms. Carmichael, are you the -- do you do the dispatching; in other words you receive the calls and then talk to the caller?

A: No, sir.

Q: Okay. So this particular disc that's been admitted into evidence, that's not you talking on there?

A: No, it's not.

Q: Okay. And do you know what was talking?

A: Yes.

Q: Who was that?

A: That's Jessica Raggerio (spelled phonetically).

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

A: Probably home asleep. She worked last night.

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

THE COURT: Anything further from the witness?

MS. LIVESAY: No, sir, Your Honor.

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

Do you wish to excuse the witness?

MS. LIVESAY: Yes, sir.

THE COURT: Any objection to her being excused?

MR. MCCOLLUM: No objection, Your Honor.

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

A: Thank you.

THE COURT: You may call your next witness.

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

THE COURT: Come forward and be sworn, sir.

CHRISTOPHER TANNER CLARK, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

CLERK: Please be seated.

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

MR. CLARK: Christopher Tanner Clark.

THE COURT: Counselor, your witness.

MS. LIVESAY: Thank you, Your Honor.

DIRECT EXAMINATION OF CHRISTOPHER TANNER CLARK BY MS. LIVESAY:

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

A: I'm twenty-five.

Q: And tell them, are you currently working?

A: Yes.

Q: Where are you working?

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

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

A: [redacted] where I'm still currently residing.

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

A: Yes.

Q: Okay. And who were your roommates?

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

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

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

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

A: There was three bedrooms and two baths.

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

A: It's a second-floor apartment.
Q: Okay. So you had to go the steps to get into your apartment door?
A: Yes, ma'am.
Q: And do you remember what happened on February 2nd of this year?
A: Yes, I remember everything.
Q: And did you have an occasion to call 911?
A: Yes.
Q: Okay. (To the Court) Can I approach the witness?
THE COURT: You may.
MS LIVESAY: Thank you, Your Honor.
BY MS. LIVESAY:
Q: I'm showing you, Mr. Clark, what's been marked as State's Evidence Number One. Do you recognize what I'm showing you?
A: Yes, ma'am.
Q: And what is that, tell the Jury.
A: It's the, the recording of the 911 call that I made on February 2nd.
Q: Okay. And if you don't mind, tell the Jury exactly when you called 911?
A: I'm not exactly sure what time it was. During the day, February 2nd middle of the day. I'm not sure exactly what time it was, but ---
Q: Okay. And what caused you to call 911?

A: I heard a commotion out in leaving room, so I just -- I poked my head out and immediately saw two guys coming in. I saw one with a gun. The other guy was kind of standing behind him to where I couldn't see. Both of them had black, black on and blue jeans and I immediately shut my door and called 911.
Q: Okay. So as soon as two guys busted in, you shut your door and called 911?
A: Yes, ma'am.
Q: Was your door locked at that time?
A: I don't believe so. My bedroom door was locked. The front door was not locked.
Q: Okay. And if you don't mind, tell the Jury how you felt when you called 911?
A: Well, I saw two guys coming into my house, one with a gun, and I was terrified. I had no idea what to do but to call 911. But yeah, I was very, very scared.
Q: And tell the Jury what were you telling the 911 dispatcher?
A: I basically told her it was a play-by-play of what was happening, what I could hear and what I saw, like immediately like when they came in. But I told her, you know, there's two guys in my house. They just busted in. One with a gun that I saw. I saw them put the gun to my roommate's face and tell him to sit down in the chair. And then I heard, I heard them take Paul back to his room and arguing with him in his room.

Other than that, I didn't see anything. I just heard everything going on.
Q: And when did the call end from 911? When did you hang up the phone?
A: It wasn't until after the police arrived and I saw them through my window, like telling them to get on the ground and everything like that.
Q: So you hung that phone up when you saw the police arrest the two guys that were in your apartment?
A: Yes, ma'am.
Q: Okay. And you made the call when they busted into the apartment?
A: Yes, ma'am.
Q: So just so I'm clear and the Jury's clear, you're talking to the dispatcher as this is going on?
A: Yes, ma'am.
Q: Okay. And are you relaying to the dispatcher what's happening while these two guys or in the apartment?
A: Yes, ma'am.
Q: Have you heard that tape this morning?
A: Yes, ma'am.
Q: Okay. Has anything you told that dispatcher been altered or redacted in any way?
A: Other than what the, the Judge had redacted, no, everything is ---

Q: So everything you said to that caller is on that tape?
A: Yes, ma'am.
MS. LIVESAY: Your Honor, at this time, I wish to play State's Evidence Number One for the Jury.
THE COURT: Any objection?
MR. MCCOLLUM: None, just the same objection.
THE COURT: All right. Your objection continues, I will allow you to publish that exhibit.
MS. LIVESAY: Thank you, Your Honor.
THE COURT: It's already in evidence. I don't have to admit it. And to be clear, that's marked as State's Number One and Court's Number Two; is that correct?
MS. LIVESAY: I think this is State's evidence Number One, Your Honor.
THE COURT: Number One. Okay. Then I will admit State's Evidence Number One, I've admitted the Court's -- and that's subject to your prior objection, Mr. McCollum.
MS. LIVESAY: Thank you.
THE COURT: Before you start that, I'd asked the attorneys to approach the bench briefly.
MS. LIVESAY: Your Honor, you want me to wait one second before I play it?
THE COURT: Yes, please. Thank you.
(REPORTER'S NOTE: A bench conference was held off the record in the presence of the Jury but out of hearing of the Jury.)

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

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

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

(REPORTER'S NOTE: State's Exhibit Number played for the Jury. Recording not transcribed herein.)

(On the Record.)

BY MS. LIVESAY:

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

A: Yes, ma'am.

Q: And is that your voice on the tape?

A: Yes, ma'am.

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

A: Yes.

Q: Now if you don't mind, I would like to go back to that date, which was February the 2nd of this year. Tell the Jury who all was in that apartment that day?

A: Erik Meijer was in the living room with his computer. We were all playing video games; it was Erik in the living room, me in my room and Paul Degruccio in his room and Scott McDonald was in his room asleep and had no idea this was going on.

Q: Okay. And to your recollection, what were y'all doing in the apartment that day?

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

Q: Okay. And who lived in the apartment at that time?
A: Me, Paul and Scott.
Q: And is Paul here today?
A: Yes, he is.
Q: Okay. And is -- can you point him out to the Jury?
A: Right there with the glasses behind you.
Q: And he was one of your roommates at the time?
A: Yes.
Q: Okay. Now what happened that day to cause you to stick your head out of your bedroom?
A: I heard a commotion in the living room and just naturally was wondering what was going on. So I just opened my door slightly, poked my head out and saw that was going on.
Q: Okay. And to your -- did you have a weapon in your bedroom at that time?
A: No, ma'am.
Q: To your knowledge, was there a weapon anywhere in that apartment you lived?
A: No, ma'am, other than in their hands.
Q: Okay. So you hear a commotion, you stick your head out the door, but you, do you ever completely come out of the room?
A: No, ma'am.
Q: Okay. And then you immediately go back into the room; is that right?

A: Correct.
Q: Okay. Now describe the guys you saw that came into the apartment?
A: I saw a black hoodie, blue jeans and a gun and, and that was pretty much it before I closed my door and locked it.
Q: Could you see their face?
A: No, I could not.
Q: Okay. Could you tell if they were white or black or Hispanic?
A: I couldn't tell if they were white; I think their necks and both hands and everything.
Q: Now had you invited anybody over?
A: No, ma'am.
Q: Okay. And when they came in, at what point did you see the gun?
A: As soon as I, as soon as I looked out my door, they were like walking in the front door and he had the gun to his side and then I saw him like pull it up to my roommate's head and tell him to sit down in the chair and that's as soon as I closed my door. That was happening while I was closing my door.
Q: Okay. Show the Jury how he was holding the gun?
A: He walked in the house and he had the gun like here and my room is to the left of me and he's, our front door is facing this way and then you go down the hallway and I see the gun

right here in his left hand.
Q: Did you ever see him point the gun?
A: Yes.
Q: Okay. And how did he point the gun?
A: In my roommate's face, just straight up and told him to sit down in the chair kind of like motion and pushed him back into the chair, didn't really touch him or anything.
Q: Okay. And could you describe the gun?
A: It was black-and-silver and that was all that I saw the brief second that I saw it.
Q: Okay. Let me ask you, when he came in and you saw that gun, did you feel like you were free to leave?
A: No, not at all.
Q: Okay. Did it appear to you when you stuck your head out that those people had permission to come into the house?
A: No, not at all.
Q: Now, did you hear the two guys with the black hoodies, the two Defendants, did you hear their voices?
A: I did.
Q: Okay. Could you recognize either one of their voices?
A: Possibly, like in that situation, I was more focused on talking to the 911 operator and trying to get the cops there and that's what I was focused on, but I did hear, at one point, somebody say we got a gun, Kenny or let's go, Kenny.
Q: So you could, could you decipher the two Defendants'

voices from the voices of your roommate and the friend that was over there?
A: Yes, most definitely, yes.
Q: Okay. So you could definitely tell who's saying what?
A: Right. Correct.
Q: Now, on the 911 tape, just so I understand, you say one of the boys yells out, Kenny?
A: Correct.
Q: Okay. Could you decipher whether or not that was your roommate's voice or a friend's voice?
A: Yes, I could.
Q: Okay. Was that a, was that the Defendants' voice or was that your roommate's voice that called out Kenny?
A: It was not my roommate's voice. I heard, We need to go, Kenny or let's go Kenny, something of that sort.
Q: Okay. Now, tell the Jury exactly, they come into the house; what do you hear go on at that point?
A: Well, I hear them come in, I hear a commotion out in the living room, I hear arguments from Paul and them and then that's after they go back into the room and I just hear Paul arguing with them like -- but really like what, you know, what's like, why are you doing this, something like that; he's just arguing with them and, and I'm on the phone with the 911 operator the whole time.
Q: Okay. Now the Defendant sitting at that table, Kenneth

Bell, do you know him?

A: No.

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

A: No, ma'am.

Q: Okay.

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

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

A: Definitely not.

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

A: Yes, ma'am.

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

A: Correct.

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

Your Honor, can I approach the witness?

THE COURT: You may.

MS. LIVESAY: Thank you.

BY MS. LIVESAY:

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

A: Yes, it's my apartment building.

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

it looks like?
A: Yes.
Q: And is that a picture of the building you were living on February 2nd, 2013?
A: Yes, it is.
MS. LIVESAY: Your Honor, at this time, the State wishes to place into evidence State's Exhibit Number Two?
THE COURT: Any objection?
MR. MCCOLLUM: That's the exterior, Your Honor?
THE COURT: It is.
MR. MCCOLLUM: I don't have any objection to either photograph.
THE COURT: All right. You want to go ahead and put the other one in then?
MS. LIVESAY: Thank you, Your Honor. At this time, I'll publish it to the Jury?
THE COURT: All right. I'll admit that's Two and Three; is that what you're doing?
MS. LIVESAY: Two and Three, yes, sir, Your Honor.
THE COURT: All right. He said he had no objection to either, so I'll admit them both as State's Exhibits and then you may publish.
MS. LIVESAY: Thank you.
THE COURT: Thank you.

STATE'S EXHIBIT TWO AND THREE

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

apartment building from the ---

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

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

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

BY MS. LIVESAY:

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

A: Yes, it is.

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

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

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

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

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

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

Q: Right next to your room?

A: Yeah.

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

A: Correct.
Q: Okay. And if you don't mind, I'm showing you State's Evidence Number Two. If you don't mind, tell the Jury what that's a picture of?
A: It's a picture of the, the breezeway walking up into my apartment building.
Q: Okay. And is the parking lot in front of these two windows?
A: Yes, it is.
Q: Okay. Now does your bedroom window face the parking lot like these windows?
A: It does, yes.
Q: Okay. And can you see people coming from these steps into the parking lot from your bedroom window?
A: Yes, you can.
MS. LIVESAY: Your Honor, at this time, I'd ask the witness to have a seat back in the witness stand.
THE COURT: Sir, you can have a seat back in the witness stand. Thank you.
BY MS. LIVESAY:
Q: So if your room is right beside Paul's room in the apartment building, you didn't have any trouble hearing what was going on in that bedroom?
A: Correct.
Q: Okay. And your bedroom window faces out into that parking

lot; is that correct?
A: Yes, ma'am.
Q: Okay. Now describe the car to the Jury that you saw the two Defendants walking to.
A: It was red Mitsubishi Galant, I believe, or ---
Q: Okay.
A: --- just a red Mitsubishi newer model car.
Q: Okay. And the two guys that you saw Ms. Boyd arrest, where were they arrested?
A: Right near the car. I saw her get them or tell them to get on the ground right near the car.
Q: Okay. Now were the guys that you saw in that apartment the same guys that you saw Ms. Boyd arrest?
A: Yes, ma'am.
Q: Had you ever seen that red Mitsubishi before that day?
A: No, never.
Q: Okay. Was that a car that you, so you never saw that car in that parking lot ever before that day?
A: No, ma'am.
MS. LIVESAY: No further questions, Your Honor.
THE COURT: Your witness, Mr. McCollum.
MR. MCCOLLUM: Thank you, Your Honor.
THE COURT: Yes, sir.
MR. MCCOLLUM: May it please the Court?
THE COURT: Yes, sir.

CROSS EXAMINATION OF CHRISTOPHER TANNER CLARK BY MR. MCCOLLUM:

Q: Good morning, Mr. Clark.

A: Good morning.

Q: You go by Tanner?

A: Yes, sir.

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

A: Correct.

Q: And Paul Degruccio was in his bedroom?

A: Correct.

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

A: Yes.

Q: He was in his bedroom?

A: Correct.

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

A: Correct.

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

A: Correct.

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

A: It was closed.

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

A: It was open.

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

A: It was closed before. I was trying to activate my cell phone and I heard commotion and then I opened it and saw what was going on and closed it and locked it.
Q: So the three of you, Erik Meijer, Paul Degruccio and you, were playing a video game where you were linked to each other?
A: Correct.
Q: And you were doing that with your door, your bedroom door closed?
A: Well, it's wireless internet.
Q: Okay. But you had your door closed while you were doing that?
A: Well, I was -- actually, at the time I was activating my cell phone. We had all just gotten on group something or Erik had just gotten there and we were getting all set up and everything.
Q: But you weren't in your room with the door locked while you were playing your video game?
A: No. No, I just closed my door so I could talk to the lady to activate my cell phone.
Q: All right. So activating your cell phone, that didn't have anything to do with playing a video game, right?
A: No.
Q: And was, did anyone ever threaten you?
A: No, sir.
Q: Did anyone ever show you or point a gun at you?

A: No, sir.
Q: Did anybody take any property from you?
A: No, sir.
Q: Did you have valuables there that day?
A: Yes, sir.
Q: You had, you had a television in your bedroom?
A: Correct.
Q: A flat screen?
A: Correct.
Q: You had your, your computer?
A: Correct.
Q: Did you have a smart phone?
A: Yes.
Q: An iPhone?
A: No, it's an Android.
Q: It's valuable?
A: Yes.
Q: Did you have any, any, any gold or any jewelry?
A: No, sir.
Q: Did you have any money?
A: No, sir.
Q: Zero?
A: Just, I just had my card on me, my bankcard. I usually don't carry cash.
Q: Okay. But you had your bankcard?

A: Yes, sir.
Q: Do you have a credit card?
A: No, sir.
Q: Okay. And during this incident, no one attempted to come into your room, correct?
A: Correct.
Q: And no one even tried the lock, no one even jiggled the door handle, right?
A: Correct.
Q: And no one -- well let's -- Scott McDonald was, is in his room asleep?
A: Correct.
Q: Had he worked the night before?
A: I'm sure, yes.
Q: Do you know where he works?
A: He works with a -- well, he's actually worked at a couple of different places in the past like year, so he's actually moving to a new shop up in North Myrtle Beach.
Q: Does Scott McDonald, does he have valuables in his room?
A: Yes.
Q: Does he have a television?
A: Yes.
Q: Does he have a computer?
A: Yes.
Q: Does he have a smart phone?

A: Yes.
Q: Did he have any money to your knowledge?
A: Not that I know of.
Q: During this time, while he was in the room sleeping, did anyone, to your knowledge, try to enter his room?
A: I don't know; I wasn't out to see anything.
Q: After the police arrived, did Scott McDonald wake up then?
A: Yes, sir.
Q: Did you wake him up?
A: I was knocking on his door and he came out, you know, like what's going on.
Q: So after the police were called, you went and knocked on his door to wake him up?
A: After they had arrested them.
Q: And did you have to knock loudly to wake him up?
A: I probably was because I was so flustered and scared.
Q: Okay. Now Erik Meijer, am I saying that correctly?
A: Yes.
Q: Erik Meijer was seated in the living room or, or I'll call it the living room; what do you call it?
A: The living room.
Q: And there's, there's one living room in the apartment?
A: Correct.
Q: Is that connected to the kitchen?
A: Yes.

Q: All right. And Erik Meijer was seated in the living room, correct?
A: Correct.
Q: And he was playing video games on his computer, right?
A: I'm not sure if he was actually playing the game or if we were all just getting set up at that point.
Q: To your knowledge, did anybody take anything from Erik Meijer?
A: No, sir.
Q: No one took anything from Erik Meijer?
A: No, sir.
Q: Okay. And Erik Meijer, does he have, there are four people in the apartment, right?
A: Correct.
Q: Does Erik Meijer, does he live there?
A: No, he does not.
Q: Okay. So he doesn't have a room there?
A: Correct.
Q: Whatever valuables he had, he would have just had with him there?
A: Right.
Q: Okay. And you own a car, right?
A: Yes, sir.
Q: And you had your car keys there, correct?
A: Yes, sir.

Q: And Erik Meijer owns a car, right?
A: Yes, he didn't at the time though.
Q: At the time, he didn't?
A: Correct.
Q: And then same for Scott McDonald, he had a car and car keys, right?
A: No.
Q: He did not?
A: I'm the only one with a car in the apartment.
Q: Okay. Thank you. Now you described the incident, now when the individuals you say came into the apartment, you did not see them come in, correct?
A: I did see them come in -- well, I -- I heard the door open and saw them, I immediately opened my door and saw them walking in.
Q: Okay. And how far away were you from the doorway when you saw that?
A: Probably from my, from the living room to my room is probably twenty feet.
Q: All right. If I want -- what I would like to do is I would like to back up and, you may not know exactly, but to give us an idea how far you were in your, the bedroom doorway, your bedroom doorway to the front door when you saw the individuals come in?
A: About right where you are right now.

Q: And you would describe that as about twenty feet?
A: Yeah, I guess.
Q: Now at the time that you look out your bedroom door, this was, what time of day was it?
A: Middle of, middle of the afternoon.
Q: So it was -- the sun was shining?
A: Correct.
Q: And if you're in your, and you -- how long have you been in that apartment? Prior to February of 2013, how long had you lived there?
A: About a year.
Q: About a year. Okay. So when you're in that apartment during the daytime, is it an apartment that's dark and you have turn on lights or is it well illuminated by the daylight?
A: It's pretty well lit.
Q: Okay. And when you put your head outside of the door, your doorway, your bedroom door, how much of your head was, was looking down the hallway; in other words, did you just peep a little bit like this or did you, did you stick your head out so that the upper part of your body was exposed?
A: Probably just my head but I did stick my head out the door.
Q: All right. When you did that, did your eyes meet the eyes of anyone else?
A: No.

Q: All right. And you, and at that time, when you saw the two individuals, where, if you know, was Paul Degruccio?
A: He was at the door looking out the window and they came in right behind him.
Q: Okay. So he was at -- and there's only one door, right?
A: Correct.
Q: There's only one exit door to the apartment?
A: Correct.
Q: And that exit door opens onto a landing, a second-story landing, right?
A: Correct.
Q: When you say he was looking out the window, is there a window in the door?
A: No, just the window of the foyer area.
Q: All right. I'm gonna hand you State's Exhibit Number Three. Now is that, that's a picture of the door, correct?
A: No, this is a picture of the hallway down to the bedrooms.
Q: So this doesn't show your doorway?
A: No.
Q: Okay. Thank you. So this is, this would be the view that once someone entered the apartment, they would be looking down towards your bedroom?
A: Correct.
Q: And your bedroom, if I do this right. If you're standing here, if I'm standing here and that's my view and I'm looking

down the hallway, your bedroom door would be on my right?
A: No, my bedroom door is on your -- let's see -- it's on your left right now from in that picture. But if you're looking down the hallway facing the way that picture is taken, it's on your right-hand side.
Q: All right. And I know you testified to this, but if, if a person is standing here with the, the entryway door to my back, okay -- in other words, if I had just walked in the entryway door and was coming down this hallway or in the living room rather, and I was looking down toward your bedroom, your door would be on my left?
A: On the right-hand side; the first door on the right.
Q: On the right; okay. Thank you. Now the window that the, the doorway where you come into your apartment, does it have those side windows, those side lights?
A: No, sir.
Q: Does the doorway have a window in it? You described a window in the foyer?
A: Correct. You see the window in that picture right there looking out above the parking lot.
Q: So looking at State's Exhibit Number Two, this is a -- there's a window next to the doorway on the first floor, right?
A: Correct.
Q: Does your doorway -- is it built the same way on the

second floor?
A: No, it's not.
Q: Okay. Can you just show me in, in the picture there where the foyer window is?
A: Right here.
Q: So is that, so that second story window right there?
A: Correct.
Q: Okay. So if someone's looking out that window, they wouldn't necessarily see somebody coming at the door, right?
A: Right, yeah, the door is behind, you know, if you're looking out the window ---
Q: All right.
A: --- then you can't see coming up the stairs or anything.
Q: And can you -- with the Court's permission?
THE COURT: Yes, sir.
BY MR. MCCOLLUM:
Q: Can you demonstrate how you describe the person holding the gun toward Paul Degruccio?
THE COURT: You may stand up, whatever you need to do to demonstrate; he asked you to demonstrate.
MR. MCCOLLUM: Thank you, Your Honor.
A: What I saw was when they came into the house, I immediately, the gun was to his left side and then he held the gun up and said, you know, sit down or move back this way, just motioned him like back this way and that's the last I

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

BY MR. MCCOLLUM:

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

A: Left or right handed.

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

A: I believe so.

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

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

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

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

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

MR. MCCOLLUM: Thank you, Your Honor.

BY MR. MCCOLLUM:

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

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

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

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

Q: Side by side?

A: Correct.

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

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

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

A: The guy in the front, I believe, the guy that I saw closest to me.
Q: And did you know a man by the name of Christopher Bell?
A: No, sir.
Q: Did you know a woman named, I think it's if I've got the name right, Tonie Ann or Tonie Ann Pasquale?
A: I, I hadn't met her before, just from ---
Q: You hadn't met her?
A: Yes.
Q: But you had never met Christopher Bell?
A: No, sir.
Q: Did you know a woman by the name of Jasmine?
A: No, sir.
Q: How long back on February 2nd of 2013, how long had you known Paul Degruccio?
A: Years. It's been four or five years at least.
Q: At the time of this incident in February of 2013, was Mr. Degruccio, was he employed?
A: Yes.
Q: Where did he work, if you know?
A: Hamburger Joe's with me.
Q: Okay. Does he still work there?
A: Yes.
Q: And at the time that he worked at Hamburger Joe's, had he, do you know how long he had worked there?

A: I'm not sure, not very long.
Q: Now, you certainly did not owe Christopher Bell any money, correct?
A: No, sir.
Q: And Erik Meijer didn't owe him any money, did he?
A: No, sir.
Q: And Scott McDonald did not owe him any money, right?
A: No, sir.
Q: To your knowledge, did Paul Degruccio owe Christopher Bell money?
A: Not to my knowledge.
Q: And since that time, have you learned in any fashion that Christopher Bell owed money, was owed money by Paul Degruccio?
A: Yes.
Q: Okay. And the items that were taken, you were asked on the 911 tape what was taken and you said what, a computer?
A: A laptop and a digital camera. After I found out what had been taken.
Q: And you didn't know what was taken, did you?
A: Correct.
Q: You were asking someone what was taken?
A: Correct.
Q: And you were asking who?
A: Paul.
Q: And Paul said those things and what else did he say was

taken?
A: That was all that I heard.
Q: Okay. Now in terms of, you said that, I think you testified and you also stated or we heard on the 911 call, that the people that had come in the apartment, you used the term arguing, were arguing with what you referred, or who you referred to as Paulie, correct?
A: Correct.
Q: So they were arguing with him, correct?
A: Correct.
Q: And they were not arguing with anyone else, were they?
A: No. Well, only one was arguing with him; the other one was watching Erik in the living room making sure he didn't go anywhere or do anything.
Q: All right. And Christopher Bell was arguing with Paulie, right?
A: I'm not sure who was who in that situation.
Q: But Paulie was arguing back, right?
A: Correct.
Q: And could you tell what they were arguing about?
A: Paul was just mad, you know, that this was, you know, happening.
Q: So while this was taking place, as you listened to it, Paul seemed to be mad that it was taking place?
A: He was upset, yes.

Q: And he was arguing with the person that was there to take his valuables?
A: Correct.
Q: And everybody else -- you were on the phone with to the police, right?
A: Correct.
Q: Scott was asleep?
A: Yes.
Q: And Erik Meijer was just sitting in the living room?
A: In the living room, yes.
Q: And then the individuals left and were arrested?
A: Correct.
Q: After they were taken into custody, did you go outside?
A: I did.
Q: Did you go anywhere near where the individuals were that were being arrested?
A: No, sir. I walked up to the cop who was walking up to me, but it wasn't near them or anything; they already had them in the cars.
Q: Did -- how about Mr. Degruccio or Paul, did he go over there?
A: No, sir.
Q: And how about Mr. Meijer?
A: No, sir.
Q: When, when somebody comes in your apartment and they're

gonna open the door -- so, if I -- for example, if I'm standing here and I'm opening the door, does the swing to the right or to the left?

A: Yes, it swings to the right.

Q: And it swings in, right?

A: Correct.

Q: Is there, is there a storm door or a screen door or anything on it?

A: No, sir.

Q: Does the door, it has a lock on the doorknob, right?

A: Correct.

Q: And it has a deadbolt lock on it ---

A: Yes.

Q: --- on the top, correct?

A: Yes.

Q: Does it have any other type of locks?

A: No, sir.

Q: And I think you testified that you don't know or maybe -- correct me if I'm wrong -- you don't know if the door was open or locked at the time that the individuals came to the apartment?

A: At that time, I did not know, but I found out later on that, that it was open and Paulie was waiting on this girl he thought was Jasmine to come and, you know, hang out with him.

Q: Okay. All right. Thank you, sir.

A: You're welcome.

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

THE COURT: Redirect?

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

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION OF CHRISTOPHER TANNER CLARK BY MS. LIVESAY:

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

A: No.

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

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

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

A: I was terrified.

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

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

didn't do anything.
Q: Did you feel like you could've just walk out of that front safely?
A: No, ma'am.
Q: Okay. And even though nobody put the gun in your face, did you feel like you could leave?
A: No, ma'am.
Q: Okay. And did you leave?
A: No, ma'am.
Q: When you saw that gun, did you ever unlock that bedroom door?
A: Never, no.
Q: Until you saw the police arrest them?
A: Exactly.
Q: The people that were in that apartment while this was going on, did any of them at any point leave that apartment ---
A: No, ma'am.
Q: --- while this incident was going on?
A: No, ma'am.
Q: So it was pretty crystal clear when he came in that you weren't going anywhere?
A: Exactly.
Q: Unless he was gonna let you go somewhere?
A: Yes, ma'am.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Recross?

MR. MCCOLLUM: No, Your Honor.

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

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

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

THE COURT: Any from the Defense?

MR. MCCOLLUM: No, Your Honor.

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

You may call your next witness.

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

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

PAUL DEGRUCCIO, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

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

MR. DEGRUCCIO: My name is Paul Degruccio.

THE COURT: Thank you.

Counsel, your witness.

MS. LIVESAY: Thank you, Your Honor.

DIRECT EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:

Q: How old are you, Paul?

A: I'm twenty-three.
Q: And are you currently working anywhere?
A: Yes, I'm employed at Hamburger Joe's in Surfside Beach.
Q: Okay. And where were you living February 2nd of 2013?
A: [redacted]
Q: Okay. And who were your roommates?
A: Tanner Clark and Scott McDonald.
Q: Okay. And do you remember what happened February the 2nd?
A: Yes, I do.
Q: And how long had you been living in that apartment?
A: About a year or so.
Q: Okay. And if you don't mind, tell the Jury what happened that day?
A: Well, it started off kind of like a normal day. I woke up from a phone call from a female who identified herself as Jasmine, who is a friend of mine. That's who I thought it was at first; that's who they claimed to be and they were ---
MR. MCCOLLUM: Your Honor?
THE COURT: Yes, sir.
MR. MCCOLLUM: I'm gonna raise an objection here.
THE COURT: Yes, sir.
MR. MCCOLLUM: Just as to the hearsay nature of whatever Jasmine said.
THE COURT: Well, I'm gonna instruct the witness not to quote what other individuals said other than perhaps the

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

You may proceed.

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

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

A: I expected a female to come over.

Q: What is her name?

A: Her name is Jasmine.

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

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

MR. MCCOLLUM: Your Honor?

BY MS. LIVESAY:

Q: So there had been some conversations ---

THE COURT: Just one second, ma'am.

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

THE COURT: Okay. Thank you.

MS. LIVESAY: Thank you, sir.

THE COURT: You may proceed.

BY MS. LIVESAY:

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

A: Yes, ma'am.

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

A: Yes, ma'am.

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

A: No, ma'am.

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

A: No, ma'am.

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

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

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

A: Oh, all I just ---
Q: I'm sorry, Paul. Before I ask you that question, I apologize. Did she know how to get to your apartment?
A: Not at first until she asked me for directions.
Q: Okay. And did you tell her how to get to your apartment?
A: Yes, I did.
Q: Okay. And when you were expecting her to come, you had told her where your apartment was, did you do anything further to show her where your apartment was?
A: Other than texting her the directions, I don't -- no.
Q: Okay. So you told her exactly which apartment it was?
A: Yes.
Q: Okay. And what happened after you told this person you think is Jasmine where your apartment was?
A: Well, some time had passed and I was basically waiting for her to come over and then I received a text that she was here and so I went and cracked the door -- she had asked me to and I was just basically looking down the, into the parking lot out the window looking for somebody, but I didn't see anyone until after the door had been busted open and there was two individuals behind me, one with a tire iron and one with a gun.
Q: Okay. Now, the text message you received on here, who did you think that was from?
A: From Jasmine.

Q: Okay. During these texts and conversations with Jasmine, did you ever hear a male voice of any kind in the background?
A: No, ma'am.
Q: Did a male voice ever get on the phone?
A: No, ma'am.
Q: Did she ever mention that she was bringing a guy over with her?
A: No.
Q: Did she indicate anything other than, to you, than she was coming?
A: No, she actually specifically asked me if there was anybody at my house so that we could be alone.
Q: Okay. So she was actually wanting -- or you, it was your understanding, she wanted to be alone with you?
A: Yes, ma'am.
Q: Okay. And in fact, she was saying things to try to get you by yourself?
A: Yes.
Q: Okay. Did you tell her that there were other people in that apartment?
A: Yes, I had actually been -- my friend, Erik, had slept over the night before and I, I had told her that, you know, I'm hanging out with my friend and that if she wanted to come over, that was cool.
Q: Okay. So she knew that your friend was not leaving?

A: Yes.
Q: And then when -- if she was coming over or anybody was coming over, then other people would be in that apartment other than just you?
A: Yes.
Q: Okay. What happened once you went to the door?
A: I cracked the door and I looked out the window for maybe a moment or two and then behind me I heard the door kind of crash open because I had only had it cracked just a little bit and the door kind of like slammed into the wall and there was two individuals, one with a gun and another with a tire iron, both masked.
Q: Okay. And did you invite either one of those two guys over?
A: No, I did not. I was actually kind of in shock at first, kind of seeing two masked people at my door and I kind of just stood there for a second without saying anything until they instructed me to sit down.
Q: Okay. Did you, at any point, give them permission to come into your apartment?
A: No, ma'am.
Q: If you don't mind, describe to the Jury what you can remember that they were wearing?
A: I don't really remember their clothes. I just remember that they were wearing masks and one had a gun and one had a

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

Q: Okay. Now what were they asking for?

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

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

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

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

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

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

A: Yes, ma'am.

Q: Okay. And that person was Christopher Bell?

A: Yes.

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

A: He was holding the tire iron.

Q: So the other guy was holding the gun?

A: Yes.

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

free to leave when you were ready to leave?
A: Not at all.
Q: Okay. Did anybody ever, did he, not just anybody, I'm sorry. Did that Defendant with the gun ever point that gun at you?
A: Yes, he did, several times.
Q: Okay. And when he did that, was it clear to you that you were not free to leave?
A: Quite clear.
Q: Okay. And who else was in the room when Christopher Bell and his Codefendant, busted in your door?
A: The only other person in the room at that time was Erik, who was on the couch.
Q: Okay. Now when this happened, did Erik get up and just leave?
A: No, he kind of froze up as I did.
Q: Okay. And what happened next once they held you at gunpoint and Christopher Bell was holding the tire iron; what did they do next?
A: Well, after I had identified him and he took his mask off, he basically, first he kind of pushed me into the chair and after they kind of had the situation under control or whatever and they took me, Chris took me to my room just basically telling me that I was gonna give him whatever I had and the other individual with the gun, who was still masked at the

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

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

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

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

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

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

A: Yes, ma'am.

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

A: Yes, I did.

Q: Okay. So what did you take that to mean? You obviously complied with what he told you.
A: I took it to mean that the situation was under their control and not mine and that I should do what they say.
Q: Okay. And out of those two guys that were in there, who was running the show?
A: I don't really know if either of them was leading the situation.
Q: Both of them -- were both of them equally participating?
A: Yes, ma'am.
Q: Okay. So he holds the gun to you and says shut up, I'm not a bitch -- or what exactly did he say to you?
A: Well, I was arguing with Chris and it was getting a little bit heated. He was kind of throwing a couple of my papers around and stuff like that. And he came into my room and he stuck the gun in my face and he said I'm not a bitch like him, sit down. Basically, because Chris, I guess wasn't being aggressive enough with me, so he felt he had to be aggressive to sit me down.
Q: Okay. Now you said you recognized Christopher Bell's voice. Did you recognize the other guy's voice?
A: No, ma'am.
Q: You had no idea who he was?
A: No, I did not.
Q: Okay. Now this is Kenneth Bell here; do you know him?

A: No, I do not.
Q: You don't know him?
A: Only from this incident.
Q: Okay. So before that day, you had never talked to him, never seen him, had any dealings with him at all?
A: Never.
Q: Okay. So there is no question in your mind you definitely had never invited him over to that apartment?
A: Not a question in my mind.
Q: Okay. And you definitely had never had any dealings whatsoever in any form or fashion with this Defendant?
A: No, I did not.
Q: Never even talked to him?
A: Never.
Q: Okay. So we're gonna come back to that about the argument, but first I want you to tell the Jury -- so he comes in and holds the gun, you then shut up. And then what happens after that; is any of your stuff taken?
A: Yes, Chris asked me -- because he knew that I had played computer games and things like that, so he was asking me where my computer was and stuff like that. And so I gave him my laptop and my camera and he basically rummaged through my room for a few more minutes until I guess they felt that they had been there too long and they agreed that it was time to leave. So they rushed out of the house.

Q: All right. And what did they leave with?
A: With my laptop and my camera.
Q: Okay. And did you ever give them permission to take the computer or the camera?
A: No, I did not.
Q: Okay. Would you have ever given them these items if they were not threatening you with a gun and a tire iron?
A: No.
Q: Okay. So there's no doubt they got these items by holding you at gunpoint?
A: Yes.
Q: So they then leave with your laptop and camera; is that correct?
A: Yes, ma'am.
Q: Okay. Now did you ever go outside once the police had gotten there?
A: I had gone downstairs after a few minutes had passed and all the individuals had been arrested.
Q: Okay. Could you see who was arrested?
A: Yes, I did.
Q: You did? Okay. Were the two guys that were arrested the same ones that were in your apartment?
A: Yes.
Q: Okay. Now how many guys -- because you were the one that they were mainly focused on; is that correct?

A: Yes, ma'am.
Q: Okay. Everybody -- there's no doubt everybody was complying with what they were saying; is that right?
A: Yes.
Q: And that nobody left until they left?
A: Yes.
Q: Okay. Did you see any more than two guys in that apartment?
A: No, I did not.
Q: Okay. So the entire time, there were two guys; one with a gun and one with a tire iron?
A: Yes.
Q: Okay. And when you walked downstairs, how many people were arrested?
A: I believe there might've been a female arrested there, but I'm not a hundred percent sure about that, but I know there was two males who were arrested downstairs.
Q: Okay. And the two males that were arrested were Kenneth Bell and Christopher Bell; is that right?
A: Yes.
Q: And those were the same two guys from your apartment?
A: Yes.
Q: Okay. Now did you ever call the police?
A: No, I did not.
Q: Why not?

A: Because they took my phone and were basically keeping me from doing anything.
Q: So you didn't have any way to call the police?
A: No.
Q: Okay. Now we talked about, a little bit about before that there was discussion between you and Chris about money that he felt like you owed; is that correct?
A: Yes, ma'am.
Q: Okay. Without going into the specifics of what that was about, when was the last time you had discussed you owing him any money?
A: It was several months ago, I ran into him at the Food Lion that is close to my house. I saw him there at the line; he didn't see me. I walked straight up to him, never tried to avoid him, and you know, I apologized to him for what had happened. It was kind of a bad situation. I did whatever I could to try and help him, but I just didn't have the money or the means to pay him back. So ---
Q: Okay. And at that time, did he threaten you?
A: No.
Q: Okay. At that time, did you feel like there was any hostility between you and him?
A: No.
Q: Okay. And that was months prior to this incident?
A: Yes, ma'am.

Q: Okay. Now did he ever try to contact you between that time and when they busted into your house?
A: No.
Q: Okay. Had he ever indicated to you between that time and when he busted into your house, look, you owe me some money; I'm gonna have to get this money back? Did he ever try to resolve it in any form or fashion?
A: No.
Q: Okay. When you saw him there at the Food Lion, did he ever try to resolve this situation?
A: No.
Q: Okay. Did he ever threaten you at that point?
A: No.
Q: Okay. So when you walked out, you didn't feel like there was any animosity between you and him?
A: No.
Q: Okay. Did he tell you then, I'm coming to get my money?
A: No.
Q: Okay. Did he, at that time, indicate that he still wanted his money?
A: No, he indicated that he felt kind of bad about it, but he didn't really pressure me into doing anything drastic for the money.
Q: Okay. But he just said, look, I'd like the money?
A: Yes.

Q: But he didn't threaten you at that time?
A: No, ma'am, he did not threaten me.
Q: Okay. Now how long had you known Christopher Bell?
A: A couple of years maybe.
Q: Okay. Have you ever carried a weapon?
A: No.
Q: At any point in time?
A: No, ma'am.
Q: Okay. Did you have a weapon in the apartment?
A: Other than maybe some kitchen knives or like a pocket knife or something; other than that, no.
Q: Did you have a gun in the apartment?
A: No, ma'am.
Q: Okay. Have you ever carried a gun?
A: No, ma'am.
Q: Okay. Have you got a gun registered in your name somehow?
A: No, ma'am.
Q: Okay. And you've known Chris for two years; is that correct?
A: I'm not exactly sure of the number but it's over a year, but not too ---
Q: Okay.
A: --- much longer than that.
Q: During the time that you knew Chris, had he ever seen you with a gun?

A: No, ma'am.
Q: Would anybody have any reason to believe that you had a gun?
A: No, ma'am.
Q: Okay. Now you had known Christopher Bell; is that correct?
A: Yes, ma'am.
Q: Did you even know he had a brother?
A: I knew that he had brothers.
Q: Okay. Did you know their names?
A: No.
Q: Okay. So you didn't even know their names?
A: No, ma'am.
Q: Okay. When you had had past contact with him regarding this debt, did he ever mention Kenneth Bell's name?
A: No, ma'am.
Q: Was Kenneth Bell with him in the grocery store?
A: No, ma'am; he was alone.
Q: Okay. So this is the first time you've seen him without a mask on and the police not arresting him; is that correct?
A: Yes, ma'am.
Q: About how long was it --I think you told me, but I wanted to make sure I'm correct on it -- how long was it between when you saw him in the Food Lion and when he busted into your apartment?

A: Maybe two, three months.
Q: Okay. He had had no contact with you during that time period?
A: No, ma'am.
Q: Did he know where you lived?
A: No, I don't believe he knew where I lived, but I definitely had the same phone number that he always knew that I had.
Q: Okay. So he didn't know exactly where you lived?
A: No, ma'am.
Q: Did he have your phone number?
A: Quite possibly. I knew him for a while and he had called me on the same number for years. I've had the same number, phone number for many years now.
Q: Okay. So he could have called you and said, Look, we're gonna have to work this out; you owe me some money?
A: Yes, ma'am.
Q: Did he ever do that?
A: No.
Q: Okay. Did he ever have anybody else contact you regarding the money?
A: No, ma'am.
Q: Now, there was, you said that, that there were three people in the car; is that correct or am I misunderstanding? When you walked downstairs after this incident, do you know

how many people were in the car?
A: I know that there was two males that were arrested and there might've been a third, but I'm not a hundred percent sure about that. Whenever I went downstairs, I talked to the police; I didn't try to ---
Q: Look them up.
A: Yes, exactly.
Q: Now the third person in the car, Tonie Pasquale, the woman, did you know her?
A: No, ma'am; I did not.
Q: You had no idea who Tonie Pasquale was?
A: No.
Q: Did you see the car they were in?
A: I saw their -- the red Mitsubishi parked out there whenever I went downstairs, but I never saw them in it or anything.
Q: Had you ever seen that car before?
A: Maybe on the street, but not him driving it or anything.
Q: Okay.
A: Not that specific car.
Q: Okay. So you wouldn't have known if he drove up if that was the car he'd be driving?
A: No, I wouldn't.
Q: Okay. And the third girl that was in the car, Tonie Pasquale, you had no idea who she was?

A: No, I did not know her at all.
Q: Okay. Had never seen her before?
A: Never.
Q: Does that name even ring a bell?
A: Now it does, but then I wouldn't have known.
Q: Okay. So you definitely would not have invited her over to your apartment?
A: No, I wouldn't have.
Q: Okay. And would you have told her where you lived?
A: No.
Q: Okay. So without a doubt, you didn't invite Christopher Bell, Kenneth Bell or Tonie Pasquale into your apartment?
A: No, I did not invite any of them.
Q: Okay. And at no point, did you ever give them permission to enter that apartment?
A: No, I did not.
Q: Okay. Would you have told Tonie Pasquale where you lived?
A: No.
Q: Okay. Now there's been some talk about Jasmine. You did know a girl named Jasmine; is that correct?
A: Yes.
Q: Okay. And you would have felt comfortable inviting her over; is that right?
A: Like I said before, I felt a little weird about the situation because I do know Jasmine. She is a friend of mine,

but she's not a good friend of mine.
Q: Uh-huh (affirmative response).
A: And she was acting too friendly.
Q: Right.
A: So even her coming over, I felt a little weird about.
Q: Okay. Now would any of the three people in that car know that you knew Jasmine?
A: I suppose they must have.
Q: Okay. Because you would have never invited -- you didn't invite the three of them over, did you?
A: No, I did not.
Q: Okay. And you never spoke on the phone that day to Christopher Bell or Kenneth Bell?
A: No, I did not.
Q: Okay. And in fact, you didn't even know that you were talking to Tonie Pasqual.
MR. MCCOLLUM: Your Honor, I object to leading.
THE COURT: I'll sustain the objection and ask Counselor not to lead the witness.
MS. LIVESAY: Thank you, Your Honor.
BY MS. LIVESAY:
Q: So, who was the only person that you were gonna allow into the apartment?
A: My friend, Jasmine.
Q: When you came downstairs, did you see the computer and

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

A: Yes, ma'am, I did.

Q: Okay. Did you recognize those items?

A: Yes, I recognized them as my own.

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

A: Yes, ma'am.

MS. LIVESAY: No further questions, Your Honor.

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

As you leave the courtroom and go to the jury room, you're gonna hear me say every time you do that and I'll instruct you, don't be getting in any discussions about anything involving this case until I ask you to begin your deliberations. You may retire to the jury room at this time.

(REPORTER'S NOTE: The Jury exits courtroom. 10:57 A.M.)

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

understand?

MR. DEGRUCCIO: Yes, Your Honor.

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

(RECESS - 10:58 A.M.)

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

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

THE COURT: The State ready to resume?

MS. LIVESAY: Yes, sir, we are.

THE COURT: Defense ready?

MR. MCCOLLUM: Yes, Your Honor.

THE COURT: All right. Bring the Jury in.

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

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

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

Mr. McCollum, you may proceed.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

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

A: Yes.

Q: And your name is Paul Degruccio?
A: Yes.
Q: And where are you from originally, Mr. Degruccio?
A: I'm originally from New Jersey but I've lived here for a while now.
Q: About how long?
A: Over a decade.
Q: And so you grew up and went to high school here?
A: Yes, sir.
Q: Okay. Where did you go to high school?
A: Socastee.
Q: Okay. Did you finish high school?
A: No, I did not.
Q: How far did you go?
A: To my last semester.
Q: All right. So you went to the last semester of your senior year?
A: Yes, sir.
Q: Okay. And ---
THE COURT: Mr. Degruccio, you can pull that microphone down a little bit and it will make you more comfortable. There we go. Thank you. I'm sorry. Go ahead.
MR. MCCOLLUM: Thank you, Your Honor.
BY MR. MCCOLLUM:
Q: Was there any precipitating event that caused you not to

finish?
A: Yes.
Q: And what was that?
A: I was arrested.
Q: Okay. And did you -- have you gone and gotten like a high school equivalency or I think there are several different versions of GED and different types of diplomas; have you done anything like that?
A: I'm actually in the process of getting my GED now.
Q: Okay. And have you gone to -- you're doing that through a technical school or through the high school program?
A: Through taking a test; you sign up and then take a test and they give it to you.
Q: Okay. So from the, from the year that you were in the, in the twelfth grade until now, where have you worked -- in other words, now let me rephrase that so it's a little more specific. You work at Hamburger Joe's now?
A: Yes, sir.
Q: And what do you do there?
A: Cook.
Q: You cook hamburgers?
A: Yes, sir.
Q: The hamburgers at Hamburger Joe's are pretty good, aren't they?
A: I guess that's a matter of opinion.

Q: And how long have you been cooking at Hamburger Joe's?
A: A couple of months maybe.
Q: Okay. At the time -- and is that the only job you've had at Hamburger Joe's is as a cook?
A: Yes, sir.
Q: Okay. And it's now August 2013. You said you'd worked there for a couple of months; do you know what month you started?
A: I'm not exactly sure. I worked there before, took a break and now I'm working there again; I started back again this summer.
Q: And when you worked there before, how long did you work there?
A: I'm not exactly sure; a few months.
Q: And that was your -- as a cook?
A: Yes, sir.
Q: Okay. And prior, so let's go back to February of 2013, were you working at Hamburger Joe's as a cook at that time?
A: Yes, sir.
Q: And you stopped working there; do you know the particular month?
A: I'm not exactly sure which month it was.
Q: Was it around the time of this incident or was it several months later?
A: I really don't want to say a certain date or anything

because I don't remember.
Q: Okay. Well say, it's safe to say -- it's safe to say I don't know, okay?
A: I don't know.
Q: And prior to working at Hamburger Joe's, did you work somewhere else?
A: I've had several jobs over the years, yes.
Q: Okay. And what job did you have prior to Hamburger Joe's?
A: Well, I remained unemployed for a while, but before then, I was a lifeguard. I worked at Sonic; just several places.
Q: What's the longest period of time you've worked somewhere?
A: Maybe a year.
Q: And where was that?
A: Lifeguarding.
Q: All right. Were you lifeguarding at an indoor pool?
A: At a waterpark.
Q: Okay. And the waterpark, was that in, in the Surfside area?
A: Yes.
Q: Okay. And when you say that you worked there for a year, you don't mean that you worked there through the fall and the winter and the spring, do you?
A: Well, I worked there during the summer and they kept me on and then they let you work again during the summer, but they pay certain people during the winter whenever the place isn't

actually open.
Q: So you got paid through the winter?
A: Yes.
Q: Okay. Did you have a job that you did there while you were getting paid there during the winter?
A: No, they just, they basically keep you on. They let you know that you're gonna have a job for sure whenever you come back during the summer.
Q: So they don't actually pay you, they just tell you you're gonna be rehired?
A: Yes.
Q: And then you're eligible for unemployment that way?
A: I never received unemployment, but maybe.
Q: Now you know Christopher Bell, right?
A: Yes.
Q: And I'd like to clarify some things, because you had testified, if I understood correctly, you testified that you knew him about a year; is that a fair statement?
A: Yes, I may have known him longer than that; I don't really know how long I've known him.
Q: And of course you also testified, if you recall, about your phone number. You said that he had been calling you on that number for several years, right?
A: I believe I testified that I've had the same phone number for several years and that he has called me on it, but not for

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

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

A: Yes, sir.

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

A: Maybe five.

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

A: Maybe twenty, I don't know.

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

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

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

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

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

A: I would have said that we were friends at one point.
Q: Friends. And how long were you friends?
A: A couple of months, a year; I'm not sure; I don't know.
Q: So you could have been friends a couple of months or you could have been friends for a year?
A: Yes.
Q: Okay. And how many times, and I'm -- and this is just, I'm just asking for like an approximation. I know that you don't keep up with how many times you see a particular person, but in the terms of Christopher Bell, did you see him a lot when you were friends; did you see him weekly?
A: Maybe once or twice a week.
Q: And when you would see him once or twice a week, how long -- how much time did you spend together?
A: A few hours.
Q: Okay. Would you go to the movies or the store and things like that together?
A: We never saw a movie together, but we would hang out at his house, play video games.
Q: So you would go to his house and play video games?
A: Yeah.
Q: Okay. Now you had indicated that, that you owed Christopher Bell some money, right?
A: Yes.
Q: And you indicated that you had neither the, I think the

money or the means with which to repay him, correct?
A: Yes, sir.
Q: Was it a substantial amount of money that you owed him?
A: It was under a thousand dollars.
Q: Under a thousand. And do you know how much it was; was it an exact amount?
A: Maybe like $800; I'm not exactly sure.
Q: And this money that you owed him, did that debt come about say from one transaction or was it an accumulation of that debt?
A: It was a one transaction.
Q: Okay. Now correct me if I'm wrong, but right now, you have a felony conviction, right?
A: Yes, I have a conviction.
MS. LIVESAY: Your Honor, I'd like to object and I've got ---
THE COURT: Ladies and gentlemen of the Jury, at this point in time, I'm going to ask you to step to the jury room. Don't be getting in discussions about the case during the break. There's some matters I have to take up with the lawyers. Thank you very much.
(REPORTER'S NOTE: The Jury exits courtroom. 11:28 A.M.)
THE COURT: Yes, ma'am.
MS. LIVESAY: Your Honor, I'm not sure how that's admissible, whether or not he has a felony conviction. The

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

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

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

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

THE COURT: Mr. McCollum?

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

THE COURT: Sir?

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

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

THE COURT: Just one second.

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

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

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

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

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

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

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

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

MS. LIVESAY: It carries more than a year.

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

MS. LIVESAY: Yes, sir.

THE COURT: That's what he pled to?

MS. LIVESAY: Yes, sir.

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

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

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

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

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

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

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

THE COURT: Yes, sir.

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

THE COURT: Yes, sir.

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

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

THE COURT: Yes, sir.

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

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

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

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

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

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

THE COURT: Yes, sir, you can.

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

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

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

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

THE COURT: Thank you.

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

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

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

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

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

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

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

Now we can talk about the other argument.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Yes, sir. Thank you.

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

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

MR. MCCOLLUM: That seems reasonable.

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

MR. MCCOLLUM: Thank you.

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

or was dishonest.

MR. MCCOLLUM: That's correct.

THE COURT: Okay. Thank you.

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

THE COURT: All right. Ma'am?

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

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

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

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

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

THE COURT: Yes, sir, I have ruled.

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

THE COURT: She did.

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

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

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

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

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

MS. LIVESAY: No, sir.

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

MR. MCCOLLUM: And ---

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

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

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

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

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

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

MR. MCCOLLUM: Your Honor ---

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

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

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

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

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

Yes, ma'am? I'm sorry.

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

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

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

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

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

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

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

MS. LIVESAY: Okay.

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

MS. LIVESAY: Yes, sir, Your Honor.

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

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

THE COURT: How?

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

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

THE COURT: You want to make a proffer?

MR. MCCOLLUM: Yes, sir.

THE COURT: Go ahead. I said go ahead.

MR. MCCOLLUM: May it please the Court?

THE COURT: I said go ahead.

PROFFER EXAMINATION BY MR. MCCOLLUM:

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

A: Yes.

Q: How many individuals?

A: Just one.

Q: And what was that person's name?

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

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

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

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

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

A: Yes, sir.

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

A: A quarter pound.

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

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

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

A: Yes.

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

A: Yes.

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

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

Q: So you had paid the other half?

A: Yes.

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

A: Yes.

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

it and got arrested and the police seized the marijuana?
A: Correct.
Q: And the incident that, if, if you know, the month that you were arrested, the month and the year?
A: I'm not exactly sure. I don't want to say the wrong date. I'm sure it's on record though.
Q: But, it was obviously prior to February of 2013, right?
A: Over a year before then.
Q: So sometime in maybe 2012; maybe as early as 2011?
A: Yes.
Q: Is that a fair statement?
A: Yes.
Q: And is that the first time that you bought marijuana from Christopher Bell?
A: No.
Q: Approximately, how many times did you ---
MS. LIVESAY: Your Honor, I think we're getting outside of the scope of what the victim ---
THE COURT: This is a proffer.
BY MR. MCCOLLUM:
Q: About how many times did you purchase marijuana from Christopher Bell?
MS. LIVESAY: Your Honor, my concern is that he is now incriminating himself on other crimes. He doesn't have an attorney here. He's not under arrest.

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

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: You want to go into that?

MR. MCCOLLUM: I would like to.

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

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

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

A: No, Your Honor.

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

A: Yes, Your Honor.

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

MR. MCCOLLUM: Thank you, Your Honor.

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

THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

conviction. So I've ruled in your favor on that.

MR. MCCOLLUM: Well, thank you.

THE COURT: I guess my question is now, Do you want to get into the facts and circumstances of that conviction?

MR. MCCOLLUM: Clearly, Your Honor, and you were asking me why I should be able to and I was attempting to explain that.

THE COURT: Well, I understand that and, so far, I'm not convinced that we should go in and try that case. Again, the issue here and the Jury knows that there was an alleged debt. The Jury's been made aware that there was a controversy over whether money was owed. Whether that debt arose as a matter of an honest legal transaction, they bought and sold a car, traded other property, which is entirely legal or whether it was for an illegal substance. I'm not sure it justifies the allegations of what happened in this case. I don't see how that bears on this.

MR. MCCOLLUM: I know, Your Honor.

THE COURT: And so that's gonna be my ruling pretty much consistently as we move along. You certainly have a right to make your record. You certainly have a right to challenge that ruling. You have done so adequately, I think, but my ruling is going to remain the same.

MR. MCCOLLUM: Okay.

THE COURT: My ruling is that I will allow you to ask him

about the conviction. I will not allow you to go into the extrinsic facts and circumstances of that conviction.

MR. MCCOLLUM: Your Honor, I understand the ruling.

THE COURT: Since they not involve, as I can tell, an act of dishonesty or a false statement.

MR. MCCOLLUM: It's -- you just gave me a glimmer of hope when I did the proffer.

THE COURT: And again, you certainly have a right to make the proffer and I have -- and we've allowed you to do so. The record is preserved. And then you can, you know, take it on up if you'd like; that's fine. That's what they're there for.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: All right.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Yes. Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 12:24 P.M.)

THE COURT: Let the record reflect the Jury has returned to the courtroom. I have overruled a State's objection and given the attorneys some instruction as to how to proceed under the rules. You may proceed, Mr. McCollum.

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

THE COURT: Yes, sir.

CONTINUATION OF CROSS EXAMINATION BY MR. MCCOLLUM:

Q: Okay. Mr. Degruccio, before the break, I had asked you if

you had been convicted of a felony; do you recall that?
A: Yes, I do.
Q: And you have, correct?
A: Yes.
Q: And that felony that you were convicted of is possessing marijuana with intent to distribute it or sell it, right?
A: Yes.
Q: Okay. Thank you. Now, when, when Christopher Bell -- Christopher Bell, you, you admit knowing him, correct?
A: Yes.
Q: And in fact, your testimony is that when Christopher Bell was in your apartment, that you recognized him, right?
A: Yes, I recognized his voice.
Q: And he was standing in your apartment and he was wearing a mask, right?
A: Yes.
Q: And when you said something like, Chris? Is that the way you said it?
A: Similar to that, yes.
Q: You said, Chris? Right? And he said -- he took his mask off, right?
A: Yes.
Q: And the reason you knew it was Chris is because when he was referring to money that you owed him, you knew that made you know who it was, right?

A: I recognized his voice, that's how I knew who it was.
Q: Okay. But did you owe other individuals money?
A: No.
Q: So the fact that he was -- did he say give me the money you owe me?
A: He said, Give me all your shit.
Q: He didn't say give me back the money you owe me?
A: No.
Q: Okay. And when he said that, you said, Chris, and then he -- you say he took off his mask and then -- is that correct?
A: Yes.
Q: All right. And then is it true that you argued with him?
A: I don't know if you would call it an argument but we had words.
Q: You had words, right?
A: Yes.
Q: And what -- can you describe for us, if you will, what that means to have words, like you and I right now, we're not having words, are we?
A: No, not really.
Q: When you say we had words, does that mean that you threatened him?
A: No, I did not threaten him. It was more like a heated discussion, not really an argument.
Q: So while this guy is in your apartment, you're having a

heated discussion with him, correct?
A: Yes.
Q: And what was the nature of the heated discussion?
A: He was robbing me and I was a little upset about it.
Q: Okay. Did you push him?
A: No, I never touched him, but he pushed me.
Q: Did you grab him?
A: No.
Q: Now did have words or did he have any heated discussion with Erik Meijer?
A: No.
Q: What's the other fellows name that was sleeping, Scott McDonald?
A: Nobody talked to him.
Q: And then Mr. Tanner?
A: He was locked in his room so nobody talked to him either.
Q: His name slipped me, what's his name?
A: Tanner Clark.
Q: Tanner Clark. So Christopher Bell did not have words with those individuals, right?
A: No.
Q: Only with you, correct?
A: Yes.
Q: And you in fact had property taken from you, right?
A: Yes.

Q: And Christopher Bell took that property, right?
A: Yes.
Q: And no one took property from Erik Meijer, right?
A: No.
Q: No one took property or even talked to Scott McDonald, right?
A: Right.
Q: And no one took property from Mr. Tanner?
A: Correct.
Q: Mr. Clark, I'm sorry, Tanner Clark. It was only you, right?
A: Yes.
Q: Were you, were you injured that day?
A: No.
Q: So you did not receive any injuries?
A: Not physically.
Q: Now this Christopher Bell, you've known him for some time, right?
A: Yes.
Q: And are you familiar with an accident he had where he was severely injured?
A: I believe he was in a car crash.
Q: And are you familiar with the condition of his right arm?
A: I believe his arm is a little messed up, yes.
Q: It's quite messed up, isn't it?

BY THE COURT

A: I am not exactly sure on the condition of his arm, but I know he is injured.

Q: Are you -- do you know which arm is injured, whether it was the right or the left?

A: No.

Q: If you I show you a picture of it, do you think you could identify that?

A: I could try.

MS. LIVESAY: Your Honor, I have an objection to both -- all these pictures.

THE COURT: All right. Ladies and gentlemen of the Jury, again I'm gonna ask you to step back to the jury room. Don't get in any discussions until such time as I've had an opportunity to ask you to begin your deliberations. You may retire at this time.

(REPORTER'S NOTE: The Jury exits courtroom. 12:26 P.M. The following takes place outside the presence of the Jury.)

THE COURT: I didn't know how we could discuss the photos without talking about what's in them. So, I sent the Jury out.

Yes, ma'am?

MS. LIVESAY: Thank you, Your Honor. The, the photos are obviously, A, they don't involve Kenneth Bell, who is on trial here today; B, they don't involve anything regarding the incident. There's nobody that can identify if this is, A,

what Christopher Bell looked like at the time; and B, what a picture of him and his family together have anything to do with this case and it is obviously to do nothing but bolster these ---

THE COURT: Can I see -- can I see the pictures, please?

MR. MCCOLLUM: She has the second copy, Your Honor.

THE COURT: Okay. All right. The -- what is the probative value of the pictures?

MR. MCCOLLUM: The, the, the Codefendant, Christopher Bell, had a debilitating injury from a car accident, where he's -- his right arm was injured. It hangs limp. I've been told that he could, he could hold something with it. For example, he could grasp something, but he can't lift anything. So, for instance, if he was holding a can of soda or something, he could hold that, but he would have to pick it up with the other hand to drink it. So, he has some -- he's not -- he doesn't have one arm, but he only doesn't really have any use of it, and that's the, that's the reason that I offered the picture. He says that he knows ---

THE COURT: The photo I've been given, there's one involving a family grouping where I assume that's Mr. Bell wearing the tie. And then there's a photo of just -- it appears to be him in a kitchen. In both pictures, you can see the sling, I believe. Am I correctly describing?

MR. MCCOLLUM: Yes, sir.

THE COURT: And your purpose is to show the sling?

MR. MCCOLLUM: Well, it's just to document -- I want to talk about the injury later in the trial and possibly call other witnesses but, yeah, I just want to document that, that he has that injury.

THE COURT: And your objection is that the top photo may involve some sympathy or something of that nature?

MS. LIVESAY: Well, my first objection is to the relevance because I'm not trying them together. I'm only trying Kenneth Bell.

THE COURT: I understand that, but there was some testimony, Ms. Livesay, about the fact that the perpetrator, one of the perpetrators carried the weapon in his left hand.

MS. LIVESAY: Right, my first is to relevance. My second is there's nothing about this picture that shows anything about an injured arm; that's my second thing. My third thing is I don't have one ounce of evidence, other than Mr. McCollum. I don't have one medical record; I don't have one person here that can tell me that there's any truth that there was any injury and to the extent of the injury. So, now we're gonna have to have Mr. McCollum testify, I guess both as a lawyer and a doctor and laying the foundation for this injury and to the extent of the injury.

THE COURT: Well, no, ma'am, I'm not gonna let him testify; that's not what he's trying to do. He's asking, he's

asking about these, gonna ask about these photos, I suppose, to identify if that was the other perpetrator.

MS. LIVESAY: My objection is there's no way he can ask a question to this witness, who has no idea about the injury -- he has no way to ask this witness or to lay a foundation about this injury because they don't have any knowledge. He's not a doctor, he cannot testify -- so, it is solely gonna be Mr. McCollum discussing this injury and telling us that this Defendant cannot hold a drink or hold a pencil, hold anything in his arm.

THE COURT: Well, I'm going to not allow the top photo. I will allow the bottom photo of these two, if it's to show the picture of the other alleged perpetrator and it also does show the sling, I think you said that was the reason you wanted to put it in. So, I think that would accomplish that purpose.

MR. MCCOLLUM: Is, is the problem that it shows other people in the picture.

THE COURT: Well, it could, it could confuse the Jury. It may involve other issues that are not on trial in this case.

MR. MCCOLLUM: Can I cut the picture?

THE COURT: Yes, sir, I'm gonna allow you to -- I'm gonna allow you to separate them.

MR. MCCOLLUM: But can I cut this other picture? In

other words, can I just cut the other people out of the other picture? I'm sorry, Your Honor, I thought it was okay to approach.

THE COURT: I beg your pardon?

I'll allow you to cut it.

MR. MCCOLLUM: Thank you.

MS. LIVESAY: Your Honor, are we allowing this picture to come in?

THE COURT: I don't know. He hasn't laid a very good foundation for it yet. And so while we've got the Jury out ---

MS. LIVESAY: I understand, Your Honor.

THE COURT: --- I'll allow him to lay a foundation on the things you were talking about, whether or not it is an accurate representation of the other alleged perpetrator, whether or not it does appear to, to show him as he appeared at that time; those are all relevant matters that the Court would have to know before I would know whether the, the photograph would be admissible. Finally, your objection, I believe, was as to any relevance whatsoever?

MS. LIVESAY: Exactly, Your Honor, and the sympathy. Obviously, this picture is tearing for sympathy by showing him with his family ---

THE COURT: I've just eliminated the family; they're out of the picture.

MS. LIVESAY: Your Honor, he's obviously standing in his house. I mean, I don't know how you can ---

THE COURT: I'm not gonna make him produce a picture ---

MS. LIVESAY: --- we can make that relevant that he's standing in that home smiling looking like a nice guy.

THE COURT: Well, everybody gets their picture taken somewhere. I'm not sure whether if it's in their home matters.

MS. LIVESAY: It's relevant in this trial. This is ---

THE COURT: Ma'am, you brought up the fact in your examination that the perpetrator that came in with the gun had it in his left hand. I don't know where this is going, but I suspect from what I've been told, that this particular person, who is another one of the people arrested at the scene, has a problem with his right hand that prevents him from picking up things. Now, this gentleman has acknowledged that he was aware he had car accident, he was aware that he had an injury to his arm, and he used the word, I think it's messed up, was the word that he used in his testimony. Now, he has a photograph of this person wearing some type of a sling on that arm. I'm gonna give him a right, the right to make a proffer with this witness as to whether or not those photos accurately show this individual. He saw him in a lot of different settings other than with a mask on his face. They knew each other for some period of time. So, I'm gonna let him try to

set a foundation to get it in. Then -- you've observed your objection; you can make it when he finishes the foundation.

MS. LIVESAY: I will, Your Honor.

THE COURT: Now, Mr. McCollum, if you would please ask the witness if he has, if he recalls how the gentleman looked and whether that's an accurate representation of how he looked.

DEFENDANT'S EXHIBIT NUMBER ONE

MARKED FOR IDENTIFICATION

PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

Q: Mr. Degruccio, at this time, I would like ask you to look at what's been marked as Defense Exhibit Number One for identification, okay; can you look at that for me, please, sir? Have you had a chance to look at it?

A: Yes.

Q: Okay. Do you know who's in that picture?

A: It's Christopher Bell.

Q: And do you know any, do you have information about Christopher Bell having an injury to his right arm?

A: Other than that I knew his arm was injured. I mean, I don't know the specifics of the injury.

Q: I understand. I'm not asking you for the specifics?

A: I know his arm was injured; that's all I know.

Q: In those two photographs in Defense Exhibit One for Identification, he's depicted in both of those?

A: Yes.
Q: And there's a sling on which arm?
A: On his right arm.
Q: And that's in both photos?
A: Yes.
Q: Did you ever see him wearing a sling?
A: No.
Q: Did you ever see him favoring his right arm?
A: No.
Q: Okay. Have you -- did it ever come to your attention -- did you ever see him lift his right arm above his head or did he ever -- did anything ever draw your attention to it?
A: No.
Q: Okay. Did you have any independent knowledge when he was in -- that he had been in a car accident?
A: I knew it because Chris told me himself.
Q: So, he told you that he had been in an accident?
A: Yes.
Q: Okay. And as a result of that, did he tell you that he had received an injury to his arm?
A: Yes.
Q: Did he tell you that he couldn't lift his arm above his ---
A: It wasn't something that we talked about. He never went into details about it.

Q: All right.

MR. MCCOLLUM: Thank you, Your Honor.

MS. LIVESAY: May I ask him a couple of questions, Your Honor?

THE COURT: Yes, ma'am. Please do.

MS. LIVESAY: Thank you.

REPLY PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:

Q: Paul, when was the accident?

A: I have no idea when his car accident was.

Q: Okay. Could it have been after February the 2nd?

A: No.

Q: Okay. It was before February the 2nd?

A: Yes.

Q: How do you know about the car accident?

A: I mean, we were friends, I just -- it just came up. I don't really remember the first time when he said it. I just knew.

Q: So he mentioned it to you?

A: Yes.

Q: Okay. And do you know when he mentioned it to you?

A: No.

Q: Okay. And did you notice him having in trouble with his arms at all?

A: He always seemed to do everything fine. I mean he didn't use his injured obviously, but he seemed to be capable in

doing anything.
Q: Did he still drive a car?
A: Yes.
Q: Now, do you know the extent of the injury?
A: No.
Q: Okay. So you have no idea really the extent of the problem with the arm?
A: No.
Q: But there's nothing that would lead you to believe that it hampers him in any form or fashion?
A: No.
Q: Okay. So, when you were around him, he didn't look in any way impaired not to be able to do what he normally did?
A: He seemed capable in any way.
Q: And could he drive a car?
A: Yes.
Q: Were you around him when he would eat and drink?
A: Yes.
Q: Okay. Could he do those things?
A: Yes.
Q: Could he open doors?
A: Yes.
Q: Did he carry things with his arms?
A: Yes.
Q: Okay. Now, that picture that Mr. McCollum showed you,

there's something on his arm; did you see something on his arm?
A: No. In the picture, yes, but not whenever we ---
Q: Okay. So, this picture, show me what you're looking at that you see on his arm, so I'll know.
A: This white thing on his hand right here.
Q: Okay. And would you say that's his arm or would you say that's his wrist?
A: I guess it's a little bit closer to his wrist.
Q: Okay. And let me ask you this much, is he wearing long sleeves or short sleeves?
A: Long sleeves.
Q: So, really can you see if there's anything on his arm?
A: No.
Q: And is there anything in this picture that looks like there's a brace or anything else on his arm?
A: Besides what's on his hand, there's really nothing else you can see.
Q: Okay. So, really, can you see his arm?
A: No.
Q: Okay. So, you don't know if there's a brace on his arm or not?
A: I do not.
Q: Okay. And could you testify from this picture that there was anything wrong with his arm?

A: No.
Q: Could you testify that there's a brace on his arm?
A: No.
Q: Now, but there does appear to be something on his wrist; is that correct?
A: Yes.
Q: Okay. And had you ever seen that before?
A: No.
Q: Okay. So, this picture, you've known him for how long?
A: A year or two.
Q: Okay. And during the time, that year or two, he told you about his accident?
A: Yes.
Q: But ironically, this is the only time you've ever seen that on his hand?
A: Yes.
THE COURT: Anything further, Mr. McCollum?
MR. MCCOLLUM: Not on that issue, Your Honor.
THE COURT: All right.
MR. MCCOLLUM: One, one thing does come to mind.
THE COURT: Yes, sir.
MR. MCCOLLUM: And quickly before the Jury comes back so -- I don't want them to have to go back and I have to finish my cross examination.
THE COURT: Oh, I understand.

MR. MCCOLLUM: I would just like to ask him if he's, and this has to do with drugs, because when, when the police got to the scene, I believe that there was marijuana found and a bong or something of that nature and I believe that it was stolen from him. And I think on the 911 tape, when he's talking to Mr. Tanner Clark, if that's his name, when they were asking what did you get, I believe he said he got my weed or he got my weed and a bong. I'd just like to ask him about that.

MS. LIVESAY: I didn't hear that.

THE COURT: I didn't hear that either.

MR. MCCOLLUM: Well ---

THE COURT: It's in evidence. You want to play it?

MR. MCCOLLUM: Well, I listened to it multiple times trying to pick up on that.

THE COURT: Did you pick up on it?

MR. MCCOLLUM: Some of us believe that we did, but I, I was having trouble hearing it. Okay. But ---

THE COURT: I wasn't listening for it, but I just didn't hear that.

MR. MCCOLLUM: I'd simply like to ask him if I may be permitted?

THE COURT: All right. Go ahead.

PROFFER EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

Q: Did you say that they got your weed?

BY THE COURT

A: No, I did not.
Q: And did you say that they took my bong?
A: No, I did not.
Q: Did you have marijuana and a smoking pipe or a bong stolen from you?
A: No.
Q: Okay. So, if drugs were found beside the car, those did not belong to you?
A: Correct.
Q: Okay. I just -- all right.

MS. LIVESAY: I just want to know if these questions are gone be asked when the Jury's back out?

BY THE COURT:

THE COURT: I'm not gonna allow it.

MS. LIVESAY: Okay. Thank you, Your Honor.

THE COURT: Unless it's on -- if it's on the tape or the recording, we can talk about it, but I didn't hear that. If you want to play it back to me, I'll be glad to listen to it again. If you think I should, I mean ---

MR. MCCOLLUM: I don't know how we can hear it. We've listened to the tape four or five times.

THE COURT: Yes, sir. I've listened to it now at least three times.

MR. MCCOLLUM: I guess out of an abundance of caution, Your Honor, I ---

THE COURT: Why don't I send the Jury out to lunch because this is gonna take a while and ---

MR. MCCOLLUM: I'm sorry, Judge.

THE COURT: That's quite all right.

MS. LIVESAY: You want me to play the tape, Your Honor, for the Court record.

THE COURT: I'm gonna send the Jury out and then we're gonna deal with this while the Jury's out to lunch. There's no need in keeping them in a jury room while we talk about this and it's already 12:30.

Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 12:24 P.M.)

THE COURT: All right. Ladies and gentlemen, it's come to my attention that my discussion concerning evidentiary questions is gonna take a little longer than I thought it was going to take and it's already about 12:30, so I'm gonna let you folks go on to your lunch. I'll give you the same instructions that I give you every time you leave the courthouse and, again, that is don't try to gather any information about the case on your own, don't listen to, watch or read media reports, don't discuss the case with anyone, don't allow anyone to discuss it with you and if anyone attempts to do so, please report them upon your return. I'll ask you to be back in the -- are they coming back to, the assembly room downstairs? Be there by 2 o'clock this

afternoon. So, at this time, you're free to go to lunch. I hope you have a good one and I'll check on you when you come back. Thank you.

(REPORTER'S NOTE: The Jury exits courtroom. 12:26 P.M. The following takes place outside the presence of the Jury.)

THE COURT: All right, ma'am, could you get the CD and let's cue it up and I believe what you were referring to was the point in time in which the 911 operator was asking the gentleman what was taken and he was asking someone else and they were responding; is that the part that you're referring to?

MR. MCCOLLUM: Yes, sir.

THE COURT: All right. If you'll try to cue it to that location.

(REPORTER'S NOTE: Portion of Plaintiff's Exhibit One played for the Court outside the presence of the Jury. Not transcribed herein.)

THE COURT: Play that section one more time? Can you tell me specifically when you think he says it? Play that section again.

MS. LIVESAY: You want me to play it again, Your Honor?

THE COURT: Yes.

MS. LIVESAY: The whole thing or just that ---

THE COURT: Just that last little section where she's ---

MR. MCCOLLUM: I think it's on there -- it's after

they're asking about the cash, was money taken or cash or something.

THE COURT: All right.

MR. MCCOLLUM: I can't hear it, Your Honor.

THE COURT: I don't hear it either, but I'll sure listen one more time.

MS. LIVESAY: I'm getting it, Your Honor.

THE COURT: Thank you.

(REPORTER'S NOTE: Portion of Plaintiff's Exhibit One played for the Court outside the presence of the Jury. Not transcribed herein.)

THE COURT: Is that it? Turn it off.

MR. MCCOLLUM: Your Honor, I don't know what to do. My assistant, Cathy, punched me and says that it says, they took my weed, okay. I don't hear it, okay, so I'm really ---

THE COURT: I don't hear it either.

MR. MCCOLLUM: I feel like that it's something that I should address if it's on there and I appreciate Your Honor playing it.

THE COURT: Well, let me ask this question. Did the police recover drugs at the scene?

MS. LIVESAY: I'm sorry, Your Honor. What was that?

THE COURT: Did the police recover drugs at the scene?

MS. LIVESAY: They did, Your Honor, I believe. Was it marijuana?

OFFICER BOYD: Marijuana.

MS. LIVESAY: From the car?

OFFICER BOYD: No, from Chris Bell.

MS. LIVESAY: From Chris Bell; where at on Chris Bell?

OFFICER BOYD: I believe Officer Langlais took it from his person.

MS. LIVESAY: I don't think it was ever tested, was it?

OFFICER BOYD: I don't have the results of the testing.

MS. LIVESAY: My understanding was there some marijuana recovered, and correct me if I'm wrong, from the front of the car.

MR. MCCOLLUM: There's some photographs, Your Honor, which are not in evidence at this time, that show that something, some glass object was broken, I think, near the left front wheel of the vehicle that they were arrested at and, and ---

MS. LIVESAY: So was that found on him or by the car?

OFFICER BOYD: You would have to ask ---

MR. MCCOLLUM: And maybe I should just ask the officer that seized the drugs at the appropriate time in the case and then we'll revisit this if it's appropriate.

MS. LIVESAY: The two issues I have is, to my knowledge, the marijuana has never been tested. So, I don't know who's gonna get up here and say it's marijuana. My second concern is I've got ---

THE COURT: A green leafy substance is probably how it would be described.

MS. LIVESAY: It was a green leafy substance. I don't even think it was field tested at the scene so I'm not sure who's gonna testify that it's marijuana. I wasn't gonna bring it in. There's a picture there, but they're not charged with any drug offenses and I told Greg I have no intentions of bringing up anything about drugs paraphernalia or drugs being around the car. They're not charged with that offense; I have no intentions of bringing that up and I told him that when we reviewed the evidence. So again, I don't know, the only relevance is for him again to try to say that my victim had marijuana in the house when nobody has said that, there's no proof to that and, again, it's not relevant. I think we've gone so far now, I want to put Mr. Bell in the back and put Paul Degruccio over there in that chair. I think we are getting to that point. I think we are losing what he's charged with and who and what's probable and what's not as to the armed robbery, burglary first and kidnapping and the charges that he's charged with. None of those have anything to do ---

THE COURT: Well, what, what I'm gonna do at this point in time -- I've listened to the tape. I can't hear what I'm being urged to hear. So, I don't hear that. What I will do is when I -- I'm not gonna let you inquire of this witness

into that at this point in time. He'll subject to recall if you'd like to recall him once we get further into the case. If there is some evidence because of the proffer -- he's denied that he had any taken, that he had any in his possession. If there is evidence from other witnesses that that was in fact taken as part of the robbery or whatever that was, then it may become relevant at that point in time, but I haven't heard anything yet. There's no evidence that I heard on the recording and he has denied that anything was taken from him or that he said those things. So, later on if there's, for example, another person in the, in the apartment heard him say that, then it may even become relevant as to his credibility.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: So, we'll see where we go with that. But right now, I don't hear a foundation for it.

MR. MCCOLLUM: I understand, Your Honor.

THE COURT: Okay.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: All right. We're in recess until 2 o'clock.

Sir, you're gonna be stepping down again. My same instructions would hold true now. You should not discuss your testimony with anyone during the break. You understand?

MR. DEGRUCCIO: Yes, Your Honor.

THE COURT: All right. We're in recess then until 2

o'clock. Thank you.

MR. MCCOLLUM: Thank you, Your Honor.

(RECESS - 12:38 P.M.)

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

(On the Record - 2:00 P.M.)

THE COURT: The State ready?

MS. LIVESAY: Yes, sir, we are.

THE COURT: Defense ready?

MR. MCCOLLUM: Yes, sir, we are.

THE COURT: Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 2:01 P.M.)

THE COURT: The record will reflect the Jury has returned to the courtroom. If any juror had any difficulty in complying with my instructions during your absence from the courthouse, please stand. It appears that everyone's been able to comply with those instructions.

I've completed my discussion with the attorneys on some evidentiary matters and at this time, you may resume your cross examination, Mr. McCollum.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Yes, sir.

CONTINUATION OF CROSS EXAMINATION OF PAUL DEGRUCCIO BY MR. MCCOLLUM:

Q: Mr. Degruccio, first of all, we've taken several breaks here so if I repeat myself or ask you questions I've already

asked, I apologize.

Now, you testified earlier that when you saw Christopher Bell, you had apologized for what had happened; do you remember saying that?

A: Yes, I saw him at Food Lion.

Q: And you had said you had apologized for what had happened, right?

A: I don't know if that's exactly what I said, but I know I went up to him and we talked about it.

Q: And earlier, you and I, we had discussed this debt that was owed and you said it was about $800, right?

A: Yes.

Q: Do you remember it being 3200?

A: No.

Q: So you, you would deny that and say it was not $3200?

A: Yes.

Q: Okay. Are you sure about that?

A: I'm pretty sure.

Q: Are you positive?

A: Ninety-nine percent sure.

Q: All right. Now, clearly you were arguing with Christopher Bell, right, inside the house on February the 2nd, right?

A: Yes.

Q: And you had testified that you were angry with him and upset with him, right?

A: Yes.
Q: Okay. And at some point, did the other individual come and separate the two of you?
A: No, he didn't separate us, but he did come into the room and sit me down, yes.
Q: All right. And did you, did you -- how tall are you?
A: 5'2", I guess.
Q: And how much do you weigh?
A: About 115 pounds.
Q: All right. And you felt comfortable standing up to Christopher Bell?
A: I wouldn't say that it was a comfortable situation, no.
Q: But you, you felt angry enough or upset enough that you stood up for yourself, right?
A: I don't know if it was the anger, but I believe any person stands up for themselves in a situation like that.
Q: Okay. There, there's, and there's no question but that whatever the debt was that you owed, you owed it to Christopher Bell and not another individual, right?
A: Yes.
Q: All right. And on this particular day, this was a Saturday morning?
A: I'm not sure what day it -- what the day was?
Q: Well, when you work, do you normally, do you work all seven days?

A: I usually get one or two days off.
Q: So you could be off any time during the week, right?
A: Yeah, the schedule is always different.
Q: Okay. So, so the fact that you were home that morning playing video games because of the nature of your job, that wouldn't indicate whether it was a weekend or weekday, right?
A: No, it wouldn't.
Q: Those days just tend to run together?
A: I can have off on the weekend or I can have off on the weekdays; it's just whatever they schedule me.
Q: In that, in that particular place that you lived in, I take it that you and your roommates rented that?
A: Yes.
Q: And how many people were paying rent, three?
A: Four, including my roommate's girlfriend.
Q: Okay. And how much is the total rent for say a month, how much is the rent for a month?
A: I think it's 625.
Q: Okay. So you had to pay a fourth of that?
A: Yes.
Q: And did you have, you had other bills, right?
A: Yes.
Q: In fact, I think you said you had a, a flat screen television, right?
A: I don't believe I said that, but yes, I do own one.

Q: Okay. Well, I'm sorry. Do you have a flat screen TV?
A: Yes.
Q: And if you know, what size is it?
A: A 32-inch maybe.
Q: All right. And that's just hanging in your bedroom?
A: Yes.
Q: And you have cable television or do you have the dish?
A: I don't have cable or anything TV hooked up in my room. I don't like to watch TV
Q: Okay. But you had cable at the apartment, right?
A: Yes, in other rooms, but not in my room.
Q: And so you paid your share of that, right?
A: Yes.
Q: And you paid your share of the electric bill, right?
A: Yes.
Q: And I guess water, is water included?
A: Water is included.
Q: And did you own a car at that time?
A: No, I've never owned a car.
Q: Okay. And if you're going somewhere, given the circumstances here in this county, how would you travel; in other words, if you were gonna go to work, how would you get there?
A: My roommate would give me a ride.
Q: So, if you went to work at Hamburger Joe's for example to

cook, what typically would you go in in the morning or the afternoon or would they open at night; what would the work schedule be like?

A: I usually either work from 10:00 to 4:00 or from 4:00 to 10:00.

Q: So if you work from 4:00 to 10:00, would your roommate come and pick you up from the restaurant and bring you back home?

A: Yes, usually we work together on the same days because they know that we live together.

Q: So, the restaurant would tend to try to schedule it so that you could -- they would accommodate you, I guess is the right phrase?

A: Correct.

Q: And on the, the flat screen TV, that's yours?

A: Yes, it was a gift.

Q: Somebody gave it to you?

A: Yes.

Q: So, you didn't purchase it?

A: No.

Q: Who gave it to you?

A: My brother.

Q: And, and he just, was it for a birthday present?

A: It was for Christmas.

Q: Okay. And do you have an idea like to, and I may be

saying this wrong, but on the flat screen TV there's this thing called 1020 and 780, right?

A: 720, 1080.

Q: 780 or 1020; the 780, which do you have; do you have 780 or 1020?

A: It's 1080p.

Q: I'm sorry; I can't get it right. But you have the good one?

A: Yes.

Q: All right. And do you know how much that television costs?

A: My brother never told me how much it costs.

Q: How old is your brother?

A: He's twenty-five or twenty-six.

Q: Does he live in Horry County?

A: Yes, he does.

Q: What kind of work does he do?

A: He buys and sells currency.

Q: So, he's a currency trader?

A: Yes.

Q: Does he do that for other people or for himself?

A: Probably both.

Q: All right. And does he, is he registered as a broker or something like that?

A: I'm not really sure. I don't really talk to my brother

too much.
Q: You don't? Why is that?
A: Just because he has kids now and I just barely see him. He has lots of things going on.
Q: All right. And you say it was, you got it for your birthday or for Christmas?
A: For Christmas.
Q: All right. And how, which Christmas was it; was it this past Christmas?
A: It was two or three years ago.
Q: And that's a pretty nice present, right?
A: Of course.
Q: Do you normally get those kinds of presents from your brother?
A: No.
Q: Was this a one-time occurrence?
A: Yes.
Q: Now in the past, and I apologize if we went through this, but in the past year or so, would you say that you worked more months or that you were unemployed more months?
A: Probably unemployed.
Q: Okay. And you were able to make your monthly payments and do that sort of thing?
A: I had help from people.
Q: Okay. From the same brother?

A: From my brothers and my parents, my roommates.
Q: So you have other brothers?
A: I have two brothers.
Q: Are they older or are they younger than you?
A: One is older and one is younger.
Q: How old is the younger one?
A: He's twenty-two.
Q: All right. And do they give you money to live on?
A: They would let me borrow money, but they never just gave it to me.
Q: So, for instance, your younger brother, did he loan you money?
A: Yes.
Q: How much did he loan you?
A: Just enough to pay the cable bill once.
Q: So, small amounts?
A: Yes.
Q: How about the other brother that we're talking about, not the one that bought you the TV, but the other older brother; did he loan you money?
A: I only have one older brother and he is the one who gave me the TV.
Q: Okay.
A: And he did loan me money once, yes.
Q: Was that a significant amount of money?

A: Just enough to pay one month's rent.
Q: Okay. And you don't like watching television, right?
A: I don't like the commercials.
Q: I understand. So what do you watch on the TV, movies and things like that?
A: Sometimes. I mainly use it for computer.
MS. LIVESAY: At this time, I have to object it goes to relevance and where this is going.
THE COURT: Relevance, Counselor?
MR. MCCOLLUM: I'll stop, Your Honor.
THE COURT: Thank you.
BY MR. MCCOLLUM:
Q: Finally, last question, last point. The only items that were taken were items that belonged to you, correct?
A: Yes.
Q: All right. Thank you. That's all I have, Your Honor.
THE COURT: Redirect?
MS. LIVESAY: Just a couple, Your Honor.
THE COURT: Yes, ma'am.
REDIRECT EXAMINATION OF PAUL DEGRUCCIO BY MS. LIVESAY:
Q: Now, Paul, we've talked a lot about Christopher Bell and the fact that he was in the apartment that day; is that correct?
A: Yes.
Q: You see him here today?

A: Yes, I do.
Q: Could you point him out to the Jury?
A: He's over there. Yellow shirt.
Q: What color shirt?
A: Yellow.
Q: Okay. So that's him sitting behind Kenneth Bell?
A: Yes, ma'am.
Q: Okay. Now, you saw how many guys in there that day?
A: Two.
Q: Okay. And you recognized one of them; is that right?
A: Yes, by his voice.
Q: Now, do you know that Christopher Bell was arrested that day?
A: Yes, I do.
Q: And are you aware that the guy that was with him was arrested that day?
A: Yes.
Q: And do you know who that was?
A: It was Kenneth Bell.
Q: Okay. Now since you know Christopher Bell and obviously now Kenneth Bell, tell the Jury who had the gun the day that they came in your apartment?
A: It was Kenneth Bell.
Q: Okay. And tell the Jury, did you owe him any money or have any relationship with him?

A: I never met him until that day.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Recross?

MR. MCCOLLUM: Nothing further, Your Honor.

THE COURT: All right, sir, you may step down.

You may call your next witness.

MS. LIVESAY: Could we excuse him, Your Honor, if he wishes to be excused?

THE COURT: Any objection from the Defense?

MR. MCCOLLUM: Yes, Your Honor, at this time.

THE COURT: All right then, he'll have to stay.

MS. LIVESAY: The next witness then, Your Honor, would be Erik Meijer.

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

ERIK MEIJER, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

THE COURT: Sir, once you're seated, I'd ask that you state your name, please?

MR. MEIJER: My name is Erik Meijer.

THE COURT: Ms. Livesay, your witness.

DIRECT EXAMINATION OF ERIK MEIJER BY MS. LIVESAY:

Q: Mr. Meijer, tell the Jury how old you are?

A: I'm twenty-five.

Q: And are you working or in school?

A: I'm kind of working, taking a break from school to help my

mom out.
Q: Okay. And where are you working?
A: Anytime Fitness in Georgetown. I'm a personal trainer.
Q: Okay. And do you remember what happened February 2nd of this year?
A: Yes.
Q: And do you know Tanner Clark and Paul Degruccio?
A: I do.
Q: And were you at their apartment that day?
A: Yes.
Q: Or did you live there?
A: No, I just stay the night there every once in a while.
Q: Okay. Now, if you don't mind, tell the Jury what happened that day you were at the apartment?
A: It started out, I was hanging out with Paulie in his room, we were gaming and he got a text from whatever that girl's supposed to be. And eventually he ushered me out of the room when she was supposed to be arriving, which is why I was in the living room. And we j just sat out there. He had unlocked the door and lightly cracked it and was checking out the front window and then out of the blue, two people busted through the door with masks, one with a gun and one with a tire iron.
Q: Okay. Now before we get too far, were you in that den that had the front door in it?

A: Yes.
Q: Okay. And who else was in that room with you?
A: Paulie, he was by the front door waiting.
Q: Okay. So, the front door opens up right into that living room where you were sitting?
A: Yes.
Q: Okay. And so whoever came in the front door, you had a clear shot?
A: Yes.
Q: Okay. Did you see anybody let those two guys in or invite them in?
A: No.
Q: Okay. To your knowledge, did anybody in that apartment know they were coming?
A: No, we were just expecting one woman.
Q: If you don't mind, describe to the Jury again what those two guys looked like?
A: I mean, you know, I briefly noticed just the black and the masks and the silver of the gun. I mean, I wasn't, my mind doesn't work on details at that point. The moment I saw that, I went into survival mode and I was just thinking of situations and how I would possible act. So, I wasn't paying too much detail to what they were wearing.
Q: Okay. Let me ask you this, did you ever see that gun get pointed at anyone?

A: Yes.
Q: Who was the gun pointed at?
A: It was mostly pointed at Paul. It made a quick pass by me.
Q: Okay. Where did they go after they came into the apartment?
A: Initially, they seated Paul down in the seat. After Paulie identified Chris, he took his mask off and led him back to Paul's room while Kenneth stayed where he could look down the hallway and watch me at the same time. So ---
MS. LIVESAY: If you don't mind, Your Honor, can I approach the witness?
THE COURT: You may.
MS. LIVESAY: Thank you.
BY MS. LIVESAY:
Q: Mr. Meijer, I'm gonna show you what's in State's evidence as Number Three; do you recognize that picture?
A: Yes.
Q: Can that -- can you show the Jury on that picture where Kenneth was standing, the Defendant?
A: He was standing right there on the hardwood floor.
Q: I'm sorry, hold on.
A: On the hardwood floor. If you can look straight ahead, you'll see couch and obviously you can see down the hallway.
Q: So, was he standing here on the wood floor?

A: Yes.
Q: Okay. And at any point, he lose control of that gun?
A: No.
Q: And how was he holding the gun when he was standing there in the hallway?
A: While he was standing in the hallway, most of the time, he was just kind of had his arms crossed. He didn't point it at me the entire time but he was definitely watching.
Q: Okay. So, were you free to leave?
A: No.
Q: Did you ever get up to leave?
A: No.
Q: Why not?
A: Obviously, he would have reacted if I attempted to leave.
Q: Okay. So he was standing in a position where he could see everything that was going on in the apartment?
A: Yes.
Q: Okay. So, if anybody did try to leave, he had a clear shot at them?
A: Yes.
Q: Okay. So, if anybody wanted to leave from any of the bedrooms, they would have to walk past him; is that correct?
A: Yes.
Q: Okay. And he had his eye on you most of the time; is that correct?

A: Yes.
Q: Okay. So, you, you did not leave?
A: No.
Q: Okay. Now, were you present when Christopher Bell took his mask off?
A: Yes.
Q: Okay. Do you remember what he looked like?
A: Yeah, it was the first time I ever met him, you know.
Q: Okay. Did you know Christopher Bell?
A: No.
Q: Had you ever met him before that day?
A: No.
Q: Now, Kenneth Bell, do you know him?
A: No.
Q: Had you ever met him before that day?
A: No.
Q: Okay. Now could you hear anything that was going on?
A: Not really, I mean, I just heard elevated voices. I couldn't really distinguish what was being said.
Q: Did anyone ever try to take that gun from the Defendant?
A: No.
Q: Okay. And did you see whether or not Chris Bell had a weapon.
A: A tire iron.
Q: Okay. And you saw that when they came in?

A: Yes.
Q: Did you ever leave that living room?
A: No.
Q: Okay. Did you see the two Defendants walk out the front door?
A: Yes.
Q: When you saw them walk out the front door, did you see anything in their hands?
A: Yes, the two items already mentioned, the laptop and the camera.
Q: So, you saw them walk out with that?
A: Yes.
Q: Did you have a weapon?
A: No.
Q: Okay. To your knowledge, was there a weapon in that apartment?
A: No.
Q: Could you recognize Chris Bell now?
A: Probably. I just -- the most I got was like a quick glance and a mug shot pictures on the internet. So, I'm not sure if I'd be able to recognize ---
Q: So, you didn't get a look -- a good look at him that day?
A: No.
Q: Did you make eye contact with either one of them?
A: For a moment. I mean, as far as being guarded, I made eye

contact several times.

Q: Were you intentionally not looking at him?

A: Yeah, most of the time, but I was still like scoping and planning.

Q: Okay. Did you have a phone with you?

A: No, Tanner had my phone in his room.

Q: Okay. So, you had no way to call 911?

A: No.

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

A: No, I had never met them before.

Q: Okay. And how many men were in that apartment that day?

A: Two uninvited and ones.

Q: Okay. So, the entire time, just the two guys, one with a tire iron and the other had the gun?

A: Yes.

Q: Did anyone in that apartment to your knowledge ever try to take the tire iron or big gun away from those two Defendants?

A: No.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: You may cross examine.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Mr. McCollum.

CROSS EXAMINATION OF ERIK MEIJER BY MR. MCCOLLUM:

Q: Is it Meijer? Meijer?

A: Meijer.

Q: It's pronounced Meijer.
A: Yeah, like mayor of the city.
Q: All right. Thank you.
Prior to the day, February 2nd, 2013, did you know Christopher Bell?
A: No.
Q: Never seen him before?
A: No.
Q: All right. How long have you known Paul Degruccio?
A: I'd met him for the first time and years ago. We grew up in the same area, but I knew him mostly through World of Warcraft and I knew him personally through the last couple of years.
Q: Okay. Now World of Warcraft, that's a video game?
A: Yes.
Q: You play it on-line?
A: Yes.
Q: It's somewhat addictive?
A: For the weak-minded, I suppose.
Q: Okay.
A: It's kind of hard to be a personal trainer and be addicted to World of Warcraft.
Q: How long have you been a personal trainer?
A: Four years.
Q: Okay. And you have clients that you train?

A: Yes, recently here, started in D.C., was brought to Barbados as a private trainer. So, I've had numerous training opportunities.

Q: So, you've been -- are you from Washington D.C.?

A: No, I grew up here.

Q: You grew up here in Myrtle Beach?

A: I graduated from Waccamaw.

Q: You graduated from Waccamaw High School. What year was that?

A: '06.

Q: All right. How long have you been a personal trainer, I think you said four years?

A: Yes.

Q: So, that was 2009, right?

A: '8, end of '8, '9.

Q: And do you have a certification for that?

A: International Academy of Sports Medicine.

Q: Okay. And did you go to school to study to be a personal trainer?

A: Some. Like I said, I'm currently taking a break because I'm back here trying to help my mom out.

Q: All right. So, you've been quite successful as a personal trainer?

A: Yes.

Q: And when you indicated that you trained clients in

Washington D.C., that's where the client lived and they, you traveled up there and trained them?

A: I went to school at the University of Maryland, so I was living in the D.C. area.

Q: Okay. And then you said that someone flew you to Barbados to train them?

A: Yes, I lived there for a period of time.

Q: So somebody ---

A: My services were good enough to be brought to Barbados, so they had me there.

Q: And how long were you there?

A: Six months on her dime and spent another three months there living with a friend and their family.

Q: All right. So, if I heard you correctly, you said six months on her dime?

A: Yes.

Q: So, you're referring to your client that you were training?

A: Yes.

Q: And you were only training one person?

A: Yes.

Q: Okay.

A: And then I had a side job in Barbados but ---

Q: So, I take it this individual was fairly wealthy?

A: Yes.

Q: And you, have you had -- and I'm not asking for names or anything -- but do you have celebrity clients and sports figures and people like that that you train?
A: Just that one, I mean, it wasn't that -- I didn't actually train the celebrity, I trained the wife.
Q: Okay.
A: And no, I didn't have any relations during the Barbados time. That goes strongly against my morals, especially since I had met the husband, since that's what most people infer happened with my trip.
Q: Okay. Back on February the 2nd, though, you weren't in Barbados; you were sitting in your friends or your apartment, right?
A: No, I don't live with them.
Q: I'm sorry. I messed that up. Back on February the 2nd of 2013, you were in Paul Degruccio's apartment playing video games, right?
A: Yes.
Q: And I think you indicated in your statement that you had what was described as a valuable laptop or a valuable computer, right?
A: Yeah, it's a fairly big laptop that would require somebody to grab it to probably set down their means of their defense.
Q: All right. And you also had other valuables with you?
A: No, just my laptop.

Q: Okay. Did you have a wallet with you?
A: Yeah, but I didn't have any money at that time.
Q: So, you had an empty wallet with no money in it. Did you have an expensive piece of jewelry or watch or anything?
A: No.
Q: Did you have a car?
A: No.
Q: You had the computer and a charger, right?
A: Yeah, for the computer.
Q: You had the laptop. And you said it was an expensive laptop, right?
A: Yes.
Q: All right. Can you describe it or give us some idea of how much or how valuable it is?
A: Asus G73; it's about 1300 bucks.
Q: All right. And was it fairly new?
A: I guess, a year and a half.
Q: And you did not -- you didn't owe anybody any money, right?
A: No.
Q: And nobody took anything from you that day, right?
A: Like I said, no.
Q: Nobody took any valuables from you, right?
A: No.
Q: And in fact, I think you said at one point, you took the

laptop and stored it under the sofa, right?
A: Yes.
Q: All right. And the only person that Christopher Bell was dealing with or talking to was Paul Degruccio, right?
A: Yes, mostly.
Q: And did you know of any prior dealings between Paul Degruccio and Christopher Bell?
A: No.
Q: So, you unaware of any of that?
A: Yes.
Q: Okay. Now, do you remember the time when the other individual, the one other than Chris, left you in the living room alone?
A: Yes, for the moment that he went to, I guess, point a gun in Paulie's face and tell him to sit down.
Q: And do you remember him coming back into the living room and saying that he was surprised that you were still there?
A: No, I think he expected me to be there.
Q: You don't remember him saying something to the effect that ---
A: Absolutely not. He was there -- he went into the room for a total of fifteen seconds. He was not giving me an opportunity to leave.
Q: And he didn't say that to you?
A: No, he did not say, excuse me, you may leave now as I go

talk to this person.
Q: But when he came back he didn't say he was surprised that you were still there?
A: No, he wasn't the least bit shocked.
Q: And he didn't say that if you had tried to leave he wouldn't stop you?
A: No.
Q: Okay. And when you -- when Ms. Livesay asked you if things were taken, she used the word they, but when you wrote your statement you said that you saw Chris walking out with a laptop and digital camera, right?
A: Yes.
Q: So, Chris is the one that took Mr. Paul Degruccio's things, property, right?
A: Yes, Chris took them while Kenneth held everyone hostage.
Q: Okay. And you, were you physically harmed?
A: No.
Q: And during this, what's, what's the fellow's name that was asleep in the other room?
A: Scott.
Q: And Scott never woke up?
A: No.
Q: And nobody tried to enter Scott's room?
A: No, they apparently asked -- inquired about him, but they were lied to and said he wasn't home.

Q: All right. So, the only person that lost -- that property was taken from was Paul Degruccio?

A: Yes.

Q: All right. Thank you, sir.

That's all I have, Your Honor.

THE COURT: Redirect?

MS. LIVESAY: Nothing from the State, Your Honor.

THE COURT: All right. Any objection to the witness being excused if he'd like?

MR. MCCOLLUM: No, Your Honor.

THE COURT: All right, sir. You may step down. You're free to go. If you like, you're free to stay.

You may call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Officer Natalie Boyd.

THE COURT: Come forward, please, ma'am, and be sworn.

OFFICER NATALIE BOYD, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

THE COURT: Ma'am, once you're seated, state your name please?

MS. BOYD: Natalie Boyd.

THE COURT: I'd ask the attorneys to approach briefly.

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

THE COURT: You may proceed, Counselor?

MS. LIVESAY: Thank you, Your Honor.

DIRECT EXAMINATION OF NATALIE BOYD BY MS. LIVESAY:

Q: Ms. Boyd, tell the Jury where you currently work?

A: For the Horry County Police Department.

Q: Okay. And how long have you worked there?

A: Since 2004.

Q: Okay. And what kind of training have you undergone with the police department?

A: I attended the South Carolina Criminal Justice Academy. I, I also am certified ---

THE COURT: Slide your chair just a little closer, ma'am. There we go. Thank you.

A: I am also certified on radar, Datamaster, on the bicycle and I have advanced criminal enforcement training, and we also have training -- in-service training once a year and legal update training.

BY MS. LIVESAY:

Q: And what are your present responsibilities at the Horry County Police Department?

A: I work the -- Outreach Team. We're a team that we do quite a few different functions to include backing up patrol, the calls -- the -- gets held up or if there's an in-progress call and we're in the area.

Q: And what were your responsibilities on or around February the 2nd of this year?

A: They were the same.
Q: Okay. And at that time, were you still wearing a uniform?
A: Yes.
Q: Okay. Did you drive a marked car?
A: Yes, I did.
Q: Okay. On February the 2nd, did you have an occasion to investigate a crime that occurred on Hopkins Circle?
A: Yes, I did.
Q: Is Hopkins Circle in Horry County?
A: Yes, it is.
Q: Okay. And if you don't mind, tell the Jury first a little bit about the procedure of how you respond to a call. How do you even know to respond to that location?
A: When we hear it dispatched over our radios, our in-car radio.
Q: Okay. And in this case, were you dispatched to that location?
A: I heard the call come out. It wasn't specifically dispatched to me. However, I was in the area of the call and it was in-progress and there was a weapon involved. So, of course, it takes more than -- it takes a few officers to respond to a call like that.
Q: Okay. And if you don't mind, tell the Jury what kind of call you were responding to at Hopkins Circle?
A: It came out that the complainant was, was hiding in, in

his room and that he could see that there was two masked men in his apartment with a weapon in his roommate's face and those were the details that I got over the phone.

Q: And when you were dispatched out there, were you told whether or not a weapon was involved?

A: Yes, we were.

Q: Okay. And was a weapon involved?

A: Yes, there was.

Q: Okay. Now, tell the Jury about what time of day it was that you responded to that call?

A: It was approximately 2 o'clock in the afternoon.

Q: Okay. And if you don't mind, tell the Jury, was it -- what the weather was like; was it raining, sunny?

A: It was sunny out.

Q: So, there was nothing to impair your view?

A: No.

Q: Okay. If you don't mind, tell the Jury what you saw when you entered that complex and what happened as far as your investigation?

A: When I entered the complex, the dispatcher had, had communicated to me that it was the second, second building on the left. And when I first entered, I started to go to the left, but then realizing there weren't apartments on the left, I turned to the right. As I turned, I saw two subjects crossing the parking lot coming from the, from the victim's

location -- building location and heading towards a red-in-color vehicle.

Q: And at that time, did you know what kind of vehicle you were looking for?

A: I, I knew that, that it was a red-in-color vehicle that was communicated and also that the subjects were wearing black hoodies and blue jeans.

Q: Okay. Describe the two guys you saw leaving the victim's apartment and going to that red car?

A: They were both wearing black hoodies, blue jeans and what at first appeared to me to be white sneakers. When I got closer to the subjects, I realized they had socks over their shoes.

Q: Okay. And did that match the description that dispatch had told you?

A: Yes.

Q: And at that point, what did you do?

A: I stopped my patrol car and I told them to stop where they were and to get on the ground.

Q: Okay. And when you're normally out patrolling, do you see people with socks over their shoes?

A: Never.

Q: Okay. So, did that draw even more of a heightened attention?

A: Yes, it did.

Q: Okay. So, if you don't mind, you get out of the car, tell the Jury what happens next?

A: I ordered the subjects to get on the ground. I could see the subject -- both subjects started to enter the vehicle at the same time, one into the driver's door and one into the back passenger seat. I also observed that there was a female already seated in the vehicle in the front passenger seat. The back passenger had closed the door and the only way I could tell that he was complying with, with me telling him to get on the ground was I could see his feet facing down. However, I could not see the driver of the vehicle. I lost sight of the driver because there was also a civilian walking by at the time that, that I was concerned about that civilian being in the close proximity of the subjects. And so at that point, I had asked the driver to stand up with his hands up and I still did not get any compliance from the driver. I repeated it and at that time, the, the suspect that was in the back of the vehicle that had complied with me started to move. He actually turned his body around so that he was facing me. He was still -- he remained on the ground but his face was looking at me. And, at the same time, the female exited the vehicle. I yelled at her to get on the ground as well and that is when a backup officer arrived.

Q: Come real close to the mic, if you don't mind; I'm sorry. Go ahead.

A: When the backup officer arrived, I had held my position in the door jamb of my patrol car because I, I did get the information that a weapon was involved. The backup officer came around the front of the suspect vehicle as I approached around the back. And, at that point, we realized that we had both subjects prone on the ground and they were both placed in handcuffs and the backup officer then placed the female in handcuffs.

Q: Now, you said you wanted to see the subject's hands that was in the front of the car; is that correct?

A: Yes, I ---

Q: Is that because you were dispatched that a weapon was involved?

A: Yes, I had, for safety reasons -- I don't -- I didn't know where he was. I, I did know there was a weapon involved. I did pause at one moment to see if I could hear where he was. And at that moment, I heard glass shatter at the front of the vehicle and that was when I knew where the driver's location was. However, he still was not, as far as I could see, complying with my commands.

Q: Okay. So at that time, you knew a weapon was involved, but you had no idea where that weapon was?

A: Correct.

Q: Okay. And that made for a automatic safety issue?

A: Yes, absolutely.

Q: For your safety and I guess other's safety?
A: Yes. As I said, there was a civilian passing by as well that was in close proximity to where the subjects were.
Q: Now this arrest, where did it take place exactly?
A: At Hopkins Circle right in ---
Q: Where?
A: At Hopkins Circle. It is [redacted] right in front of the ---
Q: And is that the apartment complex?
A: Yes, ma'am.
Q: Okay. And when you told them to get down on the ground, were they in an open area?
A: Yes.
Q: Where were they?
A: They were right near the vehicle.
Q: Okay. In the parking lot of the apartment complex?
A: In the parking lot.
Q: Okay.
A: The vehicle was parked in a parking space facing the wood line. So, it was facing away from the building.
Q: Okay. Now, did this apartment complex have multiple buildings?
A: Yes, it does.
Q: Okay. So, when this took place and you arrived, you're still not clear -- and I've got a picture. When you arrived,

you arrive at an apartment complex, multiple buildings?
A: Uh-huh (affirmative response).
Q: You know a gun is involved, okay, but you have no idea where the gun is?
A: Correct.
Q: When you were there, did you see people walking around; I think earlier you said you tried to wait until ---
A: I did. As I said, there was a civilian walking. The subjects were walking in this direction. The civilian was actually walking away from where my location is.
Q: Okay.
A: But I did want to give that civilian a moment to kind of clear out of the area where the subjects were.
Q: And would you say, not knowing where this gun was, was a issue for you and everybody else in that parking lot?
A: Absolutely.
Q: Now, did you -- you said earlier you had a backup police officer come; is that true -- is that right?
A: That's correct.
Q: Who was that?
A: That was Officer Dave Langlais.
Q: And did anybody else show up, any other officers?
A: Officer Tim Cast and Officer Johnson.
Q: And were you able to detain the two Defendants at the car?
A: Yes.

Q: Okay. And you said there was a third person in the car; is that correct?
A: That is correct.
Q: And when we say car, we're talking about the red Mitsubishi; is that correct?
A: Correct.
Q: Okay. Now, as part of your investigation, did you find out who those two guys were and the girl that was sitting in the car?
A: I did.
Q: Okay. If you don't mind, tell the Jury who was in the front getting in the driver's seat?
A: That was Christopher Bell.
Q: Okay. And was he wearing a black top and jeans?
A: He had like a black hoodie, yes and jeans.
Q: And socks over the shoes?
A: Socks over the shoes, correct.
Q: So this is Christopher Bell, socks over his shoes, jeans and some sort of black type sweatshirt type thing?
A: Uh-huh (affirmative response).
Q: Were you able, through your investigation, to find out who the guy was that was right behind him getting in the back seat?
A: Yes, I was.
Q: Who was that?

A: That was Kenneth Bell.
Q: Okay. And if you don't mind, tell the Jury what Kenneth Bell was wearing?
A: He was wearing the same; a black hoodie, like sweatshirt type and blue jeans and socks over his shoes.
Q: Okay. Did you see anybody else, any other guys come out from that apartment building that had socks on their shoes and was wearing a black hoodie?
A: No, I did not. There was actually only one other person that I seen in the parking lot at all and that was the civilian that was walking away from, from where, where the subjects were coming out. They were kind of down, I think, about one more building past where the suspects came out of.
Q: Were you able, through your investigation, to find out who that girl was that was sitting in the front seat?
A: Yes, it was ---
Q: Who was that?
A: Tonie Pasquale, if I'm saying it right.
Q: Pasquale?
A: Pasquale.
Q: Okay. Was there a girl named Jasmine anywhere in the car?
A: No.
Q: Okay. Were there any other men in that car?
A: No.
Q: Okay. Now, when you arrived had the two, Christopher Bell

and Kenneth Bell, had they gotten into the car yet or had they just opened the door? Where were they?

A: They were crossing the parking lot when I arrived and ---

Q: So, you saw them walking across?

A: I did, I saw them and I hesitated, like I said, for a moment with that civilian there and I also asked dispatch to, to give me a description, not for myself, I had already gotten the description, but sometimes when we arrive on a scene as soon as a suspect sees a police vehicle, they'll flee. And so it was more for incoming units. Had one of them decided to flee, those incoming units would have absolutely heard the description of what they were looking for.

Q: Okay. Were there items outside of that vehicle that you saw?

A: Yes.

Q: Okay. Now, who assisted you in collecting the evidence from this case as part of your investigation?

A: Office Tim Cast and also Officer Langlais helped with the logging of that.

Q: Okay. So, basically you and Officer Cast are collecting the evidence you found from that car and immediately outside the car?

A: Correct.

Q: Okay. Now and who -- did Officer Cast take the pictures that were taken?

A: Most of them, I did -- I was the one who took the picture of the victims' windows and ---
Q: I'm sorry, what?
A: I took the picture of the victims' window ---
Q: Okay.
A: --- in the apartment complex and the victims themselves. Officer Cast took the remainder of the pictures.
Q: Okay. So, the red car and anything around it and in it, Officer Cast took those pictures?
A: That is correct.
Q: But you were there to see what was around and inside that car?
A: Yes, I was.
Q: Okay. So, when you get on the scene, you see Christopher Bell and Kenneth Bell both wearing basically the same clothes, getting into that red car?
A: Correct.
Q: Okay. But they never quite made it in; is that right?
A: That is right.
Q: Okay. If you don't mind, tell the Jury what you saw directly outside of the car at the front driver's door?
A: Near the front tire, I noticed there was broken glass, which I assumed was the noise that I heard when I stopped to listen. I noticed the laptop, a -- some sort of a black bag with a cord coming out of it and that was what I immediately

noticed. Later on, of course, we seen that there was a camera underneath the hood of the car and some other items.

Q: Okay. Did you see a tire iron?

A: I did; I also a black tire iron, yes.

Q: And that was up towards the front of the car?

A: Yes, it was up near the front driver's wheel?

Q: Okay. Now, if you don't mind, were you able, through your investigation, to find out who the laptop and the camera belonged to?

A: Yes, I did.

Q: Tell the Jury who it belonged to?

A: To Paulie, the subject in the black jacket.

Q: Okay. And did you meet with him that day?

A: I did.

Q: Okay. And did he confirm that that was his laptop and his camera?

A: Yes, he did.

Q: And you took them into evidence; is that correct?

A: Yes, we did.

Q: Now, did you put on your blue lights to get to the scene?

A: I did. I initially activated my blue lights and siren, but once I arrived on Glens Bay Road, I, I did leave the blue lights on, I believe part of the way to get through traffic, but I did turn off the siren because, of course, I didn't want the suspects that I was arriving and put the victims in any

kind of danger.
Q: So, basically the siren, if they hear it, they're gonna probably run from that?
A: Correct.
Q: Okay. And as part of turning on your blue lights, do you have a in-car camera?
A: I do.
Q: And does your -- was your in-car camera turned on when the blue lights were turned on?
A: It automatically will activate when we initiate our blue lights.
Q: Okay. And do you have a audio recording device also that comes on when the camera and the blue lights come on?
A: Yes, we do.
Q: Okay. And did your camera come on in this case?
A: Yes, it did.
Q: Okay. And did it capture what you've told us about today?
A: Yes, it did.
Q: Okay. Right from the time you ignited your blue lights to the time there was an arrest?
A: Correct.

STATE'S EXHIBIT NUMBER FOUR

MARKED FOR IDENTIFICATION

Q: Officer Boyd, I'm showing you what's been marked as State's Exhibit Number Four. Do you recognize that?

A: Yes, I do.
Q: And tell the Jury and the Court what that is?
A: This is a recording from my in-car camera. It's a Coban System and what we do we our -- we have a hard drive in the system that we remove and we upload and it will upload all of the recordings on that.
Q: And have you see that video?
A: Yes, I have.
Q: And is that an exact recording of what happened that day?
A: Yes, it is.
Q: Okay. Has it been tampered with in any form or fashion?
A: No, it has not.

MS. LIVESAY: Your Honor, at this time, I will ask to put State's Exhibit Number Four into evidence?

THE COURT: Objections?

MR. MCCOLLUM: Just the issues that were raised earlier, Your Honor.

THE COURT: All right. May I ask you to approach just a minute.

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

THE COURT: All right. Ladies and gentlemen of the Jury, there is one matter I have to rule on concerning that video and I'll have to do that out of your presence. So as usual, I'm gonna ask you to step back to the jury room and as always,

I'll ask you not to discuss anything about this case until I've asked you to do so. You may retire at this time.

(REPORTER'S NOTE: The Jury exits courtroom. 2:54 P.M. The following takes place outside the presence of the Jury.)

MOTIONS:

THE COURT: All right. Mr. McCollum, can I get your attention for just a moment?

MR. MCCOLLUM: Yes, sir, Your Honor.

THE COURT: I'm informed that the video includes a recording perhaps of the discussion with your client that you had objected to prior to the trial. And at that time, the State raised the public safety exception to the Miranda Warnings and I asked them to get some cases for me perhaps and we would discuss it at a later time. You still making that motion ---

MR. MCCOLLUM: Yes, sir, Your Honor.

THE COURT: --- to suppress that statement?

MR. MCCOLLUM: Yes, sir.

THE COURT: All right. Then I'll hear from the State concerning that?

MS. LIVESAY: Your Honor, just very briefly, I'm gonna pass up a Supreme Court case regarding the public safety issue. As the Court heard my question to Ms. Boyd, I think the foundation was laid that she knew a weapon was involved when she got there. She didn't know where the weapon was.

She saw two guys getting in the car, one girl inside the car with the door shut ---

MR. MCCOLLUM: Your Honor?

MS. LIVESAY: --- an innocent bystander ---

THE COURT: Sir? Just one second.

MR. MCCOLLUM: Can I get the cite for that case?

THE COURT: Yes, sir, it's New York v. Quarles, I've got it on my computer as well, 467 U.S. 649, 104 Supreme Court 2626. It's a 1984 case.

MR. MCCOLLUM: Thank you, Your Honor. Thank you, Your Honor.

THE COURT: That's all right. Yes, ma'am?

MS. LIVESAY: But she was there, it was a parking lot, multiple buildings apartment complex, there was an innocent bystander there. She said my first issue was safety. I knew there was a gun involved, I had no idea where it was or who had it. I believe this case Benjamin -- New York v. Benjamin Quarles, the Supreme Court has the exact same factual situation, which created this exception. Police respond, they're in a supermarket, they know a gun is involved; however, they do not know where the gun is. Their first concern is public safety. The holding in that case, which was quoted or used in much earlier cases held that the, the Court of Appeals, that overturned the Court of Appeals said that it was a violation to let the statement in. What happened was

they arrested that Defendant. They then ask him where the gun is. He nods over to a direction where it is in the supermarket. They then take the gun into custody. They then try that Defendant. The Trial Judge does not allow the statement to come in; the Court of Appeals confirms that and then the Supreme Court overruled it. They, in that holding, they said that statements -- that this case presents a situation where concern for public safety must be paramount to appear to the literal language of the rules in Miranda. The rule that was actually established in that case says if there is an exception, a public safety exception exists to require -- to the requirement of Miranda Warnings that the suspects answers may be admitted into evidence and availability of such exception does not depend upon motivation of the individual officer.

Same situation, he's under arrest, their first concern is the gun. I think this case is very clear in laying out the exception and saying that it is allowed into evidence under this public safety exception.

THE COURT: All right. Mr. McCollum?

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

THE COURT: Yes, sir.

MR. MCCOLLUM: If I understand Quarles, it's that the officers responded to the supermarket or grocery store. They were -- had someone who was at large or loose and there were

other people there that could have been harmed. The officer is trying to locate the weapon and so asked him about it and he says, yes and here it is. As a result of that, the individual was charged with a weapons violation and when the case went to trial, a motion to exclude the weapon was granted and then the motion to exclude the statement was granted. But from just quickly reading this, but that was the charge. He was charged with a gun law violation.

Now, in this particular case, when Officer Boyd arrives at the scene, she's doing everything that you would expect someone to do to make the situation safe and secure. Clearly on the video, you can see what she describes as a civilian in close proximity to the suspects and she waits until that individual walks away. Interestingly, that individual seems completely oblivious to the fact that there's a police car stopped and this is going on, which that person continues to walk away. But at some point, that person goes over to a vehicle down the, down the parking lot and then turns and has the realization that maybe it's smart to leave that area and you can see them start to hurry away. Subsequent to that, Officer Boyd, or in that time period, Officer Boyd is telling the suspects to, you know, get on the ground. They appear to get on the ground. She can't see who I'll say is Christopher Bell, because he's at the front of the car. She tells him then to raise his hands because she wants to see them. I

suspect he can't raise his hands because he didn't raise one. So then, she has him move around and then they take the other, the woman, Tonie Pasquale, and have her put her hands on the back of Toni's own car. Then Christopher Bell moves on the ground so he can -- so she can see his hands. She goes over to him; he lays there compliant; she pulls his hands behind his back, okay, and then handcuffs him. At that time, Christopher Bell and Tonie Pasquale were also either handcuffed or being handcuffed. And that's when she asks him is there a gun. So, I would submit that in that scenario, whatever public safety exception existed, it ceased to exist when his hands are cuffed behind his back and the other people are either cuffed completely or in custody of the other officers that were the backup officers. And that would be the Defendant's position.

THE COURT: Anything further, ma'am?

MS. LIVESAY: Your Honor, for one, the safety issue comes into play in that we're in a public parking lot with multiple buildings, (A). (B), when she gets on scene, she's responding to two males in hoodies. When she gets there, there is a woman in the car. So, she doesn't know who else could possibly be around because over here is a wooded area and over here is an apartment complex and she has no idea who has that gun. In this case, the officer had already cuffed that Defendant when he asked him, where is the weapon. The public

concern is we don't know who has that weapon and we don't know where that weapon is. There's nothing to say there's not a fourth party standing off somewhere with a weapon or that this man hasn't put the weapon somewhere else for someone to grab the weapon. I don't think it would be fair to penalize an officer by not allowing that statement when she is trying to protect herself and the individuals around her. I mean, I think that's what this exception is for.

THE COURT: All right. It is clear to me that upon her arrival on the scene, she was looking for two suspects and she is suddenly was faced with three individuals that were at the red car. As the State just argued, that would indicate that there may have been others involved in the, in the situation and, of course, she had just arrived, had not had sufficient time to fully investigate the surrounding area. I do find that the public safety exception would apply in this case and therefore, I'm going to allow the statement. Also in taking into consideration the fact this was not an interrogation situation, not an interrogation setting. This was an arrest setting in a very fluid situation and, therefore, it would be my finding that the public safety exception would apply and I will allow the statement to come in.

MS. LIVESAY: Thank you, Your Honor.

MR. MCCOLLUM: Your Honor?

THE COURT: Yes, sir.

MS. LIVESAY: Your Honor, can we take a brief break just for me to set the projector up?

THE COURT: Let me finish with this. Yes, sir?

MR. MCCOLLUM: Your Honor, I'm afraid I'm doing what you cautioned me against doing, which is I just want to cite a couple of cases.

THE COURT: All right.

MR. MCCOLLUM: May I do that?

THE COURT: You seem to have a habit of bringing these things up after I've ruled and I really wish you wouldn't do that.

MR. MCCOLLUM: I know that and I should have kept talking before sitting down and I apologize. But I'm just asking permission to do that.

THE COURT: Yes, sir.

MR. MCCOLLUM: And this is State v. Navy, which is 386 S.C. 294. There's also another case, State v. Williams, these are South Carolina cases, which is a recent case with an Opinion Number 5161. And then ---

THE COURT: Do you have copies of these for me?

MR. MCCOLLUM: No, Your Honor, and -- but I can explain. I don't think it's gonna affect Your Honor's ruling. The other case, Your Honor, is State v. Sprouse, which is 325 S.C. 275. The only -- I'm citing those cases for the reason that I have argued or pleaded before the Court that once he's in

custody, Miranda Warnings apply. If he's in custody and he's responding to police questions or something that would be considered a question, that he's in custody. That's all I'm saying.

THE COURT: Well, I believe the Quarles case, you said the gentleman was already cuffed in the Quarles case.

MS. LIVESAY: He was in custody, Your Honor. He had been him handcuffed.

MR. MCCOLLUM: And I'm not trying -- I'm not attempting to re-argue it Your Honor.

THE COURT: Well, are we talking about people in an arrest situation where they've just been put on the ground and someone has just rolled up to a scene in any of those cases that you just cited?

MR. MCCOLLUM: No.

THE COURT: Okay. The ruling would be the same.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Yes, ma'am, you can take a moment to fix that.

The Court will be in recess. I'll stay on the Bench. You can move about.

MS. LIVESAY: Thank you, Your Honor.

MR. MCCOLLUM: Your Honor, may I leave the courtroom?

THE COURT: Yes, sir, we're in recess briefly. So courtroom personnel can move around. It'll take a few minutes

to get that set up.

Ma'am, if you need to step down and move around, you can, but I would caution you, don't discuss your testimony with anyone during the break. Thank you, ma'am.

(RECESS - 3:07 P.M.)

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

(On the Record - 3:15 P.M.)

THE COURT: All right. You ready? All right.

MR. MCCOLLUM: In this car video, at some point, the -- he's in custody and he's read his Miranda Warnings and he says he does not want to make a statement. Now it's my understanding that the prosecutor is not going to show that and try to introduce that.

THE COURT: That would -- it would be improper to show him invoking his constitutional right.

MR. MCCOLLUM: Because that would be a violation.

THE COURT: I agree. That should not be shown.

MR. MCCOLLUM: Thank you.

MS. LIVESAY: I will turn it off before she reads him Miranda.

THE COURT: Okay.

MS. LIVESAY: They won't even hear that.

THE COURT: That will be fine.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Yeah, we need to bring the lights up for

Jury.

MS. LIVESAY: I was going to play it pretty quick ---

THE COURT: Well, just leave it like that. Can I get these gentlemen maybe to sit down over here so we can get started.

MS. LIVESAY: Hey guys?

THE COURT: Order, please. We got to bring the Jury in so if you don't mind sitting down for me?

MS. LIVESAY: I'm sorry. Take that in the back with y'all if y'all don't mind.

THE COURT: Thank you, gentlemen, I appreciate that.

MS. LIVESAY: He's the next witness so he's just getting that stuff ready.

THE COURT: No problem. I just don't want them over there doing that beside the Jury. That'll distract the Jury.

MS. LIVESAY: I understand.

THE COURT: Bring them in.

(REPORTER'S NOTE: The Jury enters courtroom. 3:17 P.M.)

MR. MCCOLLUM: And again, Your Honor, I'll just make a brief contemporaneous objection.

THE COURT: Well, your objection is on the record. It's noted. It's there.

MR. MCCOLLUM: I know but I've read the cases that it wasn't ---

THE COURT: If you feel you need to redo it, you can do

so.

MR. MCCOLLUM: Thank you. That's why I'm doing it.

THE COURT: I understand.

(REPORTER'S NOTE: The Jury enters courtroom. 3:17 P.M.)

All right. The record will reflect the Jury has returned to the courtroom and, ladies and gentlemen, while you were out, we've set up some equipment. Hopefully, technology won't fail us in this situation. I have admitted a copy of the, of actually the DVD of the in-car video. That has been admitted as an exhibit during our, our motion hearing.

All right. Ma'am, you can proceed with this witness.

MS. LIVESAY: Thank you, Your Honor.

CONTINUATION OF DIRECT EXAMINATION OF NATALIE BOYD BY MS. LIVESAY:

Q: And the video we're getting ready to watch, Ms. Boyd, that is the video from your in car camera?

A: Yes, it is.

Q: And it hasn't been altered in any way?

A: No, it has not.

(REPORTER'S NOTE: State's Exhibit Number Four played for the Jury. Not transcribed herein.)

MR. MCCOLLUM: Your Honor, at this time, I renew the objection.

THE COURT: Objection is noted; same ruling.

BY MS. LIVESAY:

Q: Ms. Boyd, was that an accurate depiction of what happened that day?
A: Yes.
Q: And was that the recording from your in-car camera?
A: Yes, it is.
Q: Okay. Now, I heard you ask, the person that you cuffed, who was that?
A: The Defendant in the courtroom; that was Kenneth Bell.
Q: Okay. And who was the person that was cuffed from the driver's seat?
A: Christopher Bell.
Q: Okay. And do you remember what both of them looked like?
A: I do.
Q: Okay. And could you point them out to the Jury?
A: Kenneth Bell is seated at the table here, and Christopher Bell is in the back with a yellow shirt on.
Q: Now, did you -- is it usual protocol to pat the Defendant down or the person that's been arrested for officer safety?
A: Absolutely. The fact that they're handcuffed doesn't mean that we're secure.
Q: Come a little closer to the mic; I'm sorry.
A: The fact that the suspect is handcuffed does not mean that our scene is secure. If there's a weapon involved, it's still a safety issue for us.
Q: And you cuffed Kenneth Bell?

A: Correct.
Q: Okay. And did you pat him down?
A: Yes, I did.
Q: Thank you. Now, I heard you ask was there a weapon and is that for public safety?
A: Yes.
Q: Okay. And who did you ask that to?
A: To Kenneth Bell.
Q: And what did he tell you?
A: He told me he did not.
MR. MCCOLLUM: Same objection, Your Honor.
THE COURT: Objections renewed; same ruling. You may proceed.
MS. LIVESAY: Thank you, Your Honor.
BY MS. LIVESAY:
Q: I'm sorry, what did he tell you, Officer Boyd?
A: That he did not have a weapon.
Q: Okay. Did he indicate that there was a weapon at all?
A: No, he did not.
Q: Okay. Did you ultimately find a weapon through your investigation?
A: Yes. Yes, we did.
Q: Okay. And before we get into that, you testified earlier, just so I'm clear, that the tire iron was found under the front wheel of the car by the driver's door?

A: It was right on the ground near the driver's side of the vehicle.
Q: And that was where Christopher Bell was getting in?
A: That's correct.
Q: Okay. And where did you find the gun?
A: It was in plain view and the back floor board had a hump in the middle and that's where the weapon was found with the handle facing up as if it was tossed there.
Q: Okay. So, it was in the back seat area of the vehicle?
A: Back floorboard area. There's a hump in the middle of the floorboard in that ---
Q: It was sticking out in plain view for you to see?
A: Yes, it was.
Q: Okay. Now, if you don't mind, tell the Jury what you collected off of Kenneth Bell that day from his pockets or from off his immediate person?
A: I believe it was sunglasses, a cell phone and a .45 auto round. Let me check here and make sure I didn't miss anything. And I also did, off of his person, yes, that is it, brown sunglasses.
Q: I'm showing here what's been marked as State's Exhibit Number Five?
A: Yes, those are the items that were taken from him.
Q: Okay. And are those items you collected from Kenneth Bell that day?

A: Correct.
Q: And are those the only items that you collected off his direct person?
A: No, I also took his shoes that were covered with socks for evidence.
Q: Okay.
MS. LIVESAY: Your Honor, at this time, I'm gone ask that we place State's Exhibit Number Five into evidence and publish it to the Jury?
THE COURT: Any objection?
MR. MCCOLLUM: Could she hold it up for me?
The same objection I raised earlier, Your Honor.
THE COURT: As to that?
MR. MCCOLLUM: Yes, just as to that photo, but not the other two.
MS. LIVESAY: I'm sorry, Your Honor, this is a new objection. I couldn't -- it could be my fault, but can we clear it up?
THE COURT: Yes. I don't recall an objection to that particular exhibit.
MR. MCCOLLUM: May I approach?
THE COURT: Please do.
(REPORTER'S NOTE: A bench conference was held off the record in the presence of the Jury but out of hearing of the Jury.)
THE COURT: All right. My ruling would continue to be

the same. I rule that that is admissible. What is the exhibit number?

MS. LIVESAY: Thank you, Your Honor. Yes, it's State's Exhibit Number Five.

THE COURT: All right. It's into evidence.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Subject to the prior objections.

STATE'S EXHIBIT NUMBER FIVE

ADMITTED INTO EVIDENCE

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: Now, I always say bullet, but the correct word is cartridge; is that right?

A: Yes.

Q: Is it gonna offend you if I say bullet?

A: No.

Q: Okay. What kind of bullet is that in this picture; do you know?

A: It's .45.

THE COURT: Ma'am, get a little closer to the microphone.

A: It's a .45 caliber.

THE COURT: Thank you, ma'am.

BY MS. LIVESAY:

Q: And where was that bullet found?

A: In the left pocket.

Q: In who's left pocket?
A: Kenneth Bell.
Q: Okay. And what kind of gun was found in the backseat of that car?
A: It was a .45 caliber Ruger, I believe it was. Yeah, Ruger, P97DC pistol.
Q: Now, I'm showing you what's been marked as State's Exhibit Number Six. Who is that in that picture?
A: That is Kenneth.
Q: Okay. And is that what he was wearing that day?
A: Yes, it is.
Q: Okay. And in fact, is that him in the car?
A: Yes.
Q: Okay. And nothing at this time has been, he hadn't taken a shirt off, added a shirt, nothing, this is exactly how he was taken into custody?
A: That is correct.
MS. LIVESAY: Your Honor, at this time, I wish to place State's Exhibit Number Six into evidence and publish it to the Jury?
THE COURT: Subject to your prior objections, Mr. McCollum?
MR. MCCOLLUM: Yes, sir, Your Honor.
THE COURT: All right.
MR. MCCOLLUM: That's Number Six?

THE COURT: That's Number Six.

MR. MCCOLLUM: I raise that for the reasons stated at the bench.

THE COURT: Yes, sir. It's overruled; it will be admitted.

STATE'S EXHIBIT NUMBER SIX

ADMITTED INTO EVIDENCE

BY MS. LIVESAY:

Q: And this is Kenneth Bell?

A: Yes.

Q: At the time he was detained?

A: Yes, it is.

Q: Okay. So, he's wearing the dark-colored hoodie and jeans?

A: Yes.

Q: Now, I'm showing you what's been marked as State's Exhibit Number Seven. Is this a accurate depiction of what Kenneth Bell's shoes looked like that day?

A: Yes.

Q: Okay. And was this picture taken that day?

A: Yes, it was.

Q: Okay. So nothing has been added or removed; this is just a picture of what it looked like that day?

A: That is correct.

MS. LIVESAY: Your Honor, at this time, I'd like to put in State's Exhibit Number Seven into evidence and publish it

to the Jury.

THE COURT: Objections, Mr. McCollum?

MR. MCCOLLUM: None, Your Honor.

THE COURT: All right. It'll be admitted as marked. You may publish it to the Jury.

When we say publish, we mean they may show it to you; that's what we say in the legal business.

STATE'S EXHIBIT NUMBER SEVEN

ADMITTED INTO EVIDENCE

By MS. LIVESAY:

Q: So, these shoes are how they appeared that day?

A: Yes.

Q: With socks over them?

A: That is correct.

Q: And he was wearing this -- these clothes, a black hoodie or a dark hoodie and some jeans?

A: Correct.

Q: Now I, I realize Timothy Cast took in a lot of the items from the car because he was inventorying the car and assisting you, but if you don't mind, tell the Jury, because you were there, you were present to see what was in the vehicle and what was inventoried from the vehicle?

A: You don't mind if I look at my sheet, do you, because it's a long list.

Q: If you don't mind, tell the Jury what was inside that car.

THE COURT: Ma'am, you have the right to look at your notes to refresh your memory, but you must testify from your memory, but you can refresh your memory by looking at your notes.

A: Well, of course the, the -- it was a black-and-silver handgun that was in the back floorboard on the hump with the handle up; that was taken from the car. There was also, there was -- you want just in the car or including around the car?

Q: If you don't mind, let's start outside the car. What items were found immediately outside the car?

A: Outside the car there was a camera underneath the car. There was a black bag with some -- I believe it was a computer cord in it. There was a black in color tire iron. There was a pair of gloves and a black t-shirt that was kind of rolled up in a unusual manner.

Q: And all of that was found right outside the car?

A: That was found on the driver's side, either directly next to where the driver's tire was or there was a few items that were just underneath the hood of that area of the vehicle and that would've been the camera, the gloves and I believe a plastic container.

Q: Okay. And the camera and the laptop belonged to Paul Degruccio; is that right?

A: That is correct.

Q: And then there was the tire iron and a pair of gloves?

A: Correct.
Q: And a cord for the laptop?
A: Correct, inside of a black bag.
Q: Okay. Now, what items were inventoried from that car, inside that car, that you took in as evidence against Mr. Kenneth Bell?
A: From inside the car, again as I said, the black-and-silver weapon was taken from the vehicle and that weapon, of course, had -- was loaded. It had four rounds in it and one round in the chamber. There was -- and I'm sorry, I left out, on top of the hood there was also a silver knife that we collected. A weighing scale, also, that was underneath the vehicle. There was -- there was also a black Samsung phone that was underneath the console inside of the vehicle, a package of latex gloves on the passenger floorboard. The rest of it I already mentioned that was underneath the vehicle.
Q: How long have you been in law enforcement?
A: For nine years.
Q: How many?
A: Nine years.
Q: Okay. And you found one pair of gloves on the driver's side and one pair of gloves in the back seat; is that correct?
A: Correct.
Q: Okay. And in your experience in investigating crimes, why do people normally put on gloves?

A: To hide any DNA. If they -- they don't want to leave anything behind for us to use as evidence, fingerprints, footprints, anything of that nature.
Q: Okay. And taking fingerprints is part of investigation; is that correct?
A: Usually, if we're aware that they're wearing gloves, then obviously we're not going to, to be able to obtain any latent prints.
Q: So, gloves keep the police from able to obtain a fingerprint off the inside of an apartment or off a weapon or anywhere ---
A: That is correct.
Q: Okay. And you found two pair of gloves?
A: Correct.
Q: Okay. Now, in your experience, why would someone wear socks over their shoes?
A: For the same reasons, to not leave DNA behind, not leave a footprint behind that we could get a picture of to make a comparison, to make a mold of.
Q: Okay. And is it true in some investigations you do photograph shoe prints in investigating?
A: Absolutely.
Q: What building was Chris Bell and Kenneth Bell coming out of?
A: It was 80 -- 8650 -- 8566, I'm sorry; it was the second

building on the left.
Q: Okay. And is that the same buildings the victims lived in?
A: That is correct.
MS. LIVESAY: Okay. No further questions, Your Honor.
THE COURT: McCollum, your witness?
MR. MCCOLLUM: Thank you, Your Honor.
THE COURT: Yes, sir.
CROSS EXAMINATION OF OFFICER NATALIE BOYD BY MR. MCCOLLUM:
Q: Officer Boyd, how are you today?
A: Good.
Q: When you testified that once you arrived and were telling the individuals to lay down on the ground; you heard glass shattering in front of the vehicle?
A: Not when I very first arrived, no.
Q: At some point, did you hear glass shatter?
A: At some point, I did.
Q: Did you find glass in front of the vehicle or on the side of the vehicle?
A: At the front of the vehicle, yes, I did.
Q: Do you know what that was?
A: I believe I had, had asked Christopher what that was and he had replied that he had broke -- shattered a bong.
Q: That he had shattered a bong?
A: Uh-huh (affirmative response).

Q: And were you able to look at it and see how big it was?
A: No, I was not. It was, the only thing I observed was broken glass.
Q: Was that stuff -- was that collected as evidence?
A: No, it was not.
Q: It was on the ground in the parking lot, right?
A: Yeah, it was kind of towards the front of the vehicle, correct.
Q: And so it was -- and the parking lot was paved asphalt, I guess, is what it's called, right?
A: Yes.
Q: Okay. And so was that stuff swept up?
A: I, I really did not pay attention -- normally, when we called for a vehicle to be towed, the tow company takes care of that for us, but I cannot say that I paid attention as to whether it was swept up or not.
Q: Do you know, do you know where the bong -- you say it was a bong?
A: I, I don't know. It was unidentifiable to me. The only thing that I observed was broken glass.
Q: All right.
A: It was shattered and I couldn't identify it.
Q: It was there -- when you say shattered and maybe you don't remember, was there a lot of glass on the ground?
A: I wouldn't say a lot, no. I don't know what your

definition of a lot is, no.
Q: Okay. Were there any other pieces that you saw in addition to the glass?
A: Pieces other than what I've mentioned here?
Q: Yes, ma'am.
A: Not that I recall.
Q: Was the glass -- did it have a color to it?
A: Not that I recall.
Q: All right. And so at some point, you put, on the scene usually there's a ranking officer who's making decisions about what to do, right? Once the people are in custody as far as gathering evidence, what -- one officer is directing other officers to do certain things, correct?
A: We usually work together, but yes, there usually is -- the first officer that's on the scene will take care of handling that.
Q: And that's you, correct?
A: On most decisions. Sometimes we need to contact the supervisor by, by telephone or by radio.
Q: And what I'm asking is, there's -- you've got information that a suspect is shattering glass in front of the car, right, or beside the car?
A: No, I didn't get information. I was telling them to get on the ground and when he didn't comply with my, my orders, I stopped for a moment so that I could listen to try to figure

out where this suspect was because I was concerned. Somebody has a weapon and I don't know where he is. So, I stopped to listen. At that point is when I heard the glass shatter was when I stopped to listen.

Q: And at some point, you or another officer at the scene made some decision that that glass was not gonna be taken into evidence, correct?

A: No, as I said, usually if there's a situation like that, the tow company would, would sweep that up for us and ---

Q: So, at some point, you made a decision that you didn't, as we say, need that or want to collect that glass, right?

A: I assume so. If we did not take it, it was as I, as I explained to you, it was unidentifiable.

Q: All right.

A: There wasn't any way for me to identify what, what that was prior to it being shattered.

Q: All right. And at some point, did you gather information about what type of items were taken from the apartment?

A: I'm sorry; can you repeat that?

Q: At some point through your investigation, did you get information or try to collect information about what items specifically were taken from Paul Degruccio?

A: I did speak to the victims, yes.

Q: Okay. And from your investigation, what was your understanding of the items that were taken?

A: Well, shortly after I arrived, it did come across our radio that it was communicated to our dispatcher that a camera and a laptop was taken.
Q: All right. And to your knowledge, from doing your investigation, were any other items taken?
A: Not that I recall, no, just the laptop and the, the camera is the only thing that I recall.
Q: Okay. Now, did you ever -- did you ever get any information or have any kind of, of -- did you ever get any information -- let me back up. At the, at the scene, you told individuals to, quote, get on the ground, right?
A: Correct.
Q: And Kenneth Bell laid down on the ground, correct?
A: He did comply. I could see his feet and I could see that they were facing downward. So, I knew, at that point, that he did comply with me. However, I did not have a visual on the other suspect.
Q: And in fact, I think you said that Kenneth Bell turned around to be more compliant so you could see his face?
A: He did not immediately turn. He turned somewhere in the middle of me trying to, to get a visual on this other subject. He turned and actually faced me and then I -- to an officer, when we tell you to get down on the ground and don't move, don't move, it's more of a threat to us for somebody to actually face and look at us. Had he had a weapon on him at

that time, then it could've turned into a bad situation.
Q: So, when you say get down on the ground and you don't want the person to move even if you can't see their hands?
A: I'm like if -- if I already have you down on the ground and I have a visual on you, then yes, I do not want you to move. If I don't have a visual on you and I'm instructing you, stand up for that very reason, then I, of course, I want you to stand up and comply with what I'm telling you.
Q: Now the other individual you couldn't see and you wanted him to raise his hands -- let me skip to this -- and did you ever learn that he's unable to raise one of his hands?
A: No, I did not.
Q: All right. Thank you.

MR. MCCOLLUM: Your Honor, that's all I have.

MS. LIVESAY: Redirect?

MS. LIVESAY: No questions, Your Honor.

THE COURT: All right, ma'am, you may step down. Thank you very much.

BY THE COURT:

THE COURT: Ladies and gentlemen of the Jury, I know you've had a couple of breaks, but not everyone in the courtroom has had a break when you have one. So, we're gonna take a short break at this time. I'll ask you to step back into the jury room. Don't begin any discussion until I've asked you to do so. Thank you. Thank you very much.

(REPORTER'S NOTE: The Jury exits courtroom. 3:56 P.M. The following takes place outside the presence of the Jury.)

THE COURT: All right. Court will be in recess for about ten to fifteen minutes. Thank you very much.

(RECESS - 3:56 P.M.)

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

(On the Record - 4:10 P.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: All right. We're back on the record. Mr. McCollum, we had a discussion at the side bar where you raised an objection. I told you I'd give you an opportunity to put that on the record. You wish to go ahead and state the objection?

MR. MCCOLLUM: Your Honor, I think it's the same if I, I remember correctly, the same continuing objection. I think that you ruled it was a public safety exception. There were some other items, the gun, the bullet was testified to. I think I objected to that. There's a photo ---

THE COURT: I think the bullet was mentioned by him in response to the question by the police officer. And then the bullet was later taken into evidence after they cleared his pockets.

MR. MCCOLLUM: And Officer Boyd had testified that she had located the .45 caliber cartridge ---

THE COURT: Yes, sir.

MR. MCCOLLUM: --- off of him.

THE COURT: My, my -- excuse me. Go ahead.

MR. MCCOLLUM: And then there's a photograph that -- just a photograph of the bullet, so I was just continuing to object to those items.

THE COURT: And I believe you also raised the objection as to him being shown in cuffs in the backseat of the car.

MR. MCCOLLUM: Yes, I'm sorry, Your Honor, you're right. The -- there is a photograph that was admitted into evidence and it's Number -- it's State's Number Six?

THE COURT: Yes, sir.

MR. MCCOLLUM: Which is simply a photograph of him, the Defendant, Kenneth Bell, seated in the back of a patrol car with his hands handcuffed behind his back and I objected to the depiction of him in handcuffs.

THE COURT: All right. And my ruling was that the probative value of that piece of evidence outweighed any prejudicial effect that might have existed from the fact that he was in handcuffs, since it had already been testified to and shown on the video that he was placed under arrest, and this photo obviously shows the hoodie, the blue jeans, you know, the clothing he was wearing that day by which he was identified and then the subsequent photo I think is part of that showed the shoes with the socks over them. So, I've

ruled that it was admissible. I wanted you to be able to put that on the record.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: All right. We ready for the Jury?

MS. LIVESAY: Yes, sir.

MR. MCCOLLUM: Your Honor, before they come back ---

THE COURT: Yes, sir.

MR. MCCOLLUM: --- seated in the courtroom is the Codefendant, Christopher Bell.

THE COURT: Yes, sir.

MR. MCCOLLUM: He's actually Kenneth Bell's half-brother. He is represented by an attorney, I think in Williamsburg County, named Legrand Carraway. I spoke to Mr. Carraway today. I told him, I said there is some chance that the Defense may call him as a witness so I alerted him to that. So that -- he says if that happens, he can probably be here in about an hour to an hour and a half. So, I just want to make the Court aware of that.

THE COURT: All right. I am aware of it. I don't think there's a chance he'll be called today, but you need to make that attorney aware that that could happen tomorrow.

MR. MCCOLLUM: I did that, Your Honor.

THE COURT: Okay. Very good. Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 4:15 P.M.)

THE COURT: The record will reflect the Jury has returned

to the courtroom and when we had our break, we completed another witness for the State and the State at this time has the right to call its next witness.

Ma'am, you may call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Timothy Cast.

THE COURT: Come forward, sir, and be sworn please?

TIMOTHY CAST, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

THE COURT: Sir, once you're seated, I'm gonna ask that you state your name, please?

MR. CAST: My name is Timothy Cast.

THE COURT: Thank you. Your witness, Counselor.

MS. LIVESAY: Thank you, Your Honor.

DIRECT EXAMINATION OF OFFICER TIMOTHY CAST BY MS. LIVESAY:

Q: And Officer Cast, how long have you been with the Horry County Police Department?

A: Since 2007.

Q: And what kind of training have you undergone?

A: The basic Criminal Justice Academy Training, which is the nine weeks as well as a Field Training Officer Certification.

Q: Okay. And have you always been a road officer?

A: Yes.

Q: So, what are your responsibilities?

A: On the road active patrol as well as an active field

training officer.
Q: Okay. And are you familiar with the incident we're here today for?
A: Yes.
Q: Okay. And did you assist Officer Boyd in investigating that incident?
A: I did.
Q: And if you don't mind, first, just tell the Jury what you saw when you arrived on the scene?
A: When I arrived on the scene, I saw three subjects that were actually detained, Kenneth Bell, Christopher Bell as well as Tonie Anne Pasquale, detained and they were all around the red in color Mitsubishi vehicle. I also saw Officer Natalie Boyd, as well as Officer Langlais, and they were actually detaining them.
Q: Okay. And what did you do to assist in the investigation?
A: I basically took the majority of the photos on scene, as well as helped inventory the vehicle, as well as collect the evidence around the actual vehicle.
Q: Okay. And did you inventory the car for evidence that is in this case?
A: Yes.
Q: Okay.
MS. LIVESAY: Can I approach the witness, Your Honor?
THE COURT: You may.

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: And I've already shown these to Mr. McCollum. Now if you don't mind, tell the Court what State's Exhibit Number Fifteen is a picture of?

A: This is a picture of the actual vehicle when I arrived on the scene as the subjects were ---

Q: Don't show it yet.

A: --- were around.

Q: Okay. And is that an accurate depiction of what the car looked like on that date?

A: Yes, that is the vehicle.

Q: Okay. And everything you collected was it either around that vehicle or in that vehicle?

A: Yes.

Q: Okay.

MS. LIVESAY: Your Honor, at the time, I wish to place State's Exhibit Number Fifteen into evidence and publish it to the Jury?

THE COURT: Any objection?

MR. MCCOLLUM: No, Your Honor, and to hurry this along, if I could just ---

MS. LIVESAY: Yeah.

MR. MCCOLLUM: Your Honor, there's no objection to any of them. There may be an issue with Number Nine.

THE COURT: All right. The ones that there are no issue with, would you call those numbers out, please?

MS. LIVESAY: I only have this copy, Your Honor.

THE COURT: With the exception of Number Nine.

MS. LIVESAY: Right. It is my understanding ---

THE COURT: There's a potential objection there.

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: Those others will be admitted into evidence.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Without objection. You may proceed.

STATE'S EXHIBIT NUMBER EIGHT, TEN, ELEVEN, TWELVE THIRTEEN, FOURTEEN AND FIFTEEN ADMITTED INTO EVIDENCE

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: Tell the Jury -- if you don't mind, Your Honor, can I ask the witness to step down?

THE COURT: You may do so.

Q: I'm gonna go through these pictures with you and if you don't mind, tell the Jury what they're pictures of. I'm showing now what's State's Evidence Number Fifteen; what is that a picture of?

A: That's a picture of the vehicle the suspects were around.

Q: Okay. And was all the evidence collected either immediately around this car or in it?

A: Yes.

Q: Okay. Now, I'm showing you what's been marked as State's Evidence Number Eight. What, what is that a picture of?
A: That's a picture of a silver in color knife and a black Toshiba Laptop.
Q: Okay. And where was that knife found?
A: The actual knife was found exactly where it is.
Q: Okay. And where was the laptop found?
A: The laptop was underneath the vehicle and it was placed on top of the vehicle to get a photo of the actual laptop.
Q: Okay. And I'm showing now what's State's Evidence Number Fourteen. Tell the Jury what that's a picture of.
A: That's a picture of a far distance of the actual, the vehicle as you can see all of the evidence kind of underneath it and then the knife on the hood.
Q: Okay. I'm showing you now what's been marked as State's Evidence Number Thirteen. Tell the Jury what that's a picture of?
A: That's a picture of the same vehicle with a front angle of it with all the evidence around the front left tire as well as the laptop as well.
Q: Okay. And has anything been moved in this picture?
A: No.
Q: Okay. So, if you don't mind, I'm gonna look at it a little bit with you. What is this a picture of here?
A: That's actually the black tire iron.

Q: Okay. And was that collected?
A: Yes.
Q: Okay. And what is this a picture of?
A: That's the black -- it almost appeared to be like a black case.
Q: And what's inside of it?
A: That's actually the laptop charger.
Q: Okay.
A: And the cord.
Q: And what is this a picture of here; it looks like, it looks like -- is that a picture of the gloves there?
A: Yes. Yeah, that's actually a picture of a latex glove.
Q: And is this a picture of how it was found on the scene?
A: Yes.
Q: And nothing's been moved at this point?
A: No.
Q: I'm showing you what's been marked as State's Evidence Number Twelve. Tell the Jury what that's a picture of.
A: That's the black tire iron that was found on the front left tire.
Q: Okay. And is this taken just the way you found it?
A: Yes.
Q: I'm showing you what's been marked as State's Evidence Number Eleven?
A: Yes.

Q: And what is that a picture of?
A: That's the actual black-and-silver handgun.
Q: And where was that found?
A: It was actually behind the driver and passenger seat kind of in the floorboard; there was a few clothing items that it was set on top of it.
Q: Okay. I'm showing you now what is State's Evidence Number Ten. Tell the Jury what that's a picture of.
A: That's actually a latex glove in the rear of the vehicle; it's literally right by the gun.
Q: Okay. And had any of this stuff been moved or touched or is this a picture of just the way you found it?
A: Yes.
Q: Okay. If you don't mind, have a seat, Officer Cast.
MS. LIVESAY: May I approach the witness, Your Honor?
THE COURT: You may.
MS. LIVESAY: Is there any objections?
MR. MCCOLLUM: I don't think so.
BY MS. LIVESAY:
Q: If you don't mind, Officer Cast, look in that bag and tell me what those items are?
A: A black in color iPhone.
Q: If you don't mind, before you start showing them to the Jury, just take a look at it and tell me what's in that?
A: A black in color iPhone, a pair of sunglasses, an actual

package with, with a round in it and a pair of shoes with white socks on them over the shoes.

Q: Okay. Are these all the items that came off of Kenneth Bell?

A: They sure are.

Q: Okay. And is that the way they looked when you took them into evidence?

A: Yes.

MS. LIVESAY: Your Honor, at this time, I'm asking to admit these items into evidence and publish them to the Jury.

THE COURT: Any objection?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Without objection, they'll be marked and admitted. Has that been marked as an exhibit?

MS. LIVESAY: It has not, Your Honor.

THE COURT: Please take care of that for me.

COURT REPORTER: Mark them as a group?

MS. LIVESAY: You can mark it all as one, if you don't mind. It all came from the same ---

STATE'S EXHIBIT NUMBER SIXTEEN

ADMITTED INTO EVIDENCE

MS. LIVESAY: I'm gonna show this to the Jury.

BY MS. LIVESAY:

Q: Are these the shoes that came off Kenneth Bell?

A: They are.

Q: And is this exactly how they came off of him?
A: Yes.
Q: Okay. These are the sunglasses?
A: Yes.
Q: The phone?
A: Yes.
Q: And where did this one round come from?
A: It was actually in Kenneth Bell's pocket. It was on his person.
Q: That came from the pocket of Kenneth Bell?
A: Yes.
MR. MCCOLLUM: Your Honor, same objection.
THE COURT: All right. The objection is noted; rulings would be the same.
You may proceed, Ms. Livesay.
BY MS. LIVESAY:
Q: You know what kind of round this is?
A: It's a .45, .45 caliber round.
MS. LIVESAY: May I approach the witness, Your Honor?
THE COURT: You may.
BY MS. LIVESAY:
Q: If you don't mind, tell the Court and the Jury what this is.
A: That's the black-and-silver in color .45 caliber gun that was actually found in the back of the vehicle.

Q: Okay. And is this the way it appeared on that day other than obviously the safety precautions?

A: Yes.

Q: Okay. And what is this?

A: That's the actual magazine that was located in the actual weapon.

Q: Okay. And what are these?

A: There's a total of five rounds in there. There was four in the clip that were taken out for safety reasons and there's actually one in the chamber that was taken out as well in the packaging of the evidence.

MS. LIVESAY: Your Honor, at this time, the State wishes to place State's Exhibit Number Seventeen into evidence and publish it to the Jury?

THE COURT: Any objection?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Without objection, it'll be admitted as it's been marked. You may publish.

STATE'S EXHIBIT NUMBER SEVENTEEN

ADMITTED INTO EVIDENCE

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: So, this is the handgun that was found in the back of the car?

A: Yes.

Q: And this is a .45?
A: That's a Ruger .45.
Q: And this clip was inside the gun?
A: It was.
Q: Okay. Now, where did these bullets come from?
A: The bullets actually came out of the gun.
Q: Okay. And this one came from Kenneth's pocket?
A: Front pocket, yes.
Q: And what kind of round is this?
A: A .45. They're all the same round.
Q: And the rounds you found in this .45, what kind were they; is this a .45?
A: Yes, they're all .45 caliber rounds.
Q: And these came out of the black-and-silver handgun?
A: Yes.
Q: All of them?
A: Well, the one, excluding the one that was found on Kenneth Bell's person.
Q: I'll turn it this way; sorry about that. Now, we noted that those came of the gun. I think, I think it's important to explain how you found them. How many rounds were just in this magazine?
A: A total of four.
Q: Okay. And was there a live round in this .45?
A: There was one chambered, yes.

Q: Okay. And if you don't mind, tell the Jury what that means when there's a round in the chamber?
A: That you're ready to shoot that gun and you don't have to rack it. It's an extra step you have to take to rack a gun.
Q: Okay. So, that gun is ready to fire as soon as you pull the trigger?
A: It's ready to fire. When you actually -- on that specific gun, when you actually rack the rail, it cocks the trigger on the rear of the gun.
Q: Okay. And when you mean rack it, you mean pull it back like this?
A: Right.
Q: Okay. But when you took this gun and you inventoried it, there was already a live round; is that right?
A: Yes, the round was actually taken out for safety measures.
Q: Okay. And what that means is as soon as you pull the trigger, this gun goes bang?
A: Yes, it would have, yeah.
Q: Okay. Now, when there's not a live round, that means you have to rack the gun; is that correct?
A: Uh-huh (affirmative response).
Q: Which means pull it back and then the round then comes into the chamber; is that correct?
A: Yeah, chambering a round is basically the term for it.
MS. LIVESAY: You want to mark these? You want me to put

them in something, like a folder or something? One second, Your Honor?

THE COURT: Yes, ma'am.

BY MS. LIVESAY:

Q: I'm showing you now what's been marked as State's Number Eighteen. What is it?

A: That's a pair of latex gloves.

Q: And where did you find the two pair of latex gloves?

A: There was a pair under the front of the vehicle and there was also a pair in the rear of the vehicle in the prior pictures we were showing.

Q: Okay.

MS. LIVESAY: At this time, I make a motion to put State's Exhibit Number Eighteen into evidence and show it to the Jury.

THE COURT: Any objection?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Without objection, they'll be admitted as they've now been marked.

STATE'S EXHIBIT NUMBER EIGHTEEN

ADMITTED INTO EVIDENCE

BY MS. LIVESAY:

Q: Okay. So you got two pair of gloves; one found in the front by the tire, which the picture showed, and then one found in the back seat. Is that correct?

A: That is correct.
Q: Okay. If you don't mind me asking, what -- where was the pair of gloves in the backseat in relationship to the gun; do you remember?
A: Yes, I do. The gloves were located on the backseat literally a foot, a foot and a half from the actual gun; the gun being on the floorboard in between the seats and the gloves being on top of the backseat, on top of the clothing as well.
Q: Okay. And as a road officer, do you get any training in kind of on-the-scene investigation like taking pictures, taking fingerprints, collecting evidence?
A: We do. You get your basic training in the actual Academy and through the Field Training Program. When you're first released from Basic Training, you have a twenty-eight shift training program that you actually have to pass every day; you have to pass or fail every day.
Q: Okay. So you're trained, if need be, to dust for fingerprints?
A: Yes.
Q: Okay. Now, as a police officer, in your experience, why do people wear gloves?
A: Basically that so DNA doesn't get on any type of evidence or items as well as hiding fingerprints.
Q: Let me ask you this, When you go and officers go to the

scene to collect evidence, like a murder scene or any kind of scene, do they wear gloves?

A: Yes.

Q: And why is that?

A: Basically, not to contaminate evidence as well.

Q: Okay.

A: It's kind of like what we're doing now.

Q: So, you don't want your DNA on the evidence either?

A: Exactly.

Q: I'm gonna show you what's in State's Exhibit Number Nineteen. If you don't mind just take a look inside and tell me what's in there and where it was collected from?

A: Okay. There's a black t-shirt in a knot that was located under the fender of the vehicle. There's a, a plastic latex glove package, an empty package that was found the front floorboard of the passenger side of the vehicle. There's a black in color, kind of like a vinyl case, canvas case, with a Toshiba cord in it, the charger as well as a pistol -- a cleaning rod and some -- a cleaning kit, as well as a, a Sanyo camcorder, a HD camcorder, and as well as the silver in color Toshiba laptop that was located underneath the vehicle moved to the front of the vehicle and took a picture.

MS. LIVESAY: Your Honor, at this time, can the State place State's Exhibit Number Nineteen into evidence and publish it to the Jury?

THE COURT: Any objection?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Without objection, it'll be so marked and you may publish the items contained therein to the Jury.

THE COURT: Thank you, Your Honor.

STATE'S EXHIBIT NUMBER NINETEEN

ADMITTED INTO EVIDENCE

BY MS. LIVESAY:

Q: And where was this laptop found?

A: It was actually under the vehicle.

Q: Okay. Under which vehicle?

A: Under the red in color Mitsubishi vehicle.

Q: Okay. And where again was this camera found?

A: That was under the vehicle as well.

Q: Did you know who those items belonged to?

A: Yes.

Q: Who?

A: The actual victim.

Q: Okay. So, they didn't belong to Kenneth Bell or Christopher Bell?

A: No.

Q: Okay. And where did you find this?

A: That was actually in the black in color case.

Q: Okay. And what is this?

A: It's actually a pistol cleaning rod. Actually, it's a

part of a cleaning kit to clean a handgun.
Q: And you keep a cleaning -- you keep your pistol clean for what purpose?
A: Well, it can actually, you can have a misfire where it doesn't work, but you actually have to keep the gun clean or it will rust as well.
Q: Okay. So, you clean the gun to make sure it goes bang every time?
A: Yes.
Q: Especially, when it comes to a semi-automatic gun; is that right?
A: Yes.
Q: Okay. Do you keep your gun cleaned regularly?
A: Yes, we have to.
Q: Okay. Because the chances of a misfire up when it's not clean; is that correct?
A: That's correct.
Q: And where was this found?
A: It was found underneath the vehicle between the two front tires.
Q: And what is this?
A: That's the latex glove package, an empty package.
Q: Okay. And where was this found?
A: That was found in the front of the vehicle on the passenger-side floorboard.

Q: Okay. Was it visual as soon as you looked into, into the car; as soon as you looked in the front seat, was it visible?
A: Not at first, it was not.
Q: Okay. But you found it in the car?
A: Yes, it was in the vehicle.
Q: Okay. And it's for latex gloves?
A: Yes, ma'am.
Q: Like these right here?
A: Yes.
Q: Now, what is this and where was it found?
A: Some type, some type of black case and that was found on the ground by the vehicle.
Q: And how about what's inside?
A: That's the actual, the laptop cord and actual charger for the laptop.
Q: Now, were all these items found either in the car, near the car or on Kenneth Bell?
A: Yes.
Q: Okay. Were any of these items found from inside the apartment?
A: The items that I found were actually around the actual vehicle. Everything you see was collected around the actual vehicle.
Q: Okay. So the gun, the bullets, all of that, the gloves, were in the car?

A: Yes.
Q: Okay. And the shoes with the socks over them belonged to Kenneth Bell?
A: Yes, he was actually wearing them; we took them off his feet.
Q: Okay. So, he actually still had those shoes on when you showed up?
A: Yes, he did.
Q: Okay.
A: He was actually sitting in the back of the patrol car with the shoes on when we removed them.
Q: Okay. And why do you see something like that; socks over the shoes?
A: It's basically the same thing as wearing gloves. It's like wearing gloves on your feet. We make a lot of cases with shoe prints, believe it or not. Suspects wear the same pair of shoes then burglarize residences and we can, we can link a suspect to a shoeprint.
Q: And part of patrolling is just kind of patrolling the community of Horry County; is that right?
A: Yes, picking up 911 call responses is technically patrol.
Q: Okay. And how many times when you're just patrolling, do you see people with socks over their shoes?
A: It's extremely rare.
Q: Okay. Have you ever seen anybody walking around with

socks over their shoes that you didn't consider a suspect?
A: No.
Q: Now, do you remember seeing Kenneth Bell that day?
A: Yes, I do.
Q: Okay. And did you take a picture of him?
A: I believe Officer Boyd took the actual photo when he was sitting in the back of the vehicle, yes.
Q: Okay. And is this how you saw him when you came?
A: Yes, it is Kenneth Bell.
Q: Okay. Was he wearing glasses that day?
A: No, he wasn't.
Q: Okay. Did you find any eyeglasses?
A: Yeah, he did have a pair of sunglasses on him.
Q: Okay. Sunglasses?
A: Yeah.
Q: How about just regular glasses?
A: No.
Q: Okay. Like the pair he's wearing today?
A: He didn't have sunglasses -- those type of glasses on, no.
Q: Okay. And is this the shoes you took off his feet?
A: Those are his shoes.
Q: So, those are the actual shoes that he was wearing that day?
A: Yes.
Q: One more question, Officer Cast. When you were out there

around that car, did you see some broken glass around that car?
A: I did.
Q: Okay. So, the glass was definitely shattered?
A: Yeah, it was shattered. Honestly, it was unidentified. We didn't know what it was at first.
Q: Okay. So, you couldn't say for sure what that item was?
A: I could not. I could not testify to what that was.
Q: You could not?
A: I couldn't, no.
Q: Okay. So, it was just shattered glass out there?
A: Yes.
Q: Okay. And you didn't take it into evidence?
A: No.
Q: And why didn't you take it into evidence?
A: There was honestly nothing to collect. We didn't know what it was to take it into evidence.
Q: Okay. It was just some broken glass out by the wheel of the car?
A: Correct.
Q: Was there anything else when you were out there that you thought was of evidentiary value that you did not collect?
A: No.
Q: Okay. So, you collected everything you thought was evidence in this case?

A: Yes, to be exact, it was seventeen items that I collected personally.

Q: And if there had been other evidence out there, would you have collected it?

A: Yes.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Ma'am, this photo is still here. It has not been ---

MS. LIVESAY: I'm not gonna submit it in.

THE COURT: Then you need come get it.

MS. LIVESAY: I will get it, Your Honor.

THE COURT: Thank you, ma'am.

Thank you.

MS. LIVESAY: I think I marked it as an exhibit.

THE COURT: It's been marked. Thank you. All right.

Counsel, you may cross examine.

MR. MCCOLLUM: Thank you, Your Honor.

CROSS EXAMINATION OF OFFICER TIMTHY CAST BY MR. MCCOLLUM:

Q: Officer Cast, how are you today?

A: Fantastic.

Q: The, the items that you found in terms of the -- well, they're all mixed up now, but the, the bag and the, the broken glass and the knife, all of those items were found at the, say the driver's side front of the car, right?

A: Yes.

Q: Okay. Is that, that's the area where Christopher Bell was?
A: Yes, it was.
Q: And the, the, the knife, the silver or chrome knife, is that in evidence?
A: Yes, it is.
Q: And where was it you located that?
A: The actual knife, when I saw it, was on the actual hood of the vehicle.
Q: Is that where Christopher Bell put it?
A: They were already detained when I arrived on scene.
Q: So, you got there a little late and they were already there on ---
A: Correct.
Q: Okay. Now in terms of the, the .45 caliber gun, there were how many bullets in the gun?
A: There was a total of four in the actual magazine and one in the chamber.
Q: And are you familiar with that the clip? I'm gonna hand you the clip -- it's not marked, Your Honor.
THE COURT: It's marked as part of a larger exhibit. It was in the box with the gun, which was -- how was that marked?
COURT REPORTER: Seventeen.
THE COURT: Number Seventeen, it's part of Seventeen.
MR. MCCOLLUM: Thank you, Your Honor.

BY MR. MCCOLLUM:

Q: Let me hand that to you if it's all right. Do you know how many rounds that clip holds?

A: Usually, a clip has a number on it that tells you how many rounds it holds, but this one does not.

Q: Can you tell by either looking at it or by your experience with weapons how many it would hold?

A: I can, I can guesstimate it will hold approximately nine rounds, one in the chamber; so, probably ten total in the .45.

Q: So, you think the clip would hold nine rounds?

A: Roughly yes, that's approximating.

Q: And it had about, the actual clip, your testimony is it had four rounds in it?

A: Yes.

Q: And you said there was a round in the chamber, right?

A: There was a round in the chamber, yes.

Q: All right. Now, if I, if I took that gun and it had the, the clip in it and it wasn't cocked and I handed it to you and, and you took it from me, would you know if there, well, two questions. One, would you know how many rounds were in it?

A: By holding the gun?

Q: Yes, sir.

A: No.

Q: If, if I handed it to you and the clip was in it, could

you tell from me handing it to you whether or not it was loaded?
A: No.
Q: If, if I handed you the gun, what, what would be the first thing that you would do with it?
A: That's a wide -- that's a broad question there, but you talking about unloading it, making it safe or ---
Q: Well, yeah, I guess I -- maybe I'm not asking it right. What would you do to determine -- if I handed it to you, what would you do to determine whether or not it was loaded?
A: First, you actually look at the gun. If there's a hammer on the rear of the gun, if it's cocked, that means the slide was actually released back to actually cock the gun. So, you check -- the first thing you do is you check to see if it's actually cocked.
Q: So you just look at it and you'd know if it were cocked, okay?
A: Yeah, you can actually, you can see it on that gun; it actually cocks at the back of the gun.
Q: But if it were not cocked, what would you do to see if it were loaded?
A: The first thing you do is you actually drop the magazine, you take the magazine out and you would slide the rail back.
Q: All right. So, when you say drop the magazine, that's the part that slides in the handle, right?

A: Yes, dropping the magazine is when the magazine is released, the magazine falls from the actual weapon.
Q: All right. So, then you would know that there were no bullets in that part of the gun, correct?
A: In the actual magazine, but there would still be one, there still could be one in the chamber, yes.
Q: And if there's one in the chamber, how do you take it out of the chamber?
A: You actually slide the rail back and the round will actually shoot out on the spring.
Q: And when it shoots out, does it, does it land on the ground or does it just pop up?
A: It all depends on your experience in ejecting rounds. If you slide your hand over the actual, over the rail, you can actually catch it or you can actually release it.
Q: So, if you're someone with your experience was doing it, you could slide the rail back and put your hand there and remove the round, right?
A: Correct. With this specific, with this specific gun, you basically just tilt it and you slide the rail back and the round actually falls out.
Q: And you can catch it?
A: Yes, potentially you could.
Q: All right. And if I handed you that gun and there were rounds in the clip and you wanted to take bullets out of the

gun the way you just described out of the top of the gun or out of the chamber, every time you removed a bullet, the other round would slide into the chamber, right?

A: If the magazine was still in the gun, yes.

Q: Yeah, I'm sorry, I left that out. If the magazine was still in the gun and the gun did not have a round in the chamber, but you decided to unload the gun the way we described, every time you pulled the slide back -- am I using the right term?

A: Yeah. I didn't know if that was a question or not.

Q: I'm sorry. I'm asking you if I'm saying the right word or not?

A: You can use, what did you say, rail?

Q: I said slide?

A: You can use slide, yes.

Q: Slide's correct?

A: Yes.

Q: So every time -- if I handed you the gun and you wanted to unload the gun but you didn't want to pull the clip out, you just wanted to quietly unload the gun, that would be -- continue to move rounds in the chamber, right?

A: Yes.

Q: And we would never know at that point, if -- well, you would know when you first did it whether there was a round, when you first slid the rail back, you would know if there was

one in the chamber at that point or not, right?
A: Yes.
Q: Okay. But nobody else would know?
A: Right, there's actually another way you can actually peak -- you can slide the rail back just a small bit, you can actually see the round in the chamber. That's another way. There's multiple ways to check if the gun's loaded.
Q: But there's no question but that if an individual were in the process of unloading a gun and wanted to do it discreetly, you could be -- you could do it the way we described?
A: There's multiple ways to do it, yes.
Q: And then if that person were in the process of unloading the weapon and for whatever reason didn't get to finish, then that would leave a round in the chamber, right?
A: I don't understand your question.
Q: I'm sorry. If the, if the clip is in the, in the handle of the gun -- it's spring loaded, right; if I'm saying that right. So, if someone were unloading the gun because they didn't want the gun to be loaded anymore, but they didn't get to finish then when the gun was located, it would then, quote, have a round in the chamber, right?
A: That's not, I just don't understand your direct question here.
Q: I'm sorry. If there are rounds in the chamber, excuse me. If there were rounds in the clip and the clip is in the gun

---

A: Uh-huh (affirmative response).

Q: And you're taking bullets out of the chamber, there would always be another bullet going into the chamber until the clip was completely empty, right?

A: Correct.

Q: And is there any way to unload the gun by taking the bullets out of the chamber and prevent the bullet in the clip, the next bullet going up into the chamber?

A: If you continue to rack the gun each full round will come up, will continue to come out of the actual the barrel if that's what you're looking for.

Q: And by racking the gun, that's the way you can take bullets out?

A: Potentially that's not -- that's pretty much an amateur way to take bullets out of a gun.

Q: So, you wouldn't recommend it?

A: No, you actually drop the magazine first and then you take the rounds out of the actual chamber.

Q: That's the preferred method?

A: Yes, because a round will still come in the chamber when you rack the gun.

Q: Right, because they keep coming in and then you have to take them -- and that's a yes?

A: Yes, but you can -- you can still unload the gun, like I

said, multiple ways. You can continue racking it until all the rounds are actually out of the gun as well.

Q: All right. Now did, did you search Christopher Bell's person -- and by his person, I mean his clothing or something that he was holding?

A: I did not.

Q: Do you know who did?

A: It should have been Officer Langlais; it wasn't me. I can't testify to who, who searched him, but it was not me, no.

Q: All right. Thank you.

Just one minute, Your Honor?

THE COURT: Yes, sir.

BY MR. MCCOLLUM:

Q: Now, I think you may have already testified about this, in terms of the broken glass that was near the, say the left front tire of the vehicle, did you have an opportunity to observe that?

A: Yes, it's actually in the photo.

Q: And do you know what that broken glass object was?

A: No, I do not.

Q: So, I'm gonna hand you State's Thirteen, is that the photo you're referring to?

A: Yes, it is the photo.

Q: Okay. And so you see broken glass here in the area of the left front tire?

A: Yes.
Q: And then there's another object, small object, there next to the tire iron. Can you tell me what that is or do you know what that was?
A: I do not. It looks like a piece of glass.
Q: Did you -- how close did you get to that area where the glass was broken in terms of, did you stand next to it or did you -- were you crawling around on the ground? Did you ever even go on that side of the car?
A: Where you see me taking the photos that's a distance.
Q: So you, you took the photos so you were standing and looking at it?
A: Yes.
Q: And, and so you examined it closely enough to take the photos?
A: Uh-huh (affirmative response).
Q: But you don't know what it was?
A: It was glass; that's all I can testify to.
Q: Was there anything unusual about it?
A: That was clear that it was glass.
Q: Okay. And did it have a liquid in it?
A: No, not that I -- not that I know of.
Q: All right. And either you or Officer Boyd or somebody made a determination that that was not anything that anybody needed to collect, right?

A: Correct.
Q: Now this, this red -- what I call I guess a Tupperware lid, for lack of a better term, was that collected?
A: Yes, it was.
Q: Do you see that here? Do you see it in the courtroom?
A: The actual lid?
Q: Yes, sir?
A: Yes, it was. We had it in the box.
Q: Okay. So you collected that?
A: Yes.
Q: All right.
A: That was an unidentified object.
Q: Thank you. All right.

That's all I have, Your Honor.

THE COURT: Redirect?

MS. LIVESAY: Yes, Your Honor, just a few.

REDIRECT EXAMINATION OF TIMOTHY CAST BY MS. LIVESAY:

Q: Timothy, I want to ask you a few questions about the workings of this gun because I think I'm confused. I want to get it cleared up. Now, this is, this is the chamber to the gun; is that correct?
A: Right, or the rail.
Q: Okay. When, when I want a bullet in the chamber and I put the clip in, the first thing I do is rack the gun; is that correct?

A: That's correct.
Q: Okay. So, that bullet does not automatically go into this chamber until I rack it; is that correct?
A: No, it doesn't. You actually have to rack it to load a round in the actual chamber.
Q: That's right. So, when I load my clip and I put it in here, if I go like this it's not gonna go bang?
A: No, it won't.
Q: That's right. I got to rack it. And when I rack it, this pulls the bullet from the magazine or the clip into this chamber; is that correct?
A: Yes. Uh-huh (affirmative response).
Q: And then it goes back?
A: Uh-huh (affirmative response).
Q: So, when you put the magazine in, in this gun right here, it's not gonna go back; is that correct?
A: That's correct.
Q: Not until I intentionally pull this magazine back or pull this, this back, that then puts a round into that chamber; is that correct?
A: That is correct.
Q: Okay. So, you have to make an intentional act to get that round from the magazine into this chamber?
A: Yes.
Q: Okay. Now, we got that clear. Now, when you're loading

the magazine or the clip or however you want to call it, let's see, I think it's ---

THE COURT: The clip is on the bar in front of the witness.

Q: I actually have a weapon similar to this and I tell you, I hate it. Now let me ask you this, as you're loading these rounds into this clip, does it get easier or more difficult as you're pressing down on this part?

A: It's a spring so when you get to the actual bottom when you start putting a lot of rounds in it, it's tough.

Q: Okay.

A: The last two or three rounds are really tough.

Q: That's right. Sometimes people have trouble filling up this magazine, don't they?

A: Oh yeah. Yeah, when you get to the last round, it's actually very tough. You feel like one is ---

Q: You see people sometimes bearing down like that; is that correct?

A: Yes, that's correct.

Q: So, really as you're filling this magazine up with bullets, that last one that goes in there is the hardest to load, would you say?

A: It is.

Q: Okay. Now, when you load this magazine, you would say -- about how many does it hold?

A: I'm gonna say approximately, don't quote me on it, but nine, roughly ten.
Q: How many?
A: Nine to ten.
Q: Okay. Nine to ten. Okay. And as you're loading it, it's getting harder and harder?
A: Yeah, that last round, especially in a .45, the larger the bullet, the harder it is to, to actually put in the actual magazine.
Q: Okay. Now, there was something else I was gonna ask you. If somebody handed you this gun and you wanted to see whether or not it was loaded, correct me if I'm wrong, because I think I may have misunderstood, what would be the first thing you would do to see whether or not this gun was loaded?
A: There's multiple things you can do. On that specific particular gun, it has an actual trigger on the back of it, an actual cocking mechanism. So, when the cocking mechanism ---
Q: It's right there.
A: --- is back, the actual slide rail, when you cock it, pushes down on the pin.
Q: So, it has an aspect like a revolver when this is cocked back, then you know it's loaded?
A: Yes.
Q: Okay. Now, let me ask you this much. If there's a live round in this gun and I take the clip out, is it still gonna

say bang?
A: It's still gonna fire.
Q: That's correct. So the most important thing to do would be to pull this shaft back and see if there's a live round in it?
A: Right. It's, we call it peeking.
Q: This is about as close as I can get to ---
A: Right.
Q: So when you -- (To the Court) Can I have him step down, Your Honor?
THE COURT: You may.
MS. LIVESAY: Thank you.
BY MS. LIVESAY:
Q: This is about close to what it looks like when this it's -- when this shaft if fully closed; obviously, this is center-ways; is that correct?
A: Yes.
Q: Now, I'm gonna turn this back to the Jury so they can see it. This has an aspect like a revolver -- is that correct -- and it has a hammer?
A: It does. Yeah, a hammer; that is correct.
Q: When this hammer's back and you pull the trigger, it goes bang?
A: Yes.
Q: Is that correct? In fact, there's some holsters that

actually have a piece that go between this hammer and the gun; is that correct? It's like a safety mechanism?
A: Yes, that is true.
Q: Okay. Now, when you're looking at this gun like this and you want to know if there's a live round in the chamber, would you pull it back -- would you see that round in the chamber?
A: Yes, you would.
Q: And that's how you check to see if it's a live round; is that correct?
A: Yes, it is.
Q: Okay. So, this is a pretty deliberate action, wouldn't you say?
A: Yeah, it is.
Q: Okay. Now, you can actually -- when you pull it back, depending upon the type of gun, you can take that live round out; is that correct?
A: Yes.
Q: Okay. If you had -- you found how many in the clip, four and a live round in the chamber?
A: Four.
Q: And when you found this gun, the clip was in the weapon; is that correct?
A: Yes, the weapon was fully loaded. And what we mean by fully loaded is one in the actual chamber and a magazine actually in the gun with rounds in it.

Q: Okay. Have you ever seen anybody unload a gun by taking it like that and popping the bullet out five times?
A: No.
Q: Okay. Cause this is pretty loud, isn't it?
A: Yes.
Q: Okay. In fact, a lot of people do this to intimidate people?
A: Right.
Q: Okay. Now, let me ask you this much, when you take a live round out like that ---
A: Uh-huh (affirmative response).
Q: --- and there's four left, okay, is that gun gonna go bang?
A: If there's four in the clip and one actually goes back into the chamber if you take a round out.
Q: That's right, but you have to do that?
A: Right.
Q: Okay. If there's not a live round in this gun and this has never been racked, is it ever gonna go bang?
A: No, you actually have to rack the gun to put one in the actual chamber.
Q: So there's no if, ands, and buts about it, there has to be a deliberate action for this gun to go bang?
A: Yes.
Q: Okay. And there has to be a deliberate action for there

to be a round in this chamber?
A: Uh-huh (affirmative response).
Q: Okay. Have a seat, Officer Cast.
Now, Mr. McCollum asked you about if you wanted to quietly unload this gun, you would just pull it back like that, okay. Let me ask you this, when you rack a gun and the bullet comes out, it makes a mark on that bullet; is that correct, like a strike mark?
A: Yes, it does.
Q: Okay. Because there's friction between this shaft and the bullet; is that correct?
A: It does, it scratches the outside of the actual shell.
Q: Okay. And is it true, that different guns make different strike marks?
A: That is true.
Q: Okay. Because some bullets, when you rack it, pop out pretty far; is that correct?
A: Yes.
Q: Okay. And do you know how far the bullet would pop out of this gun when it was racked?
A: I have no idea.
Q: Okay. But what you do know is when you found it -- this is a safety measure; is that correct, to keep it like this? That's a safety measure and that's why this is on it. When you found it, was the shaft back like that?

A: No, it was forward with one in the chamber and a magazine in the actual body of the gun.

Q: Okay. So, as soon as you picked it up, it could've went bang?

A: Oh yeah.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Would you like to cross examine, recross?

MR. MCCOLLUM: No, Your Honor.

THE COURT: All right, sir, you may step down.

BY THE COURT:

THE COURT: Ladies and gentlemen of the Jury, at this time, we're going to break for the evening. I'll give you the same instructions I've given you each time you've left the courthouse and that is not to gather any information on your own, don't listen to, watch or read media reports, don't discuss this case with anyone and don't allow anyone to discuss the case with you. I'll ask that you be back in the downstairs room at 9 o'clock in the morning. We should be able to begin shortly thereafter. I hope everyone has a good evening. If you'll just move that one piece of evidence off that rail so that we can open the door and just leave everything else sitting where it is. At this time, I hope you have a good evening. You're free to go.

(REPORTER'S NOTE: The Jury exits courtroom. 5:05 P.M.)

THE COURT: I'll caution the Defendant, we'll resume the

trial at 9 o'clock in the morning in this courtroom. If you fail to appear then we will proceed in your absence and a bench warrant will be issued for your arrest. You understand that, sir?

MR. BELL: Yes, Your Honor.

THE COURT: Thank you very much.

Let's be sure we get all these exhibits back in the right containers before we leave.

MS. LIVESAY: I will, Your Honor.

THE COURT: All right. Court's in recess until 9 o'clock.

(RECESS - 5:06 P.M.)

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

AUGUST 14, 2013

(On the Record - 9:03 A.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Is the State ready to go forward at this time?

MS. LIVESAY: Your Honor, at this time, the State's gonna rest.

THE COURT: Okay. And we may have some matters that we need to take up before I bring the Jury in this morning.

I'll hear from the Defense. Do you have any motions?

MOTIONS:

MR. MCCOLLUM: Your Honor, at this time, the Defense would move for a directed verdict of not guilty on the indictment for burglary in the first degree, armed robbery, kidnapping and use of a firearm during the commission of a violent crime, and the fifth count, I believe, is conspiracy.

THE COURT: That's correct.

MR. MCCOLLUM: Under the statute.

THE COURT: Yes, sir.

MR. MCCOLLUM: So at this time, Your Honor, we would move for a directed verdict on those issues. Additionally, Your Honor, we would ask for the Court to sustain the previous objections and also we'd renew the objections on all of the previous evidentiary rulings.

THE COURT: All right. I'll hear from the State.

MS. LIVESAY: Yes, sir, Your Honor. I think the State has more than proven its case on all the pending charges that we're asking for. The evidence has been clear that one of these Defendants was identified as Chris Bell, who was also identified by the 911 caller leaving the apartment along with Kenneth Bell. Both were seen by the 911 caller. He was making a present sense impression telling exactly what he was seeing as it was happening. He actually saw the two Defendants get arrested by Natalie Boyd. On the tape it's very clear; they got him, they got him, they got him. Natalie Boyd then took the stand. She then said through her

investigation, she discovered who the two guys were Christopher Bell and Kenneth Bell. She then found all the items either on them or directly in the vehicle they were leaving in that all the victims have said were there right down to the description of the clothes while they were in the apartment. I think there's definitely enough to take this to the Jury, Your Honor.

THE COURT: All right. I will find that there is sufficient evidence to send the case to the Jury on all charges. All of my previous rulings concerning evidentiary matters would also be confirmed at this time.

I do need to take up some matters with your client, Mr. McCollum, and so I will ask that he stand to be sworn please.

KENNETH JORDAN BELL, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

THE COURT: All right, sir. Mr. Bell, you can be seated. You don't have to stand while I'm telling you this.

Mr. Bell, we've reached the stage of this trial where you have the right to present your defense. In doing so, I will advise you that you have the right to testify in this case if you choose to do so. I will also advise you that you have the right not to testify as you choose -- if you choose to do that. I want to make you aware of certain provisions of the U.S. Constitution, specifically, the Fifth Amendment to that Constitution, which contains a statement that no person shall

be compelled in any criminal trial to be a witness against himself. Now what that means is that while you have the right to testify, you cannot be compelled or forced to testify. The right to remain silent is a personal right. It's a right that belongs to you. I will advise you that if you choose to testify, your testimony will be governed by the same rules that govern the testimony of any other witness. What that means is that you would be examined by your lawyer, questioned and examined and cross examined or questioned by the State's attorney. Now in addition to that examination, should you have convictions on your record that involve dishonesty or convictions which carry a potential sentence of more than one year within the last ten years and this Court makes a determination that the probative value of admitting that evidence concerning your credibility outweighs its prejudicial effect to you. And in that case, your prior criminal record could be used to impeach your credibility.

Now, I will advise you that if you decide not to testify, that I will instruct the Jury that the fact that you did not testify in this case cannot be used in any manner whatsoever against you. In fact, I would instruct them during my charge that the fact that you did not testify could not even be discussed by them in their deliberations.

Now, in making the decision as to whether or not to testify in a case, you have the right to consult with anyone

that you would like to consult with. That includes your lawyer, family, friends or anyone else you'd like to speak to. But the decision as to whether or not to testify is ultimately yours and yours alone. It's a decision that you must make; it's a personal decision.

Now, I will ask you, do you understand the rights, the right that I have explained to you this morning?

MR. BELL: Yes, Your Honor.

THE COURT: Do you have any questions about that that you'd like for me to further explain.

MR. BELL: No, Your Honor.

THE COURT: Now have you had an opportunity to discuss this decision with people that you would like to discuss it with.

MR. BELL: Yes, Your Honor.

THE COURT: And would you like to discuss it any further with anyone before you announce what your decision might be?

MR. BELL: Yes, Your Honor.

THE COURT: All right. Then I will give you a few minutes to discuss it. If you want to discuss it with your attorney, family, friends, we'll make a place available to you to have those discussions.

We'll be in a short recess then while I give him an opportunity to discuss that decision. If you wish to step out of the courtroom, you may do so.

MR. MCCOLLUM: Thank you, Your Honor.

(RECESS - 9:13 A.M.)

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

(On the Record - 9:28 A.M.)

THE COURT: Do you need any additional time at this time?

MR. BELL: No, Your Honor.

THE COURT: Do you intent to testify in this matter?

MR. BELL: Yes, Your Honor.

THE COURT: All right. Anything else we need to take up, counsel?

MR. MCCOLLUM: Your Honor, he doesn't have any criminal history that I'm aware of.

THE COURT: Well, let me ask the State to be sure that that's the case. State have any criminal history that you intend to use for impeachment?

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

THE COURT: Do you have any criminal history for this individual that you intent to use for impeachment?

MS. LIVESAY: No, sir.

THE COURT: Okay. I'm informed the same thing, Mr. McCollum.

MR. MCCOLLUM: And, Your Honor, we've discussed this and hit's -- we probably have reached a final decision. I've explained ---

THE COURT: Well, obviously, he can change his mind. I want to be sure that he's had the opportunity, though, to fully discuss it.

MR. MCCOLLUM: That's what I told him, Your Honor. I was concerned about him having to make an intelligent choice whether he does or doesn't.

THE COURT: Exactly. So, later on, if he changes his mind, he has the absolute right to do that as well.

MR. MCCOLLUM: Okay. Thank you, Your Honor.

THE COURT: Are we ready to proceed?

MR. MCCOLLUM: Your Honor, I was -- the State hasn't called Officer Langlais and there was an issue that's in the police report that I was gonna call -- I would call him if he were in the courtroom and it just pertains to that case that's listed in the police report and the inventory sheet, it's a gun case, a gun cleaning kit. And the point of that is that, that was -- we allege that was taken out of the alleged victim's residence. So, I was gonna call Langlais just to confirm that. I could call Officer Boyd, but I may run into a situation where she says that, you know, she ---

THE COURT: Well, you want to take a moment and talk to Officer Boyd, she's here, and see if she can testify to that.

MR. MCCOLLUM: I will do that, Your Honor.

THE COURT: All right. Was that officer -- he was present yesterday?

MR. MCCOLLUM: Yes, Your Honor.

THE COURT: Because I don't know who we're talking about.

MR. MCCOLLUM: Langlais, he's been here all week.

THE COURT: Okay.

MR. MCCOLLUM: Wrongly, I assumed that she was going to put him up in the -- on the evidence.

THE COURT: All right. I'll give you a moment to confer.

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

(On the Record.)

You ready to go back on the record?

MR. MCCOLLUM: Yes, sir.

THE COURT: Yes, sir.

MR. MCCOLLUM: Your Honor, I think that, I don't know that Officer Boyd would testify that it's a pistol case and I, you know, and that's fine. But in terms of asking him questions off the record, they've had some reluctance to discuss things with me, so I haven't been doing that. What I interpreted is their preference for me not to ---

THE COURT: Oh, I understand that and I take it you do not have that officer under subpoena?

MR. MCCOLLUM: I do not.

THE COURT: Okay.

MR. MCCOLLUM: I guess what I would do if I had no other alternative, is I have, I have a witness here who said he's familiar with gun cases and if he can testify based on his being around guns and gun shops and that sort of thing, he can testify as to what it is and I would call her to ask her certainly about the, the, the, their own police evidence log.

It's my ---

THE COURT: Well, however you want to present your evidence, that'll be fine. If you need to do something to get the officer here, we'll -- I don't know if you need to issue a subpoena right now or not; we'll have to find out.

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

THE COURT: I said I don't know if he wants to have a subpoena issued right now or not.

MS. LIVESAY: I never knew -- I subpoenaed Officer Langlais, so -- obviously, I rested this morning so I had not intentions of calling him and he never told me that Mr. McCollum had made any contact with him regarding testimony.

THE COURT: Well, I understand that.

MR. MCCOLLUM: And I have not. At this time, Your Honor, what I would do is I would, I would call Officer Boyd because what I think I'm holding in my hand is her report, which will clearly list it as that and it's not the major point ---

THE COURT: I understand.

MR. MCCOLLUM: --- that I'd like to make.

THE COURT: Well, are we ready to proceed otherwise?

MR. MCCOLLUM: The only other thing, Your Honor, is I've got the Codefendant in the case and I'm probably going to attempt to call him as a witness.

THE COURT: All right.

MR. MCCOLLUM: Your Honor knows I ---

THE COURT: We discussed the fact that he's represented by other counsel. Do you need a minute to go call that attorney and let him know that could happen?

MR. MCCOLLUM: We've already called him.

THE COURT: Okay. So, we're -- are we ready to go then?

MR. MCCOLLUM: Yes.

THE COURT: Okay. All right.

MR. MCCOLLUM: Well, let me, yes. Yes, I'm ready to go. Thank you, Your Honor.

THE COURT: All right. The State ready? Ms. Livesay, you ready for the Jury to come in?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: Okay. Bring the Jury in.

I want to call on you, since you have not rested in front of the Jury.

MS. LIVESAY: Yes, sir.

THE COURT: I'll give you an opportunity to rest in front of the Jury and then I'll call on the Defense to call witnesses.

THE COURT: Did you get all those exhibits back in the right order?

COURT REPORTER: Yes, sir.

THE COURT: I was a little worried about that. I was trying to keep my eye on everything.

COURT REPORTER: I had everything.

THE COURT: Okay.

(REPORTER'S NOTE: The Jury enters courtroom. 9:35 P.M.)

THE COURT: All right. The record will reflect that the Jury has returned to the courtroom. I want to thank you for your patience this morning. We've, we've been here since 9 o'clock working. We had to take care of some things out of your presence. So, I want to thank you again for your patience thus far.

Counsel, we're ready to proceed?

MR. MCCOLLUM: Yes, sir.

THE COURT: When we broke yesterday, the State was in the process of calling its witnesses, and at this time, they may call their next witness. Ms. Livesay?

MS. LIVESAY: Your Honor, at this time, the State rests.

THE COURT: All right. The State has rested. That means the State has completed the presentation of its evidence in this matter. At this time, the Defense has the right to call witnesses. At this time, Mr. McCollum, you may call your first witness.

MR. MCCOLLUM: Thank you, Your Honor. May it please the Court? At this time, the Defense would call Wendy Jaworski.

THE COURT: All right. Come forward please.

CLERK: Ma'am, please raise your right hand; place your left hand on the Bible.

WENDY JAWORSKI, HAVING BEEN SWORN

TESTIFIES AS FOLLOWS:

CLERK: Thank you. Please be seated.

THE COURT: Ma'am, have a seat in the witness stand, please. Once you're seated, state your name?

MS. JAWORSKI: Wendy Jaworski.

THE COURT: Thank you, Counselor, your witness.

MR. MCCOLLUM: Thank you, Your Honor.

DIRECT EXAMINATION OF WENDY JAWORSKI BY MR. MCCOLLUM:

Q: Ms. Jaworski, good morning.

A: Good morning.

Q: You've been here since the beginning of the trial, right?

A: Yes.

Q: All right. And are you -- are you the, the mother of Kenneth Bell?

A: Yes, I am.

Q: All right. And are you the mother of his brother, Buddy?

A: Yes, I am.

Q: All right. Where do you currently reside?

A: Pittsburg, Pennsylvania.

Q: And have you lived there for a number of years?

A: All my life.

Q: And are you presently married?

A: Yes, I am.

Q: What is your husband's name?

A: Robert Jaworski.
Q: And is, is he presently employed?
A: Yes, he is.
Q: And where is he today?
A: He is currently at work and it's killing him not to be here.
Q: What kind of work does he do?
A: He is a mechanic.
Q: How many children do you have?
A: My husband and I have raised five.
Q: Five children?
A: Uh-huh (affirmative response).
Q: And in terms of Kenneth, is he the youngest or is he in the middle?
A: He is in the middle. Buddy is the oldest. They have a step-sister, Amanda, she's in the Air Force; and there's Kenneth; then there's Jessie, who is the mamma of a two-year-old; and there's Haley, who is currently going to Empire Beauty School. That's another reason why my husband couldn't be here. She has to be taken back and forth to school. She doesn't drive.
Q: Briefly, I want to touch on this, throughout the trial, we've been talking about the Codefendant, Christopher Bell. Do you know Christopher Bell?
A: Yes, I do.

Q: And have you heard me refer to him as Kenneth's brother?
A: Yes.
Q: And tell me about that. How do you -- how does that affect you?
A: Christopher Ryan is his half-brother. Buddy, Kenny, Shawn and Chris all have the same father, but not the same mothers.
Q: So you're not the mother of Christopher?
A: No.
Q: Now at the time of say leading up to February of 2013, to your knowledge, was Christopher Bell living in this area, in the Myrtle Beach area, the Horry County area?
A: Yes.
Q: And you were familiar with that, that he was living here?
A: Yes.
Q: And going back to Kenneth, how old is Kenneth?
A: Kenny, he just turned twenty-two.
Q: And you raised Kenny from birth?
A: Yes.
Q: And did he do well in school?
A: Straight A's through high school from elementary to high school; almost Valedictorian.
Q: How big was the high school he attended?
A: We, we live in a predominantly black area. My kids, my boys were the only two that went to that high school. And it's not an exaggeration, they were the only two white children in

the school. I mean, that to me is perseverance that -- and everybody loved them.

Q: Now, Kenneth, did he play sports?

A: Yes.

Q: What sports did he play?

A: He was captain of the football team, junior high and high school and captain of the baseball team. They -- the school district lost their baseball team and when Kenny was in tenth grade, they restarted it. He actually helped to restart the baseball team back up and he was captain of the baseball team as well.

Q: In terms of the football playing, what -- do you know what position he played?

A: He played both offense and defense. I believe defensive end.

Q: All right. And did he have any possibility or prospects of having any kind of college scholarship as a result of playing football?

A: Yes, he did. Allegheny University, which is a very prestigious school in Pennsylvania wanted him very badly. The problem was is that his football coach, who was doing some deceitful things that we didn't know about, didn't send the disc of the plays that would involve Kenny and because of that, Kenny got turned down.

Q: All right. Now, at some point -- well, let me back up a

minute. When, when Kenny, as you call him, was, was growing up, did he attend church?

A: Yes.

Q: And what faith?

A: He's Methodist.

Q: All right. In terms of other things he's done, has he worked?

A: Since sixteen years of age. Actually, he asked me -- I'm sorry, my husband is his father; that's who we refer to as his father. My current husband has raised him since five years of age. So, to us, that's his dad. He begged us at fifteen to work and my husband said no. At sixteen, he brought home a work permit and said, please, I want to work; I just want to work. So, he started, he was a cashier at a food store. He worked there for from sixteen to nineteen years of age. They were putting him in a gas station where more than three people were on the register and the thing was coming up short. So I suggested that he quit so it wouldn't incriminate him on anything. He went straight from there, I believe, a week later he was working for a clothing store called Marshalls. He worked there for about six or eight months. He was being overworked so he thought ---

Q: Is this while he was in high school?

A: Yes, and then right after graduating.

Q: So, so when he was in high school, he made good grades,

correct?
A: Yes.
Q: He worked?
A: Yes.
Q: And played multiple sports?
A: Yes.
Q: Okay. Is it safe to say that you were proud of him?
A: Oh yes.
Q: Now at some point after he finished high school, did he join the Air Force?
A: Not right away. He wanted to come right out of high school and go to the Marines and I begged him not to because it -- we were at war at that time and I didn't want to see him on the front lines. And so I asked him to take one year, try college, so he attended CCAC in Monroeville. He did not like that at all. It reminded him too much of high school. So after the one year, I told Kenny, I said okay, your one year is up. You, you can join the service and he went to the air -- he decided on the Air Force.
Q: And did he enlist in the Air Force?
A: Yes, he did.
Q: And was he accepted in the Air Force?
A: Yeah.
Q: And when was that in terms of what year was that?
A: January 17th, 2012.

Q: And do you know where he reported to?
A: He reported to the Air Force recruiting center in Monroeville.
Q: And was he accepted into basic training?
A: Yes, one of the proudest moments in my life, actually.
Q: And did he complete basic training?
A: He did not.
Q: And why is that?
A: About three or four weeks into basic training, his liver swelled. They said that he had overstress and not enough water intake and while he was in the medical center, he got that cleared up, the cameras that they have in the medical center caught him sleepwalking. So, they had to send him home, but he can always re-enlist.
Q: Now, the medical condition that the Air Force took him out of basic training on, is that, to your knowledge has that been resolved?
A: Yes.
Q: So, if there were not other obstacles, he would be eligible to re-enlist?
A: Yes.
Q: All right. At some point, when he was growing up, did you have a conversation with him about his personal appearance and specifically I mean with the idea that he may enlist or do something -- did you have a conversation with him about any

tattoos or piercings or things of that nature?
A: It's not just with him. Like I said, we raised five children and we've always stressed that at such a young age, kids want to go out and they want to get tattoos as soon as they turn eighteen. And my oldest son, Buddy, went to Canada and got a tattoo. He's the only one out of five that has no markings. He's listened to me one hundred percent. Please don't get a tattoo until you know what your career is going to be. Once you make that career, you can get whatever you want wherever you want. Kenny has good credit because he listens. I guess you could say I've protected him.
Q: All right. Were there ever any opportunities in his, in his young life where he worked to support other people?
A: Yeah. Yes, about 2008 my husband and I both lost our jobs. We were working for the same company and it sold out and Kenny was working, like I said, as a cashier at a grocery store and he actually paid the bills for about six months to a year.
Q: Now, when, when he made the decision after he was no longer in the Air Force basic training to travel, did he decide to move to this area here, the Myrtle Beach area?
A: No. Coming out of basic training, he went, one week later he had a job. He came home, one week later he got his old job back at the gas station down the street. Then my son, Buddy, had a little boy in September, September 27th of last year and

my mom and I had already had plans on coming down to see the baby once it was born.

Q: Let me stop you there. So, where does -- where does Buddy live or where did Buddy live when the baby was born?

A: Buddy resides here in Surfside.

Q: Thank you. So then you, you came down to see the baby, the grandbaby?

A: Yes.

Q: Okay. And about when was that?

A: Well, the baby was born September 27th, 2012. So we came down a couple of days later, like a day or two later.

Q: And did Kenny come with you?

A: Yes, Kenny and Haley both came.

Q: At some point, did Kenny make a decision just to stay here and live in this area?

A: Well, we came down and their oldest brother, Shawn, got married that weekend also. I believe it was like October 6th. So he also came down for the wedding and he had never been around all of his brothers. I've basically kept him away from the, what I call the Bell family, for reasons. Their dad, he's -- up until last year, he's never been around his dad except for I think when he was four. He's basically always been with me. I've never let him around that family.

Q: And then at some point, did, did Kenny live in this area with his brother, Buddy?

A: Yes, he asked me if he could try it. I told him I didn't think it was a good idea but he was twenty-one years old; what can I say? I can't, I can't keep telling him what to do.
Q: At this point, did you want him or think it was a good idea to associate with, with Christopher?
A: No. No, I left him down here thinking he was staying with Buddy. From what I understand -- I didn't know Shawn would come around and then I had learned that he went and seen his dad and I told him I didn't like that at all, but he did and there's nothing I, like I said, he's twenty-one; there's nothing I can do.
Q: All right. So, when you learned that he had been arrested and charged with these multiple felonies, was that something that you would have ever expected?
A: No. No, and to this day, it -- my husband and I, it blows our minds away. It's, it's, it's more than a three-sixty; it's double a three-sixty.
Q: You consider your son to be somebody who has what we call good character or has a reputation of good character?
A: Yeah.
Q: Do you consider him somebody to be a person who's truthful?
A: Yeah.
Q: Do you know anything about Christopher in terms of his physical condition?

A: I know he was in a car accident and I know that because the day it happened, my son, Buddy, had called me and told me Chris was at that time critical and I believe he was in Charleston Hospital for a little while. Buddy was there with him.

Q: All right. And so you really, you haven't really had -- well, let me ask you this, Have you had any dealings with Christopher?

A: Not many. After the incident, he always wanted to come around and he kept apologizing to me. And at first, I told him I, I didn't want to hear it because I just didn't want to hear it. I mean, I left a perfectly, I don't want to say perfect, but never had any run-ins with the law, never even had so much as a parking ticket, never had anything on his driver's license, had good credit and he was only twenty-one years of age. For somebody to involve a person in your things like that blows my mind. I, I could never imagine asking somebody to do things like that.

Q: Do you think that Kenneth would try to be protective of Christopher?

A: When it comes to family, Kenny will -- he'll give you his arm; he'll give you a leg.

Q: So is that, are you describing that he's loyal?

A: Very much. If you were family -- like I said, he doesn't know Chris that well. He didn't know Shawn. He hadn't seen

Shawn in, I think, he was three years old last time he saw his oldest brother, but if you are family, he will give his arm, his tooth, his eye; family is family.

Q: Now in terms of the medical condition that caused him to have to leave the Air Force, is that to your knowledge, is that cleared up?

A: Yeah, he went to see his primary care physician like the Air Force needed. His PCP is Dr. Lavarie (spelled phonetically). Dr. Lavarie issued two sleeping tests. He went and had those done. The Sleep Center said he only, he didn't need the second one; the first one was fine and Dr. Lavarie had one more session to talk with him and sign the papers and he could go back to the Air Force.

Q: All right.

MS. LIVESAY: Your Honor, obviously, at this point, even Mr. McCollum knows that that's inappropriate.

MR. MCCOLLUM: I know, Your Honor, and I'll stop with that.

THE COURT: Yes, sir. Hearsay is not admissible in the courtroom.

BY MR. MCCOLLUM:

Q: As far as on that issue, if he had not had the medical condition, would you have expected him to still be in the Air Force?

A: Yes.

Q: Do you love your son?

MS. LIVESAY: Your Honor, again, I think Mr. McCollum is continuously going down this path that, (A), it's already been gone down; and (B) it's inappropriate.

THE COURT: Well, it's -- it's already been testified to and the question then was would she have expected him to still be in the Air Force; she can answer that question so overruled.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: But we have gone a little afield on character.

MR. MCCOLLUM: Thank you.

THE COURT: Thank you.

BY MR. MCCOLLUM:

Q: So if he had not had the medical condition, would you expect him to still be in the Air Force?

A: Yes.

Q: All right. All right. Thank you, Your Honor. Please answer any questions Ms. Livesay may have.

THE COURT: Your witness, Counsel.

MS. LIVESAY: Thank you, Your Honor. Just a few.

CROSS EXAMINATION OF WENDY JAWORSKI BY MS. LIVESAY:

Q: Now you are Kenneth Bell's mom; is that correct?

A: Yes.

Q: Okay. And you have been here for the entire trial; is

that correct?
A: Yes.
Q: Now, you just testified that Chris asked Kenny to do something; is that correct?
A: He involved Kenny.
Q: Okay. So you're not disputing that Kenny went in there with Chris; is that right?
A: No.
Q: Okay. So, you know that Kenny went in that apartment with that mask on ---
A: I don't know that; I just know that Chris asked him to do something.
Q: Okay. So, you do know that Chris asked him to do it; how do you know that; were you there?
A: I spoke with Chris.
Q: You were not there?
A: Huh-uh (negative response).
Q: Okay. So at this point, you don't if Kenny went in or not?
A: No, I do not.
Q: And you call him Kenny; is that correct?
A: Correct.
Q: And everybody in the family probably calls him Kenny?
A: Yes.
Q: So, if Chris was in that apartment with Kenny and when

that 911 caller said he just called the guy Kenny; it wouldn't be out of the normal for Chris to call your son Kenny; is that right?

A: Huh-uh (negative response).

Q: It would not be out of the norm; okay. Now we talked a little bit or you did with Mr. McCollum about the fact that he had been in basic training. How long had he been in basic training?

A: He went in January 17th; he came out March 11th.

Q: He went in when; I'm sorry?

A: January 17th, 2012.

Q: Okay. And he came out in three months?

A: March.

Q: Okay. So he was in basic training learning about guns, weapons ---

A: I don't know how far he went. It wasn't long after he went in, he went in to the medical unit, which means he has to start basic training all over again.

Q: Okay.

A: As far as I know, as the basic went, he only went about two weeks and the only thing I heard was about how to fold your clothes. The first couple of weeks, besides your running and your basic obstacles and getting ready for things, which they call -- on your last week they take you out to a field and you actually have to -- I don't know that he got to the

gun part yet. The only thing I ever heard about was how to fold your clothes and keep your foot locker.

Q: So in three months, he learned how to fold clothes?

A: Like I said, after two or three weeks, he was in the medical unit.

Q: Okay. So he was only in basic ---

A: You, you don't do any basic training. You basically stay in the medical unit. You basically relax; you're not allowed to do anything but see doctors.

Q: Okay. So in the three months of basic training, he actually only participated two weeks?

A: Basically, yes.

Q: So pretty early on, he was down?

A: Yes, he was running.

Q: And you, you are here testifying on his behalf; is that correct?

A: Yes.

Q: Okay. Because you do love him?

A: Uh-huh (affirmative response).

Q: Okay. And you want to see the best for him?

A: Yes.

Q: Okay. Now do you know Paul Degruccio back there?

A: No, I do not.

Q: Okay. And do you know Erik Meijer?

A: No, I do not.

Q: Okay. So, you probably don't care that they were held at gunpoint?
A: I would not say that. I would not say that.
Q: Okay.
A: Nobody should be held at gunpoint.
Q: Okay. So you would agree with that, that nobody should be held at gunpoint.
A: Nobody should be held at gunpoint.
Q: Okay. Would you agree that holding somebody at gunpoint is against the law?
A: Yes.
Q: Okay. Would you agree breaking into an apartment is against the law?
A: Yes.
Q: Okay. Would you agree that robbing someone is against the law?
A: Yes.
Q: Okay. Now, the way Kenny is sitting here today doesn't exactly look like the way he looked in February the 2nd. Let me see. Let me show you this picture? Is this him here? I'm showing you now State's Evidence Number Six?
A: Yeah, that's him.
Q: Okay. Would you admit he looks a lot different today in trial?
A: Yeah.

Q: Okay. Now, something else I was gone show you. Thank you, ma'am. These are the pictures they took of his shoes with the socks over them.

A: I don't know.

Q: I'm telling you it's already been testified to and is in evidence.

A: Okay.

Q: These are the shoes; these are actually still on his feet. Those are his jeans. And in fact, if you see, he's sitting in the car here.

A: Okay.

Q: And they put his foot outside the car to take that picture.

MR. MCCOLLUM: Your Honor, I would ask for the form of the question.

THE COURT: I'm gonna ask her to get to a question.

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: Now, let me ask you this, When you're looking over there at him now, can you see his feet?

A: Uh-huh (affirmative response).

Q: Has he got socks over his shoes today?

A: No.

Q: Okay. Is that normally the way he wears them; does he normally wear socks over his shoes?

A: No.
Q: Now, these were the items found, give me one second. Did you see Kenny on the video?
A: Yes.
Q: Okay. So, that was Kenny -- you're his mom so you would no more than anybody that was definitely Kenny on that video?
A: Yes.
Q: Okay. And that was him being arrested?
A: Yes.
Q: Okay. Now, did you hear him tell the officer that he had one bullet in his pocket?
A: No, I did not.
Q: You did not; okay. It's up there; we can play it again. These are the items that were taken off of Kenny.
A: Okay.

MR. MCCOLLUM: Again, Your Honor, I would just ask that she pose questions.

THE COURT: Well, she's identifying a piece of evidence. I think she's going to ask her about that; I don't know where that's going, but she can, she can frame the questions so that the witness understands what the question is. I'll let you go forward.

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: I'm showing you what's been in evidence as State's

Evidence Number Five. Okay. Now I can, we can put this all back up and replay the video again if you want to hear him say that that bullet was in his pocket?

A: Okay.

Q: Okay. But these were the items found on him?

A: Okay.

Q: Okay. Now how long have you -- how old are you if you don't mind me asking?

A: Forty-five.

Q: Forty-five. Okay. Do you have any experience with weapons or guns?

A: No.

Q: Okay. Let me ask you this much, how many of these do you think he takes to lay somebody down?

A: One I guess; I don't know.

Q: Okay. So it probably just takes one bullet to lay somebody down?

A: Uh-huh (affirmative response).

Q: Okay. Now long had Kenny been living here?

A: Since October of 2012; then after this incident, he posted -- we posted his bond and he went back to Pittsburg and we've been bringing him back and forth ---

Q: Okay.

A: --- for roll calls.

Q: Okay. And did y'all hire Mr. McCollum?

A: Yes.
Q: Okay. To help your son out?
A: Yes. Well, can I rephrase that; Kenny hired Mr. McCollum. After posting his bond, two days later, he had a job. Whatever money he made, he paid my mother back for posting -- for hiring Mr. McCollum. Kenny's been paying his attorney.
Q: Okay. But you definitely have helped him out since then; I mean you did come down here and get him, didn't you?
A: My husband came down, posted his bond.
Q: Okay. And got him out?
A: Uh-huh (affirmative response).
Q: Okay. Now when we were looking at that video, who were the two guys with the hooded sweatshirts and the jeans and the socks over their shoes?
A: Going to the car after being on the ground, going to the car, from what I could recognize was Chris Bell first and then Kenny Bell.
Q: Okay. So there's, there's definitely no doubt in your mind that that was him that day on the video?
A: Uh-huh (affirmative response).
Q: And your testimony from earlier says that, I'm assuming you say Chris asked him, so I'm assuming you're talking about Chris asked him to participate in this burglary first, armed robbery, kidnapping?
A: I don't know all that. I don't know what Chris asked him

exactly or what Chris had asked him to do exactly. I know he asked Kenny to be there.

Q: You knew what?

A: He asked Kenny to be there.

Q: Okay. Did you see any other two men on the video?

A: The two police officers.

Q: Okay.

A: I'm sorry, one's a woman.

Q: Okay. But other than that, nobody else?

A: Tonie Anne.

Q: Okay. Now, and Buddy is your other son sitting back there?

A: Yes.

Q: And he was, he's Kenny's brother; is that correct?

A: He's Kenny's full brother.

Q: Okay. And he was living down here at that time as well?

A: Yes.

Q: They were living together?

A: They were supposed to be.

Q: Okay. Did you see Buddy on that video?

A: No.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Redirect?

MR. MCCOLLUM: No, Your Honor, thank you.

THE COURT: Ma'am, you may step down. Thank you very

much.

The Defense may call its next witness.

MR. MCCOLLUM: Thank you, Your Honor. Your Honor, at this time, I would call, Defense would call Buddy Bell.

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

CLERK: Sir, please raise your right hand and place your left hand on the Bible?

BUDDY BELL, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

THE COURT: Sir, once you're seated, I'd ask that you state your name please?

MR. BUDDY BELL: My name is Buddy Bell.

THE COURT: Counselor, your witness.

MR. MCCOLLUM: Thank you, Your Honor.

DIRECT EXAMINATION OF BUDDY BELL BY MR. MCCOLLUM:

Q: Mr. Bell, are you Kenneth Bell's brother?

A: Yes, sir.

Q: Are you, I guess, half-brothers with Christopher Bell?

A: Yes, sir.

Q: Okay. Is it safe to say that you know them both very well?

A: Yes, sir.

Q: All right. At this time, today, do you live in this area in Surfside Beach area?

A: I live in Surfside. Glen's Bay Road.

Q: And are you employed?
A: Yes, sir.
Q: What kind of work do you do?
A: I'm a mechanic.
Q: An auto mechanic?
A: Yes, sir.
Q: And how long have you been in that trade or business?
A: Eight years.
Q: And do you current -- you currently reside in you said the Surfside area?
A: Yes, sir.
Q: Okay. And you have a child?
A: Yes, sir.
Q: One child?
A: I have one child and one on the way.
Q: And are you older than, than, than Kenny?
A: Yes, sir.
Q: All right. How old are you?
A: Twenty-four.
Q: Twenty-four. And did you grow up in Pittsburg?
A: Yes, sir.
Q: And how long have you lived in Horry County?
A: On and off about five years.
Q: You, obviously you know your brothers well, right?
A: Yes.

Q: And would you describe your brother, Kenny, as being a person who has displayed evidence or has a reputation for good character?
A: Yeah.
Q: Would you describe him as a person who has a reputation for being truthful and honest?
A: He doesn't lie to me. Honestly, if he does something, he won't lie to me. He will be truthful one hundred percent.
Q: Is he -- is his brother, Christopher Bell, as they say, cut from the same cloth or like Kenny?
A: Honestly, there's some things I'm not allowed to say because I was told not to due to the fact that what Chris did for a living. No, Chris is not an honest person.
Q: How old is Christopher?
A: I believe he's twenty-six.
Q: Now, I want to show you -- Your Honor, I don't see an exhibit mark on this case; I don't know if it's ---
THE COURT: Ask her if it's in evidence; I don't know.
COURT REPORTER: It is. It's part of Exhibit Nineteen, State's Exhibit Nineteen.
BY MR. MCCOLLUM:
Q: All right. I'm gonna show you what's been marked as part of State's Exhibit Number Nineteen and ask you a couple of questions, okay? Are you, you have some familiarity with firearms?

A: When I first moved down here, I worked at Merchant's Tire in Murrells Inlet right behind me was Coastal Sports, which is a gun club, yes.
Q: And Coastal Sports is a gun club?
A: Yes, and I went there on -- about two days a week.
Q: So, you frequented Coastal Sports?
A: Yes, sir.
Q: And if you say it's a gun club, what do they do in there; they sell guns, shoot guns?
A: They sell guns; it's an indoor firing range. You can go through your weapons training on how to carry and you can go for your concealed permit.
Q: And what I showed you, I can't remember the Exhibit Number, do you recognize what that is?
A: Yes, sir.
Q: And what is that?
A: This right here is a felt, soft felt gun case with three chambers here in order to hold three magazines and to safely tuck in your handgun so that no scratches can get on them.
Q: All right. And are you familiar with, I don't see it right here, but you're familiar with gun cleaning kits?
A: Yes.
Q: Okay. This is ---
COURT REPORTER: Item Nineteen.
BY MR. MCCOLLUM:

Q: Part of State's Nineteen, Your Honor. I want to show you what's been marked as part of State's Exhibit Number Nineteen and ask you if you, can you identify that?
A: This is a pistol cleaning rod; it's part of the kit as well.
Q: Okay. And there's, there's no question but that -- well, let me -- I'm leading you. That -- could that case bag described as a computer case or a laptop case in your opinion?
A: I've never seen a laptop that small.
Q: All right. Do you recognize that as, as being something that somebody could carry or store a firearm in?
A: Yeah.
Q: Now does it have a label or name on it?
A: No, sir, the label's been removed.
Q: All right.
A: There's no label on it; it was right here.
Q: All right. And in terms of somebody, have you actually looked up to see if items like that were marked for sale or listed as gun cases?
A: Yeah, I have. I'm from Pittsburg. So in order for me to get my concealed permit here, I had to switch my license to South Carolina and I've yet to do that. But I have two children, not real familiar with the neighborhood -- well, one on the way -- not real familiar with the neighborhood so I wanted protection. I looked into buying a handgun as well as

a case and I've actually looked at these because they're at Walmart for about seventeen bucks.

Q: All right. Thank you. Your brother, Kenneth or Kenny, would you say that in terms of his character and the way that you've known him, would you, would you say that being charged with something like this is expected or out of character for him?

A: You know, I got a phone call the day that it happened and this officer right here was the only one that I could say was respectful to me. She knows that I got a phone call the day it happened, I was at work, and I personally showed up at the scene and I was angry and you can ask that officer, I was in tears and I did thank her for letting me speak to him just to tell him I loved him because I would not expect this.

Q: All right.

MS. LIVESAY: Your Honor, just before we get too carried away, what direction is this going in because ---

MR. MCCOLLUM: That's, that's my last question.

MS. LIVESAY: Okay.

THE COURT: Thank you.

MR. MCCOLLUM: Your Honor; thank you. No more questions.

BY MR. MCCOLLUM:

Q: Please answer any questions Ms. Livesay may have.

THE COURT: Your witness, Counsel.

CROSS EXAMINATION OF BUDDY BELL BY MS. LIVESAY:

Q: Buddy, he lived with you at the time?
A: Well, he didn't live with me at the time.
Q: Where did he live?
A: He lived with Chris.
Q: Okay. So, they must have been pretty close?
A: Not really.
Q: Well, why did he live with Chris instead of you?
A: He lived with Chris because he wanted to go out. I'm not the going-out kind. I have a family. I want to stay home with my family. He wanted to do the beach, wanted to do the boardwalk, stuff like that. I don't do it.
Q: So, he really had more in common with Chris than he did with you?
A: Not really. See what it was, was Chris had friends and Kenny's at the beach, you know, a kid, he wants to get around and meet people and, to be honest with you, to meet girls.
Q: Okay. Have you been here the whole time?
A: As far as when he lived here?
Q: In this trial, you been here the whole time?
A: Yes, sir.
Q: Okay.
A: Or yes, ma'am.
Q: Okay. And you saw the video?
A: Yes, ma'am.
Q: Okay. Who were those two boys with the black hoodies and

the jeans and socks on their feet?
A: My brothers.
Q: What are their names?
A: Kenny and Chris.
Q: Okay. And you call him Kenny too; is that correct?
A: All my life.
Q: You called him what?
A: I called him that all his life.
Q: Okay. Now were you, you actually showed up out there at the scene, didn't you?
A: Yes, ma'am.
Q: Okay. Who is the one and you would know, who is the one yelling at these two boys, it's not over yet? Who was that; was that you?
A: Yeah.
Q: It was you?
A: Yes, it was.
Q: Okay. So, you were yelling at this victim here and the other boy, it's not over yet?
A: Yeah, but there was reasons for it.
Q: I'm sorry, what?
A: There was reasons for it.
Q: There was who?
A: Reasons because for instance whenever you asked them and they testified to it, did they go down there and they said no,

just to talk to the officers. That was a lie. They did go down there. They were standing right next to the cop cars and pointing at my brother.

Q: So, you didn't want them to tell the officers what had happened?

A: No, it's not that. They were standing next to the cop cars pointing at my brother, Kenny, when my brother, Kenny, was in tears going like this (indicating) making sad faces. If you want to ---

Q: Is this -- is he crying there?

A: Not right there, no.

Q: Okay. Would you disagree that he's in the back of a cop car?

A: No, I wouldn't, but there was also another kid at the scene, too.

Q: So, you were yelling at these boys it's not over yet?

A: I was yelling at the one they had with the curly hair, longer curly hair.

Q: Okay. Were you there when all this went down?

A: No, I wasn't.

Q: Okay.

A: I showed up.

Q: Okay. So you do know now that they were held at gunpoint?

A: Yes, I do.

Q: Okay. And you know a lot about guns?

A: Yes, I do.
Q: You know a good bit -- I mean, you're not an expert?
A: I'm not an expert.
Q: Neither am I. So you would know what it means when a bullet or what do you -- do you call it a bullet or a cartridge?
A: I call it a cartridge.
Q: Okay. You would know when a cartridge or a bullet is in the chamber, what that means?
A: Uh-huh (affirmative response).
Q: Okay. Tell the Jury what that means?
A: When you have a cartridge in the chamber, pull the trigger, it's ready to go.
Q: Okay. It's gonna go bang, isn't it?
A: Yeah.
Q: Okay. Now, let me ask you this much, if I was pointing a gun at you and it had a bullet in the cartridge, would you feel like you were free to walk away from me?
A: No, but I will tell you this, if you were pointing a gun at me, you better get ---
Q: Would you feel like you could walk away?
A: No.
Q: Okay. And all I would have to do would be pull the trigger and it would go bang?
A: Uh-huh (affirmative response).

Q: Okay. Now I'm assuming you know a lot about gun safety; is that correct?
A: Yes, ma'am.
Q: Okay. Now, do you have your concealed weapons permit?
A: Not yet.
Q: Not yet?
A: I had it in Pittsburg, but coming down here you have to get a South Carolina license in order to have it and I haven't changed that yet.
Q: Okay. But you know that there's a class you got to take to get it?
A: Yes, ma'am.
Q: Because gun safety is extremely important?
A: Yeah.
Q: Okay. And you said you have two children at home?
A: I have one child at home and one on the way.
Q: Okay. Now do you have guns at home?
A: Not in the house.
Q: Okay. And why is that?
A: I don't want my children to get them.
Q: Because they're dangerous?
A: Now, for instance, my wife ---
Q: Right.
A: --- by all means, if she wants to have one in her purse, that's up her, but I won't let it near my children.

Q: So, you can appreciate how dangerous a gun is to the point you won't even keep one in your house around your children; is that correct?
A: I've had friends whose children got ahold of them.
Q: Okay. Because it takes so little for that thing to go bang, doesn't it?
A: (Indicates affirmatively.)
Q: That's right. Now, you were out there yelling at them, this isn't over yet, right? Okay. Now I notice today -- do you see Chris Bell in here?
A: He's on his way.
Q: Okay. Was he in here yesterday?
A: He came later in the evening.
Q: He came in for a little while and then he left; is that correct?
A: He left when Court was let out.
Q: Okay. Who was testifying when Chris showed up?
A: I believe Paul.
Q: Okay. Paul Degruccio?
A: Yeah.
Q: Okay. So, all three of y'all were sitting back there when Paul was testifying; is that correct?
A: Yeah.
Q: Okay. And this is the same boy that on the day all this went down, you told him this isn't over yet?

A: Not him.
Q: I'm sorry?
A: It wasn't him I said it to.
Q: But you were saying in his direction; I mean, they were all standing over there, were they not?
A: Yeah, but it was a curly-haired kid that was with them.
Q: Okay. So, you were definitely saying in his direction, this isn't over yet. And yesterday while he was testifying, it was you, Chris Bell and Kenny sitting at that table; y'all were all in here, right?
A: Uh-huh (affirmative response).
Q: Okay. Now, did you spend a lot of time with Kenny while he was down here?
A: As much as I could when I wasn't working. I worked about seventy hours a week.
Q: Okay. Is this the way he normally wore his shoes?
A: No, and you can ask the officer when I first seen it, I said, What is that?
Q: So, this is not normally the way he wears his shoes?
A: No.
Q: Okay. So it would surprise you to see him like this?
A: It did.
Q: Okay. Now you know him pretty well you say, I mean obviously you have testified extensively about his character and about his truthfulness; is that right?

A: Uh-huh (affirmative response).
Q: Let me ask you -- this is something I'd like to know. Where did he get this gun from?
A: Where?
Q: Uh-huh (affirmative response) or who, who did he get it from?
A: He got from Chris.
Q: He got it from who?
A: Chris.
Q: He got it from Chris?
A: Chris had given it to Kenny.
Q: How'd you know that; did you see it?
A: No, Chris had told me he gave it to him.
Q: Did, did you see Chris give him this gun?
A: Did I see it, no.
Q: Okay.
A: But I was told.
Q: But you didn't see him give him the gun? Okay. And Chris is your brother too; is that correct?
A: Yeah.
Q: Okay. So, there's not a doubt in your mind when Kenneth went in that apartment, he had this gun?
A: From what I was told, he had it.
Q: Okay. So, when he went into the apartment, he was the one in control of this weapon?

A: From what I was told, he had it.
Q: Okay. So, you're not disputing that he went into that apartment with Chris and held these boys at gunpoint and robbed this one?
A: From what I was told, that's what had happened.
Q: You were told that's what was happening?
A: That's what was happening from the videos, what I seen on the video, that's him.
Q: Okay. So there's, there's no dispute that Kenny went in there with this gun and held these boys at gunpoint and walked out with this boy's stuff?
A: What they did as far as putting them at gunpoint, I don't know.
Q: I'm just asking you, is that your understanding; did he go in that apartment with this gun?
A: He went in with it.
Q: Kenny Bell went in the apartment with this gun?
A: Yeah, from what I was told, he had gone in there with it.
Q: Okay. And you can appreciate the seriousness of this weapon; is that correct?
A: That's a .45, yes.
Q: Okay. And when you say it's a .45 and you make a face like that, what, what does that mean?
A: It's not no ---
Q: That means it'll tear you up a lot more than a .22 will,

doesn't it?
A: Yeah.
Q: Yeah, it will. This is a, there's not many, how many guns would you say are much stronger than a .45?
A: Not too many out there.
Q: Okay.
A: A .45 is ---
Q: That's pretty -- that'll lay you down quick; will it not?
A: Yeah.
Q: I would say so, too. Now, you testified earlier to your brother's truthfulness to Mr. McCollum. Now, you've watched the video?
A: Uh-huh (affirmative response).
Q: Okay. On the video, do you hear Ms. Boyd ask Kenny where's the weapon; did you hear that?
A: I heard it, yeah.
Q: Okay. You heard that. And what was Kenny's answer?
A: I don't -- there is no weapon or something like that.
Q: What was it?
A: There is no weapon or something like that.
Q: That's right; there's no weapon. Okay. That's not true, is it?
MR. MCCOLLUM: Your Honor, I think she's getting close to pitting.
MS. LIVESAY: Your Honor, he's exposed himself to cross

examination now on the reputation of his truthfulness.

THE COURT: I, I'm not sure who you say he's being pitted against. There's no, your client has not testified at this point in time.

MR. MCCOLLUM: True. All right. I'm just, I'm making the objection, Your Honor, pitting.

THE COURT: Overruled.

MS. LIVESAY: Thank you, Your Honor.

BY MS. LIVESAY:

Q: But on the video, he said there was no weapon and is that right; yes? I'm sorry, you've got to say yes or no because this lady is recording everything.

A: What was your question?

Q: On the video, Kenneth Bell told Officer Boyd there was no weapon; is that true?

A: Yeah, that's what he said.

Q: Yes. Okay. But you've already testified that not only was there a weapon, but in fact, Kenneth Bell had the weapon; is that correct?

A: Yeah.

Q: Okay. So, he's not necessarily as truthful as you may have thought earlier; is that correct?

A: That's what he told the officer, but when I got there I asked for two minutes and she gave that to me. He told me, I had a gun.

Q: So he told the Officer there was no weapon?
A: That's what he told the officer.
Q: But there's no dispute that that is not true?
A: No.
Q: Okay. And you, probably more than anybody, can appreciate the safety issue as to why this officer was asking where that gun was?
A: Yeah.
Q: Now, just one more question, You said that Christopher Bell is on his way here?
A: Uh-huh (affirmative response).
Q: So you've had contact with him?
A: Uh-huh (affirmative response).
Q: So -- y'all are brothers; is that correct?
A: Uh-huh (affirmative response).
Q: So you're pretty close?
A: I'm not close with Chris.
Q: Okay.
A: Me and my oldest brother are close.
Q: Okay. But you keep up with him regularly enough you know what he's doing today?
A: I told him to get here. That's what had happened.
Q: Okay. You do know?
A: I don't call him; he don't come to my house. He's probably seen my child twice.

Q: Okay. But all three of you are brothers; is that correct?
A: Uh-huh (affirmative response).
Q: And you have been here the entire time?
A: Yes.
Q: For your brother, Kenneth Bell?
A: Yes.
Q: I just have one question, one last question. Now, would you agree that he looks a lot different in this picture than what he looks today?
A: Oh, yeah.
Q: No further questions, Your Honor. Thank you, Buddy.

THE COURT: Redirect?

MR. MCCOLLUM: No, Your Honor.

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

BY THE COURT:

Ladies and gentlemen of the Jury, at this time, we're going to just take a short break. I'll allow you to step down to the jury room as always I'm going to ask you not to discuss anything about this case until I've advised you to begin your deliberations. You may retire to the jury room.

(REPORTER'S NOTE: The Jury exits courtroom. 10:28 A.M.)

THE COURT: All right. We'll be in recess for about ten to fifteen minutes. I'd like to see the attorneys in my chambers, please.

(RECESS - 10:29 A.M.)

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

(On the Record - 10:54 A.M.)

THE COURT: Thank you very much. You can be seated.

Mr. McCollum, if you need some more time, just let me know.

MR. MCCOLLUM: Your Honor, I think what I'd like to do is just recall Officer Boyd ---

THE COURT: All right.

MR. MCCOLLUM: --- concerning the gun case; and then possibly, I may recall Mr. Paul Degruccio.

THE COURT: Sure, that will be fine.

MR. MCCOLLUM: And then Christopher Bell is supposedly going to be here in a few minutes with his attorney. I wouldn't waste the Court's time or take too much time with that, Your Honor, but I'll make a decision on that very soon and then in terms of my client testifying, probably, I'll probably be in a position where I'm not going to do that.

THE COURT: Okay. Well, again, he has the right to make that decision up until the time you rest as to whether he wishes to go forward or not. He's been apprised of his rights; I want to be sure of that.

MR. MCCOLLUM: That's true, Your Honor.

THE COURT: All right. Are we ready for the Jury?

MR. MCCOLLUM: The Defense is ready, Your Honor.

THE COURT: The State ready?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 10:56 A.M.)

THE COURT: All right. The record will reflect the Jury has returned to the courtroom. At this time the Defense has the right to call its next witness. You may proceed, Mr. McCollum.

MR. MCCOLLUM: Thank you. At this time, Your Honor, we'd call Officer Natalie Boyd.

THE COURT: Ma'am, if you'll resume the stand, please. You have been previously sworn in this case to tell the truth. I will advise you that that oath still applies to your testimony; do you understand and acknowledge that, ma'am?

MS. BOYD: Yes, I do.

THE COURT: All right. Have a seat please.

Your witness, Counsel.

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

THE COURT: Yes, sir.

DIRECT EXAMINATION OF NATALIE BOYD BY MR. MCCOLLUM:

Q: Is it Corporal?

A: Lance Corporal.

Q: Lance Corporal Boyd?

A: Correct.

Q: How are you this morning?

A: Good.
Q: Did you work last night?
A: No, sir; I did not.
Q: So, you don't have to work at night when you're in Court during the day; they give you that courtesy?
A: Yes.
Q: Okay. Sometimes?
A: Sometimes.

DEFENDANT'S EXHIBIT NUMBER TWO

MARKED FOR IDENTIFICATION

Q: I want to give you what's been marked as Defendant's Exhibit Number Two for identification and just ask you to look at that. Is that Page Two of the report that either you prepared or was generated out of your, your police department?
A: Yes, it is.
Q: All right. May I have it back please?

Now I'm gonna hand this back to you, Officer Boyd, and ask you to look at Item Number Nine; item in evidence Number Nine. Can you describe that?
A: Item Nine it is listed as one pistol case with pistol cleaning rod located on the ground near the driver's side front tire.
Q: Thank you, ma'am. And then this is Exhibit Nineteen ---

COURT REPORTER: Part of Exhibit Nineteen.

BY MR. MCCOLLUM:

Q: And so I'll hand you part of Exhibit Nineteen, two parts, and ask you if that's the item that the report describes?
A: I was not the officer that actually inventoried the items.
Q: But you were at the scene?
A: I can't testify as to that, that portion of it; however, yes, I was at the scene.
Q: And the items were found in the area where Christopher Bell was located, correct?
A: This particular item was located at the, the driver's side front tire.
Q: And it was located with the other items that had been stolen out of the apartment, right?
A: I -- it was located with some other items, yes.
Q: Now, there was also a, there's a photograph of a plastic container lid, right; you've seen that? I'll give you that exhibit. Do you know what I'm referring to?
A: A plastic container, yes, I do recall a plastic container.
Q: All right. And that object was located -- I don't see it here -- at the front of the vehicle as well, right?
A: I believe so. Again, I was not the officer that actually inventoried the items.
Q: State's Number Thirteen, I want to hand that to you. Now I understand what you're saying, that you weren't the officer that inventoried it, but let's talk -- let's talk about -- you testified you've been through the Police Academy, right?

A: Correct.
Q: And clearly you've been a police officer for some number of years, correct?
A: Correct.
Q: And you've been trained as a police officer, right?
A: Correct.
Q: And you've been trained in the various duties as a police officer, correct?
A: Correct.
Q: And you've been through the Police Academy, right?
A: Correct.
Q: And you had to have certain education in order to be a, a certified law enforcement officer, right?
A: Certain education as far as police training ---
Q: Yes, ma'am.
A: --- or outside?
Q: Yeah, you've got to have certain training and you have to be certified, right?
A: Correct.
Q: And you have that, right?
A: Yes, I do.
Q: And how long have you been a police officer?
A: For nine years.
Q: For nine years. And you patrol the streets in Horry County regularly, right?

A: Yes, I do.
Q: All right.
MS. LIVESAY: Your Honor, can we just, these are all leading questions. I don't think we've heard anything other than leading questions, but she is Mr. McCollum's witness. She's not on cross examination.
THE COURT: I understand, but leading is not per se objectionable or, or requires a finding that you have to cease. I will allow you to lead the witness to a certain extent. I understand in the interest of time, that is of use sometimes, but I will ask you to hold it to a minimum please.
MR. MCCOLLUM: Thank you, Your Honor.
BY MR. MCCOLLUM:
Q: Is it important that -- well, first of all, the, you did not take the photograph that you're holding in your hand, Number Thirteen, right?
A: No, I did not.
Q: But would you expect the officer to photograph what was on the ground?
A: Yes.
Q: And would you expect him to photograph it as it is; in other words, without altering it?
A: Correct.
Q: And is that normal procedure?
A: That is normal procedure.

Q: Okay. And then if you'll look at that photograph, there's an object in there with a red lid, right?
A: Yes, not in the case, no.
Q: I'm sorry. But on the ground, there's an object with a red lid, right?
A: There is a red lid on the ground.
Q: And there was a, was there a plastic container that goes with that lid; was there something found as well?
A: I can't honestly say I recall that portion of it because, again, I was not the one that collected the evidence and inventoried it.
Q: Those items that were found in that area, those are the same items that were reportedly carried out of the house by Christopher Bell, right?
A: I don't know that our report specifically says, indicates that. We did take these items in as evidence since they were found at a close proximity to the vehicle.
Q: But, I mean, isn't that the one of the points of the trial is that those items were taken from, from the residence of this Mr. Degruccio, right?
A: Again, they were found in close proximity to, to the vehicle.
Q: And based on the fact that items were found in close proximity to the vehicle, where -- who was standing in that -- who was in that area of the vehicle?

A: Kenneth Bell and Christopher Bell.
Q: Who was in the area of the front of the vehicle?
A: That would be Christopher Bell.
Q: Was he -- was Christopher Bell the person in front of the vehicle?
A: He -- yes.
Q: Okay. And is that where you heard glass being broken?
A: Correct.
Q: And does the, that area, where this case, Number Nineteen and the cleaning kit were found, were found right next to the items that Christopher Bell -- or they were found where Christopher Bell was accused of taking those items from Mr. Degruccio?
A: These were found at the front driver's side. I believe the case actually had the computer cord inside of it.
Q: So, is it safe to say that this State's Number Nineteen, the gun case, was taken from Mr. Degruccio's apartment.
A: I found it in close proximity of the vehicle.
Q: In terms of the looking at the State's -- what does that say, three --- State's Thirteen, do you also see a laptop?
A: Yes, I do see the laptop.
Q: And is it safe to say that this is a photograph of items that were allegedly taken or that were taken from Paul Degruccio?
A: Later on, after I spoke to the victims, the victim did

state that the laptop was taken and it was also communicated across dispatch shortly after I started to deal with the suspects that there was a laptop and a camera taken from the victims.

Q: Do you know, so the laptop -- it's your understanding the laptop was taken from Mr. Degruccio, correct?

A: Yes.

Q: And just on the ground next to the laptop and the tire iron is a picture of this gun case, right?

A: I, I don't, I can't identify it as a gun case. I was not the officer that inventoried it and, as I said, there was a computer cord in it at the time.

Q: Is it a gun case?

A: Do you mind opening it for me?

Q: Certainly.

A: Because I can't say that I've even seen the inside of this prior?

Q: I apologize. I thought that you ---

A: Because I was not the officer once again, that inventoried, but I really -- this is a black case to me; it's a black case. The gun cases that I'm familiar with would immobilize the weapon so that it does not move around ---

Q: If somebody had three ---

A: --- and made out of a harder material.

Q: I'm sorry?

A: Harder material.
Q: If somebody had three clips, could they just put them in here?
A: I don't know that I would feel secure with that based on the shape of those pockets and the size of a clip.
Q: Well, is it safe to say that this wouldn't be a gun case that you would prefer?
A: I do not own a gun case similar to that, no.
Q: And you've never seen one?
A: No, I have not.
MR. MCCOLLUM: Your Honor, may I publish this to the Jury again?
THE COURT: It's already in evidence as part of Seventeen; is that correct?
COURT REPORTER: Nineteen.
THE COURT: Nineteen, excuse me. It's already into evidence as a part of State's Nineteen.
BY MR. MCCOLLUM:
Q: Now, there's no, there's no question but -- well, I, I apologize and I will try not to belabor the point too much, but did that gun case, was that taken from Paul Degruccio's apartment?
A: I don't know that. All's I know is that that was found in close proximity to the vehicle where the suspects were at the time that we arrested them.

Q: Well, was this laptop taken from Paul Degruccio's apartment?
A: Yes, it was.
Q: Was this plastic container on the ground, which is not in evidence, was that taken from Paul Degruccio's apartment?
A: I do not know that. The victims identified that, their laptop and their camcorder were taken from the, from the apartment.
Q: Okay. So, they never identified that the gun case was taken?
A: They did not communicate anything like that to me.
Q: And if any other substances were taken, glass or plastic, they never indicated that those belonged to them either, right?
A: No, the laptop and the camcorder, if I remember correctly, that is what we reported us.

MR. MCCOLLUM: All right. Thank you, Your Honor. That's all the questions I have for her.

THE COURT: You may cross examine.

MS. LIVESAY: Thank you, Your Honor, just a few questions.

THE COURT: Yes, ma'am.

CROSS EXAMINATION OF OFFICER NATALIE BOYD BY MS. LIVESAY:

Q: I'm showing you what's been marked as State's evidence Number Thirteen. Let me ask you this, What is inside this

black case, this now being called a gun case? Can you see what's in it?

A: It appears to be a computer cord.

Q: A computer cord?

A: Yes.

Q: Okay. A computer cord. Now, was the gun recovered anywhere near this case?

A: No, it was not. The gun was recovered from inside the vehicle in the back passenger floorboard on the hump.

Q: Okay. So, whoever had the gun, which is this gun -- which I think we've established, I'm sorry, is Kenneth Bell -- they definitely were not trying to put it in that case, were they?

A: No.

Q: Because it was nowhere near?

A: It wasn't anywhere near that case.

Q: Okay. And there was already something in the case?

A: A computer cord.

Q: Yes. So we can be assured nobody was trying to put this gun back into this case?

A: Correct.

Q: Okay. Now, Mr. McCollum was asking you aren't these the items, these items up here around the front of the car weren't these the ones taken from Mr. Degruccio; do you remember that question?

A: Yes.

Q: Okay. And it appeared he was trying to say this black case was taken from Mr. Degruccio. What are the items that, after your investigation, you found were taken from that victim?
A: The laptop and the camera.
Q: I don't know -- I'm gonna show the Jury this picture, but you're familiar with it?
A: Yes.
Q: Okay. Now, if you don't mind, tell the Jury what that item is by the front tire?
A: The black case with a computer cord in it and then also a tire iron in the picture.
Q: So, the tire iron was also at the front of the car?
A: Correct.
Q: Okay. Is there anything, through your investigation, that led you to even think that the tire iron was stolen from Mr. Degruccio?
A: No.
Q: Okay. So, there's nothing to say that everything in front of this car was taken from that victim?
A: No, there isn't.
Q: Okay. Okay. But the laptop happened to be in the front of the car; is that correct?
A: Yes.
Q: And where was the camera found?

A: Underneath the front of the vehicle.
Q: Underneath the car?
A: Uh-huh (affirmative response).
Q: Okay. And the tire iron was found by the front tire?
A: Right where it is.
Q: Correct. And there's no reason to believe that tire iron came from Mr. Degruccio's house; is that correct?
A: Correct, there is no reason.
Q: Okay. Now there's been some questions asked about this case. Okay. Do you know what this is? Can you say that this is a gun case?
A: No, I can't.
Q: Do you have a gun case?
A: Yes.
Q: Okay. If you don't mind, tell the Jury what your gun case looks like?
A: My, my gun case is a hard plastic case and it actually has a lock on it and it has compartments that, that fit very tightly to where the weapon is placed where the magazines are placed so that they, whether or not the case was moved as it's opened, the weapon would not come out of the case, excuse me, the magazines would not fall out of the case.
MS. LIVESAY: Can I ask her to stand up, Your Honor?
THE COURT: You may.
MS. LIVESAY: Thank you.

BY MS. LIVESAY:

Q: Could you stand up real quick; just step right here, over here, if you don't mind, real quick. This is your weapon here?

A: Yes, it is.

Q: Okay. And I noticed the case is almost like a glove around that weapon?

A: Correct.

Q: If you don't mind, let the Jury see that. Move your arm for me. Turn just a little bit so I -- I mean it's even got like right down like a glove; is that correct?

A: Yes.

Q: Is that the way your case for your gun is, like this?

A: Correct.

Q: That's right. And why is that?

A: So for safety reasons.

Q: Right, so the gun want go off?

A: That's correct.

Q: Is it striking to you that this case doesn't have anything to hold that gun in place?

A: Yes, as I said, that's not something that I would carry a weapon in.

Q: Because it can move around in this case, correct?

A: Correct.

Q: And if you dropped it, there's nothing hard on the outside

to keep that gun from firing?
A: Correct.
Q: Okay. Now, there was early testimony about these things here or for the clip. Are you familiar with what a clip or a magazine looks like?
A: Yes.
Q: Okay. Does this look like that would keep that snug?
A: No, that's wider than an actual magazine.
Q: Okay. And is there anything in this case that would keep the gun secure from moving around?
A: No, there is not.
Q: Okay. Thank you, Ms. Boyd. One more question, Do you have any reason to believe that this came out of the victim's house?
A: No, I do not.
Q: Okay. Do you have any reason to believe this came out of the victim's house?
A: No, I do not.
Q: Now, this is for cleaning a pistol?
A: Correct.
Q: Do you have one of these?
A: Not that exact one, but yes, I do.
Q: You have one?
A: I do have one.
Q: Okay. And do you clean your pistol pretty regularly?

A: Yes, I do.
Q: Okay. And if you don't mind, why do you do that?
A: So that the weapon doesn't misfire.
Q: Okay. To make sure it goes bang every time?
A: Correct.
Q: Would you say that most people that have a gun, have a cleaning kit, especially when it's a semi-automatic?
A: Yes.
Q: Okay. Is that, this is a semi-automatic weapon ---
A: Yes.
Q: --- is that correct?
A: Correct.
Q: So, most people have a cleaning kit that have a semi-automatic weapon, correct?
A: That would be correct. I would assume.
Q: Okay. And you definitely want to make sure it's clean so it goes bang every time?
A: Correct.
Q: Okay. (To the Court) No further questions, Your Honor.

THE COURT: Redirect?

MR. MCCOLLUM: Yes, Your Honor. I have a question. May I approach?

THE COURT: Yes, sir.

<u>REDIRECT EXAMINATION OF OFFICER NATALIE BOYD BY MR. MCCOLLUM:</u>

Q: If you will, Officer Boyd, for me, if you could just read

Item Nine from your police department inventory report; just Item Nine, what it is?

A: Item Nine, once again, says a pistol case with cleaning rod, pistol cleaning rod located -- it looks like an error in the typing here. It says located by D. Brown and I believe that meant on the ground near the driver's side front tire.

Q: Okay. So your police department, your report, despite whether you may not believe it's a pistol case or not, your report from your police department from this case identifies it as a pistol case, right?

A: That, again, I can't testify for the inventory portion of it. I was not the officer that inventoried the item. That is, what I just read is listed on the report, correct.

Q: Thank you. Thank you. (To the Court) That's all I have, Your Honor.

THE COURT: Cross?

MS. LIVESAY: Nothing further.

THE COURT: You may step down, ma'am.

Defense may call its next witness?

MR. MCCOLLUM: May I have just a moment, Your Honor?

THE COURT: Yes, sir.

MR. MCCOLLUM: Your Honor, may we approach?

THE COURT: Yes, you may.

MR. MCCOLLUM: May I have Mr. Carraway join us?

THE COURT: Yes. Ms. Livesay.

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

BY THE COURT:

THE COURT: Ladies and gentlemen, we're having a little difficulty with the next witness. So, I'm going to ask you to step back into your jury room. As always they'll allow you to move around, stretch your legs, do whatever you'd like to do as long as you do not talk about this case in any fashion until I've asked you to do so. You may retire to the jury room.

(REPORTER'S NOTE: Jury exits courtroom. 11:21 A.M.)

THE COURT: All right. We'll be in recess for a few minutes. I'll remain on the bench and as soon as we have a report concerning the witness, let me know.

MR. MCCOLLUM: Yes, sir.

(RECESS - 11:22 A.M.)

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

(On the Record - 11:42 A.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: All right. We're back on the record in the case of Kenneth Jordan Bell, State versus Kenneth Jordan Bell. The Defense Counsel had indicated that the next witness would appear here at the courthouse. We've been waiting some almost thirty minutes and I'd indicated I'd wait until twenty till

twelve for him to arrive because that's the information I received. He has not yet arrived.

Are you, is he at the courthouse as far as you know, Mr. McCollum?

MR. MCCOLLUM: He's close, Your Honor, and I would just like to put on the record that I prepared subpoenas for him. He was present in the courtroom where we could have served the subpoena on him but just through inadvertence, I neglected to do that.

THE COURT: So he is not under subpoena?

MR. MCCOLLUM: No, sir.

THE COURT: All right. Now do you have other witnesses to call?

MR. MCCOLLUM: No, Your Honor.

THE COURT: All right. So you intend to rest at this time?

MR. MCCOLLUM: I do, Your Honor.

THE COURT: And, Mr. Bell, I'm gonna ask if you'll stand for just a moment?

MR. BELL: Yes, Your Honor.

THE COURT: Your attorney has informed me that he does not intend to present testimony from you. Earlier you had indicated that you would testify. Is this your decision?

MR. BELL: I do not want to testify.

THE COURT: Okay. So, you have decided at this time to

invoke your right to remain silent and to not testify; is that correct?

MR. BELL: Yes, Your Honor.

THE COURT: That's your decision; is that correct?

MR. BELL: Yes, Your Honor.

THE COURT: All right. Thank you. All right. I'm gonna call the Jury in. We'll rest formally on the record and I'm -- since we're this close to 12 o'clock, I'll send them to lunch and then we'll bring them back and we'll argue and charge at that time.

All right. So bring the Jury in.

MR. MCCOLLUM: And then I'll make and renew the motions after the Jury goes out?

THE COURT: Yes, sir, that'll be fine.

(REPORTER'S NOTE: The Jury enters courtroom. 11:44 A.M.)

THE COURT: All right. The Jury has returned to the courtroom.

At this time, the Defense may call its next witness.

MR. MCCOLLUM: Your Honor, at this time, the Defense rests.

THE COURT: All right. Ladies and gentlemen of the Jury, that completes the presentation of evidence by the Defense.

Does the State wish to call any witnesses in reply?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: All right. So that completes the

presentation of evidence in the case.

I told you when we started the trial that when we reached this stage of the trial, the attorneys will be given the opportunity to make their closing argument or their summation and once that is completed, I will be charging you concerning the law.

As always, there's some things I have to take up before we go to the next stage of the trial with the attorneys. It's a quarter till 12:00, so I'm going to release you for lunch. I'll ask that you be back in the jury room at 1:30. We should be in a position to resume the trial at that point in time.

As always, when you leave the courthouse, my instructions would be and they are, not to try to gather any information about the case on your own, not to discuss the case with anyone, not watch, listen to or read media reports and please report any contact that you might have concerning your participation on this Jury with someone else.

So, at this time, I'm releasing you for lunch. We'll see you at 1:30. Thank you very much.

(REPORTER'S NOTE: The Jury exits courtroom. 11:46 A.M. The following takes place outside the presence of the Jury.)

THE COURT: All right. You indicated you'd like to take up some matters with the Court, Mr. McCollum?

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

THE COURT: Yes, sir.

MOTIONS:

MR. MCCOLLUM: At this time, I would like to renew the motion for directed verdict of not guilty as to each indictment without naming them specifically.

THE COURT: Yes, sir.

MR. MCCOLLUM: And also I would take this opportunity to renew those objections made previously as to the evidence and I would renew all those objections and motions at this time, Your Honor.

THE COURT: All right. The Court will make the same ruling as to those motions and the motion for directed verdict as to each indictment is denied and I would not change any of the rulings on the evidence.

MR. MCCOLLUM: Thank you, Your Honor.

BY THE COURT:

THE COURT: All right. Anything from the State before we take our break?

MS. LIVESAY: No, sir.

THE COURT: Are you opening on the law and then gonna close later?

MS. LIVESAY: Yes, sir.

THE COURT: Or are your opening argument will be on the law and you'll let the Defense go and then you'll have a closing?

MS. LIVESAY: Yes, sir.

THE COURT: That the way you wish to do it?

MS. LIVESAY: Yes, sir.

THE COURT: All right. And I have the attorneys in the next case.

Let me caution you, sir, again we're gonna resume the trial of your case at 1:30. If you fail to appear at that time, the trial will resume in your absence and a bench warrant would be issued for your arrest. Do you understand we'll resume in this courtroom at 1:30?

MR. BELL: Yes, Your Honor.

THE COURT: All right. Thank you, sir.

(RECESS - 11:48 A.M.)

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

(On the Record - 1:24 P.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Thank you very much. You can be seated.

All right. Before we begin arguments, I'll allow the attorneys to make specific requests for charge.

Anything you'd like to discuss concerning the charge, ma'am?

MS. LIVESAY: I don't have any specific requests, Your Honor.

THE COURT: All right. And from the Defense?

MR. MCCOLLUM: Yes, Your Honor. I hand those up. And

also I'm curious, Your Honor, I don't have a proposed charge on criminal intent.

THE COURT: I have already included that in what I've prepared.

MR. MCCOLLUM: And is it in a form where I can take a look at it before we do closing arguments?

THE COURT: Well, yes, sir. In fact, I'll just read it to you if I can get it out; just a second.

MR. MCCOLLUM: Okay.

May I approach?

THE COURT: Yes, sir.

All right. I will read the intent charge that I intend to use. What I -- it's not written here, but I intend to explain that when I go over the charges that they're certain intent requirements in order to establish various charges. In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the Jury from the circumstances surrounding the situation. There's no way to prove intent to a mathematical certainty. There's no medical science that can dissect a person's brain and determine what the person had in mind. So, the law says

that criminal intent may be inferred from the circumstances that have been shown to have existed.

This is how you make a determination of whether or not the element requiring intent was present. It's not necessary to establish intent by direct and positive evidence, but intent may be established by inference the same way as any other fact taking into consideration the acts of the parties, all of the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It's up to the Jury to determine what the Defendant intended to do based on the circumstances that have been shown to have existed. Criminal intent can arise from an action or a failure to act. And that's the charge I intend to use.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: All right.

MS. LIVESAY: Your Honor?

THE COURT: Yes, ma'am.

MS. LIVESAY: I didn't know how you wanted me to go through these.

THE COURT: I'm going to start with the one on top and I'll go down through these.

The first request is a charge for defense of a relative or a third party. I do not, did not -- did not hear any evidence that there was a threat or an attack on any relative or third party. I'm not sure that's supported by any evidence

that is in the record.

MR. MCCOLLUM: Just briefly, Your Honor, the, the Defense, going into this trial, when this was prepared was that the Defendant had a state of mind where he thought he needed to stick up for and protect his brother.

THE COURT: I understand. Well, I don't think the evidence that was presented will support the charge. That would, Request Number Three, I think, would go to the same situation. It is a request for a jury charge concerning the use of non-deadly force to defend a relative.

Request Number Two, that is included in my standard charge. I am going to charge the Jury on aiding and abetting as well as the hand of one is the hand of all. And I believe that charge includes a statement that if a person is present where a crime is being committed or association with a person who commits a crime, does not make someone an accomplice. My charge says there has to be some overt act in furtherance of the, the criminal act.

Charge Number One, as to character, let me see what that says.

I'll hear from the State on that one?

MS. LIVESAY: Your Honor, I do have an objection to it because this is not a trial where his character played any part into the defense or the evidence because this isn't a self-defense type case where his character would be at issue

when you can, in self-defense, you can go into the character of the Defendant as well as the victim. I do not believe this charge is appropriate in this case. The only character evidence that would be admissible at all, even from the witness stand, would be his reputation as to his truthfulness and his reputation in the community. I think this is definitely taking that a step further when we start talking about the Defendant's good character because really, that's not even admissible from the witness stand.

THE COURT: I'll hear from you, Mr. McCollum.

MR. MCCOLLUM: Your Honor, I think the reason this is submitted is that regardless of the evidence or strength of evidence, I think that, that there's always the issue of criminal intent. And so, in this particular case, I'm asking for the charge based on the character is relevant on the issue of criminal intent, but also on the other issues. And, Your Honor, I think it's a good law; I've asked for it before and I'm asking for a charge on it.

THE COURT: Give me a second to look at one thing.

MS. LIVESAY: Your Honor, just so I'm clear, we are on Four, Rule 404, that is the Rule we're at regarding this issue?

THE COURT: That's the one I'm reading right now.

MS. LIVESAY: Okay. That's what I was looking, I just wanted to make sure I was in the right spot.

THE COURT: I'm going to look at State v. Green before I make a ruling on this one. So, I'll have to make that decision probably while you're in your arguments.

I'm looking at Request Number Seven. That charge is contained in my general charge.

MS. LIVESAY: I don't have a problem with Number Seven. I felt like that was argued.

THE COURT: It's in the charge.

MS. LIVESAY: Okay.

THE COURT: I'm looking at Number Seven -- I mean, Number Six, excuse me, at this time. I don't normally charge that. I think you certainly have the right to argue that and what inferences the Jury can draw. I don't normally charge a jury on what inferences they have the right to draw from evidence that may or may not have been presented. So, I think that would, that would, I would run the risk of commenting on the facts if I'd have charged that. I'm not gonna limit you from arguing it; you certainly -- as you can argue the absence of witnesses, you have the right to argue what inference the Jury might draw from that, but I don't intend to charge that as a matter of law.

All right. The only one then I have not ruled on at this time is the one concerning character and, as I said, I will look at that while you're in argument.

MR. MCCOLLUM: Thank you, Your Honor. Just as a

procedural issue, may I make those a part of the court record?

THE COURT: Oh, yes, sir. That will be a Court's Exhibit.

COURT'S EXHIBIT NUMBER THREE

MARKED FOR IDENTIFICATION

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: There's one more. I've got the one I haven't decided.

MS. LIVESAY: Did you want the defense of necessity?

MR. MCCOLLUM: Oh, I'm sorry. And finally, Your Honor, I had handed up a case that outlines defense of necessity anticipating that there might've been some basis for that. So I would just present that to the Court and that's in the case. I highlighted the ---

THE COURT: I'm reading it now.

All right. I've looked at that and considered it. I do not believe that would be supported by the facts and do not intend to charge that.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: All right. Anything else before we bring the Jury in for closing arguments?

The State wish to raise anything? Ms. Livesay?

MS. LIVESAY: I'm sorry, Your Honor. I think -- I have two objections to the defense of necessity.

THE COURT: I've already ruled that I'm not gonna charge

that.

MS. LIVESAY: Okay. Thank you, Your Honor.

THE COURT: All right. I don't believe it's supported by the evidence.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: Anything else from the Defense before we bring the Jury in for closing arguments?

MR. MCCOLLUM: No, Your Honor.

THE COURT: And I'll be calling on the State first.

Bring the Jury in.

MR. MCCOLLUM: Do you have the indictments, Your Honor?

THE COURT: I do. Would you like to ---

MR. MCCOLLUM: May I see them?

THE COURT: --- have those?

MR. MCCOLLUM: Thank you.

THE COURT: Thank you.

(REPORTER'S NOTE: The Jury enters courtroom. 1:40 P.M.)

THE COURT: The record will reflect that the Jury has returned to the courtroom.

If any juror had difficulty in complying with my instructions during our break, please stand?

It appears that all jurors have been able to comply with the Court's instructions thus far.

At this time, the attorneys will be allowed to address the Jury in their closing arguments or summations. The State

will be going first.

You may proceed. Ms. Livesay, you may proceed.

MS. LIVESAY: Your Honor, I will reserve the right to close last?

THE COURT: All right. Then I'll pass to you, sir.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: You may proceed, Mr. McCollum.

MR. MCCOLLUM: May it please the Court?

THE COURT: Yes, sir.

CLOSING BY MR. MCCOLLUM:

MR. MCCOLLUM: Ladies and gentlemen, again, I want to thank you for your service here. I want to thank you for listening to this case. I want to thank you for being patient and I want to thank you for being patient with me at times as I defended and continue to defend Kenneth Bell.

This is -- when you look at our criminal courts and you look at our justice system, sometimes you, you, it take, it's hard, it's hard to see that. You're in this seat now -- and I don't know if any of you have ever been in this position before -- but you have a situation where you see something that's exceedingly tragic. You have heard from Kenneth Bell's mother, you have heard information about his character, about the kind of person he is. You heard some information about his brother, half-brother, and to some extent, you had some ability to weigh that.

Now, in a trial -- and I've been doing this a long time, I guess I started practicing in the Criminal Courts in 1988, first as a public defender and then I worked for about five and a half years as a felony prosecutor like Ms. Livesay. I wasn't in this courthouse; we were in the old courthouse across the street. And since that time, I've continuously since about, I guess, 1994, defended people charged with a crime and seriously in this situation, you know, this, this, you've heard evidence -- you've heard evidence of what appears to be a serious crime. When you step back and you look at these matters as we, you know, we read the paper, we watch the news, we see stuff and nobody -- nobody I've ever met is in favor of crime, yet, there's always a story underneath the allegation or what you may read in the paper. Now, you're in the, you're in the unique position, though you never asked to be, to weigh that because ultimately what we seek is fairness, justice, appropriate punishments, where they're deserved. And there are things in a case that -- some things I can tell you, some things I can't, depending on the facts, depending on the judge's rulings because as His Honor told you at the beginning of this trial, he has certain -- His Honor has certain ethical obligations, certain rules he has to conduct himself by and he's done that quite admirably. In that, Ms. Livesay and I also are bound by certain rules. There may be things that I think I should be able to tell you, but I'm not the ultimate

person who gets to decide that. I've taken an oath to defend Kenneth Bell. I've also taken an oath as an Officer of the Court to obey the Court. And while I may personally disagree with some of that, as a member of the bar, as an Officer of the Court, I have the duty and I do show respect for the Court and I show respect for His Honor, Judge Couch, I show respect for Ms. Livesay, I show for respect for the police officers and even these individuals who accuse or brought the charges of, of these charges against Kenneth Bell.

Your role here, as His Honor will tell you, is not to determine sentence because that's the Court's job. Your job is to determine facts in the case. At the same time, you are under the Constitution, under the case law, under the statutes, under all law, you are the Jury. You are the ultimate deciders of this case. There is nobody, there is nobody more qualified to you, than you. There is nobody who's taken an oath to hear this case and decide it other than you. Also as jurors, each and every one of you is an individual juror, you're a separate entity. There are twelve of you plus an alternate. No one can interfere with you personally in your decision on the case. You are, each one of you, a sovereign juror. You're not brought together as a team to try to solve something. You're not brought together as a team to try to do the State's work for it. You're not brought together to even work together as a team. You're brought

together on individual charges. Each case, each charge must be decided independently, and His Honor will tell you this. So, on the defense of say burglary, you could individually vote guilty or not guilty of burglary in the first degree, if you desire that. That's each one your decision.

On the charge of armed robbery, each one of you could vote guilty or not guilty on the charge of armed robbery. You could legally find the Defendant, Kenneth Bell, not guilty of burglary and armed robbery and find him guilty of conspiracy. You could find him guilty of conspiracy to commit burglary but find him not guilty of the greater charge of burglary. You have that ability.

Now, in this case, you have something that very rarely occurs. You have a young man, who has no criminal past whatsoever and that I would tell you, if you ask anybody that works in this courthouse, it's exceedingly rare, almost unheard of. And then you look at why in the world would Kenneth Bell participate in something like this with his brother? Why would his brother cajole him or try to get him to do something like this and why would he go along with it? You ask yourself, well, is it because he's loyal -- they testified that he's loyal -- because he loves his brother, because he wants to protect his brother?

Now, in that sense of, of viewing it, you still have a situation where the crime is alleged to have occurred. Now,

there are other people charged with this offense, with these offenses. I think there are five charges. There's Christopher Bell, that I've spoken about over and over and then there's a woman I believe we mentioned, Tonie Anne Pasquale. As you can see, they're not here today. They're not on trial. The State, for whatever reasons, and they're allowed to do this, has elected, chosen to call the indictments against Kenneth Bell and has asked you to make those determinations.

Now, one of the things that you will hear His Honor talk about when he gives you the jury instructions is that when a person is accused of committing a crime, one of the requirements is that the person has criminal intent. In other words, the state of mind is to commit a crime. If I, if I'm driving my car and I have an accident, it's conceivable that I could have seriously injured somebody or, or, or, you know, even in the situation where an accident sometimes is fatal, doesn't make it a crime. You have a terrible outcome but it's not a crime; it's an accident.

The other things that happened where a person goes into a situation for perhaps the wrong reason and does not go into it with a criminal intent to carry out the crime. And what I'm referring to is this, he's charged with burglary in the first degree, okay, which is going in the house to steal. They will say going in the house with the intent to commit the crime,

not being invited in. They'll say it doesn't matter if the door is open or closed because the law is the law; so that's a burglary. Robbery is going in the house to take valuables from the occupants of the house. Conspiracy is to aid and abet or conspire with other people to do this. And then kidnapping is -- there are several words that you'll hear, decoy, inveigle, carry away, these type things. But when you look at this case and this case is what we call in regular -- it's a home invasion, a home invasion/robbery.

Now, what I submit to you is this, what's odd about this case as it relates to Kenneth Bell is that what you expect to have happen is for the people in the house to be robbed. Scott McDonald, Erik Meijer, Tanner Clark, they all testified -- well, they didn't all testify, but the testimony is that they all had a computer, they all had a smartphone, some of them had money, well, not much money, but certainly a wallet and a credit card or debit card, things are routinely stolen. They had flat screens in every room. And when you look at the criminal intent or the lack of intent for Kenneth Bell, what you have is a terrible situation of a misguided brother being drawn into something by somebody with criminal intent, certainly to go in the house. Now he didn't really even talk to anybody other than Paul Degruccio or Paulie, who admits reluctantly that he owed Christopher Bell money. One of the witnesses said that, you know, that he heard them arguing.

Mr. Degruccio even admitted arguing, okay? Now I submit to you and tell you that is not what you call a normal robbery.

The other thing is when Christopher Bell went there, the only person he was even confronting or approaching was Paul Degruccio. He said there was arguing about this debt. Now, prior to going in the house, Kenneth Bell wouldn't know what to expect. He wouldn't know if his, if his brother were walking into some dangerous set of circumstances and granted, he would have created it himself and given the choice, certainly Kenneth Bell could have deserted his brother, could've called the police, could've simply run away and that argument will probably be made. And I don't disagree with that for a minute nor does he. I'm fifty-three years old. I've been involved in probably over a thousand cases, probably two or three thousand. I know what I would do. It wouldn't matter, though it might be painful if it were my father or my brother or my child, I know what I would do but, sometimes, young people don't. My father had said that telling me growing up that nothing good happened after midnight and I can get in more trouble in fifteen minutes that I can get out of in fifteen minutes. Okay. Good advice.

But I what I want you to look at -- and, again, I thank you so much for your patience and your willingness to serve here. What I want you to look at is why wasn't Kenneth Bell helping himself to valuables? If he's there doing the

robbery, if he's there doing the burglary; if he's there doing the kidnapping; if he's there using a gun doing a violent crime and that's what he intends to do, why is he not helping himself to valuables. Every situation, whether it's in real life or fictional life, you always see the, the thieves getting the money. Many times fighting over it, having disputes with themselves because their state of mind is such that they rob to get the money. They go to do the thing to enrich themselves. They go into the incident because they have no morals, have no honesty, have no scruples and want to unlawfully enrich themselves. In this case, every possible witness agrees that the only person that anything was taken from was Paul Degruccio and the only person that took anything was Christopher and that Kenneth Bell was merely present there on a terrible errand with his brother, but we find ourselves here and Kenneth Bell is the one who is on trial.

Now I understand to some extent the position that you're placed in and I would submit to you this; that you consider this. I believe His Honor will tell you that the character and good character of Kenneth Bell can be considered, but I ask you to carefully consider this, because this is, these are as serious of felony charges as exists. Okay. I ask you to seriously consider his lack of intent and seriously consider find him not guilty of burglary in the first degree, not guilty of armed robbery and not guilty of kidnapping. And no

question this has been a life changing event for him, but we don't know how much at this point. If you find, and the indictment alleges that he, for whatever wrong reason, conspired with his half-brother, conspired with this other woman, Ms. Pasquale, then find him guilty of conspiracy, a felony.

One of the things that occurs in the criminal justice system -- and again, I -- it's, it's the consequences being proportional to that individual and to the circumstances. Now without trying to minimize what you've heard, without trying to detract from that, in the most respectful way that I can say it, I would point out -- and I'm not minimizing this in any way, shape or form, there are other people that should and will stand trial for this. The individuals in the apartment -- there's been talk about the weapon -- and it's a deadly weapon, it's a dangerous weapon, clearly had obviously. No one was smacked around with it; no one was beaten; nobody was held on the ground; no one was shot; no one was stabbed -- and those are things that happen in these type of incidents, when individuals go in there and go in there to commit the robbery. The other thing that's unique, and I've touched on this already, is the, the unique nature of Paul Degruccio, who's 5'2" he says, standing up to them, arguing with them, saying Chris and arguing with him and saying that, you know, they're in there having a discussion; they're in there having an

argument and, and Phillip Bell, excuse me, Kenneth Bell is, is present.

His Honor will tell you that before you can find a person guilty, you must show proof beyond a reasonable doubt. His Honor will tell you that Kenneth Bell is presumed innocent. His Honor will tell you there are certain inferences you can draw in determining criminal intent and you're free to draw those inferences or not. You've heard witnesses testify, you've heard all the witnesses, Paul Degruccio, the other fellow, Erik Meijer. You've heard Tanner Clark. Clearly, you have the ability to weigh that testimony as to how believable they are, credible, you know, if somebody were going to do a business transaction with Paul Degruccio, if somebody was gonna trust him in some trust fashion whether you would do that based on his demeanor and how he answered his questions and that applies to all witnesses.

So, I want to thank you for your patience in this case. It's my pleasure to appear here. I can't overstate how grateful we are for your sacrifice and willingness to serve here. I will not have another -- gratefully probably for you, I want have another opportunity to talk. Ms. Livesay will make a final argument and then His Honor will give the jury instructions. I simply ask you to carefully consider finding him not guilty of burglary in the first degree, not guilty of armed robbery and not guilty of kidnapping. Thank you.

THE COURT: Ms. Livesay, for the State.

MS. LIVESAY: Thank you, Your Honor.

CLOSING BY MR. LIVESAY:

MS. LIVESAY: Ladies and gentlemen of the Jury, you have been here now for three days so I'm gonna try to make this brief, but I do want to go over with you the charges again and a little bit of the evidence that we heard over these three days.

Now he's charged with five indictments and we'll go through very briefly what those charges are and what you have to find to find him guilty and what facts have come out in this case to show that Kenneth Bell is guilty.

The first thing he's charged with is conspiracy.

Excuse me, Your Honor.

Now, conspiracy is just what you would think it is. It is a plan. It is co-conspirators just like Mr. McCollum told you, people coming together with a plan to commit a crime. Now, what evidence do we have today that there was a plan? The first evidence we have is preparation. Like any plan that you have whether it be taking a trip or going to the grocery store. A lot of times we plan these things out; we plan our flight; we plan our luggage; we call the motel room and reserve Monday through Friday or whatever it is we're gone stay; we've got a plan; things are laid out before we go on that trip. Like people make lists before they go to the

grocery store. These things -- there is a plan before we leave the house.

Kenneth Bell and Christopher Bell had a plan when they got in that car. The first way we know was because Jasmine. It is so important to look back at that evidence and know Kenneth Bell never called that victim. Christopher Bell never called that victim. Tonie Pasquale called acting like she was Jasmine. These three people had a plan. That shows right there they were planning something. They knew that Paul Degruccio would not have let them come over or he would have been prepared when they did come over if Christopher or Kenneth called and said look, man, I'm coming over. They didn't do that. Right here is the plan part, okay? They had Christopher, they had Paul Degruccio's phone number because they were calling him and texting him saying I'm Jasmine. That right there shows you criminal intent. When you have three people in the car; one posing as someone else saying hey, where do you live; are you alone; show me where that apartment is; that's a plan. If they didn't have bad intentions and they didn't have a criminal intent, Christopher knew Paul Degruccio; had just seen him at the grocery store months before; call him up and say look, I'm coming to your house; you owe me some money; I want to talk to you, but that's not what they did. Right off the bat, they're up to no good. Right off the bat, they've got a plan.

Now, Mr. McCollum wants you to believe this was all just spur of the moment and Kenneth got wrapped up in this last-minute decision. This was not a last-minute decision. They've already got this idea on board, call and find out where he lives, okay?

The second way we know that there's a plan, when they got out of the car, they had these on, socks over their shoes. That right there is a plan. That's thought out. Nobody comes up with this idea at the spur of the moment. This had to be done in the car before they ever got out. That right there shows you a plan. Right there shows they're thinking. This was planned out. They got this act together before they ever got out of the car.

The second way you know there's a plan, both of them had on gloves. This was not a spur-of-the-moment action. Both of them had on gloves, both of them had socks over their shoes. This is not something that was not well thought out and well planned out. This right here shows you criminal intent. If you don't have criminal intent and you're not in there to do something you shouldn't be doing, then why are you wearing gloves and why are wearing socks over your shoes? Look over there now; he ain't wearing gloves now, he ain't wearing socks over his shoes today.

There's something else, you know this is a plan because they had this weapon. And they didn't just have it, he had it

loaded and a round in the chamber. This was not something he got together spur of the moment. He had a weapon. He had already loaded it and he put one round in the chamber. This right here shows you there's a plan. He didn't walk in there with no gloves on, shoes, it shows you there's a plan. It shows you there's criminal intent.

Now, the second charge is burglary first. Now burglary first is to break into somebody's house. Just like Mr. McCollum told you, it doesn't matter if the door is open, closed, locked, unlocked. If you come in and you don't have permission to come in, then you're breaking and entering. Okay. Both of these boys and the third witness said nobody invited them over. Nobody gave them permission to come in. Okay. If they had permission to come in, they wouldn't need a tire iron and they wouldn't need a firearm. Nobody gave them permission and they knew they weren't getting permission and that's why they had that weapon. Nobody gave them permission to come into that house. That's why they broke in and busted open with that weapon.

Now you've got to have an intent to commit a crime. Again, all this shows intent to commit a crime. That's all we got to have is the intent to commit a crime and have a weapon. In this case, it wasn't just the intent. They committed a crime. When they took that gun and they had it in there and those people were not free to leave, that's kidnapping checked

off the list right there. When you are not free to leave because somebody is holding you against your will, you are being kidnapped, so that one is checked off the list.

The second one is armed robbery. When they went in there and they walked out with this laptop and this camera; that's armed robbery. They just didn't go in there with the intent to commit a crime; they went in there and committed a crime. So, we know we got burglary first when they came in there without permission and they committed those crimes with that weapon, that right there is burglary first. There's no doubt about it.

And the next one is armed robbery. Now, how do we know we have an armed robbery? Armed robbery is when you take something from somebody's person or within their control, their custody or control, and you're doing it while you're armed, that's armed robbery. When they came in there with that tire iron and that gun and they took that stuff; that was armed robbery.

Let me clear something up. Kenneth Bell didn't walk out with that stuff, but conspiracy is a plan and what that means is, hand of one is hand of all. Hand of one is hand to all because they're both working together. Kenneth Bell was the one that was holding everybody back with that weapon, which allowed Christopher Bell to go in there and take that stuff. In fact, Paul Degruccio did get in a heated argument with

Christopher Bell and you know who came in? Kenneth Bell. That's the guy that came in with that weapon. And you heard Paul Degruccio testify. What did he say to Paul Degruccio? I ain't no bitch like Chris, that's what he said. That's exactly why Kenneth Bell was there, to make sure it went exactly the way they wanted it to go. That's why it's hand of one, hand of all. There were three, there were four other guys in there just like Mr. McCollum told you; Erik, Paul, Tanner and Scott, four other males were in there. I would submit to you that if Chris Bell had went in there by himself, things would not have went that smooth. That's why he brought Kenneth with a weapon. Hand of one, hand to all. That's why it went that way. If he walked in there with four males with that tire iron, I would submit to you, things would go differently. That's why when you see somebody walk into a bank and rob it and there's fifteen people in there, if they got a gun, fifteen people will lay on the ground. It's having a gun changes the dynamic of everything. It's hand of one, hand to all. Kenneth did not have to walk out with that laptop in his hand. He was the one holding the rest of these boys at gunpoint, which allowed Chris to walk out with it. Now, he wants to tell you Kenneth, which is there, Kenneth was standing -- picture -- Erik Meijer testified that Kenneth was standing on the wood floor right here. I know it's been three days of long testimony, but it's important that Erik testified

none of the boys were coming out of these rooms unless they had to pass Kenneth Bell, none of them are leaving. And we know the one boy that was sitting in the den did not leave because that's Erik Meijer. He was standing here to keep his eye on the one boy that was in the den and make sure none of these other boys got out of there. That was the guy that was in control the entire time.

Mr. McCollum wants to blame everything on Christopher Bell. Christopher Bell was such a bad seed. His guy had the gun. He was the one guy in charge that could have changed all of this. Now, he's telling you well the State's only prosecuting my guy. That's not true. Christopher Bell is charged for the same thing and all those charges are pending and he will have his day in Court and so is Tonie Pasquale, the woman in this case, charged with the same thing and they're all pending. She's waiting for her day in court. So, don't get caught up with what's going on with those two. Today is Kenneth Bell's day.

Now he wants to tell you Kenneth Bell got wrapped in a bad situation and all this lies on Christopher Bell. That's what he wants you to believe. Because I don't think there's any doubt we got a burglary first, a kidnapping, a armed robbery and a criminal conspiracy.

The last charge is unlawful possession of a weapon during a violent offense. As soon as you possess one of these,

during a crime, you're in unlawful possession.

Now he wants to tell you that Kenneth didn't have any criminal intent and his mom testified and his brother testified about what a great guy he was and how he never lied and he was just a wonderful all-American guy. First thing is Kenneth Bell, the first, first decision he made was to get in that car with Chris Bell and Tonie Pasquale and figure out where the victim lived. Now the second decision he made -- nobody's forced him to do any of this -- is put these socks on his shoes. The third thing he did was put these gloves on his hands.

This was not something that he didn't have time to think about and say, whoa, this is a bad idea here; I don't want any part of that; this is a bad idea. He's going through this process. He's making these decisions. Now, then he put on a black hoodie, which you see him wearing in the police car, black hoodie, jeans, socks over his shoes and a mask. Then he had a handgun. He just didn't have a handgun; he then loaded the handgun and made a very deliberate action to put one in the chamber. These are all decisions he's making before he even gets out of the car. I'm gonna submit to you, all this is done and he hadn't even got out of the car yet. He's covered his shoes, got his gloves, loaded his weapon, then he makes the choice to get out and hold these people at gunpoint. These are all decisions Kenneth Bell made to lead him where

he's at today. Very deliberate, thought out, actions, every single one of them, deliberate and thought out.

Now there was an issue about the gun during Officer Cast's testimony. Mr. McCollum wanted to bring out, can't you unload the gun by letting that bullet come out of here -- I don't know if y'all remember that testimony or not. He was trying -- oh, couldn't he -- couldn't somebody unload the gun at that time. When we found this gun and it was inventoried, there was four in the magazine and one in the chamber and he testified when you put that clip in, does it automatically go back; no. He said you got to rack it one time to push one into the chamber. So, when Kenneth Bell had this gun -- it's a deliberate action to load this magazine. It's a deliberate action. One by one he put four bullets in there -- actually he put five -- one by one he put five bullets in there. Then he racked one and put one in the chamber. And I made this point because all of this goes to show how deliberate every decision he made was. It takes time to load this clip because you load it one bullet at a time. It takes time to pull this back and rack it and put one in the chamber. He made all these decisions very deliberately with intent to commit a crime.

Now the one thing that we saw on the video was he, he was arrested, all this was gotten off of him including this out of his left pocket. This was gotten out of his left pocket. If

you do not remember or you did not hear, I ask you to watch the video again. Natalie Boyd asked him is there a weapon. He distinctly on the video says no. She asked again, Where's the weapon? He distinctly again says there is no weapon. And this is somebody that his mom and brother wants you to believe has such a reputation for honesty. As soon as he got arrested, his first instinct, as soon as they put those cuffs on him, his first instinct is to tell a lie to this officer. That's the first thing he does. You don't hear him say the weapon is in the back of the car. He knew where the weapon was; he put it there. He was at the back of the car. He's the one that dropped that handgun in the car and dropped these gloves in the back of the car. Kenneth Bell did. He knew where that weapon was. He had a chance then, this honest guy that's been so honest all his life and never did anything wrong, and his first reaction is to tell a lie to this officer, not to say the guns in the back of the car. There's a loaded weapon in the back of the car; it's a huge safety issue now. And there's no disagreement, the brother testifies I don't even keep a gun in my house. Obviously, a huge safety issue and his first instinct is to tell a lie.

Now this cartridge/bullet is found in his left pocket. That's a .45. That was testified to by the officer. Now ironically, this is a .45 and these were the cartridges taken out. Let's see, it's one, two, three, four, five. You don't

have to be an expert to see this one he -- matches these.

Kenneth Bell had bad intentions that day. He had bad intentions and they want to pin it on Chris and they want to pin it on Tonie Pasquale. Nobody's here to say Chris is not guilty. Nobody's here to say Tonie Pasquale didn't play her part. But we're here to say today -- it's Kenneth's day. And the one person that had the most power in that situation was Kenneth. He had the weapon. He walked in that room, he participated, he was the one in control the entire time.

Now, I made a comment about his appearance today in court because this happened in February, which has not been that long ago, but this picture will go back with you. This is what he looked like that day with that black hoodie on and those jeans and the socks over his shoes. I don't think there's any dispute that he looked a lot different then than he looks today and it has not been that long ago. But this is what he looked like when he busted into that house with these socks on his shoes. He didn't look like what he looks like now sitting over there with his glasses on. He looks like he's lost some significant weight by looking at his face in this picture. So, when you're thinking about what he looked like that day; this is it, not over there.

Now, Mr. McCollum said something earlier about he has no prior record. He has no prior record. He has no prior record. That is extremely rare; that's what he told you. I

cannot tell you that is extremely rare. I can tell you without a doubt that this is not the first young man that's been in his twenties with no prior record sitting at that table charged with the same offense and I was sitting here talking to a jury of twelve people telling them it doesn't matter. This is not the only young boy with no prior record that has made fatal decisions, fatal decisions, that could have cost one of these boys their lives. I don't think anybody would disagree when a gun is involved, it amps things up substantially. I asked the brother and the mom, this thing that came out of your son, your brother, Kenneth's pocket -- this is the one that came out of his pocket that was in that gun. I asked both of them how many does it take of these to take somebody down. Both of them said just one. That's all it takes and the brother even went on to say a .45, that's a high caliber gun, that's a powerful gun, just one.

Burglary is serious. Kidnapping is serious. It should be. If somebody in the State of South Carolina has a weapon and they loaded and put a gun in the chamber and they hold people at gunpoint, that is serious. It should be serious because that says a lot about that person and what they will do.

Mr. McCollum told you, he's what, twenty-two? His mom told me twenty-two, twenty-three years old. He's already ready to hold a loaded gun on these boys. That is serious.

It should be serious because all it takes is one small move that could've changed this and made it into a detrimental situation. That's why you saw the testimony so much about how this gun works. That's why you heard all that testimony. That's why you heard testimony about this (indicating). That's why, why do you keep a semi-automatic weapon clean -- I asked both officers and I asked Buddy, his brother, Why do you keep them clean? And what did they say? To make sure they go bang every single time. That's why these are made because semi-automatic guns, if they're not clean, just like that officer said, will misfire. This was found in that car. This was found in there. And it was in there, I am gonna submit to you, they cleaned this gun before they went over there. That's why it's in there. This is what it's used for; to clean this gun to make sure it goes bang every single time. That's why this was in that car. They didn't want to just make sure that their feet were covered, they didn't want to make sure just their hands were covered, they had masks on. They didn't want to make sure just their face was covered. This was used to make sure this gun went bang if they needed it to, every single time.

They are charged -- he is charged with a serious offense, so is Christopher Bell, so is Tonie Pasquale, but they're charged with a serious offense because this is serious. Loading this weapon and breaking into somebody's house and

taking their stuff while you got a mask on, socks on your shoes; that is serious. This gun was loaded, cleaned and one in the chamber. All it took was that and it goes bang.

Now Mr. McCollum point out, well there was no scuffle, there was no scuffle. Why would there be a scuffle? This boy here never moved off the couch. The other boy who called 911 never came out of his room. When there was a thought of being a scuffle, this calmed it right down. That's why there was no scuffle.

Kenneth Bell broke into that house and his hands, his feet and his face covered. He broke in with a loaded weapon so his brother could take whatever he wanted from that house. They were working together. Hand to one is hand to all. They were both working together.

Now the Judge is gonna read the jury instructions. Beyond a reasonable doubt is not beyond all doubt. He's gonna tell you that. There are very few things in this world that we can be one hundred and ten percent sure. So, what is a reasonable doubt? He's gonna tell you in his jury instruction a reasonable doubt is something that makes you hesitate to act. A reasonable doubt is if you hesitate to act. I'm gonna submit to you today with all the evidence that has been presented, the testimony, the video, his brother telling you what he told you, there's no reason to hesitate to act. Kenneth Bell is guilty of burglary first. He is guilty of

kidnapping. He's guilty of criminal conspiracy, armed robbery and possession of that weapon. I'm gonna ask you to find him guilty of all those indictments and I submit to you, there should be no reason to hesitate to act. This is not just Kenneth Bell's day; this is Paul Degruccio and Erik Meijer and Tanner Clark's day.

Thank you for your time.

MR. MCCOLLUM: Your Honor?

THE COURT: Yes, sir?

MR. MCCOLLUM: I have a matter I'd like for you to hear, possibly at the bench?

BY THE COURT:

THE COURT: All right. Ladies and gentlemen of the Jury, I'll ask you to step back to the jury room. Don't be getting in any discussions until I've asked you to do so. You may retire.

(REPORTER'S NOTE: The Jury exits courtroom. 2:33 P.M. The following takes place outside the presence of the Jury.)

THE COURT: Yes, sir.

MR. MCCOLLUM: Just briefly, Your Honor.

Ms. Livesay, in her closing argument, she said that the Defendant had loaded the gun one bullet at a time, that it takes that specific technique, and she used it in her argument for criminal intent saying that he took the gun, he loaded the gun one bullet at a time and then made sure that he put a gun

or, excuse me, a round in the chamber. I simply say that I think those facts are in evidence and I'd just like to ask for some type of curative instruction that if the Solicitor argues facts that are not in evidence to somehow point that out.

THE COURT: I'll hear from the State as to whether or not that is in the evidence.

MS. LIVESAY: Your Honor, I believe what I said was everything I started with was I submit to you, I submit to you. Closing arguments aren't evidence; they're my theory of the case. And normally, at the close of my closing argument or before, that's normally stated to the Jury. These are the closing arguments to the Jury -- I'm now gonna read you the law, if you've heard anything else different -- this is their theory of the case. I'm reading now the law; you must put that aside and go by what I'm reading.

THE COURT: Well, I don't know that I've heard any evidence in the case as to who specifically loaded the gun. I don't have any problem with instructing the Jury that if there was anyth9ing said in the arguments by Counsel that is not supported by the evidence, that they should disregard that argument in its entirety. Is that what you're asking me to do?

MR. MCCOLLUM: Your Honor, whatever is appropriate. I was asking for a specific instruction as to those facts are not in evidence. In the alternative, if there ---

THE COURT: Well, there was evidence to the effect that in order to load the gun, it required a specific -- in other words, you've got to chamber a bullet -- I don't know how many times I heard testimony about how you go about chambering a bullet. So -- and there was evidence, testimony that that requires a specific act. You have to do that to get a bullet in the gun. Now as to who may have done that, I didn't hear any evidence as to who in fact did that. So, you're asking me to say that any statement that this Defendant may have done that was not supported in the evidence?

MR. MCCOLLUM: Something of that nature is what I was asking for, Your Honor.

MS. LIVESAY: Your Honor, my problem with that is, (A), nobody testified that they saw Kenneth Bell put those socks on his shoes, are we now gonna go so far as to say that I can't mention that because that's not ---

THE COURT: No, no, no, that's not a question of not mentioning that. You can mention the fact that the loading or the chambering of a round required a specific act; you can argue that all you want to. I didn't hear anything though from the testimony and I'm not sure you can infer that because he has a gun and it's loaded and chambered, that he is the one who did that.

MS. LIVESAY: Your Honor, my thing is, that is my, my theory -- well, here's my issue with it. That's my theory of

the case, just like it's my theory that he put the socks over his shoes, he put the gloves on his hands, he wore the hooded sweatshirt. I don't have one person that can say Kenneth Bell put the socks on his shoes. That is the theory from the evidence.

THE COURT: Well, you know, what I intend to charge the Jury -- and what I'll do, I'm not gonna specifically comment on one fact. What I'll do is simply say that if there was any argument that was made by Counsel that's not supported by evidence, they should disregard that argument in its entirety.

She is allowed to argue inferences that can be drawn from the evidence. I would submit to you, ma'am, that putting on one's clothes is more than likely that someone puts on their clothes themselves then that they may have loaded a gun that might've been in their possession when there's three people involved in the robbery. So I don't know if that's an inference that can be reasonably drawn or not; that's for them to decide. So, I'm gonna say that if the attorneys have the right to argue inferences, but if they'd argued anything that's not supported by the law or the evidence, that should be disregarded by the Jury in its entirety.

MR. MCCOLLUM: Thank you, Your Honor.

All right. Anything else?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Before we bring the Jury back in, let's get

this evidence back to the appropriate locations, please.

I will let the attorneys know that I'm not going to allow the cartridges, any of them, to go back to the jury room with the gun. If the Jury would like to see the cartridges, then I'll ask them to surrender the gun while they look at the cartridges. I don't want anyone to be tempted to load a gun and see if it works or anything of that nature in the jury room.

MS. LIVESAY: Your Honor, I'm assuming as well in the video because I have stopped it where we left out here.

THE COURT: The videos, the video, I will tell them it's available to them. That has to be shown, I take it, in the courtroom; there's nothing in the jury room that will allow them to show it I assume. I'll instruct them that's available to them.

I do intend to charge a version of the charge concerning the character evidence. Not exactly the way you submitted it, I took it out of a case.

MR. MCCOLLUM: Thank you, Your Honor.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: While the Jury is out, I'll ask the attorneys to approach the bench, please.

I have a proposed verdict form. I'll let you be reviewing that while we're working with the evidence.

MR. MCCOLLUM: Your Honor, there's no objection on behalf

of the Defendant.

THE COURT: Thank you.

I have looked at the indictments. I don't see that there's any reason why they cannot be given to the Jury. Sometimes it talks about prior offenses and things of that nature and I do intend to submit them to the Jury unless someone objects.

MR. MCCOLLUM: Your Honor, there's no objection on behalf of the Defense.

THE COURT: All right.

MS. LIVESAY: No objection.

THE COURT: Thank you.

All right. I'll put on the record that the parties have reviewed the verdict forms as prepared by the Court; there were no objections lodged and there's no objection as to the indictments being submitted to the Jury for their consideration.

You can bring the Jury back.

(REPORTER'S NOTE: The Jury enters courtroom. 2:45 P.M.)

THE COURT: The record will reflect the Jury has returned to the courtroom.

At the beginning of the trial, I went over with you the fact that the statements made by lawyers in the court do not constitute evidence and can't be used directly by a jury in determining the guilt or the innocence of the Defendant. The

attorneys have the right to argue the evidence that's in the record and any inferences that can be reasonably drawn from that evidence. If any of the attorneys during their closing arguments argued any matters that you had determined or you determine to be not in the record or not supported by the evidence or not a reasonable inference to be drawn from the evidence, then you should disregard that argument in its entirety.

CHARGE TO JURY:

Now, it's my responsibility at this point in time to instruct you concerning the law to be applied in this case. I began this trial by going over with you the indictments that are in this case. The indictments are the documents that bring the case before the Court. I told you then that they inform the Court of the charges to be tried. They inform the Defendant of the charges that have been lodged against the Defendant. The indictments, I will give to you to take back into the jury room for you to consider because I'm going to explain some things to you, to you about the indictments, but I will go over with you the indictments in this case by title.

First of all, Case Number 2013-1335, it is for burglary in the first degree; that's the indictment. I'll be giving the indictment to you. You can read the body of the indictment during your deliberations. The next indictment is in Case Number 2013-1336. This is for the offense of

kidnapping. The next indictment is indictment number 2013-1337. That's for the offense of possession of a weapon during the commission of a violent crime. The next indictment is 2013-1339. That is for the offense of armed robbery. Final indictment is in Case Number 2013-1340. That indictment is for criminal conspiracy.

Now I'm going to remind you that the fact that a Defendant has been arrested, charged and indicted in the case is not evidence in this case and can't be considered by you as evidence of guilt in this case nor does the fact that any of those events occur create any presumption or inference of guilt. Again, the documents I just talked to you about are the formal written instruments that contain the charges made against the Defendant. Those are the documents that bring this case to this Court.

Now in any case where there are multiple charges, the indictments in this case allege several different offenses against the Defendant. Each indictment is a separate and distinct offense. You, the Jury, must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment presented in the case. The Defendant therefore can be convicted or acquitted on either or all of the offenses charged and you'll be asked to write a separate verdict of guilty or not guilty for each indictment and each charge

that's before the Court.

I told you at the beginning of the trial, the Defendant has pled not guilty to the indictments that are before the Court and that plea puts the burden on the State. That burden is the burden to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it's an important rule of law that a Defendant in a criminal case, no matter what the seriousness of the crimes might be, will always be presumed to be innocent of the crime for which an indictment has been issued unless guilt has been proven to you, the Jury, by evidence satisfying you of that guilt beyond a reasonable doubt.

Now, the presumption of innocence doesn't end when you begin your deliberations. It accompanies the Defendant throughout the case and into your deliberations. It remains with the Defendant until such time as you reach a verdict of guilt and that must be based on evidence that satisfies you of that guilt beyond a reasonable doubt.

Now, to give you a visual idea of what I'm talking about, many people describe this presumption of innocence that the, that the Defendant is entitled to somewhat like the robe that Judge's wear into the courtroom. It remains about the Defendant's shoulders throughout the trial. It accompanies the Defendant into your deliberations. It remains about the

Defendant's shoulders until such time as it is stripped from him by evidence that satisfies you of the Defendant's guilt beyond a reasonable doubt. Now, I'll tell you the presumption of innocence is not just a legal phrase and it's not just a legal theory. It's a substantial right that every Defendant is entitled to unless you, the Jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Now, you've heard me use that phrase of proof beyond a reasonable doubt about four or five times already in my charge and you probably realize that the concept of someone being proven guilty beyond a reasonable doubt is an important concept in our criminal law and you may be asking yourself, what is meant by or what is a reasonable doubt. I'll tell you that a reasonable doubt is that kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving the Defendant guilty beyond a reasonable doubt.

Now, I don't want you to get confused here, so let me explain one thing to you so you can put this out of your mind. In some cases you may have been involved in or be aware of, civil cases, where someone is seeking monetary damages and they could be asking for monetary damages because someone didn't pay a debt or someone has been injured by someone else. So those are the kinds of things where people seek monetary damages and those cases are called civil cases. The standard

of proof in those cases is proof by the greater weight of the preponderance of the evidence. That means the scales of justice just tilting ever so slightly one way or the other would entitle that side to a verdict. That's in a civil case. That does not apply to this case. The standard of proof in a criminal case is more powerful than that. It must be proof beyond a reasonable doubt. Proof beyond a reasonable doubt is that kind of proof that leaves you firmly convinced of the Defendant's guilt.

Now, there's very few things that go on in this world that can be proven beyond any doubt whatsoever and that's not the burden of proof that the State has. They're not required to overcome every possible doubt. I will tell you that if based on your consideration of the evidence, if you are firmly convinced the Defendant is guilty of the crime charged, then you must find the Defendant guilty. However, on the other hand, if you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, I reminded you at the beginning of the trial, I drew some distinctions between the duties that you and I have as participants in this trial and as Trial Judge, it's been my responsibility to preside over the trial. I've had the duty of ruling on the admissibility of evidence or the appropriateness of questions that were asked by the attorneys.

I will tell you that you are to consider only the competent evidence that was placed into the record of the case and if there was anything that was excluded or taken from the record, those matters should be disregarded by you in their entirety. Again, you must only consider the testimony which has been placed into the record and any exhibits and other evidence that went into the record through the testimony of the witnesses who testified in this case and any agreements as to evidence that were made by the attorneys.

I have the additional duty of charging you as to the law now and I told you at the beginning of the trial, I am the sole judge of the law in this case. It's your duty as jurors to accept the law and apply the law as I state it to you. Again, if you had an idea as to what the law is or have a belief as to what the law ought to be, leave those notions outside of the jury room. It's your obligation under your oath to take the law as I give it to you and then apply that to the facts as you determine those facts to be.

In every case tried in this Court before a jury, the jury is the sole and exclusive judges of the facts. I told you at the beginning of the trial that you should not take from anything that I do or anything that I might say, including during this charge concerning the law, to somehow to indicate to you that I have an opinion one way or the other as to how you determine the facts in this case. You're the sole judges

of the facts in this case. I have no opinion as to how you determine the facts in this case. The law does not allow me an opinion on that subject and I do not have an opinion as to how you should determine the facts in this case. This is a matter solely for you, the Jury, to determine as to the facts. It's your duty to determine the effect, the value and the weight and the truth of the evidence that you've heard during the trial.

Now, in considering the evidence, I will tell you that you have the right to consider two types of evidence in the case and you may say, well, what do you mean by types of evidence and I'll try to explain that to you. The law divides the evidence into two basic types of evidence; that is what we call direct evidence; the other type of evidence we call circumstantial evidence.

Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which is given and to immediately establish the main fact, which is sought to be proven. That's direct evidence.

The other kind of evidence that we, that you can consider in reaching a verdict is what we call circumstantial evidence. Now circumstantial evidence is proof of a chain of facts or circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact might be reasonably inferred. Now that's

pretty fancy lawyer language and I like to use a very simple example to, to give you an example of what's meant of proof of the fact by circumstantial evidence. I'll say last night, let's say before you went to bed, you went to the window in your bedroom and you looked outside. The stars might have been shining and it may have been a pretty night so you went to bed and you slept well all night, didn't wake up at all. The next morning, you walked to the very same window, you looked outside and while the sun was coming up, you noticed that there was water dripping from all the trees, there were large puddles in the road or driveway in front of your house, so everything outdoors was wet. Now during the night, you didn't wake up so you didn't see it rain, you didn't hear it rain, but from the collateral facts that you know to be true, the wet -- water in the trees, the puddles in the road, the everything being wet outside, you could reasonably infer that at some time during the night it did in fact rain. So that's what we mean by proof of a fact by collateral facts from which another fact might be reasonably inferred.

Now, circumstantial evidence therefore is based on inference. It's not based on personal knowledge or observation and the law makes no distinction between the weight of the value that you, the Jury, can give to either direct or circumstantial evidence, nor is there a greater degree of certainty required of circumstantial evidence than

that of direct. As a jury, you should weigh all of the evidence, both direct and circumstantial. And I will tell you, if after weighing all of the evidence, if you're not convinced of the Defendant's guilt beyond a reasonable doubt, you must find the Defendant not guilty. However, on the other hand, if you are firmly convinced of the Defendant's guilt beyond a reasonable doubt, then you must find the Defendant guilty.

In doing your jobs as the determiners of facts, it's gonna be necessary for you to determine the credibility of the witnesses who testify during the trial, and that's what credibility means, it means believability. It's your duty as jurors to analyze and evaluate the evidence, determine which evidence convinces you of its truth in determining believability of witnesses who testified. I will tell you as the sole judges of the fact, you have the right to believe all of, part of or none of what a witness may have told you. You can believe one witness against all the others or all the others against one. You're the sole judges of the facts; that makes you the sole judges of the credibility and believability of the testimony you've heard as well as the weight that you -- and effect that you choose to assign to the testimony that you've heard. You have a right to consider such factors as whether or not a witness has an interest, bias or prejudice or other motive in testifying. You may also consider the

appearance and manner of a witness when testifying on the witness stand.

Now under the Rules of Evidence, a Defendant may introduce evidence of his good character. Evidence of good character or good reputation may in and of itself create a doubt as to guilt. This evidence should be considered by you by the Jury -- by you, the Jury, along with all the other evidence in determining the guilt or innocence of the Defendant. The good reputation or character of the accused may be taken into consideration by the Jury along with all the other evidence in the case in determining whether or not the Defendant committed the crime charged. As the sole judges of the facts, you give the evidence, all of the evidence, the weight and effect you think that it deserves.

Also I'm going to instruct you and I'm going to emphasize to you that the fact that the Defendant did not testify in this case is not a factor to be considered by you in any way in your deliberations and in your consideration of the question of guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever. A Defendant has a constitutional right to remain silent. The assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusions whatsoever from the fact that the Defendant did not testify in this case. The fact that the Defendant did not

testify should not even be discussed by you in the jury room. The burden of proof is upon the State and only upon the State in this case as I have told you. The Defendant is not required to prove his innocence. The burden of proof remains upon the State to prove the Defendant's guilt beyond a reasonable doubt throughout the trial.

Now I'm going to charge you that a person who was present at the scene of a crime and intentionally or through a common plan and aided, abetted, or assisted in the commission of that crime through some overt act is guilty as an accomplice. To, to be liable as an accomplice, the Defendant must have knowledge of the principal's criminal conduct, mere presence at the scene of a crime is not sufficient to establish guilt as an accomplice. Now, when we say intentionally in this case, that means willfully intending the result, which actually occurs, not accidentally or involuntarily. I will also tell you that in the State of South Carolina, if a crime is committed by two or more people, who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person, which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of them had a gun and there was only one

bullet and only one of the two fired the shot that caused the death. If two or more people are acting together and are together assisting each other in committing the offense, the act of one is the act of all or it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of the crime. The fact that someone has mere knowledge that another person is going to commit a crime, even if the Defendant was present when the crime was committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence, the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or is present, aiding, abetting or assisting in the committing of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to, aid and abet and assist in the commission of the crime. Again, however, the mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element. For there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with a person aiding and abetting by some overt act. Intent means intending the result, which actually occurs, not accidentally or involuntarily. Intent can be shown by acts and conduct of the Defendant and other circumstances, which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

Now you've heard me talk about criminal intent already and let me talk to you a little more about that. In order to establish criminal liability, criminal intent is required. For example, the mental state that is required to be proven for any particular crime and those intents might be purpose; intent, knowledge, recklessness, or criminal negligence. So as I go over the various crimes with you that have been alleged in this case, listen for the required intent that, that the law requires for any, any one of these crimes to exist.

Criminal intent is always a matter, however, that must be

determined by the Jury from the facts surrounding the situation. You see there's no way to prove what someone intended to do with any mathematical certainty or any scientific measure. We can't open someone's head and look at their brain while they're doing something and tell what they intended to do. So it can't be proven by any scientific measure. So the law says that criminal intent may be inferred from the circumstances that are shown to have existed. That's how you make a determination as to whether or not the element of any crime requiring intent was present. It's not necessary to establish intent by direct or positive evidence, but intent may be established by inference in the same way as any other fact; taking into consideration, the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state. It's a conscious wrongdoing and it's up to you to determine what a Defendant intended to do based on the circumstances that we're shown to have existed at the time of the commission of the event.

Now the crimes that have been charged in this case, the first one I will go over with you is first degree burglary. The Defendant is charged with first degree burglary. The State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. In order to prove that the Defendant entered a

dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. Even the smallest entry is sufficient. It may be even a part of a body, such as a hand or a foot, but there does have to be an entering into the dwelling. If a person enters a dwelling by using deception, artifice, trick or misrepresentation to get consent, this would be entry without consent.

Now, the next thing the State must prove in first degree burglary is that the State must prove beyond a reasonable doubt, that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry into the building. Mere entry into a dwelling without consent is not a burglary. Now, if the intent to commit a crime is formed after the entry, it is not a burglary. On the other hand, if the Defendant intended to commit a crime at the time of the entry, it is a burglary even if that intent was later abandoned after the entry. It does not matter that the intended crime was not completed. Now intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Now, the final thing that the State must prove beyond a reasonable doubt is that when entering the building or when in fleeing, the Defendant or an accomplice was armed with a deadly weapon. A deadly weapon is any article, instrument or substance, which is likely to cause death or great bodily

harm. Now whether an instrument has been used as a deadly weapon depends upon the facts and circumstances of each case. Ordinary objects may become deadly weapons when the facts show that they've been used to inflict serious bodily harm and/or death. Or the State may prove that when entering or while in the dwelling or when fleeing, the Defendant or an accomplice used or threatened the use of a dangerous object or the State may show that when entering or while in the dwelling or when fleeing, the Defendant or an accomplice displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm or other deadly weapon.

The next crime that I will go over with you is armed robbery. The Defendant is charged with armed robbery. In order to prove this offense, the State must prove beyond a reasonable doubt that the Defendant took personal property, property from the person or the presence of another person. Property is in the presence of a person if it's within that person's reach, inspection, observation, or control. So that person could, if not overcome by violence or prevented by fear, keep possession of the property. The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's on use. The slightest removal of property or the complete possession of the property, even if for just an instant, by a

Defendant is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence. Finally, the State must prove beyond a reasonable doubt, that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon again is any article, instrument, or substance, which is likely to cause death or great bodily harm. And whether an instrument has been used as a deadly weapon depends upon the facts and circumstances of each case. The question of whether or not an item is a deadly weapon is a factual question for you, the Jury, to decide.

The next offense I'll discuss with you is the alleged offense of kidnapping. The Defendant is charged with kidnapping. The State must prove beyond a reasonable doubt, that the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without the authority of law. To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously, not accidentally. Seize means to take hold of suddenly or forcibly. Confine means to limit, restrict or enclose within bounds, imprison or to shut or keep in. Inveigle means to lure, entice or lead astray by false representations, promises or other deceitful means. Decoy means to lure by or as if by decoy a decoy is something

to entice a person into a trap. Kidnap is to remove a person against his will by unlawful force or by fraud. Abduct means to carry off secretly by force for an illegal purpose. Carry away means to remove. Now, the State doesn't have to prove all of these things. Instead, if you find beyond a reasonable doubt that the Defendant did any of these things, you may find the Defendant guilty of kidnapping.

Now if something is done without the authority of law is something which the law does not sanction, permit, allow, condone, or provide justification for. Kidnapping does not have to be for any personal or monetary gain or for any illegal purpose; it can be for any reason whatsoever.

Now the next charge that I'll go over with you is the charge of conspiracy. The Defendant is charged with conspiracy and the State must prove beyond a reasonable doubt that the Defendant combined with one or more persons for the purpose of committing an unlawful act, or for the committing, committing a lawful act, done by unlawful means. Now there must be a mutual understanding, an agreement, a common intention and plan. Mere passive knowledge of or consent to criminal conduct of another does not make a person a conspirator. There must be guilty knowledge and participation. Similarly, the mere fact that a person may have associated with another person or met with another person and discussed common aims or interests does not necessarily

establish proof of the existence of a conspiracy or that the Defendant was involved in a conspiracy. On the other hand, it is not necessary that the agreement be a formal one, that it be in writing or that the people hold a meeting and expressly state the terms of the common plan or that the agreement be stated in words between them. The agreement of a criminal conspiracy may come into being through an implied, a mutual understanding, the willful intention and knowledge of adoption by two or more persons for a common plan is sufficient. No overt acts need to be shown to establish a conspiracy. A conspiracy may be shown by circumstantial evidence and the conduct of the parties. In order to convict the Defendant of conspiracy, the State must prove beyond a reasonable doubt, not only that the Defendant knew of the unlawful conduct, but that the Defendant agreed to combine with the other person for the purpose of accomplishing unlawful conduct.

Next, the Defendant has been charged with the possession of a weapon during the commission of a violent crime. The Defendant is charged with the possession of a weapon during the commission of or the attempt to commit a violent crime. In proving that charge, the State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm means a machine gun, automatic rifle, revolver, pistol or any weapon,

which will and is designed to or may be readily converted to expel a projectile. In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime, you must find the Defendant guilty of either committing a violent crime or attempting to commit a violent crime. I will tell you that under the law of this State, armed robbery, burglary in the first degree and kidnapping are classified as violent crimes. The State must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped the commission of the crime.

All right. Ms. Michele Ramont, will you raise your hand please?

You're going to be the foreperson of the Jury. That means that you will be the person who will be responsible to conduct the discussions of the Jury. If the Jury has any questions during your deliberations, it will be your job to write that on a piece of paper, submit that to the Bailiff; that'll be brought to me for my consideration. I cannot answer each and every question that the Jury might have in trying to reach a verdict in this case because I've already told you, I can't get involved in your decisions on the facts, but I'm not asking you to edit any question the Jury might have, you write it down, give it to me and I'll decide the appropriate answer. Also it will be your job to fill out the verdict form once the verdict has been reached. I'll give you

that form in just a moment and go over the form with you so that I'm sure you understand it.

Now each question that I give you must be decided by you unanimously. Each and every verdict you reach must be agreed upon by all of you before it is the verdict of the Jury. So again, no juror has any greater say in the outcome of the case than any other juror. All of you must agree upon the verdicts before they become the verdict of the jury in this case.

I've gone over a lot of material with you in my charge. There's a good bit of evidence that will be going back to the jury room with you. We're going to set that information aside so I'm going to ask you this one last time to go back to the jury room. Ma'am, do not allow any discussions about the case to begin until I ask you to begin your deliberations. I'll bring you back to the courtroom for final instructions in just a moment. You may retire to the jury room.

(REPORTER'S NOTE: The Jury exits courtroom. 3:17 P.M.)

THE COURT: Is the door closed? Objections to the charge from the State?

MS. LIVESAY: No, sir.

THE COURT: Any from the defense?

MR. MCCOLLUM: None from the Defendant, Your Honor.

THE COURT: All right. If you'll step up and let's gather the exhibits with the exception of the bullets in one place so that I know we've agreed on what's going to the Jury.

MR. MCCOLLUM: Your Honor, I don't know how significant it is, but the indictments indicate that the attorney for the Defendant is Randall K. Mullins. I don't know if that's significant or not.

THE COURT: Do you want me to address that with the Jury; I'll be glad to.

MR. MCCOLLUM: I don't want you to address it with them, but I just want ---

THE COURT: I see that.

(REPORTER'S NOTE: Counsel agrees to exhibits to be submitted to Jury.)

THE COURT: We're ready for the Jury.

(REPORTER'S NOTE: The Jury enters courtroom. 3:23 P.M.)

BY THE COURT:

THE COURT: All right, Mr. Bailiff, if you'll step over here please, sir. Hand these documents to the forelady.

Ma'am, I'm having the Bailiff hand you the thing that's on top is the verdict form that we're going to be using in the case. If you'll follow along with me at the top it states the County and State that we're in. It states the name of the case and over to the right, it lists all the numbers of the indictments that are involved. Now, as to each indictment to the case, there's a separate question and each question will be for example, as to armed robbery or burglary in the first degree, there are two choices under each question and again,

it requires a unanimous finding by the Jury, one way or the other, either guilty or not guilty. I think in the order on the form, they're not guilty on top and guilty second. Once the verdict has been reached unanimously on that particular issue by the Jury, you'll either put an X or a check in the blank beside the appropriate verdict and then move on to the next question to be answered. Once you've completed answering all of the questions for each indictment, then you will sign the document indicating that a final verdict has been reached. Knock on the door and inform the Bailiff that that verdict has been reached and you'll be brought back into the courtroom to deliver the verdict.

Do you understand the form first of all?

JUROR 256: I do.

THE COURT: All right. Underneath that are the indictments themselves. Those are the documents for you to review concerning the charges so that you understand what the State was required to prove. The State's required to prove the allegations contained in those indictments by proof beyond a reasonable doubt.

Now, the exhibits will be given to you to take back into the jury room. I'm going to ask that you try to keep those in the proper form. For example, the box there will have several things in it. Try to keep that all together; don't mix those up if you can. We've made a list of what's in there, but I'd

prefer that you keep it together in the exhibits. Now the exceptions are, I do not send bullets back to a jury room or cartridges to a jury room with a gun. If the Jury wishes to view the cartridges, we have those; you'll need to send the gun out and we'll send the cartridges in. So, you have a right to review any and all of the evidence that's in the case. I just think for safety purposes, in order for people not to try to load a gun or see how it works with actual live ammunition, we'll leave the ammunition outside; do you understand how that will be handled?

JUROR 256: I do.

THE COURT: Okay. Now the next thing I will tell you, the video recording as well as the audio recording of the 911 call, those are available to you to review and listen to during your deliberations as well. However, the equipment to play those is in the courtroom. So, if you feel the need that you do need to review that evidence again, just let us know. We'll set it up, get you back into the courtroom as soon as we can and let you review that evidence in the courtroom.

Now, ma'am, do you understand how we're going to handle those things?

JUROR 256: I do.

THE COURT: Again, if the Jury has any question during deliberations, write the question on a piece of paper, submit it through the Bailiff to me. I'll determine the appropriate

response to whatever question you might ask.

All right. Now, at this point in time, I'm going to ask the jury panel with the exception of the alternate to step back into the jury room to begin your deliberations. You can begin your discussions at this time.

(REPORTER'S NOTE: The Jury exits courtroom. 3:27 P.M. Deliberations begin.)

THE COURT: Sir, you can have a seat for just a second.

JUROR 145: Thank you.

THE COURT: All right. You must be Christopher Hite?

JUROR 145: Yes, sir.

THE COURT: Okay. Then I've got the right gentleman. Sir, you've been serving as the alternate in this case and at this point in time, the Jury itself has retired and begun deliberations. The law says that when they do that, you are no longer have any responsibilities in the case. So I'm going to release you from any other responsibility in this case at this time. That doesn't mean you're off the Jury panel, you're still on the Jury panel. The Jury panel will be calling in after 6 o'clock this evening for additional instructions. So be sure you have that number with you to make the call in and call that number this evening.

I want to thank you for your help on this case. Had any of the jurors not been able to go into deliberations or complete the trial, you would have been asked to step in their

place so we could continue. So thank you for your help in this case. If you'll step out, see the Bailiff in the hallway; he'll take care of you. Thank you, sir.

Are there any objections to my final instructions from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: Any from the Defense?

MR. MCCOLLUM: None from the Defense, Your Honor.

THE COURT: All right. We're in recess in this case until such time as a verdict has been reached. I'll ask the attorneys in the next case to approach the bench.

MS. LIVESAY: Thank you, Your Honor.

(RECESS - 3:29 P.M.)

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

(On the Record - 4:12 P.M.)

COURT'S EXHIBIT NUMBER FOUR

MARKED FOR IDENTIFICATION

THE COURT: All right. We're back on the record in the Bell case, State v. Bell. I've received an inquiry from the forelady that asks, What is the legal definition of armed robbery? and explain the hand of one is the hand of all. It is my intention to recharge the requested sections. Any objection to my doing so from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: Any from the Defense?

MR. MCCOLLUM: Your Honor, does that charge include the other statements about mere presence and those things?

THE COURT: I think it does, but just let me see what it says.

What the hand of one charge says about that, it says prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime even if the Defendant is present when the crime is committed is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting or assisting in the commission of a crime. When a person does not act in the presence of and with the assistance -- when a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or scheme are present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present at the crime, commission of a crime

needs to be sufficiently near so as to aid, abet, assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

MR. MCCOLLUM: Okay. Thank you, Your Honor. The only other thing I would request is it's possibly a criminal intent charge -- I understand the Jury has asked for that particular charge. That charge is fairly comprehensive.

THE COURT: Well, it goes on. I didn't finish it. You asked me about mere presence. It does say there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the other person aiding, abetting, by some overt act. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt. So it goes on to talk about it then. You asked about mere presence, if that was in there.

MR. MCCOLLUM: And what you read, the entirety that's your charge that you're going to ---

THE COURT: I ended up reading the whole thing. Yes, sir, I did.

MR. MCCOLLUM: Thank you.

THE COURT: That's what I charged before.

MR. MCCOLLUM: I know. Okay.

MS. LIVESAY: Your Honor, the hand of one will include, I mean since there's a question about it, the jury instructions will include the example again just because one person pulls the trigger ---

THE COURT: That's at the very beginning. He was asking about mere presence. Y'all want to come up and read the whole charge; I'll be glad to let you read the whole charge. I intend to charge it exactly the way I read it the first time.

MS. LIVESAY: Thank you, Your Honor.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: And the same is true for armed robbery. I'll go over it exact, the only concern I would have, I have is whether or not this might unduly emphasize one part of the charge or the other, but this is what they've actually asked about. So that's what I intend to do.

MS. LIVESAY: Okay.

THE COURT: So again, is there any objection to my approaching it from that fashion?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: Any objection, Mr. McCollum?

MR. MCCOLLUM: Your Honor, I can't think of any reasonable ---

THE COURT: Obviously, you reserve your right to object

after I finish and I'll try to correct any problem that there might exist at that time.

MR. MCCOLLUM: Thank you.

THE COURT: Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 4:18 P.M.)

THE COURT: All right. The record will reflect that the Jury has returned to the courtroom. I'm going to go over the questions that have been presented to me.

The first question is, What is the legal definition of armed robbery? and explain the hand of one is the hand of all.

I'll go over those two charges with you again and I'm going to start with the hand of one is the hand of all. And my charge to you earlier was that if a crime is committed by two or more people, who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person, which happens as a probable or natural consequence of the act done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun and there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are acting together, are together, excuse me, and acting together, assisting each other in committing the offense, the act of one is the act of all or as it is

sometimes said the hand of one is the hand of all. Now, prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as the result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

Now a principal in a crime is one who either actually commits the crime or who is present, aiding, abetting, or assisting in the committing, in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near so as to aid and abet and assist in the commission of a crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary

element. For there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with a person aiding and abetting by some overt act. Intent means intending the result, which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

I'm going to move on to the charge on armed robbery. The Defendant is charged with armed robbery. In order to prove this offense, the State must prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. Now property is in the presence of another person if it is within the person's reach, inspection, observation or control so that a person could, if not overcome with violence or prevented by fear, keep possession of the property. The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, if even for an instant, by the Defendant is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property

must have been done with violence or by putting the owner of the property in fear of violence. Finally the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument or substance, which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon would depend upon the facts and circumstances of each case. And whether an object is used as a deadly weapon is a factual question for you to determine from the facts and circumstances as shown in the case.

So that's the charge that I gave you on the hand of one is the hand of all and the charge that I gave you on armed robbery.

Madame foreperson, does that respond to your question?

JUROR 256: I believe it does.

THE COURT: Okay. Then you may retire to the jury room and resume your deliberations. Wait one second before you do that. I note that we're heading toward 5 o'clock. My practice is to allow the Jury to continue deliberations. About 5:30 if it looks like you're going to continue, we'll get phone numbers from you to call anyone you'd like us to call and let them know where you are and what you're doing so that the people want be concerned about you. So, if you would -- if you do wish for us to make that phone call, if you would get a list of people for us to call if we get to that point,

the Bailiff would then get that number and we'd have someone in the Clerk's Office make those phone calls.

All right. At this time, you can retire and continue your deliberations. Thank you very much.

(REPORTER'S NOTE: The Jury exits courtroom. 4:26 P.M. The following takes place outside the presence of the Jury.)

THE COURT: Any objection to my response from the State?

MS. LIVESAY: No, sir.

THE COURT: Any from the Defense?

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

THE COURT: All right. I'm gonna ask the attorneys to approach briefly.

(REPORTER'S NOTE: A bench conference was held off the record outside the presence of the Jury.)

THE COURT: All right. While the Jury was in, I was approached by the Bailiff that's handling the Jury. I was handed a, what I'll call a cartridge. He was informed that that cartridge was obtained from the black folio that's been variously described as a gun case or the holder of a computer cord. I've had that particular item marked as a part of that exhibit because I was informed it was contained within that exhibit. The Jury passed it out because they knew I had told them not to have cartridges present with a gun. So it has been marked, it's been segregated, it will be made a part of that exhibit. Since it was contained in an exhibit, it was in

evidence as part of the evidence in the case.

COURT REPORTER: That was Nineteen.

THE COURT: It's Number Nineteen. So it's been made a part of Exhibit Number Nineteen for the State.

All right. We're in recess until such time as the verdicts reached.

MS. LIVESAY: Thank you, Your Honor.

(RECESS - 4:30 P.M.)

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

(On the Record - 5:28 P.M.)

THE COURT: All right. I have received -- we're back on the record in the case, the -- I received an inquiry from the Jury and let me read it to the attorneys. It says can we listen to the 911 call again in the jury room or can we listen to it by ourselves. Signed by the foreperson.

MS. LIVESAY: I don't have a problem with them listening to the jury room with maybe a Bailiff to hit play. I mean there is stuff on my computer that ---

THE COURT: That's what I'm concerned about is sending any computer into the jury room that's not clean. In Spartanburg we have a computer that's clean and all it has is media players on it; that's all it'll do.

MS. LIVESAY: I can set it up in here. If Bobby wants to take it back there and just hit play and let them hear it and then close it.

THE COURT: I don't know if I approve of that or not.

MR. MCCOLLUM: Your Honor, I think obviously that's your call. I am asking though what the Court's intention is. It seems like that Your Honor is in trial in another case. I can be back here tomorrow.

THE COURT: Well, what I would do, my intention is always to do whatever the Jury thinks they ought to do. So, it's their deliberations. If they want to stay and continue deliberations; I'll allow them to do so. We'll order supper. If they want to break and come back in the morning, I'll allow them to do that as well. So I don't ever cram it down on them one way or the other. As it stands right now, they're still deliberating.

What I would like to do is deal with this right now and let's get this handled and then let them make a decision as to whether they want to continue deliberations or not. I don't how close they are. I'm not even gonna ask them; it's none of my business. But I do, I'll do whatever they think is best.

I just have a problem with sending anything into that jury room that has information on it. It may even pertain to this case.

MS. LIVESAY: Correct.

THE COURT: That they might somehow push the wrong button, it comes up and I've mistried the case. So I'll try to explain that to them. I don't suppose we have any player

that would just play that audio.

MS. LIVESAY: It plays on media player because we had to redact so we can't play it on a DVD.

THE COURT: All right. Okay.

MS. LIVESAY: I can try to see if we've got another laptop downstairs.

THE COURT: Well, let's just go ahead and I'll bring them in and tell them how we can do it. They can either listen to it in here and if they do that, everyone has to be present in the courtroom for them to listen to it because we don't have a player that doesn't have other information on it and I can't send it back.

MS. LIVESAY: Okay. Just give me one second and I'll get it geared up.

THE COURT: All right. Why don't you get it geared up; if they want to listen to it, we'll play it.

Are you ready?

MS. LIVESAY: Uh-huh (affirmative response).

THE COURT: All right. Bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 5:45 P.M.)

THE COURT: The record will reflect, the Jury has returned to the courtroom.

I received an inquiry from the Jury. The inquiry reads, can we listen to the 911 call again in the jury room or can we listen to it by ourselves.

I've got a little problem in that regard, Madame Forelady, and let me explain to you our situation. The only means that we have to play that recording is on the computer that belongs to the State. That computer may have information on it that you should not see or be in your presence. If I simply send j observe what goes on with that, that would be grounds for the case being mistried. So, I can't allow information into the jury room with free access to it and that's our type of situation. So, the only way I can play it is on that machine in this location. Now, so I can't, I can't comply with your request to be allowed to hear it in the jury room or by yourselves. When you're in the courtroom, the parties are, have the right to be present and hear what I talk with you about so that they understand what I'm saying and you can react to that sort of thing. So, I'm kind of in a situation where I can't really reply with your request. I can play the, the recording for you as many times as you would like. It's in evidence, you have the right to, to consider it and look at it and if you wish to then go back into the jury room and discuss what you've heard, you can, I would urge you to do that. I don't want you to conduct any deliberations in open Court. That's not the purpose of this. So, do you understand where we are and what we're capable of doing about this?

JUROR 256: Can I ask one question?

THE COURT: Yes, ma'am.

JUROR 256: Is there a way, whoever is gonna do the operating, could they stop it at a point if we ask them to?

THE COURT: Yes, ma'am, we can, we can stop it and play it however you want to, but I want to be sure it's a request from the Jury and not a request from any particular juror. So if you want to go back and formulate what you want to listen to, we'll be glad to comply with your request or I can just play the whole thing for you as many times as you want to hear it. So you want me to just play it at this time?

JUROR 256: Yes.

THE COURT: All right. Then I'm gonna instruct the Solicitor to begin the recording. Please listen to it and once it's over, I'll be glad to do that again if you'd like.

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

(REPORTER'S NOTE: State's Exhibit Number One played for the Jury. Not transcribed herein.)

(On the Record.)

THE COURT: Do you want to hear it again; should it be played again?

JUROR 256: I think we're good.

THE COURT: All right. Now, Madame Forelady, I'm going to, it's six, it's almost 6 o'clock in the evening. If the Jury would like to suspend deliberations and begin again in the morning, I will give you that opportunity or you can

continue your deliberations if you think you're making progress. If it's going to go on much longer, then of course we could provide dinner for you. If we order dinner, it'll take about an hour for it to get here. So, the reason I'm bringing it up now is if you want to stay and continue deliberations and have a meal, we need to order that to get it here at a reasonable time. If you want to suspend deliberations and come back in the morning, I'll be glad to make arrangements for you to do that. So, I'll ask you, if you would inform the Bailiff as to how you wish to proceed once you've had a chance to discuss it among yourselves -- I'm not trying to put pressure on you one way or the other. However you'd like to do it, we'll be glad to accommodate you so that you can continue your deliberations. So if you'll let him know, then we'll take the appropriate action. You may retire and continue your deliberations. Thank you very much.

(REPORTER'S NOTE: The Jury exits courtroom. 5:57 P.M.)

THE COURT: All right. Any objection to my response from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: Any from the Defense?

MR. MCCOLLUM: No objection, Your Honor.

THE COURT: All right. This inquiry was Court's Exhibit Number Five will be put into the record and we'll be in recess until we reach a verdict or we hear from the Jury.

COURT'S EXHIBIT NUMBER FIVE

MARKED FOR IDENTIFICATION

MR. MCCOLLUM: Your Honor, do you think that they understand that if they suspend deliberations that they'll be able to go home? Do you think that there's any chance that they think that we make arrangements for them and will accommodate them that that means they'll be ---

THE COURT: I thought I made it clear they could go home.

MR. MCCOLLUM: It's clear to me.

THE COURT: I would think so. You want me to bring the Forelady in and be sure that she understands they can go home?

MR. MCCOLLUM: It may -- it's a suggestion and it doesn't matter how they're told whether it's a Deputy or ---

THE COURT: I don't communicate unless it's done on the record. So, I'll be glad to bring her in and communicate with her if you'd like for me to.

MR. MCCOLLUM: If, if, I just want to make sure that they know that.

THE COURT: I thought I made that clear, but ask the Forelady to step back in. There's probably one other thing that I need to address with her anyway on the record.

(REPORTER'S NOTE: Forelady enters courtroom. 5:59 P.M.)

THE COURT: Ma'am, just have a seat in your normal seat for me. Thank you.

One thing I didn't address with you while we were in.

The Bailiff brought to me a -- what I would describe as a cartridge that apparently was discovered by the Jury during your deliberations.

JUROR 256: Oh, yes.

THE COURT: While looking at a particular piece of evidence.

JUROR 256: Uh-huh (affirmative response).

THE COURT: Can you tell me the circumstances under which you located that item.

JUROR 256: One of the women opened up the gun case.

THE COURT: The black thing?

JUROR 256: The black, yeah, and inside, I guess, where the gun would go. I don't know much about guns, but I'm guessing where the gun would go.

THE COURT: Right.

JUROR 256: And it was like stuck down in the seam.

THE COURT: So it was contained inside of that case?

JUROR 256: Yeah, it was in the case.

THE COURT: Okay. And you turned that over to the Bailiff and asked and he has brought it to me. So I just wanted to be sure that we confirmed on the record where that came from.

JUROR 256: Uh-huh (affirmative response).

THE COURT: And, ma'am, I want to be sure you understand by suspending deliberations, I'm talking about you have the

right to go home and come back in the morning and resume deliberations. Do you understand what I mean by that?

JUROR 256: Yes.

THE COURT: Okay. You may retire and let the Bailiff know how you wish to proceed.

JUROR 256: Okay.

THE COURT: Thank you, ma'am.

(REPORTER'S NOTE: Forelady exits courtroom. 6:00 P.M.)

THE COURT: All right. Concerning the cartridge, I have instructed the Court Reporter to have that marked as a part of the exhibit in which that case was contained. I believe it's Exhibit Nineteen for the State. So, it has been categorized and classified. I had asked the Jury not to have the gun present with cartridges. So they returned it to us. So it is part of the record and is part of that exhibit.

All right. We'll be in recess until such time as we hear from the Jury as to how they wish to proceed.

MS. LIVESAY: Thank you.

MR. MCCOLLUM: Thank you, Your Honor.

THE COURT: Uh-huh (affirmative response). Thank you.

(RECESS - 6:01 P.M.)

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

(On the Record - 6:59 P.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: All right. I have received another inquiry from the Jury. This inquiry says can you please describe the charge of armed robbery again. Then they ask can we have a copy of your instructions to us. I have prepared what I think will work. I think I'm just gonna give them the entire instruction in writing rather than have them keep popping in and out and asking questions. I'm gonna e-mail it to the Clerk. Once we've got it printed, I'll let you take a look at it before I submit it to the Jury. Give me just a minute.

I have sent it.

Pass it over and let Mr. McCollum look at it and then if you'll let Ms. Livesay look at it and see if there's ---

MS. LIVESAY: Are you printing us a copy, too, Heather?

THE COURT: It's pretty voluminous. Why don't you just look on with each other if you don't mind. If you need a copy then we'll do it. It's a lot of pages.

MR. MCCOLLUM: I don't know why we're reading it; I've already heard it. So ---

THE COURT: The only thing I did -- I don't -- when I charge it, there's a part of the charge that as to deadly weapons, the standard charge that a lot of judges use say a gun and a knife and a dirk and they use all these different phrases or examples of deadly weapons. I take that out because that's a comment on the facts. That's the only change that I really made to the standard charges.

So, is there any objection to me submitting this. I'll have it made an exhibit to the ---

MR. MCCOLLUM: There's no objection to submitting the written instructions on behalf of the Defendant.

THE COURT: All right. Any objection from the State?

MS. LIVESAY: No, sir.

THE COURT: All right. I'm gonna have this marked as a Court's Exhibit. I'll staple it together because the pages aren't numbered and they'll mix them up as soon as the get it.

COURT REPORTER: Can we mark the note as Six and then we'll mark the ---

THE COURT: Please do.

COURT REPORTER: And then the charge themselves will be Seven.

THE COURT: Seven, Court's Exhibit.

That's pretty thick.

COURT'S EXHIBITS SIX AND SEVEN

MARKED FOR IDENTIFICATION

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

(REPORTER'S NOTE: The Jury enters courtroom. 7:07 P.M.)

THE COURT: I received an inquiry from the Jury asking that I charge armed robbery again and I have also -- that inquiry asked if you could have the charge in writing. So rather than my reading that to you again, I have decided to give you the entire charge that I gave you in writing. It's

Court's Exhibit Number Seven. I don't read these exactly like they are printed, but it does, it does contain all of the charges that I gave. So I'm going to submit it to you. This is an exhibit now in the case. It needs to be returned with the other exhibits since it is now part of the record.

Pass this over to the Forelady.

You may retire to the jury room and resume your deliberations.

(REPORTER'S NOTE: The Jury exits courtroom. 7:08 P.M. The following takes place outside the presence of the Jury.)

THE COURT: Any objections to the response from the State?

MS. LIVESAY: No, sir.

THE COURT: Any from the Defense?

MR. MCCOLLUM: None from the Defense, Your Honor.

THE COURT: All right. We'll stay in recess until a verdict is reached. Thank you.

(RECESS - 7:08 P.M.)

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

(On the Record - 7:52 P.M.)

THE COURT: Get the Jury for me please.

(REPORTER'S NOTE: The Jury enters courtroom. 7:52 P.M)

THE COURT: Madame Forelady, the Bailiff has informed me that you, the Jury, would like to retire for the evening and return in the morning; is that correct?

JUROR 256: Yes.

THE COURT: All right. What I will do is we will suspend the deliberations at this point in time. As you leave the courthouse, I will give you the same instructions that I have given you in the past. Don't try to gather any information on your own about the case. Don't discuss the case with anyone and don't allow anyone to discuss it with you and should anyone attempt to contact you about your service on the Jury, please report that upon your return to the courthouse. I'm going to ask that you reassemble. The Bailiff will show you where to go at 9 o'clock in the morning. Now as you reassemble in the jury room, do not begin any discussions about the case until you have come into the courtroom and I have instructed you to resume your deliberations. I don't want you discussing anything about the case until everyone is present and all jurors will be present for the discussions as they resume.

Do you understand my instructions, ma'am?

JUROR 256: Yes.

THE COURT: All right. At this time, I'm going to release you for the evening. Be back in the room as instructed by the Bailiff at 9 o'clock in the morning. We should resume shortly thereafter.

You may retire. I hope you have a good evening.

(REPORTER'S NOTE: The Jury exits courtroom. 7:54 P.M.)

THE COURT: Any objections to my instructions from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: And from the Defense?

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

THE COURT: All right. We will resume at 9 o'clock. At that time, I will instruct the Jury when they are all present to resume deliberations.

We are adjourned until in the morning.

Sir, I will again point out to you, we will start your case again at 9 o'clock in the morning. Should you fail to appear at that time, a bench warrant would be issued for your arrest and we will continue the trial in your absence. Do you understand that, sir?

MR. BELL: Yes, Your Honor.

THE COURT: All right. Thank you very much. Good evening.

(RECESS - 7:55 P.M.)

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

AUGUST 15, 2014

(On the Record - 9:03 A.M.)

THE COURT: Thank you very much. You can be seated. Good morning.

MR. MCCOLLUM: Good morning.

THE COURT: All right. It appears the State is here and

the Defense has appeared. You may bring the Jury panel in.

(REPORTER'S NOTE: The Jury enters courtroom. 9:04 P.M.)

THE COURT: The record will reflect that the Jury has returned to the courtroom. It appears that all twelve of you have arrived and I will inquire of you if any of you had any difficulty with complying with my instructions concerning your behavior while you were away from the courthouse, please stand?

It appears that all jurors have been able to comply with my instructions.

Madame Forelady, at this time, I will ask the Jury to retire to the jury room to resume your deliberations. You may proceed at this time. Thank you.

(REPORTER'S NOTE: The Jury exits courtroom. 9:05 A.M.)

THE COURT: All right. Any objections from the State?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: From the Defense?

MR. MCCOLLUM: There are no objections from the Defense.

THE COURT: All right. I'd ask the attorneys to approach briefly.

(RECESS - 9:06 A.M.)

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

(On the Record - 10:03 A.M.)

THE COURT: All right. Attorneys are present in the Bell case. I have received an inquiry from the Jury. The Forelady

asks, What happens if there is one charge that the Jury cannot agree on? It appears to the Court that as to that charge an Allen Charge would now be appropriate. Does the State agree?

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: The Defense agree?

MR. MCCOLLUM: Yes, sir, Your Honor.

THE COURT: All right. Let's bring the Jury in.

(REPORTER'S NOTE: The Jury enters courtroom. 10:04 A.M.)

THE COURT: I'll ask the attorneys to approach.

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

THE COURT: The record will reflect the Jury has returned to the courtroom.

COURT'S EXHIBITS NUMBER EIGHT AND NINE

MARKED FOR IDENTIFICATION

THE COURT: All right. Madame Forelady, I have received two communications from the Jury. Let me go over these with you and let me find out exactly where I think we, what I, I know where I think we are, but I want you to tell me where we are.

And the first one is, What happens if there is one charge that the Jury cannot agree on? The second one is, Can we see the video again, the part from when the police arrived at the complex on and is there any way to slow the video?

Now, ma'am, the first question would have indicated to me

that there was some type of a deadlock on the Jury. The second question would indicate to me that perhaps in reviewing evidence, the Jury might be able to continue deliberations and might be able perhaps to reach a, a final verdict on all issues. Do you believe that the playing of the video again would assist you in your continuing deliberations?

JUROR 256: I believe so.

THE COURT: Okay. Well, then I'm not going to, I'm not going to refer to what's been marked as Court's Exhibit Number Eight, which is the what happens if you don't, cannot reach an agreement on a verdict and I'm gonna proceed to get the video ready and we'll play it. My understanding is that it can be slowed down and perhaps even stopped. I don't know if specifically what you're wanting to view other than from the time the police arrive at the, at the complex to the end of the video. I'll get that ready. Perhaps if there's something specific you'd like to have it stopped at or something of that nature, when you come back into the jury room and we have it ready for, I mean in the courtroom, perhaps you could let me know if there's some specific thing that the Jury would like to view as to that evidence.

So at this time, I'll ask you to step back into the jury room. We'll get this ready for you and then we'll be calling you back shortly. Thank you.

(REPORTER'S NOTE: The Jury exits courtroom. 10:09 A.M.)

THE COURT: All right. If you can get that ready for us; I guess we'll need to get the screen down.

Is that disc in the jury room?

COURT REPORTER: Yes, sir.

THE COURT: It's in the jury room. So, the disc is in the jury room.

MS. LIVESAY: Yes, sir.

THE COURT: We're gonna need to get that disc.

MS. LIVESAY: I've got to wait for that. I'm just gonna play it right from the beginning where she gets there. Isn't that what they wanted?

THE COURT: What they want is from when the ---

MS. LIVESAY: The police get to that complex.

THE COURT: To the complex.

MS. LIVESAY: Yeah. Okay.

THE COURT: And I don't know, I asked her to let us know where they want it slowed or stopped. So they're gonna come back in and tell me that.

MS. LIVESAY: It's hard to mess with that --

THE COURT: That's okay.

Can you make it full screen; there's a bigger size than that.

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

THE COURT: There's a bigger size than that.

MS. LIVESAY: Oh, yeah, I've put it on that.

THE COURT: Can you put it on full screen?

MS. LIVESAY: The only thing I can do is put this on full screen?

THE COURT: Right and I understand that.

MS. LIVESAY: And I'll do it as soon as I hit play.

THE COURT: Okay. All right. We're ready for the Jury; bring them in.

MR. MCCOLLUM: Judge, when it's playing I'm just gonna move him over here.

THE COURT: That'll be fine, yeah. We'll let him have a chance to look at it as well.

(REPORTER'S NOTE: The Jury enters courtroom. 10:18 A.M.)

All right. The record will reflect the Jury has returned to the courtroom. Madame Forelady, we have gotten it to the point where the -- it appears that the cars about to turn so this will be the beginning, I think, of what you requested; is that correct?

JUROR 256: Yes.

THE COURT: All right. Now if there's some point in time that you would like it slowed and/or stopped, I'll ask you, ma'am, to just let us know and we'll try to comply with your request.

JUROR 256: Thank you.

THE COURT: Well, whatever, it's your request to see it so you tell me what you'd like to see.

JUROR 256: Well, at the point where the suspects are coming across the parking lot to their car?

THE COURT: Yes, ma'am.

JUROR 256: If we could have it paused at that point.

THE COURT: All right. We'll start the playing and when we get to that point, we will pause it at that point.

MR. MCCOLLUM: Your Honor, is this lectern, do I need to move that; is that blocking ---

THE COURT: Is this blocking anybody's view?

JUROR 256: Just the microphone is.

THE COURT: Put the microphone down and that will take care of it.

JUROR 256: Uh-huh (affirmative response).

Okay. Everyone have a good view once the Solicitor sits down?

JUROR 256: Uh-huh (affirmative response).

THE COURT: Okay. You may need to pull up a chair to get close enough to push your button.

Okay. All right. You may begin.

(REPORTER'S NOTE: State's Exhibit Number Four played for Jury. Audio not transcribed herein.)

THE COURT: I'm going to back that up. Ma'am, can you reverse it, back it up? They want to pause it.

Ma'am, if you'll say pause when you want her to stop it.

You want to step over to the side so that they can all