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CLERK OF THE COURT
WASHTENAW COUNTY, MI

JUN 25 2012

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STATE OF MICHIGAN

IN THE 22ND CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

THE PEOPLE OF THE STATE OF MICHIGAN,

V

Case No. CRW12-663FC

JOSEPH CORBIN BAILEY,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE CHRIS EASTHOPE, TRIAL COURT JUDGE

Ann Arbor, Michigan - Thursday, June 7, 2012

APPEARANCES:

For the People:

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1 Ann Arbor, Michigan

2 Thursday, June 7, 2012 - 11:12 a.m.

3 THE COURT: All right. This is People versus Joseph
4 Bailey, 120663.

5 MR. HOLTZ: J. Samuel Holtz on behalf of the people.

6 MR. KILLEWALD: Robert J. Killewald on behalf Mr.
7 Bailey your Honor.

8 MR. HOLTZ: Judge, let me--we're ready to start.
9 Let me tell the Court what we've been doing the last few
10 minutes.

11 Ah--the victim in this case, Mr. Cho m'm--we told
12 him--because he runs this party store and he's kind of a one
13 man operation. We told him that ah--he could be on standby as
14 I told you at the bench, we could have him here in about 20
15 minutes. We immediately put out those phone calls and for
16 some reason we can't reach Mr. Cho. M'm--the officers are
17 going to try and have a car go by and pick him up. I think
18 that we can probably get by without him, and that is based on
19 ah--MCL--or the Rule of Evidence applying to preliminary
20 examinations, 11018 which talks about the Rule of Evidence
21 m'm--applying to preliminary examinations, 11018 which talks
22 about preliminary examinations at preliminary examinations at
23 criminal trials, hearsay is admissible to prove with regard to
24 property and the ownership authority to use value, possession
25 and entry. M'm--we have a couple different police officers

1 who can testify about their interviews with Mr. Cho where
2 essentially he says he was robbed they took about \$1,000
3 dollars. We also have a video which we can show which
4 supports that. But in light of that, I certainly want to have
5 Mr. Cho here. What I'd like to do then is unfortunately I'm
6 going to have to call a little bit out of order and I know
7 that the Court can put it together, but we're unfortunately
8 going to have to call a couple people out of order. Obviously
9 I'd like to call Mr. Cho first to talk about the crime itself,
10 but we're going to have to just go into the investigation and
11 then we'll piece it all together. So, with that, the people
12 would call Officer Schneider.

13 MR. KILLEWALD: Your Honor, if I may make a comment
14 your Honor. I'd like to make a motion m'm--

15 THE COURT: You can do it from your--if you want--

16 MR. KILLEWALD: I'd like to make a motion your Honor
17 to dismiss this matter. The victim is not here. M'm--Mr.
18 Holtz, with all due respect, the hearsay is going to be to try
19 and prove my client's guilt. I don't believe that that--the
20 rule he read applies to my client in that sense your Honor.
21 M'm--also the video, the video has to--anybody can watch a
22 video, but somebody's got to be able to describe what was
23 happening during that video and the only one that can do that
24 is the victim your Honor. The victim is not here, the Court
25 had--the prosecutor had plenty of time to bring this victim in

1 especially knowing that it was going to happen today and I
2 would ask that this matter be dismissed your Honor.

3 THE COURT: Well, the--the Rules of Evidence as I
4 know it Mr. Killewald, would allow that--would allow hearsay
5 testimony on ownership and value. So, I can't say that he
6 can't--now, I'll certainly--you have the right to preserve the
7 right to object if the testimony goes beyond those issues
8 allowed by the Court Rule--by the Rule of Evidence, but the
9 Rule of Evidence does allow that.

10 MR. KILLEWALD: Your Honor, even conceding that
11 point, that okay, I was robbed, somebody took \$1,000 dollars
12 from me. Okay. Let's say that's a given, the fact of it is
13 it doesn't tie anything with my client your Honor.

14 THE COURT: Well, right, he's left to his proofs.
15 So, I'm not going to dismiss the case right now because he--I
16 agree with you but I got to hear the proofs first.

17 MR. KILLEWALD: Right.

18 THE COURT: So, I mean, certainly your objection is
19 noted but the rule--that Rule of Evidence whether you agree
20 with it or not is there and Mr. Holtz can feel free to
21 proceed.

22 MR. HOLTZ: Thank you Judge. People would call
23 Officer Schneider.

24 ROBERT SCHNEIDER

25 Called by the People at 11:16 a.m., sworn by the

1 bailiff, testified:

2 THE BAILIFF: Do you swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 THE BAILIFF: Please be seated. When you're seated
6 state and spell your first and last name for the record
7 please.

8 THE WITNESS: Officer Robert Schneider. R-o-b-e-r-t
9 S-c-h-n-e-i-d-e-r.

10 THE COURT: Good afternoon Officer Schneider.

11 MR. HOLTZ: May I proceed your Honor?

12 THE COURT: You may.

13 MR. HOLTZ: Thank you.

14 DIRECT EXAMINATION

15 BY MR. HOLTZ

16 Q Sir, how are you employed?

17 A I'm an officer with the Ann Arbor Police Department.

18 Q How long have you been so employed?

19 A 16 years.

20 Q And what are your general duties sir?

21 A Ah--road patrol, ah--evidence tech, ah--investigation of
22 crimes--

23 Q That's enough. Are you familiar with a location of 1027
24 Broadway in the City of Ann Arbor?

25 A I am.

1 Q What is that?
2 A It's a party store.
3 Q Have you been to that store before?
4 A Yes.
5 Q Specifically I want to turn your attention to the morning of
6 April 10th, ah--did you have occasion to be dispatched to that
7 general area of 1027 Broadway?
8 A I was dispatched to the nearest intersection.
9 Q What was that intersection?
10 A M'm--Moore and Traver.
11 THE COURT: Can we hold on--is there a sequestration
12 request.
13 MR. HOLTZ: Oh, yeah, Detective Stanford, he should
14 probably--he should probably step out, I'm sorry.
15 THE COURT: Detective Fitzpatrick, is the OIC.
16 MR. HOLTZ: He's the OIC, yes.
17 THE COURT: Congratulations. M'm--anybody else here
18 that we need--both attorneys--
19 MR. HOLTZ: Not on behalf of the people.
20 MR. KILLEWALD: No your Honor.
21 THE COURT: Just want to make sure. Go ahead.
22 BY MR. HOLTZ
23 Q The morning of ah--April 10th, did you have occasion to go to
24 that general location?
25 A Yes.

1 Q And you gave us in intersection. Could you give me that again
2 please?
3 A It was Moore and Traver.
4 Q Where is that in relation to the Broadway Party Store?
5 A It's approximately between 25, 30 yards from ah--the ah--party
6 store.
7 Q In what direction, do you know?
8 A It's east.
9 Q And why were you dispatched to that location?
10 A Ah--we were--myself and my partner were dispatched to the m'm--
11 --the location to assist Officer Scott ah--in reference ah--
12 evidentiary, collection of evidentiary purposes for a gun that
13 was found in the road.
14 Q When you got there, ah--did you find a weapon of some sort?
15 A Yes.
16 Q Specifically sir, where was that weapon?
17 A M'm--it was laying in the roadway on Traver ah--about I'd say
18 probably 100 yards maybe give or take probably 10 yards. M'm--
19 --east of the intersection m'm--of Traver and Moore.
20 Q What time of day did you get there, do you recall?
21 A It was early morning.
22 Q And ah--you were dispatched there, is that correct?
23 A Correct.
24 Q Do you--do you know a general time of when that dispatch was
25 called? In other words, how long did it take you to get

1 there?
2 A M'm--well, we were assigned to the downtown area, I believe we
3 were more towards the south side, m'm--it took us a little bit
4 of time to get up to that location. M'm--I want to say it was
5 around--it may have been around 9:20.
6 Q When you arrived there, was there another officer there?
7 A Yes, it was Officer Scott.
8 Q I want to show you what's been marked as People's Proposed
9 Exhibit #2. Do you recognize that picture sir?
10 A I do.
11 Q Now, you also said you are an evidence tech, is that correct?
12 A Correct.
13 Q M'm--going back to ah--People's Proposed 2, what is that?
14 A Ah--looks like ah--sawed off shotgun.
15 Q Okay. Does that appear to be a fair and accurate
16 representation of the weapon that you found at that
17 intersection that you just told us about?
18 A Yes.
19 Q What was done to preserve that weapon, or what was done in the
20 course of your investigation there that morning?
21 A M'm--we took photos--photographs of the weapon in addition to
22 ah--up and down the street showing overall area, view. In
23 relation to the party store itself, m'm--has a business it's
24 attached to the building, it's actually on the backside of it,
25 it faces Moore Street m'm-- so when we photographed it we could

1 see the backside of that building in relation to where the gun
2 was located. M'm--we took photographs of the weapon itself
3 with measurements m'm--our ruler to show m'm--you know
4 measurement to it, m'm--in addition to ah--my partner
5 collected the gun, placed it in a paper bag.
6 Q And why is something placed in a paper bag?
7 A Preserve it for latent prints or any other evidentiary
8 purposes.
9 Q Was something done with that weapon?
10 A We transported the firearm to the Ann Arbor Police Department
11 ah--which then placed it into a gun box m'm--where it's logged
12 in as evidence.
13 Q And do you know what was done with it subsequent to that?
14 A M'm--once we log it in I'm not sure where--
15 Q You didn't have anything to do with it?
16 A No.
17 Q Okay. Thank you. What ah--what is the length of that weapon?
18 A Ah--it was about--the total length?
19 Q Yes sir.
20 A Or barrel length?
21 Q Well, give us both if you would please.
22 A Ah--I don't know the full length of the weapon itself, barrel
23 length was ah--11 and a quarter inches.
24 Q Okay. Now, did you say that that appeared to be a sawed off
25 weapon?

1 A Right.
2 Q Was there--was the barrel actually cut down?
3 A Yes.
4 Q Sir, I don't have any further questions right now. Your
5 Honor, I would move for the admission of People's Proposed
6 Exhibit 2.
7 THE COURT: Mr. Killewald any objection?
8 MR. KILLEWALD: Ah--no your Honor. If I just may
9 ask a couple of questions. Officer Schneider--
10 THE COURT: Well--I'll--I mean, do you have any voir
11 dire on the exhibit or are you have no objection to it.
12 MR. KILLEWALD: I was going to ask a question
13 regarding the exhibit.
14 THE COURT: Okay. Go ahead.
15 VOIR DIRE
16 BY MR. KILLEWALD
17 Q M'm--Mr--I'm sorry, Officer Schneider, m'm--were--you said you
18 don't know what happened after it was placed into the ah--the
19 box at the Ann Arbor Police Department, is that correct?
20 A No, we placed it, what we do is we secure it into a property
21 room locker.
22 Q Right.
23 A And then the property room officer ah--handles it from there.
24 Q Do you know if the gun was tested for fingerprints?
25 A I--like I said, I have no idea of what happened to it after

1 that.
2 Q Okay. And--and--is there--what connection if any does this
3 gun have with this matter at hand, if you know?
4 A All I know is that m'm--we were advised at--it may have some
5 relation to a robbery that occurred at the Broadway Party
6 Store, beyond that I--that's what I was told.
7 Q Okay. I have no further questions. No objections to the
8 exhibits.
9 THE COURT: That is admitted.
10 (At 11:23 a.m., PX #2 admitted)
11 MR. HOLTZ: Nothing further.
12 THE COURT: Any cross examination of Officer
13 Schneider?
14 MR. KILLEWALD: No your Honor.
15 THE COURT: You may step down, thank you.
16 (At 11:24 a.m., witness excused)
17 MR. HOLTZ: Your Honor, the people would call
18 Detective William Stanford.
19 THE COURT: All right.
20 WILLIAM STANFORD
21 Called by the People at 11:24 a.m., sworn by the
22 bailiff, testified:
23 MR. HOLTZ: Your Honor, just so the Court is aware,
24 Detective Stanford's testimony is going to be primarily as to
25 Count 3, the resisting and obstructing charge.

1 THE COURT: Detective Stanford if you would come
2 forward and be sworn please.

3 THE BAILIFF: Do you swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth?

5 THE WITNESS: I do.

6 THE BAILIFF: Please be seated, and when you're
7 seated state and spell your first and last name for the record
8 please.

9 THE WITNESS: William, W-i-l-l-i-a-m, Stanford, S-t-
10 a-u-f-o-r-d. Good morning your Honor.

11 THE DEFENDANT: Good morning sir.

12 DIRECT EXAMINATION

13 BY MR. HOLTZ

14 Q Sir, you are a detective with Ann Arbor Police Department, is
15 that correct?

16 A Yes.

17 Q Are you familiar with a ah--an alleged armed robbery that took
18 place at the Broadway Party Store on April 9th?

19 A I am.

20 Q And did you have some piece in the investigation or the
21 ongoing investigation of this alleged crime?

22 A Ah--yes. I received some tips regarding the crime.

23 Q Okay.

24 A I wasn't the OIC.

25 Q And who is the OIC?

1 A Currently it's Detective Fitzpatrick, originally when the case
2 first was ah--initiated was Detective Dortch, Michael Dortch.

3 Q Did you, throughout the investigation of this case did you do
4 some work with Detective Fitzpatrick?

5 A I did, yes.

6 Q Okay. Specifically I want to talk about something which ah--
7 took place on m'm--May 25th of this year regarding this case.

8 Were you involved in something that took place on that day?

9 A Yes.

10 Q Okay. And is that when you were with Fitzpatrick?

11 A Yes, that's--

12 Q Give us--set the scene for us. How is it that you were with
13 Fitzpatrick on that day and what were you intending to do?

14 A Ah--I had originally received some tip information. I
15 provided--

16 Q And I don't want to know what that tip information is, but--

17 A I provided it to the OIC in the case, Detective Dortch. On
18 ah--May 25th Detective Fitzpatrick who had also shared that
19 information with and came to me and indicated that it had ah--
20 had not been acted on yet at that point. My schedule was
21 clear that day, so Detective Fitzpatrick and I went to a
22 residence in Adrian and ah--did what we were--what's commonly
23 called a knock and talk.

24 Q And who did you speak to?

25 A Ah--we spoke to the defendant's mother, her specific name I

1 don't recall without looking at the report.
2 Q After you left that address, did you--did you come to know
3 somebody by the name of ah--Joseph Bailey?
4 A Yes.
5 Q And he was a person of interest, is that fair to say?
6 A Yes.
7 Q On that particular day, m'm--or any day surrounding then, did
8 you take part in trying to make contact with Mr. Bailey?
9 A Yes.
10 Q Tell us about how you tried to make contact with Mr. Bailey?
11 A M'm--we had--Detective Fitzpatrick and Sergeant Fox had
12 received some information that Joseph Bailey was involved in a
13 ah--crew that was--
14 MR. KILLEWALD: Your Honor, I'm--I'm going to object
15 to any hearsay statements that he's making m'm--as hearsay.
16 MR. HOLTZ: Your Honor, I don't believe it's
17 hearsay. First of all, it's police team under one theory, but
18 all he's doing is he's giving us the background information as
19 to how he got to a particular location when the defendant ran
20 from him. We have to put him at the scene. We have to
21 establish that he was conducting an investigation. We have to
22 establish that he identified himself as a police officer, and
23 we have to establish that the defendant ran from him.
24 THE COURT: Well, I understand that. But any out of
25 court statements being offered--so if--if the detective is

1 saying a statements came from other detectives that
2 technically is hearsay.
3 MR. HOLTZ: Well, Judge, if I may. What he's going
4 to tell us is that he got some information that the defendant
5 was at a particular location. And as a result of receiving
6 that information they went to that location. So, it's not
7 being offered for the truth of the matter that he may have
8 been working at an apartment building, it's being offered to
9 show why Detective Stanford and Detective Fitzpatrick went to
10 a particular location. That's all. Doesn't have anything to
11 do with an element of the crime here, of any of the crimes.
12 THE COURT: M'm--well, generally, I'm going to allow
13 it for that limited purpose, but generally, that's--doesn't
14 have to be re--or do with anything with the element, it's just
15 if it's the statement is being elicited for its truth, it's
16 hearsay, so--
17 MR. HOLTZ: Okay.
18 BY MR. HOLTZ
19 Q After you received some information, what did you do?
20 A We went to ah--apartment complex located at 640 Waymarket.
21 Q And what was the purpose of going to Waymarket?
22 A To check and see if ah--Joseph Bailey was working at a crew
23 there that was installing cabinets in apartments.
24 Q What did you do to try and determine whether or not the
25 defendant was working there that day once you got there?

1 A Went to the management of that apartment complex, I asked them
2 if they had ah--apartment--or ah--apartments that had cabinets
3 being installed in them. They said they currently did.
4 Showed them a picture of Joseph Bailey--

5 MR. KILLEWALD: Your Honor, I'm going to object to
6 the hearsay statement that's just about to happen--

7 MR. HOLTZ: Again your Honor, it's not being offered
8 for the truth of the matter asserted, it's simply being
9 offered to show what this defendant did next.

10 THE COURT: And I'--a description--a statement about
11 identification is hearsay. M'm--

12 MR. HOLTZ: We're not using that statement to
13 identify.

14 THE COURT: Well, you're elic--I guess the question
15 is, what statement are you eliciting from the detective.

16 MR. HOLTZ: Just why he--he's about to tell us about
17 trying to contact the defendant.

18 THE COURT: Well--

19 MR. HOLTZ: He has to tell us how he got--

20 THE COURT: But--the question that's presented in
21 front of me right now is, did you show a picture to the people
22 and what was their response. Anything that--response to that
23 is going to be hearsay. And I think that's what Mr. Killewald
24 is objecting to. M'm--is the identification that--the answer
25 to that question. That would be hearsay.

1 MR. HOLTZ: I'll ask it another way.

2 BY MR. HOLTZ

3 Q Sir, you showed a picture to somebody, is that correct?

4 A Correct.

5 Q And I don't want to know what that person said, but you spoke
6 with that person after showing them that picture?

7 A I did.

8 Q As it is--after you showed that person that picture, what did
9 you do?

10 A Went to approximately three or four apartment complexes,
11 apartment buildings down from where I was and asked management
12 if Joseph Bailey was working for them.

13 Q And I don't know what they said. But as a result of getting
14 that answer, what did you do?

15 A Saw a black male individual carrying a backpack walking into
16 the apartment complex. I called out to him, he quickly
17 entered--

18 Q Let me stop you sir. Have you ever seen a photograph of
19 Joseph Bailey?

20 A Yes. When I received original information I did research on
21 Joseph Bailey and obtained several photographs of him.

22 Q You stated to tell us about it, you saw somebody with a
23 backpack, m'm--when you saw that person with the backpack,
24 were you able to tell who that person was?

25 A Not initially.

1 Q Okay. What did you do?
2 A I called out to him.
3 Q Okay. What did you say?
4 A Ah--I said, "Mr. Bailey." Called out to him Mr. Bailey. M'm--
5 --as I came around the corner started to walk towards him,
6 because the individual walk--was walking quickly away from me
7 entering the apartment. I noticed the black backpack laying
8 on the ground. I called out again several times, "Joseph
9 Bailey, police." Ah--at that point I noticed the screen, I
10 heard a noise in the back bedroom and as I came around the
11 corner I noticed the screen had been knocked out.
12 MR. KILLEWALD: Your Honor, your Honor, I don't mean
13 to interrupt, but this officer is assuming a lot of things--
14 THE COURT: Wait, wait--Mr. Killewald, what's--you
15 have to have a legal objection--
16 MR. KILLEWALD: Okay. I object--
17 THE COURT: You can't just interrupt the cross--
18 direct examination. What's your--you got to stand up and say
19 objection--
20 MR. KILLEWALD: I object as to relevance your Honor.
21 The--there--
22 THE COURT: Overruled. It's completely relevant.
23 MR. HOLTZ: Thank you your Honor.
24 BY MR. HOLTZ
25 Q So, you went into apartment after this person?

1 A Yes.
2 Q And tell us what you found?
3 A So, came around the corner, ah--in the--what was a child's
4 bedroom, the screen had been basically blown out of the window
5 or knocked out of the window, it was laying in the grass. And
6 Joseph Bailey was running away through--from that window.
7 Q Okay.
8 A Ah--yelled several times, "Stop, police." I jumped through
9 the window and gave chase and lost him in a wooded area.
10 Q Let me back you up for just a second. You said that you were--
11 --when you were entering that apartment, you mentioned that you
12 were police, is that correct?
13 A Correct.
14 Q Now, how were you dressed that day?
15 A Very much like I'm dressed ah--right now except I'm not
16 wearing--I was not wearing a sports jacket, was wearing a ah--
17 polo shirt, my badge was exposed, my handgun was exposed.
18 Q And you said, "Police" you identified yourself as police?
19 A Yes.
20 Q Approximately how close were you to this person that turned
21 out to be Joseph Bailey when you said police?
22 A Ah--when he first started walking away into the apartment ah--
23 probably 25 feet and I don't think I got any closer to him
24 during the foot chase.
25 Q Were you aware of any loud noise or anything which would have

1 stopped anybody from hearing?
2 A No, it was a nice quiet neighborhood.
3 Q You said when you chasing him you also identified yourself as
4 the police?
5 A Yes.
6 Q Now, the person that you were chasing was he eventually
7 caught?
8 A He was eventually caught.
9 Q Where and how?
10 A Approximately 30 minutes after we set up the initial
11 perimeter, ah--and used the K-9 to ah--enter the wooded area,
12 he came--was seen coming out of that perimeter running towards
13 I94 and eventually he was captured on I94 by a uniformed
14 officer.
15 Q Thank you. The person that you were chasing that day sir, do
16 you see him in the courtroom?
17 A I do.
18 Q Could you please point to him and describe what he's wearing?
19 A Wearing the green jumpsuit sitting next to the ah--defense
20 counsel.
21 Q Thank you. May the record reflect identification of the
22 defendant Joseph Bailey? I have no further questions for this
23 witness at this time.

24 THE COURT: Cross examination of Detective Stanford.

25 CROSS EXAMINATION

1 BY MR. KILLEWALD
2 Q Officer, just a couple of questions. M'm--you--I think you
3 just testified that it was a nice quiet day, is that correct?
4 A Correct.
5 Q When you were yelling.
6 A Yes.
7 Q Did you not hear any power tools going off?
8 A Not when I entered the apartment, everyone stopped working.
9 There was no power tools going on when I entered the
10 apartment, there was no power tools going on when I was doing
11 the chase. I could hear the sirens from the patrol cars
12 responding from downtown Ann Arbor very clearly.
13 Q But initially though when you were walking towards the
14 apartment you claim that you were yelling out his name.
15 A Yes.
16 Q Did you hear power tools--
17 A I did not, no.
18 Q Thank you. I have no further questions.
19 THE COURT: Any redirect?
20 MR. HOLTZ: No, nothing further.
21 THE COURT: Detective Stanford, thank you for your
22 testimony. You may step down.
23 THE WITNESS: Thank you your Honor.
24 (At 11:34 a.m., witness excused)
25 MR. HOLTZ: Detective, thank you for coming. The

1 people would call Detective Fitzpatrick.

2 CHRISTOPHER FITZPATRICK

3 Called by the People at 11:34 a.m., sworn by the
4 bailiff, testified:

5 THE COURT: Detective Fitzpatrick, please come
6 forward and be sworn.

7 THE BAILIFF: Do you swear or affirm to tell the
8 truth, the whole truth, and nothing but the truth?

9 THE WITNESS: I do.

10 THE BAILIFF: Please be seated. When you're seated
11 state and spell your first and last name for the record
12 please.

13 THE WITNESS: First name is Christopher, C-h-r-i-s-
14 t-o-p-h-e-r, last name Fitzpatrick, F-i-t-z-p-a-t-r-i-c-k.

15 DIRECT EXAMINATION

16 BY MR. HOLTZ

17 Q And sir, how are you employed?

18 A I'm employed by the City of Ann Arbor as a detective.

19 Q How long have you been so employed?

20 A M'm--approximately 24 and a half years.

21 Q Now, it's my understanding that you were presently the officer
22 in charge on this case, is that correct?

23 A Correct.

24 Q Okay. Now, as you know sir, we're here to talk about m'm--an
25 armed robbery that took place on April 9th. Are you familiar

1 with the Broadway Party Store at 1027 Broadway?

2 A Yes I am.

3 Q And that's in the City of Ann Arbor, correct?

4 A Yes it is.

5 Q Your jurisdiction?

6 A (inaudible)

7 Q Okay. M'm--are you familiar with someone by the name of Sang-
8 Chul Choi, Cho or Choi?

9 A Yes I am.

10 Q Do you know how he pronounces his name?

11 A I believe it's Choi.

12 Q Choi, okay. And who is Mr. Choi?

13 A Mr. Choi is the son-in-law of Mr. Lee who owns the Broadway
14 Party Store. Mr. Lee has owned that business as long as I've
15 been in Ann Arbor, employed there, and Mr. Cho informed me he
16 is the son-in-law.

17 Q Okay.

18 A Of the owner, and he's the only employee, he opens at 11:30
19 and closes at 10 p.m.

20 Q Did you have an opportunity to speak with Mr. Choi about this
21 incident?

22 A I did.

23 Q And when did you do that sir?

24 A The morning after the robbery which would have been April 10th
25 I believe.

1 Q I want to ask you ah--just a couple of questions about Mr.
2 Choi, did Mr. Choi tell you in fact details about the robbery?

3 A Yes he did.

4 Q And I'm going to make that fairly limited, but I just want to
5 cover a little basic information. M'm--did he in fact tell
6 you that he was robbed?

7 A Yes he did.

8 MR. KILLEWALD: Your Honor, again, with all due
9 respect, I know the Court's made a ruling, but--

10 THE COURT: That--that would be hearsay, that
11 doesn't comply with the--with the Rule of Evidence, so if your
12 objection is hearsay, then--

13 MR. KILLEWALD: It is your Honor.

14 THE COURT: I will sustain it on that question.

15 MR. KILLEWALD: And furthermore, I would like to say
16 that--that I believe the store was robbed, not Mr. Choi
17 personally your Honor.

18 MR. HOLTZ: Well, you know, if counsel wants to
19 stipulate that there was a robbery on that day then we can
20 save some time and we can just move on.

21 THE COURT: Ah--look, what you guys want to
22 stipulate to--if--trying to cut to the chase here on what the
23 objection is, because I don't want you to be interrupted
24 during your direct, so, if its, you're going to object, say,
25 objection hearsay,

1 MR. KILLEWALD: That's--

2 THE COURT: Okay. So, Mr. Killewald, is your
3 objection hearsay based on that statement?

4 MR. KILLEWALD: Yes, yes.

5 THE COURT: So, Mr. Holtz, I know what you're trying
6 to do and you have to--but that statement unless it complies
7 with the Rule of Evidence, would be a hearsay statement.

8 MR. HOLTZ: Well, your Honor, my reasoning for
9 asking that pursuant to 1101B is that we're talking about
10 hearsay as admissible with regard to property, and a statement
11 will be made is that there was money taken from him that day.

12 THE COURT: That's okay, but that's different than
13 Mr. Choi say he was robbed that day.

14 MR. HOLTZ: Is it because it's forming a legal
15 conclusion, is that kind of where we're going?

16 THE COURT: Well, it's just--it's an out of court
17 statement offered to--the truth, you haven't gotten to the
18 property point yet. You're putting--do you see what I mean?

19 MR. HOLTZ: Okay.

20 THE COURT: I know what you're saying Mr. Holtz, and
21 I agree with you but it's still--that's--doesn't--to me doesn't
22 go into the Rule of Evidence that will make it non hearsay
23 yet. Just that statement standing on its lone, and I have to
24 rule on his objection.

25 MR. HOLTZ: Sure, okay. All right.

1 THE COURT: That statement on itself is hearsay, so
2 I'll sustain it, however, I'm certain that there's other ways
3 if you feel that you need to ask it, you can ask it.

4 MR. HOLTZ: Sure.

5 BY MR. HOLTZ

6 Q Ah--did Mr. Choi tell you anything about property?

7 A Yes he did.

8 Q What did he tell you?

9 A He said in the course of the robbery a \$1,000--approximately
10 \$1,000 dollars was taken out of the cash register and three or
11 four bottles of champagne were taken ah--from a cooler which
12 is located ah--right kind of right next to cash register area,
13 which is adjacent to that.

14 Q And did he tell you if that money and or property were--was
15 property of the party store?

16 A It was--it was proceeds or money from sales throughout the day
17 and then the champagne was for sale at the store.

18 Q Okay. Did he give you any value?

19 A Boy, it's in the report maybe how much was listed, but I don't
20 think he told me how much it cost--the value of the champagne.

21 Q Was it of some value though?

22 A Yes.

23 Q Okay. And ah--did he tell you if anybody had authority to
24 take that property?

25 A He did not know the two masked men that came into the store

1 and they took the stuff without his permission.

2 Q Without his permission?

3 A Correct.

4 Q And you said there were two masked men that came in?

5 A Correct.

6 Q Did ah--were you privy to a video that was provided by the
7 store?

8 A Yes, m'm--I was there when Detective Dortch and ah--Detective
9 Tucker that following morning on April 10th to ah--view the
10 video. I talked to Detective Dortch m'm--right after the
11 robbery happened and one of the concerns Detective Dortch had
12 was that there was no video available at that time and
13 Detective Tucker came in and was able to get into the video
14 system so we watched it that morning approximately 8:30 or
15 nine a.m.

16 Q Okay. Now, it's my understanding that some--there is in fact
17 a video but there were also some stills that were taken from
18 that video, is that correct?

19 A Yes.

20 Q I want to show you sir what's been marked as People's Proposed
21 Exhibit #1.

22 MR. KILLEWALD: Can I just show my client, 'cause
23 actually--

24 BY MR. HOLTZ

25 Q Sir, I'm showing you what's been marked as People's Proposed

1 Exhibit #1, do you recognize that?
2 A Yes I do.
3 Q What is that?
4 A That's a video of the robbery on that night of April 9th m'm--
5 approximately 10 p.m. and that's the camera that m'm--behind
6 Mr. Cho mounted almost hidden--he has in there so you don't--
7 you're looking up the wall, the camera there, it's from that
8 angle over Mr. Cho's left shoulder.
9 Q That's a still taken from that video, is that correct?
10 A Yes.
11 Q M'm--the ah--the video that you observed ah--is it fair to say
12 that that's a little bit clearer than the still photograph?
13 A It's very clear, it's clearer than this and in color.
14 Q How many--now, I know that picture right there shows one
15 person other than--who's the person behind the counter?
16 A That is Cho, the clerk of the store.
17 Q Okay. Other than the person ah--who you've identified as Mr.
18 Choi, m'm--that photograph would you agree with me shows one
19 person?
20 A M'm--no, I--it shows half--
21 Q Correct me if I'm mistaken, please do.
22 A Yeah. It shows Mr. Cho m'm--one person with a skeleton mask
23 and then if you look to the--to the right of the picture
24 there's approximately two thirds of a body of another
25 individual with a hoodie.

1 Q Does that photograph appear to be a fair and accurate
2 representation of the video that you looked at?
3 A Yes.
4 Q Okay. I would move for the admission of that at this time
5 just so the--just so the Court can have a look at that to have
6 some contacts for what we're about to talk about.
7 MR. KILLEWALD: No objection.
8 THE COURT: It's admitted.
9 (At 11:42 a.m., PX #1 admitted)
10 MR. HOLTZ: Thank you. Because--Judge, we're going
11 to expand on that just a little bit and I want your Honor what
12 it is we're talking about.
13 THE COURT: Okay.
14 MR. HOLTZ: Thank you.
15 BY MR. HOLTZ
16 Q Now, you said you saw the whole video, ah--I--what is it that
17 caught your attention particularly about the way the two
18 people were dressed?
19 A The mask or hood this individual with the, looks like a
20 shotgun, m'm--who is pointing the shotgun at Mr. Cho, it's a
21 very distinct mask, skeleton and then ah--you also note the
22 sweatshirt, whatever is underneath the vest is very distinct
23 too, with the markings and the patterns on the arms, and just
24 underneath the bottom of the vest.
25 Q Okay. How about the other person, how was the other person

1 dressed?

2 A M'm--a multi colored sweatshirt hoodie and it's--you don't--
3 you can just see part of it, m'm--looks--it's a lighter color
4 on the body of--and darker on the sleeves. Hood is pretty
5 tight around m'm--their face and you cannot make out any
6 characteristics of the face on the individual who has the
7 hoodie.

8 Q Your Honor, do you have People's 1?

9 THE COURT: I do.

10 MR. HOLTZ: The one of the firearm. Could I--please.

11 BY MR. HOLTZ

12 Q Sir, I want to show you what's been marked as ah--People's 1,
13 and ah--that's already been admitted into evidence as you've
14 heard. M'm--I know that you can't tell us for certain that is
15 the same weapon, but I want to ask you a couple of questions
16 about how those two photographs appear. M'm--you've had a
17 chance to review People's 1, is that correct?

18 A Correct.

19 Q And obviously you've had a chance to review not just the video
20 but also People's 2?

21 A Correct.

22 Q I want to ask you a couple of questions about that weapon
23 because in People's 2 it does show the perpetrator with a
24 weapon, is that correct?

25 A Correct.

1 Q M'm--are there similarities between those two weapons and if
2 so please describe what they are?

3 A Yes. If--very similar. M'm--what you look with ah--the
4 suspect who is holding the gun, you can see on the barrel that
5 the top of--very long shiny silver strip, and it's the same
6 that was found on the ground on Traver and Moore, the area
7 there. M'm--length appears ah--sawed-off, or short barreled,
8 m'm--you can't see the grip on the one from the store, so at
9 the angle, the angle of the gun, it looks very similar at the
10 point.

11 Q So, does the picture in--does the gun in one appear to be
12 consistent with the gun in two?

13 A Yes.

14 Q And again, you can't say that's the same weapon, but does it
15 appear to be consistent?

16 A Yes.

17 Q All right. Now, I want to ask you about ah--some more detail
18 questions about how the person with the gun was dressed. You
19 described m'm--some sort of ah--I believe you said some sort
20 of a skeleton type of thing?

21 A Yes.

22 Q I'm going to ask you to describe in detail if you can ah--the
23 various pieces of clothing as you observed that that person
24 with the gun was wearing. Let's start with--let's start with
25 ah--well, let's start with the vest.

1 A Yes. The vest is a dark colored vest and appears to be some
2 type of ribbed, and on the video you notice ah--some type of
3 emblem over the left chest upper torso area m'm--the video you
4 can't make out the writing but it appears to be a couple of
5 letters that are letters of the cross, a brand name, m'm--
6 again, it's a vest with no sleeves and it comes about waist
7 length on the person.

8 Q Okay. Let's talk about the thing that you described as the
9 skeleton type of thing.

10 A Yes. Initially at a glance what m'm--the thought was that it
11 was some type of mask, and that it may have been a designer
12 sweatshirt, something under that, but m'm--in researching
13 these kind of masks or outfits m'm--Google images comes up
14 with a hoodie that zips up in the front so if it's unzipped
15 it's the hood that goes over the sweatshirt, but zips up the
16 front it forms the skull and m'm--in comparing what was seen
17 on m'm--the images there on Google, m'm--we're able to figure
18 out that it was a skeleton pattern that we were seeing on both
19 arms and then m'm--lower torso sticking out from the bottom of
20 the vest, something like a vertebrae or chest.

21 Q And tell us a little bit about the head type portion of it?

22 A The unique thing there, several different types of these masks
23 as you can imagine m'm--available for costumes. But the
24 unique thing on this is that it's entire--the entire m'm--hood
25 or head of that mask is white with black striping in the

1 middle, the m'm--very almost like waspish or hornet looking
2 eyes kind of with m'm--the mouth, teeth that are formed there
3 for a grimace or smile, nose, m'm--and I believe it looks some
4 type of ears too.

5 Q All right. And what you just described is what you saw in
6 that video, is that correct?

7 A Of the mask, the sweatshirt and the vest, yes.

8 Q Okay. Were you able to see anything about the type of pants
9 that the person in the video and or pictures were wearing?

10 A Yes. You can't--it's--you can't see it from the still here,
11 but in watching the video m'm--when the suspect with the
12 skeleton mask enters you can see a flash of ah--a pattern on
13 the jeans on the right front thigh area which some type of--
14 it's a pattern is all I can say, stripped, strips there. M'm--
15 -shoes from other angles you can see black and white gym
16 shoes, those aren't available on this image either, but m'm--
17 the jeans were a dark colored blue jean with a patter on the
18 right thigh.

19 Q Okay. And did you say something about the shoes, I'm not
20 sure.

21 A In yeah--there's another camera angle that is where the--it's
22 the entrance of a parking lot where two suspects entered and
23 that shows them entering from the rear and there you get a
24 pretty good look at the pair of shoes, the black shoes with
25 white pattern on the bottom.

1 Q Did the video that you observed actually show money being
2 taken?
3 A Yes.
4 Q And was it by the gunman or by the other?
5 A No, the gunman did not move from that holding the gun pointed
6 at Mr. Cho, m'm--the other suspect with the multi colored
7 hoodie reached in and grabbed the cash out of the cash
8 register and then m'm--gathered up the bottles of champagne.
9 Q And what you observed in that video, was that consistent with
10 how Mr. Choi related to you what happened?
11 A It was--exactly how it was related, yes.
12 Q Okay. All right. Thank you. Move on to another area. At
13 some point did you receive the name of Joseph Bailey?
14 A Yes.
15 Q And again, I'm not to ask what was said but by what means did
16 you get the name Joseph Bailey?
17 A That Mr. Bailey was m'm--in the Pine Lake neighborhood--
18 MR. KILLEWALD: Your Honor, again, with all due
19 respect this is hearsay your Honor.
20 THE COURT: Sustained.
21 MR. HOLTZ: Okay.
22 BY MR. HOLTZ
23 Q You got the name Joseph Bailey, is that correct?
24 A Yes.
25 Q And did that--was it in relation to potentially this case?

1 A Correct.
2 Q Okay. Had you ever--prior to this incident, had you ever
3 known Mr. Bailey?
4 A Yes.
5 Q How would you know Mr. Bailey?
6 A When he was a juvenile he had--we had contact--
7 MR. KILLEWALD: Your Honor, I'm going to go to
8 relevance on this matter.
9 THE COURT: It goes to i.d., so I'll overrule. Go
10 ahead.
11 BY MR. HOLTZ
12 Q Go ahead sir.
13 A When m'm--Joseph was--
14 Q And I don't want to know a lot of specific crimes--
15 A Yeah.
16 Q I just want to know about the relationship?
17 A Yes. I was at his house probably when Joseph was 16, I think
18 he was a student at Stone School and ah--it was on police
19 related matters. I talked to Joseph and his mom, Ms. Custudio
20 at the time. Probably was four or five years ago, three or
21 four years ago.
22 Q Did you ah--get any information about where he was living
23 around this time?
24 A Yes, it was the same address that he had his mom's, 2523
25 Adrian, Pine Lake Coop complex.

1 Q That's in Ann Arbor, is that correct?
2 A Correct.
3 Q Okay. Did you make any attempts to contact Mr. Bailey to talk
4 to him about this incident?
5 A Yes. We were there with Detective Dortch, the afternoon of
6 April--or I'm sorry, May 24th and then we went back again on
7 May 25th in the morning.
8 Q So, I just want to make sure that my timeline is correct. The
9 date of offense is April 9th and you went there on May 24th and
10 25th is that correct?
11 A Correct.
12 Q So we're talking about roughly six weeks after the fact?
13 A Yes.
14 Q All right. Now, why did you try and go to Mr. Bailey's
15 residence?
16 A Information that was developed that Mr. Bailey had--
17 MR. KILLEWALD: Your Honor, again--
18 THE WITNESS: hoodie--
19 MR. KILLEWALD: I'm sorry, I sound like a broken
20 record--
21 THE COURT: No you--you don't have to apologize, I
22 mean, just say--
23 MR. KILLEWALD: Object to hearsay, your Honor.
24 THE COURT: There you go. That's all you need to
25 say.

1 MR. KILLEWALD: Okay.
2 MR. HOLTZ: And I'll go--we'll bypass that.
3 THE COURT: I'll sustain that.
4 MR. HOLTZ: Okay.
5 BY MR. HOLTZ
6 Q Yes or no, did you receive some information--
7 A Yes.
8 Q Which made you want to go to his place?
9 A Yes.
10 Q And did you in fact go there on the 24th?
11 A Yes.
12 Q Was Mr. Bailey there?
13 A He was not there on the 24th.
14 Q Was anyone there on the 24th?
15 A No.
16 Q Okay. Did you go back there the next day on the 25th?
17 A Yes.
18 Q Was Mr. Bailey there?
19 A No.
20 Q Was anyone else there?
21 A His mom Ms. Custodio was there.
22 Q Okay. Again, I don't want to know what she said, but did you
23 speak--and what is her name?
24 A Laura Custodio.
25 Q Okay. Did you have an opportunity to speak with her?

1 A Yes.
2 Q M'm--I don't even know what her answers were. But what did
3 you ask her?
4 A If she knew where Joe was.
5 Q Okay. And ah--but you told us that he wasn't there, is that
6 correct?
7 A She told us he wasn't there.
8 Q Did you do anything to try and verify that?
9 A I asked if it was okay if we checked his room just to make
10 sure he wasn't hiding or she was keeping him from talking to
11 us.
12 Q And that was the reason for your questioning, to find out if
13 he was there, correct?
14 A Yes, and I--and Mr. Bailey had ah--a traffic warrant for his
15 arrest out of our City of Ann Arbor at the time, so it was a
16 valid warrant and we were looking for him to serve the
17 warrant.
18 Q And did you in fact receive permission to go inside and verify
19 if he was or was not there?
20 A Yes.
21 Q Tell us where you went?
22 MR. KILLEWALD: Your Honor, m'm--I'm objection to
23 this--to this form of testimony because I'll tell you why. I
24 think under People versus Flowers, ah--the mother did not have
25 the right to let these officers to go into my client's

1 bedroom. M'm--and ah--granted she's a custodial parent of the
2 home, but his bedroom has some expectation of privacy in this
3 matter. I believe the testimony that's going to be solicited
4 is, the mom says, sure, go check out the house and we're going
5 to end up in his bedroom. And what I'm saying to the Court
6 is, I don't believe the mother had the authority to allow
7 those officers to go into her--search the house but not that
8 room your Honor. So I just want to make this record before we
9 start the testimony 'cause I know what's coming after this
10 your Honor.

11 THE COURT: Any objection--or any response to the
12 objection.

13 MR. HOLTZ: Yes your Honor. First of all, for
14 something like an evidentiary issue, which obviously Mr.
15 Killewald m'm--has preserved and can raise it any time.
16 Whenever we're talking about some sort of potential
17 constitutional violation, it is my belief that that's
18 appropriate to be addressed in Circuit Court. M'm--my
19 understanding of Court Rules is that the Magistrate or Judge
20 in this case may address certain evidentiary issues, but is
21 not required to. That would be a full blown evidentiary
22 issue. But I will tell the Court that we're not talking about
23 a search. All we're talking about as was testified by
24 Detective Fitzpatrick is they were verifying--they weren't
25 searching for evidence. All they were doing with the consent

1 of the defendant's mother is they were verifying whether he
2 was or was not there. That was the entire reason for them
3 looking throughout the house to see if he was there. They
4 were not on a search for evidence. And that's how it went.

5 THE COURT: Well, I--I--agree you know, I think that
6 the--the sitting Judge in a preliminary exam can rule on
7 evidentiary issue if they wish or they can pass it knowing
8 that's still preserved--

9 MR. HOLTZ: That's my understanding.

10 THE COURT: --For the Circuit Court, you know, and
11 I'm not sure what the People versus Flowers case says, I know
12 their constitutional privacy issues and whether a third party
13 has implicit or authority to allow for that search. M'm--and
14 whether it was truly a search ah--that would require a warrant
15 or if it was just a look see, m'm--so to be honest with you,
16 I'm going to pass on it because there'd be so much more that
17 needs to be fleshed out with regard to that. I would note
18 that I think--I'm not sure if the good faith exception relies
19 on if a police officer can rely on the apparent authority of
20 the mother who is the owner of the home to allow for that, I
21 think that would be an evidentiary issued because those issues
22 need to be fleshed out, I will allow the testimony at this
23 point. Noting Mr. Killewald that your objection is preserved.

24 MR. HOLTZ: Thank you Judge.

25 MR. KILLEWALD: Thank you.

1 BY MR. HOLTZ

2 Q So, did you in fact look around to verify whether or not
3 Joseph Bailey was or was not there?

4 A Yes.

5 Q First of all, was he there?

6 A No he was not.

7 Q Did you--when you were looking around to verify if he was or
8 was not there, did you see anything that caught your
9 attention?

10 A Yes.

11 Q And ah--what did you see?

12 A In--walking to the upstairs bedroom, m'm--opened the door,
13 walked in, shutting the door, looking behind the door. There
14 hanging from the door--

15 Q Well, why did you have to look behind the door?

16 A Just to make sure he wasn't there.

17 Q Okay. Please continue.

18 A Just to make sure he wasn't there. And there hanging from the
19 door in the bedroom was--

20 THE COURT: Mr. Bailey--

21 THE DEFENDANT: I'm sorry.

22 THE WITNESS: Was the hoodie.

23 THE COURT: Mr. Bailey, I've told you multiple
24 times, I'm not telling you again. Do you understand.

25 THE DEFENDANT: Yes.

1 THE COURT: This isn't the Price is Right, where you
2 have to look back in the crowd to find out what you should
3 bid, this is a preliminary exam, you need to keep your face
4 forward.

5 THE DEFENDANT: Yes sir.

6 THE COURT: Go ahead.

7 THE WITNESS: So, upon opening--or closing the door,
8 there on the back was a skeleton hoodie, the mask hanging on
9 the door.

10 BY MR. HOLTZ

11 Q Did you rummage through anything or go anywhere else?

12 A No.

13 Q What was your next step?

14 A I looked at Stanford, he looked at me and we thanked Ms.
15 Custudio and we left.

16 Q What did you do after you left?

17 A Detective Stanford started drafting up a search warrant.

18 Q Are we still--what day are we, are we still talking about 5
19 25?

20 A It's still the morning of Friday, April--or May 25th.

21 Q Now, we heard Detective Stanford testify a little bit ago and
22 he was talking about 5 25, we're talking about the same day?

23 A Same day.

24 Q Okay. So, Stanford drafts a search warrant, is that correct?

25 A Yes.

1 Q Was it ah--authorized and signed?

2 A Yes it was.

3 Q What did you do with that search warrant?

4 A It--we returned back to 2523 and executed the search warrant.

5 Q Who was there when that search warrant was executed, do you
6 know sir, do you remember?

7 A Sergeant Fox, he just left the courtroom, m'm--Detective
8 Lawson who is an in-service detective, Detective Lee, who is
9 an in-service detective, Detective Stanford, and myself.

10 Q When you went back to ah--execute that search warrant I want
11 you to tell us what you found which you determined to be of
12 evidentiary value? Then we'll get into some details.

13 A On the door hook right behind the skeleton hoodie was a winter
14 vest, jacket with the word Avirex, I believe on the left chest
15 area, m'm--there was pair of jean laying in the middle of the
16 floor that had a very distinct pattern on both front left and
17 right thigh areas, checkered board with a cross stitch
18 pattern. M'm--I believe that was all that was recovered.

19 Q I want to show you a few photographs if I could please. May I
20 approach your Honor?

21 THE COURT: Yes.

22 BY MR. HOLTZ

23 Q Sir, I want to show you what's been marked as People's
24 Proposed Exhibits 3,4, and 5. Let's start with People's
25 Proposed Exhibit 3. What is that?

1 A It is a sweatshirt hoodie of a skeleton.
2 Q And do you know where that photograph--what that is a
3 photograph of?
4 A That's a photograph of ah--the hoodie that was seized or taken
5 into our possession at 2523 Adrian.
6 Q Is that picture to be--appear to be a fair and accurate
7 representation of the article that was taken from the
8 defendant's home that day?
9 A Yes it is.
10 Q Okay. Let's got to ah--People's Proposed--we're on 4 now, is
11 that correct?
12 A Correct.
13 Q What is 4?
14 A This is--is the Avirex brand vest that was found hanging
15 behind that sweatshirt hoodie, m'm--it's dark colored m'm--
16 vest with the word Avirex, A-v-i-r-e-x on the left upper front
17 chest area.
18 Q Does that appear to be a fair and accurate representation of
19 the article that was taken from the defendant's home that day?
20 A Yes it is.
21 Q Let's got to 5.
22 A And this is the pair of jeans that were found laying on the
23 floor of the bedroom at Bailey's and Ms. Bailey's room. They
24 were separate from any other jeans, they were laying in the
25 middle of the floor and these are the jeans that we took.

1 Q And again, does that appear to be a fair and accurate
2 representation of what was taken from the defendant's home?
3 A Yes it is.
4 Q Your Honor, I would move for the admission of People's 3,4 and
5 5.
6 THE COURT: Any objection?
7 MR. KILLEWALD: Ah--your Honor, may I just--
8 THE COURT: Voir dire on those, go ahead.
9 VOIR DIRE
10 BY MR. KILLEWALD
11 Q Detective Fitzpatrick, m'm--you eluded to the fact to going to
12 Google to find some information, is that correct?
13 A Yes.
14 Q Does it appear to you that that this hoodie is ah--for sale
15 ah--to the public?
16 A Yes.
17 Q Okay. So it's not--it's not a one of a kind thing, is that
18 correct?
19 A Correct.
20 Q All right. Does the same go for the pants?
21 A I would assume so, I--
22 Q I mean, they're not one of a kind, I mean--
23 A No, looks like red (indiscernible) brand--
24 Q And the shoes, same?
25 A I don't have a picture of the shoes, I--

1 Q Okay.

2 A I believe they were Nike, Air Jordan's but I don't have a
3 picture of those.

4 Q All right. I have no further questions.

5 THE COURT: All right. Objection.

6 MR. KILLEWALD: No objections to the admission.

7 THE COURT: All right. They're admitted.

8 (At 12:02 p.m., admit PX #3,4,5)

9 BY MR. HOLTZ

10 Q You talked about sir, let's talk about that skeleton hoodie
11 and the vest for a second. I just want to make sure that ah--
12 we're clear on specifically where they were found in proximity
13 to each other in that room.

14 A Yes. The--the skeleton hoodie was on the exterior that what
15 we saw initially in--on the hook underneath that and right
16 next to it, was the vest hanging next to it.

17 Q And the jeans were where?

18 A Not a very big bedroom, but they were on the floor of that
19 bedroom.

20 Q That skeleton outfit, is that marketed as a Halloween type of
21 a thing?

22 A Yes.

23 Q And Halloween is in October, correct?

24 A Yes.

25 Q So, you took those items, is that correct?

1 A Yes.

2 Q Okay. At some point that day, did you attempt to make contact
3 with Joseph Bailey?

4 A I left his mom my phone number and after we left there the
5 house to get the search warrant m'm--Mr. Bailey called me. He
6 called me.

7 Q He called you?

8 A Yes.

9 Q In fact you told us before that you had a prior relationship
10 with him, is that correct?

11 A Yes.

12 Q Did he know who you were? Did he appear to know who you were?

13 A Yes.

14 Q In fact, did he refer to you in any way that showed
15 familiarity?

16 A Yes, he called me Fitz.

17 Q And what is Fitz?

18 A A nickname.

19 Q Okay. All right. And he called you Fitz. He knew who he was
20 talking to, correct?

21 A Yes.

22 Q Was it your understanding that he knew that you were a
23 detective with the Ann Arbor Police Department?

24 A Yes.

25 Q Okay. M'm--and timelines are difficult but we'll try and

1 piece it together a little bit. Do you know about what time
2 it was that you spoke with the defendant that day? If you
3 know.

4 A The first time it would have been between 9:30 and 10 a.m.

5 Q And let's put that in some sort of timeline with these other
6 things that you've told us about. You told us about on that
7 day ah--going to talk to his mother and then you told us about
8 leaving, getting a search warrant and coming back. I'd like
9 to try and piece those things together. So, you say you
10 talked to him in the morning, where does that fit in to our
11 timeline?

12 A I talked to him in the process of m'm--right after the knock
13 and talk at his residence where he wasn't there. He called me
14 and m'm--I--he must have called me 10 times every 10 or 15
15 minutes of that morning. We were working out a way to get the
16 warrant served and make arrangements to meet him.

17 Q Give us a synopsis of your discussions with him during that
18 time?

19 A He--Joe was feeling me out about what this was really all
20 about and he was on the assumption he was talking to people--
21 he was at work so that's why he had a job, he was working, he
22 couldn't get away from his work. I told him I'll go to his
23 work and talk to him there, he didn't want to bring the police
24 to his work site. So, I explained this is important, you
25 know, we--this warrant has come up, his name has come up and

1 in an investigation and found out he had a warrant and we need
2 to talk to him. Joe said he m'm--has Mr. Killewat (sic) as
3 his attorney, he would call him, he talked to Mr. Killewat
4 (sic) about this. Then he'd call me back and said I talked to
5 Mr. Killewat (sic), he said ah--

6 MR. KILLEWALD: Your Honor, never mind.

7 THE WITNESS: --this went back down to negotiations
8 about how to talk to Joe whether Joe said he was either going
9 to come to the station or he would send somebody to the
10 station with the \$500 dollars for bond. He wondered if we
11 would take half that money for bond. And the conversations
12 after checking out a few areas around Briarwood where he was
13 possibly working, Joe called me and in that conversation said
14 is this about something on TV where somebody's wearing clothes
15 that I have that were used in a robbery. And that's when I
16 told him, "Joe, you're a smart guy, there's more to it than
17 just the warrant."

18 BY MR. HOLTZ

19 Q Okay.

20 A And the--I can't--I mean I can pull my phone records--

21 Q No, that's--

22 A --the time he called, but it was just a back and forth
23 throughout the morning into the afternoon.

24 Q That give us the context that I'm looking for. And so then
25 the search warrant was executed, correct?

1 A Yes.
2 Q And were you with Stanford when ah--the defendant was
3 arrested?
4 A I was in the area.
5 Q You were in the area? The general area with multiple police
6 officers?
7 A Yes.
8 Q Is that correct? And roughly what time was that?
9 A M'm--roughly 12:30, one p.m., sometime in the early afternoon.
10 Q Was that before or after the search warrant was executed?
11 A After the search warrant.
12 Q Okay. And you were there when the defendant was arrested, is
13 that correct? Or in the general area?
14 A In the general area, yes.
15 Q And where was he taken?
16 A He was arrested on I94 right in back of the apartment complex
17 he was working at but then he was taken down to 301 E Huron to
18 the police department.
19 Q Okay. Once he was at the police department did you have an
20 opportunity to interview him?
21 A Yes I did.
22 Q And that was at the police department, is that correct?
23 A Yes.
24 Q Do you know either--well, did you personally read the
25 defendant his Miranda Rights, or were you there when they were

1 read to him?
2 A I personally read them to him.
3 Q Personally read them to him?
4 A Yes.
5 Q Okay. Where specifically was this interview conducted?
6 A Ah--our detective bureau is located on the 2nd floor of the
7 Justice Center, we have an interview room that's right in the
8 middle of the second floor.
9 Q Okay. And when you read him his Miranda Rights, ah--did he
10 agree to speak to you?
11 A Yes he did.
12 Q Did you have any concerns about his ability to understand the
13 questions or that he may have been under the influence of
14 anything or any of those things that would have been in
15 impediment to an interview?
16 A None at all, no.
17 MR. KILLEWALD: M'm--can we take a bathroom break.
18 Your Honor, I'm sorry, my client is telling me he really has
19 to go to the bathroom.
20 THE COURT: We'll take a quick recess for the--
21 MR. KILLEWALD: Okay. Thanks.
22 (At 12:08 p.m., recess)
23 (At 12:11 p.m., resume session)
24 THE COURT: Detective Fitzpatrick, would you take
25 the stand again if you're ready.

1 MR. HOLTZ: Oh, I'm sorry, didn't see that he was
2 back.

3 THE COURT: That's okay. I'm just--I'm happy to
4 take a break if you guys need a break. I just--if you're
5 ready, we'll go.

6 MR. HOLTZ: We're ready, sure.

7 THE COURT: All right. We're back on the record,
8 please continue.

9 BY MR. HOLTZ

10 Q So, sir, you told us that the defendant was Mirandized and he
11 waived his rights, is that correct?

12 A Correct.

13 Q Okay. And ah--how is it that you started this interview?

14 A M'm--started off with a bottle of water for Mr. Bailey, he was
15 running from the police and he wanted a drink or asked for a
16 drink, brought him some water. M'm--I read the rights from
17 this patrol issued card that I carry with me, that was read
18 verbatim, from that to him. He agreed to talk to me. M'm--
19 shook hands, renewed our acquaintance and m'm--just explained
20 that I wanted to hear his side of the story.

21 Q Okay. What--did you--did you address with him the ah--
22 articles that were taken pursuant to your search warrant that
23 being the skeleton hoodie, the vest, the jeans, the shoes,
24 etcetera?

25 A Yes.

1 Q And ah--did he acknowledge that those items were his?

2 A Yes he did.

3 Q M'm--specifically what I want to ask you about is his
4 questions about where he was the night of the robbery. And
5 I'll see if I can set that up for you. M'm--did you--did you
6 make him aware of what he was being interviewed for or what he
7 was a person of interest in?

8 A Yes. That it was a robbery at a liquor store.

9 Q And how did you do that? What did you tell him about that?

10 A Well, was--I needed to hear his side of the story. How it
11 ended up where he's in here being arrested for armed robbery
12 and the circumstances that lead up to that. And about the
13 video that was shown and that the mask and the skeleton were
14 things that he owned. He acknowledged that he had that hoodie
15 for a couple of years and he believed that the reason we were
16 talking to him was a few years back in the area of CCRB on
17 Halloween night, Joe was out roaming around and had police
18 contact and because of how distinctive that outfit is, the
19 uniformed police took his picture, he told me this, that they
20 took the picture just to document him wearing this outfit from
21 a few years ago. He said he wears it on Halloween and hasn't
22 worn it since. He wears it every Halloween he said.

23 Q And hadn't worn it since?

24 A Correct.

25 Q Okay. Now, just so we're clear, the date of offense is April

1 9th, is that correct?
2 A Yes.
3 Q And this interview that you're conducting is May 25th six or
4 seven weeks later?
5 A Yes.
6 Q Right.
7 A Correct.
8 Q Okay. Did you ask him where he was the night of the robbery,
9 Monday April 9th?
10 A I didn't give him the date, but--
11 Q Oh, okay, I'm sorry.
12 A Joe volunteered to me, he said, "The day that happened I was
13 at work in Detroit." And he said, "The day I saw the video on
14 TV I was in Detroit." Well, the video was released a week
15 after the robbery, I explained that to Joe that we aren't
16 talking about the week after, we're talking about the Monday
17 after Easter, April 9th. Joe said he must have been working
18 that week 'cause he just started the job at Briar Cove
19 Apartments that week. I then explained well, the robbery was
20 at 10 o'clock at night and he probably wasn't working late at
21 night and he agreed and said he probably worked until five,
22 six or seven o'clock. He did not have any account or
23 whereabouts of the where he was at 10 o'clock on the night of
24 the robbery.
25 Q So, first he tried to explain that he was working at the time

1 of the robbery, is that correct?
2 A Yes, in Detroit.
3 Q Okay. In Detroit, but that changed, correct?
4 A Correct.
5 Q And just so I'm clear, because I had a little difficulty
6 following you. How did that change?
7 A Well, because I explained that he was--he was explaining when
8 he say the robbery where he was, or when he saw that on TV
9 what he was doing--when that occurred. When this was released
10 to the local media, Joe said his mom called him and said,
11 "Joseph Bailey, that better not be you."
12 MR. KILLEWALD: Your Honor, again, hearsay
13 statements.
14 MR. HOLTZ: It's not being offered for the truth of
15 the mater asserted. That it better not be him.
16 THE COURT: Well, I--I'm going to sustain. That's a
17 hearsay statement.
18 MR. HOLTZ: Okay.
19 BY MR. HOLTZ
20 Q He received a message from his mother, right?
21 A He received a message from his mom.
22 Q Let's forget what mom said. What did he say about that?
23 A And that's when Joe became aware, he told me of the video that
24 was out there. And he said the day that happened, I was in
25 Detroit working.

1 Q Okay.
2 A He's ah--carpenter, skilled trades m'm--
3 Q Okay.
4 A --he does construction. So he had a job in Detroit and that's
5 where he was so he said he couldn't of have doing it, that's
6 when I explained to him what--wasn't that week it was the day
7 after Easter which would have been April 9th. And that's when
8 he said he just started the job at Briar Cove that week and I
9 explained well, the robbery was at night at 10 o'clock and I
10 didn't think he would still be working at the apartment that
11 late at--and he agreed and he said he worked until five, six,
12 seven o'clock.
13 Q Okay. So he gave some suggestions where he may have been but
14 it's fair to say they weren't relevant to the time?
15 A Correct.
16 Q Okay. After presented that information did he ever have any
17 type of statement or alibi where he may have been at 10
18 o'clock on April 9th?
19 A No.
20 Q Okay. Your Honor, if I could have just a second please.
21 THE COURT: Yes.
22 MR. HOLTZ: Judge, I don't think I have any more
23 questions right now for this witness.
24 THE COURT: All right. Cross examination.
25 CROSS EXAMINATION

1 BY MR. KILLEWALD
2 Q Mr.--Officer Fitzpatrick, just a couple of questions. M'm--
3 you've already answered a couple of them. You went on Google
4 to find more information about regarding his outfits, correct?
5 A Correct.
6 Q And they're for sale to the public?
7 A Yes.
8 Q So, again, this isn't one of a kind outfit that only Joe could
9 afford, correct?
10 A Correct.
11 Q All right. Now, m'm--the other thing, m'm--now you testified
12 on May 25th I think when you went back or the first or second
13 day you went back you spoke with the mom, correct?
14 A Correct.
15 Q And you asked that the mom--she said Joe wasn't--if I
16 understood your testimony, it sounds like you asked the mom,
17 mom said, "Joe's not here" you asked if you could look at--
18 into the house and see--confirm that, is that a fair
19 statement?
20 A Correct, yes.
21 Q What rooms did you actually go into when you did that?
22 A We were invited in by Ms. Custudio into the front hallway area
23 where we had the conversation and she--when I asked if we
24 could just make sure he's not hiding out in his bedroom, she
25 said, "Sure" she escorted us, lead the way up the stairs and

1 we made a right turn at the top of the stairs, or I'm sorry,
2 not the immediately on the right, the next one to the right
3 and we went to that bedroom.

4 Q Okay.

5 A She said that's where Joe stays.

6 Q And I may have been mistaken, but I thought your initial--your
7 original testimony was that that you wanted to search the
8 house to see if he was there?

9 A No.

10 Q So you never did go through any other rooms, you went straight
11 to his bedroom?

12 A Correct.

13 Q Okay. And--regarding the clothing that you found. Is it a
14 fair statement that clothing wasn't being hid, I mean, it was
15 open for anybody who came into his room?

16 A Correct.

17 Q Is--in your experience as a police officer, isn't that unusual
18 that--that a criminal or a suspect would--don't they normally
19 get rid of ah--items that they wear in criminal proceeding?

20 A Well, in this case, yeah, they got rid of the shotgun that I
21 believe was used in the robbery, immediately after the
22 robbery. M'm--in--are you asking my theory on--

23 Q Well, I'm asking you in your experience as a police officer,
24 don't suspects normally get rid of the clothing they're
25 wearing regarding these type of serious crimes?

1 A It depends. Not if it was something of value or something
2 that maybe he didn't want to part with. So, yes and no, I
3 can't say definitely.

4 Q Okay. M'm--the--there--other than those clothes being in the
5 video, and Joe's set of clothes, there's no connection--I
6 mean, there's--for instance, like there was something was
7 spilled on them at the store that you connect the store,
8 there's no connection with the store other than the video, is
9 that correct to those--those clothes, the suspects were
10 wearing?

11 A Not at this point, the m'm--shotgun that was recovered is at
12 the Michigan State Crime Lab.

13 Q Okay.

14 A For the fingerprints and for DNA. Mr. Bailey did offer--he
15 did offer a swab, a DNA swab, that's at the lab for
16 comparison, however, the backlog is six to eight months.

17 Q Okay. Ah--regarding the shoes, is there any dirt or mud on
18 the shoes that would tie in somewhere close to the store that
19 you could see?

20 A No.

21 Q M'm--now, m'm--didn't my client and this is my last question,
22 didn't my client say that he was at his girlfriends house on
23 Glencoe Hills.

24 A At our break I did look through the report here and he said he
25 had been staying out of trouble and if he was anywhere he was

1 at 10 o'clock he was probably at his girlfriend's house at 10
2 o'clock. He said if he was anywhere, it's probably where he
3 was.

4 Q And--

5 A He keeps a low profile.

6 Q Okay. And in your experience as an officer, isn't it fair to
7 say that sometimes people have tough times recalling where
8 they were six weeks prior?

9 A Absolutely.

10 Q When they're asked, okay. Thank you. I have no further
11 questions.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. HOLTZ

15 Q Sir, to follow up in Mr. Killewald's question, it is difficult
16 for somebody to remember where they were six weeks prior,
17 correct?

18 A Yes.

19 Q Do you know where you were six weeks prior from today, I mean,
20 with any specificity?

21 A No, but--

22 Q Let me follow up sir. When you ask that question of Mr.
23 Bailey, didn't he in fact give you a specific answer?

24 A Yes.

25 Q And did you find that curious?

1 A Specific answer that he knew he was at home or was at work or
2 was in Detroit or was at--yeah, he gave a number of different
3 answers, yes.

4 Q Thank you. Now, you've--I'm sure that you've been m'm--part
5 of dozens if not hundreds of executions of search warrants, is
6 that correct?

7 A Yes.

8 Q And is it fair to say that you found a multitude of evidence
9 which people have kept after a crime, correct?

10 A Yes.

11 Q In fact, that's why you go and do those things, right?

12 A Correct.

13 Q So is there anything unusual about evidence from a crime being
14 found pursuant to a search warrant?

15 A No, we were just here in this courtroom a couple of weeks ago
16 for the very same kind of case, with--the evidence was still
17 there after a search warrant was executed.

18 Q Thank you. Nothing further.

19 THE COURT: All right. Any questions on those?

20 MR. KILLEWALD: No your Honor.

21 THE COURT: Detective Fitzpatrick, you may step
22 down. Thank you.

23 (At 12:22 p.m., witness excused)

24 MR. HOLTZ: Judge I can tell the Court that ah--we
25 have been unable to locate Mr. Choi, so I'm going to rely on

1 the testimony pursuant to 1101 to establish that there was in
2 fact a robbery. We've heard testimony, the video and with
3 that, the people would not call any more witnesses for exam.

4 THE COURT: M'm--any ah--witnesses for the defense?

5 MR. KILLEWALD: No your Honor.

6 THE COURT: Argument.

7 MR. HOLTZ: Your Honor, I'm sorry, no witnesses.

8 MR. KILLEWALD: No.

9 MR. HOLTZ: The people would ah--move for bind over
10 and the people would also m'm--move to add a Count 4 of felony
11 firearm. PACC code on felony firearm is 750.227 B-A.

12 THE COURT: I'm sorry, say that again.

13 MR. HOLTZ: 750.227 B-A. M'm--just based on the
14 testimony. I don't have to go over all that. Thank you.

15 MR. KILLEWALD: Your Honor, ah--respectful of the
16 prosecutor, the only crime that they showed if any is Count 3
17 your Honor where my client ran from the police, but again your
18 Honor, that is not necessarily indicative that m'm--my client
19 committed this crime of armed robbery. Granted there--the
20 testimony was that there's a mul--well, there's more than one
21 of these outfits out there, to say that specifically because
22 my client owned an outfit that he should be guilty of--be
23 charged with armed robbery and be bound over for armed
24 robbery, it's simply ludicrous. Regarding the same thing with
25 the firearm, there's no doubt the firearms were found but the

1 Court has heard, there's no fingerprints, no other testing
2 your Honor. So I don't believe the client--the prosecutor
3 even though the burden is light, and most favorable to the
4 prosecutor your Honor, I don't believe they've shown that my
5 client is anyway connected with this armed robbery or the
6 weapons per se your Honor.

7 THE COURT: Mr--go ahead.

8 MR. KILLEWALD: And I would finally say your Honor,
9 the fact that the victim is not here, I think speaks volumes
10 your Honor.

11 MR. HOLTZ: I'm not sure volumes that speaks, but
12 I'll just pass that by. M'm--it appears that what Mr.
13 Killewald is arguing is that if we don't have three nuns who
14 make an identification of somebody committing a crime then
15 therefore the people can't sustain their burden. And that's
16 simply not the case. Sometimes we have to connect some dots.
17 Sometimes we have to prove a case by circumstantial evidence
18 and inferences which are made upon inferences or
19 circumstantial evidence. And I think that's exactly what we
20 have here. I do not dispute the statement taken in a vacuum
21 that there may be more than one of these shirts. I don't
22 think there's any question that there are more than one of
23 these shirts. I'm not sure how many of these shirts are
24 hanging on a door six month after Halloween, but clearly,
25 there were more shirts made just like this than just one. The

1 thing that gets a little bit curious though is first of all,
2 when you find that outfit hanging in a room and it's--I think
3 what we can conclude is that it's some sort of Halloween type
4 outfit. That we have an outfit hanging in a room
5 approximately six months away from Halloween. Not just that,
6 but it is the shirt which is appears to be identical to the
7 shirt that was worn by the person who committed this robbery,
8 but most significantly we don't just have the shirt, but we
9 also have the shirt and the jacket together in immediate
10 proximity to each other hanging on the back of a door. And I
11 think that speaks volumes. Not only that, we have pants which
12 have a distinctive type of a pattern on them as was testified
13 by Detective Fitzpatrick. So, I think when you put those
14 three items together and the shoes which quite frankly I'm not
15 that excited about because everybody has different kinds of
16 shoes. But when you have a jacket which has an identifying
17 mark on it which is consistent with what is seen in the video,
18 and you have a shirt which is consistent with what is seen in
19 the video and a very unusual shirt at a very unusual time of
20 year and you have pants that have distinctive markings on them
21 and you put all those things together then I think you get
22 beyond the argument of well, there are more than one pieces of
23 those clothing out there. And so, that's when you get to
24 circumstantial evidence.

25 I don't think that there can be any conclusion which

1 has been reached other than that is the outfit that was worn
2 during this robbery. And so, how do we tie it to this
3 particular defendant. Well, obviously we have it in his room.
4 We have it in his possession. We have him after he was
5 contacted by the police, we have him running from the police.
6 We have him fleeing from the police. We have ah--there's the
7 jury instruction and I was trying to pull it up, I didn't have
8 time to pull it up, but there's the jury instruction which
9 clearly tells jurors, you can make some sort of--and I'm
10 paraphrasing, you can make some sort of an inference as to
11 somebody fleeing from the police. There can be innocent
12 reasons why somebody flees from the police however you can
13 consider that in your deliberations as to why somebody would
14 flee from the police. We know that Joseph Bailey knew why the
15 police wanted to talk to him because there were multiple
16 discussions between the defendant and the detective earlier
17 that day so he knew why they wanted to talk to him. He
18 admitted that there was something on his phone, those types of
19 things. So he ran from the police and I think there's an
20 inference that can be made from that. But we have this outfit
21 and we have it in his room and then during the interview that
22 was conducted with Detective Fitzpatrick, no, the defendant
23 did not confess. But it was interesting what he said. When
24 the defendant decides to make a statement, obviously if he
25 doesn't we can draw any inferences from anything, but when the

1 defendant decides to make a statement we can analyze that and
2 see what it means. And most significantly, and this was the
3 point that we made, this is an interview that was conducted
4 six or seven weeks after the incident and Detective
5 Fitzpatrick says to him, something about it, and again, I'm
6 paraphrasing, the Court has all of these--this information,
7 but Detective Fitzpatrick says something to the effect of,
8 where were you six or seven weeks ago on April 9th. And he
9 says, I was right here. And he gives some story and then was
10 presented with more information about, well, no, the video
11 didn't come out for an hour, or for a few days later, then he
12 comes up with a different story, oh, then I was here. And
13 then, when presented with the information that well, this
14 crime took place at 10 o'clock at night, then the story
15 changed again. Well, I was here.

16 So, I think that there's again, that is suspect and
17 so I think when you put all those things together for a
18 probable cause standard, it is clearly a question of--of fact
19 for the jury to determine whether or not this defendant was
20 involved in that robbery, was involved with that gun and is
21 responsible for this crime. And so, for those reasons, we
22 would ask the Court to bind over this case on the original
23 three charges and the added Court 4.

24 THE COURT: All right. M'm--based on the--Mr.
25 Killewald, I think you noted it correct, that the burden on a

1 preliminary exam is much less than what would--may or may not
2 make it in front of a jury. M'm--this Court's duty is to
3 figure out whether there is probable cause to bind it over for
4 continued--I do think that the prosecutor has shown enough on
5 a probable cause basis to have the matter bound over on all
6 counts including the added Court 4, felony firearm. There's
7 obviously m'm--the video, the m'm--the testimony--hearsay
8 testimony that it was m'm--the Lee property that was involved
9 with the robbery, that m'm--Officer Schneider had found a
10 short barrel shotgun nearby with radius of the place. That
11 the video clearly shows a similar although doesn't mean it's
12 necessary the same gun but certainly a similar shotgun as used
13 in the robbery that was found nearby.

14 So, the Court can draw a conclusion under a probable
15 cause standard that that may more likely than not be the m'm--
16 the--the weapon used during the robbery given that short
17 barrel shotguns aren't usually found laying around the
18 streets.

19 M'm--second, the video taken m'm--prior to m'm--
20 during the video shows distinctive out--outfit and mask that
21 was worn, they're not just the typical m'm--ski mask or
22 anything, it's a very ah--descriptive mask of almost a
23 skeleton mask or something in a descriptive shirt and vest.
24 And although I didn't make much of the pants or the shoes,
25 certainly the shirt and the mask were very distinctive and at

1 some point the officer's were lead to this house based on
2 information they received, it's not on the record, and while
3 they were there and I'm making no ruling on this evidentiary
4 issue, but while they were there, they certainly observed what
5 they thought were items that were similar to what were seen in
6 the video. Apparently drafted a search warrant that was
7 signed by a Judge, entered the property, recovered these items
8 that seemed to match what the video showed in the video.
9 These were also found in the room that these officers were
10 told by the owner of the property m'm--that were--was the room
11 of the defendant, Joseph Bailey.

12 Furthermore, Officer Stanford in his investigation
13 when he went to a place he believe Mr. Bailey to be and upon
14 m'm--asking Mr. Bailey to who he believed to be Mr. Bailey and
15 ultimately I think was Mr. Bailey because they--he was
16 eventually picked up within 30 minutes, m'm--after announcing
17 himself, Mr. Bailey when he came around the corner, Mr.--
18 Detective Stanford believed that he had run and the thing
19 that--running from the police could be--could be any reason
20 but the interesting thing that I found from the testimony was
21 he had dropped his bag. And so, that to me suggests certainly
22 that he was in a real hurry to get out of there and then the
23 other issue is not many people jump through a window to just
24 jump through a window unless they're trying to m'm--resist or
25 evade the police. In this matter, defendant left his bag on

1 the ground and went through a window. I'm not sure if the
2 testimony was he kicked the screen window opened or what, but
3 it was in an apartment complex, that it was an apartment room
4 or was in an apartment that he was supposedly working at.

5 So, certainly m'm--for those reasons, I believe the
6 prosecutor has met their burden. There's no statements
7 technically that--there's no confession that I--the defendant
8 made. Certainly there are--there are some issues of question
9 of fact that's risen by the--what the prosecutor believes are
10 inconsistent--multiple inconsistent statements by the
11 defendant m'm--but again, my decision is based on the gun
12 found in m'm--the clothing that was found in the defendant's
13 possession in his room and m'm--the fact that this defendant
14 had fled after Detective Stanford approached certainly meets
15 the elements of Count 3.

16 So therefore, and the prosecutor m'm--there was some
17 discussion about previous record m'm--but they're adding a
18 felony m'm--that wouldn't happen, but m'm--then the issue is
19 whether a felony firearm fits. I do find it does for probable
20 cause purposes, therefore I will bind the defendant over on
21 Counts 1 through 4.

22 Mr. Killewald, do you m'm--waive a receipt of the
23 amended complaint at this point?

24 MR. KILLEWALD: Yes your Honor.

25 THE COURT: All right. You waive the reading of it?

1 MR. KILLEWALD: M'm--yes your Honor.

2 THE COURT: All right. Enter a not guilty plea on
3 behalf of Mr. Bailey on Counts 1 through 4. I'll set this for
4 a pretrial--

5 COURT RECORDER: Judge Morris, July 16th.

6 THE COURT: July 16th 2012 at 1:30 p.m., downtown Ann
7 Arbor in front of Judge Morris.

8 MR. KILLEWALD: I'm sorry, in front of who?

9 THE COURT: Judge Morris. And I will continue the
10 bond.

11 MR. KILLEWALD: M'm--your Honor, as to the issue of
12 bond. I know that the Court has bond him over, but currently
13 my client is under a \$250,000 dollar bond. The kid has been a
14 lifelong resident. He's working, he's got a family. I just
15 think that type of bond is overkill. I would ask if the Court
16 would consider more reasonable bond your Honor.

17 THE COURT: Mr. Holtz.

18 MR. HOLTZ: Your Honor, I'm not so sure that Mr.
19 Choi would consider these charges or this bond overkill. I
20 can't even imagine the terror that that man went through when
21 these people stuck a gun in his face and demanded his money.
22 Ah--this is a very, very serious charge obviously. I have
23 preliminarily run the guide lines and I score the guide lines
24 and this is a life offense, but on the bottom I score the
25 guide lines at 108 to 180 plus the two years for the felony

1 firearm. So, I think for safety to the public ah--more than
2 anything else m'm--he's a young man, and I don't know that
3 there's a danger of flight, but I think that anybody who's
4 looking at that much time has to consider that and I think
5 that it wouldn't be inappropriate to lower the bond in any
6 fashion.

7 THE COURT: Any response to that?

8 MR. KILLEWALD: M'm--no.

9 THE COURT: Ah--you know, I--the video is very
10 disturbing and whether or not this you know--under a probable
11 cause standard with the video putting a gun in somebody else's
12 face, m'm--the bond to me is reasonable given the events of
13 this case. So, I will continue the bond as it is.

14 MR. KILLEWALD: Thank you.

15 MR. HOLTZ: Thank you Judge.

16 (At 12:38 p.m., matter concluded)

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1 STATE OF MICHIGAN
2 COUNTY OF WASHTENAW
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5 I certify that this transcript, consisting of 73 pages, is a
6 complete, true, and correct transcript, to the best of my ability,
7 of the proceedings and testimony taken in this case on June 7,
8 2012.

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June 20th, 2012