

In The  
**Supreme Court of the United States**

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RONALD CENTENO,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI  
VOLUME II OF II  
(Pages 183 – 342)

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*Dated: May 27, 2021*

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1 JALEN DAVIDSON

2 being duly sworn, was examined and testified as follows:

## **DIRECT EXAMINATION**

4 BY MR. WASHINGTON:

5 Q Mr. Davidson, that screen, if you push on the top you can  
6 kind of push it down so that I'm not looking over you.

7 A Push it back.

8 Q Would you please state your full name for the record.

9 A Jalen Christopher Davidson.

10 Q How do you spell "Jalen"?

11 A J-A-L-E-N.

12 Q Do you see that microphone?

13 A Yeah.

14 Q I want you to grab that microphone and pull it towards  
15 you to little bit.

16 A Yeah.

17 Q Now, how old are you, sir?

18 A I just turned 20 today.

19 Q Today.

20 A Yeah.

21 Q And are you currently residing in the Gaston County Jail?

22 A Yes.

23 Q When you were in jail, what part of the town do you live  
24 in?

25 A Gastonia.

1 Q What are you in jail for?

2 A Robbery.

3 Q What kind of robbery?

4 A Bank robbery.

5 Q And was it an armed bank robbery?

6 A Yes.

7 Q And are you facing federal charges?

8 A Yes.

9 Q Have you pled guilty?

10 A Yes.

11 Q And after pleading guilty, did you agree to testify for  
12 the United States?

13 A Yes.

14 Q What are you required to do as part of your pleading  
15 guilty?

16 A Tell the truth on whatever the United States calls me to  
17 do.

18 Q Do you know the defendant in this case, Ronald Centeno?

19 A Yes.

20 Q What do you know him as?

21 A June.

22 Q June?

23 A Yes.

24 Q How long have you known June?

25 A For a few years.

1                   THE REPORTER: A few years?

2   A    Yes.

3   Q    How long?

4   A    An few years.

5   Q    Okay. Did you ever engage in any illegal activity with  
6   June?

7   A    Yeah.

8   Q    What?

9   A    Buying marijuana.

10   Q    Would you -- when you say "buying marijuana," would you  
11   buy marijuana from him or would he buy it from you?

12   A    I buy it from him.

13   Q    Do you remember around when you started buying marijuana  
14   from him?

15   A    Sometime in 2010; probably like July, August.

16   Q    How often would you buy it from him?

17   A    As often as he would get it. Sometimes it would be like  
18   two weeks. Sometimes it would be like two weeks and a month.  
19   Sometimes it would be two times a week.

20   Q    During -- how long were you buying from him?

21   A    Six-, eight-month span. Not quite a year.

22   Q    Six to eight months?

23   A    Yeah.

24   Q    Did he ever tell you how he was getting his marijuana?

25   A    Yes.

DAVIDSON - DIRECT

1 Q What did he tell you about how he got his marijuana?

2 A He robbed drug dealers.

3 MR. HEWITT: I assume I have a standing objection.

4 THE COURT: So noted.

5 Q I'm sorry. My question was did he ever tell you how he  
6 got his marijuana?

7 A Yes. He told me he robbed drug dealers.

8 Q And during the course of your dealings with him, did he  
9 ever contact you after those robberies?

10 A Yes.

11 Q And what information would he give to you?

12 A He just did a lick and -- or he just committed a robbery  
13 and he got some weed for sale for cheap.

14 Q You said "for cheap." Did you compare his prices to  
15 other prices?

16 A Yes. Would I compare his prices to other prices? Yes,  
17 sir, I did.

18 Q You know why they were cheaper than others?

19 A Because they were stolen.

20 Q What was the -- do you know what the smallest amount that  
21 you ever purchased for him under this arrangement was?

22 A About an ounce.

23 Q What's the most that he ever sold to you?

24 A Probably a little under half a pound.

25 Q Did you ever have occasion to speak with Junior about an

1 incident that happened at a Circle K or Shell gas station  
2 involving a robbery?

3 A Yes.

4 Q And did he discuss that incident with you?

5 A Yes.

6 THE COURT: Ladies and gentlemen, this next evidence  
7 is regular evidence. You can consider it as regular evidence.  
8 It doesn't have the same limiting application as I gave you a  
9 moment ago.

10 Q What did he tell you about the incident at the Circle K?

11 A Him and his boys called up this dude, the weed man, and I  
12 think it was for a quarter pound of weed, and they were going  
13 to rob him.

14 Him and his boy got in the back seat. They both had  
15 guns. And they told him to drive off. I guess they were  
16 going to take him somewhere or have him drive somewhere and  
17 take the weed but his friend used the taser and the taser  
18 scared the driver, and the driver jumped out of the car. And  
19 the car hit a sign and ran into a house. So they got out of  
20 the car and ran. They had a car following them so they ran  
21 and got in the car that was following them.

22 Q And that's what Junior told you?

23 A Yes.

24 Q Do you see the person you know as Junior in this  
25 courtroom today?

1 A Yeah.

2 Q Can you point to him and tell me what he's swearing?

3 A White shirt.

4 Q Of the three men at the table, where is he in the  
5 relation to them?

6 A In the middle.

7 Q What's that?

8 A In the middle.

9 MR. WASHINGTON: I have no further questions. Thank  
10 you very much.

11 THE COURT: You said it was the individual in the  
12 middle? Let the record reflect that the witness has  
13 identified the defendant.

14 **CROSS EXAMINATION**

15 BY MR. HEWITT:

16 Q Mr. Davidson, you have pled guilty to armed bank robbery,  
17 have you not?

18 A Yes, sir.

19 Q You have not been sentenced yet, have you?

20 A No, sir.

21 Q And under that Plea Agreement you are looking at a  
22 substantial number of years in federal prison, are you not?

23 A Yes, sir.

24 Q And you know that coming into this courtroom today and  
25 testifying as you say you've testified here will help you get

1 a reduction or a cut in that sentence, don't you?

2 A It's up to the judge.

3 Q Pardon me?

4 A I was told it's up to the judge. There's no guarantee.

5 Q I understand that. But you certainly do expect that you  
6 will get a reduction in your sentence, don't you?

7 A I would hope so.

8 Q That's why you're here testifying, so you can get a  
9 reduction in your sentence. Isn't that right?

10 A Partly, yes, sir.

11 Q And doing so, quite frankly, you're willing to say most  
12 anything that needs to be said to help you get a reduction in  
13 your sentence, aren't you?

14 A No, sir.

15 Q And do you know when you're to be sentenced? Do you have  
16 a sentencing date?

17 A No, sir, I do not.

18 Q So we're waiting on the outcome of this trial to see what  
19 you say in here before you get sentenced; isn't that right?

20 A I guess I don't have sentencing date. I haven't got a  
21 PSI yet.

22 Q But they are waiting on you to testify in here today  
23 before you'd be sentenced. Isn't that your understanding?

24 A No, I don't have any understanding.

25 Q Now aside from armed bank robbery, what else have been

1      convicted of?

2      A      In my life?

3      Q      Yes, sir.

4      A      Nothing.

5      Q      Now did I understand you correctly to say that prior to  
6      committing this bank robber you lived over in Gaston County,  
7      Gastonia?

8      A      Yes.

9      Q      Is that where you grew up?

10     A      Yes.

11     Q      And it's your testimony that you had this ongoing sale  
12     arrangement with Mr. Centeno to buy marijuana from him?

13     A      Yes.

14     Q      He was over here in Charlotte, isn't he?

15     A      Yes.

16     Q      And do you recall back in February being interviewed by  
17     federal agents with regard to various things?

18     A      Yes.

19     Q      And in that interview, which is about -- like about -- in  
20     typed form, about in four-page document, you don't mention one  
21     thing about buying or selling marijuana from Mr. Centeno, do  
22     you?

23     A      I think I did. I'm pretty sure I did.

24     Q      Well, do you want to see the record? Would you like to  
25     see the synopsis here?

1 A Yes, I would.

2 MR. HEWITT: If I might approach, Your Honor?

3 THE COURT: You may.

4 MR. HEWITT: Your Honor, if I may approach. We  
5 denominate this as Defendant's Exhibit 2.

6 THE COURT: You may.

7 BY MR. HEWITT:

8 Q I know there's a lot of other things in here, but would  
9 you show me anywhere in here where you told these agents that  
10 you were selling marijuana -- excuse me, buying marijuana from  
11 Mr. Centeno over six- to eight- or nine-month period of time?

12 A (Witness complies.) It says, "Davidson stated he  
13 purchased marijuana from Centeno on approximately 20  
14 occasions. Each purchase was approximately a dime bag."

15 Q That was when you say you purchased that from him when  
16 you were in Gaston County and he was in Mecklenburg County?

17 A Yes.

18 Q Now the truth of the matter is you met Mr. Centeno when  
19 he was your cellmate over in Gaston County in jail. Isn't  
20 that correct?

21 A No.

22 Q Well, he was your cellmate over there, wasn't he?

23 A Yeah, but not originally he wasn't my cellmate.

24 Q I know that but at some point in time he was your  
25 cellmate, was he not?

1 A Yes. After he asked to be moved to the cell with me,  
2 yes.

3 Q For what period of time were you in the cell with him?

4 A A month.

5 Q And during that time, Mr. Centeno had, did he not,  
6 discovery documents that he had gotten from the state charges  
7 that were similar to these?

8 A I have no idea.

9 Q And you had access to those documents, didn't you?

10 A No, sir, I didn't. He was in the cell every time I was  
11 in the cell. Actually I had school so he was in the cell more  
12 than me.

13 Q But when he had school you were in the cell?

14 A I had school also, so, no, sir, every time I was in the  
15 cell, he was in the cell.

16 Q You graduated, did you not, then he kept going to school  
17 after that?

18 A Okay.

19 Q Isn't that correct?

20 A Yes. I just graduated. I just graduated.

21 Q You had had access to his documents that were the  
22 evidence --

23 A No, sir.

24 Q -- the government or the state at that time that they  
25 said they did against him, did you?

1 A I did not know of any documents at all. I haven't any  
2 documents.

3 Q That's how you found out about these charges, what they  
4 say, that is the state document said about him involved in  
5 this robbery. Isn't that correct?

6 A No, that's incorrect. He told me himself about the  
7 incident.

8 Q Are you still in the Gaston County Jail?

9 A Yes, I am.

10 Q You have not, never been brought to the Mecklenburg  
11 County Jail until recently?

12 A No, sir.

13 Q All right. When do you say these drug transactions took  
14 place with Mr. Centeno?

15 A Where or when?

16 Q When? In 2010 you say?

17 A Yes.

18 Q Were you aware that he was not even in  
19 Charlotte-Mecklenburg County in 2010 or Gaston County in 2010?

20 A Yes, he was.

21 Q Were you aware that he was in prison at that time?

22 A No. He had just got out.

23 Q You were aware that he was in prison almost the entire  
24 year --

25 A No, he was out.

1 Q In 2010?

2 A No, sir. That's not true. I'm not aware of that.

3 MR. HEWITT: I think that's all I have at this time.

4 THE COURT: Redirect.

5 **REDIRECT EXAMINATION**

6 BY MR. WASHINGTON:

7 Q Why would you travel from Gaston County to Charlotte to  
8 buy marijuana?

9 A Because it was way cheaper. The price was way cheaper.

10 Q And so would that make it worth your while to travel?

11 A Yes.

12 MR. WASHINGTON: No further questions. Thank you  
13 very much.

14 THE COURT: Recross?

15 MR. HEWITT: No, Your Honor.

16 THE COURT: All right. Can we let Mr. Davidson  
17 return through the marshals' lock up. Thank you, sir.

18 MR. WASHINGTON: United States calls Detective Kelly  
19 Little.

20 MR. HEWITT: **May we approach and have a brief**  
21 **sidebar?**

22 THE COURT: Yes.

23 (Sidebar conference reported as follows:)

24 MR. HEWITT: Your Honor, I understand this witness  
25 is being called as an expert. They have not served notice on

1 me with regard to the nature of the marijuana trafficking, and  
2 the fact that commercial -- of drug conspiracy trade and this  
3 type of thing. I just think this is totally irrelevant and  
4 immaterial in to particular trial. If we had 500 pounds of  
5 marijuana or, you know, a trafficking offense, I think so.  
6 But this is a robbery case; a nickel-dime marijuana situation.

7 MR. WASHINGTON: That's why we're calling this  
8 witness. Because, of course, it is charged as a Hobbs Act  
9 Robbery, so we have to show -- of course, there's plenty of  
10 case law establishing that drug dealing affects interstate  
11 commerce, and I imagine if we were to stipulate that that is,  
12 in fact, the case, we wouldn't need him. Drug trafficking has  
13 an impact on interstate commerce.

14 THE COURT: Interstate commerce and foreign  
15 commerce.

16 MR. WASHINGTON: That element of the Hobbs Act.

17 MR. HEWITT: You're saying you had not called this  
18 witness to testify. I'm going to wait until you answer that  
19 question.

20 MR. WASHINGTON: That's why we're calling him,  
21 Judge.

22 MR. HEWITT: I don't think that answers my question  
23 as to --

24 THE COURT: So is there -- let me propose a  
25 stipulation and see what happens: That the events of the

1 night -- the parties stipulate the events of August 9, 2011,  
2 affected interstate and foreign commerce.

3 MS. McNERNEY: I don't have --

4 MR. WASHINGTON: Let me speak to counsel.

5 (USA have sidebar of their own.)

6 MR. WASHINGTON: Counsel has reminded me that when  
7 we talked about the stipulation that apparently the defendant  
8 had some reservation. And we just want to make sure if we  
9 send him away -- the defendant is not going to have a problem  
10 with that stipulation. I think counsel can make that call but  
11 I just want to raise that as an issue.

12 MR. HEWITT: Well, I think my objection is more to  
13 not putting an expert witness to testify about a robbery. I  
14 wouldn't have any problem if this witness got on the stand and  
15 testified that drug transactions affected interstate commerce.  
16 I don't have a issue with that. I will stipulate. I'm not  
17 going to ask any questions. But if they start requesting  
18 about these stipulations, the impact on drug transactions, the  
19 culture of drugs, I have an objection to that.

20 MR. WASHINGTON: No. The bulk of his testimony is  
21 just going to kind of explain how the drug trade effects  
22 interstate commerce.

23 THE COURT: If that's all it is, I don't have a  
24 problem with it. I do agree that getting into a short history  
25 lesson -- so marijuana trafficking is unnecessary in this

1 case -- but you do have an element under foreign commerce.  
2 Have him testify most marijuana is in interstate commerce,  
3 whatever he'd say, although you do have one piece of evidence  
4 because you have two 924(c) charges; guns and drugs are  
5 connected. That would be relevant. And I don't --

6 MR. HEWITT: I think the question here is either he  
7 had a gun or didn't have a gun. I don't think you have to  
8 have a correlation between -- well --

9 THE COURT: Drug dealers have guns because it's a  
10 business that involves blood shed and violence.

11 MR. HEWITT: But again, it's a drug conspiracy  
12 transaction and there's a gun or not to gun. You don't need  
13 an explanation of the drug culture to establish those facts  
14 and put the two together.

15 THE COURT: I agree with you there. Limit it to  
16 interstate commerce and that will cover your need.

17 MR. WASHINGTON: Okay. That's fine.

18 THE COURT: All right.

19 (Sidebar conference concluded.)

20 **KELLY LITTLE**

21 being duly sworn, was examined and testified as follows:

22 **DIRECT EXAMINATION**

23 Q Good afternoon, sir. Could you please state your full  
24 name for the record.

25 A Kelly Little.

1 Q And, sir, where are you employed?

2 A I'm employed with the City of Charlotte,  
3 Charlotte-Mecklenburg Police Department.

4 Q How long have you worked for the Charlotte-Mecklenburg  
5 Police Department?

6 A I've been with Charlotte for over 13 years.

7 Q How long have you been in law enforcement.

8 A Over 20 years.

9 Q Where did you work before you worked for  
10 Charlotte-Mecklenburg?

11 A I worked at two different agencies in Catawba County.  
12 The Maiden Police Department and the Catawba County Sheriff's  
13 Office.

14 Q Do you have any particular assignment at this time?

15 A Yes. I'm assigned to the DEA Task Force, a task force  
16 called the High Intensity Drug Trafficking Area's task force,  
17 of HIDA.

18 Q Can you tell us about your training and experience as it  
19 relates to the field of narcotics investigation?

20 A Yes. Like I said, I have been a police officer for over  
21 20 years. I spent 16 of those years working specifically in a  
22 drug unit, an undercover drug unit. My responsibilities were  
23 covert or undercover investigations of the Controlled  
24 Substances Act that deals with drugs, gambling, vice. And I  
25 currently, at my assignment with the HIDA task force is

1 investigations of large scale international drug trafficking  
2 organizations with ties to the Charlotte area.

3 Q Do you have any experience specifically in working  
4 marijuana investigations?

5 A Yes.

6 Q And how many marijuana investigations have you worked  
7 over the years?

8 A Over 20 years, hundreds of marijuana investigations.

9 Q Have you had any particular training with respect to  
10 marijuana investigations?

11 A Yes, I have. Along with basic and advanced narcotics  
12 investigations, I have also had specific training with -- that  
13 deals with the indoor marijuana grows and eradication  
14 investigations, which that's flying over in the air and  
15 looking for marijuana fields in remote areas.

16 Q Have you debriefed marijuana distributors?

17 A I have.

18 Q Have you debriefed importers?

19 A Yes.

20 Q How about users of marijuana?

21 A Yes.

22 Q Have you worked with confidential informants in marijuana  
23 cases?

24 A I have.

25 Q Have you worked undercover?

1 A Yes, I have.

2 Q Have you observed street sales of marijuana?

3 A Yes, I have.

4 Q Have you worked cases dealing with street level sales of

5 marijuana?

6 A Yes, I have.

7 Q How many times over of the years do you think you've

8 worked investigations dealing with street-level sales of

9 marijuana?

10 A Hundreds, if not a thousand or more.

11 Q Have you been involved in the seizure of marijuana?

12 A Yes, I have.

13 Q And are you familiar with various types of marijuana sold

14 in the Charlotte area?

15 A Yes.

16 Q Are you familiar with the price structure and business

17 model of the marijuana trade?

18 A Yes, I am.

19 Q Have you ever testified as expert in narcotics

20 trafficking in federal court?

21 A Yes, I have.

22 MR. WASHINGTON: Your Honor, I'd offer this witness

23 as an expert in the field of illegal marijuana trafficking.

24 THE COURT: Nationwide or regionally?

25 MR. WASHINGTON: In the Charlotte area.

1                   MR. HEWITT: Your Honor, I have no objection as long  
2 as it's limited to the area we discussed earlier.

3                   THE COURT: Yes. Thank you.

4                   The Court qualifies the witness as an expert in  
5 marijuana trafficking in the greater Charlotte area under Rule  
6 702 of the Federal Rules of Evidence.

7 BY MR. WASHINGTON:

8 Q    Does marijuana grow naturally in North Carolina?

9 A    No, it does not.

10 Q    So if there's marijuana in North Carolina, how did it get  
11 here?

12 A    It's imported through source countries or largely through  
13 the West Coast areas and it's imported here, and it can also  
14 be grown here but it has to come from the seeds or the clones,  
15 or the plants would have to come here from somewhere else.

16 Q    And can it be grown here legally?

17 A    No, it cannot.

18 Q    Do most user buy or grow their own marijuana?

19 A    Most users buy the marijuana from someone else.

20 Q    And when they buy it, do the users typically know the  
21 differences in grade and qualities?

22 A    Yes. It's usually advertised as a higher quality or low  
23 quality grade marijuana. Usually you can tell that by the  
24 strength or potency of the drug, the taste and the smell of  
25 it.

1 Q So higher grade marijuana in the Charlotte area, have you  
2 seen it before?

3 A Yes.

4 Q And where does it typically come from?

5 A It would normally come from sophisticated indoor grow  
6 operations, and then it usually takes place in the West Coast  
7 areas.

8 Q Is it common for marijuana grown in California, Canada or  
9 Mexico to show up in Charlotte?

10 A Yes, that's common.

11 Q Let me just ask you this question: Does marijuana  
12 distribution have an affect on interstate commerce?

13 A Yes, it does.

14 Q Is money generally generated in the marijuana business?

15 A Yes, it is.

16 Q Have you seen large seizures of money?

17 A I have.

18 Q And how is that money normally transmitted?

19 MR. HEWITT: I'm going to object at this point. I  
20 think we're going beyond --

21 THE COURT: Yeah, I'm not sure where you're going  
22 with this round of questions. Do you want to have a sidebar  
23 or are you just going to move on?

24 MR. WASHINGTON: I'll ask another question.

25 BY MR. WASHINGTON:

1 Q Are you saying that marijuana trafficking has an impact  
2 on foreign and interstate commerce, is there a global drug  
3 market?

4 A Yes, there is.

5 Q Okay. And do you have an opinion here as to whether  
6 sales that happen in Charlotte would impact in any way the  
7 interstate drug market?

8 A Yes, I do. The money derived here locally from sales of  
9 marijuana is going to be shipped back to the source location.

10 Q Okay. Thank you very much.

11 THE COURT: Cross.

12 **CROSS EXAMINATION**

13 BY MR. HEWITT:

14 Q Officer Little, marijuana is, in fact, grown in North  
15 Carolina, is it not?

16 A It is.

17 Q The high grade marijuana is called -- hydroponic, is that  
18 the term that's use --

19 A Well, that's process of an indoor operation. It's one of  
20 processes of an indoor grower is hydroponically.

21 Q Right. That's sort of a high grade as well?

22 A That's typically done that way, yes.

23 Q And it's not unusual to have that kind of growing  
24 operation in North Carolina, is it?

25 A Those do take place in North Carolina.

1 Q Thank you, sir.

2 MR. HEWITT: That's all I have.

3 THE COURT: Redirect.

4 **REDIRECT EXAMINATION**

5 BY MR. WASHINGTON:

6 Q Are those -- tend to be large commercial operations or  
7 small?

8 A There are some. I've seized, or been a part of  
9 investigations where large indoor grows have taken place.  
10 Most of the time that we seize those are closest grows,  
11 something you'll find in someone's bedroom, or, you know just  
12 a small grow. Those are more common.

13 Q In your experience, the high-end marijuana, where is that  
14 typically from?

15 A It's been in my experience in recent seizures as well it  
16 usually comes from the West Coast area.

17 Q Why is that?

18 A Well, I would say it's legal to grow in many West Coast  
19 states now, so you have more professional organizations;  
20 people who are more skilled in creating better hybrids or  
21 better strands of a better grade of marijuana.

22 Q Thank you very much.

23 MR. HEWITT: Nothing further.

24 THE COURT: Thank you. Can we release Detective  
25 Little?

1 MR. WASHINGTON: Yes.

2 THE COURT: Thank you. You are released. Thank  
3 you, Detective.

4 MR. WASHINGTON: At this time United States calls  
5 Detective Louis Rango.

6 **LOUIS RANGO**

7 being duly sworn, was examined and testified as follows:

8 **DIRECT EXAMINATION**

9 BY MR. WASHINGTON:

10 Q Good afternoon, sir.

11 A Good afternoon.

12 Q Would you please state your full name for the record.

13 A Louis Rango.

14 Q Where are you employed, sir?

15 A Charlotte-Mecklenburg Police Department.

16 Q How long have you worked for CMPD?

17 A Twelve years.

18 Q What assignment do you hold at Charlotte-Mecklenburg  
19 Police Department at this time?

20 A I'm a detective in the Auto Theft Unit.

21 Q How long have you worked in the Auto Theft Unit?

22 A Six years.

23 Q What do you do in the Auto Theft Unit?

24 A Mainly if your car is stolen, we investigate that. If  
25 there's -- getting into a lot of stuff, clone vehicle, we'll

1 look at VINs, try to find extra VINs on the vehicle and  
2 identify that car.

3 Q So have you become generally familiar with VIN numbers?

4 A Yes, sir.

5 Q Do you use those in your daily work?

6 A Yes, sir.

7 Q How often are you looking at VIN numbers?

8 A Every day. I go out, we have a few junk yards in  
9 Charlotte. I go out every day. If there's a VIN taken off,  
10 everybody knows the VIN in the windshield, if that's missing,  
11 then I have to find the secondary VIN number.

12 Q What a VIN number?

13 A A VIN number is specific to each car. Back in 1981 they  
14 revised all the VIN numbers from 13-digit VIN to go 17-digit  
15 VIN, and it tells you the country it was made in. Gives you  
16 restraints. What kind of vehicle it is, who makes it and what  
17 city and state it's made in.

18 Q So does each digit in the VIN actually stand for  
19 something?

20 A Just about every one. The first one is the country of  
21 origin; United States, Canada, Japan.

22 Q And so on and so forth --

23 A Right.

24 Q -- through the 13 digits?

25 A Yes, sir.

1 Q Are they standardized?

2 A Yes, sir.

3 Q Okay. So were you asked to examine a VIN number in this

4 case?

5 A Yes, I was.

6 Q And did you examine that VIN number?

7 A I did.

8 Q Do you know if that was VIN number 1G1JC524717128617?

9 A I guess that's it if you're reading it off.

10 Q Let me show you something.

11 A Please.

12 Q Does that look familiar to you?

13 A Can you make it any smaller? There you go. Thank you.

14 THE COURT: In a Exhibit 13 for identification?

15 Q For identification. Exhibit 13.

16 A Yes, sir.

17 Q Did you examine that VIN number?

18 A I did.

19 Q And by examining that VIN number, were you able to

20 determine if the vehicle it corresponds to was manufactured in

21 the state of North Carolina?

22 A Yes, I was.

23 Q And was it?

24 A No, sir, it wasn't. It was Lordstown, Ohio.

25 Q And you can tell that from looking at the VIN number?

1 A Yes, sir. The 11th digit on the VIN tells you where the  
2 vehicle was made at, city and state.

3 Q Where was that?

4 A Lordstown, Ohio.

5 MR. WASHINGTON: I'm going to move to admit  
6 Government's Exhibit 13.

7 MR. HEWITT: No objection.

8 THE COURT: 13 will be admitted and may be  
9 published.

10 (Government's Exhibit No. 13 received.)

11 BY MR. WASHINGTON:

12 Q So the VIN number is where on this document?

13 A On the vehicle, sir?

14 Q No, on this document?

15 A It's the top left.

16 Q Okay. Now can you go through and just explain how you're  
17 able to determine where it was made?

18 A Down at the bottom or next to the bottom it has a "7"  
19 next to it, which that would be the 11th digit, it's the  
20 plant. It was made in Lordstown, Ohio.

21 Q Okay. Thank you.

22 MR. WASHINGTON: No further questions.

23 MR. HEWITT: I have no questions.

24 THE COURT: All right. Can we release Detective  
25 Rango?

1                   MR. WASHINGTON: Yes, Your Honor.

2                   THE COURT: You are released.

3                   THE WITNESS: Thank you, sir.

4                   MS. McNERNEY: The United States calls Detective  
5                   Colpitts.

6                   **RICHARD COLPITTS**

7                   being duly sworn, was examined and testified as follows:

8                   **DIRECT EXAMINATION**

9                   BY MS. McNERNEY:

10                  Q     Good afternoon, Detective. Would you please state your  
11                  name.

12                  A     Richard Colpitts.

13                  Q     And who are you employed with?

14                  A     Charlotte Police Department.

15                  Q     And what is your employment status with CMPD?

16                  A     For the past ten years I have been a detective or a prime  
17                  detective for the department.

18                  Q     How long have you been in law enforcement in general?

19                  A     Seventeen years.

20                  Q     Detective Colpitts, were you asked to participate in the  
21                  investigation of a case involving a defendant by the name of  
22                  Ronald Centeno?

23                  A     I was.

24                  Q     What role did you play in that investigation?

25                  A     I was asked to show a photographic lineup.

1 Q To who?

2 A To a -- I believe it was an Anthony Garcia.

3 Q Okay. And did you, in fact, show a photo lineup to  
4 Anthony Garcia?

5 A I did.

6 Q Detective Colpitts, I'm going to show you what has  
7 already been admitted into evidence as Government's Exhibit  
8 14. Do you know what that is?

9 A That's photograph No. 1 of the photographic lineup.  
10 There should be six photographs included in that.

11 Q What's that?

12 A Photograph No. 2.

13 Q And photograph No. 3?

14 A Number 3. Photograph No. 4.

15 Q All right.

16 A Five. And then six.

17 Q Okay. And this is the photo lineup you showed to Anthony  
18 Garcia?

19 A That is correct. There should be two additional pages,  
20 like an instructional sheet that goes along with that.

21 Q Let me ask you this: Have you shown photographic lineups  
22 in the past other than this particular incident?

23 A I've shown several actually.

24 Q Okay. Is there a procedure or stated protocol that you  
25 use when you're showing a photographic lineup of a victim or a

1 witness?

2 A There is.

3 Q And what is that?

4 A We would begin by going over the first couple of pages  
5 that I mentioned that was not just shown to me, and that's  
6 instruction sheet. We begin by filling out the top portion.  
7 That would include the date, the time, along with my  
8 information to show when and where we were actually showing  
9 this specific lineup.

10 And then we would go over some instructions, which is the  
11 long paragraph in the middle of that form to make sure they  
12 clearly understand how the proceed is going to be. We were  
13 going to show you one photograph at a time. They are not in  
14 particular order. Hair styles, beards, mustaches obviously  
15 could be different than the photographs that we're about to  
16 show you. Don't take too much into account of those things.

17 And then once we go over the instructions, making sure  
18 they don't have any questions, and then we ask the questions  
19 at that point.

20 Q And the protocol that you just outlined, did you follow  
21 that procedure when you showed this photographic lineup to  
22 Anthony Garcia?

23 A I did.

24 Q Was Anthony Garcia able to identify any of the six  
25 photographs?

1 A Upon showing him photograph No. 4, he said, "That's the  
2 dude that tried to kill me." Mentioned it to me. Then he  
3 signed and dated that particular photograph.

4 Q Is this the image of the individual that he identified?

5 A Yes. That's his signature and the date that he signed at  
6 the bottom of it.

7 Q Okay. Now, at the time you showed this photographic  
8 lineup to Anthony Garcia, did you know who the suspect, if  
9 anybody, was at the time?

10 A No, I did not.

11 Q Did you know whether the suspect was in a lineup at all?

12 A I had no idea who he was or what they were looking for,  
13 just to show him a series of six photographs and see if they  
14 recognized anybody.

15 Q Since that time have you been able to confirm the  
16 identity of the person in paragraph No. 4?

17 A Yes. Since I showed the line up I had the opportunity to  
18 look at one of our databases within the department, and I was  
19 able to look up a Ronald Centeno. I learned that's the  
20 individual they selected as photograph No. 4.

21 Q Okay. Also going to show you what has already been  
22 entered into evidence as Government's Exhibit 7. I'll blow  
23 this up for you. Do you recognize Government's Exhibit 7?

24 A That was one of several tattoos that was listed in the  
25 database under his name, it was assigned with him. It was an

1 "Ashley." It was a set of red lips if I remember correctly.

2 Q When you say a "tattoo" in the database under his name,  
3 who is "his"?

4 A A Ronald Centeno. Date of the birth, 1/23 of '90.

5 Q And one final question, Detective Colpitts: When Anthony  
6 Garcia identified the person in photograph No. 4, the  
7 individual that robbed him, was there any hesitation on his  
8 part?

9 A No. It was immediate, and he was hundred percent sure  
10 that was the individual.

11 MS. McNERNEY: Thank you. I have no further  
12 questions for you.

13 **CROSS EXAMINATION**

14 BY MR. HEWITT:

15 Q Detective Colpitts, you did not participant in the  
16 investigation of this incident, did you?

17 A I did not.

18 Q You did not, beyond the photo lineup, you did not get any  
19 information from Mr. Garcia, did you?

20 A I did not.

21 Q Thank you.

22 MR. HEWITT: That's all I have.

23 THE COURT: Redirect?

24 MS. McNERNEY: No redirect.

25 THE COURT: All right, Detective, you're released.

1 Thank you very much.

2 THE WITNESS: Thank you.

3 MS. McNERNEY: Your Honor, at this time the  
4 government rests.

5 THE COURT: Ladies and gentlemen, we'll take our  
6 mid-afternoon break, and we'll actually take a longer break  
7 because there are some legal things the Court has to handle so  
8 we will break until 3:15. 30 minutes.

9 (Jury leaves the courtroom at 2:45 p.m.)

10 THE COURT: Take your seats.

11 Mr. Hewitt.

12 MR. HEWITT: Your Honor, at the end of the  
13 government's evidence, I would make a motion to dismiss,  
14 particularly with regard -- let me put my hand on the  
15 indictment here just a minute -- particularly with regard to  
16 Count Two and Count Four of the Bill of Indictment. They are  
17 gun charges. 924(c) is Count Two, and both are 924(c) counts.

18 I would contend, Your Honor, that there is  
19 insufficient evidence to go to the jury that Ronald Centeno  
20 possessed a firearm. There's plenty of evidence he possessed  
21 a taser, which as we've just discussed earlier, is not a  
22 firearm. I would contend, Your Honor, that based upon that  
23 lack of evidence with regard to a firearm either actually or  
24 constructively, that those two charges should not be allowed  
25 to go to the jury. For the record, I would move to dismiss

1 the other two counts also.

2 THE COURT: Thank you. I'll hear from the  
3 government.

4 MR. WASHINGTON: Your Honor, with respect to the  
5 924(c) counts, the United States believes that first of all  
6 there was some direct evidence that the defendant possessed a  
7 firearm, which came from the testimony of really one of the  
8 eyewitnesses to the crime, Mr. Wallace, who testified -- and  
9 he was asked a couple times but said that he did, in fact, see  
10 the defendant, Ronald Centeno, in possession of a firearm. He  
11 even described said. It was a --

12 THE COURT: .32.

13 MR. WASHINGTON: -- .32 on that day. Apparently he  
14 described a taser also and it sounds like there was some  
15 switching around of the taser and the firearm at some point.  
16 But he was an eyewitness and gave direct testimony, so that  
17 issue should go to the jury. Furthermore, Your Honor --

18 THE COURT: Note for the record my notes also say  
19 that Mr. Wallace said Junior had a gun, a .32.

20 MR. WASHINGTON: And secondly, Your Honor, even if  
21 that were not the case, the government would submit that the  
22 defendant could be convicted of these counts as an aider and  
23 abettor. Title 18 United States Code, Section 2.

24 THE COURT: You didn't charge that.

25 MR. WASHINGTON: It doesn't have to be charged. And

1 I actually cited that page in the government's trial brief.

2 The United States does not have to separately file  
3 or charge 18 U.S.C. United States 2. It is a theory of  
4 liability, and I think I cited two cases in there that say  
5 directly that even if it is not cited, the government can rely  
6 on an aider and abettor theory.

7 For that reason if Your Honor denies Rule 29  
8 challenge, we will actually ask for the aider and abettor  
9 instruction in the jury instructions because we believe it's  
10 applicable.

11 With respect to the other violations, Your Honor,  
12 the government believes that it has submitted sufficient  
13 evidence on each element of the carjacking and the Hobbs Act  
14 Robbery, such that they should go to the jury, and we ask that  
15 the Rule 29 motion be denied.

16 THE COURT: Viewing the evidence in the light most  
17 favorable to the United States, there is sufficient evidence  
18 for Count One to go to the jury. There's sufficient evidence  
19 for Count Two to go to the jury, specifically Mr. Wallace's  
20 direct testimony that he saw the defendant possessing a .32.  
21 There's sufficient evidence for Count Three to go to the jury,  
22 and there's sufficient evidence for Count Four to go to the  
23 jury also pointing to Mr. Wallace's direct testimony.

24 Now, with that said, we passed out proposed jury  
25 instructions. I'm not sure the government can rely on

1 constructive possession in this type of set of facts and we  
2 didn't include a constructive possession instruction.  
3 However, I think your argument as to aiding and abetting is  
4 correct, but it's not constructive possession. Constructive  
5 possession is more akin to it's stored in a joint bedroom, you  
6 know, it's stored --

7 MR. WASHINGTON: No. The government's argument  
8 really isn't constructive possession. It's that he could be  
9 an aider or abettor. Cites some 924(c) cases.

10 THE COURT: So there will be not be a constructive  
11 possession instruction. I just want to clarify that, and we  
12 don't have one.

13 We do have proposed instructions. I do not -- we  
14 have the definition of brandishing in here, but we have not  
15 put these instructions together in the form of a greater  
16 offense of a 924(c) with brandishing versus a 924(c) --  
17 ordinary 924(c), so we need to rework. I'm wondering if the  
18 government would like to do that for us?

19 MR. WASHINGTON: Yeah, I'll take a crack at that.  
20 Okay. If we have put the definition of "brandish" in --

21 THE COURT: Well, we have to. It's elemental right  
22 now.

23 MR. WASHINGTON: We put that in, and then in the  
24 jury -- in the verdict form we put in if you find that the  
25 defendant user of used or carried a firearm during or in

1 relation to a crime of violence, do you further find that it  
2 was brandished.

3 THE COURT: So that is not a lesser -- well, I guess  
4 technically is a lesser included --

5 MR. HEWITT: It doesn't have the impact on the  
6 sentencing aspect.

7 THE COURT: The jury has to specifically find  
8 brandishing.

9 MR. WASHINGTON: And I think that's how we could do  
10 it. If we find he's guilty of using and possession, then do  
11 you further find that he brandished the firearm. That way if  
12 they don't find it, he's convicted of a lesser.

13 THE COURT: I agree. That works. The jury has to  
14 specifically find issue because it is a statutory minimum  
15 therefore it has to go to the jury.

16 MR. HEWITT: Your Honor, I could certainly put this  
17 in a better handwritten form, for the Court's consideration  
18 this issue with the taser I addressed earlier, let me just  
19 read this and see if the Court will accept this. "The  
20 defendant is charged with possession of a firearm in Count Two  
21 and four of the Bill of Indictment. A taser is not a firearm  
22 as that term is defined in the United States Code 924(c)."

23 THE COURT: That's fine. I'm not sure if you need  
24 the first sentence. I think we'll attach it to the definition  
25 of "firearm," it would be like -- the definition of firearm is

1 on page 15 of the draft instructions, and we would just add  
2 the last couple sentences there to the definition of  
3 "firearm."

4 MR. HEWITT: You would just add "a taser is not a  
5 firearm as that term is defined in United States Code 924(c)."

6 THE COURT: That's fine. If that's satisfactory  
7 with you.

8 MR. HEWITT: That's all I want the charge to say.

9 MR. WASHINGTON: No objection.

10 THE COURT: Is taser T-A-Z-E-R or T-A-S --

11 MR. WASHINGTON: I think it's T-A-S. Spell check  
12 wouldn't recognize that.

13 THE COURT: All right. So at the end of that  
14 paragraph on page 15 we'll add the sentence, "A taser however  
15 is not a firearm under Title 18 United States Code, Section  
16 924(c)."

17 MR. HEWITT: All right.

18 THE COURT: So how much time do you anticipate,  
19 Mr. Hewitt?

20 MR. HEWITT: You mean as far as evidence? Very  
21 briefly. Are we go to take a recess at this point?

22 THE COURT: Yeah. This next 20 minutes is our time.

23 MR. HEWITT: I would anticipate very briefly, 15, 20  
24 minutes at the most, if that.

25 THE COURT: So we can send the jury home early this

1 afternoon and maybe we can do the instructions this afternoon  
2 and we can bring the jury back at 9:00 and start with  
3 instructions and closing statements.

4 MR. HEWITT: I would think so.

5 THE COURT: So we'll be in recess for that 20  
6 minutes.

7 (Recessed at 2:55 p.m. and court resumed at  
8 3:15 p.m.)

9 THE COURT: Anything before we bring the jurors in?

10 MR. HEWITT: Ready to go.

11 THE COURT: Let's bring the jurors in.

12 I'm sorry, there is one thing.

13 Mr. Centeno, please stand.

14 Mr. Centeno, under our system of criminal justice  
15 you have a right to remain silent. It's a fundamental right  
16 in this system, and if you choose to remain silent, I'll  
17 instruct the jurors they cannot use that against you.  
18 However, if you choose to remain silent, you give up your  
19 opportunity to take the stand and tell your side of the story.  
20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you take the stand, tell your side of  
23 the story, you would be subject, though, to cross-examination  
24 by the government and impeachment by the government. So you  
25 have to make a decision, and it's a very important decision,

1 only you can personally make it, whether you want to testify  
2 on your own behalf and be subject to cross-examination or  
3 remain silent, and if you do remain silent, I'll instruct the  
4 jurors not to use it against you.

5 THE DEFENDANT: I choose to remain silent.

6 THE COURT: Do you have any questions about any of  
7 my instructions?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. Then the Court finds that the  
10 defendant knowingly, voluntarily and intelligently exercised  
11 his right to remain silent and chose not to exercise his right  
12 to take the stand and tell his side of the story.

13 Did the United States make an offer to the defendant  
14 pretrial?

15 MR. WASHINGTON: Yes.

16 THE COURT: What were the material terms of that  
17 offer?

18 MS. GREENE: May it please the court, from the  
19 gallery, Your Honor. I'm Elizabeth Greene for the United  
20 States. I'm the one who indicted this case.

21 The offer to the defendant through his counsel,  
22 Larry Hewitt, was to plead, I believe, to the carjacking count  
23 and to one 924(c) count. And the other two counts would be  
24 dismissed.

25 THE COURT: And was there any estimate of what the

1 maximum exposure was there, or what the deal might have been,  
2 some estimate of Guidelines. Of course the 924(c) is stacked,  
3 but --

4 MR. HEWITT: We discussed that. I can't recall  
5 right off the top of my head. I discussed that with my  
6 client, let me put it that way, and made him aware of the plea  
7 offer, gave him a written copy of the plea offer, and he did  
8 not want to accept that.

9 THE COURT: All right. Mr. Centeno, is that  
10 correct? That you were fully advised of the plea offer that  
11 Ms. Greene just summarized and Mr. Hewitt just discussed?

12 THE DEFENDANT: That's correct.

13 THE COURT: Was it your personal decision to reject  
14 that plea offer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you.

17 The Court finds as a matter of fact the defendant  
18 knowingly, intelligently, and voluntarily rejected the offer  
19 of the United States and chose to go to trial.

20 Anything else before we bring the jurors in?

21 MS. McNERNEY: Nothing from the government.

22 MR. HEWITT: Your Honor, I do have evidence, one  
23 witness to call.

24 THE COURT: All right. Let's bring the jurors in.

25 (Jury enters courtroom at 3:20 p.m.)

1                   THE COURT: Ladies and gentlemen, before the  
2 mid-afternoon recess the government rested. Now, the defense  
3 has the opportunity, if it chooses, to present evidence.  
4 However, as I told you before there's no obligation or  
5 requirement that the defense present any evidence whatsoever.

6                   Mr. Hewitt.

7                   MR. HEWITT: Thank you, Your Honor. The defendant  
8 would call Daniel Irizarry.

9                   **DANIELLE IRIZARRY**

10 being duly sworn, was examined and testified as follows:

11                   **DIRECT EXAMINATION**

12 BY MR. HEWITT:

13 Q       State your name.

14 A       Danielle Irizarry.

15 Q       Spell your last name for the court reporter.

16 A       I-R-I-Z-A-R-R-Y.

17 Q       Ms. Irizarry, do you live here in Charlotte?

18 A       Yes.

19 Q       Do you know Ronald Centeno?

20 A       Yes, I do.

21 Q       How do you know him?

22 A       That's boyfriend.

23 Q       How long have you known him?

24 A       For about 10 -- 13 years.

25 Q       Have you been in constant contact in this relationship

1 over of the past three or four years?

2 A Yes.

3 Q Were you aware that with regard to this incident that's  
4 the subject of this trial, the supposed robbery back on  
5 August 9, 2011, that there were some state charges that  
6 originally arose out of that transaction?

7 A Yes.

8 Q Did you have occasion to be in the Mecklenburg County  
9 courthouse down here --

10 A Yeah, I did.

11 Q -- at the other end of the city with him on certain  
12 occasions?

13 A Yes.

14 Q At the time were you in the courtroom and in the  
15 courthouse at that time with Mr. Garcia who is supposedly the  
16 victim of these --

17 A Yes.

18 Q -- this robbery.

19 Would you describe where you were in the Mecklenburg  
20 County courthouse in conjunction with Mr. Garcia?

21 A Okay. We were in the courtroom when he first got locked  
22 up, and we were -- me and his sister and his nephew were  
23 sitting in the front. At the time, which was known as Anthony  
24 Garcia -- we didn't know who he was -- was behind us. And he  
25 shouted in the court --

1 MS. McNERNEY: Objection, Your Honor. I'm going to  
2 object based on relevance grounds.

3 THE COURT: Let's have a sidebar.

4 (Sidebar conference reported as follows:)

5 THE COURT: So where are we going on the relevance  
6 side?

7 MR. HEWITT: She is going to testify after this  
8 incident that Mr. Garcia threatened her in the courthouse and  
9 threatened the family.

10 THE COURT: All right. I guess that goes to  
11 impeachment.

12 MS. McNERNEY: After this incident.

13 MR. HEWITT: There's a state charge. After the  
14 incident. State charges the Feds picked up, they were in  
15 state court on these very, very charges. He was there and she  
16 would testify he made comments and things to her -- threats to  
17 both she and her family.

18 MS. McNERNEY: I would ask if it occurred, if it  
19 occurred after the incident.

20 THE COURT: I guess it's --

21 MR. HEWITT: I think it shows Mr. Garcia's mind and  
22 the fact of his threats towards the family and his attitude.  
23 He's a witness who testified.

24 THE COURT: It goes to his credibility. It may be a  
25 bit of a stretch, but I think it goes to his credibility. It

1 certainly isn't going to hurt anything, even the other issue I  
2 have -- it's hearsay. What hearsay exception allows it?

3 MR. HEWITT: I think she just -- I think this is a  
4 threat by a prosecuting witness that was directed at the  
5 others. I think he denied that he did it. I examined him  
6 about that issue and he denied it.

7 THE COURT: No, he didn't. He said it came after  
8 your client allegedly threatened him.

9 MR. HEWITT: At the courthouse he denied he said  
10 anything or did not --

11 MS. McNERNEY: That's not a hearsay objection. What  
12 he just said is not a hearsay objection.

13 THE COURT: I have a problem with the hearsay side.  
14 I can't figure out how it comes in under Rule 803 or 804. It  
15 doesn't come in under 804. How would you bring it in under  
16 803 or some other exception?

17 MR. HEWITT: Your Honor --

18 THE COURT: I just figured out how it can come in  
19 and it would be a prior inconsistent statement. Okay. So it  
20 comes in under 613, but you'd have to give -- Mr. Garcia has  
21 the right to confront the statement under 613.

22 MR. HEWITT: I asked him about it on direct  
23 examination and he denied it.

24 THE COURT: Right. But there is extrinsic evidence.  
25 He can confront the extrinsic evidence under 613.

1                   MR. HEWITT: Does that mean you have to bring him in  
2 here?

3                   THE COURT: The witness's prior statement, a party  
4 needs to show or disclose its content. Parties must on  
5 request disclose the adverse -- that's just asking the  
6 question. But here when you have extrinsic evidence of a  
7 witness's prior inconsistent statement, admissibility only if  
8 he's given opportunity to examine the witness about it -- so  
9 we have got to have Mr. Garcia back on the stand.

10                  MR. WASHINGTON: I think it's a prior  
11 inconsistent --

12                  MR. HEWITT: He --

13                  MR. WASHINGTON: He denied making the statement but  
14 at a previous time he made one statement. Now he's making a  
15 statement that's inconsistent with that.

16                  MR. HEWITT: We contend he made a statement and he  
17 says he did not make a statement. I think that's an  
18 inconsistency there.

19                  THE COURT: I have to make a decision. You all  
20 can't work out a resolution. She can only testify to it after  
21 Mr. Garcia has been confronted about it.

22                  MR. HEWITT: How do we do that. He's sitting back  
23 there. Bring him out. Put him on. Did you make that  
24 statement?

25                  THE COURT: Yeah.

1                   MR. HEWITT: All right.

2                   THE COURT: I can do that.

3                   MR. HEWITT: Then he denied it and I get to put her.

4                   MR. WASHINGTON: He said he did only after.

5                   MR. HEWITT: That's at the jail about a week or two,  
6 three, four days. That's what he said with regard to that.

7                   MR. WASHINGTON: Judge, I think what's happening  
8 here, it's really more akin to 608(b). Because what we're  
9 doing, we're starting to have -- we have a little mini trial  
10 over what happened at the Mecklenburg County courthouse. So  
11 it's -- he's trying to impeach the witness with specific  
12 instance of misconduct that he made a threat, and 608(b) keeps  
13 us from having a little mini trial.

14                  THE COURT: 608 goes to truthfulness. That's not  
15 what you're saying here.

16                  MR. HEWITT: I'm simply saying he made the  
17 statement.

18                  THE COURT: It's a prior inconsistent statement  
19 versus truthfulness. Well, I guess it's both.

20                  Well, at the same time I'll let this witness testify  
21 to it but Mr. Garcia has to be brought back out to explain the  
22 statement.

23                  MR. HEWITT: Do I have to put him on the stand  
24 logistically?

25                  THE COURT: 613(b), does the government want to do

1 it, do you want to call him?

2 MS. McNERNEY: Okay. I would agree with what  
3 Mr. Washington said a few minutes ago.

4 THE COURT: It's not really an even a prior  
5 inconsistent statement. It's close, but 608 goes to character  
6 for truthfulness. It's limited to that versus this is part of  
7 alleged threat and some bias contention between a key  
8 government witness.

9 MR. HEWITT: I think it shows his state of mind and  
10 bias. That's what the purpose of putting it up is to show his  
11 bias toward the defendant, particularly the defendant in this  
12 case whom he has obviously testified against.

13 THE COURT: Who wants to call Mr. Garcia? He  
14 doesn't have to be confronted if the government wants to waive  
15 that.

16 MR. WASHINGTON: Let me speak to counsel for second.  
17 (USA have a sidebar.)

18 We won't bring him back. We won't object to him  
19 asking -- we won't object to them asking that question absent  
20 the witness having an opportunity to respond. He was asked  
21 generally about threats so we believe that that is satisfied.

22 THE COURT: Okay. All right. Thank you.

23 (Sidebar conference concluded.)

24 THE COURT: Mr. Hewitt, you may continue.

25 BY MR. HEWITT:

1 Q Let me get you at the point. You were in the Mecklenburg  
2 County courthouse. You had come outside of the courtroom and  
3 at that point did you and other members of your family and  
4 Mr. Centeno have an opportunity to see Anthony Garcia?

5 A Yeah. We were standing in front of the courtroom and he  
6 came out of the courtroom and was like, there you go right  
7 there, he was talking to a group of people sitting on the  
8 benches.

9 Q What did he say to you in particular?

10 A He pointed me out and he pointed to me and he said  
11 there's his girlfriend and his sister. And we turned around,  
12 and he said, "Yeah, I see you all." We was like, "Well, why  
13 are you pointing us out?" And he's like, "Yeah, bitch, I see  
14 you. I'm going to get you."

15 Q And how did you take that?

16 A I took it as a threat.

17 Q Did you have occasion see him any other time?

18 A Not after that.

19 MR. HEWITT: Your Honor, that's all I have.

20 THE COURT: Cross?

21 **CROSS EXAMINATION**

22 BY MS. McNERNEY:

23 Q Ms. Irizarry.

24 A Irizarry.

25 Q Mr. Centeno is your boyfriend?

1 A Uh-huh.

2 Q You have a baby with him?

3 A Yes. Recently.

4 Q You are the mother of his child. Is that right?

5 A Yes.

6 Q Okay. Now when you were in the courtroom, the incident  
7 that you just mentioned, when exactly did that occur?

8 A When he first got charged.

9 Q When who first got charged?

10 A When Juan first got charged. When they first arrested  
11 him.

12 Q Okay. And you said you saw Anthony Garcia in the  
13 courtroom?

14 A Yes.

15 Q You initially didn't know who it was.

16 A Not until he shouted behind us when the judge was talking  
17 and Junior was standing in front of the judge, he stated, "Oh,  
18 I'm the victim. That's me." And he was right behind us. We  
19 didn't know who he was until he stood up.

20 We were asked to leave the courtroom so his attorney can  
21 finish talking to him. We were waiting for him to come tell  
22 us what was going to be next step, and while we were waiting  
23 before of the lawyer came out, he came and that's when he came  
24 and he pointed us out.

25 Q I assume you filed a police report --

1 A We got one of the officers that was in court. I don't  
2 remember his name, but he's always there, black guy, short  
3 haircut. He's always in there. And I went and I told him and  
4 I said, Look, this guy, he just pointed to us. He threatened  
5 us. He went up there --

6 Q Who is the officer?

7 A I don't remember his name.

8 Q And you didn't bring a copy of that police report with  
9 you today?

10 A We didn't file a police report. They didn't say we  
11 needed to file a police report.

12 MS. McNERNEY: Nothing else, Your Honor.

13 MR. HEWITT: I have nothing further, Your Honor.

14 THE COURT: Ms. Irizarry, you may step down.

15 MR. HEWITT: That the would be the evidence for the  
16 defendant. The defendant rests.

17 THE COURT: All right. Thank you.

18 MR. HEWITT: I would renew -- I would renew my  
19 motion at this point in time.

20 THE COURT: So noted, and the Court will discuss  
21 that in a moment.

22 Anything from the United States?

23 MR. WASHINGTON: No, Your Honor, no rebuttal.

24 THE COURT: All right. Ladies and gentlemen, we  
25 have completed the evidence in this case but you still have to

1 have this Court's instructions and you need to hear argument  
2 this counsel. There's no way that can be done this afternoon  
3 because counsel and the Court have to work on the  
4 instructions. So tomorrow morning we should be ready to start  
5 at 9:00 a.m. with instructions all prepared. Once you've  
6 heard the Court's instructions, then counsel will argue. And  
7 then after that you will have two or three minutes of  
8 instructions just as procedural matters.

9 So you should receive this case sometime mid-morning  
10 to late morning, and you can start deliberating at that point.  
11 But at this point you still need to keep an open mind because  
12 you haven't heard arguments from counsel, you haven't heard  
13 the Court's instructions, and you still can't discuss the case  
14 amongst yourselves or with any family or friends. We'll see  
15 you tomorrow morning at 9:00 a.m.

16 (Jury leaves the courtroom at 3:35 p.m.)

17 MR. HEWITT: One juror on the end dropped a pen, if  
18 we want to get that to her, Juror No. 1.

19 THE COURT: The renewed Rule 29 motion is denied for  
20 the reasons set forth previously.

21 Do you have an updated version of the jury  
22 instructions since the last recess? Why don't I give you ten,  
23 15 minutes to run through them all.

24 MR. HEWITT: That would be fine.

25 THE COURT: Then we'll come back out. So 15

1 minutes, that will be ten until four, so we'll be in recess  
2 until then. It's unnecessary for the defendant to be present  
3 during charge conference and the marshals would like to take  
4 him back.

5 MR. HEWITT: He'd like to be here.

6 THE COURT: I've never had a defendant in a charge  
7 conference.

8 (Defendant's counsel speaks with the defendant).

9 MR. HEWITT: He'll be fine. Thank you.

10 THE COURT: Well take a 15-minute recess for counsel  
11 to review the most recent version of the instructions.  
12 Anything that's highlighted in here in gray, that's issues we  
13 still need to discuss. They are pretty straight forward.  
14 We'll be back in 15 minutes.

15 MR. HEWITT: Thank you.

16 (Recess taken.)

17 THE COURT: So the most important person in my  
18 charge conference is Mr. Cook. If we talk too fast, he  
19 doesn't get whatever changes we make to the instructions. So  
20 we have to make sure he stays up with us.

21 All right. I go page by page and we're starting  
22 page 6 because I've already read pages 1 through 5. I don't  
23 believe there's anything on page 6 that's controversial. Any  
24 objections to anything on page 6?

25 Page 7, there's that one highlighted provision at

1 the bottom of the page.

2 MR. HEWITT: Your Honor, I would bring attention --  
3 I think the first full -- fourth paragraph deals with a  
4 co-conspirator.

5 THE COURT: You don't like that.

6 MR. HEWITT: Well, there are none.

7 THE COURT: There's an unindicted co-conspirator.

8 MR. HEWITT: That's right.

9 THE COURT: You are correct, though, this particular  
10 phrasing is slightly off. You don't want to use the term  
11 "co-conspirator" but you do want to use a phrase that  
12 describes Mr. Wallace and Mr. Davidson.

13 MR. HEWITT: Davidson, I think -- well, I guess  
14 Wallace in particular was all we've seen.

15 THE COURT: What I'm talking about, you want this  
16 type of instruction but not as a co-conspirator, as an  
17 interested criminal --

18 MR. HEWITT: I think they are both shown to be in  
19 the prison system, and I would contend they have an interest  
20 in the outcome here testifying. So they would be an  
21 interested party, I would think, although neither of those I  
22 believe would be co-conspirators.

23 THE COURT: Let's just take out that whole paragraph  
24 going a co-conspirator.

25 MR. WASHINGTON: The following three paragraphs, I

1 just don't know that they are applicable.

2 THE COURT: Well, the thing is this is intended to  
3 allow the defense to argue that these witnesses have an  
4 interest in their testimony but at the same time say that if  
5 you believe them, you can believe them. That's on the  
6 government's behalf.

7 MR. HEWITT: Well, for instance, the fourth full  
8 paragraph of the gray area, there's certainly no one who has  
9 pled guilty to the charges arising out of this transaction  
10 so--

11 THE COURT: That comes out.

12 MR. HEWITT: -- that ought to go.

13 And the other top two, three could be -- I think  
14 would be remedied by talking about an interested party -- not  
15 a party but an interested witness as opposed to a  
16 co-conspirator. I think that might be confusing to the jury.

17 THE COURT: You're right. We have to strike the  
18 term "co-conspirator."

19 What if we take out then all four of those  
20 paragraphs, and the paragraph at the very bottom of the page  
21 "in evaluating credibility of the witnesses," that basically  
22 picks up your concern, Mr. Hewitt. "You should take into  
23 account any evidence the witness who testified may benefit in  
24 some way from the outcome the case." Should we take out the  
25 four paragraphs in between -- the four whole paragraphs on the

1 page.

2 MR. WASHINGTON: Yes.

3 THE COURT: Both counsel agree?

4 MR. HEWITT: I'm agreeable.

5 THE COURT: Those four paragraphs come out in their  
6 entirety. I'm presuming, Mr. Hewitt, you want to leave in the  
7 paragraph about witnesses convicted of a felony. So we just  
8 need to take out that highlighting, and likewise law  
9 enforcement officer, I think we want to leave that in so we  
10 take out the highlighting there. And we actually -- we never  
11 got to a stipulation, correct?

12 MR. HEWITT: I don't think we did.

13 THE COURT: So we can take out the paragraph on the  
14 bottom of page 8. Mr. Cook, are you following?

15 MR. COOK: Yes, Your Honor.

16 THE COURT: Take out the paragraph regarding  
17 stipulations. No charts or summaries, correct? So the top of  
18 page 9, that paragraph comes out.

19 There was a question about DNA on the hat, so the  
20 next paragraph stays in. And Detective Little was the only  
21 702 expert, correct? So nothing else on page 9?

22 Now, over to page 10. All right. The middle  
23 paragraph, the one "evidence related to any alleged statement,  
24 confession or admission," I presume you want to leave that in.

25 MR. HEWITT: Yes.

1                   THE COURT: We take out the highlighting and leave  
2 that paragraph in. The paragraph says, "If you have find the  
3 defendant voluntarily and intentionally offered an  
4 explanation -- we have the pronoun "her" instead of "his."

5                   MR. WASHINGTON: Judge, I don't think that's  
6 applicable.

7                   THE COURT: I think you're right. There's no  
8 statements, so that whole paragraph comes out. Okay.

9                   Then the bottom of the page is the 404(b)  
10 instruction. Is that acceptable to leave that 404(b) in? I  
11 know I needs to stay in, I just want to make sure that's the  
12 one counsel -- all right. Okay.

13                   Anything on page 11? All right.

14                   Anything on page 12? All right.

15                   Anything on page 13? That one paragraph, "you've  
16 heard testimony, received evidence the defendant was in  
17 possession of a vehicle recently taken from the victim," it's  
18 kind of a close call. His cell phone was in there. So what  
19 does counsel want, to leave that one in or take it out?

20                   MR. WASHINGTON: I don't know that it really applies  
21 here.

22                   MR. HEWITT: I'm not sure it does either.

23                   MR. WASHINGTON: I think that's old presumption that  
24 when you're in possession of recently stolen goods you stole  
25 them.

1                   THE COURT:  We'll strike that whole paragraph.  That  
2 was on page 13.  Did you get that, Mr. Cook?

3                   MR. COOK:  Last full paragraph, Judge?

4                   THE COURT:  Starting with "if applicable."

5                   MR. COOK:  Yes, sir.

6                   THE COURT:  Now, page 14 we have "unusually timid  
7 victim."

8                   MR. HEWITT:  I don't believe that applies to  
9 Mr. Garcia.

10                  THE COURT:  I don't think so either, so we'll take  
11 that paragraph out.  The highlighted parenthetical on the  
12 bottom of the page, I presume you want to leave that in,  
13 Mr. Hewitt?

14                  MR. HEWITT:  Page 14.

15                  THE COURT:  Yes.

16                  MR. HEWITT:  Yes.

17                  THE COURT:  So Mr. Cook, take out the "if  
18 applicable" and also remove the parenthesis on either side of  
19 that sentence.  We leave in the sentence, "You may also  
20 consider the fact that no one was killed or seriously injured  
21 when you consider whether the government has proven this  
22 element."

23                  Anything on page 15?  All right.

24                  Anything on page 16?  And the definition of  
25 "firearm," is that acceptable, Mr. Hewitt?

1                   MR. HEWITT: Yes, it is. It has that taser request  
2 that I made.

3                   THE COURT: Okay. Anything on page 17? We have of  
4 aiding and abetting in here and any objection to that  
5 Mr. Hewitt?

6                   MR. HEWITT: Not to the language. I would object to  
7 it being in there overall, but if it's going to be in there, I  
8 have no objection to the language.

9                   MR. WASHINGTON: Are we to page 17?

10                  THE COURT: Can you -- Mr. Washington, I've got your  
11 trial brief. Where was your argument on aiding and abetting?

12                  MR. WASHINGTON: Page 8.

13                  THE COURT: Okay. I see. That's pretty state  
14 forward. Quoting the Fourth Circuit in the *United States v.*  
15 *Ashley*. A-S-H-L-E-Y. "Because the aiding and abetting  
16 provision, 18 United States Code, Section 2, does not set  
17 forth an essential element of the offense with which the  
18 defendant is charged or itself created a separate offense,  
19 aiding and abetting liability may not be charged in the  
20 indictment." Then it goes on to say the defendant it may be  
21 aiding and abetting under the indictment with charges on the  
22 principal the offense." That's from the *United States v. Duke*  
23 which is an old Fourth Circuit. *United States v. Ashley* is a  
24 2010.

25                  MR. WASHINGTON: Page 17 says Count Two also

1 charges -- that should come out, but I think we just put the  
2 aiding and abetting language, pick up with that last  
3 paragraph, aiding and abetting statute.

4 THE COURT: I think we need to have a lead-in  
5 sentence that replaces the sentence we have there, something  
6 that says, "Under Count Two, the defendant can also be found  
7 for liable for the principal offense because he aided and  
8 abetted." Something like that.

9 MR. WASHINGTON: If you find that he aided and  
10 abetted.

11 THE COURT: If you find that he aided and abetted.  
12 Let's work something out here for Mr. Cook. Do you see where  
13 we are?

14 MR. COOK: Yes, sir.

15 THE COURT: So Count Two, the government can also  
16 prove Count Two if you have find beyond a reasonable doubt  
17 that the offense occurred and you find beyond a reasonable  
18 doubt the defendant aided and abetted the commission of the  
19 offense.

20 MR. WASHINGTON: That exactly works for the  
21 government.

22 THE COURT: Does that work for you?

23 MR. HEWITT: That's fine.

24 THE COURT: Mr. Cook, did you get that?

25 MR. COOK: Yes, Your Honor.

1                   THE COURT: All right. Anything else on page 17?

2                   Anything on page 18?

3                   All right. I just thought of something, back to  
4 aiding and abetting, should aiding and abetting apply to all  
5 four counts?

6                   MR. WASHINGTON: That's true, it does apply to all  
7 of the counts. So maybe we --

8                   THE COURT: We need to move the aiding and abetting  
9 language --

10                  MR. WASHINGTON: To the end.

11                  THE COURT: No, I'd put it behind Count One and then  
12 after Count Two, after Count Three, and Count Four just have  
13 aiding and abetting also applies here. I have previously  
14 instructed you on aiding and abetting.

15                  MR. WASHINGTON: Okay.

16                  THE COURT: So Mr. Cook, can you do that? Take all  
17 the language with regard to aiding and abetting and move it to  
18 the end of the discussion on Count One. And then at the end  
19 of each count other Counts Two, Three and Four, say aiding and  
20 abetting -- the defendant can also be found guilty of count  
21 whatever based on aiding and abetting as I previously  
22 instructed you. You have got that in your notes.

23                  MR. COOK: I'm writing right now, Your Honor.

24                  THE COURT: All right. I'll let Mr. Cook catch up  
25 with us. We're on page 19. Anything on page 19? All right.

1                   Anything on Page 20? There is something at the  
2 bottom of page --

3                   MR. WASHINGTON: I think that was appropriate. I  
4 don't have any objection.

5                   THE COURT: I think you have sufficient evidence of  
6 fear even without this, but I think it's a correct statement  
7 of the law. Mr. Hewitt, do you have problem with that  
8 statement?

9                   MR. HEWITT: No.

10                  THE COURT: We'll leave that sentence in, of course  
11 take out "if applicable."

12                  All right. Anything else on Page 20? All right.

13                  Anything on page 21?

14                  Anything on page 22?

15                  23, just is an extra blank page. We'll take that  
16 out in final draft. 24 and 25 are my standard procedural  
17 instructions. Any problems with 24 or 25?

18                  MR. HEWITT: No.

19                  THE COURT: All right. So, Mr. Cook, how long do  
20 you think it will take you to get a final draft we can give to  
21 counsel? 15 minutes.

22                  MR. COOK: I'll aim to 15 minutes, Your Honor.

23                  THE COURT: If counsel could hang around for 15  
24 minute, we should have you a hard copy.

25                  MR. WASHINGTON: Judge, could we ask for -- we

1 submitted in our --

2 THE COURT: Did we not include it? It should be in  
3 there.

4 MR. WASHINGTON: It's on page 13 -- sorry to go back  
5 but counsel just reminded me -- at the top of the page there's  
6 a definition of "to take," and it says, "Take means to get  
7 ones hands or into ones possession, power or control by force  
8 or stratagem, and the one we proposed, which is part of the  
9 South Carolina circuit pattern, it said "even if the defendant  
10 does not force the victim to relinquish it," citing *United*  
11 *States v. Foster*, Fourth Circuit case from 2007. We would ask  
12 the Court to insert that sentence. The sentence would be --  
13 following stratagem -- which I'm not sure what that means --

14 THE COURT: We can take that word out because it's  
15 just the word I'm going challenged to say to the jurors.

16 MR. WASHINGTON: Maybe the jurors know. Stratagem.  
17 But even if the defendant does not force the victim to  
18 relinquish it, that's citing *United States v. Foster*.

19 THE COURT: I went definitely fits the facts here.  
20 Mr. Hewitt.

21 MR. HEWITT: I don't have an objection to that.

22 THE COURT: Can we is that out the word stratagem.  
23 I don't think the jurors are going to know -- is there another  
24 word we can put in there we'll leave it in.

25 MR. WASHINGTON: S-T-R-A-T-A-G-E-M. Trick?

1                   THE COURT: Okay. Stratagem, according to  
2 Dictionary.com, means "a plan, scheme or trick for surprising  
3 or deceiving an enemy or an artifice, ruse or trick to devise  
4 or used to obtain a goal or to gain an advantage over an  
5 adversary."

6                   MR. WASHINGTON: Totally inapplicable in this case.

7                   THE COURT: Well, no, it's not. Allegedly it was a  
8 set-up drug deal.

9                   MR. WASHINGTON: By force or trick.

10                  THE COURT: By force or trick. Is that acceptable?  
11 Does that make --

12                  MR. WASHINGTON: No, we still need that other  
13 clause.

14                  THE COURT: It kind of makes it unnecessary. If by  
15 force or trick. And that's what stratagem means, is tricks.  
16 So now we have stratagem in there.

17                  MR. WASHINGTON: We would ask that even if the  
18 defendant does not force the victim to relinquish it, the  
19 language still remain in because he remained in the vehicle.  
20 I mean just to make it clear.

21                  THE COURT: Mr. Hewitt, what's your opinion about  
22 this or do you care?

23                  MR. HEWITT: Well, I'm not sure there's force or  
24 trick here. He wasn't forced to get in the car. If you're  
25 using that with stratagem, I understand that term.

1                   THE COURT: The first witness this morning,  
2 Mr. White, did say -- did say that the other guy, was the  
3 other guy, the dark-toned man, didn't he force himself --  
4 someone into the car. He got in there quick -- faster.

5                   MR. HEWITT: He was led in by Mr. Centeno, by that  
6 testimony. It already said by the force or stratagem. The  
7 word "force" is already in here so what are you proposing to  
8 substitute for the word "stratagem"?

9                   THE COURT: Trick. Scheme or trick.

10                  MR. HEWITT: I would think scheme -- stratagem I  
11 guess is a scheme. Scheme would be an appropriate word.

12                  THE COURT: By force or scheme. And you still want  
13 "even if the defendant does not force the defendant to  
14 relinquish it."

15                  MR. WASHINGTON: Yes, Your Honor.

16                  THE COURT: Any problem with that?

17                  MR. HEWITT: No, Your Honor.

18                  THE COURT: We'll put in by force or scheme, even if  
19 the defendant does not force the possessor.

20                  MR. WASHINGTON: Possessor. That's fine.

21                  THE COURT: The possessor to relinquish it.

22 Mr. Cook, did you get that?

23                  MR. COOK: Yes, Your Honor.

24                  THE COURT: All right. Anything else?

25                  MR. HEWITT: I think that's all here.

1                   THE COURT: Give us 15 minutes.

2                   Oh, have you looked at the verdict form? The  
3 verdict form, is it all right?

4                   MR. WASHINGTON: It looks fine to the government.

5                   There's a typo in paragraph 2 of page 13 that says  
6 "for" instead of "force." In the "taking" paragraph.

7                   THE COURT: Right. I see. F-O-R-B-E.

8                   Mr. Cook, do you see that?

9                   MR. COOK: Yes, Your Honor.

10                  THE COURT: I don't know why spell check didn't pick  
11 that up.

12                  All right. So I think we have a set of  
13 instructions. We have a verdict form.

14                  MR. HEWITT: Yes, Your Honor. That's fine. We'll  
15 have instructions out in just a few minutes so we'll recess.

16                  If the parties want to review the exhibits with the  
17 clerk, you may. Okay. Thank you.

18                  (Court is adjourned at 5:08 p.m. to resume at  
19 8:55 a.m. on May 14, 2013.)

20                  -- - - -

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24

25

1           **UNITED STATES DISTRICT COURT**  
2           **WESTERN DISTRICT OF NORTH CAROLINA**

5           **CERTIFICATE OF REPORTER**

6           I, JOY KELLY, RPR, CRR, certify that the foregoing  
7           is a correct transcript from the record of proceedings in the  
8           above-entitled matter.

12           S/JOY KELLY

13           **JOY KELLY, RPR, CRR**  
14           **U.S. Official Court Reporter**  
14           **Charlotte, North Carolina**

15           **Date** \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                   ) 3:12CR385  
                                  ) MAY 14, 2013  
vs                             )  
                                  )  
RONALD CENTENO,             )  
                                  )  
Defendant.                   ) /

TRANSCRIPT OF INSTRUCTIONS, CLOSING ARGUMENT,  
VERDICT  
BEFORE THE HONORABLE FRANK D. WHITNEY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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## I N D E X

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## PROCEEDINGS

MONDAY, MAY 14, 2013

(Court called to order at 8:55 a.m.)

4 THE COURT: I now see my watch and the courtroom  
5 clock are off a little bit. I thought I was coming in at five  
6 till. Anyway, counsel has of the final jury instructions.  
7 Correct?

8 MR. WASHINGTON: Yes.

13 MR. WASHINGTON: Yes, sir.

14 THE COURT: Have you been advised of the shifting of  
15 juror's seats?

16 THE CLERK: Not yet Judge.

17 THE COURT: Juror No. 2 is wearing a leg brace  
18 today. I don't know the story. It's Juror No. 2 is wearing a  
19 leg brace. Juror No. 2 probably can't make it all the way  
20 down to seat 2, so we're going to shift 7 and 2. No, we  
21 are -- going to shift the all row down one. So seat 1 remains  
22 seat 1, but now in seat 2 will be Juror No. 3. Now in seat 3  
23 will be Juror No. 4, and now in seat 5 -- you know the rest of  
24 the story.

25 How much time does counsel need for closing

1 argument? It's an one-day trial.

2 MS. McNERNEY: Your Honor, I imagine mine will be  
3 probably about 15 minutes.

4 THE COURT: That's fine.

5 MR. HEWITT: I would say about 15 minutes.

6 MR. WASHINGTON: Could we get 15 and 5 for the  
7 rebuttal?

8 THE COURT: Well, then that's fine, but Mr. Hewitt  
9 gets 20 then.

10 MR. WASHINGTON: That's fine.

11 THE COURT: You're doing your own clock, right.

12 MR. WASHINGTON: I have to keep track.

13 THE COURT: I just tell you when you run out of  
14 time. 20 minutes a side. Just tell me when you're ready with  
15 the instructions.

16 THE CLERK: We are still waiting on one juror.

17 (Defendant enters courtroom the 9:02 a.m.)

18 THE COURT: Is counsel ready for the jury?

19 MR. WASHINGTON: There is a typo, Judge, on page 19,  
20 second paragraph from the bottom. It says "transportation for  
21 flour of goods."

22 MR. HEWITT: Where are you?

23 MR. WASHINGTON: Page 19, second paragraph from the  
24 bottom, "it says flour."

25 THE COURT: I guess it's supposed to be "flow." The

1 flower of goods is very rosy. Sorry, I couldn't pass that up.

2 So we will -- the copy goes back to the jury. We'll  
3 say "flow of goods." I'll read it "flow of goods," and I'll  
4 point out it's a typo.

5 MS. MAGEE: I already have changed it.

6 THE COURT: It's already changed on the digital  
7 version of the one we're reading from. Any other changes?  
8 That is it.

9 Anything before we bring the jurors? Well, let me  
10 ask if we have the 12th juror yet -- or 13th juror yet.

11 THE CLERK: No, we don't have the 12th juror. He'll  
12 let us know as soon as we do.

13 THE COURT: So we're still one juror short, so I  
14 guess we're in recess in place until that juror gets here.

15 (Pause)

16 We do have 12 jurors present. We have just need to  
17 make a decision ten after 9, shall we wait until 9:15.

18 MR. HEWITT: Wait a few more minutes. There will  
19 come a point where we need to move forward.

20 THE COURT: All right. So we'll be in recess for  
21 five minutes until 9:15 when we see the situation.

22 (Recess taken and reconvened at 9:20 a.m.)

23 THE COURT: All the jurors are now here.

24 We also got a note from Juror No. 7 that she had an  
25 upset stomach last night and that she might have to signal to

1 us that she might have to take a comfort break during the  
2 course of the trial. If she does, we'll just recess.  
3 Hopefully it won't interrupt your argument. We might have to.  
4 That's just putting you on alert. For the clerk of court  
5 here's that note.

6 All right. Anything before we bring the jurors in?

7 MR. HEWITT: We're ready.

8 THE COURT: Let's bring them in. Do they know the  
9 shift of seats.

10 COURT SECURITY: Yes, sir.

11 (Jury enters the courtroom at 9:20 a.m.)

12 THE COURT: If any juror at any time during the  
13 course of this morning becomes ill and needs a comfort break,  
14 just write a note and pass it down to the court security  
15 officer. We'll then find a moment during the course of either  
16 instructions or argument where we can briefly recess.

17 And we are to the point of the Court giving you  
18 substantive instructions. As I told you yesterday, when I  
19 give you formal instructions, you will have a hard copy of  
20 these instructions in the jury room so you don't need to take  
21 notes. Please follow along with me as I read these  
22 instructions to you.

23 There are a lot of instructions, so just be patient  
24 with me. Like I said, you don't have to memorize anything  
25 because you will have a hard copy. Both a hard copy and a

1 digital copy that you can put up on the screen in the jury  
2 room.

3                   Members of the jury: Now that you have heard the  
4 evidence and soon will hear the arguments of counsel, I will  
5 instruct you as to the law that applies in this case. If any  
6 difference appears to you between the law as stated by the  
7 attorneys in closing argument and that stated by me in these  
8 instructions, you are to be governed by my instructions.

9                   I remind you that it is your duty and your  
10 responsibility in the trial to judge the facts in accordance  
11 with the law as I instruct you. You may find the facts only  
12 from the evidence which I have allowed to be admitted during  
13 the trial. You must not consider anything which I have  
14 instructed you to disregard and evidence which I have admitted  
15 only for a limited purpose, you must consider only for that  
16 purpose. When you retire for deliberations, you should recall  
17 and consider all of instructions that I gave you at the  
18 beginning of the trial concerning your role and duties as  
19 jurors.

20                   In addition, I now want to give you more specific  
21 instructions concerning certain testimony or evidence that was  
22 received in the course of this trial.

23                   The indictment contains a total of four counts  
24 against the defendant. Each count charges defendant with a  
25 different crime. You must as a matter of law consider each

1 count of the indictment and defendant's involvement in this  
2 that count separately, and you must return a separate --  
3 that's misspelled -- separate verdict for each count in which  
4 the defendant is charged.

5 No, it's not. I'm sorry.

6 The Court has previously instructed you on direct  
7 and circumstantial evidence. That prior instruction continues  
8 to apply. As the Court said previously, the law makes no  
9 distinction between direct and circumstantial evidence but  
10 simply requires that your verdict must be based on all the  
11 evidence presented.

12 Your decision on the facts of this case should not  
13 be determined by the number of witnesses testifying for or  
14 against a party. You should consider all the facts and  
15 circumstances in evidence to determine which of the witnesses  
16 you choose to believe or not believe. You may find that  
17 testimony of smaller number of witnesses on one side is more  
18 credible than the testimony of a greater number of witnesses  
19 on the other side.

20 The testimony of a witness may be discredited or  
21 impeached by showing that he or she previously made statements  
22 which are inconsistent with his or her present testimony. The  
23 earlier contradictory statements are admissible only to  
24 impeach the credibility of the witnesses and not to establish  
25 the truth of these statements. It is the province of the jury

1 to determine the credibility, if any, to be given the  
2 testimony of a witness who has been impeached. If a witness  
3 is shown to have knowingly testified falsely concerning any  
4 material matter, you have the right to distrust such witness's  
5 testimony in other particulars; and you may reject all the  
6 testimony of that witness or give it such credibility as you  
7 may think it deserves.

8                   In evaluating credibility of the witnesses, you  
9 should take in account any evidence that the witnesses  
10 testified may benefit in some way from the outcome of this  
11 case. Such an interest in the outcome creates a motive to  
12 testify falsely and may sway the witness to testify in a way  
13 that advances his own interests. Therefore, if you find that  
14 any witness whose testimony you are considering may have an  
15 interest in the outcome of this trial, then you should bear  
16 that factor in mind when evaluating the credibility of his or  
17 her testimony and accept it with great care.

18                   This is not to suggest that every witness who has an  
19 interest in the outcome of the case will testify falsely. It  
20 is for you to decide to what extent, if at all, the witness's  
21 interest has affected or colored his or her testimony.

22                   You have heard the testimony of witnesses who have  
23 been convicted of a felony, a crime for which a person may  
24 receive a prison sentence of more than one year. Prior  
25 conviction of a felony is one of the circumstances that you

1 may consider in determining the credibility of a witness.  
2 While the testimony of a witness may be discredited or  
3 impeached by evidence showing that the witness has been  
4 convicted of a felony, it is the sole and exclusive right of  
5 the jury to determine the weight to be given to any prior  
6 conviction as impeachment, and the weight to be given to the  
7 testimony of anyone who has previously been convicted of a  
8 felony. You have heard from law enforcement officers in this  
9 case. Because a particular witness may be a law enforcement  
10 officer, or for that matter any employee of any other  
11 governmental agency. That does not mean that his testimony is  
12 deserving of any special consideration or any greater weight  
13 than that of any other witness's testimony.

14 You may judge the credibility of all witnesses,  
15 including government employees, and consider their interest,  
16 if any, in determining the weight to be given to their  
17 testimony. Furthermore, it is quite legitimate for counsel to  
18 attack or question the credibility of any agent or other  
19 government employee on the ground that his testimony may be  
20 colored by the personal or professional interest in the  
21 outcome of this case.

22 Questions have been raised by the government's  
23 failure to use or decision not to employ certain investigative  
24 techniques, or to present any particular types of evidence.  
25 You may consider these facts in deciding whether the

1 government has met its burden of proof, because you should  
2 look to all of the evidence, or lack of evidence, in deciding  
3 whether each defendant is guilty or not guilty. However,  
4 you're also instructed that there's no legal requirement that  
5 the government use any specific investigative technique or to  
6 present any particular types of evidence to prove its case.  
7 Therefore, the government is not required to present such  
8 evidence for you to find each defendant guilty. Rather your  
9 concern is whether the evidence which was admitted proved each  
10 defendant's guilt beyond a reasonable doubt.

11 During the trial you heard testimony -- let me  
12 rephrase that last sentence.

13 Has proved each -- "the defendant guilty beyond a  
14 reasonable doubt as to each count." Does that sound better?

15 During the trial you heard testimony of Detective  
16 Kelly Little as an expert in the field of illegal marijuana  
17 trafficking in the greater Charlotte area. A person's  
18 training and experience may make him or her a true expert in a  
19 technical field. The law allows that person to state an  
20 opinion here about matters in this particular field. Merely  
21 because these experts have expressed an opinion, however, does  
22 not mean that you must accept these opinions. The same as  
23 with any other witnesses. It is up to you to decide whether  
24 you believe this testimony and chose to rely upon it. Part of  
25 that decision will depend on your judgment about whether the

1 experts background or training and experience is sufficient  
2 for him or her to give the expert opinion that you have heard.  
3 You must also decide whether his or her opinions are based on  
4 sound reasons, judgment and information.

5           Certain government exhibits are typewritten  
6 transcripts of certain tape-recordings which have been  
7 admitted into evidence. In considering whether a transcript  
8 accurately describes the meaning of a conversation, you should  
9 consider the testimony presented to you regarding how and by  
10 whom the transcript was made. Your consideration of the  
11 transcripts should be based on the evidence introduced in the  
12 trial.

13           Additionally, the transcripts were prepared by the  
14 government as an aid to identify who was speaking and what was  
15 said. You are specifically instructed that whether the  
16 transcripts correctly or incorrectly reflect the identity of  
17 the speakers and the content of telephone conversation is  
18 entirely for you to determine. You should make this  
19 determination without prejudice or bias based on the testimony  
20 regarding the preparation of transcripts, your own comparison  
21 of the transcripts to what you have heard on the tapes, and  
22 any other relevant evidence or testimony.

23           Evidence relating to any alleged statement,  
24 confession, admission or act alleged to have been made or done  
25 by the defendant outside of court and after a crime has been

1 committed should always be considered by the jury with caution  
2 and weighed with great care. All such alleged statements,  
3 confessions or admissions should be disregarded entirely  
4 unless you are convinced that the statement, confession,  
5 admission or act was made or done knowingly and voluntarily.

6                   You've heard evidence of the acts of the defendant  
7 which may be similar to those charged in the indictment but  
8 which were committed on other occasions. You must not  
9 consider any of this evidence in deciding if the defendant  
10 committed the acts charged in the indictment. However, you  
11 may consider this evidence for other very limited purposes.

12                   You may consider evidence of the similar acts  
13 allegedly committed on other occasions to determine whether  
14 defendant had the state of mind or intent necessary to commit  
15 the crime charged in the indictment; or whether the defendant  
16 had the motive or the opportunity to commit the acts charged  
17 in the indictment; or whether the defendant acted  
18 according to a plan or in preparation for commission of a  
19 crime; or whether the defendant committed the acts for which  
20 they are on trial -- for which he is on trial by accident or  
21 mistake.

22                   These are the limited purposes for which any  
23 evidence of other similar acts may be considered. Remember,  
24 defendant is on trial only for the crime charged, and you may  
25 consider the evidence of prior acts only for the limited

1 purposes for which they were offered.

2                   Defendant has elected not to testify in this case.

3                   The Court instructs you that he has a constitutional right not  
4                   to take the stand and testify, and not to speak at all or  
5                   offer any evidence, the burden of proof being entirely upon  
6                   the government. You must draw no adverse inferences of any  
7                   kind from his exercise of this privilege not to testify. This  
8                   right is a fundamental one in America's criminal law, and one  
9                   which cannot be disregarded by the jury as its pleasure.

10                  You are here to decide whether the government has  
11                  proven beyond a reasonable doubt that the defendant is guilty  
12                  of the crimes charged. The defendant is not on trial for any  
13                  act, conduct or offense not alleged in the indictment; nor are  
14                  you concerned with the guilt of any other person or persons  
15                  not on trial as a defendant in this case.

16                  Every defendant in a criminal case is presumed to be  
17                  innocent, and this presumption continues throughout the course  
18                  of trial. This presumption will end only if you arrive  
19                  unanimously at the conclusion, if you do, that the government  
20                  has proved each of the essential elements of the crimes  
21                  charged in the indictment beyond a reasonable doubt.

22                  The term "reasonable doubt" means just what it says:  
23                  It is doubt of defendant's guilt based on reason and common  
24                  sense, and I will not attempt to define the term further.

25                  The punishment provided by law for the offense

1 charged in the indictment or for the offenses charged in the  
2 indictment, should there be a verdict of guilty on any  
3 offense, is a matter exclusively within the province of the  
4 court. You should not consider punishment in any way in  
5 arriving at an impartial verdict as to the guilt or innocence  
6 of the accused.

7                   I will now instruct you about the statutes and other  
8 law applicable to the criminal conduct alleged in the  
9 indictment.

10                  Count One of the indictment charges the defendant  
11 with carjacking in violation of Title 18, United States Code,  
12 Section 2119. I will now read to you Count One, then I will  
13 read the statute that the defendant is charged with violating.  
14 Finally, I will tell you the essential elements of this crime.

15                  You should keep in mind as I review this charge that  
16 you will have a copy of the Bill of Indictment and these jury  
17 instructions with you in the jury room during deliberations,  
18 so it will not be necessary for you to try to memorize the  
19 charge or take notes. I remind you that Bill of Indictment is  
20 not evidence.

21                  As I said before you'll have a copy of the Bill of  
22 Indictment in the jury room. It will not be on your screen,  
23 though, as I read each of the counts.

24                  Count One: On or about August 9th, 2011, in  
25 Mecklenburg County, in the Western District of North Carolina

1 and elsewhere, the defendant, Ronald Centeno, with intent to  
2 cause death and serious bodily harm, did unlawfully take from  
3 the person and presence of another by force, violence and  
4 intimidation a motor vehicle that had been shipped,  
5 transported and received in interstate or foreign commerce,  
6 that is a Chevrolet, in violation of Title 18, United States  
7 Code, Section 2119.

8                   Section 2119 of Title 18, United States Code  
9 provides in part, "Whoever, with the intent to cause death or  
10 serious bodily harm, takes a motor vehicle that has been  
11 transported, shipped or received in interstate or foreign  
12 commerce from the person or presence of another by force and  
13 violence or by intimidation is guilty of a crime."

14                   In order to prove a defendant guilty of  
15 carjacking -- in order to prove the defendant's guilty of  
16 carjacking, the government must establish beyond a reasonable  
17 doubt that -- each of the following elements of the offense:

18                   First: That the defendant took a motor vehicle from  
19 the person or presence of another.

20                   Second: That the defendant took the vehicle by  
21 using force and violence, or by acting in an intimidating  
22 manner.

23                   Third: That the defendant acted with intent to  
24 cause death or serious bodily harm. And

25                   Fourth: That the motor vehicle had previously been

1 transported, shipped or received in interstate or foreign  
2 commerce.

3 I will now define certain terms used in the  
4 definition of the offense. If I do not define certain words,  
5 you should assign to them their ordinary everyday meanings.

6 "To take" means to get one's hands or into one's  
7 possession power or control by force or scheme, even if the  
8 defendant does not force the possessor to relinquish it.

9 The government is not required to prove the  
10 defendant's motive because motive is not relevant. And the  
11 government is not required to prove that the defendant  
12 intended to deprive the victim of the vehicle permanently.

13 "Taking" under this statute means for some period of  
14 time. "Taking" is when the defendant takes control of the  
15 victim's vehicle even if the defendant does not force the  
16 victim to relinquish it. For example, forcibly removing a  
17 victim from a vehicle and placing him in the trunk would  
18 constitute taking the vehicle.

19 To prove that defendant took the vehicle, quote,  
20 "from the person or presence of another," close quote, the  
21 government must prove that the victim was sufficiently within  
22 reach, inspection or observation of the vehicle and that he or  
23 she could have retained his or her possession of it if not  
24 overcome by violence or prevented by fear.

25 To prove the vehicle was taken, quote, "from the

1 presence of another," close quote, the government must show  
2 both a degree of physical proximity to the vehicle and the  
3 ability to control or immediately obtain access to the  
4 vehicle.

5 The government can meets its burden on the second  
6 element either by proving that defendant, quote "used force  
7 and violence," close quote, or the defendant acted, quote, "in  
8 an intimidating manner." The government does not have to  
9 prove that the defendant used force and violence if it proves  
10 that defendant acted in an intimidating manner.

11 Ladies and gentlemen, I'm also going to give you an  
12 oral instruction that goes with what I've just told you. And  
13 this will be added into the hard copy you receive in the jury  
14 room. But although the government with prove one of these two  
15 alternatives elements, use of force and violence or an  
16 intimidating manner, a jury has to be unanimous as to that  
17 alternative element in a vote beyond a reasonable doubt. So  
18 the six of you can't say use force and violence; six of you  
19 can't say in an intimidating manner. All 12 of you would have  
20 to agree as to the alternative element.

21 Do you understand that? Counsel agree that's a  
22 proper statement of law?

23 MR. HEWITT: We agree.

24 MR. WASHINGTON: Yes, Your Honor.

25 THE COURT: Now, picking back up with the written

1 instructions.

2                   The phrase "intimidating manner" means the defendant  
3 did or said something that would make an ordinary reasonable  
4 person fear bodily harm. The government does not have to  
5 prove the defendant's behavior caused or could have caused  
6 great terror or panic, but it must show that ordinarily person  
7 would have feared bodily harm because of defendant's behavior.  
8 The government also does not have to prove the defendant made  
9 explicit threats of bodily harm. If you find the defendant  
10 confronted a victim in a way that would reasonably create a  
11 fear of bodily harm, that is sufficient.

12                   To establish the third element, the intent to cause  
13 death or serious bodily harm, the government must prove that  
14 at the moment the defendant demanded or took control over the  
15 vehicle, the defendant possessed the intent to seriously harm  
16 or kill the driver if necessary to steal the car or for any  
17 other reason. However, the government need not prove the  
18 defendant actually intended to cause the harm. It is  
19 sufficient that the defendant was conditionally prepared to  
20 act if the person failed to relinquish the vehicle. A  
21 defendant may intend to engage in certain conduct only if a  
22 certain event object occurs. In this case the government  
23 contends the defendant intended to cause death or serious  
24 bodily harm if the vehicle had refused -- excuse me, if the  
25 victim had refused to turn over his car. If you find beyond

1 a reasonable doubt the defendant had such intent, the  
2 government has satisfied this element of the offense.

3                   Once again, ladies and gentlemen, as I told you at  
4 the last paragraph, we have alternative elements, in this case  
5 to cause death or to cause serious bodily harm. You have to  
6 agree unanimously as to that alternate element. So the six of  
7 you can't say to cause death and six say serious bodily harm.  
8 All 12 of you have to agree on the alternative element.

9                   Evidence that the defendant intended to frighten the  
10 victim is not by itself sufficient to prove intent to harm or  
11 kill. It is, however, one of the facts you may consider in  
12 determining whether the government has met its burden. You  
13 may also consider the fact that no one was killed or seriously  
14 injured when you consider whether the government has proven  
15 this element.

16                   Regarding the fourth element, that the vehicle had  
17 previously been transported, shipped or received in interstate  
18 or foreign commerce, it is not necessary that the government  
19 prove that the defendant had any involvement in the interstate  
20 shipping, driving or transportation, or that the defendant  
21 knew that the vehicle had previously been shipped, driven or  
22 transported in interstate commerce.

23                   "Interstate commerce" includes commerce between one  
24 state, territory, possession or the District of Columbia and  
25 another state, territory, possession or the District of

1 Columbia.

2                   The government can also prove Count One if you find  
3 beyond a reasonable doubt that the offense occurred and you  
4 find beyond a reasonable doubt that the defendant aided and  
5 abetted the commission of the offense.

6                   The aiding and abetting statute, section 2(a) of  
7 title 18 United States Code provides that: "Whoever commits  
8 an offense against the United States or aids or abets or  
9 counsels, commands, or induces or procures its commission, is  
10 punishable as a principal.

11                  Under the statute it is not necessary for the  
12 government to show that a defendant, himself, physically  
13 committed the crime with which he is charged in order to  
14 sustain its burden of proof. A person who aids or abets  
15 another in the commission of an offense is just as guilty of  
16 that offense as if he committed it himself.

17                  Accordingly, you may find the defendant guilty of  
18 the offense charged if you find beyond a reasonable doubt that  
19 another person actually committed the offense with which the  
20 defendant is charged, and that the defendant aided or abetted  
21 that person in the commission of the offense.

22                  In order to "aid or abet" another in the commission  
23 of a crime, it is necessary that the defendant knowingly  
24 associate himself in some way with the crime, and that he  
25 participate in the crime by doing some act to help make the

1       crime succeed.

2               To establish that the defendant "knowingly"  
3       associated himself with the crime, the government must  
4       establish that the defendant knew that the motor vehicle would  
5       be unlawfully taken from the person and presence of another by  
6       force, violence and intimidation, with the intent to cause  
7       death and serious bodily harm.

8               To establish the defendant participated in the  
9       commission of the crime, the government must prove that the  
10       defendant engaged in some affirmative conduct or overt act for  
11       specific purpose of bring about that crime.

12               The mere presence of a defendant where a crime is  
13       being committed, even coupled with knowledge by the defendant  
14       that a crime is being committed, or merely associating with  
15       others who are committing a crime is not sufficient to  
16       establish aiding and abetting. If a person has no knowledge  
17       that a crime is being committed or is about to be committed  
18       but inadvertently does something that aids in the commission  
19       of that crime is not an aider and abettor. An aider and  
20       abettor must know that the crime is being committed and act in  
21       a way that is intended to bring about the success of the  
22       criminal venture.

23               Count Two of the indictment charges the defendant  
24       with the use or possession of a firearm to commit a crime of  
25       violence in violation of Title 18, U. S. Code, section 924(c).

1 I will now read to you Count Two, then I will read the statute  
2 that the defendant is charged with violating. Finally I will  
3 tell you the essential elements of this crime. You will have  
4 copy of the Bill of Indictment and these jury instructions  
5 with you in the jury room during deliberations.

6 Count Two read: On or about August 9, 2011, in  
7 Mecklenburg County in the Western District of North Carolina,  
8 the defendant, Ronald Centeno, did knowingly possess a  
9 firearm, that is a handgun, during and in relation to a crime  
10 of violence, that is carjacking, a violation of Title section  
11 8, United States Code, section 2119, as charged in Count One  
12 of this indictment in violation of Title 18,  
13 United States Code 924(c) .

14 It is further alleged that said firearm was  
15 brandished in violation of Title 18, U. S. Code, section  
16 924(c) (1) (A) (ii) .

17 The relevant statue on this subject is  
18 Title 18, United States Code, section 924(c) , which provides  
19 "Any person who, during and in relation to any crime of  
20 violence for which the person may be prosecuted in a court of  
21 the United States uses or carries a firearm, or who, in  
22 furtherance of any such crime, possesses a firearm, shall be  
23 guilty of a crime."

24 The government must prove each the following  
25 elements beyond a reasonable doubt to sustain its burden of

1 proving the defendant guilty:

2                   First: That the defendant committed Count One, a  
3 crime of violence for which he might be prosecuted in a court  
4 of the United States.

5                   Second: That the defendant knowingly used a firearm  
6 during and in relation to the commission of or knowingly  
7 possessed a firearm in furtherance of the crime charged in  
8 Count One.

9                   As I have just instructed you, Count Two charges the  
10 defendant with using or carrying a firearm during the  
11 commission of crime of violence, which is charged in Count  
12 One. If after considering all of the evidence you have find  
13 that the government has failed to prove Count One beyond a  
14 reasonable doubt, then you will proceed no further. This  
15 count is to be considered only if you first find the defendant  
16 guilty under Count One as charged.

17                   I will now define certain terms used in the  
18 definition of offense. If I do not define certain words, you  
19 should assign to them their ordinary and every day meanings.

20                   The defendant is charged in Count One of the  
21 indictment with committing the crime of carjacking. I  
22 instruct you that the crime of carjacking is a crime of  
23 violence. However, it is for you to determine that the  
24 government has proven beyond a reasonable doubt that the  
25 defendant committed the crime of carjacking as charged.

1                   A "firearm" is any weapon which will, or is designed  
2 to, or may be readily converted to expel a projectile by the  
3 action of an explosive. The term also includes the frame or  
4 receiver of any such weapon, or any firearm silencer or  
5 muffler or destructive devise. A taser, however, is not a  
6 firearm under Title 18, United States Code, Section 924(c).

7                   In order to prove the defendant used the firearm,  
8 the government must prove beyond a reasonable doubt an active  
9 employment of the firearm by the defendant during and in  
10 relation to the commission of the crime of violence. This  
11 does not mean the defendant must actually fire or attempt to  
12 fire the weapon, although those would obviously constitute use  
13 of the weapon. However, the mere possession of a firearm at  
14 or near the site of crime, without active employment as I just  
15 described it, is not sufficient to constitute a use of the  
16 firearm.

17                   Brandishing, displaying or even referring to the  
18 weapon so that others present knew that the defendant had the  
19 firearm available if needed all constitute use of the firearm.

20                   The term "brandish" means to display all or part of  
21 the firearm, or otherwise make the presence of the firearm  
22 known to another person in order to intimidation that person  
23 regardless of whether the firearm is directly visible to that  
24 person.

25                   In order to prove the defendant "carried" the

1 firearm, the government must prove beyond a reasonable doubt  
2 the defendant had the weapon within his control in such a way  
3 that it furthered commission of underlying crime, or was an  
4 integral part of the commission of the crime. The defendant  
5 did not necessarily have to hold the firearm physically, that  
6 is have actual possession of it on his person.

7 If you find that the defendant had dominion and  
8 control over the place where the firearm was located, and had  
9 the power and intention to exercise control over the firearm  
10 in such a way that it furthered the commission of crime of  
11 violence -- disregard in a parenthetical. So strike out "or  
12 drug trafficking crime" -- you may find that the government  
13 has proven that the defendant carried the weapon.

14 The government cannot prove this element simply by  
15 showing that the firearm was transported in a vehicle in which  
16 the defendant was riding. The government must prove that the  
17 defendant knew of the weapon's presence and had the power and  
18 intention to exercise control of the weapon so that it was  
19 available for his use in the commission of the crime if the  
20 need arose.

21 To prove that the defendant possessed the firearm in  
22 furtherance of the crime, the government must prove that the  
23 defendant had possession of firearm and that such possession  
24 was in furtherance of that crime.

25 "Possession" means that the defendant either had

1 physical possession of the firearm on his person or that he  
2 had dominion and control over the place where the firearm was  
3 located and had the power and intention to exercise control  
4 over the firm.

5 To "possess a firearm in furtherance a crime" means  
6 that the firearm helped forward, advance, promote the  
7 commission of the crime. The mere possession of the firearm  
8 at the scene of the crime is not sufficient under this  
9 definition. The firearm must have played some part in  
10 furthering the crime in order for this element to be  
11 satisfied.

12 Finally the government must prove beyond a  
13 reasonable doubt that the defendant carried, or used the firm  
14 knowingly. This means that he carried the firearm purposely  
15 and voluntarily and not by accident or mistake. It also means  
16 that he knew that the weapon was a firearm as we commonly use  
17 the word. However, the government is not required to prove  
18 the defendant knew that he was breaking the law.

19 I also want to add in one more oral instruction  
20 here. The second element that I've just been discussing, that  
21 is the defendant knowingly used a firearm during and in  
22 relation to the commission of, or knowingly possessed a  
23 firearm in furtherance of the crime charged in Count One, once  
24 again, those are two alternative theories, and you have to be  
25 unanimous as to one of those theories. You can't be six and

1 six. It has to be 12 for one theory or the other.

2                   And anytime there's an -- so I don't have to keep  
3 resaying this -- anytime there's an alternative element, then  
4 you always have to be unanimous as to which alternative  
5 element that you are choosing if you find the government has  
6 proven that element beyond a reasonable doubt.

7                   The defendant can also be found guilty on Count Two  
8 based on aiding and abetting, as I previously instructed.  
9 However, to satisfy the defendant knowingly associated himself  
10 with the crime, the government must establish that the  
11 defendant knew that a gun would be used or carried during the  
12 commission of the offense.

13                   In addition to proving that the defendant knew that  
14 a gun would be used or carried during the commission, the  
15 government must also prove that the defendant facilitated or  
16 encouraged the use, carrying or possession of that weapon in  
17 some way.

18                   If you find the government has proven the elements  
19 for Count Two beyond a reasonable doubt, then you should mark  
20 guilty on the verdict form for question 2. However, if you do  
21 not so find, or if you have reasonable doubt as one or more of  
22 the essential elements of the crime charged, it would be your  
23 duty to give the defendant the benefit of the doubt and return  
24 a verdict of not guilty.

25                   If you find defendant guilty of Count Two, then

1 there is one more question you must answer for this court on  
2 your verdict form.

10 Count Three of the indictment charges the defendant  
11 with obstructing interstate commerce through the use of  
12 robbery in violation of Title 18, United States Code, section  
13 1951. I will now read to you Count Three, then I will read  
14 the statute that the defendant is charged with violating.  
15 Finally I will tell you the essential elements of this crime.  
16 You should keep in mind as I review this charge that you will  
17 have a copy of the Bill of Indictment and these jury  
18 instructions with you in the jury room during deliberations,  
19 so it will not be necessary for you to try to memorize the  
20 charge or take notes. I remind you that the Bill of  
21 Indictment is not evidence.

22 Count Three reads: On or about August 9, 2011, in  
23 Mecklenburg County within the Western District of North  
24 Carolina and elsewhere, the defendant, Ronald Centeno, did  
25 knowingly and intentionally attempt to obstruct, delay and

1 effect commerce and the movement of articles and commodities  
2 in commerce by robbery, as the terms commerce and robbery are  
3 defined in Title 18, United States Code, Sections 1915(b)(1)  
4 and (b)(3), in that defendant planned to take marijuana from  
5 the person and presence of another against their will and by  
6 means of actual and threatened force, violence and fear of  
7 immediate future injury in violation of Title 18,  
8 United States Code, section 1951(a).

9 Section 1951 of Title 18, United States Code in  
10 pertinent part provides: "Whoever in any way or degree  
11 obstructs, delays or effects commerce or the movement of an  
12 article or commodity in commerce by robbery, or attempts or  
13 conspires so to do, or commits or threatens physical violence  
14 to any person or property in furtherance of a plan or purpose  
15 to do anything in violation of this section commits a crime.

16 In order meet its burden of proof that defendant  
17 obstructed interstate commerce by committing robbery, the  
18 government must establish beyond a reasonable doubt each of  
19 following elements:

20 First: That the defendant knowingly obtained or  
21 took another's personal property from the victim or in his  
22 presence.

23 Second. That the defendant took this property  
24 against the victim's will by actual or threatened force,  
25 violence or fear of injury whether immediately or in the

1 future. And

2                   Third: That the robbery delayed, obstructed or  
3 affected interstate commerce in any way or degree.

4                   I will now define certain terms used in the  
5 definition of the offense. If I do not define certain words,  
6 you should assign to them their ordinary everyday meanings.

7                   Robbery is the unlawful taking or obtaining of  
8 personal property of another against his will by threatening  
9 or actually using force, violence or fear of injury,  
10 immediately or in the future, to person or property. The term  
11 "property" includes money and other tangible and intangible  
12 things of value.

13                   In considering whether the defendant used or  
14 threatened to use force, violence or fear, you should give  
15 these words their common and ordinary meaning and understand  
16 them as you normally would. The violence does not have to be  
17 directed at the person whose property was taken. The use or  
18 threat of force or violence might be aimed at a third person,  
19 or at causing economic rather than physical injury.

20                   A threat may be made verbally or by a physical  
21 gesture. Whether a statement or physical gesture by the  
22 defendant actually was a threat depends upon the surrounding  
23 facts.

24                   Fear exists if a victim experiences anxiety, concern  
25 or worry over expected personal harm or business loss, or over

1 financial or job security. The existence of fear must be  
2 determined by the facts existing at the time of the  
3 defendant's actions. You also heard the testimony of a  
4 witness describing his state of mind, that is, how he felt in  
5 giving up the property. This testimony was allowed so as to  
6 help you in deciding whether property with his obtained by  
7 fear. You should consider this testimony for that purpose  
8 only.

9           If you decide that the defendant obtained another's  
10 property against his will by the use or threat of force,  
11 violence or fear of injury, you must then decide whether this  
12 action would affect interstate commerce in any way or degree.  
13 You must determine whether there is an actual or potential  
14 affect on commerce between any two or more states or between  
15 one state and the District of Columbia or between a state and  
16 a U. S. Territory or possession, or on commerce within one  
17 state that goes through anyplace outside that state. If you  
18 decide that there was any effect at all on interstate  
19 commerce, even if that effect was minimal, then that is enough  
20 to satisfy this element.

21           The defendant is charged with knowingly, voluntarily  
22 obstructing, delaying or effecting commerce and the movement  
23 of articles in commerce by attempting robbery.

24           The phrase "interstate commerce" means the flow of  
25 commerce or business activities between two or more states.

1 It also means commerce between places within the same state  
2 but passing through anyplace outside the state. Distribution  
3 of illegal narcotics, such as marijuana, is an inherently  
4 economic activity that affects interstate commerce.

5 The term "obstructs, delays or effects commerce"  
6 means any action which in any manner or to any degree  
7 interferes with, charges or alters the movement or  
8 transportation or flow of goods, merchandise, money or other  
9 property in commerce.

10 It is not necessary for the government to prove that  
11 the defendant actually intended to obstruct, delay or affect  
12 commerce. You must find beyond a reasonable doubt that the  
13 government has proved or proven that the natural consequences  
14 of the acts alleged in the indictment would delay, interrupt  
15 or adversely effect interstate commerce, and that commerce  
16 has, in fact, been obstructed, delayed, or affected by virtue  
17 of the acts.

18 The potential effect on interstate commerce can be  
19 minimal. For example, if a successful robbery of money would  
20 prevent the use of those funds to purchase articles that  
21 travel through interstate commerce, that would be sufficient  
22 potential effect on interstate commerce to violate the  
23 statute.

24 If you decide that interstate commerce would  
25 potential or probably be affected if the defendant had

1 successfully and fully completed his actions, then the element  
2 of affecting interstate commerce is satisfied. You do not  
3 have to find that interstate commerce was actually affected.  
4 However, if the defendant has finished his actions and done  
5 all he intended to do and you determined that there has been  
6 no effect on interstate commerce, then you cannot find the  
7 defendant guilty.

8                   The defendant can also be found guilty on Count  
9 Three based on aiding and abetting as I previously instructed.  
10 However, to establish that the defendant knowingly associated  
11 himself with the crime, the government must establish the  
12 defendant knew and intended that commerce and the movement or  
13 article -- the movement of articles and commodities in  
14 commerce would be obstructed, delayed and affected by robbery.

15                   Count Four of the indictment charges the defendant  
16 with the use or possession of a firearm to commit a crime of  
17 violence in violation of Title 18, United States Code, section  
18 924(c). I will now read to you Count Four.

19                   In Court Four reads: On or about August 9, 2011, in  
20 Mecklenburg County, within the Western District of North  
21 Carolina and elsewhere, the defendant, Ronald Centeno, during  
22 and in relation to a crime of violence, that is attempted  
23 Hobbes Act Robbery, in violation of Title 18, United States  
24 Code, section 1951 as charged in Count Three, for which he may  
25 be prosecuted in a court of the United States, did knowingly

1 and unlawfully carry a firearm, and in furtherance of such  
2 crime of violence did possess such firearm in violation of  
3 Title 18, United States Code, section 924(c). It is further  
4 alleged that said firearm was brandished in violation of  
5 924(c) (1) (A) (ii).

6                   In Count Two I read the statute the defendant is  
7 charged with violating, and I will remind you of the elements  
8 the government must prove beyond a reasonable doubt to sustain  
9 its burden of proving the defendant guilty.

10                  First: That the defendant committed a crime of  
11 violence for which he might be prosecuted in a court of the  
12 United States.

13                  Second: That the defendant knowingly used or  
14 carried a firearm during and in relation to the commission of,  
15 or knowingly possessed a firearm in furtherance of the crime  
16 charged in Count Three.

17                  As I have just instructed you, Count Four charges  
18 the defendant with using or carrying a firearm during the  
19 commission of crime of violence which is charged in Count  
20 Three. If after considering all of the evidence you find the  
21 government has failed to prove Count Three beyond a reasonable  
22 doubt, then you will proceed no further. This count is to be  
23 considered only if you first find the defendant guilty under  
24 Count Three as charged.

25                  I have already defined the terms used in the

1 definition of the offense in Count Two, and you should apply  
2 those definitions to the charge in Count Four. As in Count  
3 Two, you should apply the instructions I gave you on aiding  
4 and abetting as well.

5 The defendant can also be found guilty on Count Four  
6 based on aiding and abetting as I previously instructed.  
7 However, to establish that the defendant knowingly associated  
8 himself with the crime, the government must establish the  
9 defendant knew that a gun would be used or carried during the  
10 commission of the offense. In addition to proving the  
11 defendant knew that a gun would be used or carried during the  
12 commission of the offense, the government must also prove the  
13 defendant facilitated or encouraged the use, carrying or  
14 possession of that weapon in some way.

15 If you find defendant guilty of the Count Four, then  
16 there's one more question you must answer for this count on  
17 your verdict form. The government contends the defendant  
18 brandished the firearm in the commission of Count Three. I've  
19 already defined the term "brandish" for you in these  
20 instructions. If you find that the government has proven  
21 beyond a reasonable doubt that the defendant brandished the  
22 firearm, you should indicate that on your verdict form on  
23 question 4A.

24 Now the United States may make its closing argument.

25 MR. HEWITT: Could I have one brief -- I have a need

1 to step to the men's room.

2 THE COURT: Why don't we take a 15-minute break. A  
3 ten-minute break. Let's take a ten-minute recess.

4 (Jury leaves the courtroom and recess taken.)

5 THE COURT: Any problems with the instructions that  
6 I just gave?

7 MR. HEWITT: Yes, Your Honor.

8 MR. WASHINGTON: None from the government.

9 THE COURT: Thank you. Take your seats.

10 (Defendant enters courtroom at 10:10 a.m.)

11 THE COURT: All right.

12 (Jury enters courtroom at 10:14 a.m.)

13 THE COURT: The government may present its closing  
14 argument.

15 MS. McNERNEY: Thank you, Your Honor. May it please  
16 the Court.

17 What about Latarra Biggers? What about her?

18 When Mr. Hewitt had the opportunity to speak to you  
19 yesterday morning, what he said was that the government was  
20 going to present you with the following witnesses: Anthony  
21 Garcia. Allen White. Jalen Davidson and Michael Wallace. He  
22 described them as drug dealer, drug dealer, a person awaiting  
23 disposition of charges, and a convicted bank robber. But he  
24 wasn't entirely correct because you also heard from Latarra  
25 Biggers. Why does she matter?

1                   Because Latarra Biggers is not a drug dealer. She's  
2 not a bank robber. She is not facing a pending charges and  
3 she's not awaiting her sentence, yet she, too, testified for  
4 the government and told you the truth about what she knows  
5 about what happened on the evening of August 9th, 2011.

6                   She told you that she saw Anthony Garcia running for  
7 his life. Literally scared to death. And she testified that  
8 Anthony Garcia, in a moment of sheer panic and shock,  
9 exclaimed to her, "I've just been robbed. And I don't know --  
10 my car just crashed into a house. My friend is in the car. I  
11 don't know if they did anything to my friend because I just  
12 jumped out of the car." So what about Latarra Biggers?

13                  Ladies and gentlemen, what do you know independent  
14 of the testimony of the Garcia, White, Davidson and Wallace?  
15 Disregarding their testimony completely, what do you already  
16 know?

17                  You already know that something terribly frightening  
18 happened to Anthony Garcia? How do you know that? He jumped  
19 out of a moving car. He jumped out of a moving car going  
20 across 30, 35 miles per hour. Have you noticed how quickly  
21 the pavement happens beneath your vehicle when you're even  
22 going 20?

23                  A car ran off the road. This is 11:15 at night on a  
24 Tuesday night. It's not rush hour. It's not he veered off  
25 the side of the road to prevent himself from rear ending

1 somebody. He jumped out of a car. The car veers off the side  
2 of the road and collides with house, and Latarra Biggers sees  
3 him running for his life back towards the gas station;  
4 bleeding, scared.

5 What else do you know independent of their  
6 testimony?

7 You know this gentleman right here, Ronald Centeno  
8 was present at the scene. How do you know that? Well, he  
9 made a mistake and left his cell phone behind. Anthony Garcia  
10 gave a physical description of the individuals that robbed him  
11 that night for the 911 operator, and described an individual  
12 sitting -- Mr. Centeno's description. He didn't know that was  
13 going to be confirmed when law enforcement found his cell  
14 phone in the vehicle.

15 So you know something scary happened to Anthony.  
16 You know Ronald Centeno was involved. What else do you know?  
17 You know Centeno set it up. You know he arranged the meeting  
18 and the drug transaction that led to the events of a  
19 carjacking and robbery and firearm in furtherance. How do you  
20 know that? He tells you. He tells you via text message on  
21 his cell phone, ladies and gentlemen.

22 Ronald Centeno makes the initial contact with  
23 Anthony Garcia about 7:30 p.m. on August 9th 2111. He  
24 contacts him for high grade, high quality marijuana; not the  
25 regular stuff. He wants the good stuff. The expensive stuff.

1 And he's not angling for a blunt. He's not asking for a half  
2 a gram. He's asking for a quarter ounce.

3 The previous time when mister -- the previous times  
4 when Mr. Centeno had purchased marijuana from Anthony, he had  
5 bought one or two grams; not a quarter ounce of the good  
6 stuff.

7 And if you'll notice in these text messages, ladies  
8 and gentlemen, he's very agreeable to whatever Anthony says.  
9 He asks, he says, "What will you do me for 120?"

10 Anthony says, "I don't have that much on me, but I  
11 can probable you get you quarter."

12 He, "Says oh, okay. A quarter. How much for the  
13 quarter?"

14 Anthony says, "120."

15 He goes, "Okay. Give me about 20 minutes," and  
16 brought it from uptown.

17 There's no negotiation on the price. Why? Because  
18 he ain't going to pay for it anyway. He's not planning to pay  
19 for it anyway. Why negotiate that price.

20 He tried repeatedly in these text messages and  
21 conversations with Anthony to get Anthony to come to him. He  
22 tries to arrange the meeting location so he can get Anthony to  
23 him.

24 "Any way you can meet me, I'm going to Albemarle  
25 Road. That's all out of the way."

1                    "Huh? You can't meet me? It's kind of out the  
2 way."

3                    Okay. "If not, I'll just call you in like 30  
4 minutes and you can just meet me at my house. I stay by you."  
5 Isn't that convenience? "I stay over there by you." Let's  
6 make it convenient for you. Meet me somewhere.

7                    And then finally he says, "You can't come to North  
8 Ridge?" He's in a hurry too. He tells Anthony, "Hit me. I'm  
9 waiting. I'm out the house. I'm waiting." Was he that  
10 desperate to smoke a blunt, or is there something more going  
11 on?

12                  He also, unsolicited from Anthony, explains what he  
13 wants the marijuana for. He says it's really for me and my  
14 boy. Why? Why does he need to give that information to  
15 Anthony? Because Anthony don't ask him, Anthony doesn't say  
16 in the text message, Hey, why do you need so much more now  
17 than you needed before? Ronald told him anyway. He says it's  
18 really for me and my boy.

19                  Why does he need to say that? Because he needs some  
20 explanation when he arrives at to why he's accompanied by  
21 other individuals. He's setting up a robbery. And he tells  
22 you that himself.

23                  So you know independent of their testimony that  
24 something terribly frightening happened to Anthony. You know  
25 Ronald Centeno was involved, and you know Ronald Centeno

1 played the role of setting it up. What naturally follows?  
2 One of the greatest tools you, as jurors, can bring into this  
3 courtroom is your own common sense, your life experience and  
4 your good judgment.

5                   Allen White, Anthony Garcia, Jalen Davidson, and  
6 Michael Wallace simply confirm what you already know. That  
7 Ronald Centeno was intimately involved in every single facet  
8 of every single one of these crimes. And their credibility  
9 could be challenged. That's fine.

10                  Mr. Hewitt can challenge Anthony Garcia and say he  
11 had a horrible relationship with Ronald Centeno so he's not  
12 credible. That's fine. What about Allen White? They don't  
13 really know each other. They know each other as Red and Kaos.  
14 They don't even know each other's real names, yet Allen White  
15 confirms event by event by event that Anthony Garcia told you.

16                  And he could challenge Jalen Davidson. Jalen  
17 Davidson was the biggest bank robber. You can't believe Jalen  
18 Davidson when Jalen testified that he talked to Ronald Centeno  
19 and obtained information for Ronald Centeno the gun was used  
20 and a taser was employed, and a driver jumped out of the car  
21 while the car was moving, and the car veered off of the road  
22 and hit a house. You don't have to believe Jalen's testimony.  
23 You can't believe Jalen's testimony because he's a bank  
24 robber, but what about Michael Wallace? What about Michael  
25 Wallace, who is a participant there who confirms, yeah, a

1 taser was involved. Intricate details. Consistent details.

2                   A gun was used. He even described it; a .32 black  
3 and white -- black and silver gun. Wallace stated that the  
4 two individuals got in the back seat of the victim's car.  
5 They started driving towards the school, and the driver jumped  
6 out of the car, veered off the road and plowed into a house.

7                   And you can challenge Michael Wallace. You can  
8 challenge Michael Wallace and his testimony that the victim,  
9 after he jumped out of the car, ran back in the direction of  
10 the gas station. And his testimony that when Ronald Centeno  
11 got back in the vehicle, after things went down, he was upset  
12 because he had left his cell phone behind. So you can  
13 challenge Michael Wallace but what about Latarra Biggers?  
14 What about Latarra Biggers who said, Yeah, the victim was, in  
15 fact, running in the direction of the gas station. Just as  
16 Michael Wallace said he was.

17                   What about law enforcement testimony. Yeah, they  
18 did, in fact, find Ronald Centeno's cell phone in the back of  
19 the car. Just as Michael Wallace said, that Ronald Centeno  
20 stated.

21                   And you can even challenge Latarra Biggers and say,  
22 you know what? She exaggerated the situation. She was  
23 excited too, and she doesn't really know what she saw. But  
24 what about Officer Harrington who said, Yeah, I was the first  
25 office on the scene, and what I encountered was a white male

1 who was agitated, scared and bleeding. Plus it only goes one  
2 way folks.

3 The first count in this indictment, the carjacking  
4 count, you have to find that Ronald Centeno, with the intent  
5 to cause death and serious bodily harm did take a motor  
6 vehicle from the person or presence of another, and that motor  
7 vehicle had previously been shipped across state line or  
8 affecting interstate commerce. As far as interstate commerce  
9 goes, you heard the testimony of Lou Rango, that the vehicle  
10 was manufactured in Lordstown, Ohio. Obviously, if it was  
11 found in North Carolina, it crossed state lines and affected  
12 commerce.

13 Now the meat of the offense. Did Ronald Centeno  
14 intend to cause death or serious bodily harm? You tell me.  
15 Because he certainly assisted another individual in holding a  
16 loaded .32 to Anthony Garcia's head. He certainly didn't  
17 object; certainly armed himself with some sort of weapon when  
18 the other individual in the back seat ordered Anthony Garcia  
19 to drive at gunpoint to the school after they had gotten all  
20 the property, so why order them to go behind a elementary  
21 school on a Tuesday night? What's going on there? Nothing.  
22 After they've already gotten what they need to get.

23 As Judge Whitney stated, you don't have to find that  
24 victim relinquished the vehicle. You don't have to find that  
25 the defendant, Ronald Centeno, was doing the talking. As long

1 as he was aiding and abetting, that was sufficient. That's  
2 Count One.

3 Count Three is a robbery count. You have to find  
4 that Ronald Centeno took the property, personal property of  
5 another individual by force, violence or intimidation against  
6 their will. And that that act had some effect on interstate  
7 commerce. As far as the commerce requirement, you heard the  
8 testimony of the expert Kelly Little who testified that not  
9 only are marijuana is grown in the state of North Carolina,  
10 the seeds needed to grow marijuana have to be imported from  
11 somewhere else. He also testified that marijuana, although an  
12 illegitimate market, still acts in a lot of ways like a  
13 legitimate market in that when suppliers are robbed, that  
14 affects interstate commerce. You also heard Judge Whitney's  
15 legal instruction that drug distribution is an inherently  
16 economic activity that effects interstate commerce.

17 Count Two and Four are firearms in furtherance  
18 counts. You do not have to find that he actually possessed  
19 the firearm. To find him guilty of those counts, as long as  
20 he aided and abetted another in so doing he's guilty of Counts  
21 Two and Four.

22 There is direct evidence from Michael Wallace that  
23 he when they originally met up before they went to the gas  
24 station, Junior, Ronald Centeno, said I got a lick and asked  
25 Little B for his firearm. And that he came into physical

1 possession of the firearm in conjunction with talking about  
2 the fact he had a lick; a robbery.

3 During and in relation to. In preparation for a  
4 crime of violence. He did possess a firearm. Even if you  
5 don't believe Michael Wallace, you know based on the testimony  
6 of the victims, that when the other individual pulled out the  
7 gun, he pulled out some weapon in order to be assisting.

8 That's sufficient to find him guilty on Counts Two and Four.

9 As far as the carjacking goes, you know that when  
10 that individual held a loaded .32 to Anthony's head and told  
11 him to drive, that this individual right here pulled out a  
12 weapon and armed himself. You know as far as the robbery goes  
13 that when that other individual pulled out a gun, he armed  
14 himself of a weapon and he took possession of the drugs based  
15 upon the testimony of the elicited.

16 One of the things that I find most interesting about  
17 yesterday is Larry Hewitt's conversation with Anthony Garcia.  
18 Because if you remember one the first things he told him --  
19 over? Okay.

20 Let me cut to the chase, ladies and gentlemen.

21 The truth is consistent and certain. Okay?

22 Consistent and certain. Anthony Garcia, on August 9th, 2011,  
23 gave a physical description to the 911 operator of an  
24 individual fitting his description. On the 11th he identified  
25 him without hesitation as the person who robbed him. And on

1 May 13, yesterday, in this courtroom, he again pointed him out  
2 without hesitation saying that's the man who robbed me. Any  
3 doubt? No. The truth is consistent and it is certain.

4 Thank you.

5 THE COURT: You've preserved three-and-a-half  
6 minutes. Mr. Hewitt.

7 MR. HEWITT: Thank you very much, Your Honor.

8 Ladies and gentlemen of the jury, it's my  
9 opportunity to talk to you a little bit about what I contend  
10 that the evidence showed or what it did not show, and what I  
11 contend to you you could find that it showed to you or did not  
12 show to you. Obviously you are going to take what you hear  
13 from this witness stand and make a decision on that. I  
14 certainly am not going to mistake anything to you  
15 intentionally, but I'm going to make you certain contentions  
16 that I think the evidence reflects or shows or doesn't show.

17 It is your job to find those facts. As I talked to  
18 you earlier yesterday, it's obviously your duty to find  
19 whether or not, based upon those facts or more importantly the  
20 lack of those facts, Mr. Centeno is guilty of any of these  
21 four counts in the Bill of Indictment beyond a reasonable  
22 doubt.

23 You will be given a copy of this Bill of Indictment.  
24 It won't be marked up like mine is, but it will be a clean  
25 copy. And as the U. S. Attorney has told you, there are four

1 counts in here. And just simply speaking, the first count is  
2 carjacking in layman's terms. The second count is possession  
3 of a firearm; possession and use, or possession and/or use of  
4 a firearm in conjunction with a carjacking. The third count  
5 of the Bill of Indictment is robbery. Affecting interstate  
6 commerce. But the substance of the offense is robbery. And  
7 Count Four is like Count Two, use or possession of a firearm  
8 in conjunction with that robbery.

9 They are four counts in this Bill of Indictment  
10 essentially alleging two sets of situations or two incidents,  
11 but we have one set of facts. There's only one incident hat  
12 all four of these counts apply to, so we don't have two sets  
13 or two separate incidents. All four counts apply to one set  
14 of facts, one incident that occurred on this particular  
15 evening on August 9th.

16 Let's visit August 9th a little bit, ladies and  
17 gentlemen.

18 There's no question by all of the evidence there was  
19 after drug deal that was going to go down on August 9th. That  
20 was the plan. You got that from cell phone communication.  
21 You got that from Mr. Garcia. This was to be a drug deal.  
22 Now the question is what happened when the various parties  
23 came together with regard to this drug deal? What happened  
24 after that, and more importantly who was involved and who did  
25 what with regard to carjacking, robbery and possession and use

1 of firearms?

2 You have plenty of evidence here that there were  
3 more than one person, more than Mr. Centeno involved in this  
4 alleged drug transaction that took place.

5 And I'm going to divide up a little bit the  
6 witnesses into two groups. I'm going to talk to you a little  
7 bit about what Mr. White and Mr. Garcia testified to.  
8 Obviously they are the two in the car. And then what Mr.  
9 Davidson and what Mr. Wallace testified to a little bit later  
10 on.

11 But the facts are apparently that this drug  
12 transaction was set up, the parties came together up there at  
13 the Circle K. At that point the person that has been  
14 identified as Mr. Garcia who says it was Mr. Centeno made  
15 contact with him; wanted to talk about the marijuana.

16 At another point a black male got into the car with  
17 Mr. Centeno, who is identified as the light colored person  
18 into the back seat. In the front seat was the driver,  
19 obviously Mr. Garcia, and then Mr. White sitting here.

20 The evidence I think is clear as a bell from both  
21 Mr. White and Mr. Garcia that the black male possessed the gun  
22 and used the gun; threatened the life of Mr. Garcia with the  
23 gun and had the gun the entire time. The black male  
24 possessed, used, and if anybody -- and brandished the firearm.

25 He's not charged in this Bill of Indictment. We

1 don't have a black male by either name or individual charged  
2 in this Bill of Indictment. Mr. Centeno was charged in this  
3 Bill of Indictment with the use and possession and brandishing  
4 of a firearm, a gun; in this case appears to be a .32 caliber  
5 firearm, in conjunction with Count Two and Four in the Bill of  
6 Indictment.

7 There is absolutely no evidence whatsoever, I  
8 contend to you, that Mr. Centeno possessed or used or  
9 brandished a firearm. If he had a taser, a taser as the Court  
10 has instructed you is not a firearm. So I contend to you that  
11 by the evidence of the two people who knew exactly at least  
12 what they say happened in that car with regard to the incident  
13 with the gun, the evidence is clear that it was not  
14 Mr. Centeno who had the gun, used it or possessed it. And I  
15 contend to you as a result of that, it's your duty to find him  
16 not guilty of those two counts.

17 Now, what happened after that? We go to the -- the  
18 carjacking is a contention that Mr. Centeno threatened and  
19 intimidated the driver of this car such that he got control or  
20 possessed the car. Again, with regard to the robbery, the  
21 same thing.

22 The evidence here again from Mr. White, Mr. Garcia  
23 is that the light-skinned individual, who was identified as  
24 Mr. Centeno sitting in the back seat, was sitting in the back  
25 site. He didn't take control of this car. He didn't do

1 anything that would cause Mr. Garcia to be under the control  
2 of him in driving this car away and jumping out of the car.  
3 The person that did that again was this unknown black male who  
4 had the gun. And I contend to you that whoever had the gun  
5 controlled the situation. Whoever had the gun controlled what  
6 went on in that car. And that was not Mr. Centeno. Again it  
7 was this unknown person. But he's the one that had the .32 up  
8 to Mr. Garcia's head. He's the one that said drive. He's the  
9 one that said go down the road. He's the one that had control  
10 of that, and if there was a carjacking, he was responsible for  
11 the carjacking. He's not in here. We don't know who he was.  
12 But it was not Mr. Centeno.

13 The other allegation in here is that there was a  
14 robbery of marijuana. As the indictment contends, marijuana  
15 was the subject of the robbery that was included in Count  
16 Three.

17 Ladies and gentlemen, as I recall the evidence, and  
18 you recall it the way you recall it, when the police responded  
19 to the scene of wrecked vehicle, they found in that car the  
20 marijuana, the watch, the backpack, and money. Nothing was  
21 taken. Nothing was stolen. There was no robbery. There  
22 simply was no robbery.

23 There may have been some items touched and what not  
24 in the car, but they were not taken. They were not taken  
25 certainly not by Mr. Centeno. No object was found on him at

1 some date that were associated with the car. All of the  
2 objects, and particularly the marijuana that supposedly was  
3 the subject of the robbery in Count Three of the Bill of  
4 Indictment was still in the car. It was not taken. And a  
5 part of robbery is taking the property of another. And that  
6 property simply was not taken.

7 So with regard to all four counts in the Bill of  
8 Indictment, on the testimony of the alleged victims  
9 themselves, there is no evidence that Mr. Centeno carjacked,  
10 committed a robbery or possessed or used a firearm in  
11 conjunction with either of those two actions. Someone else  
12 did that. He may have been present but mere presence as His  
13 Honor just told you does not make him guilty of a crime.

14 Now, we come to Mr. Davidson and Mr. Wallace, who  
15 are the two reputable independent witnesses who come in here  
16 out of the goodness of their heart to tell you what happened  
17 and what they were told about this.

18 Obviously they were not on the scene at the time  
19 that this happened. Although Mr. Wallace -- I'm sorry.  
20 Mr. Wallace says he was there, and he knew a lick was going  
21 down. But is Mr. Wallace charged with anything? Is he  
22 charged with carjacking or robbery or possession of a firearm?  
23 Is he as guilty? If the government says Mr. Centeno is  
24 guilty, isn't Mr. Wallace as guilty as Mr. Centeno is? Where  
25 are the charges? They're not. He's a witness up here.

1                   What he does have pending is a drug dealer. He's a  
2 drug dealer who has pending charges in the Mecklenburg County  
3 Superior Court for selling drugs. And I would argue to you  
4 that he's happy to come in here and tell you his story because  
5 he's expecting -- I'm not saying hat anybody just came and cut  
6 a deal, I'm simply saying that that's expectation. He didn't  
7 come in here out of the goodness of his hear. He didn't come  
8 out here as a citizen to tell you what happened. He came in  
9 here because he had inadvertently told his story to an  
10 undercover police officer, and they said, Okay, buddy. You  
11 help us out and we'll leave you alone. And that's exactly  
12 what happened.

13                  He came in here and helped them out and they are  
14 leaving any him alone. He's not going to be charged. He's  
15 not going to come in here on a four-count Bill of Indictment  
16 for carjacking, robbery, for using a gun. He's going to walk.  
17 Because he got for the stand and helped the government. I  
18 contend to you you can't believe a thing he said. I don't  
19 know what his source of information was but I guarantee you it  
20 was all self-serving.

21                  And then we have Mr. Davidson who is a bank robber.  
22 Pled guilty; awaiting sentence. And I contend to you probably  
23 a fairly substantial sentence for armed bank robbery. And he  
24 comes in here and tells you, "Oh, I'm just coming in here to  
25 testify," but what he is looking for, ladies and gentlemen, is

1 a cut, a reduction in that bank robbery sentence. And again I  
2 would say to you his testimony is not credible. He is a  
3 person who has a very vested interest in what goes on in this  
4 courtroom, and that vested interest is a cut in his sentence.  
5 And that's what he's looking for, and I contend and argue and  
6 ask you to discount the testimony of those two completely.  
7 Set it aside, now -- and then look at the facts that occurred  
8 in this car.

9                   And once again, without beating it to death, and  
10 I'll ask you finally to read the indictment, look at the  
11 indictment, and recall what the witnesses in the car said with  
12 regard with to what Mr. Centeno did, which was virtually  
13 nothing but to sit there. Based upon that, ladies and  
14 gentlemen, I ask you to find Mr. Centeno not guilty of Counts  
15 One, Two, Three and Four.

16                   Thank you very much.

17                   THE COURT: Thank you, Mr. Hewitt.

18                   The United States has three-and-a-half minutes.

19                   MR. WASHINGTON: Ladies and gentlemen of the jury, I  
20 have just a few moments to respond to some of the issues that  
21 were raised by counsel.

22                   I'd like to begin with the discussion of the robbery  
23 charge. And Mr. Hewitt mentioned to you that there was not --  
24 there was evidence that the marijuana was left behind at the  
25 scene. Look carefully at the indictment when you get it

1 because you will see that the indictment charges that it was  
2 attempted Hobbs Act Robbery, and it also says in the  
3 indictment that the defendant planned to take marijuana from  
4 the person and presence of another. So he's charged with an  
5 attempt, attempted Hobbs Act Robbery; planned to take  
6 marijuana from the person and presence of the other, and that  
7 absolutely happened here.

8                   Ladies and gentlemen of the jury, I also want to  
9 discuss the firearm issue.

10                  First of all, with respect to each count in the  
11 indictment, the defendant doesn't have to do every act that  
12 constitutes the commission of that crime. So if he willing  
13 joins in with someone else, if he's acting in concert, the  
14 individuals become agents of one another and that's called  
15 aiding and abetting. They are aiding and abetting one  
16 another. So if this defendant set up a drug deal and knew it  
17 was going to be a robbery, and then went to that scene and got  
18 into a car with another individual, and even if he at that  
19 moment had a taser and the other individual had a pistol, they  
20 are aiding and abetting one another. They are acting in  
21 concert.

22                  THE COURT: One minute.

23                  MR. WASHINGTON: He can be convicted for those  
24 crimes. It wouldn't make sense to say that two people go in  
25 rob a bank but because Defendant A is doing all the talking,

1 Defendant B is innocent. That doesn't make sense and you know  
2 that.

3 With respect, ladies and gentlemen of the jury, to  
4 who had control, ask yourselves, ladies and gentlemen of the  
5 jury, someone putting a taser to another individual's head and  
6 his partner putting a gun to someone's head, don't they both  
7 have control of that vehicle at that time?

8 Ladies and gentlemen of the jury, the evidence has  
9 shown that this defendant set up a robbery. He set up a  
10 robbery. He went to that scene. When they put that gun to  
11 the head of the driver of that car, they took control of it.  
12 That was a carjacking at that point. Mr. Garcia was driving  
13 because he was being forced to drive. Forced to drive with a  
14 gun to his head.

15 Ladies and gentlemen of the jury, this defendant has  
16 had the opportunity to have a full and fair trial. Every  
17 defendant has the right to come up and make the government  
18 prove its case beyond a reasonable doubt. That does not mean  
19 all doubt. That would be impossible. Unless you saw the  
20 events for yourself, you would always have some doubt because  
21 you have to rely on what others have told you. But the  
22 government's burden in every criminal case is beyond a  
23 reasonable doubt.

24 THE COURT: All right, finish up, Mr. Washington.

25 MR. WASHINGTON: In this case the government has

1 satisfied that burden. Thank you very much.

2 THE COURT: Thank you, Mr. Washington.

3 Ladies and gentlemen, one last time with your  
4 computer screens. It's only two pages of instructions. Not  
5 going to take long.

6 Now, members of the jury, you've heard the evidence  
7 and arguments of counsel for the government and for the  
8 defendant. It is your duty to remember the evidence whether  
9 it's been called to your attention or not, and if your  
10 recollection of the evidence differs from that of the  
11 attorneys, you are to rely solely upon your recollection of  
12 the evidence in your deliberations.

13 It is your duty not only to consider all the  
14 evidence but also to consider all the arguments, contentions  
15 and positions urged by the attorneys, and any other contention  
16 that arises from the evidence and to weigh them all in the  
17 light of your common sense and as best you can to determine  
18 the truth of this matter.

19 During your deliberations you must not communicate  
20 with or provide any information to anyone by any means about  
21 this case. You may not use any electronic devise or media  
22 such as the telephone, a cell phone, smartphone, iPhone  
23 blackberry computer, Internet, any Internet service, any text  
24 or instant messaging service, any Internet chat room, blog or  
25 website such as FaceBook, MySpace, LinkedIn, YouTube, or

1 Twitter to communicate to anyone any information about this  
2 case, or to conduct any research about this case until I  
3 accept your verdict. In other words, you cannot talk to  
4 anyone on the phone, correspond with anyone or electronically  
5 communicate with anyone about this case. You can only discuss  
6 the case in the jury room with your fellow jurors during  
7 deliberations. I expect you will inform me as soon as you  
8 become aware of another juror's violation of these  
9 instructions.

10 You may not use these electronic means to  
11 investigate or communicate about the case because it is  
12 important that you decide this case based solely on the  
13 evidence presented in this courtroom. Information on the  
14 Internet or available through social media might be wrong,  
15 incomplete or inaccurate. You're only permitted to discuss  
16 the case with your fellow jurors during deliberations because  
17 they have seen and heard the same evidence you have. In our  
18 judicial system it is important that you are not influenced by  
19 anything or anyone outside of this courtroom. Otherwise, your  
20 decision may be based on information known only by you and not  
21 your fellow jurors or the parties in the case. This would  
22 unfairly and adversely impact the judicial process.

23 The law, as indeed it should, requires the presiding  
24 judge to be impartial. Therefore, do not assume from anything  
25 I may have done or said during the trial that I have any

1       opinion concerning any of the issues in this case.

2           I instruct you that a verdict is not a verdict until  
3       all 12 jurors agree unanimously as to what your decision shall  
4       be. You may not render a verdict by majority vote or any  
5       other voting mechanism aside from a unanimous verdict of 12.

6           The Court suggests that as soon as you reach the  
7       jury room, before beginning deliberations, you select one of  
8       your members to serve as a foreperson. This individual has  
9       the same vote as the rest of the jurors but simply serves to  
10      preside over the discussion.

11           Once you have been deliberating, if you need to  
12      communicate with me, the foreperson will send a written  
13      message to me by knocking on the door or ringing buzzer and  
14      handing it to the marshal. However, you are not to tell me  
15      how you stand numerically as to your verdict. For instance,  
16      should you be split in your voting at any particular time, you  
17      would not tell me the specific numbers of the division in your  
18      note.

19           We use a verdict sheet. I'm holding it up. This is  
20      simple written notice of the decision that you reached in this  
21      case. As soon as you have reached a verdict as to the counts  
22      alleged in the Bill of Indictment, you will return to the  
23      courtroom and your foreperson will, on request, hand the  
24      verdict sheet to the clerk.

25           There are places on the verdict sheet for the

1 foreperson to enter the verdict by placing a checkmark beside  
2 the jury's decision, sign it and date it.

3 During the trial several items were received into  
4 evidence as exhibits. We have a computer system in the  
5 deliberation room that enables you to view exhibits  
6 electronically. The clerk will show you how to operate the  
7 computer system so you may access any of the exhibits that  
8 have been admitted during this trial.

9 If you need a break during deliberations you may do  
10 on in the jury room, or if you need a break outside the jury  
11 room, a marshal will escort you, but you must not deliberate  
12 during a break unless all 12 of you are together. If you're  
13 not together, then do not talk about the case until all of you  
14 are back together.

15 Now the clerk of court will bring back the verdict  
16 sheet, he hard copy of the instructions and the Bill of  
17 Indictment, and you may take the case to see how you find, and  
18 I ask Juror No. 14 to remain in her seat.

19 (Jury leaves the courtroom the 10:50 a.m.)

20 THE COURT: Please take your seats.

21 I want to thank you very much. Now you realize your  
22 an alternate juror.

23 THE JUROR: Okay.

24 THE COURT: We don't tell you in advance because in  
25 the past we've had alternate jurors that don't pay as much

1 attention as regular jurors and so we don't tell alternates  
2 they are alternates. We all know that all the jurors will pay  
3 attention to the evidence as it's introduced in the courtroom.

4 In one moment I'll have a certificate for you to  
5 thank you for your service. You are released from your jury  
6 service tentatively, meaning it is possible the jury might not  
7 reach an unanimous verdict today, and a jury might become ill,  
8 could not come back tomorrow. So you're released to go home  
9 or back to your place of employment but you can't discuss this  
10 case with anyone until you know a verdict has been reached.  
11 Until that time, at that point you then are free to discuss  
12 the case with whoever you like. You don't have to. You might  
13 get contacted by the attorney or agents or paralegals. If you  
14 want to talk to them, you may. We have just a thank, just a  
15 certificate of appreciation for your service, and you are  
16 relieved to return to your employment or work. Do you have  
17 anything in the jury room?

18 THE JUROR: No, sir.

19 THE COURT: Any questions or matters we need to  
20 discuss?

21 MR. HEWITT: Not from the defendant.

22 MR. WASHINGTON: No, sir.

23 THE COURT: We'll be in recess pending word from the  
24 jury.

25 (10:55 in recess pending word from the jury.)

1 (Verdict at 12:05 p.m.)

2 THE COURT: It's my understanding from the clerk  
3 that the jury has reached a verdict. Let's bring the  
4 defendant in.

5 (Defendant enters courtroom at 12:07 p.m.)

6 THE COURT: Could you have your client fix his  
7 collar.

8 MR. HEWITT: We'll get it.

9 THE COURT: All right. The defendant is now present  
10 in the courtroom. Anything before we bring the jurors in?

11 MR. HEWITT: Not from the defendant.

12 MR. WASHINGTON: Nothing from the government, Your  
13 Honor.

14 THE COURT: Let's bring them in.

15 (Jury enters courtroom at 12:10 p.m.)

16 THE COURT: I'd like to ask the foreperson has the  
17 jury reached a verdict?

18 THE FOREPERSON: Yes.

19 THE COURT: On all four counts?

20 THE FOREPERSON: Yes.

21 THE COURT: Was the verdict unanimous?

22 THE FOREPERSON: Yes.

23 THE COURT: Would you please hand the verdict sheet  
24 on the clerk of court.

25 I ask the clerk of court to please publish the

1 verdict.

2 THE CLERK: United States of America v. Ronald  
3 Centeno, docket 3:12CR385.

4 Jury verdict: Count One: As to Count One of the  
5 Bill of Indictment, we hereby unanimously find the defendant  
6 guilty.

7 As to Count Two of the Bill of Indictment, we hereby  
8 unanimously find the defendant guilty.

9 (Outburst from audience in courtroom.)

10 THE COURT: Silence in the courtroom, please. Go  
11 ahead.

12 THE CLERK: As to Count Two we unanimously find that  
13 during the offense described in Count Two the defendant did  
14 not brandish a firearm.

15 Count Three: As to Count Three, we hereby  
16 unanimously find the defendant guilty.

17 As to Count Four, we hereby unanimously find the  
18 defendant guilty.

19 4A: We unanimously find that during the offense  
20 described in Count Four the defendant did not brandish a  
21 firearm.

22 THE COURT: Mr. Hewitt, would you like the jury  
23 polled?

24 THE DEFENDENT: Yes, sir.

25 THE COURT: I'd ask the clerk of court to poll the

1 verdict.

2 THE CLERK: Ladies and gentlemen, you have heard the  
3 jury verdict as published.

4 Juror No. 1: Was this your verdict? Is this still  
5 your verdict?

6 JUROR NO. 1: Yes.

7 THE CLERK: Juror No. 3: Was this your verdict? Is  
8 this still your verdict?

9 JUROR NO. 3: Yes, ma'am.

10 THE CLERK: Juror No. 4: Was this your verdict? Is  
11 this still your verdict?

12 JUROR NO. 4: Yes.

13 THE CLERK: Juror No. 5: Was this your verdict? Is  
14 this still your verdict?

15 JUROR NO. 5: Yes.

16 THE CLERK: Juror No. 6: Was this your verdict? Is  
17 this still your verdict?

18 JUROR NO. 6: Yes.

19 THE CLERK: Juror No. 7: Was this your verdict? Is  
20 this still your verdict?

21 JUROR NO. 7: Yes.

22 THE CLERK: Juror No. 2: Was this your verdict? Is  
23 this still your verdict?

24 JUROR NO. 2: Yes.

25 THE CLERK: Juror No. 9: Was this your verdict? Is

1 this still your verdict?

2 JUROR NO. 9: Yes.

3 THE CLERK: Juror No. 10: Was this your verdict?

4 Is this still your verdict?

5 JUROR NO. 10: Yes.

6 THE CLERK: Juror No. 11: Was this your verdict?

7 Is this still your verdict?

8 JUROR NO. 11: Yes.

9 THE CLERK: Juror No. 12: Was this your verdict?

10 Is this still your verdict?

11 JUROR NO. 12: Yes.

12 THE CLERK: Juror No. 13: Was this your verdict?

13 Is this still your verdict?

14 JUROR NO. 13: Yes.

15 THE COURT: All right, ladies and gentlemen of the  
16 jury, I want to thank you for telling us the truth of the  
17 matter in this case. You have done your duty, and that is to  
18 reach an unanimous verdict.

19 The Court never comments on the verdict. I  
20 shouldn't because that's your responsibility. But what I can  
21 comment on is whether I thought you were earnest and diligent  
22 in performing your service as jurors. And I thought all of  
23 you were. As you were listening to the evidence, I was  
24 watching you and observing you, and all of you paid attention;  
25 all of you took this matter very seriously --

1 (Loud noise in courtroom.)

2 THE COURT: You will disregard that.

3 Ladies and gentlemen, we will ensure that you're  
4 escorted out of this courthouse with the court security  
5 personnel.

6 (Someone speaking in the audience.)

7 But you have done what you were supposed to do. You  
8 have listened to evidence, followed this Court's instructions  
9 and unanimously told us what happened in this case. And you  
10 certainly now understand that it is a weighty and serious  
11 responsibility. And therefore, I thank you for being so  
12 diligent, being so attentive and telling us what happened in  
13 this case.

14 You are now released from your jury service. That  
15 means if you like, but you don't have to, you can talk to  
16 anyone about this case. You can talk to your family, your  
17 friends; you can talk to the attorneys, the paralegals, the  
18 agents in this case. You have no obligation to talk to  
19 anyone, but if you want you may.

20 I ask one thing, though. That jury room is a very  
21 important part of our criminal justice system, and in that  
22 jury room you are -- had the opportunity to give your personal  
23 thoughts, your personal opinions to share them with your other  
24 jurors. And likewise they are sharing their personal thoughts  
25 and opinions with you. So if you decide to talk about this

1 case if you want to, please don't breach the privilege of the  
2 confidence between jurors. What you can do is you can say as  
3 a group we generally thought this or generally thought that.  
4 But don't single out any particular juror about what he or she  
5 thought about any particular issue.

6 So thank you so much for your jury service. You are  
7 released. We will ensure the hallways are clear, and the  
8 U. S. Marshal Service will provide you security as you return  
9 to your vehicle.

10 Any questions? And we have just a small token of  
11 our appreciation, a certificate that just thanks you for  
12 telling us the truth of the matter in this case, and you are  
13 released thank you.

14 (The jury leaves the courtroom at 12:17 p.m.)

15 THE COURT: I'd like the CSO's who witnessed that to  
16 come forward. Are there witnesses as to the individual that  
17 damaged the door?

18 COURT SECURITY: All the marshals are outside.

19 THE COURT: All right. That person will be taken  
20 into custody and held in contempt of court.

21 THE AUDIENCE: They pushed him.

22 (People speaking from the audience.)

23 THE COURT: Well, the Court orders that person will  
24 be arrested for contempt. The paperwork can be done after the  
25 fact. We just want to make sure the person doesn't leave the

1 custody of the marshals.

2 Let's take our seats.

3 Mr. Centeno, you have been convicted by a jury of  
4 your peers of four felonies counts in violation of  
5 United States Code. Because of your conviction, you'll now be  
6 facing a sentencing by this Court. Before sentencing, a U. S.  
7 Probation Officer will contact you through your attorney,  
8 Mr. Hewitt. That probation officer will sit down with you and  
9 Mr. Hewitt and interview you for part of a -- for the  
10 preparation of what is referred to as a Presentence Report.  
11 That report is approximately an 30-page report that includes  
12 personal data, your personal history, your medical history,  
13 your financial history. It will also include, which is  
14 particularly important to you, a calculation of the advisory  
15 Sentencing Guidelines range. That Guideline range will be  
16 based on two things: One, the offense conduct for which you  
17 have been convicted; and two, your criminal history.

18 You will have the opportunity to object to the  
19 Guideline range calculation by the probation officer if you  
20 and your attorney believe that it's legally or factually  
21 incorrect. Those objections will be first tendered to the  
22 Probation Office. If the Probation Office agrees with those  
23 objections, then they will be incorporated into your report  
24 and the report will be amended. If the Probation Office  
25 disagrees with those objections, then this Court will hear

1 those objections at your sentencing hearing. But at your  
2 sentencing hearing the Court will then calculate the final  
3 Guideline range and then base the sentencing both on the  
4 Sentencing Guidelines and on the sentencing factors found in  
5 Title 18, U.S. Code, Section 3553(a). Mr. Hewitt will advise  
6 you more about the sentencing factors as well as the  
7 Sentencing Guidelines.

8                   This process usually takes about four to six months.  
9 Do you have any questions? You will be held in the custody of  
10 the Marshal Service pending the preparation of the Presentence  
11 Report and your sentencing at the same facility that you're  
12 currently being housed, or some facility under the contract  
13 with the U. S. Marshal Service.

14                   Do you have any questions about what I've just  
15 explained to you? All right. If you do, Mr. Hewitt can  
16 advise you. Mr. Hewitt, anything else we need to do?

17                   MR. HEWITT: Your Honor, at this time for the record  
18 I would make a motion to set the verdict aside for the  
19 evidence and for a new trial.

20                   THE COURT: So noted. As to the Rule 29 motion, the  
21 Court's prior ruling stands. As to the Rule 33 motion for a  
22 new trial, the Court does not find a basis for a new trial in  
23 this case. There was eyewitness testimony that was  
24 corroborated by a cell phone records and numerous other pieces  
25 of evidence, and so the motion for a new trial is denied. The

1 issue is preserved for appeal.

2 Anything from the United States?

3 MR. WASHINGTON: Nothing from the government, Your  
4 Honor.

5 MR. HEWITT: Nothing further, Your Honor.

6 THE COURT: One moment.

7 (Speaks with law clerk.)

8 THE COURT: All right. The Court has spoke to the  
9 Marshal Service. The Court finds that the damage to the door  
10 was by accident, and so the Court will not order that anyone  
11 be taken into custody for the damage to the door.

12 Any questions about that from either counsel? I  
13 don't know if counsel have standing.

14 MR. HEWITT: No. I don't have -- no.

15 THE COURT: You don't but the government might  
16 actually because the government might -- could consider  
17 prosecuting, but the Court is withdrawing its contempt  
18 holding. All right. So we will be in recess. Thank you.

19 (Court adjourned at 12:25 p.m.)

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3 **UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF NORTH CAROLINA**

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5  
6 **CERTIFICATE OF REPORTER**

7 I, JOY KELLY, RPR, CRR, certify that the foregoing  
8 is a correct transcript from the record of proceedings in the  
9 above-entitled matter.

10  
11  
12  
13 S/JOY KELLY

14 **JOY KELLY, RPR, CRR**  
**U.S. Official Court Reporter**  
**Charlotte, North Carolina**

15 **Date** \_\_\_\_\_

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

TRANSCRIPT OF RESENTENCING HEARING  
BEFORE THE HONORABLE FRANK D. WHITNEY  
UNITED STATES CHIEF DISTRICT COURT JUDGE  
TUESDAY, SEPTEMBER 15, 2015 AT 2:00 P.M.

## APPEARANCES:

On Behalf of the Government:

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On Behalf of the Defendant:

DOUGLAS E. ROBERTS, ESQ.  
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JILLIAN M. TURNER, RMR, CRR, CLR  
Official Court Reporter  
United States District Court  
Charlotte, North Carolina

1 (Tuesday, September 15, 2015 at 2:00 p.m.)

2 P R O C E E D I N G S

3 THE COURT: The defendant here?

4 THE DEPUTY CLERK: He's on his way, sir.

5 THE COURT: All right.

6 (Defendant present.)

7 THE COURT: We're here in United States v. Ronald  
8 Centeno on a remand from the Fourth Circuit. It was a remand  
9 at the request of the United States. It's case 3:12-CR-385.

10 Ms. McNerney and Mr. Washington are here on behalf  
11 of the Government, and Mr. Roberts is here on behalf of the  
12 defendant.

13 And I understand, Mr. Roberts, you might be moving?

14 MR. ROBERTS: Yes, Your Honor. I am actually  
15 relocating up to the Philadelphia area where my family is  
16 from for some family reasons. So this may be my last  
17 resentencing or sentencing hearing.

18 THE COURT: Well, we're going to miss you.

19 MR. ROBERTS: I appreciate that.

20 THE COURT: Very professional in all of your  
21 services.

22 MR. ROBERTS: Thank you.

23 THE COURT: Thank you.

24 All right. Specifically, United States has moved  
25 to dismiss Count Four and the Government made that formal

1 motion yesterday in writing.

2 Ms. Cochran, can I do this orally or do you need me  
3 to do a written dismissal?

4 THE DEPUTY CLERK: I can do it as part of the  
5 judgment and do an oral order as well.

6 THE COURT: All right. So the Court now grants the  
7 defendant -- the plaintiff's motion to dismiss Count Four  
8 without prejudice. It's Document 58. Therefore, Count Four,  
9 which is a violation of Title 18, U.S. Code, Section 924(c)  
10 no longer is in effect, and that will dramatically change the  
11 defendant's statutory minimum sentence.

12 Let me ask the parties since this is kind of a  
13 unique remand. It's usually coming back from the Fourth  
14 Circuit with specific instructions. This is de novo,  
15 correct?

16 MR. WASHINGTON: Correct, Your Honor.

17 THE COURT: All right. Is there -- I've done -- I  
18 have done all of the steps before and nothing was improper  
19 except to the extent that Count Four added an additional 25  
20 years. Right? What do I need to redo today is my question.

21 MR. WASHINGTON: Your Honor, I believe what you  
22 would need to do is simply resentence Mr. Centeno on just  
23 Counts One through Three. So his guideline range on Count  
24 One and Three would be the same, 125 months.

25 THE COURT: Plus 60 months for Count Two.

1                   MR. WASHINGTON: And plus 60 months for Count Two,  
2 correct. So that's what you would need to consider today.

3                   THE COURT: All right.

4                   Mr. Roberts, do you agree?

5                   MR. ROBERTS: I do agree, Your Honor. I think  
6 procedurally other than the resentencing, the other thing  
7 that we would need to have is just to make sure that  
8 Mr. Centeno has read and understood the supplement to the  
9 presentence report that was filed. That might be part and  
10 parcel of resentencing.

11                  THE COURT: And that -- I was definitely going to  
12 ask him to make sure he had reviewed this with you.

13                  So, Mr. Centeno, if you would please stand.

14                  Mr. Centeno, of course, you initially were  
15 sentenced after you were found guilty by a jury of your peers  
16 of all four of these counts. And at that time -- or after  
17 your conviction, you had a sentencing hearing. At that  
18 sentencing hearing, the Court went forward with all four  
19 counts of conviction. Since then, the Government has moved  
20 to dismiss and the Court just a moment ago dismissed that  
21 fourth count of conviction, which meant the original  
22 presentence report that this Court presented to you and your  
23 counsel reviewed with you is no longer the appropriate one  
24 for purposes of calculating your guideline range and your  
25 mandatory minimum sentence.

1           Rather, the supplement to the presentence report,  
2 which is Document No. 57, is the important document today.

3           Have you received a copy of Document 57, the  
4 supplement to the presentence report?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: Do you understand it?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Have you had an opportunity to go over  
9 the report with Mr. Roberts?

10          THE DEFENDANT: Yes.

11          THE COURT: Did he answer any -- did he answer any  
12 and all questions you had regarding this presentence report?

13          THE DEFENDANT: Yes, he has.

14          THE COURT: All right. Thank you.

15          Then based -- and there are no objections; is that  
16 correct?

17          THE DEFENDANT: No.

18          MR. ROBERTS: No objections, Your Honor.

19          THE COURT: Therefore, the Court will adopt the  
20 guidelines calculation, the statutory minimum that are set  
21 forth in the supplement of the presentence report.  
22 Therefore, the guidelines in this case provide for an offense  
23 level of 27, a criminal history category of IV, for a  
24 guideline range of 100 to 125 months plus 60 consecutive  
25 months as the statutory minimum for Count Two, which is in

1 violation of Title 18, U.S. Code, Section 924(c) .

2 Do the parties agree that those are the appropriate  
3 advisory guidelines and that is the appropriate statutory  
4 minimum?

5 MR. ROBERTS: Yes, Your Honor.

6 MR. WASHINGTON: Yes, Your Honor.

7 THE COURT: Thank you.

8 All right. Mr. Roberts, I'll hear from you.

9 MR. ROBERTS: Thank you, Your Honor.

10 Before I begin, I'd ask to approach. I just  
11 received a sentencing letter from Mr. Centeno's sister. I'll  
12 show it to counsel first for the Government, if that's all  
13 right.

14 THE COURT: Sure.

15 MR. ROBERTS: Thank you.

16 As Your Honor correctly calculated, Mr. Centeno's  
17 sentencing guidelines are 100 to 125 months plus 60 months  
18 for the 924(c). We believe a low-end sentence of 100 months  
19 on Counts One and Three plus 60 months on the 924(c) for a  
20 total of 160 months is sufficient, but not greater than  
21 necessary, to effectuate the purposes set forth in 18 U.S.C.  
22 3553(a) .

23 In terms of the nature and circumstances of the  
24 offense, they, of course, haven't changed since the Court  
25 sentenced Mr. Centeno the first time. There was basically

1 one criminal transaction that occurred, a robbery and a  
2 carjacking in which a firearm was possessed.

3 The victims in this case were drug dealers and  
4 nobody was seriously injured.

5 At sentencing the Court cited all of those factors  
6 in support of giving Mr. Centeno a downward variance on  
7 Counts One and Three on 60 months. Now, we're not asking for  
8 a variance in this case. We realize that in large part the  
9 variance was also based on the fact that Mr. Centeno was  
10 facing a second or subsequent 924(c), which raised his  
11 sentencing to the stratosphere. But we do think the  
12 justification supported a variance at that sentencing now  
13 support a low-end sentence.

14 In terms of Mr. Centeno's history and  
15 characteristics, at sentencing, again, the Court stated that  
16 it was concerned about Mr. Centeno's rehabilitation and  
17 recommended that he participate in whatever educational and  
18 vocational opportunities were available to him in the Bureau  
19 of Prisons. Mr. Centeno has taken that advice to heart.

20 I spoke to his case manager, Ms. Williams. Tried  
21 to get some certificates, but there was a problem in getting  
22 them in time. But I did speak to Ms. Williams, who confirmed  
23 that Mr. Centeno has received his GED. He actually finished  
24 second out of I think it was 23 students in his class, in  
25 terms of his score. He's taking parenting classes. He's

1 taken legal education classes. And he's also taken a money  
2 smart class, which is about a six-week class that allows  
3 folks to learn about saving and checking accounts and the  
4 basics of money management.

5 All of this I think it's notable to say Mr. Centeno  
6 took these classes while he was looking at a sentence of 420  
7 months, while he was looking at a release date of May 2043,  
8 and while he was not expecting to be released until he was  
9 into his fifties. And I think it's remarkable that somebody  
10 who is facing so much time and for whom these skills could be  
11 used so far in the future was so proactive about trying to  
12 better himself. And I think it speaks to the sort of person  
13 that Mr. Centeno is trying to become and trying to work  
14 towards becoming while in the Bureau of Prisons.

15 While incarcerated, Mr. Centeno has also turned his  
16 focus towards his family. Again, we have a letter from his  
17 sister. We also have plenty of folks here in support; his  
18 mother, his father, his sisters, his nieces and nephews and  
19 brothers as well who are all here for him.

20 Mr. Centeno at this point has been locked up about  
21 three years. This is by far the longest term he's ever been  
22 incarcerated for. I believe before this the longest time was  
23 about nine months, and he's had a lot of opportunity to  
24 reflect on what's brought him here. He's had a lot of  
25 opportunity to miss his four very young children, and he

1 realizes that he was not the role model he needed to be at  
2 that time. And now he is really working very hard to show  
3 them that even in the worst of circumstances, you can make  
4 something of yourself, you can build for the future and you  
5 can try to make better decisions.

6 All of his children have visited him since he's  
7 been incarcerated. He speaks to them on the phone every  
8 week. These four children have a few different mothers, so  
9 he does make between three and four phone calls to his  
10 children every week in order to talk to them.

11 And he's very fortunate and blessed to have the  
12 chance to see his children while they are teenagers. Again,  
13 he thought he'd be looking at them being in their  
14 mid-thirties before he saw them again. He knows that he's --  
15 he's very fortunate to have this opportunity. He looks  
16 forward to being a present factor in their lives when he gets  
17 out. Until then, he will continue to parent from a distance  
18 and try to make up for bad decisions that he made earlier on  
19 in his life.

20 I think that these efforts show a reduced need for  
21 specific deterrence in this case. In many sentences I'm  
22 forced to argue generalities, things like criminal history  
23 category, age, specific offenses that were committed in order  
24 to say in this category generally reoffend at a lesser rate  
25 than others. Here, I think we have some evidence that

1 Mr. Centeno is the sort of person who's not going to  
2 recidivate or less likely to recidivate. Again, because of  
3 the emphasis he's put and the energy he's put into getting  
4 his education, bettering himself, making up for bad decisions  
5 that he's made and then impact that those have had on his  
6 family.

7 And, again, this is a situation where he's not  
8 getting out any time soon. He's got years to continue to  
9 rehabilitate, years to pursue more educational and vocational  
10 opportunities. And I think at the rate he's going we can  
11 have some confidence that he is going to have a lot of skills  
12 when he reintegrates and he will be somebody who, when he  
13 reintegrates into society, will have a very good chance to be  
14 productive and do things that ensure that he can be the  
15 person that he wants to be for his family.

16 I think those choices that he's made since being  
17 incarcerated also mean that he's less of a danger to the  
18 community or will be less of a danger to the community when  
19 he gets out. Therefore, the need to protect the community is  
20 somewhat diminished in this particular case.

21 So for those reasons, Your Honor, we are asking for  
22 a sentence of 160 months. Mr. Centeno I know would like to  
23 address the Court at the appropriate time.

24 THE COURT: Yes. And that would be now.

25 Mr. Centeno, you do have the right to address the

1 Court if you so choose.

2 THE DEFENDANT: Yes, Your Honor.

3 I would like to express how being incarcerated has  
4 a big impact on my life, my mind as well. I have a lot time  
5 alone to actually reflect on myself and change to be a very  
6 humble, wise, smart individual. And I had took the proper  
7 steps to educate myself with all the resources provided to me  
8 in the federal system, such as getting my GED, Law I,  
9 parenting class and money smart.

10 Your Honor, the reasons I have took these courses,  
11 Your Honor, was so I could be a very reproductive candidate  
12 to the society as a citizen and also to show you, Your Honor,  
13 I have become a man by rehabilitating through this  
14 incarceration. I have learned and know that time like this  
15 don't just affect myself but affect the others of people  
16 around me, such as my children and family.

17 So, Your Honor, I would like to apologize to them  
18 sincerely and to please forgive me as well, Your Honor. I  
19 would ask that you please get me home to my family as soon as  
20 possible and find it in your heart to judge me today for the  
21 man I have become instead. I thank you for your time, and I  
22 beg that you have mercy on my sin.

23 THE COURT: Thank you very much, sir. I do want to  
24 note for the record I've read this letter that was handed up  
25 to me by Mr. Roberts.

1                   All right, Ms. McNERNEY.

2                   MS. MCNERNEY: Thank you, Your Honor.

3                   The Government's recommendation would be a sentence  
4 of a total of 185 months, and that would be the high end of  
5 the guideline range 125 plus the 60 months consecutive for  
6 Count Two.

7                   Some things have changed, although what remains is  
8 Mr. Centeno's criminal history. He's already reached the  
9 status of criminal history category IV by his mid-twenties.  
10 What is also -- what also remains the same is the facts of  
11 this case.

12                   Your Honor, this case involved a great deal of  
13 premeditation on Mr. Centeno's part. Mr. Centeno, along with  
14 a co-conspirator, who to this day remains unidentified,  
15 co-conspired together and set up a fake planned drug  
16 transaction with the victims in this case, met them in a  
17 location to -- purportedly to buy some high-grade marijuana,  
18 but instead of purchasing that marijuana, Mr. Centeno, armed  
19 with a firearm, as well as his unidentified co-conspirator  
20 who was allegedly armed with a Taser, entered the vehicle of  
21 the victims and held them at gunpoint while taking their  
22 jewelry, their watch, their money, and their drugs.

23                   After obtaining all of that property, after they  
24 got all that they needed, Mr. Centeno continued to hold the  
25 gun to the head of Anthony Garcia and told him to drive

1 behind an elementary school. For what purpose, we don't  
2 know. But that was alarming to the Government.

3 So those things remain the same characteristics of  
4 the offense and characteristics of the defendant for the most  
5 part are the same.

6 The dismissal of Count Four gives Mr. Centeno  
7 already close to a 20-year benefit. And I believe anything  
8 more than that is probably unnecessary at this point. So we  
9 would ask for the 125, high end, plus the 60 consecutive.

10 THE COURT: All right. Thank you.

11 There are identifiable victims in this case. Are  
12 there any victims in the courtroom that would like to address  
13 the Court?

14 And has the Government apprised any victims that  
15 they have been able to have contact with of their right to  
16 appear and speak?

17 MR. WASHINGTON: Your Honor, I believe so. That's  
18 handled by our victim advocates.

19 THE COURT: Okay. Thank you.

20 All right. Mr. Centeno, if you'd please rise.

21 Mr. Centeno, it was just a little over a year ago,  
22 I believe -- was it August of last year, I think -- that you  
23 appeared before this Court and you -- this Court explained to  
24 you the three-step process that the Court must go through in  
25 determining the appropriate and reasonable sentence in your

1 case.

2           This three-step process is set forth on a series of  
3 Supreme Court decisions, starting with *United States v.*  
4 *Booker*. The first step in the process, the Court is required  
5 to calculate the advisory guideline range. As you are aware  
6 today, we have calculated your guideline range to be 100 to  
7 125 months on Counts One and Three. The Court is also  
8 required as part of that initial calculation process to see  
9 if there's any statutory minimum sentence that would be added  
10 to your guideline range, and as you are aware today, the  
11 Court must add 60 months to whatever sentence the Court would  
12 determine would be the appropriate and reasonable sentence in  
13 regard to your guideline range.

14           But you are certainly aware of the huge benefits of  
15 the concession made by the United States. At your last  
16 sentencing, the Court gave you a total sentence of 420 months  
17 because you had been convicted of a second 924(c), or using  
18 or carrying a firearm during the possession -- during and in  
19 furtherance of a crime of violence. And that second 924(c)  
20 added 25 years to your total sentence. And I'll comment  
21 about that in a moment, but let me just finish up the first  
22 part of this sentencing process.

23           So the advisory guideline range I talked about, 100  
24 to 125 months, is just advisory. The Court can vary upwardly  
25 or downwardly from that range. The 60 months is statutory.

1 I can't vary on that.

2                   The second step in the process, the Court is  
3 required to look at the policy statements and bases for a  
4 departure set forth in the U.S. Sentencing Guidelines manual  
5 to see if any of those policy statements or departures are  
6 applicable in your case. The Court has reviewed those policy  
7 statements and departures and does not believe any apply in  
8 your case.

9                   Now, the third and the most important step in the  
10 sentencing process, the Court is required to consider a  
11 series of sentencing factors found at Title 18, U.S. Code,  
12 Section 3553(a). I'm sure you recall me going over those  
13 sentencing factors at your prior sentencing.

14                  At your prior sentencing, I did observe that I was  
15 very uncomfortable with you receiving the lengthy sentence  
16 the Court was going to impose upon you, and did impose upon  
17 you, because 30 years of that sentence, 360 months of that  
18 sentence, was mandated by Congress, and I have to follow the  
19 mandates of Congress. And I did properly sentence you, at  
20 least in this Court's opinion, pursuant to the confines of  
21 the statutory minimum sentence required for each of those two  
22 924(c)s, Count Two and Count Four.

23                  I also know behind that there was some concern  
24 about the legality of that sentence in part as to the fact  
25 that it's hard to determine when one crime ended and another

1       crime started, and that really there was an argument that  
2       could be made that there was only one 924(c) applicable in  
3       your case because it was a continuing criminal conduct.

4           I made a ruling that -- factual ruling that led  
5       this Court to believe that it had to impose the two 924(c)  
6       convictions on you. Now that the Government has dismissed  
7       that second 924(c), the Court is not bound by that. So that  
8       does change the whole dynamic of your sentence.

9           In applying the sentencing factors previously, I  
10      thought a variance on the sentencing guideline range was  
11      appropriate because of the overall extraordinary length of  
12      your sentence. Today, I change that because your sentence is  
13      dramatically reduced because of the reduction -- because of  
14      the elimination of Count Four by the Government's dismissal  
15      of Count Four. And a variance is not appropriate in this  
16      Court's fashioning of a just sentence, a sentence that  
17      reflects the seriousness of the offense and the nature and  
18      circumstances of the offense.

19           What is before this Court is two counsel are  
20      arguing for different ends of the guideline range. The  
21      Government is asking for 125 months, which is a high end of  
22      the range and, of course, Mr. Roberts is asking for 100  
23      months. Neither side is asking for a variance upwardly or  
24      downwardly.

25           In looking at the -- and considering the sentencing

1 factors, I do have to agree with the arguments of the  
2 Government. Your criminal history is very severe for someone  
3 of your age, criminal history category IV. That factors into  
4 your history and characteristics and aggravates against you.  
5 And the nature and circumstances and the seriousness of this  
6 criminal conduct also aggravates against you.

7           It was a very, very serious criminal conduct. When  
8 you're holding people at gunpoint, that is something this  
9 Court considers is a very serious and grave crime; but  
10 luckily no one was seriously injured. I'm sure they were  
11 emotionally scarred, but I don't -- luckily they did not --  
12 the combination of misconduct and guns did not lead to the  
13 disastrous situation of someone being killed.

14           So the original sentence of 420 months was  
15 something that I was very uncomfortable with, and I'm much  
16 more comfortable today with sentencing you at the high end of  
17 that range of 100 to 125 months, based on the nature and  
18 circumstances of the offense, the seriousness of the offense  
19 and your criminal history category.

20           I do want to address the issues put forth by  
21 Mr. Roberts. I do appreciate very much that you've taken  
22 rehabilitation seriously. That is the right thing to do,  
23 particularly because of this resentencing today, you are  
24 going to be released to society when you're still a  
25 relatively young man. It's excellent that you're taking

1 advantage of all educational and vocational opportunities  
2 because you need to be prepared to re-enter society when you  
3 eventually do, but those I do not believe justify -- do not  
4 mitigate enough to offset the very serious nature of the  
5 criminal conduct for which you were involved.

6                   So the Court will now state a sentence that's  
7 sufficient, but not greater than necessary, to accomplish the  
8 goals of sentencing. The Court has considered all of the  
9 sentencing factors. It's highlighted some that are  
10 particularly important. The Court invites the attorneys to  
11 listen to the proposed sentence before it's actually imposed  
12 so if there's a legal reason why it should not be imposed you  
13 can so advise.

14                   Now, I'm only going to restate I believe -- I'm  
15 going to resentence you as to paragraph 1. I'm going to  
16 resentence you as to the paragraph dealing with special  
17 assessments. I believe that's all that the Court needs to  
18 address.

19                   Do counsel agree? Is there any other paragraph I  
20 need to amend?

21                   MR. ROBERTS: I don't believe so.

22                   THE PROBATION OFFICER: Supervised release.

23                   MR. ROBERTS: Oh.

24                   THE COURT: Does that -- that goes down?

25                   THE PROBATION OFFICER: Well, just Count Four is

1 out. That's all.

2 MR. ROBERTS: Right.

3 THE COURT: I see what you're saying. It doesn't  
4 change the range, right? It just -- it just strikes the four  
5 years -- the three years for Count Four.

6 THE PROBATION OFFICER: Can I ask the Court a  
7 question?

8 THE COURT: Yes.

9 (The Court and probation conferred off the record.)

10 THE COURT: I believe this earlier finding by the  
11 Court still stands. It's not being changed today, but I'll  
12 just make it clear that it does not change.

13 The victim -- one of the victims in the original  
14 criminal conduct was Anthony Garcia. He was also involved in  
15 the criminal activity selling drugs. Thus, the Court found  
16 then and I found today that he is not legally qualified as a  
17 victim under the Mandatory Victim Restitution Act despite the  
18 fact he has incurred \$3,800.75 in direct monetary losses for  
19 medical bills, personal injury and car damages. But he does  
20 not benefit under the Mandatory Victim Restitution Act since  
21 he was a co-conspirator.

22 Now, with that said, I'm amending the prior  
23 judgment with the following paragraph: Pursuant to the  
24 Sentencing Reform Act of 1984 and *United States v. Booker*,  
25 it's the judgment of the Court, having considered the factors

1 noted in 18 U.S.C. Section 3553(a), that defendant Ronald  
2 Centeno is hereby committed to the custody of the United  
3 States Bureau of Prisons to be imprisoned for a term of 125  
4 months on Counts One and Three to be served concurrently, and  
5 60 months consecutive on Count Two, for a total term of 185  
6 months.

7               Upon release from imprisonment, defendant shall be  
8 placed on supervised release for a term of three years. This  
9 term consists of three years on each of Counts One and Three  
10 and a term of three years on Count Two. All such terms to  
11 run concurrently.

12               It's further ordered that the defendant shall pay  
13 to the United States a special assessment of \$100 on each  
14 count for a total of \$300.

15               All other terms and conditions of the original  
16 judgment remain in full force and effect.

17               Now, I ask counsel is there any legal reason why  
18 the sentence should not be imposed as stated?

19               MR. ROBERTS: No, Your Honor.

20               MR. WASHINGTON: No, Your Honor.

21               THE COURT: All right.

22               Mr. Centeno, I explained to you your appellate  
23 rights previously. You were taking advantage of your  
24 appellate rights when the Government filed the motion before  
25 the Fourth Circuit to remand this for resentencing. To

1 continue your appeal, you once again need to file a notice of  
2 appeal. You must file a notice of appeal within 14 calendar  
3 days of your -- of the written judgment that comes -- that  
4 follows this hearing. It's usually filed by the Court one to  
5 two weeks after this hearing.

6 Do you need me to review all of your appellate  
7 rights for you again today like I did this time last year?

8 THE DEFENDANT: Yeah, because I -- I don't  
9 understand.

10 THE COURT: Okay. Well, let me give you your  
11 appellate rights again.

12 You may appeal your conviction at trial if you  
13 believe there was some unlawful or some -- something unlawful  
14 or some fundamental defect in the proceeding. You also have  
15 a statutory right to appeal your sentence under certain  
16 circumstances, particularly if you think the sentence is  
17 contrary to law. Any notice of appeal must be filed within  
18 14 calendar days from date of written judgment.

19 If you're unable to pay the cost of an appeal, you  
20 may apply for leave to appeal at no cost to you. If you so  
21 request, the Clerk of Court will prepare and file a notice of  
22 appeal on your behalf.

23 The Court recommends that you talk to your attorney  
24 about these appeal rights and procedures.

25 Do you understand these appeal rights and

1 procedures as the Court has stated them to you today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Now, you've already been,  
4 of course, off to the Bureau of Prisons and the Court brought  
5 you back. You will be returned to the custody of the U.S.  
6 Bureau of Prisons for service of your sentence.

7 Do you have any questions of the Court?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right.

10 Anything else from counsel?

11 MR. ROBERTS: No, Your Honor. Thank you.

12 MR. WASHINGTON: No, Your Honor.

13 THE COURT: All right. Then the sentence as  
14 proposed is hereby ordered imposed. Good luck to you, sir.

15 (The proceedings ended at 2:32 p.m.)

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

I, Jillian M. Turner, RMR, CRR, CLR, Federal Official Court Reporter, in and for the United States District Court for the Western District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this the 30th day of November 2015.

/s/ Jillian M. Turner  
Jillian M. Turner, RMR, CRR, CLR  
U.S. Official Court Reporter