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**ORDER DENYING PETITION FOR LEAVE TO
APPEAL, ILLINOIS SUPREME COURT
(NOVEMBER 26, 2025)**

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In re: People State of Illinois, *Respondent*, v.
Robert Ely, *Petitioner*. Leave to appeal,
Appellate Court, Fourth District. 132013

The Supreme Court today DENIED the Petition
for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the
Appellate Court on 12/31/2025.

Very truly yours,

/s/ Cynthia A. Grant
Clerk of the Supreme Court

**ORDER, APPELLATE COURT OF ILLINOIS,
FOURTH DISTRICT
(JUNE 3, 2025)**

2025 IL App (4th) 240884-U

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

ROBERT ELY,

Defendant-Appellant.

No. 4-24-0884

Appeal from the Circuit Court of Peoria County
No. 21CF331, Hon. Katherine S. Gorman,
Judge Presiding.

Before: GRISCHOW, DOHERTY
and VANCIL, Judges.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding (1) any improper comments made by the State during closing arguments were not substantially prejudicial and did not warrant a new trial, (2) the trial court did not err by admitting other crimes evidence under

a *modus operandi* exception, and (3) the trial court did not commit plain error in permitting an in-court identification of defendant by a person who was only familiar with defendant through a security video recording in a separate, unrelated incident.

¶ 2 Following a jury trial, defendant, Robert Ely, was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 2020)), residential burglary (*id.* § 19-3(a)), and theft of paintings having a value in excess of \$100,000 (*id.* § 16-1(a)(1)). After the trial court's denial of his post-trial motions, defendant now appeals, requesting a new trial.

¶ 3 I. BACKGROUND

¶ 4 A. The Underlying Facts and Charges

¶ 5 Below, we summarize only the facts pertinent to this appeal.

¶ 6 In January 2021, Dr. William Marshall, age 92, and his wife, Nancy Marshall, lived in Peoria, Illinois. Dr. Marshall was an avid art collector. His wife suffered from severe Parkinson's disease, dementia, was immobile and nonverbal but had some level of cognition, including the ability to hear and respond to some stimuli. During the day, Nancy was cared for by in-home caregivers, while Dr. Marshall would care for her in the evenings.

¶ 7 On January 6, 2021, Dr. Marshall was found by a caregiver, having been stabbed to death, and seven different pieces of art were missing from his collection.

¶ 8 Kelissa Scott, one of the caregivers, reported a man in a white Ford pickup truck had been in the

driveway of the Marshalls' home the day before the death. The man rang the doorbell and spoke with Dr. Marshall, though Scott could not hear the conversation. When Scott left at the end of her shift, she noticed the man was inside the Marshall home, with the permission of Dr. Marshall. Extensive investigation, including collaboration with the Federal Bureau of Investigation (FBI) and witness testimony, connected Dr. Marshall's death to defendant.

¶ 9 On June 9, 2021, defendant was charged by information with first degree murder (*id.* § 9-1(a)(2)). He was later charged by indictment with three counts of first degree murder (*id.* § 9-1(a)(1)-(3)), residential burglary (*id.* § 19-3(a)), and theft of property having a value of over \$100,000 (*id.* § 16-1(a)(1)). The case was set for trial on February 21, 2024.

¶ 10 B. The State's Motion *in Limine*

¶ 11 Prior to trial, the State filed a motion *in limine* seeking to introduce evidence of other thefts and burglaries committed by defendant, arguing they fell under the “identity and *modus operandi*” exceptions to Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011).

¶ 12 The trial court granted the State's motion *in limine*, allowing the State to introduce one prior burglary by defendant, which would be referred to as the “Glen Carbon incident.” The court noted it would issue a limiting instruction when the incident would be introduced at trial, instructing the jury the incident was only for “identification, intent, [or] *modus operandi*.”

¶ 13 C. The Trial

¶ 14 1. The State's Case

¶ 15 The State called over 17 different witnesses. Since defendant concedes the fact that Dr. Marshall was murdered and challenges only his connection to the murder, only testimony linking him to the crime is summarized.

¶ 16 a. Testimony of Alaina Cochran and Rosie Bohannon

¶ 17 Alaina Cochran, a certified nursing assistant who worked for Aging Care Management, testified she had been caring for Nancy for over three years. She provided care on certain days of the month, from 8:30 a.m. to 12 p.m. (other caregivers provided care on other days). On January 6, 2024, Cochran arrived for her shift around 8:30 a.m. and noticed unusual things. Dr. Marshall normally communicated with staff every morning, but they had not heard from him that day, she found the front door open, and Dr. Marshall did not greet her upon entry. She saw food in the kitchen and found Nancy slumped over, sitting in the sunroom, soaked in urine and covered in drool, as opposed to lying in her bed. Generally, Dr. Marshall would take over his wife's care in the afternoons after the caregivers left. Nancy could hear, but she was not very verbal and was immobile and required a Hoyer lift to move her, which Dr. Marshall would assist the caregivers with.

¶ 18 Rosie Bohannon, another caregiver, arrived to assist. She saw footprints in the snow outside the garage, so she checked to see if Dr. Marshall had possibly fallen. The neighbor was outside and confirmed

Dr. Marshall had not been seen. Bohannon checked the living room and dining room and found Dr. Marshall in the basement, lying on his side. Cochran checked for a pulse, recalling Dr. Marshall was “ice cold and purple.” Bohannon called 911.

¶ 19 After calling the police, Bohannon, the longest serving caregiver for the Marshalls, went to retrieve the Hoyer lift to attend to Nancy, as it was apparent that she had been in the chair since the previous day. She noticed two paintings missing from the room. When Bohannon subsequently went to the kitchen to retrieve milk for Nancy, she saw a bucket filled with water in the sink. She remarked she had never used the bucket, as it was typically downstairs.

¶ 20 b. Testimony of Kelissa Scott

¶ 21 On the morning of January 5, 2021, Scott was caring for Nancy. Near the end of her shift, an older Caucasian man with a scruffy, graying beard, wearing a hat and coat, rang the doorbell, and she observed his white work truck in the driveway. Scott distinctly remembered the man’s teeth because they were crooked and appeared to need a cleaning, something she recognized from her time in the dental field as “meth mouth.” The man had a what she described as a Southern accent, but not quite an accent from “Alabama or Mississippi.” Scott identified defendant as the man she saw at the door that day.

¶ 22 Scott recalled defendant asked for Dr. Marshall, more specifically, asking for “Bill” while handing her the mail. When Scott went to notify Dr. Marshall he had a visitor, the man stepped inside the house. Dr. Marshall came upstairs, greeted defendant, and directed him outside to talk. The pair spoke for a few

minutes, but she did not overhear the conversation. Dr. Marshall told Scott that she could leave for the day. When Scott was leaving, she observed defendant in the piano room and noticed a power washer in his truck in the driveway.

¶ 23 Scott was questioned as part of the police investigation and shown photo arrays on three consecutive dates to identify the suspect. Scott had difficulty identifying the man in the first two arrays, explaining that the people in the photographs were not showing their teeth, something that was very prominent and identifiable in the man who came to the door. The third photo array contained pictures of men whose teeth were visible. Scott identified defendant in the third photo array and again in open court during the trial.

¶ 24 c. Testimony of Dr. John Marshall

¶ 25 Dr. Marshall's son, John Marshall, is also a doctor and was called to testify. John testified his father was an art collector, with a vast collection worth approximately \$230,000. Many pieces were displayed in museums or traveling art exhibits. During the investigation, John was able to confirm several specific art pieces missing from his father's collection. John confirmed no jewelry, money, or other valuable items were stolen. When shown a picture of a white Ford F-250 truck from a surveillance video, he recognized a painting from his parents' bedroom in the front seat.

¶ 26 d. Testimony of Roberto Vasquez

¶ 27 Detective Roberto Vasquez, an 18-year veteran of the Peoria Police Department, oversaw the investi-

gation into the murder of Dr. Marshall and ultimately arrested defendant. Detective Vasquez testified Dr. Marshall's son confirmed the ball cap found at the scene did not belong to his father. He also provided a booklet listing Dr. Marshall's artwork, which showed seven pieces were missing from the home.

¶ 28 Detective Vasquez had officers review surveillance video of the subdivision. One video showed the white Ford F-250 truck entering the subdivision at 11:09 a.m. and leaving the subdivision at 12:30 p.m., with the driver as the sole occupant. Zooming in on the video showed the driver had a gray goatee and mustache. Artwork reported missing from Dr. Marshall's home could be seen in the front seat.

¶ 29 Detective Vasquez had officers canvas for video footage throughout the city. Various videos showing the white Ford F-250 truck were found, with the last video being obtained south of Peoria near Troy, Illinois, on Interstate 70.

¶ 30 Detective Vasquez sent information about the white Ford F-250 to other law enforcement agencies in the state. As a result, the name of defendant and his son were exposed and they were considered persons of interest. His department was also contacted about the Glen Carbon incident. The Glen Carbon police provided a video from the scene of a prior burglary showing the same white Ford F-250 truck and a bucket of water in the kitchen sink of the home of that victim.

¶ 31 In February 2021, the white Ford F-250 truck was located in Caseyville, Illinois, at the house of Pedro Gonzalez. Officers obtained a search warrant, transported the truck back to Peoria, and conducted a search. An LG cell phone was found. A search of the

cell phone revealed a Gmail account connected to defendant, three images of the white Ford F-250 truck in the parking lot of Michael Riggio Auto Sales, and a message regarding a trip to Las Vegas, Nevada, connected to defendant. The police also found a business card from a U-Haul facility in Overland, Missouri, and a U-Haul padlock. Detective Vasquez contacted U-Haul and retrieved records connecting defendant's phone number to a storage unit under the name Staneka Ziko. Phone records from T-Mobile revealed communications between defendant's cell phone and Ziko's phone number 96 times between January 6, 2021, and January 12, 2021 (Ziko was never located). In addition, on January 12, 2021, the records revealed communication between defendant's cell phone and Ziko's numbers 18 minutes before the U-Haul storage rental was made, and then 3 minutes after. A search of the U-Haul storage unit uncovered seven paintings, all of which were missing from Dr. Marshall's home. Utilizing a fracture match, the FBI connected a piece of broken frame located in the white Ford F-250 truck to one of the stolen paintings.

¶ 32 Detective Vasquez and officers searched the home of Tilley Frank in St. Louis, Missouri, where defendant also resided. Detective Vasquez spoke with defendant and noted his accent, describing it as Southern or Creole, and noted defendant's bad teeth. Medication, a set of U-Haul keys, a Ford truck owner's manual, and an orange traffic cone were found in the home. Later, it was determined the keys opened the U-Haul padlock from the storage unit in Overland, Missouri.

¶ 33 At this point, Dr. Marshall's cell phone still had not been located. Detective Vasquez obtained a search warrant for Dr. Marshall's Gmail account,

which was also the same as his iCloud identifier. The warrant was sent to Google, and with the information obtained, the police were able to track Dr. Marshall's cell phone traveling out of town in the same direction as the white Ford F-250 truck. The data showed the cell phone stopped at mile marker 99, leaving East Peoria, Illinois. Detective Vasquez located the cracked cell phone on the shoulder of the road in that area.

¶ 34 e. Testimony of Clay Blum

¶ 35 Clay Blum, a crime scene technician with the Peoria Police Department, was in charge of processing the crime scene. He did not find evidence of forced entry. Officer Blum testified to the photographs he took, one of which showed a chair cushion, a magazine, a family photo, and papers on the floor in the basement, indicating a struggle. The magazine, cushion, and family photo had a red substance on them identified as blood. A small table in the same area and the chair with the missing cushion also had red, blood-like stains on them. Officer Blum collected samples of the blood-like stains. He also photographed the walls, revealing several spaces where paintings had once hung. After the coroner took custody of the body, he was able to see what he believed were lacerations to Dr. Marshall's abdomen and lower back.

¶ 36 f. Testimony of Scott Bowers and Paul Tuttle

¶ 37 Officers Scott Bowers and Paul Tuttle are crime scene technicians with the Peoria Police Department. Officer Bowers was assigned to process the main and second floor areas of the residence. He photographed the bedroom walls where paintings

were missing. He also examined the bed frame and dressers for latent fingerprints using fingerprint powder. He photographed the kitchen, including a bucket in the kitchen sink.

¶ 38 On February 2, 2021, Officers Bowers and Tuttle searched a white Ford F-250 truck suspected of being part of the crime. Officer Bowers found no latent prints or blood stains on the truck, inside or out. Upon searching the bed of the truck, Officer Bowers found a black-handled Farberware chef's knife, which was "approximately 13-inches long with an approximately 8-inch blade," with a dark substance that tested positive for blood. DNA evidence testing later confirmed the blood on the knife belonged to Dr. Marshall. Officer Tuttle found a cell phone with no detectable fingerprints, along with a U-Haul padlock, keys, a tape measure, a pair of gloves, and a bank receipt.

¶ 39 The next day, Officer Bowers responded to Eastbound Interstate 74, just east of exit 99, and met Detective Vasquez. They had located a cell phone on the side of road, which he photographed and collected for evidence.

¶ 40 g. Testimony of Sergeant Michael Johnston

¶ 41 Michael Johnston, a sergeant in the detective bureau of the Peoria Police Department, assisted Detective Vasquez with the investigation. He also assisted in creating the screenshot image from video surveillance that showed the white Ford F-250 truck transporting art pieces from the subdivision. Sergeant Johnston testified it was suspicious, as the truck did not have a rear license plate and only a vanity plate on the front. He noted the side of the truck had an

advertisement for services, but no contact information. It was also odd to have a pressure washer in the truck during winter, with temperatures around 20 to 30 degrees Fahrenheit.

¶ 42 After magnifying the screenshot of the truck, Sergeant Johnston was able to determine the front vanity plate was an advertisement for a St. Louis area auto dealership, Michael Riggio Auto Sales. A lone male driver and fine art were observed in the truck's cab. Sergeant Johnston drafted a statewide intelligence message to disseminate to partnering law enforcement. He also contacted the auto dealership and obtained the vehicle identification number (VIN) of the Ford F-250 truck and a bill of sale listing Tilley Frank as the owner.

¶ 43 h. Testimony of Pedro Gonzalez

¶ 44 On February 1, 2021, Caseyville police officers and Peoria detectives came to Gonzalez's home in Caseyville to discuss a white Ford F-250 truck parked in his driveway. Gonzalez knew defendant as Robert and his girlfriend Tilley from their work together in construction. Approximately three weeks prior, defendant offered Gonzalez \$150 to take the truck and store it in his garage for two months, along with \$200 to give to his landlord. Defendant claimed his job had slowed down and he wanted to store the truck until the weather improved and more work was available. Gonzalez agreed and parked the truck in his driveway, covering it partially due to limited garage space. Gonzalez moved a power washer, blower, and weed eater into his garage so they would not be stolen. Defendant asked him to rent a storage unit in Overland, Missouri, and Tilley offered money for this,

but he declined. Gonzalez identified defendant in court.

¶ 45 Gonzalez agreed to work with the FBI and St. Louis authorities and wear a body wire to record conversations with defendant and Tilley. On one recording, Tilley admitted she owned the truck and said if Gonzalez got arrested, she would bail him out. Gonzalez gave the police a phone number he linked to defendant, and during cross-examination, he acknowledged that Tilley often answered the phone.

¶ 46 i. Testimony of Sue Neutzling

¶ 47 Sue Neutzling was called to testify regarding the Glen Carbon incident, a prior burglary that occurred at her mother's home. Neutzling identified defendant as one of the perpetrators of that burglary. Before Neutzling testified, the trial court read the following instruction:

“Evidence has been received that defendant has been involved in conduct other than that charged in the indictment. The evidence has been received on the issue of the defendant's identification and *modus operandi* and may be considered by you only for that limited purpose.

It is for you to determine whether the defendant was involved in that conduct, and, if so, what weight to be given to this evidence on the issues of identification and *modus operandi*.”

¶ 48 On March 23, 2020, Sue's mother, Wilma Jean Mayfield, now deceased, lived alone in Glen Carbon, Illinois. At the time, Mayfield was around 80 years old

and had Ring security cameras with audio and video surveillance around her property. Neutzling could remotely access and view live and recorded footage from her mother's Ring security cameras.

¶ 49 On March 23, 2020, Neutzling received a Ring doorbell alert that someone was at her mother's door. Neutzling watched in real time as a man pretending to know her mother tried to gain access to the home. Neutzling observed a white Ford pickup truck in the driveway. This observation raised her concern, as she was responsible for coordinating any work at the property, and no such work had been scheduled. Furthermore, she had noticed this particular truck in the driveway on previous occasions.

¶ 50 After spotting the truck and seeing the man enter her mother's home, Neutzling immediately called the police and drove to her mother's home. Neutzling noticed her mother's rings were missing and a green bucket of water was left in the garage. She did not recognize the bucket and noted it was out of place in the home.

¶ 51 Neutzling saved the Ring video footage and turned it over to police. The video was played for the jury, showing the interaction with defendant and the white Ford truck. In open court, Neutzling identified defendant as the individual shown in the video from the Ring camera. On cross-examination, defendant's counsel clarified Neutzling saw two men on the video from the Ring camera on March 23, 2020. Neutzling was not asked by police to identify that second man.

¶ 52 2. The Remainder of Trial and Posttrial Proceedings

¶ 53 Defendant chose not to testify. Following closing arguments, the jury came back with a guilty verdict. Defendant was sentenced to 99 years in the Illinois Department of Corrections for first degree murder and 15 years for theft. A sentence was not imposed for the residential burglary. A motion to reconsider the sentence was filed, alleging the sentence was excessive, disproportionate, and unconstitutional. The motion was denied.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 On appeal defendant argues the trial court erred, claiming: (1) improper and inflammatory comments made by the State during closing argument warranted a new trial, (2) the admission of other crimes evidence was more prejudicial than probative, and (3) allowing the identification of defendant on a Ring camera video was improper. We disagree and affirm.

¶ 57 A. The State's Comments During Closing Argument

¶ 58 Defendant contends a new trial is warranted because the trial court permitted improper and inflammatory comments by the State during closing argument.

¶ 59 “An error in closing argument is not a typical trial error in that it does not involve the admission of inculpatory evidence or the rejection of exculpatory evidence but rather commentary on the evidence that has been presented.” *People v. Williams*, 2022 IL 126918,

¶ 40. An objected-to, improper comment in closing argument will result in reversible error only when the comment engenders substantial prejudice against the defendant to the extent that it is impossible to determine whether the verdict of the jury was caused by the comments or the evidence. In determining whether a trial court's decision to overrule a defendant's objection to a prosecutor's comment during closing argument is reversible error, there is a two-step process. *Id.* ¶ 41. First, a court must determine if a comment was improper. *Id.* Second, the court must determine if the improper comment was so prejudicial that justice was denied or the verdict itself resulted from the error. *Id.* In making this determination, the trial is viewed in its entirety. *LID Associates v. Dolan*, 324 Ill. App. 3d 1047, 1065 (2001). Absent an abuse of discretion, a trial court's decision to overrule an objection to a prosecutor's comment in closing argument will not be overturned. *Williams*, 2022 IL 126918, ¶ 41.

¶ 60 When viewing the totality of the evidence and arguments presented, we find defendant was not substantially prejudiced by the State's comments during closing argument, even if some comments may have been improper.

¶ 61 1. Reference to Neutzling's In-Court Identification

¶ 62 Defendant argues the State's comment regarding the strength of Neutzling's identification of defendant was inappropriate. Specifically, when the State said, "She picks the person we all agree is the defendant," in reference to Neutzling's in-court identification, defendant argues this was the insertion of a personal opinion by the prosecutor. We disagree.

While it may sound as if the comment veers on the line of personal opinion, precedent says otherwise. For example, in *People v. Emerson*, 122 Ill. 2d 411, 434 (1987), the defendant appealed on similar grounds, arguing the statement, “And we know Robert Ray was telling you the truth. We could tell.” (emphasis omitted) was the insertion of a personal opinion by the State. However, our supreme court rejected the defendant’s argument that the comment was the insertion of a personal opinion and instead noted it was a fair comment on the evidence. *Id.* In addition, the court in *People v. Pope*, 284 Ill. App. 3d 695, 707 (1996), noted that if a jury must infer the prosecutor is inserting his personal opinion, it is not the same as explicitly stating his or her opinion. We reach the same conclusion in this case and have determined this comment was not improper. The state’s attorney commented on the evidence without explicitly stating his personal opinion.

¶ 63 2. The State’s Reference to Nancy Marshall

¶ 64 Next defendant claims a second comment made by the State, referring to Nancy, the victim’s spouse, was improper. Specifically, the State commented, “Also, the fact that—and this is a chilling part of the case, Nancy Marshall was disabled. She was in that chair. She could not talk, but she could hear. Imagine that.” Defendant raised an objection to this comment during the trial, asserting that these remarks were emotional appeals to the jury based on unsubstantiated evidence.

¶ 65 It is generally error for counsel to appeal to the passions of the jury, and instead, counsel must confine closing argument to the facts that are in evi-

dence and to reasonable inferences from the evidence. *People v. Clark*, 335 Ill. App. 3d 758, 764 (2002). However, attorneys are given broad latitude in making closing arguments, and the trial court has discretion in the scope of closing argument. *Weisman v. Schiller, DuCanto & Fleck, Ltd.*, 368 Ill. App. 3d 41, 62 (2006). Defendant argues these remarks by the prosecutor were unsupported by evidence introduced at trial and thus improper. The crime occurred in the basement, while Nancy was upstairs in the den, and there was nothing in the record to suggest any altercation had taken place in her presence. However, reviewing courts are to consider the whole closing argument, rather than focusing on selected phrases or remarks, in determining whether there was prejudicial error. *People v. Lewis*, 2017 IL App (4th) 150124, ¶ 67. The State's comments here were irrelevant and improper. We discourage the use of similar remarks in closing arguments and caution trial counsel to tread carefully when commenting on unsubstantiated evidence that may only serve to enflame the passions of the jury. However, these remarks alone did not amount to substantial prejudice in this case. Instead, the comments were comprised of three lines within closing arguments that extended over 100 pages in the trial transcript. Any potential prejudice produced by the comments was reduced when the trial judge instructed the jury not to let sympathy or prejudice influence its decision.

¶ 66 3. The State's References to "Knowing" Defendant Was the Killer

¶ 67 The final comment defendant alleges warrants a new trial occurred when the state's attorney said, "I know that's the killer." After the State's comment during closing argument, defendant objected, and the

judge called both attorneys for a sidebar conference. Defendant's objection was sustained, and the jury was admonished to disregard any personal opinion made by the State.

¶ 68 Despite the wide latitude prosecutors are granted in closing argument, it is improper for a prosecutor to express personal beliefs. *Id.* However, "the act of sustaining an objection and properly admonishing a jury is generally sufficient to cure prejudice engendered by improper closing argument." *People v. Wheeler*, 226 Ill. 2d 92, 128 (2007). The prosecutor's comment was improper, but the trial court sustained defendant's objection, admonished the jury to disregard it, and cured any resulting prejudice.

¶ 69 4. The Cumulative Effect of the State's Comments

¶ 70 A reviewing court must entertain every reasonable presumption that the trial court properly exercised its discretion in determining the propriety of the remarks. *People v. Beler*, 327 Ill. App. 3d 829, 835 (2002). We find substantial prejudice has not been established. Defendant's guilt did not rely solely on these comments, and the record was not closely balanced. The closing arguments spanned over 100 pages in a 1,300 page transcript of the trial alone, and there were dozens of witnesses and various exhibits (including photo and video evidence). The record contains substantial evidence related to the elements the State needed to prove. It was not impossible to determine whether the jury's ultimate determination in this case was based on the improper comments versus the evidence presented.

¶ 71 In short, any improper comments made by the State during closing argument, in the aggregate, did not cause substantial prejudice to defendant, nor did they threaten to tip the scales of justice against defendant. A fair trial is not necessarily an error free trial, and the mere existence of a few improper comments will not require reversal. *McHale v. Kiswani Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 45; *Bajgrowicz v. DEV Medical Associates, S.C.*, 2024 IL App (1st) 230196-U, ¶ 152. Ultimately, we cannot say the trial court’s decision was an abuse of discretion. Thus, we reject defendant’s request for a new trial on this basis.

¶ 72 B. Admissibility of Other Crimes Evidence

¶ 73 Defendant further argues the trial court erred in granting the State’s motion *in limine* regarding other crimes evidence by permitting evidence of the Glen Carbon incident. Defendant claims it lacked a “high degree of similarity” to the present case, making it substantially more prejudicial than probative.

¶ 74 “Courts generally prohibit the admission of [other crimes] evidence to protect against the jury convicting a defendant because he or she is a bad person deserving punishment.” *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Even though a defendant is entitled to have his or her guilt or innocence evaluated only based on the charged crime, “[o]ther-crimes evidence is admissible *** to prove intent, *modus operandi*, identity, motive, absence of mistake, and any material fact other than propensity that is relevant to the case.” *Id.* Even if other crimes evidence falls under one of the exceptions to allow for its admissibility, the court can still exclude it if the prejudicial effect of the evidence substantially outweighs its probative value. *Id.* To be admissible, other crimes evidence must have some

similarity to the crime charged. *Id.* at 184. A reviewing court will not reverse the trial court's decision to admit other crimes evidence unless it finds the court abused its discretion. *Id.* at 182. An abuse of discretion pertains to a decision that is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* A reviewing court, in determining whether the trial court abused its discretion in admitting other crimes evidence, owes some deference to the trial court's ability to evaluate the impact of the evidence on the jury. *Id.* at 186.

¶ 75 Here, the trial court granted the State's motion *in limine*, allowing the State to present evidence of an incident where defendant was identified as the perpetrator where an elderly woman's home was robbed in Glen Carbon. This incident was captured on video and played for the jury. The similarities between the Glen Carbon incident and the case at hand include the manner in which defendant approached the homeowners (repeated visits to the homes, friendly demeanor, and pretending to know the elderly owners), the use of the white Ford F-250 truck, and filling up a bucket of water while in the home (identified as a tactic used where burglars ask homeowners to fill up a bucket of water to create noise and distract them). Reasonable minds can differ about whether other crimes evidence is "admissible without requiring reversal under the abuse of discretion standard." *Id.* There were some factual differences between the crime in this case and the Glen Carbon incident, including the type of items stolen. However, no two crimes are the same, and some differences between a prior offense and the crime

currently charged do not make the prior offense inadmissible. *See id.* at 185.

¶ 76 Moreover, we are not persuaded the admission of the other crimes evidence was substantially more prejudicial than probative. During trial, the court issued a limiting instruction to the jury, noting the evidence was not to be used for propensity, but rather for “defendant’s identification and *modus operandi*.” As the factual similarities increase between a previous incident and the current crime, so does the probative value in determining whether it falls under the *modus operandi* exception to other crimes evidence. *People v. Bartall*, 98 Ill. 2d 294, 310 (1983). We also recognize that as the factual similarities increase, so can the prejudicial effect. In this case, the limiting instruction diminished the prejudicial value. Consequently, the properly admitted evidence of other crimes was not excessively prejudicial compared to its probative value. We cannot conclude the trial court’s decision was arbitrary or unreasonable. Therefore, admitting the other crimes evidence was not an abuse of discretion.

¶ 77 C. Identification of Defendant Through Video Recording

¶ 78 Defendant’s final argument is that the trial court erred by allowing a witness to make an in-court identification of defendant when that witness had only ever seen defendant through a video camera in real time.

¶ 79 Here, we clarify our understanding of the sequence of events in the record to determine the proper standard of review. The State called Neutzling to testify. During her testimony, defense counsel objected to Neutzling’s statement that she had “seen a man

being very nice to my mother trying to gain access to the house and acted like he knew her.” Defense counsel objected on the basis of hearsay. The State disagreed. The trial court had counsel approach for an unrecorded sidebar conference. When the sidebar ended, Neutzling was permitted to continue testifying and later made an in-court identification of defendant. The record reveals, after other witnesses testified and after a lunch break, the court allowed defense counsel to make his record on his previous objection regarding what Neutzling saw on the Ring video.

¶ 80 Generally, a court reviews a trial court’s decision to admit lay opinion identification testimony under an abuse of discretion standard. *People v. Thompson*, 2016 IL 118667, ¶ 49. However, to preserve a purported error for review, a defendant must contemporaneously object to the error at trial and raise the error in a posttrial motion. *People v. Sebbby*, 2017 IL 119445, ¶ 48; *People v. Denson*, 2014 IL 116231, ¶ 11. Failure to take either of these steps results in forfeiture. *Sebbby*, 2017 IL 119445, ¶ 48. A reviewing court may consider an otherwise forfeited issue under the plain error doctrine. *Id.*

¶ 81 In making his record, defense counsel noted, during the unrecorded sidebar, he objected to Neutzling’s in-court identification of defendant due to lack of personal knowledge and abandoned the hearsay objection. Even though defense counsel was not allowed to make his record until later in the trial, the original objection and sidebar were contemporaneous, preserving the issue for appeal. Hence, counsel’s argument will be reviewed under an abuse of discretion standard.

¶ 82 Our supreme court has clarified the admission of lay opinion identification testimony under Illinois Rule of Evidence 701 (eff. Jan 1, 2011) in *Thompson*. In that case, the supreme court held, “[O]pinion identification testimony is admissible under Rule of Evidence 701 [(eff. Jan. 1, 2011)] if (a) the testimony is rationally based on the perception of the witness and (b) the testimony is helpful to a clear understanding of the witness’s testimony or a determination of a fact in issue.” *Thompson*, 2016 IL 118667, ¶ 50. In addition, “[l]ay opinion identification testimony is helpful where there is some basis for concluding the witness is more likely to correctly identify the defendant from the surveillance recording than the jury.” *Id.* Special knowledge of the defendant is not required; rather, “the witness must only have had contact with the defendant, that the jury would not possess, to achieve a level of familiarity that renders the opinion helpful.” *Id.* There are a variety of factors to consider in determining whether lay opinion identification testimony was proper, including: the witness’s general familiarity with the defendant; the witness’s familiarity with the defendant at the time the recording was made or where the witness observed the defendant dressed in a manner similar to the individual depicted in the recording; whether the defendant was disguised in the recording or changed his or her appearance between the time of the recording and trial; and the clarity of the recording and extent to which the individual is depicted. *Id.* ¶ 51. These factors are considered in their totality. *Id.*

¶ 83 The State argues, although Neutzling only observed defendant on video through a Ring camera, she had the opportunity to observe him in real time;

thus, her in-court identification of defendant was proper lay opinion testimony. At the very least, Neutzling's testimony provided a foundation for the admission of the Glen Carbon Ring video. However, we find the State's distinction regarding Neutzling's real time viewing of the video irrelevant. Neutzling's only familiarity with defendant was what she observed on the Ring video, which was then shown to the jury. She had no more familiarity with defendant than any juror who watched the recording. Consequently, Neutzling's in-court identification of defendant was improper. However, the error in admitting her in-court identification of defendant was harmless. "An evidentiary issue is harmless when no reasonable probability exists that the jury would have acquitted the defendant absent the error." *People v. Pelo*, 404 Ill. App. 3d 839, 865 (2010). No reasonable probability exists that the jury would have acquitted defendant absent Neutzling's in-court identification. The jury understood Neutzling's in-court identification of defendant was based solely on seeing him previously on the Ring camera video. The jury viewed the same recording as Neutzling and could judge for themselves. Furthermore, the accuracy of Neutzling's identification was challenged during cross-examination and scrutinized during closing argument.

¶ 84 Under these circumstances, we find defendant's argument that Neutzling's identification alone could have compromised the trial unpersuasive. Consequently, any error from her in-court identification was harmless, and we thus deny defendant a new trial on this basis.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we affirm the trial court's judgment.

¶ 87 Affirmed.

**ORDER, ILLINOIS TENTH JUDICIAL
CIRCUIT COURT, PEORIA COUNTY
(APRIL 25, 2024)**

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, PEORIA COUNTY

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

ROBERT ELY,

Defendant.

Case No. 21-CF-00331-1

ASA: DEB SHELBY

Def Atty: WILLIAM WOLF

Courtroom: 210

Before: Katherine S. GORMAN, Judge.

ORDER

[. . .]

- ☒ 4. The Defendant having previously been found Guilty on February 28, 2024, by the Jury of the charge(s) of: First Degree Murder, Residential Burglary, Theft.

[. . .]

THE COURT, PURSUANT TO 730 ILCS 5/5-4-1:

- ☒ 7. Conducts a full sentencing hearing on this date.

IT IS HEREBY ORDERED:

- ☒ A. That the jury's verdict(s) of Guilty to the charge(s) of First Degree Murder, Residential Burglary & Theft is accepted and entered of record, and the Court hereby enters judgment on the verdict(s) of Guilty and final judgment is entered;

[. . .]

- ☒ D. The defendant is sentenced to imprisonment at the Department of Corrections of Illinois for a term of 99 year(s) on First Degree Murder and 15 years on Theft followed by a period of 3 year(s) Mandatory Supervised Release (parole) and 1 year MSR, or until the Defendant is discharged by law, the Court having regard to the nature and circumstances of the offense and to the history, character, and condition of the offender and being of the opinion that a sentence of imprisonment is appropriate pursuant to 730 ILCS 5/5-6-1 or 2, and:

- ☒ (1) Said sentence is to run concurrently with each other;

- ☒ E. That the Defendant is entitled to receive credit for time actually served in custody from 06/09/21 to 04/25/24. That the Defendant is not eligible for day-for-day credit; on First Degree Murder

- ☒ F. Truth in sentencing applies. The Defendant shall serve 100% of said sentence on First Degree Murder and 50% on Theft

- ☒ G. That the Defendant pay a fine of \$75;
[. . .]
- ☒ I. That a judgment be entered against the Defendant for costs (see supplemental order);
- ☒ J. That the Court, pursuant to Ill. Sup. Ct. R. 605(c) informs the Defendant of his appeal rights;
[. . .]
- ☒ L. That a mittimus is to be issued and executed without delay. The Defendant is remanded to the custody of the Sheriff of Peoria County for transmittal to the Department of Corrections of Illinois;
[. . .]
- ☒ N. That the Sheriff's Office of Peoria County is ordered to take a DNA standard from the Defendant and the Defendant is ordered to pay a DNA testing fee of \$250.00;
[. . .]
- ☒ S. Other: No Judgment of Conviction Entered on the Residential Burglary Count

/s/ Katherine S. Gorman
Judge of the Tenth Judicial Circuit

ENTERED: 4/25/2024

**SENTENCING JUDGMENT,
ILLINOIS TENTH JUDICIAL
CIRCUIT COURT, PEORIA COUNTY
(APRIL 25, 2024)**

**IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, PEORIA COUNTY**

PEOPLE OF THE STATE OF ILLINOIS

v.

ROBERT ELY
Date of Birth: 07/27/1966
(Defendant)

Case No. 21-CF-00331-1

Date of Sentence: 04/25/24

Before: Katherine S. GORMAN, Judge.

**JUDGMENT – SENTENCE TO ILLINOIS
DEPARTMENT OF CORRECTIONS**

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

Count
Offense

3
First Degree Murder

Date of Offense	01/05/21
Statutory Citation	720 ILCS 5/9-1(A)(2)
Class	M
Sentence	99 Yrs. 0 Mos.
MSR	3 Yrs.
Count	6
Offense	Theft
Date of Offense	01/05/21
Statutory Citation	720 ILCS 5/16-1(A)(1)
Class	1
Sentence	15 Yrs. 0 Mos.
MSR	1 Yrs.

The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 1052 days as of the date of this order) from (specify dates) 06/09/21-04/25/24 and/or credit for time served on electronic monitoring, GPS monitoring, or home confinement (of _____ days as of the date of this order) from (specify dates) _____. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

This order is effective immediately.

ENTER:

/s/ Katherine S. Gorman

Date: 4/25/2024

Robert ELY

**INDICTMENT
(JUNE 6, 2021)**

STATE OF ILLINOIS, PEORIA COUNTY
IN THE CIRCUIT COURT OF THE TENTH
JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

v.

ROBERT A. ELY
AKA ROBERT ELY
8000 DELMAR APT 2W
ST LOUIS MO 63130
DOB: 07/27/1966
RACE: WHITE
SEX: MALE
EYES: BROWN
HAIR: BLACK
HGT: 5 Ft. 11 In.
WGT: 182 Lbs.
DCN: INDICTMENT

Defendant.

Case No. 21CF331

City of Peoria Police Department 21-275

BILL OF INDICTMENT

The Grand Jury charges in Count 2 of 6 that on
or about 01/05/2021

In said Peoria County, State of Illinois,

ROBERT A ELY

Committed the offense of MURDER

a Class M Felony (murder)

HE WITHOUT LAWFUL JUSTIFICATION
AND WITH THE INTENT TO KILL WILLIAM
MARSHALL STABBED WILLIAM
MARSHALL WHILE AT 524 E. HIGHPOINT
PLACE, PEORIA, IL THEREBY CAUSING THE
DEATH OF WILLIAM MARSHALL AND THE
VICTIM WAS OVER 60 YEARS OF AGE AT
THE TIME OF HIS DEATH.

In violation of 720 ILCS 5/9-1(A)(1)

Illinois Compiled Statutes

LIST OF WITNESSES:

A TRUE BILL

{signature not legible}

Grand Jury Foreperson

BILL OF INDICTMENT

The Grand Jury charges in Count 3 of 6 that on
or about 01/05/2021

In said Peoria County, State of Illinois,

ROBERT A ELY

Committed the offense of

FIRST DEGREE MURDER

a Class M Felony (murder)

IN THAT HE, WITHOUT LEGAL
JUSTIFICATION. KNOWINGLY STABBED
WILLIAM MARSHALL KNOWING SAID
ACTS CREATED A STRONG PROBABILITY
OF DEATH OR GREAT BODILY HARM TO
WILLIAM MARSHALL THEREBY CAUSING
THE DEATH OF WILLIAM MARSHALL AND
THE VICTIM WAS OVER 60 YEARS OF AGE
AT THE TIME OF HIS DEATH.

In violation of 720 ILCS 5/9-1(A)(2)

Illinois Compiled Statutes

LIST OF WITNESSES:

A TRUE BILL

{signature not legible}
Grand Jury Foreperson

BILL OF INDICTMENT

The Grand Jury charges in Count 4 of 6 that on
or about 01/05/2021

In said Peoria County, State of Illinois,

ROBERT A ELY

Committed the offense of MURDER

a Class M Felony (murder)

IN THAT HE WITHOUT LEGAL
JUSTIFICATION, STABBED WILLIAM
MARSHALL WHILE ATTEMPTING TO
COMMIT A FORCIBLE FELONY BEING
RESIDENTIAL BURGLARY IN VIOLATION
OF 720 ILCS 5/19-3(A) THEREBY CAUSING
THE DEATH OF WILLIAM MARSHALL
AND VICTIM WAS OVER 60 YEARS OF AGE
AT THE TIME OF HIS DEATH.

In violation of

720 ILCS 5/9-1(A)(3)

Illinois Compiled Statutes

LIST OF WITNESSES:

A TRUE BILL

{signature not legible}
Grand Jury Foreperson

BILL OF INDICTMENT

The Grand Jury charges in Count 5 of 6 that on
or about 01/05/2021

In said Peoria County, State of Illinois,

ROBERT A ELY

Committed the offense of

RESIDENTIAL BURGLARY

a Class 1 Felony

IN THAT HE DID KNOWINGLY AND
WITHOUT AUTHORITY ENTER THE
DWELLING PLACE OF WILLIAM
MARSHALL LOCATED AT 524 E.
HIGHPOINT PLACE, PEORIA, IL WITH
THE INTENT TO COMMIT THEREIN A
THEFT

In violation of 720 ILCS 5/19-3(A)

Illinois Compiled Statutes

LIST OF WITNESSES:

A TRUE BILL

{signature not legible}

Grand Jury Foreperson

BILL OF INDICTMENT

The Grand Jury charges in Count 6 of 6 that on
or about 01/05/2021

In said Peoria County, State of Illinois,

ROBERT A ELY

Committed the offense of THEFT

a Class 1 Felony

HE DID KNOWINGLY AND WITHOUT
AUTHORITY EXERT UNAUTHORIZED
CONTROL OVER PROPERTY OF WILLIAM
MARSHALL, SAID PROPERTY BEING
PAINTINGS HAVING A TOTAL VALUE IN
EXCESS OF \$100,000.00 BUT NOT
EXCEEDING \$500,000.00 LOCATED AT 524
E. HIGHPOINT PLACE, PEORIA, IL
PERMANENTLY DEPRIVING THE OWNER
OF THE USE OR BENEFIT OF THE
PROPERTY AND SAID ACTS WERE IN THE
FURTHERANCE OF A SINGLE INTENTION
OR DESIGN

In violation of 720 ILCS 5/16-1(A)(1)

Illinois Compiled Statutes

LIST OF WITNESSES:

A TRUE BILL

{signature not legible}

Grand Jury Foreperson

ORDER

- ☒ This indictment having been returned in open court on 7/6/2021. This case is hereby assigned to Judge Katherine S. Gorman in Courtroom 210. State's Attorney assigned: DEB SHELBY.
- ☒ Defendant(s) is in custody, and this serves as a Directive to the Sheriff to produce Defendant ROBERT ELY to appear on Arraignment date Wednesday July 14, 2021, at 9:00 AM
- ☒ Bond is presently set on this Indictment set at \$5,000,000.00 (10%)

/s/ Katherine S. Gorman
Judge

Entered 7/6/2021

**PROSECTUTOR CLOSING REMARKS,
TRIAL EXCERPT
(SEPTEMBER 24, 2024)**

IN THE CIRCUIT COURT OF THE TENTH
JUDICIAL CIRCUIT PEORIA COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

ROBERT ELY,

Defendant.

No. 21-CF-331

Before: Hon. Katherine S. GORMAN, Judge.

[February 28, 2024, Transcript, p.15]

. . . the jury out?

MR. FITZSIMONS: Yes.

MR. WOLF: Yes.

THE COURT: All right.

(The following proceedings were had in the
presence of the jury.)

THE COURT: All right. Everybody take a seat. Good
morning. A little cooler in here today.

All right. You've now heard all the evidence in this case, but the trial has not ended. At this time the lawyers have the opportunity to make final arguments. What the lawyers say during the arguments is not evidence and should not be considered by you as evidence. After you've heard the arguments, I will instruct you on the law and then you will retire to your jury room to consider your verdict.

Mr. Fitzsimons.

MR. FITZSIMONS: Thank you, Judge. Counsel.

Good morning, ladies and gentlemen. First of all, on behalf of Ms. Shelby and I, I would like to thank you for the time you put into this case. Usually our trials are Monday to Wednesday. This was more involved and so it's longer. Usually trials have breaks, one, because there's things we have to do outside of your presence so there's a lot of coming and going. Often there's scheduling issues. More so in this case because we had witnesses coming from out of the country, so there was that. And then add in the flukey part; hard to believe today that there was a couple days it was unbearably hot in the building. But thank you very much for your patience through all of that.

As the judge explained to you, now Ms. Shelby and I have an opportunity to argue the evidence that was presented during this trial. And luckily at the beginning of this trial you got to know something about Dr. William Marshall, a man in his 90s who, one, was a loved guy. You heard that from the people who work for him in his house.

You could clearly tell the first caretaker called Alaina, she was there that next morning, obviously loved that guy. She went to nursing school at his encouragement. And that's no small undertaking. That's a massive undertaking in one's life. Did that because of his encouragement. Someone who has already had a job, went back to school because of him.

You saw the caretaker who was there the morning when Dr. Marshall's killer came to the house. She loved him too. You could clearly see that, the emotion they felt for him. But those caretakers were not there for Dr. Marshall. They were there for his wife, Nancy, Ms. Marshall.

Dr. Marshall was not the typical man in his 90s. He was fit. He had an exercise bike down—or exercise equipment down there.

If you remember, when we were talking to the caretakers, the way they had to move Ms. Marshall from her bedroom to the living room everyday is a two-man job. I suspect somewhat of an uncomfortable situation for that company that does the caretaking. They want the second person to be one of their nurses, one of their CNAs. Dr. Marshall wasn't having that. He was the second man of that two-man job and even then only in the morning. So that means at night, by himself, he got her back into that same—got her back into her bedroom, a man in his 90s, every night. They were just there to help in the morning, and even then just kind of partially.

Why that's key, one, just shows you what an extraordinary gentleman he is, but that would not have

been part of the plan when this man showed up. Because you don't show up at an elderly person's house banking on the fact that they're going to be that active. And you remember from the evidence from the autopsy from the doctor, Dr. Marshall had some pretty significant defensive wounds, some very deep cuts to his right hand, his right arm was messed up, and then obviously the wounds that killed him, the deep stab wounds to his chest.

Also, you recall from the DNA evidence, they got—they pulled DNA from Dr. Marshall's fingernails, sent that to the lab. The only DNA that matched in that was Dr. Marshall's. So he wasn't scratching anybody. His defensive wounds, purely defensive wounds. But he was no one to roll over. I'd argue to you based on that, he confronted his killer. That was not part of the plan.

Also, the fact that—and this is a chilling part of this case, Nancy Marshall was disabled. She was in that chair. She could not talk, but she could hear. Imagine that.

MR. WOLF: Objection. This is not proper argument.

THE COURT: Come up here, please.

(The following proceedings were had at the bench.)

(The following proceedings were had in open court.)

MR. FITZSIMONS: There are some horrifying parts of what this man did in that house. Killing Dr. Marshall, that means Nancy was left in that chair. When the caretakers got there the next morning, she was still in that chair. I mean, she was there overnight. I'd argue that the defendant here had

to get out of the house after all that—after he got those paintings. He got seven of them. Perhaps that's all that could fit in that truck.

When we started the trial, the judge read off to you the indictment against the defendant, which of course in the instructions the indictment is no evidence against the defendant. It is merely the charge that we're arguing to you now.

Obviously, no surprise to you I want to spend most of my time talking about the murder case, but let me talk about the other ones just to address it so we can move on. We've charged the defendant with murder. We've charged the defendant with residential burglary and theft. Residential burglary is entering into a residence with the intent to commit, in this case, a theft. So how do we know it was his intent to commit the theft? He committed the theft. I mean, the items were taken. He didn't go into that house with the intent to just have a chat with Dr. Marshall and then while he was there go, you know, I might just take a painting. He was there for the purpose to steal from him, something, something of value.

I know there was some argument, well, maybe he's not just a jewelry type of guy. The things he stole were valuable. That's the whole point. Dr. Marshall—when you go into that basement—and the paneling in Dr. Marshall's basement is not too dissimilar from the paneling in this courtroom, but just paintings all over. Those frames also—the paintings are very valuable, the frames are also very valuable.

Remember the FBI analyst, the chemical analyst, the blond doctor from the FBI, the gold color on one of the frames, not paint, it was straight up gold. Those are some nice frames. Maybe that's what caught his eye. But he definitely stole something of value.

Remember when we called Dr. Marshall's son to testify? He testified that when they—when the insurance money from the paintings, when they claimed them, well over \$100,000. And that goes into the next count. He—residential burglary, he goes in with the intent to commit a theft. The theft in this case—and you'll be instructed on that. The proposition will be, did he take an item from Dr. Marshall and was it in value of over \$100,000? I don't know that that's really—that evidence is all in dispute during this trial, but I want to address that with you.

The residential burglary, I do want to say this. You will see in the propositions for residential burglary—and those of you who have been on jury duty before you'll recall—and I can't remember if any of you have—that when you go back there, the judge will give you what we call the issues instructions. And it lists out propositions that have to be answered by you in finding whether someone is guilty or not guilty of an offense.

And for residential burglary you'll see that one of the propositions is that the defendant entered without authority. But you'll also get an instruction that is, One enters without authority if—even if there, in essence—and you'll see the instruction for yourself—if when they enter the home, they had the intent to commit a theft whether they

were actually invited in or not. The reason is, for instance in this case, if you could go back in time and tell Dr. Marshall because—

First of all, let me back up. The defendant shows up at Dr. Marshall's house, is outside, inside, outside again and then comes back in. Perhaps Dr. Marshall said, Come back in. But if you could go back in time and tell Dr. Marshall, This man is about to kill you and steal your stuff, obviously Dr. Marshall wouldn't let you in. You can't trick your way into being invited. So you're entering without authority if you're entering with that intent, even if you were invited in. So the residential burglary isn't just what you think on a TV show of someone kicking in a door or going through a window.

All right. When you get the instructions for murder, I just want to address the jury instructions for that. You will see in the issues instructions for murder, again, propositions. The first proposition is that the defendant performed the acts which caused the death of William Marshall. And second proposition, that when the defendant did so, he knew that his acts created a strong probability of death or great bodily harm to William Marshall or he was committing the offense of residential burglary. That clause from "or he was committing the offense of residential burglary," that is what we refer to as felony murder. In other words, if you kill someone while committing a felony, you can't say, Well, listen, I didn't mean to kill that person; I was just trying to do this felony. That would be an unjust result.

So the second proposition is, one, he did what he did knowing it created a strong probability of death or great bodily harm. I'd submit to you stabbing Dr. Marshall as many times as he did and how he did created a strong probability of death and great bodily harm and, in fact, Dr. Marshall died.

The "or committing the offense of residential burglary," why I want to point this out is of course your verdict on murder has to be unanimous, whether he's guilty or not guilty of murder. But whether you among yourselves disagree on whether or not it was just outright murder with the knowing that created strong probability of death or great bodily harm or that he did it while committing the residential burglary is fine. If some of you believe that and some of you believe that was just created as a strong probability of death, that's fine. It's just overall your verdict has to be unanimous on murder, overall. Although you might—some of you might believe it was a felony murder, some of you might believe it was murder outright. But he killed Dr. Marshall. And he did it intentionally. This was no accident.

But let me focus on—and I imagine after a week of this trial you know what this case is about. So let me now focus on that first proposition, that it was the defendant who performed the acts which caused the death of William Marshall. How is it we know that it was the defendant? Well, the first way we know is because the person who was there that morning who saw the killer come to the door pointed him out in court. Kellisa, sometimes known as Kelsey, the soft-spoken sweet

lady who sat here, who also was upset when she started, pointed that man out in court as the man who showed up at the door that morning. And I think we can all agree Kelsey saw the killer. Was she wrong? I guess that's the argument, right? That's the debate? Was she wrong?

Well, not only did she pick him out in court, she picked him out in this photo array. And this was the third overall photo lineup that they'd shown her; the second one that involved the defendant, that you might recall was Sergeant Ray who also testified.

Now, let me say something about these lineups and Kelsey. We first—well, you saw for yourself when she sat through this photo array, she went through all six folders. Once, she went through it again, she went through it a third time. I mean, you saw it. She looked at each one of them hard. That's a good thing. How uncomfortable would it be if as soon as they just opened up one folder she goes, Yeah, that's it. That's a lady who was taking this seriously, who wanted to do the right thing.

Because, remember, they tell you as part of the admonitions for this, it's important to exclude as it is to include, the person may or may not be in there. And by the way, everyone knows what a lineup is about when the police are showing it to you, everybody. That's no secret. The killer might be in there. So it's the kind of thing you would want someone to take seriously. It would be disturbing if she was just kind of not interested and just goes, Yeah, yeah, yeah. But here's what we know about her and how consistent and how genuine she is. If she doesn't see somebody, she had no

problem telling the police that. This was the third one.

The first one did not have the defendant in it; some guy named Herbert. Also, to the criticism that the police had tunnel vision and only ever once focused in on the defendant. First lineup they had a guy who—because there was some talk of there was kind of a weird guy in the neighborhood so maybe that was him. For a moment that's all the police had to go on. That's not a lot. Thankfully that moment didn't last long.

But the first lineup had some dude named Herbert. She looked at that, Not him. She didn't see him. The second photo array, and she even testified to you that she struggled a bit. That she struggled with it. And I think you heard evidence of that, that she could narrow it down to two. What a coincidence one of those two, the defendant, the same man. And let's—again, let's all agree she saw the killer that day. Same man she pointed out in court as being Dr. Marshall's killer she saw in that second array and narrowed it down to him and one other picture. And that other guy was a picture from the Florida Department of Corrections. That wasn't the guy at Dr. Marshall's house. But she was uncomfortable with that, not because she's flakey, not because she's not paying attention. Because this was a man she saw briefly.

But you remember because of her background as a dental assistant, she focused in on the one thing as a consequence of doing that kind of work she notices people's teeth. I don't know that's—either that's a gift or a curse if that's the first thing you notice about someone, but that's just a—if she sold

shoes, perhaps, she would always look at people's shoes at first. But that's—she is who she is. She has the background that she has. That's her experience and that's what she notices. But that's hard to do in a photo array when you don't—that's what you got.

So what a coincidence she narrows it down to that. But because she's taking it seriously, she tells the police, Listen, the thing is it's his teeth. So—and by the way, gives more—and was always able to give a description not only of this defendant but of the car he was driving and his overall appearance.

So let's talk about was she wrong when she sat here and looked at this man and said, That's the guy who was at the house? She saw the killer. She's the last person to see Dr. Marshall alive. She saw the killer and pointed him out. Was she wrong in her description?

All right. Well, here's that third photo array. The police—because she says, Look, it's the teeth. I suppose it would have been the easiest thing in the world if you were Detective Vasquez and go, Ah, shit, well, that's too hard to put together, moving on. Nope. They now have to find a picture—and by the way, at this point in the investigation they've learned independent of Kelsey a lot more about Robert Ely and who he is. And now he becomes a person of interest, right? Because a truck is found. Pedro, My friend Robert asked me to hide this truck, the same truck that's leaving the neighborhood.

So now they go and they go back because they remember the lady who saw Dr. Marshall, the last one who saw him alive. They remember the lady who saw the killer come to the door, and they go back and they say, Well, now we need a lineup where we can maybe see some teeth. They've got to find a picture of the defendant, which they get open source, just out there in the internet, find a photo of him. And you've got to find him with his teeth. But not only that, more challenging, you also have to find—because it's a lineup, people who look like him enough but also who are showing their teeth.

So that takes some time to put together. And this is what they get together. And this is the folders that she's looking at when she's going one by one and she looks at it very, very seriously. And remember, she's focusing. She's trying very, very hard. And was she wrong? She picks the person we all agree is the defendant.

MR. WOLF: Objection to “we all agree.”

MR. FITZSIMONS: Mr. Wolf—

MR. WOLF: Judge, this is improper.

THE COURT: Just a minute. Come on up here.

(The following proceedings were had at the bench.)

(The following proceedings were had in open court.)

MR. FITZSIMONS: I mean, when we were—in an attempt to criticize her identification, even the defense attorney put the picture up and we talked about that being Robert Ely and how better his teeth looked, do you recall that? She picked out

the defendant. But, again, was she wrong? Because she notices his teeth, and for sure his teeth look better there. What was her description? Was she wrong? What was the first thing she says, her identifying feature—again, so she's focus—when she's looking—that's that same picture from the lineup. She's focusing on that. His teeth look somewhat like what she remembers. She picked the defendant.

But remember she described for us what? Meth mouth. That is the term. It's not very nice, for sure. It's kind of mean, but every profession has something like that. And in the dental field it's—I think you could take that to mean—not that she's giving a diagnosis of one who is consistently using meth and is the shade of black that is consistent with one—it's a slang term. It's kind of a mean thing to describe people who just have bad teeth, very bad teeth. That's what she's talking about. That's not to imply—I don't know that the defendant is a meth user.

But when she says that the teeth were messed up, they were dark, this is what—kind of what she was looking at. Even this doesn't do it justice because she was there and he was talking and she had even a better look at his mouth than this. This is just to give you an idea more of what she's talking about. This is a—not unique because, of course, other people would have bad teeth for sure, but a remarkable, distinct feature of the defendant. That's not common. And she pointed him out as the man who came to the door. She saw the killer. The man who came to the door was the killer. She described him as having that meth mouth and

there it is. That's him with that same distinct feature. Was she wrong?

What else did she say? How he spoke. She called it a southern accent. Was she wrong? I don't know if he's from the south or not. That truck had Texas plates. I think it's the lady Tilley. I don't know if they're dating or they're married or what, but his companion Tilley had a Georgia license, I think was in one of those pictures. I don't know if he's truly southern or not. But he has a distinct way of talking.

And this nonsense of asking her, Well, now, was it eastern European or southern? It's very distinctive. But if you didn't know better, you would describe it as southern. Because who would ever think that anyone is Romani? Has anyone ever even heard that term before this? Unlike, you know, Pedro, you recall Pedro, very obvious an accent. We're all familiar. That's a very distinctive accent of one who speaks Spanish, Mexican accent, Pedro. Robert Ely, not so much, and you've heard him talk.

So was he wrong—was she wrong? Right here at this white box, this is the overhear that Pedro was wearing. And you can hear him talking. You can hear Pedro talking. You can hear both of their accents.

(Video played.)

MR. FITZSIMONS: First of all, the first guy talking is Pedro. I owe money on the truck, that's the defendant. That's how he talks. He has kind of an odd way of talking, but that's how he talks at home. Pedro goes home to talk to him. That's how

he talks at home. How does he talk when he's trying to charm his way into an elderly person's house? You'll notice he puts a little affect on the way he talks. And we know that because we've heard him in an old lady's house down in Glen Carbon.

(Video played.)

MR. FITZSIMONS: You hear he adds a bit of the drawl when he talks. Maybe that's just part of his folksiness when he's trying to be charming. But he has a distinctive way of talking. Is he southern? I don't know. He might be.

But she's not wrong, Kelsey, Kellisa, not wrong when she calls it southern. That kind of drawl, that kind of twang he puts on it, that's what Detective Vasquez was talking about when he said, I don't know, it seems kind of Creole to me. Notice everybody goes—they don't outright go, Oh, well, that guy is from Texas. Everyone goes, It's kind of southern. In other words, there's something just a bit off about it. Now, maybe that's because of the flavor of the Romani accent mixed in with his kind of folksy drawl. I don't know. But that's what they're hearing.

The lady who was at the house who saw the killer not only described his teeth that he has, describes the way he's talking. Same man who is sitting right here she pointed out is the man at the house. And we know the man at the house was the one who killed Dr. Marshall.

Well, also how we know she's right was his—what we call MO. You've heard that term, his method of operation. The way he does things is so consist-

ent. How he was at that door was exactly how you could imagine it at Dr. Marshall's. Because remember she testified that he comes to the door and what's the first thing, very nice, but with his mail. How creepy is that? Grabbed his mail, comes up—and of course the mail would say "William Marshall." Comes up, Oh, how is Bill?

One, try to charm your way in and act like you know the person. Remember she said that, that he came and acted as if—she thought they knew each other. But that is part of his act, I guess. It's part of his method. So that's how we know she's also describing the same guy, this defendant, this is him. And we've also heard it—

(Video played.)

MR. FITZSIMONS: Right, that being very nice. Trying to charm your way into the house. That's what he was doing at Dr. Marshall's house. There's a second part of that MO that Kelsey would not have been aware of that morning, but the people who were there the next morning certainly were, the bucket.

(Video played.)

MR. FITZSIMONS: That's Dr. Marshall's kitchen. There's the bucket. That's the guy she pointed out as being in the house that morning. Now has the same teeth she described, has the same voice she described, and behaved in the exact same way. That's not even all of it.

What else? There's a white truck. She said she saw a white truck when she was leaving. Same white truck. He picked the wrong street to drive

down. He picked the wrong street. Who would ever think that a neighborhood has got a camera perched up high? The Mount Hawley neighborhood, that's a nice neighborhood. Every neighborhood should have this.

And not only that, what terrible luck he's got, he's got to put the paintings in the cab. Doesn't know there's cameras there, but adding more bad luck on top of bad luck, what a great quality camera that is. They bought a nice camera. That's a nice system. From that they can zoom in.

And by the way, this is why I'm pointing this out. Remember when we had Detective Rezac who was able to get the location data off the phone? When that truck left, it left town. It didn't hang around. So to this notion that, oh, the police just had tunnel vision, why—you know, the investigation just goes right out of town. Yeah, because the killer went right out of town.

And how we know that, he took Dr. Marshall's phone. More bad luck. He doesn't realize Dr. Marshall's phone keeps contacting the satellite, some app or the phone itself kept pinging to a satellite. And every time it does it leaves a dot on a map that the police can take that data, put it on a map. That's what that ZetX program is. They map out a location and a time. It's amazing. And the police could see that truck leaving town right away. And they can pinpoint where he finally threw out the phone. This is right outside of East Peoria. They find Dr. Marshall's phone.

But back to him picking the wrong street. The police can now take that video and zoom in. And

of course what is it we see right there in the cab of the truck? Man with Dog painting that was found down in St. Louis. And look who is sitting right there? The scruffy man, the man that the—that Kelsey pointed out in court as the killer. And we know he smokes. He's smoking a cigarette. There was cigarettes found in the truck. And remember there's some evidence when he was under surveillance? He's throwing a cigarette out that they pick up when he's under surveillance in St. Louis.

But there he is. I think we can all agree the killer is in the truck. And you can zoom it in and see him right there. The same man who's got the same teeth Kelsey described, same man who's got the same voice Kelsey described, same man who behaves in the same way, the same MO as Kelsey described now on video.

And that's the back of the Man with Doll that's from the Marshall collection. That was to show you that's part of Dr. Marshall's paintings. They find that truck. Remember they put out the message, and an officer—a white truck that's got that writing on the side that they can zoom in and look at. And they can see this vanity plate from Mike Riggio on it. And then an officer in Collinsville—or Caseyville calls them up and says, I found your truck. Because remember they didn't have a VIN number or anything to go off, just this description. And an officer down there doing good work finds it and calls up.

So the detectives go down there. They talk to Pedro. That's where they learn Robert, among others, but Pedro says, Yeah, Robert asked me to

hide the truck. So obviously they want to search the truck. They bring it back. And there it is on the right there in the Peoria police sally port, and, again, same truck. It's got the same power washing.

And what's so obviously creepy about this truck? It's got this—so if you were in the neighborhood, if you were in Dr. Marshall's neighborhood and you're just looking at it and go. All right, you know, Dr. Marshall's having some work done. You would really have to be paying attention to go, Wait a minute, it's freezing out here; it's very cold; there's a power washer in the back; not the kind of thing done out in the cold weather. There's this advertising with no number on it at all.

But that's—you don't notice that thing when you're just casually seeing the truck go by. This is not a work truck. It's a disguise. This is how he gets into that neighborhood unnoticed and how he can operate moving freely. He doesn't have to slink around in a shadow. This is a disguise.

But they search the truck. And inside the truck on the floorboard they find these pieces, these wooden pieces and this debris here. And they gather that and that gets sent off.

And they find—and you now know, because you heard all the evidence, the significance of this U-Haul business card and the address on here to the facility down in Overland, Missouri. But at the time they don't know—I mean, we're—all of us now looking back, we have that benefit now of hindsight. At the time they're going through it they're just gathering because it may or may not be important.

But then they search the back of the truck. This mess back here. And Officer Bowers, you heard testify, was back there and he's searching the truck. And he goes, Wait a minute, I should lift the mat. There's a mat back there and he lifts it and what does he find? This knife. This Farberware knife from a kitchen. Look how long it is. It's absolutely consistent with the knife that killed Dr. Marshall. Because remember Dr. Marshall had a very deep wound that went up and punctured, among other things, his heart. And on the edge of that knife they find the blood. And where's that blood match to when it goes to the lab? Dr. Marshall. That's the knife that caused, among his other injuries, that right there. That is Dr. Marshall's blood on that knife.

So now let's link up. That truck is found all the way down outside of St. Louis. Dr. Marshall lived up here. And the murder weapon is in the truck, same truck you see the defendant driving in with the same voice, the same MO, same teeth, and the murder weapon is in the back. Was Kelsey wrong? Was that just some unfortunate coincidence, the person she's described is the man who showed up and is the killer is also the man who drives the truck that has the murder weapon in it?

Not only that, what do we know about the truck? This is, again, from the overhear Pedro wore. This is the defendant looking at Pedro while Pedro is telling him that the truck just got found by the police. What a cold chill must have gone down the defendant's spine when he heard that, or at least you would hope there was. He's staring at him.

And by the way, Pedro, nice guy, does work for the defendant, but he's not part of this Romani theft ring. He doesn't know anything about that. So of course the defendant can't say to Pedro, Oh, my God, I left the murder weapon in there. He can't say anything like that. When they hide it, the defendant is like, Listen, just keep this and I'll pay you, but please cover it up. His work truck, right? You think you would need to work, but that's not its function. As I said before, it's a disguise.

But this is the moment he's being told that it was taken. But the—why I put this up here is, who is the man who wanted the truck hidden? It's the same man that Kelsey picked out as being the man who showed up that day, same guy. She saw the killer. Same guy she pointed out Pedro pointed out as the man who asked him to hide the truck. Kelsey and Pedro, two people separated by half of the state of Illinois who otherwise have no connection on this planet both know the defendant. One of them pointed him out as the guy who was at the house, the other one pointed him out as the man who asked him to hide a truck that had a murder weapon in it. Was she wrong? No. She IDed his killer.

And that's not even all. This U-Haul facility—this is argument. So let me argue to you that this was phenomenal police work. When they find the defendant and now a different white truck, a newer white truck, right, because the old one is at Pedro's hidden, so they need a new cover so they get a new truck, and they find the phones. And they download the phone that has, I suppose,

been referred to as Tilley's phone and also a phone that Pedro knows to contact the defendant.

They see a bunch of numbers on it. And they know or suspect that a U-Haul facility is involved with this because there's that business card found in the truck hidden at Pedro's, the truck at the police department. And so the thought is, well, let's get a list of people who have rented out storage sheds and their numbers and let's see if any of those numbers match the number on that phone. And it does. And then they match that to this locker, 1721. And this is where the FBI came in to help. They crack it open. They cut off that lock. And the only thing in there, only thing in there, the paintings. And there they all are, all seven of them.

And then the investigation doesn't even stop there. They send this painting—this is what the federal—the FBI analyst, the fractologist—that was the one with the darker hair—they send all this to the FBI. And these chunks that were found in the truck—the floorboard of this truck were sent to the FBI lab with this painting and that fractologist was able to match this to this painting. This is what the federal government called item number 1. This is the Snowy Evening painting. And that analyst, when she was looking at it, some paint actually chipped off of the frame. And so she went back and matched that to also—the debris from the truck, matched it to this frame.

So was Kelsey wrong? Now, the guy who she's pointed out as being the man who was at the house, she pointed this defendant out as the killer with the same voice, the same teeth, the same MO with the murder weapon in the truck now has

got paintings in his shed that is rented out to some person named Staneka or Staneka—I don't know that we'll ever know that. I'm going to say Staneka Ziko.

Now, about that—because I know Mr. Wolf put a lot of effort into this, in that there was contact between Staneka Ziko the day this facility—that storage shed was rented and—from the day it was rented from Staneka to Tilley. Tilley is the older lady in that overhear who you hear talking, the person the defendant lives with.

And while this was in Tilley's name, well, of course—if you want to believe Tilley is involved with all of this, of course she is. Absolutely. Is she the boss of this theft ring? Is she the boss? I don't know. Maybe. But she was not—there was not a little old lady who went into that house and killed Dr. Marshall. But of course Tilley is involved with all this. Absolutely. And that's his companion.

So was Kelsey wrong? Imagine the person she pointed out has a girlfriend or wife who's got the stolen paintings in the shed, right? Has the murder weapon in the truck he's driving; has the same messed up teeth he's got; has the same voice he's got; and has the same MO. And that's a guy she just saw briefly. Was she wrong? He's got all—all of those things match up, and Mr. Wolf called that tunnel vision. No, that's just an investigation. That is just following the leads where they went and it went right up to this defendant. It was not part of the plan. I'd argue to you that when he knocked on that door, the person who answered it was Kelsey. That was a wrinkle in the plan. Because ideally he's alone.

And, in fact, as soon as he gets there—Dr. Marshall wants her to leave even earlier than normal. Remember, she said that was kind of an uncomfortable moment, Well, go ahead and leave now. She wanted to stretch that out for another 15 minutes. He came right back in and told her to go and be good to her family and stay warm.

So, yeah, Tilley, Tilley keeps being brought up. Tilley is a part of it. Absolutely. Mr. Wolf put up some pictures from those receipts that were pulled out of the new truck. And if you recall the balance—and I won't go through here and try to fish it out. But the balance on one of those receipts have like a withdrawal and the balance is \$80,000. This as a big effort. It's big business. Is Tilley the boss? I don't know. Maybe. But I know that's the killer. You know that's the killer.

MR. WOLF: Objection, Judge.

MR. FITZSIMONS: Pardon me. Pardon me.

MR. WOLF: Judge.

THE COURT: Come on up.

(The following proceedings were had at the bench.)

(The following proceedings were had in open court.)

THE COURT: All right. Please disregard any personal opinion from the lawyer.

MR. FITZSIMONS: You know that's the killer. Kelsey pointed him out.

So was Tilley involved? Yes, of course. But not only that, the thing about the storage shed is there's the government—the federal government, the FBI people. They cut off the lock and they

bring it up to Detective Vasquez who's got keys. And where does he find those keys? In the place where the defendant lives. So now think about the person Kelsey has pointed out. Same teeth, same look, same voice, same MO, his girlfriend is part of renting that storage shed. It's got the missing paintings in it. And he's got the keys to it in his house. And she picked out the wrong guy? She saw the killer. That's the person she pointed out has all of these connections to the murder. He's got the murder weapon. He's got the keys in there.

And we know, one, Pedro knows to go there to visit them. Because remember there was some testimony he went there once and he wasn't home so he had to leave and come back, Pedro did? And when he came back, that was part of the video of the overhear we saw. He leaves and he comes back. The defendant is there. And when they search the apartment, they find these keys and they find some medications for the defendant.

And let me argue this to you, because I believe Mr. Wolf pointed out that the pills were I think a heart pill and like a pain reliever pill. Perhaps the suggestion to you is that he's too feeble to be doing any of these things. Pedro knows him as he does construction work with the defendant as well. So the defendant is not only doing this racket among the elderly people, which Pedro is not a part of, but he also does some construction. Yeah, he may have a heart condition, but he's—he's not incapable of doing this. And by the way, what's his—would not have taken—he's not—he didn't go to the home and Dr. Marshall was a

body builder. He went and stabbed a man in his 90s. But we know that that's where he lives because that's where his medications are. That's where the keys are.

Kelsey described the height. I can't wait to talk to you about this. Some of you—I can't remember so forgive me—may work in the medical field or certainly have friends who do. And perhaps maybe all of you have been in a doctor's office and you—in some of the offices you see on the door frame of the door would be a measurement, like a yardstick or a ruler on the side of the door. That's the only place that exists, I'd argue to you.

Normally when they ask people height, we all just kind of go on our best judgment, same with weight, height and weight. If you were to ask—if you had to go back there and come out and guess my height and weight, especially weight, some of you may say 190, and thank you; some of you might say 220; some might say up to 240. You don't know. Same with my height. I might be 5, 8. I might be 5, 10. I might be pushing 6 feet because I'm not standing next to anything. All you have to go on is your perception. But when you came back out of that jury room and looked at me, every one of you would go, Well, that's the prosecutor. Your perception of people's height changes.

Kelsey was, if you recall, a short person. 5, 8 might be tall to her. The house where she sees him—because remember she's not with him. She's in the house, not to answer the door for Dr. Marshall and not to be in his business. She's there to take care of Ms. Marshall back in that chair. So she

lets him in. She has to go back and deal with Ms. Marshall and she thinks the guy is gone.

She never notices him again until she's at the door and takes a look over and sees him in that piano room and the piano room is down a step. Which is why this nonsense of, well, we'll have Detective Vasquez step down and all that. Sure, one person might look a certain height, but then your perceptions could change depending on where you're standing relative to where other people are standing. So this nonsense about the height.

But what was not nonsense was the good look she got at his teeth, how she heard his voice, and that truck. And what an amazing coincidence, I suppose, he wants you to think, that the same truck with the murder weapon and the paintings are in the shed rented by someone at the instruction of his companion.

Kelsey saw the killer. He drove down, unfortunately for him, the wrong road and they got a picture of him. The man in the white truck is the killer. The man who showed up at the house is the killer. There he is sitting in the truck. There he is from a download from the phone that was seized that was in the truck he was also found in. And there he is sitting right there. That is why we're asking you to find him guilty of the murder, guilty of the residential burglary and guilty of the theft. Thank you.

THE COURT: Thank you.

All right. Before we hear from Mr. Wolf, I'm going to have you come forward, please.

MR. WOLF: Yes, Judge.

THE COURT: And Mr. Fitzsimons.

(The following proceedings were had at the bench.)

(The following proceedings were had in open court.)