No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Charles W. Pollock Jr.,
Defendant-Appellant.

Appeal From the United States District Court
For the Central District of Illinois
Case No. 11-CR-10082
The Honorable James E. Shadid

BRIEF AND REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT CHARLES W. POLLOCK JR.

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Sarah O'Rourke Schrup
Attorney
Megan Kiernan
Senior Law Student
Jules Levenson
Senior Law Student
Vanessa Szalapski
Senior Law Student
Counsel for Defendant-Appellant,
Charles W. Pollock Jr.

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Disclosure Statement

I, the undersigned counsel for the Defendant-Appellant, Charles W. Pollock Jr., furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: Charles W. Pollock Jr.

2. This party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

Sarah O'Rourke Schrup (attorney of record), Megan Kiernan (senior law student), Jules Levenson (senior law student), and Vanessa Szalapski (senior law student), of the Bluhm Legal Clinic at the Northwestern University School of Law.

The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

Anthony W. Vaupel
256 S. Soangetaha Rd.
Galesburg, IL 61401

Jeffrey L. Flanagan
411 Hamilton Blvd. Suite 1020

Peoria, IL 61602

Karl W. Bryning
401 Main St. Suite 1500
Peoria, IL 61602

Joseph M. Borsberry
411 Hamilton Blvd. Suite 1510
Peoria, IL 61602

/s/ Sarah Schrup
Date: November 25, 2013

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

Address: 375 East Chicago Avenue, Chicago, Illinois 60611
Phone Number: (312) 503-0063
Fax Number: (312) 503-8977
E-mail Address: s-schrup@law.northwestern.edu

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Jurisdictional Statement

The United States District Court for the Central District of Illinois had jurisdiction over Appellant Charles W. Pollock Jr.'s federal criminal prosecution pursuant to 18 U.S.C. § 3231, which states that the "district courts of the United States shall have original jurisdiction . . . of all offenses against the laws of the United States." This jurisdiction was based on an indictment charging Pollock with violations of 18 U.S.C. § 922 and 18 U.S.C. § 1512.

Pollock was initially indicted on September 15, 2011. (R.14.)[1] Pollock's trial took place between February 5 and February 7, 2013, and the jury found him guilty of all three counts alleged in the second superseding indictment on February 7, 2013. (App. A.1, A.12.) The district court sentenced Pollock on August 5, 2013 (App. A.34–37), and entered its judgment on August 6, 2013 (App. A.38). Pollock filed his timely notice of appeal on August 12, 2013. (R.88.)

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 (2012), which grants jurisdiction of "all final decisions of the district courts of the United States" to its courts of appeal, and 18 U.S.C. § 3742, which provides for review of the sentence imposed.

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[1] References to the sequentially paginated trial transcript shall be denoted as (Trial Tr. __) and references to the sentencing hearing transcript as (Sentencing Tr. __). All other references to the Record shall be denoted with the appropriate docket number as (R. __). References to the material in the short appendix shall be denoted as (App. A.__) and material in the long appendix as (App. B. __).

Statement of the Issues

I. Whether the district court's failure to instruct the jury that it must unanimously agree on the specific firearm possessed in order to sustain a conviction under 18 U.S.C. § 922(g)(1) violated the defendant's right to due process.

II. Whether the government's repeated mischaracterization of two different witnesses' testimony about critical facts affected the defendant's substantial rights.

III. Whether the district court erred in not adequately addressing the 18 U.S.C. § 3553(a) factors both in the sentence as a whole and in its decision to apply a consecutive sentence, in applying the § 5K2.9 policy statement, in imposing an alternate sentence, and in imposing a substantively unreasonable sentence.

IV. Whether the district court erred in applying the relevant-conduct and cross-reference guidelines.

V. Whether the district court erroneously imposed an alternate sentence that included a crime-of-violence enhancement and a finding that the firearms did not constitute a collection.

Statement of the Case

On August 18, 2011, the government filed a criminal complaint against Charles W. Pollock Jr., alleging that he possessed firearms as a felon and that he used those firearms in connection with a crime of violence. (R.1.) A grand jury later indicted Pollock only on the felon-in-possession charge under § 922(g)(1). (R.14.) On November 16, 2011, the government filed a first superseding indictment, identifying four additional firearms as well as adding a second count charging him with possessing ammunition. (R.22.) In a second superseding indictment, filed on May 17, 2012, the government added a third count: attempted witness tampering in violation of 18 U.S.C. § 1512(b)(2)(c). (App. A.1–2.)

Pollock's jury trial took place from February 5 to February 7, 2013. The district court denied Pollock's motion for acquittal both at the end of the government's case and at the close of evidence. (App. A.8; App. B.24; Trial Tr. 448.) The jury found Pollock guilty of all three counts. (App. A.12.) Pollock then moved for a new trial (R.73–74), which the court denied (App. A.13–14). On August 5, 2013, the court sentenced Pollock to 120 months' imprisonment on each count; it ran Counts 1 and 2 concurrently, but imposed a consecutive sentence for Count 3 (for a total of 240 months). (App. A.34–37.) The court also issued an alternate sentence of 115 months' imprisonment on each count; again, it ran Counts 1 and 2 concurrently, but imposed a consecutive sentence for Count 3 (for a total of 230 months). (App. A.30–31, A.34.) The

court entered judgment the following day, on August 6, 2013. (App. A.38.) Pollock filed a timely notice of appeal on August 12, 2013. (R.88.)

Statement of the Facts

Charles Pollock is not perfect, but he is not a career criminal. Before he was convicted in this case, his only prior convictions resulted from his attempts to contact his girlfriend of twenty-two years following their break-up. (Sentencing Tr. 73–74.)

Two years after the end of this relationship, Pollock began dating Kim Bowyer. *See* (Sentencing Tr. 12.) Their tumultuous 15-month relationship was wrought with conflict fueled by excessive drinking and suspected infidelity by both parties. *See* (Sentencing Tr. 19, 62.) The nature of these fights, however, is hard to pin down, as Bowyer's reports to police and her in-court testimony are inconsistent. For example, Bowyer recounted at sentencing an argument she and Pollock had in a bar on July 9, 2011. Although it is undisputed that Bowyer became so angry that she decided to leave (App. B.10), Bowyer gave inconsistent reports of what happened next: in some versions she returned to the bar (App. B.11); in others she did not (App. B.8–9). In the versions where she did return to the bar, sometimes she said Pollock was still there (App. B.11), in other versions he was not (Sentencing Tr. 20). In yet another version she left with Pollock and then he kicked her out of the car while driving on the highway (App. B.65), though she later denied that this happened (Sentencing Tr. 41). Ultimately, a policeman was dispatched to pick her up after she had been seen wandering the highway and knocking on strangers' doors. (App. B.65.) The incident

culminated with Bowyer accusing Pollock of stealing her truck, and the two broke up shortly thereafter. (Sentencing Tr. 37.)

Bowyer also reported an additional incident on which the parties sharply disagree. A state court jury would later reject Bowyer's version, and acquit Pollock. Despite this acquittal, Bowyer's story had serious consequences for Pollock in this federal case. According to Pollock, on July 16, 2011, Bowyer called him repeatedly and asked him to come over. (App. B.45.) When Pollock arrived at her house, Bowyer was irate and an argument ensued. When Pollock expressed a desire to leave, Bowyer climbed into his car and refused to get out, so Pollock eventually drove home with her in his car. (Sentencing Tr. 67.) Later, the police arrived, *see* (Sentencing Tr. 69); Pollock assumed that Bowyer's daughter had called them following the argument at Bowyer's home (Sentencing Tr. 71; App. B.61). Neither Bowyer nor Pollock spoke to the police or allowed them in (Sentencing Tr. 70–71); after observing the situation from a window less than two feet away (Sentencing Tr. 70), the police checked with the State's Attorney, who told them not to enter, and they eventually left (App. B.62).

Bowyer told a completely different story. According to Bowyer, Pollock was the one who called her, came to her house, forced her into his car, and drove her to his house. (Sentencing Tr. 24–25.) Once there, she alleged that he forced her inside and put her on his lap. (Sentencing Tr. 25–27.) Bowyer claimed that when the police knocked on the door, Pollock told her to stay

quiet. (App. B.33–34.) Pollock and Bowyer went upstairs and the police left. (App. B.34.) According to Bowyer, Pollock forced her to have oral and vaginal sex. (App. B.37–38.) Pollock denied having sex with Bowyer. (Sentencing Tr. 72.) It is undisputed that Pollock drove her home later that night.

From here, Bowyer's story conflicts not only with Pollock's but also with her own. In her initial statement to the police, made immediately after Pollock drove her home, Bowyer claimed that at the end of the night Pollock expressed a desire to kill himself, that he told her he "would probably never see [her] again," and that he "lov[ed] [her]." (App. B.54.) The next day, however, she returned to the police station to add a single sentence to her story: she now claimed that Pollock had actually suggested the two of them commit suicide together with his .45 caliber pistol. (App. B.55.)

In the wake of Bowyer's reports, police began investigating Pollock. Meanwhile, Pollock and his friend Todd Clayes spent the afternoon and most of the night of July 20, 2011 drinking beer at Pollock's home. (App. B.17.) According to Clayes, who later testified at Pollock's trial, the two went out into the fields behind Pollock's house around 3 o'clock in the morning so that Clayes could smoke some marijuana Pollock stored in the trunk of an old car. (App. B.17.) Clayes claimed that while in the field, Pollock showed him a semi-automatic pistol that was also kept in the trunk. (App. B.17.) The two then went back to Pollock's home, drank more beer, and went to sleep. (App. B.18.) The next day, July 21, 2011, police officers obtained a search warrant,

executed it, and arrested Pollock. (App. B.56–59.) The police uncovered no evidence relating to a rape or kidnapping, nor did they find any firearms. (App. B.56–59.) The only objects they recovered were bullets from the bottom of Pollock's sock drawer. (App. B.59.)

Pollock telephoned Clayes on the day of his arrest, and then on the following day, from jail. (Trial Tr. 193.) In those calls, Pollock asked Clayes to remove the "stereo" from the back of the old car they had visited only a couple nights before. (Trial Tr. 193–95.) Clayes found the car, removed the gun cases and shoeboxes that were inside, and eventually took them to Pollock's mother's house. (Trial Tr. 198.) Clayes did not open the boxes during his trip to Pollock's mother's house (Trial Tr. 229), so he never saw what was inside them (Trial Tr. 229–30).

Jail officials were recording Pollock's calls (Trial Tr. 32–33, 195), and based on those calls, obtained and executed a second search warrant on July 26, 2011. They searched his entire property but found nothing (App. B.69–72), so they went to Clayes's home (Trial Tr. 202, 324). After three hours of questioning and threats that Clayes could face prison time, Clayes told authorities that he had brought the gun cases and shoeboxes to Pollock's mother's house. (Trial Tr. 226–28.) He later retrieved those gun cases and shoeboxes. (Trial Tr. 205.) Because Clayes had not inspected the contents of the boxes when he first moved them from the trunk, he did not know whether anything had been added or removed while they were at Pollock's mother's

house. (Trial Tr. 229–30.) He saw the firearms for the first time when the police asked him to open the boxes at his home and report the firearms' serial numbers. (Trial Tr. 206.) He then handed the firearms over to the police. (Trial Tr. 206–07.)

As a result of the events during July 2011, Pollock faced two separate sets of charges. The state brought an eight-count indictment based solely on Bowyer's claims, charging Pollock with offenses ranging from simple battery to kidnapping to aggravated criminal sexual assault. (App. B.66–68.) Bowyer testified at the subsequent trial in state court. (Sentencing Tr. 41.) The jury acquitted Pollock on all counts—not only the rape and kidnapping, but also the simple battery charge. (App. A.27–28.)

The government separately charged Pollock as a felon in possession of firearms and ammunition in a federal case. (R.14.) In the months leading up to trial, Pollock was in contact with Clayes. Some of Pollock's calls and letters were typical friendly contact, but one letter that Pollock sent in February 2012, before trial, hinted that it would be nice if Clayes were out of town when trial rolled around. (App. B.21.) Eleven days later, though, Pollock encouraged Clayes to testify. (App. B.29.) In May 2012, the government filed a second superseding indictment adding a count of attempted witness tampering based on the letter. (App. A.1.)

The case proceeded to trial. Beginning in opening statements and continuing thereafter, the government told the jury that Clayes had

identified one of the firearms charged—a Colt .45 semiautomatic pistol—as the one he saw in the trunk of Pollock's old car that night out in the field. (App. B.10.) Clayes admitted during his testimony that he did not know exactly what type of firearm he had seen, nor could he identify that firearm from the firearms the government displayed at trial. (App. B.22.) Yet no fewer than six times during trial the government linked Clayes and Pollock to "the .45." This was a central piece of evidence in its case that otherwise relied only on inferences that shoeboxes and gun cases contained the firearms the government charged Pollock with possessing. (App. B.6, B.18, B.28, B.30–31, B.31; Trial Tr. 435.)

Bowyer also testified at trial; in advance of her testimony the parties agreed that no mention of the alleged rape and kidnapping—of which Pollock had now been acquitted—would be allowed during the course of Bowyer's testimony. (App. B.4.) Bowyer testified that she helped Pollock move three long gun cases and three shoeboxes from his mother's house to his car, but never saw what was inside of them because she left after placing the boxes in Pollock's car. (Trial Tr. 54–55.)

At the close of evidence, the district court held its instruction conference. (Trial Tr. 425.) The court adopted the government's instruction as to the elements of § 922(g)(1), over defense objection. (App. A.10.) When both parties asked for a more specific instruction as to the first element—the possession of a firearm—the judge refused to separately instruct the jury, and instead told

the government to do so in its closing argument. (App. B.26–27) (district court stating "I do believe this could be addressed in closing . . . [the government] will argue from the instruction that [Pollock] possessed at least one firearm to establish that element"). During closing, the government told the jury that it "must find unanimously that he possessed at least one of them." (Trial Tr. 480.) The government did not, however, tell the jury it must be unanimous as to the specific firearm.

The jury delivered a guilty verdict on all counts. (App. A.12.) The primary issue at sentencing was whether the court should apply a cross reference based on Bowyer's statements regarding the alleged sexual abuse. (App. A.15–19.) The government presented testimony from Bowyer about her relationship with Pollock and the events on July 16, 2011. (Sentencing Tr. 24–35.) Pollock likewise recounted those events. (Sentencing Tr. 66–73.) The district court then turned to its sentence. It briefly mentioned the § 3553(a) factors (App. A.32), and it relied on the guideline policy statement in § 5K2.9 in order to impose a consecutive sentence for Pollock's attempted obstruction-of-justice conviction (App. A.32–35). It announced an initial sentence, which hinged on its belief that evidence at the trial supported the cross reference. (R.83 at 9; R.87 at 2.) *But cf.* (App. B.4) (parties and court agreeing that no evidence of the alleged sexual abuse would be raised at trial). By applying the cross reference, the district court arrived at a guidelines range of 360–480 months. (App. A.30.) From that range, the district court imposed a sentence

of 240 months' imprisonment: 120 months on the § 922(g)(1) counts and a consecutive 120 months for the attempted witness-tampering count. (App. A.35.)

The district court then announced an alternate sentence. (App. A.30–31.) The court based the alternate sentence, which was only ten months shy of the initial sentence (App. A.34), on a finding that Pollock's prior conviction for aggravated stalking was a crime of violence (App. A.30–31). Using a base-offense level of 20 for the crime of violence (App. A.30–31), the district court added four levels by finding that Pollock had possessed all nine firearms listed in the indictment (App. A.30–31). The district court rejected Pollock's argument that the firearms were part of a collection (App. A.30–31), and factored in a two-level increase for obstruction of justice (App. A.29). The alternate sentence was 230 months' imprisonment: 115 months' imprisonment on Counts I and II, and a consecutive 115 months' imprisonment on Count III. (App. A.34–35.) Had the district court not applied the crime-of-violence enhancement and had it found Pollock's firearms constituted a collection, Pollock's guideline range would have been 27–33 months. Pollock timely appealed.

Summary of the Argument

This Court should reverse Pollock's conviction. First, the district court failed to instruct the jury that it must unanimously agree on the specific firearm possessed in order to convict Pollock under 18 U.S.C. § 922(g)(1). The language of § 922(g)(1) makes possession of a specific firearm an element of that statute, a conclusion supported by the legislative history, by courts' interpretation of similar statutes, and by traditional concerns of fairness. Due process requires a jury be unanimous on each element of an offense, and Pollock's conviction does not meet this requirement.

This Court should also reverse Pollock's conviction because of six instances of prosecutorial misconduct at trial. The government mischaracterized Clayes's testimony six times between opening statements and closing arguments, erroneously attributing to Clayes a specific identification of Government Exhibit 8, a .45 semi-automatic pistol. In fact, Clayes testified only that Pollock had shown him what looked like a semi-automatic pistol and that he could neither identify the firearm among the exhibits nor provide further identifying characteristics. The government also mischaracterized Bowyer's testimony at the sentencing hearing. These mischaracterizations were improper and constitute a miscarriage of justice. First, the repeated mischaracterizations filled a gap in the government's case and allowed the jury to convict on non-existent evidence. Second, the district

court relied on the government's mischaracterizations to determine Pollock's sentence.

Three independent reasons justify resentencing. First, Pollock's sentence generally rested on several procedural and substantive errors. The district court used the wrong guidelines and interpreted others erroneously. It failed to explain its reasoning and gave only a passing reference to the § 3553(a) sentencing factors before imposing a hefty consecutive sentence for Pollock's attempted obstruction-of-justice conviction. Second, aside from these general errors the district court also erred in applying a cross reference. Its interpretation of what facts were required to support the imposition of the cross reference was flawed as a matter of law. In addition, the district court relied on inconsistent and unreliable testimony in imposing the cross reference. Finally, the district court erred in imposing an alternate sentence. Not only was imposing this alternate sentence reversible error *per se*, the court improperly determined that Pollock had been convicted of a crime of violence and that Pollock's firearms were not a collection. These errors affected the court's guidelines calculation and Pollock's rights. Accordingly, this Court should also reject the district court's alternate sentence.

ARGUMENT

I. The district court erred by failing to instruct the jury that it must unanimously agree that Pollock possessed a *specific* firearm in order to convict under § 922(g)(1).

The district court violated Pollock's right to due process by failing to instruct the jury that it needed to unanimously agree on the specific firearm or firearms that Pollock possessed as an element of § 922(g)(1). At trial, the government offered the following instruction regarding the elements of felon in possession under § 922(g)(1):

> Count 1 of the indictment charges the defendant with Felon in Possession of Firearms. In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt: 1) The defendant knowingly possessed a firearm; and 2) At the time of the charged act, the defendant was a convicted felon; and 3) The firearm had traveled in interstate commerce.

(App. A.4.) The district court accepted the government's instruction over defense objection. (App. A.8–10.) The instruction failed to specify that the crime's first element—knowing possession of a firearm—requires proof of a *specific* firearm. After some discussion, both parties agreed the instruction was deficient, and asked the court for a more specific explanation of the requirements of § 922(g)(1). The court, however, declined to supplement the instruction—an error of constitutional magnitude—and instead told the government to simply explain § 922(g)(1)'s requirements to the jury during closing arguments. (App. A.8–11.) Although the government addressed the elements of § 922(g)(1) in its closing, it did so

incompletely: the government did not tell the jury that it had to unanimously find that Pollock possessed a specific firearm or firearms. (Trial Tr. 480.)

In order to meet the minimum threshold required by due process, a jury must unanimously find that the government has proven each element of the crime charged beyond a reasonable doubt. *Richardson v. United States*, 526 U.S. 813, 817 (1999) (holding that while a jury must unanimously agree on each element of a crime, it does not need to unanimously agree on the "underlying brute facts"); *Schad v. Arizona*, 501 U.S. 624, 631–32 (1991) (plurality opinion) (noting that even though juries do not need to agree on every fact underlying the verdict, due process limits the state's authority to define different courses of conduct). Whether a phrase or provision constitutes an element of a crime is a question of statutory interpretation. *Richardson*, 526 U.S. at 818. The Supreme Court in *Richardson* set forth a test for courts to apply in answering this question; its approach mirrors traditional statutory construction, but also accounts for the due process implications of erroneously defining statutes in a way that omits elements. *Id.* at 820 (warning that courts should be wary of defining a crime in a way that permits juries to convict without agreeing on means when that definition "risks serious unfairness and lacks support in history or tradition"). This Court reviews questions of law de novo. *Cent. States Se. & Sw. Areas Pension Fund v. Messina Prods., LLC*, 706 F.3d 874, 879 (7th Cir. 2013).

Here, § 922(g)(1)'s plain language, as well as its legislative history and courts' interpretations of similar language in other statutes, shows that possession of a

specific firearm is an element of the crime and not merely an underlying brute fact. Principles of due process and tradition also weigh in favor of treating firearm specificity as an element.

All statutory construction begins with the plain language. *Commodity Futures Trading Comm'n v. Worth Bullion Grp., Inc.*, 717 F.3d 545, 550 (7th Cir. 2013); *see also Richardson*, 526 U.S. at 818. Here, the plain language unambiguously requires that possession of a specific firearm is an element under § 922(g)(1). That section makes it "unlawful for *any* person who has been convicted in *any* court of, a crime punishable by imprisonment for a term exceeding one year, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, *any* firearm or ammunition." 18 U.S.C. § 922(g)(1) (2006) (emphasis added).

Read as a whole, the language of the provision is both inclusive and specific. Words in a statute are to be read together, not "by a process of etymological dissection." 2A *Sutherland Statutory Construction* § 46:5 (7th ed. 2007); *see also Scherr v. Marriott Int'l, Inc.*, 703 F.3d 1069, 1077 (7th Cir. 2013) ("[W]e view words not in isolation but in the context of the terms that surround them . . . .") (internal citation omitted). When Congress repeats the same word in a statute, it is presumed to carry the same meaning throughout. *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1708 (2012) (noting that "there is a presumption that a given term is used to mean the same thing throughout a statute, a presumption surely at its most vigorous when a term is repeated within a given sentence") (citation omitted). Congress used the term "any" three separate times in § 922(g)(1); if the term "any

firearm" were to be read in any way other than requiring specificity, then the term "any person" and "any court" would not require the indictment to charge a specific person with a specific felony in a specific court, which would impermissibly undermine the purpose of the statute. *See Sutherland*, *supra*, § 46:7 (noting that a court should construe a statute in the manner that is consistent with its purpose); *see also United States v. Abu-Shawish*, 507 F.3d 550, 558 (7th Cir. 2007) ("An indictment is considered deficient if it does not provide enough factual details to 'sufficiently apprise the defendant of what he must be prepared to meet.'") (quoting *Russell v. United States*, 369 U.S. 749, 763 (1962)).

Not only does the sensible plain-language reading of § 922(g)(1) require proof of a specific firearm, the legislative history further bolsters this conclusion. Congress's purpose in employing the term "any firearm" was to create a statute that encompassed all different types of firearms. Legislators debated whether to exclude certain classes of common collectors and sporting weapons—rifles and shotguns—from the reach of certain portions of the Act.[2] 114 Cong. Rec. 16,498 (June 10, 1968) (statement of Sen. Dodd) (advocating for extending the ban on rifles and shotguns); *id.* at 16,481 (statement of Sen. Mansfield) (stating rifles and shotguns were excluded from mail-order bans). Legislators agreed, however, that certain classes of owners—felons among them—should be barred from possessing *any* type of firearm, including the very rifles and shotguns excluded elsewhere. 114 Cong. Rec. 14,773

[2] Later iterations of the bill restricted these types of firearms as well. *Compare* Title IV–State Firearms Control Assistance, H.R. 5037, 114th Cong. § 922(a)(3)(A) (1968) (printed in 114 Cong. Rec. 16,567 (June 10, 1968)) ("any firearm, other than a shotgun or rifle, purchased . . ."), *with* 18 U.S.C. § 922(a)(3)(A) (Supp. IV 1964) ("any firearm. . .").

(May 23, 1968) (statement of Sen. Long) (explaining that the amendment sought to "make it unlawful for a firearm—be it a handgun, machinegun, a long-range rifle, or any kind of firearm—to be in the possession of a convicted felon"). Thus, in enacting § 922(g)(1) and in using the term "any firearm" within it, Congress was simply trying to cast a wide net as to the types of firearms that would be regulated as to felons. *Compare* 18 U.S.C. § 922(b)(1) (Supp. IV 1964) (where Congress restricted only some types of firearms), *with* § 922(g)(1) (where Congress restricted all types of firearms). *See also* Title IV–State Firearms Control Assistance, H.R. 5037, 114th Cong. § 922(a)(3)(A) (1968) (printed in 114 Cong. Rec. 16,567 (June 10, 1968)).

Furthermore, the debates also showed that Congress intended to require proof of a specific firearm. Like § 922(g)(1), the language of the proposed § 922(a)(3) included the phrase "any firearm." Senators posed hypotheticals in which a felon moved from one state to another state with different firearm laws and they discussed whether possession of specific firearms would violate the statute. 114 Cong. Rec. 13,636 (May 16, 1968) (Sen. Brooke) (Senator Brooke confirming with Senator Dodd that the felon "does not have to divest himself of *that firearm* when he moves from State A, if it is permissible for him to own firearms in State B") (emphasis added). Thus, the legislative history evinces Congress's intent that § 922(g)(1) includes all types of firearms, but also requires proof of the specific firearm.

In addition, this Court and others have interpreted the use of the term "any" in other similar statutes as requiring the government to prove facts with specificity. For example, the perjury statute states in relevant part:

> Whoever under oath . . . in any proceeding . . . knowingly makes *any* false material declaration or makes or uses *any* other information, including *any* book, paper, document, record, recording, or other material, knowing the same to contain *any* false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 1623(a) (2006) (emphasis added). This Court has interpreted that language as requiring a jury be told that it must specifically find which (of "any") false declarations served as the basis of the conviction. *United States v. Fawley*, 137 F.3d 458, 462, 470 (7th Cir. 1998). In overturning the district court's instruction to the jury that it only needed to "unanimously agree that at least one of the answers given by the defendant as charged in the indictment was false," this Court held that the district court's instruction was "ineffective" and "misleading," and "eviscerate[d] the defendant's due process right to a unanimous verdict." *Id.* at 471; *see also United States v. Holley*, 942 F.2d 916, 929 (5th Cir.1991) (holding that the district court's failure to give a specific unanimity instruction was reversible error in a perjury prosecution that alleged multiple false statements). The use of "any" in § 922(g)(1) is no different from the use of "any" in § 1623, and should be interpreted accordingly.

Although some courts have held that § 922(g)(1) does not require the government to prove possession of a specific firearm, these circuits have either not engaged in a statutory construction pursuant to *Richardson*'s framework, or have

done so inaccurately. *See, e.g.*, *United States v. Verrecchia*, 196 F.3d 294, 299 (1st Cir. 1999) (interpreting *Richardson* as not requiring specificity as to the firearm in § 922(g)(1) because it was merely a brute fact—one of many means to violate the statute); *United States v. Villegas*, 494 F.3d 513, 515–16 (5th Cir. 2007) (finding *Verrecchia* persuasive and holding that the district court did not need to instruct the jury that it must unanimously agree the defendant possessed at least one of the firearms set forth in the indictment); *United States v. DeJohn*, 368 F.3d 533, 542 (6th Cir. 2004) (same); *United States v. Drayton*, 51 F. App'x 95, 97 (4th Cir. 2002) (same); *see also United States v. Hamilton*, 992 F.2d 1126, 1130 (10th Cir. 1993) (flatly rejecting the need for proof of specificity without engaging in a statutory construction).

The First Circuit's *Verrecchia* decision was the only decision to engage in a statutory construction; however, its construction did not read the statutory provision as a whole, summarized congressional intent in only the most general terms, and geared its limited examination of the legislative history only through that lens. 196 F.3d at 298–301 (engaging in a limited statutory construction and focusing solely on statements where Congress was generally concerned with stopping felons from possessing firearms). And *Verrecchia* did not account for the significant constitutional concerns and patent absurdities that arise from its interpretation, all of which are discussed below.

The final piece of the inquiry is whether due process, history, or tradition compels a particular interpretation. *Richardson*, 526 U.S. at 819–21. In *Richardson*,

the Supreme Court found no "tradition of treating individual criminal 'violations' [under 21 U.S.C. § 848] as simply means toward the commission of a greater crime." *Id.* at 821. Rather, they were historically treated as legal elements. *See id.* Here, there is no tradition or history of treating the specific firearm possessed as a mere brute fact: a means toward the commission of a greater crime. Prior to the passage of the 1968 Act, Congress—in line with the dictates of the Second Amendment—criminalized only specific weapons. *See* National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236 (codified as amended at 26 U.S.C. § 5848 *et seq.* (1964)) (imposing an excise tax on the manufacture and transfer of certain firearms only); *District of Columbia v. Heller*, 554 U.S. 570, 593–95 (2008) (detailing the history of the firmly entrenched individual right to bear arms). There was no history or tradition of broad and sweeping firearm regulation when § 922(g)(1) was enacted that compels a finding against firearm specificity.

What is more, the same fairness concerns that the *Richardson* Court identified are at play here. The Court warned of the danger in allowing the jury to "avoid discussion of the specific factual details of each violation," fearing it would "cover up wide disagreement among the jurors about just what the defendant did, or did not, do," thus allowing conviction based on generalizations like the defendant's bad reputation. *Richardson*, 526 U.S. at 819.

Except for Clayes's testimony about the night in the field (App. B.17), the government presented no evidence that Pollock possessed a specific firearm. Yet even Clayes could not affirmatively identify the firearm as being one of the

government's exhibits at trial. (App. B.22.) And Bowyer, although testifying that she helped Pollock move three long gun cases and three shoeboxes from his mother's house to his car, admitted that she never saw what was inside of them. (Trial Tr. 54–55.) As for the charged firearms, the first time any of those were seen was after Pollock was already in custody and after a break in the chain of custody (the boxes and cases had resided in Pollock's mother's home for some days). Given this state of evidence, it was important for the jury to indicate—and for Pollock to know—which firearms formed the basis of his conviction so that he might have the information he needed to appeal. For example, had the jury found him guilty only of the Colt .45 semi-automatic that the government repeatedly attributed to Clayes's testimony, his prosecutorial misconduct argument would only be that much stronger. *See infra* Section II. In addition, because it was not tasked with identifying which weapons Pollock possessed, the jury was more likely to make generalizations about Pollock that would lead to a conviction. The jury knew the defendant had a prior felony conviction. It also knew he and Bowyer fought frequently. (App. B.8.) Bowyer had testified that Pollock got "mean and angry," (App. B.9), and even suggested Pollock stole her truck, (App. B.15–16). Under these facts, it would have been easy for the jury to conclude that "where there is smoke there must be fire." *Richardson*, 526 U.S. at 819.

As a final matter, because Congress is presumed to enact statutes that are constitutional, *Sutherland*, *supra*, § 45:11, the term "any firearm" in § 922(g)(1) cannot be interpreted in a way that would abridge due process generally or be

deemed void for vagueness. *See United States v. Buchmeier*, 255 F.3d 415, 428 (7th Cir. 2001) (recognizing a potential due process violation "where a defendant is convicted of one count of violating § 922(g)(1)" but "such a large number of firearms are listed in the count that the defendant's inability to know which firearms he was convicted of having possessed creates such a burden on that defendant's ability to appeal his conviction that it would be problematic"); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."); Yet that is precisely what would happen if the statutory language were construed in only general terms. The First Circuit's approach in *Verrecchia* shows why. There, the court explained that because the specific firearm was merely a "brute fact" rather than an element, "twelve jurors who agreed that a defendant possessed a firearm, but disagreed about which particular one, would be unanimous on the element that he possessed 'any firearm.'" 196 F.3d at 299. But *Verrecchia's* hypothetical shows why it cannot comport with the unfairness prong of *Richardson*'s analysis. If the government charged a single defendant with possession of twelve firearms, and each juror believed that the defendant possessed a different firearm, then the government would not have proved, beyond a reasonable doubt, that the defendant had violated § 922(g)(1). And without the requisite specificity, the defendant would have no recourse on appeal. *Buchmeier*, 255 F.3d at 428.

Thus, it was reversible error for the district court to fail to instruct the jury that it had to unanimously find that Pollock possessed a specific firearm.

II. The government's repeated mischaracterization of crucial evidence deprived Pollock of a fair trial and a fair sentencing hearing.

This Court should remand for a new trial because the government misstated critical evidence, resulting in a miscarriage of justice. Under the two-part test for assessing prosecutorial misconduct in the context of misstated evidence, this Court evaluates the government's comments to determine whether they were improper and then considers the record as a whole to decide whether these errors denied the defendant his right to a fair trial or sentencing. *United States v. Sandoval*, 347 F.3d 627, 631 (7th Cir. 2003). Because defense counsel failed to object to the government's remarks, this Court reviews for plain error. *Id.* But as discussed below, the mischaracterizations of the evidence here satisfy even that rigorous standard, for the proceeding likely would have turned out differently had the government not marshaled inaccurate evidence in the way it did. *United States v. Hale*, 448 F.3d 971, 986 (7th Cir. 2006).

A. The government improperly mischaracterized witness testimony both at trial and at sentencing.

Prosecutorial misconduct can occur either at trial or at sentencing, *United States v. Stinefast*, 724 F.3d 925, 930 (7th Cir. 2013) (claim of prosecutorial misconduct at sentencing); *Sandoval*, 347 F.3d at 631 (claim of prosecutorial misconduct at trial and sentencing), and both occurred here. From opening statements through closing arguments the government stated no fewer than six times (five times to the jury

and once to the court in opposition to a motion for directed verdict) that its star witness—Clayes—had seen and identified a .45 semi-automatic pistol. This pistol was the same type of firearm that later served as the basis for the cross reference that transformed Pollock's simple felon-in-possession conviction into a 20-year prison term. Then, at the sentencing hearing, the government misstated Bowyer's testimony. Although she testified that Pollock said that authorities would find his fingerprints and DNA on her truck (the one she accused Pollock of stealing and wrecking), the government transformed that supposed admission relating to a truck theft into an attempt to cover up an alleged sexual abuse—the very crime that served as the basis for the cross reference and the inordinately high prison term.

1. The government mischaracterized Clayes's testimony during trial.

On no fewer than six occasions between opening statements and closing arguments the government claimed that Clayes had seen its Exhibit 8—the .45 semi-automatic pistol. Mischaracterizing evidence is improper, especially if done repeatedly. *See United States v. Anderson*, 450 F.3d 294, 300 (7th Cir. 2006) (finding government's four mischaracterizations of expert testimony serious error and improper).

Clayes testified that late one evening, after consuming eighteen beers and smoking some marijuana, he peered into the trunk of a car parked in a dark field on the outskirts of Pollock's land. (App. B.17.) With only the headlights of another car for light, Pollock "got out a pistol" and "showed" it to him. (App. B.17.) Clayes testified that Pollock then put the firearm "back in the trunk" and the two of them

"went back to the garage and continued to drink beer." (App. B.17.) On cross-examination, Clayes admitted—twice—that he was not sure what type of firearm it was. All he knew was that it was "a pistol, a semi-automatic pistol" (App. B.22); Clayes neither specified the brand nor the caliber, nor did he offer any other identifying characteristic. When asked if he had any idea whether the firearm he saw was among the government's exhibits, he said "no." (App. B.22.) The most he could say was that the firearm was "probably" among the government's exhibits at trial. (App. B.22.)

Despite this equivocal testimony, the government repeatedly and conclusively asserted that Pollock possessed the .45 charged in the indictment and—as was later revealed during sentencing—used "the .45" during the alleged sexual abuse of his girlfriend, which led to the cross reference and his 20-year sentence:

- Opening statements: "[the defendant] takes out one particular gun, a Colt .45 military semi-automatic pistol, and shows it to Mr. Clayes." (App. B.6.)

- Direct examination of Clayes: "[s]o after you went out there, you smoked a little marijuana, [the defendant] *pulled out the .45 pistol*." (App. B.18) (emphasis added).

- In directed verdict argument: "Todd Clayes does indicate he pulled, not only saw the .45 caliber semi-automatic pistol that the defendant showed him . . . ." (Trial Tr. 435.)

- Closing arguments: "Well, it is parked out behind his house and they go out there. They open the trunk and low and we behold (sic) what is there? The defendant pulls out and Todd Clayes claims to have seen at that time a .45 caliber automatic pistol. Ladies and gentlemen, Government's Exhibit Number 8, a .45 caliber automatic pistol, wouldn't you expect to find a .45 caliber automatic pistol in this evidence. Here is one; Government's Exhibit Number 8." (App. B.28.)

- Closing rebuttal: "And counsel made much of the fact that I said a .45 automatic. Remember what happened in that little give and take with Todd Clayes? I said .45 automatic and Todd Clayes corrected me is what he did. And he said, 'semiautomatic' because that's the proper name for this gun, a .45 caliber semiautomatic." (App. B.30–31.)

- Closing rebuttal: "You heard Special Agent Galecki, sometimes you call it an automatic for shorthand. Mr. Vaupel, when he made his closing arguments he called it an automatic. That's not what it is. And this is not what Todd Clayes says he saw. *He said he saw this .45 caliber semi-automatic*, and he is correct that's the right name for this. He saw this where? He saw this in the trunk of that Nissan." (App. B.31) (emphasis added).

Thus, the government improperly transformed a witness statement about a semi-automatic pistol into Government Exhibit 8, a .45 semi-automatic pistol.

2. The government mischaracterized Bowyer's testimony during sentencing.

The government also misstated Bowyer's testimony at sentencing in relation to the cross reference ultimately applied to Pollock's sentence. When asked whether Pollock ever referred to evidence against him, Bowyer stated, "He says, you got one hell of an alimony (sic). He says, you got DNA. I'm sure they will fingerprint *the truck*." (App. B.39) (emphasis added). But when arguing that the district court should apply the cross reference in this case the government stated, "[h]e made the comment, well, you have my DNA; you could really get me in a lot of trouble. So he is trying to convince her not to go to the authorities." (App. A.20.) The government then links the same .45 that it claims Clayes identified at trial with the mischaracterized DNA testimony to tie the firearm to the alleged crime. (App. A.16) (Pollock "is threatening her with the gun; take you downstairs put our heads

together and he blow our heads off with the .45. In order to threaten her so that she wouldn't go and report the kidnapping and the rape. We think that's clearly in connection."); (*see also* App. A.20) (Pollock "made the comment, well, you have my DNA; you could really get me in a lot of trouble. So he is trying to convince her not to go to the authorities. He is threatening her with the .35 (sic) and at that time the kidnapping is still a continuing offense."). Through this improper amalgamation, the government represented to the court that Pollock had engaged in acts that it believed would justify the imposition of the cross reference, when in fact Bowyer had said no such thing.

B. The government's improper statements deprived Pollock of a fair trial and a fair sentencing hearing and affected his substantial rights.

The government's improper remarks prejudiced Pollock and deprived him of a fair trial and a fair sentencing hearing. *United States v. Anderson*, 303 F.3d 847, 854 (7th Cir. 2002). In determining whether improper statements deprived a defendant of a fair trial, this Court considers five factors: "(1) the nature and seriousness of the misconduct; (2) the extent to which the comments were invited by the defense; (3) the extent to which any prejudice was ameliorated by the court's instruction to the jury; (4) the defense's opportunity to counter any prejudice; and (5) the weight of the evidence supporting the conviction." *Id.* Repeated instances of improper statements intensify the prejudice against the defendant. *See United States v. Forlorma*, 94 F.3d 91, 95–96 (2d Cir. 1996) (remand for new trial because of the government's repeated improper misstatements). In the sentencing context,

this Court examines prejudice by asking whether the improper statements influenced the district court's sentencing decision. *See Stinefast*, 724 F.3d at 931.

Because this issue arises on plain error, Pollock must also show that the error affected his substantial rights. *United States v. Olano*, 507 U.S. 725, 731–36 (1993). Fundamentally, this prong of the plain-error inquiry asks whether a miscarriage of justice occurred. *United States v. Iacona*, 728 F.3d 694, 699 (7th Cir. 2013). Because plain error is essentially a heightened standard of the second prong of the prosecutorial misconduct test, these two inquiries are addressed in tandem below.

The miscarriage of justice in this case is three-fold. First, the improper mischaracterization of Clayes's testimony contributed to the denial of Pollock's directed-verdict motion. (App. A.8.) Defense counsel moved for an acquittal based on the inconsistent statements between Bowyer and Clayes, the lack of direct eyewitness testimony, and the break in custody between removing the cases from the car and retrieving them from Pollock's mother's house. (Trial Tr. 434.) The government's response focused on Clayes's purported identification of the .45 semi-automatic pistol in the car trunk. From this erroneous assumption, the government then closed the gap in its chain of custody by arguing that Clayes moved this batch of firearms as a unit from Pollock's trunk to his mother's home, back to Clayes's home, and then into the hands of the police. (Trial Tr. 435–36) ("Todd Clayes does indicate he pulled, not only saw the .45 caliber semiautomatic pistol that the defendant showed him, the fact that he also picked all of those guns, all of the boxes . . .").

Second, the jury verdict was impacted by these misstatements. The five prejudice factors from the second prong of the prosecutorial misconduct test are instructive here. First, the government's misstatements were serious and pervasive; they repeatedly mischaracterized the testimony of the only witness in this felon-in-possession prosecution who actually saw a firearm. (App. B.6, B.17, B.18, B.28, B.30; Trial Tr. 435.) Second, the defense did not invite these remarks. Third, the misstatements were not neutralized by any curative instruction because the court did not provide one. Fourth, the government's mischaracterizations made it impossible for the defense to mitigate the error, particularly because two of the government's most serious misstatements occurred during closing rebuttal (App. B.30–31), when the defense had no further opportunity to respond. Fifth, without the improper characterization of Clayes's testimony, the government's case rested purely on circumstantial evidence and was accompanied by a breach in the chain of custody. That is, Bowyer saw cases but no firearms (Trial Tr. 55), and Clayes did not see any firearm other than the one in the trunk until he picked up what turned out to be a batch of firearms from Pollock's mother's house, well after Pollock had already been arrested (App. B.22–23; Trial Tr. 434). By mischaracterizing Clayes's testimony—the only witness in the case who testified to having actually seen a firearm—the jury could more easily conclude that Pollock actually possessed the firearms that Clayes collected from Pollock's mother's house, the ones that eventually became Government Exhibits 1–8.

Third, the most serious miscarriage of justice occurred at sentencing when the district court relied on the government's improper statements both about Bowyer's DNA testimony, and Clayes's .45 testimony (App. A.20), in order to increase Pollock's sentence to 20 years (App. A.28–29) ("I'm focusing solely on the issue of the .45 caliber weapon . . . . The restraint of her movement continued throughout this time and at the very least a reasonable inference could be that letting her know what he could do if she went to the authorities."); (App. A.34) ("I made that cross reference the specific Act (sic) of the .45 caliber and request to commit suicide in the commission of or continuing commission of the offense.").

The government's mischaracterizations of Clayes's and Bowyer's testimony at trial and sentencing stripped Pollock of his substantial right to be convicted on the evidence and to have a fair sentencing hearing.

III. The district court's sentence was infected by procedural and substantive errors.

Pollock's sentencing was plagued by procedural and substantive errors in addition to the specific errors discussed below. *See infra* Sections IV and V. This Court reviews procedural errors at sentencing de novo, *United States v. Lyons*, 733 F.3d 777, 784 (7th Cir. 2013), and substantive errors for an abuse of discretion, *Gall*, 552 U.S. at 56.

First, the district court failed to adequately address the § 3553(a) factors in imposing its sentence (A.32); *Lyons*, 733 F.3d at 785 (stating that rote recitation of the § 3553(a) factors precludes "meaningful appellate review"). At sentencing, the

district court made only the following passing reference to the § 3553(a) factors without actually discussing any of the individual factors:

> The Court having considered the information before it . . . . the factors as set forth in 3553, which include the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense to promote respect for the law and provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with educational or vocational training, medical care or other correctional treatment in the most effective manner.

(Sentencing Tr. 124–25.) The district court's cursory attention to the § 3553(a) factors provides this Court with no information as to why Pollock received a 20-year sentence and therefore hinders meaningful appellate review.

The district court committed several additional errors in deciding to impose a consecutive 10-year sentence for Pollock's attempted witness-tampering conviction. The district court first erred in not discussing, or even mentioning, a single § 3553(a) factor when imposing the consecutive sentence, a step required by § 3584(b). 18 U.S.C. § 3584(b) (2012). Its sole rationale for doubling Pollock's sentence was because it believed that the two-level guideline enhancement for obstruction of justice, which it also imposed in fashioning the sentence, did not "adequately account[] for the nature and circumstances of the offense." (A.32–33.) But the district court did not specify which nature and circumstances justified such a significant enhancement.

Its reliance on the policy statement in § 5K2.9 also does not suffice to justify this consecutive sentence. Section 5K2.9 authorizes "departures," a sentencing

mechanism that this Court has repeatedly recognized as obsolete in the post-*Booker* world. *United States v. Brown*, 732 F.3d 781, 786 (7th Cir. 2013). Therefore, departure guidelines' only remaining utility are in "appl[ication] by way of analogy when assessing the § 3553(a) factors." *Id.* But because the district court did not assess the § 3553(a) factors in conjunction with its invocation of § 5K2.9, it erroneously used and applied that guideline to enhance Pollock's sentence. (App. A.32–33.) In any event, even if § 5K2.9 retained some independent usefulness, the district court never identified what made Pollock's conduct more serious than the mine-run of attempted witness-tampering convictions that presumably are sufficiently addressed by the guideline enhancement, a prerequisite for applying it. *See United States v. Robertson*, 324 F.3d 1028, 1031 (8th Cir. 2003) (describing application of § 5K2.9 to cases that fall outside the "heartland" of typical cases encompassed within the guidelines).

Third, Pollock's conduct was nothing more than garden-variety attempted witness tampering, so the district court's application of the guideline is substantively unreasonable as well. The jury convicted Pollock based on a letter in which Pollock told his friend Clayes to try to "avoid being served" (App. B.20) or to "go fishing in Alaska or Florida" (App. B.21). Pollock never threatened Clayes, and even later encouraged Clayes to testify. (App. B.29.) Pollock's consecutive sentence vastly overstates the seriousness of his offense and creates a disparity among defendants who have committed similar crimes; Pollock's 10-year sentence dwarfs

the average 2-year sentence[3] for this category of crime, and even in extreme witness-tampering cases, sentences have hovered only at around 3 years. *See, e.g.*, *United States v. Hopkins*, 383 F. App'x 534, 536–37 (7th Cir. 2010) (defendant sentenced to 36 months for "extreme witness tampering" that involved directing a carjacking, issuing a death-threat against someone, and attempting to elicit false statements from his wife, family members, and neighbors); *United States v. Darif*, 446 F.3d 701, 705 (7th Cir. 2006) (defendant received a 21-month sentence for witness tampering by calling witnesses and trying to persuade them to lie); *United States v. Murphy*, 406 F.3d 857, 860 (7th Cir. 2005) (defendant received an 120-month sentence for witness tampering that involved splitting the witness's head open). In short, the district court over-punished Pollock in a way that creates "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6) (2006), all without providing guidance or meaningful justification.

Fourth, the district court also committed procedural error in imposing two different versions of Pollock's sentence—an original and an alternate—because § 3551(b)(3) authorizes district courts to impose only "*a* term of imprisonment." *See United States v. Desantiago-Esquivel*, 526 F.3d 398, 401 (8th Cir. 2008) (emphasis in original) (finding the imposition of two sentences reversible error). The alternate sentence was not vetted by the probation office nor was the defendant given a

[3] U.S. Sentencing Comm'n, *Statistical Information Packet: Fiscal Year 2012 7th Circuit*, 10 tbl. 7 Administration of Justice Offenses (2012), *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/State_District_Circuit/2012/7c12.pdf.

sufficient opportunity to lodge his objections prior to its imposition. Fed. R. Crim. P. 32(e)(2). The most striking example was the district court's conclusion that his past conviction qualified as a crime of violence. The defendant was first apprised of this possible sentencing ground when the government invoked it during the sentencing hearing. (App. A.24.) Unprepared to rebut a complex argument that involved an analysis of the modified categorical approach, *see infra* Section V.A, defense counsel could only look on as the district court accepted it and factored it into its alternate sentence. (App. A.31.) Not only were these two sentences procedurally flawed, they were also substantively incorrect for the reasons discussed below.

IV. The district court improperly cross referenced to the sexual abuse guideline.

The district court erred in cross referencing the sexual-abuse guideline because it did not make or explain necessary factual findings. Even if it had, the district court further erred in its interpretation and application of the sentencing guidelines: the district court conflated the requirements of two separate guidelines, which meant that it considered the wrong facts in applying the cross reference. In any event, the government failed to prove the requisite nexus between a firearm and the alleged sexual abuse. Accordingly, the sentence should be vacated.

This Court reviews a district court's calculation of the sentencing guidelines range de novo, but the underlying findings of fact for clear error. *United States v. Quintero*, 618 F.3d 746, 755 (7th Cir. 2010).

A. The district court failed to make or adequately explain necessary findings before applying the cross reference.

The district court's failure to make or adequately explain its findings with respect to the disputed events of July 16 renders its use of the cross reference improper. This Court's first step in reviewing a sentence is to determine whether the court below committed "significant procedural error." *Gall*, 552 U.S. at 51. The district court must not only make adequate findings, but also explain them if the reason is not evident from the record; failure to do so is error. *See United States v. Baker*, 40 F.3d 154, 162–63 (7th Cir. 1994); *see also* Fed. R. Crim. P. 32(i)(3)(B) (requiring sentencing courts to rule on "any . . . controverted matter" that will affect sentencing); U.S. Sentencing Guidelines Manual § 6A1.3(a-b) (2012) (requiring the evidence relied on at sentencing have "sufficient indicia of reliability to support its probable accuracy" and general compliance with Rule 32). Here, the district court failed to: (1) make the threshold finding that the alleged sexual abuse occurred or explain how it could so find by a preponderance of the evidence; (2) state why it credited one of three inconsistent versions of the event that Bowyer gave in her testimony; and (3) state why it credited Bowyer over Pollock, given the many inconsistencies in her story and the lack of inconsistency in his.

1. The district court failed both to make the threshold finding that the alleged sexual abuse occurred and to state why this acquitted conduct rose to a preponderance of the evidence.

In applying a cross reference, a district court must identify the crime, show that the elements of that crime were satisfied, and support its conclusion by a preponderance of the evidence. *United States v. Tapia*, 610 F.3d 505, 512–13 (7th

Cir. 2010). Here, the district court neither explicitly found that the alleged sexual abuse occurred, nor that the government showed the abuse by a preponderance of the evidence. (App. A.28–29.) The district court's sole preponderance ruling presupposed this threshold finding and jumped ahead to whether there was evidence of a connection between the two offenses. (App. A.28–29.) That failure was particularly acute here for three reasons. First, it was based on conduct for which Pollock was acquitted. Although a court may use such acquitted conduct at sentencing, the lacuna between an acquittal and the preponderance threshold is wider, and thus merits serious consideration by the court. *See, e.g.*, *United States v. Waltower*, 643 F.3d 572, 577 (7th Cir. 2011) (permitting use of acquitted conduct only if this conduct is actually proven by a preponderance of the evidence). Pollock was not only acquitted of rape, he was also acquitted of all lesser charges, including simple battery, which widens the evidentiary gap even more. Second, the sexual abuse alleged here was based on Bowyer's inconsistent and contradictory testimony. Finally, the record indicates that the judge applied the cross reference based on the erroneous belief that evidence at trial established the sexual abuse. (R.87 at 2.) Under these circumstances, the district court erred in simply presuming that the alleged abuse occurred, and it was required to explain how this acquitted conduct rose to a preponderance of the evidence.

2. The district court failed to explain why it credited one of Bowyer's versions of events over her many inconsistent versions.

The district court erroneously failed to explain why it credited one of Bowyer's multiple inconsistent statements over the others. Although the choice to credit one

inconsistent statement within a single witness's testimony over another is usually given deference, *United States v. Duarte*, 950 F.2d 1255, 1266 (7th Cir. 1991), a court's failure to address contradictory statements and to give reasons for choosing one over another warrants reversal, *United States v. Noble*, 246 F.3d 946, 952 (7th Cir. 2001).

Bowyer made multiple inconsistent statements as to what happened the night of July 16, 2011. Bowyer's initial statement to the police, made immediately after Pollock drove her home, included the fact that at the end of the night, Pollock had expressed a desire to kill himself. (App. B.54.) The next day, however, she returned to the police station to add a single sentence to her story: she now claimed that Pollock had actually suggested the two of them commit suicide together with his .45 caliber pistol. (App. B.55.) These inconsistent statements—concerning critical facts—required the district to court credit one or the other, but it failed to do so. Instead, at sentencing the district court explicitly relied on Bowyer's inconsistent statements to impose the cross reference (App. A.28) (finding that the cross reference applied "based on Miss Bowyer's testimony"), holding that there was a connection between the alleged suggestion to commit joint suicide and the alleged sexual abuse because the former was made in furtherance of the latter (App. A.28–29). Because the district court decided to rely on one of these versions in applying the cross reference, it was required to explain its choice to ensure the reliability of the evidence.

3. The district court failed to explain why it chose to credit Bowyer's internally inconsistent testimony over Pollock's consistent testimony.

The district court erroneously failed to explain why it chose to credit Bowyer's testimony over Pollock's testimony—even though Bowyer's testimony was riddled with internal inconsistencies and Pollock's testimony was uniform and unwavering. Like a district court's decision to credit one version of competing stories within a single witness's testimony, a district court's decision to credit one witness's version over another witness's is usually subject to deference. *See, e.g.*, *Morisch v. United States*, 653 F.3d 522, 529 (7th Cir. 2011). This principle applies even if that witness is an admitted liar, convicted felon, large scale drug-dealer, or paid government informant. *United States v. Nunez*, 627 F.3d 274, 284 (7th Cir. 2010) (citation omitted). But before a district court may credit one witness over another, it must explain why unless the reason is evident from the record. *United States v. Baker*, 40 F.3d 154, 162–63 (7th Cir. 1994). A district court's explanation is especially important where one witness's testimony has been shown to be inconsistent on critical facts; not only does an explanation assist appellate review, it ensures that the district court properly exercised its discretion and did not engage in erroneous fact finding. *See Tapia*, 610 F.3d at 513.

Bowyer's statements, to both the police and the court, were consistently inconsistent. Bowyer's reporting of the bar fight was one instance (App. B.8–12), and her report of the night of July 16 was another. *Compare* (App. B.54), *with* (App. B.55). Pollock's testimony, however, was consistent. Unlike Bowyer, Pollock told

only one story of what happened that night, and it is a story that is very different than Bowyer's. Pollock stated that he neither abducted nor assaulted Bowyer. (App. B.44–45.) Given this stark contrast, the district court needed to give some rationale for choosing to believe Bowyer (or at least one of her versions) over Pollock's single and consistent story.

B. The district court incorrectly applied the cross reference, both as a matter of law and as a matter of fact.

The district court not only failed to make the required findings, but even the findings that it did make show that it misunderstood the proper application of the cross-reference guideline. It improperly conflated portions of the relevant-conduct guideline and the cross-reference guideline to create a hybrid test that led to an ultimate ruling unsupported by either. Even if the district court had interpreted these guidelines correctly, it erred in applying the cross reference because the government failed to prove the necessary nexus between a firearm and the alleged sexual abuse that would have supported a cross reference.

1. The district court used an erroneous hybrid test for cross references.

The district court applied part of the cross-reference guideline—§ 2K2.1(c)—and part of the relevant-conduct guideline—§ 1B1.3—to fashion a new and legally incorrect test to determine whether Pollock should be held accountable for the alleged sexual abuse as a part of his felon-in-possession sentence.

The cross-reference guideline contained in § 2K2.1(c) provides that when a defendant uses or possesses a firearm "in connection with the commission . . . of

another offense," the court should sentence under the guideline that renders the higher offense level (either the firearm guideline or the other-offense guideline). U.S. Sentencing Guidelines Manual § 2K2.1(c)(1). The commentary explains that "in connection with" means the firearm "facilitated, or had the potential of facilitating" another offense. *Id.* cmt. n.14.

The relevant-conduct guideline, § 1B1.3(a), also plays a role in the calculus, though as discussed below, not for the reason that the district court gave. *See infra* IV.B.2. The relevant-conduct guideline limits the reach of cross references to a defendant's acts and omissions "that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." U.S. Sentencing Guidelines Manual § 1B1.3(a); *see also United States v. Jones*, 313 F.3d 1019, 1023 (7th Cir. 2002).

The district court gave two reasons for imposing the cross reference: (1) it found that one of Bowyer's many statements—the one where Pollock supposedly suggested the two commit suicide—connected the firearm to the commission of sexual abuse; and (2) it found that Pollock's mention of the firearm "restrain[ed]" her movement and "prevent[ed]" her from going to the authorities to report the [sexual abuse]." (App. A.28–29.) The first reason is tethered to the language of the cross-reference guideline and, standing alone, is a correct statement of the law. As discussed below, however, that rationale alone is not sufficient to support the cross reference because conduct occurring after the crime has finished cannot "facilitate" the crime, as the cross-reference guideline requires. Because of this deficiency, the

government invoked language from a wholly separate guideline—the relevant-conduct guideline—to shore up the gap (App. A.19–20), an approach that the district court adopted in its second reason (App. A.28–29). By applying this language, which ostensibly arose from the "avoiding-detection" clause of the relevant-conduct guideline, the district court misinterpreted the guidelines and ended up with the exact opposite of the intended result. That is, the appropriate inquiry under § 1B1.3(a)(1) should have been whether the alleged *sexual abuse* was used to avoid detection for Pollock's *possession of firearms*. Instead, the district court applied the cross reference because it found that the *firearm* was used to avoid detection for the alleged *sexual abuse*.

When the first reason is combined with the second, as the district court did here, the result is an unwarranted expansion of the reach of the cross reference as well as a complete misinterpretation of the language of the relevant-conduct guideline from which the language originated. It also undercuts the role of the relevant-conduct guideline in ensuring that a defendant's exposure is not limitless. As this Court has observed, the government cannot use cross references to punish defendants for unrelated offenses. *United States v. Taylor*, 272 F.3d 980, 984 (7th Cir. 2001). Sometimes there is no way to bridge the gap between two different offenses, and just because the government wants to do so does not mean that it can. *Id.* Such an unbridgeable gap exists here.

2. The government failed to show a nexus between the firearm and the alleged sexual abuse, and failed to show that the alleged abuse was relevant to the firearm possession.

Even if the district court had applied each guideline correctly, it still should not have applied the cross reference. The government's evidence did not meet the express requirements of the cross reference, and, even if it had, the alleged abuse was not relevant to the firearm possession, thus precluding its consideration. With respect to the cross reference, the government did not demonstrate the requisite nexus between the firearm allegedly referenced by Pollock and the alleged sexual assault. As discussed above, § 2K2.1(c) allows for a cross reference to the other offense's higher base offense level if the firearm was possessed or used to facilitate the other offense. U.S. Sentencing Guidelines Manual § 2K2.1(c) cmt. n.14. Here, the government needed to demonstrate that the firearm aided, or had the potential of emboldening, the *commission* of the alleged sexual abuse. *United States v. Markovitch*, 442 F.3d 1029, 1032 (7th Cir. 2006); *United States v. Wyatt*, 102 F.3d 241, 247 (7th Cir. 1996). A firearm only meets this nexus if it is relevant prior to, or contemporaneously with, the other crime. *See United States v. Krumwiede*, 599 F.3d 785, 790 (7th Cir. 2010) (noting that "in connection with" applies to a firearm taken during a burglary) (citation omitted).

The government failed to demonstrate the required nexus. Though Bowyer gave multiple, contradictory versions of what happened on the night in question, in all of her versions, the alleged sexual activity was over before any mention of a firearm. At the sentencing hearing, Bowyer testified that Pollock allegedly finished the

sexual act and then became depressed, at which point he suggested suicide. (App. B.38.) Indeed, all of the wrong acts that Pollock allegedly committed that night took place without a single reference to firearms. (App. B.40.) Furthermore, Bowyer admitted that she at no point saw a firearm anywhere on Pollock's premises or in his car. (App. B.41.) Because no firearm was mentioned or seen prior to the alleged assault, no firearm facilitated or had the potential of facilitating the alleged abuse.

Even if the firearm were possessed in connection with the alleged abuse for cross-reference purposes, the government failed to prove that the abuse served as relevant conduct with respect to the felon-in-possession conviction. For ongoing offenses especially, such as a firearm-possession offense, not all conduct contemporaneous with the offense is relevant conduct. *United States v. Nance*, 611 F.3d 409, 416 (7th Cir. 2010) (explaining that conduct of the same type as defendant's conviction is relevant); *Taylor*, 272 F.3d at 983 (a shooting perpetrated by an escapee was not relevant to the escape because he was neither shooting a would-be arrestor nor trying to cover up the escape). Only conduct that is sufficiently connected to the crime of conviction is relevant. *Nance*, 611 F.3d at 416; *Taylor*, 272 F.3d at 983.

Here, the district court cross referenced the sexual assault guideline, so the appropriate inquiry under subsection § 1B1.3(a)(1) is whether the alleged sexual assault was in preparation for Pollock's possession of firearms; attempted to cover up such possession; or occurred during, and was connected to, the possession. If none of these conditions are met, the alleged assault cannot be relevant conduct.

The alleged sexual assault was neither in preparation for Pollock's possession of firearms—he allegedly already had them—nor was it an attempt to cover up the possession. Accordingly, the sexual assault can only be relevant conduct if it occurred while Pollock possessed firearms *and* was sufficiently connected to the possession.

Yet the assault was not sufficiently connected to the possession to qualify as relevant conduct. Even assuming that everything Bowyer said was true, the facts establish only that Pollock came to her house, took her against her will, and forced her to engage in sexual relations, all without mentioning a firearm and without Bowyer seeing one. (App. B.32–39.) Then, at some point after Pollock and Bowyer allegedly had sex, Pollock allegedly asked Bowyer if she wanted to commit suicide with him (Bowyer's statements vary as to when this occurred, if at all). (App. B.38, B.42–43, B.54.) Pollock's after-the-fact statement—allegedly made in the throes of despair—is not enough to connect the assault to the offense of conviction without gutting relevant conduct of any discernible limits.

V. The district court's alternate sentence is erroneous.

The district court, recognizing the possibility that this Court might reject its imposition of the cross reference, also offered an alternate sentence. (App. A.30–31.) The district court crafted this sentence without the assistance of the probation officer or the PSR, and ultimately arrived at a sentence just ten months lower than the one actually imposed under the cross reference.[4] Because the district court

[4] The fact that the court below issued an alternate sentence so close to the original sentence suggests that its opinion of Pollock's proper sentence exists independent of the

provided its reasoning, this Court can review the alternate sentence, *see United States v. Berheide*, 421 F.3d 538, 542 (7th Cir. 2005), and should also reject that sentence, for two reasons. First, the district court relied on inapposite precedent in finding that Pollock's aggravated stalking conviction constituted a crime of violence. Second, it further relied on unreliable testimony to find that Pollock's firearms were not a collection. Each of these errors individually, and collectively, resulted in an improper guidelines calculation under the alternate sentence.

A. The district court erroneously relied on *United States v. Meherg* to hold that Pollock's aggravated stalking conviction was a crime of violence.

The district court erred when it applied this Court's *Meherg* decision to deem Pollock's aggravated stalking conviction a crime of violence. *United States v. Meherg*, 714 F.3d 457 (7th Cir. 2013). The district court should have instead applied the modified categorical approach to guide its decision. Its failure to do so meant that Pollock was improperly held to have committed a crime of violence and was therefore erroneously subjected to an increased advisory guideline range; this Court should reverse and remand for resentencing. *See United States v. Robinson*, 435 F.3d 699, 701 (7th Cir. 2006).

Under the guidelines, if a defendant is convicted of a firearm offense after committing a crime of violence, the court sets the base offense level at 20, rather than the default level of 12. U.S. Sentencing Guidelines Manual § 2K2.1(a)(4). A

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determinations it is required to make. If this Court reverses, it should specify that Circuit Rule 36 is to apply on remand. *See Lindquist Ford, Inc. v. Middleton Motors, Inc.*, 658 F.3d 760, 766 (7th Cir. 2011) (explaining that Rule 36 is intended to avoid "any bias or mindset the judge may have developed during the first trial").

crime of violence is an offense that, in addition to being punishable by at least one year in prison, either "has as an element the use, attempted use, or threatened use of physical force against the person of another" or "presents a serious potential risk of physical injury to another." *Id.* § 4B1.2(a). Generally, to determine whether a crime is violent, courts apply a categorical approach. *United States v. Taylor*, 630 F.3d 629, 633 (7th Cir. 2010). If the elements of the crime meet the relevant crime-of-violence definition, then the conviction qualifies. *Id.* In a divisible statute like the Illinois aggravated stalking law, 720 ILCS 5/12-7.4(a) (2009), it is possible that some provisions qualify as crimes of violence, while others do not. *Taylor*, 630 F.3d at 633. In such instances, the court applies a modified categorical approach to determine whether the crime constitutes a crime of violence, looking at documents "such as indictments and jury instructions, to determine which alternative formed the basis of the defendant's prior conviction." *Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013); *Taylor*, 630 F.3d at 633. Under either approach, the court does not examine the facts actually underlying the conviction. *Id.*

Under Illinois law, a person commits aggravated stalking when, in conjunction with the offense of stalking, he or she:

> (1) causes bodily harm to the victim; (2) confines or restrains the victim; or (3) violates a temporary restraining order, an order of protection, a stalking no contact order, a civil no contact order, or an injunction prohibiting the behavior described in subsection (b)(1) of Section 214 of the Illinois Domestic Violence Act of 1986.

720 ILCS 5/12-7.4(a) (2009). Given this statute's divisibility, the district court had to first ascertain which subsection formed the basis of Pollock's conviction and then

determine whether that subsection qualified as a crime of violence (that is, whether it had actual, attempted or threatened use of physical force as an element or presented serious risk of bodily injury). *Taylor*, 630 F.3d at 633; U.S. Sentencing Guidelines Manual § 4B1.2(a). Subsection (a)(3) of the Illinois aggravated stalking law, for example, does not have any element of physical force and can be violated without any risk of injury. *See, e.g., People v. Reynolds*, 706 N.E.2d 49, 54 (Ill. App. Ct. 1999) (defendant violated an order of protection by sending a note to his ex-wife that falsely claimed that certain charges against him had been dropped).

Rather than applying the modified categorical approach, however, the district court simply grafted this Court's *Meherg* decision onto Pollock's conduct. 714 F.3d 457. Although *Meherg* did find that aggravated stalking under Illinois law could constitute a crime of violence, this Court's holding hinged on its proper application of the modified categorical approach. The holding was thus limited to subsection 720 ILCS 5/12-7.4(a)(2), which formed the basis of Meherg's conviction, and which required the defendant to actually confine or restrain the victim, *Meherg*, 714 F.3d at 461. This Court held that the subsection's "actual confinement or restraint" language was analogous to the crimes of unlawful restraint and false imprisonment, both of which had been previously deemed crimes of violence. *Id.* (citations omitted). Thus, *Meherg* only establishes that aggravated stalking convictions that require proof of actual confinement or restraint are crimes of violence. *Id.* Because Pollock's conviction rested on subsection (a)(3), which does not require confinement or

restraint, the district court's reliance on *Meherg* was misplaced. The court improperly increased Pollock's base offense level by 8 based on this error.

B. Pollock's firearms constituted a collection.

The district court wrongly used Pollock's status as a felon as well as unreliable ATF agent testimony in order to decide that Pollock's firearms did not constitute a collection under guideline § 2K2.1(b)(2). If an eligible defendant demonstrates by a preponderance of the evidence that he "possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition," the court must set the base offense level to 6. U.S. Sentencing Guidelines Manual § 2K2.1(b)(2); *United States v. Gresso*, 24 F.3d 879, 880 (7th Cir. 1994). To determine whether a group of firearms is a collection, courts must consider, "the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant's criminal history (e.g., prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law." U.S. Sentencing Guidelines Manual § 2K2.1 cmt. n.6.

1. The court improperly based its decision on Pollock's status as a convicted felon.

The district court's collection decision was tainted because it improperly relied on Pollock's status as a convicted felon. Although § 2K2.1(b)(2) grants an offense-level reduction to defendants who possess firearms for "lawful sporting purposes or collection," a person prohibited from possessing firearms, such as a felon, is still eligible for the reduction, provided that his use or possession would have been legal

for a person not generally restricted from carrying firearms. *United States v. Shell*, 972 F.2d 548, 552 (5th Cir. 1992). Because any defendant sentenced under § 2K2.1 was necessarily found to have illegally possessed a firearm or ammunition, if the collection provision were available only to those whose firearm possession was legal, the reduction would apply to no one, and the provision would be a nullity. *Id.* Accordingly, a defendant's mere status as a felon does not preclude a base offense level reduction.

Despite this incongruity, the government nevertheless argued at sentencing that Pollock was ineligible for the collection reduction based on his prior felony conviction, and his resultant inability to legally possess firearms. (App. A.24.) The court seized on this reasoning and its first explanation for why the collection issue was "not even a close call" was that Pollock was prohibited from having firearms under any circumstances. (App. A.29.) The court thus erred in relying on Pollock's felon status to deny him the collection reduction.

2. The court improperly considered unreliable testimony.

Not only did the court below err in considering Pollock's status as a felon, its analysis of the relevant factors on firearm collection was also tainted by speculative and unreliable testimony. The Federal Rules of Evidence do not apply at sentencing, but the court may not consider evidence that is based on speculation. *Noble*, 246 F.3d at 951–53. Here, the district court relied on two pieces of ATF agent Matthew Galecki's testimony to deny Pollock the lower base-offense level arising from a firearm collection: (1) Galecki's belief that collectors like to keep their firearms in pristine condition, and thus do not fire them or keep ammunition for them (App.

B.47–48); and (2) Galecki's belief that legitimate collectors do not hide their firearms, but rather keep their firearms to show to others or to sell for monetary gain (App. B.48–49). The court not only generally relied on "the testimony" relating to collections in its decision (Galecki was the sole witness on this issue), it also specifically referenced the portions of Galecki's testimony where he stated that the firearms were not well maintained and hidden in the trunk of the car. (App. A.29.)

The factual basis of Galecki's testimony was sparse. He admitted on cross-examination that he had only come into contact with a few firearm collectors. (App. B.51.) Galecki stated that the bulk of his time was spent investigating firearm violations, not collections. (App. B.51.) Although he had previously testified at trial that what constitutes a collection "depends on the person" (Trial Tr. 301), he arrived at sentencing with a checklist of collector characteristics (App. B.46–52). Even so, those characteristics were in some instances inaccurate. For example, he claimed that one hallmark of a collector was his intent to sell the firearms for "monetary purposes or gain." (App. B.49.) Yet an intent to sell the firearms for a profit is the hallmark of a dealer, not a collector, and it is a characteristic that aggravates a defendant's conduct rather than mitigates it. *United States v. Miller*, 547 F.3d 718, 721 (7th Cir. 2008). Galecki's collection testimony was at best speculative and at worst simply wrong; in either case it was far from reliable. Accordingly, the court erred by relying on it.

CONCLUSION

For the foregoing reasons, this Court should reverse Pollock's conviction or alternatively vacate his sentence and remand for resentencing.

Respectfully Submitted,

Charles W. Pollock Jr.
Defendant-Appellant

By: /s/ SARAH O'ROURKE SCHRUP
MEGAN KIERNAN
JULES LEVENSON
VANESSA SZALAPSKI
Senior Law Students

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Counsel for Defendant-Appellant,
CHARLES W. POLLOCK JR.

No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America, Plaintiff-Appellee, v. Charles W. Pollock Jr., Defendant-Appellant.	Appeal From The United States District Court For the Central District of Illinois Case No. 11-CR-10082 The Honorable James E. Shadid

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Certificate of Compliance with Federal Rule of Appellate Procedure 32(a)(7)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 13,653 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 12 point Century Schoolbook font with footnotes in 11 point Century Schoolbook font.

/s/ Sarah O'Rourke Schrup
Attorney #6256644
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2013

No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Charles W. Pollock Jr.,
Defendant-Appellant.

Appeal From The United States District Court
For the Central District of Illinois
Case No. 11-CR-10082
The Honorable James E. Shadid

RULE 30(a) APPENDIX OF DEFENDANT-APPELLANT CHARLES W. POLLOCK Jr.

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Sarah O'Rourke Schrup
Attorney
Megan Kiernan
Senior Law Student
Jules Levenson
Senior Law Student
Vanessa Szalapski
Senior Law Student
Counsel for Defendant-Appellant,
Charles W. Pollock Jr

RULE 30(a) APPENDIX TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
AT PEORIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 11-10082
	)	
CHARLES W. POLLOCK, JR.,	)	VIO: 18 U.S.C. §922(g) and §1512(b)(2)(c)
	)	
Defendant.	)	
	)	

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT 1
(Felon in Possession of Firearms)

In or about June and July 2011, in Knox County, in the Central District of Illinois, the defendant,

CHARLES W. POLLOCK, JR.,

did knowingly possess firearms: (1) Winchester 12 gauge pump shotgun, serial number 61166; (2) Winchester .22 caliber short rifle, serial number 226108; (3) Winchester .22 caliber short rifle, serial number 292140; (4) Smith and Wesson .38 caliber revolver, serial number V164395; (5) Colt .38 caliber pistol, serial number 189457; (6) Colt .32 caliber automatic pistol, serial number 347044; (7) Colt .32 caliber automatic pistol, serial number 346815; (8) Essex Arms .45 caliber semi-automatic pistol, serial number 71010; and (9) Colt .45 caliber revolver, serial number 37684 all of which had previously

traveled in interstate commerce, the defendant having been previously convicted under the laws of the State of Illinois of a crime punishable by imprisonment for a term exceeding one year.

In violation of Title 18, United States Code, Section 922(g).

COUNT 2
(Possession of Ammunition by a Felon)

In or about June and July 2011, in Knox County, in the Central District of Illinois, the defendant,

CHARLES W. POLLOCK, JR.,

did knowingly possess ammunition, 7.62x39mm rifle rounds, which had previously traveled in interstate commerce, the defendant having been previously convicted of a crime punishable by imprisonment for a term exceeding one year.

In violation of Title 18, United States Code, Section 922(g).

COUNT 3
(Attempt to Tamper with a Witness by Corrupt Persuasion)

In or about February of 2012, in Knox County, in the Central District of Illinois, the defendant,

CHARLES W. POLLOCK, JR.,

did knowingly attempt to corruptly persuade Todd Clayes by writing a letter with the intent to cause and induce Todd Clayes to evade legal process summoning him to appear as a witness in an official proceeding, namely the trial in *United States v. Pollock*,

Case No. 11-CR-10082 in violation of Title 18, United States Code, Section 1512 (b)(2)(c).

A True Bill,

s/ Foreperson

Foreperson

s/ T. Chambers

JAMES A. LEWIS
UNITED STATES ATTORNEY
KTC/ksr

GOVERNMENT'S INSTRUCTION NO. 3A

g over obj grounds

Count 1 of the indictment charges the defendant with Felon in Possession of Firearms. In order for you to find the defendant guilty of this charge, the government must prove each of the three following elements beyond a reasonable doubt:

1. The defendant knowingly possessed a firearm; and

2. At the time of the charged act, the defendant was a convicted felon; and

3. The firearm had traveled in interstate commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.

FEDERAL CRIMINAL JURY INSTRUCTION 4.01

questions.

THE COURT: Okay. You may step down, sir.

Now ladies and gentlemen, thank you for your time today. Let's call it a day and let's start at 9:30. Give yourself a little room, 9:30. Please do not discuss this matter with anybody including amongst yourselves and amongst others, please refrain from the newspaper any internet searches, just decide this case based only on what you get in this courtroom. All right. See you tomorrow morning. Be safe going home. Thank you.

(Jury excused for the day.)

(Proceedings held outside of the jury.)

THE COURT: Okay. Mr. Vaupel, you have a motion to make?

MR. VAUPEL: I do, Judge. Your Honor, with respect to this issue of the transcripts, when the government went to introduce which I objected to the transcripts, I then objected specifically to the recording associated with 24T-3 and 24T-4 to be played. And the Court -- I appreciate the Court whether the Court did it or Mr. Chambers withdrew asking to play that, in any event, it wasn't played. However, the transcript was still given to the jurors. The jurors still had the opportunity to

read this. And it creates among others, it would seem to create a confrontation clause problem in that I don't know who this unknown male is nor am I able to cross-examine him or even interview him.

THE COURT: Mr. Chambers?

MR. CHAMBERS: First, Your Honor, we don't believe these two transcripts are prejudicial.

Second, the practice that we would use was when we started to play the tape then they would read so I can't attest to anyone read. Even if they did, there was very little in here that is prejudicial especially compared to the actual statements from the defendant. We don't object tomorrow morning to an instruction that they shouldn't consider any transcript -- well, you already told them that I guess -- they shouldn't consider the transcript but they should only consider those transcripts where the disk was played in court.

THE COURT: Well, first of all, I was going to tell them that, I will reiterate it tomorrow if you wish.

Second of all, I didn't make a ruling on that. I'm not sure that they would have been inadmissible if they were provided for the effect on

the listeners. I understood what Mr. Chambers said it was that they would be played to show that the listener was supposed to receive a phone call at a certain time the next day and so it would have been the effect on the listener. So I can't say that nobody read those but they were cautioned not. I would think that they would do what they are told and we have to assume that. So for those reasons, the motion is respectfully denied. We will resume tomorrow. We will put on a full day and see where we are.

MR. CHAMBERS: I think that we will be right at the end by tomorrow. So we will probably rest. If we push through, how late would we go tomorrow night, do you think?

THE COURT: I don't know. I really don't want to go any further than that, but we will see where we are.

MR. CHAMBERS: We may be able to rest tomorrow night or first thing Thursday morning.

THE COURT: Then either way we are going into Thursday so there is no reason to push into tomorrow night and then the defense will either put their case on or we will proceed to closing. We will discuss that tomorrow.

service of process so that it would benefit him. Thank you, Judge.

THE COURT: When reviewing this in the light most favorable to the people at this time, the Court believes that it is right for a jury determination; that a reasonable jury, if they believe the evidence as presented, could find as to each of the counts. And therefore the motion is respectfully denied.

So with that in mind, I would go back and 8A would be given over objection given my ruling, if you prefer, Mr. Vaupel.

MR. VAUPEL: That's fine, Judge.

THE COURT: But that's as to Count I.

Okay. Then number 19 is instruction 4.09.

MR. VAUPEL: Judge, I have an objection to that and the nature of my objection is that the -- this is -- 4.09 is an attempt instruction, but I believe the definition of the tampering instruction already takes this in consideration. And specifically, so long as I'm looking at the right language here, the defendant made an effort with the purpose to obstruct or impede the --

MR. MURPHY: My latter instruction, number 24, refers to the defendant attempting to corruptly persuade another. So I felt it was necessary,

stating it to the jury.

THE COURT: Okay. I think that's appropriate to take judicial notice of it. I think that you can call the clerk to put it into evidence if I didn't take judicial notice.

MR. MURPHY: I would call the clerk to testify if you didn't --

THE COURT: I don't think you need to do that. All right.

MR. CHAMBERS: Judge, can we have just about five minutes before we start?

THE COURT: Yep.

(The court took a recess.)

MR. CHAMBERS: Your Honor, may we, with respect to the elements instruction for which I think is 8A, there are nine firearms here. The jury doesn't have to -- only has to find one of them. I know that Brad is going to argue that to the jury that they only have to find one. We just thought out of an abundance of caution it may be a good idea to add language there -- Tony, what was the language?

MR. VAUPEL: Brad?

MR. MURPHY: You must find that unanimously that the defendant possessed at least one of the

nine firearms alleged.

MR. CHAMBERS: And we would put it right in that first element.

MR. MURPHY: No.

THE COURT: So you'd make it Number 4?

MR. MURPHY: No, put to down here. We would put it as part of that paragraph not an element.

MR. CHAMBERS: No, it is not an element.

MR. MURPHY: And that is consistent, Judge, by the way, with recent Seventh Circuit case law.

MR. CHAMBERS: It is not too recent. It is 2001 or 2002.

MR. MURPHY: I consider that recent.

THE COURT: Mr. Vaupel?

MR. VAUPEL: Judge, I would continue to have the same objection that I expressed earlier.

THE COURT: Then -- well, when can you tender one?

MR. MURPHY: It is being done right now. It will be tendered as Instruction 8B, Judge.

THE COURT: Okay. When it comes up, we will look at it.

MR. CHAMBERS: Have we already done the judicial notice or do you want us to do that in front of the jury?

THE COURT: In front of the jury.
MR. CHAMBERS: Brad, what is the language --
THE COURT: And then you can rest.
MR. MURPHY: I will take care of that.
THE COURT: I'll give it but it did say that the defendant knowingly possessed a firearm. It clearly doesn't say that they have to find him guilty. They have to find that he possessed all of them to find him guilty, and I do believe this could be addressed in closing by correctly stating that they don't have to find him possessing all of them.
MR. CHAMBERS: We can go ahead then, Judge. We don't have to change it. If everybody agrees, we are fine with that.
MR. MURPHY: See if counsel agrees with that.
MR. CHAMBERS: Tony, is that okay?
MR. VAUPEL: Yeah, that's all right. That's what I said to you.
THE COURT: He'll argue from the instruction that they just need to find that he possessed at least one firearm to establish that element, that's a correct statement of the law.
MR. CHAMBERS: We are ready to go.
MR. VAUPEL: What was the date that you --

We, the jury, find the defendant, Charles W. Pollock, Jr., guilty of the charge of felon in possession of a firearms as alleged in Count I of the indictment."

"We, the jury, find the defendant, Charles W. Pollock, Jr., guilty of the charge of possession of ammunition by a felon as alleged in Count II of the indictment."

And "We, the jury, find the defendant Charles W Pollock, Jr., guilty of the charge of attempt to tamper with a witness by corrupt persuasion as alleged in Count III of the indictment."

Do the parties wish to have the jury polled?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: Okay. Polling of the jury is the clerk simply asking you if this is in fact your verdict individually and collectively. So you will just need to answer out loud please.

(Jury polled and all answered in the affirmative.)

THE COURT: Okay. Thank you, ladies and gentlemen.

The jury verdicts are now received and entered of record. Your service is -- you're

Mr. Chambers wish to be heard?

MR. CHAMBERS: Your Honor, we understand that the suppression issues are preserved for appeal. We understand that with respect to argument one, government worked hard to excerpt only those relative parts that were not biased against the defendant showing other bad acts. The evidence of possession both actual and construction is overwhelming. The argument about chain goes to weight not admissibility. And finally the government's closing argument about the slight of hand was directed not towards Mr. Vaupel and his behavior but instead to the argument made by the defense. And that's a proper argument of the Seventh Circuit, Your Honor.

THE COURT: Okay. Mr. Vaupel, anything else?

MR. VAUPEL: No.

THE COURT: The Court will respectfully deny both the motion for new trial and amended motion for new trial. The motions as they pertain to the motions to suppress are made part of the record as well.

The jury found Mr. Pollock guilty on February 7, 2013 to three counts of the second

superseding indictment, felon in possession of firearms, possession of ammunition by a felon and attempt to temper with a witness by corrupt persuasion. I believe the verdicts were appropriate and the rulings leading up to them were as well. And therefore the motions are respectfully denied.

With that in mind then are the parties ready to proceed to sentencing?

MR. CHAMBERS: The government is, Your Honor.

MR. VAUPEL: Yes, Judge.

THE COURT: Okay. Parties have received the Presentence Report; is that correct, Mr. Chambers?

MR. CHAMBERS: Yes, sir.

THE COURT: Mr. Vaupel?

MR. VAUPEL: Yes, Your Honor.

THE COURT: There are a number of objections to the Presentence Report that have been made. The defense has filed a motion -- a sentencing commentary -- sentencing memorandum outlining the defense position and the objections the government has filed and that was on June 19, 2013. The government has also filed a sentencing commentary responding on July 29, 2013. Are the parties ready to proceed to take those up?

guns, would you?
A. No, I would not anticipate that.
MR. MURPHY: That's all. Thank you.
THE COURT: Mr. Vaupel, anything?
MR. VAUPEL: No.
THE COURT: Sir, you may step down. Thank you.
MR. MURPHY: The final objection has to do with the enhancement for obstruction but I think that the first thing to do is argue the cross-referencing objection and the collection.
Is there anymore -- is there any evidence from the defense? Anything further?
MR. VAUPEL: No.
THE COURT: Anything further from the government on these two issues?
MR. CHAMBERS: No, Your Honor.
THE COURT: Okay. Go ahead, Mr. Chambers.
MR. CHAMBERS: Your Honor, may it please the court, counsel.
We believe that the United States Probation Office has properly applied the cross-reference. The guideline is to be applied where the defendant used or possessed any firearm or ammunition in connection with the commission or attempted

commission of another offense. The phrase "in connection with," Your Honor, we would submit to the Court that here after kidnapping the victim he raped her and then he threatened her with the gun in an attempt to keep her from reporting the kidnapping and the rape to the authorities. After the sexual act is completed, that he is expressing the depression and remorse, he is threatening her with the gun; take you downstairs put our heads together and he blow our heads off with the .45. In order to threaten her so that she wouldn't go and report the kidnapping and the rape. We think that's clearly in connection. We think clearly the Presentence Report writer is correct and that the cross-reference should apply.

True, he was not convicted of the offense in state court of the kidnapping of the rape, but the defendant, as the Court is aware, does not have to be convicted of the other offense in order for the cross-reference to apply. We submit to the Court that it does.

Thank you.

THE COURT: Mr. Vaupel.

MR. VAUPEL: Yes, Judge.

Your Honor, while I agree that the standard

is by a preponderance of the evidence, it's not that simple. There are a number of different connections that the government has to make in order to be able to cross-reference a given case. I have set all that out in my motion, or my sentencing memorandum rather, and so I won't repeat it all here, the problem that seems most pressing right now is that Miss Bowyer, again, testified here today as she has -- this is one of the few consistent parts of her testimony that she never saw a gun. There was no gun in the car. No gun in the house. No gun at all. Mr. Chambers attempts to bootstrap some sort of a claim of suicide after the fact to a threat but there is no reference of a gun until this supposed sexual attack took place.

Therefore, the gun wasn't used in connection with some sort of a sexual assault or abduction or anything else? It is referenced after the fact. Miss Bowyer, when she took the stand, she didn't say, hey, look I knew he had guns and I was afraid if I didn't do what he said, he was going to get out his gun and shoot me. She didn't say, hey, I knew that he had guns in the house and therefore I complied or anything like that. And that's -- there has to be some sort of a nexus. There has to be

some sort of commonality and I cited the Ritsema case in the sentencing memorandum and the Court in that case said that the "temporal dimension of relevant conduct could not reasonably have been intended to cause a Court to convert one single possession conviction into a sweeping tool to gather an all otherwise unrelated criminality of a defendant which occurred contemporaneously with the charged offense." And that's what we have here. I mention that at the bottom of my page five of the sentencing memorandum.

Mr. Chambers is arguing that we have a possession and we have sex abuse. Aside from the fact that Mr. Pollock was found not guilty of these various charges in Knox County, we have some claim of sexual abuse; and therefore, it's all connected but it is not. There has to be a nexus. There has to be a commonality.

Likewise, Mr. Chambers hasn't even proven that the gun was readily available. Supposedly these guns were in the trunk of some car on someone else's property in an undetermined distance away, whether it was a hundred yards or more or less. There was a case that came out in -- I think it was last week.

THE COURT: Let's move back past the sexual assault issue on this matter. Do the parties agree that it requires the finding of preponderance of the evidence that a gun was used in connection with or commission of an attempted commission of another offense, that is the standard, right?

MR. CHAMBERS: Correct.

THE COURT: Okay. So until we get to the part about -- as I understand the testimony after the sexual assault, and the part about going to the garage, a gun is not mentioned. Now, whether or not Miss Bowyer was aware of -- had in her mind that he had guns or that didn't come out in testimony; is that right?

MR. CHAMBERS: Correct.

THE COURT: So the question in my mind then is at the point where he brings up the gun was that in commission of another offense? Is that the government's position?

MR. CHAMBERS: Your Honor, it is the Government's position. The government's position is the kidnapping is continuing. The rape has just occurred. He is threatening her with this 45 which she knows that he has and by threatening her, he's attempting to prevent her from going to the

authorities. So although the sex act is finished, she still could report it. He made the comment, well, you have my DNA; you could really get me in a lot of trouble. So he is trying to convince her not to go to the authorities. He is threatening her with the .35 and at that time the kidnapping is still a continuing offense.

THE COURT: So address that, Mr. Vaupel. Let's go to that point.

MR. VAUPEL: Judge, my recollection was that she was asking for him to take her home and he said something to the -- there was some sort of testimony and that was something to the affect of after I sober up. There is no continuing abduction and there is no attempt to conceal anything.

If we take Miss Bowyer's testimony at face value, these are words spoken by somebody who is depressed as opposed to attempting to conceal any past crime.

THE COURT: Okay.

MR. VAUPEL: And then, Judge, I would just direct your attention back to Exhibit A wherein Miss Bowyer wrote, he told me he'd take me home after he sobers up, and finally took me home; says that I'd probably never see you again and tells me

that he loves me and wants to kill himself. That's her statement on July 17 which again is consistent with after the fact.

THE COURT: And you're saying in the context was that statement made before or after the reference to the .45 realizing that Mr. Pollock denies even referencing the .45.

MR. VAUPEL: This would occur when -- this would be different than -- well, let me square myself up here.

This statement -- Miss Bowyer doesn't allege that he threatened to commit suicide with her. This statement is him saying, allegedly, that he would kill himself. There is a second statement I think is Government's Exhibit B or C or something in which they reference putting their heads together.

THE COURT: Okay.

MR. CHAMBERS: Your Honor, if I may, the statement concerning the gun is much earlier before they go home. The statement about sobering up and taking her home is the very end and even then, threatening to kill her with a .45 is related to the kidnapping and related to the sexual rape. He was concerned about what she could do now that she had a case against him. She testified here this afternoon

and he was trying to convince her not to go to the authorities.

THE COURT: Okay. Mr. Vaupel, now move on to why this was a collection and then I will let have Mr. Murphy address it.

MR. VAUPEL: Thank you, Judge.

Your Honor, as it relates to the collection case, these firearms fall under two general categories. It is not a smattering of all different firearms. These were, as I recall, Colt and Winchester with exception of one Essex, which an expert can figure out that this was an Essex; however, it had a Colt slide on it. And I believe that it looked like a Colt, and therefore, would -- it would pass itself off to most folks as a Colt handgun.

Unspoken here is just because somebody collects something doesn't mean that they are sophisticated. It doesn't mean that they have a great collection or anything like that. A person -- you can have two collectors who collect anything whether it is football cards or guns and some of these collectors will be very sophisticated and have very nice and elaborate well-maintained collections and some people don't. And the government hasn't

proven anything as it relates to whether or not there is an actual collection, but we do know that these are fairly old weapons.

There is only two kinds, with the exception of the Essex. And although they weren't maintained as well as some other collectors, we feel that it meets the definition of this.

THE COURT: Thank you.

Mr. Murphy.

MR. MURPHY: I suppose, Your Honor, that following that rationale argued by counsel, that when I pull into Mr. Chambers' house up to his house next time, I should draw the conclusion that he is a collector of Ford automobiles because there are three Fords in his driveway. I don't think that that argument holds water. I think that we are given circumstances for the Court to consider as to whether or not it is a legitimate collection. The number and type of firearms, it certainly wasn't an extensive collection of firearms. The amount and type of ammunition, I submit, is relevant because there was ammunition for these firearms and the legitimate collector doesn't usually use the ammunition in the firearm. They try to keep them in as pristine collection as they can.

The location of the firearms; these were located for a period, apparently, for 30 days, and I think that that's important too. Judge, he picked them up the month before because he had an argument with his mom. He was prohibited from having them because of his prior conviction. His mom said come get them. The only reason that he had them was because his mom said come get them. He wasn't collecting them but for 30 days because mom said come get him.

He -- the nature of his criminal history; we know that this defendant had that prior conviction. And therefore he couldn't have lawfully collected even one gun. So I'm submitting that with regard to this collection issue, it comes into play only if the Court applies the cross-reference in this case. And if the Court chooses not to do that, the Court -- I'm going to urge the Court to apply Subsection 2K2.1(a) sub (4) capital(A). I'm going to urge the Court to do that because I submit that the Seventh Circuit has already determined in the United States v. Randy Meherg, M-e-h-e-r-g, Meherg, that is located at 714 F.3d 457; that the offense of aggravated stalking under Illinois law is a crime of violence, and therefore, that's the alternative I

make.

THE COURT: If we get to that point, you will have time to make further argument on that.

MR. MURPHY: Thank you. That's our position, Judge. Thank you.

THE COURT: Okay. I would like to have argument on the obstruction enhancement that is referenced as obstruction, or objection three, referencing page 20 paragraphs 36 and 42.

The defendant objects to the enhancement he received for the obstruction of justice and the information in paragraph 42.

And then we will take a break, and then I will announce my rulings, my findings, and then proceed accordingly to sentencing.

MR. CHAMBERS: Your Honor, if I may, the defendant was correctly assessed the two level enhancement increase for obstruction of justice. He sent two letters to Todd Clayes knowing full well that he was a potential adverse witness. In those letters, he attempted to influence Clayes to make him unavailable to testify. He realizes that Clayes's unavailability would increase the chances that the charges against him would not be proven. That's clearly obstructive conduct. In fact, he was

convicted of it. We believe that the enhancement does apply. Thank you.

THE COURT: Mr. Vaupel.

MR. VAUPEL: Judge, at the time -- and there is so many papers spread out here. At the time that the letter was sent, I don't believe that Mr. Clayes had been subpoenaed as a witness, and I don't recall anything in discovery indicating that Mr. Clayes had communicated to Mr. Pollock that he was a witness. I suppose Mr. Pollock could think or assume or whatever, but I don't believe that his letters were obstructing to somebody that he doesn't know is a witness and to somebody who hadn't been subpoenaed by the government or even testified at the state court trial.

THE COURT: All right.

MR. CHAMBERS: I would only say to that that if he didn't think that he was a witness then why did he call him a rat on the jail tapes. He knew he was a witness. He knew that he was an important witness for the government. He was trying to convince him not to testify.

THE COURT: Okay. Let's take a ten minute recess. When we come back, I will announce my findings. Based upon my findings, we will proceed

to the appropriate sentencing. Mr. Pollock will have an opportunity to read his statement after arguments of counsel, but he won't need -- I'll leave it, since we are done with evidence, I will leave it up to the marshals whether they believe that his hands need to be handcuffed or not. Okay. We will be in recess.

(A recess was taken.)

(Proceedings were held in open court.)

THE COURT: Please be seated. Thank you.

MR. VAUPEL: Judge, did the Court receive the letters that we uploaded?

THE COURT: Yes, I did. They were from Peter Andriotes --

MR. VAUPEL: Okay. Yes, Judge. Thank you.

THE COURT: -- Reverend Zehr.

MR. VAUPEL: Zehr.

THE COURT: Those are the two, right?

MR. VAUPEL: Yes.

THE COURT: Okay. On the first issue of cross-referencing, in the calculations of the guideline levels as pursuant to that, I'm going to find for the government and the probation's position as follows:

I'm aware that the defendant was acquitted

in state court. I'm also aware that this cross-referencing can be applied, whether or not a conviction was obtained. Now having said that, I am -- I would say "cautious" in making some determination when there was a jury verdict on the issue, but I am specifically referencing or referring here to then the point in time where I believe -- and I realize the standard is by preponderance of the evidence, where as the jury verdict would have been beyond a reasonable doubt, and to establish a connection with the commission of or attempted commission of another offense. I'm focusing solely on the issue of the .45 caliber weapon. The mention of suicide and what, as my interpretation actually, based on Miss Bowers' testimony, would be that it would be a murder suicide is what it would be because she wasn't agreeable to taking her own life. I'm not sure frankly, Mr. Pollock would have either, but there can be no question with the belief of Miss Bowyer at that time was that Mr. Pollock could and would do it; that he was capable of doing it. The restraint of her movement continued throughout this time and at the very least a reasonable inference could be that letting her know what he could do if she went

to authorities. So I believe by a preponderance of the evidence on that issue, the government has prevailed.

With regard to the issue of collection, I don't think there is any question about it. That's not even a close call in my mind. First of all, Mr. Pollock's prohibited from possessing firearms for any purpose. You don't -- and then he asked someone to get them and hide them. The weapons were not in the condition that satisfies me that they were for any lawful sporting purpose or collection. Given the testimony and lack of maintenance, care, oiling, cleaning, stored in the trunk of a car, and the fact that the .45 caliber had a frame made by one company, a slide by a different company, that does not add up to any kind of a legitimate collection.

So the finding for the government and probation's position on that. With regard to the enhancement for obstruction, I think that clearly applies as well and find that the government's position is appropriate. There I don't think much needs to be said on that other than the jury heard that are one and made that determination beyond a reasonable doubt with their finding.

So, with that in mind, the total offense level will start at 40, Criminal History Category will be IV, that would make the guideline provision of 360 to 480 months; however, it is statutorily the maximum sentence on Counts I and II is 120 months and on Count III the statutory maximum is 240 months. Supervised release is one to three years on each of the counts; ineligible for probation; 25,000 to $250,000 fine; and a hundred per count special assessment.

Given my rulings, do the parties agree that those are the guideline provisions?

MR. CHAMBERS: The government does, Your Honor.

MR. VAUPEL: Yes, Judge.

THE COURT: Given my rulings.

MR. VAUPEL: Given your ruling.

THE COURT: Now for the record, alternatively, had I not made the findings that I made, and had or had -- or if the Seventh Circuit thinks that these findings were not appropriate or at the standard, more specifically, the cross-referencing and I guess the collection issue, although I don't see how that is a close call, but if the Seventh Circuit were to disagree with me, it

would be my position that under 2K2.1(a)(4)(A), the base offense level would be 20 because of the case of the United States v. Meherg which was decided April 8, 2013, that one of Mr. Pollock's criminal convictions was for aggravated stalking and that constitutes a crime of violence. So the base offense level would have been 20. The number of firearms would have added four to make that 24. The obstruction enhancement, which I found to be the case, I would find again, would make 26; that would make a criminal history category of IV and a guideline range of 92 to 115 months on each of the three counts. I will comment on that here again in a few moments.

So with that in mind, are the parties ready to proceed to sentencing?

MR. CHAMBERS: The government is, Your Honor.

THE COURT: Any evidence in aggravation from the government?

MR. CHAMBERS: No, sir.

THE COURT: Any additions or corrections to the Presentence Report from the government?

MR. CHAMBERS: No, Your Honor.

THE COURT: Any evidence from the defense?

government's commentary, the arguments of counsel, the statement of Mr. Pollock, the factors as set forth in 3553, which include the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense to promote respect for the law and provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with educational or vocational training, medical care or other correctional treatment in the most effective manner. I believe that after factoring all of these matters that this sentence is sufficient but not greater than necessary to comply with the purpose of the Act.

Now 5K2.9 sets forth the criminal purpose: committed the offense in order to facilitate or conceal the commission of another offense. I believe that's the case here. When the defendant was under federal indictment for Count III -- was under federal indictment for Counts I and II when Count III was committed and the enhancement for the level for obstruction of justice, the two point enhancement, I don't think adequately accounts for

the nature and circumstances of the offense, so therefore a consecutive sentence, I believe, is necessary as to Count III.

Now, if I were to sentence Mr. Pollock alternatively, as I said, for the record -- Mr. Vaupel, do you want to be heard?

MR. VAUPEL: I'm sorry, Judge, Mr. Pollock -- I didn't realize that he had -- he wishes you to consider his certificates from his Bible courses as part of the record.

THE COURT: Why don't you just tell me what they say; give me an offer of proof. How many are there?

THE DEFENDANT: 153, Your Honor.

THE COURT: All right. Did you just provide those to Mr. Vaupel?

MR. VAUPEL: Yes, Judge, just now. That certify that he successfully completed the Servant of God correspondence courses.

THE COURT: I will consider them as you represent them that there are 153 certificates.

THE DEFENDANT: All of these ones I have from completions of the course. I have got some of these in excess of 6, 7, 800 hours in these certificates.

THE COURT: All right. And I will consider that as represented by you and by Mr. Vaupel, but I'm not going to now at this point in the proceeding read each of those. And I would say that it as commendable as that is, and clearly that sets forth a good character trait on your behalf, it would not affect the sentence I'm about to impose.

Now I was going to say that alternatively, if I had just found against the cross-reference and for the gun and on the gun issue and then establish the guidelines accordingly, the guideline range would have been 92 to 115 months. I would have imposed 115 months on Count I and II concurrent, and because I believe a consecutive sentence is necessary, as I just stated, I would have imposed a 115 months consecutive on Count III, consecutive to Counts I and II. But I'm not sentencing you in that regard. I'm sentencing you for -- alternatively under the findings that I made that cross-reference the specific Act of the .45 caliber and request to commit suicide in the commission of or continuing commission of the offense. And, therefore, the ranges are, as I set forth earlier, 120 months as to Counts I and II statutorily and 240 months as to Count III. I am not going to adopt the complete

position of the government, but I am going to adopt a portion of that position.

Now, as I said earlier, Mr. Pollock, you are -- believe that you are being singled out for everything because of Kim Bowyer. The fact that you are being sentenced for the guns, the ammunition, and for the tampering with the witness has little to do with Kim Bowyer and everything to do with you. The finding that I made cross-referencing the case has to do with Kim Bowyer in the sense that she was under your control when that threat or request to commit suicide together was made, if you want it put that way.

So, it will be a sentence to the Bureau of Prisons for Counts I and II for a period of 120 months to be served concurrently. That is the maximum sentence that can be imposed on Counts I and II unless I were to run them consecutively which I am not.

But Count III is to be run consecutively and it will be for another 120 months.

So that will be a sentence of -- total sentence of 240 months in the Bureau of Prisons.

You will be serving a term of three years on each count of supervised release to be served

concurrently.

I will find that you do not have an ability to pay a fine, so no fine is imposed.

I did not reference Mr. -- as Mr. Chambers did, but I do think that anything more that needs to be said about you is set forth in paragraph 63, Dr. Olms' characterizing of you that Mr. Chambers referred to. It is conduct that is abundantly clear by spending any amount of time with you as we have.

Within 72 hours of your release, not commit -- you will serve those terms of supervised release while on -- you will report and serve those terms while on supervised release. Not commit another federal, state or local crime. Not possess a controlled substance. Submit to drug testing as directed, and cooperate in the collection of DNA.

You will refrain from any use of alcohol and not purchase, possess, use, distribute or administer any controlled substance or mood-altering substance or any paraphernalia related to except as prescribed by a physician.

Not own, purchase or possess a firearm, ammunition or other dangerous weapon, not even for collection purposes.

A special assessment of $300 is imposed

payable immediately.

Recommend you serve your sentence in a facility as close to your family in Kewanee, Illinois as possible. And in a facility that will maximize your exposure to educational and vocational opportunities if you choose.

Is there anything else before appeal rights?

MR. CHAMBERS: Nothing from the government, Your Honor.

THE COURT: You do have appeal rights. And if you are unable to afford an attorney one would be appointed for you. You have 14 days to appeal or ask Mr. Vaupel to do so on your behalf.

Anything else before we recess?

MR. CHAMBERS: Nothing from the government, Your Honor.

THE COURT: All right. Thank you. We will be in recess.

(Which were all of the proceedings had in this case on this date.)

*****

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Nancy Mersot Date: September 9, 2013
Court Reporter

AO 245B (Rev. 09/08) Judgment in a Criminal Case
vl Sheet 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA
v.
Charles W. Pollock, Jr.

JUDGMENT IN A CRIMINAL CASE

Case Number: 11-10082-001

USM Number: 17675-026

Anthony W. Vaupel
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. 1ss, 2ss, 3ss

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g) and § 924(a)(2)	Felon in Possession for Firearms	7/21/2011	1ss
18 USC § 922(g) and § 924(a)(2)	Possession of Ammunition by a Felon	7/21/2011	2ss
18 USC § 1512(b)(2)(C)	Attempt to Tamper with a Witness by Corrupt Persuasion	7/21/2011	3ss

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 1, 1s, 2s ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/5/2013
Date of Imposition of Judgment

s/ James E. Shadid
Signature of Judge

James E. Shadid, Chief United States District Judge
Name of Judge Title of Judge

8-6-13
Date

DEFENDANT: Charles W. Pollock, Jr.
CASE NUMBER: 11-10082-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months on Counts 1ss and 2ss to be served concurrently; 120 months on Count 3ss to be served consecutively to Counts 1ss and 2ss.

☑ The court makes the following recommendations to the Bureau of Prisons:

It is recommended that the defendant serve his sentence in a facility as close to his family in Kewanee, Illinois, as possible. It is further recommended that he serve his sentence in a facility that will maximize his exposure to educational and vocational opportunities.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Charles W. Pollock, Jr.
CASE NUMBER: 11-10082-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
3 years on each count to be served concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency as directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from ☑ Any ☐ Excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Charles W. Pollock, Jr.
CASE NUMBER: 11-10082-001

SPECIAL CONDITIONS OF SUPERVISION

1. You shall refrain from any use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or mood altering substance, or any paraphernalia related to any controlled substance or mood altering substance, except as prescribed by a physician. You shall, at the direction of the probation officer, participate in a program for substance abuse treatment including not more than six tests per month to determine whether you have used controlled substances and or alcohol. You shall pay for these services as directed by the probation office.

2. You shall not own, purchase, or possess a firearm, ammunition, or other dangerous weapon, not even for collection purposes.

DEFENDANT: Charles W. Pollock, Jr.
CASE NUMBER: 11-10082-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 300.00	$	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$0.00	$0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
v1 Sheet 6 — Schedule of Payments

DEFENDANT: Charles W. Pollock, Jr.
CASE NUMBER: 11-10082-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All crimnal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America, Plaintiff-Appellee, v. Charles William Pollock, Defendant-Appellant.	Appeal From The United States District Court For the Central District of Illinois Case No. 11-CR-10082 The Honorable James E. Shadid

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CIRCUIT RULE 30(d) Statement

I, the undersigned, counsel for the Defendant-Appellant, Charles W. Pollock, Jr., hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the appendix to this brief.

/s/ SARAH O'ROURKE SCHRUP
Attorney
MEGAN KIERNAN
Senior Law Student
JULES LEVENSON
Senior Law Student
VANESSA SZALAPSKI
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2013

Certificate Of Service

I, the undersigned, counsel for the Defendant-Appellant Charles W. Pollock Jr., hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on November 25, 2013, which will send notice of filing to counsel of record.

/s/ Sarah O'Rourke Schrup
Attorney
MEGAN KIERNAN
Senior Law Student
JULES LEVENSON
Senior Law Student
VANESSA SZALAPSKI
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of Law 375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2013

No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Charles W. Pollock Jr.,
Defendant-Appellant.

Appeal From The United States District Court
For the Central District of Illinois
Case No. 11-CR-10082
The Honorable James E. Shadid

RULE 30(b) APPENDIX OF DEFENDANT-APPELLANT CHARLES W. POLLOCK Jr.

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

SARAH O'ROURKE SCHRUP
Attorney
MEGAN KIERNAN
Senior Law Student
JULES LEVENSON
Senior Law Student
VANESSA SZALAPSKI
Senior Law Student
Counsel for Defendant-Appellant,
Charles W. Pollock Jr.

RULE 30(b) APPENDIX TABLE OF CONTENTS

entirely appropriate to record those conversations as the Court indicated, but I think what Mr. Vaupel recommends is a fair instruction.

THE COURT: All right. Mr. Vaupel, how do you want that? Recite that again; how you ended it about no inference of any guilt.

MR. VAUPEL: Yes, Judge. "The fact that the defendant might have been in custody should not be considered by you as evidence of guilt."

THE COURT: Okay. All right. How about this? And you can reword this with me if you wish.

"It is within the law for jails to record conversations to and from those in custody. You are going to receive testimony in evidence that Mr. Pollock was in custody at times during these proceedings. The fact that Mr. Pollock might have been in custody should not be considered by you as any evidence of guilt."

MR. CHAMBERS: Fine with the government.

MR. VAUPEL: Yes, Judge.

THE COURT: Okay. I will say that before the first witness.

MR. CHAMBERS: Your Honor. There are two other matters. I don't know how quick the witnesses will go, so in case there is no break between them,

two other matters; pursuant to our agreement we expressed to the Court yesterday, I've instructed our second witness Kim Bowyer to not discuss the rape, the kidnapping and the rape. She has been instructed not to. If asked on cross, of course, she will answer truthfully.

Now that presents an evidentiary issue because she basically then has two main places where she talks about the possession of guns. First, she will testify that the defendant and she went over to the mother's house and retrieved the firearms, put them in the defendant's trunk, and he drove away with them. That's fine. That doesn't involve the rape and kidnapping.

The other piece of evidence is this; that during the rape and kidnapping, I believe after the sexual act, the defendant said to her, "I should take us both out in the garage, put our heads together and shot a .45 -- shoot my .45 through us both," which would indicate that he had the .45. I think the Court heard testimony about that at the suppression hearing.

We worked last night to try to come up with a way to put that evidence in without mentioning the rape and kidnapping and simply I think that it opens

too many doors. So I will place defense counsel on notice that unless he opens the door on cross, we are not going to go into that piece of testimony. I've instructed her, and I'm not going to ask her about his threat to kill her and commit suicide with the .45. So we will not be offering that. I just want the Court to know that and counsel to know that.

THE COURT: Mr. Vaupel, no need for you to respond just Mr. Chambers is making a record that he is not -- that he doesn't intend to open any doors into that regard, and if they get opened, I guess they will get opened in cross.

MR. VAUPEL: And I guess the only thing that I would say for the record is because all of these events are -- well, it's one chain of events; I don't know what's going to happen.

THE COURT: I don't know either. I just know this that that's obviously in my mind that if that evidence comes out, it is going to be a double-edged sword. I don't know that at this point -- Mr. Chambers, you're not raising any issues in motion in limine. I think that if -- as to the charge -- the Knox County charges, we will see where it goes, but I don't -- I appreciate the record that

you're making. Let's leave it at that.

MR. CHAMBERS: Your Honor, I didn't think I needed to make a motion in limine. I thought that we had an agreement between the parties that we wouldn't go there. If it become it becomes necessary, I will make that motion in limine not to discuss the rape and kidnapping charge. It's either her allegations, the events of those couple days, or the fact that he was acquitted because I think that it has no bearing on this, but I think right now we have an agreement between the parties unless I misunderstood.

MR. VAUPEL: Judge, it's true Mr. Chambers and I have had some conversations. It is -- unless a door is opened, it's not my current intention to ask Miss Bowyer questions about the Knox County case; the sexual assault that Mr. Pollock was found not guilty of.

THE COURT: Well, let's jump ahead to that. If we are having a fact witness testify, Miss Bowyer, as to the events about the guns. And it does come up, because I guess in some ways you want to attack her credibility, which I understand, but in the event it does come up, how is the verdict relevant? So I'm not going to let it come up from

the defense point of view just so the jury can hear that he was acquitted, and, in other words, Ladies and gentlemen, it's all nonsense, you're not to believe it. So with that in mind, maybe that caution will --

MR. VAUPEL: And, Judge, it wouldn't be brought up simply for the fact or for the jury to hear that he was found not guilty of anything, it would likely come up because he was charged with criminal damage to property in the same case number that he was charged with the criminal sexual assault case. It would likely come up as far as impeachment of Miss Bowyer and that she made numerous claims about the physical manhandling that she underwent. Nevertheless, there is no record or no reports, any signs of physical injury or things like that. We believe that she has made any number of inconsistent statements.

MR. CHAMBERS: Well, Your Honor, I don't want to try a dirty trial. I want to try a clean trial, but if we get into those physical injuries, I have a witness downstairs that works for the Rape Crisis Center in Knox County that saw those physical injuries the day after the rape and is prepared to testify to them. That I think is not a matter that

photos -- the defendant lived in rural Knox County way out in the country and his house was surrounded by junk cars, I guess is what you would call them. Cars that people would have for to get parts off of and stuff like that, that's kind of the business that he had. So he had a whole field of these cars. And he took Larry Todd Clayes out to one specific car and he opened up the trunk and there in the trunk of the car were all of these boxes and gun cases with the guns. And he takes out one particular gun, a Colt .45 military semiautomatic pistol, and he shows it to Mr. Clayes. They look at it. Put the gun back in. Shut the trunk, and they go back to the house. Well, shortly after that, there was a search warrant conducted out at the defendant's house and then the defendant was incarcerated and the judge will tell that that should not be considered by you in any shape, form or fashion as to the defendant's guilt. The fact that he went to jail is not to be considered by you at all.

But you are going to hear calls from the jail from the defendant to various persons and some of those calls you will hear is that the defendant calls his friend Larry Todd Clayes and says, Go out

A. Yes.
Q. Is that the car that he put the guns into?
A. Yes.
Q. That he drove away in?
A. Yes.
Q. I want to show you a series of photographs now, a series of Government's Exhibits 25B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, and B-9. Just take a moment and glance through those if you will.
Have you seen those photographs before?
A. Yes.
Q. I showed them to you downstairs in my office in the basement?
A. Yes.
MR. CHAMBERS: Your Honor, I move for the -- well, first, I'll ask her what are these.
BY THE WITNESS:
A. That's one of the cars that he got from Galesburg that he bought from them.
MR. CHAMBERS: Okay. I move for the admission of 25B-1 through 25B-9.
THE COURT: Any objection?
MR. VAUPEL: No, Judge.
THE COURT: It will be admitted.
MR. CHAMBERS: Lisa, can you -- may I

Charles' house and the two of you had gone into Wataga together?
A. Correct.
Q. And you had left your telephone and keys and things like that in the saddle bags of Charles' motorcycle?
A. Bike, yes, and some clothes.
Q. And then while you were there at Wataga, you became upset with him, correct?
A. Yes.
Q. And you left?
A. Yes. Because we had been in these fights before; it is best for me to just walk away.
Q. All right. And so you didn't just walk away, you kept walking, right?
A. Yes.
Q. And you started knocking on houses?
A. Yes, to try to get a ride back to get my truck.
Q. As opposed to just going back in and saying, "Hey, can you take me home Charles?"
A. It doesn't work that way with him.
Q. How about, "Hey, can I have my keys and phone back?"
A. Never thought of it at the time. I just wanted to go home.

Q. So it seems like a better idea to knock on the doors of strangers?
A. It is better than dealing with him because he gets really mean and angry.
Q. Okay. And at the time you were found along the side of the road by a police officer, correct?
A. Yes.
Q. Do you recall about what time that was?
A. No.
Q. Would it have been after 3:00 in the morning?
A. I do not remember.
Q. And at that time -- well, it was Deputy Davidson of the Knox County or the Sheriff's Department, correct?
A. Yes.
Q. And at that time you told him that Charles forced you out of his -- or left you there on the side of the road, correct?
A. Yes.
Q. But that wasn't true, was it?
A. It happened a few weeks back ago. I got confused when they asked me that question when I went to trial for the state charge because there was another time that he left me but it wasn't in Wataga, it was in a different town.

Q. You were confused?
A. I was confused.
Q. The night of July 10?
A. No, the night --
Q. You told --
A. -- the night that we were at the bar.
THE COURT: Wait. Let him finish his question.
Go ahead, Mr. Vaupel.
BY MR. VAUPEL:
Q. You are picked up by Deputy Davidson on July 10, correct?
A. Yes.
Q. And you are confused that night --
A. Because it was really close from the other night before, yes.
Q. -- with the other night?
A. Yes.
Q. So you couldn't tell while you were there on the side of the road?
A. I don't know. I'm confused right now. I don't know what you're asking. I'm sorry.
Q. Well, I'm asking you --
A. Hold on a minute. Let me think. We got in a fight at the bar. I took off. Went for a walk. I

came back. Went back in the bar. He was talking to these girls. He was flirting with them saying comments to them that he wants to lick their bodies and all of that stuff. I got mad. Left again. And that's when I went knocking at everybody's doors to get my ride back to his house and then go home. I just wanted to go home because I know how our fights get. They get out of control.

Q. So you started walking along the highway?

A. Yes.

Q. And you lived in Williamsfield, correct?

A. Yes.

Q. And that's --

A. That's a way --

Q. 15, 20 miles away?

A. Probably further.

Q. And so on that night you thought it best to just start walking?

A. Start walking and hopefully I can get a ride from somebody.

Q. And that night you had been drinking quite a bit of alcohol, right?

A. Yeah, we both have.

Q. And so when Deputy Davidson found you on the side of the road --

A. Uh-huh.
Q. -- you thought the best thing to do was to immediately lie and say that Charles dropped you off on the side of the road?
MR. CHAMBERS: Objection to the characterization that she lied to the deputy.
THE COURT: Overruled. You may answer.
BY THE WITNESS:
A. Your question was? I'm sorry.
BY MR. VAUPEL:
Q. You thought the best thing to do would be to lie to Deputy Davidson and tell him that Charles left you on the side of the road?
A. I really don't remember all in details on that. But I did tell him what happened about the incident a couple weeks back where he did do that; that was in Brimfield.
Q. You then thereafter gave a written statement in which you did in fact admit that Charles didn't leave you on the side of the road?
A. No, I left; I walked.
Q. All right. But my question is after you talked to Deputy Davidson sometime later you gave a written statement saying that Charles did not leave you on the side of the road, correct?

A. I don't remember.
Q. Do you remember testifying later on before the grand jury that Charles left you in Wataga?
MR. CHAMBERS: Mr. Vaupel, can I have that cite please?
MR. VAUPEL: Page 214, bate stamped 214.
BY MR. VAUPEL:
Q. Do you recall that?
A. Can you ask me a question again?
Q. Sure. Later on in August of 2011, do you recall being before the grand jury?
A. Yes.
Q. And do you recall telling them that Charles left you in Wataga?
A. When I came back to the bar there was nobody there.
Q. That's not my question.
A. The second time when I came back.
Q. You do remember testifying that Charles left you --
A. I don't remember. I remember everybody was gone and I had to get a ride home.
Q. But you don't remember testifying that he left you?
A. Everybody left.

Q. I understand that somebody eventually has to leave.
A. No, everybody was gone, yeah.
Q. Do you recall testifying to that?
A. I don't remember at this moment.
Q. Well, then, do you remember testifying at a later hearing that you saw Charles talking to these two women that he didn't see you and you decided to leave?
A. Yes.
MR. CHAMBERS: Mr. Vaupel, can you give me another cite for that too, please?
MR. VAUPEL: That would be bate stamped 577.
MR. CHAMBERS: Your Honor, may I have just a moment? Page 26. I got it.
BY MR. VAUPEL:
Q. So now do you remember saying to the deputy that you really wanted to get back to Charles' house to get to your truck?
A. Yes.
Q. And you -- and that was because you were afraid he would damage your truck, that's what you said?
A. He made these threats in the past, yes.
Q. And so you get back home that night, right?
A. Yes.

Q. Deputy Davidson took you home?
A. Yes.
Q. And he didn't want you to drive, did he?
A. He didn't want us together because we had been fighting.
Q. Well, specifically he didn't want you to drive, did he?
A. He didn't say that. He said you guys been fighting; it is best that you guys stay away from each other for 24 hours.
Q. He didn't tell you that he didn't want you to drive because of the amount of alcohol that you had been drinking?
A. No, he didn't mention that. His main thing was because we had been arguing and that.
Q. So then despite his advice you and your daughter hopped in the car and drove straight out to Bill's house?
A. Yes.
Q. And that's when you said that your truck is gone?
A. Yes.
Q. Now later on you said that Bill sent you text messages to tell you where the truck was?
A. We were on the phone; we talked.

Q. So there is no text messages, huh?
A. There was texting, but I don't remember word-by-word what that said. I just remember verbally him telling me that it is down by the river. I go, where at by the river? He says, you can figure it out. And then called me names as usual.
Q. So there were some text messages?
A. Yeah. I don't remember what they all said?
Q. Did you later on disclose those text messages to a Deputy Cheesman who arrived on the scene?
A. No.
Q. No?
A. I don't think. I don't remember.
Q. Did you later on disclose those text messages to Detective Kraemer?
A. I don't think so. I don't remember. I just remember verbally talking to him on the phone.
Q. And now you are the person who found the truck, right?
A. My daughter and I.
Q. Did you also make some 911 calls that night?
A. That morning, that morning or night. I can't remember if it was morning or night; it was in that time frame.

A. I stopped by Bill's house because I hadn't seen him in a while. It was on my way home.
Q. And if you will describe where Bill's house is?
A. It's out in the country off of Victoria Road kind of by the Hook & Bullet Conservation Club.
Q. Kind of secluded out in the country?
A. Yes.
Q. And if you will, what line of work was Mr. Pollock in at that time?
A. Junking cars as far as I know.
Q. Did he have a lot of junk cars around his house?
A. Yes.
Q. So you stopped out there after work. Tell the ladies and gentlemen what happened.
A. I stopped out after work and we went into the garage and we drank some beers for a while and then he asked me if I wanted to smoke some marijuana, I said yes. So we got into my truck, drove out into the field to a car, and he got into the trunk of the car and got a little Tupperware dish -- with some marijuana in it and I smoked some, and then he pulled out, got out a pistol and showed me also, and I said that's nice, and put it all back in the trunk and went back to the garage and continued to drink beer.

A. Yes.
Q. Is that the last one in the series?
Okay. Thank you.
You can set those aside, Todd.
And Lisa, you can take that down, if you'd like.
So after you went out there, you smoked a little marijuana, he pulled out the .45 pistol. You saw the other gun cases and boxes. You go back to the garage, what happens next?
A. We drank more beer and it got late so I just spent the night there and we went in and went to sleep.
Q. And what happens the next morning?
A. I got up and I went to work. I got off early because we finished that job up early, and I had talked to Bill about buying an ATV from him, and so I went to his house, back to the house again, and we loaded up that ATV and took it to my house and I gave him the money for it. And then we went back to his house because it had a snow plow also that I couldn't fit in the truck. And we went back to the house, loaded it up, and he got on his bike and I followed him into Lafayette and we want to the bar and had a couple drinks and then he left.

A. Yes.
Q. 24T-7, Lisa, if you will please.
(Recording played in open court.)
MR. CHAMBERS: Can we recover the transcript books then, Your Honor?
MR. VAUPEL: Judge, may we have a sidebar please?
(Sidebar conference held outside of the hearing of the jury.)
MR. VAUPEL: Judge, I have a motion to make outside the presence of the jury when there is a logical break point.
THE COURT: What's it about?
MR. VAUPEL: Judge, I will be moving for a mistrial based upon the fact that the jury received the transcripts over my objection and it contained a transcript of, I believe it's T-3 and T-4 with these unknown males.
THE COURT: Okay. Are you about done with this witness?
MR. CHAMBERS: Just about.
THE COURT: How long is your cross-examination going to be because 3 and 4 weren't played and so I will assume that nobody read them because they weren't played and so we will

THE COURT: You want 33 and 34; the envelopes are 33A and 34A.

Any objection?

MR. VAUPEL: No, Judge.

THE COURT: It will be admitted.

MR. CHAMBERS: And, Your Honor, I'd ask to publish.

THE COURT: You may.

BY MR. CHAMBERS:

Q. First, the letter on February 7th. I'll get that. Can you read that to the jury. That is 33, correct? Can you read that for the jury.

A. "Hey Todd, I go to federal court the 13th of February for pretrial and have jury trial 27th of February. The sheriff will be trying to serve you a subpoena sometime after the 13th of February. It would be nice if you could somehow avoid being served. If you don't get served, you don't know when to go to" -- I can't -- "to court" -- I can't -- that's kind of ineligible (sic) to me.

Q. Okay.

A. "You are the only witness that put -- that can put me away. I done kicked Kim's ass in state court."

Q. Let me see that for a second.

MR. CHAMBERS: I wonder if it would be easier to make a copy, Your Honor. This is the original.

BY MR. CHAMBERS:

Q. It is very difficult to read but try your best. I'll see if copies look legible. Go ahead, Todd. Pick up where you left off if you can.

The copy is no better?

A. "I done kicked Kim's ass in state court. If you don't come to court and testify, the Feds have to let me go. If you do testify, you can try saying you don't remember. That is what the cops said here on my state charge. If you could somehow disappear until the 28th of February, I'm sure to be out that day. So if you can disappear or become invisible, maybe go fishing in Alaska or Florida or anywhere you want. Hide. Leave state or whatever. We will try and call you on the 13th or 14th of February and let you know what's up on this end. The less we say the better off I'll be. Be like the invisible man. Love, Me."

"If you testify I go to prison for up to ten years. They say a year a gun. If you somehow get a subpoena and don't show up in court, you can only get a thousand dollar fine. Help. You could always

A. Yes.
Q. And Mr. Chambers said it was an automatic?
A. Yes, semiautomatic, yes.
Q. Semiautomatic. And what kind of gun was it?
A. I'm not sure what type it was. I just seen it was a pistol, a semiautomatic pistol.
Q. And you have no idea which one of these that would have been, right?
A. No, I really wouldn't, no.
Q. As a matter of fact you don't know if whatever that was is here at all?
A. I'm sure it's one of them, yes. I mean it was in a trunk.
Q. Well, you assume it was one of them, right?
A. I'm sure it was probably one of them, yes.
Q. You assume that there were bullets or some other guns in these other boxes, right?
A. Well, there was guns in them other boxes.
Q. Did you check these boxes when you removed them from the trunk?
A. No.
Q. Did you check these boxes before you took them to Sandra Pollock's house?
A. No.
Q. And when you went back to Sandra's house, you

said that there were boxes throughout the house?
A. Yes.
Q. And she had to -- she collected a number of different boxes?
A. She pointed me to where they were and I collected them.
Q. Did you mark those boxes in any way before you gave them to Miss Pollock?
A. No.
MR. VAUPEL: Can I have just one moment, Judge?
Just one or two more. Thank you.
BY MR. VAUPEL:
Q. When you took these boxes over to -- well, prior to taking these boxes over on this night where Bill supposedly showed you this gun, did you -- did he hand you the gun?
A. No.
Q. What did I do with it?
A. Just held it up and showed it to me and I said -- and showed it to me and then put it back into the trunk.
Q. So didn't hold it up high or anything like that?
A. Just like that.
Q. Right out in front of him?

your motion at this time?

MR. VAUPEL: I can or would you prefer to finish working?

THE COURT: Okay. But we can work through these. The thing is what I'm saying is like you would want this instruction 19 because you believe the case should be tossed, and if I don't toss the case then I'm going to give the instruction over your objection for the record. Okay? So go ahead.

MR. VAUPEL: Judge, I would make a motion for a directed verdict on all counts, in that I don't believe the government has proven even in the light most favorable to them that a reasonable finder of fact could convict Mr. Pollock based upon these facts, specifically, that in the government's own exhibit as it relates to Count III, Mr. Pollock states to Mr. Clayes, I want you to testify. Number -- as it relates to Count II, there has been no evidence in any way, shape or form as to the knowingly component of whether or not Mr. Pollock knowingly possessed those -- lack of a better word -- those FKF bullets that were found in his house. I guess there is one piece of evidence as to whether or not he knowingly possessed that and that would be the telephone call between himself and his brother.

stating it to the jury.

THE COURT: Okay. I think that's appropriate to take judicial notice of it. I think that you can call the clerk to put it into evidence if I didn't take judicial notice.

MR. MURPHY: I would call the clerk to testify if you didn't --

THE COURT: I don't think you need to do that. All right.

MR. CHAMBERS: Judge, can we have just about five minutes before we start?

THE COURT: Yep.

(The court took a recess.)

MR. CHAMBERS: Your Honor, may we, with respect to the elements instruction for which I think is 8A, there are nine firearms here. The jury doesn't have to -- only has to find one of them. I know that Brad is going to argue that to the jury that they only have to find one. We just thought out of an abundance of caution it may be a good idea to add language there -- Tony, what was the language?

MR. VAUPEL: Brad?

MR. MURPHY: You must find that unanimously that the defendant possessed at least one of the

nine firearms alleged.

MR. CHAMBERS: And we would put it right in that first element.

MR. MURPHY: No.

THE COURT: So you'd make it Number 4?

MR. MURPHY: No, put to down here. We would put it as part of that paragraph not an element.

MR. CHAMBERS: No, it is not an element.

MR. MURPHY: And that is consistent, Judge, by the way, with recent Seventh Circuit case law.

MR. CHAMBERS: It is not too recent. It is 2001 or 2002.

MR. MURPHY: I consider that recent.

THE COURT: Mr. Vaupel?

MR. VAUPEL: Judge, I would continue to have the same objection that I expressed earlier.

THE COURT: Then -- well, when can you tender one?

MR. MURPHY: It is being done right now. It will be tendered as Instruction 8B, Judge.

THE COURT: Okay. When it comes up, we will look at it.

MR. CHAMBERS: Have we already done the judicial notice or do you want us to do that in front of the jury?

THE COURT: In front of the jury.
MR. CHAMBERS: Brad, what is the language --
THE COURT: And then you can rest.
MR. MURPHY: I will take care of that.
THE COURT: I'll give it but it did say that the defendant knowingly possessed a firearm. It clearly doesn't say that they have to find him guilty. They have to find that he possessed all of them to find him guilty, and I do believe this could be addressed in closing by correctly stating that they don't have to find him possessing all of them.
MR. CHAMBERS: We can go ahead then, Judge. We don't have to change it. If everybody agrees, we are fine with that.
MR. MURPHY: See if counsel agrees with that.
MR. CHAMBERS: Tony, is that okay?
MR. VAUPEL: Yeah, that's all right. That's what I said to you.
THE COURT: He'll argue from the instruction that they just need to find that he possessed at least one firearm to establish that element, that's a correct statement of the law.
MR. CHAMBERS: We are ready to go.
MR. VAUPEL: What was the date that you --

vehicle. It is very important. Turns out to be a 1994 silver Nissan vehicle. The very vehicle that the Gieryna's sold to this defendant the month before and that he had hauled away.

Well, it is parked out behind his house and they go out there. They open the trunk and low and we behold what is there? The defendant pulls out and Todd Clayes claims to have seen at that time a.45 caliber automatic pistol.

Ladies and gentlemen, Government's Exhibit Number 8, a .45 caliber automatic pistol, wouldn't you expect to find a .45 caliber automatic pistol in this evidence. Here is one; Government's Exhibit Number 8.

The defendant displayed, I submit, that weapon to Mr. Clayes that evening but that's all that was done at that point because it wasn't until the following day or a couple of days, within a couple of days, the search warrant is done at the defendant's house you will recall on the 21st. And two things happened. Number one, these bullets Government's Exhibit Number 12, were seized. You saw the pictures from where the bullets were recovered. These bullets, all of these bullets including the 7.62, which is the subject of Count

He is sayings, "Well, I suppose you can do these different things" but in the end on February 17th, right before this jury trial that Mr. Murphy referenced, he says in his letter, "Todd, I want you to testify." That seems to me that the government hasn't proven their case beyond a reasonable doubt. If Charles is trying to get Todd to not show up, I don't think he would say "I want you to testify."

Next, on Count II, the Court read an instruction to you that Charles has to knowingly possess these firearms or ammunition. And the Court read, "A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct and does not act through ignorance, mistake or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence including what the defendant did or said."

So as it relates to these bullets -- and by the way, I concur with what Mr. Murphy said in that the only bullets you're considering for purposes of Count II are these bullets from Government's Exhibit 12, the long bullets, not the short ones in here.

The only evidence we have as to whether or not Charles knowingly possessed these bullets are

over to the mother's house and picked up the boxes but she never looked inside or saw the guns. He wants you to believe that, but he doesn't want you to believe the fact that he said "I'm mad at my mom. I want to go get my guns out of her house," went over and got these boxes.

There is no mistake about these boxes. She ID'd these boxes. She identified these as the boxes plus one more. One more long gun that's not here. She identified these boxes as the ones she took out of the house. They took out of the house. He carried -- they weren't all in the boxes that's not what the testimony was. Remember they were -- they carried out shoeboxes and gun cases. She described him having under his arm like this carrying them out. And she carried three long rifle cases, one, two, and a missing one. That's what the testimony is. What happened to those boxes, these boxes? Were they heavy? Yes, they were heavy? Like they had weapons in them? Yes, she said. What did you do with them? She testified that they took them out and put them in the trunk of his car. He dropped her off and he took off. Where do we see him next?

And counsel made much of the fact that I said a .45 automatic. Remember what happened in

that little give and take with Todd Clayes? I said .45 automatic and Todd Clayes corrected me is what he did. And he said, "semiautomatic" because that's the proper name for this gun, a .45 caliber semiautomatic.

You heard Special Agent Galecki, sometimes you call it an automatic for shorthand. Mr. Vaupel, when he made his closing arguments he called it an automatic. That's not what it is. And this is not what Todd Clayes says he saw. He said he saw this .45 caliber semiautomatic, and he is correct that's the right name for this. He saw this where? He saw this in the trunk of that Nissan.

Rachel, I need to do what to make this work?

THE CLERK: You are good.

MR. CHAMBERS: Thanks.

Okay. Here we go.

Todd Clayes said that they had been drinking all night and they went out in the garage and then he took him out so Todd could smoke some marijuana. Where did he take him? Todd Clayes identified this car as where he took him. Let me see if I can zoom out a little bit. This is the car. Mr. Vaupel says there is a lot of junk cars out there. How do you know that's the one? Well, Todd Clayes tells you

to, and he is like get out of the car. I said no, I just want to stay here, just leave me alone. And he is like get the fuck out of the car, so he ended up getting out of the car and drag me by my hair up to -- throughout the grass and everything. I said, okay, okay, okay, stop dragging my hair. I will walk. I will go in your house.

Q. Kim, did you voluntarily get in his truck to go to his house?

A. His car, no.

Q. Did you get in his car to go to his house?

A. No.

Q. Okay. Did he force you into the car?

A. Yes.

Q. Did he forcibly take you to his house?

A. Yes.

Q. Okay. Now he is dragging you across the yard. You are now walking. Tell the Court what happens next.

A. We get in the house. He locks up the door and then he start cussing out my daughter, I bet your cunt daughter is probably calling 911 right now. He said, I am assuming the cops will be here soon. He said, I went through this before with Robyn and all of that.

Q. Who is Robyn?
A. His ex-girlfriend.
Q. Okay. Go ahead.
A. And then he told me to sit on the reclining chair, which I did, and he is pacing back and forth, just calling me all of the names. He says, I know that the cops are coming. He says, your stupid daughter. He just kept repeating himself over and over and over. When the cops did finally show up, he got me up, put me on his lap and straddled me like a baby.
Q. Explain that to the Court. He is sitting in the chair?
A. Uh-huh.
Q. How are you positioned?
A. I was sitting on his lap and --
Q. Facing him?
A. Facing -- it is like -- okay, say he is right behind me and I was like this and he had me in a hurdle, in a baby hurdle.
Q. In a what?
A. In like a baby hurdle. He had my knees clear up to my face where I couldn't hardly breathe.
Q. Are the police knocking on the door?
A. They are banging on the door.

Q. What is he saying to you?
A. Shut the fuck up. Don't say a damn word, if you say a word, I will break your neck right now.
Q. Tell the Court what happened.
A. He just kept on over and over and over just telling me to be quiet, don't say a word. No funny business. And then he says we are going to sneak up the stairs.
Q. Were the lights off inside?
A. The lights were off upstairs but in the living room that was the only light that was on.
Q. What happened next?
A. We walked up the stairs and then he pushed me on to the bed. He says don't move, don't say a word because this bedroom windows were open because I could hear the cops, you know, talking to each other among each other and everything. He says eventually the cops will leave, he said, I went through this before, they will come, bang on the door for a while then they will leave. And I'm thinking in the back of my head, oh, my God I hope to God they don't. Then eventually they did, he was right. I was just laying there and I was just like I can't believe they left me here, you know, and with his state of mind. I just couldn't understand it. And he kept

on asking me, what's wrong with you, what's wrong with you. I just went numb. I was just scared, so scared how he was.

Q. What happened next?

THE DEFENDANT: Come on. This is nothing but a lie.

THE COURT: Mr. Chambers, just keep examining the witness please.

BY MR. CHAMBERS:

Q. What happened next?

THE DEFENDANT: There are no tears.

BY THE WITNESS:

A. He told me to get on my knees.

BY MR. CHAMBERS:

Q. Did you make a phone call?

A. Yes, yes.

Q. Before you were forced on your knees?

A. Yes, he wanted me to call up Shandel to tell her everything was all right.

Q. Okay. Tell the Court how that phone call went.

A. She was hysterical. I was trying to get her calmed down and everything.

Q. Where did you get the phone call?

A. On his cell phone.

Q. Okay. So you called your daughter on his cell

phone. Tell the Court what happened.
A. Like I said, she was hysterical, and I was just telling her everything is all right. He was still in the room at the time and he said he was going to go downstairs to get another can of beer and then right when he started going down the stairs, I was telling her, call 911 again, things are not right here, things are getting really bad. She was like I'm going to come. I said, no, you're not going to come. I said do not come. I said anybody should come. If you can't get ahold of the cops, get Mike's neighbor, have him bring a gun and have him come because I was scared to death. I didn't know what was going to go on. And then by the time I was telling her all that he came back up the stairs. He heard part of the conversation and he kicked the side of my head and the phone flinged, and then I got really sick to my stomach, really dizzy.
Q. After he kicked you to the side of the head, what happened next?
A. Shortly after that he told me to get on my knees, put my hands behind my back and he wanted me to start barking like a dog and squealing like a pig. He says now you're going to start listening to me when I'm telling you what to do.

Q. Did he demand oral sex at that point?
A. Yes.
Q. Tell the Court what he said?
A. He told me to suck my cock, suck my cock, you fucking bitch.
Q. Did he force you to do it?
A. Yes.
Q. Tell the Court how he forced you?
A. He put his hand behind my head and then just pressed against me.
Q. Did he make any additional threats against your daughter?
A. Just like I said he threatened to come back, tie me up and take me back to the house and he was going to rape her over and over and over; that he promised me that he was going to screw my head up like he screwed up Robyn's head.
Q. What happened next?
A. After he did that, he was acting like he was going to get on the phone and he said that he was going to get ahold of his nigger friends to take care of my oldest daughter to kidnap her and prostitute her out and that you would never see your daughter again.
Q. What happened next?

A. He wanted to have sex, and I told him I didn't want no sex. I said, I'm too upset. I don't want no sex. My head was throbbing. He actually gave me that cold beer can and put it on my head because I was just so light-headed getting headaches and all of that stuff and he just said, I want to have sex, damn it, girl, I told you you're going to listen to every word I say. You are going to do what I tell you. Then every time I refused, he says, well, I'm going to get ahold of my nigger friends and I'm going to get this taken care of and your mom will be easy to get taken care of. Then I got really scared because then I am like, okay, he is for real about all of this stuff, that's when I said that I will do whatever you want me to do.

Q. What did you do?

A. I ended up having sex with him.

Q. After he climaxed, what happened next?

A. He started finally calming down. Started talking -- he was getting really depressed and he was talking like suicide depressed and he thought about -- he goes maybe we should just go out to the garage and put our heads next to each other and get my 45 out and blast our brains out.

Q. Kim, did he climax inside of you?

A. Yes.
Q. Did he say anything to you about the evidence that you would have against him if you decided to prosecute him?
A. Yes.
Q. What did he say about that?
A. He says, you've got one hell of an alimony (sic). He says, you got DNA. I'm sure that they will fingerprint the truck. You got your daughter as a witness that he took me. He says, you got one alibi. He says, we might just end it had now. He started getting into ending our lives together. He just went over and over and over with that and I was trying -- at that time I was just trying to comfort him saying, no, you don't want to do that. You know, you can go to jail for a long time doing something like that. You don't want to do that.
Q. What did, tell the Court again what he said to you about the 45?
A. He says that we should go out to the garage and he had a 45 hidden out in the garage somewhere and put our heads together and blast our brains out, one shot.
Q. Did he feel threatened by the defendant?
A. Yes.

Q. Did you think you were going to die?
A. Yes.
Q. Why do you think he told you -- what was your understanding of why he told you about the 45?
A. I don't understand.
Q. Why did he say that to you?
A. I don't know.
Q. Did he express a concern about you reporting the kidnapping and the rape to the authorities?
A. Yes.
Q. How many times did he suggest to you that he was going to take you out in the garage and put a 45 to your head and blow both of your heads off?
A. That one time.
Q. Now, did you know him to have guns?
A. Yes. I knew that he had guns at his mom's house; he told me.
Q. You knew they came from the mom's house?
A. Yes.
Q. You helped him carry those?
A. Yes.
Q. Kim, after this was over, did you get counseling?
A. Yes.
Q. Why?

A. 16th, no.
Q. Never saw any guns on the 17th?
A. 17th, no.
Q. Charles didn't have a gun in his car?
A. No.
Q. You didn't see one, right?
A. I didn't see one, no.
Q. You didn't see any guns at the house, right?
A. The only time that I saw guns was when he got out of his mom's house back in June.
Q. So sometime in June you saw gun cases?
A. Right, I had to carry.
Q. You didn't see guns on that day either; you assumed they were guns?
A. He told me they had guns. He had low guns and he had some big guns.
Q. Again, you didn't see any guns. You assumed that they were guns, right?
A. Oh, I carried the cases. I know that they are guns.
Q. So you can tell what a gun is by the weight of a box?
A. The way the case is, it is shaped just like a gun.
Q. You didn't see any ammunition?

brains out with a .45"?
A. Yes.
MR. VAUPEL: What page?
MR. CHAMBERS: Page 154.
Thank you, Your Honor.
MR. VAUPEL: Judge, I only have one follow-up question to that.
FURTHER RECROSS-EXAMINATION
BY MR. VAUPEL:
Q. Ma'am, in your initial written statement, isn't it true that you reported that Mr. Pollock said that he loves you and he wants to kill himself.
A. No. That he -- he had said that he's loved me over and over and over and that he wanted to kill both of us.
THE DEFENDANT: She is lying. The 17th.
MR. VAUPEL: Judge, may I approach?
THE COURT: You may.
BY MR. VAUPEL:
Q. For purposes of identification, I will mark this as Defendant's Exhibit A. And do you want to identify what Exhibit A is.
A. Do you want me to say this is me or what is your question?
Q. Is that a handwritten statement?

not think I was going to come home alive."
That's what you told the officer, right?
A. Yes.
Q. And the very next day, the Chief of Police, John Kellogg, interviewed you, correct, about the gun?
A. Yes.
MR. CHAMBERS: Your Honor, I move to admit Government's Exhibit S-6?
THE COURT: Any objection?
MR. VAUPEL: Is that a different statement?
No. I said no, I'm sorry.
MR. CHAMBERS: Your Honor, I believe there is no objection.
THE COURT: It will be admitted.
Mr. Farmer, will you step up please.
BY MR. CHAMBERS:
Q. Didn't you tell Chief John Kellogg that towards the end of the night he started talking about suicide --
A. Yes.
Q. And asked what I thought about going in the garage, take our .45 gun, put our heads together, pull the trigger and end our life?
A. Yes.
MR. CHAMBERS: No further questions, Your

didn't have them. What struck me as odd that she reported her truck stolen before she ever went to my house. And this is documented factual evidence from the transcripts and her testimony.
Q. Did you take her truck?
A. No, I didn't take her truck.
Q. Did you have her purse and phone and all of that stuff?
A. She left some clothes in the saddle bag of my motorcycle is the extent that -- I believe it was a leather coat and some shorts or something of that nature.
Q. Did -- now moving forward to -- well, actually let's wrap up a couple of loose ends going backwards in time. Did you ever pull her off a bar stool by her hair?
A. No.
Q. Did you ever ram her face into the ground?
A. Definitely not.
Q. Did you ever threaten her daughter or other family members?
A. No. And in the court transcripts, again, her daughter even testified that I never threatened her. They had domestic battery put on me for allegedly pushing her daughter. Her daughter took the stand

and testified that I never laid a hand on her or her mother.
Q. All right. So now moving back to this night of this alleged sexual assault. Why did you go to her house if you did?
A. She kept calling me. Going to Arkansas and they wanted me to come get her dog and watch the dog. I really said I really don't want no part of it and she said that Shandel, which is her daughter, you know, would really like to see you before she leaves and we need you to watch the dog. When I went to their house, her daughter was on the porch, and I was like where is the dog, and her mom was pretty irate I guess, and I says, you know, I'm not here to argue with you. So she went and got in my car in the passenger seat and I told her to get out. She would not exit my car. So at that point I says, I'm going home, get out of my car. She says, you're not getting rid of me that easy. I drove her home with her in my car. She left her cell phone and her purse on the porch at that time. She asked to use my phone and she called her daughter numerous times throughout the night.
Q. Now did you ever pick her up and throw her in your car?

A. Yes, I am.
Q. And I believe there was also some ammunition that was seized as well?
A. I believe that's correct.
Q. We are now presenting evidence with regard to the issue raised by counsel as to whether or not the weapons were possessed for either lawful sporting purposes or for collection. And I believe we are primarily emphasizing the collection; is that right, counsel?

Let me ask, first of all, were there any of these weapons that were in either poor or old, ancient condition?
A. Some -- I would consider some of the weapons in average to below average condition.
Q. What do you mean by that please?
A. Primarily lack of maintenance. A lot of it being care, oiled, cleaned, so to speak.
Q. You are aware, are you not, as to where the weapons had been stored while they were at or about the defendant's property?
A. Yes.
Q. And where was that?
A. I believe that was in the back part of the truck of the vehicle.

Q. You're aware that there were both long guns and handguns, correct?
A. Correct.
Q. Are you aware as to the .45 caliber handgun?
A. I am.
Q. And what did you notice in particular about that .45 caliber handgun?
A. The frame of the firearm, complete firearm was made by Essex Arms; however, the slide of the firearm was made actually by a different company.
Q. As well, are you familiar with legitimate collectors of firearms?
A. I have come in contact, yes.
Q. In terms of the collection of firearms, how is the present of ammunition or the use of the ammunition in the firearms considered with regard to those who legitimately collect firearms?
A. The experience that I have had with collectors generally they don't fire cartridges through the firearm. They like to keep them in the original condition or the condition -- the best condition they could possible to preserve the integrity and --
Q. So the presence of ammunition is one factor that you would consider as to whether or not these guns are being collected or not?

A. Yeah, I would say so.
Q. Are you also aware that consistent with the verdict of the jury in this case, that the defendant was restricted by the law of the State of Illinois from possessing firearms?
A. Yes.
Q. And that was because why?
A. Previous conviction I believe.
Q. Okay. And were you aware that that was a prior conviction from, I believe, Henry County for aggravated stalking?
A. Correct.
Q. Now, are you aware that consistent with the facts of this case that the defendant while incarcerated in Knox County in July of 2011 made efforts to have another individual take these firearms from where they had been stored in the trunk of his vehicle and to secret them?
A. Yes, I was made aware of that situation.
Q. And were you further aware that there was testimony given here by that other individual, that friend of the defendant?
A. Yes.
Q. Again, in your experience, is that typical that a legitimate collector simply gives his weapons to

another individual to secret them?
A. No.
Q. Isn't the purpose of a legitimate collection in fact to display them to show them to others?
A. I would agree with that and for, as well as for my monetary purposes or gain if the collector or individual would like to sell those firearms.
Q. And you have been an agent how long now?
A. Since 2001.
Q. And have you ever run into a situation where a legitimate collector of firearms, in fact, stores the weapons in the trunk of a car on somebody else's property?
A. No.
MR. MURPHY: Thank you, Judge. Those are my questions.
THE COURT: Mr. Vaupel.
MR. VAUPEL: Sir, I just have a few questions.

CROSS-EXAMINATION

BY MR. VAUPEL:
Q. The majority of these weapons were fairly old, correct?
A. I would say that's an accurate statement.
Q. Going from memory, I think a couple of them were

as old as 1910 or 1911 and through there they just missed the Antiquity Act?
A. Correct.
Q. And this handgun, the Essex with the Colt slide, on appearance it appeared to be a Colt handgun, correct?
A. From my perspective, no.
Q. And why did it not appear to be a Colt?
A. Because in my training and experience we are -- the firearm's identified by the markings that are on the receiver not the slide.
Q. Where is the receiver at?
A. The bottom portion of the firearm.
Q. So if I'm holding a gun and I turn it upside down and I am looking at the bottom of the gun, that's where the mark is?
A. It would be -- the slide would be above the trigger housing, so to speak, for the trigger.
Q. And does the slide conceal the markings at all?
A. It can possibly.
Q. Did it in this case?
A. I don't recall.
Q. If -- as it relates to the presence of ammunition, did -- do you know if these guns had been previously fired?

A. Prior to me field testing them?
Q. Yes.
A. I do not know.
Q. Do you know gun collectors who do use their guns to fire on a range or anywhere else?
A. Personally speaking, I do not.
THE DEFENDANT: Tony.
BY MR. VAUPEL:
Q. And to be fair, you don't hang out with collectors? Your role is law enforcement and you are constantly looking into firearm cases, fair?
A. Correct.
Q. And so, from the standpoint of your expertise, you know right off the bat what kind of gun you are looking at but it would be fair to say that you don't know the habits of most collectors?
A. The habits of most collectors.
Q. Right.
A. The few that I have encountered or spoken with, I can honestly say that they either maintain their firearms as brand new or in the best possible condition.
Q. And at trial when I asked you was -- did this look like a collection to you, did you -- did you say something to the affect of a collection is what

each individual makes of it?
A. I'd have to see the transcript but there is no definition that I'm aware of by federal law that actually identifies what a collection is.
Q. I guess what I'm getting at, maybe poorly, is some people have really nice collections and people have really crappy collections, right?
A. Or -- just a group of firearms?
Q. Right. And just because they have collected old, yet not very nice guns, doesn't make it any less of a collection. They are just not as nice as other people's collections, fair?
A. It all depends on the person I suppose.
Q. So, in this particular case, you don't have any personal knowledge as to whether Mr. Pollock was collecting guns or why he would be doing it?
A. Yes.
MR. VAUPEL: No other questions.
MR. MURPHY: Just one last question.

REDIRECT EXAMINATION

BY MR. MURPHY:
Q. Special Agent Galecki, you would not expect a legitimate collector of firearms to be telling someone that he thought they ought to go to the garage and blow their brain out with one of their

Case Number

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE NO. 1 OF 2 PAGES

I, Kim Bowyer, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Denny Davison. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 39 years of age, My date of birth is [redacted] live at [redacted].

I Kim Bowyer was talking to my mom because we were going to Arkansas tommorrow early morning. Bill pulled up my driveway yelling at me to get into the car & telling [redacted] to get in the house pushing her. Bill picked me up by my neck & hair left off the ground & through me in his car. He was screaming at me calling me names pinching his dash board ceiling of his car. Grab a hold of me to the housse. He sat down the recliner & put me on his lab & wouldn't let me move. the cops showed up he told me not to say nothing to the cops. He took me upstairs. He told me to get on my hands & knees, to make make bark like a dog & squeal like a pig. He push me around he kick me with his foot on the side of my head. Acusing lying to him. He told me I have to listen to him Do what he says. If his friends are over that I would have to fuck them or suck their cock. He told me to get on my knees again to pray then told me to suck his cock. If I didn't do what he says for me to do. He was going to take me home trie me up and fuck [redacted] over & over in her pussy and ass He threaten to Kill me and daughters [redacted] & my mom if he didn't do it. He knows some niggers in Chicago to do it, prositute them out. He wouldn't let me go He kept on screaming at me, wanted me to repeat after him that I am stupid, horr, pig, cunt. He was very drunk. After going through that then he tells me how much he loves me. Then he made me take my pants off then fuck me. He wants to fix all the damages on my truck I told him no. He finally come down told me go to the bathroom with He wanted to take a Shower

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Executed at 6-17-11 U.S. 150 Knox Hwy 12, this 17 day of July 19 2011.

[redacted] _____ Kim Bowyer
Signature of person giving voluntary statement

WITNESS: _____

Case Number

Case Number _____

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE NO. 2 OF 2 PAGES

Kim Bowyer, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Denny Davison. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 39 years of age, My date of birth is [redacted] I live at [redacted]

and for me not to move or he will kill me. After shower he took to the bedroom laid down. He told me he will take me home after he sober's up and finally took me home. He says I will probaly never see you again, & tells me he loves & that he wants to kill himself. I did not think I was going to come home alive.

KB

I have read each page of this statement consisting of 2 of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

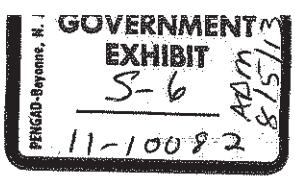
Signed at _____, this 19 day of July 19 2011.

WITNESS: _____

Kim Bowyer
Signature of person giving voluntary statement

WITNESS: _____

Case Number _____ 88



Case Number

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE NO. 1 OF 11 PAGES

I, Kim Bowyer, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to John Kellogg. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 39 years of age, My date of birth is [redacted] live at [redacted]

Towards the end of the night he started talking about suicide ask me what I think about going in the garage take his 45 gun put our heads together pulled the trigger to end our life. Because he said he had nothing to live for. He said after everything that has happen that I would never see him again.

COPY

[redacted]

I have read each page of this statement consisting of one page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Signed at WILLIAMSFIELD POLICE, this 18th day of July 19 2011.

WITNESS: John Kellogg

WITNESS:

Kim Bowyer
Signature of person giving voluntary statement

Case Number

89

COPY

GOVERNMENT EXHIBIT SWA1 11-10082

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 11SW42

Vs }

Charles W. Pollock, Jr.-M/W
[redacted]

SEARCH WARRANT

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS

Upon the sworn complaint of **Det. Carl Kraemer**, I find sufficient facts to show probable cause to issue a warrant to search the premises at [redacted] (and/or) the person(s) of **Charles W. Pollock, Jr. – M/W, DOB** [redacted] (and/or) object being **any and all outbuildings at the above listed address.**

I, now, therefore command you to search the foregoing premises, vehicle(s) or person(s) and seize the instruments, articles and things listed as follows: **: black cloth zippered purse, wallet, driver's license, social security card, FOID, Tompkins State Bank checks and debit card, and miscellaneous items belonging to Kim Bowyer (female, white,** [redacted] **,and unknown make .45cal pistol, and any and all firearms and ammunition.**

Which have been used in the commission or constitute evidence of the offense of: **aggravated kidnaping, aggravated criminal sexual assualt, unlawful restraint, domestic battery, violation of FOID Act and criminal trespass to vehicle.**

the Court authorizes a no-knock search.

You are further commanded to make a return to me or any Court of competent jurisdiction with an inventory of the instruments, articles and things seized, if any.

Your authority to execute this warrant shall expire 96 hours after 11:40 AM/~~PM~~, July 21, 20 11.

Judge

FILED
KNOX CO., IL
JUL 2 , 2011
KELLY CRIEDSMAN
Clerk of the Circuit Court
Deputy

(court original)

191

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 115042

Vs }

Charles W. Pollock, Jr.-M/W
[redacted]

COMPLAINT FOR SEARCH WARRANT

Now come the undersigned affiant **Det. Carl Kraemer**, and states that he has reasonable cause to believe that the instruments, articles and things as follows : **black cloth zippered purse, wallet, driver's license, social security card, FOID, Tompkins State Bank checks and debit card, and miscellaneous items belonging to Kim Bowyer (female, white, [redacted]),and unknown make .45cal pistol, and any and all firearms and ammunition**, constitutes evidence of, or having been used in the commission of the offense of **aggravated kidnapping, aggravated criminal sexual assault, unlawful restraint, domestic battery, violation of FOID Act and criminal trespass to vehicle.**

The affiant believes that the foregoing instruments, articles and things are located at [redacted] or on the person(s) of **Charles W. Pollock, Male, White,** [redacted] **or within any and all garages or outbuildings at the above listed address.**

In support of the foregoing, your affiant stated the following facts:
On 07/10/11 Knox County Sheriff's Department received a complaint from Kim Bowyer reporting Charles Pollock left her stranded on the roadway after an argument. Upon return to his residence, her vehicle was gone and she reported it stolen. Later that day, Bowyer located her truck in the 1500 block of Knox Highway 28 near Lappin Bridge after receiving texts from Pollock revealing where the truck was located. At the time of recovery there was several thousands of dollars worth of damage done to the truck. Bowyer's purse and wallet were not recovered with the truck.

On 07/16/11 Williamsfield Police and the Knox County Sheriff's Department received a call that Pollock had forcibly taken Bowyer from her porch and restrained her at his residence against her will. Deputies responded to his residence and saw them inside. At one point Pollock walked to the window where Deputies were standing outside and closed the curtains. Pollock would not answer the door despite repeated attempts by Deputies knocking and announcing themselves. Bowyer provided a voluntary written statement to the Knox County Sheriff's Department that Pollock forced her to engage in sexual activity while she was held against her will. Pollock made threats against her family and her if she did not comply with his demands. She did not think she would come home alive. Bowyer also provided the Williamsfield Police Department a voluntary written statement. Bowyer stated toward the end of that same night he asked her what she thought about going to his garage, where they would put their heads together and he would pull the trigger on his .45 cal pistol to end their lives together. Pollock told her he had nothing left to live for.

Pollock has a revoked FOID card. Pollock has been arrested three times with one conviction for assault, one time with two convictions for obscenity, two arrests with no convictions for obstructing justice and one arrest with no convictions for public peace. Pollock's last arrest was for domestic battery on September 11, 2010. At this time Pollock has a warrant for his arrest for criminal trespass to vehicles with a $5000 / 10% bond and a warrant for aggravated kidnapping and other charges with a $300,000 / 10% bond.

In 2008 Pollock threatened to kill his neighbor and the neighbor's family. In 2011 Pollock threatened to kill Bowyer, her mother and her daughters. Bowyer told Police that Pollock has multiple guns hidden in the garage that were previously removed by law enforcement in 2009.

Bowyer stated that on a Sunday in late June 2011 Pollock had her help him remove guns from his mother's residence. He had her carry two brown cloth zippered long gun cases in which she believed contained long guns. He carried multiple closed shoe boxes in which she believed contained pistols and ammunition. She does not know exactly where at the residence they were stored, but she is aware of cubby holes built into a wall of the garage.

Based on Pollock's documented history of threats, violence, and Bowyer's report of Pollock having and threatening to use firearms at his residence, I request this honorable court to issue a no-knock search warrant.

WHEREFORE the affiant requests the issuance of a warrant to search the above premises, vehicle(s) or person(s).

The affiant, being sworn, says that the matters and facts stated in the complaint are true of his own knowledge, except those matters therein upon information and belief and as to those matters he believes them to be true.

Det Carl Klaus #840
Affiant

I have read the foregoing complaint and I approve the issuance of a Search Warrant.

State's Attorney

Subscribed and sworn to before me this 21 day of July, 20 11.

Notary

Judge

(court original)

FILED
KNOX CO., IL
JUL 21 2011
KELLY CRAIG
Clerk of the Circuit Court
Deputy

193

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 11SW42

Vs }

Charles W. Pollock, Jr. - M/W
[redacted]

COPY

RETURN OF SEARCH WARRANT

I have executed the attached warrant by a search of the premise(s) at [redacted] (and/or) the person(s) of **Charles W. Pollock, Jr. - M/W, DOB** [redacted] (and/or) item(s) **any and all outbuildings at the above listed address** and I seized and have in my possession, awaiting order of the Court, the following instruments, articles and things:

Five unfired .38 special pistol rounds
Eleven unfired small bore high powered rifle rounds
Two high capacity rifle magazines

A copy of this inventory has been left with or posted at:
Charles W. Pollock - M/W [redacted]

Dated this **22nd** day of **July**, 2011.

Det. Carl Kaeser #840
Peace Officer

I did not execute this warrant within 96 hours from the time of issuance and it is hereby returned to this Court as vios and not executed.

Dated this day of , 20 .

Peace Officer

(court original)

FILED
KNOX CO., IL.
JUL 22 2011
KELLY CHRISMAN
Clerk of the Circuit Court
Deputy

194

ATT: LISA HOPPS

Printed By: KN771
Printed Date: 01/15/2013

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003697-00

GOVERNMENT EXHIBIT SWA 2 11-10082

INCIDENT INFORMATION

Date Reported: 07/16/2011 Time: 2148
Report Officer: KN865 (JENNINGSSGREG)
Reviewed By: KN5 (SANDROCK)
Officer Making Rpt: KN865 (JENNINGSSGREG)
Supervisor: KN5 (SANDROCK)
Date Occurred: 07/16/2011 Time: 2148
Location: [redacted] Pref: Apt:
City: VICTORIA State: IL Zip: [redacted]
Latest Poss Date: 7/16/2011 Time: 2315
Associated Offense #:
Rpt District: 0006 Beat: SO Shift: 2
Command Area: 02
Damage Prop: Stolen Property: Stolen Vehicle:
Disposition: CLEARED BY ADULT ARREST Disposition Date: 07/16/2011

OFFENSES

Offense: 430 ILCS 65.0/2-A-2(A) (ILLEGAL POSS AMMUNITION/FOID)
IBR Code: 90Z Att/Comp: C UCR: 5000 UCR Arson:
Offense: 7150 (SOA-OTHER Law Enforcement (All)
IBR Code: 90Z Att/Comp: C UCR: 9999 UCR Arson:
Offense: 720 ILCS 5.0/31-4-A(4) (OBSTRUCT JUSTICE CLASS 4 FELONY)
IBR Code: 90Z Att/Comp: C UCR: 3730 UCR Arson:

VICTIM

Name: BOWYER,KIM J
Juvenile: NO
Address: [redacted]
Bldg: Apt #:
Contact: [redacted] SSN: DOB: [redacted] Sex: F Race: W
DL Number: [redacted] State: IL Hgt: 5'00 Wgt: 130 Hair: BRO Eyes: BLU
Employer: Contact:
Emp Addr:
Bldg: Apt #:

WITNESS/INV PARTY

Invol Type: BUSINESS Name: CERNOVICHS AUTO & TRUCK WRECK
Juvenile: NO
Address: [redacted]
Bldg: Apt #:
Contact: [redacted] SSN: DOB: Sex: Race:
DL Number: State: Hgt: Wgt: Hair: Eyes:
Employer: Contact:
Emp Addr:
Bldg: Apt #:

Invol Type: COMPLAINANT Name: [redacted]
Juvenile: NO
Address: [redacted]
Bldg: Apt #:
Contact: [redacted] SSN: [redacted]
DL Number: [redacted] State: IL

ATT: Lisa Hopps

Printed By: KN771
Printed Date: 01/15/2013

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003697-00

NARRATIVE

On Saturday, July 16, 2011 at approximately 2148hrs, I, Deputy Gregory N. Jennings was dispatched to [redacted] to assist Williamsfield Police Officer Thanh Nguyen on a kidnapping report.

Upon arrival, I met with Officer Nguyen and the complainant ([redacted]). Officer Nguyen informed me that [redacted] made a complaint that her mother, Kimberly J. Boyer was just kidnapped. [redacted] then informed me that Boyer and herself was sitting on the porch area of their residence, when they noticed Boyer's ex-boyfriend (Charles W. Pollock) pull up in his vehicle. [redacted] stated Pollock started yelling at Boyer to get in the vehicle with him. [redacted] said Boyer refused to get in the vehicle, as she did not want to go with him. Pollock then exited his vehicle, and forcefully grabbed Boyer. Pollock then placed Boyer in his vehicle and departed. [redacted] advised Pollock was intoxicated.

Knox County Dispatched advised both officers that Pollock resides at [redacted]. Due to the complaint received, Officer Nguyen and myself departed for Pollock's residence.

At the residence, I observed a red vehicle bearing Illinois Registration [redacted] to be sitting in the driveway. This vehicle matched the description of the vehicle that [redacted] described. In running the registration on my Mobile Data Terminal (MDT) it showed that there was an expired Order of Protection between Pollock and Boyer. It is noted, Pollock was the respondent of the expired Order of Protection. Officer Nguyen and myself then attempted to make contact at the front door. We had negative results after approximately five (5) minutes of knocking. It is noted, I could observe a light to be on in the living room area of the residence.

Officer Nguyen informed me that Boyer attempted to contact [redacted] via cellular phone. [redacted] advised Boyer left a message quickly stating that she was okay. Boyer then hung up immediately after stating she was okay. [redacted] advised Boyer had called her from Pollock's cellular phone.

At that time, I stepped from the front porch of the residence. I then touched my hand to the vehicle. The vehicle was still warm showing that it was just recently used. I then walked the perimeter of the house. While walking on the northside of the residence, I observed two (2) subjects to be sitting in a chair located in the living room area. I observed a white male (Pollock) to have his arms wrapped around a white female (Boyer). It was difficult to tell if he was holding her with affection or aggression. It is noted, the blinds were partially closed at this time. Pollock then stood up and Boyer sat down in the chair. I noticed Boyer to put her head in her hands as if she was crying. Pollock then fixed the blinds so I could not see into the window.

Due to the complaint and information observed, I contacted Sgt. Bart Randall. Sgt Randall requested that I contact the on-call State's Attorney John Pepmeyer.

At approximately 2244hrs, I contacted on-call SA John Pepmeyer and informed him of the incident. Officer Nguyen stood by my side as I was speaking to SA John Pepmeyer.

I informed SA John Pepmeyer that Williamsfield Police Department received a complaint of a

ATT: LISA HOPPS

Printed By: KN771
Printed Date: 01/15/2013

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003697-00

kidnapping. SA Pepmeyer was advised that there has been a history of domestic violence, and Order of Protections on the suspect (Pollock). I explained that Boyer was taken against her will from the residence (porch) and was placed into Pollock's vehicle. I advised SA Pepmeyer that Pollock was intoxicated at the time of call. SA Pepmeyer was then informed that Pollock departed and took Boyer to his residence in which we attempted to make contact with both parties. I then advised to SA Pepmeyer that I seen both Pollock and Boyer in the residence. I explained that Boyer had been sitting on his lap, as he was holding her. I advised it was difficult to observe if he was holding her with force or if he was holding her in an affectionate matter. I then explained that I observed Pollock to stand up, and Boyer to sit in the chair with her head in her hands as if she was crying. SA Pepmeyer was then informed that Pollock closed the blinds preventing me to see anything else in the residence.

SA Pepmeyer requested that I do not force entry at this time. SA Pepmeyer requested I contact the Public Safety Building, and requested they attempt to call Pollock's phone in an attempt for him to let us check the well being on Boyer. SA Pepmeyer then informed me to knock on the door announcing name and agency. SA Pepmeyer requested that I inform the occupants that I was only at the residence to do a well being check.

Officer Nguyen then knocked on the front door announcing name and agency. I walked to the window where I located Boyer and Pollock to be sitting. I knocked and announced on the window, stating Knox County Sheriff's Department Deputy Jennings. I then announced that I was there to conduct a well being check on Boyer due to the complaint received. Officer Nguyen and myself knocked and announced for approximately twenty-five (25) minutes. After having negative contact, I contacted SA Pepmeyer and informed him of our results. SA Pepmeyer advised if we have no contact with the occupants, to not force entry and depart.

Officer Nguyen and myself continued to make contact until approximately 2323hrs. At approximately 2323hrs we departed.

I then put in an extra patrol request into the Knox County Sheriff's Department 3rd Shift Deputies requesting them to frequently drive by the residence.

It is noted, Boyer later met with Deputy Dennis Davidson and provided him with Written Statements. See Report K11-3704.

Deputy Gregory N. Jennings
865

OFFENSE REPORT #110003697-00 REVIEWED BY JENNINGSGREG ON 7/17/2011

OFFENSE REPORT #110003697-00 APPROVED BY SANDROCK, TIM ON 7/18/2011

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003563-00

INCIDENT INFORMATION

Date Reported: 07/10/2011 Time: 0306
Report Officer: KN621 (DAVISON,DENNIS)
Reviewed By: KN5 (SANDROCK)
Officer Making Rpt: KN621 (DAVISON,DENNIS)
Supervisor: KN5 (SANDROCK)
Date Occurred: 07/10/2011 Time: 0306
Location: [redacted] Pref: Apt:
City: VICTORIA State: IL Zip: [redacted]
Latest Poss Date: 7/10/2011 Time: 0306
Associated Offense #:
Rpt District: 0006 Beat: NO Shift: 3
Command Area: 02
Damage Prop: $1000 Stolen Property: $1 Stolen Vehicle: $1
Disposition: Disposition Date:

OFFENSES

Offense: 720 ILCS 5.0/16-1-A-1-1(3) (THEFT-MOTOR VEH THEFT)
IBR Code: 240 Att/Comp: C UCR: 5000 UCR Arson:
Offense: 720 ILCS 5.0/21-1-1-A(4) (CRMINAL DAMAGE PROPRTY>$300-10K FELONY CLS 4)
IBR Code: 90Z Att/Comp: C UCR: 5000 UCR Arson:

WITNESS/INV PARTY

Invol Type: OTHER Name: HENDERSON,SHANDELLE DESIREE
Juvenile: NO
Address: [redacted]
Bldg: Apt #:
Contact: [redacted] SSN: DOB: [redacted] Sex: F Race: W
DL Number: [redacted] State: IL Hgt: 5'05 Wgt: 140 Hair: BRO Eyes: GRN
Employer: Contact:
Emp Addr:
Bldg: Apt #:

Invol Type: OWNER Name: BOWYER,KIM J
Juvenile: NO
Address: [redacted]
Bldg: Apt #:
Contact: [redacted] SSN: DOB: [redacted] Sex: F Race: W
DL Number [redacted] State: IL Hgt: Wgt: Hair: Eyes:
Employer: Contact:
Emp Addr:
Bldg: Apt #:

Invol Type: QUESTIONABLE SUSPECT Name: POLLOCK JR.,CHARLES W
Juvenile: NO
Address: [redacted]
Bldg: Apt #:

GOVERNMENT EXHIBIT
SWA4
11-10062

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003563-00

Contact: [redacted] SSN: DOB: [redacted] Sex: M Race: W
DL Number [redacted] State: IL Hgt: 6'00 Wgt: 200 Hair: BRO Eyes: GRN
Employer: Contact:
Emp Addr:
Bldg: Apt #:

PROPERTY

Property Tag #
Rec Type: DAMAGED
Ucr Type: MISCELLANEOUS Property Type: VEHICLE-STOLEN
Brand: Model:
Description: Serial No:
Quantity:
Owner Applied No: Damaged Value: $1000
Date Reported: 7/10/2011 Time: 0306
Date Recovered: Time:

Property Tag # D22692
Rec Type: EVIDENCE
Ucr Type: MISCELLANEOUS Property Type: EVIDENCE NOT OTHERWISE CLASSED
Brand: Model:
Description: WRITTEN STATEMENTS Serial No:
Quantity: 3
Owner Applied No: Value Stolen: Value Recovered:
Date Reported: 7/11/2011 Time: 0200
Date Recovered: Time:

Property Tag #
Rec Type: STOLEN
Ucr Type: MISCELLANEOUS Property Type: VEHICLE-STOLEN
Brand: GMC Model:
Description: 2002 GMC TRUCK Serial No:
Quantity: 1
Owner Applied No: Value Stolen: $1 Value Recovered:
Date Reported: 7/10/2011 Time: 0306
Date Recovered: Time:

TOTAL VALUE STOLEN: $1001
TOTAL VALUE RECOVERED: $0

VEHICLE

Date and Time Last Updated: 7/13/2011 Officer Signed ID: KN621

Rec Type:
Year: 2002 Make: GMC Model: 150
Style: PK Color 1: PEW Color 2:
Tag Type: TK Tag State: IL Tag Num: 42442E-B

KNOX COUNTY SHERIFF
Offense Report
INCIDENT NUMBER: 110003563-00

Vin: 2GTEK19T421238783
Value Stolen: $1 Date Reported: 7/10/2011 Time: 0306
Value Recvrd: Date Recvrd: Time:

TOTAL VALUE STOLEN: $1
TOTAL VALUE RECOVERED: $0

NARRATIVE

NOTE: Any person arrested in this report are presumed innocent until proven guilty in a court of law.

On 07/10/2011 at 0306 hrs, I,Deputy Davison was dispatched to a person walking in the roadway on US 34 in the vicinity of US 34 and I1 Rt 167.

Deputy Swearingen and myself, went to this location and located the subject . The person in question was identified as KIM J. BOWYERS of [redacted]

In speaking to BOWYERS she stated that her boy friend, CHARLES W. POLLOCK had been out having a few drinks, when on the way home they began to argue.POLLOCK then dropped BOWYER out of the vehicle and told her to find her own way home.

BOWYERS further stated she had her vehicle at POLLOCK'S residence and wanted me to take her there to pick it up. I informed BOWYERS she had consumed to much alcohol to be driving her vehicle home. I then informed BOWYER that I would take her to her residence and she could have a family member go pick up the vehicle for her.

BOWERS vehicle is a 2002 GMC truck bearing registration [redacted] BOWYERS said that the truck was parked in the driveway of POLLOCKS residence. BOWYERS further advised that her purse and phone were in the truck as well.

BOWYERS said that both have argued before and she was afraid that POLLOCK would take and damage her vehicle along with destroying her property.

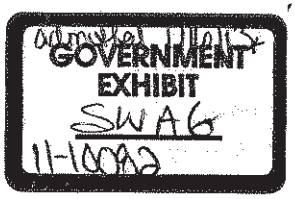
I then transported BOWYERS home with out incident.

A short time later, BOWYERS called to report her vehicle missing. I then called BOWYERS and she stated that she had her daughter [redacted] drive her to POLLOCKS house and her vehicle was not there.This is when BOWYERS called to report the vehicle stolen.

At the time of this report, POLLOCK has not been located.

I had BOWYERS and her daughter SHANDELLE give written statements of the happenings on this night. A copy of the statements will be attached to this report and given to the States Attorney for his review.

The original copies of the statements will be entered into evidence,under tag # D22692,and



IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

CHARLES W. POLLOCK JR.,

Defendant.

Case No. 11-CF 307 [redacted]

INFORMATION

Now comes ELISA M. TANNER, Knox County Assistant State's Attorney, in the name and by the authority of the People of the State of Illinois, and prosecutes on behalf of said People and informs the Court that

CHARLES W. POLLOCK JR.

within the County of Knox, committed the offenses of:

COUNT I

AGGRAVATED CRIMINAL SEXUAL ASSAULT (CLASS X), in that on or about July 16 and July 17, 2011, said defendant committed an act of sexual penetration with Kim Bowyer in that by the use or threat of force said defendant placed his penis in the vagina of Kim Bowyer, and the criminal sexual assault was committed during the course of the commission of another felony, that being Unlawful Restraint, in violation of 720 ILCS 5/112-14(a)(4).

COUNT II

CRIMINAL SEXUAL ASSAULT (CLASS 1), in that on or about July 16 and July 17, 2011, said defendant committed an act of sexual penetration with Kim Bowyer in that by the use of force said defendant placed his penis in the vagina of Kim Bowyer, in violation of 720 ILCS 5/12-13(a)(1).

COUNT III

UNLAWFUL RESTRAINT (CLASS 4), in that on or about July 16 and July 17, 2011, said defendant knowingly and without legal authority detained Kim Bowyer, in that the defendant took Kim Bowyer to his residence located at [redacted] Illinois and physically prevented her from leaving the residence by holding her and pushing her down, as well as threatening her life, in violation of 720 ILCS 5/10-3(a).

FILED
KNOX CO., IL
JUL 20 2011
KELLY CHEESMAN
Clerk of the Circuit Court
Deputy

COUNT IV

AGGRAVATED KIDNAPING (CLASS X), in that on or about July 16, 2011, said defendant knowingly and by the use of force carried Kim Bowyer from her residence at [redacted] to his residence at [redacted] with the intent secretly to confine Kim Bowyer against her will, and while committing another felony upon Kim Bowyer, that being Criminal Sexual Assault, in violation of 720 ILCS 5/10-2(a)(3).

COUNT V

KIDNAPING (CLASS 2), in that on or about July 16, 2011, said defendant knowingly and by the use of force carried Kim Bowyer from her residence at [redacted] to his residence at [redacted] with the intent secretly to confine Kim Bowyer against her will, in violation of 720 ILCS 5/10-1(a)(2).

COUNT VI

DOMESTIC BATTERY (CLASS 4), in that on or about July 16 and July 17, 2011, said defendant knowingly and without legal justification made contact of an insulting or provoking nature with Kim Bowyer, a family member, being his girlfriend, in that he grabbed her by her neck, kicked her and shoved her, and having previously been convicted of Aggravated Stalking in Henry County Case 09 CF 134, in violation of 720 ILCS 5/12-3.2(a)(2).

COUNT VII

CRIMINAL DAMAGE TO PROPERTY (Class 4), in that on or about July 10, 2011, said defendant knowingly damaged the property of Kim Bowyer, being a 2002 GMC truck, in that he dented the truck in multiple places, cracked the sideview mirros, and scratched a rear panel of truck making an "X", said damage being in excess of $300.00 but less than $10,000.00, in violation of 720 ILCS 5/21-1(1)(a).

COUNT VIII

BATTERY (CLASS 4), in that on or about July 16, 2011, said defendant knowingly and without legal justification made physical contact of insulting or provoking nature with [redacted] in that he shoved [redacted] while located at [redacted] in violation of 720 ILCS 5/12-3.

~~KNOX~~ COUNTY STATE'S ATTORNEY

~~Elisa M.~~ Tanner, Assistant State's Attorney

STATE OF ILLINOIS)
) SS
COUNTY OF KNOX)

ELISA M. TANNER being first duly sworn on oath, deposes and says that the contents of the foregoing Information against CHARLES W. POLLOCK JR. are true and correct to the best of her knowledge and belief.

Elisa M. Tanner, Assistant State's Attorney

SWORN and SUBSCRIBED before me
this 19th day of July, 2011.

Melody K Simkins
NOTARY PUBLIC

"OFFICIAL SEAL"
MELODY K SIMKINS
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 02/07/2015

Knox County State's Attorney
Knox County Courthouse
200 South Cherry Street
Galesburg, IL 61401
309/345-3880

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 115W43

Vs }

Charles W. Pollock, Jr. – M/W
[redacted]

SEARCH WARRANT

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS

Upon the sworn complaint of **Det. Carl Kraemer**, I find sufficient facts to show probable cause to issue a warrant to search the premises at [redacted] (and/or) the person(s) of (and/or) object being **any and all vehicles on the above listed property.**

I, now, therefore command you to search the foregoing premises, vehicle(s) or person(s) and seize the instruments, articles and things listed as follows: **black cloth zippered purse, wallet, driver's license, social security card, FOID, Tompkins State Bank checks and debit card, and miscellaneous items belonging to Kim Bowyer (female, white, [redacted], and firearms and ammunition.**

Which have been used in the commission or constitute evidence of the offense of: **aggravated kidnapping, aggravated criminal sexual assault, unlawful restraint, domestic battery, violation of FOID Act and criminal trespass to vehicle.**

You are further commanded to make a return to me or any Court of competent jurisdiction with an inventory of the instruments, articles and things seized, if any.

Your authority to execute this warrant shall expire 96 hours after 3:40 ~~AM~~/PM, July 25, 2014.

Judge

(court original)

GOVERNMENT EXHIBIT SWB 1 11-10082

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 11SW43

Vs }

Charles W. Pollock, Jr. - M/W
[redacted]

COMPLAINT FOR SEARCH WARRANT

Now come the undersigned affiant **Det. Carl Kraemer**, and states that he has reasonable cause to believe that the instruments, articles and things as follows **black cloth zippered purse, wallet, driver's license, social security card, FOID, Tompkins State Bank checks and debit card, and miscellaeous items belonging to Kim Bowyer (female, white, [redacted]), and firearms and ammunition**, constitutes evidence of, or having been used in the commission of the offense of **aggravated kidnapping, aggravated criminal sexual assault, unlawful restraint, domestic battery, violation of FOID Act and criminal trespass to vehicle.**

The affiant believes that the foregoing instruments, articles and things are located at [redacted] or on the person(s) of or within **any and all vehicles on the above listed property.**

In support of the foregoing, your affiant stated the following facts:
Search warrant 11SW42 was issued and executed on 07/21/11. Items to be seized included firearms and ammunition. As previously sworn and testified to by affiant, Kim Bowyer reported she was present when Pollock removed from his mother's residence what she believed to be guns inside several shoe boxes. During the search several empty shoe boxes were located but no guns were found. 16 rounds of ammuntion were recovered from the upstairs bedroom and are listed on the search warrant return. Approximately 50 junk vehicles are on the property and were not included in search warrant 11SW42.

On 07/25/11 phone calls made by Pollock from the jail were monitored. The Securus call platform advises all users the call is from a Knox County Jail inmate and that all calls are subject to recording and monitoring.

In a recorded call made by Pollock to his mother on 07/23/11 at 1655hrs, she asked him what he did with the things he took back from her residence. Pollock replied that a Todd Claeys was supposed to get all that. She asked if he wanted them brought back to her residence. He said he planned to have Claeys take them to Al's Sporting Goods to be auctioned off.

In a recorded call made by Pollock to Claeys on 07/23/11 at 1802hrs, Pollock asked him if he took care of that stuff for him yet. Claeys replied not yet. Pollock said he needed it done ASAP and empasized its importance to him to be taken care of immediately. He said not to worry about anyone being out there.

Pollock instructed Claeys to pry open the trunk if he had to. He said to used a hammer to pop the trunk lock or to break out a window and fold down the back seat to gain access.

In a recorded call made by Pollock to Claeys on 07/23/11 at 2132hrs, Pollock asked if he got his stereo yet. Claeys replied absolutely and that it kicks ass and was the best stereo he ever had. Pollock said he would put Claeys in touch with his mother about getting his stuff back to her.

Based on the information obtained, it is believed Pollock secured his firearms and ammuntion in the trunk of a vehicle on the premises. It is unkown if the stereo is a reference to them or if they have been recovered.

WHEREFORE the affiant requests the issuance of a warrant to search the above premises, vehicle(s) or person(s).

The affiant, being sworn, says that the matters and facts stated in the complaint are true of his own knowledge, except those matters therein upon information and belief and as to those matters he believes them to be true.

Affiant

I have read the foregoing complaint and I approve the issuance of a Search Warrant.

Asst. State's Attorney

Subscribed and sworn to before me this 25 day of July, 20 11.

Notary

Judge

(court original)

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY

Case # CF/CM

The People of the State of Illinois

Clerks Search Warrant Number: 11SW43

Vs }

Charles W. Pollock, Jr. - M/W
[redacted]

COPY

RETURN OF SEARCH WARRANT

I have executed the attached warrant by a search of the premise(s) at [redacted] (and/or) the person(s) of [redacted] (and/or) item(s) **any and all vehicles on the above listed property** and I seized and have in my possession, awaiting order of the Court, the following instruments, articles and things:

Nothing seized.

A copy of this inventory has been left with or posted at:
Posted on main entrance at
[redacted]

Dated this **27th** day of **July**, 2011.

Det. Paul Kraemer #840
Peace Officer

I did not execute this warrant within 96 hours from the time of issuance and it is hereby returned to this Court as vios and not executed.

Dated this day of , 20 .

Peace Officer

(court original)

FILED
KNOX CO., IL
JUL 27 2011
KELLY CHEESMAN
Clerk of the Circuit Court
Deputy

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RULE 10(e) INDEX TO THE TRANSCRIPT OF THE PROCEEDINGS

[1] The following references to the sequentially paginated trial transcript include the volume number, where Vol. 1 corresponds to the proceedings on February 5, 2013, Vol. 2 on February 6, 2013, and Vol. 3 on February 7, 2013.

Significant Portions of Trial Transcript

Witness, Sentencing Transcript	Direct/Cross
Kim Bowyer	28/55[2]
Charles Pollock	77/90
Matthew Galecki	95/99
Vernice Begley	120
Mark Grabbe	122
Jeffrey Ainley	124

Significant Portions of Sentencing Transcript

[2] The following references to the sequentially paginated sentencing transcript from the proceeding on August 5, 2013.

No. 13-2764

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America, Plaintiff-Appellee, v. Charles William Pollock, Defendant-Appellant.	Appeal From The United States District Court For the Central District of Illinois Case No. 11-CR-10082 The Honorable James E. Shadid

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CIRCUIT RULE 30(d) Statement

I, the undersigned, counsel for the Defendant-Appellant, Charles W. Pollock, Jr., hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the appendix to this brief.

/s/ SARAH O'ROURKE SCHRUP
Attorney
MEGAN KIERNAN
Senior Law Student
JULES LEVENSON
Senior Law Student
VANESSA SZALAPSKI
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2013

Certificate Of Service

I, the undersigned, counsel for the Defendant-Appellant Charles W. Pollock Jr., hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on November 25, 2013, which will send notice of filing to counsel of record.

/s/ Sarah O'Rourke Schrup
Attorney
MEGAN KIERNAN
Senior Law Student
JULES LEVENSON
Senior Law Student
VANESSA SZALAPSKI
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of
Law 375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2013