

THE TRIAL THAT COULD NOT BE WON BUT WAS

Cross Examination of Detective O'Boyle and closing arguments by David D. Black

Below is a brief synopsis of the evidence presented by the prosecution to the Jury against the Defendant.

1. Eyewitness testimony puts Defendant at the scene of the crime
2. Defendant was chased through the woods and was caught with evidence from the crime scene in his back pocket
3. Defendant confesses to the crime verbally
4. Defendant confesses to the crime in writing

VERDICT - *NOT GUILTY*

**CROSS-EXAMINATION
OF O'BOYLE**

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN

-vs-

Case No. D-95-003515-FH
Volume No. I

[REDACTED]

Defendant.

JURY TRIAL

PROCEEDINGS HAD AND TESTIMONY TAKEN in the
above-entitled cause, before the HONORABLE PETER E. DEEGAN,
Judge, 31st Judicial Circuit, and a Jury, at Courtroom 312,
County Building, Port Huron, St. Clair County, Michigan, on
Tuesday, ~~March 21, 1995~~

APPEARANCES: MARY ROY KELLY
ASSISTANT ST. CLAIR COUNTY PROSECUTOR
201 McMORRAN BOULEVARD
PORT HURON, MICHIGAN 48060

On behalf of the People

DAVID D. BLACK
ATTORNEY AT LAW
829 SUPERIOR
PORT HURON, MICHIGAN 48060

On behalf of the Defendant

I N D E X

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WITNESS:

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DEPUTY TIMOTHY O'BOYLE

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Marked

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NONE

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Port Huron, Michigan

~~Wednesday, May 21, 1996~~

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(EXCERPT OF PROCEEDINGS HELD:)

CROSS-EXAMINATION

BY MR. BLACK:

Q Detective, I'll be the first to admit you've had a great, great career here in St. Clair County --

THE COURT: Is that a question or is that --

MR. BLACK: One of my narratives, Judge. Strike that.

THE COURT: Let's avoid the narratives, please.

BY MR. BLACK:

Q Detective, is it? Sergeant? No?

A No. It's Deputy.

Q Deputy.

How long were you with the Task Force?

A Approximately ten years.

Q That's been primarily your career, hasn't it?

A Absolutely, yes.

1 Q That's what you enjoy doing?

2 A At that time. I'm, now have union business and things. I'm
3 pretty busy.

4 Q Is it fair to say that one of the major reasons you went off
5 the Task Force is you were becoming known in the community?

6 A No, I don't think so. I think that's a misnomer. I grew up
7 in this community. I worked in the jail. I knew everybody.
8 I left when I got elected union president and I just
9 couldn't do both jobs together, and that's the reason.

10 Q That's fair enough.

11 Um, now, did you interview Lon Hellebuyck?

12 A Yes, I did.

13 Q Okay. Lon Hellebuyck tell you that he gave the checkbook to
14 my client?

15 A No, he did not. Lon stated that he stayed out on the
16 bike --

17 THE COURT: All right. Let's -- I -- if you want
18 him to answer it, that's -- I'm going to -- that's up to
19 you, but if you, problem with hearsay --

20 MR. BLACK: I just want to ask this one question,
21 your Honor.

22 THE COURT: All right. Go ahead.

23 BY MR. BLACK:

24 Q Just a yes or no question, did Lon Hellebuyck tell you that
25 he gave my client the checkbook?

1 A No, he did not.

2 Q Did you offer my client to work for the Task Force?

3 A Yes, I did.

4 Q Did you offer Lon Hellebuyck to work on the Task Force?

5 MRS. KELLY: I'm going to object to that your,
6 Honor. I think we're going to get into a lot of things, I
7 don't think the Defense wants to get into.

8 MR. BLACK: Simple yes and no question.

9 THE COURT: And how would that be relevant to this
10 case?

11 MR. BLACK: Well, I think it's relative as to
12 Detective -- or Deputy O'Boyle's testimony.

13 THE COURT: Well, --

14 MR. BLACK: One, just if I --

15 THE COURT: Okay.

16 MR. BLACK: Give me a little leeway, your Honor.

17 THE COURT: Be careful what door -- let's try to
18 keep focused on the case. If you have some awareness of
19 relevancy, I'm not going to block --

20 BY MR. BLACK:

21 Q Okay. The first time you went up and saw -- how many trials
22 have you testified in?

23 A I'm scared to guess. I have --

24 Q Well over a couple hundred?

25 A -- a lot. A lot.

1 Q Okay. And have you ever been to seminars as to being a
2 professional witness?

3 A Yes.

4 Q Okay. So you're good at testifying, correct?

5 A I try.

6 Q Good. That's what you're supposed to --

7 MR. BLACK: Judge, can you give me two minutes,
8 please? I have to change my line of questioning a little
9 bit.

10 THE COURT: You want to take a recess now, I would
11 be happy to give you ten minutes.

12 MR. BLACK: If we could.

13 THE COURT: Okay. Witness may step down from the
14 witness stand. I'll have the Bailiff take the jury to the
15 jury room. We'll call you out in about 10 or 15 minutes.

16

17 (Whereupon, the Court was in recess at
18 about 3:05 p.m., and was back in session
19 at about 3:30 p.m.)

20

21 THE COURT: Before I bring the jury back out
22 because they are sequestered, we got anything set up as far
23 as jury instructions?

24 MRS. KELLY: Carol's working on them right now.

25 THE COURT: Okay.

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MRS. KELLY: That's what I did on my break.

THE COURT: All righty. I don't imagine they'll be that complicated.

MRS. KELLY: There weren't very many.

THE COURT: I was anticipating -- all right. Ready to proceed?

MR. BLACK: We are, Judge.

THE COURT: Okay.

MR. BLACK: Thank you very much.

THE COURT: All right.

(Whereupon, the jury entered the courtroom)

THE BAILIFF: The jury is impaneled in the jury box.

THE COURT: All right. You can be seated, please. Witness may resume the stand.

All right, Mr. Black, you may continue your cross-examination of the officer.

CROSS-EXAMINATION (CONT.)

BY MR. BLACK:

Q Detective, where was the first opportunity, the location or -- you had to talk with Mr. ~~XXXXXXXXXX~~ about this

1 incident? First location, actual physical place that you
2 talked to [REDACTED] regarding this incident?
3 A Regarding the B & E specifically?
4 Q Correct.
5 A It was in the jail.
6 Q And where was he at in the jail at that time?
7 A I take -- he was in a cell. I'd taken him out of a cell and
8 we had went into a room, an interview room that we use at
9 the jail.
10 Q How long had he been in jail before you saw him on this --
11 the first time?
12 A It was just about exactly 24 hours. First interview -- two.
13 The second one was approximately 2:20, so it was
14 approximately 24 hours exactly.
15 Q Okay. So he was sitting in jail for 24 hours, then you
16 talked to him for the first time, correct?
17 A No. That was the second time I had talked to him. The
18 first time I talked to him, when he was arrested.
19 Q Okay.
20 A Twenty-four hours later I talked to him again, but that was
21 specifically about this B & E.
22 Q Okay.
23 A We had spoke briefly the day before, --
24 Q Okay.
25 A -- but this was specifically about the B & E.

1 Q Where was the first place you talked to him after he came
2 into custody?

3 A Geez. We talked on the porch, we talked in the field, we
4 talked in the car. We talked in the jail. I just --
5 continual talk from the, from the time --

6 Q Okay.

7 A -- I brought him into custody until I took him back, we were
8 talking.

9 Q Once he arrived at the jail, though, you didn't talk to him
10 again until about 24 hours, once he was in jail?

11 A Once he was in jail, he was booked in. Then I took him into
12 an interview room and then I interviewed him there for a
13 good hour plus we talked.

14 Q This was the second time, correct?

15 A That's the first time. When we first took him to jail, --

16 Q Okay.

17 A -- I interviewed him for at least an hour, hour and a half
18 when he was first arrested. That was after he was booked in
19 after he was read Miranda.

20 Q Okay. At that point he wasn't working for the Task Force,
21 was he?

22 A No. No, he was not. He was not a paid informant for the
23 Task Force at that time, no.

24 Q Okay. During the next 24 hours, do you have any information
25 if anyone else approached him to work for the Task Force?

1 A Do I specifically have any information? He -- no, I do not
2 have any information. But nobody would go through that
3 without talking to me. They wouldn't have talked -- I would
4 say no, I would be pretty positive they didn't.

5 Q When was the first time you talked to him about joining the
6 Task Force?

7 A Oh, probably in the car as we were coming in after the
8 arrest.

9 Q Do you remember the second time you talked to him about it?

10 A It would have probably been continual, it's just one of
11 those things when I'm talking to people. When I'm
12 interviewing somebody, it's just something that comes about,
13 if I think they have any knowledge. I don't say hey, will
14 you go to work. I just start asking them at that point,
15 they're pretty much working. If they are telling me
16 something about the drug use in the community, they're
17 telling me what's going on, they're kind of opening up
18 information and it just makes them feel comfortable talking
19 to me about it.

20 Q Did there ever come a point in time when you offered Mr.
21 [REDACTED] any type of help in regards to testimony as to any
22 drug -- people in the community?

23 A You know, you have to be more specific.

24 Q Did there ever come a point in time in your conversations
25 with Mr. Palazzola up until the second interview where you

1 offered him some type of aid in any criminal prosecution for
2 testimony or knowledge about the sale of illegal drugs in
3 the community?

4 A Okay. At -- when I first arrested him when we spoke that --
5 about the Drug Unit later. We talked quite a bit, probably
6 a good 45 minutes, an hour, about the drug happenings that
7 was in the community there, what, what's going on.

8 Q Will you answer the question? Do you know the question?

9 A I think so. I was trying to get to that, what offer I made
10 him.

11 Q Okay.

12 A I was trying to explain it. And at that point we were not
13 talking about this, this at all. We were talking about
14 money. He was in for an a FOC --

15 Q Okay.

16 THE COURT: Let, let's --

17 MR. BLACK: Detective, if I might --

18 THE COURT: -- listen to the question. Just
19 answer the question.

20 MR. BLACK: Do you understand the question?

21 THE WITNESS: I thought I did. I guess I might
22 not of.

23 THE COURT: Okay.

24 BY MR. BLACK:

25 Q Did there come a point in time when you offered, for lack of

1 a better word, a deal to my client if he'd go to work for
2 the Task Force?

3 A Okay, that's what I'm trying to answer.

4 Q Just yes or no.

5 A A deal, no.

6 Q Okay. Any help or aid in any criminal prosecution he may be
7 facing?

8 A I offered him no help. I offered him money.

9 Q Okay.

10 A That's what we offered.

11 Q Okay.

12 A He was -- and that was in regard -- because he owed money --

13 Q Okay. All right. That's all I want.

14 And before you talked to him the second time, he,
15 he turn you down on that?

16 A No. He gave me a lot of information. A lot of information.

17 Q Did you ever give him any money?

18 A No.

19 Q Why didn't you give him any money?

20 A Because the information isn't enough. You have to go out
21 and work on that information and then I'll give him money.

22 Q Okay. Did there come a point in time when he refused to do
23 anything for you in regards to helping you out in your
24 endeavors with the Drug Task Force?

25 A No. He told me as soon as he could get out on the road he

1 would go to work. As soon as he could get out, he would
2 work and earn some money --

3 Q Okay.

4 A -- the day he would get out.

5 Q Did he ever get out?

6 A Not that I know of, no.

7 Q He never received any money from you?

8 A Never got a dime, no.

9 Q Okay. Now, the first time you talked to him, he didn't
10 admit to this B & E, did he?

11 A No, he did not.

12 Q Okay. In fact, he denied it, correct?

13 A Yes, he denied it.

14 Q He denied it emphatically?

15 A No, we didn't push that hard. He had a piece of property on
16 him that I wasn't exactly sure how or why. I didn't have
17 the answers before I asked the questions, so I just asked
18 where it came from.

19 Q Were -- you're talking about the checkbook, aren't you?

20 A Correct.

21 Q It's your testimony that you didn't speak with Leatherberry,
22 the officer that testified prior to yourself, or anybody
23 else about that checkbook.

24 You had no knowledge of the B & E out on Rabidue
25 Road before the second time you talked to him?

1 A Okay. See. You keep jumping back. You're talking about
2 the first time?

3 Q No. I'm talking --

4 A Before the second time, I had all the knowledge I needed.

5 Q Right.

6 A You were just asking for the second time --

7 Q Before you talked to -- the first time --

8 A Oh. I was just asking the question about the first time.

9 Q Okay.

10 A Now we're on the second time.

11 Yes, I talked to, I -- probably four or five
12 different --

13 Q No. I'm sorry, --

14 A -- paid informants --

15 Q -- you're exactly right.

16 A Yeah.

17 Q Before you talked to him the first time in detail at the
18 jail, --

19 A Correct.

20 Q -- it's your testimony that you didn't have any idea about
21 this B & E out there?

22 A I didn't have the specifics of that B & E. No, I did not.
23 I was arresting him on two warrants that were outstanding.

24 Q You didn't have the specifics, but you knew about it, didn't
25 you?

1 A Not -- I knew of some B & E's that had happened in an area
2 and we were -- I was given a little tidbit from somebody,
3 hey, go out and look this area over, start working that
4 area. Specifically B & E, no.

5 Q Aren't all B & E's listed right in your office?

6 A Yes, they are.

7 Q And tell the address where they happen?

8 A You have to go dig up the report through the computer. It's
9 like at that point known what number it is, 14 or 15,000
10 complaints that had come through at that point, so you have
11 to go dig up each complaint.

12 Q On the checks, the exhibit, it tells the address, correct?

13 A Correct.

14 Q Okay. Why didn't you press, press him the first time on it?

15 A I didn't have the answers. You know, I like to have the
16 answers before I ask the questions. If I started throwing
17 things in the air, he can just talk me in circles. I had
18 him, he was in jail, he was going nowhere. I went and did
19 my homework before I asked him the other questions, I went
20 out and did my digging and ask --

21 Q Okay.

22 A -- all I knew he had.

23 Q You had got a guy in custody?

24 A Correct.

25 Q You have a checkbook?

1 A Yes.

2 Q His name's not on it?

3 A Yes.

4 Q You got a B & E, you specifically know about about?

5 A Correct.

6 Q Not facts specifically, --

7 A Correct.

8 Q You do know this guy has a checkbook, it's not him, --

9 A Correct.

10 Q -- and you don't press him on it?

11 A Exactly.

12 Q Is that typically your style?

13 A Yep. I didn't have the answers. He is there for some other
14 charges that he could not get out of jail at that time. He
15 was there. I placed a hold 'til I got done. I left
16 immediately and started working on the B & E. That's what I
17 did.

18 Q Okay.

19 A When I walked out of the jail, I didn't do anything else but
20 work on that B & E until I got all the information, and it
21 was about 24 hours later when I was ready to sit down and
22 interview him again.

23 Q Okay. Fair enough.

24 Now, the second time you talked to him, you
25 reconfirmed his Miranda? You didn't actually read it to

1 him, but you gave him all the knowledge in the world that he
2 needed from the Miranda?

3 A Exactly. I did not reread the Mirandas at all. I said:
4 You are aware that I read your Miranda yesterday, you
5 understand you are still under Miranda. He, he, exactly, --

6 Q Thank you.

7 A -- and he --

8 Q Thank you.

9 And at that point you began to pressure him?

10 A I didn't need to. His quote was, "I knew you'd be back."

11 Q Okay.

12 A It's in the report, "I knew you'd be back," and he just went
13 just as plain --

14 Q Okay.

15 A It was real -- very very cooperative.

16 Q Okay. I appreciate that.

17 But isn't it true you talked to him about the Task
18 Force before any of that happened, before he opened up to
19 you?

20 A Absolutely.

21 Q And isn't it true that you led him to believe you're going
22 to do him big big favors if he told you exactly what you
23 wanted to hear?

24 A Not big big favors, money. And it could be up to big money.

25 Q Okay.

1 A It's money, all money.

2 Q But he believed at the time he made his confession to you
3 that he was going to get big big favors, or big big money;
4 is that correct?

5 A He believed that I was there because I told him that a very
6 close friend of mine wanted me to work on this very hard,
7 and that's why I stayed on it, and this case was going to
8 come to court. I mean, it was, it was important to me to
9 bring this case to court. And at that point we really
10 didn't talk much about the Task Force in the second
11 interview. The first interview we talked a lot about the
12 Task Force, the first one. The second --

13 Q You just told before you started, you talked about the Task
14 Force, the second interview?

15 A No. The first interview we talked about the Task Force all
16 the way through, mostly.

17 Q I just asked you the second interview, you asked him about
18 the Task Force?

19 A I don't know --

20 Q Right before you even started pressing him at all, you said
21 yes.

22 Is that wrong?

23 A I -- okay. I didn't say I pressed him. I didn't say I
24 talked to him about the Task Force --

25 Q Okay. Tell us about the Task Force, the second interview.

1 A He pretty much told me what had happened. That's -- just he
2 said exactly what had happened. Interview was short. He
3 talked about how it happened, that himself and his
4 partner -- told us what he did, who stood on the road, what
5 they did with the items. He was real clean about that.

6 Q Okay.

7 A That didn't have anything to do with the Task --

8 Q Your interview, at this point in time --

9 A Okay.

10 Q This is my question: He told you, as you say, I think he's
11 going to do big things for him, big money, correct?

12 A You keep saying big things.

13 Q Okay.

14 A We did not make any offers of big things to him. We offered
15 money so he could get some money --

16 THE COURT REPORTER: Only one can talk at a time,
17 please.

18 THE WITNESS: Correct.

19 BY MR. BLACK:

20 Q He thought at that time he was going to get money from you?

21 A Okay. Where we at?

22 Q Okay. You know where we're at?

23 A I'm not sure.

24 Q You do all the time --

25 A You know where we're at.

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THE COURT: Ask --

THE WITNESS: I'm not sure.

MR. BLACK: Okay.

THE COURT: Pin it down so, --

MR. BLACK: Okay.

THE COURT: -- so you're on the same page.

BY MR. BLACK:

Q At the time when you're pressing him -- strike that.

At the time before he opens up to you, as you say
or as I'm saying at the second interview, --

A Correct.

Q -- and at that point he's expecting money from you --

A Right.

Q -- if he helps you?

A In this B & E? Is that what you're asking? If he helps me
where?

Q In the Drug Task Force.

A With what?

Q With any information.

A With any information --

Q Okay. I'm on -- Mr. O'Boyle, you know what I'm talking
about?

A Well, I'm not sure if you're alluding to this case. There
was nothing made reference to this case for money for
anything. Nothing. Now, if you're talking --

1 Q I'm not talking about this case, am I?

2 A Okay.

3 Q I'm talking about the Drug Task Force, him opening up to you
4 in the second interview.

5 A Okay.

6 Q But right before he opens up to you in the second interview,
7 he believes, in your mind, that he's going to get money from
8 you if he cooperates in a Drug Task Force investigation?

9 A Okay. In my mind at that point it was -- we had just sat
10 down. I don't have any idea what he was thinking because we
11 just sat down, we only be talking for just -- not for me,
12 reiterate about the Miranda, and he knew -- "I knew you were
13 coming back," and we went right into the B & E. There was
14 never anything spoken at that point --

15 Q No, you -- he doesn't think he's getting money --

16 A At that point there was nothing talked about --

17 Q That interview. When does he start thinking he's going to
18 get money in the Task Force?

19 A Well, I think you're going to have to ask him.

20 Q No. I'm asking you, --

21 A I don't know.

22 Q -- you made him an offer --

23 A I told him when he got out of jail the day before, that he
24 could go to work and help pay for his Friend of Court fines,
25 he could go to work.

1 Q Okay. And isn't it true People's Exhibit Number 2, I
2 believe, he wrote this out, didn't he?

3 A He wrote the one in red, yes.

4 Q Okay. You told him what to say in that, didn't you?

5 A I told him I wanted the specifics, and that's what he wrote.
6 I wanted longer, but that's what he wrote. He wrote it down
7 and that was it.

8 Q You told him what you needed?

9 A I told him I wanted him to tell me what had happened at the
10 house, how he got in, and that's what he wrote.

11 Q Didn't you tell him word for word what to write and he wrote
12 it as you said it?

13 A No. Not even close. Not even close.

14 Q Okay. Is it typical -- forget the money part. Have you --
15 strike that.

16 Isn't it typical in your line of work with the
17 Drug Task Force, you allude to people, and my client, too,
18 that you can help them out with their criminal problems?

19 A At times, yes, you will, you will definitely make them feel
20 that at times, correct.

21 Q Okay. Thank you.

22 MR. BLACK: No further questions -- oh. One more
23 question.

24 BY MR. BLACK:

25 Q Did you have a witness for this --

1 A The -- which one?

2 Yes, I had a Cathy Stroh. She signed her initials
3 at the top. She watched him, listened to him part of the
4 interview and watched him write that.

5 Q Okay. Isn't it true that Cathy came in afterwards that this
6 was written?

7 A She wouldn't have signed it if she didn't. No. It's in the
8 report.

9 Q Do you have --

10 A She's here. We can have her -- she's at the jail. She can
11 come over and testify.

12 Q Do you have any specific recollection whether she was
13 actually standing right there when he wrote that out?

14 A Yes, she was there. She was in the room. She didn't catch
15 the very beginning, but she heard most of the interview.

16 MR. BLACK: Okay. No further questions. Thank
17 you.

18

19

REDIRECT EXAMINATION

20

21 BY MRS. KELLY:

22 Q Deputy O'Boyle, when you first arrested the Defendant, Mr.
23 [REDACTED], is it fair to say, then, you were not
24 investigating or arresting him for the breaking and
25 entering?

1 A That's correct.

2 Q In regards to the matters that you talked with him about the
3 first day, did any of them, other than the discussion about
4 the collection, relate to the breaking and entering?

5 A No, they did not.

6 Q In regards to the second interview when you talked with Mr.
7 [REDACTED] about the breaking and entering, did you offer him
8 any leniency or offer him anything?

9 A No. Never not, not on the second interview at all.

10 Q And would you have been even in a position to do that?

11 A No. We're not allowed to make those deals. We can talk
12 money and things when they're small cases, like the fleeing
13 and eluding, which was my own personal case in the
14 beginning, where he ran on of making deals, like they do on
15 TV, you have to go through the Prosecutor's Office. They
16 make the deals. The attorneys, they have to work it out
17 between themselves. I'm not allowed to make a deal.

18 Q In regards to, then, any discussion about working for the
19 Task Force, the Drug Task Force in the first interview, is
20 it the policy of the St. Clair County Drug Task Force to pay
21 informants for information?

22 A Oh, no. It has happened in very extreme cases, but most of
23 the time you have to put some work, you have to go out and
24 physically do something for the Drug Unit before you get
25 money. Just giving information is not enough.

1 Q So, for instance, maybe get yourself invited into a home to
2 see if there's any drugs there?

3 A Correct, or make controlled buys, something on that order.
4 You have to be specifically doing -- it's like being on the
5 job. You have to be doing something for your pay. Just
6 calling us up and giving us information is not enough.

7 Q And in regards to, then, this particular breaking and
8 entering, there was no involvement between the St. Clair
9 County Drug Task Force and this particular case?

10 A Absolutely none. And at that point I was out of the St.
11 Clair County Drug Task Force. I was on specific road
12 patrol. I was just trying to gain some knowledge and
13 possibly pass it -- I wasn't even specifically working for
14 the Drug Unit. I'd been out for some months.

15 Q As far as the statement that was written out by the
16 Defendant, did you provide any language for him to put in
17 there?

18 A No, I did not.

19 Q What do you mean, you would have rather had a longer
20 statement?

21 A I asked him to write down, and then I didn't pay attention
22 what he was writing, I wanted him to write exactly how
23 everything -- what happened, like he told me how everything
24 had happened. I wanted that all wrote on paper, and when he
25 handed to me, signed this, is what he had wrote, I had hope

1 for the drive down the road himself, and Lon, one guy going
2 in and one guy going out, I wanted that all drawn out. This
3 is all, this is all he wrote.

4 MRS. KELLY: I have nothing further.

5
6 RE-CROSS-EXAMINATION

7
8 BY MR. BLACK:

9 Q Detective, isn't -- or, excuse me, Deputy, isn't it true
10 that in your line of work when an arrest is made, you have
11 to ask the Prosecution for a warrant, correct?

12 A Correct.

13 Q And it's up to you to go to the Prosecution and get a
14 warrant; is that correct?

15 A Correct.

16 Q And if you don't go to get a warrant, someone usually
17 doesn't get charged with that; is that correct?

18 A That's correct.

19 Q And isn't it true that in your line of work, the Task Force,
20 that you've held these years, sometimes --

21 A Or just not held them, just didn't, just didn't go get them.

22 Q As long as they do what you tell them to, correct?

23 A Correct.

24 MR. BLACK: No further questions.

25 REDIRECT EXAMINATION

1

2 BY MRS. KELLY:

3 Q Deputy O'Boyle, as far as whether or not he agreed to work
4 on with the Task Force, did things change in your mind after
5 the first interview, after you went and did some more
6 investigation?

7 A (No response).

8 Q On the B & E?

9 A Absolutely. We were talking about a whole -- when we were
10 talking about going to work, he --

11 MR. BLACK: If he could answer the question, your
12 Honor, at this point in the trial?

13 THE WITNESS: I'm trying --

14 MRS. KELLY: Well, Mr. Black, --

15 THE COURT: He's trying to answer the question as
16 he understood it in his own mind.

17 THE WITNESS: Specifically he had a Friend of
18 Court warrant, which was for kids he owed money. He was
19 going to go to work after he got out of a misdemeanor
20 charge, and I had personal charges which were fleeing and
21 eluding --

22 BY MRS. KELLY:

23 Q So were you going to assist him in paying off, helping him
24 get his Friend of the Court, of the money he owed his
25 children?

1 A Correct.

2 Q And did you feel differently about that in any way after you
3 investigated further and found out about the breaking and
4 entering?

5 A Absolutely.

6 MRS. KELLY: I have nothing further.

7

8 RECROSS-EXAMINATION

9

10 BY MR. BLACK:

11 Q What do you mean, you felt differently?

12 A It was -- we went from my misdemeanor, fleeing and eluding,
13 to a felony home in somebody's house had broken into.
14 That's not something that you take lightly. That's a
15 serious felony.

16 Q Thank you.

17 THE COURT: All right. You may step down.

18

19 (Whereupon, the witness was excused)

20

21 (END OF EXCERPT)

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CLOSING ARGUMENTS

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN

-vs-

Case No. D-95-003515-FH
Volume No. II

[REDACTED]

Defendant.

JURY TRIAL

PROCEEDINGS HAD AND TESTIMONY TAKEN in the
above-entitled cause, before the HONORABLE PETER E. DEEGAN,
Judge, 31st Judicial Circuit, and a Jury, at Courtroom 312,
County Building, Port Huron, St. Clair County, Michigan, on
Wednesday, ~~May 23, 1995~~

APPEARANCES: MARY ROY KELLY
ASSISTANT ST. CLAIR COUNTY PROSECUTOR
201 McMORRAN BOULEVARD
PORT HURON, MICHIGAN 48060

On behalf of the People

DAVID D. BLACK
ATTORNEY AT LAW
829 SUPERIOR
PORT HURON, MICHIGAN 48060

On behalf of the Defendant

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I N D E X

PAGE

Closing Argument by Mr. Black:

3

E X H I B I T S

Marked

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NONE

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Port Huron, Michigan
Wednesday, ~~May 23~~, 1956

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(EXCERPT OF PROCEEDINGS HELD:)

MR. BLACK: Thank you, Judge.

First of all before I start, I would like to thank each and every one of the jurors here today for being attentive. It was a quick trial. It wasn't a whole lot to listen to, but you sat there and we -- I tried to do this trial as quickly as I possibly could. I see this trial boiling down to Mr. O'Boyle and my client, whether Mr. O'Boyle got him to confess to something he didn't do. He's the master. But before I go into that, I want to thank each and every one of you, Charlene, and Gloria, and Amy, Carol, Joellen, Ed, Anne, Fred, Carole, Dennis, Nancy, Margie, Anita, and Jeff. And the reason I do that is that you've all been attentive. You've taken the opportunity to do something that's very special. You sat in a jury trial. You've upheld the constitution of the United States. You gave my client a fair trial. I know as I sit here right now and -- none of you have made your mind up. You all still

1 are holding the presumption that my client's innocent. And
2 that's the most important thing. You've got to look at this
3 trial as though it's your son or daughter sitting there.
4 It's your relative sitting there. You've got to listen to
5 this evidence just as carefully as you would if it was your
6 son, if it was your friend, your daughter. Because he's
7 presumed innocent right now. There's a reasonable doubt.

8 Very tough case. Right from the beginning. We
9 have a confession. It's an O'Boyle confession. How do you
10 get around that? I didn't know if I wanted to take this
11 case when it first came in. But I did. I believed in my
12 client's innocence. I still do as I sit here today, 100
13 percent.

14 I'm going to go over a little bit first of all,
15 some of the jury instructions that you're going to get. And
16 I'm just going to read them to you. The Judge is going to
17 explain these to you and you have the duty to listen to all
18 these and follow them. And you're going to hear duties of a
19 judge and jury, presumption of evidence, circumstantial
20 evidence, witness credibility, police witness, home
21 invasion, time and place, deliberations, penalty,
22 communications of the court, exhibits. And one most
23 important thing is statements, confessions. You're going to
24 hear the Judge is allowed a jury instruction on that. I
25 want you to remember that. That has to deal with Mr.

1 O'Boyle and my client.

2 Let's start a little bit from the beginning and --
3 Okay. Mr. Watson testified he saw a 220 pound, blond haired
4 fellow in the woods. I think we all know sitting there that
5 that's the fellow named Lon Hellebuyck, or however we
6 pronounce it. He has blond hair, and my client doesn't.

7 Detective Leatherberry stated yeah, that sounds
8 like him. He's in the woods.

9 My client is home sleeping on his porch with a
10 checkbook. And makes sense to me if you can get past the
11 confession that this Lon Hellebuyck went into this home, and
12 and detective testified he helped out in that prosecution.
13 Gave my client the checkbook. He fell asleep with it in his
14 pocket. There's no checks written out of it.

15 Think about that. If he has this checkbook after
16 this break-in, isn't he -- the first thing he's going to do,
17 being a criminal that he stated he is, is go out and cash
18 some checks. Sure he's a criminal. He didn't do this
19 crime. He didn't do this crime. He admitted to doing this
20 crime because they got along with Mr. O'Boyle.

21 Mrs. Kelly said he waited 11 months. Come on
22 here. Everybody here knows you get charged with a crime,
23 the police talk to you, you get a lawyer. This is your
24 first opportunity. He didn't wait 11 months. He going to
25 call the Prosecutor? I don't think so. He had faith in

1 Detective O'Boyle. Detective O'Boyle told him everything it
2 was going to take to get him to confess to this. He doesn't
3 care. I mean, he's a great police officer. I like Tim.
4 And when we go on today, I'm going to go home, he's going to
5 go home. My client's going to go back to prison regardless
6 of what you guys do here today. He's serving --

7 MRS. KELLY: I'm going to object to that, your
8 Honor.

9 THE COURT: There's no evidence in relationship to
10 that. You have no right to make that kind of an argument in
11 front of this jury. First of all, what's going to happen to
12 this Defendant if he's convicted will be that he'll be
13 sentenced, and that's my responsibility. It's not the
14 jury's.

15 MR. BLACK: Okay. I thought there was
16 testimony --

17 THE COURT: And there's no evidence as to what or
18 what is not going to happen to him that has been presented
19 in this trial. And it's not relevant to begin with.

20 MR. BLACK: Okay.

21 THE COURT: All right. The jury should disregard
22 that comment that was made by counsel.

23 Proceed with your summation.

24 MR. BLACK: Excuse me, jury. I thought there was
25 testimony as to that, but strike that, please.

1 They've got to prove that my client entered this
2 dwelling. How do they do it? Checkbook alone is not enough
3 circumstantial evidence. That's not enough. They've got to
4 prove he was in there. O'Boyle says: I didn't know when I
5 was going out there to investigate this. You believe that,
6 then believe a lot of things.

7 Detective Leatherberry sent this over to O'Boyle.
8 He is the one, he's the master, he can get anybody to
9 confess to anything. He'll sit there, he'll make you a
10 deal. He'll promise you everything. He'll promise you any
11 way to get out of this. He's owned these kids. He's
12 testified himself that he has these people arrested.
13 Doesn't go to the Prosecutor for a year, sometimes three
14 years. He holds them. He owns them. He knows that. The
15 Prosecutor knows it. My client knows it. He knows it only
16 too full well.

17 Let's go through a little bit of testimony of
18 Detective O'Boyle. He admitted that someone gets arrested,
19 it's up to him as to what happens to them. I -- if I'm a
20 police officer, I can arrest somebody, take them into jail,
21 like he testified, and never ever, ever go to the Prosecutor
22 and get them charged. Never. I don't have to. What's that
23 give me if I'm on the Task Force? It gives me ownership.
24 And now the really way they're going to get ownership over
25 him is if he confesses. If he confesses, writes out a

1 confession, now I've got it hanging over your head. The
2 minute you don't work for me, the minute you don't go to
3 work for me, the minute you don't, the minute you don't do
4 what I want, the minute you don't bust everybody, you know,
5 everybody you're related to, I got you, and you're going to
6 prison, pal.

7 That's what happens. That's what happened here.
8 He got along with the master, and the master's got him to do
9 it. He's the best. He can chase people down in 90 degree
10 heat. He can catch them. He's testified he's a
11 professional witness. You see what he did to you? You
12 probably didn't. He sat, turn -- he turned around and
13 looked at every one of you. Every one of you is going.
14 He's a master. He's believable. He's great. And I hope
15 that still he didn't get you. I hope that right now he's
16 innocent. I hope my man is innocent in his mind, because he
17 is. I'm telling you he is.

18 They had to have a confession here. They had to
19 have a confession because they didn't have anything on him.
20 He helped Lon Hellebuyck's prosecution. Who knows what Lon
21 Hellebuyck's doing now. My client's not the big problem.
22 My client never got out of jail. He could never go to work
23 for the Task Force. That's why he's here now.

24 If you have any, any reasonable doubt, and it
25 stems from the confession, because that's where the evidence

1 comes from, that Detective O'Boyle can get along with my --
2 you heard him yesterday on the stand. I mean, what is it
3 going to take for this guy to get him to do whatever he
4 wants him to do? He leaves him alone in that cell for 24
5 hours. His own testimony. He leaves there saying hey, I'm
6 the only one that can help you. I've got you with this
7 checkbook. You're going. You're going. You're mine. When
8 I walk back in here, I want to hear it all.

9 And you heard it, boy. He walked back, he opened
10 right up. Didn't even have to read Miranda. Do you think
11 for a minute a guy like that is going to do this?
12 Absolutely not. O'Boyle owned him. He still owns him. He
13 owns -- oh, you wouldn't believe all the people, the kids he
14 owns. It's amazing. If you think for one minute, one
15 minute that this man looked at him -- he is slick as they
16 come. He's the best. He's the hotdog. He's the top gun.
17 He is the man. If you think he could get along with my guy
18 and get him to confess to something he didn't do, then you
19 have a reasonable doubt. And that's all it is, is a
20 reasonable doubt.

21 Could Detective O'Boyle get my guy to confess?
22 Could he get him to confess to do something he didn't want
23 to? Could he promise him big money? Could he promise I'll
24 pay your Friend of Court fees? I'll get you out of jail,
25 you go to work for me. I never have to authorize this. I

1 never have to authorize this. I never have to take this to
2 the Prosecutor. You never have to be charged with this
3 crime.

4 That's what happens. This guy's committed crimes.
5 He got up here and told you. I didn't want him to take the
6 stand. Maybe it's good. It showed -- he's not the smartest
7 guy in the world, but he's smart enough to know O'Boyle is
8 the only person who can help him. He's caught with the
9 checkbook. That's what it boils down to.

10 The rest of the testimony is irrelevant, in my
11 opinion. We have a checkbook, fine. Could have dropped off
12 this guy. He could have found it in the car. He could have
13 gotten it from Lon Hellebuyck.

14 We have Mr. Watson. Mr. Watson says hey, I don't
15 like the [REDACTED] I -- he was, he was on a motorcycle,
16 he had his head down. Big deal. There's motorcycles all
17 the time out there on Rabidue Road. It's not that big a
18 deal.

19 The only thing that matters in this case is right
20 there. If you think this guy who's done it to thousands of
21 people, he owns them, and if you --

22 MRS. KELLY: I'm going to object to this. This is
23 not facts that are in evidence that he owns thousands of
24 people. This is not -- he is giving a closing argument that
25 is, is not supported by facts in evidence.

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THE COURT: You may continue.

MR. BLACK: Detective O'Boyle --

THE COURT: Let's talk about the evidence that's in the case.

MR. BLACK: I'm finished on that, Judge.

When -- I ask you this, I asked you if you could be tough enough, if you could be tough enough as to reasonable doubt. One element of this crime. And you all said you could. If you believed it. If you don't believe it, I don't want you to. But if you think there's a reasonable doubt here, a reasonable doubt, that's the last thing I'm going to say, he's giving you the elements of the crime right here. Look at him. He is good. He can get any one of us to do it. I'll tell you that.

And I'll tell you what. If you think there's a chance that he could get to -- my guy to confess to something he didn't do and put it in writing, then you have a reasonable doubt, and you've got to stick to that. You took an oath to stick to that. You took an oath to listen to this Judge, to listen to me, to listen to the Prosecution, to give my client the benefit of the doubt. He's innocent. He's innocent. Don't go in that jury room -- if you've got a sore back or a headache or, or whatever, don't go into that jury room. This man's life's at stake. His freedom's at stake. His liberty. Things our

1 founding fathers fought for is at stake. And you owe it to
2 him. You owe it to him as much as I'm sitting here, you owe
3 it to him to give him the reasonable doubt, if you believe
4 Detective O'Boyle could do it to him.

5 Thank you. I have no further questions, no
6 further anything. Thank you very much.

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8 (END OF EXCERPT)
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