

Electronically Filed
Apr 30 2012 09:12 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

ERICK BROWN,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Case No. 60197 Clerk of Supreme Court

RESPONDENT'S APPENDIX

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INDEX

<u>Document</u>	<u>Page No.</u>
Information, filed 01/28/03	1-4
Order of Affirmance, filed 09/13/07, with Clerk's Certificate and Remittitur.....	50-57
Reporter's Transcripts of 06/27/06 (Proceedings), filed 10/27/08	5-49

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
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- 6
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ROBERT L. LANGFORD, ESQ.
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STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ Jennifer Garcia
Employee,
Clark County District Attorney's Office

SSO/John Giordani/jg

ORIGINAL

FILED

2003 JAN 28 P 2:11

Shirley B. Panagiotou
CLERK

INFO

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I.A. 2/5/03
9:00 A.M.
PD/A. Fritz

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERICK MARQUIS BROWN, #1895908,
ALFRED MAURICE BLACKWELL,
#1896296

Defendants.

Case No:
Dept No:

C 189658
XIV

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That ERICK MARQUIS BROWN and ALFRED MAURICE BLACKWELL, the Defendants above named, having committed the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE OR OLDER RESULTING IN SUBSTANTIAL BODILY HARM (Felony - NRS 200.310, 193.165, 193.167, 0.060); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - NRS 200.310, 193.165, 0.060); ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE (Felony - NRS 200.380, 193.165, 193.167); and ROBBERY WITH USE OF A

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JAN 29 2003
COUNTY CLERK

1 DEADLY WEAPON (Felony - NRS 200.380, 193.165), on or about the 23rd day of
2 November, 2002, within the County of Clark, State of Nevada, contrary to the form, force
3 and effect of statutes in such cases made and provided, and against the peace and dignity of
4 the State of Nevada,

5 COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM

6 did then and there wilfully, unlawfully, and feloniously enter, while in possession of
7 a firearm, with intent to commit a felony, to-wit: robbery, that certain building occupied by
8 LAS VEGAS MANUFACTURING JEWELERS, located at 2829 North Green Valley,
9 Henderson, Clark County, Nevada.

10 COUNT 2 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON,
11 VICTIM 65 YEARS OF AGE OR OLDER RESULTING IN SUBSTANTIAL
BODILY HARM

12 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
13 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away MIKE GOLCEKER, a human
14 being 65 years of age or older, with the intent to hold or detain the said MIKE GOLCEKER
15 against his will, and without his consent, for the purpose of committing robbery and/or
16 inflicting substantial bodily harm, said Defendants using a deadly weapon, to-wit: a firearm,
17 during the commission of said crime; the said MIKE GOLCEKER sustaining substantial
18 bodily harm; the said Defendants aiding or abetting each other through counsel and
19 encouragement by entering into a course of conduct whereby both Defendants entered the
20 crime scene together; Defendant ERICK MARQUIS BROWN producing a handgun and
21 thereafter both Defendants demanding and taking jewelry and/or money from the said MIKE
22 GOLCEKER.

23 COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
24 RESULTING IN SUBSTANTIAL BODILY HARM

25 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
26 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away EMMETT CONNELLY, a
27 human being, with the intent to hold or detain the said EMMETT CONNELLY against his
28 will, and without his consent, for the purpose of committing robbery and/or inflicting

1 substantial bodily harm, said Defendants using a deadly weapon, to-wit: a firearm, during
2 the commission of said crime; the said EMMETT CONNELLY sustaining substantial bodily
3 harm; the said Defendants aiding or abetting each other through counsel and encouragement
4 by entering into a course of conduct whereby both Defendants entered the crime scene
5 together; Defendant ERICK MARQUIS BROWN producing a handgun and thereafter both
6 Defendants demanding and taking jewelry and/or money from the said EMMETT
7 CONNELLY.

8 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON VICTIM 65 YEARS OF
9 AGE OR OLDER

10 did then and there wilfully, unlawfully, and feloniously take personal property, to-
11 wit: jewelry and lawful money of the United States, from the person of MIKE GOLCEKER,
12 the said MIKE GOLCEKER being 65 years of age or older, or in his presence, by means of
13 force or violence or fear of injury to, and without the consent and against the will of the said
14 MIKE GOLCEKER, said Defendants using a deadly weapon, to-wit: a firearm, during the
15 commission of said crime; the said Defendants aiding or abetting each other through counsel
16 and encouragement by entering into a course of conduct whereby both Defendants entered
17 the crime scene together; Defendant ERICK MARQUIS BROWN producing a handgun and
18 thereafter both Defendants demanding and taking jewelry and/or money from the said MIKE
19 GOLCEKER.

20 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

21 did then and there wilfully, unlawfully, and feloniously take personal property, to-
22 wit: jewelry and lawful money of the United States, from the person of EMMETT
23 CONNELLY, or in his presence, by means of force or violence or fear of injury to, and
24 without the consent and against the will of the said EMMETT CONNELLY, said Defendants
25 using a deadly weapon, to-wit: a firearm, during the commission of said crime; the said
26 Defendants aiding or abetting each other through counsel and encouragement by entering
27 into a course of conduct whereby both Defendants entered the crime scene together;
28 Defendant ERICK MARQUIS BROWN producing a handgun and thereafter both

1 Defendants demanding and taking jewelry and/or money from the said EMMETT
2 CONNELLY.

3 DAVID ROGER
4 DISTRICT ATTORNEY
Nevada Bar #002781

5
6 BY


7 MELISA DE LA GARZA
8 Deputy District Attorney
9 Nevada Bar #005927

10 Names of witnesses known to the District Attorney's Office at the time of filing this
11 Information are as follows:

12	<u>NAME</u>	<u>ADDRESS</u>
13	ERRICHETTO, LINDA or Designee – LVMPD Forensic Lab	
14	PRICE, DENISE – HPD P#690	
15	BROWN, ERICK – Address Unknown	
16	GOLCEKER, MIKE – 11500 Evergreen Creek Ln., LV, NV 89135	
17	CONNELLY, EMMETT – 1705 King James St. #103, LV, NV 89144	

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26 DA#02FH1222A-B/tgd
27 HPD EV#0218848
28 BURG W/FA; KWDW V/65; KWDW;
RWDW V/65; RWDW - F
(TK5)

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

OCT 27 10 58 AM '08

THE STATE OF NEVADA,

Plaintiff,

vs.

ERIC BROWN,

Defendant.

CLERK OF THE COURT

No. C189658

Dept. XIV

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

June 27, 2006
1:30 p.m.
Department XIV

APPEARANCES:

For the State:

MR. MARC DIGIACOMO

MR. TIM FATTIG

Deputy District Attorneys

For the Defendant:

MR. MICHAEL CRISTALLI

MR. GARY MODAFERRI

Attorney-at-Law

Reported by:
Joseph A. D'Amato
Nevada CCR #17

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OCT 27 2008

CLERK OF THE COURT

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SUPPLEMENTAL WITNESS INDEX

Page

EMMETT J. CONNELLY:

Examination by Mr. Fattig	52
Examination by Mr. Cristalli	100
Re-Examination by Mr. Fattig	125
Re-Examination by Mr. Cristalli	127

MARIA WEIR:

Examination by Mr. Fattig	129
Examination by Mr. Cristalli	152
Re-Examination by Mr. Fattig	171

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ERICK M. BROWN,

Defendant.

No. C189658
Dept. XIV

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

June 27, 2006
1:30 p.m.
Department XIV

APPEARANCES:

For the State:
MR. TIMOTHY FATTIG
MR. MARC DIGIACOMO
Deputy District Attorneys

For the Defendant:
MR. MICHAEL CRISTALLI
MR. GARY MODAFFERI
Attorneys-at-Law

Reported by:
Joseph A. D'Amato
Nevada CCR #17

In fact, we have I think juror Number

12 doesn't hold a job, hadn't held a job in quite
some time. There were other individuals that was
more sporadic than that young woman.

We raise that issue. We don't believe
there was sufficient grounds to discharge her and
want to preserve that for the record.

THE COURT: Thank you, counsel.

MR. FATTIG: No one was nearly as
sporadic in terms of her job history as Ms. Whittle,
badge number 488. She indicated she worked at an
auto parts store for about one month.

Before that she worked at the village
cleaners for three months, before that she worked as
a medical assistant for three months. That was on
Your Honor's questioning, and then Mr. DiGiacomo
asked her about before that, so that's three jobs in
last seven months.

Mr. DiGiacomo asked her about her
period of time before the last seven months. She
went through a number of jobs. Worked retail on and
off, at many places for about six years, and I take
it that she was out of high school or thereabout for
about six years.

She talked about working as a medical

THE COURT: The continuation of
C189658, State versus Erick Brown. Record reflects
the presence of the Defendant, his counsel, Mr.
Cristalli and his assistant, Mr. Modafferi, Mr.
DiGiacomo and Mr. Fattig for the state.

The absence the jury is noted.

Mr. Cristalli?

MR. CRISTALLI: I know yesterday we had
one juror that the state exercised its peremptory
challenge on. We had a discussion at the bench with
regard to their peremptory challenge.

She was a young black woman. I note
for the record there are two additional black women
on the jury.

My client is a male black individual.
I raised the Batson Challenge to get an idea as to
why that peremptory challenge was exercised.

The State's response was that she was
young, she held numerous jobs in the past and that
she wore some shirt that suggested immaturity, on
her part.

I would note for the record, I did not
see anything from her in terms of her past work
history that was distinguishable from any other one
of the jurors.

assistant at numerous places for several years.

She certainly seems unstable in terms
of her employment history. We also believed that
her T-Shirt -- she wore a T-Shirt to Court which
read "Most likely to steal your boyfriend" across
the front area.

We believe that wearing a T-Shirt to
Court and let alone a T-Shirt with that particular
statement on it showed a concern lack of maturity on
her part.

We have not stricken two other African
American females that didn't have these types of
concerns.

Mr. Cristalli cited juror Number 12
who was younger than Ms. Whittle, badge 488, because
in questioning him he indicated he had a job, I
believe, for about six or seven months from last
August until this February.

He indicated that he's the juror from
Laughlin, that he hasn't had a job since February,
but he graduated, I believe, last year.

We're talking about someone that just
hasn't accumulated the type of work history that
Ms. Whittle did -- three jobs in seven months was
certainly something we were concerned about, let

1 alone numerous other jobs she's had since coming out
2 of high school.

3 THE COURT: All right, gentlemen.

4 Well, we discussed it briefly at the
5 bench as counsel has acknowledged at the time of the
6 objection. Certainly it has been preserved.

7 I think collectively there have been
8 only race-neutral bases for peremptory on so I don't
9 see a problem with it.

10 As counsel indicates, both counsel, we
11 do have several blacks on the jury. It's not that
12 they are being systematically excused at this
13 juncture.

14 Counsel, anything else outside the
15 presence of the jury?

16 MR. CRISTALLI: No, sir.

17 MR. FATTIG: As a housekeeping matter,
18 yesterday I filed an Amended Information. It merely
19 took out Mr. Blackwell as a co-defendant and I gave
20 an open copy of that to Mr. Cristalli.

21 I wanted to make sure that was in the
22 record.

23 THE COURT: Is there any objection to
24 the filing of that, counsel?

25 MR. CRISTALLI: No, sir.

1 THE COURT: The amended information
2 will be accepted. Anything else?

3 MR. FATTIG: No.

4 THE COURT: Mr. Bailiff, please.

5 [Whereupon the bailiff escorted the
6 jury panel to the courtroom.]

7 THE COURT: Ms. Clerk, will you call
8 the roll of our prospective jury, please?

9 [Whereupon, the clerk of the court
10 called the roll of the jury.]

11 THE CLERK: The panel is present, Your
12 Honor.

13 THE COURT: Very well. Good afternoon,
14 Ladies and Gentlemen.

15 Ms. Clerk, will you draw a single name
16 to replace our last peremptory?

17 THE CLERK: Badge 461, Andrea Westlake.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Is it Miss or Mrs. Westlake?

23 A. Miss.

24 Q. Ms. Westlake, do you know of any
25 reason why you couldn't serve as fair juror in this

1 case?

2 A. No.

3 Q. Have you served as a juror before?

4 A. No.

5 Q. Are you or any close friends or
6 relatives involved in law enforcement or have you
7 been in the past?

8 A. No.

9 Q. Have you or close friends or family
10 members ever been the victim of crime?

11 A. No.

12 Q. Will you follow all of the
13 instructions of the Court on the law even though
14 they may differ from your personal conceptions of
15 what the law ought to be?

16 A. Yes.

17 Q. A person accused of committing a crime
18 is presumed to be innocent in a criminal trial. Do
19 you understand and agree with that?

20 A. Yes.

21 Q. Are you aware that the Defendant does
22 not have to take the stand and testify or offer any
23 evidence if he chooses not to and you can still find
24 him not guilty?

25 That's because the burden is upon the

1 State to prove his guilt beyond a reasonable doubt.

2 A. Yes.

3 Q. Have you or close friends or family
4 mommy ever been involved in the criminal justice
5 process either in prosecuting a case or as a witness
6 or a Defendant?

7 A. No.

8 Q. Tell us please of your employment,
9 currently, number of children you may have and how
10 long you've lived here.

11 A. I've lived here for 18 years. I work
12 at Hot Cats. It's a retail store.

13 Q. What is that?

14 A. It's a retail store in the Fashion
15 Show Mall.

16 Q. Okay. You have lived here 18 years?

17 A. Yes.

18 Q. Any children?

19 A. No.

20 Q. Have you been married in the past?

21 A. Yes.

22 Q. Are you a retail clerk at the store?

23 A. I'm the store manager.

24 Q. What do you sell there?

25 A. Clothing, mens' and womens' clothing.

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9

1 Q. How long have you worked there?

2 A. **Nine years.**

3 Q. What other employment if any have you

4 had as an adult?

5 A. **I haven't.**

6 Q. When you were married was your husband

7 employed?

8 A. **Yes.**

9 Q. What did he do?

10 A. **He was a technician at Honda.**

11 Q. Motor cars?

12 A. Cars.

13 Q. Was that the work he's was doing

14 throughout the time you were together?

15 A. **Yes.**

16 Q. Where did you move from?

17 A. **Florida.**

18 Q. What city?

19 A. **Clearwater.**

20 Q. Is that where you're from originally?

21 A. **Yes.**

22 Q. Grew up there?

23 A. **Yes.**

24 Q. Do you have any prejudice as to the

25 nature of the charges in this case?

10

1 A. No.

2 Q. Do you know any of the other

3 prospective jurors?

4 A. **No.**

5 Q. Do you have any racial prejudice?

6 A. No?

7 Q. Do you understand an Information is a

8 mere accusation and not evidence, that the defendant

9 is presumed to be proven guilty and the State has

10 the burden of proving the defendant's guilt beyond a

11 reasonable doubt?

12 A. **Yes.**

13 Q. If you were charged with offenses

14 similar to the ones alleged in this case or if you

15 were prosecuting this case would you want 12

16 individuals such as yourself to be on your jury?

17 A. **Yes.**

18 Q. Do you know of any reason at all

19 why you can't be completely fair and impartial in

20 hearing this case?

21 A. **No.**

22 THE COURT: Questions from the State?

23 MR. DIGIACOMO: No, Your Honor, pass for

24 cause.

25 THE COURT: Defense counsel?

11

1 MR. CRISTALLI: Pass.

2 THE COURT: Very well.

3 It appearing to the Court all

4 peremptory challenges have been exercised or waived

5 I'd ask our clerk to swear our jury.

6 [Whereupon, the clerk of the court

7 swore in the jury panel.]

8 THE COURT: Ms. Clerk, call a single

9 name to serve as an alternate.

10 THE CLERK: Badge 534, Regina Meyer.

11

12

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Is it Miss or or Mrs. ?

16 A. **Miss.**

17 Q. Ms. Meyer do you know of any reason

18 why you couldn't serve as a fair juror in this case?

19 A. **No.**

20 Q. Have you served as a juror before?

21 A. **No.**

22 Q. Are you or any close friends or

23 relatives involved in law enforcement?

24 A. **No.**

25 Q. Have you or close friends or family

12

1 members ever been the victim of crime?

2 A. Yes.

3 I'll answer that with another question

4 you're going to ask. I was living with my mom in

5 2004. I was the Defendant against her in two

6 domestic disturbance calls.

7 Q. Let's take one at a time.

8 A. She was the victim.

9 Q. She was the victim.

10 Have you ever been a victim of crime?

11 A. **No.**

12 Q. Your mother was a victim by virtue

13 of --

14 A. **I had altercations with her, yes.**

15 **They are misdemeanors, Your Honor.**

16 Q. Was it one occasion or two?

17 A. **Two.**

18 Q. Were you arrested?

19 A. **Yes.**

20 Q. Were you prosecuted?

21 A. **I pled guilty to a lesser charge.**

22 Q. Was it one time or two?

23 A. **One.**

24 A. **Twice.**

25 Q. Were you incarcerated?

1 A. **Just for two days, separated.**
 2 Q. It was a misdemeanor as you indicated,
 3 right?

4 A. **Yes.**

5 Q. Sort of an informal probation after
 6 that or how did it work out?

7 A. **I had classes from Judge Lippis and**
 8 **I'm bipolar and I ended up in the hospital for a**
 9 **month.**

10 **After that was undertaken to get me**
 11 **stabilized everything was good again.**

12 Q. That's with call an informal
 13 probation. The judge let's do you some things and
 14 have you report back.

15 Do you think you were treated fairly
 16 by the authorities?

17 A. **Yes, very fairly, under the**
 18 **circumstances.**

19 Q. Your mother I take it is well?

20 A. **She is.**

21 **Well, she's been sick with heart**
 22 **disease. I've helped her through that. She had a**
 23 **triple bypass in December and then had a**
 24 **defibrillator put in and I was with her and stayed**
 25 **with her so I tried to make my amends in that way.**

1 Q. Anything about the situation that
 2 you've alluded to that would preclude you from
 3 fairly serving as a juror?

4 A. **No.**

5 Q. Will you follow all of the
 6 instructions of the Court on the law even though
 7 they may differ from your personal conceptions of
 8 what the law ought to be?

9 A. **Yes.**

10 Q. A person accused of committing a crime
 11 is presumed to be innocent in a criminal trial.

12 Do you understand and agree with that?

13 A. **Yes.**

14 Q. Are you aware that the Defendant does
 15 not have to take the stand and testify or offer
 16 any evidence if he chooses not to and you can still
 17 find him not guilty? That's because the burden is
 18 on the state to prove the defendant's guilt beyond a
 19 reasonable doubt.

20 A. **Yes.**

21 Q. Have you or any close friends or
 22 family members ever been involved in the criminal
 23 justice process either in prosecuting a case or as a
 24 witness or Defendant other than what you've
 25 mentioned?

1 A. **Yes.**

2 **When I was a young child my father**
 3 **owned an electronic store. He was a witness in a**
 4 **crime.**

5 **A man had come in and stolen a pen**
 6 **knife or something, flashlight pen and stabbed**
 7 **another man in the street and he had to testify in**
 8 **Court to that.**

9 Q. Was that in Clark County?

10 A. **No. It wasn't.**

11 Q. How old were you at the time?

12 A. **Eleven.**

13 Q. **You have some memory of it?**

14 A. **Yes.**

15 Q. Do you think that would alter in any
 16 way your feelings about this case?

17 A. **No.**

18 Q. Tell us of your current employment,
 19 number of children you may have had from a previous
 20 marriage and how long you've lived in Clark County.

21 A. **I've lived in Clark County since late**
 22 **1995. Second time. I have no children. I've never**
 23 **been married.**

24 **I'm currently employed part-time. I'm**
 25 **on disability as well, part-time with priority**

1 **staffing.**

2 **They do convention work. I've been**
 3 **there for about eight months.**

4 Q. You've never been married?

5 A. **Never been married.**

6 Q. Your mother lives in Las Vegas?

7 A. **Yes.**

8 Q. When did you come here?

9 A. **I came back in 1995. We were all**
 10 **living in Missouri. I was living in Kansas City and**
 11 **they were living in a little town, Anderson.**

12 **I came back in 1995. They came back**
 13 **in 1998. They followed me, my parents, when my**
 14 **father was still alive.**

15 Q. Did you live here one time previous to
 16 that?

17 A. **Yes, from 1983 until 1992.**

18 Q. Were you employed back in those days?

19 A. **Yes, I have a degree from the**
 20 **University of Nevada at Las Vegas.**

21 Q. What kind of work were you doing back
 22 then?

23 A. **Hospitality work, change, mostly**
 24 **change while I was going to school. Change girl.**

25 Q. After you graduated did you take up

1 any profession or what did you do?

2 A. **No, I didn't.**

3 **I wasn't able to find a profession**
4 **with my degree in history. I was working**
5 **sporadically and I worked in retail in Kansas City**
6 **at Dillards.**

7 Q. Are you from that area, originally?

8 A. **No. I'm from Portland, Oregon.**

9 Q. Grew up there?

10 A. **From Portland to Santa Barbara.**

11 Q. Do you have any prejudice as to the
12 charges in this case?

13 A. None.

14 Q. Do you know any of the now jurors or
15 prospective jurors?

16 A. **No.**

17 Q. Do you have any racial prejudice?

18 A. **None.**

19 Q. Do you understand that an Information
20 is a mere accusation and not evidence, that the
21 Defendant is innocent until proven guilty and that
22 the state has the burden of proving the defendant's
23 guilt beyond a reasonable doubt?

24 A. **Yes.**

25 Q. If you were charged with offenses

18

1 similar to the ones alleged in this case or if you
2 were prosecuting this case would you want 12
3 individuals such as yourself to be on your jury?

4 A. **Yes.**

5 Q. Do you know of any reason at all why
6 you can't be completely fair and impartial in
7 hearing this case?

8 A. **No.**

9 THE COURT: Questions from the State?

10 MR. FATTIG: No, judge. Pass for
11 cause.

12 THE COURT: Counsel?

13 MR. CRISTALLI: Pass for cause.

14 THE COURT: State wish to exercise a
15 peremptory challenge?

16 MR. FATTIG: Yes. We would thank and
17 excuse Ms. Connor.

18 THE COURT: Thank you very much, ma'am.

19 THE CLERK: Badge 383, Michael Myers.

20

21

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Mr. Myers, do you know of any reason
25 why you couldn't serve as a fair juror in this case?

1 A. **No, sir.**

2 Q. Have you served as a juror before?

3 A. **No.**

4 Q. Are you or any close friends or
5 relatives involved in law-enforcement or have you
6 been in the past?

7 A. **No.**

8 Q. Have you or close friends or family
9 members ever been the victim of crime?

10 A. **No.**

11 Q. Will you follow all of the
12 instructions of the Court on the law even though
13 they may differ from your personal conceptions of
14 what the law ought to be?

15 A. **Yes.**

16 Q. A person accused of committing a crime
17 is presumed to be innocent in a criminal trial.

18 Do you understand and agree?

19 A. **Yes.**

20 Q. Are you aware that the Defendant does
21 not have to take the stand and testify or offer any
22 evidence if he chooses not to and you can still find
23 him not guilty?

24 That's because the burden is on the
25 state to prove the defendant's guilt beyond a

20

1 reasonable doubt.

2 A. **Yes.**

3 Q. Have you or close friends or family
4 members ever been involved in the criminal justice
5 process either in prosecuting a case or as a witness
6 or Defendant?

7 A. **No.**

8 Q. Tell us of your current employment,
9 marital status, number of children you may have and
10 how long you've lived in Clark County.

11 A. **I'm currently employed as a driver at**
12 **UPS. I've been there for a year. I was**
13 **self-employed for two years doing hardwood floors.**

14 Q. Are you married?

15 A. **No.**

16 Q. Have you been?

17 A. **No.**

18 Q. No children?

19 A. **No.**

20 Q. How long have you lived in Las Vegas?

21 A. **Twenty-five five years, born and**
22 **raised.**

23 Q. Prior to UPS what was your employment?

24 A. **It was hardwood floors.**

25 Q. Installing floors or selling products?

1 A. **Installing hardwood floors.**
 2 Q. You did that for two years?
 3 A. **Yeah.**
 4 Q. Prior to that were you employed?
 5 A. **Yeah. I worked three years at the Las**
 6 **Vegas Convention Center.**
 7 Q. Any other work as an adult?
 8 A. **No.**
 9 Q. Were you ever in the military?
 10 A. **No.**
 11 Q. Where are you from originally?
 12 A. **From Las Vegas.**
 13 Q. Do you have any prejudice as to the
 14 nature of the charges in this case?
 15 A. **No.**
 16 Q. Do you know any of the other
 17 jurors?
 18 A. **No.**
 19 Q. Do you have any -- do you have any
 20 racial prejudice?
 21 A. **No.**
 22 Q. If you were charged with offenses
 23 similar to the ones alleged in this case or if you
 24 were prosecuting this case would you want 12
 25 individuals such as yourself to be on your jury?

1 A. **Yes.**
 2 Q. Do you know of any reason at all why
 3 you can't be completely fair and impartial in
 4 hearing this case?
 5 A. **No, sir.**
 6 THE COURT: Questions from the State?
 7 MR. FATTIG: No. Pass for cause.
 8 THE COURT: Defense counsel, questions?
 9 MR. CRISTALLI: Pass.
 10 THE COURT: Very well.
 11 Mr. Cristalli, do you wish to exercise
 12 a peremptory challenge?
 13 MR. CRISTALLI: Court's indulgence.
 14 We'll pass.
 15 THE COURT: Swear in Mr. Myers, Ms.
 16 Clerk.
 17 [Whereupon, the juror sworn in by the
 18 clerk of the court.]
 19 THE COURT: We'll read the charging
 20 document.
 21 Does counsel waive the reading of the
 22 list of names attached thereto?
 23 MR. FATTIG: Yes.
 24 MR. CRISTALLI: Yes.
 25 [Whereupon, the clerk of the court

1 read the information, charging document to the
 2 jury.]
 3 THE CLERK: To which the Defendant has
 4 entered pleas of not guilty.
 5 THE COURT: Thank you.
 6 Ladies and Gentlemen, what I will now
 7 read is intended to serve as an introduction to the
 8 trial of this case. It is not a substitute for the
 9 detailed instructions on the law which I will give
 10 to you at the close of case before you retire to
 11 consider your verdict.
 12 This is a criminal matter commenced by
 13 the State of Nevada, which I may sometimes refer to
 14 as the State, against Erick Brown. The case is
 15 based upon the information which has been read to
 16 you by the clerk.
 17 You should distinctly understand that
 18 the Information is simply a charge and it is not in
 19 any sense evidence of the allegations it contains.
 20 The Defendant has pled not guilty to
 21 the information. The State therefore has the burden
 22 of proving each of the essential elements of the
 23 Information, beyond a reasonable doubt.
 24 The purpose of this trial is to
 25 determine whether the State will meet that burden.

1 It is your primary responsibility as jurors to find
 2 and determine the facts.
 3 Under our system of criminal procedure
 4 you're the sole judge of the facts. You're to
 5 determine the facts from the testimony you hear and
 6 other evidence, including the exhibits introduced in
 7 Court.
 8 It is up to you to determine the
 9 inferences which you feel may be properly drawn from
 10 the evidence.
 11 The parties may sometimes present
 12 objections to some of the testimony or other
 13 evidence. At times I may sustain such objections or
 14 direct that you disregard certain testimony or
 15 exhibits.
 16 You must not consider any evidence to
 17 which an objection has been sustained or which I've
 18 instructed you to disregard.
 19 If you cannot hear a witness please
 20 raise your hand as an indication. You're informed,
 21 you may, if you wish, take notes during the trial.
 22 You are admonished that no juror may declare to any
 23 fellow juror any fact of this case which is within
 24 his or her own knowledge.
 25 If any juror has learned during the

RA000012

1 trial that he or she or any other juror has personal
2 knowledge of any fact in controversy in this case he
3 shall disclose such situation to me in the absence
4 of the other jurors.

5 This means if you learn during the
6 course of this trial that you were acquainted with
7 the facts of the case or one of the witnesses and
8 you've not previously told me of this relationship
9 you must then close that fact to me.

10 You communicate to the Court through
11 the bailiff.

12 You will be given an opportunity to
13 ask questions, written questions of any of the
14 witnesses called to testify in this case. You are
15 not encouraged to ask large numbers of questions
16 because that is the primarily responsibility of
17 counsel.

18 Questions may be asked only in the
19 following manner: If, after both lawyers have
20 finished questioning of the witness and only at this
21 time, if there are additional questions you would
22 like to ask the witness you should write your
23 question down with your juror badge number and
24 signature below it and raise your right hand.

25 The bailiff will pick up your question

1 and deliver it to the Court.

2 After consulting with counsel I will
3 deem if your question would result in an unfair
4 trial or it's legally improper. No adverse
5 inference should be drawn if the question is not
6 brought.

7 No emphasis should be placed on the
8 answer to the question merely because the question
9 came from the juror.

10 You're admonished that you are not to
11 visit the scene of any of the acts or occurrences
12 made mention of during this trial unless
13 specifically directed to do so.

14 Does counsel wish to invoke the
15 Exclusionary Rule?

16 MR. FATTIG: Yes, judge.

17 MR. CRISTALLI: Yes, Your Honor.

18 THE COURT: We'll proceed on that
19 basis.

20 Your opening remarks, counsel.

21 MR. FATTIG: May it please the Court,
22 counsel, Ladies and Gentlemen of the Jury. Just
23 prior to 5:00 p.m. on November 23, 2002, an
24 African/American male who was described to the
25 police that day as five foot seven, 180 pounds

1 entered into Las Vegas Manufacturing Jewelers which
2 is located at 2829 North Green Valley Parkway which
3 is in a strip mall on the corner of Sunset and Green
4 Valley Parkway.

5 It was a Saturday evening. It was
6 getting, or dark at the time. The evidence will
7 show that that same male had been in that same store
8 earlier that day and had been talking to an employee
9 named Emmett Connelly. The middle name is James,
10 and he goes by Jim.

11 You'll hear this individual had a
12 request of Mr. Connelly. He had a bracelet and a
13 portion of it so it could be made into an earring.

14 This request was made by Mr. Connelly
15 and later in the day this same male came back to
16 talk to Mr. Connelly about the request he had made
17 earlier.

18 Right around 5:00 p.m., just a few
19 minutes before the man entered the store, another
20 man came into the store. There's an entryway where
21 you have to be buzzed in in order to get inside the
22 store. There's basically two doors in a secure
23 area, inner perimeter, essentially.

24 The second individual that came in,
25 you're going to hear he was described that day as

1 five foot five inches, approximately 200 pounds.

2 Mike Golsecker who was there that
3 particular time had to look at this man before he
4 buzzed him in. He looked at him and he buzzed him
5 into the store.

6 He greeted the man in the middle of
7 the store. You'll hear that the man talked to him
8 briefly and requested -- he acted as if he was
9 removing an earring from his ear. He held it out
10 and he asked Mr. Golsecker if Mr. Golsecker could
11 clean his earring.

12 Mr. Golsecker said he certainly could.

13 Mr. Connelly was dealing with the
14 shorter man. Mr. Golsecker was dealing with the
15 taller man.

16 The evidence will be that Mr.
17 Golsecker walked back in the back right position of
18 the back area. There is a machine, ultrasonic
19 machine that cleans jewelry.

20 The evidence will be that Mr.
21 Golsecker had the earring that was given to him by
22 this larger individual. Mr. Connelly had noticed
23 when he had been dealing with the shorter
24 individual, he had noticed Mr. Golsecker met this
25 taller individual as he went to the bathroom as

1 well.

2 When he saw Mr. Golsecker go put the
3 jewelry into the machine, that piece of earring he
4 had from the taller man, Mr. Connelly began walking
5 out to the front to deal again with the shorter man.

6 The evidence will be that he walked
7 down the hallway to deal with the shorter man. He
8 was greeted by that same shorter man and he looked
9 up, saw the man.

10 He was immediately punched in the face
11 or head area two times.

12 He then saw the taller man that had
13 been greeted by Mr. Golsecker and the taller man had
14 a gun.

15 It will be described as a dark,
16 bluish/black large framed semi-automatic hand gun,
17 and it was pointed at his head.

18 The men were yelling at him to get
19 down on the ground and they are pushing them and
20 they push them a little bit, just a few feet into
21 that back room area where Mr. Golsecker was.

22 The evidence will be that you will
23 hear from these gentlemen that they were forced to
24 the ground, that Mr. Connelly he was hit, first to
25 the ground, and his hands were tied behind his back

30

1 with a zip tie device. He was forced to lay on his
2 stomach.

3 Mr. Golsecker will describe similarly
4 being tied up, being hit, being tied up with his
5 hands behind his back, laying on the his stomach.

6 Mr. Golsecker will tell you when he
7 was hit it caused him to start to bleed. As he was
8 waking on the ground in that back room of his store
9 where he worked the blood from his face started to
10 pool.

11 He was forced to move his head
12 slightly.

13 When this had the taller man who had
14 the gun -- he said something to the effect of don't
15 move, and he hit him in the head again.

16 This caused Mr. Golsecker to lose
17 consciousness at this point. Mr. Connelly was
18 laying in the back area just a few feet from Mr.
19 Golsecker, did lose consciousness.

20 The men began their attention on him
21 and start yelling at him where is the videotape?
22 There's a videotape system in the store. It was
23 collected.

24 They wanted to know where the keys
25 were; they wanted to know where the money was; they

1 wanted to know about the safe. They were yelling
2 names.

3 The shorter man who knew his name as
4 Jim, would kick him and say this is for you, Jim,
5 and stand on him.

6 Over the next 10 to 15 minutes you'll
7 hear they ransacked that particular store. They
8 took items that were the more valuable items.

9 You'll hear about several hundred
10 pieces of jewelry that were taken. You're going to
11 hear that Mr. Connelly peered as he laid there and
12 he hears the front door to the store being opened,
13 someone being buzzed in.

14 He hears it twice. As this was
15 occurring he's unable to see, because they had
16 placed some sort of -- they will describe it as a
17 towel or some of the of material over his head at
18 this point.

19 As he laid it -- he distinctly
20 remembers the front door was buzzed in twice while
21 these men were going about their business.

22 You'll hear after, towards the end of
23 this robbery, that the shorter man, the man that had
24 been kicking Mr. Connelly, the man that had come in
25 originally to ask for this earring to be fixed,

32

1 ripped Mr. Connelly's distinctive watch right off
2 his arm.

3 He said this baby -- it's a red-faced
4 Rolex. He took several unique pieces of jewelry.

5 You'll hear from Mr. Golsecker and Mr.
6 Connelly about some of the pieces that were taken
7 from the jewelry shop itself.

8 You're going to hear they are one of a
9 kind pieces and that they spent hours looking at
10 these same pieces of jewelry later and that they
11 recognized them when they saw them again, and they
12 did a few days later.

13 After the shorter man steals the
14 jewelry, he stole some rings and a bracelet and a
15 red-faced Rolex watch from Mr. Connelly. After the
16 men left, Mr. Connelly was able to wiggle his arms
17 free.

18 He waited a bit to make sure the coast
19 was clear. He got up and he ended up -- Mike
20 Golsecker at that point comes to. He ends up
21 cutting free Mike Goldsacker's zip tie. Then people
22 in the front of the store concluded that a robbery
23 had just taken place. The police show up within
24 minutes.

25 In fact, they are there by the time he

RA000014

1 gets off the phone with 911. He goes outside and
2 greets them.

3 We will -- you will hear about the
4 descriptions he gave to the police within moments.

5 You're also going to hear that when
6 the Henderson Police got this information they came
7 out to the scene. They got the descriptions.

8 This information was shared with other
9 jurisdictions. One of the jurisdictions that it was
10 shared with was Los Angeles.

11 You'll hear about a task force that
12 the Los Angeles Police Department was involved in,
13 that this task force has been developed because in a
14 lot of jewelry stores around the country -- people
15 who do these robberies attempt to fence or get rid
16 of the property in Los Angeles.

17 There is a task force for this.
18 You'll hear that on November 26, 2002, three days
19 after the the armed robbery in Henderson sore, a guy
20 named Fred Forshammi (phonetic) who works at a place
21 called Princess Jewelers in Los Angeles was working
22 when he had contact with two people.

23 He has identified those two people and
24 is expected to identify them again as Alfred Maurice
25 Blackwell and Erick Brown, the Defendant in this

1 case.

2 Three days after the crime the
3 evidence will be Erick Brown has bags of jewelry
4 with him. Mr. Forshammi is going to tell you he
5 used to be a fence, specifically for jewelry.

6 How, at this kind of price, that he
7 was convicted of that crime in the past and in this
8 particular case he made contact with these two
9 people and he suspected the property that Erick
10 Brown possessed, hundreds of pieces of jewelry that
11 he carried, was stolen.

12 The evidence is going to be -- you're
13 going to hear that Mr. Forshammi met with Mr. Brown
14 and Mr. Blackwell was with him, that Mr. Blackwell
15 fits the description of the five feet seven man that
16 had the gun.

17 You're going to hear that Mr. Brown
18 wanted Mr. Forshammi to fix the red-faced Rolex,
19 because the band had broken. And that Mr. Forshammi
20 had pretended to attempt to fix the red-faced Rolex
21 that Mr. Brown wanted \$50,000 in cash for this
22 jewelry.

23 Mr. Forshammi didn't want to pay that
24 much. He offered 20,000. Basically on the 26th
25 there wasn't a deal. The parties split up.

1 You'll hear on the next day Erick

2 Brown and Alfred Maurice Blackwell went back to Mr.
3 Forshammi, and there was additional negotiations and
4 essentially no deal was ever made, but Mr. Brown --
5 Mr. Forshammi saw this jewelry.

6 You'll hear about surveillance being
7 done by the task force made up of FBI agents and
8 other task force police at the Hyatt Hotel not too
9 far from the jewelry district in Los Angeles, that
10 members of the task force made contact with the
11 Defendant Erick Maurice Blackwell and they also made
12 contact with Erick Brown.

13 They made contact with him and he had
14 a bag and he -- in that bag it was discovered
15 hundreds of pieces of jewelry. He was careful that
16 the police make contact with Mr. Brown, the
17 Defendant.

18 If they find this jewelry, he's
19 finished. He was found with the red-faced Rolex,
20 Mr. Blackwell was found with it.

21 He came out of the room he shared with
22 Mr. Brown, room 107. Now, the men fit the
23 description, but there's been no identification.
24 The jewelry fits the general description of what was
25 taken, but there needs to be additional

1 investigation clearly and that's what happens.

2 Members of the task force then E-Mail.

3 They take photographs, property found in Mr.
4 Blackwell's room. They take photographs of the
5 individuals, Mr. Brown and Mr. Blackwell.

6 They E-Mail that information up to
7 Henderson Police Department. Henderson Police
8 Department and detectives do photographic lineups.

9 Typically the way these things are,
10 they take a photograph of Mr. Brown along with five
11 other African/American males. There were five other
12 black males with similar characteristics, just the
13 photograph and just the head.

14 You'll see these exhibits. They will
15 be evidence in the case. They then showed them to
16 Mr. Connelly, Mr. Golsecker.

17 You'll hear Mike Golsecker testify
18 that it was Erick Brown, the person he had the most
19 contact with as being the man who had hit him.

20 This is the man who hit me, he wrote.
21 You'll hear that the jewelry was found in
22 Mr. Brown's possession. Photographs were shown to
23 Mr. Golsecker.

24 They both identified the pieces of
25 jewelry found in Erick Brown's possession as having

1 stolen this property as well as the red-faced Rolex
2 that was in Mr. Blackwell's possession.

3 Opening statements essentially are
4 coming attractions, if you will. It's an
5 opportunity for each side to let the jury know some
6 some of the evidence you'll hear.

7 It's certainly not all the evidence
8 but it gives you a sampling highlights, if you will,
9 of what you're going to see in next few days.

10 At this point in the case you have to
11 be concerned about the facts, because you are the
12 Fact Finders.

13 I think at the end of the case Judge
14 Mosley would give you the instructions which is give
15 to you the law. Then you get to the chance to
16 deliberate.

17 When you deliberate in this case
18 you'll reach a couple of conclusions: You'll reach
19 the conclusion that Mike Golsecker and Emmet
20 Connelly were beaten, robbed, were seized, confined,
21 kidnapped; that the people that entered into this
22 jewelry store did so with an intent to commit
23 robbery and an intent to commit the crime, and that
24 the people that did this were Alfred Blackwell and
25 Erick Brown, and at the end of case we're going to

1 ask you to find Mr. Brown guilty of burglary with
2 firearm, kidnapping victim over 65, resulting in
3 substantial bodily harm, and robbery with a deadly
4 weapon. One count victim over 65, one count elderly
5 person.

6 THE COURT: Thank you, Mr. Fattig.
7 Mr. Cristalli, do you wish to make your
8 opening statement at this time or do you wish to
9 reserve your right?

10 MR. CRISTALLI: Your Honor, I will
11 make an opening statement.

12 Thank you, Your Honor.

13 May it please the Court, counsel,
14 Ladies and Gentlemen of the Jury.

15 We spoke a little bit at Voir Dire and
16 so did the judge about reasonable doubt. It's their
17 duty to prove this case. It's their duty to prove
18 this case to you, beyond a reasonable doubt.

19 I don't have to do anything.
20 Mr. Brown doesn't have to do anything. Mr.
21 Modafferi doesn't have to do anything in this case.

22 Please do not lose sight of the fact
23 that the evidence they present must be sufficient to
24 establish guilt, beyond a reasonable doubt.

25 They are not going to be able to do it

1 in this case. They aren't going to be able prove,
2 beyond a reasonable doubt, that Erick Brown was the
3 individual that committed to crimes as alleged by
4 the State.

5 What is some of the evidence you'll
6 here in this case?

7 First of all, what you'll hear is that
8 when the individuals came in -- and we don't
9 question the fact there was a robbery. We don't
10 question the fact that there was a burglary.

11 It happened, but Mr. Brown didn't do
12 it.

13 Some of the evidence that wasn't
14 developed in this particular case, you're going to
15 hear evidence of that.

16 What do we know?

17 Well, after the perpetrators had left
18 the scene we have police officers come to the scene.
19 We know through the testimony of Mr. Connelly and
20 Mr. Golsecker and other police officials that the
21 perpetrators didn't wear gloves, that they touched
22 everything in the store, that it was a jewelry
23 store.

24 We're all familiar with jewelry
25 stores. It's glass, it's pristine, it's wiped down

1 so everybody can take a look at the jewelry and
2 hopefully buy it.

3 We want to make it as pristine and
4 nice as we possibly can. A perfect receptacle for
5 fingerprint analysis.

6 We're also going to hear testimony
7 that the perpetrators touched the glass, touched a
8 lot of different areas within the location.

9 At the time of the event when police
10 arrived there was no crime scene analyst. You'll
11 hear testimony that typically at any particular
12 crime scene when there's the forensics involved
13 there will be a Crime Scene Analyst that will come
14 to the scene and do whatever the forensics they do,
15 whether it be DNA, whether it be fingerprint
16 analysis.

17 At that particular time because they
18 were in Henderson they didn't have an available
19 Crime Scene Analyst.

20 The day after the Crime Scene Analyst
21 came in and dusted for prints and actually recovered
22 a number of prints, latent prints, we'll call them.
23 You'll hear testimony as it relates to that.

24 Not one of the latent fingerprints
25 that were recovered from the scene, not one of those

1 fingerprints matched the fingerprints of Mr. Erick
2 Brown.

3 Despite the fact that the testimony
4 that you will hear is that the taller man,
5 allegedly, Mr. Brown, based on the testimony of Mr.
6 Connelly and Mr. Golsecker, and how the evidence
7 developed, touched things. No positive fingerprint
8 identification.

9 Also, it's alleged that the taller
10 individual who is alleged to have been Mr. Brown
11 wore an earring. The earring was given to Mr.
12 Golsecker.

13 The earring, from the evidence you'll
14 hear, was recovered by police at the apartment -- or
15 not recovered. I don't know, but certainly a viable
16 piece of evidence.

17 You're not going to hear any evidence
18 to suggest that that evidence was either developed
19 for DNA testing or any other type of forensic
20 testing.

21 You're not going to hear any evidence
22 from either or all these witnesses that Mr. Brown
23 ever wore an earring.

24 What else do we know?

25 Well, the big issue here is the photo

1 identification. We got Mr. Brown in California with
2 the proceeds from the crime.

3 Just remember there is no evidence to
4 suggest the fact he will have the proceeds of the
5 crime in California, that he automatically is the
6 perpetrator of the offense.

7 As the testimony will develop you'll
8 see why that is, but in terms of the identification
9 what do we know about it?

10 What was the procedure and what was
11 the policy in place when the identification was
12 developed?

13 You'll hear testimony from an expert
14 in the area of photo identification. You'll hear
15 evidence of a policy and procedure from the United
16 States Department of Justice guidelines as to how to
17 properly assemble a photographic lineup.

18 Some of the things you're going to
19 hear is when you assemble a photographic lineup,
20 okay, you want to make it as sterile as you possibly
21 can. You want to take away any suggestion, if
22 necessary, from the lineup as possible.

23 What that means is the individual who
24 is administering the test, say one of the police
25 officers, should not know who the suspect is or

1 whether or not the suspect is in the six-pack
2 lineup.

3 We don't want the possibility of
4 suggestiveness in the lineup. We know that through
5 the evidence that didn't occur in this particular
6 case.

7 We know Detective Price who was the
8 investigator and detective in this particular matter
9 was working with police authorities in California,
10 that she knew that they had Erick Brown in custody.

11 They sent photographs of Erick Brown.
12 She assembled a six-pack lineup.

13 She put the six-pack up there and
14 together she went over to Mr. Golsecker and she was
15 the one who administered the test to him.

16 Another thing you're going to hear
17 about -- what the expert will tell you is it's all
18 about the style of the hair, the color of the skin,
19 how closely he was matched to the others.

20 Specifics are very important. The
21 more specific -- before they get to the individual
22 that's going to try to identify them, the better it
23 is. Then you could be more specific in terms of
24 developing the alternatives.

25 What do we know in this case? You're

1 informed it was a photographed six-pack lineup. The
2 expert testimony in this case through the Department
3 of Justice guidelines will tell you that that is not
4 the most reliable. It is not the most objective and
5 most re -- it's the most susceptible to
6 suggestiveness. The best possible way to first try
7 to identify somebody is through a physical lineup,
8 and you'll hear that through the testimony.

9 You'll have a better opportunity to
10 make an accurate and objective identification. That
11 wasn't done in this case.

12 The testimony you will hear and
13 through the guidelines as suggested by the
14 Department of Justice do a photographic
15 interpretation.

16 We don't how the individual who was
17 administering the test performed it, so put down one
18 picture, have the individual take a look at it, take
19 it away, put down another picture, have the
20 individual take a look at it, take it away.

21 It is more objective because victim,
22 could not, in any way, shape or form tell whether or
23 not the suspect is in the photographic lineup and
24 which one twice.

25 Another thing you'll hear that

RA000017

1 shouldn't be done in this case, you shouldn't
2 suggest if you were administering it, whether or not
3 the suspect is in the lineup or not because if you
4 suggest that to the individual who is trying to make
5 identification, then he knows he's got to try to ID
6 somebody. He knows that the suspect is in there.

7 In this case you'll hear testimony
8 that the evidence property recovered was first given
9 to Mr. Golsecker and Mr. Connelly to identify and
10 then the photographic lineup was given, so
11 inherently the individual who was sitting there --
12 and we don't know whether or not they were told that
13 the suspect was in the lineup, but one of the things
14 you'll hear through the expert testimony is you
15 shouldn't get that type of information.

16 It suggests that the perpetrator is in
17 the lineup. It's very important, because each one
18 of these issues takes away objectiveness through the
19 expert testimony and through the evidence that we
20 will hear in this trial that makes this
21 identification less than reliable.

22 We know this was a cross-racial
23 identification through the testimony, but if you
24 think about it, we tend to be able to identify
25 folks, we tend to identify people of our race more

1 easily than if we had to identify somebody with a
2 different race.

3 In addition to the inappropriate
4 policies and procedures that were administered in
5 this particular case, we -- to make it more
6 difficult we have a cross-racial issue that has was
7 to be addressed as well.

8 What else do we have about the
9 identification and why may it be inherently
10 unreliable through the evidence?

11 The information we have in terms of
12 the description of the suspects isn't the 911 call.
13 You'll hear evidence pertaining to the 911 call.

14 The 911 call spoke to the second
15 individual, the taller individual, as black, tall,
16 thin, with short black hair, dark shirt and dark
17 pants.

18 That's it. That's what we have.
19 That's the most recent description of the individual
20 who now has been alleged to be Mr. Brown.

21 Not very specific. Pretty generic.

22 That's all we have, initially, as the
23 case progressed, as individuals got identified,
24 descriptions got more specific.

25 What else do we know in terms of some

1 of the description issues that may make this
2 identification more than not so reliable through the
3 evidence?

4 Well, we know that Emmet Connelly, one
5 of the victims in this case, could not identify
6 Mr. Brown. He had an opportunity to see both
7 individuals but he could not positively identify
8 Mr. Brown.

9 He said the tall guy had more hair
10 than the short guy. That's an interesting fact that
11 you have to pay attention in this case.

12 He said Erick Brown, who he then later
13 identified, had more hair than the shorter guy, who
14 was Mr. Blackwell. You'll see through the evidence
15 that's absolutely not true.

16 When Mr. Brown was taken into custody
17 in Los Angeles, only a couple days after the events,
18 he had the same type of hair he does today.

19 Mr. Blackwell has hair. You'll see
20 that. There is a piece of the description that is
21 inconsistent with the identification.

22 Well, what else do we know about
23 Mr. Golsecker's identification? He's the one
24 that -- he identified Mr. Brown. Mr. Connelly could
25 not.

1 What other issues existed through the
2 evidence that you will hear that makes this a little
3 bit not so reliable in terms of the identification?

4 It's a traumatic event. They were
5 just held up at gunpoint and just sustained a severe
6 beating.

7 Through the testimony of our expert
8 witness that is also a very important issue in terms
9 of making an identification or in terms of assessing
10 the value of the identification.

11 He will talk about traumatic events
12 and how it affects an individual's ability to
13 recall, after also taking into consideration the
14 procedures that were done or not done in this
15 particular case and also the fact it was a
16 cross-racial identification.

17 Let's talk more about the evidence as
18 it relates to the identification.

19 One of the interesting things in this
20 case that you'll hear is Mr. Connelly says that he
21 -- and remember when the two suspects were in the
22 jewelry store, one of them referred to the other as
23 Greg or Craig, okay?

24 Interestingly enough, results were
25 developed and there were descriptions and as they

RA000018

1 were identified something changed. All of a sudden
2 now, at a hearing that Mr. Connelly was at, he says,
3 no, not Craig or Greg.

4 I remember explicitly who it was.
5 They referred to one of the individuals referred to
6 Erick, Erick Brown.

7 Now he's changed his tune. He's asked
8 why is that?

9 Well, because I read on a subpoena the
10 name Erick Brown so now I know it was Erick.

11 He mixes it up in his mind as the
12 evidence is developed over the course of this trial.
13 We have the original description, black, tall, thin,
14 dark hair, dark shirt and dark pants.

15 It gets developed a little more. Tall
16 gets now identified to 6 foot five, then, weight is
17 200 pounds.

18 It later then gets bumped up to 250
19 which more -- 250, which more accurately represents
20 Mr. Brown's proper weight, very technical things in
21 terms of reliability.

22 You'll hear testimony, yeah, the tall
23 guy, this guy had an earring in his ear. He took it
24 out, gave it to us, we went to clean it. There is
25 no evidence to suggest whatsoever Mr. Brown didn't

1 wear an earring.

2 Is there any other evidence that you
3 will hear during the course of this trial?

4 You'll hear the name Martell Williams,
5 not Erick Brown, not Arthur Blackwell.

6 Martell Williams, what do we know
7 about him and what evidence am I going to hear as it
8 relates to Martell Williams?

9 Sometime later Martell Williams' name
10 was thrown around initially when Mr. Brown was taken
11 into custody in Los Angeles. Nothing was really
12 done about it.

13 Sometime later there was a search done
14 of Martell Williams' apartment. Well, Martell
15 Williams, during the course of the search of his
16 apartment, all of a sudden he had proceeds of the
17 crime of the jewelry store robbery in Las Vegas.

18 He had proceeds of that crime.

19 Do you know what else we know about
20 Martell Williams? He wears an earring.

21 What else do we know about him?

22 You know, does he fit the description
23 or doesn't he?

24 What you're going to hear through the
25 the testimony is that Martell tell Williams is

1 six'one", 187 pounds. He has short cropped hair.
2 He has the proceeds of the crime. He wears an
3 earring.

4 He wasn't really developed in this
5 case. While six foot one, 176 pounds, to a shorter
6 guy who is caucasian, does that fit the physical
7 initial description of what was given?

8 I leave it to you, Ladies and
9 Gentlemen.

10 The bottom line, Ladies and Gentlemen
11 is this: It's their burden to prove this case.

12 When you hear all the evidence in this case you'll
13 say to yourself there's more evidence against
14 Martell Williams than there is against Erick Brown.

15 When you do that the only verdict that
16 you can return in this case, because you're going to
17 return a verdict of not guilty, because they won't
18 be able to prove it.

19 Thank you.

20 THE COURT: Thank you counsel. State's
21 first witness, please.

22 MR. FATTIG: Emmet Connelly.

23

24

25

EMMET JAME CONNELLY,

1 a witness herein, was sworn by the clerk of the
2 court, was examined and testified as follows:

3

4

5

6

EXAMINATION

7 BY MR. FATTIG:

8 Q. Can you state your name and spell your
9 last name for the record?

10 A. Yes. Emmet James C-o-n-n-e-l-l-y.

11 Q. I'm going to direct your attention
12 back to November 23, 2002.

13 Were you working at Las Vegas
14 Manufacturing Jewelers?

15 A. Yes.

16 Q. Is that located at 2829 North Green
17 Valley Parkway in Henderson, Nevada?

18 A. Yes.

19 Q. How long had you worked there
20 approximately?

21 A. Approximately six, seven months,
22 something like that.

23 Q. You do in fact work -- did you, in
24 fact, work November 23 of 2002?

25 A. Yes.

RA000019

- 1 Q. What was your shift that day?
- 2 A. **Normally, I think we opened at 10:00**
- 3 **o'clock, if I'm not wrong, 10 to about six.**
- 4 Q. Did you have occasion to have a
- 5 customer come in at about 5:00 o'clock that
- 6 afternoon?
- 7 A. **Yes.**
- 8 Q. Had you seen that customer earlier at
- 9 some point?
- 10 A. **Yes.**
- 11 Q. When had you seen that customer
- 12 earlier?
- 13 A. **A few hours earlier, four hours or**
- 14 **something like that, sir.**
- 15 Q. Could you describe what that customer
- 16 looked like?
- 17 A. **He was a black man, about five seven**
- 18 **or five eight, kind of a light build.**
- 19 Q. When you say light build what does
- 20 that mean?
- 21 A. **He wasn't fat or heavy. He was**
- 22 **relatively thin, I guess you could say.**
- 23 Q. What about his hair? Did he have
- 24 hair?
- 25 A. **Yes, he did.**

- 1 Q. What kind of hair was it?
- 2 A. **Fairly short hair, sir.**
- 3 Q. When he came in the first time what
- 4 was the purpose of him coming in?
- 5 A. **He come in with a bracelet of some**
- 6 **kind and he either wanted it repaired or turned into**
- 7 **an earring, if I recall right.**
- 8 Q. Was there an agreement to do that?
- 9 A. **Yes, there was.**
- 10 Q. When you make an agreement to do some
- 11 work for a customer how does that occur?
- 12 How is that documented?
- 13 A. **What we do is there is a little gray**
- 14 **envelope and we write the name and phone number and**
- 15 **often times an address and then -- on the envelope.**
- 16 **We turn it around and do the same thing again.**
- 17 **The envelopes have individual numbers**
- 18 **and of course the tag does and we tear the tag off**
- 19 **and give it to them and then seal the envelope.**
- 20 Q. Do you mark down information about the
- 21 person?
- 22 A. **Information?**
- 23 Q. The name and whatnot?
- 24 A. **Yes.**
- 25 Q. And you're relying on that person to

- 1 be truthful when you're writing down that
- 2 information?
- 3 A. **Yes.**
- 4 Q. Did you do that with that individual,
- 5 the five foot seven guy that came in earlier that
- 6 day?
- 7 A. **Yes.**
- 8 Q. And then there was an occasion where
- 9 he came in later about 5:00 o'clock?
- 10 A. **Yes.**
- 11 Q. Do you know what the purpose was when
- 12 he came in later -- had the work been done?
- 13 A. **No.**
- 14 **We had -- I got to looking at it a**
- 15 **little earlier in the day. I said there's another**
- 16 **way to do this.**
- 17 **Maybe I should wait until he walks**
- 18 **back in or contacts me and we'll talk about that.**
- 19 Q. When you say another way to do it,
- 20 what do you mean?
- 21 Why didn't you do it the way he wanted
- 22 to do it?
- 23 A. **I thought I could save him some money,**
- 24 **sir.**
- 25 Q. Was he by himself when he first came

- 1 in that second time?
- 2 A. **Yes.**
- 3 Q. Can you describe how someone would
- 4 enter into the store at Las Vegas Manufacturing
- 5 Jewelers?
- 6 A. **We had kind of a cage and we had**
- 7 **remote controls that we would actually have to click**
- 8 **and it would because and that's the only way they**
- 9 **could get in.**
- 10 Q. There's -- is it fair to say there's
- 11 kind of an entryway and then you have to get into
- 12 through the second door in order to actually get
- 13 into the store?
- 14 A. **Yes.**
- 15 Q. And then you have to get buzzed in
- 16 through that second door by someone?
- 17 A. **Yes.**
- 18 Q. Then who has the buzzers?
- 19 A. **Me and my boss did at the time.**
- 20 Q. Do you remember if you let that man in
- 21 that second time at about 5:00 o'clock?
- 22 A. **The guy with the repair, yes.**
- 23 Q. You recognized him from earlier in the
- 24 day?
- 25 A. **Yes, I did.**

RA000020

1 Q. Was there anything unique about that
2 guy?

3 A. **He kinds of acted like he was, I don't**
4 **know, just acted funny.**

5 Q. When you say funny what do you mean?

6 A. **A little bit odd. It's hard -- it**
7 **just wasn't quite right.**

8 **The appearance wasn't quite there. He**
9 **acted, I don't know, just a little bit odd.**

10 Q. Did he move in an odd way or did he
11 act in an odd way?

12 A. He moved in an odd way and he kind of
13 acted in a little bit of an odd way.

14 Q. Can you be any more specific in terms
15 of his movement?

16 A. **He didn't walk like you do now.**

17 Q. Was there a limp?

18 A. **I'm thinking it was kind of a limp or**
19 **he drug a foot or something. Something wasn't**
20 **right.**

21 Q. When he came in that second time what
22 was the conversation at that point?

23 A. **We normally have them come in and we**
24 **have a little desk there and we set them down to**
25 **talk about something.**

1 **And I told him I'll go get the repair**
2 **and I'll show you. I think I've got a way of saving**
3 **you money.**

4 Q. Was he -- did he seem amenable to
5 that?

6 A. **Yes, he actually reached in his**
7 **pocket. He says here, I got money for the repair**
8 **now.**

9 **I said let me show you something first**
10 **or words to that effect.**

11 Q. Then what did you do?

12 A. **I went back in the back to look for**
13 **the repair or the grey envelope.**

14 Q. Did it have the bracelet in it?

15 A. **Yes.**

16 MR. FATTIG: Court's indulgence.

17 May I approach the witness?

18 THE COURT: You may.

19 BY MR. FATTIG:

20 Q. I'm going to show you a couple of
21 exhibits. State's proposed exhibit 55, initially, I
22 ask you if you recognize that.

23 A. **I sure do.**

24 Q. What does that show?

25 A. **It shows the hallway of the jewelry**

1 **store.**

2 Q. That's kind of the back area that you
3 would have to walk to?

4 A. **This would be the back area. This**
5 **would probably be the entrance to my office.**

6 Q. On the left there?

7 A. **Yes.**

8 Q. And 56 is kind of a similar photo.
9 Little bit farther back?

10 A. **Yes.**

11 Q. And this is proposed 63.
12 What does that show?

13 A. That shows the back room where
14 basically all the repairs and the work is done and
15 watch parts.

16 Q. Do these fairly and accurately depict
17 the hallway of the store and that back area?

18 A. **It is very accurate, yes.**

19 MR. FATTIG: Move to admit 55, 56 and
20 63.

21 THE COURT: Any objection?

22 MR. CRISTALLI: No objection.

23 THE COURT: It is received.

24 BY MR. FATTIG:

25 Q. Showing you, sir, there is a screen

1 there in front of you.

2 THE COURT: Is this screen here?

3 MR. FATTIG: To your right there.

4 THE WITNESS: Nothing is on, sir.

5 MR. FATTIG: It's also to your left
6 there.

7 THE COURT: This might be easier.

8 BY MR. FATTIG:

9 Q. This is State's exhibit 5. Would that
10 be the hallway that connects the customer area with
11 the back of the store?

12 A. **Yes.**

13 Q. Did you have to go down that hallway
14 to pick up that individuals -- the grey envelope
15 with his bracelet?

16 A. **Yes.**

17 Q. Did you notice if anyone else entered
18 the store about that time?

19 A. **When I was walking back I heard the**
20 **buzzer click and I seen another man walk in.**

21 Q. Can you describe what that man looked
22 like?

23 A. **He was a black man. He was pretty**
24 **tall. I would say six, five, and he weighed -- he**
25 **was kind of thin.**

RA000021

1 **Medium build, I guess in the two**
 2 **hundreds, maybe 225, something like that.**
 3 Q. Did you actually buzz that guy in or
 4 did somebody else do that?
 5 A. **I honestly don't think I did. I think**
 6 **Mike did. I'm not sure about that.**
 7 Q. Mike is that Mike Golsecker?
 8 A. **Yes.**
 9 Q. Is he also employed there?
 10 A. **He's the owner.**
 11 Q. Was it just you and Mike working that
 12 day?
 13 A. **Yes.**
 14 Q. Did you make your way back to the back
 15 area?
 16 A. **Yes.**
 17 Q. What did you do when you got toward
 18 the back?
 19 A. **Started looking for the repair.**
 20 Q. Showing you State's 63, can you see on
 21 that diagram?
 22 A. **Yes.**
 23 Q. That's the back room area?
 24 A. **Yes, it is.**
 25 Q. Can you see in that area in that

1 photograph where you would have been looking for the
 2 bracelet approximately?
 3 A. **Right by the jeweler's bench it's more**
 4 **than a shoebox, but it's kinds of a shoebox and**
 5 **that's where we kept, on one of those two little**
 6 **stools or something that we keep there, little**
 7 **tables next to the jeweler's bench.**
 8 **That's where we kept the repairs.**
 9 Q. Is that back in this area?
 10 A. **Yes, exactly.**
 11 Q. Were you able to find that bracelet?
 12 A. **No, sir.**
 13 Q. How long did you look for it?
 14 A. **I had just started looking.**
 15 Q. And then what happened?
 16 A. **Mike come back and he had an earring**
 17 **in his hand and he was putting it in the ultrasonic.**
 18 Q. Where was the ultrasonic?
 19 A. **Back here by this area where you see**
 20 **the water bottle, there is a blue area. It's a**
 21 **casting thing.**
 22 **It would be in that area. You can't**
 23 **see it from here, but it's there.**
 24 Q. It's outside of the picture but in
 25 that back room?

1 A. **It's in the picture, but you just**
 2 **can't see it, yeah.**
 3 Q. What is the ultrasonic?
 4 A. **An ultrasonic is a little machine that**
 5 **has liquids in it and it vibrates ultrasonically and**
 6 **it cleans jewelry and gold.**
 7 **It gets all the dirt off of it, or**
 8 **most of it.**
 9 Q. So you saw Mike dealing with the
 10 ultrasonic and then what happened?
 11 A. **Well, when I noticed he was back there**
 12 **I said we've got two people out there by themselves.**
 13 **I'll go back out.**
 14 Q. Did you do that?
 15 A. **Yes, I started to.**
 16 Q. Did you have to go down -- approach
 17 the witness again, judge?
 18 THE COURT: You may.
 19 BY MR. FATTIG:
 20 Q. Showing you proposed 70, do you
 21 recognize that photograph?
 22 A. Yes, that is an ultrasonic.
 23 Q. That's the ultrasonic in the back of
 24 the store?
 25 A. **Yes.**

1 Q. Move to admit 70.
 2 MR. CRISTALLI: No objection.
 3 THE COURT: Received. Thank you.
 4 BY MR. FATTIG:
 5 Q. So you're going to deal with the
 6 customers again, correct?
 7 A. **Yes.**
 8 Q. You go back to the hallway?
 9 A. I start back there, yes.
 10 Q. What happens when you get to the
 11 hallway?
 12 A. **The shorter guy come around and he hit**
 13 **me twice.**
 14 Q. Were you able to tell it was the
 15 shorter guy that was hitting you?
 16 A. **Yes.**
 17 Q. How did he hit you?
 18 A. **I didn't hear you.**
 19 Q. **How did he hit you?**
 20 A. **He hit me with his fist in this area**
 21 **here.**
 22 Q. For the record, he's indicating his
 23 forehead area.
 24 THE COURT: Very well.
 25 BY MR. FATTIG:

RA000022

1 Q. What happened then?
 2 A. **Then immediately the big guy come**
 3 **around with a gun.**
 4 Q. Could you describe the gun that the
 5 big guy had?
 6 A. **Yes. It was a large frame automatic**
 7 **and he pointed it right at my head.**
 8 Q. Do you see either of these individuals
 9 in Court today?
 10 A. **Yes, I do.**
 11 Q. Can you please point to him and
 12 identify a piece of clothing he's wearing today?
 13 A. **The gentleman with the gray shirt and**
 14 **darker tie.**
 15 MR. FATTIG: Record reflect
 16 identification of the Defendant, Erick Brown?
 17 THE COURT: It may.
 18 BY MR. FATTIG:
 19 Q. Which one of the individuals was the
 20 Defendant, Erick Brown?
 21 A. He was the taller gentleman.
 22 Q. The one with the gun?
 23 A. **Yes.**
 24 Q. Where was the gun pointed at?
 25 A. **My head.**

1 Q. How close to your head was it?
 2 A. **That far away, maybe. He had it just**
 3 **like that.**
 4 MR. FATTIG: For the record, I believe
 5 he indicated his fingers, approximately 18 inches to
 6 two feet.
 7 THE WITNESS: Yeah, that's fair.
 8 BY MR. FATTIG:
 9 Q. Did the Defendant say anything to you?
 10 A. **They both did, yes.**
 11 Q. What did they both say?
 12 A. **They said get back, get down, and they**
 13 **started hollering that real loud and many times and**
 14 **started to push me down.**
 15 Q. Is that exactly how they said it or
 16 did they say it a different way?
 17 A. **No, they said it in different words.**
 18 Q. Can you use the exact words?
 19 A. **Get down, mother fucker, and I said**
 20 **get down. They started screaming it back and forth.**
 21 Q. Did you get down on the ground?
 22 A. As fast as I could. It took a while
 23 but as fast as I could.
 24 Q. Why do you say it took a while?
 25 A. **It takes me a while to get down and**

1 **back up.**
 2 Q. How old are you now?
 3 A. **I'm 67.**
 4 Q. At the time how old were you?
 5 A. **Sixty-three.**
 6 Q. Where in the store were you forced to
 7 lie down?
 8 A. **In the back by where the work is done.**
 9 Q. In that back room?
 10 A. **Yes.**
 11 Q. As they were ordering you and did you
 12 see where Mike was during that time period?
 13 A. Mike was closer to the back door. He
 14 was two, three, four feet away, something like that.
 15 Q. Were you eventually able to get on the
 16 ground?
 17 A. **Yes, I did.**
 18 Q. How did you lay on the ground?
 19 A. **Laid face down.**
 20 Q. What happened with your hands?
 21 A. **They told me to put my hands on,**
 22 **behind my back and they tied my hands.**
 23 Q. Were you able to see what they were
 24 using as they tied your hands?
 25 A. No, but I knew what it was. They have

1 a distinctive sound when you pull the zip ties.
 2 Q. You heard them before?
 3 A. **Many times.**
 4 Q. It sounded leak a zip tie?
 5 A. **Yes.**
 6 THE COURT: You'll have to wait until
 7 the question is asked before you answer so we can
 8 get a record.
 9 Proceed.
 10 BY MR. FATTIG:
 11 Q. So you were laying on your stomach
 12 with your hands behind your back?
 13 A. **Yes.**
 14 Q. Do you know which one of them tied
 15 your hands with the zip tie?
 16 A. It was the shorter man.
 17 Q. Were you hit at all when you went to
 18 the ground?
 19 A. **Many times.**
 20 Q. What about in this initial period,
 21 right when you laid down and they tied you up?
 22 A. **I don't remember, but I know I was hit**
 23 **and kicked to get forced down.**
 24 Q. Did you hear what was happening with
 25 Mike during this time period? **RA000023**

1 A. **After they had me zip tied?**
 2 Q. Yes.
 3 A. **Yes, I did.**
 4 Q. What did you hear?
 5 A. **I heard them holler at Mike and they**
 6 **said so you want to wiggle and move around, and I**
 7 **heard them hit Mike at least twice.**
 8 Q. Can you describe how the sound that
 9 you heard in terms of the hitting?
 10 A. **They hit him with a gun. That's the**
 11 **only thing they had. It just sounded like that.**
 12 MR. CRISTALLI: Objection. Calls for
 13 speculation.
 14 THE COURT: I'll let him voice his
 15 opinion as to what he thought he heard. It is only
 16 his opinion.
 17 Go ahead.
 18 BY MR. FATTIG:
 19 Q. It didn't sound like a fist to you?
 20 A. **No, it was not a fist.**
 21 Q. Sounded like it was a hard object?
 22 A. **It was a hard object.**
 23 Q. Did you hear how Mike reacted to that?
 24 A. **Finally he just went oh, and I never**
 25 **heard another sound from him.**

1 Q. Did he appear to lose consciousness?
 2 A. **Yeah, yes, he did.**
 3 Q. Based on the fact that you didn't hear
 4 anything?
 5 A. **I didn't hear anything.**
 6 Q. Could you see Mike during this time
 7 period?
 8 A. **No, sir.**
 9 Q. Why not?
 10 A. **Because I was laying face down on the**
 11 **ground.**
 12 MR. CRISTALLI: Can we approach real
 13 quickly?
 14 THE COURT: Come forward.
 15 [Discussion at the Bench.]
 16 THE COURT: Proceed.
 17 BY MR. FATTIG:
 18 Q. Mr. Connelly, you were laying on the
 19 ground and you heard Mike get hit and then what
 20 happened?
 21 A. **He didn't any more noise.**
 22 Q. What were the other the guys doing
 23 then?
 24 A. **They kept asking me questions, because**
 25 **I was the only one that was awake and every time**

1 **they would ask me something they would kick me.**
 2 Q. What kind of questions were they
 3 asking?
 4 A. **Where is the cash, where is the keys?**
 5 **They were very adamant about the**
 6 **camera and the video.**
 7 Q. Who was asking about the camera and
 8 the video?
 9 A. **They both were.**
 10 Q. Both of them. So the Defendant and
 11 the shorter guy?
 12 A. **Yes.**
 13 Q. What were they asking about the camera
 14 and the video?
 15 A. **They just told me -- I can't -- they**
 16 **said we want the tapes or something, something like**
 17 **that, and I said it's a fake camera.**
 18 **They didn't believe me at first.**
 19 Q. There was a surveillance camera in the
 20 store?
 21 A. Yes, it was.
 22 Q. But it wasn't hooked up to anything?
 23 A. **No. It was just a dummy.**
 24 Q. How did they react when you told them
 25 and they seemed to not believe you about that?

1 A. **They told me they didn't believe me**
 2 **and the guy kicked me a couple more times and he**
 3 **says you're shining a nigger.**
 4 **I don't even know what that means.**
 5 Q. Which one of the two said that?
 6 A. **The bigger guy.**
 7 Q. Where did he kick you at?
 8 A. **All over my head and my right side.**
 9 Q. You're indicating, for the record, the
 10 right chest area?
 11 A. **Yes, right in here.**
 12 Q. They asked you about money and about
 13 other things?
 14 A. **They asked me where the keys were.**
 15 **They asked me where the money was many times.**
 16 Q. Were you able to provide answers to
 17 those questions?
 18 A. **Yeah, I did, yes.**
 19 Q. Were you able to provide them quick
 20 enough?
 21 A. **No, sir.**
 22 Q. Why not?
 23 A. **Because I was in a little bit of pain.**
 24 **I was scared to death, and if I didn't answer it**
 25 **fast enough they kept kicking me.**

RA000024

1 Q. Which one would kick you at that
2 point?
3 A. **Mostly the shorter one.**
4 Q. Would he say anything as he kicked
5 you?
6 A. Yeah. He said this is for you, Jim.
7 And kept saying it over and over and over.
8 Q. Do you go by Jim?
9 A. **Yes, I do.**
10 Q. That's from your middle name?
11 A. **Yes.**
12 Q. Did the short guy know that from your
13 dealings with him?
14 A. **Yes.**
15 Q. Did they receive the keys to various
16 jewelry cases and other things?
17 A. **I told them where they were.**
18 Q. As you were laying there was your
19 vision obstructed at any point in time by anything?
20 A. **They put a hood over me. They put**
21 **something over my head.**
22 Q. When you say a hood can you describe
23 it more?
24 A. **They put some kind of cloth over my**
25 **head so I couldn't see anything.**

1 Q. At that point you were only able to
2 hear what was happening?
3 A. **Yes.**
4 Q. Can you describe what you heard going
5 on?
6 A. **I heard them use the buzzer twice and**
7 **then it was just making a lot of noise ransacking**
8 **this and ransacking that and throwing stuff all over**
9 **the place.**
10 Q. A lot of ransacking and the buzzer
11 twice?
12 A. **Yes.**
13 Q. What is the buzzer?
14 A. **The remote control you use to let**
15 **people in.**
16 Q. Is that the only way you can let
17 someone in through the front?
18 A. **Yes.**
19 Q. Did you notice if they were letting
20 anyone in through the back door?
21 A. **Couldn't get in the back door from the**
22 **outside.**
23 Q. Why is that?
24 A. **We had a bar, pretty good bar system**
25 **on it.**

1 Q. That was on the inside of the door?
2 A. **Yes.**
3 Q. When you leave the store through the
4 front do you have to get buzzed out or can you just
5 leave?
6 A. **No. You can't leave unless we don't**
7 **want you to.**
8 Q. The buzzing would indicate someone
9 coming into the store?
10 A. **Only.**
11 Q. Did you have any personal items on
12 your person that were taken from you during this?
13 A. **All of my jewelry, except my necklace.**
14 Q. Can you describe the jewelry that was
15 taken from you?
16 A. **It's what I'm wearing, minus this**
17 **ring. I made all of it.**
18 Q. Why don't we -- can I approach the
19 witness?
20 THE COURT: Yes.
21 MR. FATTIG: Let's take a look at what
22 we have here.
23 BY MR. FATTIG:
24 Q. Three rings answer and a bracelet?
25 A. **There was a fourth ring but I was**

1 **building a barbeque in my house and I lost the ring**
2 **somehow.**
3 Q. Show these on the screen.
4 This bracelet was on your hand and it
5 was taken off?
6 A. **Yes.**
7 Q. This ring, it has some distinctive
8 holes?
9 A. **Yes.**
10 Q. Is that condition the of the ring in
11 when it was taken from you?
12 A. Yes, it was my wedding ring. I made
13 it that way.
14 Q. So you actually manufactured this
15 particular ring?
16 A. **Yes, I done the wax and everything,**
17 **yes.**
18 Q. Then we have this ring. What kind of
19 ring would this be?
20 A. It's kind of a stone ring, but the
21 diamonds are a little bit on the unusual side. We
22 used bigger diamonds in that one or I used bigger
23 diamonds in that one.
24 Q. This would be the third ring?
25 A. **Yes.**

RA000025

1 Q. With green running down the middle,
2 running diagonal?
3 A. **Yes, they are emeralds.**
4 Q. Which one of the two men took these
5 items from you?
6 A. **The shorter one.**
7 Q. How did he take them off you?
8 A. **He just peeled them off. The**
9 **bracelet, he pulled on it until he -- he pulled on**
10 **it so hard he straightened the lobster claw part of**
11 **it and it of course come off.**
12 Q. Did you have any other items taken
13 often your person?
14 A. **My money.**
15 Q. How much money was taken from you?
16 A. **I really don't remember any more.**
17 Q. Where was that taken from?
18 A. **In my wallet, in my pockets. They**
19 **rolled me over and took everything out of my**
20 **pockets, all the money.**
21 Q. Do you remember who took the wallet
22 with the money in it?
23 A. I think the shorter man did.
24 Q. Showing you State's exhibits 91, do
25 you recognize what's shown there?

1 A. Yes.
2 Q. As well as 11D?
3 A. **Yes.**
4 Q. What's that?
5 A. **My watch.**
6 Q. Was your watch taken as well?
7 A. **Yes.**
8 Q. And how was that taken?
9 A. At the very last when they were
10 leaving the shorter guy said this bad buy is coming
11 with me. He pulled it off and broke the band and he
12 took my watch.
13 Q. Was that occurring right before they
14 actually left?
15 A. **Yes.**
16 Q. How did they actually leave?
17 A. **They run out the back door.**
18 Q. Are these fair and accurate depictions
19 of your Rolex watch?
20 A. **They are my watch.**
21 Q. Was your Rolex watch a unique piece of
22 jewelry?
23 A. **Extremely.**
24 **I know a lot of people that have never**
25 **seen a red-faced Rolex. As far as I know, if it**

1 **wasn't -- if it wasn't the only one ever, it's**
2 **certainly very unique.**
3 Q. Any other unique characteristics to
4 the watch?
5 A. **The diamond bezel and the rest of it**
6 **is just a Rolex.**
7 Q. Showing you 11M, do you recognize any
8 of the pieces in that photograph?
9 A. Yeah, that's -- one of them is this
10 ring here. That one for sure.
11 Q. The green ring with the --
12 A. **With the emeralds and the diamond.**
13 Q. Diagonally?
14 A. **Yes.**
15 MR. FATTIG: Move to admit 11M, 91 and
16 11D.
17 MR. CRISTALLI: No objection.
18 THE COURT: Received. Thank you.
19 MR. FATTIG: That would be 91, the
20 Rolex watch?
21 THE WITNESS: Yes.
22 BY MR. FATTIG:
23 Q. And 11M, the green ring, excuse me,
24 that runs diagonal would be that ring in the array?
25 A. **Yes.**

1 Q. There is a couple of rings in that
2 photograph, correct?
3 A. **Right.**
4 Q. You recognize that particular ring as
5 being a ring that you made?
6 A. **Yes, I made it.**
7 Q. **You're wearing it today?**
8 A. **Yes.**
9 Q. Now, after or when the men left you
10 were still laying on the ground, I take it?
11 A. **Yes.**
12 Q. Can you describe how they got out the
13 back door?
14 A. **They had a little trouble with the**
15 **bar, because it's a pretty good bar system. They**
16 **finally got it figured out and got out.**
17 Q. There was a little bit of a struggle
18 with the back door?
19 A. **Yes.**
20 Q. After they left did you get up right
21 away?
22 A. **I waited a minute or two to make sure**
23 **they were gone. I waited a short amount of time.**
24 Q. Were you able to get up after that?
25 A. **They didn't do a very good job of zip**

1 **tying me and I got up right away.**

2 Q. When you got up what did you do?

3 A. **I tried -- I got to the phone as quick**
4 **as I could and dialed 911.**

5 Q. Did you attend to Mike before that or
6 after that?

7 A. **It's kind of fuzzy. I don't remember**
8 **for sure. I know I did tend to him and I cut his**
9 **zip ties off.**

10 Q. Did Mike regain consciousness before
11 the police were there?

12 A. **Yes.**

13 Q. Where did you cut off Mike's zip tie
14 at?

15 A. **Somewhere in the front of the store.**

16 Q. Is it fair to say Mike's zip tie was
17 on much tighter than yours was?

18 A. **He screamed real loud when I finally**
19 **cut it off.**

20 Q. Did Mike appear to be in pain?

21 A. **He was in a lot of pain.**

22 Q. Did you see if he was bleeding?

23 A. **All over.**

24 Q. And did you, in fact, call 911?

25 A. **Yes, I did.**

1 MR. FATTIG: It my understanding
2 through stipulation the 911 call is marked State's
3 exhibit 87, including the accompanying paperwork
4 that's been admitted through stipulation.

5 MR. CRISTALLI: Yes, Your Honor.

6 THE COURT: It will be received.

7 [Whereupon, the 911 tape was played
8 for the jury.]

9 BY MR. FATTIG:

10 Q. Mr. Connelly, you were able to go
11 outside of the store and you brought the clicker
12 with you in order to get back in?

13 A. **Yes.**

14 Q. When you went out the store did you
15 see an officer out there?

16 A. **I seen them behind the pillars, yes.**

17 Q. What were they doing behind the
18 pillars?

19 A. **They had their guns drawn.**

20 Q. And did you let them know who you
21 were?

22 A. **Yes.**

23 Q. Did you then go back in the store with
24 the officers?

25 A. **I walked a short distance and I fell.**

1 **I couldn't go any farther.**

2 Q. Were you in pain at that point?

3 A. **A lot.**

4 Q. Where was the pain?

5 A. **My head and my right side.**

6 Q. Did you eventually -- were you able to
7 give a description to the police officers?

8 A. **Yes, I did.**

9 Q. So you were able to provide for more
10 than you did over the phone to dispatch, what we
11 just listened to?

12 A. **Yes.**

13 Q. Is it fair to say that the officers
14 were there before the ambulance?

15 A. **Yes.**

16 Q. Did the -- but the ambulance came in
17 within a few minutes?

18 A. **Yes.**

19 Q. Where were you taken?

20 A. **To the Catholic hospital.**

21 Q. Saint Rose Dominican, does that sound
22 familiar?

23 A. **Yes.**

24 Q. How long were you in the hospital?

25 A. **Two and a half days, sir.**

1 Q. What kind of treatment were you given?

2 A. **MRI's and just a tremendous amount --**
3 **they run me through a bunch of machines. I was**
4 **pretty foggy a lot so I don't remember all of it.**

5 Q. What kind of injuries did you have?

6 A. **I had injuries to my eye and I lost**
7 **part of my hearing for a while and my ribs were in**
8 **very bad shape.**

9 Q. When you say bad shape were they
10 broken?

11 A. **The doctor's report was they were**
12 **fractured.**

13 Q. You were in pain for a while after
14 this?

15 A. **For months, months and months.**

16 Q. Pain in your chest or your ribs?

17 A. **Yes, yes.**

18 Q. Did you have problems sleeping?

19 A. **I just here in last year or so been**
20 **able to sleep on my right side.**

21 Q. Did you -- you indicated you had some
22 hearing loss?

23 A. **Yes, I did.**

24 Q. Has that come back all the way?

25 A. **I think most of it has.**

RA000027

1 Q. It took a little while to come back?
 2 A. **Yes.**
 3 Q. What about your vision?
 4 A. **I lost a little bit of vision in this**
 5 **eye. They knocked something loose in my eye and I**
 6 **had to see an ophthalmologist and they put 48 laser**
 7 **stitches in this eye.**

8 Q. You're motioning to your left eye?
 9 A. **My left eye, yes.**
 10 Q. You received surgery for your eye at
 11 some point later on?

12 A. **Yes, afterwards.**
 13 MR. FATTIG: It's my understanding
 14 state's exhibit 90 is being admitted through
 15 stipulation, certified copies of his medical records
 16 from St. Rose Dominican.

17 THE COURT: So stipulated.
 18 MR. CRISTALLI: Yes.
 19 THE COURT: Received on that basis.

20 Thank you.

21 BY MR. FATTIG:

22 Q. Did the -- after you got out of the
 23 hospital did the police make contact with you a few
 24 days later?

25 A. **Yes.**

1 Q. Specifically I want to talk about
 2 November 27, 2002 which I believe is the day before
 3 Thanksgiving.

4 Do you remember them meeting you
 5 somewhere?

6 A. **Yes.**

7 Q. Where did they meet you at?

8 A. At my apartment.

9 Q. Did they tell you why they were coming
 10 over to see you?

11 A. **They said they had some photographs**
 12 **for me to look at, I believe.**

13 Q. Did they in fact show you some
 14 photographs?

15 A. **Yes.**

16 Q. Showing you initially State's proposed
 17 exhibit 2D, do you recognize this piece of paper?

18 A. **Yes, I sure do.**

19 Q. How do you recognize it?

20 A. **It's got my signature on it and**
 21 **printing up here.**

22 Q. Is that one of the photographic
 23 lineups they showed you on November 27?

24 A. **Yes.**

25 Q. Did you actually write something

1 beneath a picture on that?

2 A. **Yes, in parens, I printed this is the**
 3 **one.**

4 Q. Under photograph number one, correct?

5 A. **Yes, sir.**

6 Q. When you say this is the one, what did
 7 you mean by that?

8 A. **He was the -- he was one of the**
 9 **robbers.**

10 Q. **Which robber was that one?**

11 A. **He was the shorter one.**

12 Q. Were you positive in that
 13 identification?

14 A. **Very much so.**

15 Q. Did you in fact date and sign that?

16 A. **Yes, sir.**

17 Q. And put a time of 8:44 p.m.?

18 A. **Yes.**

19 Q. Showing you State's proposed 2E, do
 20 you recognize that document?

21 A. **Yes, I do.**

22 Q. How do you recognize that?

23 A. **It has my signature. It has my**
 24 **signature.**

25 Q. Were you able to identify anyone in

1 that photo lineup?

2 A. No, sir.

3 Q. What did you write on that photo
 4 lineup?

5 A. **Not sure.**

6 Q. Showing you State's two have do you
 7 recognize what that shows?

8 A. **Yes.**

9 Q. What does this show?

10 A. **It shows my watch and a couple of my**
 11 **rings.**

12 Q. This would be six different
 13 photographs of various pieces of jewelry?

14 A. **Yes.**

15 Q. All on one piece of paper, correct?

16 A. **Yes, sir.**

17 Q. What did they tell you about this
 18 jewelry, if anything, before they showed it to you?

19 A. **Nothing.**

20 Q. When you looked at the photographs you
 21 recognized certain items?

22 A. Yes, I did.

23 Q. Were you told to write down that you
 24 recognized certain items?

25 A. **Yes, sir.**

RA000028

1 Q. You, in fact, did that?
 2 A. **Yes, I did.**
 3 Q. Do you remember if you viewed the
 4 photo lineups 2E and 2D before you viewed the
 5 jewelry in two have or did you view the jewelry
 6 first before the photo lineups?
 7 A. **I really don't remember. I think, I**
 8 **don't remember for sure.**
 9 Q. This is almost four years ago,
 10 correct?
 11 A. **Yes, sir.**
 12 Q. You didn't put a time on the jewelry
 13 photos, correct?
 14 A. **No, sir.**
 15 Q. Are these fair and accurate depictions
 16 of the photo lineups and the jewelry photos that you
 17 saw on November 27, 002?
 18 A. **Yes.**
 19 MR. FATTIG: Move to admit 2F, 2E and
 20 2D.
 21 MR. CRISTALLI: No objection.
 22 THE COURT: They are received. Thank
 23 you.
 24 BY MR. FATTIG:
 25 Q. This would be 2D, this would be the

1 photo where you were able to identify the individual
 2 that was the shorter individual under graph one,
 3 correct?
 4 A. **Yes, sir.**
 5 Q. This is the line up where you were
 6 unable to pick anyone out in the photographic
 7 lineup, correct, you were not sure?
 8 A. **Yes.**
 9 Q. And two F, these are some of the items
 10 of jewelry they showed you on November 27 that you
 11 were able to identify?
 12 A. **Yes.**
 13 Q. This is the red-faced Rolex watch?
 14 A. **Yes.**
 15 Q. And you wrote this is my wedding band
 16 on this picture of the ridge on the left?
 17 A. **Yes.**
 18 Q. And this ring and -- I designed this
 19 ring and it is mine on that picture for that ring?
 20 A. **Yes.**
 21 Q. Today, you have testified that you
 22 recognize the Defendant Erick Brown as being the
 23 taller man with the gun?
 24 A. **Yes, sir.**
 25 Q. When were you able to first recognize

1 Erick Brown?
 2 A. **When I seen him at the first hearing.**
 3 Q. That would have been the preliminary
 4 hearing in January of 2003 down in Henderson?
 5 A. **Yes.**
 6 Q. And in that hearing you identified
 7 Erick Down, as being the taller man?
 8 A. **Yes.**
 9 Q. Was that the first time you had a
 10 chance to see Erick Brown other than in a head shot
 11 which we just viewed?
 12 A. **Yes.**
 13 Q. To see his entire body?
 14 A. **Yes.**
 15 Q. Did you also see the other individual,
 16 the shorter guy at the preliminary hearing?
 17 A. **Yes.**
 18 Q. Were you able to identify him at that
 19 preliminary hearing?
 20 A. **Yes.**
 21 Q. As you did as well in the photo
 22 lineup?
 23 A. **Yes.**
 24 Q. Did you also see Mr. Blackwell at a
 25 trial in 2003 in the summer?

1 A. **Yes.**
 2 Q. Did you identify Mr. Blackwell at that
 3 trial?
 4 A. **Yes.**
 5 Q. Showing you, if I can approach,
 6 proposed 86, do you recognize that photograph?
 7 A. **Yes.**
 8 Q. Or that diagram?
 9 A. **Yes.**
 10 Q. What does that show?
 11 A. **It shows the shopping center where we**
 12 **had the jewelry store.**
 13 Q. That would be an aerial of the
 14 intersection?
 15 A. **Yes.**
 16 Q. It is a fair and accurate copy or
 17 aerial photograph of that area of town?
 18 A. **Yes.**
 19 MR. FATTIG: Move to admit 86.
 20 THE COURT: Objection?
 21 MR. CRISTALLI: No objection.
 22 THE COURT: Received.
 23 MR. CRISTALLI: May we approach
 24 quickly? I apologize.
 25 [Discussion off the record.]

RA000029

THE COURT: Continue, please.

BY MR. FATTIG:

Q. Sir, I believe if you put your finger on the screen it will mark.

Could you point out where approximately the store is if you recognize where it would be on that diagram?

A. **I'm thinking it's right -- somewhere in this area here. That last one is too far away. Right in that area.**

Q. Fair to say this is a strip mall here running north and south along Green Valley with the intersection of Green Valley and Sunset?

A. **Yes.**

Q. It's somewhere towards the middle or upper portion of the strip mall?

A. **Right, yes.**

Q. Showing you 11, excuse me, showing you 11Q, do you recognize any of the jewelry in this photograph?

A. **Yes, that's my ring. That's this ring.**

Q. That would be the ring up here. How about this ring in the bottom corner, do you recognize that?

A. **Well, I'm not sure. It appears to be my other ring, but I'm not sure.**

Q. You're unsure about that one. This shows one of the rings we saw today?

A. **Very definitely.**

MR. FATTIG: Move to admit 11Q.

MR. CRISTALLI: No objection.

THE COURT: It is received.

BY MR. FATTIG:

Q. You indicated you were sure about one of the rings and unsure about another one that looks like one of your rings?

A. **Yes.**

Q. Can you indicate which ring you're sure of?

A. **This one.**

Q. The one up here.

Which one kind of resembles one of your other rings?

A. **This one.**

Q. The one on the bottom left.

THE COURT: Would this be a good spot for our break?

MR. FATTIG: Yes.

[Whereupon, the Court admonished the

jury.]

THE COURT: The continuation of C189658, State of Nevada versus Erick Brown. Record reflect the presence of the Defendant, his counsel, Mr. Cristalli and Mr. Modafferi assisting Mr. Cristalli, we have Mr. DiGiacomo and Mr. Fattig for the State.

Do counsel stipulate all Members of the Jury are present and properly seated?

MR. CRISTALLI: Yes, Your Honor.

MR. FATTIG: Yes.

THE COURT: You may resume your questioning. Let me admonish you you're still under oath, Mr. Connelly.

BY MR. FATTIG:

Q. Mr. Connelly, did you have occasion to meet with detectives on July 2, 2003?

A. **Yes.**

MR. FATTIG: Approach the witness.

THE COURT: You may.

BY MR. FATTIG:

Q. Showing you what has been marked as State's proposed 18A, do you recognize that?

A. **Yes, I do.**

Q. And is that photographic lineup that

was shown to you on July 2, 2003?

A. **Yes.**

Q. Were you able to identify anyone in that photographic lineup?

A. **No, sir.**

Q. Showing you 18D, do you recognize -- this is a number of photographs all stapled together.

Do you recognize any of the photographs there?

A. **Yes. I've got my initials on ones that I recognized.**

Q. These would be a number of pictures of different pieces of jewelry, correct?

A. **Yes.**

Q. In fact, looks like there's 14 different pieces of jewelry, different pictures of jewelry as part of the packet?

A. **Yes.**

Q. How many of those were you able to recognize?

A. **Four, I think. I think that's all. I'm really nervous here. That was it.**

Q. The first page you're able to recognize?

RA000030

1 A. Yes.
 2 Q. You -- it looks like you were able to
 3 initial to each of the pictures of jewelry you
 4 recognized?
 5 A. Yes.
 6 Q. How did you recognize those pieces of
 7 jewelry?
 8 A. **This one I had either tried to sell**
 9 **through a lady or she was coming back in for it.**
 10 **The rings are just unique enough that I would**
 11 **remember the inventory and this one, it's a very**
 12 **nice ring and I looked it and I would recognize it.**
 13 Q. So these four pieces of jewelry were
 14 in your store on November 23, 2002?
 15 A. Yes.
 16 Q. And taken in the robbery?
 17 A. Yes.
 18 Q. The other 10 pieces of jewelry in 18D
 19 you do not recognize?
 20 A. No, sir.
 21 Q. That would be the front page and again
 22 you initialed next to each piece the item that you
 23 recognized?
 24 A. Yes.
 25 Q. It's dated 7.2.03, at 10:25.

1 There is a number of other pieces of
 2 jewelry that you do not recognize and you do not
 3 initial, correct?
 4 A. **No, did not.**
 5 THE COURT: Is this in evidence?
 6 MR. FATTIG: I'm sorry.
 7 MR. CRISTALLI: I'm not quite sure
 8 which property this is, when that was recovered. I
 9 want some more foundation.
 10 If that was shown to him on the 27th
 11 of November. Is that what it was.
 12 MR. FATTIG: No, July 2nd.
 13 MR. CRISTALLI: I wanted some
 14 foundation for time.
 15 THE COURT: Before you show it to the
 16 jury why don't you lay your foundation?
 17 BY MR. FATTIG:
 18 Q. Were you shown these 14 piece of
 19 jewelry on July 2, 2003?
 20 A. Yes.
 21 Q. The same day you were shown the
 22 photographic lineup and you were unable to pick out
 23 anyone in that photographic lineup?
 24 A. **Yes. I didn't recognize anybody.**
 25 Q. You were able to recognize some of the

1 jewelry shown to you that same day?
 2 A. Yes.
 3 Q. Four of the 14 pieces?
 4 A. Yes.
 5 Q. Is this an accurate depiction of the
 6 four pieces that were taken in the jewelry store
 7 robbery?
 8 A. Yes.
 9 MR. FATTIG: Move to admit 18D and 18A.
 10 MR. CRISTALLI: No objection.
 11 THE COURT: Received.
 12 BY MR. FATTIG:
 13 Q. So 18D, again, is the various
 14 photographs and then there is a number of pieces of
 15 jewelry, 10, to be exact, that you do not recognize;
 16 is that correct?
 17 A. **That's correct.**
 18 Q. And 18A being another photographic
 19 lineup that you do not recognize anyone in that
 20 photographic lineup as having anything to do with
 21 the robbery at the store?
 22 A. **Yes, that's right.**
 23 MR. FATTIG: Nothing further.
 24 THE COURT: Cross.
 25 MR. CRISTALLI: Thank you, Your Honor.

1 Can we approach for one preliminary
 2 issue I want to make the Court is okay with?
 3 THE COURT: Yes.
 4 [Discussion at the Bench.]
 5
 6 EXAMINATION
 7 BY MR. CRISTALLI:
 8 Q. Good afternoon, Mr. Connelly.
 9 MR. CRISTALLI: Your Honor, through
 10 stipulation defense has marked for identification
 11 purposes Defendant's Proposed Exhibit B, which is a
 12 transcription of the 911 tape.
 13 Instead of having to go through the
 14 911 tape again and have the jury have to listen to
 15 it again, the State has agreed to allow us to admit
 16 this into evidence and allow us to utilize it during
 17 cross-examination and also have the jury have a copy
 18 of it during the course of that.
 19 THE COURT: Do you concur?
 20 MR. DIGIACOMO : That's correct.
 21 Two things. When the jury gets this
 22 they are going to notice the dispatcher is indicated
 23 as D. For whatever reason, Mr. Connelley's name is
 24 initialized as EG. The person speaking on the
 25 transcript even though it's Emmett Connelley, it's

RA000031

1 EG on the transcript.
 2 It appears to be a true and correct
 3 transcript of the 911 call.
 4 THE COURT: Do you recognize that?
 5 MR. CRISTALLI: Yes.
 6 THE COURT: The item will be received
 7 into evidence.
 8 You may proceed.
 9 MR. CRISTALLI: May I approach the
 10 witness, Your Honor?
 11 THE COURT: Yes.
 12 BY MR. CRISTALLI:
 13 Q. I'm going to show you what has been
 14 marked as Defendant's admitted Exhibit B.
 15 Now, you had an opportunity, Mr.
 16 Connelly, did you not, to listen to the 911 tape
 17 recording of yourself calling dispatch?
 18 A. Yes.
 19 Q. We just listened to it a little while
 20 ago, correct?
 21 A. Yes.
 22 Q. During the course of that 911 tape the
 23 dispatcher asked you specifically for a description
 24 of the individuals who had just come in and robbed
 25 you, correct?

1 A. Yes.
 2 Q. And what you said specifically on the
 3 second page of the transcript was that the taller
 4 individual, you believed, was approximately 20 years
 5 of age, true?
 6 A. **I don't see that.**
 7 Q. Take a moment on the second page, if
 8 you could, and get to where --
 9 A. **It says oh, one was about 25. The**
 10 **other was very tall and he was probably a little**
 11 **younger.**
 12 Q. Then you said okay.
 13 So he's about 20 -- or is that the
 14 dispatcher?
 15 A. **That's not me. And I said yeah.**
 16 Q. When they were talking about how old
 17 the individuals were you said one was about 25, the
 18 other one was very tall and he was probably a little
 19 younger, correct?
 20 A. Okay.
 21 Q. The taller one would have been under
 22 25 years of age, correct?
 23 A. Yes.
 24 Q. Is that yes?
 25 A. **I have a tendency to drag on. I'm**

1 **trying not to do that.**
 2 Q. That's fine.
 3 Then the dispatcher said to you and he
 4 was tall, was he thin? And you said yeah, correct?
 5 A. **It said, the one that was tall and**
 6 **thin, what color shirt?**
 7 Q. No, no. If we could just go
 8 item-by-item.
 9 A. **And he was tall; was he thin?**
 10 **And I said yeah.**
 11 Q. And then she, the dispatcher, said to
 12 you, what color hair?
 13 You said black, correct?
 14 A. Yes.
 15 Q. Then she goes on to talk about what
 16 color shirt and you say what's that, ma'am? What
 17 color shirt?
 18 You go on to describe the color of the
 19 shirt as a dark shirt and dark pants, true?
 20 A. **Yeah, down here towards the end, yes.**
 21 Q. And after that you don't give any more
 22 specific description about the taller individual,
 23 the taller suspect, correct?
 24 A. **I guess -- I guess not.**
 25 Q. And let me -- let's now turn the next

1 page, if we could, and initially on that page you go
 2 on to describe the description of the smaller
 3 individual, correct?
 4 A. Yes.
 5 Q. And you go on to talk about his height
 6 and his weight and also the color of his shirt and
 7 pants, true?
 8 A. Yes.
 9 Q. You talk a little bit about what had
 10 happened to yourself and Mr. Golsecker and then on
 11 the bottom, second line up from the bottom where it
 12 says EG, but we know it's Emmett Connelley, you say
 13 they knocked all his teeth out and you say they went
 14 out the back door.
 15 I'm not touching anything because you
 16 can print it. They got prints all over this,
 17 correct?
 18 A. Yes.
 19 Q. You physically observed the suspects
 20 touching things wherein you believed that they were
 21 going to leave or they were leaving fingerprints,
 22 correct?
 23 MR. FATTIG: Objection. Misstatement
 24 when it says things. He just asked him about the
 25 back door.

RA000032

1 MR. CRISTALLI: Let's go back again to
2 where we just read.

3 It says EG, Emmett Connelley. They
4 knocked all his teeth out, they, they went out the
5 back door. I'm not touching anything because you
6 can print it. They got prints all over this.

7 That is what you said during the
8 course of your dialogue.

9 THE WITNESS: Yes.

10 BY MR. CRISTALLI:

11 Q. Now, if we can switch the page again,
12 you go on to give a description of the firearm,
13 correct?

14 A. **It was an auto, yeah, okay, yes.**

15 Q. You can take your time and review it.

16 You kind of knew and through the
17 course of your direct testimony knew specifically
18 the firearm description because you said the
19 individual who you described was the taller
20 individual was the one that put the gun to you,
21 correct?

22 A. **Yes, sir.**

23 Q. You said he put a gun to your head,
24 correct?

25 A. **Yes, he did, really close.**

1 Q. And it was really close?

2 A. **Yes.**

3 Q. And then as we go on the bottom, once
4 again, one line up from the last entry there where
5 it says EG and it says well, one was called Cal and
6 the other one was called um, um, Peat or Dean; I
7 can't recall which.

8 Do you recall that statement that you
9 made to the 911 dispatch person?

10 A. **I heard it just then, yes.**

11 Q. And that was in reference to what you
12 said that there were two other individuals that came
13 back into the store?

14 A. **I'm not understanding.**

15 Q. You said they were referring to you,
16 so I'm trying to understand what you meant.

17 You meant one of the suspects was
18 telling the other one of the suspects -- you have
19 two individuals in the jewelry store.

20 One of the suspects is calling the
21 other suspect or individual by the name of Pete or
22 Dean, correct?

23 You said one was called Cal and the
24 other one was called Pete or Dean?

25 A. **Okay.**

1 Q. That's what you recalled?

2 A. **Yes. That's what it said, yes.**

3 Q. You recall these two individuals
4 talking to each other?

5 A. **Now? No, I don't.**

6 Q. Right. But at the time, when you
7 listened to the 911 tape, correct?

8 A. **Yes.**

9 Q. You heard yourself tell the dispatcher
10 that you heard these two having a dialogue with one
11 another and calling one another by these names?

12 A. **Yes.**

13 Q. Now, putting that side, let's talk
14 about what you have testified in terms of your
15 initial interaction with the suspects.

16 You said that you had an opportunity,
17 obviously, to see both the smaller individual and
18 the taller individual, correct?

19 A. **Yes.**

20 Q. In fact, the taller individual as you
21 have testified was the one who put the gun to your
22 head, correct?

23 A. **Yes.**

24 Q. And do you recall previously
25 testifying that your interaction with both of the

1 suspects only lasted a couple of seconds?

2 A. **It's been a little while.**

3 Q. Would you disagree with me about that
4 statement?

5 Would you disagree that your
6 interaction with the suspects only lasted a couple
7 of seconds?

8 A. **It was a short amount of time, I
9 think, if you're talking about when he had the gun
10 to my head.**

11 Q. I'm asking you whether or not it would
12 be accurate to say your interaction with the
13 suspects was -- lasted a few seconds.

14 A. No, because I talked to one for quite
15 some time over the repair.

16 Q. Let's now talk about the taller
17 individual. The taller individual -- would it be
18 safe to say that the -- that your interaction with
19 the taller individual lasted a couple seconds?

20 A. A few seconds, yes, but I could still
21 see.

22 Q. Would it be safe to say that a couple
23 of seconds was between three seconds to five
24 seconds?

25 A. **I don't know how to answer that. It's**

RA000033

1 possible. I didn't know the amount of time, but I
2 know I got a very good look at him.

3 Q. So you got a good look at him.

4 A. When they got a gun to your head you
5 do it.

6 Q. You would agree also with me that as
7 you've testified on direct examination that you were
8 pretty scared. It was a traumatic event, correct?

9 A. Sure.

10 Q. You don't get held up at gunpoint on a
11 daily basis, I hope.

12 A. First time for me.

13 Q. Now in terms of your recollection
14 regarding the description of the taller individual
15 you would agree with me that initially you told 911
16 dispatch that he was -- he was tall, correct?

17 A. Yes.

18 Q. He was thin, correct?

19 A. Yes.

20 Q. And you described the color of his
21 shirt and his pants, right?

22 A. Yes.

23 Q. And you'd agree with me that that was
24 the extent of your description at that particular
25 time, true?

1 A. Yes.

2 Q. Now, after the events had occurred did
3 there ever come a point in time where you gave some
4 type of -- shortly after the events you gave some
5 type of a written voluntary statement or a written
6 statement to the police department?

7 A. Right after that they were questioning
8 me, you know, yes.

9 Q. But do you recall specifically as to
10 whether or not you were ever -- you ever signed off
11 on any type of written statement or whether or not
12 you actually executed a written statement describing
13 the events and describing the suspects?

14 A. No. I remember some questions being
15 asked. That's all I can tell you.

16 Q. And then there came a point in time
17 where you had an opportunity to testify at a
18 preliminary hearing, correct?

19 A. Yes.

20 Q. Well, let me go backwards a little
21 bit.

22 Mr. Connelly there came a point in
23 time, did there not, when police officers, police
24 detectives came to your residence?

25 A. Yes.

1 Q. Was that -- do you remember what
2 police officer or what detective that was?

3 A. Yes, I do.

4 Q. And prior to them coming back to your
5 residence do you recall ever a police officer coming
6 to you and either tape recording a statement of
7 yours or having you execute some type of written
8 statement?

9 A. I don't remember that, sir.

10 Q. That's fine.

11 When they came to you, to your house
12 on the 27th did you recall them tape recording an
13 interview with you or having you do some type of
14 written statement?

15 A. No, sir, no.

16 Q. So at this particular time the only
17 memorialization that we have um, in terms of your
18 description of the suspects was what you gave to the
19 911 dispatch person, correct?

20 MR. FATTIG: Objection. Misstates his
21 testimony.

22 MR. CRISTALLI: If it's true, he can
23 say yes. If not, no.

24 MR. FATTIG: He already testified about
25 it.

1 BY MR. CRISTALLI:

2 Q. Did you give, in terms of
3 memorializing, in terms of either a tape recorded
4 statement or written statement other than what was
5 communicated to the 911 dispatch did you give any
6 other descriptions to any police officers or
7 detectives that were written, taped or memorialized?

8 A. It's been a long time. I honestly
9 don't remember.

10 Q. That's fine.

11 Q. I may have missed it. Who came to
12 your house on the 27th?

13 A. Detective Price and another young man.
14 I can't remember his name right now.

15 Q. When they came to your residence did
16 they come and say to you Mr. Connelly, we have a
17 suspect in custody and we have received your
18 property?

19 A. No.

20 Q. Did they say to you we have some
21 things that we want you to look at? Can you take a
22 look at them?

23 A. No. I think they indicated they had
24 some photographs they wanted me to look at.

25 Q. At that time you don't recall whether

1 or not they showed you what we'll refer to as the
2 six-pack, but those are six individuals shown to you
3 in photographs, correct, or the property first?
4 Do you remember which was shown to you
5 first?

6 **A. I'm thinking. I'm thinking the**
7 **pictures of the guys.**

8 **Q. You're not sure of that?**

9 **A. No, sir, I'm not. It's been a little**
10 **while.**

11 **Q. Now, you also have testified that the**
12 **taller individual, the taller suspect involved in**
13 **the robbery had taken out an earring and given his**
14 **earring to Mr. Golsecker for him to clean, correct?**

15 **A. It appeared so, sir.**

16 **Q. In fact the police actually recovered**
17 **that earring, true?**

18 **A. I don't know that. I don't know. I**
19 **don't know that.**

20 **MR. CRISTALLI: May I approach?**

21 **THE COURT: You may.**

22 **BY MR. CRISTALLI:**

23 **Q. Let me show you what has been admitted**
24 **as State's exhibit 70. It appears in there, does it**
25 **not, that there is an earring being strained out?**

1 **A. You're right, it is, okay. First time**
2 **it looked at it.**

3 **Q. What is this device?**

4 **A. Called an ultrasonic.**

5 **Q. They were pulling it out of the**
6 **ultrasonic, it would appear, anyway?**

7 **A. Yes. That basket is put in the**
8 **ultrasonic so they don't fall to the bottom.**

9 **Q. I'm putting that up right now. So the**
10 **basket actually goes into the ultrasonic?**

11 **A. Right.**

12 **Q. What type of chemical is used in the**
13 **ultrasonic?**

14 **A. There is a variety of chemicals that**
15 **you can use.**

16 **Q. What do you typically use at your**
17 **facility?**

18 **A. I used either Mr. Clean or lemon**
19 **scented ammonia and water.**

20 **Q. Do you know whether or not that, the**
21 **earring and the strainer was actually submerged in**
22 **the ultrasonic?**

23 **A. I can answer that.**

24 **Q. Its right up there?**

25 **A. The knobs on the end of the strainer**

1 **there fit on top of the lip of the ultrasonic and**
2 **the basket is in the liquid.**

3 **Q. You don't know if Mr. Golsecker ever**
4 **actually subject merged it, do you?**

5 **A. I seen him start to put it in there**
6 **and I went back out.**

7 **Q. Could you physically visibly see it**
8 **being submerged?**

9 **A. No, I didn't, I don't think.**

10 **Q. Let's let's talk about the physical**
11 **lineups again. Now, this was one of the physical**
12 **lineups; was it not, sir?**

13 **A. Yes.**

14 **Q. And you've actually/, you've looked at**
15 **that on direct examination. Is that your signature**
16 **on that exhibit?**

17 **A. As poor as it is, yes.**

18 **Q. And that's wherein you say you're not**
19 **sure of any of the individuals within that six-pack**
20 **as committing the robbery against you, correct?**

21 **A. Yes.**

22 **Q. You dated that or was that your -- did**
23 **you date that or did Detective Price date that?**

24 **A. That's my writing.**

25 **Q. You put the time down there?**

1 **A. Yes.**

2 **Q. And did they -- did the police,**
3 **Detective Price advise you of the type?**

4 **Did he advise you of anything related**
5 **to that particular six-pack prior to them giving it**
6 **to you?**

7 **A. Oh no.**

8 **Q. You say oh no?**

9 **A. I don't know why you would ask that.**
10 **I don't don't understand.**

11 **Q. You don't know why I asked you that?**

12 **A. We already went over that. I didn't**
13 **know why it was asked again.**

14 **Q. If the detective had told you whether**
15 **or not they had an individual in custody that was in**
16 **the six-pack?**

17 **A. That's what you asked me and I said**
18 **no, I didn't. They didn't say that to me.**

19 **Q. So they didn't say that to you?**

20 **A. No.**

21 **Q. They gave you no indication somebody**
22 **was in custody?**

23 **A. No.**

24 **Q. They gave you no indication -- you**
25 **knew that some property was recovered, correct?**

1 A. Yes.

2 Q. And that is because why?

3 Why did you know that the property was
4 recovered?

5 A. That picture -- they had pictures of
6 it, I guess.

7 Q. If you have a recollection, that's
8 fine.

9 A. Lot of times on some of this I
10 honestly don't remember.

11 Q. Mr. Connelly, now that you know
12 obviously we've been through some proceedings and
13 we've looked at the six-pack.

14 Can you now identify the individual in
15 here as one of the individuals that committed the
16 offense against you?

17 A. Yes.

18 Q. And that is, Mr. Brown.

19 He's identified in slot number four?

20 A. That's correct.

21 Q. But at the time when you were given
22 the six-pack shortly after the incident you were not
23 able to identify him, correct?

24 A. That's correct.

25 Q. You were also give, we've already

1 established, the six-pack, the photographs of the
2 property that you identified.

3 Then you gave some testimony at a
4 preliminary hearing which you referred to on direct
5 examination, correct?

6 A. Yes.

7 Q. And during your testimony at the
8 preliminary hearing do you recall telling or
9 testifying that the taller individual had short
10 cropped hair?

11 Do you recall testifying to that?

12 A. Yes.

13 Q. Do you also recall that you testified
14 that the taller individual's hair was longer than
15 the shorter individual?

16 Do you recall that testimony?

17 A. Yes.

18 Q. Once again I'm going to show you
19 what's been marked State's exhibit 2D. That is a
20 six-pack wherein you identified Mr. Blackwell,
21 correct?

22 A. Yes.

23 Q. And he is in slot number one, correct?

24 A. Yes.

25 Q. And it appears he does have short but

1 noticeable hair, correct?

2 A. Yes.

3 Q. Then I'm going to show you what's been
4 marked as State's exhibit 2E wherein you could not
5 identify Mr. Brown, but now we know he's in slot
6 number four.

7 It doesn't appear in that particular
8 photo that he has any hair on his head, correct?

9 A. No, it doesn't.

10 Q. Now, you had an opportunity to observe
11 the individuals when they came into the store. It
12 was a traumatic event and the gun was near your
13 head. We've already got that clear.

14 The next time you had an opportunity
15 to identify Mr. Brown you were unable to do it and
16 that was the six-pack lineup, correct?

17 A. Yes.

18 Q. Then you had another opportunity to
19 make an identification and that was at the
20 preliminary hearing, correct?

21 A. Yes.

22 Q. At the preliminary hearing you
23 identified Mr. Brown as the taller suspect who
24 committed the crimes against yourself and Mr.
25 Golsecker; is that correct?

1 A. Yes.

2 Q. At the time of the preliminary hearing
3 Mr. Brown was sitting at counsel table with his
4 lawyer, true?

5 A. Yes.

6 Q. It wasn't me at the time, but there
7 was a lawyer there, right?

8 A. Yes.

9 Q. At that particular time he was dressed
10 in prison garb, correct?

11 A. Yes.

12 Q. That's when you made the
13 identification of him as the taller individual
14 involved in the robbery?

15 A. Yes.

16 Q. There was no six-pack or physical
17 lineup at that time, correct?

18 A. No.

19 Q. I also want to talk a little bit about
20 the reference to some of the names that you heard.
21 On the 911 tape you said you heard either Craig or
22 Dean or Peat. You heard references to those three
23 names.

24 At the preliminary hearing you recall
25 testifying specifically to hearing maybe Greg or

1 Craig.

2 Do you remember that testimony?

3 A. Yes.

4 Q. Do you also remember testifying at the
5 preliminary hearing that you recalled the taller
6 suspect being -- or Mr. Brown being identified as
7 Erick.

8 Do you remember making that reference?

9 A. Yes.

10 Q. You testified that the reason why you
11 referred to him as Erick is because you read his
12 name on a subpoena somewhere.

13 Do you remember that testimony?

14 A. Yes.

15 Q. So you initially heard Pete or Dean or
16 Craig or Greg and then once you read the subpoena
17 with Mr. Erick Brown's name on it you recalled a
18 name of Erick, true?

19 A. **It's not exactly like that.**

20 Q. Okay. Well, what am I missing?

21 A. **I mean I just didn't read a name and
22 said there it is.**

23 Q. You testified that you read a subpoena
24 and it had Mr. Brown's name on it, Erick Brown, and
25 that's when you recognized Erick, true?

1 A. **If I recall how I recognized -- is
2 that what you're asking me?**

3 Q. I'm just asking you whether or not you
4 recognize testifying to that extent.

5 Do you remember saying that?

6 A. Yes.

7 Q. Now, there also came a point in time
8 some time later -- let me get this point here.

9 The events occurred on November 22,
10 2002, correct?

11 A. Yes.

12 Q. You were presented a six-pack line up
13 on November 27, 2002, correct?

14 A. Yes.

15 Q. You then were at a preliminary hearing
16 on January of 2003, correct?

17 A. Yes.

18 Q. And that's when you made an
19 identification of Mr. Brown, right?

20 A. Yes.

21 Q. You agree with me that that is over a
22 year after the events?

23 A. **If that's the time frame, yes.**

24 Q. So the record is clear, November 22,
25 2002 to January of '03 would suggest --

1 MR. FATTIG: Objection. It's a matter
2 of weeks.

3 MR. CRISTALLI: I'm sorry about that.
4 BY MR. CRISTALLI:

5 Q. The preliminary hearing --

6 MR. FATTIG: And it's November 23rd.
7 You said 2002 and '03.

8 BY MR. CRISTALLI:

9 Q. My mistake.

10 The preliminary hearing then was, I
11 think -- so we've got two months or two month and
12 sometime after you were presented the six-pack
13 lineup, correct?

14 A. Yes.

15 Q. This is where I screwed up.

16 When you were at -- some particular
17 time later you met again with Detective Price and
18 she showed you another six-pack lineup, correct?

19 A. Okay.

20 Q. Do you remember that?

21 A. **I honestly don't, no.**

22 Q. So you don't remember. The State has
23 presented you with what was marked State's exhibit
24 18A. I'm going to present it up there right now.

25 A. **That? Yes, I remember that.**

1 Q. On that it says -- I'm trying to get
2 the date of that.

3 A. **It shows 11.27.**

4 Q. It says date of lineup July 2, 2003.

5 A. Yes.

6 Q. And the date of the offense was
7 November 23, 2002, correct?

8 A. **I guess that is a three, yes.**

9 Q. You couldn't identify anyone in that
10 six-pack to be involved in the robbery for which you
11 were a victim, true?

12 A. **That's true.**

13 Q. Would you then for me look at the
14 individual in number five position?

15 Would you agreed with me that he does
16 have short cropped hair?

17 A. It's pretty short hair, yeah.

18 Q. And then with that six-pack lineup you
19 were also shown property for which you identified as
20 belonging to you or the store, correct?

21 A. **The store.**

22 Q. The store, all right.

23 And that was also shown to you on the
24 date that that subsequent lineup was shown to you on
25 the 2nd of July 2003?

RA000037

1 A. **Okay.**
 2 MR. CRISTALLI: Court's indulgence.
 3 I don't have any further questions.
 4 THE COURT: Is there re-direct?
 5 MR. FATTIG: Briefly.
 6 RE-EXAMINATION.
 7 BY MR. FATTIG:
 8 Q. When was the first time, Mr. Connelly,
 9 that you ever physically saw the Defendant Erick
 10 Brown?
 11 A. **At the preliminary hearing, sir.**
 12 Q. Prior to that you had just seen -- you
 13 just had seen the head shot they showed you in the
 14 photographic lineup?
 15 A. **Yes.**
 16 Q. Can you describe what you mean by
 17 short cropped hair?
 18 A. **Just real short hair. When I was in**
 19 **the service you're talking about hair like that.**
 20 **Not a lot of hair.**
 21 Q. You're putting your fingers together.
 22 Could you estimate how long?
 23 A. **Probably an eighth to a quarter, tops.**
 24 Q. Eighth to a quarter of an inch?
 25 A. **Yes.**

1 Q. Did you ever actually see Erick Brown
 2 wearing an earring that day?
 3 A. **No. Actually, I didn't.**
 4 Q. What did you see?
 5 A. **I seen the appearance of him taking**
 6 **off an earring as I walked back into the room.**
 7 Q. So you -- so he appeared to be taking
 8 off an earring, but you never actually saw him
 9 wearing it?
 10 A. **No, sir, I did not.**
 11 Q. Do you remember the circumstances
 12 around you remembering that one of the individuals
 13 mentioned Erick?
 14 A. **I know how that come about, yes.**
 15 Q. How did that come about?
 16 A. **It was a very short name. I couldn't**
 17 **recall for the life of me what it was. There was so**
 18 **much going on.**
 19 **When I seen the name, I said Erick,**
 20 **man, that's what it was. That's what he was saying.**
 21 **That's how that come about.**
 22 Q. You told the police -- you told the
 23 911 operator several short names, Craig, Greg, Cal
 24 or Dean?
 25 A. **Yes.**

1 Q. Do you remember when the officer got
 2 there how you remember describing how tall the man
 3 with the gun was?
 4 A. **I told him he was about six, five.**
 5 Q. And that was minutes after the crime,
 6 after they left?
 7 A. **Yes.**
 8 Q. Right after you got off the phone with
 9 911?
 10 A. **Pretty close, yes.**
 11 Q. Did you describe how much he weighed,
 12 approximately?
 13 A. **I thought he weighed probably about**
 14 **two hundred, 225. He looked kind of thin to me.**
 15 **MR. FATTIG: Nothing further.**
 16 THE COURT: Re-cross?
 17 MR. CRISTALLI: Briefly.

RE-EXAMINATION

20
 21 BY MR. CRISTALLI:
 22 Q. In terms of the first time you saw
 23 Mr. Brown -- and we all agree the first time you saw
 24 him, physically saw him was at the preliminary
 25 hearing -- he was in prison clothes, sitting next to

1 his counsel, true?
 2 A. **First time I seen him is when he had a**
 3 **gun at my head.**
 4 Q. We're trying to develop that. I
 5 understand your position.
 6 When you first saw the photo lineup
 7 wherein Mr. Brown was you couldn't identify him,
 8 true?
 9 A. **In the photographs?**
 10 Q. Yes.
 11 A. That's true.
 12 Q. I'm trying to get out the second time
 13 you were in front of him or third time, according to
 14 you, you were in front of him he was in prison
 15 clothes, sitting next to defense counsel in a court
 16 room, true?
 17 A. **Yes.**
 18 Q. You tried to -- you talked a little
 19 bit about how you made this statement that he was
 20 Erick and I want to point out to you page 50 of the
 21 preliminary hearing transcripts.
 22 I'd like to you take a look
 23 specifically at lines 19 and 20.
 24 A. **Okay.**
 25 Q. In there it says and who did you learn

RA000038

1 that from, one of the gentlemen's name was Erick?

2 You said I read the subpoena. Is that
3 true, is that what you said?

4 A. Yes.

5 Q. You testified on cross-examination did
6 you not that the taller guy had more hair than the
7 shorter guy?

8 You also testified to that at the
9 preliminary hearing, correct?

10 A. Yes.

11 MR. CRISTALLI: No further questions.

12 THE COURT: Anything further from the
13 State.

14 MR. FATTIG: No, judge.

15 THE COURT: Thank you, sir.

16 Next witness, please.

17 MR. FATTIG: Maria Weir.

18 MARIA WEIR,

19 called as a witness herein, was sworn by the clerk
20 of the court, was examined and testified as follows:

21

22 EXAMINATION

23 BY MR. FATTIG:

24 Q. Could you state your name and spell

1 last name for the record?

2 A. **Maria Weir, W-e-i-r.**

3 Q. How are you currently employed?

4 A. **I'm a forensic identification
5 specialist for the Los Angeles County Sheriff's
6 Department.**

7 Q. How long have you worked in that field
8 for the Los Angeles County Sheriff's Department?

9 A. Since January of this year.

10 Q. Prior to January of this year how were
11 you employed?

12 A. **I was a Crime Scene Analyst with the
13 Henderson Police Department.**

14 Q. How long had you worked as a CSA in
15 Henderson?

16 A. **From December 2000 to December 2005,
17 five years.**

18 Q. You recently moved down to Los Angeles
19 to basically do the same type of work for Los
20 Angeles County?

21 A. Yes.

22 Q. Could you briefly detail your
23 educational experience regarding, as well as your
24 overall work experience in terms of how you obtained
25 the job of a Crime Scene Analyst for Henderson?

1 A. Yes.

2 **I have a Bachelor's Degree from the
3 California State University Dominguez Hills in public
4 administration concentrating in criminal justice.
5 As far as formal training in the field I have over
6 2000 hours of training in the area of crime scene
7 investigation as well as latent fingerprint
8 identification and comparisons through organizations
9 such as the Federal Bureau of Investigation, the
10 California Department of Justice, as well as
11 professional organizations that I belong to such as
12 the International Association for Identification.**

13 **As far as my experience, again I was
14 with Henderson for five years. Prior to that I
15 worked in the State of California for the El Segundo
16 police department for six years.**

17 **While I was in college I did a
18 four-year internship with the Westminster police
19 department in Orange County.**

20 Q. With El Segundo were you also a Crime
21 Scene Analyst for them?

22 A. Yes, I was.

23 Q. Were you on duty on November 24, 2002
24 in the early morning hours about 8:00 a.m.?

25 A. **I wasn't on duty but I was called in**

1 **to work.**

2 Q. You were called in to work to 2829
3 North Green Valley Parkway, a jewelry store?

4 A. **That's correct.**

5 Q. Were you briefed before you got to the
6 scene about why you were being called there?

7 A. Yes.

8 Q. What were you told?

9 A. I was told that there had been a
10 robbery of a jewelry store and that there were two
11 victims that that had been beaten pretty badly.

12 Q. When had the robbery occurred as far
13 as you know?

14 A. **As far as I knew, the night before,
15 the previous night.**

16 Q. Was there a reason you didn't respond
17 the night before on November 23?

18 A. Yes.

19 Q. What was that?

20 A. **Myself and another person from our
21 section who are the only two people available to
22 work crime scenes were working a homicide scene.**

23 Q. That's how it was run back in 2002
24 with the Henderson Police Department?

25 A. Yes.

RA000039

1 Q. So you were busy with another crime
2 scene most of the evening of the 23rd?
3 A. **That's correct.**
4 Q. The morning of the 24th did you notice
5 whether or not the crime scene had been preserved at
6 all?
7 A. **Yes, I did.**
8 Q. What did you notice?
9 A. **I observed a red piece of evidence**
10 **tape across the seal of the doorway to the entrance**
11 **to the jewelry store.**
12 Q. Were you accompanied by anyone that
13 morning on the 24th?
14 A. **Yes.**
15 Q. Who was with you?
16 A. **Investigator Denice Price as well as**
17 **Ron Allison.**
18 Q. They are detectives with the Henderson
19 Police Department?
20 A. **Yes.**
21 Q. Did you have occasion to break the
22 seal of the front door?
23 A. **Once I documented its condition**
24 **through a photograph I broke the seal to make entry.**
25 Q. When you get to a crime scene what's

1 one of the first things you do?
2 A. **When we arrive at a scene the first**
3 **thing we do is brief with the investigators as far**
4 **as overall what they believe happened or any**
5 **information they have.**
6 **Then we'll walk through the scene and**
7 **take notes as we walk through as to what we observe.**
8 Q. Did you do those things at the scene?
9 A. **Yes.**
10 Q. What do you do after you walk the
11 scene and take notes?
12 A. **I will get my camera and document the**
13 **scene through photographs.**
14 Q. Did you do that in this case?
15 A. **Yes.**
16 Q. So you're taking photographs of
17 various items before anyone has touched them or
18 disturbed them?
19 A. **Yes.**
20 Q. After you take photographs what do you
21 do?
22 A. **I will identify areas or items of**
23 **evidence and I will place, sometimes I'll place a**
24 **placard next to it as far as identifying it by a**
25 **number and I'll do a rough sketch of the placement**

1 **of the evidence.**
2 Q. Did you do a rough sketch of the scene
3 in this case?
4 A. **Yes.**
5 Q. Did you take photographs of various
6 pieces of evidence?
7 A. **Yes, I did.**
8 MR. FATTIG: It's my understanding
9 pursuant to stipulation there is a number of
10 photographs that will be admitted.
11 Let let me put them in evidence as 19
12 through 23, 28 through 34, 36 through 45, 49 through
13 54, 57 and 58, 60 through 62, 64 through 69 and 71.
14 THE COURT: Are those marked?
15 THE CLERK: Yes.
16 THE COURT: Mr. Cristalli, do you
17 concur?
18 MR. CRISTALLI: Yes, Your Honor.
19 THE COURT: Pursuant to stipulation,
20 those matters are received.
21 BY MR. FATTIG:
22 Q. I'll show you a few of those
23 photographs and ask you to describe what we see, the
24 first one being State's 19.
25 What does this depict?

1 A. That is the front door to the jewelry
2 store.
3 Q. Can you see the red or the sealing
4 that you talked about in that photograph?
5 A. **Yes. It's in the upper left-hand**
6 **corner.**
7 Q. Of the door?
8 A. **Yes.**
9 Q. And is there one down here as well on
10 the bottom left?
11 A. **Yes.**
12 Q. Exhibit 20, what does that depict?
13 A. **That is the front of the jewelry store**
14 **with the address, 2829.**
15 Q. Do you remember an interior door here
16 in this cage area as well in order to get into the
17 store?
18 A. **Yes.**
19 Q. 23, what does this depict?
20 A. **That is just inside that caged foyer**
21 **area in the front. That's a carpeting area and the**
22 **tile floor.**
23 **Basically it's the customer area of**
24 **the jewelry store right inside the front door.**
25 Q. There's an item here on the carpet?

1 A. **Yes.**
 2 Q. What does that depict?
 3 A. **That is a white plastic flex cuff or**
 4 **zip tie.**
 5 Q. Is that where it was when you entered
 6 into the store that morning?
 7 A. **Yes.**
 8 Q. Showing you State's 28, what does that
 9 show?
 10 A. **That is the south wall of the**
 11 **business, if I'm standing inside the front door**
 12 **basically looking to my left.**
 13 Q. The left side of the store of a
 14 jewelry case and the wall?
 15 A. **Yes.**
 16 Q. State's 29?
 17 A. **That is the same jewelry case. I just**
 18 **moved in closer more to the center of the store**
 19 **looking directly at the south wall.**
 20 Q. It doesn't look like that case has
 21 been disturbed in terms of the central area, but
 22 there's nothing on the right side of the case.
 23 Fair to say?
 24 A. **Yes.**
 25 Q. State's 30, does that show kind of the

1 same side of the store?
 2 A. **Yes. That's the same south wall more**
 3 **towards the back, the west side of the store.**
 4 Q. State's 32?
 5 A. **That is again the south side of the**
 6 **store. The far west jewelry case.**
 7 Q. And this would be State's 33.
 8 A. **That is the floor area behind those**
 9 **jewelry cases that we just looked at in the previous**
 10 **photos.**
 11 Q. There appears to be various items
 12 laying about the floor?
 13 A. **Yes.**
 14 Q. State's 37?
 15 A. **That is the far southwest corner floor**
 16 **area leading into the back office.**
 17 Q. Is that a watch or a piece of jewelry
 18 laying on the ground?
 19 A. **It appears to be.**
 20 Q. State's 38?
 21 A. **This is that back office that we just**
 22 **saw the doorway to in the previous photo.**
 23 Q. State's 39?
 24 A. **This is behind the desk area just**
 25 **showing the dishevelment of the items.**

1 Q. In that office?
 2 A. **In that same office, yes.**
 3 Q. There are two offices in this jewelry
 4 store?
 5 A. **Yes.**
 6 Q. State's 42?
 7 A. This is the second office. It's off a
 8 hallway off the north side of the business?
 9 Q. State's 44?
 10 A. **This is inside that office that we**
 11 **just looked at. There was a safe, an open safe**
 12 **right there behind the doorway as you went in.**
 13 Q. No money or jewelry apparently in that
 14 safe?
 15 A. **No.**
 16 Q. State's 49?
 17 A. **This is that jewelry case on the north**
 18 **wall of the --**
 19 Q. You mean that would be on the right
 20 side?
 21 A. **Yes, on the right side.**
 22 Q. State's 50?
 23 A. **This is another case on that north or**
 24 **right wall.**
 25 Q. State's 53?

1 A. **This is the floor area behind those**
 2 **jewelry cases we just looked at along that north**
 3 **wall.**
 4 Q. With items of disturbance in the
 5 walkway there?
 6 A. **Yes.**
 7 Q. And 54, would that be a close-up of
 8 that same area?
 9 A. **Yes.**
 10 Q. 57?
 11 A. **This is the hallway leading to the**
 12 **back area of the store. The mark on the north wall**
 13 **there on the right side of the photograph is a swipe**
 14 **mark of apparent blood.**
 15 Q. Did you do any testing with that spot?
 16 A. **Yes, I did.**
 17 Q. What kind of testing did you do?
 18 A. **We have a presumptive test for blood.**
 19 **It's called phenophaline. I use that presumptive**
 20 **test.**
 21 Q. What was the result?
 22 A. It was positive.
 23 Q. Did you in fact use the phenophaline
 24 presumptive test on other areas of blood?
 25 A. **Yes.**

RA000041

1 Q. Approximately how many?
 2 A. **Approximately six areas total, I**
 3 **believe.**
 4 Q. Showing you 58, what does that show?
 5 A. **At the end of the hallway that was in**
 6 **the previous photograph this is the back work area,**
 7 **the floor just as you come back in the back work**
 8 **area.**
 9 Q. What is that object laying on the
 10 ground?
 11 A. **That is another set of the plastic**
 12 **flex cuffs for zip ties.**
 13 Q. Showing you State's 64, what does this
 14 show?
 15 A. **This is continuing back into that work**
 16 **area behind the customer area. Some blood drops on**
 17 **the floor there.**
 18 Q. There are various spots here. Are
 19 these blood drops?
 20 A. **Yes.**
 21 Q. State's 65?
 22 A. **Continuing back further into that**
 23 **area, this is the farthest area back in the work**
 24 **area of the store.**
 25 Q. Would that be the back door at the top

1 of the photograph that we're looking at?
 2 A. **Yes.**
 3 Q. The very bottom of the back door?
 4 A. **Yes.**
 5 Q. There appears to be some pooling of
 6 blood in this area?
 7 A. **Yes.**
 8 Q. What is this object over here?
 9 A. **It's a blue work apron.**
 10 Q. Showing you 68?
 11 A. **That is a photograph of the rear door**
 12 **exiting from the the back work area into an alley.**
 13 Q. And 71, what does that show?
 14 A. **This is an earring that had been**
 15 **removed from a cleaning solution that was in that**
 16 **back work area.**
 17 Q. Did you recover it out of the cleaning
 18 machine?
 19 A. **Yes.**
 20 Q. It was inside the solution when you
 21 recovered it?
 22 A. **Yes.**
 23 MR. FATTIG: May I approach the
 24 witness?
 25 THE COURT: You may.

1 BY MR. FATTIG:
 2 Q. Showing you what has been marked as 92
 3 and 92A, do you recognize these documents?
 4 A. **Yes.**
 5 Q. What do they show?
 6 A. **These are the rough sketches I**
 7 **completed at the crime scene.**
 8 Q. You believe this is a fair and
 9 accurate copy of the rough sketch that you did at
 10 the crime scene?
 11 A. **Yes.**
 12 MR. FATTIG: Move to admit 92 and
 13 92A. THE COURT: Is there an objection?
 14 MR. CRISTALLI: Only to the extent
 15 it's not to scale. Otherwise we have no objection.
 16 THE COURT: It's understood it's not to
 17 scale. The item is received.
 18 BY MR. FATTIG:
 19 Q. So the jurors have an idea, ma'am,
 20 this would be -- you marked this entrance here and
 21 then there is a couch here and these would be the
 22 cases along the side?
 23 A. **Correct.**
 24 Q. With the offices towards the back, say
 25 from the middle, the safe in the middle?

1 A. **Yes.**
 2 Q. And then 92A, this is marked hallway
 3 over here?
 4 A. **Yes.**
 5 Q. Correct?
 6 A. **Um-hum.**
 7 Q. Does that lead off of this initial
 8 diagram, 92?
 9 A. **That's correct, yes.**
 10 Q. It kind of comes off the back right
 11 portion of the 92?
 12 A. **Yes.**
 13 Q. Leading up to this back office way?
 14 A. **Yes.**
 15 Q. And what is this here that you marked
 16 number six?
 17 A. **That large area of pooled blood in the**
 18 **back work area on the floor.**
 19 Q. This would be the apron next to that
 20 area?
 21 A. **Yes.**
 22 Q. And over here you have one of the flex
 23 cuffs that you recovered?
 24 A. **Correct.**
 25 Q. And then what would this be over here?

RA000042

1 A. **That's the swipe mark of blood on the**
2 **hallway wall.**

3 Q. In the photograph that we saw?

4 A. Yes.

5 Q. Then we also have more flex cuffs in
6 the front of the store in the carpet area?

7 A. Yes.

8 Q. How many total flex cuffs did you
9 recover?

10 A. **Two, I believe.**

11 Q. You previously testified at a trial of
12 a co-defendant, correct?

13 A. **Yes, I did.**

14 Q. Showing you what has been marked as
15 proposed 12 and 13, do you recognize these?

16 A. Yes.

17 Q. What are they?

18 A. **These are evidence packages that I**
19 **submitted containing the flex cuffs.**

20 Q. So you collected some evidence from
21 the crime scene, correct?

22 A. Yes.

23 Q. Whatever did you collect from the
24 scene?

25 A. **I collected the two flex cuffs, the**

1 **blue apron from the back work area, the earring from**
2 **the cleaning solution as well as samples of the**
3 **blood.**

4 Q. You collected -- you collect an item
5 of evidence. How do we know that the item of
6 evidence is inside this particular envelope?

7 It was procedure?

8 A. **The procedure is to the -- the sticker**
9 **on the front of the envelope indicates what the**
10 **envelope contains and this is listed white plastic**
11 **flex cuffs on both items.**

12 Q. And how do we know they came from this
13 Las Vegas Manufacturing Jewelry Store on November
14 24, 2002?

15 A. **That's indicated by the case number on**
16 **the envelope and the date.**

17 Q. And the date.

18 So the case number would be unique to
19 every single event that Henderson goes out to?

20 A. Yes.

21 Q. You had previously testified and you
22 had previously brought these to Court in the earlier
23 trial, correct?

24 A. Yes.

25 Q. They were in a sealed condition when

1 you testified last time and they were opened in
2 front of a separate jury, correct?

3 A. Yes.

4 Q. And looks like they have been stapled
5 shut. Let me pop this open.

6 Can you remove what's inside State's
7 proposed 12?

8 A. **Do you have any gloves by any chance?**

9 MR. FATTIG: Do we have gloves?

10 THE CLERK: Um-hum.

11 BY MR. FATTIG:

12 Q. Is there a possibility there could be
13 some biological substance, blood or whatnot on
14 there?

15 A. **That's a possibility, but I also**
16 **chemically processed these.**

17 Q. How did you do that?

18 A. **I used a procedure, basically super**
19 **glue on it.**

20 Q. Why did you process them?

21 A. **I was trying to obtain fingerprints.**

22 Q. Were you able to obtain fingerprints
23 off of either one of those?

24 A. **No, I was not.**

25 Q. Can you take out what we have there?

1 That would be one of the flex cuffs?

2 A. Yes.

3 Q. Which flex cuff is that one?

4 A. **I believe this was from the front**
5 **customer area on the carpet.**

6 Q. Is that in substantially the same
7 condition as it was when you impounded it back on
8 November 24, 2002?

9 A. Yes.

10 Q. If you could take out number 13.

11 A. **[Witness complied.]**

12 Q. That's another flex cuff?

13 A. Yes.

14 Q. Where did you recover that?

15 A. **This was from the back work area on**
16 **the floor.**

17 Q. Is that also in substantially the same
18 condition as it was back in 2002?

19 A. Yes.

20 MR. FATTIG: Move to admit 12 and 13.

21 THE COURT: And their contents?

22 MR. CRISTALLI: I believe.

23 MR. FATTIG: I believe they are marked
24 12 and contents.

25 THE COURT: Any objection, counsel?

RA000043

MR. CRISTALLI: No, sir.

THE COURT: Those are received.

BY MR. FATTIG:

Q. Ma'am, you talked about fingerprint processing of the flex cuffs here.

Did you do other fingerprint processing on the at the scene?

A. Yes.

Q. Where did you do that at?

A. I processed all of the jewelry cases, as well as different areas within the store. The safes that had been gone through, the desk area, the desk areas in the back, any area that looked disheveled or any items that were out of place.

Q. What about the back door area?

A. As well as the back door, yes.

Q. And the safes?

A. And the safes, yes.

Q. Were you able to lift any fingerprints anywhere in the store?

A. Yes, I was.

Q. Where at?

A. All of the fingerprints were recovered from the jewelry cases.

Q. How many fingerprints total did you

150

lift?

A. I believe I had nine lifts.

Q. Are those indicated, the location where you lifted them are they indicated on the diagram here which is marked 92?

A. Yes.

Q. How are they indicated?

A. I identify my lifts as LP or latent print. And you number them. These are LP1 through nine on the various jewelry cases.

Q. We have a close-up on the left side of the diagram here. These are marked LP2 and LP3?

A. Yes.

Q. That would be the second and third print you lifted?

A. Yes.

Q. So you were unable to lift prints off of any other surfaces other than the jewelry cases, correct?

A. That's correct.

Q. Was that unusual in your experience?

A. No, it's not.

Q. Why?

A. In order for fingerprints to be left behind many circumstances have to come into play.

For example, atmospheric conditions.

If it's dry or moist in the air in the air, the condition of the individual, individuals skin who is touching the object, if it's very dry skin lot of times there won't be a fingerprint left behind.

The fingerprint debris left behind is probably made up of water or the moisture that comes from your hands. The moisture combines with any debris or oils that are naturally produced by your skin.

A lot of different things have to come into play. The surface being touched also may not be conducive to fingerprints so it is very common to not find prints.

Q. I know you talked about supergluing the flex cuffs.

What kind of processing did you do with the glass areas, the safe and the back door?

A. We used fingerprint powders at scenes on a lot of surfaces that were in the store are very smooth surfaces. I used a black graphit powdered.

MR. FATTIG: Court's indulgence.

Nothing further..

THE COURT: Cross examination.

152

MR. CRISTALLI: Yes, Your Honor.

EXAMINATION

BY MR. CRISTALLI:

Q. Good afternoon.

Now, you were not called into this scene until the 24th of November 2002, correct?

A. Correct.

Q. The events occurred on or the incident occurred on November 23, 2002, right?

A. That's correct.

Q. What, how long did it take you between the time of the incident until the time you actually got there to do the analysis of the crime scene?

What was the total amount of time between those two events?

A. I'm not aware what time the actual incident occurred. I couldn't tell you a total number of hours.

I know what time I arrived.

Q. You arrived at what time?

A. At approximately 8:00 a.m.

Q. If the event occurred around 5:00 o'clock the previous day, then it was the difference

RA000044

1 between 5:00 o'clock and you getting there at 8:00
2 o'clock, correct?

3 **A. Yes.**

4 **Q.** As a Crime Scene Analyst, I know you
5 were attending to other things at that particular
6 time.

7 You were the sole Crime Scene Analyst
8 that arrived at that scene and processed that scene,
9 correct?

10 **A. Yes.**

11 **Q.** There was another one?

12 **A. That's correct.**

13 **Q.** And as a Crime Scene Analyst you have
14 worked many years in the State of Nevada and now in
15 Los Angeles County.

16 It would be safe to say we want to
17 preserve evidence? Preservation of evidence is
18 pretty important to your job and to police officers
19 jobs; is that correct?

20 **A. Yes, it is.**

21 **Q.** Especially in the area of the
22 forensics, right?

23 **A. Yes.**

24 **Q.** You qualified yourself in the area of
25 the forensics?

1 **A. Yes.**

2 **Q.** Special identification of latents and
3 I would assume that you also retrieve DNA as well
4 from crime scenes?

5 **A. Yes.**

6 **Q.** Obviously the quicker you can get
7 there the faster you can preserve the evidence the
8 better it is, right?

9 **A. Essentially.**

10 **Q.** Would you disagree with me on that?

11 **A. No.**

12 **Q.** So if all the stars aligned in the
13 right way, you would have preferred to be there
14 sooner than later on the scene of this case?

15 **A. If I could have been, yes.**

16 **Q.** When you got there on the 24th of
17 November 2002 and you began your crime scene
18 analyst -- your work there, correct?

19 **A. Yes.**

20 **Q.** When you're doing your work do you
21 know whether or not the scene had been tied off?

22 Do you know who had been at the scene
23 at that particular time?

24 Had there been a log in terms of the
25 police that had been on the scene or other

1 individuals on the scene??

2 **A. Whenever a scene is secure, which is a**
3 **hundred percent of the time, there is usually a**
4 **crime scene log that is completed.**

5 **Q.** Do you know whether or not one was
6 created in this particular case?

7 **A. I don't recall. I don't recall.**

8 **Q.** In the normal course of work that
9 would be the case?

10 **A. On major scenes where we're going to**
11 **be there a long time, yes.**

12 **Q.** It makes sense because you want to
13 make sure that you know who is going to and from the
14 scene so that you can make sure none of the evidence
15 is messed with?

16 **A. Yes.**

17 **Q.** When you got to the scene on the 24th
18 of November 2002 do you recall who was present at
19 the scene with you?

20 **A. Yes.**

21 **Q.** Who was that?

22 **A. Detective Denice Price and Randy**
23 **Allison.**

24 **Q.** Detective Price was the lead detective
25 on this particular case?

1 **A. Yes.**

2 **Q.** Was, when you arrived at the scene did
3 you arrive together with Detective Price and the
4 other detective was who?

5 **A. Randy Allison.**

6 **Q.** Did you arrive together?

7 **A. Not in the same vehicle. I think we**
8 **arrived approximately the same time.**

9 **Q.** And when you all arrived did -- was
10 there anybody present at the location?

11 **A. I believe there were some officers**
12 **there, some police officers.**

13 **Q.** Do you know where those officers were
14 in the front of the business?

15 In terms of being inside of the
16 business do you know, do you know who was inside the
17 business if anyone?

18 **A. I don't believe anybody was inside the**
19 **business.**

20 **Q.** As a Crime Scene Analyst in this case
21 did you get any information from police officers
22 that conducted interviews regarding whether or not
23 the perpetrators or suspects had gloves on, whether
24 or not they left prints, whether or not they left
25 any other forensic type of evidence, DNA, so forth

RA000045

1 and so on?

2 A. No.

3 Q. It wouldn't be important for you as a
4 Crime Scene Analyst to get that information?

5 A. No.

6 **I ask the questions. If the witness**
7 **or if the victims or witnesses have any of that**
8 **information, but if I remember correctly I don't**
9 **believe that the victims could remember if they had**
10 **gloves on or anything like that.**

11 Q. If there was information that the
12 victims had given to 911, for example, or to the
13 police officers that the suspects or the
14 perpetrators had no gloves on and that they left
15 their prints all over the place that would be an
16 important piece of information for you, I would
17 assume?

18 A. **It would, but I would process even if**
19 **they said they had gloves. I would still process**
20 **for fingerprints.**

21 MR. CRISTALLI: Have this marked,
22 please.

23 THE COURT: Counsel approach, please.
24 [Discussion at the Bench.]

25 BY MR. CRISTALLI:

1 Q. I wasn't to approach with what has been
2 marked as defense Exhibit C. Can you look at that
3 quick and identify what that is?

4 A. **It's a crime scene entry log.**

5 Q. And do you -- looking at that do you
6 recognize that as a log that's relevant to the
7 incident that occurred on November 23, 2002?

8 A. **Yes.**

9 Q. In fact it does have your name on
10 their, there; does it not?

11 A. **Yes.**

12 Q. Do you have, along with your name is
13 Detective Price and Allison's name on there as well?

14 A. **Yes.**

15 Q. Did you write your own name in there
16 or did Detective Price put the log in name in there
17 for you, do you recall that?

18 A. **I don't recall.**

19 Q. Prior to your arrival there is a
20 number of individuals, appears to be all police
21 officers that had logged in and out of the scene,
22 correct?

23 A. **Yes.**

24 MR. CRISTALLI: We'll move for its
25 admission.

1 THE COURT: Any objection?

2 MR. FATTIG: No.

3 THE COURT: It is received. Thank you.

4 BY MR. CRISTALLI:

5 Q. Let me present this here.

6 That's the entry log that we had just
7 that you just took a look at?

8 A. **Yes.**

9 Q. Obviously that says Detective Price,
10 Detective Allison and Maria Weir, correct?

11 A. **Yes.**

12 Q. Did you -- that is your signature
13 there?

14 A. **No.**

15 Q. So somebody had signed in for you?

16 A. **Yes.**

17 Q. Do you know who that was?

18 A. **I do not remember. It was either the**
19 **officer keeping the log or one of the detectives.**

20 Q. You have a time in and time out,
21 correct?

22 A. **Yes.**

23 Q. Somebody -- it appears all that
24 writing is consistent with one another, it appears
25 that they had also signed out for you, true?

1 A. **Yes.**

2 Q. How many hours would you have been
3 there? Log in 804, losing out 1235.

4 Is that accurate?

5 A. **Four and a half hours.**

6 Q. Now, um, when you got in there we
7 looked at a picture, a photograph the State had
8 pretend to you. That was of an earring that was
9 recovered from a fight of some sort.

10 Did you recover that yourself
11 personally or was it recovered prior to your
12 arrival?

13 A. **I believe I pulled it out of the**
14 **solution.**

15 Q. So it was immersed in the solution?

16 A. **Yes.**

17 Q. It was an earring?

18 A. **Yes.**

19 Q. Did you have any information from any
20 of the witnesses in this case through the detective
21 that one of the suspects may have been wearing an
22 earring?

23 A. **Yes.**

24 Q. You knew that information
25 Was there any attempts by you as the

RA000046

1 Crime Scene Analyst to try to recover any type of
2 forensic evidence from that earring, i.e. DNA?

3 **A. In a situation like that we would**
4 **actually submit the entire earring to the crime lab**
5 **for DNA.**

6 **I would not try and recover it from**
7 **the earring.**

8 **Q.** Do you know whether or not that was
9 done in this particular case?

10 **A. I do not know.**

11 **Q.** As far as you're concerned you have no
12 information related to that, true?

13 **A. That's true.**

14 **Q.** Let's talk a little bit about the
15 fingerprint analysis that was conducted in this
16 case. You talked a little bit about latent
17 recovery.

18 A latent could be a fingerprint, could
19 be a palm print, correct?

20 **A. That's true.**

21 **Q.** And a latent doesn't have to be a full
22 print. It could be a partial print, correct?

23 **A. That's correct.**

24 **Q.** But a latent would refer to something
25 you could do an analysis and comparison on?

1 **A. Yes.**

2 **Q.** It's a good enough quality to be able
3 to do a comparison?

4 **A. Not all latents are good enough for**
5 **comparison. A latent print is a general term we**
6 **give to any fingerprint evidence that's recovered**
7 **from a crime scene.**

8 **Q.** The latents recovered in this
9 particular case were all of the nature that you
10 could do a proper analysis and comparison on, true?

11 **A. Not all of them, no.**

12 **Q.** Do you know how many of those latents
13 that you actually could do were of the quality that
14 you could do a proper analysis and comparison on?

15 **A. I believe I identified five that were**
16 **suitable for comparison.**

17 **Q.** We talked a little bit about how you
18 would pull a latent from a crime scene. In this
19 case I would assume that you got pretty much the
20 best possible receptor that you could have, that
21 being either stainless steel or glass type surfaces?

22 **A. Glass is very conducive to accepting**
23 **fingerprints, if you will. As far as the best, I**
24 **don't know, but it is conducive to fingerprints,**
25 **yes.**

1 **Q.** Obviously, a latent left on a glass is
2 better than a latent left on plastic bottle,
3 probably, or some other type of plastic surface or
4 some on the typical surface.

5 Would you do a chronology of the best
6 surfaces and the worst surfaces?

7 **A. I'd say plastic is actually as good as**
8 **glass. Some harder items are like wood surfaces,**
9 **they are difficult to get prints from, some cloth**
10 **material, like that.**

11 **Q.** As a Crime Scene Analyst you can pull
12 latents from difficult places as you said, material?

13 **A. Yes.**

14 **Q.** And other types of surface because you
15 have some methodology. You mentioned super glue
16 methodology to pull latents from probably more
17 difficult surfaces?

18 **A. Yes.**

19 **Q.** You didn't have to do that on the
20 stainless steel or the glass signature surfaces
21 because it was conducive to you pulling it
22 traditionally the way you do?

23 **A. With the powder that I had, yes.**

24 **Q.** You talked about environment,
25 moisture, et cetera. It would be better in an ideal

1 set of circumstances to get to the location to the
2 place where the analysis is being to be done so that
3 environmental aspects don't connect the latents, had
4 they been sitting there for a couple days or couple
5 weeks?

6 **A. It could be.**

7 **Q.** You talked about environment and we
8 talked about moisture. Obviously moisture would --
9 in a dry environment, wouldn't least as long.

10 I mean it would dissipate over time,
11 correct?

12 **A. Yes, it would.**

13 **Q. You took the locations of the prints**
14 **and you did your own diagram as to where you drew**
15 **those prints from.**

16 **Is that typically the way you would do**
17 **it or would there be another methodology that you**
18 **would use to identify the actual locations of where**
19 **the prints came from?**

20 **A. Yes. Whenever I retrieve the latents**
21 **I put it on what we call latent lift card. It's**
22 **like a three by five card.**

23 **I would also indicate on the card the**
24 **exact location where it was recovered from.**

25 **Q.** Did we do that in this case?

1 A. Yes.
 2 Q. Did you identify that on direct
 3 examination, those cards?
 4 A. Today?
 5 Q. Yes.
 6 A. **No, we didn't go through it.**
 7 Q. With regard to that, that's fine.
 8 With regard to that obviously once you
 9 obtained the latents you're not -- you recovered the
 10 latents. You can't do a comparison necessarily
 11 immediately because you don't have a person to
 12 compare it to or latents to compare it to, correct?
 13 A. **Not on the scene, no.**
 14 Q. You'll have to secure it. There's
 15 going to be the chain of custody issues you'll have
 16 to make sure that are protected and then at some
 17 particular time someone will give you information
 18 regarding possible suspects and you'll do a
 19 comparison?
 20 A. Yes.
 21 Q. There is also is there not a system
 22 wherein you could, if you have latent prints, that
 23 are of quality that you can do a comparison, you can
 24 put them in AFIS?
 25 A. **That's correct.**

1 Q. For purposes of the jury, AFIS is a
 2 system wherein you could put them in a computer
 3 system, right?
 4 A. Yes.
 5 Q. And see whether or not they match
 6 anybody, anybody's prints that are already in the
 7 system?
 8 A. **That's correct.**
 9 THE COURT: Let me interrupt. We're
 10 going into an area we discussed on a previous
 11 occasion.
 12 MR. CRISTALLI: Okay Your Honor. I'm
 13 moving on pretty quickly here.
 14 BY MR. CRISTALLI:
 15 Q. That is a viable thing?
 16 THE COURT: As I said, that's in an
 17 area I don't think we'll go into.
 18 BY MR. CRISTALLI:
 19 Q. There came a point in time where you
 20 were given some prints to do a comparison to,
 21 correct?
 22 A. **I was given named suspects to compare**
 23 **prints to, yes.**
 24 Q. Somebody gave you the actual prints of
 25 those suspects?

1 A. Yes.
 2 Q. Then you did a comparison with what
 3 you recovered from the scene?
 4 A. Yes.
 5 Q. Some of those -- one of the suspects
 6 that you did a comparison was Mr. Erick Brown,
 7 correct?
 8 A. Yes.
 9 Q. You did an analysis, comparison of
 10 what you -- the latents you pulled to his
 11 fingerprints and none of the latents matched his
 12 fingerprints, true?
 13 A. **That's correct.**
 14 Q. In fact, you did a report to that
 15 effect, correct?
 16 A. Yes.
 17 MR. CRISTALLI: Finishing up. I want
 18 to get these two in.
 19 MR. FATTIG: Can we approach, judge?
 20 [Discussion off the record.]
 21 MR. CRISTALLI: Approach?
 22 THE COURT: Yes.
 23 BY MR. CRISTALLI:
 24 Q. I guess they should be marked for at
 25 least identification purposes, but for times sake

1 I'm going to show you what is a laboratory report
 2 from the police -- Henderson Police Department.
 3 Can you tell me whether or not you
 4 recognize that?
 5 A. Yes.
 6 Q. What is that?
 7 A. **It is a laboratory report that I wrote**
 8 **regarding the comparison that I made of the prints**
 9 **from the crime scene to Mr. Blackwell and Mr. Brown.**
 10 Q. It says here that of five, it says
 11 five latent lift cards submitted by M. Weir, your
 12 badge number and it says suitable latent prints
 13 presented, correct?
 14 A. Yes.
 15 Q. You don't know how many suitables were
 16 in that five or were they all five?
 17 A. **I don't know how many. There may have**
 18 **been multiple on each card.**
 19 **I don't know the total.**
 20 Q. It has Mr. Brown's name on here with
 21 his identification number, correct?
 22 A. Yes.
 23 Q. And the comparison was negative, true?
 24 MR. FATTIG: Objection. Asked and
 25 answered.

RA000048

1 THE COURT: We've covered this.
 2 MR. CRISTALLI: The date on this, Ms. Weier,
 3 is November 25, 2002.
 4 THE WITNESS: That's the date on that form,
 5 yes.
 6 BY MR. CRISTALLI:
 7 Q. That's the date this report was generated?
 8 A. No.
 9 Q. It says dated November 25, 20.
 10 What is that?
 11 A. We had just implemented a new laboratory
 12 management system.
 13 The way the system was generated or the way it
 14 was initially set up the date we created a lab case in
 15 this system is actually the date it was put on all the
 16 reports, regardless of when we did the work.
 17 This was immediately discovered and
 18 corrected. Unfortunately, this report was never
 19 corrected.
 20 I know the actual date. I did the comparison.
 21 It was not on November 25.
 22 Q. The November 25, 2002 date is in error?
 23 A. Yes.
 24 Q. This would not have been the date that the
 25 comparison was done?

1 A. That's correct.
 2 Q. Off the top of your head, you don't know the
 3 date?
 4 A. I believe it was in January.
 5 Q. I'm going to show you another laboratory report
 6 that has the date of April 14, 203. It appears to be
 7 another comparison or analysis that was done on an
 8 individual by the name of Martell Williams, correct?
 9 A. Yes.
 10 Q. Your analysis size was that there was no positive
 11 comparison as related to Mr. Williams, correct?
 12 A. That's correct.
 13 Q. Here it says nine latent lift cards were
 14 submitted by you on this sheet.
 15 A. That's another error with that form. There were
 16 actually a total of nine latent lift cards. In that
 17 report I identified five as suitable. That was an error
 18 on my part.
 19 Q. So it's not nine, it's five?
 20 A. Nine were submitted and all nine were looked at
 21 and the -- but five were actually marked as suitable for
 22 comparison.
 23 Q. Nine were listed and five were suitable?
 24 A. Yes.
 25 Q. Finally, here it appears also that there was

1 footwear evidence.
 2 A. There was a footwear impression in blood. It was
 3 a tennis shoe impression.
 4 Q. Was there any comparison done of that foot to
 5 either a shoe of Mr. Brown, to the best of your
 6 knowledge?
 7 A. I'm not aware of it.
 8 Q. Did you perform any comparison of any footwear?
 9 A. I did not. I'm not qualified to.
 10 Q. You don't do footwear analysis?
 11 A. No.
 12 MR. CRISTALLI: No further questions.

RE-EXAMINATION

17 BY MR. FATTIG:
 18 Q. When when did -- when did you do the comparison
 19 to Mr. Brown and Mr. Blackwell to their known prints?
 20 A. I believe it was January 14.
 21 Q. 2003?
 22 A. Yes.
 23 MR. FATTIG: I have nothing further, Your
 24 Honor.
 25 THE COURT: Thank you, Ms. Weir. You can

1 step down.
 2 [Whereupon, the Court admonished the jury.]
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 20
 21 ATTEST that this is a true and complete
 22 transcript of the proceedings held.

J. A. DAMATO CCR17

RA000049

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

ERICK M. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 47856

2007 OCT 12 P 1:53

District Court Case No. C189658

Cheryl Bloom
CLERK OF THE COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 13th day of September, 2007.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 9th day of October, 2007.

Janette M. Bloom, Supreme Court Clerk

By: *J. Castillo*

Chief Deputy Clerk

RECEIVED

OCT 11 2007

CLERK OF THE COURT

RA000050

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47856

FILED

SEP 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary with a firearm; first-degree kidnapping with the use of a deadly weapon, victim 65-years or older, resulting in substantial bodily injury; first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily injury; robbery with the use of a deadly weapon, victim 65-years or older; and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Erick Brown to concurrent and consecutive prison terms totaling 60 to 160 years.

Brown first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

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OCT 11 2007

CLERK OF THE COURT

In particular, we note that the victims, Emmett Connelly and Mike Golsecker, both identified Brown at trial as one of the assailants that pushed them into a back room, restrained them with "zip ties," severely beat them, and robbed them with the use of a gun. Golsecker testified that he was seventy years old at the time of the robbery. When officers apprehended Brown, he possessed a backpack containing a large amount of jewelry taken in the robbery. Evidence was also presented at trial that Brown had pawned a ring taken in the robbery and had given another ring taken in the robbery to his fiancé. Finally, officers testified that Brown made inculpatory statements.

We conclude that the jury could reasonably infer from the evidence presented that Brown participated in the robbery of the jewelry store, and the kidnapping of Connelly and Golsecker, despite Brown's testimony to the contrary. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.²

Brown next contends that he was wrongly convicted of kidnapping because any force used was incidental to the robbery. In

²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

support of his claim, Brown cites to Mendoza v. State³ and Wright v. State.⁴

Dual convictions for kidnapping and an associated offense are appropriate "where the movement or restraint serves to substantially increase the risk of harm to the victim over and above that necessarily present in an associated offense" and "where the movement, seizure or restraint stands alone with independent significance from the underlying charge."⁵

In the instant case, Connelly and Golsecker were pushed into the back room and onto the floor while being hit and kicked by Brown and Alfred Blackwell. Their hands were restrained behind their backs with "zip ties." When Golsecker moved, Brown hit him in the head, causing him to bleed from his nose, mouth, and head. When Golsecker turned his head, Brown struck him with the gun and Golsecker lost consciousness. Brown and Blackwell began to question Connelly regarding the store surveillance camera and the location of keys. Because Connelly did not answer quickly enough, Brown repeatedly kicked Connelly in the head and side. As a result of the beating, Connelly sustained numerous injuries including lacerations to his eye, fractured ribs, and a temporary loss of

³122 Nev. 267, 130 P.3d 176 (2006).

⁴94 Nev. 415, 581 P.2d 442 (1978), holding modified by Mendoza, 122 Nev. 267, 130 P.3d 176.

⁵Mendoza, 122 Nev. at 274-75, 130 P.3d at 180-81.

hearing. Golsecker's teeth were broken, causing problems with his speech. He also sustained a severe cut to his mouth, two black eyes, and a bruised nose. The movement and restraint of Connelly and Golsecker substantially exceeded that required to complete the robbery and stood alone with independent significance from the robbery.⁶ Therefore, we conclude that Brown's dual convictions for first-degree kidnapping and robbery were proper.

Last, Brown contends that the district court abused its discretion by presenting Blackwell to the jury. Specifically, Brown contends that it was error to "parade" Blackwell because the probative value of the evidence was substantially outweighed by its prejudicial effect.

The determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed unless manifestly wrong.⁷ In the instant case, the district court concluded that the admission of Blackwell as "evidence" was relevant to the issue of the accuracy of the victim's identification. Additionally, the presentation of Blackwell was not highly prejudicial because he was dressed in street clothes and the fact of his guilty plea was not presented

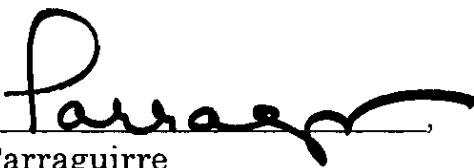
⁶Id.

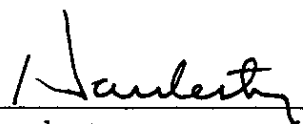
⁷See Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).


to the jury. Brown has not demonstrated that the district court's decision was manifestly wrong. Moreover, any error was harmless beyond a reasonable doubt.⁸

Having considered Brown's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Cristalli & Saggese, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: October 9, 2007

Supreme Court Clerk, State of Nevada

By [Signature] Chief Deputy

RA000056

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 47856

District Court Case No. C189658

REMITTITUR

TO: Charles J. Short, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 9, 2007

Janette M. Bloom, Clerk of Court

By: 
Chief Deputy Clerk

cc: Hon. Donald M. Mosley, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Cristalli & Saggese, Ltd.

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on OCT 12 2007.

HEATHER LOFQUIST
Deputy District Court Clerk

RA000057
07-20380