

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

DVONTAE RICHARD,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No. 70542

APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME II

**Appeal from Judgment of Conviction
Eighth Judicial District Court**

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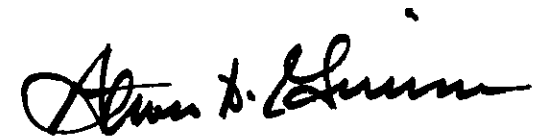
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C308258-1
)	DEPT NO. XXVIII
vs.)	
)	
DVONTAE RICHARD,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

TUESDAY, FEBRUARY 23, 2016

APPEARANCES:

For the State:	JOHN L. GIORDANI, III, ESQ. Deputy District Attorney CHAD N. LEXIS, ESQ. Deputy District Attorney
For the Defendant:	BRENT D. PERCIVAL, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

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1 **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 23, 2016, 10:20 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: Case number C308258, State of Nevada
5 versus Dvontae Richard. Let the record reflect the defendant
6 is present, represented by counsel. Are we -- is the State
7 ready to go ahead?

8 MR. GIORDANI: We are ready, Your Honor, I'm just --
9 so the Court's aware, I'm booting up a video right now for the
10 first witness. It's -- it takes forever, as Mr. Percival
11 knows. So we would need to test it once it's booted up to
12 play it, but if the Court wants to get going I can try to do
13 it mid -- mid-witness.

14 THE COURT: I mean, are you talking it takes a
15 minute or are you talking it takes 20 minutes?

16 MR. LEXIS: Five to 10.

17 MR. PERCIVAL: I would say five to 10 minutes is --
18 is what it's always taken on my computer to boot up.

19 MR. GIORDANI: It's been going for a couple minutes
20 already, though.

21 THE COURT: All right. So you need that for the
22 first witness?

23 MR. GIORDANI: Unfortunately, yes.

24 THE COURT: All right. So let's just -- we'll wait.

25 MR. GIORDANI: Okay. Thank you.

 UNCERTIFIED ROUGH DRAFT

1 THE COURT: And just for the record, you talked to
2 your -- the defense talked to their client. Do you need
3 additional time because this would be a good time if you
4 needed to talk to him outside, you are free to do that while
5 we're waiting. Yes? No? I'm just making it available. All
6 right. Tell me when you're ready.

7 MR. GIORDANI: Yes, Your Honor.

8 (Pause in proceedings.)

9 MR. PERCIVAL: Judge, my client would like to
10 address the Court.

11 THE COURT: Wait a second. All right. Are we on
12 the record?

13 THE CLERK: Yes.

14 MR. PERCIVAL: Yes.

15 MR. LEXIS: Is this something about your -- your
16 attorney client? Should we step out?

17 MR. PERCIVAL: Probably.

18 MR. LEXIS: Okay.

19 THE COURT: All right. We're on the record. We're
20 outside the presence and defense counsel has indicated that
21 the defendant wishes to address the Court so the State, the
22 prosecutors, have stepped outside. Go ahead.

23 THE DEFENDANT: Your Honor, I need -- I don't know
24 if it's more time or whatever, but I can't go to trial because
25 I have not -- I have a little bit of the information that the

1 DA have. I have no pictures, I have no transcripts, I have
2 none of this. I was just aware of -- I just learned about
3 this yesterday. I had no time to talk to my lawyer, he didn't
4 come see me yesterday. Over the weekend he was supposed to
5 come see me, he didn't come see me. So now that I'm here,
6 what am I going on trial on? I have none of the information
7 that the DA has against me. I have none of this information.
8 The only information I have is the hospital records and the
9 hospital statements from when I was shot. I have nothing
10 else.

11 THE COURT: So yesterday when we were here all day
12 it didn't occur to you to mention this?

13 THE DEFENDANT: I was -- I was picking up -- as we
14 went I was picking up all this information. I didn't -- my
15 lawyer said he was going to come see me yesterday after trial
16 but as we went yesterday I learned about pictures,
17 transcripts, I learned about all of this yesterday. I have
18 none of this. The discovery I have has none of this.

19 THE COURT: Counsel?

20 MR. PERCIVAL: Judge, I was appointed in September
21 on this -- or excuse me, I believe August on this case. He
22 had been represented by the public defender prior to that.
23 They'd already gone through the preliminary hearing. I gave
24 everything that I had to him with the exception of we didn't
25 print out the pictures off the CD of pictures that I was

1 given. I asked him if he had seen the pictures, he said yes,
2 I seen them at the preliminary hearing. So I assumed that he
3 had seen them with his public defender. You know, the --

4 THE COURT: All right. So, what is it you're
5 claiming you didn't have a chance to look at?

6 THE DEFENDANT: I only seen three pictures, that's
7 the picture of the gun, a picture of me laying in the hospital
8 bed and a picture of my bullet wound.

9 THE COURT: All right. There's a --

10 THE DEFENDANT: Mr. Percival showed me -- he gave me
11 nothing. I haven't received a piece of paper since I -- every
12 paper I have I got from my public defender.

13 THE COURT: All right. So --

14 MR. PERCIVAL: Well, I know he -- I know he has a
15 substantial amount of the discovery, Judge, because we -- I
16 sent it with my private investigator and I've seen him
17 carrying it when I've visited him seven, eight times at the
18 jail.

19 THE COURT: All right. We will take 15 minutes. I
20 mean, there's additional photos, correct, that he's claiming
21 he didn't see?

22 MR. PERCIVAL: Well, I just -- I had just given him
23 a stack of -- I received from the DA his stack of photos and
24 gave them to my client to look at just a minute ago.

25 THE COURT: Okay. So you had a chance to look at

1 those?

2 THE DEFENDANT: I want the transcript -- I want
3 everything that they have. Why can't I have everything that
4 they have?

5 MR. PERCIVAL: What --

6 THE DEFENDANT: That is my lawyer, that's what he's
7 here for. And this is the same thing we've been doing the
8 whole time he's been on my case is arguing.

9 THE COURT: I'm not sure what transcript you want.

10 MR. PERCIVAL: That's what I'm getting at.

11 THE DEFENDANT: Well, how about I find a new lawyer?
12 How about that?

13 THE COURT: Well, we're in the middle of the trial.

14 THE DEFENDANT: The middle of a trial that he put
15 together two weeks ago.

16 THE COURT: All right. You can certainly make
17 whatever claims you want to make in post-conviction relief in
18 that in fact is what happens, but at this point being
19 certainly in the middle of the trial, certainly you were aware
20 that this trial was going and certainly we spent all day in
21 here and you didn't mention. So now it appears that your
22 counsel is advising that you do have the photos. Is there
23 anything --

24 THE DEFENDANT: What photos do I have? He just set
25 those photos in front of me two minutes ago.

1 THE COURT: So do you need more time to look at
2 them?

3 THE DEFENDANT: I need another lawyer.

4 THE COURT: Well, assuming your -- that's a motion
5 for a new lawyer, it's denied. It certainly is -- we've
6 already started the trial, we've already sworn the jury, so
7 your motion is denied. Is there any specific documents that
8 you claim you have not had an opportunity to look at that you
9 would like to look at?

10 THE DEFENDANT: The only thing I have in my
11 discovery packet is the statements that was read, wrote,
12 whatever it is that was given at the hospital. I have nothing
13 else.

14 THE COURT: Is there anything else?

15 MR. PERCIVAL: Judge, the only thing -- the only
16 thing that I'm aware of that's a transcript that he might not
17 have is the preliminary hearing transcript. He should have --
18 we've gone over his own statement, he has got copies of
19 statements of Eric Blake, Trevon Kinard. He indicated to me
20 that he has all the handwritten statements. He's never asked
21 me for anything that I haven't given him.

22 THE COURT: Are we even going to be -- are they --
23 is the State calling any witnesses this morning that were at
24 the preliminary hearing?

25 MR. PERCIVAL: That -- yes, they're -- the first

1 witness they're calling is Luis Ruiz. He was -- he testified
2 at the preliminary hearing. He made a one-page handwritten
3 voluntary statement. There was no tape recorded interview
4 with him. Mr. Richard was present at the preliminary hearing
5 and heard him testify and has spoken to -- has spoken to me of
6 comparing the statement to the transcript and that they were
7 at odds with each other. So I was under the impression that
8 he had the preliminary hearing transcript until this morning.
9 And --

10 THE COURT: All right. Do you have the testimony at
11 the preliminary hearing of this --

12 MR. PERCIVAL: Of this witness?

13 THE COURT: -- particular witness?

14 MR. PERCIVAL: Certainly.

15 THE COURT: And how many -- it's not that many
16 pages.

17 MR. PERCIVAL: No, 30 maybe? Twenty-five, 30 pages.

18 THE COURT: All right. I will give him -- how long
19 do you need to look at those 30 pages?

20 THE DEFENDANT: All day.

21 THE COURT: Well, we're not -- no.

22 THE DEFENDANT: Well, it's not your fault, it's not
23 my fault, it's my lawyer fault.

24 THE COURT: All right. You can have -- we'll take
25 10 minutes. You can look at those 30 pages of the first

1 witness and we will go from there. I'm not even sure -- I
2 thought I looked at it and I don't think it's 30 pages even.

3 MR. PERCIVAL: Well, it's --

4 THE COURT: All right. Give it to him and you can
5 take --

6 MR. PERCIVAL: No, it's probably more like -- it's
7 probably more like 20 pages.

8 THE COURT: All right. Then you can take some time
9 to review it and we will proceed. All right. You can tell --
10 tell them we're going to take an extra 10 minutes. Have a
11 seat, read it over.

12 (Pause in proceedings.)

13 THE COURT: Okay. We're back on the record. Let
14 the record reflect the presence of the defendant. We -- I
15 gave you 10 or 15 minutes to review the transcript. It's my
16 understanding you didn't wish to do so; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You didn't wish to review it?

19 THE DEFENDANT: No.

20 THE COURT: Okay. So --

21 MR. GIORDANI: Judge, did the record reflect that
22 the prosecutors were out of the courtroom during this whole --

23 THE COURT: Yes.

24 MR. GIORDANI: Thank you.

25 THE COURT: Yes. Yes. I -- the entirety of time

1 and so now that you're back, let's go. Bring the jury in.

2 (Jury reconvened at 10:59 a.m.)

3 THE COURT: Please be seated. Morning, ladies and
4 gentlemen. Sorry we're a little late, I had some things to
5 do. You can't always plan. Call the roll.

6 (Clerk called roll.)

7 THE COURT: Thank you. State, call your first
8 witness.

9 MR. GIORDANI: Luis Ruiz.

10 LUIS RUIZ, STATE'S WITNESS, SWORN

11 THE CLERK: Please be seated. Please state your
12 name and spell it for the record.

13 THE WITNESS: Luis Ruiz, L-u-i-s, R-u-i-z.

14 MR. GIORDANI: May I, Your Honor?

15 THE COURT: Yes.

16 MR. GIORDANI: Thank you.

17 DIRECT EXAMINATION

18 BY MR. GIORDANI:

19 Q Mr. Ruiz, let me move that chair, that's kind of in
20 the way. I want you to pull yourself up a little bit. This
21 is a microphone right in front of you. You're a little soft
22 spoken so I want the jury to be able to hear you, so speak
23 into that microphone. Okay?

24 A Okay. All right.

25 Q I want to draw your attention to May 20th of last

1 year, around three a.m. Do you recall where you were on that
2 early morning?

3 A Yes.

4 Q Where was that?

5 A At the Bank of America.

6 Q Is that Bank of America located approximately Desert
7 Inn and Maryland Parkway?

8 A Yes.

9 Q Is that located here in Clark County, Nevada?

10 A Yes.

11 Q Where had you come from before arriving at the Bank
12 of America on that morning?

13 A I came from work.

14 Q And where do you work generally?

15 A Monte Carlo.

16 Q Okay. When you left work and you went to the bank,
17 what was your purpose in going there? What were you going to
18 the bank for?

19 A Getting money out of the ATM.

20 Q Okay. When you went there, did you park your
21 vehicle?

22 A Yes, I did.

23 Q And do you remember where you parked?

24 A I park right in front of the ATM.

25 Q Okay.

1 MR. GIORDANI: And, Your Honor, State's Proposed
2 Exhibits 3 through 19 are photographs and they're all admitted
3 by stipulation between the parties. We haven't gone through
4 that yet, but I just wanted to make that record before I
5 publish these and move for their admission.

6 (State's Exhibit 3 through 19 admitted.)

7 MR. PERCIVAL: And I have looked at them, Judge.

8 THE COURT: And they're stipulated to be admitted?

9 MR. PERCIVAL: Yes.

10 THE COURT: Yes. Okay. Thank you.

11 MR. GIORDANI: Thank you, Your Honor.

12 BY MR. GIORDANI:

13 Q Luis, can you see on that screen right in front of
14 you?

15 A Yes.

16 Q Okay. I'm showing you State's 3. Let's see if I
17 can get that glare. Do you see this here?

18 A Yes.

19 Q Does that appear to be the Bank of America that you
20 just talked about?

21 A Yes, it is.

22 Q Okay. I'm showing you State's 5. Can you see a
23 vehicle in that photo?

24 A Yes.

25 Q And whose vehicle is that?

1 A That's mine.

2 Q All right. And is that a fair and accurate
3 depiction of the location that you parked when you went to the
4 ATM machine that morning?

5 A Yes, it is.

6 Q Okay. When you got there tell us what you did.

7 A I parked in the parking lot and then got out of the
8 car, went to the ATM to get money.

9 Q Okay. And that ATM machine, is it inside some doors
10 or is it outside the building?

11 A Outside the building.

12 Q Okay. Showing you State's 6. Do you recognize
13 that?

14 A Yes.

15 Q Do you know where the ATM is in reference to these
16 doors?

17 A On the left side.

18 Q Okay. So it's not depicted in the photo but it's
19 outside the bank --

20 A Yeah.

21 Q -- to the left of this photo; is that correct?

22 A Yes.

23 Q Okay. How did you get money out, did you use a
24 card?

25 A Yes, I did.

1 Q Do you remember how much you took out?

2 A I took out 20.

3 Q Twenty dollars?

4 A Yeah.

5 Q What was the -- what were you going to use that 20
6 for, if you remember?

7 A To put gas in the car.

8 Q Okay. When you took that 20 out, did you -- well,
9 let me -- I'll get to it. Once you took the money out where
10 did you go?

11 A I went back in the car and sat there for a minute or
12 two minutes.

13 Q Okay. What did you do when you sat there? What
14 were you doing?

15 A I put the money in my wallet and realized I didn't
16 need the money, so I got out of the car and went back to the
17 ATM.

18 Q What was the purpose in going back to the ATM?

19 A Putting the money back to the bank because I don't
20 like carrying that cash.

21 Q Okay. So the jury understands, did you take the
22 money out thinking you didn't already have cash?

23 A Yes.

24 Q How much cash did you realize you had when you got
25 back in the car?

1 A Twenty bucks.

2 Q Okay. So you already had 20 and that was enough for
3 gas?

4 A Yeah.

5 Q Is that a yes?

6 A Yes.

7 Q You've got to be verbal because she's taking all
8 this down and she's listening. Okay?

9 A Okay.

10 Q When you -- when you got back out of your car, did
11 you actually get that money, that 20 redeposited into the
12 bank?

13 A Yes.

14 Q What did you do from there?

15 A I went back in the car and got inside the car.

16 Q Okay. What did you do inside the car?

17 A I sat there for a minute, for a couple minutes.

18 Q Okay. What were you doing?

19 A Just putting on music from my phone to the Bluetooth
20 of the stereo.

21 Q Okay. So you're attaching Bluetooth to your car,
22 however you do that? Is that a yes?

23 A Yes.

24 Q Okay. At that point did something catch your
25 attention?

1 A Yes. I saw like a shadow on the -- on the back
2 light barely coming in.

3 Q Okay. And then what happened?

4 A And when I popped inside the car and closed the door
5 and then that's when they came up to me.

6 Q When you say they, are you referring to one person
7 or more than one person?

8 A More than one person.

9 Q How many?

10 A Two.

11 Q What did they do when you saw them first?

12 A They -- they pulled two guns at me on the driver's
13 side window. And then they yelled [indiscernible] give it
14 all.

15 Q They yelled [indiscernible] give it all?

16 A Yes.

17 Q Okay. When they said give it all -- or yelled give
18 it all, did that catch you by surprise?

19 A Yes.

20 Q What did you do?

21 A I stayed in the car and -- and they opened the door
22 and that's when they pointed the gun at me.

23 Q Okay. When you say they pointed the gun at me, do
24 you mean one of them or both of them?

25 A Both of them.

1 Q Did you have an opportunity to view those guns or
2 look at the guns?

3 A Yes.

4 Q Can you describe either or both of the guns?

5 A One is -- was black and gray and the other one was
6 black.

7 Q Okay. Do you know the difference between a
8 semiautomatic and a revolver?

9 A Yes.

10 Q And were they -- do you know if they were semiauto
11 or revolvers or --

12 A Semiauto.

13 Q Both of them?

14 A Yeah.

15 Q Okay. Did you get a look at the two people and what
16 they were wearing, if you recall?

17 A Yes. The -- just the surgical mask and I don't
18 remember about the clothing.

19 Q Okay. So you remember -- correct me if I'm wrong,
20 but one of them wearing a surgical mask?

21 A Yes.

22 Q Do you remember what the other one had on his face,
23 if anything?

24 A A bandanna.

25 Q Okay. Do you remember the clothing of either of the

1 two?

2 A No, I don't remember.

3 Q Okay. Do you remember doing a statement in this
4 case?

5 A Yes.

6 Q And if I showed you that statement would it refresh
7 your recollection --

8 A Yes.

9 Q -- as to what they were wearing? Police responded
10 and filled out a report, right?

11 A Yes.

12 Q All right. I'm going to show you -- or if it would
13 refresh your recollection, a police report. Do you think a
14 police report depicting what you told police on that day would
15 refresh your memory as to what those two individuals were
16 wearing?

17 A Yes.

18 Q Okay.

19 MR. GIORDANI: Court's brief indulgence. Can I
20 approach?

21 THE COURT: Yes.

22 BY MR. GIORDANI:

23 Q So just so the jury is clear, you didn't write this
24 report, correct?

25 A This report?

1 Q Yeah, this is a police report, right?

2 A Yes.

3 Q Okay. So you didn't write it obviously?

4 A Yes, I did.

5 Q But you didn't write the words on this, correct?

6 A No.

7 Q Okay. Now, there at the bottom of page one,
8 counsel, there are two descriptions. Can you read those to
9 yourself and look up at me when you're done? Does that
10 refresh your memory a little bit?

11 A Yes.

12 Q Okay. So what were those two individuals wearing
13 that day?

14 A One of them was wearing black shorts and a white
15 tank top. And the other one was wearing black pants and a
16 black shirt with a hood.

17 Q Okay. With a hood?

18 A Yeah.

19 Q Okay.

20 MR. GIORDANI: And, Your Honor, at this point I'm
21 going to move to publish State's Proposed Exhibit 2, that's
22 the video surveillance from the bank also admitted by
23 stipulation from the parties.

24 THE COURT: It's stipulation to admit, defense
25 counsel?

1 MR. PERCIVAL: Yes, Judge.

2 THE COURT: Okay. Then go ahead.

3 BY MR. GIORDANI:

4 Q Now, Luis, you've never seen video surveillance from
5 this bank before, have you?

6 A No.

7 Q Okay. So the record's clear, this video starts at
8 approximately 2:15 a.m. and for the sake of saving time, I'm
9 going to fast-forward a little bit. While that's
10 fast-forwarding, Mr. Ruiz, you had said that the two
11 individuals opened the door; is that correct?

12 A One of them opened the door.

13 Q Okay. So you yourself didn't open the door --

14 A No.

15 Q -- they -- they did that?

16 A They did it.

17 Q Okay. When the two -- one of the two individuals
18 opened the door, what did they say, if anything?

19 A Give it all.

20 Q Give it all?

21 A Yeah.

22 Q Okay. What did you do at that point?

23 A That's when I took out my wallet and handed it to
24 them.

25 Q Can you describe that wallet?

1 A It was a Louis Vuitton, brown, Louis Vuitton.

2 Q Louis Vuitton?

3 A Yeah.

4 Q How much, if you recall, did you pay for that wallet
5 when you bought it?

6 A Around 600.

7 Q Okay. Do you remember saying it was around 300?

8 A Yeah, around 300 to six.

9 Q Okay. When you handed them their wallet -- your
10 wallet, did it have anything inside of it?

11 A It had \$30 inside.

12 Q Okay. Your -- can I assume your ID and other type
13 of ID cards?

14 A Yeah, ID, health card and --

15 Q Health card?

16 A Yeah.

17 Q Okay. Did you -- when you gave them your wallet
18 were you still sitting in the vehicle or did you get out of
19 the vehicle --

20 A I was still sitting in the vehicle.

21 Q Okay. Were either of them pointing firearms at you
22 at this point?

23 A Yes, they were.

24 Q Was it both or just one?

25 A Both of them.

1 Q Okay. And I apologize, I forgot to ask you earlier.
2 Do you recall the race of the two individuals?

3 A It was two black males.

4 (Video played)

5 Q You see a black vehicle on that screen. That's not
6 yours, right?

7 A No.

8 Q Okay. Do you recognize that vehicle, Luis?

9 A Yes.

10 Q And does that appear to be your vehicle?

11 A Yes, it is.

12 Q Okay. I'm going to push play and -- so the Court's
13 aware so we're back down to normal speed. And you're seeing
14 this video for the first time here in court, right?

15 A Yes.

16 Q Okay. Does that appear to be you?

17 A Yes, it is.

18 Q Okay. And is that during that first when you went
19 to get the 20?

20 A Yeah, when I first went to get 20.

21 Q And to save some time I'm going to fast-forward this
22 again. Do you recall going into the back of your vehicle?

23 A Yes.

24 Q Do you know what you were doing?

25 A I think checking my speakers.

1 Q Okay. Does that have anything to do with the
2 Bluetooth or whatever?

3 A Yes.

4 Q Okay. Mr. Ruiz, we're fast-forwarding so it will be
5 a minute. When those men first came up to you and brandished
6 the firearms and said, "Give it all", how did you feel at that
7 point?

8 A I just stood there and I didn't move until the last
9 moment they yelled kind of loud, "Give it all" so --

10 Q Were you scared?

11 A Yeah, I was kind of scared because I didn't have my
12 gun loaded.

13 Q Okay. Did you have a firearm in your vehicle?

14 A Yes, I did.

15 Q And was that firearm registered?

16 A Yes, it is registered.

17 Q And did you purchase it legally through a store?

18 A Yes.

19 Q Did you maintain paperwork from that firearm?

20 A Yes.

21 Q Do -- did you bring one with you today?

22 A Yes, I did.

23 Q Does that paperwork you brought with you today
24 depict the serial number that was on that firearm --

25 A Yes.

1 Q -- you purchased legally?

2 A It has the serial number in there.

3 Q Okay. Can I have you pull that out and look at it?

4 Is that the correct piece of paper?

5 A Yes.

6 Q Let me take this from you. And so the record's
7 clear, I've shown defense counsel that. And Luis, can you
8 tell me what the serial number on your firearm was?

9 A XCX346.

10 Q XCX346?

11 A 346.

12 Q Okay. Thank you. If you look at the screen, Mr.
13 Ruiz, you're at the ATM machine again, I believe? Is that --
14 do you see in the top right corner?

15 A Yes.

16 Q Is that the second time where you redeposited the
17 money back?

18 A Yes, I did.

19 Q Okay. That firearm that you had in your vehicle,
20 did you have it loaded?

21 A No.

22 Q So you were carrying an unloaded gun?

23 A Yes.

24 Q Why did you carry that gun on you?

25 A For protection but I didn't have -- I didn't have it

1 loaded or nothing.

2 Q Okay. Where was that located in your vehicle?

3 A On the bottom of the center console on the carpet.

4 Q I'm showing State's 12, Your Honor. Actually I'm
5 not showing that. Do you see this?

6 A Yes.

7 Q Does that appear to be the center carpet area?

8 A Yes.

9 Q And was your firearm located --

10 A On the carpet area.

11 Q Okay. I'm just going to show this to the jury so
12 they don't have --

13 THE COURT: Is that admitted?

14 MR. GIORDANI: Yes, it's admitted 12.

15 THE COURT: Thank you.

16 BY MR. GIORDANI:

17 Q And Mr. Ruiz, you described it being on the carpet
18 area, this gray area?

19 A Yes.

20 Q Okay. So the firearm --

21 MR. GIORDANI: Court's brief indulgence. There's no
22 rewind feature so you have to click back. I apologize.

23 BY MR. GIORDANI:

24 Q Mr. Ruiz, if you saw your firearm again do you think
25 you would recognize it?

1 A Yes.

2 MR. GIORDANI: And, Your Honor, I'm going to open up
3 a piece of physical evidence, State's Proposed Exhibit 31. I
4 believe that's admitted by stipulation as well.

5 MR. PERCIVAL: That is correct, Judge.

6 THE COURT: Very well.

7 MR. GIORDANI: May I approach the witness?

8 THE COURT: Yes.

9 BY MR. GIORDANI:

10 Q You've never seen this bag before?

11 A No.

12 Q Okay. Sit back, please. I'm not going to hand this
13 to you but I'm going to show it to you. Okay? Does that
14 appear to be your firearm?

15 A Yes, it is.

16 Q And does that have the serial number, XCX346?

17 A Yes.

18 Q All right.

19 MR. GIORDANI: And I'm going to just show this to
20 the jury, Your Honor.

21 THE COURT: All right. Just -- yeah. It's locked
22 out so it's --

23 MR. GIORDANI: Yeah, it's safe.

24 BY MR. GIORDANI:

25 Q And that -- does that appear to be racked, or the

1 slide's open, and there's no clip inside and obviously nothing
2 in the chamber, correct?

3 A Yes.

4 Q Okay. And is that the firearm that you had in your
5 vehicle on this day?

6 A Yes, it is.

7 Q Did it have a clip with it?

8 THE COURT: Hold on a second. What?

9 MR. GIORDANI: And for the Court's edification, the
10 envelope is going to be --

11 THE CLERK: 31.

12 MR. GIORDANI: -- State's 31. The gun is going to
13 be State's 31A and the clip and ammo in one envelope is going
14 to be State's 31B.

15 THE COURT: Very well.

16 MR. GIORDANI: And for the record, I'm going to open
17 31B.

18 THE COURT: The bullets and the gun can't be
19 together. So if you're done with the gun --

20 MR. GIORDANI: Bring this back? Okay. Understood.
21 Clerk, you want to take that?

22 THE COURT: The clerk.

23 BY MR. GIORDANI:

24 Q Did you recently purchase, just before this
25 incident, purchase something with regard to the magazine?

1 A Yes.

2 Q What was it?

3 A Extended clip.

4 Q Okay. Is that a -- kind of a modifier, a longer

5 clip?

6 A Yeah, a longer clip.

7 Q Showing you the 31B. Does that appear to be the

8 clip?

9 A Yes.

10 Q Extended clip?

11 A That's the clip.

12 Q And so the jury's aware, that's the magazine that

13 holds the bullets that goes inside the bottom of the handle.

14 A Yes.

15 Q Okay. Put that stuff back. All right. And we're

16 now going to publish that video in normal speed. Can you

17 still see on that screen, Mr. Ruiz?

18 A Yes.

19 Q Do you recall what direction those two men came

20 from?

21 A From the driver's side.

22 Q Behind your vehicle?

23 A Yes.

24 Q Did you see someone running towards your vehicle at

25 that point?

1 A Yes.

2 Q When you handed over your wallet, what proceeded
3 from there? What happened from there?

4 A They told me to get out of the car.

5 Q Did you do so?

6 A Yes.

7 Q When they did that were they brandishing a firearm
8 still?

9 A Yes.

10 Q Were they pointing them at you?

11 A Yes.

12 MR. PERCIVAL: Objection, leading, Judge.

13 THE COURT: Sustained.

14 BY MR. GIORDANI:

15 Q Did they have anything in their hands when they told
16 you to get out of the car?

17 A They had two guns.

18 Q Did you get out of the vehicle?

19 A Yes.

20 Q And what happened from there?

21 A I stood in the back, like right in the middle of the
22 door and one of them was searching while the other one was
23 still pointing a gun at me.

24 Q Okay. So when you say one of them was searching
25 while the other was pointing a gun, what was the one person

1 searching? What do you mean by that?

2 A They were searching inside of my vehicle.

3 Q Okay. I'm showing you State's 10 -- I'm not, sorry.

4 Can you show me where on this photo that they made you stand?

5 A On this side.

6 Q Okay. And what door, if any, was open to your
7 vehicle?

8 A This one, the driver's side.

9 Q Where you got out?

10 A Yes.

11 Q Okay. Just so we're clear, you were standing about
12 halfway back?

13 A Yes.

14 Q And at that point one of the individuals was
15 searching while the other was pointing a gun at you is what
16 you said?

17 A Yes.

18 Q How long did that go on, if you recall?

19 A Around five minutes.

20 Q Okay. At some point did the individual that was
21 searching the vehicle stop searching?

22 A Yes.

23 Q What happened then?

24 A He said to go back inside the car.

25 Q Okay. Did you listen? Did you comply with that?

1 A I stood there and then he told me a second time to
2 go back inside the car, get in the car.

3 Q Did they have anything in their hand still while you
4 -- while they said that to you?

5 A Yes, they were pointing the gun.

6 Q Okay. When you say they were pointing the gun, do
7 you mean both or just one?

8 A Both of them.

9 Q Okay. Did you -- when you got back inside the
10 vehicle, did they issue any commands to you?

11 A Yes. They told me that they were going to leave in
12 10 minutes, just stay in the car, do not move.

13 Q Did you listen to that?

14 A Yes.

15 Q Okay. We're going to push play on this video again.
16 So at this point you believe you're sitting in your vehicle
17 like they told you to?

18 A Yes.

19 Q Go ahead and keep watching that video. Can you see
20 on that video that you're now driving away?

21 A Yes.

22 Q Where did you go from there?

23 A To the Mini Mart.

24 Q Why didn't you just call the police from there?

25 A I didn't have a cell phone, they took my cell phone.

1 Q Okay. Where was your cell phone located?

2 A It was in the center console.

3 Q What type of phone was it?

4 A An iPhone 6 Plus.

5 Q Okay. How much did you pay for that when you bought
6 it?

7 A Around six to eight hundred.

8 Q Okay. When -- after the two men left, did you look
9 for your gun and your phone?

10 A Yes.

11 Q And were those items missing?

12 A Yeah, they were missing.

13 Q Okay. Where did you physically go from there? When
14 you drove away where did you end up?

15 A To -- in the Mini Mart so I can ask them to let me
16 borrow a phone.

17 Q And did you then call police?

18 A Yes, I did.

19 Q Did the police come out and meet you?

20 A Yes.

21 Q And where did they meet you? Was it at the Mini
22 Mart or did they meet you back here?

23 A They told me to go back where the -- where they
24 pointed a gun at me at the bank.

25 Q Okay. So did you go back?

1 A Yes.

2 Q Okay. When you met with -- did you meet with
3 uniformed officers?

4 A Yes.

5 Q Did you give them a written statement?

6 A Yes.

7 Q And did you give them all the details you could at
8 that point?

9 A Yes.

10 Q After that day, did you again see a detective a
11 couple days later or weeks?

12 A Yes.

13 Q Was that approximately June 3rd?

14 A Yes, it was.

15 Q Okay.

16 MR. GIORDANI: May I approach the witness?

17 THE COURT: Yes.

18 BY MR. GIORDANI:

19 Q Do you remember meeting with Detective Miller?

20 A Yes.

21 Q On June 3rd?

22 A Yes.

23 Q Did he show you a couple of items?

24 A Yes, he did.

25 Q Can I show you State's Proposed Exhibits 17 and 18?

1 Do you recognize these two items?

2 A Yes, I do.

3 Q Let me start with 17. What is that?

4 A It's a statement --

5 Q Is that -- oh, I'm sorry.

6 A It's a statement of witness so I can write down
7 again.

8 Q And is it fair to say there's a typewritten
9 paragraph on the top of this?

10 A Yes.

11 Q And then there's some handwriting at the bottom?

12 A Yes.

13 Q And then a signature and date and time on the
14 bottom?

15 A Yes.

16 Q Is that your signature?

17 A Yes, it is.

18 Q And is the handwritten writing on there yours?

19 A Yes.

20 Q And then after showing you this, did he then show
21 you State's Proposed 18?

22 A Yes.

23 Q Did you attempt to pick out the person that robbed
24 you in that photo?

25 A Yes.

1 Q Did you -- how many people did you think were in
2 that photo that you thought were the person who robbed you?

3 A There was two.

4 Q Do you remember which two?

5 A This one and this one.

6 Q They have numbers by them, right?

7 A Yes.

8 Q So the jury understands, which ones did you just
9 point to?

10 A One and three.

11 Q How long did you look at those two individuals
12 before ultimately selecting one of them?

13 A It was like for 10 minutes. The detective told me
14 to take my time and look at them closely.

15 Q And did you do that?

16 A Yes.

17 Q And ultimately, you picked one of them. Which one?

18 A The number one.

19 Q Okay. And then after you picked that one as the
20 person instead of picking three, did you circle it and sign
21 your name?

22 A Yes.

23 Q And then did you do the written statement on State's
24 Proposed 17?

25 A Yes.

1 Q So that was written after you selected the picture?

2 A Yes.

3 MR. GIORDANI: At this point I'd move for the
4 admission of State's Proposed 17 and 18, Your Honor.

5 THE COURT: Any objection?

6 MR. PERCIVAL: No objection, Your Honor.

7 THE COURT: They'll be admitted.

8 (State's Exhibit 17 and 18 admitted.)

9 MR. GIORDANI: May I have the Elmo back, please?

10 BY MR. GIORDANI:

11 Q I'm showing the jury 17. Can you see that on your
12 screen?

13 A Yes.

14 Q This paragraph up top here, is that what you
15 described as what the detective read to you?

16 A Yes.

17 Q Before showing you the photos?

18 A Yes.

19 Q And then this is your handwriting at the bottom?

20 A Yes, it is.

21 Q All right. I'm showing you State's 18 now. There
22 are six photos there?

23 A Yes.

24 Q And can you point on that screen to the two photos
25 you were focused on for 10 minutes?

1 A It was this one, number one, and number three.

2 Q You can actually touch the screen and it will write.

3 Okay. So those are the two you looked at for 10 minutes

4 before selecting number one.

5 A Yes.

6 Q And you signed and circled it, right?

7 A Yes.

8 Q I'm going to go back to State's 17. Will you clear?

9 The bottom right? And then you wrote your statement at the
10 bottom, right?

11 A Yes.

12 Q Can you read that from the screen there?

13 A "I looked at the number one and three and I can't
14 exactly recognize it by covering half of his face. I'm about
15 80 percent sure it's number one."

16 Q Okay. So not 100 percent certain it's number one,
17 fair?

18 A No.

19 Q Okay. And you described earlier that both the men
20 that robbed you were wearing masks.

21 A Yes.

22 Q Okay. When you say covering half his face, was that
23 what you were referencing the masks?

24 A Yes.

25 Q Did you get a good look at the two individuals'

1 eyeballs or I guess above the --

2 A Yes, I did.

3 Q And is that how you were attempting to identify in
4 the photos?

5 A Yes.

6 Q Did you ever get back any of your items, like your
7 phone or your wallet?

8 A No, I never did.

9 Q Okay. And obviously, your gun's here in court?

10 A Yes.

11 Q Okay. Did you ever give those two men permission to
12 take any items from your vehicle whatsoever?

13 A No, I didn't.

14 Q Thank you.

15 MR. GIORDANI: I'll pass the witness, Your Honor.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. PERCIVAL:

19 Q Mr. Ruiz, you indicated that the incident happened
20 about 2:30 in the morning?

21 A Yes.

22 Q And you had been at work, correct?

23 A Yes.

24 Q Where do you -- where do you work?

25 A Monte Carlo Casino.

1 Q Okay. And what do you do there?

2 A Bus person.

3 Q What are your usual hours?

4 A Graveyard.

5 Q Okay. Graveyard meaning?

6 A Nine to five, six to two in the morning. It's -- my

7 hours are mixed.

8 Q Oh, you don't always work the same shift?

9 A No.

10 Q When you say nine to five; is that nine p.m. to five

11 a.m.?

12 A Yes.

13 Q What restaurant do you work in?

14 A In the food area.

15 Q In like the food court?

16 A Yeah.

17 Q Okay. Did you -- now, on that particular morning

18 had you gotten off work early or something?

19 A Yes.

20 Q So you went from the Monte Carlo --

21 A Directly to the Bank of America.

22 Q And pulled into the Bank of America, correct?

23 A Yes.

24 Q And that was to get gasoline?

25 A Yes.

1 Q Or to get -- actually to get --

2 A Cash.

3 Q -- from the ATM to get gasoline; is that right?

4 A Yes.

5 Q Okay. And we watched the video a couple minutes
6 ago. You pull up and you wait for just a short time and then
7 go up to the ATM, correct?

8 A Yes.

9 Q And then return to your car, correct?

10 A Yes.

11 Q Sit there for a while. What was it you were doing?

12 A Just checking my wallet and realizing I didn't need
13 the money.

14 Q So -- because you already had cash?

15 A Yeah. And I don't like carrying cash in my wallet.

16 Q So you went back to the machine and redeposited your
17 money, correct?

18 A Yes.

19 Q And you had \$30 in your wallet?

20 A Yes.

21 Q You get back in your car, correct?

22 A Yes.

23 Q At -- up to this point you haven't seen anyone; is
24 that correct?

25 A I saw a shadow.

1 Q You saw a shadow?

2 A After the second time I went to get money -- or
3 after the second time I went to deposit the money.

4 Q When you went -- you saw a shadow somewhere while
5 you were going back to put the money back into the --

6 A No.

7 Q Okay.

8 A After getting inside the car, before getting inside
9 the car.

10 Q Okay. So you have redeposited your money --

11 A Yeah.

12 Q -- and returned to the car.

13 A Yeah.

14 Q And you're getting ready to get into --

15 A Yes.

16 Q -- get into the car; is that right?

17 A Yes.

18 Q And you see a shadow where?

19 A On the back of the vehicle.

20 Q At the back of the vehicle?

21 A Yeah.

22 Q Okay. And at that point are -- you go ahead and get
23 into the vehicle, correct?

24 A Yes.

25 Q And you shut the door?

1 A Yes.

2 Q And you sit there, correct?

3 A Yes, I sat there.

4 Q And you don't see any people until -- at that point,
5 correct?

6 A Yes, I don't see any people at that time.

7 Q Okay. You're sitting -- you're facing forward?

8 A Yes.

9 Q Fiddling around with your Bluetooth --

10 A Yes.

11 Q -- I assume to get your iPhone to play music through
12 your car stereo --

13 A Yes.

14 Q -- is that right?

15 A Yes.

16 Q So your attention is focused on your iPhone.

17 A Yes.

18 Q Okay. And somebody comes to the door, correct?

19 A Yes.

20 Q It's -- now, you're not looking in your rearview
21 mirror or in the side view mirror or anything like that --

22 A No.

23 Q -- correct when this is happening?

24 A No.

25 Q Your attention is focused on what you're doing with

1 getting your music ready --

2 A Yes.

3 Q -- correct? So the first thing you see is someone
4 at the -- two persons at the side window?

5 A Yes, on the driver's side.

6 Q Okay. And they're yelling, "Give it all. Give it
7 all"?

8 A "Give it all," yeah.

9 Q Okay. You indicate one has a surgical mask on?

10 A Yes.

11 Q One has a bandanna of some sort?

12 A Yes.

13 Q Do you remember what color the bandanna was?

14 A Black.

15 Q Okay. Now, you said that they had a -- these two
16 individuals had a portion of their face covered, correct?

17 A Yes.

18 Q From what? From the bridge of the nose down or what
19 portion of their face was covered?

20 A From the bridge to the nose down.

21 Q Okay. So --

22 A Yes.

23 Q -- basically their -- it's like this, correct?

24 A Yes.

25 Q And are they agitated? Do they appear to be excited

1 or angry, that type of thing? Are they acting --

2 A Kind of angry and -- and nervous.

3 Q The two acted like they were nervous?

4 A Yes.

5 Q Moving around a lot?

6 A Yes.

7 Q How far away are they from you?

8 A Like --

9 Q I mean in --

10 A In distance?

11 Q In distance, how far away would they have been?

12 A Not that far away, like really close to the
13 windshield.

14 Q Okay. Like maybe if the window would have been
15 rolled down you probably would have been able to touch them.
16 Would that be fair to say?

17 A Yes, yes.

18 Q So you got these two gentlemen -- are your windows
19 tinted?

20 A Yes, they are.

21 Q Okay. You've got dark tint --

22 A Yes.

23 Q -- on the side windows? So you're looking at these
24 two individuals through dark tinted windows, correct?

25 A Yes.

1 Q And you said you see what you think are guns?

2 A Yes.

3 Q Now, were they -- were the guns just like yours,
4 like the one they -- they showed the jury?

5 A Yes.

6 Q Both of the guns were just like yours?

7 A No. There -- they were a different model.

8 Q Pardon me?

9 A They were a different model. They weren't the same
10 -- like the same size in --

11 Q They weren't the same kind of gun?

12 A Yeah. They were not the same size or anything like
13 that but it --

14 Q Okay. Do you know if -- do you know what brand of
15 guns they were?

16 A No.

17 Q Do you know whether they were pellet guns?

18 A No, they weren't pellet guns.

19 Q Did they fire the guns?

20 A No.

21 Q Never heard the guns go off?

22 A No.

23 Q Did you -- did you ever see anyone try and cock the
24 gun?

25 A No.

1 Q So it didn't eject any shells?

2 A No.

3 Q When you got back to the scene with the police and
4 looked around were there any shells, cartridges, that sort of
5 thing on the ground?

6 A No, there weren't.

7 Q Okay. You're -- you're aware -- you -- have you
8 ever heard of Airsoft pistols?

9 A Yes.

10 Q You're aware that they make Airsoft pistols that
11 look absolutely identical to your gun?

12 A Yes.

13 Q And they make replica pistols of your gun, correct?

14 A Yes, they do.

15 Q Like you couldn't fire them if you wanted to but
16 they look exactly like your gun. Is it --

17 A Yeah. I've been owning three guns so I know exactly
18 how they --

19 Q Pardon?

20 A I've been owning three guns so I know exactly how
21 they look.

22 Q You've owned three guns yourself, right?

23 A Yes.

24 Q Okay. And you know that they -- they even make
25 water pistols that look --

1 A Yeah, they make --

2 Q -- like your gun, don't they?

3 A Yes.

4 Q And you don't know whether these guns were water
5 pistols, toy guns, pellet guns, real guns, what, do you?

6 A No.

7 Q Isn't that true?

8 A Yes.

9 Q Okay. Because certainly, you want -- none was ever
10 fired?

11 A No.

12 Q And these two individuals are within a couple of
13 feet, maybe arms-length --

14 A Yes.

15 Q -- from you, correct?

16 A Yes.

17 Q And one of them opens the door --

18 A Yes.

19 Q -- is that right? Is that right?

20 A Yes.

21 Q Okay. And that person tells you to get out of the
22 car, right?

23 A Yes, "Give it all". They tell me to "Give it all".

24 Q Oh, they say give it up?

25 A Yeah.

1 Q And then you handed --
2 A The wallet.
3 Q You handed them the wallet --
4 A Yes.
5 Q -- right? And then someone told you to get out of
6 the car --
7 A Yes.
8 Q -- correct? Is that right?
9 A Yes.
10 Q Okay. So you stepped out of the car?
11 A Yes, I did.
12 Q Now, this Bank of America parking lot has a lot of
13 florescent light, like streetlamps --
14 A Yes.
15 Q -- in it, correct?
16 A Yes.
17 Q So it's pretty well lit --
18 A Yes.
19 Q -- correct? And if that parking lot that you pulled
20 up in fronts immediately on Desert Inn Road, correct?
21 A Yes.
22 Q So there's traffic -- even at that time in the
23 morning there's quite a bit of traffic.
24 A Yes, a little bit of traffic.
25 Q Is that true?

1 A Yes.

2 Q Lots of people are going past both going eastbound
3 and westbound, correct?

4 A Yes.

5 Q And in fact while you were there in your car many
6 vehicles passed both east and west, correct?

7 A Yes.

8 Q Right?

9 A Yes.

10 Q Okay. And the two people that had you -- or that
11 approached your car, now, you saw them, actually saw the
12 people for the first time when they were at your door --

13 A Yes.

14 Q -- right?

15 A Yes.

16 Q But you hadn't been watching them in the rearview
17 mirror --

18 A No.

19 Q -- from across the street and down the sidewalk --

20 A No.

21 Q -- and all that?

22 A No.

23 Q Just right there, they open the door and they tell
24 you to get out, correct?

25 A Yes.

1 Q And I -- if I -- if I saw correctly and I was
2 looking at it a little bit of a bad angle, but what happened
3 was they had you get out of the car and move toward the back
4 of the car but not all the way to the back, right?

5 A Yes.

6 Q And you were standing between the back of the -- the
7 back of the -- or the back of the driver's side door and the
8 back of the car somewhere --

9 A Yes.

10 Q -- correct?

11 A Yes.

12 Q Are you up against the car?

13 A On the side, like on the side.

14 Q You're on the side of the car?

15 A Yes.

16 Q Okay. And there's vehicular traffic going back and
17 forth while --

18 A Yes.

19 Q -- this is all going on, right?

20 A Yes.

21 Q And now it would be safe to say that you are far
22 more visible to the public, to traffic going past when you're
23 standing outside your car than you would be inside your car
24 with tinted windows?

25 A Yes.

1 Q Isn't that correct?

2 A Yes.

3 MR. PERCIVAL: I'm sorry. Is it not picking me up?

4 THE OFFICER: You're fine.

5 MR. PERCIVAL: Sorry. I'm used to being thought of
6 as kind of loud.

7 BY MR. PERCIVAL:

8 Q With the windows rolled up in your car at night, the
9 windows on your vehicle are dark enough that it would be kind
10 of hard to see who was inside the car, correct?

11 A Yes.

12 Q Like if I was standing here and we're out and you
13 have the windows up at night, it would be difficult for me to
14 tell that you are Luis Ruiz.

15 A Yes.

16 Q Right?

17 A Yes.

18 Q Okay. But when you're out in the parking lot you're
19 under all these streetlamps, correct?

20 A Yes.

21 Q And there's -- and you can see traffic going by --

22 A Yes.

23 Q -- while this happening, correct?

24 A Yes.

25 Q And you indicated that one individual was holding

1 what you thought was a gun?

2 A Yes.

3 Q On you, correct?

4 A Yes.

5 Q And the other one was searching the inside of your
6 car.

7 A Yes.

8 Q Now, that really -- it probably seemed like a long
9 time but it didn't really take all that long, did -- on the
10 video, did it? I mean, we just watched the video in real
11 speed --

12 A Oh, yes.

13 Q -- it might have been a minute or two?

14 A Yeah, like a minute. Like --

15 Q Okay.

16 A -- three minutes.

17 Q Now, the man that was -- that was keeping you in
18 place, was he talking to you?

19 A No.

20 Q Okay. He didn't say anything?

21 A No.

22 Q How about the guy that was searching your car, was
23 he speaking to you?

24 A No.

25 Q And he was in the car for just a minute or two?

1 A Yeah, like a minute or two.

2 Q Right?

3 A Yes.

4 Q Got your pistol, got your iPhone.

5 A Yes.

6 Q And then he got out of the car. Did he tell you to
7 get back into the car or did the other individual tell you to
8 get back into the car?

9 A He told me to go back into the car -- inside the
10 car.

11 Q Pardon?

12 A The guy that was searching, he told me to go back
13 inside the car.

14 Q Okay. And you did, you got back inside the car --

15 A Yes.

16 Q -- correct? And they ran away apparently?

17 A Yes.

18 Q Did you watch them run away? Could you see them as
19 they ran away?

20 A Only like up [indiscernible] and saw them run away.

21 Q So when you -- when you were getting back into the
22 car and that door was open you could still see --

23 A Yes.

24 Q -- you could see them going the other direction?

25 A Yes.

1 Q And they were running, correct?

2 A Yes.

3 Q And they ran across the street, correct --

4 A Yes, across the street.

5 Q -- there on Desert Inn?

6 A Yes.

7 Q I think in your preliminary hearing -- or excuse me,

8 in your handwritten statement -- I'm sorry. Is there a -- is

9 there a bridge over there some place --

10 A Yes.

11 Q -- across the street?

12 A Yes, it is, a small bridge.

13 Q A small bridge?

14 A Yeah.

15 Q What, does it go across a wash or a rainwater

16 diversion trench or something --

17 A Yeah, like rainwater, yeah.

18 Q Okay. So you saw them go across that bridge --

19 A Yeah.

20 Q -- is that right? Okay. Never had any more contact

21 with them?

22 A No.

23 Q Now, they told you to wait for 10 minutes because

24 they were going to leave --

25 A Yes.

1 Q -- correct? And -- but you didn't wait 10 minutes.
2 I mean, virtually as soon as they were across the street you
3 backed out and went to the Mini Mart --

4 A Yeah.

5 Q -- to call the police, correct?

6 A Yes.

7 Q You met the -- you met the police that evening?

8 A Yes, I did.

9 Q Okay. Did you ever give a tape recorded statement
10 to the police?

11 A No.

12 Q Okay. But you gave them a --

13 A Written statement.

14 Q -- handwritten statement, correct?

15 A Yes.

16 Q And you were trying to help the police, correct?

17 A Yes.

18 Q Would that be fair to say?

19 A Yes.

20 Q I mean, you wanted these guys -- the guys that were
21 robbing you or that had taken your stuff to get caught.

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q So you're going to give them as truthful and

1 accurate of details as you can.

2 A Yes.

3 Q Right? Now, on the night in question, you never saw
4 the two individuals that approached your car again?

5 A No.

6 Q Correct, on the 20th? That was --

7 A No.

8 Q -- the early morning of the 20th of May, correct?

9 A No, I never saw them.

10 Q Okay. Never saw them again. And you never ran into
11 them on the street or at work or anything like that in the
12 next week or two, correct?

13 A No.

14 Q Okay. And then you said Detective, I believe it was
15 Detective Miller came to your house?

16 A Yes.

17 Q That was June the 3rd; is that correct?

18 A Yes.

19 Q And did he tell you that he was investigating the
20 robbery, the incident at the ATM at the Bank of America --

21 A Yes.

22 Q -- when he came to your house?

23 A Yes.

24 Q He let you know that that was the purpose of his --

25 A Yes.

1 Q -- visit, right?

2 A He said he was going to try to get the video
3 surveillance.

4 Q He was going to try and get the --

5 A The video.

6 Q I'm sorry. And I'm -- I'm a little bit -- I have a
7 hearing loss so -- and you're kind of quiet so I'm sorry I
8 have to keep asking you to repeat things. But I'm not doing
9 it to irritate you, I don't always hear perfectly. Now,
10 Detective Miller brought with him what -- what we refer to as
11 a six-pack photo array, correct?

12 A Yeah.

13 Q A group of pictures of six people, correct?

14 A Yes.

15 Q And was it your understanding that there was going
16 to definitely be somebody in that photo that you were supposed
17 to identify?

18 A Yes.

19 Q You thought there's got to be somebody on there that
20 is a suspect or that they believe did this in my case,
21 correct?

22 A Yes.

23 Q And did the detective read the -- okay, he gave --
24 or at least he brought with him these witness instructions,
25 correct?

1 A Yes, he did.

2 Q Okay. And did he read those to you?

3 A Yeah. He read them before he told me to write the
4 statement.

5 Q Okay. Before he told you to write the statement?

6 A Yeah, about circling pictures.

7 Q Okay. He -- did he tell you -- did the detective
8 tell you that this group of six pictures may or may not
9 contain a photo of someone that was involved in the incident
10 on May 20th?

11 A Yes, he did.

12 Q Did he tell you that you did not have to identify
13 anyone?

14 A Yes.

15 Q Did he tell you that it is just as important that --
16 to clear innocent people as it is to find guilty people?

17 A Yes.

18 Q Okay. And then he read all of this statement to
19 you, correct?

20 A Yes, he did.

21 Q And after he read the statement he gave you the
22 photographs --

23 A Yes, he did.

24 Q -- is that correct?

25 A Yes.

1 Q Okay. Now, you looked at those photographs and
2 these are the -- the photo lineup witness instruction is
3 identified as Exhibit 17 and he, after he read you --

4 MR. PERCIVAL: Is it all right for me to approach
5 the witness before --

6 THE COURT: Yes, go ahead. Both sides you feel to
7 approach.

8 MR. PERCIVAL: Thank you, Your Honor.

9 BY MR. PERCIVAL:

10 Q Okay. He showed -- he had you look at this,
11 correct?

12 A Yes.

13 Q Now, did -- he had already read you the directions;
14 is that correct?

15 A Yes, he did, he read the directions.

16 Q Okay. And so you looked at this set of photographs
17 for I think you said about 10 minutes?

18 A Yes.

19 Q Correct?

20 A Yes.

21 Q And ultimately you circled one person.

22 A Yes, I did.

23 Q And that was the person in position number one,
24 correct?

25 A Yes.

1 Q Is it not the person in position number three,
2 correct?

3 A Yes.

4 Q Okay. Now, when you looked at this individual in
5 position number one, did you believe him to be the person that
6 searched your car or did you believe him to be the person that
7 stood outside with you?

8 A The person that searched my car.

9 Q Okay. You believe that he was in the car searching
10 the car --

11 A Yes.

12 Q -- and someone else was outside, correct?

13 A Yes.

14 Q And in fact you did -- when you circled this and
15 signed your name to it, did you hand it back to the detective?

16 A Yes.

17 Q Did he ask you did you consider any of the other
18 photos?

19 A Yes.

20 Q He did ask you that? He asked you, did you consider
21 any of the other individuals before you circled this, correct?

22 A He said to look at them closely and I told him two,
23 there's two of them. It's between two of them.

24 Q Okay.

25 A And he said to circle the one that I think is the

1 one.

2 Q Circle the one that you think is the one --

3 A Yeah.

4 Q -- correct? And in your statement you say, "I
5 looked at number one and three. Number one I can exactly
6 recognize it by covering half of his face." So you can
7 exactly recognize it?

8 A Yes.

9 Q "I'm about 80 percent sure it's number one,"
10 correct?

11 A Yes.

12 Q Now, would it be fair to say that you were
13 face-to-face with the individual outside the car for a greater
14 period of time, a longer period of time than you were the
15 person that's inside your car searching it?

16 A Yes.

17 Q Okay. And you -- you described one of them
18 clothing. Was that -- was the one who was wearing the
19 clothing that you described the guy that was searching your
20 car?

21 A The one --

22 Q The black pants and -- and the black and white
23 shirt?

24 A Yes.

25 Q That's the guy that was searching your car, correct?

1 A Yes.

2 Q And you don't remember at all what the other guy was
3 wearing?

4 A No.

5 Q Okay. After the man that had searched your car had
6 finished he came back to you and said okay, get back in your
7 car, correct?

8 A Yes.

9 Q And at the time they had their guns pointed at the
10 ground, didn't they?

11 A Yes.

12 Q They weren't pointing the guns at you anymore?

13 A They were pointing it like -- kind of like this.

14 Q Kind of like this?

15 A Yeah.

16 Q Okay. But they weren't -- it wasn't up in your
17 face, correct?

18 A Yes.

19 Q Okay. He tells you get back in your car, which you
20 do, right?

21 A Yes.

22 Q Did you have your car keys?

23 A They were inside the vehicle.

24 Q They were in the --

25 A Yeah.

1 Q -- in the ignition?

2 A Yes.

3 Q Okay. So they did not take your car keys. You were
4 able to start the car --

5 A No.

6 Q -- when you got back in.

7 A No, they didn't.

8 Q Pardon?

9 A They didn't take my keys.

10 Q And within just a few seconds after you knew that
11 they were across the street you backed up and went to the Mini
12 Mart?

13 A Yes.

14 Q Now, when you -- when you called the police, went to
15 the Mini Mart and called the police, did they come -- I didn't
16 -- you confused me earlier. Did they come to the store and
17 tell you to go back to the bank or did -- while you were on
18 the phone did they tell you to go back?

19 A While I was on the phone they told me to get -- go
20 back to the scene.

21 Q Okay. And so you went back to the Bank of America
22 and waited for them? Is that how it happened?

23 A Yes.

24 Q Okay. And when you got back I think -- I think I
25 already asked you, you didn't find any -- like none of your

1 property was lying on the ground.

2 A No.

3 Q You -- did you park in exactly the same spot you had
4 parked in before when -- before the men came to your car?

5 A I don't remember.

6 Q You don't remember if you parked in the exact same
7 spot?

8 A No, I think that I did.

9 Q Okay. So -- pardon, you think you did or did not?

10 A I don't really remember.

11 Q Okay. So you don't know if you were parked in
12 exactly the same spot as you were --

13 A No.

14 Q -- before; is that correct?

15 A Yes.

16 Q And so the photographs that you were shown of your
17 vehicle, it may not be in the same exact position it was in
18 when you stopped to go to the ATM; is that correct?

19 A Yes.

20 Q Okay.

21 MR. PERCIVAL: Court's indulgence for just a moment.

22 BY MR. PERCIVAL:

23 Q It would be fair to say, wouldn't it, that you got a
24 pretty good look at the exposed portion of the guys' face --

25 A Yeah.

1 Q -- close to you? And they were at points very close
2 to you, correct?

3 A Yes.

4 Q You remember at your preliminary hearing testifying
5 that they were on the average between 10 and 12 inches away
6 from you --

7 A Yes.

8 Q -- during this incident?

9 A Yes.

10 Q So you had adequate opportunity to view their eyes,
11 view their cheekbones from like the bridge of the nose up,
12 correct?

13 A Yes.

14 Q And as we -- as we said, this parking lot's pretty
15 well lit.

16 A Yes.

17 MR. PERCIVAL: No further questions at this time,
18 Your Honor.

19 THE COURT: Redirect?

20 MR. GIORDANI: No, Your Honor. Thank you.

21 THE COURT: Questions from the jury? If you have
22 any raise your hand? Okay. Go ahead and finish writing it
23 and give it to the Marshal. Any other questions? Nope. Name
24 and badge number on it.

25 MR. GIORDANI: May we approach?

1 THE COURT: Yes, we're going to do that.

2 (Bench conference transcribed as follows.)

3 MR. GIORDANI: Just regards to scheduling. The
4 detective's outside. I'm going to be really quick with my
5 direct of the detective because I played the video for this
6 witness so I was hoping we could get him on before lunch since
7 we started late.

8 THE COURT: All right. If he's waiting.

9 MR. GIORDANI: He's been here since 9:30.

10 THE COURT: Any objection to that? We'll take a
11 later lunch.

12 MR. PERCIVAL: I don't know how long he's going to
13 be and so -- and depending on what he asks I don't know what
14 I'm going to ask him on cross so I can't say that --

15 THE COURT: I understand. I'm just --

16 MR. PERCIVAL: I mean, I don't want -- I'm not
17 trying to be difficult or anything like that, I'm just telling
18 you.

19 THE COURT: I don't see any reason not to. We'll
20 just go a little later for lunch. So --

21 MR. GIORDANI: Okay, that's fine.

22 THE COURT: -- and I'm not limiting you so if it
23 takes an hour, it takes an hour. Here's --

24 MR. GIORDANI: Thank you.

25 THE COURT: Oh, now we have two questions.

1 MR. GIORDANI: I think that's fair.

2 THE COURT: Okay. No objection to Court's Exhibit

3 2?

4 MR. PERCIVAL: Uh-huh. That's what I think --

5 MR. GIORDANI: That's fair.

6 THE COURT: All right. I need this so it's verbal.

7 MR. GIORDANI: Sorry.

8 THE COURT: No objection to Court's Exhibit 2,

9 defense?

10 MR. PERCIVAL: No objection.

11 THE COURT: State?

12 MR. GIORDANI: No, Your Honor.

13 THE COURT: All right. Court's Exhibit 3?

14 MR. GIORDANI: No objection by the State.

15 MR. PERCIVAL: No objection from the defense.

16 THE COURT: Thank you.

17 (End of bench conference.)

18 THE COURT: Mr. Ruiz, -- oh, okay. Don't you keep

19 your doors locked?

20 THE WITNESS: No, because until you put it in

21 reverse and start driving it locks the doors.

22 THE COURT: Were either of the men wearing anything

23 on their heads?

24 THE WITNESS: One was wearing a hood.

25 THE COURT: Follow up from the State?

1 MR. GIORDANI: Yes. Thank you, Your Honor.

2 BY MR. GIORDANI:

3 Q I should have asked you that. You said earlier one
4 was wearing a hood --

5 A Yeah.

6 Q -- during your testimony. I didn't ask which one.
7 Do you remember which one it was? Was it the guy who went
8 into the vehicle or the guy that held you? And if you don't
9 remember --

10 A I don't really remember.

11 Q Okay. But you remember one wearing a hood?

12 A Yes.

13 Q You can describe that anymore or do you just
14 remember a hood?

15 A I just remember a hood.

16 Q Do you remember a color?

17 A Gray sweatshirt hood.

18 Q Gray sweatshirt hoodie? Hood?

19 A Yes.

20 Q Is it known as a hoodie?

21 A Yes.

22 Q Okay.

23 MR. GIORDANI: Pass the witness, Your Honor.

24 THE COURT: Follow up from the defense?

25 MR. PERCIVAL: No questions, Judge.

1 THE COURT: Thank you, you may step down. Ladies
2 and gentlemen, we're going to go a little longer so we can
3 move on. We'll just move the lunch back. I'll still --
4 obviously you'll get -- does anybody need to take a quick
5 break? Raise your hand. Sorry. Okay. Then we will take a
6 quick break. During -- we'll take five minutes.

7 During this recess you're admonished do not talk or
8 converse amongst yourselves or with anyone else on any subject
9 connected with this trial, or read, watch or listen to any
10 report of or commentary on the trial or any person connected
11 with this trial by any medium of information including,
12 without limitation, newspapers, television, radio or Internet.
13 Do not form or express any opinion on any subject connected
14 with the trial until the case is finally submitted to you.

15 We'll take five minutes.

16 (Court recessed at 12:08 p.m. until 12:18 p.m.)

17 (Jury reconvened at 12:21 p.m.)

18 THE COURT: Please be seated. Parties acknowledge
19 the presence of the jury?

20 MR. PERCIVAL: So acknowledged by the defense, Your
21 Honor.

22 MR. GIORDANI: Yes, Your Honor.

23 THE COURT: State, call your next witness.

24 MR. GIORDANI: David Miller.

25 DAVID MILLER, STATE'S WITNESS, SWORN

1 THE CLERK: Please be seated. Please state your
2 name and spell it for the record.

3 THE WITNESS: My name is David Miller, D-a-v-i-d,
4 M-i-l-l-e-r.

5 MR. GIORDANI: May I?

6 THE COURT: Go ahead.

7 MR. GIORDANI: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GIORDANI:

10 Q What do you do for a living, sir?

11 A I'm a police officer with the Las Vegas Metropolitan
12 Police Department.

13 Q How long have you been with Metro?

14 A For 16 years.

15 Q What is your current assignment?

16 A I'm a robbery detective.

17 Q How long have you been in robbery?

18 A For approximately 11 years.

19 Q Can I assume that robbery detectives investigate
20 robberies?

21 A Yes, sir.

22 Q How do you typically get assigned a robbery case?

23 A Two different ways. Sometimes if I'm on duty, for
24 instance, sometimes we'll respond to an actual crime scene.
25 If we're off duty, cases like that will be assigned to us in

1 our queue. Just like sometimes we'll the case a day later,
2 sometimes we'll get the case a week later.

3 Q Did you become involved in the investigation of a
4 robbery that occurred outside of a Bank of America on Desert
5 Inn and Maryland Parkway on May 20th of 2015?

6 A That's correct.

7 Q Which of those two ways was this particular
8 investigation assigned to you?

9 A I was assigned that case a day later. I wasn't at
10 that actual crime scene.

11 Q Okay. So the jury's clear, you didn't go to the
12 bank, you didn't -- weren't involved in any investigation at
13 the actual scene?

14 A Right. I was assigned the case one day later.

15 Q What did you do when you were first assigned to the
16 case?

17 A I think after I read over the case I got a hold of
18 the victim on the phone because I wanted -- I found out his
19 phone was stolen and I wanted to find out the serial number or
20 the IMEI number that he had on the phone so we could enter it
21 into the system in case it were found. And I also put a call
22 into Bank of America, their corporate security, trying to get
23 some video from their ATM machine if any video existed.

24 Q The victim you reference, is that Luis Ruiz?

25 A That is correct.

1 Q Did you make contact with him and did you get that
2 serial number?

3 A Yes, sir.

4 Q Did you make contact with the bank person ultimately
5 and get that surveillance video?

6 A Yes, sir.

7 Q And did you provide that to the Clark County
8 District Attorney's Office?

9 A Yes, sir.

10 Q After doing those two things, what did you do next?

11 A I was given some information from another detective
12 in our section named Detective Lance Spiotto.

13 Q Okay. And Detective Spiotto, was he investigating a
14 different incident?

15 A Correct.

16 Q Do you recall what that -- or when that incident
17 occurred that he was investigating?

18 A It occurred four days later, it occurred on the 24th
19 in 2015, on May 24th.

20 Q And without going into too much detail, just so I
21 have a point of reference, would that be a shooting or an
22 attempt robbery resulting in a shooting that occurred at a
23 Terrible Herbst car wash?

24 A Correct on South Arville, correct.

25 Q Okay. So for a point of reference I'll refer to

1 that as the car wash incident; is that okay?

2 A Yes, sir.

3 Q Okay. What did your case have to do with that car
4 wash robbery?

5 A I was informed that an arrest had been made and that
6 a gun had been recovered and that gun in fact was the same
7 serial number, it was the same gun that was stolen from the
8 victim, Luis Ruiz, in my case.

9 Q Okay. And was it your understanding that that
10 firearm was located at the scene or near the scene of that car
11 wash shooting?

12 A That is correct.

13 Q When you received this information, what did you do
14 with it?

15 A I immediately was very interested obviously because
16 number one, it was that instant at the car wash was similar in
17 nature to the crime that I was investigating. Number two,
18 there was somebody in custody for that. Number three, the --
19 that person in custody allegedly was the person in possession
20 of the gun stolen from Luis Ruiz. So I definitely was
21 thinking maybe this could be my suspect.

22 Q And who was that person?

23 A Dvontae Richard.

24 Q And you just pointed in the courtroom. Would the
25 record reflect the identification?

1 THE COURT: Yes, it will so reflect.

2 MR. GIORDANI: Thank you, Your Honor.

3 BY MR. GIORDANI:

4 Q Did you make contact with Mr. Richard at some point?

5 A I did.

6 Q And when you made contact with him, did you attempt
7 to speak with him?

8 A Yes.

9 Q In doing so, did you read him his Miranda warnings?

10 A Yes.

11 Q Do you that typically from a card or from memory?

12 A Verbally from memory.

13 Q From memory?

14 A Yes, sir.

15 Q Can you do that for the ladies and gentlemen here
16 today?

17 A You have the right to remain silent. Anything you
18 say can be used against you in the court of the law. You
19 have the right to the presence of an attorney before
20 questioning. If you cannot afford an attorney one will be
21 appointed before questioning.

22 Q Thank you. After reading -- or saying those
23 warnings to Mr. Richard, did he agree to speak with you?

24 A He did.

25 Q And did he agree to waive those rights?

1 A He did.

2 Q When you spoke to him, did you ask him any questions
3 about the car wash incident?

4 A No, sir.

5 Q And why is that?

6 A A lot of time had passed, I wasn't sure -- let's
7 see, it was probably around I want to say June 3rd at this
8 point, somewhere around there when I interviewed him, a lot of
9 time had passed. I assumed at that time he probably had
10 counsel regarding the car wash incident that -- which he had
11 already been charged with so I avoided that case for Sixth
12 Amendment purposes.

13 Q Okay. So did you specifically question him about
14 your May 20th incident?

15 A That's right.

16 Q Did you -- when you go in to question him about that
17 May 20th incident, were there certain things that you told him
18 and certain things you intentionally did not tell him?

19 A Correct.

20 Q Can you describe the reasoning for that and what it
21 was for the jury?

22 A Yes. When I speak to anybody, a suspect for
23 instance in any type of case, typically I provide them a
24 little bit of information just so that they know what we're
25 talking about and that we're all on the same page. But I

1 don't give them all the information. The example I sometimes
2 use is the old box game Clue. If I were interviewing Mrs.
3 Scarlett and said, hey, I'm questioning you about the
4 candlestick murder weapon that was used in the billiards room,
5 and if I just gave them all that information then they might
6 just regurgitate that information right back at me. And so
7 typically what I'll do is I'll provide a little information
8 and then try to get more details from them to see if they're
9 telling me the truth.

10 Q And what information did you provide to Mr. Richard
11 in this interview?

12 A I told him we were doing an investigation regarding
13 a robbery that occurred at -- outside an ATM in a parking lot
14 of a bank and that it was somewhere off of Desert Inn. And I
15 told him that it occurred a few days before he had been
16 charged and arrested regarding the car wash robbery.

17 Q And what was his response after you provided that
18 information?

19 A At first he kind of did kind of regurgitate some of
20 that information. First, he acted a little confused and then
21 he said, yes, I witnessed it. It was around three a.m., it
22 was off Desert Inn. But he kind of just regurgitated the same
23 information I had just told him. And so the interview
24 continued until he gave me more details.

25 Q And what details did he give you later on?

1 A Then he provided some very accurate details.

2 Q Such as?

3 A He indicated that they were driving down Desert Inn.
4 He didn't want to name who his -- his partner was, but he said
5 they were driving Desert Inn. They saw the victim outside the
6 ATM machine and therefore assumed that there would be an
7 opportunity to get money. He indicated that it was mainly his
8 partner's idea and that he even mentioned some doubt about
9 doing it because he said, hey, there's cameras in a bank
10 parking lot, but they -- they did it anyway.

11 They pulled out -- he indicated accurately that they
12 parked across the street. In this case he could have said,
13 yeah, we pulled right into the parking lot and robbed the
14 victim but he didn't. He said they parked across the street,
15 which is accurate. That they came across the street, that
16 they approached the victim, and specifically he said they
17 approached the victim who was in his car which I thought was
18 very detailed. He could have said they approached him up at
19 the ATM machine and did the robbery there if he was just
20 making things up for instance but he didn't.

21 He said I approached him in the car, they -- at
22 gunpoint. They said they removed the victim from the car,
23 which is also an accurate detail of this specific crime. He
24 accurately described the victim himself and said that he was a
25 Hispanic male. I believe he said he was -- he thought he was

1 in his 20s, around 25 or so, which was accurate to Luis Ruiz's
2 description. And they accurately -- he accurately described
3 the model of the vehicle. Luis Ruiz drives a Chevy Tahoe and
4 he said that he thought it was an SUV, possibly an Expedition
5 or a Tahoe. He accurately described the color of the victim's
6 vehicle. He said it was lighter in color, possibly gray or
7 light -- light tan or white and in fact it was white.

8 And he very accurately described a -- out of all of
9 the things in the world that he could have said was stolen he
10 specifically said a Glock -- the victim's Glock 26 was stolen
11 and that's a 9mm handgun and that is in fact what was stolen
12 in this case.

13 Q And I should have asked you this earlier, but this
14 was a tape recorded interview, correct?

15 A Yes, sir.

16 Q So everything you're testifying to was taken down in
17 an audio transcription and then transcribed onto paper.

18 A Yes, sir.

19 Q That's your conversation and Mr. Richard's words on
20 there.

21 A Yes, sir.

22 Q Did he ultimately admit to or describe what he was
23 wearing during the incident?

24 A Yes. I believe he said a hoodie of some sort that
25 was maroon, to my recollection.

1 Q Okay. Would it refresh your recollection to see
2 that transcribed statement?

3 A Yes, sir.

4 MR. GIORDANI: May I approach the witness, Your
5 Honor? Thank you. For Mr. Percival's edification, I believe
6 well be looking at page 44 of the interview of Dvontae
7 Richard.

8 BY MR. GIORDANI:

9 Q If you could read that over to yourself and look up
10 at me when you're done, sir. Does that refresh your
11 recollection?

12 A Yes.

13 Q And what did he say he was wearing during the May
14 20th incident?

15 A A red and gray hoodie.

16 Q Did you, after interviewing the defendant, make
17 contact with Mr. Ruiz?

18 A Correct.

19 Q And what was the purpose of that contact?

20 A And just for the record there, I can't remember if I
21 did the -- I might have interviewed Luis Ruiz first and then
22 did the interview with Dvontae, I can't remember.

23 Q Okay.

24 A But I believe it was on the same day. I did a photo
25 lineup interview with Luis Ruiz.

1 Q And in that photo lineup, did you include a
2 photograph of the suspect from the car wash shooting?

3 A I did.

4 Q Being --

5 A Dvontae Richards, yes, sir.

6 Q So whether or not it was before his interview or
7 after his interview, you already knew he was a suspect?

8 A That's correct, yes.

9 MR. GIORDANI: May I approach?

10 THE COURT: You don't need to --

11 MR. GIORDANI: Okay. I'm sorry. It's habit.

12 BY MR. GIORDANI:

13 Q State's Proposed 19. You see that?

14 A Yes, sir.

15 Q Do you recognize it?

16 A Yes, sir.

17 Q What is that?

18 A This is actually the page that we do not show, in
19 this case the victim, Luis Ruiz, because it's got everybody's
20 name and ID numbers. This is more for our record just to know
21 who we had in the photo lineup.

22 Q Okay. Thank you. Showing you State's already
23 admitted 18. Is that the photo sheet that you actually showed
24 to the -- the witness?

25 A That's correct.

1 Q And that removes the identifiers from the photos?

2 A Correct. These are the only photos that we actually
3 show, yeah.

4 Q Okay. Thank you.

5 MR. GIORDANI: May I have the overhead, please?

6 THE CLERK: Nineteen is not admitted yet.

7 MR. GIORDANI: Oh, I move for the admission of 19.

8 THE COURT: Any objection?

9 MR. PERCIVAL: No objection.

10 THE COURT: It will be admitted.

11 (State's Exhibit 19 admitted.)

12 MR. GIORDANI: I move to publish?

13 THE COURT: Go ahead.

14 BY MR. GIORDANI:

15 Q This is the one that you described as with
16 identifiers?

17 A With identifiers. That is not shown to the victim,
18 correct.

19 Q Okay. Who is in the number one position?

20 A A filler picture named Tyler Sylvester.

21 Q What is a filler picture?

22 A Filler picture is -- is what -- what happens, in
23 this case Dvontae Richard was a suspect, as you see that's in
24 picture number three. What we'll do is we'll take his picture
25 and mix it among five other filler pictures. In other words,

1 people that are just randomly pulled, have nothing to do with
2 this particular incident. They're just there for fillers.
3 They -- typically we'll -- they'll have a similar appearance
4 as the suspect.

5 Q Okay. So you picked -- they're picked at random but
6 you want people who look somewhat similar --

7 A Somewhat similar.

8 Q What's the purpose of that?

9 A Well, for instance, if -- if I put five pictures of
10 people with clown wigs on and then just one picture of Dvontae
11 Richard, then he would really stand out and that would -- that
12 wouldn't be fair, it wouldn't be right.

13 Q Okay. I'm showing you already admitted 18. There's
14 a photo circled in that, correct?

15 A Correct.

16 Q And can you describe kind of the process you went
17 through with Mr. Ruiz before he got to that point of circling
18 a photo?

19 A Yes. The very first thing I do is we have something
20 called photo lineup witness instructions and we read that to
21 -- in this case to Luis Ruiz. I read that to him to make sure
22 he understood the instructions. Those instructions typically
23 explain to our victim in this case that just because I'm
24 showing him pictures it doesn't mean we've caught anybody. It
25 doesn't mean he has to pick anybody. That it's just as

1 important to free innocent persons from suspicion as it is to
2 identify those who are guilty. In this particular case after
3 we read those instructions he said he understood those
4 instructions and that's when I presented him with this page of
5 photos that we're looking at right here.

6 Q Okay. And just so the jury's clear, I'm showing you
7 State's 17. Are those the instructions you just described?

8 A Yes.

9 Q What did you observe Mr. Ruiz do when you finally
10 gave him this photo sheet?

11 A He focused on pictures one and three and he told me
12 that those two men looked like the suspect -- like one of the
13 suspects involved in this incident. I asked him at that point
14 if one looked more like the suspect than the other and he said
15 he thought number one looked more like the suspect than the
16 other.

17 Q And did he then fill out this handwritten -- State's
18 17, this handwritten statement describing the same?

19 A That's correct, sir.

20 Q I want to talk a little bit about follow up
21 investigation. Did you ultimately -- were fingerprints taken
22 from the vehicle --

23 A Yes, sir.

24 Q -- to your knowledge by a crime scene analyst; is
25 that fair?

1 A That is fair, yes.

2 Q You weren't present for that, right?

3 A No, sir.

4 Q But to be fair to Mr. Richard, those fingerprints,
5 none of them came back to Mr. Richard; is that fair?

6 A No, sir. I believe a couple of them came back to
7 Luis, to Luis Ruiz.

8 Q The owner of the vehicle?

9 A Correct.

10 Q Did you obtain a buccal swab at some point?

11 A I did.

12 Q Can you tell the ladies and gentlemen of the jury
13 what a buccal swab is briefly?

14 A A buccal swab is kind of like a Q-tip you might
15 clean your ear with, except what we do is we rub it on the
16 inside of the cheek. And what that does is it provides a
17 sample of DNA and then we turn that into the lab and the lab
18 can do what they do with it to actually get the DNA out of the
19 buccal swab.

20 Q And when did you conduct that, if you recall?

21 A I believe it was like June 10th or 11th.

22 Q Okay. So about a week after you had initially
23 interviewed him?

24 A That's correct, sir.

25 Q When you made contact with him, did he make any

1 statements to you at that point?

2 A Yes, sir.

3 Q And did you question him in any way?

4 A No.

5 Q What did he say to you?

6 A I took the buccal swab and he asked why I was taking
7 the buccal swab and what a buccal swab was. And I told him it
8 was for DNA, that we were going to compare his DNA to any DNA
9 that might be on that Glock 26.

10 Q Okay. What was his response?

11 A His response was why are you doing that, I already
12 told you I was holding it?

13 Q All right.

14 MR. GIORDANI: I'll pass the witness, Your Honor.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. PERCIVAL:

18 Q You indicated that during your interview with Mr.
19 Richard on June the 3rd you were talking to him about how the
20 incident of May 20th occurred, correct?

21 A Was I -- yeah, I believe so, if I understood your
22 question correctly.

23 Q And he told you that he had been riding around with
24 a couple of guys, right?

25 A At the very end I think he mentioned there was a

1 third suspect. I don't know if he meant regarding that
2 particular incident. He indicated that there were a lot of
3 other things he could -- other information he could provide,
4 so I don't know which instance he was referring to.

5 Q And you asked him whether his compatriot had a --
6 had a gun, correct?

7 A Yes.

8 Q And you asked him if it was a toy gun or a squirt
9 gun or something like that?

10 A That sounds right, yeah.

11 Q And he said, I don't know, I never handled it,
12 correct?

13 A That sounds right.

14 Q In fact, throughout your interview with him he said
15 -- he said that he was just along with this guy to make sure
16 if something went bad he could help him out, watch his back?

17 A Yeah, he said he was watching his back. I believe
18 those were his exact words.

19 Q Right. And that he hadn't personally been in
20 possession of a handgun at the time, correct?

21 A Correct.

22 Q The Glock 26 that you're referring to, you said was
23 one that disappeared as a result of this incident at the Bank
24 of America, correct?

25 A Yes. It was stolen during the Bank of -- yes.

1 Q All right. And you had a -- a buccal swab done,
2 right? Correct? That's to collect -- collect the DNA
3 evidence?

4 A Correct, sir.

5 Q Do you know if the DNA evidence was ever -- if the
6 gun was actually ever processed for DNA?

7 A It was, yes.

8 Q Okay. And the results were inclusive on that,
9 correct?

10 A That is correct.

11 Q During your conversation of June 3rd, did he tell
12 you that he didn't get any money?

13 A He did say that.

14 Q Did he tell you that he didn't know anything about
15 an iPhone?

16 A Correct.

17 Q You indicated that you had retrieved the serial
18 number from -- on the iPhone from Mr. Ruiz?

19 A Yes, sir.

20 Q Now, that's an iPhone 6 Plus, is that what kind of
21 phone it was?

22 A Yes. I believe that's what he said, a gold iPhone 6
23 Plus.

24 Q Do they -- those phones have a find my phone
25 function --

1 A Correct.

2 Q -- don't they? Were you able to -- did you ever
3 conduct an investigation in an effort to find the phone?

4 A Yes. I believe Luis tried himself to use his iPhone
5 feature and it said it didn't -- it didn't track the phone.

6 Q Wasn't tracking the phone?

7 A Correct.

8 Q Was the -- Metro has a process by which they can
9 check with pawn shops and local I guess like trade and pawn
10 stores, correct?

11 A Yes, sir.

12 Q And was there ever any investigation done to
13 determine whether that phone had been pawned?

14 A Yes.

15 Q And did you locate the phone?

16 A We've never located the phone, no.

17 Q So did Mr. Ruiz tell you where he purchased the
18 phone?

19 A I don't believe so.

20 Q Did anyone inquire?

21 A I don't believe so.

22 Q Were you present when Mr. Ruiz was attempting to
23 use, I guess it's his computer, to locate the phone?

24 A No, sir.

25 Q So you don't have personal knowledge of whether he

1 actually did that, correct?

2 A Oh, I only have what he's told me, correct.

3 Q Okay. And we don't know where the phone was
4 purchased, so we don't even really know if the phone existed
5 except for what Mr. Ruiz tells us, correct?

6 A I only know what Mr. Ruiz told us, correct.

7 Q When you asked Mr. Richard what kind of gun his
8 compatriot had he said he didn't know, correct?

9 A No, he described it in detail. At the very end I
10 believe he said it was specifically a black semiautomatic, I
11 believe, to my recollection.

12 Q Okay. It appeared to be a black semiautomatic. But
13 he did say he never held it?

14 A Correct. I don't think he ever said he held it.

15 MR. PERCIVAL: No further questions, Judge.

16 THE COURT: Redirect?

17 MR. GIORDANI: Court's brief indulgence. No, Your
18 Honor. Thank you.

19 THE COURT: Questions from the jury? Raise your
20 hand if you have a question. No questions from the jury. You
21 may step down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Counsel, approach.

24 (Bench conference transcribed as follows.)

25 THE COURT: When's your next witness? Is he going

1 to be here in 10 minutes?

2 MR. GIORDANI: They're going to be waiting outside,
3 we'll have them lined up. I told everyone we're going to
4 start back up at one, so if they have to wait they can wait.

5 THE COURT: They're going to have to wait.

6 MR. GIORDANI: Yeah, that's no problem.

7 THE COURT: I'm just saying. How we going on time,
8 our scheduling so far? Are we --

9 MR. GIORDANI: We're looking really good. Frankly,
10 we're going to finish five more witnesses today because
11 they're pretty quick witnesses except for one of them --

12 THE COURT: Okay.

13 MR. GIORDANI: -- or maybe two. So I anticipate
14 actually being done tomorrow.

15 THE COURT: Okay. Very good. All right. Then
16 we'll take an hour. Okay. Thank you.

17 (End of bench conference.)

18 THE COURT: All right. We're going to take an hour.
19 It's 12:45, we'll have you come back at 1:45.

20 During this recess you're admonished do not talk or
21 converse amongst yourselves or with anyone else on any subject
22 connected with this trial, or read, watch or listen to any
23 report of or commentary on the trial or any person connected
24 with this trial by any medium of information including,
25 without limitation, newspapers, television, radio or Internet.

1 Do not form or express any opinion on any subject connected
2 with the trial until the case is finally submitted to you.

3 One-forty-five. Have a good lunch.

4 (Court recessed at 12:46 p.m. until 1:51 p.m.)

5 (Outside the presence of the jury.)

6 THE COURT: -- presence. You have five somewhat
7 short witnesses?

8 MR. GIORDANI: Yes, Your Honor.

9 THE COURT: Okay. And one of them there is an
10 interpreter?

11 MR. GIORDANI: Yes.

12 THE COURT: And Kathy was asking, I think the
13 statute doesn't require that the interpreter be sworn in when
14 it's a court -- they're a certified court interpreter; is
15 that --

16 MR. GIORDANI: That's my understanding as well.
17 Typically the clerk will ask him to just state his name for
18 the record and that's sufficient.

19 THE COURT: And defense, is that your understanding?

20 MR. PERCIVAL: That was my understanding as well,
21 Your Honor.

22 THE COURT: When it's a court certified -- and we do
23 have a court certified, right?

24 MR. GIORDANI: Yes.

25 THE COURT: Okay. Is that for the first witness?

1 MR. GIORDANI: Because we're already running a
2 little behind I can call a witness out of order since the
3 interpreter's not here yet.

4 THE COURT: Oh, okay. All right. Everybody ready?

5 MR. GIORDANI: Let me just check if she's out here.

6 THE COURT: Defense, you ready to go?

7 MR. PERCIVAL: Yes, Judge.

8 MR. GIORDANI: I'll call Elizabeth first.

9 THE COURT: Okay. Bring them in.

10 (Jury reconvened at 1:54 p.m.)

11 THE COURT: Please be seated. Good afternoon,
12 ladies and gentlemen. Parties acknowledge the presence of the
13 jury?

14 MR. GIORDANI: Yes, Your Honor.

15 MR. PERCIVAL: So acknowledge.

16 THE COURT: So the parties tell me we're still on
17 schedule. I just thought you'd want to know. Maybe even a
18 little ahead, so we're moving along. State, call your next
19 witness.

20 MR. GIORDANI: Elizabeth Greer.

21 ELIZABETH GREER, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. Please state your
23 name and spell it for the record.

24 THE WITNESS: My name is Elizabeth Greer,
25 E-l-i-z-a-b-e-t-h, last name G-r-e-e-r.

1 MR. GIORDANI: May I, Your Honor?

2 THE COURT: Go ahead.

3 MR. GIORDANI: Thank you.

4 DIRECT EXAMINATION

5 BY MR. GIORDANI:

6 Q Ma'am, I want to draw your attention back to a
7 specific day last year, it's May 24th of 2015. Do you recall
8 that day?

9 A Yes, I do.

10 Q Did something out of the ordinary happen that day?

11 A Yes.

12 Q For lack of a better term I guess?

13 A Yeah.

14 Q Where were you on that day?

15 A I had just arrived in Las Vegas.

16 Q Okay. Were you living somewhere else?

17 A Coming from Oakland, California.

18 Q Oakland, California?

19 A Yes.

20 Q So was this your first day in Vegas?

21 A My very first day, yes.

22 Q Okay. Where did you go that this incident occurred?

23 A I was at the Terrible Herbst on Flamingo and
24 Arville.

25 Q Terrible Herbst on Flamingo and Arville?

1 A Yes.

2 Q And is that here in Clark County, Nevada?

3 A Yes, it is.

4 MR. GIORDANI: I apologize. Can I have the Elmo,
5 please? And, Your Honor, the parties met and conferred prior
6 to entering court today and I believe we've agreed to admit
7 State's Proposed Exhibits 25 through 30, 33 through 82, 83
8 through 117, 118 through 137, 138 through 149, 152 through
9 156, 157 through 161, 162 through 171, 172 and 173, 183
10 through 187.

11 THE COURT: Is that correct, defense? Do you want
12 to review?

13 MR. PERCIVAL: Yes, Your Honor, I believe so. I
14 mean, we certainly met.

15 THE COURT: Well, review --

16 MR. PERCIVAL: May I take a look at them for just a
17 second?

18 THE COURT: -- them if you're not sure.

19 MR. PERCIVAL: I mean, I'll be -- I'll be quick.
20 That is correct, Judge.

21 THE COURT: They'll be admitted.

22 (State's Exhibit 25 - 30, 33 - 149, 152 - 156, 157 - 173, 183
23 - 187 admitted.)

24 MR. GIORDANI: Thank you, Your Honor.

25 BY MR. GIORDANI:

1 Q Ma'am, I'm showing you State's 25. Can you see on
2 your screen there?

3 A Yeah.

4 Q Okay. You described the Terribles on Flamingo and
5 Arville, correct?

6 A Correct.

7 Q And does that appear to be the Terribles you were
8 describing?

9 A Yes, it is.

10 Q What was your purpose in being there that day?

11 A I was actually trying to get out of the rain.

12 Q Trying to get out of the rain?

13 A Yeah.

14 Q So it was a rainy day that day?

15 A Like a very sporadic rainstorm.

16 Q Okay. On and off?

17 A Yeah.

18 Q You wouldn't know that that's typical Vegas weather?

19 A At that point I didn't know, now I know.

20 Q Showing you State's 26. Where did you go to get out
21 of the rain, if you can tell from that aerial map?

22 A I went to sit -- there's some wooden benches
23 underneath this awning right here.

24 THE COURT: That's a touch screen so if you touch it
25 if you want to mark, go ahead.

1 A Like there's an awning right here and I was sitting
2 on one of those wooden benches there.

3 BY MR. GIORDANI:

4 Q Okay. And you had -- did you have any items with
5 you?

6 A I had two very large suitcases with me.

7 Q Is that because you were moving here?

8 A Yes.

9 Q While you were sitting on those benches, did
10 anything or anyone catch your attention?

11 A Several people caught my attention. There were two
12 gentlemen getting their vehicle washed underneath the tents.

13 Q And is that -- just for the record, the blue tents
14 there?

15 A Yes.

16 Q Or purple?

17 A Yes.

18 Q What drew your attention to those two men?

19 A They were just fun, jovial, they were greeting
20 pretty much anyone and everyone who walked past them.

21 Q Did you have a conversation with them or joke with
22 them?

23 A Just hi and bye. Like hello, oh, how are you doing
24 today? This weather's crazy and that's pretty much it.

25 Q Okay. And did those two individuals, were they

1 standing by any type of vehicle?

2 A Yes.

3 Q What type, if you recall?

4 A All I remember it was a dark blue SUV. I don't
5 remember exactly what make or model.

6 Q Was it a fairly nice vehicle?

7 A It was a very nice vehicle.

8 Q Very nice?

9 A Yes.

10 Q Okay. After -- or when you had that quick
11 interaction with those people, was that before you went and
12 sat on the benches or during -- while you were on the benches?

13 A As I'm heading towards the benches and when I sit
14 down.

15 Q Okay. And what were those two individuals doing did
16 it appear to you?

17 A They just appeared to be getting their vehicle
18 washed.

19 Q Okay. Did some other individuals catch your
20 attention at some point?

21 A Yes. As I was sitting on the bench I noticed two
22 gentlemen walk past me and they were -- they struck me as a
23 little odd because of their demeanor.

24 Q And can you describe that for the ladies and
25 gentlemen?

1 A Very nervous, looking around. They also had
2 t-shirts like draped over the tops of their heads.

3 Q Okay.

4 A Which is what stood out the most to me.

5 Q Although it was raining that day, how would you
6 describe the temperature?

7 A It was pretty warm and it had -- it was pretty warm
8 on top of it being rainy.

9 Q Okay. I want to show you a few photos and you tell
10 me if you recognize them. These are already admitted.
11 State's 58. Does that look familiar to you?

12 A Yes.

13 Q And what is that?

14 A That's where I was sitting. Well actually, the
15 furthest bench is where I was sitting.

16 Q Okay. Let me show you --

17 A I can see my bags.

18 Q You can see your bags in that photo?

19 A Right there.

20 Q Let me show you State's 38.

21 A Yep.

22 Q So that's that series of benches?

23 A Yes.

24 Q Can you see the bench you were sitting on in that
25 photo?

1 A Not in this photo, no.

2 Q In the last one?

3 A Yes.

4 Q Can you put a dot on the bench you were sitting at?

5 A Right by there -- well --

6 Q Okay. So is it behind that red trash can?

7 A Yes.

8 Q Okay.

9 A Around that little like tile wall that's there.

10 Q Were you sitting on the tile wall or on the bench?

11 A No. I was sitting on the other side of it, like
12 right there.

13 Q Okay. Thank you. When you saw those two men that
14 caught your attention, you said that they were acting odd and
15 that's what caught your attention.

16 A Yes.

17 Q Did you hear them say anything?

18 A I heard one gentlemen ask another gentlemen is that
19 Old Boy.

20 Q Okay. And when you say is that Old Boy, how did you
21 as a layperson interpret that?

22 A I interpreted that they were asking about someone
23 that possibly knew or knew of.

24 Q Okay. Did you see them indicate or point anywhere
25 when they said that or did they just --

1 A No, I didn't see them point or anything.

2 Q After that statement, did you see those two
3 individuals confer and talk amongst themselves?

4 A Yes.

5 Q How long did that conversation last?

6 A It felt like about a minute.

7 Q Okay. Did you ever see those individuals go inside
8 the store?

9 A Absolutely not.

10 Q Okay. When -- after that conversation that you
11 think was about a minute, what happened?

12 A I saw the two gentlemen walk back towards where I
13 was sitting. The next thing I know there were gunshots.

14 Q Okay. And I just want the record to be clear and
15 the jurors to be clear, when you say the two men, are you
16 talking about the two who discussed something or the two that
17 were out by the cars?

18 A The two that discussed something.

19 Q Okay. So those two walked back in the other
20 direction and then the next thing you know gunshots rang out.

21 A Right.

22 Q What did you do when you heard these gunshots?

23 A At first I was a little like stuck.

24 Q Scared?

25 A Scared. Where I come from you just don't move when

1 somebody's shooting.

2 Q Okay.

3 A And then one of the bullets went past me and at that
4 point I hit the ground.

5 Q Okay. Can you estimate, and if you can't it's okay,
6 but can you estimate how many gunshots you heard that day?

7 A I counted about eight, but I'm pretty sure there
8 were more.

9 Q Okay. I'm showing you 38 again. Now I don't know
10 if you can see in that photo, but do you see the windows that
11 are behind one of those benches?

12 A Yes.

13 Q Let me zoom in here. I apologize. Let me show you
14 State's 58. There's a tint on there. Do those appear to be
15 shattered to you?

16 A Yes.

17 Q Were those windows like that when you first sat
18 down?

19 A Absolutely not.

20 Q Okay. When the -- when the gunshots started to ring
21 out, did you know what direction they were coming from?

22 A They were coming from in front of me.

23 Q Okay. So you're facing out towards the street --

24 A I'm facing out towards the main area of the gas
25 station and they were coming towards me.

1 Q Around what time of day was this, if you can recall?

2 A Around three p.m., a little after three p.m.

3 Q Can you estimate the number of people that were at
4 that car wash that -- at that time?

5 A At the car wash or at the gas station as a whole?

6 Q All around, yeah.

7 A There was a lot of people there. Like at least more
8 than 10.

9 Q At least more than 10?

10 A Yes.

11 Q Okay. When those gunshots started to ring out, did
12 you look around and see what was happening?

13 A I laid on the ground but I did look like to see --

14 Q Okay.

15 A -- if anybody was, you know --

16 Q Can you describe that scene for the ladies and
17 gentlemen what you saw?

18 A I saw -- after the gunshots I saw the two gentlemen
19 that were conferring at the door of the store run in the
20 direction in which they came. I saw a couple of people that
21 were hurt. And there was a gentleman who had on a gold chain
22 and he was shot like through his abdomen it looked like.

23 Q Shot through his abdomen it looked like?

24 A It looked like.

25 Q Okay. Is it fair to describe the whole situation as

1 chaotic?

2 A Very much so.

3 Q Did you stick around long enough for police to
4 arrive and speak to them?

5 A Yes, I did.

6 Q And did you provide a written statement then?

7 A Yes, I did.

8 Q Did you do a recorded audio statement or just a
9 written?

10 A Just a written.

11 Q Okay.

12 MR. GIORDANI: I'll pass the witness, Your Honor.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MR. PERCIVAL:

16 Q Can you -- it's Ms. Greer, correct?

17 A Yes.

18 Q Can you please again for me touch the screen showing
19 where the awning was where you were sitting on the bench?

20 A This awning.

21 Q It's the rectangular area here?

22 A Yes, that.

23 Q Okay. And you indicated that this blue or purple
24 structure down on the lower left, is that the drying area or
25 the detailing area?

1 A It's the hand detailing area.

2 Q Okay. You said you saw -- I didn't mean to do that.
3 You said you saw two individuals, one of them wearing a gold
4 chain --

5 A Yes.

6 Q -- correct?

7 A Yes.

8 Q And he was down in the area where the cars were
9 being washed; is that correct?

10 A Yes, he was in the hand detailing area.

11 Q Do you remember anything that he was wearing besides
12 the gold chain?

13 A A wife beater, jeans, I can't remember if they were
14 shorts or pants.

15 Q Did he have a hat on or anything -- anything on his
16 head?

17 A I can't remember.

18 Q Okay. When you say a wife beater, you mean like
19 a --

20 A Oh, I'm sorry, like an undershirt.

21 Q Like a white undershirt, tanktop --

22 A Yes.

23 Q -- style?

24 A Yes.

25 Q Okay. And did he have -- he had someone with him,

1 correct?

2 A Yes, he did.

3 Q Can you describe anything that that gentleman was
4 wearing?

5 A He had on a red shirt. That's all I can remember.

6 Q A red shirt?

7 A Yeah.

8 Q Remember anything else about him?

9 A Other than him being injured, no.

10 Q The -- oh, the guy in the red shirt was injured?

11 A Yes.

12 Q And you said at some point you saw two individuals
13 walk past you towards the store --

14 A Right.

15 Q -- correct?

16 A Yes.

17 Q Could you please on the Elmo draw a line with your
18 finger showing the path that they were taking?

19 A Well, okay. So one gentleman went this way, like
20 down along the lower path, and another gentleman walked up by
21 where I was sitting.

22 Q Okay. And where is the front door or the main
23 entrance to that Terrible Herbst?

24 A It's about right here.

25 Q Okay. So there's a -- they were headed toward an

1 entrance right there?

2 A Yeah.

3 Q Okay. You said absolutely not -- you said they did
4 not go into the store?

5 A No, they did not.

6 Q Okay. Did you ever see them go around a corner,
7 this direction?

8 A No, sir.

9 THE COURT: Do you want me to clear it? Just tell
10 me when you want --

11 MR. PERCIVAL: Okay. Well, I can't make the -- the
12 line --

13 THE COURT: I know, just tell me when you want me to
14 clear it.

15 MR. PERCIVAL: Okay. Go ahead and clear it.

16 BY MR. PERCIVAL:

17 Q What -- and how long were they -- were they within
18 your field of view the whole time they -- after they went past
19 you?

20 A Yes.

21 Q The whole time?

22 A Yes.

23 Q Okay. And how long were they up there?

24 A I guess about a minute.

25 Q A minute?

1 A Uh-huh.

2 Q Okay. What were they -- what were they doing?

3 A They were talking, looking around. At that point I
4 couldn't hear what they were saying.

5 Q Okay. But you said that when they passed you you
6 heard one of them say, hey, is that Old Boy or something like
7 that?

8 A Right.

9 Q Okay. And then at some point they walked back past
10 you; is that correct?

11 A Yes.

12 Q And about how long was it after they walked past you
13 that you heard gunfire?

14 A Like a matter of seconds.

15 Q Okay.

16 A Five, maybe, 10.

17 Q Okay.

18 A Not very long.

19 Q All right. Did you see anyone shooting a gun?

20 A No, I did not.

21 Q When the gentlemen walked back past you toward --
22 from the store part of the Terrible Herbst --

23 A Right.

24 Q -- back towards the detailing area, could you see
25 the other two guys, the guy in the -- with the gold chain and

1 the wife beater and his friend in the red shirt?

2 A I could see the guy with the gold chain and the wife
3 beater but not his friend in the red shirt.

4 Q Okay. Could you on the -- on the Elmo there, could
5 you make a dot or press it to show where it is -- where it was
6 that the guy in the wife beater was standing?

7 A He was by the front of his car, like around here.
8 Well, over there.

9 Q Okay. So -- and where was his car parked?

10 A It was underneath the awning.

11 Q Okay. Would that be at the north end of the awning
12 then closest to the -- or tent area, north end of the tent
13 area closest to the awning that you were sitting under?

14 A It was -- yeah, it was the front one and he was the
15 only car there.

16 Q Okay. He was the only car so he was in the front
17 somewhere around here?

18 A Right around -- yeah. Like I'm drawing way over
19 here but it's --

20 Q Okay. No, no, that's great. That shows me pretty
21 much exactly where he was. And was the man in the white
22 t-shirt on this side of his car or on the --

23 A Yeah. He was next to Flamingo Road, so he was on
24 the outside of --

25 Q So he was further away --

1 A -- from the street.

2 Q -- from you than his car was? Is that -- the car
3 was closer to you than he was?

4 A It's like here's the car, here's him.

5 Q Okay. He's -- he's right at the back -- is he at
6 the back of the car then?

7 A The front.

8 Q The front?

9 A Yes.

10 Q And which direction was the car facing? Was it
11 facing --

12 A It was facing out towards Arville.

13 Q Okay. So that would be west of where you were
14 sitting.

15 A Yes.

16 Q All right. And he's at the front or the back of his
17 car?

18 A Front.

19 Q Did you -- after you saw the gentleman that you said
20 had stopped up near the store, after they came back past you,
21 did you ever see them go out into the parking lot --

22 A I --

23 Q -- or out into the car detailing area?

24 A I saw them walk past me. There was like a little
25 bit of a column and one stayed over by the column, that's when

1 the gunshots started.

2 Q Okay. Could you indicate on the Elmo where that
3 column was located?

4 A At -- I honestly can't because that doesn't seem
5 like I can see it from there.

6 Q It doesn't -- it doesn't show in -- from this angle?

7 A No.

8 Q Was it part of the -- was it part of the tent or was
9 it part of the solid structure, the column you're referring
10 to?

11 A It's part of this structure right here.

12 Q Okay. So once they went past the column you
13 couldn't see them anymore?

14 A Right.

15 Q All right. And then you said you heard gunshots
16 ring out.

17 A Yes.

18 Q Never saw any -- never saw anyone shooting?

19 A Nope.

20 Q Didn't see any guns in the hands of the guys that
21 walked past you?

22 A No, I did not.

23 Q You -- is it safe to say that you don't know who was
24 doing the shooting?

25 A No, I didn't -- I do not know.

1 Q Okay. But some -- but the -- some of the shots that
2 you were aware of were coming toward you or you felt that they
3 were coming toward you, correct?

4 A Yes, they were.

5 Q And in fact something, presumably gunfire, hit the
6 window of the drying tunnel where the cars are --

7 A Yes, sir.

8 Q -- going under the blowers, correct?

9 A Yes, sir.

10 Q The man that was -- you said there was somebody that
11 was working on the car that was hit by gunfire?

12 A Yes.

13 Q Did you see where he was when he was hit?

14 A Honestly, no.

15 Q Okay. Do you know what part of the car he was near,
16 front, back, east --

17 A He was on the side of the car closest to me but I
18 can't tell you whether he was at the front or the back at that
19 point.

20 Q Okay. Were you aware of anyone else that got hit by
21 gunfire? You said the guy in the -- the guy -- the guy in the
22 wife beater --

23 A Wife beater, the guy in the red shirt and somebody
24 who worked at the gas station.

25 Q Okay.

1 MR. PERCIVAL: No further questions.

2 THE COURT: Redirect?

3 MR. GIORDANI: No, Your Honor. Thank you.

4 THE COURT: Questions from the jury, raise your
5 hand. No questions. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: State, call your next witness.

8 MR. LEXIS: Your Honor, the State calls Horacio
9 Lopez.

10 HORACIO HERNANDEZ-LOPEZ, STATE'S WITNESS, SWORN

11 THE CLERK: Please be seated. Please state your
12 name and spell it for the record.

13 THE WITNESS: Horacio Hernandez-Lopez.
14 H-o-r-a-c-i-o, H-e-r-n-a-n-d-e-z, L-o-p-e-z.

15 THE COURT: Do you need the name of the --

16 THE CLERK: Yes, I do.

17 THE COURT: Yeah, the name -- sorry, your name, the
18 court interpreter, you're certified?

19 THE INTERPRETER: Ricardo Pico, certified Spanish
20 interpreter.

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION

23 BY MR. LEXIS:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q Sir, taking you back May 24th, 2015. Were you
2 working at the Terrible Herbst gas station on 4070 Arville?

3 A Yes.

4 Q Were you working there in the early afternoon?

5 A Yes.

6 Q What do you do?

7 A I wipe dry vehicles.

8 Q Did you see a man appear that day that had a gold
9 chain on?

10 A Yes.

11 Q Did you recognize this person?

12 A Yes.

13 Q How do you recognize him?

14 A Well, he's a client of the car wash.

15 Q He's a frequent customer?

16 A Yes.

17 Q Have you ever had any problems with him?

18 A No.

19 Q On this particular day when he arrived, did he have
20 somebody else with him?

21 A Yes.

22 Q And were you also in the area wiping down cars?

23 A Yes.

24 Q And do you know who was wiping down the car that had
25 the guy with the gold chain?

1 A Yes.

2 Q And what was his name?

3 A Randy.

4 Q Was he also an employee?

5 A Yes.

6 MR. LEXIS: Judge, Proposed State 173 has been
7 admitted by stipulation.

8 MR. PERCIVAL: Yes.

9 MR. LEXIS: May I publish it, Your Honor?

10 THE COURT: Go ahead.

11 BY MR. LEXIS:

12 Q Who is that?

13 A That is my co-worker.

14 Q Is this the person who was wiping down the car of
15 the guy with the -- the gold chain?

16 A Yes.

17 Q Did you notice anything suspicious?

18 A No.

19 Q Did you notice anything out of the ordinary as you
20 saw the man with the gold chain?

21 A No.

22 Q Did there come a point in time where somebody
23 approached the man with the gold chain?

24 A Yes.

25 Q Explain that.

1 A Me and my friend, my co-worker friend, we were
2 standing, you know, chatting and we saw two -- two people
3 Afro-Americans, you know, walking together, approaching. So
4 when they were close by or getting to with the guy with the
5 chain the one that had a hoodie on, he pushed him and he
6 grabbed him like so.

7 Q Do you know what color the hoodie was?

8 A It was red.

9 Q Sir, I'm showing you State's Exhibit 26. Do you
10 recognize this as the property of the gas station?

11 A Yes, that's where I work.

12 Q Can you use that screen in front of you like Monday
13 night football when they make circles on it and X's and put a
14 circle across where the car wiping area is?

15 A I was standing right here. I don't know how to
16 correct this, it's a lot of dots.

17 THE COURT: If you push on the right bottom corner
18 it clears.

19 BY MR. LEXIS:

20 Q Where was the man with the gold chain standing? And
21 where was his buddy standing?

22 A He was on his right side.

23 Q Okay. And the two other black males that you
24 noticed approaching, where were they coming from?

25 A Like -- like this.

1 Q Did they approach in the manner that you marked on
2 that?

3 A Yes.

4 Q They approached together?

5 A Yes.

6 Q And one of them had a red hoodie on?

7 A Yes.

8 MR. LEXIS: Your Honor, may the witness step down to
9 demonstrate how he approached the man with the gold chain?

10 THE COURT: Okay.

11 BY MR. LEXIS:

12 Q Sir, may you please step down for a second? Stay
13 right there. If I'm the man with the gold chain, did the
14 person with the red hoodie approach from the right side or the
15 left side?

16 A From this side.

17 Q Okay. This way?

18 A Yes.

19 Q I want you to approach me exactly how you saw the
20 person with the red hoodie approach the man with the gold
21 chain. Go ahead. Okay. For the record the witness has
22 walked up towards me and then in a violent manner acted with
23 both hands as he was tugging the chain and taking it away.
24 Sir, is that the manner in which you saw the man with the red
25 hoodie approach?

1 A Yes.

2 Q When you came -- now that I'm facing the jury, can
3 you demonstrate for them while they're looking at me the
4 manner in which the man grabbed the gold chain? He used both
5 hands? Is that a yes or no, sir? Have a seat, sir.

6 THE COURT: You have to answer out loud. Shaking
7 your head doesn't work.

8 A I'm sorry.

9 BY MR. LEXIS:

10 Q Did he use both hands when he tried to grab the
11 chain?

12 A Yes.

13 Q And did he grab the chain?

14 A Yes.

15 Q Did that cause the male with the gold chain to
16 lunge?

17 A He broke the chain off.

18 Q Did it cause the man with the gold chain to lunge
19 towards his direction of force where he was pulling it?

20 A Yes.

21 Q Did the man with the gold chain have any warning?
22 Was any words exchanged?

23 A No.

24 Q What was your reaction when you saw this?

25 A At first I was in shock. Then after his friend

1 pulled out a gun and pointed it at him I just hit the ground
2 and then I heard gunshots.

3 Q When you say you were in shock, sir, after
4 witnessing the man with the red hoodie violently tug on the
5 man with the gold chain, what was going through your mind?

6 A Fear.

7 Q Immediately after that you just said that you see
8 another man pull out a gun?

9 A Yes.

10 Q Is that the man that was with the gold-chained
11 individual?

12 A Yes.

13 Q And did he immediately do that after he saw -- or
14 you saw the person pull on the gold chain?

15 A Yes. As soon as he started yanking on it he pulled
16 out his gun.

17 Q And did gunshots immediately emerge?

18 A Yes.

19 Q And what did you do?

20 A I hit the ground, you know, protecting my life.

21 Q Did you go up to your friend Randy?

22 A No, after everything had happened.

23 Q Did you know if anybody got hit?

24 A Yes, Randy.

25 Q Do you know where he got hit?

1 A His foot.

2 Q Describe the scene for me after the gunshots
3 emerged.

4 A It was chaotic. It was chaos, we were all confused.

5 MR. LEXIS: Court's indulgence. No further
6 questions, Your Honor.

7 THE COURT: Cross-exam?

8 CROSS-EXAMINATION

9 BY MR. PERCIVAL:

10 Q Now, you had indicated that you were standing,
11 chatting with a co-worker somewhere near the center of the
12 blue tent where the cars are wiped; is that correct?

13 A Yes.

14 Q And what direction were you facing?

15 A I was in front of the owners of the vehicle.

16 Q You were in front of them?

17 A Yes.

18 Q And about how far away were you from the owners of
19 the vehicle?

20 A From here to where you are at.

21 Q So maybe 15 feet?

22 A No, maybe eight feet.

23 Q Okay. And who was closest to you, the man with the
24 gold chain or his friend?

25 A Well, they were both together.

1 Q Okay. You were near the center of this tent,
2 correct, here?

3 A Yes.

4 Q Okay. And they were -- can you show me on the Elmo
5 again where the man with the gold chain was standing?

6 A I didn't mean to hit that spot.

7 THE COURT: Bottom right.

8 MR. GIORDANI: It's off about a couple inches.

9 A I can't hit the spot. Maybe if I use a pen? I
10 touch here but it shows over here. I don't know.

11 BY MR. PERCIVAL:

12 Q So the screen is not accurately reflecting where
13 you're trying to --

14 A No.

15 Q Okay. Was he --

16 A I can show you -- show it to you on the piece of
17 paper.

18 Q Is that all right? Can you --

19 A He was here.

20 Q Okay.

21 A And I was over here, they were here, the car was
22 here and they were approaching from this direction.

23 Q The pen doesn't really show very well on the blue.
24 So if I understood you correctly, the car was roughly here?

25 A Yes.

1 Q And it's facing west, Arville Street, correct?

2 A Yes.

3 Q Okay. And you said that you were about right there,
4 correct?

5 A Yes.

6 Q And you're -- so you're at the back left-hand side
7 of -- the back driver's side of the car a little -- little
8 ways away from the car; is that correct?

9 A Well, there's a wall, then the car and then me.

10 Q Okay. So the wall is -- is the wall underneath the
11 awning?

12 A Yes.

13 Q Okay.

14 A There's nine spaces underneath.

15 Q Okay. Nine stalls?

16 A Yes.

17 Q Let me see. This has been marked State's 35. Does
18 that show where the car that the gold -- the man with the gold
19 chain owned was parked?

20 A Yes.

21 Q Yes. Okay. You indicated that you were at the back
22 of the car or behind the car on the driver's side of the car,
23 correct?

24 A There's a wall over here and I was standing there.

25 Q A wall -- a wall over where?

1 A This --

2 Q Like this column thing?

3 A This is a wall. Yes, the column.

4 Q Okay. So you were standing by the column?

5 A Yes.

6 Q I'm going to show you what's been marked State's
7 Exhibit 52 and this is -- does that look like the car from the
8 back -- the same car from the back?

9 A Yes.

10 Q And as I understand it, you were standing here by
11 this column; is that right?

12 A Over here, over here -- a little -- a little bit on
13 this side.

14 Q Okay.

15 A And they were over here.

16 Q Over -- okay. They were over by this column in the
17 right -- of the upper right of the picture?

18 A Yes.

19 Q Okay. And you said that -- now, could -- did you
20 have a direct line of sight to them? You could see them
21 directly from where you stood?

22 A Yes.

23 Q And were they standing side by side? What direction
24 were they facing, the man with the gold chain and the friend?

25 A They were looking towards me.

1 Q Okay. They were -- they were facing you?

2 A Yeah, we were facing each other.

3 Q Okay. And where was Randy?

4 A I don't know exactly, but he was wiping this side of
5 the vehicle.

6 Q Meaning the passenger side of the vehicle?

7 A Yes.

8 Q And you said that the guy in the red sweatshirt and
9 the guy that was with him came from the east towards the man
10 with the gold chain; is that correct?

11 A Yes.

12 Q Okay. Did you see either of them carrying any
13 weapons?

14 A No.

15 Q But the man in the gold -- or the man in the red
16 sweatshirt or hoodie went and grabbed the man with the gold
17 chain's chain, correct?

18 A Yes.

19 Q Okay. Now, when he did that the man in the red
20 sweatshirt had his back to you; is that correct?

21 A Yes, the back to me.

22 Q Okay. And there was actually a struggle that
23 started or a fight started kind of between the man with the
24 gold chain and the man in the red sweatshirt who had grabbed
25 his chain; is that right?

1 A Yes.

2 Q And now when you say they were standing, the man
3 with the gold chain and his friend were standing facing you,
4 do you remember if his friend was to the left or to the right
5 of the man with the gold chain?

6 A On his right side.

7 Q So if they're facing you that would mean that he was
8 actually slightly closer to the blue car than the man in the
9 gold chain, correct?

10 A Yes.

11 Q About how far apart were they?

12 A Like so.

13 Q Okay. They were almost shoulder-to-shoulder then;
14 is that correct?

15 A Yes.

16 Q Okay. And --

17 A Because they were talking.

18 Q Okay. When the man in the hoodie yanked on the
19 chain you said that the man with the chain's friend
20 immediately pulled a gun; is that correct?

21 A Yes.

22 Q You hadn't seen a gun on him -- in the hands of the
23 man with the red hoodie?

24 A No.

25 Q And you hadn't seen the guy that was walking with

1 him with a gun, correct?

2 A No.

3 Q And as soon as the man that was with the guy with
4 the gold chain pulled the gun, he began firing; is that
5 correct?

6 A Yes.

7 Q He started shooting?

8 A Yes.

9 Q Who was he shooting at, if you could tell?

10 A He was shooting at the red hoodie guy.

11 Q Okay.

12 A But I think -- he also hit his friend.

13 Q He also hit his friend in the white shirt, in the
14 white wife beater?

15 A Well, the other one ran away.

16 Q Okay. We'll get to that in a second. You -- when
17 you said you think he hit his friend, you think he hit the guy
18 with the chain?

19 A I understand he scraped him twice.

20 Q Okay. What direction was he firing? Would he have
21 been firing --

22 A He was shooting at the body, at them.

23 Q He was shooting at the guy in the red hoodie?

24 A Yes.

25 Q Would that have made the gunfire going towards the

1 store?

2 A No, towards me, towards the street.

3 Q Okay. So --

4 A That was one phase of the shooting, there were two.

5 Q Okay. When you heard the gunshots ring out, what
6 did you do?

7 A I hit the ground and I hid behind this trash bin
8 here.

9 Q Okay. Could you see -- now, what was the man with
10 the chain's friend wearing, do you remember?

11 A No. He had a hat on.

12 Q Do you remember anything about the color of his
13 shirt or what kind of a shirt he had on, anything like that?

14 A No. I think it was white but the one that caught my
15 attention was the guy with the red hoodie.

16 Q Okay. But it's the guy that is the friend of the
17 man with the gold chain that starts shooting, correct?

18 A Yes, he started shooting, yes.

19 Q And you heard several gunshots, correct?

20 A Over 20 I believe, more.

21 Q Okay. And could you see the man shooting his gun?

22 A He shot towards me, right besides me. I thought I
23 was going to get hit.

24 Q All right. So he turned and was actually shooting
25 in your general direction; is that right?

1 A Yes. Then he changed positions because the guy with
2 the red hoodie took off running. I was trying to tend to the
3 window guy with the towels we have at the car wash. I feared
4 that he saw me, that the guy that was shooting, he saw the
5 guy. Run away. He put another clip on his gun and I was just
6 in front of him and I was saying, no, no, no. And he started
7 shooting again and again and hit the ground.

8 Q Okay. Now, you said the -- you saw the very
9 beginning of the shooting where he -- where he pulled the gun
10 out of -- off his hip, correct?

11 A Yes.

12 Q And he started shooting at the man in the red
13 hoodie; is that right?

14 A Yes.

15 Q And the man in the red hoodie turned and ran as soon
16 as the fire, shots started being fired; is that correct?

17 A Yes, he ran away.

18 Q Okay. And he was running back to the east, correct?
19 From the direction that he had just walked up front; is that
20 right?

21 A No. He ran northbound towards the apartment
22 complex.

23 Q Okay. So this is taking place somewhere here?

24 A Yes.

25 Q Okay. And the guy in the red hoodie ran -- I

1 thought you had said that he ran this way? Is there an
2 apartment complex back here?

3 A No, towards this way. He ran this way. And there's
4 an apartment complex over here.

5 Q Okay. So he -- you have to turn the corner around
6 that -- the end of the drying tunnel, right?

7 A Yes.

8 Q So he ran out from under the tent and made a left
9 and ran north?

10 A People were standing here. This is the store.

11 Q Yes. Okay.

12 A Yeah, this is the store, the Terrible store.

13 Q Uh-huh. That's the convenience store part of the
14 structure, correct?

15 A When he ran he ran like so. Then again he started
16 shooting at him. He -- there's some big windows here, he
17 shattered those. And you can tell there were some bullet
18 holes on the wall.

19 Q This is the guy that was with the man that owned the
20 BMW or the blue car, right?

21 A Yes, yes.

22 Q And then so he's shooting kind of north and east
23 toward the -- I keep bumping it with my leg -- toward the end
24 of -- this is where the drying tunnel is, isn't it?

25 A Yes.

1 Q So he ran around the edge of the drying tunnel and
2 north?

3 A Yeah, but there's a door here and you can cross
4 through there. I think that's where he saw him again and he
5 started shooting that -- shooting in that direction.

6 Q Was there a time when the gunfire ceased for a few
7 seconds?

8 A Yes.

9 Q And when that -- when you heard the gunfire stop,
10 what did you do?

11 A I tried to help the guy that was wounded and he
12 showed me his wounds and his hand on this side.

13 Q And you're talking about the guy in the white shirt,
14 the white shirt undershirt with the chain, he was wounded?

15 A Yes.

16 Q Besides the man that was with the man in the white
17 undershirt, did you see anyone else with a gun?

18 A No, just him.

19 Q Okay. He was the only one you saw shooting?

20 A Yes.

21 Q Do you know what the relationship was between the
22 man that was shooting and the man in the white shirt?

23 A The one with the chain?

24 Q Yes.

25 A I understand they were friends, maybe his bodyguard.

1 Q At one point you had testified in an earlier
2 proceeding that you thought he was his bodyguard; isn't that
3 correct?

4 A He is because he was, you know, defending him.

5 Q Well, when the fight started between him and the man
6 with the red hoodie he pulled out the gun to defend him?

7 A Yes.

8 Q And you -- you saw, actually saw the guy, friend or
9 bodyguard reload his pistol, correct? He changed clips?

10 A Yes, yes.

11 Q And after he did that he continued to shoot at the
12 man with the red sweatshirt who was running away; isn't that
13 correct?

14 A Yes. And I kept telling him don't, don't, no. I
15 thought he was going to shoot -- shoot me and I hit the
16 ground.

17 Q Did he actually point the gun at you?

18 A He did when I was right in front of him.

19 Q Okay. And you said no, no, no or something like
20 that, correct?

21 A Yes. I was afraid, you know, him killing me because
22 he was shooting like a mad man. He also asked me to call the
23 police.

24 Q And ultimately you did dial 9-1-1; is that correct?

25 A Yes.

1 Q And then you gave your phone to the man that had
2 been shooting; isn't that right?

3 A Yes.

4 Q And that was so -- you had testified in an earlier
5 proceeding you did that because you wanted him to stop
6 shooting and you thought if he had to talk to the police he
7 wouldn't be able to shoot, correct?

8 A Yes, yes.

9 Q Is it -- is it accurate that you never saw the face
10 of the guy with the red hoodie, correct?

11 A No.

12 Q No, you did not see the face?

13 A No, I didn't, no.

14 Q How about the guy that had walked with up him, did
15 you see the face of the guy that had walked up with him?

16 A No. I mean, people walk by there a lot around that
17 time. There was a lot of people coming and going and I really
18 didn't pay attention.

19 Q When the shooting started, did that guy run away
20 too?

21 A Yes, he run --

22 Q There were probably -- probably a lot of people
23 running and taking cover at that point in time, right?

24 A Yes, there was -- not as many.

25 Q I'm sorry?

1 A There was not as many but we all tried to cover.

2 Q Tried to find a place so you wouldn't get shot,
3 right?

4 A Yes.

5 MR. PERCIVAL: Court's indulgence for just a moment.

6 BY MR. PERCIVAL:

7 Q You said you got some towels and were trying to help
8 the guy with the white shirt and the chain to stop the
9 bleeding; is that right?

10 A Yes.

11 Q And did you give him -- did you give him anything
12 else besides towels?

13 A Yes. I picked up the pieces of the gold chain,
14 there was a gold ring, his glasses and one dollar that he had
15 in his hand. I picked them up and I gave it to him in his
16 hands. He grabbed them, he put them inside his vehicle, he
17 came back and then and he sat down on a cooler.

18 Q When you gave the man that was shooting -- that had
19 been shooting the gun, did he speak with the police or did
20 you?

21 A I called first or talked to them first, then I
22 handed him the phone so he would stop shooting.

23 Q And did he speak with them as well?

24 A Yes.

25 MR. PERCIVAL: No further questions, Your Honor.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. LEXIS:

4 Q So did the man who was shooting ask you to call
5 9-1-1?

6 A Yes.

7 MR. LEXIS: No further questions, Judge.

8 MR. PERCIVAL: Okay.

9 THE COURT: Any recross on that?

10 MR. PERCIVAL: No, I don't think so. No.

11 THE COURT: Okay. Questions from the jury? I
12 thought I saw -- just the one? Approach.

13 (Bench conference transcribed as follows.)

14 THE COURT: Any objection from the State?

15 MR. LEXIS: No objection.

16 MR. PERCIVAL: No objection from the defense.

17 THE COURT: Thank you.

18 (End of bench conference.)

19 THE COURT: Sir, if you were standing close enough
20 to the gold chain man to see his face, why couldn't you see
21 the face of the man in the red hoodie?

22 THE WITNESS: He had it covered it like so and I was
23 looking at him from the side and I was talking with my
24 co-worker.

25 THE COURT: Follow up from the State?

1 MR. LEXIS: No, Your Honor.

2 THE COURT: From the defense?

3 MR. PERCIVAL: No -- no follow up.

4 THE COURT: Thank you. You may step down. Ladies
5 and gentlemen, we'll take a recess. We've been going about an
6 hour and 10 minutes so we'll take a 10-minute recess.

7 During this recess you're admonished do not talk or
8 converse amongst yourselves or with anyone else on any subject
9 connected with this trial or read, watch or listen to any
10 report of or commentary on the trial or any person connected
11 with this trial by any medium of information including,
12 without limitations, newspapers, television, radio or
13 Internet. Do not form or express any opinion on any subject
14 connected with the trial until the case is finally submitted
15 to you.

16 We'll take 10 minutes.

17 (Court recessed at 3:04 p.m. until 3:21 p.m.)

18 THE COURT: -- outside the presence. Anything we
19 need to talk about?

20 MR. GIORDANI: We just were going to ask that -- we
21 have the next witness, he's in custody back in the holding
22 room. We were just going to ask to have him on the stand
23 before the jury comes in so we don't have to walk -- march him
24 through with my investigators.

25 THE COURT: All right. Any objection?

1 MR. PERCIVAL: No, no, objection to that.

2 THE COURT: Go ahead.

3 (Off-record colloquy.)

4 THE COURT: Okay. Go get the jury. Now, are they
5 also witnesses because I assume we have --

6 MR. GIORDANI: No, those are our investigators.

7 THE COURT: Okay. Although I don't know if it was
8 formally stated, we have invoked the exclusionary rule.

9 MR. GIORDANI: Oh, sure.

10 (Jury reconvened at 3:22 p.m.)

11 THE COURT: Please be seated. Parties acknowledge
12 the presence of the jury?

13 MR. GIORDANI: Yes, Your Honor.

14 THE COURT: Defense?

15 MR. PERCIVAL: Yes, Your Honor.

16 THE COURT: State, call your next witness.

17 MR. GIORDANI: We called Kirsten Kinard. He is on
18 the witness stand.

19 KIRSTEN KINARD, STATE'S WITNESS, SWORN

20 THE CLERK: Please be seated. Please state your
21 name and spell it.

22 THE WITNESS: Kirsten Kinard.

23 THE CLERK: And spell it for the record.

24 THE WITNESS: K-i-r-s-t-e-n, K-i-n-a-r-d.

25 MR. GIORDANI: May I?

1 THE COURT: Go ahead.

2 DIRECT EXAMINATION

3 BY MR. GIORDANI:

4 Q Mr. Kinard, I'm just going to start out front with
5 this. You don't want to be here today; is that fair?

6 A No.

7 Q I understand that. You're sitting here in custody,
8 correct?

9 A Uh-huh.

10 Q You're in cuffs?

11 A Yes.

12 Q All right. What are you currently in custody on?

13 A Old case, 12 years ago.

14 Q Okay. You were subpoenaed in this case about you
15 being -- someone trying to rob you. You know why you're here,
16 right?

17 A Yeah.

18 Q And you were previously subpoenaed and you didn't
19 show up, right?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q She's taking all this down. And ultimately, another
24 attorney in my office issued a material witness warrant for
25 your arrest and you were picked up on that warrant; is that

1 correct?

2 A Yes.

3 Q Okay. On May 24th of last year, do you recall an
4 incident at a Terrible Herbst car wash?

5 A Yes.

6 Q What were you doing there that day?

7 A Getting my car washed.

8 Q Were you with anybody?

9 A Yeah, my cousin.

10 Q All right. Can I move this microphone up closer to
11 you?

12 A Yeah, my cousin.

13 Q And what's your cousin's name?

14 A Eric Blake.

15 Q Is your cousin -- does he have a registered firearm
16 and a CCW?

17 A Yes.

18 Q Why'd you have him with you there that day?

19 A He always with me, he's my cousin.

20 Q Okay. When you were with your cousin were you at
21 the drying area of the car wash?

22 A Yes.

23 Q I'm showing you State's 35. Do you see that on your
24 screen there?

25 A Yes, I do.

1 Q Is there a vehicle you see in that photo?

2 A Yes.

3 Q Does that appear to be your vehicle?

4 A Yeah, that's my vehicle.

5 Q All right. A pretty nice car?

6 A Yeah, it's pretty nice.

7 Q Really nice?

8 A Yeah.

9 Q Forty-one. Is that your car from a different angle?

10 A Yeah.

11 Q All right.

12 A Kind of clean.

13 Q On that day, did a man approach you that you didn't

14 know?

15 A Yeah, somebody approached me.

16 Q All right. Can you describe that, how that happened

17 for the jury?

18 A I was standing by a wall and somebody just ran

19 around the corner and snatched my chain.

20 Q All right. When you say your chain, can you

21 describe that chain specifically?

22 A Cuban link.

23 Q Cuban link? Can you tell the ladies and gentlemen

24 of the jury how much you paid for that chain?

25 A Like 60,000.

1 Q Do you remember telling a grand jury previously it
2 was around 45,000?

3 A Yeah, probably something like that.

4 Q Is that more accurate or --

5 A Yeah, that's accurate.

6 Q Okay. It's -- I'm going to show you State's
7 Proposed -- or State's 161. Do you recognize that?

8 A Yeah.

9 Q What is that?

10 A That's my chain and my watch.

11 Q Is that stuff -- as it sits in that photo, is that
12 after this incident occurred?

13 A Yeah, I think -- I would think so.

14 Q Okay. So you're wearing your chain that day I
15 presume?

16 A Yeah.

17 Q Describe step-by-step what happens as you're
18 standing there with your cousin.

19 A I'm just standing there at the car wash and a guy
20 went around the corner and snatched my chain. I thought it
21 was a game at first, but it was real.

22 Q Okay. When you say a guy came around the corner,
23 did -- did he come directly at you or did he come from a side?

24 A He came from like a side view.

25 Q And did you see him coming or did you first feel

1 the --

2 A No. I just felt -- I thought it was a game,
3 somebody was just grabbing my chain.

4 Q When you say you thought it was a game, you thought
5 someone was messing with you?

6 A Yeah. I thought it was somebody I knew that was
7 probably messing with me.

8 Q All right. When that individual grabbed your chain,
9 how did you react or what did you do?

10 A Man, it happened so quick. I just, you know, it was
11 just reaction time. But I knew I had my cousin with me and I
12 knew he had his firearm on him so --

13 Q Okay.

14 A -- I knew it wasn't going to be, you know, too much
15 of a --

16 Q Did you -- did you wrestle with the guy or try to
17 defend yourself?

18 A I couldn't. My chain was so heavy and he had my
19 neck.

20 Q Okay.

21 A It was like, it was like a dead weight.

22 Q All right. Did he pull you to the ground?

23 A He was trying but he couldn't.

24 Q Okay. Were you resisting and going back --

25 A Yeah, I was resisting.

1 Q Okay. Now, I want to be upfront. Did you ever see
2 the person's face that snatched your chain?

3 A No, I didn't, he had a hood on.

4 Q Okay. Do you remember the color of the hood?

5 A Nope, it happened so fast.

6 Q All right. So if I were to ask you to identify him,
7 do you see that person in the courtroom today, what would your
8 response be?

9 A No.

10 Q The person with the hood, did you see him, the guy
11 who grabbed your chain, did you see him with anyone else?

12 A Yeah. There was somebody else that was shooting but
13 I couldn't see their face.

14 Q All right. Did your cousin eventually shoot too?

15 A Yeah.

16 Q Do you know who shot first?

17 A Truthfully, I don't know.

18 Q All right. Do you -- but you believe you saw your
19 cousin and another person shooting.

20 A Yeah. It was two people shooting for sure.

21 Q When -- when the gunshots rang out, whichever one
22 was first, what did you do or where were you at the time?

23 A I ducked for cover.

24 Q Okay. I'm showing you State's 45.

25 A Yeah.

1 Q Do you see that?

2 A Uh-huh.

3 Q Your car in the back right there, right?

4 A Uh-huh.

5 Q Can you see -- I'm going to zoom in. Can you see

6 where you were standing in this photo?

7 A By this little wall thing.

8 Q All right. This thing marks so I'm going to do

9 this.

10 A Yeah.

11 Q Is this right here what you're -- so you're talking

12 about this?

13 A Yeah.

14 Q That's a pillar or a wall you're calling?

15 A Yeah, a pillar.

16 Q Were you on the other side of it?

17 A Yeah.

18 Q So you can't see yourself if you were standing in

19 this photograph.

20 A Exactly.

21 Q Okay. Where was your cousin standing, if you

22 remember?

23 A Like right here on the right side of me.

24 Q Right here?

25 A Uh-huh.

1 Q The jury can see that? So when the shots rang out,
2 were you on the other side of that pillar that's shown in the
3 photo?

4 A I was like right by my truck a little bit. Shots
5 rang out and I just ducked. I ain't trying to get hit in the
6 face.

7 Q Okay. When you ducked, though, did you actually get
8 hit?

9 A Yeah, I got hit.

10 Q Where'd you get hit?

11 A Like the little bottom of my stomach and my finger
12 or both of my fingers.

13 Q All right. I'm going to walk through those injuries
14 real quick with you.

15 MR. GIORDANI: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 BY MR. GIORDANI:

19 Q I'm showing you State's Proposed Exhibits 188
20 through 194. Just tell me if you recognize these as I thumb
21 through.

22 A Yeah, that's my wounds.

23 Q Do you recognize all those photos?

24 A Uh-huh.

25 Q And you -- is that a yes?

1 A Yes.

2 Q And you said those are my wounds as I was going
3 through. Are those fair and accurate depictions of the wounds
4 you sustained on May 24th, 2015?

5 A Yes.

6 MR. GIORDANI: Move to admit those.

7 MR. PERCIVAL: Judge, objection. I object to the
8 admission of these. First, they're --

9 THE COURT: Approach.

10 (Bench conference transcribed as follows.)

11 MR. PERCIVAL: My client isn't charged with battery
12 with a deadly weapon. He is not -- nobody has said he had a
13 gun or [inaudible] but it's irrelevant to any of the charges
14 of my client.

15 MR. GIORDANI: It's our position --

16 THE COURT: Let him finish, go ahead.

17 MR. GIORDANI: Oh, I'm sorry.

18 THE COURT: Are you done?

19 MR. PERCIVAL: And further, they're more prejudicial
20 then they are probative of anything because [inaudible].

21 THE COURT: Isn't there a conspiracy charge?

22 MR. GIORDANI: Yeah, there is.

23 MR. PERCIVAL: There is a conspiracy charge but
24 [inaudible].

25 THE COURT: But they -- the conspiracy, they show

1 what the result of the conspiracy was. All right. Let's put
2 it on the record.

3 MR. GIORDANI: My position --

4 THE COURT: Let me see them. Are they -- you said
5 they're prejudicial.

6 MR. GIORDANI: Number one, the State's position is
7 they're relevant to show the resulting actions of the attempt
8 robbery that the defendant committed. Obviously conspiracy
9 liability applies here because it's charged. I'll also note
10 for the record that the probative value outweighs the
11 prejudicial, any unfair prejudice and that we've trimmed down
12 about 50 photos of wounds to this eight or so photos that
13 we've shown the Court.

14 THE COURT: I'll let you have the last one. You're
15 moving to exclude them. Go ahead.

16 MR. PERCIVAL: My client [inaudible] not charged
17 with --

18 THE COURT: You need to speak up a little.

19 MR. PERCIVAL: Okay, okay. I'm sorry.

20 THE COURT: No, that's okay. I understand.

21 MR. PERCIVAL: Actually, I'm used to being thought
22 of as loud and so I try and keep it down. But he's not
23 charged with battery with a deadly weapon with substantial
24 bodily harm. The State dismissed that at the very beginning
25 of this case, at the very beginning of this trial. Everyone

1 that's testified has said they never saw my guy with a gun.
2 He's not responsible for these injuries personally and he's
3 already testified that he was injured in the hand and
4 [inaudible] belly, that's established. All these -- all these
5 can do is, you know, [inaudible] injury to either be upset or
6 to be sympathetic.

7 THE COURT: Okay. Thank you. For the record, these
8 are like some of the mildest photos I've seen in a while. We
9 had worst on a civil case. So as far as them being highly
10 prejudicial, I don't agree. They're, you know, they do show
11 some blood but now with -- now with the -- what's on TV this
12 is nothing. But second of all, it is -- it is appropriate
13 given the fact that there's a conspiracy to commit robbery and
14 this was the result. Did you -- you dropped the --

15 MR. GIORDANI: I dropped the with deadly weapon from
16 the attempt robbery based on my interviews with witnesses. I
17 never had it battery with deadly -- with substantial charge --

18 THE COURT: Right.

19 MR. GIORDANI: -- so I don't know what Mr.
20 Percival's referring to if that was a --

21 THE COURT: Anyway, I -- I don't see where the
22 prejudice outweighs the probative value so I'm going to allow
23 them.

24 (End of bench conference.)

25 MR. GIORDANI: Based on the foundation I laid

1 before, the conference, I would move for the admission --

2 THE COURT: They'll be admitted.

3 MR. GIORDANI: State's 188 through 194. Thank you,
4 Your Honor. May I publish?

5 (State's Exhibit 188 - 194 admitted.)

6 THE COURT: Yes.

7 MR. GIORDANI: Thank you, Your Honor.

8 BY MR. GIORDANI:

9 Q Showing you page 188. Is that you?

10 A Yeah.

11 Q And is that you immediately after the incident?

12 A Yes.

13 Q In the hospital?

14 A Yes.

15 Q Showing you State's 189. What is that?

16 A My hand.

17 Q You said you were shot twice in the hand?

18 A Yeah, my pinky and my thumb.

19 Q All right. Let me show you State's 190. Does that
20 show your pinky injury there?

21 A Yes.

22 Q State's 191. Is that a close-up of that injury?

23 A Yes.

24 Q How -- how has that bullet wound affected the
25 dexterity in that finger?

1 A Oh, it's all right. It look good now.

2 Q Okay. So that one's all healed up?

3 A Yeah.

4 Q Do you have a scar there?

5 A Barely. You can't really see it, though.

6 Q Okay. State's 194. Is that your thumb?

7 A Yes.

8 Q Is that the bullet wound that you described there?

9 A Yes.

10 Q How is your dexterity now in that thumb?

11 A I mean it's good, it works.

12 Q It works? Okay. Is there a scar there?

13 A Yeah, barely though, you can't really see it.

14 Q All right. And you suffered another wound. Where

15 was that?

16 A It's like on the bottom of my stomach.

17 Q Intestinal, like groin area?

18 A Uh-huh.

19 Q Is that a yes?

20 A Yes.

21 Q Showing you 192. Is that the wound you described?

22 A Yes.

23 Q One-ninety-three. Is that a close-up of that wound?

24 A Yes.

25 Q Do you know if you had a bullet removed there or is

1 that more like a grazing injury?

2 A Grazed me.

3 Q Okay. Take those down.

4 MR. GIORDANI: Court's indulgence.

5 BY MR. GIORDANI:

6 Q Did you ever give anyone, including the person in
7 the red hood or the hoodie, permission to take your item at
8 all?

9 A No.

10 MR. GIORDANI: Pass the witness.

11 THE COURT: Cross-exam?

12 CROSS-EXAMINATION

13 BY MR. PERCIVAL:

14 Q I just wanted to go over a few things. If I
15 understood you correctly, you were standing somewhere between
16 this column and where your car is parked; is that correct?

17 A Yes, sir.

18 Q About how far away from the column were you in -- in
19 the direction of your car?

20 A I was right there, right there on the column.

21 Q Right there, right next to the column?

22 A Say this is the column, I'm about like right here.

23 Q Okay. So you're -- if this was the column your --
24 your back is to it real close; is that correct?

25 A Yes.

1 Q And you said your cousin was to your right a few
2 feet, correct, over here?

3 A Yes.

4 Q Is that right?

5 A Yep.

6 Q Was he like directly across from you or was he
7 behind you or a little bit in front of you?

8 A He was like on the side of me.

9 Q Just directly to your right-hand side?

10 A That would be my left. If I'm standing, he was on
11 my left.

12 Q Okay. Were you facing toward the car or -- you're
13 not standing toward the column, your back was to the column,
14 right?

15 A Truthfully, I really don't even know. It happened
16 so fast.

17 Q Okay. So you don't really know for sure where Eric
18 was; is that right?

19 A No, he was right next to me.

20 Q On -- and that's what I was trying to get at. Was
21 he on your right or on your -- on your left?

22 A I would say on my left.

23 Q So that would be over here.

24 A No.

25 Q No? Over here?

1 A Yeah.

2 Q Okay. And you said you didn't see the guy in the
3 hoodie approach you until --

4 A No, I didn't see nobody face so if -- I'm sorry.

5 Q It's okay. It's okay. We'll get through this. You
6 didn't see him approaching; is that correct?

7 A No, it happened so fast.

8 Q Okay. So the first time you ever saw the guy with
9 the hood was when you felt somebody snatch and tugging at your
10 chain, correct?

11 A Exactly.

12 Q And you said I think on direct exam that you thought
13 that somebody was just messing with you, playing a game or
14 something because they're yanking on that chain.

15 A Yeah, I thought it was somebody I knew.

16 Q Okay. And you described that as a one-kilo chain?

17 A Yeah, yeah.

18 Q So it weighs about two pounds?

19 A Kilo.

20 Q Yeah.

21 A Yeah.

22 Q And then do you recall testifying at a preliminary
23 hearing related to this case?

24 A Yes.

25 Q When you were subpoenaed to testify in front of

1 another judge?

2 A Yeah.

3 Q You indicated in your testimony there that you and
4 the guy with the hood started tussling, correct?

5 A Yeah.

6 Q You're struggling over this -- over this chain; is
7 that right?

8 A Yes.

9 Q And you heard shots ring out, right?

10 A Yes.

11 Q About how long -- about how much time elapsed when
12 you felt the tug -- between the time you first felt the tug on
13 the chain and a shot ringing out?

14 A Seconds. It happened so fast, man.

15 Q Okay. Just a couple seconds or --

16 A It had to be like five seconds.

17 Q Okay. What direction did the shot come from?

18 A I have no idea. Truthfully, I don't, I don't know.
19 I was ducking for cover.

20 Q As soon as you heard the shots you ducked for cover?

21 A Yeah. As soon as the shots rang out whoever was
22 grabbing my chain had let go and I was trying to get out the
23 way.

24 Q Did you see what the guy that grabbed your chain did
25 after he let go?

1 A No.

2 Q You never --

3 A I was -- I was running, I was trying to get out of
4 there.

5 Q Okay. And where did you run to?

6 A I was running towards my truck a little bit.

7 Q Okay.

8 A But it's like I fell or something so -- and that's
9 when bullets hit me.

10 Q Okay. And so you're running towards your truck and
11 fall down and you said the bullet hit you after you fell down?

12 A Yeah.

13 Q Do you know what direction the bullet was traveling?

14 A No, I don't.

15 Q You said you saw -- did you see anybody with the guy
16 in the red hood?

17 A No, it happened so fast.

18 Q You never saw anybody else with him; is that
19 correct?

20 A I seen a figure but I couldn't see his face or
21 nothing.

22 Q Okay. Where was that person when you seen him?

23 A He was like somewhere right here.

24 Q Sorry. Where?

25 A Back to the right.

1 Q This way?

2 A Yeah, coming from that way.

3 Q Somewhere here?

4 A Yeah.

5 Q Like that?

6 A Yeah. But I didn't -- I ain't see him because it

7 happened so fast.

8 Q You just saw --

9 A Like a glance, yeah.

10 Q -- a glimpse of him? Okay. And did you see where

11 the guy in the hoodie went?

12 A No.

13 Q What about your cousin, Eric, did you see him at any

14 time during this incident?

15 A After it was all over and he was like I'm hit and I

16 was looking and searching myself.

17 Q Okay. When you fell did you fall head -- head first

18 towards --

19 A Exactly.

20 Q -- the car?

21 A Exactly.

22 Q And so I take it you were on -- on your stomach?

23 A Yes.

24 Q And your cousin had been some place over here,

25 correct? Roughly?

1 A Yeah, in the beginning.

2 Q Okay. Did he move some place?

3 A He had to.

4 Q Okay. Do you know where he went?

5 A No, because he ended up way on the other side.

6 Q And when you say way on the other side, over here
7 some place?

8 A Yeah, exactly. He was on the ground and he was hit.

9 Q Okay. You said you heard shots ring out. How many
10 shots do you think you heard?

11 A I did not count, I do not know, it was pandemonium,
12 shots everywhere. I don't know how many shots it was.

13 Q Is it fair to say there were a lot of shots fired?

14 A Uh-huh.

15 Q Okay. Did you ever talk to your cousin about how
16 many shots he fired afterwards?

17 A Not really. I know he unloaded and then I think he
18 had another clip in.

19 Q Okay.

20 A I think if I'm --

21 Q But you didn't see, actually, anybody shoot. Is
22 that what you're telling me?

23 A No, I didn't. I just heard shots.

24 Q The -- the gun -- the laceration wound to your lower
25 abdomen, does it start on -- I can't tell if it starts on the

1 left or the right side. I mean --

2 A I can't show you. I can't pull my pants down and
3 show you.

4 Q Well, no -- no, I wasn't going to ask you to do
5 that. And you said you didn't know which direction the bullet
6 was traveling; is that correct?

7 A No, I just felt it when I was hit. And when it was
8 done I just looked at myself and made sure I wasn't -- it
9 wasn't like no life threatening injuries.

10 Q You indicated that you were currently in custody for
11 an old crime from back --

12 A Twelve years ago, yeah.

13 Q -- 12 years ago? But you were convicted in what,
14 2012?

15 A Of the crime? No.

16 Q Okay. And what -- do you remember what you were --
17 what your charges --

18 A Yeah. Me and my girlfriend, we got into an
19 argument. I --

20 MR. GIORDANI: Objection, Judge.

21 THE COURT: Counsel, remove that stuff. I don't
22 know what you're looking at.

23 MR. PERCIVAL: I'm sorry. That was unintentional.

24 MR. GIORDANI: I was objecting to getting into the
25 facts of underlying priors. It should be the title of the

1 conviction and that's it.

2 THE COURT: Correct.

3 MR. PERCIVAL: That was -- that was actually the
4 question I thought I asked.

5 THE COURT: All right.

6 BY MR. PERCIVAL:

7 Q Do you know what the name of the crime you were
8 convicted of?

9 A Yeah, attempt to grand larceny of a vehicle.

10 Q Okay. Now, that's not the only time you've been
11 convicted of a felony, is it?

12 A No.

13 Q In fact, in 2006 weren't you convicted of possessing
14 marijuana for sale?

15 A Yes.

16 Q Transporting?

17 A Yes.

18 Q And then in 2012, you were convicted in the San
19 Francisco area of burglary in the first degree; isn't that
20 correct?

21 A Yes.

22 Q And it wasn't until also in 2012 that you were
23 convicted of this grand larceny auto?

24 A Yeah.

25 Q And that's what you're in custody on now, correct?

1 A Yes.

2 Q Do you remember being visited by a detective while
3 you were in the hospital after this incident?

4 A I don't remember.

5 Q Okay. Do you remember giving a tape recorded
6 voluntary statement to the police about this incident?

7 A No.

8 Q Would it refresh your memory to look at a transcript
9 of that?

10 A Yeah. You can show me because I don't remember.

11 Q You want to take a look at that for a minute?

12 A Yeah, can I?

13 Q Yes.

14 A Oh, I guess I have.

15 Q Does looking at that document refresh your
16 recollection about giving a statement at UMC Hospital?

17 A Yeah.

18 Q Were you, at the end of this incident at the car
19 wash, were you missing any property that you're aware of?

20 A No.

21 Q You wound up with every -- you have everything that
22 you had --

23 A Yes.

24 Q -- at the time the incident started, correct?

25 MR. PERCIVAL: No further questions.

1 THE COURT: Redirect?

2 MR. GIORDANI: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. GIORDANI:

5 Q I just want to clarify a couple things, Mr. Kinard,
6 and we'll get you out of here. You previously testified or
7 Mr. Percival clarified with you that you've given two
8 statements, one to police and then you were forced to testify
9 by someone in my office at the grand jury proceeding. Do you
10 remember that?

11 A Yes.

12 Q And you were brought in against your will to testify
13 and there were other people there, you remember that?

14 A Yes.

15 Q All right. During that testimony, and I have your
16 transcript here if you think what I'm saying is incorrect, you
17 let me now and I'll show it to you. Okay? Do you remember
18 testifying that when the person came up to you to snatch your
19 chain the amount of force applied was very, very significant?

20 A Yeah, I mean, we was tussling.

21 Q All right. And I want to clarify because you said
22 at first I thought someone was messing with me or joking or
23 whatever. But was this -- when the chain first got pulled was
24 it a light tug or was it --

25 A No, it was like pulling. That's why I thought it

1 was somebody I knew.

2 Q All right. And in fact your neck was injured after
3 this incident.

4 A Not really, no, it wasn't.

5 Q Do you remember telling the grand jury your neck was
6 hurting after the incident?

7 A Yeah, but it wasn't like that.

8 Q I understand that but it was enough force that your
9 neck hurt.

10 A Yeah.

11 Q Okay. Do you remember testifying at the grand jury
12 that that second guy, not the guy with the hood, but the
13 second guy, you got a quick glimpse at him --

14 A Uh-huh.

15 Q -- as you said here today. Is that a yes?

16 A I got a quick -- yeah, kind of. But if I seen him
17 today I wouldn't know what he looked like.

18 Q I understand that and I won't ask you to identify
19 him.

20 A Yeah.

21 Q What I want to understand is how much you saw. Do
22 you remember telling the grand jury that you only saw -- you
23 got a quick glimpse at him and he pointed a gun at you. You
24 saw his gun.

25 A Not really.

1 Q Okay. I'll show you then.

2 MR. GIORDANI: And counsel, it's page 12 of grand
3 jury testimony. May I approach?

4 THE COURT: Yes.

5 BY MR. GIORDANI:

6 Q All right. I'm showing you transcripts. If you can
7 read about here and read down to yourself and look up at me
8 when you're done.

9 A Yeah. I think I -- I probably said it but --

10 Q Does that refresh your memory?

11 A Probably, yeah.

12 Q Okay. And do you remember now saying that you saw
13 the guy? You could identify his race and that he had a gun
14 but nothing else.

15 A I never said I could identify his race.

16 Q Do you remember calling him an African American
17 male?

18 A No.

19 Q Okay. Do you dispute what's in the transcript?

20 A Yes, I do.

21 Q Okay. So the transcriptionist got that wrong where
22 it says, did you see -- do you recall the race and the answer
23 is African American.

24 A No, I never said that.

25 Q Okay. And where you say, "Got a quick glimpse of

1 him. I wouldn't know his face if I saw him again, but he was
2 light skinned, his hair was short and he pointed a gun at me."
3 Do you remember that?

4 A No.

5 Q Okay. Are you saying that this is wrong or you just
6 don't remember?

7 A I'm saying that's wrong.

8 Q When you testified earlier I may have missed it, you
9 described the hoodie. Did you say what color it was or no?

10 A I don't even remember.

11 Q Okay. Do you recall telling Detective Weirauch on
12 the day you were in the hospital that it was a reddish hoodie?

13 A No, I don't remember that.

14 Q Okay.

15 MR. GIORDANI: May I approach the witness?

16 THE COURT: Go ahead.

17 BY MR. GIORDANI:

18 Q Page five of the voluntary statement. Do you see
19 here where you say -- right here, "Do you remember what color
20 the hoodie was" --

21 A Yeah.

22 Q -- is the question asked to you and you say, "Like
23 reddish or something. My cousin probably seen him more
24 because, you know" --

25 A Yeah.

1 Q -- and then you kind of trail off.

2 A I probably -- I don't -- I don't even remember that
3 truthfully.

4 Q That's all right. But you remember -- I mean, but
5 you're not disputing what's in this statement?

6 A Yeah, I'm not disputing it.

7 Q Okay.

8 MR. GIORDANI: I'll pass the witness, Your Honor.

9 THE COURT: Recross? Defense?

10 MR. PERCIVAL: No, no further questions, Your Honor.

11 THE COURT: Questions from the jury? Raise your
12 hand? No questions from the jury. You may step down.

13 State, you may call your next witness.

14 MR. LEXIS: State calls Randy Combs.

15 THE COURT: Remain standing.

16 RANDY COMBS, STATE'S WITNESS, SWORN

17 THE CLERK: Please be seated. Please state your
18 name and spell it for the record.

19 THE WITNESS: Randy Combs.

20 THE CLERK: I'm going to have you spell it for the
21 record.

22 THE WITNESS: C-o-m-b-s, Combs.

23 THE COURT: Go ahead.

24 DIRECT EXAMINATION

25 BY MR. LEXIS:

1 Q Good afternoon, sir.

2 A Good afternoon.

3 Q So I'm taking you back to May 24th, 2015. Where

4 were you working?

5 A Terrible Herbst Car Wash.

6 Q What do you do there?

7 A Car wash attendant.

8 Q Were you working in the afternoon that day?

9 A Yes.

10 Q Did you find a -- did you recognize somebody with a

11 gold chain?

12 A Yes, a customer that came in often.

13 Q You recognized him as a repeat customer?

14 A Oh, yeah. He has a couple -- he had a couple of

15 different vehicles.

16 Q Ever had any problems with this individual?

17 A No.

18 Q Was he with somebody else?

19 A Yes.

20 Q Did you recognize that man?

21 A No.

22 Q Were they minding their own business?

23 A Yeah, waiting on their car.

24 Q Did he have a BMW?

25 A Yes.

1 Q And were you the one wiping down that BMW?

2 A Yes, I was.

3 Q Tell me what happened while you were wiping down
4 that car.

5 A As I was doing the rims, I was doing the driver's
6 side rear rim, and I -- out of the corner of my eye seen -- I
7 heard a scuffle and I seen the owner of the car spin. I stood
8 up to see what was going on and then I heard gunfire flew by
9 -- went by my ear and I ducked back down. And was looking at
10 the ground or at my foot and I saw my shoe -- my foot get shot
11 with a bullet, blew the top of it off.

12 Q Okay. Immediately after that where did you go?

13 A I sort of hobbled away and went and sat down in the
14 grass 20, 30 feet away from the incident and waited for the
15 ambulance basically.

16 Q Right -- right prior to the gunshots, did you notice
17 anything out of the corner of your eye?

18 A Just the -- the owner of the vehicle spinning like
19 in a circle and saw two dark figures to the left, that's all I
20 could see.

21 Q Did you recognize those people?

22 A No.

23 Q Sir, I'm showing you what has been marked as State's
24 43. Is that the vehicle?

25 A Yes.

1 Q Okay. Do you remember where you were?

2 A Yeah. I was on the rear rim on the driver's side.

3 Q You can touch the screen, sir.

4 A Yeah, on the other side.

5 Q It marks so go ahead and touch it.

6 A This rim on the other side.

7 Q Okay. So I'm showing you what is marked --

8 A Passenger side.

9 Q -- as State's 44.

10 A Right here, right in this area.

11 Q And when you say you see something out of the corner

12 of your eye, is it while you're cleaning those rims?

13 A Yeah, I was down -- yep, it was.

14 Q Okay. It's that -- the gold chain guy suddenly

15 spinning around?

16 A Yes.

17 Q After you saw him spinning around was it moments

18 later that the gunshots rang out?

19 A Yeah.

20 Q Pretty much instantaneously?

21 A Yeah. I stood up from the rim and right then I

22 heard them go shwoo, shwoo.

23 Q Did you go to the hospital, sir?

24 A Yeah.

25 Q I'm showing you what is marked as State's 173. Is

1 that you?

2 A Yes.

3 Q Is that an accurate representation of you at the
4 hospital?

5 A Yep. Yes.

6 Q Sir, I'm also --

7 MR. LEXIS: Judge, may I approach --

8 THE COURT: Yes.

9 MR. LEXIS: -- the witness?

10 BY MR. LEXIS:

11 Q Sir, take a look at all those photos. Are they true
12 and accurate representations of what your foot looked like as
13 well as your shoes?

14 A Yes.

15 Q I'm showing you what is marked as --

16 THE COURT: Those are proposed?

17 MR. LEXIS: Yes, Your Honor. I haven't moved to
18 admit them yet, Judge.

19 THE COURT: Okay. Well, don't project them.

20 MR. LEXIS: Okay.

21 THE COURT: Okay. I thought you were --

22 MR. LEXIS: I move to admit State's Proposed Exhibit
23 177, 176, 174 and 178.

24 THE COURT: Go ahead.

25 MR. PERCIVAL: Same objection as to the prior

1 photos, Judge.

2 THE COURT: All right. I'll overrule the objection.
3 They will be admitted.

4 (State's Exhibit 174, 176 - 178 admitted.)

5 BY MR. LEXIS:

6 Q Sir, I'm showing you what is State's Exhibit 178.
7 What is that a picture of?

8 A The shoes I was wearing that day.

9 Q Is there a bullet hole in those shoes?

10 A Yeah.

11 Q On which foot?

12 A Right here.

13 Q Go ahead and circle it. That was the bullet hole
14 that went through your shoe?

15 A Yes.

16 Q I'm showing you State's 176. What is that?

17 A That's part of the bullet wound right there where it
18 went in.

19 Q I'm showing you what is marked as State's 174. What
20 is that, sir?

21 A A close-up of the bullet wound.

22 Q I'm showing you what is marked as State's 177. What
23 is that?

24 A That's where it exited I think, out of my ankle.

25 Q So did you have two wounds on your foot?

1 A Three altogether, but there was one a little above
2 that but that's where it exited.

3 Q So it went through your toe area and then it came
4 out your ankle?

5 A Yeah.

6 Q Do you still have pain to this day?

7 A Yes.

8 Q Are you able to work?

9 A Not yet.

10 Q Are you able to stand up, sir, and show the jury
11 what you have on your foot?

12 A Yeah. I could probably sit and do it better.

13 Q Okay. Why -- why do you have it like that?

14 A Do you want me to take this off or is that good?

15 Q That's fine, sir. Why is that still like that?

16 A It's still not healed.

17 Q You still have an open wound?

18 A Yes.

19 MR. LEXIS: Court's indulgence. No further
20 questions, Your Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. PERCIVAL:

24 Q Mr. Combs, I just want to clarify a couple of things
25 and I'll be quick.

1 THE CLERK: Which exhibit are you showing?

2 MR. PERCIVAL: Huh?

3 THE CLERK: What's the exhibit that's --

4 MR. PERCIVAL: Oh, 44, State's 44.

5 BY MR. PERCIVAL:

6 Q Now, if I understood you correctly, you were wiping
7 down the driver's side rear rim; is that correct?

8 A Yes.

9 Q Okay. And you said you saw out of the corner of
10 your eye the owner of the car like spinning around in a circle
11 or something; is that right?

12 A Yes.

13 Q Could you indicate on that picture approximately
14 where that was that you saw him spinning around?

15 A Yeah. I was here, I would say he was approximately
16 here, somewhere right here.

17 Q Okay. He was just a few feet to the opposite -- on
18 the opposite side of the car and just --

19 A No. He was on -- he was -- I think he was about --
20 he was on this side of the car, not on the opposite side.

21 Q Okay. He was kind of behind the car? Is that what
22 you're saying here?

23 A He was more like parallel to the driver's side of
24 the car to my right.

25 Q Okay. Could you see anybody else other than the

1 owner of the vehicle?

2 A His friend that he had with him.

3 Q Okay. And then do you remember what he was wearing?

4 A No.

5 Q Don't remember what he looked like?

6 A Not really.

7 Q Okay.

8 A I can tell you the basic height and, you know --

9 Q Right.

10 A -- stuff like that but I'm not -- not features.

11 Q Not features in -- no recollection of the details of
12 his clothing?

13 A No.

14 Q Do you remember what the car owner was wearing?

15 A I mean, the -- he was wearing pants and a shirt and
16 a real thick gold chain.

17 Q Okay. Could you see what was causing him to be
18 spinning around?

19 A Not really. As I stood up, I stood up to see what
20 was -- why he was doing it and I saw two figures off to the
21 other side of the vehicle or right in that area and then I
22 heard gunshots.

23 Q Okay. Did you see who was shooting?

24 A No.

25 Q With -- with relation to this -- to the driver's

1 side rear, what -- what direction were you facing? And I
2 guess the best way for me to put it for me, I mean, are you
3 facing like at an angle across toward the front of the car or
4 are you facing directly sideways?

5 A Towards the rear.

6 Q So you're facing towards the rear of the car?

7 A Yeah. I'm doing the -- wiping the rim, wiping the
8 rim facing the rear of the vehicle.

9 Q Okay.

10 A Basically cleaning the rim with my right hand.

11 Q Basically beside the vehicle squatted down wiping
12 the rim?

13 A Yes.

14 Q And you indicated that the bullet that hit you went
15 in the -- the front of your foot and came out at the ankle; is
16 that correct?

17 A Yes, came out my ankle area.

18 Q After you heard the gunfire and felt the gunshot,
19 did you see anybody running away, anything like that?

20 A Well, after I got shot I didn't see anybody. I was
21 basically worried about myself and I sort of hobbled off to
22 the grassy area on the corner of our lot.

23 Q And tried to get some help, some medical attention?

24 A Just sat down, you know, to get away from the
25 gunfire and sit down because, you know, my foot.

1 Q I take it you didn't actually see any of the --
2 whoever was shooting?

3 A No.

4 Q Okay.

5 MR. PERCIVAL: Nothing further.

6 THE COURT: Redirect?

7 MR. LEXIS: No, further questions, Your Honor.

8 THE COURT: Questions from the jury? No questions
9 from the jury. You may step down. Counsel, approach.

10 (Bench conference transcribed as follows.)

11 THE COURT: Do we have more witnesses?

12 MR. GIORDANI: We're going to cut one of them,
13 Jason. We don't think we need him based on that testimony.
14 I'm going to call Eric Blake, that's the last one for today.

15 THE COURT: And how long will he take?

16 MR. GIORDANI: Fifteen minutes for me.

17 THE COURT: All right. Should we take a short
18 recess?

19 MR. GIORDANI: If you'd like, Your Honor.

20 THE COURT: You need a recess?

21 MR. GIORDANI: [inaudible]

22 THE COURT: Does any -- you guys need a recess if we
23 go another --

24 (End of bench conference.)

25 THE COURT: Okay. Let's go.

1 MR. GIORDANI: All right. The State would call Eric
2 Blake.

3 ERIC BLAKE, STATE'S WITNESS, SWORN

4 THE CLERK: Please be seated. Please state your
5 name and spell it for the record?

6 THE WITNESS: Eric Blake, E-r-i-c, B-l-a-k-e.

7 MR. GIORDANI: May I, Judge?

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION

10 BY MR. GIORDANI:

11 Q It's all right, Mr. Blake, you're not the first
12 person who lifted there. What's your relationship to Kirsten
13 Kinard?

14 A My cousin.

15 Q On May 24th of last year were you with your cousin?

16 A Yes.

17 Q Did you go to a car wash that day?

18 A Yes.

19 Q Why were you with your cousin that day?

20 A Two days later somebody kicking his door and stole
21 some of [indiscernible] so I'm staying there, I'm staying with
22 him for about two or three days.

23 Q Okay. So you were staying with him?

24 A Yes.

25 Q When you said two days after, do you mean two days

1 before someone had done something?

2 A It was before.

3 Q Okay. And since then you'd been staying with him?

4 A Yes.

5 Q Sir, do you own a firearm?

6 A Yes.

7 Q What type of firearm is it?

8 A A Glock 19.

9 Q And is that a semiautomatic gun?

10 A Think so, yes.

11 Q Does it have a slide on it?

12 A Yes.

13 Q Do you have a permit to conceal carry that weapon?

14 A Yes, I do.

15 Q And is that weapon registered?

16 A Yes.

17 MR. GIORDANI: Your Honor, pursuant to stipulation
18 138 and 139 I believe are already admitted.

19 THE CLERK: 138, 139?

20 MR. GIORDANI: 138 and 139.

21 THE CLERK: Yes.

22 MR. PERCIVAL: Those are the registration cards?
23 Yes, that's correct --

24 THE COURT: Okay.

25 MR. PERCIVAL: -- we had stipulated them.

1 MR. GIORDANI: Thank you.

2 BY MR. GIORDANI:

3 Q Sir, can you see on your screen there?

4 A Yes.

5 Q I know it's a little unclear. What is on the top
6 left?

7 A That's my Las Vegas, Nevada permit to carry.

8 Q Concealed firearms permit --

9 A Yes.

10 Q -- correct?

11 A Yes.

12 Q And on the right?

13 A My secure license for security.

14 Q And that says State of Nevada Private Investigators
15 Licensing Board Security Exam, et cetera; is that correct?

16 A Yes.

17 Q At the bottom here, what is that?

18 A My photo license to carry in Florida as well.

19 Q So concealed weapon or firearm license State of
20 Florida; is that right?

21 A Yes.

22 Q I'm showing you 139. Do you recognize that?

23 A Yes.

24 Q What is that?

25 A That's my blue card for Vegas.

1 Q So blue card meaning gun registration card for that
2 firearm?

3 A Yes.

4 Q And on the day, May 24th, were you carrying all of
5 these items in your wallet?

6 A Yes, I was.

7 Q Do you always carry those when you carry your
8 firearm?

9 A Yes.

10 Q On that day how were you carrying your firearm, was
11 it concealed or not concealed?

12 A I think it was concealed -- or not -- I don't know
13 for sure.

14 Q Okay. Do you remember where on your person your
15 firearm was?

16 A My right side.

17 Q All right. Would it be right side like on your belt
18 or something to --

19 A Yes.

20 Q -- that effect?

21 A Yes.

22 Q On that day, did something happen to your cousin?

23 A Yes.

24 Q Describe that for the ladies and gentlemen of the
25 jury.

1 A Was at the car wash and somebody tried to rob him
2 for his chain. One had a -- was on the left side, he had a
3 gun, and the other one on his left -- the one on the right --
4 left side had a gun and the one on the left -- somebody had a
5 gun, that's all I can remember. And somebody tried to snatch
6 his chain and when they snatched it off his neck they snatched
7 it so hard he fell to the ground and when he did that I pulled
8 my own gun out.

9 Q All right. And let me stop you and step back and
10 get step-by-step. You described two individuals and your
11 cousin --

12 A Yes.

13 Q -- is that right? Those two individuals, when is
14 the very first time you saw them on that day?

15 A He was walking towards him from the restaurant
16 called Sonic. He was walking toward him real fast, so I
17 stepped back to see what he was going to do. And I was
18 stepping back and they just ran over real fast. I didn't have
19 no time to react, I just did -- natural instincts.

20 Q All right. Let me stop you for a second. Showing
21 you State's 26. Let me zoom out. Now, I want to go
22 step-by-step. Is this the Terrible Herbst convenience store
23 here?

24 A Yes.

25 Q And these blue or purple tents, is that where the

1 car wash or the drying area is?

2 A Yes.

3 Q You described them coming from, was it Sonic?

4 A Yes.

5 Q Where is Sonic on -- in relation to this map? And
6 you can write on that screen.

7 A More like this way right here.

8 Q Okay. Is it fair that Sonic isn't actually
9 contained on this map? Is it a little further to the right?

10 A Yes.

11 Q So you said they came from that direction?

12 A Yes.

13 Q How far away, if you could estimate, were they from
14 you when you first saw them coming your direction?

15 A Ten feet.

16 Q Okay. So fairly close?

17 A Yes.

18 Q Okay. Did you see them go past you --

19 A Yes.

20 Q -- up to the store area?

21 A Yes.

22 Q And then did you see them coming back from the store
23 area towards where you were under those tents?

24 A Yes.

25 Q When you saw them coming back that time, were you

1 paying attention to them?

2 A Yes, I was.

3 Q Why is that?

4 A It was too hot for what they had on. They had --
5 one had a red hood on his head and the other one had a white
6 towel on his head.

7 Q All right. So one had a red hood on and one had a
8 white towel on his head?

9 A Yes.

10 Q And you said it was too hot. Are you describing the
11 temperature that those clothes --

12 A Yes, it was about 90 degrees.

13 Q I'm sorry?

14 A It was about 90 degrees outside.

15 Q Okay. So that caught your attention because the
16 clothing didn't seem appropriate for the temperature; is
17 that --

18 A Yes.

19 Q Okay. When they started to approach that second
20 time from the store area, did you pay attention to them? Like
21 did you draw your attention to them and watch them approach or
22 what?

23 A Yes, I did.

24 Q And what did you see from that point on?

25 A Well, when they acted like they was gonna go inside

1 the gas station inside the store but they went around this
2 wall, which is about right here.

3 Q And that's a couple inches off when you touch the
4 screen so if you want me I --

5 A Yes.

6 Q -- can bring this up to you.

7 A Yes, you can bring it to me.

8 Q Okay. And so the jury can see where you're talking
9 about and I'll put it back up on the overhead after.

10 A There was [indiscernible] on the edge on the corner.

11 Q Okay.

12 A So the guy with the white towel on his head, he was
13 about right here, and then the guy with the red hood on was
14 about right there behind my cousin.

15 Q Okay. And there's some pillars that hold up those
16 tents, right?

17 A Yes.

18 Q I'm going to put this back up so now the jury can
19 see it and I'm going to point to where you just said and you
20 correct me if I'm wrong. So you said the guy with the white
21 towel on his head -- wait, let me zoom in. The white towel on
22 his head, when they came back from the store area, he was in
23 this area right here?

24 A Yes.

25 Q And the other guy with the red hood was somewhere

1 down here?

2 A No, it would be up.

3 Q A little higher?

4 A Up.

5 Q Up?

6 A Right there.

7 Q Okay.

8 A But they side-by-side, all three of them
9 side-by-side.

10 Q Okay. When they came back, did they separate a
11 little bit?

12 A Yes.

13 Q What happened from there?

14 A That's when the guy with the red hood on snatched my
15 cousin's chain off his neck -- well, he tried to with so much
16 force my cousin fell to the ground. As he's falling to the
17 ground I unholstered my gun, then I had to rack it one back
18 and then when I did that they both looked at me.

19 Q Okay. Let me stop. When -- you just described and
20 motioned with your hand you racked a round into the chamber?

21 A Yes.

22 Q Did it appear to you that that caught their
23 attention?

24 A Yes.

25 Q That makes a natural noise when it happens, right?

1 A Yes.

2 Q And when you said they -- those two looked at me,
3 are you talking about the guys tussling your cousin and the
4 guy with the hood or are you talking about the guy with the
5 hood and the guy with the white towel over his head?

6 A The guy with the white towel on his head and the
7 hood.

8 Q Okay. So those two guys then focused their
9 attention on you.

10 A Yes.

11 Q What happened from there?

12 A As I recall, I heard gunshots so I don't know if I
13 shot first or they shot first. But I do know I shot my gun
14 first -- I mean, it seemed like I did. So when that happened
15 they all ran. The guy with the white towel, he ran this way
16 to the left. The guy with the red hood on went to the right.

17 Q Okay. Let me stop you because I think we skipped a
18 part. Now, at some point did you see a firearm brandished by
19 the guy with the white towel on his head?

20 A Oh, yes.

21 Q When was that? Was that before or after you pulled
22 your gun?

23 A Before.

24 Q So he already had a gun in his hand before you
25 pulled your gun.

1 A Yes.

2 Q Okay. Did he do anything with it? Did he point it
3 at anyone or did you just see him, I guess, creeping up with
4 it?

5 A Creeping up with it.

6 Q Okay. When you saw that is that when your cousin is
7 tussling with the guy in the red hood?

8 A Yes.

9 Q So is it all kind of simultaneous?

10 A Yes.

11 Q All right. When you pull your firearm who is --
12 what direction do you point it in?

13 A The guy with the gun.

14 Q Okay. So you don't point it at your cousin and the
15 guy with the hood, you point at the other guy?

16 A Yes.

17 Q And as you sit here today, do you recall, did you
18 fire first or did he fire first?

19 A I don't remember.

20 Q Okay. Do you recall firing your gun, though?

21 A Yes.

22 Q Can you guess or do you know the amount of times you
23 fired?

24 A Seventeen.

25 Q Why is that?

1 A I just -- naturally [indiscernible] how many times I
2 shot but as I was shooting, the guy ran with the gun so I
3 stopped shooting at him and then after that I don't remember
4 what happened.

5 Q Okay. And when you say 17, is that the amount of
6 rounds that your clip, your magazine holds in your firearm?

7 A Yes.

8 Q So did you unload your entire magazine?

9 A I think so.

10 Q Okay. Did you -- do you recall seeing workers and
11 people scattering when this -- the shooting occurred?

12 A Yes.

13 Q Do you know if you hit anybody?

14 A I hit the person with the red -- the hood on, the
15 hood, the red hood, I shot him.

16 Q Okay. What -- do you know where you hit the person
17 with the red hood?

18 A No.

19 Q Did you just see him react when --

20 A Yeah, I seen him fall down.

21 Q Okay. When he -- when the guy with the white towel
22 on his head ran, did the guy with the red hood also run?

23 A Yes.

24 Q And which direction did he go?

25 A He ran towards -- well, they were [indiscernible]

1 where the cars go to get vacuum clean?

2 Q Uh-huh.

3 A That's where -- he ran towards like some apartments,
4 that way.

5 Q Can you see that -- let me zoom that out. Can you
6 see that on this map kind of the direction?

7 A Yes, he ran up this way.

8 Q Okay. And the guy with the white towel on his head,
9 which direction did he run, if you know?

10 A That way.

11 Q Okay. After they were away from the scene, did you
12 still have your firearm in your hand?

13 A Yes.

14 Q Were you in shock at the point -- at that point?

15 A Yes.

16 Q Did you have an interaction with a worker who was
17 there near you?

18 A I don't remember.

19 Q Did -- did you -- did anyone call 9-1-1?

20 A Yes.

21 Q Okay. Do you remember who?

22 A I think it was a witness. It was a Mexican guy,
23 Spanish.

24 Q Mexican or Spanish guy that called?

25 A Yes.

1 Q Did he -- did he give the phone to you?

2 A Yes.

3 Q Did you speak with police?

4 A Yes.

5 Q Were you asking for help?

6 A Yes, I was.

7 Q And did you inform them that you had a firearm?

8 A Yes.

9 Q And did you talk to them about what you should do
10 when the police get there?

11 A I don't remember that part.

12 Q Okay.

13 MR. GIORDANI: Can we switch from the Elmo to the
14 input, the computer input?

15 (Off-record colloquy)

16 MR. GIORDANI: And this is State's Proposed Exhibit
17 23. After conferring with counsel we are stipulating to the
18 admission of that instead of playing it once and then
19 replaying it.

20 THE COURT: Is that correct?

21 MR. PERCIVAL: That's correct.

22 THE COURT: Be admitted.

23 (State's Exhibit 23 admitted.)

24 MR. GIORDANI: Thank you, Your Honor. Oh, it would
25 help if I had the sound on.

1 (Audio played)

2 BY MR. GIORDANI:

3 Q Can you hear that, Mr. Blake?

4 A A little.

5 Q I'll start it over.

6 A Okay.

7 Q Can you hear that better?

8 A Yes.

9 Q Did you hear that last portion where you said police
10 here, I'm not trying to get shot?

11 A Yes.

12 Q I've got to put my gun down?

13 A Yes.

14 Q Does that indicate or refresh your memory as to
15 whether you had your gun in your hand when the cops got there?

16 A Yes, I was talking to -- I was walking towards them.

17 Q Okay. That's not a good idea, right?

18 A Yes.

19 Q Okay. Did you put your gun down at the scene?

20 A Yes, I did.

21 Q Right after that?

22 A Yes.

23 Q I'm showing you State's 140.

24 MR. GIORDANI: Oh, can we switch back? Thank you.

25 BY MR. GIORDANI:

1 Q You see a gun in that photo?

2 A Yes.

3 Q Do you -- do you recall, is that where you set your
4 gun down at?

5 A Yes.

6 Q State's 141. Does that look like your gun?

7 A Yes, it is.

8 Q State's 146. Does that appear to be the magazine
9 from your gun?

10 A Yes.

11 Q Now, it looks like there's still ammunition in
12 there. Do you remember reloading with another magazine?

13 A Yes.

14 Q When was that? Was that before the phone call we
15 just heard?

16 A Before.

17 Q Okay. Do you remember discharging after you
18 reloaded?

19 A No.

20 Q When you reloaded were those two individuals that
21 were a threat to you or your cousin, were they still around?

22 A No.

23 Q Okay. Did you do that for your safety?

24 A Yes.

25 Q When the police arrived, did you talk to them?

1 A Yes, I did.

2 Q Did you give them a statement?

3 A Yes.

4 Q Did you also realize that you'd been shot?

5 A Yes.

6 Q And where was that?

7 A In my ankle, my right ankle.

8 Q Okay. Did you ultimately get medical treatment for
9 that?

10 A Yes.

11 Q And were you taken to a hospital?

12 A Yes.

13 Q When you were there did you speak with police?

14 A Yes, I did.

15 Q And did you give a voluntary recorded statement,
16 audio recorded?

17 A Yes.

18 Q Now, I want to step back a moment because we skipped
19 over a little part. When you were at the scene and after the
20 two individuals fled in different directions, did you observe
21 and look around you?

22 A Yes, I did.

23 Q And what was that scene like when you looked around
24 after the shooting stopped?

25 A When the shooting stopped I wanted to make sure I

1 was clear, my cousin was safe, so I pointed my gun -- I think
2 I waved my gun around because I didn't know if they still was
3 there.

4 Q Okay.

5 A So I seen people all on the ground and that's when
6 -- I think I reloaded before that. Yeah, it's pretty clear.

7 Q Okay. When you looked around, did you see other
8 people were injured?

9 A Yes.

10 Q And did you see your cousin was injured?

11 A Yes.

12 Q Did you attempt to tend to him and help him?

13 A Yes, I stood over him.

14 Q Okay. Was he also taken to the hospital?

15 A Yes.

16 Q When you were taken to the hospital, did you have
17 any surgery that you know of?

18 A No.

19 MR. GIORDANI: May I approach the witness?

20 THE COURT: Yes.

21 THE CLERK: Which exhibit numbers?

22 MR. GIORDANI: I'm getting there. State's Proposed
23 Exhibit 150 and 151.

24 BY MR. GIORDANI:

25 Q Do you recognize those?

1 A Yes.

2 Q What is that?

3 A My ankle.

4 Q And is that the injuries that you sustained on that
5 day, May 24th?

6 A Yes.

7 MR. GIORDANI: I move for the admission of 150 and
8 151.

9 THE COURT: Any objection?

10 MR. PERCIVAL: Same objection as the earlier one,
11 Judge.

12 THE COURT: Approach.

13 (Bench conference transcribed as follows.)

14 MR. PERCIVAL: I anticipated that you would just
15 [inaudible].

16 THE COURT: Well, I wanted to see.

17 MR. PERCIVAL: Okay.

18 THE COURT: I didn't know what he had so, yeah, this
19 -- my same ruling. It barely shows anything and I don't see
20 how it's prejudicial.

21 MR. GIORDANI: Thank you, Your Honor.

22 (End of bench conference.)

23 THE COURT: They'll be admitted.

24 MR. GIORDANI: Thank you, Your Honor.

25 (State's Exhibit 150 and 151 admitted.)

1 BY MR. GIORDANI:

2 Q I'm showing you State's 150. Do you recognize that?

3 A Yes.

4 Q And is that that injury?

5 A Yes, it is.

6 Q Which foot is that?

7 A My right foot.

8 Q Okay. One-fifty-one, same injury, just a different
9 angle?

10 A Yes.

11 Q Is that the back kind of near the Achilles heel?

12 A Yes. Yes, it is.

13 Q Did you -- did you have any bullets removed or did
14 it just go through and through?

15 A It went through.

16 Q All right. Does that affect how you walk today?
17 Are you --

18 A Yes.

19 Q It does?

20 A Yes. I still can't wear my shoe half the day.

21 Q Okay. Based upon everything that happened at the
22 scene, did you convey, to the best of your recollection, what
23 you could to the officers when you gave that recorded
24 statement in the hospital?

25 A Yes.

1 Q And did you also testify at a prior hearing in this
2 case?

3 A Yes.

4 Q And did you attempt to convey as best you could what
5 you recalled from that date?

6 A Yes.

7 MR. GIORDANI: I'll pass the witness.

8 THE COURT: Cross-exam?

9 CROSS-EXAMINATION

10 BY MR. PERCIVAL:

11 Q Good afternoon, Mr. Blake.

12 A How ya doing.

13 Q You indicated when Mr. Giordani was questioning you
14 that you observed the two individuals, one in the hood and the
15 other with a towel or a -- or something white over his head
16 coming from the direction of the Sonic, correct?

17 A Yes.

18 Q And they went up to the convenience store -- when
19 they first approached they went up to the convenience store,
20 correct?

21 A Yes.

22 Q And then came back and started to approach you and
23 your cousin?

24 A They approached my cousin.

25 Q Pardon?

1 A They approached my cousin.

2 Q Okay. And -- so that I'm clear, when you first saw
3 them they walked -- were walking westward on -- along --
4 parallel to Flamingo toward the Terrible Herbst, correct?

5 A Yes.

6 Q And at some point they turn the corner and go up to
7 the convenience store?

8 A I think so. All I know is coming towards my cousin
9 that's on the edge. My cousin's right here on the edge of the
10 corner right by his car.

11 Q Okay. Is -- is it your testimony the car was in
12 this corner of the -- of the drying tent --

13 A Yes.

14 Q -- or the -- so it was closest -- the portion of the
15 drying tent closest to the what would be the drying tunnel
16 where the cars come out of the tunnel where they've been
17 washed and dried?

18 A Yes.

19 Q He's pulled in right here, then?

20 A Yes.

21 Q And you and he are just to the east of the drying
22 tent, is that what -- where that little green dot is?

23 A Yes.

24 Q And you said that when they approached the first
25 time they went on past you; is that correct --

1 A Yes.

2 Q -- and went up towards the store?

3 A Yes.

4 Q And then a couple of minutes later they came back
5 down from the direction of the store and that's when the guy
6 in the red hood tried to snatch your cousin's chain --

7 A Yes.

8 Q -- is that right?

9 A Yes.

10 Q Now, is there some sort of a curb or a sidewalk or
11 something area here, like outside of the -- outside of the
12 drying tent?

13 A Yes, it's a curve.

14 Q Pardon me?

15 A My cousin's on a curve and I was off the curve.

16 Q Okay. Your cousin was up on the curb?

17 A Yes.

18 Q And you're about -- both out from under the tent
19 thing. You're not actually underneath the tent where the
20 drying is going on; is that correct?

21 A No.

22 Q No, that's not correct?

23 A I mean, that's correct but we was under -- was not
24 under the tent.

25 Q Okay. And you said that the guy in the hood

1 approached your cousin from his -- what that would be his --

2 A Right side.

3 Q -- right side?

4 A Yes.

5 Q And your cousin was facing his car I take it?

6 A Yes.

7 Q Towards his car. And were you to his left or to his
8 right?

9 A Which one?

10 Q Your cousin -- I'm sorry. Were you to your cousin's
11 left or to your cousin's right?

12 A I was in front of him, directly in front of him.

13 Q Okay. And -- but you were keeping your eye on these
14 guys because they were dressed kind of inappropriately for the
15 -- for the weather conditions on that day --

16 A Yes, and they were moving real fast too.

17 Q I'm sorry, I couldn't --

18 A They was moving real fast.

19 Q Okay. So the guy with the hood is the one that
20 reached up and grabbed your cousin's chain, correct?

21 A Yes.

22 Q And as soon as you saw that you stepped off --
23 stepped out and drew your firearm and started firing, correct?

24 A No. When the guy pulled his -- the other guy pulled
25 his gun out --

1 Q Okay.

2 A -- that's when I pulled mine out.

3 Q Do you remember the -- do you remember speaking to a
4 detective at University Medical Center on the day that this
5 happened?

6 A Yes.

7 Q Do you remember calling -- do you remember telling
8 him the order of the way things happened?

9 A I believe so.

10 Q Okay. Do you remember telling the officer that, "As
11 soon as they snatched my cousin's chain I immediately started
12 shooting"?

13 A I don't remember.

14 Q Okay. Would it refresh your recollection to look at
15 -- at your transcript of your voluntary statement?

16 A Yes.

17 Q On page two there.

18 A I might have said it but I still don't remember.

19 Q Okay. So that night, the very night this happened,
20 you told the police officer that as soon as you saw this guy
21 try and snatch your cousin's chain you stepped off the curb
22 and immediately started shooting, correct?

23 A I might have said it but I don't remember.

24 Q You don't remember saying it?

25 A No.

1 Q Okay. But --

2 MR. GIORDANI: I'm sorry. What page is that,
3 counsel?

4 MR. PERCIVAL: Oh, I'm sorry, page two.

5 MR. GIORDANI: Thank you.

6 MR. PERCIVAL: Page two of the voluntary statement.

7 MR. GIORDANI: Appreciate it.

8 BY MR. PERCIVAL:

9 Q Now, the -- the guy that snatched or grabbed your
10 cousin's chain, you never saw him have any kind of weapon,
11 correct?

12 A No.

13 Q No, you didn't? I'm sorry, that's -- the way I
14 asked the question. You did not see him with a weapon, that's
15 right?

16 A No, I did not. I did not see him with a weapon.

17 Q Okay. And you said there was another guy --

18 A Yes.

19 Q -- right? With -- with relation to the guy that
20 approached your cousin, where was he?

21 A On my cousin's left side. My cousin's standing
22 right -- my cousin's right here, the guy with the red hood on,
23 he was right here and the guy with the white towel he's right
24 here side-by-side by my cousin.

25 Q Okay. And you were --

1 A In front of all three of them.

2 Q You were in front of all three of them facing
3 them --

4 A Yes.

5 Q -- is that correct? Okay. And this -- now, the guy
6 that snatches your cousin's chain, did you shoot at him?

7 A Yes, but not -- not at that moment.

8 Q Okay. You shot at the guy with the white towel on
9 his head first?

10 A Yes.

11 Q Okay. Now, you said that he had a weapon somewhere,
12 correct? He had his hand on it?

13 A Yes.

14 Q Was it in his belt, in his pocket, where -- what --

15 A I don't know where it came from, I just know it was
16 in his hand.

17 Q Okay. And you saw -- after you pulled your gun out
18 he pulled -- he produced a firearm from somewhere, correct?

19 A Yes, yes.

20 Q And I take it you fired at him first?

21 A Yes, I did.

22 Q Okay. Do you know if he fired back at you?

23 A I don't remember.

24 Q You don't remember?

25 A No.

1 Q Okay. In fact, on the night that you were
2 questioned by the police you said you weren't even sure that
3 he ever got a shot off, correct?

4 A I don't remember. It happened so fast I really
5 don't know.

6 Q Okay. But you know that as soon as you saw him with
7 his hand on a gun you opened fire?

8 A Yes.

9 Q And when you opened fire, what did he do?

10 A Probably shot back, I'm not for sure.

11 Q You're not for --

12 A No, he ran. That's what he did.

13 Q You know he ran?

14 A Yes.

15 Q Okay. Did you fire on him as he was running away?

16 A No.

17 Q How about the guy with the hood, what did that guy
18 with the hood do when you shot?

19 A He ran too.

20 Q Okay. Now, you said they ran in different
21 directions; is that right?

22 A Yes.

23 Q One of them ran east and then north towards an
24 apartment complex; is that right, the guy in the hood?

25 A Yes.

1 Q Were you firing at him as he was running away?

2 A I think so, I'm not for sure.

3 Q Okay. Do you know whether you hit him?

4 A Yes.

5 Q How did you know that you hit him?

6 A He fell.

7 Q Okay. Can you indicate on that -- on the photo
8 where -- where the man with the hooded sweatshirt was when he
9 fell?

10 A I'm not for sure, so I don't want to guess, but he
11 was running towards this way.

12 Q Okay. So he was -- he had actually turned the
13 corner -- let me -- this area here, this darker area, that's
14 where the cars go through the car wash, correct?

15 A I think so.

16 Q Okay. And then they come out this end here?

17 A I don't remember that part.

18 Q Pardon?

19 A I don't remember that part where they come out.

20 Q Okay. But he -- from where they were he had started
21 around this way, as I understand it, when he fell; is that
22 correct?

23 A Yes.

24 Q All right. Did he fall in -- I mean, did he get
25 back up? Did you see him get back up?

1 A Yes.

2 Q And what did he do after he got back up?

3 A Kept running.

4 Q Okay. He never had a -- he never produced a firearm
5 that you saw, correct?

6 A No.

7 Q On direct you said you fired 17 rounds?

8 A I think so. I wasn't counting.

9 Q Okay. Well, what does the -- the clip capacity on
10 -- that's a Glock 19?

11 A Yes, 19.

12 Q And what is the clip capacity on the Glock 19?

13 A Seventeen, 17 rounds.

14 Q It holds 17 rounds?

15 A Yes.

16 Q And you emptied the entire magazine?

17 A Yes. I was afraid for my life and my cousin's. I
18 didn't know if they was shooting back or what they was gonna
19 do.

20 Q Now, you said that the guy with the -- the towel or
21 something white over his head was to your cousin's --

22 A Left.

23 Q -- left, which would have put him closer to Flamingo
24 than your cousin, correct? Closer to this road? It would
25 have been the guy with the -- with the white towel on his head

1 and then your cousin and then the guy with the hoodie?

2 A Yes.

3 Q And he ran this direction; is that right?

4 A Yes.

5 Q Did you ever -- did you ever see the face of the guy
6 in the hoodie?

7 A Yes.

8 Q Okay. Did you tell the police you couldn't identify
9 him if you saw him again?

10 A No.

11 Q Did they ever ask you to identify him?

12 A I don't remember.

13 Q How about the other guy, the guy with the towel over
14 his head, were you ever asked to identify him?

15 A No.

16 Q Was the guy in the -- I'm trying to picture this in
17 my head. The guy in the hoodie and your cousin and the guy
18 with the towel kind of in a -- in a line across or was one --
19 was -- were any of them further away or closer to you than the
20 others?

21 A They was in a line.

22 Q I'm sorry?

23 A They was in a line together.

24 Q Okay. They were all kind of in a straight line
25 across, correct?

1 A Yes.

2 MR. PERCIVAL: Pass the witness.

3 THE COURT: Redirect?

4 MR. GIORDANI: No, Your Honor. Thank you.

5 THE COURT: Questions from the jury? No questions
6 from the jury. You may step down. Counsel, approach.

7 (Bench conference transcribed as follows.)

8 THE COURT: What time are we going to start?

9 MR. PERCIVAL: I've got a -- may I step over to the
10 table for a second?

11 THE COURT: Go ahead.

12 MR. GIORDANI: I thought -- I thought we were
13 starting at nine, I'm good with that.

14 MR. PERCIVAL: Unless the -- unless my calendar is
15 incorrect, it doesn't look like I have anything on calendar
16 tomorrow morning.

17 THE COURT: That's good. Do you have a witness
18 coming at nine?

19 MR. GIORDANI: Not yet. We'll call him after
20 court --

21 THE COURT: Oh, okay.

22 MR. GIORDANI: -- so whatever the Court wants to do.

23 THE COURT: And --

24 MR. GIORDANI: If I could just say this, Judge. If
25 we start at nine I can guarantee you we'll be done tomorrow

1 with our witnesses.

2 THE COURT: You guys will -- okay. Well, I'm trying
3 to figure out when we should go over jury instructions. Are
4 you thinking -- are you hoping to be closing on Thursday?

5 MR. GIORDANI: [inaudible]

6 THE COURT: Okay. So have you even talked about
7 jury instructions?

8 MR. PERCIVAL: We honestly -- we've all been kind
9 of --

10 THE COURT: I know, busy, so --

11 MR. GIORDANI: Yeah, I just got the packet finished
12 on my lunch break. I finished it and sent it to my secretary
13 to format it. So as soon as she's done with that she's going
14 to email it to me and I'll forward it to Mr. Percival and to
15 the Court.

16 THE COURT: My question is, when are we going to go
17 over these? It might be Wednesday evening assuming you guys
18 want to --

19 MR. GIORDANI: Sure.

20 THE COURT: -- close on -- or can close on Thursday.
21 Or -- I don't know, you tell me. What do you guys --

22 MR. GIORDANI: Wednesday --

23 THE COURT: How many are tomorrow? How many
24 witnesses are tomorrow?

25 MR. GIORDANI: Five at the most, five at the most.

1 We might cut one but we think it's about five. So we can do
2 it as soon as we're done with testimony and then Mr. Percival
3 will have to decide -- or his client will have to decide if
4 he's going to testify.

5 THE COURT: Right, right.

6 MR. PERCIVAL: Well, I was -- I thought this would
7 take a little longer than it has and I was planning on putting
8 him on on Thursday but -- so if we wanted to do like --

9 THE COURT: All right. Well, we told them, in our
10 letter it says until Friday, so we've got time. We're way
11 ahead of schedule so --

12 MR. PERCIVAL: Is that a problem for me to put -- if
13 he decides he wants to, put him on the stand, I can put him on
14 the stand Thursday morning?

15 THE COURT: I don't see that being a problem.

16 MR. GIORDANI: That just might mean we might end
17 very early tomorrow.

18 THE COURT: Yeah.

19 MR. GIORDANI: And waste a day.

20 MR. PERCIVAL: Well, but what we could do is -- what
21 could do is --

22 THE COURT: Do you want to start a little later so
23 -- I don't know, it's up to you guys.

24 MR. GIORDANI: No, let's start early so we make sure
25 we're done and then we'll --

1 THE COURT: All right. Then we'll start at nine and
2 worry --

3 MR. GIORDANI: -- have to do jury instructions
4 afterwards.

5 THE COURT: -- about how it goes from there. Okay.

6 MR. GIORDANI: Should I send them to your law clerk?

7 THE COURT: No, send them --

8 MR. GIORDANI: Or JEA?

9 THE COURT: -- to the JEA.

10 MR. GIORDANI: Okay.

11 MR. LEXIS: So, Judge, after all the witnesses
12 tomorrow is when we'll go over jury instructions?

13 THE COURT: Yeah, and --

14 MR. LEXIS: Sounds good.

15 THE COURT: -- worry about -- you know, we'll wait
16 and see what -- whether his client's going to testify. We
17 won't -- okay. Thank you.

18 (End of bench conference.)

19 THE COURT: All right. Ladies and gentlemen, we'll
20 be starting at nine o'clock tomorrow morning. We are hopeful
21 to be done a little earlier than today, so that's always a
22 good thing, I'm sure. And we're still on track and certainly
23 for Friday and maybe a little sooner, so nine o'clock tomorrow
24 morning.

25 During this recess you are admonished, do not talk

1 or converse amongst yourselves or with anyone else on any
2 subject connected with -- connected with this trial or read,
3 watch or listen to any report of or commentary on the trial or
4 any person connected with this trial by any medium of
5 information including, without limitation, newspapers,
6 television, radio or Internet. Do not form or express any
7 opinion on any subject connected with the trial until the case
8 is finally submitted to you.

9 Have a good evening. We'll see you at nine a.m.

10 (Court recessed for the evening at 4:55 p.m.)
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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT