

1 at the point which you open the safe?

2 A Yes, after I hit (sic), I did in fact move and I
3 opened the safe.

4 Q Okay. And I'm going to show you State's 96. And is
5 that just a close-up of the safe being open?

6 A Yeah, it's just a close-up of all the coin
7 containers that they took.

8 Q I'm going to skip 97. I'm going to publish State's
9 98. You indicated, sir, that they broke the skin when they
10 struck you with the firearm in your forehead; is that correct?

11 A And I was in fact bleeding, yes.

12 Q Okay. So, what are we looking at here in State's
13 98?

14 A Most likely my blood.

15 Q Is this the floor of the manager's office?

16 A Yes.

17 Q Okay. And then, these little plastic bins we see
18 here, there's a -- looks like a blue and orange --

19 A They're just coin containers.

20 Q Okay. Those are inside the safe in the manager's
21 office?

22 A Yeah.

23 Q And then we see little red droplets on the ground
24 there as well, correct?

25 A Yes.

1 Q Okay. You believe that to be your blood?

2 A I expect myself to be the only one bleeding at that
3 moment.

4 Q Right. And you were also standing in that vicinity
5 after you were hit, correct?

6 A Yes.

7 Q Okay. Now, you indicated -- or you told us earlier
8 that they had you put money in a blue sack; is that correct?

9 A At first; then they put me out of the way. I only
10 -- the only thing I put in there was probably a handful of
11 coins, and then they said I was too slow --

12 Q Okay.

13 A -- and they shoved me out of the way.

14 Q And after they shoved you out of the way, did --

15 A They started loading it up themselves.

16 Q Okay. So, they were emptying the safe into the blue
17 sack?

18 A Um-hum.

19 Q Can you just describe this? Was it like a plastic
20 bag, or how would you characterize the --

21 A It was not a sports bag, because it didn't have the
22 straps to it, but something similar to it. But it is
23 definitely a bag that you can -- that -- it's like a tailored
24 bag; not something that's just picked up off the street. It's
25 not just like a little plastic grocery bag.

1 Q Okay. So, did this bag have handles to it?

2 A No.

3 Q Okay.

4 A Not like handles like sewn into it, no.

5 Q Okay. Do you recall speaking with the police on the
6 night in question?

7 A Yes.

8 MR. PORTZ: Court's indulgence.

9 THE WITNESS: You can really hear anything echo in
10 here.

11 MR. PORTZ: Okay.

12 BY MR. PORTZ:

13 Q Now, sir, you testified that you don't believe it
14 has handles as you sit here today?

15 A I do not really recall if it has --

16 Q Okay.

17 A -- complete handles, but I do not believe it did.

18 Q Do you remember giving the police a statement on the
19 night that this robbery took place, November 17th, 2014?

20 A Yes, I do, and I have that statement on me.

21 Q And do you recall that they recorded that statement?

22 A That is correct.

23 Q Okay. And would a copy of that statement refresh
24 your memory as to whether or not there were handles on that
25 blue bag?

1 MR. TANASI: Judge --

2 THE WITNESS: Don't believe so.

3 MR. TANASI: -- I'm going to object. I don't
4 believe the witness --

5 THE WITNESS: I did not mention it.

6 MR. TANASI: -- indicated he doesn't remember. I
7 think he testified pretty affirmatively what the bag had, and
8 it didn't have handles, as he's testified here.

9 THE COURT: No, he just -- he just said he wasn't
10 really sure. He said initially, and then on re-questioning,
11 he said he wasn't sure. And so, if he's trying to refresh his
12 memory -- the question is, would it help refresh your memory
13 to see the statement as to whether or not you said it had
14 handles or not?

15 THE WITNESS: Sure.

16 MR. PORTZ: May I approach, Your Honor?

17 THE COURT: Yes.

18 MR. PORTZ: I'm showing page 11 of the voluntary
19 statement.

20 BY MR. PORTZ:

21 Q Mr. Mendoza, do you recognize this as the statement
22 you gave to police that evening? I'm going to have you look
23 at what I'm showing you, sir. This is your name, correct?

24 A Yes.

25 Q And your date of birth?

1 A Yes.

2 Q Okay. And that was your recorded phone number and
3 home address at the time of the statement?

4 A That's correct.

5 Q Okay. I'm going to direct you to page 11, the
6 question and answer section. In this area right here, when
7 the detective asked you that question, take a moment to review
8 that.

9 A Oh.

10 Q Okay. Does that refresh your memory as to whether
11 or not the bag had -- the blue bag had handles on it?

12 A Again, the memory's foggy.

13 Q Sure. Fair to say that on November 17th, 2014, only
14 an hour or so after the robbery, your memory was a little more
15 fresh than it is today a year-and-a-half later?

16 A Yes.

17 Q Any reason to doubt you told the detective that it
18 did have handles, that blue bag?

19 A I do not believe so, sir.

20 Q Okay. Thank you, sir. Do you recall approximately
21 how much money they were able to put into that blue bag?

22 A Well, from the safe at the store, I believe it's 200
23 to \$800.

24 Q Okay. And what kind of -- what form was the
25 currency? Was it paper money, coins, both?

CONTINUED

NEXT

VOLUME

1 Q Before this gunman leaves, do you see Juan or
2 Angelica?

3 A Yeah. Once he -- once he left, I know they were
4 both in the back of the store, both with their heads down
5 towards the floor.

6 Q So, as far as you know, Juan and Angelica were never
7 able to exit out that back door?

8 A No, they weren't able to get out.

9 Q Okay, so let's go back to when this man brought you
10 over to the safe. What does he have you do at this point?

11 A At that point, he just tells me to open the safe.
12 He's just pointing the gun at my head; I'm at gunpoint. He
13 just keeps on repeating, open the fucking safe, open the
14 fucking safe. So, I did what he told me to do; I opened the
15 safe. And I remember one of my employees, earlier that day,
16 she went to go eat at a nearby grocery store, so there was a
17 bag, and it looked like he hesitated, so he grabbed the bag
18 and he told me to put all the money in there, and I did.

19 Q Do you recall the name of the grocery store that
20 this bag had come from?

21 A Yeah, it was Cardenas.

22 Q Cardenas?

23 A Yes, sir.

24 Q Okay, and is that a local market?

25 A Yeah. It's in the same shopping center.

1 Q So, to be clear, this person with the gun did not
2 bring that bag into the store with him?

3 A Yes, sir.

4 Q And then what did he do with that bag?

5 A He -- I put the money in there, he grabbed it, and
6 he ran out.

7 Q And about how much money do you -- do you estimate
8 was taken that evening?

9 A No more than 2,000.

10 Q On his way out, do you recall the gunman saying
11 anything?

12 A Yeah. So, once he grabbed the bag, I heard him
13 yell, let's go, let's go. And that's when he opened the back
14 door, and he kept yelling, let's go, let's go.

15 Q So, he ran out that back door that Juan and Angelica
16 had been trying to exit?

17 A Yes, sir.

18 Q And you heard him shouting, let's go?

19 A Yes, sir.

20 Q But you never saw who he was speaking to?

21 A No, sir.

22 Q At that point, after they had left, what do you and
23 your employees do?

24 A So, at that point, I handed the phone to Karina and
25 she called 911. And I just made sure everyone was okay, and

1 then I called 911 myself.

2 Q Okay.

3 MR. PORTZ: At this point, Your Honor, the State is
4 going to move to admit State's Proposed Exhibit 286. I've
5 shown a copy to counsel. To my understanding, there's no
6 objection to its admission.

7 MR. TANASI: That's correct, Your Honor.

8 MS. LOBO: No objection.

9 THE COURT: Okay, so 286 will be admitted.

10 (Exhibit 286 is admitted)

11 BY MR. PORTZ:

12 Q Sir, I'm going to publish State's 286. Is this a
13 photograph from your store that evening?

14 A Yes, sir.

15 Q Okay. And what are we looking at here?

16 A That was one of the cash drawers.

17 Q And --

18 A That was -- oh, I'm sorry.

19 Q I'm sorry, go ahead.

20 A That was just -- I was barely starting to count that
21 cash drawer. I didn't finish counting it, and it was just
22 there. He didn't -- he didn't bother touching that one.

23 Q Okay, so that one had been left behind?

24 A Yeah.

25 Q But you had put other coins and paper cash in the

1 safe that he took?

2 A Yes. There was already like two more cash registers
3 in there.

4 Q I'm going to zoom-in here to the left side of the
5 screen. Sir, we're looking in the cash register's top left
6 compartment. What's inside that? What are those little
7 objects inside --

8 A Oh, those are the rolled coins.

9 Q Those are rolled coins?

10 A Yes, sir.

11 Q And can you tell me the name of the company that the
12 paper wrapping is on the rolled coins?

13 A Loomis.

14 Q Loomis? Thank you. Sir, as assistant manager, are
15 you aware of whether or not your store has surveillance video
16 equipment?

17 A Yes, sir, I was aware.

18 Q Okay. And were you familiar with your surveillance
19 video equipment system?

20 A Yes, sir.

21 Q And have you had a chance to review surveillance
22 video from the night in question?

23 A I personally didn't do anything. I just -- we all
24 left it to the police. They're the ones that looked into it.

25 Q But since then, have you seen surveillance video

1 from this incident?

2 A Yes, sir.

3 Q And the video that you saw, did it fairly and
4 accurately depict what happened to you that evening?

5 A Yes, sir.

6 Q Have you also had a chance to listen to the 911 call
7 that you made that evening?

8 A Yes, sir.

9 Q And did you recognize your voice?

10 A Yes, sir.

11 Q And did it fairly and accurately reflect the 911
12 call that you had on the night after your robbery?

13 A Yes, sir.

14 MR. PORTZ: Your Honor, at this point, the State is
15 going to move for admission of State's -- well, I apologize.
16 We're going to play a portion of State's 82 and 82A.

17 THE COURT: Okay.

18 BY MR. PORTZ:

19 Q Did you also -- you said Karina also called 911; is
20 that correct?

21 A Yes, Karina --

22 Q Okay.

23 A -- called 911 before me.

24 Q Did you have a chance to also listen to Karina's 911
25 call from that evening?

1 A Yes, sir.

2 Q Okay, and did you recognize the voice as Karina's?

3 A Yes, sir.

4 Q Okay. I'm going to play portions for you of each of
5 the videos, and also the 911 calls, and we'll have you confirm
6 that, and then we'll play them, okay?

7 A Yes, sir.

8 (Surveillance video is played)

9 (Stopped playing of surveillance video)

10 MR. PORTZ: Okay, so I'm going to pause that.

11 BY MR. PORTZ:

12 Q And sir, do you recognize what's shown on your
13 screen? Can you see that?

14 A Yes, sir.

15 Q Is that the surveillance video; different camera
16 angles from your store?

17 A Yes, sir.

18 (911 call is played)

19 (Stopped playing of 911 call)

20 BY MR. PORTZ:

21 Q Okay, sir, we just played a portion of the first 911
22 call with the time and date stamp of the night that we've been
23 discussing. Did you recognize that voice?

24 A Yeah, that's Karina's voice.

25 Q Okay.

1 (911 call is played)

2 (Stopped playing of 911 call)

3 BY MR. PORTZ:

4 Q Okay, sir, and you've heard a portion of a second
5 911 call. Did you recognize the male caller there?

6 A Yes. That was me, sir.

7 Q Okay.

8 MR. PORTZ: At this point, Your Honor, the State
9 will move for admission of State's 82 and 82A.

10 THE COURT: Any objection?

11 MR. TANASI: No objection, Your Honor.

12 MS. LOBO: No objection.

13 THE COURT: Okay, it'd be admitted.

14 (Exhibits 82 and 82A are admitted)

15 MR. PORTZ: Okay, and we move to publish --

16 THE COURT: Yes.

17 MR. PORTZ: -- the video and audio.

18 BY MR. PORTZ:

19 Q Mr. Urbina, we're going to --

20 A Yes.

21 Q -- start with the video. For the record, we're
22 looking at eight separate camera angles simultaneously; is
23 that correct?

24 A Yes, sir.

25 Q Okay. And at the top of each of those camera

1 angles, it gives you -- it states what we're kind of looking
2 at? Like, for instance, we can see at the bottom there's the
3 stock room, to the left of that is the freezer, above that is
4 the side dining, et cetera. It tells us what we're looking
5 at?

6 A Yes, sir.

7 Q Okay.

8 (Surveillance video is played)

9 (Stopped playing of surveillance video)

10 MR. PORTZ: Okay, we'll pause there.

11 BY MR. PORTZ:

12 Q And I know it's a little difficult, but are you able
13 to identify your employees on this video that we're looking at
14 here?

15 A Yes, sir.

16 Q Okay. What I'm going to do --

17 MR. PORTZ: If we can lift the mouse so that it's
18 not -- I just -- there, I just want that to disappear.

19 BY MR. PORTZ:

20 Q If you touch your screen, it will actually circle.
21 So, why don't you start by circling one of the employees you
22 recognize and tell the jury who that is.

23 A Okay, so right -- right here -- oh.

24 Q If you need to clear it, you can touch the bottom
25 left corner here. Okay.

1 A So, we got right -- right here, that's -- that's
2 Juan.

3 Q Okay. So, for the record, you've indicated in the
4 stock room video camera, the gentleman at the bottom of the
5 frame is Juan Taingo, correct?

6 A Yes, sir.

7 Q Okay.

8 A And then also in the stock room, right here, that's
9 Johana.

10 Q Johana? Okay. For the record, stock room, the
11 person in the middle is Johana.

12 MR. PORTZ: Your Honor, if it would be easier, I
13 know it's -- it's fine detail. If he could come down to the
14 television screen and point for the jury so that he's more
15 specific. We're getting a lot of markings on this system.

16 THE COURT: Well, whatever's easiest. I mean,
17 that's -- I just -- you won't be able to see -- can you see
18 that screen?

19 MR. TANASI: We can, Your Honor. We'll make it
20 work.

21 THE COURT: All right, okay. Go ahead.

22 MR. PORTZ: Thank you.

23 THE COURT: You want to step down?

24 THE WITNESS: All right.

25 MR. PORTZ: It's a little bit of a bigger screen

1 over here for you.

2 THE WITNESS: Yes, sir.

3 BY MR. PORTZ:

4 Q So, you've indicated Juan, and then who was the
5 second person you indicated?

6 A In the stock room, that's Johana.

7 Q Okay.

8 A In the front counter, right, that's me.

9 Q Okay, so front counter frame in the left side of it,
10 that's you in the blue shirt?

11 A Yes, sir. Right here, we have Angelica.

12 Q In the drive-thru?

13 A Yes, sir.

14 Q Okay.

15 A And then, also in the stock room, bottom right,
16 that's Karina.

17 Q The bottom right screen? Thank you, sir. You can
18 have a seat. And sir, is there a reason that your shirt's a
19 different color than the rest of your employees?

20 A Just to show that I'm the assistant manager, just to
21 stand out from everyone else.

22 Q We'll continue playing.

23 (Surveillance video is played)

24 MR. PORTZ: We're going to move forward to nine
25 minutes and 40 seconds, and then we'll let it play from there.

1 (Stopped playing of surveillance video)

2 MR. PORTZ: Okay, we're going to pause at ten
3 minutes and two seconds.

4 BY MR. PORTZ:

5 Q Mr. Urbina, I'm going to direct your attention --

6 MR. PORTZ: May I approach the screen, Your Honor?

7 THE COURT: Yeah.

8 BY MR. PORTZ:

9 Q -- to the bottom left corner, the freezer and back
10 door photo.

11 A Yes, sir.

12 Q We see two of your employees at the back -- at a
13 door there, trying to push on that; is that correct?

14 A Yes, sir.

15 Q Okay. Do you recognize who those two are?

16 A Yes, that's Angelica and Juan.

17 Q And do you -- is that where you recall seeing them
18 attempting to exit that back door?

19 A Yes, sir.

20 Q And that -- again, you said that back door is
21 typically easy to open, but they could not get out?

22 A Yes, sir.

23 Q All right, we'll continue playing.

24 (Surveillance video is played)

25 (Stopped playing of surveillance video)

1 MR. PORTZ: And we've paused, for the record, at ten
2 minutes and 20 seconds.

3 BY MR. PORTZ:

4 Q I'm going to direct your attention again, Mr.
5 Urbina, to the fry area. That's the middle row, all the way
6 to the right.

7 A Yes, sir.

8 Q Who are we looking at with their hands on their head
9 in that corridor right there?

10 A That looks like Johana.

11 Q And is that -- where does that corridor lead to?

12 A That leads -- that leads to the back, like towards
13 the -- towards my office.

14 Q Where the safe was?

15 A Yes, sir.

16 Q Okay.

17 (Surveillance video is played)

18 MR. TANASI: Judge, I'm going to object, just to the
19 extent that it looks like --

20 THE COURT: You want to stop the video at this time?

21 (Stopped playing of surveillance video)

22 THE COURT: Okay, go ahead.

23 MR. TANASI: It's a late objection, I realize that,
24 but to the extent that it looks like Johana, I just would
25 assert that he's speculating at this point. I think there

1 needs to be more foundation if he's going to identify someone
2 in the store.

3 THE COURT: Okay, that's fair. The objection is the
4 -- is that -- whether or not you can identify somebody more
5 appropriately -- or more thoroughly, okay?

6 THE WITNESS: Okay.

7 THE COURT: All right, go ahead.

8 BY MR. PORTZ:

9 Q So, for the record, you've already identified Johana
10 at the beginning of the video, correct?

11 A Yes, sir.

12 Q Okay. And she was with you, you testified, as you
13 walked down that back corridor to the back room?

14 A Yes, sir.

15 Q And you remember walking down that back corridor to
16 the back room?

17 A Yes, sir.

18 Q And it was at the direction of the gunman, correct?

19 A Yes, sir.

20 Q Okay. Who was with you aside from Johana?

21 A Karina.

22 Q Okay. The person that you pointed to and indicated
23 as Johana --

24 A Yes, sir.

25 Q -- was not wearing a blue shirt, correct?

1 A No, she was not --

2 Q Okay, so that --

3 A -- wearing a blue shirt.

4 Q -- wasn't you, right?

5 A No, that was not me.

6 Q So, fair to say -- maybe you can't tell from there,
7 but it's either Johana or Karina?

8 A Or Karina. Yes, sir.

9 Q One of your employees following you to the back with
10 the gunman?

11 A Yes, sir.

12 Q Thank you.

13 (Surveillance video is played)

14 (Stopped playing of surveillance video)

15 MR. PORTZ: All right. And for the record, we've
16 paused at ten minutes and 45 seconds.

17 BY MR. PORTZ:

18 Q Sir, I'm going to direct your attention to the
19 freezer and back door at the bottom left of the screen. Do
20 you see someone standing in that photograph -- or in that
21 frame?

22 A Yes, sir.

23 Q Do you recognize who that individual is?

24 A Yes, sir. That was the guy that broke in.

25 Q And what does he -- what does he appear to be

1 walking towards in that frame?

2 A Towards the back door.

3 Q And that's where you recall him exiting on the night
4 in question?

5 A Yes, sir.

6 Q Before he shouted "let's go" to some unknown
7 individual?

8 A Yes, sir.

9 Q All right, we'll continue playing.

10 MR. PORTZ: Court's indulgence.

11 BY MR. PORTZ:

12 Q Can you see if he's carrying anything?

13 A Yeah. So, at the bottom left corner where it says
14 "Freezer" and "Back door," it seems that -- well, he has the
15 bag, the bag that I put the -- that he made me put the money
16 in.

17 Q The Cardenas bag that --

18 A The -- yeah, the Cardenas bag.

19 Q -- one of your employees brought in earlier?

20 A Yes, sir.

21 (Surveillance video is played)

22 (Stopped playing of surveillance video)

23 MR. PORTZ: Thank you, sir. We're now going to move
24 to publish the 911 calls.

25 (911 call is played)

1 (Stopped playing of 911 call)

2 (911 call is played)

3 (Stopped playing of 911 call)

4 MR. PORTZ: Thank you, Your Honor. The State has no
5 further questions. We'll pass the witness.

6 THE COURT: Cross?

7 MR. TANASI: Brief, Your Honor. Thank you.

8 CROSS-EXAMINATION

9 BY MR. TANASI:

10 Q Good afternoon, sir.

11 A Good afternoon.

12 Q My name is Rich Tanasi. I represent Mr. Hobson. I
13 have a few questions for you on cross-exam; is that okay?

14 A Yes, sir.

15 Q All right, sir. So, I want to jump right to the
16 boots that you described. I think earlier, you testified that
17 you saw the taller gentleman wearing black boots; is that
18 fair?

19 A Yes, sir. Yes, sir.

20 Q Okay. Do you remember testifying in front of the
21 grand jury in this case in January of 2015?

22 A Yes, sir.

23 Q Okay. Do you remember testifying that, "And then
24 the shoes, I do not remember what type of shoes, I just
25 remember they were black"? Do you recall that?

1 A Yes, sir.

2 Q Okay. But as you sit here today, you now know that
3 the taller gentleman was wearing black boots; is that --

4 A Black boots. Yes, sir.

5 Q Okay, as you sit here today?

6 A Yes.

7 Q But again, at the time that you gave your testimony
8 under oath to the grand jury in January of 2015, you didn't
9 know what type of shoes he was wearing, fair? Yes or no, sir.

10 A In my defense, yeah --

11 Q Just yes or no, please, sir.

12 A Yes, sir.

13 Q Okay, thank you.

14 MR. TANASI: No further questions.

15 THE COURT: Ms. Lobo?

16 MS. LOBO: No questions.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. PORTZ:

20 Q Sir, when Mr. Tanasi was asking you about those
21 boots, it sounded like you had something you wanted to add.
22 Could you please clarify what you were wanting to explain?

23 A Yes, sir. At the time back in January, I remember I
24 was still kind of shaken up about what was going on. I still
25 -- I still didn't know what was going on. Like, I still --

1 like, stuff was still playing through my head. And I remember
2 that -- now that I remember -- they were black boots, because
3 I think they even took pictures of the boots. I don't know if
4 you guys have a hold of those, but I remember that they made
5 us -- the floor was wet, and they told us not to even like
6 step on the floor anymore because it was -- there was
7 footprints, and one of the officers did clear that they were
8 -- they were some type of boot.

9 Q Okay.

10 A And I just --

11 Q At what point do you recall getting to see his boots
12 during the robbery?

13 A When I was grabbing the money. When I was grabbing
14 the money, I was on my -- I was on my knees, and he didn't
15 want me to look at him in the eye, so he just -- I kept
16 looking -- I just stared at his feet, and I remember that they
17 were black boots.

18 Q Thank you, sir.

19 MR. PORTZ: I have no further questions, Your Honor.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Tanasi?

22 MR. TANASI: Briefly, Your Honor. Thank you.

23 RECROSS-EXAMINATION

24 BY MR. TANASI:

25 Q Sir, so is it fair to say that after you saw the

1 pictures of the boots that the officer showed you, you then
2 came to the conclusion that he was wearing boots, fair?

3 A Yes, sir.

4 Q Okay, thank you.

5 MR. TANASI: Nothing further.

6 THE COURT: Anything further? Hold on. Any
7 redirect?

8 MR. PORTZ: Oh, no, Your Honor. Thank you.

9 THE COURT: Okay. Jim, we got some questions.
10 Parties want to approach?

11 (Off-record bench conference)

12 THE COURT: Okay. Mr. Urbina?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is Loomis the only vendor used for
15 rolled coins at the restaurant?

16 THE WITNESS: At that time, to be honest, I wasn't
17 in charge of shipping out the money. I was -- I was just in
18 charge of counting the cash, so I don't know who they had the
19 -- who they would like receive money from.

20 THE COURT: Okay. Of the approximate \$2,000 stolen,
21 how much do you estimate was rolled coins?

22 THE WITNESS: Rolled coins? It was practically
23 everything, maybe more than -- maybe 100 or \$200 worth.

24 THE COURT: Okay. So, if it's easier to estimate,
25 how many rolls of coins?

1 THE WITNESS: How many -- oh, I could say maybe more
2 than 20 rolls -- rolls.

3 THE COURT: Okay.

4 THE WITNESS: Um-hum.

5 THE COURT: Do you have any questions as a result of
6 those questions?

7 MR. PORTZ: Yes, Your Honor, just one.

8 THE COURT: Okay.

9 THE WITNESS: Yes, sir.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. PORTZ:

12 Q Mr. Urbina, aside from Loomis, do you recall seeing
13 the names of any other companies on the wrapped coins in your
14 store?

15 A No, sir.

16 Q Thank you, sir.

17 THE COURT: Mr. Tanasi, Ms. Lobo, or Mr. -- Mr.
18 Tanasi, any questions?

19 MR. TANASI: No, Your Honor. Thank you.

20 THE COURT: Ms. Lobo?

21 MS. LOBO: No, Your Honor.

22 THE COURT: Okay. All right. Mr. Urbina, thank you
23 so much for your testimony, and you're excused. You can step
24 down, okay?

25 THE WITNESS: All right, thank you.

1 THE COURT: Okay. All right. Ladies and gentlemen,
2 we'll give you a 15-minute recess.

3 During this recess, you're admonished not to talk or
4 converse amongst yourselves or with anyone else on any subject
5 connected with this trial --

6 THE MARSHAL: Your Honor --

7 THE COURT: -- or read, watch, or listen to any
8 report --

9 THE MARSHAL: [Inaudible].

10 THE COURT: You have another question?

11 UNKNOWN SPEAKER: Just -- yeah, just a general
12 question.

13 THE COURT: Oh, of Mr. Urbina?

14 UNKNOWN SPEAKER: I guess from all witnesses, is my
15 question.

16 THE COURT: Mr. Urbina, could you have a seat right
17 there in the front row? Right there. Okay, could the parties
18 approach?

19 (Off-record bench conference)

20 MR. TANASI: Judge, I'm sorry. Can we approach one
21 more time?

22 THE COURT: Yes.

23 (Off-record bench conference)

24 THE COURT: Okay. Mr. Urbina --

25 THE WITNESS: Yes, sir.

1 THE COURT: -- I want to remind you you're still
2 under oath, even though I did excuse you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Do you understand that?

5 THE WITNESS: Yes, sir, I understand.

6 THE COURT: Okay. There's another question that was
7 asked -- well, a number of questions. Which hand was he
8 holding the gun in?

9 THE WITNESS: Right hand.

10 THE COURT: And was he wearing gloves?

11 THE WITNESS: Yes, red and black gloves.

12 THE COURT: And the next question was, if so, what
13 color? You're saying red and black?

14 THE WITNESS: Red and black.

15 THE COURT: Okay. Does the State have any questions
16 as a result of those questions?

17 FURTHER REDIRECT EXAMINATION

18 BY MR. PORTZ:

19 Q Sir, I just want to get into questions about whether
20 or not you saw the video of this incident before you gave a
21 statement, okay?

22 A Yes, sir.

23 Q To the grand jury. Did you review any video footage
24 of the surveillance video system that we just published today
25 before you testified at the grand jury?

1 A Yes, sir.

2 Q Okay. On the night of the robbery, do you recall
3 giving a statement to police?

4 A Yes, sir.

5 Q And that was immediately after the police arrived?

6 A Yes, sir.

7 Q And would that have been before you had any chance
8 to review the surveillance footage that you reviewed for the
9 grand jury months later?

10 A Yeah, that was before.

11 Q And in that statement, do you recall testifying that
12 you were in the back counting boxes when you heard a crash?

13 A Yes, sir.

14 Q And in that statement, again, before you reviewed
15 any of the video, that your employees were running, and it
16 appeared like someone was following him, like a shadow behind
17 them?

18 A Yes, sir.

19 Q Do you recall telling the police again on the night
20 of the robbery before you've ever seen any video that you saw
21 your two employees running behind them, and that the guy
22 behind them was wearing a grayish hoodie with a gun in his
23 hand?

24 A Yes, sir.

25 Q And that the man who had the gun in his hand was

1 yelling, get the fuck over here, get the fuck over here?

2 A Yes, sir.

3 Q And you told the police again on the night of the
4 robbery that you ran towards the lobby, and that's when he got
5 me?

6 A Yes, sir.

7 Q And that's as you've testified here today, correct?

8 A Yes, sir.

9 Q And you also told the police on the night of the
10 robbery, before you ever saw the video, that once he got you,
11 he said, open the fucking safe, open the fucking safe?

12 A Yes, sir.

13 Q And that he turned towards one of your employees,
14 and you thought he was going to harm her, so you walked with
15 him to the employee --

16 A Yes, sir.

17 MR. TANASI: Your Honor --

18 MR. PORTZ: -- or to the safe?

19 THE COURT: Hold on.

20 MR. TANASI: I'm going to object. This goes outside
21 of the scope of the question.

22 THE COURT: Well, I'm going to sustain your
23 objection, but not for that reason, but I am sustaining the
24 objection.

25 MR. PORTZ: May I ask on what grounds the objection

1 is sustained?

2 THE COURT: Are you reading in his statement? Is
3 that a proper way?

4 MR. PORTZ: Court's indulgence.

5 BY MR. PORTZ:

6 Q Sir, where were you when you first reviewed the
7 surveillance video of this incident?

8 A I was -- actually, I was in front -- I wasn't --
9 like, I didn't -- that night, I wasn't allowed to watch the
10 video until like after the police have went through it, and
11 then he put like a chip on the computer and he took everything
12 out, and that's when we were able to see it, but that was
13 after I gave my statements to them.

14 Q Okay. So, you never saw it until after you gave
15 your interview with police at work --

16 A Yes, sir.

17 Q -- on the night of the robbery?

18 A Yes, sir.

19 Q All right, thank you.

20 THE COURT: Anything further?

21 MR. PORTZ: Your Honor, I have nothing further.

22 THE COURT: Okay.

23 MR. PORTZ: Thank you.

24 THE COURT: Any --

25 MR. TANASI: None from the defense, Your Honor.

1 THE COURT: Okay. Any questions? Okay. Mr.
2 Urbina, thank you so much for your testimony this time, okay?
3 You can step down. You're excused.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Once again, I want to take a
6 break.

7 During this recess, you're admonished not to 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 or any commentary on the trial, or any person connected
11 with this trial, by any medium of information, including,
12 without limitation, newspapers, television, the internet, or
13 radio, or form or express any opinion on any subject connected
14 with this trial until the case is finally submitted to you.

15 It's -- well, it's in between. It's about, what,
16 eight after or so? Why don't we come back at 25 after. Be
17 ready to come in. We'll be at ease while the jury exits the
18 courtroom.

19 (Outside the presence of the jury)

20 THE COURT: Okay, we're outside the presence of the
21 jury. Is there anything that needs to be put on the record at
22 this point from the defense?

23 MR. TANASI: No, Your Honor.

24 MS. LOBO: No, Your Honor.

25 THE COURT: From the State? Okay.

1 MS. MERCER: No, Your Honor.

2 MR. PORTZ: No, Your Honor.

3 THE COURT: All right. So, we'll start up at 25
4 after and get going again. I'm planning on going until 5:00.

5 MR. TANASI: Okay.

6 THE COURT: All right. So, do you have witnesses
7 for that?

8 MS. MERCER: We have three more witnesses, Your
9 Honor.

10 THE COURT: Okay, we'll just go until they're done.

11 MS. MERCER: Okay.

12 THE COURT: Okay. All right, thank you.

13 (Court recessed at 3:08 P.M. until 3:28 P.M.)

14 (Outside the presence of the jury)

15 THE MARSHAL: Department 19 is back in session

16 THE COURT: Christine, are we on the record?

17 THE COURT RECORDER: It's rolling.

18 THE COURT: Okay. Jim, you want to go ahead and get
19 the jury in?

20 THE COURT RECORDER: We're on, Judge.

21 THE COURT: Okay.

22 (Within the presence of the jury)

23 THE MARSHAL: Please be seated. Department 19 is
24 back in session.

25 THE COURT: Okay, we're back on the record in case

1 of C-303022, State of Nevada vs. Tony Hobson and Brandon
2 Starr. I'd like the record to reflect the presence of the
3 defendants and their counsel, as well as the State and their
4 counsel, and all members of the jury. Will the parties
5 stipulate to the jury?

6 MS. MERCER: Yes, Your Honor.

7 MR. TANASI: Yes, Your Honor.

8 THE COURT: Okay. Or the presence of the jury, I'm
9 sorry. Before we took a break, the State was still in their
10 case in chief. You want to call your next witness?

11 MS. MERCER: Your Honor, the State calls Karina
12 Aguilar.

13 THE COURT: Okay.

14 THE MARSHAL: Step up here, please. Watch your step
15 there. Remain standing, face the clerk over here, and raise
16 your right hand.

17 KARINA AGUILAR ROSALES, STATE'S WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated.

19 THE MARSHAL: Just have a seat there.

20 THE CLERK: Would you --

21 THE MARSHAL: Speak into this microphone.

22 THE CLERK: -- please state your full name, spelling
23 of your first and last name for the record?

24 THE WITNESS: Karina Aguilar Rosales.

25 //

DIRECT EXAMINATION

1
2 BY MS. MERCER:

3 Q Can you spell them, please?

4 A Oh. K-a-r-i-n-a, A-g-u-i-l-a-r, R-o-s-a-l-e-s.

5 MS. MERCER: May I --

6 THE COURT: Your witness.

7 MS. MERCER: Thank you.

8 BY MS. MERCER:

9 Q Ma'am, I want to direct your attention to November
10 15th of 2014. On that day, where were you working?

11 A At Popeye's.

12 Q Is that the Popeye's located at 4505 East Bonanza?

13 A Yes.

14 Q Do you still work there?

15 A No.

16 Q When did you leave your job at that Popeye's.

17 A January.

18 Q January of 2015 or '16?

19 A Yes, 2015.

20 Q When you were working at the Popeye's on Bonanza,
21 what position did you hold with the company?

22 A Just register.

23 Q You worked the cash register?

24 A Um-hum.

25 Q How old were you when you worked there?

1 A 17.

2 Q Specifically, on November 15th of 2014, were you 17?

3 A Yes.

4 Q What shift were you working that night?

5 A I was working night shift, closing.

6 Q What time did your store close?

7 A At 11:00.

8 Q Were you working one of the front registers or the
9 drive-thru register?

10 A I was working front register.

11 Q After the lobby closed, did you have specific job
12 duties that you were responsible for before everyone could
13 leave?

14 A We had to clean out where the registers were; we had
15 to clean out the lobby also.

16 Q On November 15th of 2014, after your lobby closed,
17 did you start doing those things?

18 A Yes.

19 Q Was anyone else up front with you?

20 A Yes, Angelica.

21 Q At some point, did something unusual happen while
22 you were cleaning up the front area with Angelica?

23 A Yes. We heard a noise, and we thought it was one of
24 the dishes because a girl was washing, or we also thought that
25 something might have happened in the parking lot.

1 Q Did you do anything to try to figure out where the
2 noise was coming from?

3 A Well, I stepped out -- I stepped out next to where
4 the registers were to see what was it, and I just saw someone
5 crawling under the door.

6 Q You saw someone crawling under the door?

7 A Yes, well ducked down.

8 MS. MERCER: Your Honor, may I approach your clerk?

9 THE COURT: Yes.

10 BY MS. MERCER:

11 Q When you say that you saw someone crawling under the
12 door, what condition was the door in at that time?

13 A It was shattered.

14 Q Shattered?

15 A Um-hum.

16 Q Publishing State's Exhibit 75 on the overhead. When
17 you say that you saw him crawling under the bar, which bar are
18 you referring to?

19 A The --

20 Q Is it right here?

21 A Yes.

22 Q The individual that you saw crawling through that
23 bar, did you notice whether he had anything in his hands?

24 A Just a gun.

25 Q A gun?

1 A Um-hum.

2 Q Do you --

3 THE COURT: Is that a yes, ma'am?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 BY MS. MERCER:

7 Q Do you know what color that gun was?

8 A I recall that it was gray.

9 Q Gray?

10 A Um-hum.

11 THE COURT: Is that a yes, ma'am?

12 THE WITNESS: Yes.

13 BY MS. MERCER:

14 Q Do you remember anything else about that
15 individual's appearance?

16 A Well, anything -- the only thing I can recall, it
17 was -- he was tall, like 6-feet-tall. He was wearing black
18 and gray.

19 Q Where was the black and gray?

20 A The black and gray was -- I -- the only thing I
21 recall was like a little sweater -- sweatshirt that he was
22 wearing.

23 Q Did that sweatshirt have a hood or no hood?

24 A It had a hood.

25 Q Was the hood pulled up?

1 A Yes.

2 Q Was it a pullover hoodie, or did it have a zipper?

3 A I remember it being a zip-up, but I'm not sure.

4 Q Do you remember what he was wearing on the bottom
5 part of his body?

6 A No.

7 Q The individual that you saw crawling under the
8 handle, was he -- could you tell what race he was?

9 A He was black; African American.

10 Q When he came under the door, did he have anything
11 concealing his face?

12 A Yes.

13 Q At some point -- well, what was it that was
14 concealing his face?

15 A If I recall, it was a bandana.

16 Q Do you recall what color it was?

17 A Red, I believe so.

18 Q You indicated that you noticed a gun in his hands.
19 Was there anything covering his hands?

20 A Just the gloves, that's all I remember. Not
21 specifically.

22 Q Do you recall what color the gloves were?

23 A No.

24 Q Do you recall speaking with a detective on the night
25 of the robbery on November 15th of 2014?

1 A Yes.

2 MS. MERCER: Court's indulgence.

3 BY MS. MERCER:

4 Q Do you remember describing the gloves that night to
5 the detectives?

6 A Yes.

7 Q Would it refresh your recollection if I showed you a
8 copy of that statement as to the color of the gloves?

9 A Yes.

10 MR. TANASI: Your Honor, I'm just going to object.

11 I think she said she does remember --

12 MS. MERCER: She said she remembers --

13 MR. TANASI: -- giving the statement.

14 MS. MERCER: -- describing them, but doesn't
15 remember the color that she told them.

16 THE COURT: Yeah, you can approach. Overruled.

17 MS. MERCER: Thank you.

18 BY MS. MERCER:

19 Q If you could just read starting right here for me to
20 yourself, and then let me know when you're done. Did you have
21 a chance to read that?

22 A Yes.

23 Q Did it refresh your recollection as to the color
24 that you described those gloves being?

25 A Yes.

1 Q What color did you say that they were?

2 A It was a partial red.

3 Q When the individual came into your store, did you
4 notice anything on his face?

5 A The bandana.

6 Q What about facial hair?

7 A The facial hair, yes, just -- just a little bit on
8 the side.

9 Q Like sideburns?

10 A Um-hum.

11 Q Right here?

12 THE COURT: Is that a yes, ma'am?

13 THE WITNESS: Yes.

14 BY MS. MERCER:

15 Q And you indicated that he was approximately
16 6-feet-tall?

17 A Yes.

18 Q You indicated that he was a black male?

19 A Excuse me?

20 Q You indicated he was a black male?

21 A Yes.

22 Q How would you describe his skin tone? Was it light,
23 medium, or darker?

24 A It was medium.

25 Q Approximately how old do you believe that person

1 was?

2 A I'd say he was in his like late 20s.

3 Q Once you saw that person coming in through the door,
4 what did you and Angelica do?

5 A When we saw him coming out through the door, I told
6 Angelica to run through the back and tell the guys that there
7 was a person with a gun. So, we decided not to just stay
8 still, but to run around the restaurant until -- to see if we
9 can be able to press the button for -- to call the police that
10 they just put --

11 Q A silent alarm?

12 A Yes.

13 Q You said that they had just put in?

14 A That same day.

15 Q What -- I'm sorry?

16 A They put those alarms that same day.

17 Q Were you familiar with the location of those silent
18 alarms at the time?

19 A They didn't -- well, they didn't tell me personally,
20 but we knew that it would have to -- it would have to have
21 been under the registers.

22 Q Were you able to find those silent alarms?

23 A No.

24 Q Did you and Angelica both run to the back and alert
25 the other employees that a man was in there with a gun?

1 A Yes.

2 Q What happened at that point?

3 A After we did, we didn't stay still, but we did run
4 around where there's a space to run -- to run out to see if we
5 could get out through the exit doors and to call for help, but
6 we --

7 Q Which exit doors are you referring to?

8 A To the front ones.

9 Q Did you make it to the front doors?

10 A We -- we made it to the lobby, but no, he -- he got
11 to us.

12 Q Publishing State's Exhibit 76 on the overhead, is
13 this the lobby where you were when you saw the person coming
14 through the door?

15 A Yes.

16 Q And where specifically were you in that lobby?

17 A I was --

18 Q Could you place an X on it for me?

19 A I was towards more over here.

20 Q Okay. That's where you were when you initially saw
21 the person coming in under that bar?

22 A Yeah, where the registers were at.

23 Q What about when you ran back towards the front door?
24 How far did you make it before you were stopped?

25 A So, the registers where I put the X are, there was

1 -- it's close to another door, to our right door. We just
2 made it right to the side of the registers.

3 Q Okay. What happened at that point?

4 A At that point, he told us that -- he -- well,
5 whatever you call, he told us to just -- we were going to
6 surrender already; just to walk to the safe.

7 Q When you say "he," you're referring to the man with
8 the gun?

9 A Yes.

10 Q So, he told you to walk towards the safe?

11 A Yes.

12 Q Were there other employees in the back when you and
13 Angelica were up front cleaning?

14 A Yes, it was Jeronimo, and Johana, and Juan. Here.
15 So, what happened was -- so, when he came in -- so, when he
16 came in, that's when I told Angelica to go to the back to go
17 tell the guys that there was a guy with a gun, so we did. We
18 didn't just stay still; we didn't surrender or anything. We
19 just decided to run through the -- through the restaurant to
20 see if we could exit or just press the alarm, if we'd be able
21 to call for help, but that didn't happen.

22 By the time that we were trying to run out, the only
23 person that I recall running with me in front of me, it was
24 Johana and Jeronimo. I was in the back. When we got to the
25 point to the registers right here, that's when -- because I

1 was in the back; he was in the back of me. He told me that we
2 had to just walk with him to the lobby.

3 Q When he told you that, what was he doing with the
4 gun?

5 A He was pointing it at me, and that's when --

6 Q Pointing it where at you?

7 A In the back.

8 Q Okay. Was it pushed up against your back, or just
9 pointed in your direction?

10 A It was pointed at my direction.

11 Q Okay. So, from there, what happened?

12 A So, what happened, we walked to the side to the
13 lobby where the first X -- where I put the first X. That's
14 when he told us that we had to surrender; that we had to walk
15 to the safe. We walked to the safe, and he told us to kneel
16 down, and that's when he brought Juan and Johana also, where
17 we all just -- all decided to just line up where the safe was.
18 And that's when Jeronimo opened the safe, then he got the
19 money, and he ran off to the back of the exit door.

20 Q Okay. At any point, did you see anyone trying to
21 exit out the back door other than the suspect?

22 A I personally did not see it, just over -- after
23 everything happened, I just heard what --

24 Q Okay. During this incident, did you -- well, how
25 close were you to the office where the manager was?

1 A In the beginning?

2 Q Once you were -- once you were told to get on your
3 knees.

4 A I was right next to Jeronimo.

5 Q Could you hear what was taking place inside of the
6 office between the suspect and your manager?

7 A Oh, I just -- all I remember was when he told him to
8 open the safe.

9 Q What was he doing with the gun at that point?

10 A I don't remember.

11 Q At some point during this incident, did you sustain
12 an injury?

13 A Yes.

14 Q Where were you injured?

15 A On my left leg in the bottom, close to -- it was in
16 the front. I don't know how to --

17 Q On your calf?

18 A On my leg.

19 Q On the front of your leg?

20 A Yes.

21 Q Okay. How did you sustain that energy -- that
22 injury?

23 A Excuse me?

24 Q How did you get that injury during this incident?

25 A Oh. So, when we were running towards to exit when

1 he was in the back of me, he hurt me.

2 Q "He" being the person with the gun?

3 A Yes.

4 Q What did he do to hurt you?

5 A Well -- well, it was like just his leg through mine.
6 That's when I just got a sharp -- when I got a --

7 Q I'm sorry, I didn't understand what you said.

8 A Sorry. When he was chasing us down, all he did when
9 I calmed down and everything was just kind of -- like his foot
10 just went against my leg, then that's when it kind of hit me,
11 and like that's when I got scarred up.

12 Q Okay, so did he kick you, or was he trying to stop
13 you? I don't -- I don't understand.

14 A He tried to stop me.

15 Q Okay. And then, after he had the money, you
16 indicated that he left out the back door?

17 A Yes.

18 Q And then you called 911, correct?

19 A Yes.

20 Q And then, at some point while you were on the phone
21 with 911, your manager also called 911?

22 A Yes.

23 Q Did an ambulance respond to the scene?

24 A Yes.

25 Q Did they check you out and make sure you were okay?

1 A Yes.

2 Q Did you end up having to go to the hospital?

3 A No.

4 MS. MERCER: Court's indulgence. I'll pass the
5 witness, Your Honor.

6 THE COURT: Cross?

7 MS. LOBO: No cross, Your Honor.

8 MR. TANASI: No, Your Honor. Thank you.

9 THE COURT: Okay. Okay. All right, Ms. Aguilar,
10 thank you for your testimony. You can step down. You're
11 excused, okay?

12 THE WITNESS: Thank you.

13 THE COURT: All right. Call your next witness.

14 MR. PORTZ: The State's next witness is Juan
15 Mendoza. And for the jury, this will be in reference to
16 incident 8 of 14, counts 37 through 43.

17 THE MARSHAL: Step up here, please. Watch your step
18 there. Remain standing, face the clerk over here, and raise
19 your right hand.

20 JUAN MENDOZA, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated.

22 THE MARSHAL: Just pull up your chair and speak into
23 this microphone.

24 THE CLERK: If you could please state your full
25 name, spelling of the first and last name for the record.

1 THE WITNESS: Juan Mendoza. J-u-a-n, M-e-n-d-o-z-a.

2 THE COURT: Your witness.

3 MR. PORTZ: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. PORTZ:

6 Q Mr. Mendoza, how are you currently employed, sir?

7 A Yes, I am.

8 Q And who do you -- or what do you do for a living at
9 this point?

10 A At this point, I operate six different stalls at
11 Mandalay Bay.

12 Q Okay. Before Mandalay Bay, who did you work for?

13 A Wendy's.

14 Q And did you work at a specific Wendy's store?

15 A The store 13 on I believe Nellis and Harris.

16 Q Okay. And I'm going to publish what's been admitted
17 as State's 8. This is an overhead view of a map, and you can
18 see Nellis and Harris, and there's a little sign that says
19 "990 North Nellis." Is that the location of your store
20 specifically?

21 A Yes.

22 Q Okay, and that's here in Las Vegas, Clark County,
23 Nevada, correct?

24 A Yes, that is the location of the previous store I
25 worked at.

1 Q Great. Were you working at that store on November
2 17th, 2014?

3 A Yes.

4 Q Okay. And on that -- that night -- or that day,
5 what was your shift hours?

6 A I was the closing manager on duty.

7 Q And as closing manager, what time did you stay -- or
8 what time does your store close?

9 A Until -- I stayed until 2:00 P.M., I believe. Yes.

10 Q 2:00 P.M.? 2:00 in the afternoon, or 2:00 in the
11 morning?

12 A 2:00 in the morning. Thank you.

13 Q Okay. And the store itself, what time does the
14 store close?

15 A The store closes at 1:00.

16 Q Thank you. On that evening, November 17th, 2014,
17 you were working as the closing manager, you said?

18 A That is correct.

19 Q And who else were you working with?

20 A I was working with my crew at the time, which was
21 Jesus, Anthony James (phonetic), and I can never pronounce her
22 name properly. Janie?

23 Q Janie? And I'm going to ask you if you recall, is
24 Janie's last name Fannon?

25 A I believe so.

1 Q Okay.

2 A It sounds familiar. Sounds about right.

3 Q Jesus, was his last name Lopez?

4 A Yes.

5 Q And then Anthony, was his last name Maddaford?

6 A Yes.

7 Q Okay. Do you know if there was another woman in
8 there that was a girlfriend of one of the employees?

9 A Yes, but not to my knowledge until everything was
10 happening.

11 Q Okay. Do you know that girlfriend's name at all, or
12 no?

13 A Only from what's written down here.

14 Q Okay, only if you knew. That's fine. So, what is
15 everyone doing, I guess, just before close?

16 A We were getting ready to actually close up shop at
17 that exact minute, and just standard procedure, I guess. I
18 don't remember the people's positions or where they're at for
19 normal closing procedures, but I remember that when we were
20 about to close, that's when they started to break in.

21 Q Okay, so that would be just before 1:00 A.M.?

22 A Yeah.

23 Q And what made you think someone was trying to break
24 into your store?

25 A The minute I saw someone walking into the store

1 holding a gun to a girl who I did not recognize.

2 Q Okay. Did you hear anything happening -- well,
3 where were you at that point in time?

4 A I was in the actual managerial office, just stepping
5 out.

6 Q Okay. Did you hear anything happening before your
7 employees were shouting?

8 A I did not.

9 Q After the fact, did you -- actually, I'm going to
10 publish State's 93. Do you recognize what's depicted there,
11 sir?

12 A That would be the side of the like managerial
13 gathering -- meeting area.

14 Q Does that door gain access to your Wendy's that you
15 were working?

16 A It does, but that is a side room altogether, so you
17 have to go to another door to get into Wendy's.

18 Q Okay. Was the window -- or the glass pane of this
19 door to your knowledge broken before the break-in that night?

20 A It was not.

21 Q Now, you said you were in the manager's office; is
22 that correct?

23 A I was the manager on duty, correct.

24 Q All right, and what were you doing at that time?

25 A At that time, I was just preparing to close out the

1 night.

2 Q I'm going to publish State's 94. Can you tell us
3 what we're looking at here, sir?

4 A You're looking at the back room that leads to the
5 entrance of the managerial office, and the prep table.

6 Q So, describe for the members of the jury what
7 happens when you hear your employees shouting.

8 A I was stepping out of this area, and I just looked
9 around. It wasn't really like employees shouting; it was just
10 like shock.

11 Q Okay.

12 A And that surprised me.

13 Q And what do you see when you step out of your
14 office?

15 A I was already out of the office at this time, and I
16 see them dragging Jesus's girlfriend, I believe, and this
17 whole situation began.

18 Q Okay, so -- and Jesus's girlfriend --

19 A And --

20 Q -- didn't work in your store; is that correct?

21 A That is correct.

22 Q She was just there with Jesus?

23 A She should not have been there to begin with.

24 Q Okay. So, you said you saw them dragging her --
25 Jesus's girlfriend?

1 A Yes, which means --

2 Q Who were these --

3 A -- they were making the commotion and the ruckus.

4 Q Okay, so who were these individuals? Did you know
5 them?

6 A Them being dragged -- the people dragging them?

7 Q The people dragging her.

8 A No, sir.

9 Q Okay. Could you see or make out their faces?

10 A No, sir. The -- both of them were wearing bandanas.
11 One was a red one; the other one was a blue one. The one with
12 the red one was holding a gun to Jesus's girlfriend, while the
13 blue one was holding a gun to me. They were -- the one with
14 the blue bandana was holding a revolver, and it was a metallic
15 kind of silver color, like that laptop.

16 Q Okay. And do these men with the guns approach you?

17 A Yes, the one with -- the one that was holding --
18 pointing the gun at me approached me, demanded -- making --
19 trying to do fear tactics to get us to open the safe.

20 Q The man with the red bandana, he has a firearm as
21 well, you said, correct?

22 A Yes.

23 Q Okay. Is he saying anything to you at this point?

24 A No. I believe that was the one that was holding
25 Jesus's girlfriend hostage.

1 Q Does the man with the blue bandana say anything to
2 you?

3 A Yes, of course. He's saying -- trying to intimidate
4 us, saying, do you think this is a game, you know, and just
5 regular things like that, trying to get us to employ the safe
6 -- open the safe.

7 Q And where is the safe located?

8 A The safe is located -- actually, if you look in that
9 printer -- the picture, you'll be able to see it by the chair.

10 Q Okay, so inside the office that we're looking at --

11 A Yes.

12 Q -- in this photograph? Do they get you inside that
13 room?

14 A Yes.

15 Q And I'm going to publish State's 95. Is this a
16 photograph inside that room?

17 A Yes.

18 Q Okay. Can you describe what we're looking at here?

19 A You're looking at the open door to the safe, a trash
20 can, and of course the drop box.

21 Q Now, do you have access to this safe?

22 A I do have access to the -- I did have access to the
23 safe.

24 Q When you were working that night --

25 A Yeah.

1 Q -- you had access to that safe? When -- after they
2 shout, do you think this is a game, and they have you inside
3 this room, what happens next?

4 A They push me out of the way, take out a blue sack,
5 which I still cannot identify to my -- best of my knowledge,
6 but it is a blue sack, and start taking the money out of the
7 safe.

8 Q Okay. Before -- well, you had to open the safe, I'm
9 assuming; is that correct?

10 A Yes.

11 Q Okay. Before you open the safe, did they do
12 anything physically to you?

13 A They did pistol-whip me.

14 Q Do you recall which one struck you with the pistol?

15 A The one that was pointing the revolver at me.

16 Q And do you recall how many times you were struck?

17 A Once.

18 Q Where were you hit, sir?

19 A On -- above the eyebrow by the temple.

20 Q Okay. So, for the record, you're indicating just
21 above your left eyebrow, correct?

22 A Yes.

23 Q Did that cause you any injury?

24 A It did break the skin, and I had to get sutures.

25 Q Now, you said -- well, after you hit (sic), is that

1 THE COURT: Yeah, that'd probably be --

2 MS. MERCER: -- through four events yesterday.

3 (Pause in the proceedings)

4 MR. TANASI: 1:00 o'clock is fine with the defense,
5 too, Your Honor.

6 MS. LOBO: Yes, Your Honor.

7 THE COURT: Okay. Okay. All right, we'll get
8 started at 1:00 o'clock tomorrow then, and then we'll go ahead
9 and get finished here today. What they're saying is -- go
10 ahead and go off the record. Off.

11 THE COURT RECORDER: Do you want me to go off the
12 record?

13 THE COURT: Yeah.

14 (Off the record at 1:18 P.M. until 1:20 P.M.)

15 (Outside the presence of the jury)

16 THE COURT RECORDER: Judge, we're on the record.

17 THE COURT: Okay.

18 (Pause in the proceedings)

19 THE COURT: Okay. All right, all right. You want
20 to go ahead and bring them in, Jim, then?

21 (Within the presence of the jury)

22 THE MARSHAL: Please be seated. Department 19 is
23 back in session.

24 THE COURT: Okay. Good afternoon, ladies and
25 gentlemen. We're back on the record in case number C-303022,

1 State of Nevada vs. Tony Hobson and Brandon Starr. I'd like
2 the record to reflect the presence of the defendants and their
3 counsel, as well as the State and their counsel.

4 Ladies and gentlemen, over the evening recess, I was
5 notified that one of our jurors' husband took a pretty serious
6 fall, and he's in the hospital, and she is with him in the
7 hospital at this time. So, during the break right before you
8 came back in, we had a discussion with counsel. And so at
9 this point in time, Juror number 13, Janet Swanson-Sulerud is
10 going to be excused.

11 And also, we have another juror that was involved in
12 a car accident last night. He's here now; however, I'm going
13 to -- we're not going to start until 1:00 o'clock tomorrow --

14 JUROR NO. 6: Thank you, Your Honor.

15 THE COURT: -- to give you an opportunity to see the
16 doctor. And we have -- I have a big calendar anyhow, so it
17 probably would have been that time. And I appreciate that
18 you're here, and for the record, it is Mr. Kozlowski. Mr.
19 Kozlowski, please let me know if you need a break or you need
20 to stand up or something, because you indicated your hip was
21 injured, and --

22 JUROR NO. 6: Yeah.

23 THE COURT: -- so I certainly don't want to
24 aggravate that with this.

25 JUROR NO. 6: Thank you, Your Honor. I will.

1 THE COURT: Okay? And please let me know. Don't be
2 embarrassed or anything. And I know you sound like a tough
3 guy, based on what you were in here earlier, but you know, we
4 don't want to mess with that, okay?

5 JUROR NO. 6: I look soft, sir, but --

6 THE COURT: Okay.

7 JUROR NO. 6: -- I can handle my own.

8 THE COURT: Okay. All right, okay. All right, so
9 just so we're clear on the record, is Vissa Noguez here?

10 JUROR NO. 1: Here.

11 THE COURT: Robert Bass?

12 JUROR NO. 2: Here.

13 THE COURT: Vince Gaeta?

14 JUROR NO. 3: Present.

15 THE COURT: Lin-Belle Addington?

16 JUROR NO. 4: Here.

17 THE COURT: Daniel Boggs?

18 JUROR NO. 5: Here.

19 THE COURT: Nicholas Kozlowski?

20 JUROR NO. 6: Present.

21 THE COURT: William Burns?

22 JUROR NO. 7: Here.

23 THE COURT: Angila Jenkins?

24 JUROR NO. 8: Here.

25 THE COURT: David Snyder?

1 JUROR NO. 9: Here.

2 THE COURT: Glynis Bernard?

3 JUROR NO. 10: Here.

4 THE COURT: Daniel Powers?

5 JUROR NO. 11: Here.

6 THE COURT: Charles Worth?

7 JUROR NO. 12: Here.

8 THE COURT: Heather Hedrick?

9 JUROR NO. 14: Here.

10 THE COURT: And Dustin Bigelow?

11 JUROR NO. 15: Here.

12 THE COURT: Okay. All right, so when we took a
13 break last night, the State was still in their case in chief.
14 They were prepared to call a witness. I took a break. Are
15 you prepared at this time to present any further witnesses?

16 MR. PORTZ: Yes, Your Honor. Court's indulgence.

17 THE COURT: Okay.

18 MS. MERCER: Your Honor, the State calls Noemy, and
19 I can't pronounce her last name, but her testimony pertains to
20 -- Court's indulgence. Noemy, and it pertains to counts 37
21 through 43 of the Indictment in event number 8. Your Honor,
22 may I approach your clerk?

23 THE COURT: Yes.

24 THE MARSHAL: Step up here, please. Watch your step
25 there. Remain standing, face the clerk, and raise your right

1 hand.

2 NOEMY ELIZABETH MARROQUIN, STATE'S WITNESS, SWORN

3 THE CLERK: Thank you. Please be seated.

4 THE MARSHAL: Speak right into this mic.

5 THE WITNESS: Okay.

6 THE CLERK: And if you could please state your full
7 name, spelling of the first and last name for the record.

8 THE WITNESS: Noemy Elizabeth Marroquin.

9 THE COURT: Could you spell it?

10 THE WITNESS: N-o-e-m-y. Elizabeth,
11 E-l-i-z-a-b-e-t-h. Last name, M-a-r-r-o-q-u-i-n.

12 THE COURT: Your witness.

13 MS. MERCER: Thank you.

14 DIRECT EXAMINATION

15 BY MS. MERCER:

16 Q Ma'am, do you -- are you familiar with an individual
17 by the name of Jesus Lopez?

18 A Yes.

19 Q How do you know him?

20 A He was my boyfriend.

21 Q He was your boyfriend?

22 A No, we're married now.

23 Q Okay. How long have you known Mr. Lopez?

24 A About a couple of years now.

25 Q I want to direct your attention to November 17th of

1 2014. At that time, where was Mr. Lopez working?
2 A Wendy's.
3 Q Is that the Wendy's located at 990 North Nellis?
4 A Yes.
5 Q Is that here in Las Vegas, Clark County, Nevada?
6 A Yes.
7 Q On November 17th, what shift was he working?
8 A Graveyard.
9 Q Did you say graveyard?
10 A Yes.
11 Q When he was working at that Wendy's, did he drive
12 himself to and from work, or were you his ride?
13 A I was his ride.
14 Q Do you know about how long he worked at that
15 location?
16 A Probably about a year or so.
17 Q When did his employment stop after November 17th?
18 A Like a week after.
19 Q On November 17th of 2014, were you at Wendy's after
20 the -- they closed, waiting for Mr. Lopez to get off work?
21 A Yes.
22 Q Did you often wait inside of the business?
23 A Yes.
24 Q Where would you wait?
25 A In the lobby.

1 Q On November 17th, were you waiting in the lobby?

2 A Yes.

3 Q Where specifically in the lobby were you waiting for
4 him?

5 A On the side, kind of by the windows.

6 Q Where is that in relation to the main entrance to
7 the restaurant?

8 A Probably like down the left side. The entrance
9 would be on my right.

10 Q As you were sitting there waiting for him, what were
11 you doing?

12 A On my phone.

13 Q While you were on your phone, did something unusual
14 happen?

15 A Yes.

16 Q What happened?

17 A I was just on my phone, and then I had looked over
18 and a guy was coming at me, and he pulled me up to get out of
19 my seat.

20 Q Did you get a good look at that guy?

21 A He was covered in all black.

22 Q Did he have anything over his face?

23 A Yes.

24 Q What was covering his face?

25 A A bandana.

1 Q Do you remember what color bandana?
2 A Probably black.
3 Q Was he carrying anything in his hands?
4 A Yes.
5 Q What was he carrying in his hands?
6 A Like a metal.
7 Q What kind of metal?
8 A I don't know. I wasn't really trying to look at it.
9 Q Okay.
10 A It was just -- I seen when he was coming, he was
11 holding a metal in his hand.
12 Q Could you -- did you see enough of it to tell
13 whether or not it was a firearm?
14 A No.
15 Q Was it a darker colored metal or silver colored
16 metal?
17 A Dark.
18 Q About how tall was that gentleman?
19 A Like 5'7, 5'8.
20 Q How tall are you?
21 A I'm 5-feet.
22 Q You're 5-feet-tall?
23 A Um-hum.
24 Q Do you -- you said that he was wearing --
25 A All black. Black hoodie, black pants, black gloves.

1 Q Did you get a look at his shoes?

2 A Black shoes.

3 Q Would you describe his build as thin, medium, or
4 heavy?

5 A Thin.

6 Q Could you tell what race the individual was?

7 A Black.

8 Q I take it it was a male?

9 A Yes.

10 Q When he pulled you up, how did he pull you up?

11 A He pulled me up by the back of my sweater.

12 Q When he pulled you up, where did he take you?

13 A He took me walking towards the back to the kitchen.

14 Q Were you the only individual in the front of the
15 store at that point?

16 A Yes.

17 Q When he took you to the back towards the kitchen,
18 did he say anything to you?

19 A Just to get the fuck up, go to the back.

20 Q I'm sorry, what was the last part?

21 A To go to the back.

22 Q When you went to the back, where did he take you in
23 the back?

24 A Near a stove.

25 Q When he took you near the stove, is the stove close

1 to the manager's office?

2 A It's a distance.

3 Q About how far?

4 A Probably like -- like 15 feet.

5 Q Could you see into the manager's office?

6 A Yes.

7 Q Was the manager inside of the office?

8 A Yes.

9 Q Once you were standing in front of the stove, did
10 other employees join you there at that location?

11 A Yes.

12 Q And how did they end up next to you?

13 A He pulled everybody to get behind me.

14 Q The same person that --

15 A Yes, he --

16 Q -- grabbed you?

17 A He was holding me.

18 Q Was there another person with him?

19 A I didn't see them when it first happened, but then
20 two guys came in, running in.

21 Q At what point did you notice the two other
22 individuals running in?

23 A Like right after -- like, I turned around when I was
24 walking in. When I turned around, there was two guys coming
25 behind me.

1 Q Could you tell which direction they came from?

2 A Well, just the lobby. From the lobby.

3 Q Once the other employees were at the stove with you,
4 what commands, if any, did they give you?

5 A Just to shut up, and he went to the manager's
6 like --

7 Q When you say "he," which he?

8 A Like both of the other ones that came in, they were
9 already over there. And then after that, I don't know like
10 what they were saying, so everybody had to get on the floor
11 and look down on the floor.

12 Q Did one of the three individuals that was in your
13 store that night tell everybody to get on the ground?

14 A Yes.

15 Q When they told you to get on the ground, did they
16 tell you how to position yourself on the ground?

17 A Yeah.

18 Q What -- what did they tell you?

19 A Laying down on my stomach with my face down.

20 Q So, from that position, were you able to see much of
21 what was going on in the office?

22 A Just one time when I looked up.

23 Q What did you see when you looked up?

24 A One of the guys' eyes.

25 Q Okay. Could you hear their conversation that was

1 occurring in the manager's office?

2 A No, I was trying to just not listen to anything.

3 Q Could you tell whether any of them was armed with a
4 gun?

5 A Yes.

6 Q Which -- which one of the three individuals was
7 armed with a gun?

8 A Both that came in.

9 Q Both of the two people that came in after the first
10 person that pulled you into the kitchen?

11 A Yes.

12 Q In terms of height, were the two individuals that
13 joined the first guy taller --

14 A Yes.

15 Q -- the same height, or shorter?

16 A They were both taller.

17 Q With regards to the second person that came in,
18 about how tall was he?

19 A Like 5'10. Pretty tall.

20 Q How would you describe his build?

21 A Thin.

22 Q What about the third person?

23 A Like 5'10 as well, and he was just bigger; heavy.

24 Q Heavier build?

25 A Um-hum.

1 Q Could you tell whether they were both male or
2 female?

3 A Yes.

4 Q And the second one, male or female?

5 A Male.

6 Q Third one?

7 A Male.

8 Q Was there something that made you at some point
9 think that one of them might be female?

10 A Yes.

11 Q And what was that?

12 A When I made contact with the heavy built, he had
13 really fluttery eyelashes, so I assumed it looked like a girl.

14 Q When did you come into contact with that person?

15 A When I was on the floor and I looked up to see if
16 they were gone, and he was right in front of me.

17 Q Did you make eye contact with that person?

18 A Yes.

19 Q That person that had the long eyelashes -- well, the
20 two people that came in after the first person, how were they
21 dressed?

22 A All black.

23 Q So, all three of them were in all black?

24 A Yes.

25 Q Were all of their faces covered?

1 A Yes.

2 Q Were any of them wearing anything over their hands?

3 A Gloves. Black gloves.

4 Q When -- do you know whether they took money from the

5 safe?

6 A Yes.

7 Q And how do you know that?

8 A Because my head was up. When I made contact, the

9 money was falling out. There was --

10 Q Money -- I'm sorry?

11 A The money was falling out of their bag.

12 Q Okay, so they were carrying a bag with money in it?

13 A Um-hum.

14 Q Do you remember what that bag looked like?

15 A Black.

16 Q What kind of money was falling out of it?

17 A The coins.

18 Q Were the coins loose, or were they wrapped in

19 something?

20 A I'm not sure.

21 Q When you -- you indicated that when you looked up,

22 they were leaving?

23 A Um-hum.

24 THE COURT: Is that a yes, ma'am?

25 THE WITNESS: Yes.

1 THE COURT: You can't "um-hum," "mm-mm," because we
2 don't know what that means, okay?

3 THE WITNESS: Okay.

4 THE COURT: All right?

5 THE WITNESS: All right.

6 THE COURT: Okay.

7 BY MS. MERCER:

8 Q Did you actually see them leave?

9 A Yes.

10 Q Which door did they leave from?

11 A The back.

12 Q After they left, did anyone contact the police?

13 A Yes.

14 Q Who did?

15 A I did.

16 Q And did you get an opportunity to listen to that
17 call?

18 A Yes.

19 Q Was it a fair and accurate recording of your
20 conversation with the 911 operator?

21 A Yes.

22 Q Did you also get the chance to look at surveillance
23 video of the incident?

24 A Yes.

25 Q And did that video also fairly and accurately depict

1 what occurred on that day?

2 A Yes.

3 MS. MERCER: Your Honor, permission to publish a
4 portion of the video, as well as a portion of the 911?

5 THE COURT: What exhibit?

6 MS. MERCER: It's Exhibit 101 and 101A. 101 is the
7 envelope.

8 THE COURT: Okay. All right. Have the parties
9 received -- you've received this?

10 MR. TANASI: Yes, Your Honor.

11 THE COURT: Okay.

12 (Surveillance video is played)

13 (Stopped playing of surveillance video)

14 BY MS. MERCER:

15 Q Ma'am, does this appear to be the video of the
16 incident that took place on November 17th of 2014?

17 A Yes.

18 Q And now I'm going to publish a portion of your 911
19 call.

20 (911 call is played)

21 (Stopped playing of 911 call)

22 BY MS. MERCER:

23 Q Is that your voice, ma'am?

24 A Yes.

25 MS. MERCER: Your Honor, at this point, I would move

1 for the admission of 101 and 101A.

2 THE COURT: Any objection?

3 MR. TANASI: No objection, Your Honor.

4 MS. LOBO: No objection.

5 THE COURT: They'd be admitted.

6 (Exhibits 101 and 101A are admitted)

7 MS. MERCER: And permission to publish, Your Honor?

8 THE COURT: Yes.

9 MS. MERCER: We'll go ahead and start listening to
10 the rest of the 911 call at this point.

11 (911 call is played)

12 (Stopped playing of 911 call)

13 MS. MERCER: And now, ma'am, I'm going to play the
14 video surveillance.

15 THE WITNESS: Okay.

16 (Surveillance video is played)

17 (Stopped playing of surveillance video)

18 BY MS. MERCER:

19 Q Ma'am, I'm going to pause it right here. Did you
20 see the first individual that was in the bottom left screen?

21 A Yes.

22 Q Is that one of the two people that came in after the
23 first one, or is that the first one?

24 A No, that was one of the two people that came in.

25 Q And then, the gentleman that just walked in after

1 that, was he one of the first -- was he the first one, or was
2 he one of the second two?

3 A The second one.

4 (Surveillance video is played)

5 (Stopped playing of surveillance video)

6 BY MS. MERCER:

7 Q At that point, do they leave the store?

8 A Yes.

9 Q Now, in the 911 call, you indicated that the manager
10 had sustained an injury?

11 A Yes.

12 Q Did you see that injury?

13 A Yes.

14 Q Where was it?

15 A On his forehead. His head.

16 Q Before this incident, did you have the opportunity
17 to see the front door of the business?

18 A Yes.

19 Q And was there anything wrong with it?

20 A No.

21 Q Afterwards, did you see the front door?

22 A Yes.

23 Q And was there something different about it?

24 A No.

25 Q Okay. I'm going to publish State's 93. What door

1 is this?

2 MS. MERCER: Oh, can we -- sorry about that.

3 THE WITNESS: That's their back door.

4 BY MS. MERCER:

5 Q That's the back door?

6 A Yes.

7 Q And was that door broken like that before the
8 robbery?

9 A No.

10 Q You indicated that when they -- that they made you
11 stand by the stove?

12 A Um-hum. Yeah.

13 Q I'm publishing State's Exhibit 99. Can you see the
14 stove in this picture?

15 A Yeah, like right there.

16 Q Could you draw a line on it for me, please?

17 THE COURT: Just touch the screen.

18 BY MS. MERCER:

19 Q If you touch the screen.

20 A Oh.

21 Q Maybe push a little harder. Okay, thank you.

22 A Um-hum.

23 Q And publishing State's Exhibit 94, do you see it in
24 this picture as well?

25 A No.

1 Q That door that's closed in 93, is that the manager's
2 office?

3 A Yes.

4 Q Publishing State's Exhibit 8, do you see the little
5 bubble that says "990 North Nellis"?

6 A Yes.

7 Q That's the location of the Wendy's, correct?

8 A Yes.

9 Q So, the closest major cross-streets are Nellis and
10 Bonanza?

11 A Yes.

12 Q In the 911 call, you indicated that there were a
13 total of four employees there with you --

14 A Yes.

15 Q -- during the robbery?

16 A Yes.

17 Q One of them being the manager, correct?

18 A Yes.

19 MS. MERCER: I'll pass the witness, Your Honor.

20 THE COURT: Cross?

21 MR. TANASI: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. TANASI:

24 Q Good afternoon, ma'am. My name is Rich Tanasi. I
25 represent Mr. Hobson in this case. I have a couple questions

1 for you if that's okay.

2 A Yes.

3 Q Okay. Do you recall giving a statement to Detective
4 Matlock on the day of the robbery?

5 A Yes.

6 Q Okay. He asked you a bunch of questions about what
7 happened in that statement, right?

8 A Yes.

9 Q And you answered him, right?

10 A Yes.

11 Q And when you were giving, you know, those answers to
12 those questions, it was right around the time of the robbery
13 just occurring, correct?

14 A Yes.

15 Q Okay, so the events in your mind at the time that
16 you were giving those answers to Detective Matlock were
17 fresher than they are now, correct?

18 A Yes.

19 Q And at the time that you were giving that statement,
20 had you had an opportunity to speak with the State, Ms. Mercer
21 or Mr. Portz, at the time, again, that you were giving this
22 statement to Detective Matlock?

23 A Like the day of?

24 Q Correct.

25 A No.

1 Q No? Okay. And so, in that statement, would you
2 agree with me that you did reference that there was a big
3 female; one of the suspects was a big female?

4 A Yes.

5 Q Okay. You also said that you could tell that
6 because of her eyelashes, fair?

7 A Yes.

8 Q Okay. You were ordered -- if you remember, you were
9 ordered by someone to, come on, let's go, correct?

10 A Yes.

11 Q Okay. And that someone behind you, you described
12 them as big?

13 A The one that grabbed me?

14 Q Yeah, that said, come on, let's go.

15 A No, I don't remember saying he was big.

16 Q The person behind you, did you describe them as
17 having something big in their hands?

18 A Yes.

19 Q Okay. Big, and it was black, to your recollection?

20 A Yes.

21 Q Okay, it was long?

22 A Yes.

23 Q Okay, it was thick?

24 A Yes.

25 Q Correct? And it was a stick?

1 A It looked like a stick.

2 Q Okay, so the thing that was behind you, you believe
3 was a stick, correct?

4 A Yes.

5 Q Okay. And again, there's three total robbers or
6 suspects in the store, correct?

7 A Yes.

8 Q And one of those you believed was a female, correct?

9 A Yes.

10 Q Okay, thank you, ma'am.

11 MR. TANASI: Nothing further.

12 MS. LOBO: Nothing additional, Your Honor.

13 THE COURT: Any redirect?

14 MS. MERCER: Just a couple follow up.

15 REDIRECT EXAMINATION

16 BY MS. MERCER:

17 Q Ma'am, you had the opportunity to listen to your 911
18 with the rest of us, correct?

19 A Yes.

20 Q And you told the operator it was three men, correct?

21 A Yes.

22 Q When you met with Mr. Portz and I, we told you the
23 most important thing was to tell the truth, correct?

24 A Yes.

25 MS. MERCER: No further questions.

1 THE COURT: Any cross?

2 MR. TANASI: No, Your Honor. Thank you.

3 MS. LOBO: No, Your Honor.

4 THE COURT: Okay, okay. Ms. Marroquin?

5 THE WITNESS: Yes.

6 THE COURT: Ms. Marroquin, thank you for your
7 testimony. You can step down. You're excused, okay?

8 THE WITNESS: Thank you.

9 THE COURT: Call your next witness.

10 MR. PORTZ: Your Honor, the State calls Guy Brown.
11 And for the jurors' reference, we're going back to event
12 number 4 of 14, and this will relate to counts 16 through 21.

13 THE MARSHAL: Step up here. Step up here. Watch
14 your step right there.

15 THE WITNESS: Thank you.

16 THE COURT: Remain standing, face the clerk, raise
17 your right hand.

18 GUY BROWN, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated.

20 THE MARSHAL: Pull your chair up. Speak into that
21 microphone.

22 THE WITNESS: Thank you.

23 THE CLERK: Please state your full name, spelling of
24 the first and last name for the record.

25 THE WITNESS: G-u-y, Steven, B-r-o-w-n.

1 THE COURT: So, you pronounce it Guy Brown?

2 THE WITNESS: Guy -- yeah, Guy Brown.

3 THE COURT: Okay. Your witness.

4 MR. PORTZ: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. PORTZ:

7 Q Good afternoon, Mr. Brown. How are you currently
8 employed, sir?

9 A Through Pizza Hut.

10 Q And how long have you been working with Pizza Hut?

11 A Eight years.

12 Q What is your position right now with Pizza Hut?

13 A Driver.

14 Q And as a driver, one of your responsibilities is to
15 deliver pizzas to customers who place orders to your store?

16 A Absolutely.

17 Q Which store do you work at? Do you know the
18 address?

19 A Not the address, but it's Flamingo and Boulder.

20 Q Okay. Did you formerly work -- and I'm going to
21 direct your attention back to November of 2014. Did you work
22 at the Pizza Hut at 5105 East Sahara here in Clark County?

23 A Yes, I did.

24 Q Okay. And on November 3rd of 2014, were you working
25 on that evening?

1 A Yes, I was.

2 Q Now, I'm going to direct your attention to around
3 10:55 or so in the evening. Do you recall if you were out on
4 a delivery at some point around --

5 A I believe that would be the correct time. It was
6 getting close to closing and I was out on a delivery.

7 Q Okay, and what time does your store typically close?

8 A 11:00 o'clock Monday through Thursday. Friday is
9 12:00 -- on Friday and Saturday.

10 Q Okay. And when you come back from that delivery
11 that you're on, how do you enter the Pizza Hut store?

12 A Through the security door -- the driver security
13 door. There's a code we have to push -- enter to get into the
14 store.

15 Q Okay. I'm going to publish State's 53. It's going
16 to come up on your screen. Is that the Pizza Hut that you
17 worked at, sir?

18 A That I did work at, yes, correct.

19 Q Okay, and that's the one on Sahara we've been
20 talking about today?

21 A That's correct.

22 Q I'm going to publish State's 54. Can you see in
23 this image -- is this the interior of your store?

24 A Yes, it is, and there's -- to the right, my right --
25 I don't know what it would be if you're looking at it, is our

1 door that drivers come through, and this is the front entrance
2 to the left.

3 Q Okay. Do me a favor. If you touch that screen, it
4 will actually mark it, so why don't you draw an X through the
5 door that the drivers enter? Okay. So, for the record,
6 you've indicated that door that's on the right of this
7 exhibit?

8 A Yes, sir.

9 Q Now, can the public access that, or do you have to
10 enter a code or something?

11 A You have to enter a code to get through that door.

12 Q Okay. Now, about what time do you believe you got
13 back to the Pizza Hut that night, November 3rd?

14 A That would be a rough estimate, but I know it was on
15 one of my last one or two deliveries. I might have had
16 another delivery after that, but this incident occurred and it
17 -- you know, we didn't do anything after that.

18 Q Okay. It was around closing time, you said?

19 A Yes, sir.

20 Q So, near 11:00, you got back --

21 A Yes, sir.

22 Q -- is that fair to say? All right. Can you tell us
23 what happened when you entered through that driver's door
24 there?

25 A Right below where this fire extinguisher is is a

1 trash and our safe. And trash was just everywhere, and I'm
2 going, what's going on? And over here, out of the view of --
3 after I walk in, there's a -- the -- our desk and everything
4 on the inside, not where the public can enter. There is my
5 boss on the ground, and I look over, and he's like this,
6 holding his head.

7 Q Okay.

8 A And then I looked up and seen a gentleman walking
9 towards me about where the cash register is on the other side
10 of this wall here where I put this X.

11 Q Okay. Let me put a new picture up for you, okay?

12 A Okay.

13 Q Publishing what's been admitted as State's 56, do we
14 see --

15 A Ah, there's --

16 Q -- the trash that you're referencing in this case?

17 A That's the trash I was talking about, correct.

18 Q Okay. And where -- can you see where your manager
19 was lying on the floor in this --

20 A He's -- where this trash can is, if he was to walk
21 like towards me --

22 Q Uh-huh.

23 A -- he'd be where I am.

24 Q Okay, so about from where the picture is taken; is
25 that fair to say?

1 A Yeah.

2 Q Okay.

3 A Yeah. Yes.

4 Q And what's your manager's name, sir?

5 A Trevor.

6 Q Do you know his last name? Does Faraone sound

7 correct?

8 A You know what, yeah. Sorry.

9 Q That's okay.

10 A Yeah, if you say so.

11 Q Well, I'm just asking you. If you don't know, it's

12 okay.

13 A Well, I -- yeah, I -- I would -- I honestly don't

14 know his last name, I'm sorry, but I do know it's -- Trevor is

15 his first name.

16 Q Okay. Did you see any of the other employees there

17 that night?

18 A Thomas. I can't name the girls by name. I don't

19 have a --

20 Q Let me ask you this. Is Thomas's last name Bagwell?

21 A Yes, it is.

22 Q Okay. Did you know or ever work with a woman named

23 Ashley Carmichael?

24 A Yes, I have. She was our manager.

25 Q Okay. Was --

1 A Assistant.

2 Q Was Ashley Carmichael there that night?

3 A Yes, she was.

4 Q Okay. Where was Ashley and where was Thomas?

5 A Thomas was laying over by the fryer, I believe,

6 where our fryer is. We can't see it in this picture. And I

7 didn't notice Thomas for a while. Ashley was laying down on

8 the floor where you go towards the back, and my boss Trevor

9 was parallel to that.

10 Q Okay. So, you walk in, and all your coworkers and

11 your manager are laying on the floor; is that correct?

12 A Right.

13 Q Okay. Now, is there anyone else inside the room

14 when you walk in?

15 A Yes. There was a black gentleman, and he was

16 walking towards me with like a -- some sort of knife, but it

17 was not an illegal knife, so to speak; it was a legal knife.

18 And he was walking towards me and I kind of resisted, you

19 know? I mean, I can -- not bragging or anything, but I can

20 handle myself, and I'm -- I've disarmed people with knives

21 before. And I was going to attempt that, and then I looked

22 over to my peripheral vision, and then I saw a man with a gun.

23 Q Did that make you change your mind?

24 A Oh, absolutely.

25 Q Fair enough. So, the man with the knife, how was he

1 holding the knife as he approached you?

2 A Like this, and this is the blade up here.

3 Q Okay. For the record, you gave approximately a,
4 what, four to five-inch blade?

5 A Yeah, yeah. It was a legal knife, in my opinion.

6 Q And you're -- you're indicating he raised his hand
7 sort of as if he were pointing that towards you?

8 A Yeah, he come at me, showing me the -- brandishing
9 the knife like I would just, you know, yield to that, you
10 know? And --

11 Q Compared to the man with the gun, was there a height
12 difference between the man with the knife and the man with the
13 gun?

14 A I believe there was, yes. The man with the gun
15 seemed to be a little bigger statue (sic).

16 Q Okay.

17 A Little taller, anyway. They were both skinny
18 gentlemen.

19 Q Okay. So, both skinny, but the man with the gun was
20 taller?

21 A I believe so. Yes, sir.

22 Q Could you tell what race either of the individuals
23 were?

24 A I think they were African American.

25 Q Okay. What sort of clothing was the man with the

1 knife wearing?

2 A Dark clothing is all I can really -- I can't nail it
3 down. I'm sorry.

4 Q That's okay. Do you recall if he had anything over
5 his face?

6 A I don't reckon. No, there was no hoodie or
7 anything. There was no mask. They were pretty brazen about
8 it.

9 Q Okay. Do you recall if they had anything on their
10 hands?

11 A I didn't recognize any gloves. They were pretty
12 brazen about it.

13 Q Okay. Fair to say that this was a pretty quick
14 encounter between you and these gentlemen?

15 A Yeah, and the reason why my boss told me afterwards
16 is that they had been there a minute or two and they were
17 gathering everybody's cell phones, and they told him, hey, we
18 have a driver out. And I don't know if they took that to
19 heart or anything, because the next thing I know, I walked in
20 on it. And my boss said they were busy gathering all the cell
21 phones, and that he -- when I walked in, they just totally --
22 their demeanor changed, and they just wanted to know where the
23 quickest exit, not before they took my Bluetooth.

24 Q Okay, so you're jumping ahead a little bit.

25 A I'm sorry.

1 Q Were you caught off guard when you came in and saw
2 someone with a knife and all your employees --

3 A Yeah, I was definitely flabbergasted.

4 Q Okay. This person with the knife, did he actually
5 physically touch you in any way?

6 A He tried to push me to the ground a little bit, you
7 know, but I was resisting it. I mean --

8 Q Did you ever go to the ground?

9 A Yeah, once I saw that gun. And then my boss yells
10 out, we're being robbed, get on the ground.

11 Q Okay. Does the man with the knife say anything at
12 all to you?

13 A You know, sir, I don't think I could recall
14 anything.

15 Q Okay. And how about the gentleman with the gun; do
16 you recall him saying anything?

17 A He did say he will shoot.

18 Q Okay. Now, you said that someone took something
19 from you. Can you describe how that took place?

20 A Yeah. I was on the ground, and the gentleman that
21 had the gun had the clear bag of money, I saw the money in the
22 bag, and he's holding it in one hand with the gun in the
23 other, and he said, where's the money? And I just tapped my
24 back pocket, and they shuffled through my pocket and grabbed
25 the money, put it in the bag. And as he's looking at me,

1 staring at me, he goes, oh, I'll take that Bluetooth, too.
2 And I kind of thought, well, that Bluetooth's connected to a
3 phone, kind of a little -- you know?

4 Q Sure. How much money was in your pocket that they
5 took?

6 A You know, I don't think it was over \$100.

7 Q Okay.

8 A You know, maybe 60, or 70, or 50, somewhere in that
9 vicinity.

10 Q After taking the Bluetooth and your money, what did
11 these two robbers do?

12 A They immediately forgot taking everybody's cell
13 phone and wanted to get out of there, because I -- in my
14 opinion, I spooked them.

15 Q Okay.

16 A I come out of nowhere.

17 Q And did they ask anything with regards to an exit?

18 A They yelled, where is the exit? And we told them
19 several times, pointing to the back, to the back. They didn't
20 click, you know? They were still amped up, in my opinion, and
21 just didn't hear what we were telling them.

22 Q That bag that they put your money and the Bluetooth
23 in, what kind of bag did it look to be?

24 A It was one of our -- it looked like maybe one of our
25 trash bags; a clear trash bag. One of the smaller ones for

1 the little -- maybe like he has, a little trash can.

2 Q And did these two men ultimately leave your store?

3 A Yes, they did.

4 Q Which door did they exit?

5 A The rear.

6 Q Okay.

7 A Where we told them the rear exit was, and it's into
8 an alleyway.

9 Q All right, and I'm going to publish a couple photos
10 for you real quick. Publishing State's 60. Is that a picture
11 of the back exit door --

12 A Yes, sir, it is.

13 Q -- from the outside of the store?

14 A Yes, sir.

15 Q Okay. And publishing State's 61, is that a picture
16 of the alleyway that you referenced?

17 A Yes, it is.

18 Q And on the far left of this exhibit, is that the
19 door that goes into your store?

20 A It looks like it, but I don't see that -- the air
21 vent on top. It could -- yeah, it probably is. I would say
22 yes.

23 Q And do vehicles or cars have access to this
24 alleyway, sir?

25 A Absolutely, from both ends.

1 MR. PORTZ: The last thing I'm going to do is ask if
2 we could please switch over to the video. I'm going to show
3 you a still from the surveillance from that night and ask you
4 to identify yourself.

5 THE COURT: Right here.

6 THE WITNESS: Oh.

7 THE COURT: You'll see it.

8 THE WITNESS: Sorry.

9 THE COURT: It will come up on that screen. Did
10 something come up?

11 THE WITNESS: Yeah, that's -- that's definitely me.
12 Very handsome young fellow there.

13 BY MR. PORTZ:

14 Q And that's the driver's door that you were entering
15 through, sir?

16 A Yes, sir.

17 Q Okay, we're going to play just a couple seconds of
18 this video for you.

19 MR. PORTZ: And I apologize, this has already been
20 admitted as State's 64A -- 64 and 64A.

21 (Surveillance video is played)

22 THE WITNESS: That's when I got -- that's it right
23 there.

24 (Stopped playing of surveillance video)

25 MR. PORTZ: All right.

1 BY MR. PORTZ:

2 Q So, sir, at that point, did you see the knife that
3 you were referencing, the --

4 A Saw the knife, and then I -- to my right when I
5 walked in, right over here, when he took me down -- the knife
6 took me down, that's when -- that's the only reason why I went
7 down, because I saw the gun, and you can't beat a gun.

8 Q Mr. Brown, thank you very much.

9 MR. PORTZ: I have no further questions at this
10 point. I'll pass, Your Honor.

11 THE COURT: Cross?

12 MR. TANASI: Yes, Your Honor. Thank you.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. TANASI:

16 Q Good afternoon, Mr. Brown. My name's Rich Tanasi.
17 I represent Mr. Hobson in this case. Got a few questions for
18 you on cross; is that okay?

19 A Yes, sir.

20 Q All right, sir, thank you. Do you recall filling
21 out -- or actually, being questioned by Detective Weirauch the
22 night of the incident?

23 A I'm not sure if that was the detective's name, but I
24 do remember being questioned and I believe recorded at the
25 time.

1 Q Okay. And your testimony at that time, it was fresh
2 in your mind as to what just happened, the events in that
3 case?

4 A Yes.

5 Q Okay. Would you agree with me that the events at
6 that point were fresher in your mind than they are as you sit
7 here today?

8 A That would be fair to say.

9 Q Okay. Do you recall telling the detective that you
10 saw a clear bag; a plastic bag?

11 A Yes, I did.

12 Q Okay. Do you also recall telling the detectives
13 that one of the folks that robbed you was 5'5?

14 A I'm sorry, 5'5?

15 Q 5-foot-5.

16 A He was short statued (phonetic). I'm 6-foot --

17 Q Sure.

18 A -- and he was -- he was definitely here on me.

19 Q Okay. And do you recall describing them, the two
20 folks, as little dishwashers?

21 A I'm -- as dishwashers? I'm not sure if I understand
22 that phrase.

23 Q Okay. So, again, do you recall the question of,
24 "Okay, was he the same size as you?" Do you recall that
25 question of Detective Weirauch?

1 A Yeah.

2 Q Okay. And then do you recall giving the answer, "He
3 -- yeah, they were both little dishwashers"?

4 A Well, I'm a dishwasher, so I might have used
5 something like that. I don't know.

6 Q Sure. Point is to indicate they were both about the
7 same size; is that fair?

8 A Oh, the two gentlemen?

9 Q Yeah.

10 A Yeah, they were pretty much the same statue (sic),
11 you know, give or take inches.

12 Q Okay. Did you have an opportunity to meet with the
13 State before your testimony today; meet with Ms. Mercer or Mr.
14 Portz?

15 A I believe I met with one of the people, I guess.

16 Q Sure. And did you go over what your testimony would
17 be here today?

18 A Yes, I did.

19 Q Okay, sir.

20 MR. TANASI: Thank you. Nothing further.

21 THE COURT: Ms. Lobo?

22 MS. LOBO: No cross.

23 THE COURT: No questions? Mr. Maningo?

24 MR. MANINGO: No, Your Honor. Thank you.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION

1
2 BY MR. PORTZ:

3 Q Mr. Brown, were you ever standing next to the guy
4 with the gun?

5 A No, not next to him, but in front of him.

6 Q And when you saw him, were you already going to the
7 ground?

8 A Yes, yes.

9 Q Thank you, sir.

10 A Yes. Once I saw that gun, and then my boss yells
11 out, get on the ground, we're being robbed, that was all she
12 wrote.

13 Q Thank you, Mr. Brown.

14 MR. PORTZ: I'll pass, Your Honor.

15 THE COURT: Mr. Tanasi?

16 MR. TANASI: Nothing further. Thank you, Your
17 Honor.

18 THE COURT: Nothing further? Okay, okay. So, Mr.
19 Brown, thank you for your testimony. You can step down.
20 You're excused, okay?

21 THE WITNESS: Thank you, sir.

22 THE COURT: Call your next witness.

23 MR. PORTZ: Your Honor, the State's next witness is
24 Jeronimo Urbina. And for the ladies and gentlemen of the
25 jury, this will be event number 6 of 14, referencing counts 26

1 to 32.

2 THE MARSHAL: Follow me. Step up here. Watch your
3 step. Remain standing, face the clerk, raise your right hand.

4 JERONIMO URBINA RUIZ, STATE'S WITNESS, SWORN

5 THE CLERK: Okay, thank you. Please be seated.

6 THE WITNESS: Sorry.

7 THE MARSHAL: Pull up your chair. Speak into that
8 microphone.

9 THE WITNESS: Yeah.

10 THE CLERK: If you could please state your full
11 name, spelling of the first and last name for the record.

12 THE WITNESS: Jeronimo Urbina Ruiz.

13 J-e-r-o-n-i-m-o, U-r-b-i-n-a, R-u-i-z.

14 THE COURT: Your witness.

15 MR. PORTZ: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. PORTZ:

18 Q Mr. Urbina, how are you currently employed, sir?

19 A What was that? I'm sorry.

20 Q How are you currently employed? What do you do for
21 a living?

22 A Right now, I'm working at financial services places
23 (sic).

24 Q Okay. And before that, who did you work for?

25 A I worked for Popeye's.

1 Q And do you recall the address of the particular
2 Popeye's you worked for?

3 A Yeah.

4 Q What was that address, sir?

5 A Oh, the address? I don't --

6 Q Or general cross-streets?

7 A Lamb and Bonanza.

8 Q Okay. I'm going to publish what's been admitted as
9 State's Exhibit 6. I'm going to zoom-in. See that little
10 bubble that says "4505 East Bonanza"?

11 A Yes, sir.

12 Q And then here's Bonanza and Lamb. Is that address,
13 4505 East Bonanza, is that the location of your -- your store
14 that you worked at?

15 A Yes, sir.

16 Q Okay. And that's here in Las Vegas, Clark County,
17 Nevada, correct?

18 A Yes, um-hum.

19 THE COURT: Is that a yes, sir?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay.

22 BY MR. PORTZ:

23 Q And we have to say yes or no for the record. We
24 can't say "uh-huh" or "mm-mm," okay?

25 A Yes, sir.

1 Q I'm going to also publish what's been admitted as
2 State's 72. Do you recognize that, sir?

3 A Yes, sir.

4 Q How do you recognize that?

5 A I would go and work there every day.

6 Q Were you working there on the evening of November
7 15th, 2014?

8 A Yes, sir.

9 Q And do you recall what your shift was on that
10 evening?

11 A Yes, I was assistant manager from 4:00 P.M. to 11:00
12 P.M.

13 Q And as assistant manager, are some of your duties to
14 oversee the rest of your employees?

15 A Yeah. My duties were to just keep control of the
16 store, make sure everything's in order, and make sure my
17 employees feel comfortable.

18 Q And do you recall what employees were working with
19 you on that evening?

20 A I remember it was Juan, he was the cook, and there
21 was three other girls, Johana, Angelica, and Karina.

22 Q Okay. I'm going to ask you if you recognize Juan's
23 last name to be Taingo, T-a-i-n-g-o?

24 A Yes, sir.

25 Q And Angelica's last name as Ornelas, O-r-n-e-l-a-s?

1 A Yes, sir.

2 Q For Johana, her last name being Vasquez,
3 V-a-s-q-u-e-z?

4 A Yes, sir.

5 Q And Karina's last name being Aguilar, A-g-u-i-l-a-r?

6 A Yes, sir.

7 Q Now, can you tell the ladies and gentlemen of the
8 jury what time your store closes?

9 A So, the front lobby, it closes at 10:00 P.M., and
10 then our drive-thru would close at 11:00 P.M.

11 Q When you close the front lobby at 10:00 P.M. before
12 the drive-thru was actually closed at 11:00, what are your
13 employees doing at that point in time?

14 A So, once we close the lobby, the front lobby, there
15 would be two employees that would just clean up the lobby.
16 So, they would wipe -- they would sweep the floors, clean the
17 tables, and just start putting all the chairs up and cleaning
18 up the lobby.

19 Q Okay. And what about the cash registers that are in
20 the lobby? What happens with the money inside those?

21 A I'm in charge to take them to the back and begin
22 counting them.

23 Q And when you finish counting that money from those
24 registers, what do you do with them?

25 A I store them in a safe.

1 Q And do you do the same process at 11:00 P.M. when
2 you close the cash register at the drive-thru?

3 A Yes, sir.

4 Q Who has access to the safe once you've put the money
5 into it?

6 A Just me.

7 Q Now, on the evening of November 15th of 2014, did
8 something happen in your store that caused you to call the
9 police?

10 A Yes, sir.

11 Q What happened?

12 A There was a robbery.

13 Q Okay. Do you recall about what time this robbery
14 took place?

15 A I remember it was maybe like around 10:45 P.M.

16 Q So, your drive-thru is still open, but the main
17 lobby is closed at this point?

18 A The main lobby is closed, yes.

19 Q What happens at about 10:45 P.M. that makes you
20 realize something's wrong?

21 A So, I was already counting both of the cash
22 registers, and I had two employees in the front, they were
23 both cleaning up, and I just heard a shatter. My first
24 instinct, I thought, oh, they broke a glass, or they broke --
25 they broke a pot or something. Well, that wasn't the case. I

1 turned around and I just see two girls running towards me, and
2 they kept yelling, he's got a gun, he's got a gun, and then
3 that's when I noticed that there was someone inside the store.

4 Q And where were you when this happened?

5 A I was in the back of the store.

6 Q And you said it was two of your female employees
7 shouting, he's got a gun; is that correct?

8 A Yes, sir.

9 Q Did you later come to find out what that shattering
10 noise was?

11 A Yeah, it was the front door.

12 Q I'm going to publish State's 75. Do you recognize
13 what you see here, sir?

14 A Yeah, that was one of our front doors.

15 Q And is this how it appeared after the robbery took
16 place?

17 A Yes, sir.

18 Q And obviously, what's wrong with this front door?

19 A The glass is shattered. It's broken.

20 Q Now, you said you saw someone following one of your
21 employees with a gun; is that correct?

22 A Yes, sir.

23 Q Okay. Can you describe what -- could you see what
24 race this person was?

25 A Not at the moment.

1 Q Okay. Could you later determine what his race was?
2 A Yeah, later on, I could.
3 Q And what was it?
4 A He was African American.
5 Q And it was a male?
6 A Yes, it was a male.
7 Q Was this person tall, short? How would you describe
8 them?
9 A He was way taller than me. I'm about 5'7. He was
10 maybe like 6'1, 6'2.
11 Q Okay, and how about a build? Was he heavysset,
12 skinny, medium build?
13 A He was pretty -- he was buff. I could say he was
14 buff.
15 Q Do you recall what this person with the gun was
16 wearing?
17 A I just remember he had like a black and gray hoodie
18 on, he had a black bandana over his face, I remember he had
19 red and black gloves, and he had some combat boots on.
20 Q What color were the combat boots?
21 A Also black.
22 Q Okay. What was this person -- well, the person with
23 the gun, this taller person, could you see what type of gun he
24 was holding?
25 A Yes. Right away, once he -- once he came towards

1 me, I could tell it was a revolver.

2 Q And is he saying anything at this point in time
3 while he's chasing your female employees?

4 A I recall he kept saying, where's the fucking safe,
5 where's the fucking safe?

6 Q Did he ever threaten to do anything with the firearm
7 he had in his hands?

8 A No, he never threatened to shoot or anything.

9 Q So, do you go out into your store from the manager's
10 office, or where do you go next?

11 A Yeah, we ran towards -- well, two -- I grabbed two
12 of my female employees, which was Karina and Johana, and we
13 both ran to the front of the store. And that's where he
14 grabbed one of the girls, and that's where we stopped. And he
15 demanded us to take him to the safe, and I proceeded with
16 that.

17 Q Okay. So, if I got this right, you, Karina, and
18 Johana ran to the front of the store?

19 A Yes, sir.

20 Q Do you recall or did you see where Juan and Angelica
21 went?

22 A At that point, I knew they were trying -- they tried
23 to run through the back door --

24 Q Okay.

25 A -- but they weren't able to get out.

1 Q I'm going to publish State's 74. Is that a
2 photograph of the back door to your store?

3 A Yes, sir.

4 Q Have you gone in and out of that back door when you
5 were working there?

6 A That's -- that back door was really -- it wasn't for
7 -- it was just for when merchandise came, so we weren't
8 allowed to go out that door.

9 Q Is that the back door that you saw Juan and Angelica
10 at?

11 A Yes, sir.

12 Q Okay, but have you actually exited that back door
13 before?

14 A I have, and it's -- it's easy access. It's just
15 pushing, and it opens right away.

16 Q So, it doesn't get stuck on anything if someone's
17 trying to open it?

18 A No, sir.

19 Q But you saw Juan and Angelica trying to open it and
20 they were having a hard time?

21 A They were having a hard time. Yes, sir.

22 Q Now, after you said that -- you said they caught you
23 at the front of the store; is that correct?

24 A Yes, sir.

25 Q Okay. How many people caught you at the front of

1 the store? Was it one, or two, or three suspects?

2 A Just one person.

3 Q Just one person? At any time, did you ever see more
4 than one person inside the store, other than your employees?

5 A No, it was just that one person.

6 Q When he stops you at the front of the store, where
7 does he take you?

8 A He asked me to take him to the safe.

9 Q Okay, and do you take him?

10 A Yeah. So then at that point, he pointed the gun
11 towards one of my employees, which I believe was Johana. It
12 was like on -- it was straight gunpoint to her head. So, at
13 that point, I guided him to the -- towards the back where the
14 safe was at.

15 Q I'm going to publish now State's 78. Do you
16 recognize what's in State's 78?

17 A Yes, sir. That's the safe from the back of the
18 store.

19 Q Okay. So, this is where you were when the robbery
20 initiated; is that correct?

21 A Yes, sir.

22 Q When this gunman brought you and those two girls
23 back to the safe, did you ever again see Juan or Angelica?

24 A At -- no. I wasn't so sure where -- how -- where
25 they were at at that point of the store -- at the --

1 MR. PORTZ: Thank you.

2 MS. MERCER: It's showing up on this monitor, but
3 it's not up on the TV.

4 BY MR. PORTZ:

5 Q Is it on your monitor, ma'am?

6 THE CLERK: There it is.

7 THE WITNESS: There's no pictures, it's just --

8 BY MR. PORTZ:

9 Q But do you see a white screen?

10 THE COURT: Do -- yeah.

11 THE WITNESS: Yeah.

12 MR. PORTZ: Okay.

13 THE COURT: Okay.

14 MR. PORTZ: We're going to publish --

15 THE COURT: Is it up?

16 MR. PORTZ: Thank you. A portion of -- so, this is
17 a portion of the video ending in 0400 on channel 1.

18 (Exhibit 52A is played)

19 BY MR. PORTZ:

20 Q Okay, ma'am, do you recognize what's depicted in
21 this portion of the video so far?

22 A That's the front of the store.

23 Q Okay, and that's got your address there and
24 everything?

25 A 6130, yes.

1 Q And it's from the same date and time as the -- or
2 same date, at least, at this point as the robbery itself?

3 A Yes.

4 Q Okay, thank you.

5 (Stopped playing of Exhibit 52A)

6 MR. PORTZ: I'm going to now publish channel 2.

7 (Exhibit 52A is played)

8 BY MR. PORTZ:

9 Q Okay, ma'am, do you recognize what's depicted in the
10 channel 2 video?

11 A That's still the front of the store.

12 Q Is this from a different angle?

13 A Different angle.

14 (Stopped playing of Exhibit 52A)

15 (Exhibit 52A is played)

16 BY MR. PORTZ:

17 Q And then channel 3, do you recognize what's depicted
18 in this image?

19 A Yep, that's me in the background, and that's the
20 front of the store.

21 Q Okay, so you recognize yourself in this image?

22 A Yes.

23 Q And there's a surveillance camera videotaping this
24 area of your store at the time of the robbery?

25 A Yes, it is.

1 Q And again, same November 1st timestamp, 2014?

2 A That's correct.

3 Q All right.

4 (Stopped playing of Exhibit 52A)

5 MR. PORTZ: And then, finally, I'm going to play a
6 portion of a 911 call for you from State's 52A.

7 (Exhibit 52A is played)

8 (Stopped playing of Exhibit 52A)

9 MR. PORTZ: Okay.

10 BY MR. PORTZ:

11 Q Ma'am, first of all, that timestamp, did you
12 recognize that as the date and time of the robbery, or shortly
13 after the robbery occurred?

14 A I believe so.

15 Q Okay. And then the man's voice that we hear there
16 identifying himself as Daniel, do you recognize that as Daniel
17 Heffner's voice?

18 A That is Daniel.

19 Q That is Daniel?

20 A Um-hum.

21 MR. PORTZ: Your Honor, at this point, the State
22 moves to admit 52A.

23 THE COURT: Any objection?

24 MR. TANASI: No objection, Your Honor.

25 MR. MANINGO: No objection, Your Honor.

1 THE COURT: All right, it'd be admitted.

2 (Exhibit 52A is admitted)

3 MR. PORTZ: And that would include State's Proposed
4 Exhibit 52 as well, the case for the CD. Thank you. Ma'am,
5 we're going to start with channel 1.

6 THE COURT: Are you moving to admit 52 and 52A?
7 Because you moved 52A. Are you moving 52 in as well?

8 MR. PORTZ: I'd move to admit 52 as well.

9 THE COURT: Any objection?

10 MR. MANINGO: No objection.

11 MR. TANASI: No objection, Your Honor.

12 THE COURT: Okay, it will be admitted.

13 (Exhibit 52 is admitted)

14 BY MR. PORTZ:

15 Q We're going to play the 911 call first, okay?

16 (Exhibit 52A is played)

17 (Stopped playing of Exhibit 52A)

18 BY MR. PORTZ:

19 Q Okay, and that was Daniel's voice the entire time?

20 A That was.

21 Q Okay. Working in the pizza business, delivery
22 business, I'm guessing that there are delivery drivers that
23 come back and forth?

24 A There are.

25 Q But at the time that this robbery occurred, how many

1 people, not including the guy with the gun and the guy with
2 the knife, how many Pizza Hut employees were --

3 A Just us three.

4 Q Okay. Now I want to take a moment to review the
5 surveillance video. I'm going to start with channel 1.

6 MR. PORTZ: And if I could ask Ms. Mercer to forward
7 to about six minutes and 30 seconds in.

8 (Exhibit 52A is played)

9 BY MR. PORTZ:

10 Q Ma'am, could we see you in the reflection of the
11 window?

12 A You could.

13 Q Okay, and now you went to the back?

14 (Stopped playing of Exhibit 52A)

15 THE WITNESS: I went to the back.

16 MR. PORTZ: All right. Now, for the record, we've
17 stopped -- I'm sorry, I have to stand here because I can't
18 see. Six minutes and 49 seconds.

19 BY MR. PORTZ:

20 Q Do you recall this individual entering your store
21 while you were in the back?

22 A Once he got into the back, yes.

23 Q Okay. And just for the record, are his gloves gray?

24 A It looks like it.

25 Q And maybe some red in there?

1 A Maybe.

2 Q The man is wearing something covering his face,
3 correct?

4 A Correct.

5 Q Okay. And then, what's on top of his head?

6 A A hat.

7 Q And this would be the gunman?

8 A That is the gunman.

9 Q Okay.

10 A That was the first one that came around the corner.

11 Q Okay.

12 A That's the tall gentleman.

13 MR. PORTZ: We can continue playing.

14 (Exhibit 52A is played)

15 (Stopped playing of Exhibit 52A)

16 BY MR. PORTZ:

17 Q That man jumped over the counter, correct, the
18 gunman?

19 A That's correct.

20 Q Okay. Now, this second individual who enters, this
21 would be the person with the knife; is that correct?

22 A I want to say.

23 Q All right. Do you recall if a second person came
24 back there and that person had a knife?

25 A Actually, in all honesty, the one that had me, that

1 grabbed me by the wrist was the one with the -- he had gray
2 gloves with a yellow cuff --

3 Q Okay.

4 A -- and he was the one with the knife. I could be
5 mistaken on that.

6 Q Okay, that's fine.

7 A And that right there could be the gun gentleman, but
8 I put my head down and, you know, put my hands up like that.

9 Q Okay, so your focus is on what?

10 A I was trying not to look at them.

11 Q Okay, fair enough. We'll continue playing.

12 (Exhibit 52A is played)

13 BY MR. PORTZ:

14 Q Can you describe what door that man -- that second
15 person walked through?

16 A That's the door to get through to the back.

17 Q Does the general public have access, or should have
18 access to that door?

19 A No, they shouldn't be back there at all, but you
20 just push it to open it.

21 (Stopped playing of Exhibit 52A)

22 MR. PORTZ: I'm going to pause again at seven
23 minutes and six seconds in.

24 BY MR. PORTZ:

25 Q Now, you said there was a third suspect that you

1 never saw, only saw later on video; is that correct?

2 A Not until we saw it on video.

3 Q Okay, so you never encountered this individual --

4 A Never.

5 Q -- that we see on screen at 7:30 -- or --

6 A Never.

7 MS. MERCER: 7:06.

8 MR. PORTZ: 7:06, thank you. All right, we'll
9 continue playing.

10 (Exhibit 52A is played)

11 BY MR. PORTZ:

12 Q Do we see one of the suspects in the reflection of
13 the window?

14 A That's correct.

15 (Stopped playing of Exhibit 52A)

16 BY MR. PORTZ:

17 Q Okay, is that the second -- the second suspect
18 walking out with the register itself?

19 A I want to say that would be the one with the gun. I
20 want to say.

21 Q Okay, I don't want to know whether or not this was
22 the person with the gun, just was that the register that you
23 said was taken?

24 A That was the register that was taken.

25 Q Okay. All right, we'll continue playing.

1 (Exhibit 52A is played)

2 (Stopped playing of Exhibit 52A)

3 BY MR. PORTZ:

4 Q Okay, and did we just see the last --

5 A That was the last.

6 Q Okay, so that was the last person to leave; that was
7 also the first person to walk in, right, with the hat -- the
8 ball cap on?

9 A That's correct.

10 Q Okay. Now we're going to switch to channel 2.
11 We'll let this one play through, but this is pretty much the
12 same angle, or a slightly different angle of the front door?

13 A Um-hum. That's correct.

14 Q Okay.

15 MR. PORTZ: If Ms. Mercer could fast-forward to
16 6:20.

17 (Exhibit 52A is played)

18 BY MR. PORTZ:

19 Q And ma'am, is that the computer screen monitor at
20 the bottom of the front door now?

21 A That is, and the keyboard.

22 Q And the keyboard?

23 A Um-hum.

24 Q Now, the gentleman who returns in all black, is he
25 wearing red gloves with white lettering on it?

1 A It looks like it. I can't tell. It was hard for me
2 to tell.

3 Q That's okay.

4 (Stopped playing of Exhibit 52A)

5 MR. PORTZ: We've got one more angle. We're going
6 to play channel 3, and if we could start at five minutes and
7 55 seconds.

8 (Exhibit 52A is played)

9 BY MR. PORTZ:

10 Q Again, ma'am, that's you at the front cash register?

11 A Correct.

12 (Stopped playing of Exhibit 52A)

13 MR. PORTZ: Okay. For the record, we've paused at
14 six minutes and 40 into the video.

15 BY MR. PORTZ:

16 Q Does this gentleman appear to have red gloves with
17 white lettering on it?

18 MR. TANASI: Objection, Your Honor. The video
19 speaks for itself. It's now a piece of evidence. The jury
20 can decide and determine what color his gloves are.

21 THE COURT: Sustained.

22 MR. PORTZ: Continue playing, please.

23 (Exhibit 52A is played)

24 (Stopped playing of Exhibit 52A)

25 MR. PORTZ: Okay.

1 BY MR. PORTZ:

2 Q Ma'am, do you recall after the fact finding anything
3 on your counter top?

4 A There was a footprint, a clear footprint.

5 MR. PORTZ: Thank you. We can continue playing.

6 (Exhibit 52A is played)

7 (Stopped playing of Exhibit 52A)

8 MR. PORTZ: Okay.

9 BY MR. PORTZ:

10 Q Ma'am, we've paused, for the record, at seven
11 minutes and 46 seconds, and I just want to ask if that
12 refreshes your memory as to which of the two men were carrying
13 a firearm on the night in question?

14 A Honestly, the gentleman that had the yellow on his
15 glove was the one that had me. He had the knife.

16 Q Okay.

17 A The other gentleman I didn't really look at very
18 closely, but he had the gun.

19 Q Okay.

20 A Maybe he handed him the gun, I'm not positive, but
21 he started out with the knife, and he's the one that had me by
22 the wrist.

23 Q Okay, fair enough.

24 MR. PORTZ: We'll continue playing.

25 (Exhibit 52A is played)

1 (Stopped playing of Exhibit 52A)

2 MR. PORTZ: And we can stop playing. Could we
3 switch back to the Elmo, please?

4 BY MR. PORTZ:

5 Q Ma'am, after that 911 call made by Daniel, did the
6 police ultimately show up?

7 A They did.

8 Q Okay. And did they take pictures of your store;
9 specifically, some of the pictures I've been showing you
10 today?

11 A They did.

12 Q Did they also take pictures of those footprints on
13 the counter top you referenced?

14 A They did.

15 Q Okay. I'm going to show you State's 44. Is that
16 one of the footprints you recall seeing on the counter top?

17 A I believe so, yes.

18 Q State's 46, is that one of the footprints that you
19 recall seeing on the counter top?

20 A I believe so, yes.

21 Q State's 45, is that another footprint that you
22 recall seeing on the counter top?

23 A I believe so.

24 Q And State's 47, is that another print you recall
25 seeing on the counter top?

1 A I believe so.

2 Q In addition to taking photographs, did you see the
3 police do anything else with those footprints from the
4 counter?

5 A In all honesty, the police had all of us step
6 outside, and then they taped off the area and they went in.
7 They were in there for a few hours while we all sat out and
8 waited outside.

9 MR. PORTZ: Court's indulgence. Oh.

10 BY MR. PORTZ:

11 Q Ma'am, you did reference that there was
12 approximately \$160 in the register that was taken; is that
13 correct?

14 A Approximately, yes.

15 Q Okay. Does your company keep track through the
16 cashier or the cash register the money coming in and coming
17 out for a tally at the end of the night?

18 A Yes.

19 Q Okay. I'm going to publish right now what's been
20 admitted by stipulation as State's 51. Is this a receipt from
21 November 1st, 2014 that would be from your Pizza Hut?

22 A Bring it down a little bit so I can see the date.

23 Q I'll zoom-in for you.

24 A There you go. That is from the date.

25 Q Okay. And if you look at that actual count line

1 there, is that \$160.27?

2 A That's correct.

3 Q Okay. Ms. Poole, thank you very much.

4 MR. PORTZ: At this point, I have no further
5 questions and I'll pass the witness, Your Honor.

6 THE COURT: Cross?

7 MR. TANASI: Your Honor, may we approach?

8 THE COURT: Yes.

9 (Off-record bench conference)

10 THE COURT: Okay, any cross?

11 MR. MANINGO: Court's indulgence, Your Honor. No
12 questions. Thank you, Your Honor.

13 THE COURT: None at all from either side?

14 MR. TANASI: That's correct, Your Honor.

15 MR. MANINGO: Correct.

16 THE COURT: Okay. Okay. All right, so let's see.
17 All right, Ms. Poole, thank you so much for your testimony.
18 You can step down. You're excused, okay?

19 THE WITNESS: Thank you.

20 THE COURT: All right. State, want to call your
21 next witness?

22 MS. MERCER: Your Honor, the State's next witness is
23 Trevor Faraone, and his testimony pertains to event number 4,
24 counts 16 through 21.

25 THE COURT: What's that? I didn't hear you.

1 MS. MERCER: It's Trevor Faraone, and his testimony
2 pertains to counts 16 through 21, and it's the fourth event in
3 the series.

4 THE COURT: Okay.

5 MS. MERCER: May I approach your clerk, Your Honor?

6 THE COURT: Yes.

7 THE MARSHAL: Step up here, please. Watch your step
8 there. Remain standing, face the clerk, raise your right
9 hand.

10 TREVOR FARAONE, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated.

12 THE MARSHAL: Just have a seat and pull it up.
13 Speak into that microphone.

14 THE CLERK: Please state your full name, spelling
15 your first and last name for the record.

16 THE WITNESS: Trevor Faraone. First name,
17 T-r-e-v-o-r. Last name, F-a-r-a-o-n-e.

18 THE COURT: Your --

19 MS. MERCER: May I -- may I proceed, Your Honor?

20 THE COURT: Ms. Mercer.

21 MS. MERCER: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MERCER:

24 Q Sir, where are you currently employed?

25 A Pizza Hut.

1 Q Which location?

2 A The one on 5105 East Sahara Avenue in Las Vegas.

3 Q Mr. Faraone, publishing on the overhead State's
4 Exhibit 4, do you see the bubble that says 510 East -- 5105
5 East Sahara?

6 A Yes.

7 Q Is that the address of your store?

8 A Yes.

9 Q So, the closest major cross-street is South Nellis?

10 A Correct.

11 Q How long have you been working at that store?

12 A For the better part of two-and-a-half years.

13 Q Did you take a break at some point in your
14 employment from that store?

15 A For one year, I oversaw three stores, and one of
16 them being that location.

17 Q I want to direct your attention to November 3rd of
18 2014. Were you working that night?

19 A Yes.

20 Q What shift were you working?

21 A I was working closing shift, counting inventory.

22 Q What time does your store close?

23 A It closes at 11:00 P.M. on that night.

24 Q Were there any other employees present in the store
25 with you just prior to 11:00 P.M.?

- 1 A There were three other employees on shift.
- 2 Q Who were they?
- 3 A Thomas Bagwell, Ashley Charmichael, and Guy Brown.
- 4 Q What was Guy Brown's -- what was his job duty that
5 night?
- 6 A He's a delivery driver.
- 7 Q Around 11:00 P.M., was he out making a delivery?
- 8 A That's correct.
- 9 Q While Guy Brown was out making a delivery, did
10 something unusual happen at your store?
- 11 A Yeah, two individuals came into the store to rob us.
- 12 Q Before I get much further, I'm going to publish a
13 few exhibits on the overhead. Publishing State's Exhibit 53
14 on the overhead, is this a picture of the outside of your
15 store?
- 16 A Yes.
- 17 Q Publishing State's Exhibit 54, what are we looking
18 at here?
- 19 A This is the lobby and the front counter.
- 20 Q And how would you get to the back of your store?
- 21 A They jumped the counter.
- 22 Q Okay. Is this right here -- does that lead to the
23 back of the store?
- 24 A Yes.
- 25 Q Where you were doing inventory?

1 A Correct.

2 Q Publishing State's Exhibit 55, what is this a
3 picture of?

4 A That's the other view of the same lobby.

5 Q And what is this right here?

6 A That is a heating cabinet we keep carry-out orders
7 in.

8 Q Publishing State's Exhibit 56, what is this a
9 picture of?

10 A This is from the other side of the counter after --
11 you can see everything's turned about.

12 Q Okay. With regards to this stuff strewn about on
13 the floor down here, was that like that prior to the robbery?

14 A No, that happened during the robbery.

15 Q Is there an alleyway behind your store?

16 A Yes.

17 Q Publishing State's Exhibit 61, is that the alleyway?

18 A Yes, that's the back of the building.

19 Q And publishing State's Exhibit 60, is this your back
20 door to that alleyway?

21 A Yes.

22 Q Okay. You indicated that just prior to 11:00, Guy
23 was out making a delivery, and two men entered your store and
24 robbed it?

25 A Correct.

1 Q Where were -- you've indicated that you were in the
2 back doing inventory, correct?

3 A Yes.

4 Q What were Ashley and Thomas Bagwell doing?

5 A Ashley was working on closing down the make table
6 where they make pizzas for the night, and Thomas was working
7 on closing down the rest of the restaurant.

8 Q Like the front area?

9 A Yeah, still behind the counter, but yes.

10 Q At what point was it that you realized your store
11 was being robbed?

12 A I was at the freezer counting items and I heard
13 commotion, and looked up and saw somebody run to the back, and
14 then heard shortly thereafter, get down, get down.

15 Q Did you see the person that was saying, get down,
16 get down?

17 A Not right away.

18 Q Okay. At some point, did he approach you?

19 A Yes.

20 Q When he approached you, do you remember anything
21 about what he was wearing?

22 A He was in all black head to toe, had a bandana over
23 his face; that was red though.

24 Q That was red?

25 A Yes.

1 Q Do you recall -- you said from head to toe. Do you
2 mean his shoes as well?

3 A Yes.

4 Q The black -- or the red bandana that he was wearing,
5 what part of his face was it concealing?

6 A I didn't get a great look, but it was concealing
7 around his nose and his mouth. I could see his eyes.

8 Q Okay, so from the nose down?

9 A Um-hum.

10 Q How tall are you, Mr. Faraone?

11 A 6'3, 6'4.

12 Q The individual that approached you wearing all black
13 and a red bandana, how tall was he?

14 A He was probably my -- my height. He was fairly
15 tall.

16 Q Was he armed with anything?

17 A He had a gun.

18 Q Do you know the difference between a revolver and a
19 semi-automatic firearm?

20 A Yes.

21 Q Which one of those was it?

22 A I wasn't able to see past the barrel of the weapon,
23 so I don't know for sure.

24 Q Do you remember what color the weapon was?

25 A It was -- it was dark gray, gunmetal.

1 Q When that individual approached you with a gun, what
2 happened at that point?

3 A He asked who was in charge; I identified myself. He
4 asked where the safe was, I instructed him it was in the front
5 of the store, and then he asked me to go to the front of the
6 store.

7 Q At that point, could you see -- you indicated that
8 there were two suspects, correct?

9 A Yeah.

10 Q At what point was it that you became aware of the
11 presence of the second suspect?

12 A It was around that time, because Ashley and Thomas
13 were now on the ground, and he was instructing the other
14 person to watch them when he took me up to the front.

15 Q When you say "he," you're referring to the man with
16 the gun?

17 A Correct.

18 Q So, he was giving instructions to the other
19 individual that was with Ashley and Thomas?

20 A Correct.

21 Q Do you recall what specific instructions he was
22 giving them?

23 A No.

24 Q Where were Ashley and Thomas at that point?

25 A They were located on the ground back by our coolers

1 in the very back.

2 Q After you had identified yourself as the manager to
3 the individual with the gun, did he direct you to go
4 someplace?

5 A Yeah, he asked me to go to the safe to get the money
6 out of the safe.

7 Q Did you in fact go to the safe to get the money out?

8 A Yes.

9 Q Once you were at the safe, what happened?

10 A I told him that it has a time lock and I can't get
11 into it. He didn't believe me. He hit me in the head with
12 the gun. I had to actually go to the safe through the codes
13 to show where it says "time lock" before he believed me. Then
14 he told me to get the money out of the tills, and so that's
15 when I got the money out of the tills.

16 Q Okay. You said that he hit you in the head with the
17 gun?

18 A Yes.

19 Q Do you remember where he struck you in the head?

20 A At that time, it was on the -- my right side of the
21 head in between like my temple and my ear.

22 Q You said "that time." Did he strike you more than
23 one time?

24 A He struck me once when I was getting up to go to the
25 safe, and then he struck me again when I couldn't get the

1 tills open fast enough.

2 Q The first time that he struck you when he was
3 getting you up to go to the safe, was there a conversation
4 occurring between the two of you?

5 A Yeah. He told me, you need to get up, you need to
6 open the safe. Not verbatim, but the gist. When I said,
7 okay, and I started to arise, it wasn't fast enough for him,
8 so.

9 Q That time when he struck you, where did he strike
10 you?

11 A That was in the back of the head, the very top back.

12 Q Your store has two registers, correct?

13 A Yes.

14 Q Which register did you first go to?

15 A The one that you see there next to the sign that
16 says "Wing Street," that's also directly above the safe.

17 Q Do you mind circling it for the jurors, please? Is
18 there a -- are you familiar with the surveillance equipment in
19 your store?

20 A Yes.

21 Q Is there a camera that captures that area?

22 A Yes. It captures both tills and the front door, and
23 it captures the back door.

24 Q When you went to that first register -- is the safe
25 underneath that first register?

1 A Yes.

2 Q You indicated that you initially told him the safe
3 was time locked?

4 A Yes.

5 Q And he didn't believe you?

6 A Correct.

7 Q And then you said something about, I had to show him
8 the time lock?

9 A Yeah, so I had to redo everything into the safe so
10 the safe gives the message, "No access, time lock."

11 Q Okay, so the message actually scrolls across the
12 safe?

13 A Correct.

14 Q And then at that point, you opened that cash
15 register?

16 A Yes.

17 Q How much money was in that cash register?

18 A I don't recall specifically that one. I just recall
19 that between the two of them, there was about \$200.

20 Q While you were standing at that cash register, did
21 you see the person with the gun doing anything with your trash
22 that's depicted in State's Exhibit 56?

23 A Yeah, that's where he dumped out the trash that was
24 in -- there was a trash liner in the can. He dumped all the
25 trash out and removed the liner, and told me to put all the

1 money into the liner.

2 Q Did you in fact place the money into the liner?

3 A Yes.

4 Q After you emptied that cash register for him, did
5 you then move to the one on the left?

6 A Correct.

7 Q And you said that between the two of them, there was
8 approximately how much money?

9 A \$200.

10 Q Once you were done emptying the cash registers, what
11 happened?

12 A He told me to go to the back with Ashley and Thomas
13 and get down again, and then he told the second individual to
14 go through our pockets to look for phones or money.

15 Q So, he was giving instructions to the person that
16 had not pistol-whipped you, the second individual that you saw
17 enter the store?

18 A Correct.

19 Q The second -- the second individual, did you spend
20 much time with him?

21 A No.

22 Q Do you remember anything about what he was wearing?

23 A He was also in all dark -- I don't know if it was
24 all black, but he was darkly dressed.

25 Q Were -- did you spend enough time with him to be

1 able to tell whether the first suspect and the second suspect
2 had the same builds or different builds?

3 A The second suspect was shorter. He was not as tall.
4 Much shorter.

5 Q Could you tell whether the second suspect had a
6 weapon on him?

7 A I could not tell.

8 Q As you, Ashley, and Thomas were in the back, after
9 the individual with the gun instructed the other individual to
10 go through everybody's pockets, did you see them remove any
11 objects from any of your employees?

12 A Yeah, he removed a phone from Ashley Charmichael, an
13 iPhone. That's the only one I --

14 Q I'm sorry, did you say an iPhone?

15 A Yes.

16 Q Do you recall what color?

17 A It was a -- no, actually, I don't recall the color.
18 I just remember she got a gold one replaced, but I don't know
19 what the original was.

20 Q Okay. So, they took an iPhone, and then what else?

21 A I -- I didn't see anything else. That's the only
22 thing I could see in my field of vision.

23 Q At some point while all of this was going on, did
24 Guy Brown return to the store?

25 A Yes. Guy Brown finished his delivery and came in

1 through the driver door.

2 Q Can you see the driver door in this exhibit, which
3 is 54?

4 A Yes.

5 Q Could you place an X on it for the jurors? Is that
6 door open to the public?

7 A It has a key code. You need a code to access that
8 door.

9 Q Once Guy Brown came in, what happened?

10 A When I saw him come in, I told him to get down, we
11 were being robbed. The individual with the gun turned around
12 and said, get down, and pulled Guy down Brown -- pulled down
13 Guy Brown.

14 Q Once he pulled Guy Brown down, did you see them
15 doing anything else?

16 A Yeah, he quickly took money that Guy had in his
17 hand, and he took the Bluetooth that Guy had on his ear.

18 Q What happened at that point?

19 A He asked us if there was a back way out of the
20 restaurant, and we told him there was a back door. He asked
21 where it was, and we told him to go down the hall between the
22 two coolers, and then they left.

23 Q Did they head in the direction of the back door?

24 A Yes, they left through the back door.

25 Q Have you had the opportunity to review surveillance

1 footage from the robbery that happened in your store on
2 November 3rd of 2014?

3 A Yes.

4 Q And did that surveillance footage fairly and
5 accurately depict those events?

6 A Yes.

7 MS. MERCER: Your Honor, at this point, I'm going to
8 request permission to publish portions of State's Exhibit 64.

9 THE COURT: Yes. Is it up on your screens?

10 MS. MERCER: No, it's not coming up, Your Honor.

11 MS. LOBO: No, Your Honor.

12 MR. PORTZ: It's on our screens, but not the TV,
13 Your Honor. It's on our screen.

14 THE COURT: Okay.

15 MS. MERCER: Yeah, it's on -- well, now it's not.

16 THE COURT: Is it now? Is it up on the screen?

17 MS. MERCER: It's not, Your Honor.

18 THE COURT: Still not? I wonder why mine's coming
19 up.

20 THE CLERK: I don't know.

21 THE COURT: Is it on your screen? It wasn't?

22 THE CLERK: It's not. I'm toggling between the two,
23 and that's what I've been doing this whole time.

24 THE WITNESS: It's the overhead.

25 THE COURT: No, that's something else. Now?

1 MS. MERCER: No.

2 MR. TANASI: No, Your Honor.

3 MR. MANINGO: No.

4 THE CLERK: Is it on yours?

5 MS. MERCER: No, it's not on ours.

6 THE COURT: Try again. No.

7 THE CLERK: It's not, and I have no idea why not.

8 On mine, it's on.

9 THE COURT: Just close it -- close it down.

10 UNKNOWN SPEAKER: There we go.

11 MS. MERCER: Oh, there we go.

12 THE COURT: There it went. Do you have it now?

13 MS. MERCER: Yes, Your Honor.

14 THE COURT: Is it up in front of you, sir?

15 THE WITNESS: No.

16 THE COURT: Is it on your screens? It was.

17 THE CLERK: It's on.

18 MR. TANASI: Yes, Your Honor.

19 THE COURT: It's not on yours?

20 THE WITNESS: I don't see it, no.

21 MR. PORTZ: It's on --

22 BY MS. MERCER:

23 Q Is it on yours, Trevor?

24 THE COURT: Okay. Do you see the -- like some kind
25 of front door there, Mr. --

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 (Exhibit 64A is played)

4 (Stopped playing of Exhibit 64A)

5 MS. MERCER: Okay. And for the record, I have that
6 paused at 13:40.

7 BY MS. MERCER:

8 Q Is that the -- is that one of the individuals that
9 robbed your store that night?

10 A Yes.

11 (Exhibit 64A is played)

12 (Stopped playing of Exhibit 64A)

13 BY MS. MERCER:

14 Q And is that the two individuals that entered your
15 store that night and robbed it?

16 A Yes.

17 MS. MERCER: Your Honor, at this point, I would move
18 for the admission of State's -- State's Proposed Exhibit 64
19 and request permission to publish.

20 THE COURT: 34?

21 MS. MERCER: 64 and 64A.

22 THE COURT: Oh, 64 and 64A?

23 MS. MERCER: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. TANASI: No, Your Honor.

1 MR. MANINGO: No, Your Honor.

2 THE COURT: All right, they'll be admitted.

3 (Exhibits 64 and 64A are admitted)

4 BY MS. MERCER:

5 Q And Trevor, before I continue playing the
6 surveillance video of this incident, you actually spoke with
7 the 911 operator that night, correct?

8 A Correct.

9 Q Did another employee initially place the call?

10 A Yes.

11 Q Who was that?

12 A I believe it was Guy.

13 (Exhibit 64A is played)

14 BY MS. MERCER:

15 Q Trevor, do you know whether it was the first
16 individual or the second individual that approached you with a
17 gun?

18 A I think it was the first individual.

19 MS. MERCER: And for the record, Your Honor, the
20 State's publishing channel 1 -- the channel 1 file on that
21 disk.

22 BY MS. MERCER:

23 Q And is that you being brought up there by the first
24 suspect with the gun?

25 A Correct.

1 Q Did you see him moving that liner around?

2 A Yeah.

3 Q Was that when he emptied the trash can?

4 A Yes.

5 (Stopped playing of Exhibit 64A)

6 MS. MERCER: And it's paused at 14:29.

7 BY MS. MERCER:

8 Q What just happened there?

9 A That's when he struck me when I couldn't open the
10 safe.

11 (Exhibit 64A is played)

12 (Stopped playing of Exhibit 64A)

13 MS. MERCER: And now it's paused at 15 minutes.

14 BY MS. MERCER:

15 Q What just happened there?

16 A That's when he struck me when I couldn't get the
17 till open fast enough.

18 (Exhibit 64A is played)

19 BY MS. MERCER:

20 Q And is that the second suspect now walking up?

21 A Yes.

22 (Stopped playing of Exhibit 64A)

23 MS. MERCER: And now we're publishing channel -- the
24 channel 2 video, skipping ahead to 13 minutes and 40 seconds.

25 (Exhibit 64A is played)

1 BY MS. MERCER:

2 Q That's you at the safe again, correct, just a
3 different angle?

4 A Correct.

5 THE COURT: Do you have this paused?

6 MS. MERCER: No, it's playing.

7 BY MS. MERCER:

8 Q And now, at 15:46, is that Guy Brown?

9 A Correct.

10 Q And was that one of the suspects pulling him down to
11 the ground?

12 A Correct.

13 (Stopped playing of Exhibit 64A)

14 BY MS. MERCER:

15 Q Did you know how much money was in Guy Brown's hand
16 that they took?

17 A He told me later it was about \$30.

18 Q And was that money from his last delivery?

19 A Yes.

20 MS. MERCER: Could we go back over to the -- please.
21 Thank you.

22 BY MS. MERCER:

23 Q Publishing State's Exhibit 57, is this a photograph
24 that was taken after police responded to your store after the
25 robbery?

1 A Yes.

2 Q And it shows your empty register?

3 A Correct.

4 Q Your store is located here in Las Vegas, Clark
5 County, Nevada, correct?

6 A Correct.

7 Q Could you tell what race the two individuals that
8 came into your store that day were?

9 A They appeared to be black.

10 Q Could you tell whether they were male or female?

11 A They were -- they were male.

12 MS. MERCER: Permission to publish the 911 now, Your
13 Honor?

14 THE COURT: Yes. This is the 64A; is that right?

15 MS. MERCER: Yes, Your Honor.

16 (Exhibit 64A is played)

17 (Stopped playing of Exhibit 64A)

18 BY MS. MERCER:

19 Q Trevor, did medical actually respond to your store?

20 A Yes.

21 Q And did they take a look at you?

22 A Yes.

23 Q Were you transported to the hospital?

24 A I was not.

25 Q Did the police take a photograph of you at this

1 incident?

2 A Yes.

3 Q Publishing State's Exhibit 62. Is this the
4 photograph that they took of you that night?

5 A One of several, yes.

6 MS. MERCER: I'll pass the witness, Your Honor.

7 THE COURT: Cross?

8 MR. TANASI: Briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. TANASI:

11 Q Good afternoon, sir. My name's Rich Tanasi. I
12 represent Mr. Hobson. I've got a few questions for you on
13 cross; is that okay?

14 A Okay.

15 Q All right. The last thing I think I heard you said,
16 and I just want to make sure I heard it correctly, was that
17 the police took several pictures of your injuries, correct?

18 A I believe so, yes.

19 Q Okay. You didn't take any of those pictures, right?

20 A No.

21 Q The police came and took those pictures, fair?

22 A Yes.

23 Q Okay. Earlier, I think I had heard you testify that
24 you know the difference between a revolver and a
25 semi-automatic; is that fair?

1 A Yes.

2 Q Okay. Do you recall testifying before the grand
3 jury?

4 A No.

5 Q Do you recall testifying before the grand jury in
6 this case on January 22nd, 2015?

7 A Yes. I mean, I recall doing that, yes.

8 Q Okay. You told the grand jury at the time when
9 asked whether -- "Do you know the difference between a
10 semi-automatic and a revolver," you said, "I don't." Would
11 you disagree with that?

12 A I do -- that is a correct statement.

13 Q Thank you. Prior to today's testimony, did you have
14 a chance to meet with the prosecutors in this case, Ms. Mercer
15 and Mr. Portz?

16 A Yes.

17 Q Did you have a chance to go over your testimony and
18 what you were going to talk about here today?

19 A Just asked me the same questions they asked me right
20 now.

21 Q Okay. All right, thank you, sir.

22 MR. TANASI: Nothing further.

23 THE COURT: Ms. Lobo?

24 MS. LOBO: No cross.

25 THE COURT: What's that?

1 MS. LOBO: No cross, Your Honor.

2 THE COURT: Okay. Any redirect?

3 MS. MERCER: No, Your Honor.

4 THE COURT: Okay, all right. Is it Faraone?

5 THE WITNESS: Faraone.

6 THE COURT: Faraone? Mr. Faraone, thank you so much
7 for your testimony. You can step down. You're excused, okay?
8 Could the parties approach?

9 (Off-record bench conference)

10 THE COURT: All right, call your next witness.

11 MR. PORTZ: State's next witness is Guy Brown. And
12 for the jurors, this will also be from event number 4, counts
13 16 through 21. Court's indulgence.

14 (Pause in the proceedings)

15 THE COURT: All right. Ladies and gentlemen, we're
16 going to take our evening recess. Tomorrow, I have a pretty
17 good morning calendar, so I'm not going to get started until
18 1:00 o'clock tomorrow afternoon.

19 During this recess, ladies and gentlemen, you're
20 admonished not to converse amongst yourselves or with anyone
21 else on any subject connected with this trial, or read, watch,
22 or listen to any report or commentary on the trial by any
23 person connected with this case, or by any medium of
24 information, including, without limitation, newspapers,
25 television, the internet, or radio. You are further

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

4 For our evening recess, I'll expect you to be here
5 by 1:00 o'clock tomorrow. Please remember not to come into
6 the courtroom until my marshal contacts you, okay? All right.
7 Leave your notebooks on your chair and my marshal will pick
8 them up. We'll be at ease while the jury exits the courtroom.

9 (Outside the presence of the jury)

10 THE COURT: Okay, we're outside the presence of the
11 jury. Is there anything that needs to be put on the record at
12 this time by either party?

13 MR. TANASI: Quickly --

14 MS. MERCER: Your Honor, I forgot to move into
15 admission one of the video exhibits. It was Exhibit 36.

16 THE COURT: Exhibit what?

17 MS. MERCER: 36, which was played for the jurors.

18 THE CLERK: She moved 36A. She forgot to move 36.

19 MS. MERCER: It's the envelope that goes with the
20 disk.

21 THE COURT: Was that --

22 THE CLERK: It's marked individually.

23 THE COURT: Which one did you play that with?

24 MS. MERCER: It was with Darnell Butler.

25 THE COURT: I thought you did move it in.

1 MS. MERCER: I moved 36A, which is the actual disk
2 itself, but I forgot the envelope, which is 36.

3 THE COURT: Okay.

4 MS. MERCER: 36A, which is the disk --

5 THE COURT: I had asked about it, and they had no
6 objection to it. That's right. That's the one I re-asked.

7 MR. MANINGO: Which one is that, Your Honor?

8 THE COURT: 36 and 36A.

9 MR. MANINGO: Yeah.

10 THE COURT: Okay.

11 MR. MANINGO: Right.

12 THE COURT: All right, so there was -- their
13 response was that there was no objection.

14 MR. MANINGO: Correct.

15 THE COURT: Okay. All right. Okay, so --

16 THE COURT RECORDER: Off the record, or?

17 MR. TANASI: Actually, Judge --

18 THE COURT: No, we're still on the record.

19 MR. TANASI: Sorry.

20 THE COURT: Okay.

21 MR. TANASI: Your Honor, just one request for my
22 client. From what I understand, if we're starting at 1:00
23 o'clock tomorrow --

24 THE COURT: Uh-huh.

25 MR. TANASI: -- he's been transported pretty early,

1 and then sitting I think just in a cell --

2 THE COURT: Um-hum.

3 MR. TANASI: -- on a concrete floor for that entire
4 time. And so, given the 1:00 o'clock start, I don't know if
5 there's any way to just transport him later in the day.

6 THE COURT: That's up to the transport. I don't
7 know how they do -- or what they do with their -- for their
8 purposes of getting them ready.

9 MR. TANASI: Okay.

10 THE COURT: I leave that up to the jail. The jail,
11 basically, they know we're being transported by -- they need
12 to be here by 1:00 o'clock. I'm sure that they're probably
13 going to feed him, and then I don't know what time they --
14 because they dress them out, I think they dress them out
15 early, but I leave that up to the jail. I don't get involved
16 with that, okay?

17 MR. TANASI: Understood, Judge.

18 THE COURT: Anything else?

19 MR. TANASI: That's it.

20 THE COURT: Okay, all right. We're off the record.

21 MS. MERCER: Thank you, Your Honor.

22 THE COURT: All right, you have a good evening.

23 I'll see you tomorrow at 1:00.

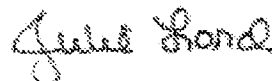
24 MR. PORTZ: You too, Judge.

25 (Court recessed at 4:45 P.M., until Tuesday,

26 May 10, 2016, at 1:12 P.M.)

CERTIFICATE

ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case to the best of my ability.



JULIE LORD, INDEPENDENT TRANSCRIBER


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|----------------------|---|------------------------|
| THE STATE OF NEVADA, | . | CASE NO. C-14-303022-1 |
| | . | CASE NO. C-14-303022-2 |
| Plaintiff, | . | |
| | . | DEPT. NO. XIX |
| vs. | . | |
| | . | TRANSCRIPT OF |
| TONY LEE HOBSON, | . | PROCEEDINGS |
| and BRANDON STARR, | . | |
| | . | |
| Defendants. | . | |
| | . | |

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

TUESDAY, MAY 10, 2016

APPEARANCES:

FOR THE STATE: ELIZABETH A. MERCER, ESQ.
KENNETH PORTZ, ESQ.
Deputy District Attorneys

FOR DEFENDANT HOBSON: RICHARD E. TANASI, ESQ.

FOR DEFENDANT STARR: LANCE A. MANINGO, ESQ.
ADRIAN LOBO, ESQ.

ALSO PRESENT:

MARIA PERALTA DE GOMEZ
Spanish Interpreter

COURT RECORDER:

CHRISTINE ERICKSON
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

01363

INDEXWITNESSES

| <u>NAME</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|---------------------------|---------------|--------------|-----------------|----------------|
| <u>STATE'S WITNESSES:</u> | | | | |
| Noemy Marroquin | 14 | 29 | 32 | -- |
| Guy Brown | 34 | 46 | 49 | -- |
| Jeronimo Urbina Ruiz | 50 | 75 | 76/79 | 77/-- |
| Karina Aguilar Rosales | 88 | -- | | |
| Juan Mendoza | 102 | -- | | |
| Jose Romero | 125 | -- | | |
| | * | * | * | * |

EXHIBITS

| <u>DESCRIPTION</u> | <u>ADMITTED</u> |
|---------------------------------|-----------------|
| <u>STATE'S EXHIBITS:</u> | |
| Exhibits 101 and 101A.. | 26 |
| Exhibit 286.. | 62 |
| Exhibit 82 and 82A. | 66 |
| Exhibit 92 and 92A. | 137 |

1 LAS VEGAS, NEVADA, TUESDAY, MAY 10, 2016, 1:12 P.M.

2 (Outside the presence of the jury)

3 THE COURT RECORDER: We're on.

4 THE COURT: We're on the record. Okay, this is the
5 case of C-303022, State of Nevada vs. Tony Hobson and Brandon
6 Starr. I'd like the record to reflect the presence of the
7 State, their counsel, and Ms. Lobo. Is Mr. -- I saw Mr.
8 Tanasi and Mr. Maningo earlier.

9 THE MARSHAL: They're in the back, Judge.

10 MS. LOBO: Mr. Maningo stepped in the back to go to
11 the restroom. I haven't seen --

12 MS. MERCER: He was here.

13 MS. LOBO: -- Mr. Tanasi just yet though.

14 THE COURT: All right. Well, we have some issues
15 with some jurors.

16 MS. LOBO: Okay. All right.

17 THE COURT: So, I wanted to put that on the record.

18 MS. LOBO: We can --

19 THE COURT: Okay.

20 MS. MERCER: Oh, there's Mr. Tanasi.

21 THE MARSHAL: They're all here, Your Honor, 14,
22 except for Ms. Sulerud, or --

23 THE COURT: Yeah.

24 MS. LOBO: Let me just step in the hall and grab --

25 THE MARSHAL: Juror number 13.

1 MS. LOBO: -- and see if Lance is back there.

2 MR. MANINGO: Sorry, Judge.

3 THE COURT: Okay.

4 MS. LOBO: Oh, there you are. Where'd you come
5 from? Oh, back there.

6 MR. MANINGO: Just right back in there.

7 MS. LOBO: Oh. Then we can start, Judge.

8 THE COURT: Okay. I'd like the record to reflect
9 the presence of the defendants, as well as Ms. Lobo, as well
10 as Mr. Tanasi.

11 During our evening recess, we had a number of issues
12 that came up. Specifically, Juror number 13 is Ms. Sulerud --
13 Swanson-Sulerud.

14 MS. LOBO: Um-hum.

15 THE COURT: Her husband had a fall and is -- and
16 cracked his head open, and he's at UMC. And so, she's not
17 here. Is that -- is she here?

18 THE MARSHAL: No, she's not here.

19 THE COURT: She's not here. Okay. And with respect
20 to Juror number 4, Ms. Addington, she indicated she was just
21 going to be late today, but she's here now.

22 Juror number 6, Mr. Kozlowski, he was in a car
23 accident last night and has asked for some time because he
24 needs to go to see the doctor. So, I wanted to bring him in
25 separate, and talk to him about that and see what his position

1 is.

2 But with regards to Ms. Sulerud, she -- she will not
3 come to court. She's with her husband in the hospital. So,
4 what's the parties -- do you want me to -- I have no other
5 information other than that she is in the hospital at UMC with
6 her husband and that she will not be here.

7 MS. MERCER: Your Honor, is she the one that
8 indicated that she has to care for her husband normally?

9 MR. TANASI: No, I think --

10 THE COURT: I'm not --

11 MR. TANASI: I think she was the --

12 THE COURT: She's the -- she's seated as -- like in
13 the middle of --

14 MS. MERCER: She's the one wearing the -- the --

15 THE MARSHAL: Yeah, she was [inaudible].

16 MR. TANASI: Was she in the back right corner --

17 MS. MERCER: Yeah.

18 MR. TANASI: -- Your Honor?

19 THE COURT: No, she's in the front row.

20 MR. TANASI: In the front row?

21 MS. MERCER: She's wearing the headphones.

22 THE MARSHAL: Right in the middle, Juror number 13.

23 MS. LOBO: Oh, okay, I remember who she is.

24 THE MARSHAL: Wearing the headphones.

25 MR. TANASI: Okay.

1 MS. LOBO: I mean --

2 THE COURT: I'm going to see. Let me look at my --

3 MS. MERCER: I'll submit it. I mean --

4 MS. LOBO: -- her husband's in the hospital.

5 MR. TANASI: Judge, I don't --

6 MS. LOBO: I don't have a problem.

7 MR. TANASI: I think it's giving them the time they
8 need.

9 MS. MERCER: Yeah.

10 MS. LOBO: Yeah.

11 THE COURT: Do you have any objection to me
12 releasing her?

13 MR. TANASI: No, Your Honor. They can have the
14 time.

15 MS. MERCER: No, Your Honor.

16 MS. LOBO: No.

17 THE COURT: Okay. All right. We'll notify her that
18 she can be excused and take care of her husband, okay? Send
19 her our condolences and hope for a speedy recovery, all right?
20 Okay.

21 So then, I'm going to call in Juror number 6 now,
22 Mr. Kozlowski, when you're ready. Tell me when you're ready.
23 Mr. Starr, I believe, was getting buttoned up there, okay?

24 MS. LOBO: Okay, we're ready.

25 THE COURT: You ready?

1 MS. LOBO: Yes.

2 THE COURT: Okay. Just bring in Juror number 6, Mr.
3 Kozlowski.

4 (Within the presence of Juror No. 6)

5 JUROR NO. 6: How are you, Judge?

6 THE COURT: Good. Mr. Kozlowski, you can stay right
7 there, okay?

8 JUROR NO. 6: Yeah.

9 THE COURT: I was informed that you were involved in
10 a traffic accident last night.

11 JUROR NO. 6: Yes, I was, sir.

12 THE COURT: Okay, is that what this is from?

13 JUROR NO. 6: That's part of it, yeah.

14 THE COURT: Okay. And did you go to the hospital
15 last night?

16 JUROR NO. 6: No, I did not last night. I only had
17 the facial abrasion last night; woke up with a hip problem and
18 whatever else. But all in all, I do feel fine, I just -- I
19 basically just need to know the start time so I can see a
20 doctor in the next 48 hours.

21 THE COURT: Yeah, I got you. Okay. Come on, come
22 on, Mr. --

23 MR. MANINGO: I'm sorry, Your Honor.

24 THE COURT: It's fine, it's fine.

25 JUROR NO. 6: That's -- I have a family friend who's

1 a doctor, and it doesn't have to be like a regulated
2 appointment. I can go literally any time, I just have to call
3 him and just show up, and he can be there as early as 8:30.

4 THE COURT: Okay, okay.

5 JUROR NO. 6: Yeah, it was --

6 THE COURT: All right, that's fine.

7 JUROR NO. 6: It was a rough night.

8 THE COURT: Let me talk it over with the parties,
9 and then we'll be back to you, okay?

10 JUROR NO. 6: Thank you, Your Honor.

11 THE COURT: All right. Okay. Oh, Mr. Kozlowski,
12 before you leave --

13 JUROR NO. 6: Yes, sir.

14 THE COURT: -- can you -- do you need to do it
15 within -- I mean, is it something that you could do --

16 JUROR NO. 6: This week --

17 THE COURT: Okay.

18 JUROR NO. 6: -- is all I ask.

19 THE COURT: Okay. So --

20 JUROR NO. 6: Yeah, but -- but --

21 THE COURT: All right. Let me talk to them, and
22 then we'll --

23 JUROR NO. 6: Yeah.

24 THE COURT: Okay.

25 JUROR NO. 6: Whatever you need, Your Honor. Thank

1 you. But honestly, Your Honor, I do feel fine otherwise, so.

2 THE COURT: Are you okay to sit the rest of the day
3 today?

4 JUROR NO. 6: Oh, yeah. I'm good to go.

5 THE COURT: Are you sure? Because you said it was a
6 hip issue.

7 JUROR NO. 6: Yeah, I mean, I was a baseball player;
8 I played a lot of sports. I can deal with some stuff, Your
9 Honor. I think we're good.

10 THE COURT: Okay. All right, let me talk to them
11 and see what we can do, okay?

12 JUROR NO. 6: All right, sounds good.

13 THE COURT: All right.

14 (Outside the presence of Juror No. 6)

15 THE COURT: All right, so let's go ahead and we'll
16 finish out this afternoon. And then tomorrow, I'm probably
17 not going to get started until at least 11:00, so we can see
18 whether or not he can go tomorrow morning and do that, and
19 then keep us apprised. Is there anything that you guys want
20 to add to this, or do you have any other thoughts?

21 MS. MERCER: We're flying through the witnesses
22 pretty quickly. We're ahead of where we thought we would be
23 at this point, so if you needed to start tomorrow at 1:00, I
24 think everyone would be fine with that as well. I mean, we
25 made it --

1 the gun, told you, "This is a stick-up, give me all the
2 money"?

3 A I'll tell you again, you just showed it to me, so I
4 guess.

5 Q Okay. Well, do you need to see it again?

6 A It don't matter if you -- like, what am I here for?
7 I really --

8 Q Because you're a witness in a robbery incident.

9 A I really don't get it. Like, I'm doing my own time.
10 I'm not going to help y'all do nothing.

11 THE COURT: Just answer the questions, Mr. Butler.

12 MS. MERCER: Thank you, sir. Okay.

13 BY MS. MERCER:

14 Q Do you recall writing for the police --

15 A No.

16 Q You don't recall?

17 A No.

18 Q Do you recall any of the statement?

19 A No.

20 MS. MERCER: Your Honor, at this point, I would move
21 to have this marked as an exhibit.

22 THE COURT: Okay.

23 MS. MERCER: Thank you. Permission to approach?

24 THE COURT: Yes.

25 BY MS. MERCER:

1 Q Sir, showing you what's now been marked as State's
2 Proposed Exhibit 285, that's your signature at the bottom,
3 correct, where it says "Darnell Butler"?

4 A It looks like it.

5 Q And there's no reason to doubt that's your
6 signature, correct?

7 A I doubt a lot of stuff, but okay, your point would
8 be?

9 Q This is your handwriting right here?

10 A Yep.

11 MS. MERCER: I would move for the admission of 285,
12 Your Honor.

13 MR. TANASI: No objection, Your Honor.

14 THE COURT: It'll be admitted. Oh, I'm sorry. Mr.
15 Maningo, I apologize. Ms. Lobo, Mr. Maningo?

16 MS. LOBO: Yes, Your Honor, no objection.

17 THE COURT: Okay, it'd be admitted.

18 (State's Exhibit 285 is admitted)

19 MR. MANINGO: Thank you, sir.

20 THE COURT: Okay.

21 MS. MERCER: Move to publish, Your Honor.

22 THE COURT: Yes.

23 MS. MERCER: Could you load that document for just a
24 second?

25 THE CLERK: Um-hum.

1 BY MS. MERCER:

2 Q And your statement says, "Two suspects walked in the
3 front door, and the first guy states, it's a stick-up, give me
4 all the money," correct?

5 A Yep.

6 Q You told them -- and then you wrote, "I told them,
7 please don't shoot, they can have the money," right?

8 A Yeah, I guess.

9 Q And then they followed you around the register and
10 made you open the register?

11 A Yep.

12 Q Okay. And then at the bottom, you described them,
13 and you say, "They both followed me around the register. They
14 both had on red bandanas over their face. The short guy with
15 the gun told me, don't do anything stupid," correct?

16 A It says it right there.

17 Q "I noticed they both had gloves," and then you wrote
18 in parentheses, "red," correct?

19 A Yep.

20 Q "Dark pants," correct?

21 A Yep.

22 Q "Just ran in and out really fast"?

23 A Yep.

24 Q "The second guy was adjusting his mask as he walked
25 in"?

1 A Yep.

2 MS. MERCER: And if we could go back to the video,
3 please.

4 (Exhibit 36A is played)

5 (Stopped playing of Exhibit 36A)

6 MS. MERCER: I'm going to pause it. This is 30
7 seconds into the second clip, which ends in 105.

8 BY MS. MERCER:

9 Q That's you opening the cash register, correct?

10 A I can't see nothing.

11 Q Your monitor's not on again?

12 THE COURT: It's not on again?

13 MS. LOBO: No.

14 MR. TANASI: It's not on again, Your Honor.

15 MS. LOBO: No.

16 THE COURT: Okay. All right, there you go. Can you
17 see it now, sir?

18 THE WITNESS: Um-hum.

19 THE COURT: Okay. Do you see it now, Mr. Maningo or
20 Mr. Tanasi?

21 MR. MANINGO: Yes, sir.

22 MR. TANASI: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. MERCER: Okay.

25 BY MS. MERCER:

1 Q And sir, that's you opening your cash register,
2 correct?

3 A Yep.

4 (Exhibit 36A is played)

5 (Stopped playing of Exhibit 36A)

6 BY MS. MERCER:

7 Q And at 46 seconds into that same video, they're
8 leaving, correct?

9 A Yep.

10 Q So, it happened quickly? Is that a yes?

11 A Yeah.

12 MS. MERCER: Now publishing the file ending in 100.

13 (Exhibit 36A is played)

14 BY MS. MERCER:

15 Q This is looking at your front door, correct?

16 A Yep.

17 (Stopped playing of Exhibit 36A)

18 MS. MERCER: And I've paused it at 15 seconds in.

19 BY MS. MERCER:

20 Q That's the first individual with the gun, correct?

21 A Yep.

22 Q And he's wearing a gray hoodie and red gloves with
23 white letters?

24 A Yep.

25 (Exhibit 36A is played)

1 (Stopped playing of Exhibit 36A)

2 BY MS. MERCER:

3 Q And that's the second individual coming in, correct?

4 A Yep.

5 Q And it's now at 18 seconds in, for the record. And
6 he's adjusting his bandana? Mr. Butler?

7 A Oh, yeah.

8 MS. MERCER: Publishing the file ending in 101.

9 (Exhibit 36A is played)

10 (Stopped playing of Exhibit 36A)

11 BY MS. MERCER:

12 Q That's the second individual again, correct?

13 A Yep.

14 Q And you can see that there's red and gray on his
15 gloves?

16 A Yeah.

17 Q And he's wearing a dark-colored hoodie?

18 A Yep.

19 Q And you can't see any hair sticking out from that
20 hoodie, correct?

21 A No.

22 (Exhibit 36A is played)

23 (Stopped playing of Exhibit 36A)

24 MS. MERCER: And the time on the video is now 40
25 seconds in, for the record.

1 BY MS. MERCER:

2 Q And they're both leaving, correct?

3 A Yep.

4 MS. MERCER: Publishing the file ending in 102.

5 (Exhibit 36A is played)

6 BY MS. MERCER:

7 Q This is above that door, the entrance, correct?

8 A Yeah.

9 Q Looking at your register?

10 A Yep.

11 Q What were you doing prior to those individuals
12 coming into the store?

13 A I think I was stocking and reloading the sandwich
14 rack.

15 Q And that's the first individual with the gun?

16 A Yep.

17 Q And you can see the gun in his right hand?

18 A Yep.

19 Q And that's the second individual, correct?

20

21 A Yep.

22 (Stopped playing of Exhibit 36A)

23 MS. MERCER: Publishing the last file on that disk,
24 103.

25 (Exhibit 36A is played)

1 (Stopped playing of Exhibit 36A)

2 MS. MERCER: I'm going to pause at the --

3 BY MS. MERCER:

4 Q This is the first individual in the gray hoodie,
5 correct, the first one inside?

6 A I guess, yeah.

7 Q The one that had the gun? And he appears to have on
8 light-colored shoes?

9 A That's what it looks like.

10 (Exhibit 36A is played)

11 BY MS. MERCER:

12 Q Is your store equipped with a silent alarm?

13 A No.

14 Q Okay.

15 A We got I guess like a little trigger in there you
16 got to push.

17 (Stopped playing of Exhibit 36A)

18 BY MS. MERCER:

19 Q Did you push that trigger?

20 A Yep.

21 Q Did the police respond?

22 A Yep.

23 Q Did you also call 911?

24 A Yep.

25 MS. MERCER: Your Honor, permission to publish -- or

1 actually, Court's indulgence. Permission to publish a portion
2 of that 911?

3 THE COURT: Which -- which exhibit is it?

4 MS. MERCER: It's on the same exhibit, Your Honor.

5 THE COURT: Okay, yes, go ahead.

6 (Exhibit 36A is played)

7 (Stopped playing of Exhibit 36A)

8 BY MS. MERCER:

9 Q That's you, correct?

10 A Yep.

11 MS. MERCER: I would request permission to publish
12 the entire --

13 THE COURT: Yes.

14 MS. MERCER: -- recording.

15 (Exhibit 36A is played)

16 (Stopped playing of Exhibit 36A)

17 BY MS. MERCER:

18 Q So, according to that call, you had less than \$50 in
19 your register that they were able to obtain?

20 A Yeah.

21 Q Do you recall whether the second person that entered
22 was armed with anything?

23 A Like I said, a knife.

24 Q Okay.

25 MS. MERCER: Court's indulgence.

1 BY MS. MERCER:

2 Q And Darnell, you've indicated that you are not here
3 to help the State with anything, correct?

4 A I didn't want to be here in the first place.

5 Q Okay, so that's a yes, correct?

6 A Take it as you will.

7 Q And you were convicted in 2015 for an attempt to
8 carry a concealed firearm, correct?

9 A What does that have to do with why I'm here?

10 Q Sir, if you could just answer the questions.

11 A Yeah.

12 Q And in 2009, you were convicted of attempt
13 possession of a firearm by an ex-felon, correct?

14 A Are we here -- am I on trial today?

15 Q Sir, could you please answer the question?

16 A I'm just saying though, like, you -- you keep asking
17 me about my record. If that was the case, you could have left
18 me in prison doing my time like I was doing already.

19 Q Sir, I'm going to ask you one more time, please
20 answer the question. In 2009, you were convicted of attempt
21 possession of a firearm by an ex-felon, correct?

22 A Yeah.

23 Q And in 2003, you were convicted of conspiracy to
24 commit robbery --

25 A You got mad.

1 Q -- correct?

2 A Yeah.

3 Q And each of those was here in the Eighth Judicial
4 District Court of Clark County, correct?

5 A I guess.

6 MS. MERCER: Court's indulgence. I'll pass the
7 witness, Your Honor.

8 THE COURT: Cross?

9 MR. TANASI: Briefly, Your Honor. I lost track of
10 Mr. Butler's statement. Do you have that up here still, or?

11 MS. MERCER: Which one? The handwritten statement?

12 MR. TANASI: Handwritten statement, yeah. Thank
13 you.

14 CROSS-EXAMINATION

15 BY MR. TANASI:

16 Q Mr. Butler, I just want to ask you one quick
17 question, because I know that you want to get out of here. I
18 can appreciate that. You were shown a copy of your voluntary
19 statement; do you remember that?

20 A Yep.

21 Q Okay. And you went through kind of the last portion
22 of that statement; do you remember that?

23 A Yep.

24 Q Do you have that statement in front of you right now
25 by any chance?

1 A No.

2 THE COURT: No, he doesn't.

3 MR. TANASI: May I approach?

4 THE COURT: Yes, he doesn't have it.

5 MR. TANASI: All right. I'll show you another copy
6 of your statement.

7 THE COURT: Can you bring this up?

8 THE CLERK: I am.

9 THE COURT: Okay.

10 MR. TANASI: Thank you.

11 THE COURT: Is it on the screen there, Mr. --

12 THE WITNESS: Yep.

13 THE COURT: -- Butler? Okay.

14 BY MR. TANASI:

15 Q Okay, Mr. Butler, I just want to turn your attention
16 to the very last sentence, the one sentence -- part of the
17 sentence that the State didn't ask you about. Do you see that
18 there?

19 A Yep.

20 Q Okay.

21 MS. MERCER: Well, and I would object to the form of
22 the question. That was a little bit argumentative. I didn't
23 ask him about the entire statement.

24 THE COURT: Well, the statement's in evidence,
25 right?

1 MS. MERCER: Correct.

2 THE COURT: Okay. Go ahead, Mr. Tanasi.

3 MR. TANASI: Thank you.

4 BY MR. TANASI:

5 Q Real quickly, you noted that, "As he walked in, I
6 believe he had small dreadlocks," correct?

7 A Um-hum.

8 THE COURT: Is that a yes, sir?

9 THE WITNESS: Yeah.

10 THE COURT: Okay.

11 MR. TANASI: Okay, thank you, sir. Nothing further.

12 THE COURT: Do you want to -- do you want to get
13 the --

14 MR. TANASI: Yeah.

15 THE COURT: -- statement?

16 MR. TANASI: I'll grab that.

17 THE COURT: Ms. Lobo or Mr. --

18 MR. MANINGO: Court's indulgence, Your Honor.

19 MS. LOBO: No questions at this time, Your Honor.

20 THE COURT: Redirect?

21 MS. MERCER: No, Your Honor.

22 THE COURT: All right, so are you done with Mr.
23 Butler then?

24 MS. MERCER: Yes.

25 MR. TANASI: Yes, Your Honor.

1 THE COURT: Mr. Butler, thank you so much for your
2 testimony. You can step down. He's excused.

3 MS. MERCER: Your Honor, may I check the hallway for
4 a witness real quick?

5 THE COURT: Yeah.

6 MR. PORTZ: Yes, Your Honor. The State's next
7 witness will be Yanais Silva. And for the jurors' reference,
8 we'll be going a little out of order. This is event number 11
9 out of 14, and it pertains to counts 52 through 59.

10 THE MARSHAL: Come on up here. Step up here,
11 please, and watch your step.

12 THE WITNESS: Thank you.

13 THE MARSHAL: Remain standing, face the clerk over
14 here, and raise your right hand, please.

15 YANAIS SILVA, STATE'S WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated.

17 THE MARSHAL: Pull your chair up and speak into that
18 microphone, would you, please?

19 THE CLERK: Will you please state your full name,
20 spelling of the first and last name for the record?

21 THE WITNESS: My name is Yanais Silva. It's spelled
22 Y-a-n-a-i-s. My last name is S-i-l-v-a.

23 THE COURT: Is it Yananis?

24 THE WITNESS: Yanais.

25 THE COURT: Yanais?

1 THE WITNESS: Um-hum.

2 THE COURT: Mr. Portz, your witness.

3 MR. PORTZ: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. PORTZ:

6 Q Ms. Silva, I would like to direct your attention to
7 November 23rd of 2014. Where were you working at that time?

8 A I was working at El Pollo Loco.

9 Q How long had you been working with El Pollo Loco?

10 A Approximately six months.

11 Q And were you at a specific store?

12 A Yes, I was at the one on Buffalo on Cheyenne.

13 Q Okay, and would that be 7380 West Cheyenne here in
14 Clark County, Nevada?

15 A Yes.

16 Q I'm going to publish up on the screen what's been
17 admitted as State's 11, a little bit of a map. You see that
18 little bubble that says 7380 West Cheyenne?

19 A Yes.

20 Q Is that the location of your El Pollo Loco?

21 A That is correct.

22 Q And I'm going to show you what's been admitted as
23 State's 137. Is that a photograph of the El Pollo Loco you
24 worked at on Cheyenne?

25 A Yes.

1 Q What -- on November 23rd, 2014, what was your
2 position at El Pollo Loco?

3 A I am a service assistant -- I was.

4 Q And I take it by saying "I was," you no longer work
5 with El Pollo Loco?

6 A No.

7 Q Okay. And who else was working with you that night?

8 A That night, there were four of us, including myself.
9 There was a manager, which is Laura Lopez. And then also, we
10 had two other helpers, Luis and Sergio.

11 Q Okay. And Laura Lopez, her last name is L-o-p-e-z?

12 A Yes.

13 Q And Sergio, is his last name Bautista?

14 A Yes.

15 Q And is that B-a-u-t-i-s-t-a?

16 A Yes.

17 Q And then Luis, is his last name also Lopez?

18 A That is correct.

19 Q Okay, and is he in any way related to Laura?

20 A No.

21 Q Okay. So, Laura's the manager. What's Sergio's
22 role?

23 A Sergio was the dishwasher guy.

24 Q And Luis Lopez?

25 A He was the main cook.

1 Q Okay. And you said -- I guess we've already
2 discussed it was at night. What was your shift or the hours
3 that you were working that day?

4 A Mainly, we close the store from 5:00 to 11:30.

5 Q 5:00 to 11:30?

6 A Um-hum.

7 Q And what time do you close your store at?

8 A We close it at 10:00.

9 Q And is that just the main store, or the main store
10 and the drive-thru?

11 A That's the main store, but of course, we did change
12 it up that we would close the drive-thru half-an-hour later.

13 Q Okay. And once you've closed the main store and the
14 drive-thru -- so, a half-hour later would be 10:30?

15 A Um-hum.

16 Q What do -- what's your --

17 THE COURT: Is that -- is that a yes, ma'am?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 MR. PORTZ: Thank you. Yeah, we have to answer yes
21 or no for the record.

22 BY MR. PORTZ:

23 Q What is your -- what are your duties once the store
24 closes at 10:30?

25 A Once the store closes, we were supposed to clean up,

1 stock up, make sure everything is working for the next shift.

2 Q And what is Laura's job as the manager of the store
3 when the store closes?

4 A When the store closes, she does the direct deposit,
5 and takes care of the money, the cash registers. She makes
6 sure everybody did their job on cleaning everything.

7 Q And where does Laura get the cash from to do these
8 direct deposits?

9 A She gets them from all the cash registers that were
10 used on that date.

11 Q Were any of the cashiers using those registers still
12 at the store at about 10:30, 11:00 o'clock at night?

13 A No, she had already done the deposit.

14 Q And where does Laura put the money that she takes
15 from the cash registers?

16 A Most of it, if they are the earnings, they go to the
17 big main corporate safe box that we have underneath and nobody
18 can open, but we also do -- she does get the change and puts
19 it in the one that's in the office.

20 Q Okay, so there's two different safes inside the
21 store?

22 A Yes.

23 Q Okay. You said there's a main one that no one can
24 open, and that's --

25 A That's correct.

1 Q -- where the bulk of the cash goes?

2 A Um-hum.

3 Q Okay. And then --

4 THE COURT: Is that a yes, ma'am?

5 THE WITNESS: Yes, sorry.

6 MR. PORTZ: Thank you.

7 BY MR. PORTZ:

8 Q There's one inside the manager's office that carries
9 just change, or is there paper money as well?

10 A It does carry change and paper money as well.

11 Q Who has access to that safe?

12 A The store managers, all of them; the shift leaders
13 as well.

14 Q Would that include Laura?

15 A Yes.

16 Q At about 11:00 P.M. or a little thereafter, does
17 something out of the ordinary happen?

18 A Yes. As soon as we noticed that the lights went off
19 from our front of the building, which would include the
20 drive-thru and, you know, the one that illuminates El Pollo
21 Loco, we started hearing this bang. I was exiting through the
22 back of the door, and that's when the noise started.
23 Apparently, somebody broke our -- our door, there's a window.
24 Somebody threw a rock through it.

25 Q Okay, so let's back up just a few steps.

1 A Um-hum.

2 Q Why were you exiting out the back door at that time?

3 A I was done with my shift, and as usual, we always
4 exit through the back of the door.

5 Q This banging noise that you heard, what part of the
6 store was it coming from?

7 A It was coming from the front of the -- of the store.

8 Q Did you ultimately later that night see -- well, did
9 you -- you said you heard a crashing sound?

10 A Yes.

11 Q Did you ultimately later that night see what had
12 caused that crashing sound?

13 A Yes, I did. I saw that there was a couple -- there
14 was a rock inside our store.

15 Q Okay. So, I'm going to publish first what's been
16 admitted as State's 138. What are we looking at here?

17 A That's the door that was broken. Somebody was
18 trying to get in there.

19 Q Okay. And is this the main lobby where patrons come
20 and sit down to eat?

21 A That is correct.

22 Q And this is the same area where you heard that
23 banging sound coming from?

24 A That is correct.

25 Q Showing you State's 139, is that the same door, but

1 from inside the store?

2 A That is correct.

3 Q Finally, showing you State's 141. You said you saw
4 a rock. Do we see the rock in State's 141?

5 A That is correct.

6 Q Okay. Where is the rock located?

7 A It's towards the bottom. There's a corner right
8 there underneath the soda machines. You guys can see it --

9 Q Okay, so it's on the floor underneath the soda
10 machine?

11 A -- on the floor. Um-hum.

12 Q And where is that front door in relation to this
13 rock?

14 A It's -- the front door is directly across it.

15 Q So, if we go back to say State's 139, would it be
16 fair to say that the person who took this picture is standing
17 near that rock?

18 A Yes.

19 Q Okay. So, you're clocked out, you're walking out
20 the back door, you hear a loud bang. What happens next?

21 A After the loud bang, one of my coworkers, they
22 started to get worried. So, we start hearing -- we noticed
23 the front people -- Laura noticed that there's somebody coming
24 in, and so did Luis. I was the closest one to the door, the
25 back door, and Luis yelled at me, Yanais, go, go, just try to

1 get out of here. And in a state of panic, I tried opening the
2 door. The door -- that door has always been hard to actually
3 open. Tried it once, tried it twice, and finally it opened,
4 and then I see a gun pointing at my head.

5 Q So, when you tried to open that back door, there was
6 some resistance before you could actually get out?

7 A That is correct.

8 Q Now, you opened the door, and you said you saw a
9 gun.

10 A Uh-huh.

11 Q Was there a person holding this gun?

12 A Yes, there was.

13 Q Can you tell me what this person was wearing?

14 A Yes. This person was wearing a black hoodie with a
15 -- I don't know, what's it called, but it seems like those
16 hospital masks.

17 Q Okay.

18 A And I saw that he had black gloves with the gun.

19 Q Okay. This gun, could you tell whether it was a
20 revolver or a semi-automatic?

21 A It seemed to be a revolver -- black revolver.

22 Q Did you ever get a look at this person with the gun
23 at the back door's shoes?

24 A I did.

25 Q Could you describe those?

1 A The shoes were black tennis shoes --

2 Q Okay.

3 A -- that had an "N" on them.

4 Q And you said there was a noise coming from the
5 front. Did you notice -- well, what did the man with the gun
6 at the back door have you do at that point in time?

7 A At that point, I saw the gun. He's like, get back
8 in there, get back in there. He turns me around and he starts
9 pushing me towards the front of the restaurant.

10 Q Was anyone back there with you at this point?

11 A At this point, right away, I was the first one, you
12 could say that Luis was a little bit in the middle, and Sergio
13 was there as well.

14 Q Where was Laura Lopez at this point in time, the
15 manager?

16 A She was where the cash registers were in the front
17 of the store.

18 Q So, the man with the gun at the back door, where
19 does he direct you to?

20 A He directs us to where my work station used to be.
21 First, he makes sure that there's nobody in the store besides
22 us. He stops us at the middle where -- that would be Sergio's
23 work station where he makes all the beans and all that, making
24 sure there's nobody there. Then he moves us to my work
25 station, which is closer to the office and to the cash

1 registers.

2 Q Okay. And what does he do when he has -- so, it's
3 going to be you, Sergio, and Luis at this point, correct?

4 A That is correct.

5 Q Okay. What does he do when he has the three of you
6 by your work station near the manager's office?

7 A After that, he makes -- he puts us down kneeling,
8 and then he tells us to get down on the ground and do not look
9 up.

10 Q At any point in time, do you notice any other
11 individuals from -- coming from the front where that loud
12 banging noise started?

13 A Yes. I didn't notice him before he actually told us
14 to go down on the ground. He was on top of the counter, and
15 he had a gun, of course, and he's telling us to get down as
16 well.

17 Q Okay.

18 A So, one was in the back pointing a gun, and the
19 other one was in the front.

20 Q And when the -- when you, and Luis, and Sergio are
21 on the ground, do you ever see Laura?

22 A Can you repeat the question, please?

23 Q When they put you, and Luis, and Sergio on the
24 ground by your work station --

25 A Um-hum.

1 Q -- did you ever see Laura at any point in time;
2 Laura Lopez, your manager?

3 A Yes, we do. They rounded us up together, and after
4 they told us to get down on the ground, they got her up.

5 Q Okay. How did they -- well, I guess what did they
6 say to you when you were all on the ground?

7 A Who's the manager?

8 Q And is it at that point that Laura stood up?

9 A She identified herself right away that she was the
10 manager in charge, and she got up. They told her to get up
11 right away, and they told us to stay down looking at the
12 ground, and of course they were being really aggressive and
13 cussing at us.

14 Q What kinds of things were they saying to you?

15 A Don't fucking look at me or I'll shoot you, I'll
16 shoot you.

17 Q The man who came in from the front, could you tell
18 if he had a mask on either?

19 A Yes, they both did.

20 Q Were they -- both of those like surgical hospital
21 kind of masks?

22 A Yes.

23 Q What did they do with Laura after she identified
24 herself as the manager?

25 A After she identified herself as the manager, the guy

1 that came from the back door took her into the office, which
2 is the manager's office, and told her to open the safe.

3 Q Okay. Now, is this the safe that Laura can actually
4 open of the two safes?

5 A Yes.

6 Q Okay. While they're in there, do you see -- can you
7 see them handing Laura anything?

8 A Yes. I can -- I was the closest one to the door, so
9 I did have -- I could see her getting -- they told her -- they
10 gave her a Walmart blue bag, those reusable ones, and they
11 told her, put the money in the bag. And they had her put the
12 money in the bag while he pointed the gun at him, and the
13 other guy pointed the gun at us.

14 Q So, one guy stayed with you; another guy was with
15 Laura with a blue Walmart reusable bag?

16 A That is correct.

17 Q All right. Let me publish State's 142. Can you
18 tell me what we're looking at here?

19 A That would be the office where the cash register is
20 located, along with all, you know, the information that the
21 manager needs to do any shift trades or anything like that.

22 Q Can you -- if you touch that screen, you can
23 actually -- it will circle things. Can you circle where the
24 cash register is?

25 A Sure.

1 MR. PORTZ: Change this color. Try again. Court's
2 indulgence. One more time, please. All right, it's not
3 getting better. For the record, and you can --

4 THE COURT: When you changed your color, it changes
5 yours. Come up here and maybe --

6 MR. PORTZ: Thank you, Judge.

7 THE COURT: -- change hers, okay?

8 MR. PORTZ: May I approach?

9 THE COURT: Yes.

10 MR. PORTZ: Can't seem to get this figured out
11 today.

12 THE COURT: There you go.

13 MR. PORTZ: Okay.

14 THE COURT: Okay.

15 MR. PORTZ: Try again now and see if that's better.

16 THE COURT: There you go.

17 MR. PORTZ: All right, that's a little more clear.

18 BY MR. PORTZ:

19 Q So, for the record, you circled a safe that's at the
20 bottom left corner of the desk inside the office, correct?

21 A That is correct.

22 Q All right. Now, when you see -- do you see Laura
23 actually taking items out of that safe and putting them into
24 the blue Walmart bag?

25 A Yes, I do.

1 Q What type of items do you see her putting into the
2 blue Walmart bag?

3 A That day, I believe we just got all our change. So,
4 there were a couple boxes of quarters, pennies, everything,
5 and also, there was a couple of, you know, dollars in there as
6 well.

7 Q So, when the change is kept, is it -- first of all,
8 is it wrapped up in paper?

9 A Yes, it is.

10 Q Okay. Do you know or recall what kind of paper
11 wrapping was used on those coins?

12 A I do not. I didn't have any contact with the money
13 at all.

14 Q You said that they're also kept in cardboard boxes;
15 is that correct?

16 A That is correct.

17 Q Okay. Did these cardboard boxes -- are there
18 cardboard boxes for specific types of coin currency, like a
19 cardboard box just for quarters, and one just for pennies?

20 A That is correct.

21 Q Okay, and does it say that on the box somewhere?

22 A Yes.

23 Q Do you see -- in addition to them putting this in
24 the blue Walmart bag, does anyone take one of the cardboard --
25 or more -- one or two of the cardboard boxes with them?

1 A Yes.

2 Q Okay. Is that the man who came in from the back
3 room with Laura into the office?

4 A That is correct.

5 Q What does he do with those cardboard boxes with the
6 coins inside of them?

7 A After he gets the money from her, he -- they go
8 towards the back of the -- of the store. They mumble
9 something, and one of them takes the money, and you can hear
10 it jogging -- he's trying to jog. That one was the guy that
11 was outside with us. He runs out first.

12 Then the guy that was in the office with Laura, he
13 goes towards the back, and then he remembers something and he
14 comes back. And Laura, by this time, she's standing, scared.
15 He pats her down, and grabs her cell phone, and runs away.

16 Q So, in addition to the coins that were taken in
17 cardboard boxes --

18 A Yes.

19 Q -- they took Laura's cell phone?

20 A That is correct.

21 Q Was there also currency put inside to that blue
22 Walmart bag?

23 A Yes.

24 Q Okay. When they leave, do they say anything to you
25 or your coworkers on their way out?

1 A Yes. They tell us to stay down, look -- do not look
2 at them, stay down, and they just leave.

3 Q And I might have asked you this. Could you tell the
4 race of these individuals; these gunmen?

5 A Yes. I did get to see the top portion of where
6 their eyes were and their forehead, so I did notice that they
7 were both African American.

8 Q And did you also notice whether or not there was a
9 height disparity between the two gunmen?

10 A Yes, they were both above 6 feet. I know -- the one
11 that came from the back that grabbed me, I know that he's
12 taller than I am. That's how I came up with the height.

13 Q So, you know that -- okay. Was one of them taller
14 than the other, or --

15 MR. TANASI: Objection, leading, Your Honor.

16 MS. LOBO: Asked and answered.

17 MR. TANASI: And asked and answered.

18 THE COURT: Overruled.

19 MR. PORTZ: I don't think it's been asked and
20 answered.

21 THE COURT: Overruled. Go ahead.

22 BY MR. PORTZ:

23 Q Was one of them taller than the other? If you
24 recall.

25 A I do not. I didn't stand next to the other one.

1 Q Okay. Did you or your coworkers call the police?

2 A Yes. After they left, we were shocked and panicked.
3 After about 30 seconds of realizing that we just got robbed,
4 we decided to close the door right away, and we all locked
5 ourselves in the little office where the -- where the safe
6 was. Laura used my phone to call the 911, because they did
7 take off the office phone as well.

8 Q Okay. Now, when you say they took off the office
9 phone, can you explain in a little more detail what you mean
10 by that?

11 A Yes. As soon as they got into the office, they
12 pulled it out, making sure that we had no contact with anybody
13 else.

14 Q When you say "they," do you mean the two gunmen who
15 robbed you that night?

16 A I would say the one that came -- that actually went
17 inside the office; the one that came from the back door.

18 Q Can you see that landline in the exhibit that is
19 published right now, Exhibit 142?

20 A Yes, I can.

21 Q Okay. I'm going to publish a close-up picture.

22 MR. PORTZ: Clear that, please, Ms. Mercer.

23 BY MR. PORTZ:

24 Q This is Exhibit 144. Is this a photograph of that
25 landline that you referenced?

1 A That is correct.

2 Q Okay. Is it missing anything that would assist you
3 in being able to call 911 after you've been robbed?

4 A The phone.

5 Q Publishing now Exhibit 148. Can you tell us what
6 we're looking at here?

7 A That is the phone that they ripped out and threw it
8 to the ground.

9 Q And was it -- you said Laura used your phone to call
10 911?

11 A That is correct.

12 MR. PORTZ: Court's indulgence.

13 BY MR. PORTZ:

14 Q And ma'am, it's Yanaís Silva, correct?

15 A That is correct.

16 Q Silva-Rios?

17 A Um-hum.

18 Q Okay.

19 A Yes.

20 Q Ms. Silva-Rios, thank you very much for your
21 testimony.

22 MR. PORTZ: Your Honor, I'll pass the witness at
23 this point.

24 THE COURT: Cross?

25 MS. LOBO: Yes, Your Honor.

1 THE COURT: So, Mr. Tanasi, you don't have any
2 cross?

3 MR. TANASI: I don't, Your Honor.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MS. LOBO:

7 Q Good afternoon, Ms. Silva-Rios.

8 A Hello.

9 Q I have a couple questions. You mentioned towards
10 the end of your testimony that you and your coworkers locked
11 yourselves in a back room after the robbers left the area; is
12 that correct?

13 A That is correct.

14 Q Okay. Prior to you locking yourselves in the room,
15 you weren't locked in any specific area by the robbers?

16 A By the robbers?

17 Q Um-hum.

18 A Do you mean like actually in a room, or in an open
19 area?

20 A I'm talking about -- you weren't locked in the room
21 by these individuals?

22 A No.

23 Q Okay. And during the time that they were there
24 demanding this money from you, you -- all of you guys weren't
25 tied up?

1 A No, but I was hit with a gun to my head, asking me
2 if there was money in the cash register.

3 Q I understand that. My question is, you weren't tied
4 up; your hands weren't bound?

5 A No.

6 Q And none of your coworkers' hands were bound during
7 that time?

8 A No.

9 Q And nobody seemed to be, I guess, confined to a
10 certain area in that vicinity, right?

11 A That is correct.

12 Q Okay. You were just in the area and there were guns
13 that were present?

14 A Yeah.

15 Q And they wouldn't let you move?

16 A Yes.

17 Q Okay. And so, I want to ask you then about the
18 items that were being taken during that time. You weren't the
19 person who was ordered to the room to the safe?

20 A That is correct.

21 Q And the purpose to go to the room with the safe is
22 to get the money?

23 A That is correct.

24 Q And I believe it wasn't your phone; it was Ms.
25 Lopez's phone that was taken?

1 A That is correct.

2 Q And so, you were placed in a certain area and not
3 allowed to move?

4 A That is correct.

5 Q Okay, but no binding, no tying up to anything of
6 that nature?

7 A That is correct.

8 Q Okay. You also mentioned that you noticed that the
9 person was wearing sneakers?

10 A Yes.

11 Q And that there was an "N" that was on those
12 sneakers?

13 A Yes.

14 Q And you described those sneakers that you recognized
15 them as being a New Mark (phonetic) brand?

16 A Yes.

17 Q And you recognized that brand because it's something
18 maybe you saw at Walmart?

19 A Yes.

20 Q Okay, and you had seen it before?

21 A Yes.

22 Q Okay. The back door, you stated when you were
23 testifying, was pretty hard to open normally, right?

24 A It is.

25 Q Okay. And on that evening, it was hard to open as

1 well?

2 A It was harder.

3 Q Okay. And that's because you presume there was
4 somebody on the other side of that, right?

5 A Yes.

6 Q Okay.

7 MS. LOBO: All right, Court's indulgence. Pass the
8 witness.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. PORTZ:

12 Q Ma'am, at any point after you attempted to exit and
13 the door was being -- at least it felt like it was being held
14 against you, you testified you opened the door and there was a
15 man with a gun, correct?

16 A Yes.

17 Q Okay. Did you want to leave work? You had clocked
18 out. At this point in time, were you wanting to leave?

19 A Yes. I usually never finished first, and of course
20 the only day that I was going to be the first one to leave
21 before all the lights went off --

22 Q Um-hum.

23 A I was actually singing, but -- going out there. And
24 as soon as I opened the door, you know, it was night, and out
25 of nowhere, there's just -- this gun comes to my face.

1 Q Okay. And how about when you heard that loud
2 banging noise coming from the front and your fellow employees
3 telling you to run? Did you want to leave the building at
4 that point in time out the back?

5 A Yes.

6 Q Why did you want to leave?

7 A Because I knew that that wasn't a friendly knock. I
8 knew that something was going to happen. And a week before,
9 our managers made us sign, if we got robbed, since it was
10 getting close to Christmas, to do everything we could; that
11 way, we wouldn't be harmed.

12 Q So --

13 A And this late, no customers would come.

14 Q Okay. So, were you wanting to leave for your own
15 safety?

16 A Yes.

17 Q And on your way out of the door, were you -- what
18 prevented you from leaving?

19 A A man with a gun to my face.

20 Q And then you were forced back in by that man,
21 correct?

22 A I was forced back in with that man --

23 Q Okay.

24 A -- and my coworkers.

25 Q Thank you very much, ma'am.

1 MR. PORTZ: Your Honor, I have nothing further.

2 THE COURT: Any further cross?

3 MS. LOBO: No, Your Honor.

4 THE COURT: Okay, okay. Is it Ms. Silva-Rios?

5 THE WITNESS: Yes.

6 THE COURT: Thank you so much for your testimony.

7 You're excused. You can step down.

8 THE WITNESS: Thank you.

9 THE COURT: Okay. Call your next witness.

10 MR. PORTZ: Court's indulgence. And Your Honor, the
11 State's next witness is going to be Shanon Poole.

12 THE COURT: Okay.

13 MR. PORTZ: And for the jury, this references event
14 number 3 out of 14, and corresponds to counts 11 through 15.

15 THE MARSHAL: Step up here, please. Watch your
16 step. Remain standing, face the clerk, and raise your right
17 hand.

18 SHANON POOLE, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated.

20 THE MARSHAL: Have a seat, pull it up. Speak into
21 that microphone.

22 THE WITNESS: Okay.

23 THE CLERK: Please state your full name, spelling
24 your first and last name for the record.

25 THE WITNESS: Shanon Poole. S-h-a-n-o-n, P-o-o-l-e.

1 THE COURT: Your witness, Mr. Portz.

2 MR. PORTZ: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. PORTZ:

5 Q Good afternoon, Ms. Poole. Where are you presently
6 employed, ma'am?

7 A Pizza Hut.

8 Q And is there a specific location that you work at?

9 A Lake Mead and Jones.

10 Q Okay, and would that be 6130 West Lake Mead here in
11 Clark County, Nevada?

12 A Yes.

13 Q How long have you been working at that Pizza Hut?

14 A Six years.

15 Q I'm going to publish what's already been admitted as
16 State's 3, and we can see there a map. Actually, we can
17 actually see our cross-streets of Lake Mead and Jones. Do you
18 see that little bubble there that says 6130 West Lake Mead?

19 A Yes.

20 Q Is that the location of the Pizza Hut you work at?

21 A That is.

22 Q And the same Pizza Hut you worked at on November
23 11th, 2014?

24 A I worked there, yes.

25 Q Okay. And then, showing you what's been -- or

1 marked as State's 37, is that the front view of your Pizza
2 Hut?

3 A That is.

4 Q Now, what's your position with Pizza Hut, ma'am?

5 A I'm the CSR; cashier.

6 Q Okay, and what are some of your just general
7 responsibilities as a cashier with this Pizza Hut?

8 A Take orders, answer phones, cash-out people, hand
9 them their food.

10 Q Were you working actually on November 1st, 2014?

11 A I was.

12 Q And do you recall what day of the week that was?

13 THE COURT: Hold on, hold on. Is it November 11th
14 or November 1st?

15 THE WITNESS: It's November 1st.

16 MR. PORTZ: November 1st.

17 THE COURT: Okay, because your first question was
18 were you there on November 11th, 2014. So, okay, this
19 happened November 1st?

20 MR. PORTZ: I will -- I will clarify.

21 THE WITNESS: November 1st.

22 THE COURT: Okay. All right.

23 BY MR. PORTZ:

24 Q And you were in fact there that date, November 1st,
25 2014?

1 A I was.

2 Q Do you recall what day of the week that was?

3 A I don't recall.

4 Q What were your store hours at that 7-Eleven -- or at
5 that Pizza Hut? I'm sorry.

6 A Well, if it was on Friday or Saturday, we closed at
7 12:00 o'clock. If it was on the rest of the week, we closed
8 at 11:00.

9 Q And at some point on November 1st at approximately
10 11:00 P.M., did something out of the ordinary happen?

11 A Well, I was on the phone speaking with somebody, and
12 then I had to go to the back to ask the manager a question;
13 put her on hold. And when I went around the back, I was
14 asking the question, and then all of a sudden, two guys flew
15 through the door and went to the back behind the wall where
16 the register's at --

17 Q Okay.

18 A -- and told us to get down on the ground. They were
19 throwing things or knocking things over, I'm not sure which.

20 Q So, you were in the back of the store when all of
21 this -- when these individuals entered, correct?

22 A Yeah.

23 Q Okay. So, if this was after 11:00, was your store
24 still open?

25 A It -- yeah, it was still open. It probably was a

1 Friday or Saturday.

2 Q Okay. Now, who else was with you working at that
3 store this date?

4 A Daniel, the manager, and then George, the cook.

5 Q Is Daniel's last name Heffner?

6 A Yes.

7 Q And is George's last name Thimakis?

8 A Yes.

9 Q Spelling with that --

10 MR. PORTZ: Court's indulgence.

11 BY MR. PORTZ:

12 Q T-h-i-m-a-k-i-s, does that sound about right?

13 A It sounds about right, but I'm not positive.

14 Q Okay. Now, you said before you went to the back,
15 you were on the phone; is that correct?

16 A That's correct.

17 Q And who were you speaking with?

18 A An older lady, and I forget the question that she
19 was having me go back there to ask.

20 Q Was this a customer, or?

21 A It was a customer.

22 Q Okay. I'm going to publish what's been admitted as
23 State's 39. Can you tell the jury what we're looking at?

24 A That's the front of the store, and it looks like the
25 computer's on the floor. You can't really see the computer,

1 but you can see the cords. The silver thing in the background
2 is the hot hold. I was around behind the hot hold.

3 Q Okay. So, can you circle for the ladies and
4 gentlemen of the jury where you were talking on the phone to
5 this customer before you went back?

6 A Do I touch the screen?

7 Q You can touch the screen and circle it. Okay, so
8 for the record --

9 A That's -- that's the phone that I was on.

10 Q Okay. So, for the record, you've indicated you were
11 behind the counter on the left side of the screen, correct?

12 A That's correct.

13 Q Okay. Now, when you were speaking to this woman on
14 the phone -- you mentioned there's some cords and a computer
15 that's knocked off the counter. Was it like that when you
16 were speaking to her?

17 A No, no. After -- after everything happened, we came
18 out and found it like that.

19 Q All right. So, describe again one more time what
20 happens when you go back to ask the manager a question at this
21 point.

22 A I went back to ask him the question, and then two
23 guys flew around the left side through that door, and then
24 around behind the hot hold.

25 Q And --

1 A Stuff was falling, and then all of a sudden, we were
2 told to get down on the ground. Then we saw the gun and we
3 saw the knife, and one in the other's hand.

4 Q So, one man had a gun; one man had a knife?

5 A Yes.

6 Q All right, so let's do some descriptions here, the
7 gunman first of all. Was there a size disparity between the
8 man with the gun and the man with the knife?

9 A The man with the gun was the tall slender guy.

10 Q Did you --

11 A And the one with the knife was the shorter one.

12 Q Okay. Did the man with the gun have anything on his
13 head?

14 A They both had hoodies on; they both had
15 handkerchiefs over their face. They were well-covered.

16 Q Were they so covered that you could not identify
17 what race these individuals were?

18 A They were both black.

19 Q And could you tell if they were male or female?

20 A Male.

21 Q Now, you said the gunman was of a skinnier build?

22 A He was tall and skinny.

23 Q Okay. The man with the knife, what was he? Medium,
24 skinny, heavy?

25 A He was just a little bit -- just a little bit -- he

1 was still skinny, but he wasn't super skinny.

2 Q Okay. Now, when they tell you to get on the floor,
3 do you get on the floor of your own volition, or does someone
4 do something?

5 A Well, the gentleman with the knife grabbed me by the
6 wrist just slightly, just like this, and then guided me over
7 in front of the fire, which is on the right of the screen, but
8 you can't see it. It's behind the wall, but it's to the
9 right. And he had me get down on my knees. You can't see it.

10 Q You can't see it from here?

11 A Not from that picture.

12 Q If I publish State's 42, is it visible from this
13 image?

14 A Let's see.

15 Q Or no?

16 A No, it's not. That right there is the other side of
17 the store. That's where they entered, they went through, and
18 came through. That's the back of the store.

19 Q Okay. I'm going to show you one last one, and then
20 we'll just continue on. State's 43, can we see this here?

21 A You can't see it. It will be this way of the -- of
22 this thing right here.

23 Q Okay, so behind the metal figure to the right of the
24 screen?

25 A Yeah.

1 Q Okay. So, they put you on the floor there, correct?

2 A They put me on my knees on the floor there.

3 Q Okay. And then, is -- are Daniel and George also
4 placed on the floor?

5 A They got down on their bellies, and Daniel was in
6 front of the cut. Daniel was right here, and George laid down
7 -- this is the make table, and he laid down right there.

8 Q The men -- the -- either of these individuals, were
9 they saying anything to the three of you as you were on the
10 floor?

11 A They were telling us to get down on the floor. They
12 wanted us -- they wanted Daniel to go and open the safe.

13 Q Okay. Were they aware --

14 A And Daniel told them, I can't open the safe. The
15 manager's on a delivery right now; he'll be back in five
16 minutes. Just give him five minutes and he'll come and he'll
17 open the safe for you.

18 Q Okay. Now, I thought you said Daniel was the
19 manager.

20 A Daniel was the manager. That's not what he told
21 them.

22 Q Okay, so he was -- he was lying to the --

23 A Yes.

24 Q -- to the robbers? Okay.

25 A Yes.

1 Q So, what did they do when they heard Daniel say
2 that?

3 A They told him that they wanted the keys to the
4 register; come and open the register. And then Daniel told
5 them, I don't have the keys to the register, the manager has
6 that and he'll be back in five minutes, he's on a delivery.
7 That also was a lie.

8 Q And after they have been shut down twice now on
9 getting what they want, what did they do?

10 A Well, they went around to the front and they --
11 well, they told us to stay put where we were at and not to
12 move, and then they went around the front. We heard, you
13 know, things falling and being rustled around. And then
14 probably about maybe a minute later, maybe 30 seconds, a
15 minute later, Daniel got up, walked around and peeked around
16 the corner to see if they were still there, and they were not,
17 but they had knocked down the computer, the monitor, the
18 printer, you know, everything that was in that general
19 vicinity, and they had taken the register with the drawer with
20 all the money in it.

21 Q Okay. So, going back to State's 39, we see on the
22 right side a computer. Are you saying --

23 A Um-hum, that was mine.

24 Q Okay. There was also one here on the left where
25 there's a cord hanging down from the counter?

1 A That was Daniel's.

2 Q And that was the one that had been taken from the
3 store; is that correct?

4 A That was the one that had been taken.

5 Q All right. Showing you State's 40, this is a
6 picture obviously of the one that had not been taken, correct?

7 A That is mine, yes.

8 Q Okay. Can you tell us where the money is kept in
9 this particular setup?

10 A In this particular instance, the drawer is right
11 here, and it's under a metal thing that's attached to the
12 bottom of the counter. Now, the one that they had taken was
13 not in a metal drawer. It was on top of the counter with the
14 computer monitor and then the keyboard in front of it. It was
15 more easily accessible than this one was.

16 Q Okay. And just for the record, you indicated that
17 the cash is kept in a metal box underneath the keyboard --

18 A In a metal box underneath --

19 Q -- in this photograph?

20 A Yeah, underneath the keyboard underneath the desk -
21 - or the counter.

22 Q After these individuals had fled the scene with
23 those objects or with the money, do you know how much money
24 was in that register that they took?

25 A Roughly about 160.

1 Q After they fled, did you or anyone else call 911?

2 A Daniel called 911. We pressed the buttons that
3 we're supposed to press when we get robbed, and Daniel took
4 care of that. He was the manager.

5 Q And ma'am, were -- you were present when Daniel
6 called 911?

7 A I was.

8 Q And about how long after the robbery was it that
9 Daniel had called 911?

10 A Immediately.

11 Q And did you listen to him talk on the phone with the
12 911 operator?

13 A Honestly, I want to say yes, but I don't recall what
14 he said. It was very short.

15 Q Sure, sure. The gist of it, was it to explain what
16 had happened to notify police?

17 A It was.

18 Q Are you also familiar with whether or not your store
19 has a surveillance video system?

20 A They had two cameras in the back behind me, aiming
21 down like this. They did get some shots. And then after the
22 robbery, they put in another camera.

23 Q Okay, but on the night of the incident in question,
24 there were two cameras --

25 A There was two cameras.

1 Q -- in the front?

2 A Um-hum.

3 Q Okay.

4 THE COURT: Is that a yes, ma'am?

5 THE WITNESS: Yes.

6 BY MR. PORTZ:

7 Q And have you had a chance to review video
8 surveillance of what happened that night?

9 A Yes.

10 Q And in your review of that video surveillance, did
11 it fairly and accurately depict what you have testified to
12 here today and what you recall going through on the night in
13 question, at least in that particular area?

14 A Only in that particular area. However, there was a
15 third gentleman that I did not -- we didn't know was there
16 until after we saw the video.

17 Q Okay.

18 A He was the lookout.

19 Q Okay.

20 MR. PORTZ: Your Honor, at this point, we're going
21 to publish portions of State's 52A.

22 THE COURT: Okay.

23 MR. PORTZ: Can we switch over to the audio and
24 video?

25 THE CLERK: I am, yeah.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON STARR,)
#1165964,)
Appellant,)
v.)
STATE OF NEVADA,)
Respondent.)

CASE NO.: 71401 Electronically Filed
E-FILE Jun 21 2017 09:23 a.m.
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APPELLANT'S APPENDIX VOLUME VI

Appeal from a Denial of Post Conviction Relief
Eighth Judicial District Court, Clark County

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MASTER INDEX

Case No.: 71401

| Document (File stamp date in parenthesis) | Vol. | Page No. |
|--|-------------|-----------------|
| Amended Judgment of Conviction [Jury Trial] (10/19/16) | 3 | 556-00567 |
| Case Appeal Statement [Terrence M. Jackson] (9/23/16) | 3 | 548-00550 |
| Case Appeal Statement [clerk of court] (10/4/16) | 3 | 551-00552 |
| Cert. of Service: Motion to Sever: Hobson (6/3/15) | 1 | 142-00143 |
| Defendant's Joint Memorandum in Support of Proposed Jury Instructions (5/19/2016) | 2 | 359-00370 |
| Defendant's Notice of Witnesses (4/22/2016) | 2 | 326-00327 |
| Findings of Fact, Conclusions of Law, Order (4/13/16) | 2 | 315-00323 |
| Indictment: (December 12, 2014) | 1 | 01-00006 |
| Instructions to the Jury (5/23/2016) | 2 | 371-00472 |
| Joinder in Hobson's Motion to Sever: Starr: (6/5/2015) | 1 | 144-00146 |
| Judgment of Conviction [Jury Trial] (9/20/16) | 3 | 532-00542 |
| Jury Trial - Day 13 - heard 5/23/16 @ 1:44 p (7/22/16) | 3 | 504-00531 |
| Jury Trial - Day 1 - heard 5/4/2016 (1/3/17) | 3 | 568-00686 |
| Jury Trial - Day 1 - heard 5/4/2016 (1/3/17) | 3 | 687-00750 |
| Jury Trial - Day 2 - heard 5/5/2016 (1/3/17) | 4 | 751-00978 |
| Jury Trial - Day 3 - heard 5/6/16 (1/3/17) | 5 | 979-01133 |
| Jury Trial - Day 4 - heard 5/9/16 (1/3/17) | 5 | 1134-1225 |
| Jury Trial - Day 4 - heard 5/9/16 (1/3/17) | 6 | 1226-1362 |
| Jury Trial - Day 5 - heard 5/10/16 (1/3/17) | 6 | 1363-1426 |
| Jury Trial - Day 5 - heard 5/10/16 (1/3/17) | 6 | 1427-1476 |
| Jury Trial - Day 6 - heard 5/11/16 (1/3/17) | 7 | 1477-1622 |
| Jury Trial - Day 7 - heard 5/12/16 (1/3/17) | 7 | 1623-1720 |
| Jury Trial - Day 7 - heard 5/12/16 (1/3/17) | 8 | 1721-1879 |

MASTER INDEX

Case No.: 71401

| Document (File stamp date in parenthesis) | Vol. | Page No. |
|--|-------------|-----------------|
| Jury Trial - Day 8 - heard 5/16/16 (1/3/17) | 8 | 1880-1960 |
| Jury Trial - Day 8 - heard 5/16/16 (1/3/17) | 9 | 1961-2115 |
| Jury Trial - Day 9 - heard 5/17/16 (1/3/17) | 9 | 2116-2210 |
| Jury Trial - Day 9 - heard 5/17/16 (1/3/17) | 10 | 2211-2304 |
| Jury Trial - Day 10 - heard 5/18/16 (1/3/17) | 10 | 2305-2455 |
| Jury Trial - Day 10 - heard 5/18/16 (1/3/17) | 11 | 2456-2610 |
| Jury Trial - Day 11 - heard 5/19/16 (1/3/17) | 11 | 2611-2714 |
| Jury Trial - Day 12 - heard 5/20/16 (1/3/17) | 12 | 2715-2858 |
| Motion to Continue Trial: Starr: (4/6/2016) | 2 | 299-00303 |
| Motion for Discovery & Alt. Motion in Limine (4/27/16) | 2 | 328-00358 |
| Motion to Sever from Co-Defendant's: Hobson: (6/1/15) | 1 | 107-00129 |
| Motion to Sever by Defendant: Starr: (June 2, 2015) | 1 | 130-00141 |
| Motion to Withdraw Counsel & Motion to Appoint Appellant Counsel [<i>pro per</i>] (9/21/2016) | 3 | 543-00545 |
| Notice of Alibi Witnesses: Starr: (4/22/2016) | 2 | 324-00325 |
| Notice of Appeal [Terrence M. Jackson] (9/23/16) | 3 | 546-00547 |
| Notice of Appeal [<i>pro per</i>] Defendant Starr (10/10/16) | 3 | 554-00555 |
| Notice of Witnesses and/or Expert Witnesses (8/4/2015) | 2 | 264-00298 |
| Order Appointing Terrence M. Jackson, Esquire (10/7/16) | 3 | 00553 |
| Order Denying Defendant's Motion to Sever (7/21/2015) | 2 | 262-00263 |
| Second Superseding Indictment (April 24, 2015) | 1 | 57-00106 |
| Sentencing - heard 9/8/16 (1/3/17) | 12 | 2859-2895 |
| State's Opposition to Motion to Sever: (6/19/2015) | 1 | 147-00250 |
| State's Opposition to Motion to Sever: (6/19/2015) | 2 | 251-00261 |
| State's Opposition to Motion to Continue (4/7/2016) | 2 | 304-00306 |

MASTER INDEX

Case No.: 71401

| Document (File stamp date in parenthesis) | Vol. | Page No. |
|--|-------------|------------------|
| State's Supplemental Notice of Witnesses &/or Expert | 2 | 307-00314 |
| Superseding Indictment: (February 20, 2016) | 1 | 007-00056 |
| Verdict: Defendant Starr (5/23/2016) | 2 | 473-00503 |

CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esq., am a person competent to serve papers and not a party to the above-entitled action and on the 19th day of June, 2017, I served a copy of the foregoing: Appellant's Appendix and Index, Volumes I - XII, as follows:

[X] Via Electronic Service (*eFlex*) to the Nevada Supreme Court and to the Eighth Judicial District Court, and by U.S. mail with first class postage affixed to the Petitioner/Appellant as follows:

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By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esq.

1 Q Was there also a woman named Jennifer Hernandez
2 working with you that night?

3 A Yes.

4 Q And was there a man named David Caballero working
5 with you that night?

6 A Yes.

7 Q And is Caballero spelled C-a-b-a-l-l-e-r-o?

8 A Yes.

9 Q So, your store you testified closes at 11:00 P.M.,
10 correct?

11 A It closes at 10:00 on the lobby, 11:00 in the
12 drive-thru, and at 12:30, we all leave.

13 Q Okay. So, after the drive-thru is closed, what do
14 you and your fellow employees -- what are you doing?

15 A We clean.

16 Q While you're cleaning, is there a point in time
17 where you walk out the back of the restaurant?

18 A Sometimes.

19 Q Okay. And on this night, October 28th, did you walk
20 outside while you were cleaning to go outside to the back?

21 A Yes.

22 Q I'm publishing State's 18. Is that a picture of the
23 back of your restaurant?

24 A Yes.

25 Q And is there a door that goes from -- well, which

1 door do you exit out of to get to the back of the -- outside
2 the back of the restaurant?

3 A On the right.

4 Q Okay, the door that we see on the right in this
5 photograph?

6 A Yes.

7 Q And why did you go outside that evening?

8 A Because I noticed that my coworkers had not come
9 back in, so I went outside to see if they needed my help.

10 Q Do you recall about what time this was?

11 A Not anymore.

12 Q Okay, but it was after 11:00 P.M. when the store --
13 the drive-thru had closed, correct?

14 A Yes.

15 Q So, what happens when you get out back to help your
16 employees?

17 A Well, I went out in a matter of seconds or minutes,
18 and when I saw two people, one of them had a gun and was
19 pointing at us. And to me, they threw me on top of some red
20 bars.

21 Q Okay. Do we see the red bars in this picture here?

22 A Yes.

23 Q Can you please -- if you touch that screen, you can
24 actually circle. Just circle the red bars they threw you up
25 against. Well, touch the screen and draw a circle around it.

1 Okay, so two red poles in the middle of the photograph,
2 correct?

3 A Yes.

4 Q Okay. Now, you said there were two men; is that
5 right?

6 A Yes.

7 Q Could you tell whether they were white, black,
8 Hispanic, Asian?

9 A Black, please.

10 Q What were they wearing when you saw them?

11 A Well, actually and honestly, since it was like they
12 caught me by surprise, I didn't really pay attention to the
13 details.

14 Q Okay. These two men, could you give us an age range
15 of what you think their ages were?

16 A More or less in their 30s.

17 Q And was one of these men taller or shorter than the
18 other?

19 A Yes, there was one who was taller.

20 Q Okay. Now, they initially approached you and your
21 coworkers outside; is that correct?

22 A Yes.

23 Q Where did they take the -- where did they take you
24 and your coworkers?

25 A To the front -- the front of the office.

1 Q So, they actually took you back inside the store?

2 A Yes.

3 Q All right. Now, let's talk about the two men for a
4 moment. You said there was a taller one, correct?

5 A Yes.

6 Q Okay. About how tall was that person?

7 A Well, since I'm 6'1, I'm guessing they would be like
8 6'3 or 6'4.

9 Q Okay. And did this person have a thin, medium, or
10 heavy build?

11 A Thin.

12 Q Thin? And do you recall if this person had anything
13 in his hands?

14 A Who, that person?

15 Q The taller one.

16 A It was a gun.

17 Q Okay. Do you know the difference, sir, between a
18 revolver and a semi-automatic?

19 A Yes.

20 Q And which type of gun did this taller man have?

21 A Like a revolver.

22 Q And did the taller one have anything over his face
23 covering his face?

24 A Yes.

25 Q Do you recall what was over his face?

1 A It was a scarf.

2 Q A scarf. So, but it didn't cover the entire face;
3 you could still see a portion of his --

4 A Yes, like from here down.

5 Q So, is that how you were able to tell that he was
6 African American?

7 A Yes.

8 THE COURT: For the record, he said, "from here
9 down." Could he --

10 MR. PORTZ: I'm sorry, Your Honor.

11 THE COURT: -- show us again, just for --

12 THE WITNESS: From here.

13 THE COURT: Okay. From the nose?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Is that fair, what he said?

16 MR. PORTZ: That's how he recalls it, Your Honor.

17 THE COURT: Okay.

18 MR. PORTZ: Thank you for clarifying, Judge.

19 BY MR. PORTZ:

20 Q The shorter one -- about how tall was the shorter
21 one?

22 A It was like 5 feet to 6.

23 Q Okay. And was he thin, or medium, or heavy build?

24 A About him, I don't remember well.

25 Q Okay. Do you remember if he had anything in his

1 hands?

2 A A knife.

3 Q And did this gentleman also have something covering
4 his face?

5 A Yes.

6 Q Do you recall if either of the men, the guy with the
7 gun or the guy with the knife, had gloves on their hands?

8 A Honestly, I don't.

9 Q Okay. Which of these two men approached you while
10 you were outside? The taller man or the shorter man?

11 A The taller one.

12 Q And the taller one is the one who pushed you into
13 those red poles outside your store?

14 A Yes.

15 Q On your way back into the store, who was behind you
16 as you went into the El Pollo Loco?

17 A Well, there was nobody behind me. They were -- they
18 are trying to get us all into the store, and once we were by
19 the door, the one who got behind me was the taller one.

20 Q Okay. And the taller one is the one with the gun,
21 correct?

22 A Yes.

23 Q Does he do anything to you at that point with the
24 gun?

25 A He was touching my head with it.

1 Q Just touching it?

2 A Hitting my head with it.

3 Q Okay, hitting? And for the record, you indicated
4 the top left portion of your head; is that correct?

5 A Yes.

6 Q Where does the man with the gun take you?

7 A To the front of the office.

8 Q I'm going to publish State's 22. Do you recognize
9 State's 22? Is that the front of your restaurant by the
10 register?

11 A Yes.

12 Q And is that where the man with the gun took you?

13 A Yes.

14 Q Where were the other employees who were outside with
15 you?

16 A I think around me.

17 Q And there's a little room to the left on this
18 picture; do you see that?

19 A Yes.

20 Q What is that room?

21 A The office.

22 Q And who was inside that room?

23 A Jamie.

24 Q I'm going to publish Exhibit 23. Is that looking
25 into the office from the front counter?

1 A Yes.

2 Q Is the safe to the store inside the office?

3 A Yes.

4 Q So, when the man with the gun has you here, what
5 does he have you and the employees do?

6 A To get on the floor. And to the manager, he told to
7 open the safe or else he would shoot me.

8 Q Okay. When he said he would shoot you, were you
9 still standing or were you laying on the floor at this point?

10 A I was on the floor.

11 Q And when he said that, did he give the manager any
12 specific amount of time to comply or he would shoot you?

13 A My manager told me that -- that he told her to count
14 to three, or else he would shoot me if she didn't open the
15 safe.

16 Q Okay, I want to be clear we have a correct
17 translation. Did the man with the gun say he would count to
18 three, or did your manager say that she would count to three?

19 A The man told her.

20 Q Okay, so you heard the man tell -- the man with the
21 gun tell your manager that?

22 A I don't -- I don't speak English, but I understood
23 that he said that if she didn't open the safe, he would shoot.

24 Q And where was the gun in his hand when he said that?

25 A To my head.

1 Q Okay. For the record, you pointed to the back left
2 side of your head. Is that where he was pointing the gun?

3 A Yes.

4 Q Okay, and was the gun actually touching your head?

5 A Yes.

6 Q The second man -- did you see the second man at all
7 during this period of time?

8 A Only at the beginning, but then later I didn't
9 because I was laying on the floor.

10 Q Okay. While you're laying on the floor, do you hear
11 or see Jamie open the safe for these men?

12 A I think so.

13 Q Well, let's start with hearing. Could you hear the
14 safe open?

15 A Yes.

16 Q Did you see them taking money out of the safe?

17 A No, I was -- by then, I was on the floor.

18 Q Okay. At some point, do these two men leave?

19 A Yes.

20 Q Do they say anything to you and your coworkers when
21 they leave?

22 A Well, they said -- well, my coworkers told me they
23 said not to get up.

24 Q Sir, you know that your store has video
25 surveillance?

1 A Yes.

2 Q Okay. And have you seen video surveillance of what
3 happened to you that night?

4 A Yes.

5 Q Did that video fairly and accurately depict the
6 injuries you sustained and what you've testified to here
7 today?

8 A Yes.

9 Q Okay, we're going to cue up a portion of that video.
10 This is going to be State's 31A, front counter. While we're
11 cuing up the video, Mr. Borja, when these men left, could you
12 tell which door they left from in your store? Did they leave
13 out the main lobby or out that back door that you came in
14 from?

15 A No, it seems like they left through the back door.

16 MR. PORTZ: Yes. Oh, can we switch over to the --

17 THE CLERK: I thought you were doing it from there.
18 [Inaudible].

19 MR. PORTZ: Thank you.

20 (Exhibit 31A is played)

21 (Stopped playing of Exhibit 31A)

22 MR. PORTZ: All right, we're pausing it at one
23 minute and 20 seconds.

24 BY MR. PORTZ:

25 Q Mr. Borja, is that you lying on the ground, covering

1 your head?

2 A Yes.

3 Q And did we see the -- the guy you described as the
4 tall man hit you in the head with the gun in that video?

5 A Yes.

6 Q Okay. Did you also see in that video the point in
7 time where you said he put the gun to your head and said he
8 would count to three?

9 A Yes.

10 MR. PORTZ: Thank you. Can we switch back to the
11 Elmo again?

12 BY MR. PORTZ:

13 Q Sir, did you suffer injuries that night?

14 A A cut here on my head because of the blows that he
15 gave me.

16 Q Okay. I'm going to publish State's 26. Is that you
17 from the night in question, sir?

18 A Yes.

19 Q And do you remember the police documenting with
20 photographs the injuries that you sustained?

21 A Yes.

22 Q Publishing State's 27. And I know that brightness
23 is -- can you see an injury here on you, sir, that we're
24 looking at?

25 A Yes.

1 Q Okay. What injury is that?

2 A There's like a cut right here.

3 Q Did you have that cut before the robbery began?

4 A No.

5 Q Showing you State's 28, do you remember the police
6 taking a photograph of the inside of your right arm?

7 A Yes.

8 Q And do you see an injury there on the inside of your
9 right arm?

10 A Yes.

11 Q Sorry about this glare. What injury did you sustain
12 there?

13 A Same thing, like a cut.

14 Q Okay. Looks like a scratch?

15 A It could be -- you could say that, yes.

16 Q Publishing State's 29. And what are we looking at
17 here, sir?

18 A A cut on my head.

19 Q And is that -- how did you sustain that cut on your
20 head?

21 A Because of the blows I was receiving.

22 Q And then, sir, I'm going to publish State's 25. Is
23 this the safe inside the office where your manager Jamie was?

24 A Yes.

25 Q Okay. I'm going to zoom-in on these wrapped coins

1 here.

2 MR. PORTZ: Is there any way we can adjust this
3 glare?

4 THE CLERK: Turn the light off, maybe.

5 MR. PORTZ: There's no light on. Okay.

6 BY MR. PORTZ:

7 Q And sir, are those wrapped coins that you keep in
8 your -- in the safe at the office?

9 A Yes.

10 Q And are they wrapped in what say "Loomis" wrappers?

11 A Yes.

12 Q Does someone call the police after these men leave?

13 A Yes.

14 Q Okay. After the police see your injuries, do they
15 offer you an ambulance ride to the hospital or something to
16 help you; take you to the hospital?

17 A Yes.

18 Q Okay. Do you ultimately go to the hospital this
19 night?

20 A Yes.

21 Q Okay. And did you have to get any stitches, or what
22 did they do for your injury to your head?

23 A They cleaned our -- well, they cleaned my wound and
24 they prescribed me some pills.

25 Q Mr. Borja, thank you very much.

1 MR. PORTZ: I have no further questions at this
2 point.

3 THE COURT: Okay. Cross?

4 MR. TANASI: Briefly, Your Honor. Thank you.

5 THE COURT: Mr. Tanasi?

6 CROSS-EXAMINATION

7 BY MR. TANASI:

8 Q Good afternoon, sir. My name's Richard Tanasi. I
9 represent Mr. Hobson. I've got just a few questions for you
10 on cross; is that okay?

11 THE INTERPRETER: I'm sorry. What's your name,
12 counsel, for the interpreter?

13 MR. TANASI: I'm sorry. It's Rich Tanasi.

14 THE WITNESS: That's fine.

15 MR. TANASI: Thank you.

16 BY MR. TANASI:

17 Q Just to be clear, the pictures we just saw of your
18 injuries, you didn't take those pictures, correct?

19 A No.

20 Q The police took those pictures of your injuries,
21 correct?

22 A Yes.

23 Q Okay. Did they tell you why?

24 A No.

25 Q Okay. Do you remember filling out a statement on

1 October 28th, 2014; a handwritten statement?

2 A Yes.

3 Q And in that statement, you described two tall,
4 dark-colored men, correct?

5 A Yes.

6 Q You didn't say one was tall and one was short,
7 correct?

8 A Well, at that moment, I wasn't -- well, I don't know
9 if I wrote it, but I said it and -- when the police were
10 writing the report.

11 Q Okay. Do you -- would it -- do you recall what you
12 wrote in that statement?

13 A I think so.

14 Q Okay.

15 A But I don't remember it very well.

16 Q Sure. If I showed you a copy of your statement,
17 would it refresh your recollection?

18 A Yes.

19 MR. TANASI: May I approach?

20 THE COURT: Yes.

21 BY MR. TANASI:

22 Q Sir, if you wouldn't mind just reading that
23 statement to refresh your recollection to yourself. Have you
24 had a chance to review your statement?

25 A Yes.

1 Q Have you refreshed your recollection?

2 A Yes.

3 Q Would you agree with me that you didn't say the two
4 folks who robbed you were tall and short; you described both
5 of them as tall?

6 A At that moment, I had a lot of injuries on my head.

7 Q Understood, sir.

8 MR. TANASI: May I approach, Your Honor?

9 THE COURT: Yes.

10 MR. TANASI: Thank you.

11 BY MR. TANASI:

12 Q Prior to today's testimony here in court, did you
13 have a chance to meet with the State; have a chance to meet,
14 more specifically, with Mr. Portz or Ms. Mercer?

15 A Yes.

16 Q Did you talk about what your testimony would be here
17 today?

18 A Yes.

19 Q Thank you, sir.

20 MR. TANASI: Nothing further.

21 THE COURT: Mr. Maningo, Ms. Lobo?

22 MR. MANINGO: No questions, Your Honor. Thank you.

23 THE COURT: Okay. Any redirect?

24 MR. PORTZ: Just one question.

25 REDIRECT EXAMINATION

1 BY MR. PORTZ:

2 Q Mr. Borja, when you met with Ms. Mercer and I to
3 discuss what happened over a year-and-a-half ago now, is it
4 true that we only ever told you when you're testifying to tell
5 the truth?

6 A Yes.

7 Q Thank you, Mr. Borja.

8 MR. PORTZ: No further questions.

9 MR. TANASI: Nothing further. Thank you, Your
10 Honor.

11 THE COURT: We have a question, Jim. Parties
12 approach.

13 (Off-record bench conference)

14 THE COURT: Okay. Mr. Borja, how many times were
15 you hit in the head with the gun?

16 THE WITNESS: More than three times.

17 THE COURT: Any questions as a result of my
18 questions, Mr. Portz?

19 MR. PORTZ: Court's indulgence.

20 THE COURT: Or I'm sorry, the juror's question.

21 MR. PORTZ: No, Your Honor. Thank you.

22 THE COURT: Mr. Tanasi, any questions?

23 MR. TANASI: Court's indulgence, please.

24 THE MARSHAL: Another question.

25 THE COURT: We have another question? Okay. Could

1 you approach?

2 (Off-record bench conference)

3 THE COURT: Okay. Mr. Tanasi, did you have any
4 questions, however, as a result of the first question?

5 MR. TANASI: No, Your Honor.

6 THE COURT: Mr. Maningo, Ms. Lobo?

7 MR. MANINGO: No, sir.

8 THE COURT: Okay. Mr. Borja, we have another
9 question, all right? Was he hit with handle or barrel?

10 THE WITNESS: With the lower part of the gun.

11 THE COURT: Okay. Any questions?

12 MR. PORTZ: No, Your Honor.

13 THE COURT: Any question?

14 MR. TANASI: No, Your Honor.

15 THE COURT: Okay, okay. Mr. Borja, thank you so
16 much. You can step down. You're excused, okay? All right.
17 Okay. Ladies and gentlemen, it's five to 2:00. We're going
18 to take a recess.

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

1 trial until the case is finally submitted to you.

2 It's five til. I'll give you until ten after.

3 Stretch your legs and use the restroom. Hold on, let me --

4 let me -- before you go, the parties -- do you want to take

5 lunch? Because I mean, I'm going to go until 5:00. Do you

6 all feel like you need to take lunch? I'll give you an hour.

7 I'll let you -- I'll let you guys decide. You tell me.

8 You're fine to come back at a quarter -- five -- I mean, ten

9 after, or do you want to take lunch?

10 UNKNOWN SPEAKER: Come back.

11 THE COURT: Okay. All right, so I'll see you back

12 at ten after, okay? All right, we'll be at ease while the

13 jury leaves the room.

14 (Outside the presence of the jury)

15 THE COURT: Okay, we're outside the presence of the

16 jury. Is there anything that needs to be put on the record at

17 this time?

18 MR. TANASI: No.

19 MS. MERCER: No, Your Honor.

20 MR. TANASI: No, Your Honor.

21 MS. LOBO: No, Your Honor.

22 THE COURT: All right.

23 MR. MANINGO: No, thank you.

24 THE COURT: Okay, be back ten after.

25 MR. MANINGO: Thank you.

1 MS. LOBO: Thank you.

2 (Court recessed at 1:56 P.M. until 2:14 P.M.)

3 (Outside the presence of the jury)

4 THE COURT: All right. Christine, are we back on
5 the record?

6 THE COURT RECORDER: Yes.

7 THE COURT: All right. We're back on the record in
8 C-3033022, State of Nevada vs. Tony Hobson and Brandon Starr.
9 Are we ready to bring the jury in?

10 MS. LOBO: Yes, Your Honor.

11 THE COURT: Jim, go ahead and bring --

12 MR. TANASI: Yes, Your Honor.

13 MR. MANINGO: Yes, Your Honor.

14 THE COURT: Go ahead and bring them in.

15 MR. TANASI: Thank you.

16 (Within the presence of the jury)

17 THE MARSHAL: Please be seated. Department 19 is
18 back in session.

19 THE COURT: Okay. This is continuation of the jury
20 trial in C-3033022, State of Nevada vs. Tony Hobson and
21 Brandon Starr. I'd like the record to reflect the presence of
22 the State, their counsel, as well as the defendants and their
23 counsel, all members of the jury. Will the parties stipulate
24 to the presence of the jury?

25 MS. MERCER: Yes, Your Honor.

1 MS. LOBO: Yes, Your Honor.

2 MR. TANASI: Yes, Your Honor.

3 THE COURT: Okay. Before we took a break, the State
4 was still in their case in chief. Do you want to call your
5 next witness?

6 MS. MERCER: Your Honor, the State calls Diana Mena.

7 THE MARSHAL: Step up here, please. Watch that
8 step. Okay, remain standing, face the clerk over here, and
9 raise your right hand, please.

10 DIANA MENA, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated.

12 THE MARSHAL: Okay, just relax. Pull your chair up
13 and speak into that microphone if you would.

14 THE CLERK: Please state your full name, spelling of
15 the first and last name for the record.

16 THE WITNESS: My name's Diana Mena. D-i-a-n-a,
17 M-e-n-a.

18 THE COURT: Your witness, Ms. Mercer.

19 MS. MERCER: Thank you.

20 DIRECT EXAMINATION

21 BY MS. MERCER:

22 Q Ma'am, where are you currently employed?

23 A Bell Trans.

24 Q And where were you previously employed prior to
25 that?

1 A El Pollo Loco.

2 Q Were you specifically employed at the El Pollo Loco
3 at 4011 East Charleston?

4 A Yes.

5 Q Is that here in Clark County, Nevada?

6 A Yes.

7 Q How long were you employed at that location?

8 A Almost four years.

9 Q What position did you hold within that company?

10 A I was drive-thru cashier.

11 Q Drive-thru cashier?

12 A Yeah.

13 Q The entire time?

14 A Yeah.

15 Q Okay. I want to direct your attention to October
16 28th of 2015. On that date, were you working?

17 A Yes.

18 Q What shift were you working?

19 A It was 4:00 to 12:00.

20 Q And were you working as a drive-thru cashier that
21 night?

22 A Yes.

23 Q What time does your drive-thru shut down?

24 A 11:00.

25 Q 11:00 P.M.?

1 A Yes.

2 Q After your drive-thru shuts down, do you count down
3 your drawer?

4 A Yes.

5 Q And then, are you personally responsible for
6 depositing the money from your drawer?

7 A Yes.

8 Q Where do you deposit it?

9 A It's a safe.

10 Q Inside of the manager's office?

11 A No.

12 Q Somewhere else?

13 A Um-hum, yeah.

14 Q Is it larger than the one that was in the manager's
15 office?

16 A Yes.

17 Q Who was your manager that night?

18 A Jamie Schoebel.

19 Q Do you remember who else you were working with that
20 night?

21 A It's Jose Borja, David, and Jennifer.

22 Q Is that Jennifer Hernandez --

23 A Yeah.

24 Q -- and David Caballero?

25 A Yeah.

1 Q Sometime after your drive-thru shut down, did you
2 have occasion to go out back with some other employees?

3 A Yes.

4 Q What were you guys doing?

5 A We were taking out trash.

6 Q Who all went outside with you?

7 A It was Jennifer, Jose, and David.

8 Q While you were out back, did something unusual
9 happen?

10 A Yes.

11 Q What happened?

12 A The two guys came running towards us. One of them
13 started hitting Jose, and they were telling us to go inside.

14 Q Okay. So, starting with the individual that you
15 said struck Jose, you all were still outside when he first
16 struck him?

17 A Yeah.

18 Q Where did he strike him?

19 A Like in the face.

20 Q What did he strike him with?

21 A He had a gun.

22 Q The individual that struck Jose with the gun, what
23 did he look like?

24 A Can't remember.

25 Q Do you remember about how tall he was?

1 A Not exactly how tall, but like, he was taller than
2 me.

3 Q He was taller than you?

4 A Yes.

5 Q The other individual, was he armed with anything?

6 A Yeah, like a knife.

7 Q In comparison to the individual with the gun, about
8 how tall was he?

9 A He was like about my size.

10 Q And how tall are you?

11 A Like 5'5.

12 Q You're 5-foot-5?

13 A Yeah.

14 Q When you say that he was about your size, was he the
15 exact same height, or was he slightly taller?

16 A Like maybe slightly taller.

17 Q The individual that had the gun, do you know
18 approximately how many inches taller he was than the person
19 with the knife?

20 A No. Like maybe like 3, 4.

21 Q Okay. Ms. Mena, it's been a while since this
22 happened, correct?

23 A Yes.

24 Q Do you recall speaking with police on the night of
25 this incident?

1 A With who?

2 Q Do you recall speaking with the detective on the
3 night of the robbery?

4 A Oh, yes.

5 Q And he recorded that interview?

6 A Yes.

7 Q Do you recall the description -- as you sit there
8 today, do you recall the description that you provided to them
9 of the individual with the gun?

10 A Yes.

11 Q Do you recall the exact description that you gave
12 them?

13 A Not exactly, but I do remember some stuff that I
14 told them.

15 Q Okay. Would it refresh your recollection if I
16 showed you a copy of that statement as to the description that
17 you provided them?

18 A Yes.

19 MS. MERCER: Your Honor, permission to approach?

20 THE COURT: Yes.

21 BY MS. MERCER:

22 Q And if you could just start reading right here for
23 me, and read it to yourself, and let me know when you're done,
24 please.

25 A To here?

1 Q Did you have a chance to read that?

2 A Yeah.

3 Q Did that refresh your recollection as to the
4 description of his height that you provided to the police?

5 A Yes.

6 Q And how did you describe him?

7 A He was tall with a gray -- like gray hoodie and a
8 red bandana.

9 Q And you said he was approximately six feet, two
10 inches tall?

11 A Yeah.

12 Q To the detectives?

13 A Yes.

14 Q Okay. When the individual -- the taller individual
15 with the gun started striking Jose, what if anything did he
16 say to you all, all the employees in the back?

17 A No, they were just telling us to go inside.

18 Q And you in fact went inside, correct?

19 A Yes.

20 Q When they were kind of gathering you all and making
21 you go back inside of the business, did they ask you any
22 questions with regard to where the manager was or who the
23 manager was?

24 A No, they just went directly to the front.

25 Q What was in the front?

1 A The manager's office.

2 Q Once you were taken -- well, you said they went to
3 the front. Did they take you with them to the front?

4 A Yeah, they took all of us with them.

5 Q And did you have to kind of line up outside of her
6 office?

7 A They just had us gathered outside.

8 Q What if anything did they make you do?

9 A They just had us on the floor.

10 Q You indicated that while you were outside, Jose was
11 struck with the firearm?

12 A Yes.

13 Q How many times was he struck while you were still
14 outside?

15 A He was struck like a couple times, maybe like three.

16 Q Once you were back inside and you were lined up
17 outside of Jamie's office, did you see what if anything the
18 taller individual was doing with the gun?

19 A He was just pointing at Jose the whole time.

20 Q Was he doing anything other than pointing the gun at
21 Jose?

22 A Like, he hit him, and then like he was just pointing
23 the gun.

24 Q Where did he hit him with the gun?

25 A In the head.

1 Q What if anything was he saying when he struck Jose
2 with the gun or had the gun pointed at Jose?

3 A They just said to hurry up and open the safe or he
4 was going to shoot him.

5 Q Who were they talking to?

6 A Jamie.

7 Q Were you able to see whether or not Jamie opened the
8 safe?

9 A No, I did not.

10 Q Why weren't you able to see whether Jamie opened the
11 safe?

12 A We were on the floor. Like, they had us laying down
13 on the floor with our heads down.

14 Q So, you weren't looking at them?

15 A Hm-mm.

16 Q You indicated that they were wearing a bandana. Do
17 you remember where the -- what part of their faces the
18 bandanas covered?

19 A Like from the nose down.

20 Q So, were you able to see some skin from above the
21 nose?

22 A Like the eyes, and just like this area.

23 Q And you've just made a line across your --

24 A Like -- yeah.

25 Q -- where your eyes are --

1 A Yeah.

2 Q -- and part of your forehead, for the record?

3 THE COURT: Is that a yes, ma'am?

4 THE WITNESS: Yes.

5 BY MS. MERCER:

6 Q Were you able to determine whether the -- what race
7 the two individuals were?

8 A Yes.

9 Q What race were they?

10 A They were African Americans.

11 Q Were they both male?

12 A Yes.

13 Q You indicated that the taller one was wearing gray
14 and had a red bandana around his mouth?

15 A Yes.

16 Q Do you recall what the shorter individual with the
17 knife was wearing?

18 A I remember it was a black hoodie.

19 Q And he also had a red bandana around his face?

20 A Yes.

21 Q Do you recall whether the individuals were wearing
22 anything over their hands?

23 A Yeah, they had gloves.

24 Q Did either of the suspects go into the office where
25 Jamie was?

1 A One, to get the money.

2 Q Which one?

3 A The shortest one.

4 Q The shortest one with the knife?

5 A Yeah.

6 Q When he was inside of the office, did anything
7 happen that caused you concern with regards to Jamie?

8 A When they first came in, when he asked her to open
9 the safe, he like -- like hit Jamie in the stomach.

10 Q What if anything did you or any other employees do
11 or say at that point?

12 A We just told him like to -- don't hit her because
13 she was pregnant.

14 Q Did they listen to you?

15 A No.

16 MS. MERCER: Court's indulgence.

17 BY MS. MERCER:

18 Q Ms. Mena, did you have an opportunity to review
19 surveillance footage of this incident?

20 A I'm sorry?

21 Q Did you have an opportunity to review the
22 surveillance footage of this incident?

23 A Yes.

24 Q And was that a fair and accurate recording of what
25 took place that day?

1 A Yes.

2 MS. MERCER: Your Honor, at this point, I'd move to
3 publish State's Exhibit 31A, just a portion of it.

4 THE COURT: Yes, yes, that's fine.

5 BY MS. MERCER:

6 Q Ms. Mena, I'm just going to play one video so that
7 you can identify yourself really quickly, okay?

8 (Exhibit 31A is played)

9 (Stopped playing of Exhibit 31A)

10 MS. MERCER: And for the record, I have it paused at
11 31 seconds into the video labeled "Front counter."

12 BY MS. MERCER:

13 Q Do you see the woman depicted on that video?

14 A I don't see anything on my screen.

15 Q I'm sorry? You can't see anything on your screen?

16 THE COURT: Jim, you want to come up here?

17 MR. TANASI: Ours are blank, too, Judge. I don't
18 know if that --

19 THE COURT: What's that? Yours is blank, too?

20 MR. TANASI: Ours are blank, too. I don't know if
21 that --

22 MR. MANINGO: Just now.

23 MR. TANASI: -- matters.

24 THE COURT: Did it go -- just went off?

25 MS. LOBO: Yeah.

1 THE COURT RECORDER: It's on.

2 THE COURT: Is yours on?

3 MR. TANASI: Yeah. No, the power's on --

4 MR. MANINGO: Off.

5 MR. TANASI: -- but there's nothing on.

6 THE COURT: Mine's on, so is that --

7 MR. MANINGO: It says "Out of range."

8 THE COURT: All right, just --

9 THE COURT RECORDER: Hang on, I'm just going to --

10 THE COURT: -- boot it up again, see what happens.

11 There it is. Did it come up now?

12 MR. TANASI: Thank you.

13 THE COURT: Is yours up?

14 THE WITNESS: Yes.

15 THE COURT: Okay, it's up now.

16 MR. TANASI: Thank you.

17 BY MS. MERCER:

18 Q Now can you see it?

19 A Yes.

20 Q And is that you?

21 A Yes.

22 Q And that gentleman standing in front of you now at
23 33 seconds in, is that Jose?

24 A Yes.

25 Q The individual with his hand around Jose's neck, is

1 that the taller individual with the gun?

2 A Yes.

3 Q And I have it paused at 34 seconds in. The woman
4 that's standing behind you, what is her name?

5 A Jennifer.

6 Q Jennifer Hernandez?

7 A Yes.

8 MS. MERCER: Your Honor, at this point, I will pass
9 the witness.

10 THE COURT: What's that?

11 MS. MERCER: At this point, I'll pass the witness.

12 THE COURT: All right. Cross?

13 MR. TANASI: Yes, Your Honor. Thank you.

14 CROSS-EXAMINATION

15 BY MR. TANASI:

16 Q Good afternoon, ma'am.

17 A Good afternoon.

18 Q My name's Richard Tanasi. I represent Tony Hobson.
19 Got just a few questions for you on cross-exam, okay?

20 A Okay.

21 Q All right. You described the two folks that robbed
22 the store as one being taller and one being shorter, correct?

23 A Yes.

24 Q All right. Do you remember filling out a statement
25 at the time of the robbery on October 28th, 2014?

1 A Yes.

2 Q Handwritten statement?

3 A Yes.

4 Q Agree with me that when you're filling that
5 statement out, the events are probably freshest on your mind?

6 A Yes.

7 Q Fresher than they are now, fair?

8 A Yes.

9 Q Okay. In that statement, you said nothing about
10 their height; is that correct?

11 A Yes.

12 Q Okay. All right, thank you.

13 MR. TANASI: Nothing further.

14 THE WITNESS: Okay.

15 THE COURT: Okay.

16 MR. MANINGO: No questions, Your Honor. Thank you.

17 THE COURT: Do you have any questions -- any further
18 questions?

19 MS. MERCER: Just one.

20 REDIRECT EXAMINATION

21 BY MS. MERCER:

22 Q Ms. Mena, when you were asked to fill out the
23 handwritten voluntary statement, it's just a one-page
24 document, correct?

25 A Yes.

1 Q And they didn't -- did -- what instructions, if any,
2 did they give you when you filled it out?

3 A No, they just said to fill out as much as we could.

4 Q Okay, so they didn't specifically tell you, include
5 the suspects' height and weight?

6 A No.

7 Q But then when you were interviewed by a detective,
8 you provided that information, correct?

9 A Yes.

10 MS. MERCER: No further questions.

11 THE COURT: Okay, all right. So, Ms. Mena, thank
12 you so much. You can step down. You're excused okay?

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. MERCER: Your Honor, the State's next witness is
16 Darnell Butler.

17 THE COURT: Okay.

18 THE MARSHAL: Is he in custody?

19 MS. MERCER: Um-hum. Your Honor, may I approach
20 your clerk, please?

21 THE COURT: Sure.

22 THE MARSHAL: Come up here. Step up here. Step up
23 here.

24 THE WITNESS: And what is this for?

25 THE MARSHAL: Step up there. Face the clerk over

1 here and raise your right hand.

2 DARNELL BUTLER, STATE'S WITNESS, SWORN

3 THE CLERK: Thank you. Please be seated.

4 THE MARSHAL: Just have a seat.

5 THE CLERK: If you could please state your full
6 name, and the spelling of the first and last name for the
7 record.

8 THE MARSHAL: Speak into that.

9 THE WITNESS: Darnell Butler. D-a-r-n-e-l-l,
10 B-u-t-l-e-r.

11 MS. MERCER: May I proceed, Your Honor?

12 THE COURT: Yeah, your witness.

13 DIRECT EXAMINATION

14 BY MS. MERCER:

15 Q Sir, you were previously employed at a 7-Eleven
16 located at -- on East Charleston, correct?

17 A Yep.

18 Q And that was specifically 4581 East Charleston?

19 A I'm not sure.

20 MS. MERCER: Your Honor, permission to publish
21 State's Exhibit 2?

22 THE COURT: Yes.

23 MS. MERCER: Okay.

24 BY MS. MERCER:

25 Q And Mr. Butler, if you could look at the screen for

1 me.

2 THE COURT: You're going to have to brighten it up,
3 probably. There you go.

4 BY MS. MERCER:

5 Q Do you see the little bubble that says 4581 East
6 Charleston?

7 A Yeah.

8 Q And it's off of Arden and Charleston?

9 A Yep.

10 Q Do you recall your store generally being in the area
11 of Arden and Charleston?

12 A Yep.

13 Q How were you employed at that 7-Eleven?

14 A What do you mean?

15 Q Were you a cashier?

16 A Yeah.

17 Q Were you working on October 29th of 2014?

18 A I'm not sure.

19 Q Okay. Would it refresh your recollection if I
20 showed you a copy of a statement that you completed for
21 police?

22 A I guess.

23 THE COURT: Okay, hold on. Mr. Butler, could you
24 scoot in a little bit? We're just not picking you up
25 completely on the -- okay. All right, thank you.

1 MS. MERCER: Permission to approach the witness,
2 Your Honor?

3 THE COURT: Yes.

4 BY MS. MERCER:

5 Q And if you could just take a look at this statement
6 for me, and it includes a date of 10/29/2014 up here. Does
7 that refresh your recollection as to the date?

8 A Yeah.

9 Q Okay. And on that store, did -- or on that date,
10 did something happen at your store that caused you to write
11 this statement for the police?

12 A Yeah, it did.

13 Q What was that?

14 A I got robbed.

15 Q As you were working as a cashier? What shift were
16 you working that night?

17 A Graveyard.

18 Q Were you the only employee at the store at that
19 time?

20 A Yep.

21 MS. MERCER: Your Honor, permission to publish?

22 THE COURT: Yes.

23 BY MS. MERCER:

24 Q Darnell, I'm publishing State's Exhibit 32 up on the
25 overhead.

1 THE COURT: You need to brighten it up --

2 MS. MERCER: I'm trying to figure that out.

3 THE COURT: -- if you can. Okay. Well, Mr. Portz
4 dropped it way down, so. There you go. Does that help?

5 MS. MERCER: Thank you.

6 THE COURT: Do you see it a little bit better, Mr.
7 Butler?

8 THE WITNESS: Uh-huh.

9 THE COURT: Okay. All right.

10 BY MS. MERCER:

11 Q Is this the outside of your store?

12 A Yep.

13 Q And I'm showing you State's Exhibit 33. Is this
14 behind your cashier counter?

15 A Yep.

16 Q Showing you State's Exhibit 34, is this the cashier
17 after the robbery -- or the cash drawer after the robbery?

18 A Yep.

19 Q And there are no bills in it?

20 A No.

21 Q Just change? And showing you State's Exhibit 35, is
22 this the other register?

23 A Yep.

24 Q Since you were the only employee working on that
25 night, was there only one drawer that had money in it, or did

1 both drawers have money in it?

2 A Just one.

3 Q The one that you were operating out of? Is that a
4 yes?

5 A Yeah.

6 Q And is it this drawer that has the change in it?

7 A Yep.

8 Q You indicated that you were robbed that night. How
9 many people came into your store and robbed you that night?

10 A Two.

11 Q And do you recall whether one of them entered before
12 the other?

13 A I don't really remember right --

14 Q Was your store equipped with surveillance video?

15 A Yeah.

16 Q I'm sorry, surveillance cameras. And they were
17 working that night, correct?

18 A I believe so, yeah.

19 MS. MERCER: Your Honor, I would request to publish
20 a portion of 36A.

21 THE COURT: That's fine. This is 36A?

22 MS. MERCER: Yes, Your Honor.

23 THE COURT: Okay, okay.

24 BY MS. MERCER:

25 Q Darnell, do you recall about what time that robbery

1 occurred?

2 A No.

3 THE WITNESS: Hey, Your Honor, so --

4 THE COURT: Hold on, Ms. Mercer. Yeah.

5 THE WITNESS: So, this has nothing to do with me
6 whatsoever? Like, I'm not being prosecuted right now? I've
7 been in handcuffs this whole morning for nothing?

8 THE COURT: Well, my understanding is that you're in
9 custody on something else.

10 THE WITNESS: That does not pertain to this matter.
11 Like, I'm here against my will, right?

12 THE COURT: You're here because you've been
13 subpoenaed.

14 THE WITNESS: For what though?

15 THE COURT: Because you're a witness in a matter --
16 in a case.

17 THE WITNESS: But I don't know nothing.

18 THE COURT: Okay, go ahead, Ms. Mercer.

19 THE WITNESS: They got everything I know.

20 THE COURT: Go ahead.

21 MS. MERCER: Okay.

22 BY MS. MERCER:

23 Q And Mr. Butler, the two individuals that entered
24 your store that night, were they wearing anything to conceal
25 their faces?

1 A I don't remember.

2 Q Okay. Do you recall testifying that --

3 MS. MERCER: Court's indulgence.

4 BY MS. MERCER:

5 Q Do you recall writing in your voluntary statement
6 that they both had red bandanas over their faces?

7 A You just showed it to me, so yeah, I guess.

8 Q Okay. So, you would not be able to identify those
9 individuals, correct?

10 A No.

11 (Exhibit 36A is played)

12 BY MS. MERCER:

13 Q And that's you right there, wandering around the
14 store, correct?

15 (Stopped playing of Exhibit 36A)

16 BY MS. MERCER:

17 Q Can you see it on your screen, Mr. Butler?

18 A No.

19 THE MARSHAL: The screen's gone off again.

20 THE COURT: His screen did?

21 MR. MANINGO: We don't have video --

22 MS. LOBO: We don't have it, Judge.

23 THE COURT: All right, hold on. We'll get it --
24 boot it up again.

25 MS. MERCER: Yeah, it's off.

1 THE CLERK: No, I just toggle between the document
2 and the [inaudible].

3 THE COURT: Okay.

4 THE CLERK: I don't know what it's doing now.

5 THE COURT: Okay, let's see.

6 MR. MANINGO: There it is.

7 MS. LOBO: There you go.

8 THE COURT: Did it come up now? Sir, do you got --

9 BY MS. MERCER:

10 Q Can you see it now, Mr. Butler?

11 THE COURT: -- something on your screen?

12 THE WITNESS: Yeah.

13 THE COURT: All right.

14 MS. MERCER: I'm going to back that up for a second.

15 (Exhibit 36A is played)

16 BY MS. MERCER:

17 Q Do you see the individual back there in the red
18 shirt --

19 A Yeah.

20 Q -- red and black shirt? That's you, correct?

21 A Yeah.

22 (Stopped playing of Exhibit 36A)

23 MS. MERCER: And I paused it at 57 seconds.

24 BY MS. MERCER:

25 Q And is that one of the individuals that came into

1 your store and robbed you that night?

2 A I guess, yeah.

3 (Exhibit 36A is played)

4 (Stopped playing of Exhibit 36A)

5 MS. MERCER: And I've paused it at one minute and
6 one second.

7 BY MS. MERCER:

8 Q And is that the second individual that came and
9 robbed you that night at the bottom of the screen by the door?

10 A I guess, yeah.

11 MS. MERCER: Your Honor, at this point, I would move
12 for the admission of 36A and request to publish.

13 THE COURT: Any objection?

14 MR. TANASI: Your Honor, I would object, just from
15 the standpoint of his answers are "I guess." He hasn't given
16 a confident answer.

17 THE COURT: Well, he can't -- he's saying that's me
18 in the video, but the question was is somebody came in and
19 robbed, and "I guess" is what he's saying. So, you're saying
20 that he can't identify it?

21 MR. TANASI: Essentially, Your Honor. I'll submit
22 it on that.

23 THE COURT: All right. And Mr. Maningo?

24 MR. MANINGO: Your Honor, I'd join in the objection.
25 I don't think that there's been a proper foundation laid with

1 respect to this witness's knowledge of the video. I think his
2 answers, while honest, are very vague as to whether he
3 recollects this video, his knowledge base for the video
4 itself, and I don't think a proper foundation's been laid.

5 THE COURT: Okay, overruled. It will be admitted.

6 (Exhibit 36A is admitted)

7 MS. MERCER: Thank you, Your Honor.

8 MR. TANASI: Thank you.

9 THE CLERK: Judge, that's 36 and 36A, correct?

10 THE COURT: It's 36 and 36A, right?

11 MS. MERCER: Correct. Let me double-check, just --
12 yes, it is 36A.

13 (Exhibit 36A is played)

14 (Stopped playing of Exhibit 36A)

15 BY MS. MERCER:

16 Q And Mr. Butler, at this point, you were walking back
17 behind your counter where the cash registers are?

18 A Yep.

19 Q Why did you walk back there?

20 A Well, it looks like I was being robbed.

21 Q Okay. Did they say anything to you when they
22 entered the store?

23 A I don't remember.

24 Q Do you recall writing in your voluntary statement
25 for the police that night that the first guy in, the guy with