

1 A It was about two weeks ago when I was over there, so, yeah.

2 Q So, let's talk about your path, you come out and you see Mr. Munoz and

3 Mr. Harvey but you don't see any sort of interaction?

4 A Right.

5 Q From that period you begin to walk towards this vehicle?

6 A [No audible response]

7 Q Yes?

8 A Yes.

9 Q And you're standing on the sidewalk?

10 A Yes.

11 Q And do you have your cell phone out?

12 A Yes.

13 Q Do you call 9-1-1?

14 A No.

15 Q You're taking photographs?

16 A Yes.

17 Q Are you -- do you immediately start to take photos?

18 A Not immediately, no.

19 Q Okay. You wait a little bit?

20 A I waited until I got down by where the vehicle was.

21 Q So you put the vehicle basically right in front of the Dollar Tree?

22 A Yes.

23 Q And that vehicle is parked forward facing or backed in the stall?

24 A Forward facing.

25 Q Do you recall whether or not there was a license plate on the front or

1 the back of the car?

2 A I don't recall on the front. I recall there was one on the back.

3 Q Okay. Do you have any conversation with Mr. Harvey?

4 A No, ma'am.

5 Q At this time period you indicated that Mr. Harvey was running?

6 A Yes.

7 Q Are you also running?

8 A No.

9 Q Just walking?

10 A Yes.

11 Q Okay. And what's Mr. Munoz doing, does he go back to the store?

12 A I don't believe he went into the store, but he was behind me. I can't

13 really recall where he went to.

14 Q Okay. Just behind you somewhere?

15 A Yes.

16 Q No further communication with him?

17 A Not really, no.

18 Q Got it. And, so, where is that you stopped walking when you stopped

19 walking?

20 A Probably about two or three parking stalls away from where the vehicle

21 was parked, just in that triangle.

22 Q Okay. Can you show us where that is? I'm not sure which shape --

23 A Yeah.

24 Q -- to give you so let's just point.

25 A Right about here. Well --

1 Q I can't see. You're -- okay.

2 A Where the two cars are, right there passed the planter, that's about  
3 where I'd be standing.

4 Q That's where you stopped?

5 A Yeah.

6 Q Okay. And that's where you're taking the photographs?

7 A Yes.

8 Q Now, during this time that you're outside, you didn't see a knife?

9 A No, ma'am.

10 Q Did you see a knife on the ground anywhere?

11 A No, ma'am.

12 Q You've been working for T.J. Maxx for eight years?

13 A Yes, ma'am.

14 Q You indicated that it's not part of your job -- maybe I misunderstood  
15 you. I know you do ORC, organized retail crime; right?

16 A Yes, ma'am.

17 Q Is it part of your job to arrest individuals?

18 A No, ma'am.

19 Q Okay, it is not.

20 And so when you have an apprehension do you call Metro?

21 A When I personally have an apprehension?

22 Q Yes.

23 A I don't apprehend people.

24 Q You don't apprehend people at all?

25 A No, ma'am.

1 Q Okay. Are you familiar with the security company that works the plaza  
2 of this T.J. Maxx?

3 A No, ma'am.

4 Q Now, on these pictures that you took, you don't recall exactly how many  
5 you took?

6 A No, I don't recall.

7 Q You know that they were of the vehicle?

8 A Yes.

9 Q And of the license plate maybe?

10 A Yeah. Generally when I'm snapping photos, if I have to build a case file  
11 on something, I try to get good pictures of the vehicle, suspects, and then license  
12 plates, if I can, yes.

13 Q Okay. So presumably you would have had pictures of Mr. Harvey as  
14 well as the vehicle and the license plate?

15 A Presumably, yes.

16 Q But you never showed those pictures to Mr. Munoz?

17 A No.

18 Q You never showed those pictures to Metro?

19 A No.

20 Q And you deleted them?

21 A Yes.

22 Q On the same date?

23 A Yes, ma'am.

24 Q And you never told the cops that you had taken those photos?

25 A No, ma'am.



1 Q Did any of the officers ask you whether you had taken any photos or  
2 video?

3 A I don't recall anybody asking.

4 Q And these are on your personal cell phone?

5 A Work cell phone.

6 Q Work cell phone?

7 A Yes, ma'am.

8 Q But you did not download these to any type of computer or iCloud or --

9 A No. No, ma'am.

10 Q And your company policy with regard to photographs what is that?

11 A You're not allowed to take photographs with your personal cell phone,  
12 which is why I use my work cell phone.

13 Q Okay.

14 A And that's really about it.

15 Q Any other policies?

16 A [No audible response].

17 Q No?

18 A No, I mean --

19 Q What about with whom you are allowed to share them with?

20 A Yeah. Photographs are only shared with pretty much people who are  
21 above me, not allowed to e-mail them, don't text them, things like that.

22 Q And you're allowed to give them to law enforcement?

23 A If law enforcement requests them, yes.

24 Q If law enforcement questions them?

25 A Yeah.

1 Q Okay. But they are accessible to individuals outside of law  
2 enforcement?

3 A As far as -- oh, people with whom I work with, yes. Like my boss would  
4 be able to receive them or somebody who would be maybe the position right above  
5 me. If it's needed for a case, I could pass the photos along to them as well.

6 A Okay.

7 Q What is an L. C. L. P. Detective?

8 A L. C. L. P?

9 Q Are you familiar with that?

10 A I'm not.

11 Q And so in this case you had a very limited role?

12 A Yes.

13 Q Just go outside and took some pictures, but didn't turn those over, and  
14 then basically testifying here?

15 A That's --

16 Q For the most part?

17 A Yes, ma'am.

18 Q Okay. But you didn't see anything of what happened?

19 A No.

20 MS. SPELLS: Okay. Court's belief indulgence.

21 THE COURT: Okay.

22 MS. SPELLS: Pass the witness, Your Honor.

23 THE COURT: State, redirect?

24 MR. ROSE: Very briefly, Your Honor.

25 THE COURT: Okay.

1                   You stay at that store?

2           A       Oh, no, I rotate. But I cover Marshalls and Home Goods as well. But  
3 where he may work one or two stores in a day, I might work five.

4           Q       Okay. So you're constantly going to different stores, different locations?

5           A       Yes, ma'am.

6           Q       And do you know how long Mr. Munoz has been working for T.J. Maxx?

7           A       [No audible response]

8           Q       Does a year sound about right?

9           A       Probably about right. I don't recall exactly when he was hired though.

10          Q       Okay. So with you constantly on the move and -- to your knowledge,  
11 does he also go to different stores?

12          A       Yes, yeah, he'll work different stores within T.J. Maxx, yes.

13          Q       Okay. But not Home Goods and --

14          A       No.

15          Q       -- Marshalls --

16          A       Marshalls.

17          Q       -- as well.

18                   How often do you see him at work?

19          A       It really depends on what stores he's working in, and if it necessitates  
20 me being there, sometimes a couple of times a week; sometimes once a month.

21          Q       Okay.

22          A       Just depends on what my work schedule is.

23          Q       And you guys have two different functions?

24          A       Yes.

25          Q       So it's not like you work in a team or a pair?

1 A No, yeah, no.

2 Q So, are you familiar with him outside of work at all?

3 A No.

4 Q Okay. Have you had much of an interaction with him?

5 A Just working with him.

6 Q Just working with him?

7 A Yes, ma'am.

8 Q Okay. And for the most part that's just been brief interactions?

9 A Sometimes 8-hour shift.

10 Q Sometimes an 8-hour shift?

11 A Yeah.

12 Q Okay. When you walked outside you say that he looked shocked, what

13 about his face gave you that impression?

14 A Just the way that he looked, his eyes were just kind of wide opened and

15 he kind of had that -- hard to describe that --

16 Q Hard to describe?

17 A Just in a way that somebody looks when they --

18 Q So basically --

19 A -- can't believe what -- maybe what they just did or just saw or

20 something like that just --

21 Q Okay.

22 A -- you know.

23 Q And was this the first time that you guys were kind of paired up together

24 with like an apprehension like this?

25 A Oh, no, I've assisted him on many apprehensions prior to that.

1 Q With more of an active role or a less active role?

2 A By --

3 Q By yourself?

4 A -- my role being more active? It just depends, every stops different.

5 Sometimes I get up there in time to see the actual encounter between, you know,  
6 him and a suspect or sometimes I don't, so.

7 MS. SPELLS: Okay, thank you.

8 THE COURT: Anything else?

9 MR. ROSE: Not by the State, Your Honor.

10 THE COURT: Thank you very much for your testimony. You can go ahead  
11 and step down and you're going to be excused. If you're going to be out in the  
12 hallway for any length of time, don't talk about your testimony.

13 THE WITNESS: Okay, I won't. I'm leaving.

14 THE COURT: Okay.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: All right. Let's take a short recess. Give you guys a little  
17 break. During this next very, short probably 10 minute recess. We'll shoot for like  
18 are a quarter till. We want to make as much progress as we can here.

19 I will admonish the members of the jury not to converse or discuss  
20 amongst themselves or with anyone else on any subject connected or related to the  
21 trial. Don't watch, listen, or read any reports or commentaries regarding this trial  
22 through any medium of information. Don't form or express any opinions on any  
23 subject connected or related to this trial until such time as this case has been finally  
24 submitted to you.

25 See you guys in about 10 minutes.

1 [Outside the presence of the jury panel]

2 Okay. We're outside the presence of the jury.

3 Did you want to make a record on --

4 MS. SPELLS: I do.

5 THE COURT: Go ahead.

6 MS. SPELLS: Your Honor, I'd like to make a record that I guess I talk a little  
7 bit too low and so we did discuss me trying to use a microphone and not walking  
8 away so that our record is clear. And then the other thing I believe I needed to  
9 make a record on -- the other thing I believe I needed to make a record on was --  
10 oh, the witness Mr. Bramble. The State asked a question as to why he deleted the  
11 photos and the question was, you had information that someone was in custody at  
12 that time period. I did ask to approach. We would object to that as not only being  
13 hearsay but more prejudicial than probative and kind of outside his purview of what  
14 he could testify to and not relevant to the topic in which we were focused on or  
15 relevant to the incidents here.

16 THE COURT: He did make mention to the fact that he was informed that  
17 somebody was in custody. He didn't say that the Defendant was in custody. He  
18 said that someone was in custody, which was the reason he deleted the photos.

19 MR. ROSE: That's correct, Your Honor.

20 THE COURT: You know, probably if you had known in advance that he was  
21 going to say that, I would have sustained an objection. But he said it, we moved on,  
22 it was the only mention of it. I don't think that it --

23 MR. ROSE: And, Your Honor, just for purposes of the record, I don't believe it  
24 was hearsay because we were not offering it for the truth of the matter. It was  
25 asserted just for why he did what he did because he did delete the photographs.

1 And it doesn't matter whether or not somebody was actually in custody as long as  
2 he believed that somebody was in custody at that point, which is why he thought  
3 they were no longer relevant and he wasn't doing a case file.

4 THE COURT: You're probably right. But I probably, again, had I had  
5 known -- had we known he was going to say that, I probably would have like, said,  
6 don't say that. But it doesn't make any difference. It's not -- it's not going to a big  
7 deal. It's not going to have any effect on anything.

8 MR. ROSE: And one more thing, Your Honor, is that we did have the pretrial  
9 motion regarding the show-up identification, that show-up identification had been  
10 suppressed. And the reason why I asked in that specific manner was to avoid any --  
11 and he was informed not to talk about the show-up in any way, shape, or form. And  
12 the reason why I asked in that specific manner was so that it was ambiguous as to  
13 how or why or who had told him of that so that there was no indication of a  
14 show-up because we had an issue with the redaction earlier. I did not want it to  
15 appear as if we were trying to hide anything, but also did not want to put out  
16 anything that appeared as if a show-up had been done. I was trying to explain why  
17 he did what he did without violating any of this Court or Judge Miley's rulings  
18 previously.

19 THE COURT: Everything --

20 MS. SPELLS: Just briefly for the record --

21 THE COURT: It's all right.

22 MS. SPELLS: -- if the Court doesn't mind.

23 THE COURT: What's that?

24 MS. SPELLS: I just have something brief for the record.

25 THE COURT: What? Go ahead.

1 MS. SPELLS: So that witness was not the individual who was present during  
2 the show-up, so I don't think that is necessarily relevant. The witness had already  
3 testified as to why he had deleted the photos that being that he was not building a  
4 case file was not involved so. I mean, we completely understand the Court's ruling.  
5 We did move on. But for the record, that was the basis for our objection. Our  
6 understanding is that the State kind of intentionally wanted that information to come  
7 out. I'm not saying that it was done maliciously or anything like that but we did  
8 object to that. We don't think that it's relevant to the show-up.

9 THE COURT: I don't think there's any harm done. Once again, it was said,  
10 it's done. I don't think it caused any harm. Had I had an opportunity and I probably  
11 would have said, don't say it, don't let him say it. But you had a completely  
12 legitimate reason, I mean, here's a guy that stood there and took photographs with  
13 his camera and then, you know, fairly quickly just deleted them. And, I mean, that  
14 wouldn't -- that didn't sound logical without a reason why he did that. And he did it  
15 because he was told somebody had been -- was in custody. He didn't feel like there  
16 was any need to keep them, so.

17 That having been said, let's take a break.

18 MR. ROSE: Thank you, Your Honor.

19 [Recess taken at 2:40 p.m.]

20 [Trial resumed at 2:53 p.m.]

21 [In the presence of the jury panel]

22 THE MARSHAL: All rise, please.

23 And be seated.

24 THE COURT: Will the parties stipulate to the presence of the jury.

25 MS. SPELLS: Yes.



1 MS. JONES: Yes, Your Honor.

2 MR. SCHWARTZ: Yes, Your Honor.

3 THE COURT: Very good. Okay.

4 MR. ROSE: The State's next witness, Your Honor, is Errol Appel.

5 THE COURT: Errol?

6 MR. ROSE: Errol.

7 THE COURT: Errol.

8 **ERROL APPEL**

9 [having been called as a witness and being first duly sworn, testified as follows:]

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

12 THE COURT: State and spell both your first and your last name.

13 THE WITNESS: First name is Errol, spelled, E-R-R-O-L. Last name is Appel,  
14 spelled, A-P-P-E-L.

15 THE COURT: Very good.

16 MR. ROSE: May I proceed, Your Honor?

17 THE COURT: Yes.

18 MR. ROSE: Thank you.

19 **DIRECT EXAMINATION BY MR. ROSE**

20 BY MR. ROSE:

21 Q Good afternoon, Errol.

22 A Thank you.

23 Q What do you do for a living?

24 A I represent Freddie Fannie and HUD in federal inspections.

25 Q And are you married?

1 A Yes.

2 Q And what does your wife do?

3 A My wife is the store manager for Ross.

4 Q And for more than one store or just one store?

5 A Right now it's more than one store.

6 Q And one of the stores that she manages is that the Ross store located

7 at the intersection of Sahara and Decatur?

8 A Yes.

9 Q How long has she been managing that store?

10 A She's been there for almost nine months.

11 Q Okay. So was she managing that store on March 30th of this year

12 2016?

13 A Yes.

14 Q What were you doing that day, March 30th?

15 A I was doing some inspections for the government and I was just in that

16 neighborhood so I stopped in to visit her.

17 Q Okay. And her being your wife?

18 A Right. My wife, yeah.

19 Q And that was at that particular store?

20 A At that store, yes.

21 Q Is that here in Las Vegas, Clark County, Nevada?

22 A Yes.

23 Q Okay. Did you stay at the store all day?

24 A No.

25 Q But at some point in time did you end up leaving the store?

1           A     I'm sorry, I didn't hear you.

2           Q     At some point in time did you end up leaving the store?

3           A     Yes, I did.

4           Q     Did anything unusual happen after you left?

5           A     After I got out, left the store, I was getting in my car, and there was two

6 gentleman that were running out of the store, yelling, screaming, and I yelled out my

7 window, said, what's going on. And one of gentleman said that we just got held up

8 by knife point.

9           Q     Now, those two gentlemen, did you know those two gentlemen?

10          A     No.

11          Q     And they were coming out of the T.J. Maxx just a couple of stores down

12 from the Ross?

13          A     Yes.

14          Q     Now, were you in your car at this point in time?

15          A     Yes.

16          Q     Okay. And what kind of car was that?

17          A     My vehicle at that time was a 2012 Traverse, Chevrolet.

18          Q     Do you remember what color?

19          A     White.

20          Q     White?

21          A     Uh-huh.

22          Q     Okay. So after you see these people running out, you have that, you

23 know -- do you have any other conversation with them other than that very brief little

24 interaction?

25          A     I'm sorry, I didn't hear you.

1 Q You said that these two gentlemen yelled something to you, other than  
2 that, you know, one line back and forth, did you have any other conversation with  
3 them?

4 A No, they just yelled that they were held up at knife point and --

5 MS. JONES: Objection, Your Honor, hearsay.

6 THE COURT: Don't say what they said. They just said something and -- well,  
7 this is probably --

8 MR. ROSE: May we approach very briefly?

9 THE COURT: You're going to say it's an excited utterance?

10 MR. ROSE: Excited utterance as to why Mr. Appel does what he does.

11 THE COURT: Actually, I think there's an exception. I think it's an excited  
12 utterance and I'm going to let it in. It's overruled.

13 Go ahead. So what did you hear, again?

14 THE WITNESS: I yelled out, what's going on, they said that we were just held  
15 up at knife point. And I, at that time, yelled to them to call Metro and that I was  
16 going to be following them.

17 Q About how far away do you think you were from these two gentlemen?

18 A Probably about 25 yards at the most.

19 Q Okay. And so you said you saw these two gentlemen running out and  
20 did you see anybody else that made you take notice?

21 A I noticed a gentleman and a lady and two children.

22 Q And where in relation to the two people running out of the T.J. Maxx  
23 were -- was this other group of four people?

24 A I'm sorry, I didn't hear. I'm sorry. I'm a little heard of hearing, I  
25 apologize.

1 Q I apologize. I'll try and speak up.

2 So you said that there was a group of four people, the gentleman, the  
3 lady, and the two younger people, and then you had the two gentlemen running out  
4 of the T.J. Maxx?

5 A Right.

6 Q That group of four where were they in relation to the two gentlemen  
7 running out of the T.J. Maxx?

8 A They were running into a U-Haul van.

9 Q Okay. And do you remember -- was it a standard, white U-Haul?

10 A It was a U-Haul that had the nineteen-ninety-five rent me, cargo van.

11 Q Okay. Did you happen to see any other U-Haul vans in the parking lot?

12 A There were none that I noticed, no.

13 Q Okay. And did you see that group of four get into the U-Haul?

14 A Yes.

15 Q And you said that there was a gentleman in that group of four, do you  
16 remember where in the U-Haul that person got into?

17 A Where the what?

18 Q The gentleman, who was in that group of four, did he get into the  
19 passenger seat, the driver's seat, the back of the van?

20 A He got into the driver's seat, the lady got into the passenger seat, and  
21 there was two children involved. She grabbed one of the children and put it in the  
22 front seat and then the other child into the sliding glass -- into the sliding door.

23 Q Okay. What happened to the van after all four people got in?

24 A They sped off and I was in pursuit of them.

25 Q Now, you say you were in pursuit of them, the four people who got into

1 the van, did you know any of them?

2 A No, never seen them in my life.

3 Q But you decided to speed off after the van?

4 A I did that under the -- what the gentlemen said that they had gotten held  
5 up, yes.

6 Q Do you remember if you called 9-1-1?

7 A Yes, I did.

8 Q And when did you call 9-1-1?

9 A Immediately after they told me that, and he sped off, I called 9-1-1 and  
10 identified myself and also told the dispatcher that I was -- I was armed and I did  
11 have a valid CCW.

12 Q Okay. So you said that you were armed?

13 A Yes.

14 Q With a firearm?

15 A It was a firearm, yes.

16 Q Okay. And you said you had a CCW, is that a concealed carrier  
17 weapons permit?

18 A That's correct.

19 Q Now, why did you tell the officers that?

20 A For their safety and for my safety.

21 Q Okay. Did you stay on the phone with 9-1-1 while you were following  
22 the U-Haul?

23 A The entire time, yes.

24 Q While you were following the U-Haul, did you see any other U-Haul  
25 vans?

1 A No, sir.

2 Q Any other U-Hauls at all?

3 A I saw a couple of U-Haul trucks but they were not the van.

4 Q Okay. Are you confident that it was the same van that you were  
5 following the whole time?

6 A That's correct.

7 Q Okay. I'm assuming, because you were driving, that you have a driver's  
8 license; right?

9 A That's correct.

10 Q Okay. Have you been driving for a little while now?

11 A Many, many years.

12 Q Could you describe the manner in which the van itself was driving?

13 A Very recklessly and very disregard for a lot of people, safety was a  
14 major concern.

15 Q Did you maybe have to, you know, violate a traffic law while you were  
16 following it?

17 A Probably a few of them, yes.

18 Q Okay. But you were able to follow it?

19 A I was able to follow them. They were going down Charleston Street  
20 and in and out of buildings, in and out of parking lots, and stuff of that nature; that's  
21 correct.

22 MR. ROSE: Okay. May I approach the clerk, Your Honor?

23 THE COURT: Yes. I'll tell you what, I'll make you guys a deal, all of you.

24 You don't have to ask me for permission to approach the clerk or the witness or the  
25 bench. I'm giving you permission.

1 MR. ROSE: Thank you, Your Honor.

2 MS. JONES: Thank you, Your Honor.

3 MS. SPELLS: Thank you.

4 MR. ROSE: Your Honor, the State has Proposed Exhibit 1. I believe that  
5 there is no objection to it. So we would ask to both admit and to publish it at this  
6 point in time.

7 THE COURT: No objection?

8 MS. JONES: No objection, Your Honor.

9 THE COURT: All right. State's 1 is admitted and go ahead and publish.

10 MR. ROSE: Thank you, Your Honor.

11 **[STATE'S EXHIBIT 1 ADMITTED]**

12 BY MR. ROSE:

13 Q Mr. Errol, if you look over on that screen next to you, showing you  
14 what's been admitted as State's Exhibit 1, do you recognize what we're looking at  
15 here?

16 A Not really. It's kind of difficult.

17 Q Do you need me to zoom in a little bit for you?

18 A It needs to be, yeah.

19 Q So zooming in first over here.

20 A Okay, now we're good.

21 Q Do you see where it kind of looks like a T.J. Maxx?

22 A Yes.

23 Q Okay. And then moving down to kind of the bottom corner, does it look  
24 like on the left-hand side there it says South Decatur Boulevard?

25 A That's correct.



1 Q And then we're just going to go to the other corner because of the way  
2 the map is cut off. Does it now look like it says West Sahara Avenue at the very  
3 bottom edge of the page?

4 A Correct.

5 Q So would it appear to you that that T.J. Maxx is at the intersection of  
6 Decatur and Sahara?

7 A Uh-huh, yes; correct.

8 Q Is that also where the Ross is located?

9 A Ross is located there in that same shopping center; correct.

10 Q Okay. Now, can you see on the portion of the map that we're looking at  
11 here, which direction the U-Haul went initially?

12 A The U-Haul went from Ross straight out to Decatur Boulevard and then  
13 made a right-hand turn going towards Charleston.

14 Q Okay. Now, Errol, you can actually draw on that screen.

15 A Oh, okay.

16 Q It's a touch screen. So if you wouldn't mind --

17 THE COURT: Put your finger and just draw however you want to.

18 THE WITNESS: Okay, perfect.

19 The van was packed here, I'm parked right there, and he took off  
20 through this -- right there, made a right-hand turn on Decatur and then he went  
21 down--

22 BY MR. ROSE:

23 Q Okay. We'll move it up --

24 A Okay.

25 Q -- and we'll kind of trace the route. But essentially what you're saying is

1 kind of from the T.J. Maxx, directly west through the parking lot, and towards  
2 Decatur Boulevard -- or right so he was heading northbound on Decatur Boulevard?

3 A That's correct.

4 Q Okay. So we're just going to kind of slide this up, so we're now heading  
5 north on Decatur Boulevard, up past Oakey. Do you remember where along here  
6 he went?

7 A I'm sorry?

8 Q We're now looking at a lit bit further north on Decatur?

9 A Right.

10 Q Did he -- was he still on Decatur up past Oakey Boulevard?

11 A Yes, he went to Charleston.

12 Q Okay. So if we keep going up on this is that Charleston up at the top  
13 edge of the screen now?

14 A Right. From there he made a right-hand turn.

15 Q Okay. So he makes a right-hand turn so he's heading now east on  
16 Charleston?

17 A Right.

18 Q Okay. And if we move this over on Charleston, where along Charleston  
19 does he go?

20 A Okay. He went through a couple of -- the Cane's Fingers, from there he  
21 went back up and through there, came back down through here, and then he cut  
22 through a parking lot and ended up here at Desert Torah Academy.

23 Q Okay. So he turns eastbound onto Charleston, proceeds down a little  
24 ways, goes through a couple of parking lots, and winds up in front of the Desert  
25 Torah Academy?

1 A That's correct.

2 Q Okay.

3 A And I was right behind him and there was a -- parking, there's a van  
4 there -- or not a van but a street separating.

5 Q Let me maybe zoom in on that a little bit more.

6 A Yeah.

7 Excuse me?

8 Q Do you want me to zoom in a little bit more?

9 A If you could, I'd appreciate it.

10 Q Okay.

11 A Okay. There's a street right there, he pulled into this area right there,  
12 going into the main entrance to the -- or trying to get into the main entrance to the  
13 school. I'm parked over here on the phone with Metro, and I notified Metro that they  
14 had two squads going this way and to come into the -- into the Jewish school  
15 because I did not know the name the name of the school.

16 Q Okay. So you know that you're sitting out in front a school, you've seen  
17 the U-Haul van come to a stop, and you're trying to let Metro know where to go?

18 A That's correct.

19 Q So during this route, from T.J. Maxx over to the school, did you see  
20 anybody get out of the van?

21 A The gentleman got out of the van, the driver got out of the van, ran to  
22 the school doors, and he could not get in, they were locked -- they were locked.

23 Q Okay. Now, you say that the gentleman -- was that -- did that appear to  
24 you to be the same person who got into the driver's seat of the U-Haul?

25 A That was the -- it's the same individual.

1 Q Okay. That person got out of the U-Haul, ran to the doors of the Jewish  
2 school, and then what did they do at those doors?

3 A He tried to get into the school, the school was locked, the doors were  
4 locked, then he ran -- started running back towards the van and at that time Metro,  
5 two squads from Metro showed up.

6 Q Okay. Now, did you go over and actually try the doors yourself?

7 A No.

8 Q Okay. So are you saying that it was locked because it looked like he  
9 could not get in?

10 A People could not get in and I had talked to some people there that  
11 said --

12 Q Well, without talking to anybody else about what happened --

13 A Yes.

14 Q -- just based on how you observed him trying the door --

15 A He could not get into the school.

16 Q Okay.

17 A They did not open.

18 Q Okay. And then he ran back towards the U-Haul?

19 A Right.

20 Q He being the driver of the U-Haul; correct?

21 A Correct.

22 Q And then that's when Metro showed up?

23 A That's when Metro showed up it; that's correct.

24 Q Now, did you have a pretty clear line of sight for all of this?

25 A I had a -- total, complete line of sight, nothing was blocking me.

1 Q So could you actually see what Metro was doing?  
2 A Yes.  
3 Q And at any point in time did you go and speak with Metro?  
4 A Yes.  
5 Q And was that at this particular location or was it somewhere else?  
6 A No, it was at that location.  
7 Q Did you get to actually see the van?  
8 A Yes.  
9 Q And did you have the opportunity to look inside the van?  
10 A Yes.  
11 Q And what, if anything, do you remember seeing in the van?  
12 A I saw a whole lot of merchandise.  
13 Q And --  
14 MS. SPELLS: Your Honor, may we approach?  
15 THE COURT: Sure.  
16 [Bench conference begins]  
17 MS. SPELLS: I don't know where we're going here but I did want to --  
18 THE COURT: Where are we?  
19 MR. ROSE: My very next question is going to be whether or not there were  
20 any tags on the merchandise.  
21 THE COURT: Okay.  
22 MR. ROSE: He actually --  
23 THE COURT: You can ask him that but don't get into a whole bunch of  
24 merchandise and stuff.  
25 MR. ROSE: No, I won't. I won't.

1 THE COURT: Okay.

2 MR. ROSE: That'll be the end of it.

3 THE COURT: All right. Go ahead.

4 MR. ROSE: He has been specifically informed what he's not allowed to talk.

5 THE COURT: Okay.

6 MR. ROSE: Okay.

7 THE COURT: Okay.

8 BY MR. ROSE:

9 Q And the merchandise that you saw in the van, did that still have tags on

10 it?

11 A Yes.

12 Q Do you remember what tags those actually were, do you?

13 A I just saw a lot of tags on it and also saw some --

14 Q Okay, that's all we need.

15 A -- yeah, other tags.

16 Q And you said that you made a 9-1-1 call; correct?

17 A I'm sorry?

18 Q You said that you made a 9-1-1 call; correct?

19 A That's correct.

20 Q Do you think you'll be able to recognize your own voice?

21 A I would hope so.

22 Q So just for the purposes of the record, we will be playing a second

23 audio file from State's Exhibit 39.

24 THE COURT: This is from Exhibit 39?

25 MR. ROSE: Yes, Your Honor.

1 THE COURT: Okay.

2 [State's Exhibit 39 played]

3 BY MR. ROSE:

4 Q Mr. Appel, were you able to hear that?

5 A Yes.

6 Q Okay. And that little brief clip could you tell whose voice that was that  
7 was just speaking?

8 A That was my voice.

9 Q That's your voice?

10 A Yeah.

11 Q Okay. So is that the call that you made?

12 A Yes, correct.

13 MR. ROSE: Okay. Can you play that time frame.

14 [State's Exhibit 39 played]

15 BY MR. ROSE:

16 Q So was that the call that you made?

17 A Yes.

18 Q Okay. Now, I just want to touch on one or two things in there. You  
19 made a couple of statements in there about what had happened in front of the  
20 stores, did you actually see the interaction between the two gentlemen from T.J.  
21 Maxx and the driver of the U-Haul?

22 A No.

23 Q So the statements that you made to the 9-1-1 operator were those  
24 based primarily on that first initial contact and what they had told you?

25 A That's correct.

1 Q Okay. And just to be clear, so you didn't see that interaction, you never  
2 saw a knife, did you?

3 A No.

4 Q Okay. You never actually went over and spoke with the driver of the  
5 U-Haul yourself, did you?

6 A No, sir.

7 MR. ROSE: Court's brief indulgence. There's no further questions at this  
8 point in time, Your Honor.

9 THE COURT: Cross.

10 MS. JONES: Yes, Your Honor.

11 **CROSS-EXAMINATION BY MS. JONES**

12 BY MS. JONES:

13 Q Good afternoon, Mr. Appel.

14 A Yes, ma'am.

15 Q I have a few questions. So you mentioned you're a HUD inspector?

16 A Yes, ma'am.

17 Q So you take a lot of notes?

18 A Yes, ma'am, very thorough.

19 Q And you have to be accurate in those notes that you take?

20 A Yes, ma'am.

21 Q And you write a lot of reports; right?

22 A Followed by photos, yes, ma'am.

23 Q Okay. Going back to that day, March 30th, you said that you were in  
24 your car in front of the Ross store?

25 A Yes, ma'am.



1 Q And you saw three people running towards a U-Haul van?

2 A No, ma'am, I said four people.

3 Q Four people?

4 A Yes, ma'am.

5 Q You saw four people running.

6 Did you see three people trying to take photographs of the U-Haul van?

7 A I'm sorry?

8 Q Did you see three people trying to take photographs of the U-Haul van?

9 A No, there were two people taking photographs of the U-Haul van, there

10 were four people in the van.

11 There was a man, a lady, and two children.

12 Q And that's fine. Thank you. I appreciate that Mr. Appel. Just wait until I

13 ask a question.

14 A Fine.

15 Q All right. So you really wanted to be helpful that day?

16 A Of course.

17 Q And it was based on the information you received that you heard

18 somebody talking?

19 A That's correct.

20 Q And you wanted to help catch the people who had -- you had heard had

21 done something?

22 A That's correct.

23 Q Okay. So you followed that car?

24 A Yes. No, the van.

25 Q You followed the van?

1 A Yes, ma'am.

2 Q And you followed it pretty closely?

3 A Yes, ma'am.

4 Q You didn't let it out of your sight?

5 A No, ma'am.

6 Q And when the van stopped you stopped?

7 A Yes, ma'am.

8 Q Okay. And kind of going back to the people running, you saw four

9 people running towards the van, and you saw two people taking pictures?

10 A Yes.

11 Q And those were the two people who told you that the store had been

12 shoplifted?

13 A No, ma'am. They said they had been robbed at knife point.

14 Q They had been robbed at knife point, okay.

15 But you didn't see anything?

16 A No, ma'am.

17 Q You didn't see any action -- interaction between anything, two people,

18 you didn't see the knife; right?

19 A I'm sorry?

20 Q You didn't see the knife?

21 A No, ma'am.

22 Q And you didn't see any altercation?

23 A No, ma'am.

24 Q You just saw people running towards the van?

25 A That's correct.

1 Q You said you were never inside the T.J. Maxx?

2 A No.

3 Q You never saw anything stolen?

4 A That's kind of a hard question to answer, ma'am.

5 Q You didn't see anybody take anything, did you?

6 A No, I didn't see anybody take anything but.

7 MR. ROSE: May we approach very briefly?

8 MS. JONES: Okay.

9 MR. ROSE: Your Honor, may we approach very briefly?

10 THE COURT: Sure.

11 [Bench conference begins]

12 MS. JONES: He didn't see anybody take anything.

13 MR. ROSE: Your Honor, I have no objection at all to the questions as being  
14 asked. My only concern is that he saw other things which have been ruled on in the  
15 Motion in Limine. And I'm just, you know, buffering that if we are proceeding down a  
16 line about other things that were taken or whatever else, then we might get into  
17 other things we just [indiscernible] already.

18 THE COURT: What is -- what direction are you going? What is your --

19 MS. JONES: [indiscernible] he didn't see anything.

20 THE COURT: Okay. All right. But be careful because if you tread too far  
21 over --

22 MR. ROSE: And that's my only concern.

23 THE COURT: Okay. All right.

24 MR. ROSE: Thank you.

25 THE COURT: Be careful.

1 [Bench conference concludes]

2 BY MS. JONES:

3 Q Thank you, Mr. Appel.

4 So you never saw any conversation take place between Mr. Harvey and  
5 any of the people you saw in the parking lot that day?

6 A Which parking lot are you talking about, ma'am?

7 Q I'm talking about the Ross parking lot.

8 A No, ma'am.

9 Q Okay. And actually you thought it took place in front of the Ross store  
10 because that's what you said on the 9-1-1 call; correct?

11 A No. What I said was that I'm in front of the Ross store. I didn't think it  
12 took place in the Ross store. Otherwise I would have been -- I would have known  
13 about it.

14 Q Okay. But you were in front of the Ross store?

15 A I was in front of the Ross store; that's correct.

16 Q When you saw this happen?

17 A Yes.

18 MS. JONES: Pass the witness.

19 THE COURT: Redirect?

20 MR. ROSE: Very briefly, Your Honor.

21 **REDIRECT EXAMINATION BY MR. ROSE**

22 BY MR. ROSE:

23 Q Errol, do you remember when we were looking at this map, State's  
24 Exhibit 1 I believe it is -- State's Exhibit 1, we were looking at the academy and you  
25 were kind of pointing out where it was that you were located?

1 A Uh-huh.

2 Q Is that a yes?

3 A At the beginning or at the end?

4 Q Do you remember looking at this map and this general area that we're

5 looking at now?

6 A Right.

7 Q Okay.

8 A Okay.

9 Q And earlier do you remember circling where you say the Defendant

10 was, this location here, which has that little mark of CC's right over top of it?

11 A This area right there? I think that's -- isn't that the front door of the

12 school?

13 Q Okay.

14 A Yeah.

15 Q So to the best of your recollection, maybe this map doesn't look familiar

16 to you, but the -- what you remember is that it was a school that he was in front of?

17 A That's correct.

18 Q Okay.

19 A Yeah.

20 Q So, if there was something else on this map that showed where the

21 school itself was that would be where you remember this taking place?

22 A That's correct.

23 MR. ROSE: Okay. No further questions, Your Honor.

24 THE COURT: Anything else?

25 MS. JONES: Court's indulgence.

1 And just a little clarification, Your Honor.

2 THE COURT: Okay.

3 **RE CROSS-EXAMINATION BY MS. JONES**

4 BY MS. JONES:

5 Q Mr. Appel, I asked you a little bit about what you did and you told me  
6 you were a HUD inspector and that you took -- you wrote a lot of reports and that's  
7 correct?

8 A That's correct.

9 Q And you have to write accurate reports?

10 A Of course.

11 Q And you mentioned that you had actually spoke to Metro on  
12 March 30th; is that correct?

13 A For the recording, that's correct.

14 Q And you actually wrote a voluntary statement for Metro that day;  
15 correct?

16 MR. ROSE: Your Honor, I would object as to outside of the scope of the  
17 redirect.

18 THE COURT: All right. It is outside the scope of recross, but I'm going to let  
19 you go. Go.

20 MS. JONES: Thank you, Your Honor.

21 BY MS. JONES:

22 Q I'm sorry, did you understand the question, Mr. Appel?

23 A Would you repeat it, please.

24 Q Yes, sir.

25 Again, you mentioned that you wrote reports and they were accurate

1 reports; correct?

2 A That's correct.

3 Q And I asked you about did you write a voluntary report for Metro, the  
4 Las Vegas Metropolitan Police Department?

5 A Yes, I did.

6 Q And you wrote it shortly after -- after the incident in what you did that  
7 day; correct?

8 A I wrote what I saw at that time, yes.

9 Q But it was on that day?

10 A It was on that day.

11 Q Shortly after you saw it happen?

12 A Probably about a half hour, 45 minutes afterwards.

13 Q I would say that was kind of shortly afterwards.

14 I have a copy of your report, Mr. Appel. I'm showing it to the State.

15 Mr. Appel, can I just ask you to read your report?

16 A To read it?

17 Q To yourself.

18 A Oh, okay.

19 Okay.

20 Q Mr. Appel, do you remember me asking you how many people you saw  
21 running from the T.J. Maxx store?

22 A Uh-huh.

23 Q And you said there were two?

24 A Repeat the question.

25 Q Do you remember when I asked you how many people were running

1 from the T.J. Maxx store?

2 A Okay. Whether it was -- okay, go ahead.

3 Q And you said that there were two people running from the T.J. Maxx  
4 store?

5 A Taking pictures with their cameras; correct.

6 Q Correct.

7 And what did you write in your -- your voluntary statement that --

8 A There was a third person but he wasn't involved, so.

9 Q But you did write that there were three people running from the T.J.  
10 Maxx store?

11 A I wrote -- yeah, there was three, so, okay.

12 Q Okay. And three males from the T.J. Maxx store --

13 A If you take --

14 Q -- photographing the van that was in your --

15 A Excuse me?

16 Q -- that was in your voluntary statement?

17 A Yeah, okay, let me clarify that what you're trying to get to. Okay, three  
18 people means two people that were taking the pictures and one gentleman running  
19 there, so that's a total of three.

20 Q But, Mr. Appel, you mentioned to me that you were a HUD inspector  
21 and you write accurate reports; correct?

22 A Okay, ma'am, I know what --

23 Q I'm just asking you to answer the question.

24 A -- you're trying -- I understand what you're trying to say. There were  
25 three individuals running from that store.



1 Q Okay.

2 A Two of them taking -- two of them are white males, taking pictures with  
3 their camera and another black male that was also running from that store. So that's  
4 a total of three.

5 Q Mr. Appel, I'm going to ask that you answer my questions, okay.

6 A I just did, ma'am.

7 Q I'm going to ask that you answer my questions.

8 A Okay.

9 Q So, again, I'm going to ask, in your voluntary statement you state that  
10 there are three people who are running from the T.J. Maxx store photographing the  
11 van, that's in your voluntary statement that you just read?

12 A Two of them are photographing, okay, one is not photographing.

13 Q And, again, I'm going to ask the question, did you write in your report --

14 THE COURT: Couldn't you just -- read it. Read it so we know what you're  
15 talking about.

16 MS. JONES: And I did, Your Honor.

17 BY MS. JONES:

18 Q -- that three males from the T.J. Maxx out of the store photographing  
19 the van that's --

20 A I didn't specify which ones were photographing, ma'am.

21 Q But that's what you wrote in your voluntary statement; correct, because  
22 I'm reading from the statement?

23 A Okay, ma'am, three males running from the store.

24 Q Mr. Appel, it's really a yes or no question. Did you write that in your  
25 voluntary statement?

1           A     It's in the statement, ma'am.

2           Q     Okay.

3           A     I didn't specify how many were --

4           Q     But it is in the statement that you had three people who were

5 photographing the van?

6           A     Three people are running from the store.

7           Q     Okay.

8           A     I did not specify how many people were photographing.

9           Q     And yet you testified today that it was only two?

10          A     Okay, whatever, ma'am.

11          Q     All right. You testified today that there were only two?

12          A     There was two taking pictures, there was three people running from the

13 store. You can't change the spots on the leopard.

14          Q     No, sir, you cannot. But sometimes you can -- sometimes it's not

15 always what it appears to be or what it seems.

16          A     It's sometimes what, ma'am?

17          Q     It's not always what it appears to be.

18          MR. ROSE: Your Honor, is there a question?

19          THE WITNESS: I don't really want to get into a sparring --

20          THE COURT: All right. We're getting sidetracked. You're good.

21          MS. JONES: Thank you.

22          THE COURT: Is that it?

23          MS. JONES: Yes, Your Honor.

24          THE COURT: Do you have any further questions?

25          MR. ROSE: Nothing by the State, Your Honor.

1 THE COURT: Okay. All right. Mr. Appel, thank you very much for your  
2 testimony. I appreciate it. You can go ahead and step down and you'll be excused.

3 Now, if you're going to wait outside in the hallway for any length of time,  
4 I'm going to caution you not to discuss any of your testimony while you're waiting  
5 outside.

6 THE WITNESS: Okay.

7 THE COURT: Okay.

8 THE WITNESS: Not a problem.

9 THE COURT: Thank you, very much.

10 THE WITNESS: Thank you.

11 THE COURT: All right. That was fun.

12 All right. What are we doing?

13 MR. SCHWARTZ: What's that?

14 THE COURT: I said what are we doing now?

15 MR. SCHWARTZ: The State has two more witnesses if you want to get it  
16 going right now or if we want to take a break?

17 THE COURT: No, let's roll. Let's get going.

18 MR. SCHWARTZ: State would call Officer Nelson, please.

19 THE COURT: And these two witnesses aren't taking too long, are they?

20 MR. SCHWARTZ: Not from the State, Your Honor. I don't anticipate from the  
21 defense either.

22 MS. SPELLS: Your Honor, may we briefly approach?

23 THE COURT: Sure.

24 Have a seat for just for a second.

25 THE WITNESS: Yes, sir.

1 [Bench conference begins]

2 MS. SPELLS: Just for timing issues, I know that we reserved, but should we  
3 also be prepared to call a witness today? It's 3:30. I didn't know when the Court  
4 was anticipating breaking for the day.

5 THE COURT: If you can, yeah. Yeah, if that's possible.

6 MS. SPELLS: Okay. I'll try to see if we can get them --

7 THE COURT: Because I don't think he's going to take too long.

8 MS. SPELLS: -- right down here, okay.

9 THE COURT: Perfect.

10 [Bench conference concludes]

11 **RICHARD NELSON**

12 [having been called as a witness and being first duly sworn, testified as follows:]

13 THE CLERK: Please be seated and then state and spell your name for the  
14 record.

15 THE COURT: State and spell both your first and your last name.

16 THE WITNESS: Yes, sir. Richard Nelson, R-I-C-H-A-R-D N-E-L-S-O-N.

17 THE COURT: Okay.

18 MR. SCHWARTZ: May I proceed?

19 THE COURT: Yeah.

20 MR. SCHWARTZ: Thank you, Your Honor.

21 **DIRECT EXAMINATION BY MR. SCHWARTZ**

22 By MR SCHWARTZ:

23 Q Sir, how are you employed?

24 A Police officer with Las Vegas Metropolitan Police Department.

25 Q And how long have you been with Metro as a whole?

1 A Seven years.

2 Q And is that all been as a police officer?

3 A Correct.

4 Q And specifically that's a patrol officer?

5 A That's correct.

6 Q Okay. Now, I want to direct your attention to March 30th, 2016, did you  
7 have occasion to respond to a call at T.J. Maxx?

8 A I did.

9 Q And what was the nature of that call?

10 A It was a robbery call.

11 Q As far as what you're -- you're under the impression when you're  
12 arriving on scene was there any allegations of a knife in the call?

13 A Yes.

14 Q And that T.J. Maxx that you arrived at is 4640 West Sahara?

15 A That's correct.

16 Q Okay. Tell me what happened when you arrived at that T.J. Maxx?

17 A When I arrived I made contact with the victim who is loss prevention  
18 with the T.J. Maxx.

19 Q Okay. Would that be Mr. Munoz?

20 A Yes.

21 Q And at that time when you arrived had the suspect left?

22 A Yes, the suspect was not there.

23 Q So what was your role, what types of things did you do at the T.J.  
24 Maxx? You spoke to Mr. Munoz?

25 A I spoke to Mr. Munoz and he explained to me what happened.

1 Q Was it your understanding whether or not there were other officers  
2 involved in the apprehension of the suspect?

3 A Yes. Upon my arrival the air unit had located the suspect vehicle.

4 Q Okay. So as far as you knew there was an air unit involved that had  
5 located the vehicle?

6 A Correct.

7 Q And what is an air unit?

8 A Air unit is an air patrol unit that assists us with locating -- could be  
9 subjects, missing persons. It's a tool for -- resource tool for patrol officers.

10 Q Helicopter?

11 A Correct.

12 Q Okay. After you had a chance to speak with Mr. Munoz, did you also  
13 speak with another loss prevention agent Mr. Bramble?

14 A Yes, briefly.

15 Q At that point did you review any surveillance video?

16 A I believe some surveillance video was seen, yes.

17 Q So, as you're conducting this investigation were you able to determine a  
18 general description of the suspect?

19 A Yes.

20 Q And what was that?

21 A It was a light skinned black or Hispanic male, wearing shorts, and a  
22 blazer type coat.

23 Q Okay. Any identifying tattoos?

24 A On his neck.

25 Q Once you realize, once you learn from air unit that there had been a

1 suspect apprehended or stopped, did you respond to that location?

2 A I did.

3 Q Okay. And specifically was that location at 1312 Vista Avenue?

4 A It was.

5 MR. SCHWARTZ: And, Your Honor, I know we don't have to ask permission,  
6 how about permission to publish?

7 THE COURT: Permission is granted. Which exhibit is it?

8 MR. SCHWARTZ: State's Exhibit 1.

9 THE COURT: Okay.

10 BY MR. SCHWARTZ:

11 Q Just for a little context, Officer, this blue dot at the bottom of the screen,  
12 on the left, bottom left of the exhibit.

13 A Yes.

14 Q Do you recognize that as T.J. Maxx?

15 A That's correct.

16 Q And up here, off of Vista Drive is this Desert Torah Academy area, is  
17 this the general area where the suspect would have been apprehended?

18 A Yes, in that parking lot.

19 Q And was that the parking lot -- is this a school here?

20 A It is a school.

21 Q Okay. It was in that parking lot?

22 A That's correct.

23 Q So when you responded to the area other officers and other units had  
24 responded before --

25 A Correct.

1 Q -- before you got there?

2 And at that point was the suspect in custody?

3 A Yes.

4 Q And do you see the suspect here in court today?

5 A I do.

6 Q And can you please point to him and identify an article of clothing he's  
7 wearing?

8 A The gray shirt.

9 MR. SCHWARTZ: Your Honor, would the record please reflect identification  
10 of the Defendant.

11 THE COURT: Yes, the record will so show.

12 MR. SCHWARTZ: Thank you.

13 By MR SCHWARTZ:

14 Q And through your investigation, prior to arriving at the Vista location,  
15 had you also developed a description of the vehicle that the suspect was in?

16 A Yes, it was a U-Haul vehicle with Arizona license plates.

17 Q Okay. And what -- would that be a white U-Haul vehicle?

18 A It would have been multi-colored with stickers.

19 Q Okay. And it would be an Arizona tag, would it be AG5 --

20 MS. SPELLS: Objection, I'm sorry.

21 Q -- would it be Arizona tag AG55084?

22 A Yes.

23 Q Okay. And that's -- you would have documented that in your report?

24 A Correct.

25 Q Okay. And when you arrived on scene did the description of the vehicle



1 searching and looking for -- searching the van and looking in the surrounding areas  
2 for a potential weapon?

3 A That's correct.

4 Q To your knowledge was any weapon ever found?

5 A Not to my knowledge.

6 Q Now, Officer, in general do you always find a weapon when there's an  
7 allegation of a weapon?

8 A No.

9 Q Is it at all surprising to you that there was not a weapon found at this  
10 location?

11 A No, it's not surprising.

12 Q Okay. Why is that?

13 A The distance from the T.J. Maxx to the in custody location a lot could  
14 happen between there.

15 Q So, from T.J. Maxx all the way to where the apprehension occurred,  
16 weapon could have been ditched or something along that nature?

17 A That's correct.

18 MS. JONES: Objection, Your Honor, speculation.

19 THE COURT: Sustained.

20 By MR SCHWARTZ:

21 Q No weapon was found at the Vista location?

22 A No.

23 Q Now, Officer, you're the reporting officer in this case; correct?

24 A Yes.

25 Q And are you aware of what items were located inside the vehicle?

1 A From T.J. Maxx?

2 Q Yeah, just in general. So, specifically are you -- actually, you know,  
3 could I approach Your Honor?

4 THE COURT: Sure.

5 [Colloquy between District Attorney and Defense Counsel]

6 MR. SCHWARTZ: I'm going to -- permission to approach, okay. Thanks,  
7 Your Honor.

8 MS. JONES: Objection, Your Honor.

9 MS. SPELLS: Do you want us --

10 THE COURT: You just want to approach the witness?

11 MR. SCHWARTZ: Correct.

12 THE COURT: Yeah. He doesn't want to approach the bench.

13 MR. ROSE: Oh, you just confused us all.

14 MS. JONES: Oh, I was actually calling for an objection, Your Honor.

15 THE COURT: Oh, okay.

16 MS. JONES: I'm sorry.

17 MS. SPELLS: We are going to the bench?

18 THE COURT: Come here.

19 MS. JONES: We are coming to the bench.

20 [Bench conference begins]

21 MR. SCHWARTZ: So this has already been admitted.

22 THE COURT: Okay. What are these?

23 MR. SCHWARTZ: Well, I don't know if this officer will be able to identify them  
24 or not but these are items that were all found in the van.

25 MS. JONES: [indiscernible]

1 MR. SCHWARTZ: Oh, sorry.

2 THE COURT: What do these have to do with this? What do those items  
3 have to do with this whole case?

4 MS. SPELLS: Nothing.

5 MR. SCHWARTZ: Well, that's the objection. My position is --

6 THE COURT: They're irrelevant if they don't have any connection to the T.J.  
7 Maxx.

8 MR. SCHWARTZ: Well, Your Honor, I don't believe that they're irrelevant  
9 because they didn't show the Defendant's state of mind in general. [Indiscernible]  
10 This is going to be testimony that it's a security --

11 MS. SPELLS: Well, let's not do that. You don't know which angle you're  
12 holding that picture up and who can see what.

13 MR. SCHWARTZ: Okay. That thing is a security radio.

14 THE COURT: Is -- okay.

15 MR. SCHWARTZ: This is safety tags. My position is it's relevant because it  
16 shows the state of mind the Defendant in general. Now, there's no allegations that  
17 these were in the actual items taken at this point, but it shows the state of mind of --

18 THE COURT: Those are the security tags that come off of items of whatever  
19 that are --

20 MR. SCHWARTZ: Correct.

21 THE COURT: -- that are -- and that's how they protect their --

22 MR. SCHWARTZ: Correct.

23 THE COURT: That's how every store in the world protects their clothing and  
24 their items. They have security tags on them, is that your theory?

25 MR. ROSE: Take it off the mic.

1 MS. JONES: [Indiscernible] our position is that [indiscernible]

2 THE COURT: Has this all been -- always consistently apart of your evidence,  
3 this clothes and -- they've been aware of all this?

4 MR. SCHWARTZ: Absolutely, yeah.

5 THE COURT: And these were --

6 MS. SPELLS: We're not --

7 THE COURT: -- items that were taken out of the van?

8 MR. SCHWARTZ: Yes.

9 MS. SPELLS: We were aware of it later. To say -- I mean --

10 THE COURT: What, what?

11 MS. SPELLS: To necessarily say consistent -- consistently I wouldn't say  
12 that -- I wouldn't say that it's necessarily new; however, this is not something that  
13 was disclosed in the beginning. This is photographs that we don't get photographs  
14 until --

15 MR. SCHWARTZ: Your Honor, it was in that --

16 MS. SPELL: -- obviously later on in the case --

17 MR. SCHWARTZ: I'm sorry.

18 MS. SPELL: -- it's not the initial packet of discovery. But it would have been  
19 later on in the case. Our position --

20 THE COURT: But you've seen all this before?

21 MS. SPELLS: We've seen this.

22 Our position is this, I mean, this amounts to bad act evidence. This is  
23 not a specific intent crime. It's a general intent crime. They have the --

24 THE COURT: Well, this probably should have been addressed in a Motion in  
25 Limine before --

1 MS. SPELLS: And I could -- and here's the thing, we do try to make things a  
2 little bit cleaner through Motions in Limines; however, I think --

3 THE COURT: Let me --

4 MS. SPELLS: -- the burden is on the State to ask permission.

5 THE COURT: Let me put it like this.

6 MR. SCHWARTZ: Can I make one point before you rule, Your Honor?

7 THE COURT: Okay. You're just going to make this muddy. You're just going  
8 to muddy up this case, if you do this. I think you probably have a good enough legal  
9 basis to get this in but it's not that clear by a long shot. And if you get this in, you're  
10 going to, without any question, you're going to create a real, viable appellate issue  
11 and you probably don't need it. I'll tell you what --

12 MR. SCHWARTZ: Can I make one thing clear though?

13 THE COURT: Sure.

14 MR. SCHWARTZ: These items were listed on the impound report, which was  
15 given in initial discovery. So what it sounds like, Your Honor, this ruling is that you  
16 would allow me to but you would suggest to consider --

17 THE COURT: I will allow you to but --

18 MR. SCHWARTZ: Okay.

19 THE COURT: -- I don't think it's a good idea.

20 MR. SCHWARTZ: Okay, that's fair.

21 THE COURT: You don't need it, it's just borderline relevant.

22 MS. SPELLS: And, Your Honor --

23 MR. SCHWARTZ: How about this one? Will you guys object to that?

24 THE COURT: You know what if you can tie those -- because the wife is  
25 outside of the store. She never appears inside the store. Those radios, is that

1 some form of communication? I mean, how do you tie that into this case?

2 MR. SCHWARTZ: Well, the only tie in that we have is that it's a security radio

3 that is used by security officers at a hotel. And so it's just evidence that he has a

4 security radio that he can listen to security --

5 THE COURT: Oh, boy, you're asking for trouble.

6 MS. SPELLS: This is not --

7 THE COURT: Don't do it. Just --

8 MR. SCHWARTZ: Okay. That's fair.

9 THE COURT: Okay.

10 MS. SPELLS: And are they --

11 MR. SCHWARTZ: Whatever the Court's ruling is.

12 THE COURT: All right. They're not going to do it. Sure. They're not going to

13 do it.

14 MR. SCHWARTZ: But I would like to use this though?

15 MS. SPELLS: The shirt?

16 THE COURT: That's fine. That's the jacket?

17 MS. SPELLS: Okay.

18 THE COURT: That's the jacket that he had on.

19 MR. SCHWARTZ: Okay. So there's no objection to that?

20 MS. SPELLS: He was wearing that; right?

21 MR. SCHWARTZ: The Defendant?

22 MS. SPELLS: Are you saying something --

23 MR. SCHWARTZ: Yeah.

24 MS. SPELLS: Yeah.

25 MR. SCHWARTZ: Okay.

1 MS. SPELLS: Oh, okay, yes. As long as you're not saying he was stealing it.

2 MR. SCHWARTZ: No. I would never do that with your theory of defense.

3 THE COURT: Okay, use that.

4 MR. SCHWARTZ: So we'll withdraw the -- we'll withdraw the [indiscernible].

5 [Bench conference concludes]

6 MR. SCHWARTZ: Your Honor, if I may approach the Officer?

7 THE COURT: Yes.

8 By MR SCHWARTZ:

9 Q Officer, this is State's Exhibit 2, do you recognize these items?

10 A Yes.

11 Q And how do you recognize them?

12 A They were -- the other officer stated that they were recovered inside the  
13 U-Haul van.

14 Q Now, this is State's Proposed Exhibit 3, do you recognize that?

15 A Yes.

16 Q Was this also recovered in the van?

17 A It was.

18 MR. SCHWARTZ: Your Honor, the State would move to admit State's  
19 Proposed Exhibit 3.

20 THE COURT: Did we already admit two?

21 MR. SCHWARTZ: We did.

22 THE COURT: Okay. So three, any objection?

23 MR. SCHWARTZ: Just showing defense counsel State's Proposed 3.

24 THE COURT: Just to make sure you're not -- all right, no objection?

25 MS. JONES: No objection, Your Honor.

1 THE COURT: Two is already admitted, three is also admitted.

2 [STATE'S EXHIBIT 3 ADMITTED]

3 MR. SCHWARTZ: Your Honor, State's publishing State's 2.

4 BY MR. SCHWARTZ:

5 Q And, Officer, you just testified that these are the items recovered from  
6 the white U-Haul van?

7 A Correct.

8 Q And State's 3 now publishing for the jury, also recovered from the  
9 U-Haul van?

10 A Correct.

11 Q And, Officer, do you have occasion to go actually go back to T.J. Maxx  
12 to recover the surveillance video?

13 A Yes, I went back and recovered it.

14 MR. SCHWARTZ: Okay. Your Honor, State has nothing further with this  
15 witness.

16 THE COURT: Okay, cross.

17 MS. JONES: Yes, Your Honor.

18 CROSS EXAMINATION BY MS. JONES

19 BY MS. JONES:

20 Q Good afternoon, Officer Nelson.

21 A Good afternoon.

22 Q Officer Nelson, you mentioned that you have been a patrol officer for  
23 seven years?

24 A Correct.

25 Q So you're trying to investigate?



1 A Yes, ma'am.

2 Q Trying to write reports?

3 A Yes.

4 Q Make them very accurate?

5 A Correct.

6 Q Comprehensive?

7 A Yes.

8 Q And in your investigation you tend to follow the facts in order to solve a  
9 crime; correct?

10 A Correct.

11 Q Okay. And you know that your reports are used by the prosecution;  
12 right?

13 A Yes.

14 Q Determine how strong their case is?

15 A Yes.

16 Q Whether or not they might need to negotiate the case?

17 A Yes.

18 Q And you know that those reports are also seen by the defense?

19 A Correct.

20 Q And if there's anything missing out of those reports you know we're  
21 going to ask you about them?

22 A Of course.

23 Q Okay. And you tend to write your reports shortly after you've gathered  
24 your information; correct?

25 A Correct.

1 Q And you have enough time to write those reports?  
2 A Yes.  
3 Q And you write reports in case they may have to be used at trial like  
4 today?  
5 A Yes.  
6 Q Okay. Now, you mentioned that you had actually interviewed  
7 Mr. Munoz?  
8 A Yes.  
9 Q And he identified himself as the person who reported the theft; correct?  
10 A Yes.  
11 Q And he told you about what items were taken?  
12 A Yes.  
13 Q And where did that interview take place; was it inside or outside the T.J.  
14 Maxx?  
15 A A little bit of both actually.  
16 Q Okay. All right. And he explained to you that he followed Mr. Harvey  
17 out of the store?  
18 A Correct.  
19 Q And he mentioned to you that Mr. Harvey got into a U-Haul, a white  
20 U-Haul van?  
21 A Yes.  
22 Q And he also mentioned to you that there was a surveillance video?  
23 A For inside the store, yes.  
24 Q Okay. And Mr. Munoz mentioned to you that there were photographs  
25 taken of the van?

1 A Not to my recollection.

2 Q No one mentioned to you any that there were any photographs taken of  
3 the van; right?

4 A Not that I recall.

5 Q Okay. Because if they had you would have written it in your report?

6 A It would have been documented somehow.

7 Q Right. Okay. And in this particular case you wrote the property report;  
8 correct?

9 A I'm not sure if I did or one of my partners did.

10 Q Okay. If I showed you a copy of your report, would that help you?

11 A Yes.

12 Q Okay.

13 A Yeah, that was an additional property report when I picked up the  
14 surveillance.

15 Q And you also wrote the impound report in this case; correct?

16 A For that DVD?

17 Q Oh, no. I was talking about the impound report.

18 Court's indulgence.

19 And let me back up. You testified that you saw the items that had been  
20 inventoried by your partner; correct?

21 A Items that had been -- which items?

22 Q Inventoried from the U-Haul van?

23 A Which items?

24 Q I'm sorry, I think that was Exhibit 2.

25 A The photograph of items?

1 Q Correct.

2 A Yes.

3 Q Thank you.

4 And in that report there was never a knife documented; correct?

5 A In the -- no, not in that report.

6 Q And not in your property report, the one with the DVD, no knife?

7 A There was no knife located, yes.

8 MS. JONES: Pass the witness.

9 THE COURT: Redirect?

10 MR. SCHWARTZ: Briefly, Your Honor.

11 **REDIRECT EXAMINATION BY MR. SCHWARTZ**

12 By MR SCHWARTZ:

13 Q Now, Officer, you did indicate that there had been allegations of a knife  
14 in your arrest report; correct?

15 A That's correct.

16 Q And Ms. Jones asked you about your discussion with Mr. Munoz?

17 A That's correct.

18 Q And that he told you that he followed Mr. Harvey, the Defendant, out of  
19 the store?

20 A Yes.

21 Q And that the Defendant got into the U-Haul; correct?

22 A In the driver seat of the U-Haul.

23 Q Mr. Munoz also told you that prior to that the Defendant threatened him  
24 with a knife; correct?

25 A That's correct.

1 MR. SCHWARTZ: Okay. No further questions.

2 THE COURT: Anything else?

3 MS. JONES: No, Your Honor.

4 THE COURT: Thank you very much for your testimony. I appreciate it.

5 THE WITNESS: Thank you, sir.

6 THE COURT: You can go ahead and step down and be excused. If for some  
7 reason you're going to be out in the hallway for any length of time, I'll caution you  
8 not to discuss any of your testimony.

9 MR. SCHWARTZ: State's final witness, Your Honor, is Officer Humpherys.

10 THE COURT: Humpherys.

11 **TRAVES HUMPHERYS**

12 [having been called as a witness and being first duly sworn, testified as follows:]

13 THE CLERK: Please be stated and then state and spell your name for the  
14 record.

15 THE COURT: State and spell your first and your last name.

16 THE WITNESS: First name; last name?

17 THE COURT: First name, last name, and spell them both.

18 THE WITNESS: First name Traves, T-R-A-V-E-S, last name  
19 H-U-M-P-H-E-R-Y-S.

20 MR. SCHWARTZ: Thank you, Your Honor.

21 **DIRECT EXAMINATION BY MR. SCHWARTZ**

22 BY MR. SCHWARTZ:

23 Q Sir, how are you employed?

24 A Las Vegas Metropolitan Police Department for seven and a half years  
25 now.

1 Q And for the seven and a half years operate as a patrol officer?

2 A Yes, sir.

3 Q Okay. Directing your attention to March 30th, 2016, did you have

4 occasion to respond to a call at a Vista Avenue?

5 A I did, sir.

6 Q What was the nature of that call?

7 A The call initially came out that a -- a 407, which is a robbery, was taking

8 place at T.J. Maxx. An ATL had started, I believe I was either the second or the

9 third officer assigned to the call. I was primarily assigned to ATL the area to look for

10 a suspect vehicle.

11 Q And what does ATL mean?

12 A Attempt to locate.

13 Q Okay. So you got a call to attempt to locate a robbery suspect?

14 A Yes, sir.

15 Q Anything in the call indicate that a weapon could potentially be used?

16 A I briefly remember some radio traffic in regards to a -- what we call is,

17 our code is 413A, which is a knife. It was possibly that was seen. It was displayed.

18 And --

19 Q So when you received that call you responded to 1312 Vista Avenue?

20 A Yes, that's a school, which is about a mile and a half to two miles east

21 of the location of where this occurred.

22 Q And the location where it occurred was that a T.J. Maxx?

23 A Yes, sir.

24 Q Okay. The school, is it a Jewish school?

25 A It's a Jewish school, yes.

1 Q You were the -- were you the first officer to arrive at that scene, at the  
2 school?

3 A At the school, yes. And then moments later, within a couple of minutes,  
4 another unit arrived.

5 Q And when you arrived, did you observe a vehicle in front of or near the  
6 school?

7 A In the parking lot, in the front, yes.

8 Q What vehicle was that?

9 A It was a -- I recall a white, U-Haul van.

10 Q And did you have occasion to apprehend anyone from that van?

11 A I detained the gentleman sitting in a classroom -- or in the courtroom,  
12 excuse me.

13 Q And you're pointing over in this direction, could you describe an article  
14 of clothing that gentleman was wearing? Today, I'm sorry.

15 A Um --

16 Q Today, an article of clothing he's wearing today?

17 A Today, yes. He's wearing a gray or a blue shirt with a dark colored tie,  
18 slacks.

19 MR. SCHWARTZ: Your Honor, will the record please reflect identification of  
20 the Defendant.

21 THE COURT: Yes, the record will so show.

22 BY MR. SCHWARTZ:

23 Q So you said you arrived and you apprehended the Defendant?

24 A I took him into custody, detained him, yes.

25 Q Okay. Were there any other people in the van at that time?

1           A     I recall a -- his significant other and two children, I believe, two small  
2 children.

3           Q     Would this significant other have been a black female adult?

4           A     Yes, sir.

5           Q     And did you have any interactions with them or did other officers --

6           A     Very, very brief. I had a very brief interaction with them. It was  
7 basically just to -- just a brief description or explanation of what we were doing, what  
8 was going on, and just try to keep them calm.

9           Q     Did you -- but they were removed from the vehicle?

10          A     They were.

11          Q     And did you, along with other officers, have occasion to search that  
12 U-Haul vehicle?

13          A     Once I was initially done doing what I was doing with the suspect, I  
14 went over and assisted Officer Resberg and another officer. I can't recall the  
15 officer's name.

16          Q     Now, Officer, just in general when a weapon is potentially involved and  
17 you're responding to that scene, what are some of the thoughts and concerns when  
18 you arrived to that scene?

19          A     Does the suspect still have the weapon in their possession, is it on their  
20 person, is it in their vehicle, could it be located nearby, was it disposed of nearby or  
21 at the actual location of the crime, there's all kinds of stuff that you can consider.

22          Q     As far as you are aware, was a knife ever recovered at the scene?

23          A     Not that I'm aware of, no.

24          Q     Okay. Part of your goals in arriving at the scene would be to secure the  
25 scene of any weapons; correct?



1           A     My goal, since I initially come in contact with the suspect, would be to  
2 make it safe, get him into custody, and make sure there was no weapons. And if  
3 there were weapons, then I would make sure they were secure in place.

4           Q     Now, Officer, I'm going to show you State's Exhibit 2, do you recognize  
5 these items as being recovered from the U-Haul van?

6           A     I do. I impounded those items.

7           Q     And so after you -- after you and other officers recovered them, you  
8 would have impounded them and documented that in an impound report?

9           A     Yes.

10          Q     Or property report?

11          A     Yes.

12          Q     And showing you State's Exhibit 3, same question, this was an item  
13 recovered in the U-Haul van?

14          A     Yes.

15          Q     And, again, impounded by yourself?

16          A     Yes, sir.

17          MR. SCHWARTZ: Court's indulgence.

18          THE COURT: Sure.

19          BY MR. SCHWARTZ:

20          Q     Now, Officer, you testified that there was no knife recovered at the  
21 scene to your reflection, is that at all surprising to you?

22          A     No, sir, it's not.

23          Q     Why is that?

24          A     A lot of times, through my experience from being on the job for the last  
25 seven and a half years, that when we get calls similar in nature suspects or people

1 that are involved do dispose of weapons that are used between where they actually  
2 committed the crime and to where they're caught.

3 Q As you testified earlier, there was several miles between where it was  
4 alleged to be used and the apprehension of the Defendant?

5 A Yes, there was a significant distance between where it occurred and  
6 where he was caught.

7 MR. SCHWARTZ: Your Honor, I don't have any further questions.

8 THE COURT: All right, cross-examination.

9 MS. JONES: Yes, Your Honor.

10 Court's indulgence.

11 THE COURT: Sure.

12 **CROSS-EXAMINATION BY MS. JONES**

13 BY MS. JONES:

14 Q Good afternoon, how you are this afternoon, Officer Humpherys?

15 A I'm good, ma'am. How are you doing?

16 Q Good. Thank you for asking.

17 A Your welcome.

18 Q I'm going to ask you a little bit about your background, your training and  
19 experience, especially since you brought it up on that direct. So, you attended the  
20 police academy?

21 A Yes, ma'am.

22 Q You were taught the importance of reports?

23 A Yes, ma'am.

24 Q The importance of investigating?

25 A Yes, ma'am.

1 Q To do comprehensive reports?  
2 A Yes, ma'am.  
3 Q Comprehensive investigation?  
4 A Yes, ma'am.  
5 Q Collect all the facts?  
6 A Yes, ma'am.  
7 Q Try to document those facts?  
8 A Yes.  
9 Q And document them to the best of your ability?  
10 A Yes.  
11 Q Make sure those facts are accurate?  
12 A Yes.  
13 Q Great. You know that those reports are going to be used by the  
14 prosecution?  
15 A Absolutely, yes.  
16 Q By the defense?  
17 A Yes.  
18 Q That they could be used later on for trial like today?  
19 A Yes.  
20 Q Did you have an opportunity to review your reports before you came in  
21 today?  
22 A I did.  
23 Q Okay, great.  
24 You mentioned the fact that you had an opportunity to do a safety  
25 search on Mr. Harvey; correct?

1 A Pat-down, a Terry pat-down.

2 Q Correct. And that's considered a search; correct?

3 A It's not considered a search, no. It's --

4 Q Oh, okay. But you do a pat-down as you --

5 A For safety, yes.

6 Q For safety reasons?

7 A Yes.

8 Q And during that pat-down you did a thorough pat-down?

9 A Absolutely.

10 Q You checked all his pockets?

11 A Absolutely.

12 Q And his jacket, the jacket pockets?

13 A Yes.

14 Q You checked his short pockets?

15 A With his permission, yes, I did. He gave me consent to go into his

16 pockets.

17 Q Thank you for following procedure, Officer. I appreciate that.

18 A You're welcome.

19 Q You checked his shoes?

20 A Initially the upper region of the shoe. It's a procedure that we're taught.

21 Just to scoop with our fingers to make sure there's no sharp objects or weapons

22 protruding out of the shoe or within, you know, that we can see.

23 Q Right. And, again, that's for safety --

24 A I don't recall taking his shoes off, if that's what you're asking.

25 Q No, sir. I was just asking if you checked his shoes because I'm familiar,

1 as you were saying, about the shoes.

2 But you did check those?

3 A Yes, the top of them I did.

4 Q Okay. And during your search you found some items; correct?

5 A If I recall, I found his wallet with his identification, just initial identification  
6 and stuff like that in it. So I can identify him.

7 Q Okay. And during your search of Mr. Harvey's person, you did not find  
8 a knife?

9 A No, I did not, ma'am.

10 Q And you mentioned with your training and experience that's not  
11 unusual?

12 A Absolutely, it's not unusual.

13 Q And in your training and experience you've talked to several witnesses  
14 in the past; correct?

15 A Yes, ma'am, I have.

16 Q And in your training and experience over those seven and a half years  
17 has it been anytime where a witness may have just misunderstood or didn't see  
18 what they thought they saw?

19 A Absolutely.

20 Q Okay. You mentioned that you were present during the search of the  
21 U-Haul van?

22 A Not --

23 Q Assisted --

24 A Not initially but towards the --

25 Q Towards the end?

1           A     -- towards -- middle or the end. Like I said, I don't have the time table.  
2     Once I was done dealing with the suspect --

3           Q     Yes, sir.

4           A     -- and I knew that he was safe and secure in the hands of other officers,  
5     I believe it was Officer Nelson, if I recall right. It's been so long though. That I went  
6     over and I assisted Officer Resberg and another officer with the items in the van.

7           Q     And to the best of your recollection, do you remember that -- if there  
8     was a knife found in that van?

9           A     No, no, I do not remember a knife being found in the van.

10          MS. JONES: Okay. Court's indulgence.

11                 Thank you.

12     BY MS. JONES:

13          Q     Officer, understanding that this happened a while back, back in March  
14     of this year, you mentioned the CAD and that you were actually the second on  
15     location for the ATL; correct?

16          A     I believe I was assigned second or third. I can't remember which one I  
17     was assigned but I know that I was assigned. I assigned myself to attempt to locate  
18     the vehicle that was involved in the crime.

19          Q     And based on that dialogue in the CAD, the indent at T.J. Maxx started  
20     at about 4:35 p.m., do you remember about what time you arrived at -- is it 1412  
21     Vista Avenue?

22          A     I don't know exact times and I'm not going to guess what time. So I  
23     don't know exact time.

24          Q     Would it help you if I had you review the CAD log?

25          A     Sure, absolutely.

1           My call sign that day was 3 Union 13, so I see a recording to CAD,  
2 which would be -- it was either by MDT, which is our computer because we can  
3 communicate with dispatch through our computer. A lot of times if there's a lot of  
4 radio chatter, instead of getting on the air, you will an AM, which is like a direct  
5 message to the dispatcher either assigning yourself or telling them what your intent  
6 is on the call. Like I said, I can't remember if I came over the radio or if I sent a  
7 message to the MDT. I, you know, it says right here 1638 was when my call sign, 3  
8 Union 13, first pops up on CAD. So that would be when I was first assigned to the  
9 call. 1638 which would be 4:38.

10         Q     Thank you.

11         A     You're welcome.

12         Q     And you were aware that there was an air detail also following the --

13         A     Yes.

14         Q     -- vehicle also?

15         A     Yes.

16         Q     And were you also aware that there was a civilian that was following the  
17 U-Haul?

18         A     Briefly, I briefly remember maybe some radio chatter in regards to -- I  
19 didn't know whether it was loss prevention or if it was a witness. I can't attest to  
20 that.

21         Q     And was there any mention in the CAD log that an item had been  
22 thrown from the U-Haul?

23         A     I don't recall that, no.

24         Q     Is it common to have so many patrol cars and vehicles actually in  
25 pursuit of a vehicle -- of a suspect?

1           A     I wouldn't -- I'm not trying to correct you, ma'am, but I wouldn't say it  
2 was a pursuit.

3           Q     Okay.

4           A     It would depend on the nature of the call. I would on -- depends on how  
5 many units are available, I mean, at any given time we can only have a certain  
6 amount available. It depends on what day it is, of how many people were working in  
7 that area. The nature of this call I would say, yes, a minimum, most of the time, of at  
8 least two or three. Depending on man power, depending on what we have.

9           Q     Okay. To have that many people covering that one vehicle?

10          A     A call of this nature, yes. If -- when a weapon is mentioned or as  
11 possibly witnessed or seen or used in nature of the crime, then, yes, there would be  
12 multiple patrol units that would be responding or should be responding to assist.

13          Q     Okay. And one last question, Officer, you were shown a picture of a  
14 blue blazer?

15          A     Correct.

16          Q     Was that the blazer that Mr. Harvey had on the day that you  
17 apprehended him?

18          A     I honestly cannot remember if he had it on him or if it was in the vehicle,  
19 that part of my memory is not clear, and I can't answer that question accurately.

20          Q     All right. Thank you; one moment.

21                 If I could just show you that CAD one more time, Officer.

22          A     Okay.

23          Q     Does it give a description?

24          A     Would you like me to read it?

25          Q     Just to yourself.



1 A Okay.

2 Okay.

3 Q Thank you, Officer.

4 Does this blue blazer in the exhibit at least match what is stated in the  
5 CAD?

6 A One was impounded, yes.

7 Q Okay. And another question, Officer, is it common for a witness to  
8 actually follow someone that could be considered a suspect?

9 A Honestly, I -- I can't really say if it's common or not. It depends on the  
10 situation and it depends on that actual individual person.

11 Q But in your seven and a half years of training and experience would you  
12 say that --

13 A I would say in my seven and a half years I would say at least 50 percent  
14 of the time there's somebody that -- on the calls that I've been involved in, similar to  
15 this in nature, there is somebody that follows either on foot, on a bike, a car for a  
16 certain amount of time or the whole time until we arrive.

17 MS. JONES: Court's indulgence.

18 BY MS. JONES:

19 Q And, Officer, just for clarification, that blue blazer was an item that was  
20 actually stated as a piece of clothing that was on the Defendant -- on the suspect at  
21 the time?

22 A Like I said earlier, I can't recall if it was on him or not. I don't -- I  
23 honestly cannot remember. It's been so long ago.

24 Q And I'm just asking, was that in the CAD that that was part of the  
25 description of locating the suspect?

1 A Um -- do I -- can I review it again?

2 Q Absolutely.

3 A I'm sorry there was a lot of information there to recall.

4 Can you restate your question, please?

5 Q Was the blue blazer a description of a piece -- or an item of clothing  
6 that the suspect was wearing at the time?

7 A What I just read it was white T-shirt and blue jeans, I believe.

8 Q Not blue shirt?

9 A No.

10 Okay. It says, blue shirts. White shirt, blue shirts. I'm confused  
11 because it's shirts plural, so. A white shirt and blue shirts and then down here it  
12 says -- that's a description of his significant other, is black shirt, black pants.

13 Q Thank you.

14 A Your welcome.

15 MS. JONES: No further questions.

16 THE COURT: Redirect?

17 MR. SCHWARTZ: Court's indulgence.

18 THE COURT: What does CAD stand for?

19 THE WITNESS: Honestly, Judge, I don't -- I cannot remember. I just know --  
20 we just call it CAD.

21 THE COURT: I can't remember either.

22 THE WITNESS: And we just know that it's information pertaining to the calls  
23 that we're on.

24 MS. SPELLS: Communication.

25 THE COURT: Okay.

1 THE WITNESS: Communication something probably.

2 MS. SPELLS: Communication something Detail.

3 THE WITNESS: What's that, ma'am?

4 MS. SPELLS: I think it stands for Communication something Detail. Is that  
5 what you're asking?

6 THE WITNESS: We have so many acronyms we have to remember I --  
7 sometimes I just can't remember them all.

8 THE COURT: Anything else?

9 MR. SCHWARTZ: Just briefly, Your Honor.

10 **REDIRECT EXAMINATION BY MR. SCHWARTZ**

11 By MR SCHWARTZ:

12 Q So CAD is just sort of the way you guys document where certain people  
13 are and what calls are going on?

14 A CAD is the official record, I believe, that the department uses for  
15 communications.

16 Q Okay.

17 A When we're assigned to calls, when we're communicating on the  
18 computer, when we're communicating on the radio, communicating amongst each  
19 other over the radio. All that stuff is documented by the dispatcher and it's put into  
20 what we call CAD as record.

21 Q So the dispatcher will input different things that are being said over the  
22 radio?

23 A If it is called out over the radio, yes.

24 Q And do you remember when Ms. Jones was asking you if there's  
25 anything in the CAD regarding whether a knife or something was being disposed of

1 and you said you don't recall seeing that in the CAD?

2 A I don't remember it being disposed of, no, I don't remember that.

3 MR. SCHWARTZ: Okay. If I may approach, Your Honor, just to refresh --

4 THE COURT: Sure.

5 MR. SCHWARTZ: -- possibly refresh your recollection --

6 BY MR. SCHWARTZ:

7 Q Would it refresh your recollection maybe to look at the CAD?

8 A Sure. I'll do my best.

9 Q And I'll just direct you to page two. Just read it to yourself, please.

10 A Just this line here; right?

11 Q Yeah.

12 So does this refresh your reflection whether there was any information in  
13 the CAD about possible disposition of a knife?

14 A Now that I just read it, yes.

15 Q Okay. And what was that?

16 A It says in there it was around 1643 hours that subject may have  
17 possibly dumped an item and then headed back towards the van.

18 MR. SCHWARTZ: Nothing further, Your Honor.

19 THE COURT: Anything else?

20 MS. JONES: Yes, Your Honor.

21 THE COURT: Okay.

22 **RE CROSS-EXAMINATION BY MS. JONES**

23 BY MS. JONES:

24 Q And, Officer, just to be specific, it actually reads that possible just  
25 dumped property; correct?

1 A Property.

2 Q Not knife?

3 A Not -- no, I did not read knife.

4 Q Or weapon?

5 A No.

6 MS. JONES: Thank you.

7 THE COURT: Is that it?

8 MR. SCHWARTZ: That's all, Your Honor. Thank you.

9 THE COURT: Okay. Thank you very much for your testimony.

10 THE WITNESS: Yes, sir.

11 THE COURT: I appreciate it, Officer.

12 THE WITNESS: Yes, sir.

13 THE COURT: You can go ahead and step down and you'll be excused. Just

14 in case you're going to be out in the hallway for any length of time, I'll caution you

15 not to discuss your testimony.

16 THE WITNESS: Of course, of course.

17 THE COURT: I don't think you need to stick around. I think you're free --

18 THE WITNESS: If I need to stick around, I will.

19 THE COURT: I think you're free to leave.

20 THE WITNESS: All right. Thank you.

21 MR. SCHWARTZ: Your Honor, just making sure that all are exhibits that were

22 marked were admitted.

23 THE COURT: All right. You've got 1 through 40 something?

24 MR. SCHWARTZ: 3 to 7 were not admitted.

25 THE COURT: 3 to 7 were not admitted.

1                   1, 2 and starting at 8, it goes 8 through 42.

2           MR. ROSE: I believe it was either 41 or 43.

3           MR. SCHWARTZ: 43.

4           THE COURT: 1 through 43 were admitted?

5           MR. SCHWARTZ: That's correct.

6           MS. SPELLS: Your Honor, I would confer that it is Exhibits 1 through 3 and  
7 Exhibits 8 through 41 --

8           THE COURT: 41, correct.

9           MS. SPELLS: -- that have been admitted.

10          THE COURT: So we've got them all?

11          MR. SCHWARTZ: That's correct, yes, Your Honor.

12          THE COURT: Okay. So is the State going to rest?

13          MR. SCHWARTZ: Your Honor, at this time the State would rest.

14          THE COURT: All right. We're going to take a short break. And then we're  
15 going to come back and figure out how we're going to wrap this all up. The defense  
16 reserved their opening statements. So at the close of the State's evidence then the  
17 defense will be given an opportunity to make their opening statement. And I believe  
18 they've also indicated the potential of a couple of witnesses. But let's just go take a  
19 couple of minutes, okay. Let's take about, it's 20 after, we'll say 4:30 and we'll be  
20 back here and we'll see how this is going to wrap up.

21                   In this next ten minute break I'll admonish the members of the jury not  
22 to converse or discuss amongst themselves or with anyone else on any subject  
23 connected or related to this trial. Don't watch, listen, or read any reports or  
24 commentaries regarding this trial through any medium of information, radio,  
25 television, newspapers, Internet. And don't form or express any opinions on any

1 subject connected or related to this trial until such time as this case has been finally  
2 submitted to the jury.

3 10 minutes.

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We're outside the presence of the jury.

6 Is there anything we need to put on the record?

7 What's our plan here?

8 MS. SPELLS: We plan to do opening and do one witness today.

9 THE COURT: Okay.

10 MS. SPELLS: And then return tomorrow and finish up.

11 THE COURT: Okay. Fairly short witness?

12 MS. SPELLS: Yes.

13 THE COURT: Do you know who the witness is?

14 MR. SCHWARTZ: I believe it's Ms. Harvey.

15 THE COURT: Okay. Then let's really keep this close. 4:30 we've got about 7  
16 or 8 minutes and then we're going to start, crank it up --

17 MR. ROSE: Yes, Your Honor. And --

18 THE COURT: -- because I want to be done right around 5-ish.

19 MR. ROSE: And, Your Honor, just one thing, just kind of for clarification  
20 purposes, the defense did reserve their opening statement. My understanding is an  
21 opening statement is only about what the evidence is going to show. Given that the  
22 State has presented its case in chief we would simply ask that the opening  
23 statement by the defense be restricted to whatever they believe the evidence that  
24 Ms. Harvey will present has shown or will have shown -- my apologies. Otherwise, it  
25 would simply be commentary on what the evidence has shown, which is more akin

1 to a closing statement.

2 THE COURT: Don't make your opening and closing. I mean, make it an  
3 opening. If you're going to reserve your opening, make it an opening and don't  
4 make it is as second chance to get more closing argument in. All right.

5 MR. ROSE: Thank you, Your Honor.

6 THE COURT: Take a break.

7 MS. SPELLS: Your Honor, how late will we be going tonight?

8 THE COURT: Five. I'm going to shut this down at 5 o'clock.

9 MS. SPELLS: Okay. Well, after the jury is excused, are you expecting us to  
10 stay or do you want to handle jury instructions --

11 THE COURT: Well, I want them out of here by 5 o'clock. Are we going to try  
12 and settle instructions?

13 MS. SPELLS: That's what my inquiry is.

14 THE COURT: Well, I would suggest we do that in the morning. Let's hear  
15 your witness and then when we come back in the morning before -- before we get  
16 away from here, we'll pick out a time, tell them to be here, let's give ourselves at  
17 least 30 minutes to try and settle instructions. You guys need to, you know, let's not  
18 argue about every single one. You guys go through the damn instructions and pick  
19 out the ones that you have an argument on. But don't make me just sort through  
20 them and hear an argument on every single instruction, okay. You know what the  
21 instructions are. I mean, the instructions are -- there's no -- should be barely any  
22 argument. The standard instructions are so well known let's just not do anything  
23 goofy or strange. Go through them and pick out the ones that you really have a  
24 dispute about.

25 Now we're down to 5 minutes.



1 [Recess taken at 4:27 p.m.]

2 [Trial resumed at Resume 4:34 p.m.]

3 [Outside the presence of the jury panel]

4 THE COURT: Mr. Harvey, I need to explain your options with regards to  
5 testifying.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: First of all, you need to understand that pursuant to the  
8 Constitution of the United States and also the Constitution of the State of Nevada  
9 you are protected against self-incrimination, which means that you cannot be  
10 compelled to testify in a criminal case where you're the Defendant. If you choose  
11 not to testify, you have the option to include as an instruction, in the set of  
12 instructions to the jury, that they are told they -- the fact that you may have elected  
13 not to testify cannot be discussed or considered by the jury in any form or fashion  
14 and they cannot even bring it up during the course of their deliberations.

15 On the other hand, you can waive your right against self-incrimination  
16 and you can get on the witness stand and testify just like any other witness. If you  
17 do that, I need to caution you you'll be subject to being cross-examined by the State  
18 of Nevada. And if you have any prior convictions or felonies within the last 10 years,  
19 they will be allowed to ask you about those convictions. It's a limited query. They  
20 can ask you have ever been convicted of a felony and when and what it was for but  
21 then they can't go into any other aspects of a prior conviction.

22 This is all something that you need to discuss with your attorney. And  
23 at some point you'll have to declare whether you are going to exercise your Fifth  
24 Amendment right against self-incrimination and not take the stand or that you're  
25 actually going to testify.

1                   Okay?

2           THE DEFENDANT: Yes, sir.

3           THE COURT: And if you're not going to testify, you need to tell me if you  
4 want to insert that instruction into the packet of instructions telling the jury not -- that  
5 they cannot discuss the fact that you choose not to testify.

6                   Okay. You understand everything?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Okay. Do you have any questions about what I just told you?

9           THE DEFENDANT: No, sir.

10          THE COURT: Okay.

11          MR. ROSE: And just for the record, Your Honor, we do have the certified  
12 JOC's, I believe there are two that are within the relevant time period.

13          THE COURT: Within ten years?

14          MR. ROSE: I believe so, Your Honor.

15          THE COURT: Okay.

16          MS. SPELLS: We would just ask for a copy of the said certified JOC's. We  
17 don't have them.

18          THE COURT: Yeah, bring them in.

19                               [In the presence of the jury panel]

20          THE MARSHAL: All rise, please.

21                   And be seated.

22          THE COURT: Will the parties stipulate to the presence of the jury.

23          MR. SCHWARTZ: Yes, Your Honor.

24          MR. ROSE: Yes, Your Honor.

25          MS. JONES: Yes, Your Honor.

1 MS. SPELLS: Yes.

2 THE COURT: All right. So we're going to have the defense opening  
3 statement and then call a witness; is that correct?

4 MS. JONES: Correct, Your Honor.

5 MS. SPELLS: Yes, Your Honor.

6 THE COURT: All right.

7 **DEFENSE OPENING STATEMENT**

8 MS. JONES: Good afternoon.

9 THE JURY PANEL: Good afternoon.

10 MS. JONES: May I introduce myself again. My name is Kelley Jones and  
11 Ms. Jasmin Spells and I have the honor and the privilege to actually represent  
12 Mr. Alfred C. Harvey in this case.

13 Now, when you were sworn in, and during voir dire, you mentioned that  
14 you would keep an open mind. You would let all the evidence be presented before  
15 you make a decision. Now, as Judge Bixler told you earlier what happens is that the  
16 State gets to present their case and then Mr. Harvey gets to actually present his  
17 case, which is what is about to occur now.

18 Before I tell you what I think the evidence actually will show, I want to  
19 say one thing, that this is a very simple case. And to quote that wonderful  
20 philosopher Tom Cruise, perception and reality are two different things. The State  
21 has the burden of proving that Mr. Harvey stole items with the threat or force to  
22 obtain or retain those items. And you need to pay attention to make sure that the  
23 evidence does show that. It is their burden to prove each and every element of the  
24 crime to the specific detail of the information as it was read.

25 MR. SCHWARTZ: Your Honor, may we approach?

1 MR. ROSE: Your Honor, may we approach?

2 THE COURT: Okay.

3 [Bench conference begins]

4 MR. SCHWARTZ: Our objection is going to be that this is improper opening  
5 statement [indiscernible] what the opening -- what the evidence will show.

6 THE COURT: Well, I don't mind her explaining that the burdens of the  
7 [indiscernible], that's fine. As long as you don't reference what's already been  
8 presumed as evidence. You can explain the burdens of proof, what the  
9 requirements of the State are in order to convict, and all that stuff, that's fine. But  
10 you can't reference what's already been presented, okay.

11 MR. SCHWARTZ: Okay.

12 [Bench conference concludes]

13 MS. JONES: Ladies and gentlemen of the jury, once again, I'm just asking  
14 that you listen, that you've taken notes on the evidence already presented, that you  
15 listen to the evidence that's about to be presented to you. And I believe if you do  
16 that, and also follow the instructions that the judge will give you in following the law,  
17 you will render a verdict of not guilty. You will find that Mr. Alfred C. Harvey did not  
18 commit a robbery with use of a deadly weapon.

19 And that's all we're asking for a verdict of not guilty.

20 Thank you.

21 THE COURT: Thank you very much.

22 And your witness is who again?

23 MS. SPELLS: Your Honor, we're going to call Tara Harvey.

24 THE COURT: Tara Harvey, okay.

25 And before the witness comes in, let me -- this is exactly why we tell

1 you to keep an open mind. If you keep an open mind throughout the entire trial, this  
2 trial is still not over with, they still got some witnesses, so do not form or express any  
3 opinions, do not form any opinions on this case until all of the evidence has been  
4 adduced, okay.

5 **TARA HARVEY**

6 THE CLERK: Please be stated and then state and spell your name for the  
7 record.

8 THE WITNESS: Tara Jefferson Harvey. Tara, T-A-R-A, Jefferson,  
9 J-E-F-F-E-R-S-O-N, Harvey, H-A-R-V-E-Y.

10 THE COURT: Very good.

11 MS. SPELLS: May I proceed, Your Honor.

12 THE COURT: Yes, please.

13 **DIRECT EXAMINATION BY MS. SPELLS**

14 BY MS. SPELLS:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Mrs. Harvey, how do you know this gentleman at this table?

18 A He's my husband.

19 Q He's your husband.

20 How long have you been married?

21 A Four years.

22 Q Four years.

23 Now, are you familiar with the charge in this case?

24 A Yes, ma'am.

25 Q Okay. And kind of the location, the T.J. Maxx area?

1 A Yes, ma'am.

2 Q And were you present at T.J. Maxx on March 30th, 2016?

3 A I was present but I was in the vehicle.

4 Q You were in the vehicle?

5 A Yes.

6 Q What type of vehicle was that?

7 A It was a U-Haul rental, truck, van.

8 MS. SPELLS: Can everyone -- can you hear her okay? Okay.

9 BY MS. SPELLS:

10 Q And so you didn't enter the store on that day?

11 A No, I didn't.

12 Q Do you recall what color shirt your husband was wearing that day?

13 A Blue.

14 Q Blue shirt.

15 I'm showing you what has been admitted into evidence as State's

16 Proposed or -- not proposed. It is actually admitted. State's admitted Exhibit

17 Number 3, do you recognize that shirt?

18 A Yes.

19 Q That picture?

20 A Yes.

21 Q What is that a picture of?

22 A It's a picture of a shirt, jacket type.

23 Q Okay. Do you know who this shirt, jacket type belongs to?

24 A Alfred.

25 Q And was he wearing this shirt on that day?

1 A Yes.

2 MS. SPELLS: May I publish?

3 THE COURT: Yes.

4 BY MS. SPELLS:

5 Q So, Mr. Harvey was wearing this shirt on March 30, 2016?

6 A Yes.

7 Q Mrs. Harvey, are you familiar with the names Shaun Bramble or Julian  
8 Munoz at all?

9 A The loss prevention guys, T.J. Maxx?

10 Q Yes.

11 A Yes.

12 Q And have you seen them before?

13 A Yes.

14 Q Did you see them on March 30th, 2016?

15 A Yes.

16 Q Where did you see them at exactly?

17 A They were in front of the U-Haul.

18 Q In front of the U-Haul.

19 And did you see them doing anything?

20 A Taking pictures.

21 Q You saw them taking pictures.

22 Who did you see taking pictures?

23 A Both guys were taking pictures.

24 Q And what was it that made you -- that gave you the conclusion they  
25 were taking pictures?

1           A     Their cell phones were pointed up towards the van and the flashes  
2 were going off on their cell phones.

3           Q     Did you see flashes go off on both phones?

4           A     Yeah, but more on the taller guy phone.

5           Q     Okay. Taller guy, that is the individual who -- does he have more of a  
6 beard?

7           A     Yes, yes, he does.

8           MS. SPELLS: And I don't believe the State has any objection that individual  
9 would be identified as Mr. Bramble.

10          MR. SCHWARTZ: No, objection.

11          MR. ROSE: No, objection.

12          BY MS. SPELLS:

13          Q     Now, at this T.J. Maxx store there are a number of stores in that plaza?

14          A     Yes, there are.

15          Q     And the U-Haul van, do you know where it was parked at?

16          A     We were parked along the curb of the shopping center, kind of by Dollar  
17 Tree but, you know, in between Ross and T.J. Maxx.

18          Q     Okay. So let me show you a picture because -- to actually clarify a little  
19 bit better.

20                   I'm going to put a picture right up here. It should come up on your  
21 screen.

22          A     Okay.

23          Q     Right there. And the screen that you're looking at is a touch screen.

24          A     Okay.

25          Q     So you can make marks on that screen.



1 Now, where my pen is located, that is the T.J. Maxx store.

2 A Okay.

3 Q And this is the Ross store.

4 A Okay.

5 Q So you're indicating that you were parked along this curb around here?

6 A Yes.

7 Q And do you know exactly where on this curb, if you can make a star?

8 A How do I make a star? I'm sorry, I just touch it?

9 Q Yeah, just touch it approximately where you think you were parked at?

10 A [Witness complies]

11 Q So you've marked over here closer to --

12 A I can't -- I kind of want to mark maybe one slot over. We're kind of by

13 that -- the --

14 THE COURT: Let me clear it out.

15 THE WITNESS: Okay.

16 THE COURT: And you can start again.

17 THE WITNESS: Okay.

18 THE COURT: Because when you make a mark it doesn't go exactly where

19 you --

20 THE WITNESS: I'm sorry, okay.

21 THE COURT: Kind of lead it a little.

22 THE WITNESS: Okay. About right there.

23 Is that -- this is Ross right here?

24 BY MS. SPELLS:

25 Q This is Ross right here, yes?

1 A Yeah.

2 Q Okay. So you were parked --

3 A Can you make it bigger? I'm sorry.

4 Q Can we make this bigger?

5 A I just want to see the -- thank you. Okay.

6 Q Is that zoom too much for you?

7 A Okay. Yeah, about right there. We were parked about right there.

8 Q I'm not seeing where you marked.

9 A Oh, I'm sorry.

10 THE COURT: Mark it again.

11 Quit moving it.

12 THE WITNESS: Sorry, I'm sorry.

13 THE COURT: There you go.

14 BY MS. SPELLS:

15 Q Okay. So approximately the middle of the Dollar Tree?

16 A Yeah.

17 Q Okay. Ms. Harvey, do you know what Mr. Harvey's dominant hand is?

18 A Right.

19 Q And on March 30th, 2016, did you see Mr. Harvey with a knife at all?

20 A No, I didn't.

21 Q Did he give you a knife?

22 A No, he didn't.

23 Q Do you know him to generally carry a knife on his person?

24 A No, he doesn't.

25 MS. SPELLS: Court's brief indulgence.

1 THE COURT: Sure.

2 MS. SPELLS: We'll pass the witness, Your Honor.

3 THE COURT: Cross.

4 MR. SCHWARTZ: Thank you, Your Honor.

5 **CROSS-EXAMINATION BY MR. SCHWARTZ**

6 By MR SCHWARTZ:

7 Q How are you doing, Ms. Harvey?

8 A Good. How are you?

9 Q Pretty good, thank you.

10 March 30th, 2016, the date we're talking about --

11 A Uh-huh.

12 Q -- do you remember?

13 A Yes.

14 Q Okay. What were you and Harvey doing that day before you went to

15 T.J. Maxx?

16 A We were --

17 MS. SPELLS: Objection.

18 THE COURT: Why?

19 MS. SPELLS: This is cross-examination, Your Honor, not direct examination.

20 The questions should be leading in scope.

21 THE COURT: No, no, no, he gets to ask cross-examination questions.

22 Overruled, go ahead.

23 THE WITNESS: We were moving stuff from some storage.

24 BY MR. SCHWARTZ:

25 Q Okay. Moving it from storage to where?

1 A To a new place we were moving into.

2 Q And who was moving things?

3 A Me and Mr. Harvey.

4 Q Okay. The Defendant?

5 A Yes.

6 Q Were your kids with you?

7 A Yes.

8 Q Okay. And how many kids do you have?

9 A Three but two were with me.

10 Q And two kids were with you?

11 A Yes.

12 Q And are they kids that you have had with Mr. Harvey?

13 A One is with Mr. Harvey; one is from a prior relationship.

14 Q Okay. And the other kid just wasn't there that day?

15 A Just wasn't there. He's older.

16 Q How old are the two kids that were with you?

17 A Four and thirteen.

18 MS. SPELLS: Your Honor, I'm going to object as to relevance.

19 THE COURT: Well, it's all, I mean -- first of all they're in the video, they've  
20 seen them.

21 BY MR. SCHWARTZ:

22 Q Four year old's a girl?

23 A Yes.

24 Q 13 year old's a boy?

25 A Yes, yes.

1 Q And then he went into the T.J. Maxx store?  
2 A Yes.  
3 Q With the two children?  
4 A Yes.  
5 Q Okay. And you stayed in the car?  
6 A Yes.  
7 Q Why did you stay in the car?  
8 A My stomach hurt.  
9 Q Your stomach hurt.  
10 And was the car on or off?  
11 A It was off.  
12 Q It was off.  
13 So the air wasn't on?  
14 A No.  
15 Q Radio wasn't playing?  
16 A No.  
17 Q Okay. You have the windows up or down?  
18 A Cracked, probably.  
19 Q Cracked.  
20 Were you sitting in the passenger seat?  
21 A Yes.  
22 Q Okay. How long would you say they were in the store for?  
23 A Maybe 20 minutes.  
24 Q What type of items were you guys going to get at T.J. Maxx?  
25 A My daughter wanted a toy that she saw at a previous T.J. Maxx.

1 Q Okay. So you were just looking for a toy?

2 A Well, she wanted -- yeah, to see if she could get the toy, yes.

3 Q So your husband, the Defendant, was going to take her in there?

4 A Yes.

5 Q To get a toy?

6 A Yes.

7 Q Come back out and you guys were going to go about your day?

8 A Yes.

9 Q Fair?

10 A Exactly.

11 Q Did you ever leave the car?

12 A No.

13 Q When was the first time you saw Mr. Harvey come back?

14 A He was -- what do you mean? I'm sorry, can you repeat the question.

15 Q Yeah.

16 So he left the car to go inside the store?

17 A Yes.

18 Q With the two children?

19 A Yes.

20 Q And when is the next time you saw him again?

21 A He was coming out with the kids.

22 Q Okay. And specifically we have the map here, you see T.J. Maxx right

23 here?

24 A Yes.

25 Q And your car is where this -- I might have moved it, sorry. Where the

1 red dot is?

2 A Yes.

3 Q Where did you see Mr. Harvey?

4 A He was walking towards the car.

5 Q And just mark it on the map for me, if you don't mind.

6 MR. SCHWARTZ: Your Honor, one of the jurors has a --

7 JUROR NUMBER 2: We're having a little problem hearing her.

8 THE WITNESS: I'm sorry.

9 THE COURT: Yeah, speak up.

10 THE WITNESS: Okay. Can I have some water, please.

11 THE COURT: Can you have some what?

12 THE WITNESS: Water, please.

13 THE COURT: Right here.

14 THE WITNESS: Oh, thank you.

15 THE COURT: Right here, right here. We've got a pitcher of water and a  
16 couple of glasses and it's all fresh.

17 BY MR. SCHWARTZ:

18 Q And now did you mark it on the screen where you saw him?

19 A Okay. Kind of in front of the U-Haul van.

20 Q Okay. So the first time you saw him is when he's about at the van --

21 A Yes.

22 Q -- fair to say?

23 A Yes.

24 Q And behind him is the two loss prevention officers you talked about?

25 A No --

1 Q No?

2 A -- not yet.

3 Q Okay. So you don't see them yet?

4 A No.

5 Q And Mr. Harvey gets in the van?

6 A Yes.

7 Q Turns it on?

8 A Not yet.

9 Q He doesn't turn it on?

10 A Well, he doesn't but that's -- I saw loss prevention before he turned it

11 on.

12 Q Okay, okay. So let's then -- we'll go in order. So he gets in the car and

13 then you saw loss prevention?

14 A Yes.

15 Q And they were at the front of the store, the T.J. Maxx store?

16 A No, they were in front of the U-Haul.

17 Q Okay. So they had been behind Mr. Harvey?

18 A Well, not exactly behind. They came running behind him.

19 Q Okay. And once you saw them, Mr. Harvey turned the car on?

20 A Yes. Well, the car -- before that, the car was already started kind of. It

21 kind of happen fast like the -- the loss prevention guys came out and he kind of

22 started the car at the same time they were coming out. But it wasn't exactly when

23 they came out though. It was a little before.

24 Q So is it fair to say he got in the car and turned the car on?

25 A Yes.



1 Q Okay. And it's fair to say about that time is when you noticed the loss  
2 prevention kind of by the van?

3 A Yes.

4 Q Okay. And at that point the car is facing the Dollar store; correct?

5 A Yes.

6 Q Okay. So you would have to back out and then drive forward to get out;  
7 right, you back out of the spot?

8 A Yes.

9 Q That's what happened?

10 A Yes.

11 Q So after you got in, turned the car on, you guys backed out, and you  
12 drove off; fair?

13 A Yes.

14 Q And you went out this direction; right?

15 A Is that --

16 Q You went on Decatur Boulevard; correct?

17 A Yes.

18 Q Okay. Made your way to Charleston?

19 A Yes.

20 Q And you made your way ultimately to a school?

21 A Yes.

22 Q Okay. And you would agree with me that that trip, from T.J. Maxx to the  
23 school, the Defendant was driving the whole time?

24 A Yes.

25 Q And you were in the passenger seat the whole time?

1 A Yes.

2 Q And you would agree with me that he was driving fast?

3 A No, he wasn't driving fast.

4 Q He was driving slow then?

5 A Not slow. Just regular speed limit.

6 Q Driving the speed limit.

7 What's the speed limit?

8 A I'm not sure in Vegas but.

9 Q Okay.

10 A 35, 40. I don't know the speed limit.

11 Q So if the speed limits 35 or 40 on Decatur that's what he was going?

12 A Yeah, he was going with the traffic, yeah.

13 Q Okay. And he was changing lanes?

14 A Yes, like normal driving, yes.

15 Q Okay. And when you guys got to the school he actually got out and he

16 ran to the door of the school; correct?

17 A No, it didn't happen like that.

18 Q He got out and went to the school door; right?

19 A Yes.

20 Q Okay. And he tried to open it and it was locked; fair?

21 A No, it was not locked.

22 Q He didn't go in the school though, did he?

23 A He didn't go in the school but it wasn't locked.

24 Q He --

25 A He went into --

1 Q He didn't go in the school though; right?

2 A He did go in the school.

3 Q He went in the school and then he came out back?

4 A Yes, yes.

5 Q So he opened the door and went inside the school?

6 A Yes.

7 Q Okay. And you were aware at the time that there was another car

8 behind you, right, that was following you?

9 A Yes.

10 Q Okay. Were you -- you were a little confused on why that was

11 happening; right?

12 A Yes.

13 Q Okay. You must have also been confused why loss prevention was

14 running after your husband; right?

15 A They weren't running after him so much but is taking pictures.

16 Q Okay. Did you think they were running after you?

17 A No.

18 Q Did you think they were running after your kids?

19 A No. I hope not, no.

20 Q So who were they running after?

21 A Alfred.

22 Q Thank you.

23 MS. SPELLS: Objection, she's asked and answered that she didn't know.

24 MR. SCHWARTZ: She answered. Thank you.

25 THE COURT: I'm going to let her answer. She's a percipient witness. She's

1 able to make conclusions. Go ahead.

2 MR. SCHWARTZ: Okay. Thank you, Your Honor.

3 BY MR. SCHWARTZ:

4 Q So were you concerned that they were running after Alfred?

5 A Well, I didn't know what was going on really.

6 Q Okay. Because you didn't see it?

7 A I saw them come out to -- I saw them come out to the van, that's what I  
8 saw.

9 Q And that's what you said?

10 A Uh-huh.

11 Q But you didn't see what happened before that?

12 A No, I wasn't in the store, no.

13 Q Sure.

14 And you also didn't see anything that happened before Mr. Harvey was  
15 right in front of the van?

16 A I saw him walking.

17 Q That's what you just said -- that's what you just said previously; right?

18 A Yeah, I saw him walking from the store that's all I saw.

19 Q Okay, excellent. Thank you.

20 Ma'am, you testified today that you saw the loss prevention officers  
21 both of them were taking pictures of your car; correct?

22 A Yes, they were.

23 Q Now, you remember testifying just a few days, weeks ago --

24 A Uh-huh.

25 Q -- right, and we were talking about this whole picture situation?

1           A     Yes.

2           Q     And actually you said you only saw one person --

3           A     That's not true.

4           Q     -- that --

5           A     That's not what I said. I said --

6           Q     Let me finish and then you can tell me whatever you said.

7           A     Okay.

8           Q     Today you said you saw two people taking pictures and you saw both  
9 cameras flashing?

10          A     Yes.

11          Q     Okay. And previously, isn't it true that you testified that actually only the  
12 gentleman with the big beard, only his phone was flashing?

13          A     That's not what I said. I said that they both were taking pictures but his  
14 flash was going off more than the other one. And I conclude that he was taking  
15 pictures because his flash was going off more. I didn't say the other one wasn't  
16 taking pictures.

17          Q     So specifically when you testified about a week ago you did not say  
18 then as your testimony today you did not say that only one phone was flashing,  
19 you're telling me you didn't say that last time you testified?

20          A     I didn't say it in those words, no, I didn't.

21          Q     But for the most part the gentleman with the beard his phone was  
22 flashing and you noticed more?

23          A     Yeah, he was took more pictures than the other one.

24          Q     Okay. Excellent. Thank you.

25                 Ma'am, I'm showing you State's Exhibit 10, you recognize that

1 gentleman, don't you?

2 A Yes.

3 Q Who is it?

4 A Alfred.

5 Q Okay, fair. And that's what he was wearing the day that we're talking  
6 about; right?

7 A Yes.

8 Q He had a hat on, he had a blue shirt, and he had a blue blazer?

9 A Yes.

10 Q Okay, thank you.

11 Now, when the Defendant came back to the car with his -- with the two  
12 kids --

13 A Yes.

14 Q -- he got in, he didn't have any children's toys with him; right?

15 A No, because he was waiting for me to come in.

16 Q Okay. So, I guess, maybe I misunderstood, you were actually planning  
17 to go into the store?

18 A Yeah, because I have the money so.

19 Q Okay. So is there -- he was waiting for you to come into the store to  
20 bring the money?

21 A Well, we were going to look together for the toy, and I said, give me a  
22 few minutes, my stomach hurt.

23 Q Okay. I thought you said he was in the store for about 20 minutes?

24 A Well, it seemed like -- I'm not good at time but it seemed like about 20  
25 minutes.

1 Q You never went in the store to help him with the money; right?  
2 A No, because I assumed he's going to come back out --  
3 Q And he did?  
4 A -- and get me.  
5 Yeah.  
6 Q And he did?  
7 A Yeah.  
8 Q And he got you but you didn't go back in the store to buy the toy; right?  
9 A Well, obviously loss prevention was right there chasing us, chasing.  
10 Q That's concerning; right?  
11 A When I found out later, yeah. I didn't know what was going on.  
12 Q Okay. But you did find out later what was going on inside?  
13 A Yes.  
14 Q Okay. So Alfred went in there without any money?  
15 A He had money but not enough to buy a toy that she wanted. He had  
16 money.  
17 Q Okay. The toy was going to be more expensive than whatever  
18 amount -- how much money did he have?  
19 A He had probably like 10, 15 bucks.  
20 Q Okay. Toy was going to be more than that?  
21 A Yes.  
22 Q So you were going to come in and just give him money when you got in  
23 there?  
24 A No, I was going to pay for it with my credit card.  
25 Q Okay, excellent. Thank you.

1 A Uh-huh.

2 Q Now, ma'am, I mean, not a trick question, but you love your husband --

3 A Yes.

4 Q -- fair?

5 You guys have been married for four years; you just have the one kid  
6 together?

7 A Yes.

8 Q Okay. You don't want to see anything bad happen to him; fair?

9 A No.

10 Q Okay. And there's nothing you have to hide; right?

11 A No.

12 Q Okay. Now, did you get contacted by an investigator in my office to talk  
13 to you about the case?

14 A Yes.

15 Q And did he ask you kind of what happened that day, on March 30th?

16 A You mean today when he asked me?

17 Q He asked you what happened; right?

18 A Yeah, and I said -- I talked to him briefly.

19 Q You told him you didn't really want to talk to him; fair?

20 A I told him that I knew -- he asked me if I wanted to talk, and I said, I  
21 don't want to talk -- I did tell him I'm talking -- I'm coming to testify about what I know  
22 what happened outside the T.J. Maxx. And he said, you don't want to elaborate.  
23 And I said, no, because I'm already nervous and I'm going to testify.

24 Q Okay. So you didn't elaborate for him what had happened --

25 A No.



1 Q -- fair?

2 Okay. Court's indulgence. Thank you.

3 THE COURT: Sure.

4 MR. SCHWARTZ: Pass the witness, Your Honor.

5 MS. SPELLS: Can we approach?

6 THE COURT: Sure.

7 [Bench conference begins]

8 MS. SPELLS: We're going to object and ask that last question and answer --

9 THE COURT: I can't hear you.

10 MS. SPELLS: I object. I ask that the last question and answer be stricken  
11 from the record. I mean she has no obligation necessarily to speak to that officer.  
12 Whether she does or does not is not relevant in this [indiscernible] process. If she  
13 says it's -- I mean, officers don't return our phone calls. We don't get [indiscernible]  
14 They don't return any of our phone calls, she won't talk to us. Like we can't even --

15 MR. ROSE: Well, you could. I mean, you could ask that question. That's a  
16 fair question. It goes to bias and [indiscernible], Your Honor.

17 MR. SCHWARTZ: I didn't elaborate on [indiscernible].

18 MR. ROSE: I just asked if she --

19 MR. SCHWARTZ: Sorry, I just asked if she --

20 THE COURT: Talk to the investigator and she said, no, she said I'm going to  
21 testify and I don't want to talk to you.

22 MR. SCHWARTZ: Of course.

23 THE COURT: I'm going to let it stand in. I don't think there's anything wrong  
24 with it.

25 MS. SPELLS: Okay.

1 [Bench conference concludes]

2 THE COURT: Any additional direct?

3 MS. SPELLS: Just briefly.

4 **REDIRECT EXAMINATION BY MS. SPELLS**

5 BY MS. SPELLS:

6 Q Ms. Harvey --

7 A Yes.

8 Q -- how many times were you contacted by an investigator with their  
9 office, if you know?

10 A Once on the phone and once in person.

11 Q Did you speak with the individual in person?

12 A Yes, briefly.

13 Q Were you trying to hide something from them?

14 A No, I wasn't.

15 Q I'm going to talk you about this U-Haul car, you were sitting in the car?

16 A Yes.

17 Q When you left T.J. Maxx and went to the school, were you driving the  
18 car?

19 A No, Alfred was driving.

20 Q Where were you seated?

21 A Passenger.

22 Q Okay. Were you turning around, looking behind you?

23 A What do you mean? No, just -- just sitting in the car, just driving.

24 Q Okay. And you're not driving?

25 A No.

1 Q Did you have a reason to look in the rear-view mirror?  
2 A No.  
3 Q Okay. So when the State asked you a question you said that you knew  
4 a car was following you, is that something you knew while you were in the car with  
5 Alfred driving?  
6 A No, the -- one gentleman that was in T.J. Maxx parking lot, he tried to  
7 block us in for some reason.  
8 Q Okay. That car tried to block you in and then Mr. Harvey drove off?  
9 A Yes, yes.  
10 Q While he's driving off, are you turning around looking in the rear-view  
11 mirror or the back mirror?  
12 A No.  
13 Q Is there even a back window?  
14 A Yeah, there's a back window but you can't see out that window really.  
15 Q Why can't you see out of it?  
16 A It's because it's got a -- the way the seats are designed in the U-Haul  
17 van, and then there's like a cage, so it's -- I mean, it has little holes but you can't  
18 really -- really, you know, see-see, you could see but not like.  
19 Q You can't see well?  
20 A Yes.  
21 Q Are you nervous today?  
22 A Yes.  
23 Q Why?  
24 A First time being in court really.  
25 Q Okay. Now, you've testified in this case one other time?

1 A Yes.

2 Q Besides that time and this time have you testified in court before?

3 A Never.

4 Q So is this a scary experience for you?

5 A Yes, never been arrested before either so.

6 Q Now, Mr. Harvey stopped the car at this school?

7 A Yes.

8 Q Did you see prior to Mr. Harvey stopping the car at the school, did you  
9 see any lights and sirens?

10 A When we started approaching the school, we started to see the lights  
11 and sirens.

12 Q Okay. Were there any lights and sirens directing you to stop at that  
13 school?

14 A No.

15 MS. SPELLS: Pass the witness.

16 THE COURT: Anything else?

17 MR. SCHWARTZ: Just a couple. Thank you, Your Honor.

18 **RECROSS-EXAMINATION BY MR. SCHWARTZ**

19 **BY MR. SCHWARTZ:**

20 Q So the gentleman that ended up following the U-Haul van, you first saw  
21 him actually in the T.J. Maxx parking lot?

22 A Yes, he didn't actually follow us from T.J. Maxx. He just blocked us.

23 Q Okay. He's not -- you didn't see -- I thought you said you saw him once  
24 you got to the school you knew that somebody had been following you, right, that's  
25 what you told me?

1           A     I never said -- I didn't -- no, I never said that.

2           Q     Okay. So maybe I got it confused. I thought when I talked to you just a  
3 second ago that you told me that when you arrived at the school you were aware  
4 that someone had been following you, a car?

5           A     No, a car wasn't following us. The guy who blocked us in I wasn't sure.  
6 He might have followed us but I wasn't sure. But he tried to block us in but that's all.

7           Q     Okay. So to be clear now you don't -- you never saw anyone following  
8 you?

9           A     No, I never said anyone was following us.

10          Q     Okay. And when you got to the school you didn't see the other car that  
11 had followed you; right?

12          A     No.

13          Q     Okay.

14          A     No, car followed us.

15          Q     The only time you saw -- go ahead.

16          A     No, car followed us.

17          Q     Okay. The only time you saw the gentleman who blocked you in was at  
18 that point when he blocked you in?

19          A     Yeah, and he blocked us in and we got around his car and went out.

20          Q     Okay. And you'd agree with me you were at the school for a while;  
21 right?

22          A     Yes.

23          Q     Okay. And never once did you see that same man hanging around  
24 there, huh?

25          A     No, but I did -- I think he might have came later and talked to police or

1 something. I think I might have seen him then.

2 Q And you saw the car that he was driving at the time he blocked you, it  
3 was a white car; fair?

4 A Yes.

5 Q And you saw that same car at the school later on?

6 A Yes. I believe so, yes.

7 Q Now, you said just now, correct me if I say this wrong, okay, when you  
8 were about to stop at the school is when you first noticed the sirens and the lights?

9 A Yes, it wasn't directed towards us though.

10 Q Okay. Were they -- where were the lights and sirens coming from?

11 A The lights and sirens were in front of us. We were turning, I believe,  
12 right under the street. We were turning right on that street that goes into the school.  
13 And the sirens and lights were at the stop light in front of us. But they --

14 Q In front of you?

15 A Yes, but not directed.

16 Q And you told me, I think before, tell me if I got this wrong, but when you  
17 got to the school, Mr. Harvey --

18 A Uh-huh.

19 Q -- got out --

20 A Yes.

21 Q -- and is it fair for me to say that he ran inside?

22 A He did not run inside.

23 Q He just walked inside?

24 A Yes.

25 Q Okay. Why did he go inside?

1 A Because my daughter had to go to the bathroom.  
2 Q Okay. So he took your daughter into the bathroom with him?  
3 A He attempted to get to the bathroom.  
4 Q Okay. Did he take your daughter into the bathroom with him?  
5 A He could not go to the bathroom. They would not let him go to the  
6 bathroom with my daughter. They said he couldn't come in.  
7 Q So, just very simple, he took your daughter from the car --  
8 A Yes.  
9 Q -- into the school?  
10 A Yes.  
11 Q Okay. And then he took her back out of the school, back to the van?  
12 A Yes.  
13 Q And that was just about immediately after you saw the lights and  
14 sirens?  
15 A Yes.  
16 Q But they weren't -- you didn't think in any way they were directing you to  
17 stop?  
18 A No, not at all, they didn't say anything to us.  
19 Q So you were -- you would have been -- you were confused when  
20 actually the police were looking for your van; right?  
21 A Yes.  
22 Q And you were confused when loss prevention was coming out to you  
23 when you were in the U-Haul; fair?  
24 A Yes.  
25 Q The entire time that you were in the car with Mr. Harvey, from T.J. Maxx

1 all the way to the school, was he also surprised why loss prevention was following  
2 him? He was, wasn't he? He didn't know any idea why he was being followed;  
3 right?

4 A Not -- no.

5 Q He didn't?

6 A He -- he -- he didn't say. I didn't -- I can believe --

7 MS. SPELLS: Objection, speculation.

8 THE WITNESS: Yeah.

9 THE COURT: Well --

10 MR. SCHWARTZ: Based on her conversation with him.

11 MS. SPELLS: Personal knowledge..

12 THE COURT: They're having a conversation.

13 MS. SPELLS: There's been no foundation.

14 THE COURT: Well, you know, he didn't ask her if they discussed it.

15 BY MR. SCHWARTZ:

16 Q Did you have any discussion with Mr. Harvey during the car ride from  
17 T.J. Maxx to the school?

18 A Brief.

19 Q Brief, okay.

20 Were the kids talking as well or just you and Mr. Harvey?

21 A Just me and Mr. Harvey.

22 Q And during that entire time that you were talking with him --

23 A Uh-huh.

24 Q -- he had no idea what was going on either; right?

25 A No, I never said that.



1 Q Okay. So he knew exactly what was going on; right?

2 A No. He was -- he was wondering why loss prevention was following  
3 him because he got into like a little thing with them.

4 MS. SPELLS: Objection, personal knowledge.

5 THE WITNESS: Yeah.

6 MR. SCHWARTZ: It's what he told her, Your Honor.

7 THE COURT: Well, this is a conversation apparently they had. I'm going to  
8 let me you go. Go ahead.

9 BY MR. SCHWARTZ:

10 Q Okay. They got into a little thing with him, huh? Isn't that why they  
11 were following you?

12 A No, he didn't understand why they were following him. Like he told me  
13 that they thought he did something but he didn't do anything.

14 Q He didn't do anything?

15 A Yeah.

16 Q He told you he didn't do a thing; right?

17 A Yeah.

18 Q Okay. That's all I'm asking.

19 So it's fair for me to say, right --

20 A Yes.

21 Q -- if he told you that he didn't do anything wrong, then he didn't know  
22 why loss prevention was following him?

23 A Yes, you could say that.

24 Q Similarly he didn't know why the police and the helicopters were  
25 following you guys; right?

1 A Yes.

2 MR. SCHWARTZ: Nothing further, Your Honor.

3 THE COURT: Anything else?

4 **FURTHER REDIRECT EXAMINATION BY MS. SPELLS**

5 BY MS. SPELLS:

6 Q Ms. Harvey, did you know the helicopter was following you?

7 A I assumed because they were right over our van.

8 MS. SPELLS: Okay. So you saw it right over your van.

9 Nothing further.

10 THE COURT: Is that it?

11 MR. SCHWARTZ: Yes, Your Honor.

12 THE MARSHAL: I thought there was a question from a juror.

13 It was already asked.

14 THE COURT: Okay. So, we're all done.

15 MS. SPELLS: Your Honor can we still have it submitted to the court or --

16 THE COURT: She withdrew it. We never even got a chance --

17 MS. SPELLS: She withdrew it, okay.

18 THE COURT: -- to even look at it.

19 Thank you very much for your testimony. I appreciate it. You can go  
20 ahead and step down and you'll be excused.

21 Ms. Harvey, if you're going to wait outside in the hallway here, I caution  
22 you not to discuss any of your testimony while you wait outside, okay.

23 THE WITNESS: Okay, yes, sir.

24 THE COURT: All right.

25 We passed our target time here. So we're going to take a break, an

1 overnight break.

2 Now, timewise, we're going to need about 30 minutes to discuss what's  
3 going on and specifically reviewing the instructions. So what time would you like to  
4 start this trial?

5 MR. ROSE: Can we approach briefly, perhaps.

6 THE COURT: I want them to hear what time you guys are proposing because  
7 I don't want anybody to -- as far as I'm concerned, we can start at 6 o'clock in the  
8 morning.

9 MR. SCHWARTZ: Your Honor, could we start at 9:30 and we will be here at  
10 9:00 with you.

11 THE COURT: Okay, that sounds good. You guys -- 9:30, okay?

12 All right. Because we're getting close, you guys will be deliberating very  
13 quickly.

14 Ask Tom.

15 Tom, we've got a question over here.

16 THE MARSHAL: She has to take children to school. She said 10 o'clock  
17 would be more amenable to her.

18 THE COURT: There's fine. We can do it.

19 MR. SCHWARTZ: We should be done by lunch time.

20 THE COURT: 10 o'clock is fine.

21 All right. I think we have one more question over here, Tom.

22 JUROR NUMBER 9: I'm having a hard time to come tomorrow here. My  
23 husband --

24 THE COURT: Wait, wait, wait. Tell Tom and --

25 THE MARSHAL: She says her husband doesn't get off work until 11 and

1 that's her childcare for tomorrow.

2 THE COURT: I don't know if we can start that late. We can take a -- if we  
3 don't get started until 11 o'clock, that's going to put us well into the afternoon.

4 There's no other arrangements that you can make? I mean, for  
5 childcare for an hour or so if we go to 10 o'clock, can you get somebody that can  
6 provide childcare for an hour and then just like take an Uber or something. Can you  
7 do that?

8 JUROR NUMBER 9: I don't have anyone whose -- I don't have any family  
9 here.

10 THE COURT: Can you be here at 11 o'clock?

11 JUROR NUMBER 9: He get off at 11. He work --

12 THE COURT: Okay. Well, this is getting -- now we're not starting until noon.  
13 If he doesn't get off until 11, by the time he gets home and you get here it's going to  
14 be 12 o'clock.

15 Any suggestions?

16 MS. SPELLS: Court's brief indulgence.

17 MR. SCHWARTZ: Can we approach, Your Honor.

18 THE COURT: Sure.

19 [Bench conference begins]

20 MR. SCHWARTZ: I don't know if this is a thing people do. But if she brought  
21 the kids with her, could they go down to Victim Witness and hang out there with  
22 some supervisors. I don't know.

23 MR. ROSE: What we can -- bring them to the Victim Witness Center.

24 MR. SCHWARTZ: That's what I said.

25 MR. ROSE: Yeah.

1 MS. SPELLS: I'll watch the baby.

2 THE COURT: All right.

3 MR. SCHWARTZ: That's an idea at least.

4 THE COURT: Do you think you can call Victim Witness and see if they can  
5 help her out and watch --

6 MR. SCHWARTZ: Yeah, I know -- I don't think that they're probably open but  
7 one of our Victim Witness advocates will definitely take care of it for us.

8 THE COURT: Okay. Let me make that suggestion.

9 MR. SCHWARTZ: Okay.

10 MR. ROSE: Okay.

11 [Bench conference concludes]

12 THE COURT: Okay. Here's a way we can do this. All you would need to do  
13 is get down here because the District Attorney's Office has Victim Witness  
14 advocates who can watch your kids until your husband can get here and pick them  
15 up. So, you'll have childcare built into the system, all you'll need to do is just get  
16 down here.

17 JUROR NUMBER 9: [Indiscernible].

18 THE COURT: And bring your kids. Come down here a little early, bring your  
19 kids, and they'll make arrangements for the Victim Witness Office advocates. They  
20 have folks down there that do this kind of thing. So that'll get you off the hook as far  
21 as your childcare, okay.

22 All right. So we'll do it like this, we'll say --

23 MS. SPELLS: Your Honor, can we approach again, please?

24 THE COURT: Sure.

25 ///

1 [Bench conference begins]

2 MS. SPELLS: I'm a mom and I'm fearing some hesitation. Can we provide  
3 accommodations that the Victim Witness will be like in the courtroom, in the back or  
4 something?

5 THE COURT: Sure.

6 MR. ROSE: Oh, yeah.

7 MR. SCHWARTZ: Let's do it. That's fine.

8 MS. SPELLS: I mean --

9 MS. ROSE: Oh, yeah. Well, yeah. No, that way they --

10 MS. SPELLS: I certainly wouldn't want my kids with strangers.

11 MR. ROSE: Yeah.

12 THE COURT: Absolutely, we can do that. We'll explain that.

13 MS. SPELLS: That's -- okay.

14 MR. ROSE: That's fine.

15 [Bench conference concludes]

16 THE COURT: What we can do is so you don't have to worry about your kids  
17 being someplace where you can't watch them. There's two offices right here,  
18 between the outer doors and the inner doors, and we can have the Victim Witness  
19 folks come down and watch your kids right outside the courtroom. So you'll never --  
20 they'll never be more than 30 feet away.

21 Does that ease your mind a little?

22 JUROR NUMBER 9: Yeah, they are only seven months babies

23 [indiscernible].

24 THE COURT: Seven months?

25 JUROR NUMBER 9: Seven months. [indiscernible]

1 THE COURT: Okay. So they're little kids.

2 JUROR NUMBER 9: Yes.

3 THE COURT: Okay. Well, you know, bring that thing you do that, you know,  
4 your -- and, I mean, they have people that are real competent and good and they  
5 can watch the little -- the babies right here. And if you have any questions or  
6 problems, you're going to be like 10 giant steps away. Okay?

7 JUROR NUMBER 9: [Shakes head yes]

8 THE COURT: All right. So all you'll have to do is bring your kiddies down  
9 here. Be here from between 9:30 and 10 and we'll be ready to start at 10 o'clock.

10 We'll be here earlier and they'll make all the arrangements for you. And  
11 you just -- when you would normally just be coming in here, just bring your kids and  
12 they'll have -- they'll get them all ready to go, okay.

13 JUROR NUMBER 9: [Indiscernible]

14 THE COURT: All right. So for us, we'll be here by -- I'd like to say maybe like  
15 between 9:00 and 9:15 and we'll be ready to go at 10 o'clock, okay.

16 MR. ROSE: Yes.

17 MR. SCHWARTZ: Yes.

18 THE COURT: All right. Anything else I need to ask of these guys?

19 All right. So we're going to have an overnight recess, again. But we're  
20 getting real close to the end now. When I tell you that part about keeping an open  
21 mind, the defense has identified another witness, well maybe a couple, so there is a  
22 possibility of some witnesses for the defense, keep an open kind, do not form or  
23 express any opinions about this case until you've heard all of the evidence. We  
24 haven't heard all of the evidence necessarily. All right.

25 Remember this overnight admonishment. I will admonish you not to

1 MR. ROSE: Is this a reporting or a recording courtroom? Because our stock  
2 instructions have both --

3 THE CLERK: Recording.

4 THE COURT: We're a recording.

5 MR. ROSE: Recording, okay.

6 THE COURT: We're recording.

7 MR. ROSE: Okay.

8 THE CORRECTIONS OFFICER: Judge, what time do you want the  
9 Defendant here? 9:15?

10 THE COURT: Yeah, have him here between 9:00 and 9:15.

11 THE CORRECTIONS OFFICER: Yes, sir.

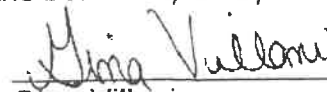
12 THE COURT: I mean, we can't even -- we can't settle any of the instructions  
13 without him here.

14 THE CORRECTIONS OFFICER: Yes, sir, okay.

15 THE COURT: We can do something off the record but really he should be  
16 here.

17 [Jury Trial, Day 2, concluded at 5:29 p.m.]  
18  
19  
20

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 Gina Villani  
25 Court Recorder



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ALFRED C. HARVEY, ) No. 72829/75911  
)  
)  
Appellant, )  
)  
vi. )  
)  
THE STATE OF NEVADA, )  
)  
)  
Respondent. )

<b>PHILIP J. KOHN</b> Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610  Attorney for Appellant	<b>STEVE WOLFSON</b> Clark County District Attorney 200 Lewis Avenue, 3 <sup>rd</sup> Floor Las Vegas, Nevada 89155  <b>ADAM LAXALT</b> Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538  Counsel for Respondent
---	---

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22 day of October, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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STEVEN S. OWENS

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

ALFRED C. HARVEY, NDOC# 1174900  
C/O SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

BY /s/ Rachel Howard  
Employee, Clark County Public Defender's Office

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Respondent.

Electronically Filed  
Oct 23 2018 08:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

### Counsel for Respondent

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. C314260

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vs.

DEPT. VIII

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12

ALFRED HARVEY,

13

Defendant.

14

BEFORE THE HONORABLE JAMES M. BIXLER, SENIOR DISTRICT COURT JUDGE  
WEDNESDAY, NOVEMBER 16, 2016

15

16

**TRANSCRIPT OF PROCEEDINGS**  
**JURY TRIAL - DAY 2**

17

18

APPEARANCES:

19

For the State:

BRYAN S. SCHWARTZ, ESQ.  
STEVEN ROSE, ESQ.  
Deputy District Attorneys

20

21

For the Defendant:

JASMIN D. SPELLS, ESQ.  
KELLEY R. JONES, ESQ.

22

23

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

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None

1 WEDNESDAY, NOVEMBER 16, 2016 AT 10:41 A.M.

2 [Outside the presence of the jury panel]

3 THE COURT: Everybody good? Everybody ready to go?

4 MR. ROSE: Yes, Your Honor.

5 MR. SCHWARTZ: Yes, Your Honor.

6 MS. JONES: Yes, sir.

7 THE COURT: Okay. Did the State get a copy of the Defendant's  
8 instructions?

9 MR. ROSE: We did.

10 MR. SCHWARTZ: We did. Thank you.

11 THE COURT: Okay. You guys are going to need to chat.

12 MR. ROSE: Yep.

13 THE COURT: And kind of get that coordinated and then we'll go over it, okay.

14 All right, let's roll. Let's get them in. We're behind schedule.

15 For the benefit of the audience, you might not be aware, but when the  
16 jury comes in and out of the courtroom we all stand and rise, this is done out of  
17 appreciation and thanks for the jury service that these people are providing. They'll  
18 be coming right in.

19 [In the presence of the jury panel]

20 THE MARSHAL: All rise, please.

21 And be seated.

22 THE COURT: Seats filled. Will the parties stipulate to the presence of the  
23 jury.

24 MR. SCHWARTZ: Yes, Your Honor.

25 MS. SPELLS: Yes, Your Honor.

1 THE COURT: Very good. Good morning.

2 THE JURY: Good morning.

3 THE COURT: As normal, we're behind. But we're always a little behind.

4 In my enthusiasm yesterday, we jumped right from instructing you on  
5 your duties as jurors to the opening statements from counsel. I overlooked the  
6 reading of the actual Information, even though I explained to you what the purpose  
7 of it was.

8 So, I'm going to have the clerk read to you guys, and for the record, the  
9 Information, which is the charging document, as I've explained to you, that tells the  
10 Defendant initially what it is the State says that he's done and now we'll tell you what  
11 it is that the State has accused the Defendant of accomplishing. Before we even  
12 read it, I want to remind you that the Defendant has pled not guilty to the charges  
13 contained in the Information.

14 [The Clerk reads the Information]

15 THE COURT: Thank you.

16 Okay, ready to call first witness?

17 MR. SCHWARTZ: Yes, Your Honor.

18 THE COURT: All right.

19 MR. SCHWARTZ: The State's going to call Julian Munoz.

20 **JULIAN MUNOZ**

21 [having been called as a witness and being first duly sworn, testified as follows:]

22 THE CLERK: You can be seated and then state and spell your name for the  
23 record.

24 THE COURT: State and spell both your first and your last name.

25 THE WITNESS: Julian, J-U-L-I-A-N, Munoz, M-U-N-O-Z.

1 THE COURT: Okay. I can see you're a fast talker. Everything that we say in  
2 here is -- we make a verbatim record of.

3 THE WITNESS: Okay.

4 THE COURT: So, slow down a little.

5 THE WITNESS: Okay.

6 THE COURT: Speak real clearly right towards that microphone, okay.

7 THE WITNESS: Okay.

8 THE COURT: All right.

9 MR. SCHWARTZ: May I proceed, Your Honor?

10 THE COURT: Yes.

11 MR. SCHWARTZ: Thank you.

12 **DIRECT EXAMINATION OF JULIAN MUNOZ**

13 BY MR. SCHWARTZ:

14 Q Mr. Munoz, where do you work?

15 A I work at T.J. Maxx.

16 Q And is that at 4640 West Sahara?

17 A Yes.

18 Q And that's here in Las Vegas, Nevada?

19 A Yes.

20 Q And what do you do at T.J. Maxx?

21 A I'm a loss prevention detective.

22 Q And how long have you been at T.J. Maxx as a loss prevention  
23 detective?

24 A At T.J. Maxx I've been there for a year.

25 Q Where were you previously?

1 A I was at J.C. Penny previously.

2 Q Still as a loss prevention officer?

3 A Yes.

4 Q How long were you at J.C. Penny?

5 A For about two and a half years.

6 Q And did you work loss prevention before J.C. Penny?

7 A Yes, I worked at Kohl's as a -- same position.

8 Q Same position.

9 How long at Kohl's?

10 A About a year and a half.

11 Q Is that the extent of your loss prevention line of work?

12 A Yes.

13 Q Now, can you tell the ladies and gentlemen of the jury, just some of the

14 responsibilities you have as a loss prevention detective at T.J. Maxx?

15 A I conduct external investigations, I make arrests on shoplifters, I

16 conduct internal investigations on associates that are stealing, and I make sure

17 operations -- daily operations are being conducted day-to-day.

18 Q Is one of your responsibilities have to do with operating the

19 surveillance?

20 A Yes.

21 Q And what kind of surveillance system does T.J. Maxx have?

22 A We have a CCTV, a closed-circuit television system.

23 Q And what does that really mean?

24 A Cameras. We have a bunch of cameras all over the store that go to my

25 office and I've got a bunch of screens and I can essentially see almost the whole

1 store and it records video.

2 Q Does it provide you the video feed in your office in live time as it's  
3 happening?

4 A Yes, it does.

5 Q Okay. Approximately how many cameras would you say you have at  
6 T.J. Maxx?

7 A In the store that I was working probably about 11.

8 Q 11 or so?

9 A Yes.

10 Q And to be clear do you work at different T.J. Maxx locations?

11 A I do. I bounce around between five or six.

12 Q Okay. And specifically we're talking about the one on West Sahara?

13 A Yes, that one is about 11.

14 Q 11 cameras.

15 Do all the cameras -- are they all -- are any of them dummy cameras,  
16 so to speak, fake cameras that don't actually record anything?

17 A We do have a couple in a couple of stores but I don't believe we have  
18 any at that store.

19 Q Okay. And the cameras that you have in this West Sahara store, can  
20 you move them?

21 A Yes. We have four of them, they're called PTZ, it stand for  
22 pan-tilt-zoom, they rotate 30 degrees and I can zoom on four of the cameras.

23 Q Okay. So you said they revolve --

24 A Yeah, 360 degrees.

25 Q -- 360 degrees?



1 A Yes.

2 Q And you can, at your direction, you can zoom the camera in, move it left  
3 to right, up and down?

4 A Yes.

5 Q And that would be to help you kind of identify or look at certain areas of  
6 the store, certain people in the store?

7 A Yes.

8 Q Now, T.J. Maxx, you said you've worked there approximately --

9 A A year now, over a year.

10 Q Approximately a year.

11 What do you sell at T.J. Maxx?

12 A I'm sorry?

13 Q What do you sell at T.J. Maxx?

14 A We sell clothing, clothing accessories, fragrances, jewelry, handbags,  
15 home -- home merchandise.

16 Q Primarily a clothing store?

17 A Yes.

18 Q Okay. Clothing and accessories?

19 A Yes.

20 Q Also have electronics there?

21 A Yes. Yeah, we do have those.

22 Q Now, I want to direct your attention to March 30th, 2016.

23 A Okay.

24 Q Were you working as a loss prevention officer that day?

25 A I was.

1 Q And did something occur -- and so what were you doing at that time  
2 while you were working as loss prevention?

3 A Just my daily day-to-day observations --

4 Q Were you in your --

5 A -- and just patrolling.

6 Q I'm sorry, I didn't mean to interrupt you.

7 A No, no, yeah.

8 Q Were you in your office?

9 A Yes, I was.

10 Q And you said, I think before, that your office consists of different  
11 computer monitors where you can observe the surveillance?

12 A Yes.

13 Q Was anyone else working with you in loss prevention on that date?

14 A Yes.

15 Q And who was that?

16 A That was Shaun Bramble. He's my national task force investigator.

17 Q Okay. Is he -- fair to say, he's got a similar job to yourself with some  
18 differences?

19 A Yes.

20 Q Okay. But for the most part he does loss prevention at T.J. Maxx?

21 A Yes.

22 Q Okay. Now, did something occur while you were working on March  
23 30th that drew your attention in particular?

24 A As far as the theft?

25 Q Yes, as far as -- did someone enter the store that you ultimately started

1 watching on camera?

2 A Yes, Mr. Harvey did.

3 Q Okay. And you mentioned Mr. Harvey, do you see Mr. Harvey here in  
4 the court?

5 A Yes, I do.

6 Q Can you please point to him and identify an article of clothing that he's  
7 wearing today?

8 A He's wearing the glasses right there.

9 MR. SCHWARTZ: Your Honor, would the record please reflect that the  
10 witness has identified the Defendant.

11 THE COURT: Yes, the record will so show.

12 MR. SCHWARTZ: Thank you.

13 BY MR. SCHWARTZ:

14 Q Now, how is it that you first observed Mr. Harvey, the Defendant, on  
15 that date?

16 A I saw him walking in the door.

17 Q Okay. Anything at that point draw your attention that you thought you  
18 needed to follow him around on the cameras?

19 A No. No, not at that point.

20 Q What is it that sort of caused you some concern about the Defendant in  
21 your store and caused you to start watching a little closer?

22 A As he entered the children's department he started selecting  
23 merchandise kind of erratically without looking at price or size, picking up a lot of  
24 stuff, putting it down. It's not consistent with usual shopping behavior.

25 Q Now, Mr. Munoz, as a loss prevention detective, are there things known

1 as alert signals?

2 A Yes, there is.

3 Q What are, in general, what are alert signals?

4 A Backpacks, large empty bags --

5 Q Mr. Munoz, what -- so we all understand, what is an alert signal like, in  
6 general like?

7 A So, alert signal is essentially suspicious behavior that gives me  
8 reasonable belief to watch a customer in the store or potential shoplifter in the store.

9 Q Okay. So it's certain behavior that might indicate potential of theft?

10 A Yes.

11 Q Okay. And you were describing some of those alert signals, can you  
12 finish describing those?

13 A Yeah. Avoiding associates, being overly friendly with associates,  
14 selecting merchandise quickly without looking at price or size, stuff like that.

15 Q Now, you've been in loss prevention for a number of years, is it  
16 common that people will conceal items in coats, pockets, backpacks?

17 A Yes.

18 Q Is there a particular areas of the store in general where you usually see  
19 people concealing things?

20 MS. SPELLS: Objection, foundation.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: Okay.

23 THE COURT: Do you understand the question?

24 THE WITNESS: Could you say it again, please.

25 MR. SCHWARTZ: Sure.

1 BY MR. SCHWARTZ:

2 Q Are there different areas in the store, in general, not specific to this  
3 event, but just in general where you would expect to see people concealing things?

4 A Yes. Generally corners, blind spots, where there's not a lot of foot  
5 traffic and whatnot.

6 Q Is the checkout line a place where you would typically see someone  
7 concealing an item?

8 A Yes.

9 Q Okay.

10 A Usually shoplifters like to kind of throw off loss prevention, they grab  
11 some stuff, they'll go into the checkout line, some detectives will stop watching them  
12 at that point thinking that they're going to pay for it, they conceal it in the line and  
13 then they walk out.

14 Q Now, in regards to Mr. Harvey, the Defendant here in this case, while  
15 you saw him in the store did he exhibit some of those alert signals to you?

16 A Yes, he did.

17 Q And you mentioned some of them before, but it was sort of picking up  
18 items at random?

19 A Yes.

20 Q Placing them down in different places?

21 A Yes.

22 Q And is there also something in loss prevention known as staging?

23 A Yes, there is.

24 Q What is staging?

25 A So staging essentially what it is you pick up -- or you select a piece of

1 merchandise and you go put it somewhere else in the store where it doesn't  
2 necessarily is supposed to be and then sometimes someone else will come, pick it  
3 up and conceal it, or that person will come, you know, kind of walk away from it, see  
4 if anyone comes around it to see if they're being watched by loss prevention and  
5 they'll come back for it.

6 Q Okay. Now, in particular to Mr. Harvey, tell us what you observed on  
7 the surveillance that day?

8 A So, I saw him walk into the store and he went to the children's  
9 department. At this point I wasn't really too concerned with him. I was just kind of  
10 looking around, seeing who else was in the store, feeling other people out.

11 Q And, I don't mean to interrupt you; at that point when he entered the  
12 store was he by himself?

13 A No, he was with two children.

14 And --

15 Q And, I'm sorry, you mentioned that initially nothing about him drew your  
16 attention to him other than he just happened to be in your store?

17 A Yes.

18 Q Did something change?

19 A Yeah. I believe I kind of was looking at other people and then I  
20 switched over back over to him when he was in the children's department and I saw,  
21 from what I remember, him selecting quickly and putting stuff down quickly and then  
22 handing merchandise to the children and at that point he left the children's  
23 department and went to the men's department.

24 Q And what did you observe at the men's department?

25 A The men's department was kind of the same erratic behavior, selecting

1 merchandise without regards to price. At that point I saw him conceal a wallet into  
2 his coat and then this goes on for a few minutes. He's selecting merchandise,  
3 picking up a lot of merchandise, putting a lot of merchandise down, and then he  
4 starts heading towards the back, towards the restrooms.

5 Q At this point are you going to maintain surveillance on him to the best of  
6 your ability at this point?

7 A Yes, I do because at this point he has already concealed merchandise.

8 Q And does he at some point exit the restrooms?

9 A Yeah. When he exits -- he actually before he goes into the restrooms  
10 he's got two wallets with him and he puts them down before he goes in, and then  
11 when he comes out he picks them up and then conceals them in his coat.

12 Q After he's concealed -- so he concealed a wallet initially in the  
13 beginning, the first time you saw him, he then would conceal two other wallets as he  
14 comes out of the restroom?

15 A Yes.

16 Q What does he do next?

17 A Well, at this point I'm with Shaun and so I exit the -- because he's  
18 concealed twice, I exit the store to be outside when he exits. At this point I'm on the  
19 phone with Shaun, and Shaun's -- he's in the office still maintaining observation.

20 Q Prior to you exiting and sort of stopping surveillance, did you observe  
21 the Defendant pick up any lotion or cream items?

22 A Yes, I did.

23 Q Okay. And tell me about that?

24 A So he picked up -- yeah, he went into our fragrances, he picked up a  
25 cream and then concealed it in his front, left pocket.

1 Q This was before you stopped maintaining surveillance?

2 A Yes.

3 MR. SCHWARTZ: Your Honor, may I approach your clerk?

4 THE COURT: Certainly.

5 MR. SCHWARTZ: Thank you.

6 For the record, I'm showing defense counsel State's Proposed Exhibit  
7 Number 40.

8 THE COURT: State's Proposed Exhibit number what?

9 MR. SCHWARTZ: 40.

10 THE COURT: 40.

11 MR. SCHWARTZ: Your Honor, I believe there's no objection, the State would  
12 move to admit State's Proposed 40, it's the surveillance video.

13 THE COURT: No objection?

14 MS. SPELLS: No objection, Your Honor.

15 THE COURT: State's 40 is admitted.

16 **[STATE'S EXHIBIT NUMBER 40 ADMITTED]**

17 BY MR. SCHWARTZ:

18 Q Now, Mr. Munoz, did you have occasion to review the surveillance  
19 video from March 30th?

20 A Yes.

21 Q And in particular, did you burn that surveillance video onto a disk and  
22 provide it to the Metropolitan Police Department?

23 A I believe I burned a couple of disks and I believe I did provide it to them.

24 MR. SCHWARTZ: Okay. Your Honor, State's permission to publish -- I'd ask  
25 for permission to publish State's 40.



1 THE COURT: Yes, go ahead.

2 MR. SCHWARTZ: Thank you.

3 BY MR. SCHWARTZ:

4 Q And Mr. Munoz, there's a couple of screens and there should be -- it  
5 should be showing on your screen as well.

6 Is that -- is it on?

7 A Yes.

8 Q Okay.

9 THE COURT: This is a touch screen; right?

10 MR. ROSE: Yes.

11 THE COURT: Okay. That means you can put your finger and circle it, so.  
12 Mine's not.

13 BY MR. SCHWARTZ:

14 Q Now, Mr. Munoz, once the video gets up and going are we going to see  
15 multiple cameras on one screen?

16 A Yes.

17 Q And did you create the file that you saved this -- this surveillance video?

18 A Yes.

19 Q And is that titled Knife Event 3-30-2016?

20 A Yes.

21 Q Okay. Now, before we get playing on this video, Mr. Munoz, can you,  
22 while you're watching the video, can you enlarge certain cameras to get a better -- to  
23 get a full screen view of what that specific camera is looking at?

24 A Yes.

25 Q And just for the record, the videos going to start at 17:21:13 and I'll go

1 ahead and start playing some of the video right now with all six cameras playing at  
2 the same time.

3 [State's Exhibit 40 played]

4 And Mr. Munoz, if I was to zoom in now on jewelry three camera at  
5 17:21:20, what are we looking at there?

6 A That would be Mr. Harvey entering the store.

7 Q And those are the two children that you mentioned he was with?

8 A Yes.

9 Q Now, we're back on the six camera view, we'll continue playing.

10 [State's Exhibit 40 played]

11 And, now, it looks like if I -- click on customer service two, the cameras  
12 started moving, and is that Mr. Harvey that you just identified?

13 A Yes.

14 Q And would that be you sort of moving and zooming in and out on this  
15 shot?

16 A Yes.

17 Q Okay. And so at this point, do you have any reason to suspect  
18 Mr. Harvey of anything?

19 A No.

20 Q Is it fair to say that when you're just conducting your surveillance by  
21 looking at the different cameras that you'll just kind of look at different people  
22 sporadically as you're surveilling?

23 A Yes.

24 Q Okay. And I had just stopped the camera on 17:21:31 for the record.  
25 We'll continue playing.

1 [State's Exhibit 40 played]

2 And as you can see, Mr. Munoz, the cameras still moving; correct?

3 A Yes.

4 Q Okay. We'll zoom in on that camera.

5 MS. SPELLS: Which camera for the record?

6 MR. SCHWARTZ: Customer service two, thank you.

7 BY MR. SCHWARTZ:

8 Q And, now, Mr. Munoz, I'm going to pause it here on that same camera,  
9 17:21:57. It appears that the camera has now turned to a different direction?

10 A Yes.

11 Q And that would have been your operation moving the camera?

12 A Yes.

13 Q And why is that?

14 A He wasn't really doing anything at this point. At this point he was just  
15 in -- what we call the runway. He hadn't entered any departments and he wasn't  
16 exhibiting any alert signals at this point, so. I was just kind of panning around,  
17 looking around.

18 Q And so at this point this camera is still customer service two, this  
19 cameras just going to scan and look other places at this point; is that right?

20 A Yes.

21 Q Okay. We'll continue playing.

22 [State's Exhibit 40 played]

23 We'll go ahead and go back to the six screen view. And at this point,  
24 Mr. Munoz, it appears there's nothing in particular that you would be looking at; is  
25 that fair to say?

1           A     No. That's our handbag department, that's a high theft department. I  
2 like to always keep an eye in there see what's going on.

3           Q     And we're talking about customer service two?

4           A     Yes, customer service two, where I'm looking at right now.

5           Q     This one, okay.

6                     Continue playing for the record.

7                             [State's Exhibit 40 played]

8                     And at some point you testified that something about Mr. Harvey kind of  
9 drew your attention; is that fair to say?

10          A     Yes.

11                     So at this point -- I'm looking --

12          Q     I'm going to go ahead and zoom in on men's number one.

13          A     Kind of quickly selects that right there.

14          MS. SPELLS: Your Honor, under the best evidence rule we'd ask that the  
15 video speak for itself.

16          THE COURT: I'm sorry?

17          MS. SPELLS: Under the best evidence rule we'd ask that the video speak for  
18 itself.

19          THE COURT: Well, I mean he's already testified that some of the activity  
20 caused him to start to focus on the Defendant. So I think it's appropriate for him to  
21 point out exactly what kind of activity he observed that caused him to start to focus  
22 on the Defendant.

23                     So, understand?

24          THE WITNESS: Yes.

25          THE COURT: Go ahead, play it.

1 [State's Exhibit 40 played]

2 BY MR. SCHWARTZ:

3 Q Oops, sorry. So, just for the record the cameras going to resume men's  
4 one, 17:22:33. I'll just continue letting this camera play.

5 [State's Exhibit 40 played]

6 And did he just put an item down there?

7 A Yeah, he put it.

8 Q And Mr. Munoz, is that one of the -- sort of the alert signals you  
9 mentioned before?

10 A Yeah, it's erratic behavior like there's no reason to do that and.

11 Q Okay. Also, I think, you testified possibly staging an item, you might put  
12 it somewhere else to see if someone --

13 A Yes.

14 Q -- does anything with it?

15 A Yes.

16 Q Okay. And continuing on with the same camera angle. We'll, go ahead  
17 and go back to the six panel one.

18 [State's Exhibit 40 played]

19 And it appears that this customer service two camera at 17:22:49 is  
20 now -- you're now using that camera; correct?

21 A Yes.

22 Q And for the record, you testified the Defendant then went over to where  
23 the wallets and other items would be found and started selecting at random; is that  
24 fair to say?

25 A Yes.

1 Q And Mr. Munoz, is this the area that this store keeps the wallets?

2 A Yes, it is.

3 Q And behind it it looks like there's just rows of socks as well; correct?

4 A Yes.

5 Q And I believe you testified, before we started the video, that this would  
6 be one of the points where he concealed the first wallet?

7 A Yes.

8 Q And that would have been in his coat jacket?

9 A Yes.

10 Q Okay. Thank you.

11 And that had been paused at 17:23:30. Continuing on with customer  
12 service camera two.

13 [State's Exhibit 40 played]

14 At that point, we just stopped it at 17:23:49, what are we just --

15 A There's where he concealed the first wallet.

16 Q Okay. Just rewind it briefly.

17 And, now, on the time stamp will be 17:23:46, you testified he's going to  
18 conceal the wallet in his coat jacket and I'll click play.

19 [State's Exhibit 40 played]

20 Is that what we just observed there, Mr. Munoz at 17:23:50?

21 A Yes.

22 Q Okay. Fair to say concealing an item is also an alert signal?

23 A Yes.

24 Q Okay. And, again, just for the record, he -- is it fair to say he's  
25 continuing to exhibit those alert signals, selecting at random, placing back?

1 A Yes.

2 Q Did he just -- what did he just pick up there?

3 A Looked like another wallet.

4 Q Oops, sorry, did not mean to do that.

5 Still on customer service two.

6 Are the two minor children with him at this time?

7 A I believe so. But, I mean, at this point I'm just focused on him.

8 Q Okay. As Mr. Munoz -- has the Defendant selected another wallet item

9 at that point?

10 A Yes.

11 Q 17:25:05.

12 And has Mr. -- the Defendant selected another sort of bag item and

13 then just placed it back right there at 17:25:32?

14 A Yes.

15 Q And as you testified previously he then leaves sort of that wallet

16 department?

17 A Yes. And he heads towards the back near our home department.

18 Q And I believe you testified on direct -- or -- before the video came up,

19 that he at some point places the wallets down, he goes to the restroom, and he

20 returns to the wallets?

21 A Yes.

22 Q Okay. We'll just continue letting it play at 17:25:42.

23 [State's Exhibit 40 played]

24 Go ahead and zoom in on customer service two. Pause it. We'll pause

25 it now at -- looks like he's off -- is it fair to say he's no longer on customer service

1 two?

2 A Yes, he's on camera one, our men's department.

3 Q Camera one?

4 A Yes.

5 Q 17:25:51. Continue playing here.

6 [State's Exhibit 40 played]

7 And does it appear that he's gone back over to where one of the  
8 children he was with is?

9 A Yes.

10 Q Is that the children's department?

11 A Yes.

12 Q And I'm going to pause the camera now at 17:26:22 on men's one. Is it  
13 fair to say this is somewhat of a blind spot for your surveillance system?

14 A Yes.

15 Q Continue playing it, the video.

16 [State's Exhibit 40 played]

17 For this entire time it looks like it's approximately would have been --  
18 approximately 30 seconds on the time stamp behind the -- behind the blind spot of  
19 shelves; is that fair to say, what are these things?

20 A Yeah, probably racks.

21 Q Racks of things, okay.

22 A Yeah.

23 Q Mr. Munoz, where is the Defendant now making his way through?

24 A That's our home department.

25 Q Okay. And is it at this point where he's going to place the wallet down



1 somewhere?

2 A Yes, here in a couple of seconds. He's heading towards the restroom  
3 right now. I believe it's going to be on another camera.

4 Q Okay. And so as I pause it at 17:27:35, back to the six camera view,  
5 continue playing.

6 [State's Exhibit 40 played]

7 Would it be the shoes camera?

8 A Yes.

9 Q Okay, shoes four at 17:27:40.

10 A That's where he puts the wallets down.

11 Q Okay. If I could just rewind, get the time stamp, is that approximately  
12 17:27:43, shoes four, you observed Defendant walking past this shelf and placing  
13 the wallet down right there?

14 A Yes.

15 Q And is he making his way still towards the restrooms?

16 A Yes.

17 Q That would be in this corner of the store where he's heading?

18 A Yeah, right there where the black doors at or at.

19 Q So at about 17:28:00 he enters the restroom --

20 A Yes.

21 Q -- correct? Okay.

22 At this point you're going to be still maintaining -- trying to maintain  
23 visual on the Defendant?

24 A Yes.

25 Q Okay. And just to save us some time, I'll just fast forward a little bit here

1 on the same camera until he comes out, which will be at about 17:29:40.

2 [State's Exhibit 40 played]

3 I'll go ahead and pause this camera, shoes four, at 17:29:38, Defendant  
4 exits the bathroom, Mr. Munoz?

5 A Yes.

6 Q Okay. And you testified before that after this point he's going to go  
7 return to the wallet that he had just placed down, possibly some sort of a staging  
8 incident?

9 A Yes.

10 Q Okay. We'll go ahead and play on shoes four.

11 [State's Exhibit 40 played]

12 A At this point he returns to the wallets, grabs them right there.

13 Q Okay. And that would be at time stamp 17:30:06 at shoes four for the  
14 record.

15 We'll continue playing on this camera.

16 [State's Exhibit 40 played]

17 A And he's going to conceal them right here.

18 Q I'm sorry, what's that Mr. Munoz?

19 A He's about to conceal them right here.

20 Q And is that going to be in the jacket again?

21 A Yes.

22 Q Okay. Is that what we just saw at approximately --

23 A Yep, right there.

24 Q 17:30:09.

25 And I believe you testified that after this he makes his way and the next

1 item that kind of caught your attention was a lotion or some sort of facial, lotion  
2 cream?

3 A Yes.

4 Q Okay. We'll continue playing on this camera, shoes four.

5 [State's Exhibit 40 played]

6 Is it going to be a different camera now that we're going to see him on  
7 or is it --

8 A No, it's the same camera right here.

9 Q And, again, this would be you zooming in on shoes four?

10 A Yes.

11 Q And as he's at this sort of table, next to him it looks like there's some  
12 belts right next to it?

13 A Yes.

14 Q Is this the table where the cream would be located?

15 A Yes.

16 Q Okay. And I had stopped it on 17:30:31.

17 Go ahead and continue playing shoes four.

18 [State's Exhibit 40 played]

19 A That's the cream right there that he selects.

20 Q And that's at 17:30:34, shoes four, he selects the cream you  
21 mentioned?

22 A Yes.

23 Q And I believe you testified he would conceal it in his left, short's pocket?

24 A Yes.

25 ///

1 [State's Exhibit 40 played]

2 Q Okay.

3 A He conceals right there.

4 Q It that where -- so that's at 17:30:38, shoes four.

5 And Mr. Munoz, I'm going to stop it at-- go back to the six camera  
6 screen at 17:30:55, you testified that at some point you stopped maintaining  
7 surveillance via the surveillance system and you went outside?

8 A Yes, it was approximately after -- a little bit after he concealed the  
9 face -- or the cream.

10 Q Okay. So approximately around this time you would have gone  
11 outside?

12 A Yes.

13 Q Now, you have reviewed this surveillance video; correct?

14 A Yes.

15 Q Okay. Even this part where you have now -- you will now soon exit the  
16 store?

17 A Yes.

18 Q Okay. And we'll just play this six panel screen 17:30:55.

19 [State's Exhibit 40 played]

20 Now, Mr. Munoz, is this you exiting the store down here? Oops.

21 A If you just hit play, it'll switch back to the screen. It should, yeah.

22 Q How about that?

23 A Yeah.

24 Q Is that you exiting the store?

25 A Yes.

1 Q And that's 17:30:58, on doors 11.

2 So, at this point Mr. Bramble, what is he doing?

3 A He's taking over the security cameras and I'm on the phone with him.

4 Q Okay.

5 Do you guys have a like a walkie-talkie system you talk on or is it just  
6 your phones?

7 A No, we just use our personal cell phones.

8 Q We'll continue playing the six panel screen. It's 17:30:58.

9 [State's Exhibit 40 played]

10 It appears jewelry three camera is zooming in?

11 A Yes.

12 Q And just for the record, you did testify that you have reviewed this  
13 video. Fair to say Defendant will exhibit similar signs that we've been watching?

14 A Yes.

15 Q At this point he's selected a green box; fair to say?

16 A Yes.

17 Q What's he going to -- withdraw that question.

18 In this area that the Defendant is looking, perfumes, fragrances, things  
19 of that nature would be located in this area?

20 A Yes.

21 Q Okay. And I apologize I stopped the camera on 17:31:42, jewelry three.  
22 We'll continue playing.

23 [State's Exhibit 40 played]

24 At this point it appears Defendant had selected a black in color, dark in  
25 color box --

1 A Yes.

2 Q -- is that correct?

3 A Yes.

4 Q Okay. And somewhat of a lighter colored box?

5 A Yes.

6 Q Okay. And at this point where is he going to proceed to?

7 A He's going to go the Q line.

8 Q What's a Q line?

9 A That's where they stand in line to wait for the registers to pay for  
10 merchandise.

11 Q Okay. Now, in reviewing this surveillance did you observe anything  
12 happen with regards to the Defendant in the Q line?

13 A Yeah, he's going to conceal again in the Q line and then at that point  
14 he's going to exit the Q line, dump the rest of the merchandise. He's going to  
15 conceal the beige fragrance box set.

16 Q Okay.

17 A And he'll dump the rest into a shopping cart and then exit.

18 Q And just for the record it was paused -- the surveillance was paused on  
19 jewelry three, 17:31:56.

20 And is that the check out or the Q line that the Defendant has just  
21 entered at 17:32:19?

22 A Yes, it is.

23 Q Go ahead and pause it there, 17:32:23, and go to customer service two.  
24 Continue playing.

25 ///

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[State's Exhibit 40 played]

And is it at this point that it appears maybe some sort of concealing?

A Yes.

Q Okay. And then you mentioned he was going to drop this darker colored box off in a basket as he exited?

A Yes.

Q Here's the other -- the minor dropped a box as well and as they exit together --

A Yes.

Q -- at 17:32:55 on customer service two.

A Uh-huh.

MR. SCHWARTZ: Court's brief indulgence while I sort these exhibits.

BY MR. SCHWARTZ:

Q Now, Mr. Munoz at this point you are out front of the store?

A Yes.

[Colloquy between District Attorney and Defense Attorney]

MR. SCHWARTZ: Your Honor, may we approach?

THE COURT: Sure.

[Bench conference begins].

MR. SCHWARTZ: Number 8. Get the numbers though. Because I think there's only --

[Colloquy between District Attorney and Court Clerk]

MS. SPELLS: Your Honor, at this point the State is intending to admit certain photographs, and for the most part, we don't have any objection to photographs of the video surveillance being admitted; however, we do have objections to the

1 photographs of the children being admitted. We filed a Motion in Limine. It's not  
2 relevant. In that motion the State argued that they thought it was only relevant to  
3 provide the contacts as to the named victim's actions and feelings with regard to the  
4 actual knife incident, the robbery. The children being in the store at this point the  
5 State has mentioned children and it appears to be purposefully a number of different  
6 times, which is insightful and prejudicial to the jury. The pictures of children have  
7 absolutely no relevance here, don't go to the crime as charged, and our --

8 THE COURT: So your objection is to the still photos with the children in  
9 them?

10 MS. SPELLS: That's correct.

11 THE COURT: I'm going to --

12 MR. SCHWARTZ: They're just still photos from the surveillance already  
13 admitted into evidence. And on top of that the Motion in Limine, the only request  
14 was to keep out the statement in regards to the children from Mr. Munoz, which was  
15 denied. So with regard --

16 MS. SPELLS: We also requested --

17 MR. SCHWARTZ: One second.

18 MR. ROSE: [indiscernible] that Motion in Limine [indiscernible].

19 THE COURT: Let me see.

20 MR. ROSE: [indiscernible] to protect the --

21 MS. SPELLS: That is correct. To let the video play as is not to have  
22 commentary with regard to the children. But additionally, parts of those that witness  
23 doesn't even have personal knowledge. He indicates that he was outside.  
24 Moreover, to clarify the record -- and I don't even know if we are on record, but --

25 MR. SCHWARTZ: We are.



1 MS. SPELLS: -- we specifically brought up the fact that we did not want any  
2 testimony with regard to the child having a box and then returning that box and that  
3 is in the record.

4 MR. SCHWARTZ: Every one of those photographs with the kids in it has a  
5 relevance other than the fact that the kids [indiscernible]. And so if you're concerned  
6 about that, I can address that. But that is in evidence, that picture in video form is in  
7 evidence.

8 THE COURT: We'll make a record so you can protect your record. But I'm  
9 going to overrule the objection and I'm going to let them in. Basically it's just exactly  
10 what we've already seen. As soon as we take a break, I'll let you make a record.

11 MR. SCHWARTZ: Thank you.

12 THE COURT: But I'm letting them in.

13 MR. SCHWARTZ: Okay.

14 MS. SPELLS: Thank you.

15 [Bench conference concludes]

16 BY MR. SCHWARTZ:

17 Q Now, Mr. Munoz, when you went outside -- you testified you went  
18 outside while the Defendant was still in the store; correct?

19 A Yes.

20 Q What was your purpose in going outside?

21 A To be ahead of him, to be in front of him, and not to be coming from  
22 behind.

23 Q Now, just in general terms, loss prevention, what is your goal at this  
24 point?

25 A To successfully make the arrest and get him back into the office to

1 process him.

2 Q Okay. And is part of it also just to get the property back?

3 A Yes, also recovery.

4 Q So you position yourself out in front of the store is that so you can -- I  
5 don't -- what's the purpose of that?

6 A It's so I could meet him in the front. It discourages him from running.

7 Q Okay. Is there also -- what's the loss prevention policy at T.J. Maxx as  
8 far as pursuing people when you believe they've committed a theft?

9 A As far as making an arrest I have boundaries.

10 Q Okay.

11 A It's right off the sidewalk and the width of the store, that's just for the  
12 arrest. I'm allowed to pass those boundaries to observe whether or not they get into  
13 a vehicle, whether or not they dump merchandise, or whatever happen -- whatever  
14 else happens out there.

15 MR. SCHWARTZ: Your Honor, the State's going to move, I don't believe  
16 there's an objection, I just showed State's Proposed Exhibit 41 to defense counsel,  
17 I'll be asking it to be moved into evidence at this point.

18 THE COURT: Any objection to 41?

19 MS. SPELLS: No, Your Honor.

20 THE COURT: All right. State's 41 is admitted.

21 MR. SCHWARTZ: Permission to publish, Your Honor.

22 THE COURT: Yes.

23 **[STATE'S EXHIBIT 41 ADMITTED]**

24 BY MR. SCHWARTZ:

25 Q Mr. Munoz, do you recognize what's depicted in State's 41?

A Yes, that's the T.J. Maxx.

1 Q Will you please put -- does it appear to be the parking lot as well?

2 A Yes.

3 Q Can you please put an X on T.J. Maxx?

4 A Is it coming up?

5 MR. SCHWARTZ: I don't see -- may I approach the witness, Your Honor?

6 THE COURT: Yes. It might be the touch screen is only hooked up to his  
7 screen. It might not be hooked up to anything else.

8 BY MR. SCHWARTZ:

9 Q Did anything come up when you did it?

10 A No.

11 Q Okay. Tap that.

12 THE COURT: We'll have the IT guys at noon take a look at this.

13 BY MR. SCHWARTZ:

14 Q Mr. Munoz, is it fair to say this is T.J. Maxx right here, this big building?

15 A Yes.

16 Q In fact, it looks like it might be upside down, here we go, does it say T.J.  
17 Maxx here?

18 A Yes.

19 Q Okay. Is the entrance to the store just sort of right in the center of that  
20 building?

21 A Yes, it is.

22 Q Right here?

23 A Yes.

24 Q Now, when you positioned yourself out there, that would have been just  
25 right in front of the exits and entrance to the store?

1           A     Yes, yeah, probably -- I was probably behind -- there's a pillar right  
2 here, so I was probably just standing right behind it.

3           Q     What happened when the Defendant exited the store?

4           A     I approached him.

5           MS. SPELLS: Wait -- excuse me, can we correct the record as to where the  
6 pillar was.

7           THE WITNESS: The pillars are like -- it's directly in front of the exit.

8 BY MR. SCHWARTZ:

9           Q     And, Mr. Munoz, if I could have you just, and with the Court's  
10 permission, just step down and perhaps show on this big screen --

11          THE COURT: Absolutely.

12          MR. SCHWARTZ: That might be easier or everybody.

13          THE COURT: Yeah, stand right beside that big screen so that --

14          MR. SCHWARTZ: If defense counsel wants to come over here.

15          THE WITNESS: So this pillar is right here and then right here in the -- the  
16 entrance is right here.

17 BY MR. SCHWARTZ:

18          Q     And, Mr. Munoz, can you show on the screen where you were  
19 standing?

20          A     I was standing probably right about here, right along the pillars.

21          Q     And when the Defendant exited, can you please describe what  
22 happened at that point?

23          A     At that point I approached him, identified myself as loss prevention, and  
24 I asked for merchandise back.

25          Q     Okay. At that point what did he say to you?

1           A     At that point he claimed that he had put the merchandise back down in  
2 the store, which is when I told him that I need the wallets specifically out of his coat,  
3 and at that point he handed -- he took the wallets out of his coat and handed two of  
4 them to me.

5           Q     Two of the wallets to you?

6           A     Yes.

7           Q     Okay. At that point what did you ask of the Defendant?

8           A     I asked him to step back in the store with me and follow me back to my  
9 office.

10          Q     And would that be to fill out some paperwork inside?

11          A     Yes.

12          Q     And what is the purpose of the paperwork?

13          A     It's a civil demand notice, sometimes we do prosecute. But at this  
14 point, from the merchandise that I had saw, I probably wasn't going to. So --

15          MS. SPELLS: Objection, relevance.

16          THE COURT: I'm sorry?

17          MS. SPELLS: Objection, relevance.

18          THE COURT: Well, that's probably correct. Let's just --

19          MR. SCHWARTZ: I'll just move on.

20          THE COURT: -- move on. Okay.

21 BY MR. SCHWARTZ:

22          Q     In general though, is there a certain value of the items that if it hits a  
23 certain value you usually request that the individual be prosecuted?

24          MS. SPELLS: Objection, relevance.

25          THE COURT: Well --

1 MR. SCHWARTZ: Your Honor, it shows exactly his state of mind is what he's  
2 doing.

3 THE COURT: All right. Go ahead.

4 THE WITNESS: T.J. Maxx policy is to prosecute \$30 and above. But with  
5 our district we get a lot of shoplifters so if it's only a couple of items and it's on the  
6 borderline, I usually call my boss, my DLP, district loss prevention manager, to just  
7 kick -- request or to just kick them loose, to write them up and kick them loose  
8 essentially because I don't like waiting for the police three hours for two items.

9 BY MR. SCHWARTZ:

10 Q Okay. So, part of the purpose of having them come in and fill out the  
11 paperwork is just to have an internal record of who the person is?

12 A Yes.

13 Q Should you see them in the future?

14 A Yes, that and they're sent a civil demand notice from the company  
15 request -- it's like a fine.

16 Q Okay. And if you -- if your office or your store or yourself choose to  
17 prosecute, you then would need to do what?

18 A I would call the police.

19 Q Okay. That would be just call Metro to have them respond and write a  
20 citation, et cetera?

21 A Yes.

22 Q Okay. Now, again, on the map here that we're looking at, when the  
23 Defendant hands you back the wallets and you ask him to step inside, are you guys  
24 still in that same area or have you moved?

25 A Yeah, at this point he's started to move down towards this way and I

1 reposition myself. I'm walking with him. And I'm, you know, he's telling me that he's  
2 not walking back into the store. At this point I'm like, it was a bright day, kind of like  
3 this, there was a lot of people around, and I'm like it's not a big deal, just walk back  
4 in with me, we don't have to do this in front of all these people out here. And at that  
5 point he reaches into his pocket and takes out a knife.

6 Q Okay. Which pocket did he reach into?

7 A He reaches into his left pocket. I was standing on his right side. I  
8 heard the snap of the knife. At this point I can't see it, but then he comes all the way  
9 up like this for a second and comes back down with it and he tells me, we're not  
10 doing anything today.

11 Q Okay. At that point, what do you do?

12 A At that point I stopped dead in my tracks and I call 9-1-1.

13 MR. SCHWARTZ: You can have a seat for the moment being. Thank you,  
14 sir.

15 THE WITNESS: Can I get some water?

16 THE COURT: Yeah, absolutely.

17 BY MR. SCHWARTZ:

18 Q Now, Mr. Munoz, you stated that the Defendant -- you heard a snap?

19 A Yes.

20 Q And then the Defendant raised the knife above his head and said, we're  
21 not doing this today?

22 A Yes.

23 Q Can you describe for me the knife?

24 A I believe it was black.

25 Q Okay. And can you describe to me approximately how long the blade

1 of that knife was?

2 A Approximately four inches.

3 Q And it was raised -- can you describe again for the record -- or show me  
4 again for the record how it was raised above the ahead?

5 A Like.

6 Q Okay. And if you could just hold your hand where it was.

7 A [Witness complies].

8 MR. SCHWARTZ: Your Honor, for the record, the witness has lifted his left  
9 hand above his head, towards the left of his head.

10 THE COURT: That's correct.

11 BY MR. SCHWARTZ:

12 Q And you stated that he lowered it kind of to the left side of his body?

13 A Yes.

14 Q Okay. And at that point, Mr. Munoz, how did you feel?

15 A I was concerned for my safety, so at that point I discontinued the arrest.

16 Q And had you ever had a knife pulled on you before at that time?

17 MS. SPELLS: Objection.

18 THE COURT: Sustained.

19 MR. SCHWARTZ: Your Honor, if I may, it goes to why he did exactly what he  
20 did and his state of mind at the time.

21 THE COURT: Well, let's, first of all, have him describe what he did before we  
22 decide why he did what he did.

23 MR. SCHWARTZ: Okay.

24 BY MR. SCHWARTZ:

25 Q And upon seeing the knife what did you do?



1 A I dialed 9-1-1.

2 Q Okay. Did you stop pursuing the Defendant?

3 A Yes.

4 Q Did you go back inside or where did you go physically?

5 A Yeah, I was kind of retreating towards the exit as he was walking  
6 towards his car.

7 Q Okay. And if we could have the mic again, I'm sorry, Tom.  
8 I'm going to have you step down and just show us where he's -- where  
9 everyone is going.

10 Now, specifically, where you observed the Defendant going after you  
11 stopped pursuing him?

12 A He was heading down this way, towards the Ross, he was parked  
13 somewhere in front of the Ross in one of these first aisles.

14 Q And did you observe him enter a vehicle?

15 A Yes, it was a white U-Haul.

16 Q Can you just -- a white U-Haul?

17 A Yes.

18 Q Can you describe how he moved from where you were towards the  
19 U-Haul, what his demeanor was like?

20 A He was walking quickly, he wasn't running though, and the children  
21 were in tow.

22 Q The children were in tow?

23 A Yeah, they walking behind him.

24 Q Following behind him?

25 A Yeah.

1 Q Okay. Once he entered the U-Haul, were you still able to observe him?

2 A Yes.

3 Q And before I have you step back to the stand, can you show me the  
4 perimeter where you said you'll pursue up to a certain point?

5 A Yes. So my boundaries for arrest are the width of T.J. Maxx and then  
6 right off the curb. If they go past these, I'm not allowed to complete the arrest but  
7 I'm allowed to observe what further activity.

8 Q So you go off the -- go past the perimeter, but you could not arrest or  
9 detain someone passed that perimeter?

10 A Yes.

11 Q Just to observe them?

12 A Yes.

13 Q Now, you can have a seat again. Thank you, sir.

14 Now, at the point that you -- the Defendant's heading to the U-Haul, you  
15 stated you called 9-1-1?

16 A Yes.

17 Q Do you also tell Shaun what's going on?

18 A Yeah. He's walking out quickly to assist me with the arrest. It's usually  
19 how we do it.

20 Q What is it that you communicate with Shaun?

21 A I let him know that he's got a knife and, you know, just to proceed with  
22 caution.

23 Q Okay. And at that point did Shaun tell you to call 9-1-1?

24 MS. SPELLS: Objection, hearsay.

25 THE WITNESS: Yes.

1 THE COURT: Sustained.

2 BY MR. SCHWARTZ:

3 Q At that point you called 9-1-1?

4 A Yes.

5 Q What else did you observe as the white U-Haul was leaving the parking  
6 lot?

7 A So he had trouble backing up. I also was able to get the plate number,  
8 it was an Arizona plate. So it took him probably a good minute to back up because  
9 there was a lot of traffic that day and the shopping mall was pretty busy.

10 Q And, so, as he's having trouble backing out, you're able to observe, for  
11 yourself, the plate?

12 A Yes.

13 Q Did you communicate that with the 9-1-1 operator?

14 A Yes.

15 Q And does the Defendant, in the white U-Haul, eventually make his way  
16 out of the parking lot?

17 A Yes.

18 Q And do you recall an older white gentleman arriving in a vehicle as  
19 well?

20 A Yeah, he was -- he pulled up right after Mr. Harvey was driving away.

21 Q And did you communicate with him what had just happened?

22 A Yeah, he asked what was going on --

23 MS. SPELLS: Objection, hearsay.

24 THE COURT: Don't repeat what somebody else -- the conversation you had  
25 with somebody else, don't repeat what they said.

1 THE WITNESS: Okay. So just say --

2 BY MR. SCHWARTZ:

3 Q You, yourself?

4 A So we -- I told him that he had just pulled a knife on me.

5 Q Okay. You communicated what had just happened with the older  
6 gentleman?

7 A Yes.

8 Q And did the older gentleman then leave the parking lot in the same  
9 direction as the white U-Haul?

10 A Yes.

11 MS. SPELLS: Objection, leading questions, Your Honor.

12 THE COURT: Well, don't suggest your answer but go ahead. Let's get  
13 through this.

14 BY MR. SCHWARTZ:

15 Q Okay. He did?

16 A Yes.

17 Q And did you stay at the T.J. Maxx waiting for police to arrive?

18 A Yes.

19 MR. SCHWARTZ: And, Your Honor, if I might approach the witness?

20 THE COURT: Certainly.

21 [Colloquy between District Attorney and Defense Counsel]

22 MR. SCHWARTZ: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MR. SCHWARTZ:

25 Q Just look through these photos real quickly, I believe it's 8 through 38,

1 just kind of scan through them real quickly, try to keep them in order, if possible.

2 And now, Mr. Munoz, do those appear to be fair and accurate  
3 depictions of still shots from the surveillance video?

4 A Yes.

5 MR. SCHWARTZ: Your Honor, at this point the State's going to -- may I  
6 approach again?

7 THE COURT: Yes.

8 MR. SCHWARTZ: The State's going to move to admit State's Exhibit 8  
9 through 38 into evidence. I believe the defense, I did show them to her, her  
10 objection will be the same one as already discussed at the bench.

11 THE COURT: We'll make a record when we take a break, but your objection  
12 is noted and State's Exhibits 8 through 38 will be admitted.

13 MR. SCHWARTZ: Awesome, thank you, Your Honor.

14 **[STATE'S EXHIBITS 8 through 38 ADMITTED]**

15 BY MR. SCHWARTZ:

16 Q Now, Mr. Munoz, once the police arrived, what did you do with them at  
17 T.J. Maxx?

18 A I just wrote a police report for them. I believe I showed them some of  
19 the surveillance video and I just described the event that had gone down.

20 Q And at some point you did burn a surveillance video for them at some  
21 point?

22 A Yes, I believe so.

23 MR. SCHWARTZ: And, Your Honor, may approach the clerk?

24 THE COURT: Yes.

25 ///

1 BY MR. SCHWARTZ:

2 Q Now, Mr. Munoz, have you previously reviewed the 9-1-1 call that you  
3 made on March 30th, 2016?

4 A Yes.

5 MR. SCHWARTZ: And, Your Honor, at this point I believe we've already  
6 covered the objection to this call, State's Proposed Exhibit Number 39, I'd ask  
7 permission to admit into evidence and to publish for the jury. This will be the  
8 redacted copy.

9 THE COURT: Okay, and its --

10 MS. SPELLS: Your Honor, may we approach?

11 THE COURT: Sure.

12 [Bench Conference Begins]

13 THE COURT: Did you listen to the video?

14 MS. SPELLS: I did, Your Honor.

15 Here's the issue. We have sidebar conversations for the reason of not  
16 letting the jury know exactly what's going on. It's completely inappropriate to let the  
17 jury know that things have been redacted as if we're hiding things from them without  
18 any type of [indiscernible]. If anything, we need to be approaching and discussing  
19 that information, to say, oh, this is the redacted copy, this is this, oh, you know. And  
20 we have sidebars for a reason.

21 THE COURT: Well, is there anything else -- is there anything else redacted?  
22 Just don't --

23 MR. ROSE: Yes.

24 MR. SCHWARTZ: That's why I asked and I apologized.

25 THE COURT: Okay, that's all right.

1 MR. ROSE: And, Your Honor, I don't know if --

2 THE COURT: Let's roll.

3 MR. ROSE: Well, I don't know if Your Honor wants or if defense wants but  
4 what we could do is we could, if defense wants, have Your Honor make a statement  
5 that the parties have reviewed the 9-1-1 call and portions of it which are not relevant  
6 to this and then removed with the agreement of the parties.

7 THE COURT: Do you want me to do that?

8 MS. SPELLS: Yes.

9 THE COURT: Okay.

10 MR. SCHWARTZ: And say we've agreed to both the redacted.

11 THE COURT: I'll do that.

12 MR. ROSE: Thank you.

13 THE COURT: I'll do that.

14 [Bench conference concludes]

15 THE COURT: Just for the benefit of the jury, I've examined this information,  
16 counsels all had their input and I have ordered certain portions that were irrelevant  
17 be taken out. So that's -- and the word redacted version, that -- it was done at my  
18 direction that some of it, the information, some of the statements were irrelevant so I  
19 excluded them out, okay.

20 Go ahead.

21 MR. SCHWARTZ: Your Honor, the State would ask permission to publish  
22 State's Exhibit 39.

23 THE COURT: Yes.

24 MR. SCHWARTZ: And admit it if it hasn't been.

25 THE COURT: It's admitted and you go ahead and publish.

1 MR. SCHWARTZ: Thank you.

2 [STATE'S EXHIBIT 39 ADMITTED]

3 [State's Exhibit 39 played]

4 MR. SCHWARTZ: And, Your Honor, I'm showing the defense State's  
5 Proposed Exhibit 2.

6 May approach the witness?

7 THE COURT: Certainly.

8 BY MR. SCHWARTZ:

9 Q Now, Julian, do you recognize what's depicted in State's Proposed  
10 Exhibit 2?

11 A Yes.

12 Q And, without telling me what it is, how can you recognize these items?

13 A By the T.J. Maxx stickers --

14 Q Okay.

15 A -- and their packaging.

16 Q And does this picture fairly and accurately depict items that are sold at  
17 T.J. Maxx?

18 A Yes.

19 MR. SCHWARTZ: And at this point, Your Honor, State's going to move to  
20 admit State's Proposed Exhibit 2.

21 THE COURT: Any objections?

22 MS. SPELLS: No.

23 THE COURT: Please admit it.

24 [STATE'S EXHIBIT 2 ADMITTED]

25 MR. SCHWARTZ: Permission to publish, Your Honor?



1 THE COURT: Yes.

2 BY MR. SCHWARTZ:

3 Q What are we looking at here, Julian?

4 A That's a Tommy Hilfiger wallet.

5 Q And what about this?

6 A That looks like a box set of fragrances.

7 Q And this?

8 A That's a cream.

9 Q And for the record you're referring to the item that's farthest right on the  
10 exhibit?

11 A Yes.

12 Q And what is this on the left?

13 A That is another fragrance.

14 Q Fair to say that you observed the Defendant taking these items from the  
15 store?

16 A Yes.

17 Q Okay. And when you looked at the surveillance today, is this that  
18 fragrance -- at least similar item looking shape and box and color?

19 A Yes.

20 MR. SCHWARTZ: Your Honor, may we approach, please?

21 THE COURT: Sure.

22 [Bench conference begins].

23 MR. SCHWARTZ: So the only other thing I wanted to ask him was what I  
24 think we already -- you -- it was whether he had had a knife pulled on him before,  
25 she objected, you sustained. I said, well, it goes to his state of mind why he reacted

1 the way he did given that it's never happened to him before. And you said, well, let's  
2 see what he does next. So I'd like to -- I think it's appropriate, I think it's relevant, sir.  
3 It goes to his state of mind at the time. Why it's a knife. I mean, I think the knife can  
4 be a potential issue for the case. So I think I --

5 THE COURT: I don't think -- I don't have any problem with you saying when  
6 he produced the knife what effect did that have on you.

7 MR. SCHWARTZ: Uh-huh.

8 THE COURT: But to say have you ever had a knife pulled on you before --

9 MR. SCHWARTZ: Don't you think though, Your Honor, that if you ever had a  
10 knife pulled on you, you would react more scared than if it's happened in the past  
11 several times. That's my point. That's why I think it's relevant.

12 THE COURT: Which would [indiscernible] to the level of his educational --

13 MR. SCHWARTZ: It'll just be simply one question, had you ever had a knife  
14 pulled on you as a loss prevention?

15 MS. SPELLS: I mean the problem with that is to say that a person is more  
16 scared because something never happened. You really have to evaluate that  
17 particular person and it doesn't go to just their course of action in one career. It  
18 goes to their course of action over however many years they've been alive on earth  
19 and different situations that have occurred, so.

20 THE COURT: Here's my concern, I'm going to let you ask it, but it's so  
21 marginally relevant.

22 MR. SCHWARTZ: Okay.

23 THE COURT: Go ahead.

24 MR SCHWARTZ: Okay. Thank you.

25 ///

1 BY MR. SCHWARTZ:

2 Q Now, Mr. Munoz, did you ever have a knife pulled on you before as a  
3 loss prevention agent?

4 A No.

5 MR. SCHWARTZ: Thank you.

6 State has no further questions, Your Honor.

7 THE COURT: All right. Do you want to start your cross or do you want to  
8 take a lunch break?

9 MS. SPELLS: Can I defer to what the jury would like to do, Your Honor?

10 THE COURT: Does -- I assume that cross is probably going to take 30  
11 minutes or so?

12 MS. SPELLS: It's a little long.

13 THE COURT: Do you guys want to take a lunch break now and come back at  
14 1 o'clock and do her cross? Why don't we do that. Why don't we do that.

15 MR. SCHWARTZ: May I approach your clerk?

16 THE COURT: Yes.

17 MR. SCHWARTZ: Thank you.

18 THE COURT: Let's take a lunch break. Let's come back at 1 o'clock.

19 Now, be careful, now that we've started this trial and you've heard some  
20 testimony and you've seen some evidence, it's real important that you don't talk  
21 about anything that's going on here while we're on these breaks. I'm just kind of  
22 slowly reminding you the importance of not discussing anything about this case with  
23 anybody and especially including each other, okay. Just a quick reminder, the folks  
24 that are in this room, you can't talk to them at all period, okay. So during the next 54  
25 minute -- or excuse me 64 minute recess I'll admonish the members of the jury not

1 to converse or discuss amongst themselves or with anyone else on any subject  
2 connected or related to this trial. Don't watch, listen, or read any reports or  
3 commentaries regarding this trial through any medium of information, including  
4 television, news, Internet. Don't form or express any opinions on any subject  
5 connected or related to this trial until such time as this case has been finally  
6 submitted to you.

7           Go relax. See you at 1 o'clock, okay. I promise you we'll be starting at  
8 1 o'clock, not 1:30.

9                               [Outside the presence of the jury panel]

10           THE COURT: All right. We're outside the presence of jury. You can go  
11 ahead and relax and step down. I will caution you, because we're going to have a  
12 lunch break and you're going to be out, don't discuss any of your testimony while on  
13 break.

14           THE WITNESS: Okay.

15           THE COURT: In fact, when you're not on the witness stand, and you're  
16 outside, just don't discuss your testimony.

17           THE WITNESS: Okay.

18           THE COURT: Okay. Anything we need to put on the record?

19           MS. SPELLS: Yes, Your Honor, a couple of things, please. I'll try to do this in  
20 reverse order. This is Jasmin Spells on behalf of Mr. Alfred Harvey, on behalf of the  
21 defense. We did just approach before the close of the State's direct examination on  
22 Mr. Julian Munoz and the defense had objected to the question of had Mr. Munoz  
23 ever had a knife pulled on him as to relevance, and as to kind of the basis what it  
24 added to this case, and the Court did overrule that objection and the State was  
25 allowed to ask that question.

1           Additionally, the defense did approach and had an objection with regard  
2 to questions pointing out the children. The defense did note that we had previously  
3 filed a Motion in Limine with regard to some of the information and that one of the  
4 specific things that was brought up in argument with the Motion in Limine was any  
5 testimony with regard to a juvenile picking up a box and putting it back down the  
6 ruling from the Court was that the Motion in Limine was denied. There was not a  
7 specific ruling with regard to the incident with the child picking up the box, putting it  
8 back down. But here it just appears that in argument for the Motion in Limine the  
9 State expressed that they thought the children being present was relevant to  
10 describe Mr. Munoz feelings and his actions and what he did with regard to the  
11 incident of the robbery. And here there have been a number of questions that have  
12 gone forth that is kind of outside of that scope and seems to be just inciting the jury  
13 and putting the jury on notice that there were children, there were children, did you  
14 see the picture there with the minor, and his kids are there and they entered the  
15 store. It seems to be a little bit over the top even giving the ruling that our motion  
16 to -- our Motion in Limine was denied.

17           Additionally, Your Honor, the defense did approach and objected to a  
18 statement from the State that the 9-1-1 phone call had been redacted and that there  
19 were different things going forth that had been either redacted and objected to.  
20 Based upon that, we did have a discussion at the bench and the Court did make a  
21 statement to the jury that it was the Court's decision to have the 9-1-1 phone call  
22 redacted. And the understanding -- my understanding, and the State can clarify if  
23 they have a different understanding, is that here on out anything that is involving  
24 redactments or considering evidence that we have asked to be excluded from the  
25 jury that we would approach and have a sidebar instead of just inform the jury, hey,

1 we're excluding this information from you.

2 THE COURT: And that --

3 MS. SPELLS: Court's brief indulgence.

4 THE COURT: -- that is also my understanding. Anything that we're going --  
5 any items of evidence that involve redaction or exclusion of some sort we'll -- if there  
6 needs to be a discussion about it, we're just do it at the bench. And I would assume  
7 that any items that have been redacted or excluded in any form or fashion were  
8 done so at the direction of the Court. And so if it becomes -- some item that needs  
9 to be discussed in front of the jury, I will make sure that they understand that any  
10 revisions or redactions or exclusions were done at the direction of the Court so they  
11 won't focus on either one of you as having done it.

12 MS. SPELLS: Your Honor, there's one other matter -- I apologize -- with  
13 regard to State's admitted Exhibits 8 through 38. The defense did have objection to  
14 any photographs depicting Mr. Harvey with the minor children coming into evidence.  
15 We expressed the fact that we didn't think it was relevant, that it was insightful. We  
16 did have that sidebar and the Court did rule that those pictures were going to be  
17 admitted and that it was evidence that had already been admitted through the  
18 surveillance video is my understanding.

19 And I don't know if the Court wants me to put on record --

20 THE COURT: No, that's --

21 MS. SPELLS: -- the specific pictures that we had issue with it. If so, I would  
22 need to see them again. Those were Exhibits 8 through 38.

23 THE COURT: Yeah, you're exactly right. And those still pictures of 8 through  
24 38 you did object to the pictures depicting the Defendant with those children. But  
25 they're already before the jury, they've already seen them, they are just still pictures

1 of the video that we've been examining. So I didn't see any point in removing them  
2 out. They've already seen the kids with the Defendant in the store, so. But you've  
3 made your record.

4 MS. SPELLS: Thank you.

5 MR. SCHWARTZ: And, Your Honor, if we could just briefly, I know we're  
6 cutting close on lunch time, but just briefly respond. The incident that Ms. Spells  
7 objected to with regard to asking about whether he had a knife pulled on him, the  
8 State believed it was relevant to show the witness's state of mind, explain why he  
9 reacted the way he did, given that it was the first time he had ever had a knife pulled  
10 on him as a loss prevention agent.

11 Additionally, I believe the State -- or the Court already addressed it  
12 appropriately, but I apologize for mentioning the redacted version. I don't believe I  
13 said it was the Defendant's request or anything like that. But I think the Court's  
14 curative instruction to the jury was appropriate and instructed them it was the Court's  
15 position.

16 I know Mr. Rose would like to make a record as well about the children  
17 objection.

18 MR. ROSE: Yes, Your Honor. With respects to both the references to the  
19 children and to the Exhibits 8 through 38. First, I believe that a number of the  
20 questions were with regard to what was being shown on the video. The video has  
21 been admitted into evidence; however, the record itself is not going to reflect what is  
22 actually on the video unless the disk is actually, you know, transferred to a reviewing  
23 Court. So I think it is not inappropriate to have descriptions of what is happening on  
24 the video. And I think a number of those, although perhaps not every single  
25 question with reference to a child or minors, involved a description of what was

1 actually being shown on the video. I think a substantial number of them were. And  
2 they were simply to put on the record what it was that the jury was actually looking  
3 at at the time and they were all in relation to other events that were occurring by the  
4 Defendant, including his leaving the store and have the mechanics of how all that  
5 was occurring.

6 Similarly with 8 through 38, I know Your Honor has made his ruling on  
7 those, they are a part of what is already in evidence; moreover, I will simply repeat  
8 the fact that at the Motion in Limine I brought up the fact that if we were going to  
9 redact portions of statements with regard to children, then we're also going to have  
10 to redact the video and other things which included the children or references to the  
11 children. And the representations that were made at that point in time is that the  
12 defense was not seeking to redact the video, they were not asking to redact the  
13 video, all they were asking to do was to keep out one statement by Mr. Munoz, let's  
14 go inside so we don't do this in front of your kids or in front of your children. That  
15 statement actually didn't come out today, so we don't have to do this in front of  
16 everybody. But the representations that were made at the Motion in Limine was that  
17 they were not seeking to redact any of the portions of the video. The stills that we  
18 have are simply parts of that video, which each have an independent relevance to  
19 the case apart from the fact that the kids happen to be in them.

20 So that would just be the record that the State would ask to make.

21 MS. SPELLS: Your Honor, I just like to correct the record with regard to my  
22 representations. The defense did indicate that they did not take issue with video  
23 surveillance with the children being present; however, we did state that video  
24 surveillance and mention of the child receiving a box and putting the box down was  
25 more prejudicial than probative. And in arguing the motion what the defense stated



1 in the way that it was expressed is that we don't take issue with children being in the  
2 background as part of the store surveillance, not with commentary with regard to it.  
3 So that was our argument that if it was just part of normal store surveillance, without  
4 commentary and without the specific mention and pointing out of that child having  
5 that box and putting that evidence back down, that was our representation.

6 THE COURT: Everybody made their record?

7 MS. SPELLS: Yes.

8 MR. ROSE: We have, Your Honor.

9 THE COURT: Have a good lunch.

10 MR. SCHWARTZ: Thank you, Your Honor.

11 MR. ROSE: Thank you, Your Honor.

12 THE DEFENDANT: Thank you, sir.

13 MS. JONES: Thank you, Your Honor.

14 [Recess taken at 12:09 p.m.]

15 [Trial resumed at 1:07 p.m.]

16 [Outside the presence of the jury panel]

17 THE COURT: All right. We're back on the record in the State of Nevada  
18 versus Alfred Harvey.

19 Anything we need to put on the record before we bring the jurors in?

20 MS. SPELLS: No.

21 THE COURT: We're good? All right.

22 [In the presence of the jury panel]

23 THE MARSHAL: All rise, please.

24 And be seated.

25 THE COURT: Will the parties stipulate to the presence of jury.

1 MR. SCHWARTZ: Yes, Your Honor.

2 MS. SPELLS: Yes, Your Honor.

3 THE COURT: Very good, very good. Okay, cross-examination.

4 MS. SPELLS: Thank you, Your Honor.

5 **CROSS-EXAMINATION OF JULIAN MUNOZ**

6 BY MS. SPELLS:

7 Q Good afternoon, Mr. Munoz.

8 A Good afternoon.

9 Q So on March 30th, 2016, you're at T.J. Maxx; right?

10 A Correct.

11 Q And that's where you're employed at?

12 A Yes.

13 Q You're watching closed-circuit television?

14 A Yes.

15 Q And you see Mr. Harvey pick up some wallets?

16 A Yes.

17 Q Two wallets?

18 A I believe it was three or four that he picked up.

19 Q Three or four wallets?

20 A Yes.

21 Q Now, with regard to the three or four wallets exactly how many did you  
22 see him conceal?

23 A Three.

24 Q Three.

25 And you received all three of those wallets back?

A No, not initially. I only recovered two when I went out to stop -- stop

1 him.

2 Q You indicated that you saw Mr. Harvey conceal face cream?

3 A Yes.

4 Q Now, I want to you talk to you just a little bit about T.J. Maxx store.

5 A Uh-huh.

6 Q It's considered like a department store?

7 A Yes.

8 Q And it is maybe somewhat of a discount department store in

9 comparison to Macy's or one of the higher end department stores?

10 A I agree, yeah.

11 Q Yes?

12 A Yes, yes.

13 Q Inside of T.J. Maxx you have a clothing department?

14 A Yes.

15 Q Both men's and women's?

16 A Yes.

17 Q You have a children's department?

18 A Yes.

19 Q You also have a toy department?

20 A Yeah, we have a section -- yes, yes, yeah.

21 Q Health and beauty?

22 A Yes.

23 Q And accessories?

24 A Yes.

25 Q Now, when you were watching Mr. Harvey you saw him in the health

1 and beauty aisle?

2 A Well, I saw him in a lot of the store, but yeah that was one of the aisles,  
3 yes.

4 Q I apologize. Let me clarify.

5 So you saw Mr. Harvey going around a lot of the store?

6 A Yes.

7 Q And when you saw him take the face cream that you described, that  
8 would have been located in the health and beauty aisle?

9 A Yes.

10 Q And when we watched the video that's what we saw when we saw that  
11 display with all of those other creams?

12 A Yeah, and fragrances and.

13 Q And with regard to the wallets here, those are located in accessories?

14 A Those are the men's department.

15 Q Okay. Is it considered --

16 A But it's considered an accessory.

17 Q Okay. So it's considered man's accessories?

18 A Yes.

19 Q And you yourself wrote a report with regard to this incident?

20 A Yes.

21 Q Do you recall in that report that you notated the wallets as being a part  
22 of man's accessory items?

23 A Yes.

24 Q In addition to all of these departments that I've mentioned, T.J. Maxx  
25 also sells food?

1           A     Yes.

2           Q     As well as beverages?

3           A     Yes.

4           Q     But you don't have -- do you have a specific section called food and  
5 beverage?

6           A     No.

7           Q     So the specific items that you saw Mr. Harvey conceal include face  
8 cream?

9           A     Yes.

10          Q     And a few wallets?

11          A     Yes.

12          Q     You did not see him conceal any man's clothing?

13          A     No.

14          Q     You did not see him conceal any women's clothing?

15          A     No.

16          Q     And you did not see him conceal any children's clothing?

17          A     No.

18          Q     This T.J. Maxx store, and we've talked about it just a little bit, it's  
19 located inside of a plaza?

20          A     Yes.

21          Q     Within that plaza there are multiple stores?

22          A     Yes.

23          Q     Which store is directly to the left of T.J. Maxx as you are standing  
24 outside of the store?

25          A     Looking at it or --

1 Q Facing away --  
2 A -- facing away to the left?  
3 Q -- from the store, back to the store like this?  
4 A It's a Dollar Tree.  
5 Q Okay. So the Dollar Tree is right here?  
6 A Yes.  
7 Q And I'm at T.J. Maxx right here?  
8 A Yes.  
9 Q Okay. And then from this Dollar Tree is there another store right here?  
10 A Yes.  
11 Q Okay. And then after that store is Ross?  
12 A Yes.  
13 MS. SPELLS: Okay. And may I approach, please?  
14 THE COURT: Sure.  
15 Do you want the aerial photograph?  
16 MS. SPELLS: I do, Your Honor.  
17 THE COURT: It's 40. I'm pretty sure it's 40.  
18 MS. SPELLS: These are not in order, I apologize.  
19 BY MS. SPELLS:  
20 Q I'm showing you what has been admitted as State's Exhibit 41. Okay.  
21 And so this is the T.J. Maxx; right?  
22 A Yes.  
23 Q Okay. And is the Dollar Tree this direction?  
24 A Yeah, that's it.  
25 Q This is the Dollar Tree?

1 A Yes.

2 Q And so is this Ross or is it further down?

3 A No, I believe the bigger one down here is Ross.

4 Q Down here?

5 A No, no. Right below the one you were just pointing at.

6 THE COURT: His screen now writes.

7 THE WITNESS: Yeah, that one.

8 MS. SPELLS: Oh, your screen now writes?

9 THE COURT: Yeah.

10 MR. SCHWARTZ: Just to be clear for the record, it looks like he's indicating  
11 from top to bottom on the exhibit.

12 BY MS. SPELLS:

13 Q Can you -- do me a favor and put a circle around T.J. Maxx?

14 A [Witness complies]

15 Q And can you do me a favor and put an X where Ross is located?

16 A I believe that's it.

17 Q And let's draw a square around the 99 cent store or the Dollar Store?

18 A [Witness complies]

19 Q So between T.J. Maxx and Ross there are two stores in between?

20 A I believe this little triangle one is an extension of our -- yes, so, yes,  
21 that's correct, yes, two.

22 Q Okay. Because there's another store in that plaza in between the Dollar  
23 Store and Ross; right?

24 A Yes. I don't --

25 Q A little trinket store?

1           A     Yeah, I'm not sure what -- I've never been in there. I don't even know  
2 what it's called. But, yeah, I believe there is.

3           Q     And when we were discussing earlier, we were going to get to this later,  
4 but when you went into the parking lot and you were giving the 9-1-1 operator  
5 information with regard to the U-Haul vehicle, where was that U-Haul parked at on  
6 this screen, if we can draw a triangle in the area of the parking lot?

7           A     I want to say it was probably somewhere around here. Sorry, this isn't  
8 very -- yeah, somewhere around there. Maybe like a little more up.

9           Q     Okay. So closer to the Ross store?

10          A     Yeah, yes.

11          Q     And there's a red pillar in that area as well?

12          A     I'm not sure.

13          Q     You're not sure?

14          A     I don't recall.

15          Q     We were talking about pillars on direct examination. Do you recall  
16 speaking with the State and letting them know that you came outside and you were  
17 standing by a pillar?

18          A     Yeah, that was in front, right directly in front of my store.

19          Q     Okay. Directly in front of your store.

20                   And the pillar directly in front of your store is it red?

21          A     I don't believe so. I mean --

22          Q     You don't?

23          A     Yeah, I don't recall.

24          Q     Okay.

25          A     I work a lot of stores.



1 Q Oh, that's fair. I forgot that you worked multiple stores.

2 A Yeah.

3 Q Fair to say though that that's not the only pillar with regards --

4 A No, there's multiple -- yeah, there's multiple pillars there.

5 Q Okay. So the distance from your store, to the distance of the triangle  
6 you have there that you believe the car to be parked at, how far would you say that  
7 was?

8 A 50, 70 feet maybe.

9 MR. SCHWARTZ: Your Honor, just to make a record. It looks like he made a  
10 triangle where the U-Haul was parked in between where he's located the Ross store  
11 with an X and then the -- looks likes the Dollar Store with the square, just for the  
12 record.

13 THE WITNESS: Yes.

14 THE COURT: Correct.

15 BY MS. SPELLS:

16 Q Now, you were speaking earlier when you normally go to work you take  
17 your cell phone?

18 A Yes.

19 Q And that's your personal cell phone?

20 A Yes.

21 Q And this is the same cell phone that you used to call the police on the  
22 day in question?

23 A Yes.

24 Q You made this call outside of the store?

25 A Yes.

1 Q You indicated that you were on the sidewalk when you made the phone  
2 call?  
3 A Yes.  
4 Q Now, my understanding is that you made this phone call right after you  
5 saw Mr. Harvey -- what's -- do what you said was show a knife to you?  
6 A Yes. Well, not right after. I first told Shaun or -- yeah, I told Shaun,  
7 hey, he's got a knife and then he directed me to call 9-1-1.  
8 Q Okay. So you told Shaun that you believe Mr. Harvey to have a knife?  
9 A [No audible response]  
10 Q I'm sorry, we have to get an audible response for the record.  
11 A Oh, yes.  
12 Q And Shaun informed you to call 9-1-1?  
13 A Yes.  
14 Q Okay. Now, Mr. Munoz you've seen me before; right?  
15 A Yes.  
16 Q A couple of times?  
17 A Yes.  
18 Q And that's been at prior court hearings?  
19 A Yes.  
20 Q At those prior court hearings you came and you testified?  
21 A Yes.  
22 Q You were placed under oath?  
23 A Yes.  
24 Q Rose your right hand?  
25 A Yes.

1 Q Swore to tell the truth to the best of your ability?

2 A Yes.

3 Q And to the best of your recollection?

4 A Yes.

5 Q And do you recall in a hearing, maybe about a week ago, you told me  
6 that you picked up your cell phone immediately after you saw Mr. Alfred Harvey  
7 show you a knife in his left hand?

8 A I said, immediately? I mean, it was relatively quick, yes.

9 Q Okay. And so today you're informing me that your first action was to  
10 call Mr. Bramble, your co-worker?

11 A No, I didn't call him. He was walking up.

12 Q He was walking up?

13 A Yes.

14 Q Okay. So you had a conversation with him first?

15 A Yeah, I believe it was a statement.

16 Q Okay. And while you were having this statement, did you have your cell  
17 phone in your hand?

18 A I do not recall.

19 Q So you don't recall when exactly you took the cell phone out of your  
20 pocket?

21 A No, I don't.

22 Q Would it surprise you if your prior testimony was that you saw the knife  
23 and you immediately took the cell phone out of your pocket to call 9-1-1?

24 A Well, I'm trying to think because I was on the phone with Shaun prior to  
25 him coming out. So I might -- I may have never even put it back in my pocket but --

1 because I was on the phone with him and I usually -- I may have put it back in my  
2 pocket, I may have not. But I cannot definitively tell you today whether I did.

3 Q Okay. So you were on the phone with Shaun and then you got off the  
4 phone with Shaun?

5 A Yes, as soon as he exited the store.

6 Q Okay.

7 A I at least hung up.

8 Q Okay. And then this conversation with Mr. Harvey occurred?

9 A Yes.

10 Q And then you saw Shaun come out?

11 A Yes, after Mr. Harvey pulled a knife, I stopped walking with him, Shaun  
12 was walking up quickly, I turned around to tell Shaun that he has a knife, and he told  
13 me to call 9-1-1.

14 Q Okay. Now you called 9-1-1?

15 A Yes.

16 Q And you told them exactly what happened?

17 A Yes.

18 Q You gave a description of the person?

19 A Yes.

20 Q You also gave a description of the U-Haul van?

21 A Yes.

22 Q And you gave the license plate number?

23 A Yes.

24 Q So you were walking as you were calling 9-1-1?

25 A Yes, yes.

1 Q And in order to see the license plate, fair to say you had to get pretty  
2 close to the car?

3 A I mean, yes, close enough to see it. I mean, I wasn't like right next to  
4 the car.

5 Q But close enough to see the license plate?

6 A Yes.

7 Q And, so, you have your phone in your hand at this time?

8 A Yes.

9 Q While you're speaking to 9-1-1?

10 A Yes.

11 Q At no point do you take any photographs?

12 A No.

13 Q At no point do you take any video?

14 A No.

15 Q But you did see one of your co-workers take photographs; right?

16 A I'm trying to remember. I don't know if I was --I was probably more  
17 concentrating on the car and getting the plate. I wasn't really too aware of what was  
18 going around me.

19 Q So you never saw any photographs that any other co-worker took?

20 A No, I never saw any.

21 Q While you were walking, on the phone with 9-1-1 to give them this  
22 information, you want to make sure that you have the correct car?

23 A Yes.

24 Q You want to make sure that you have the correct license plate?

25 A Yes.

1 Q And, so, you're staying on the sidewalk?

2 A Yes.

3 Q And the car is parked, you indicate, a little bit to the right of the Dollar  
4 Store, if you're facing T.J. Maxx?

5 A Yes.

6 Q And a little bit to the left of Ross?

7 A Yes.

8 Q And it's in a parking stall?

9 A Yes.

10 Q Is it parked forwards in or backwards in?

11 A From what I could remember, I believe, it was parked forward.

12 Q And do you recall whether the vehicle had a front and back license  
13 plate?

14 A I do not remember.

15 Q Did you have anything to write with?

16 A I did not.

17 Q So you were doing this by memory?

18 A I believe I was giving it to the 9-1-1 operator as I was viewing it. I was  
19 telling her on the phone.

20 Q And this is somewhat of a unique vehicle?

21 A Yes.

22 Q So you [indiscernible] in?

23 A Yes.

24 Q And you saw this vehicle take off out of the parking lot?

25 A Yes.

1 Q You made sure to keep an eye on it?  
2 A Yes.  
3 Q You're up dating 9-1-1 with the things that you see?  
4 A Yes.  
5 Q And the location of the car?  
6 A Yes.  
7 Q And this car starts to travel on surface streets?  
8 A Yes.  
9 Q You've been working with T.J. Maxx -- you indicated one year?  
10 A Yes.  
11 Q But you've been with loss prevention for approximately five years?  
12 A Yes.  
13 Q And, so, that's a long time to work in loss prevention; yes?  
14 A Yes.  
15 Q And the nature of your job is to prevent people from taking items from  
16 the company that you work from -- work for?  
17 A Yes.  
18 Q And some times that requires that you have a lot of confrontations?  
19 A Yes, some times.  
20 Q And, so, that's basically par for the course; right?  
21 A Yes.  
22 Q Kind of like part of my job is asking people questions?  
23 A Yes.  
24 Q Part of your job is having encounters with individual that can be  
25 somewhat confrontational?

1 A Yes.

2 Q And, so, you're comfortable in that environment?

3 A Yes.

4 Q You've been doing this for a while though?

5 A Yes.

6 Q Sometimes you still get maybe a little nervous when you're confronting  
7 people?

8 A Yeah, I would say the sensation of going out to make an arrest on  
9 someone the first time I did it is about the same as the last time I've done it. Your  
10 anxiety gets up there, your adrenaline starts pumping, your heart starts pumping,  
11 every time, I mean. And it doesn't matter who it is because you never know what's  
12 going to happen.

13 Q So, a lot of adrenaline pumping?

14 A Yes.

15 Q Anxiety pumping?

16 A Yes.

17 Q Maybe a little bit nervous?

18 A Yep, sure.

19 Q And this situation no different, still nervous and anxious?

20 A Yes.

21 Q Now, on direct examination we had some communication with regard to  
22 what T.J. Maxx policies are, and your actions with regard to what you did based  
23 upon those policies, based upon your training. I just want to briefly talk to you about  
24 that.

25 A Okay.



1 Q So my understanding from your testimony earlier today is that per your  
2 company policy you are allowed to exit the store while following an individual who  
3 you believe may have committed a theft within the store?

4 A Yes.

5 Q And you are allowed to make contact with that individual so long as  
6 you're within the parameters of the T.J. Maxx store?

7 A Yes.

8 Q And that's where we have this circle located on this screen?

9 A Yes.

10 This store?

11 Q Yes.

12 A Yes.

13 Q And when we're speaking of the parameters of the store, we're  
14 speaking about the width of the store?

15 A Yes.

16 Q As well as extending to the front curb?

17 A Yes.

18 Q So if an individual steps into the street, that is outside of those  
19 parameters?

20 A Yes. I'm not supposed to make an arrest if they've stepped off the curb.

21 Q Okay. And if an individual steps outside of the width of the T.J. Maxx  
22 store, that is also the prohibited area for making an arrest?

23 A Yes.

24 Q So in this plaza there are private security?

25 A Yes.

1 Q And private security -- is it my understanding that they have the ability  
2 to assist with anything that's outside of your parameter?

3 A I'm not sure on their policies. I don't -- honestly we don't really speak  
4 with them. As far as T.J. Maxx is concerned, we just kind of try to stay away from  
5 them because that opens up liabilities. So we don't really work with them at all.

6 Q So you don't work with outside security?

7 A No.

8 Q But they're contracted for this plaza?

9 A Yes.

10 Q And you've seen them on occasion while you're working?

11 A Yes, I've seen them.

12 Q Okay. And you've seen them assist with other issues at the plaza?

13 A At this plaza, no. I mean, I haven't seen them assist with anything.

14 Q Okay. So, to your knowledge, they have arresting power?

15 A I have no idea.

16 MR. SCHWARTZ: Your Honor, may we approach?

17 THE COURT: Sure.

18 [Bench conference begins].

19 MR. SCHWARTZ: Just so you know I object to this line of questioning with  
20 regard to the security. He doesn't know anything about it and I don't think it's  
21 relevant.

22 THE COURT: That's -- what are you getting into?

23 MS. SPELLS: I'm trying to make provisions on what he did based upon  
24 when the State brought up his line of questioning with regard to what his parameters  
25 are, what he did. So given that our [indiscernible] the questions that he was going to

1 rely upon are not going to follow [indiscernible]. He indicated that he was not unless  
2 they follow a question as to whether or not he called. I think it's relevant here given  
3 the actions that he took.

4 THE COURT: I'll give you the leeway. But you guys are [indiscernible]  
5 they don't call them, they don't -- he doesn't have any information about how they  
6 work. It sounds like it. If that's the case, then we'll just move on.

7 MS. SPELLS: Sure.

8 THE COURT: I'll give you a little leeway.

9 MS. SPELLS: Thank you.

10 MR. SCHWARTZ: Thank you.

11 [Bench conference concludes]

12 BY MS. SPELLS:

13 Q Thank you.

14 And so, Mr. Munoz, in this situation you did not call this private security  
15 company?

16 A No.

17 Q And to your knowledge neither did your co-worker, Mr. Bramble?

18 A No.

19 Q I want to talk to you a little bit about, again, this walk towards the car.

20 Were you walking?

21 A Yes.

22 Q Or were you running?

23 A I was walking.

24 Q And your prior testimony is that Mr. Harvey was also walking?

25 A I believe so.

1 Q That's we talked about earlier today. Do you recall what you testified  
2 to?

3 A Yeah, uh-huh.

4 Q Okay. So correct me if I'm wrong. I thought I heard you say that you  
5 were walking --

6 A Yeah, he's walking quickly.

7 Q -- Mr. Harvey was walking?

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Okay.

12 MR. SCHWARTZ: And, Your Honor, I believe that misstates the testimony.  
13 He said that Mr. Harvey was walking quickly but.

14 THE COURT: Is that correct?

15 THE WITNESS: Yes, I believe so.

16 THE COURT: Okay, agree.

17 MS. SPELLS: Your Honor, I would ask that the jury remember what their  
18 recollection is.

19 BY MS. SPELLS:

20 Q But clarify, my question here was, was someone running; right?

21 A No one was running.

22 Q Okay. So both of you were walking?

23 A Yes.

24 Q Now, there was you and there was Mr. Bramble, was there a third  
25 individual involved coming from the T.J. Maxx store?

1 A There's the children, Shaun walked out and then the children.  
2 Q I'm speaking about a third adult?  
3 A Adult, yes, Shaun walked out afterwards.  
4 Q Okay. Was there another third adult coming from T.J. Maxx like an  
5 employee?  
6 A Not to my knowledge, no.  
7 Q So where exactly is it that you approached Mr. Harvey outside of the  
8 T.J. Maxx store? Let's go ahead and put a star at that location.  
9 A It's a little bit off. It was just to the right of the entrance if you're looking  
10 at just to the right, like maybe a foot.  
11 Q Okay. And you engage Mr. Harvey in a conversation?  
12 A Yes.  
13 Q You ask Mr. Harvey to stop?  
14 A I identified myself as T.J. Maxx loss prevention and he naturally  
15 stopped.  
16 Q Okay. And so upon identifying him you asked him to return property?  
17 A Yes.  
18 Q And you specifically asked Mr. Harvey to give you wallets?  
19 A Yes.  
20 Q You indicated that he gave you two wallets?  
21 A Yes.  
22 Q And he gave you those two wallets without any issue?  
23 A Well, the first time I asked him he tried to claim that he didn't have  
24 anything on him. Because I asked him, I needed my unpaid merchandise back.  
25 And he stated, well, I left it back there in the store. And then at this point I was more

1 detailed, I'm like, I need the wallets out of your coat and he took them out.

2 Q Okay. So he didn't throw the wallets at you?

3 A No.

4 Q He didn't make any physical contacts with you?

5 A No.

6 Q He handed you these wallets back?

7 A Yes.

8 Q Relatively mild-mannered way?

9 A Sure, yes.

10 Q He wasn't screaming at you giving you these wallets?

11 A No.

12 Q And when Mr. Harvey returned these wallets he did not threaten you?

13 A No, not yet.

14 Q Focusing on the wallets, you testified this morning that there were three  
15 wallets?

16 A Yes, that he concealed.

17 Q And that you only received two back?

18 A Yes.

19 Q So, do you recall testifying a few months ago and indicating that  
20 Mr. Harvey returned all of the wallets back to you?

21 A I do not recall at this time.

22 Q Okay, one moment please.

23 And with regard to the other items, you did not specifically ask for any  
24 other items back; is that correct?

25 A That's correct.

1 Q At that time period you asked Mr. Harvey to go back into the store?

2 A Yes.

3 Q And Mr. Harvey refused to go back into the store?

4 A Yes.

5 Q Now, just briefly, I want to discuss with you these items in question and  
6 actually let me obtain --

7 MS. SPELLS: May I approach, Your Honor?

8 THE COURT: Yes.

9 MS. SPELLS: May I approach the witness?

10 THE COURT: Yes.

11 BY MS. SPELLS:

12 Q Now, I'm showing you what has been admitted as State's Exhibit 2. Do  
13 you recognize this photo?

14 A Yes.

15 Q And can you tell us what's depicted in that photo?

16 A There's a wallet, there's two fragrances, and a cream.

17 Q Okay. How many wallets are in that photo?

18 A There's one wallet.

19 MS. SPELLS: Permission to republish, Your Honor?

20 THE COURT: Yes.

21 BY MS. SPELLS:

22 Q So these are some of the items that we discussed previously as far as  
23 you watching on closed-circuit television as being concealed?

24 A Yes. I mean, I did not see all of them concealed.

25 Q Sure.

1           A     But, yes, some of them, yes.

2           Q     Okay. And so I want to briefly discuss with you the perfume here.

3     When we were watching the closed-circuit television you testified that there were

4     two boxes of perfume picked up?

5           A     Yes.

6                 As we were watching it right here?

7           Q     Yes.

8           A     Yes.

9           Q     This morning?

10          A     Yes.

11          Q     And one of those boxes was similar to what we see here in this picture

12     being the Chloe perfume; is that correct?

13          A     Correct.

14          Q     And another box was described as being black?

15          A     Yes.

16          Q     Now, we don't see any other fragrances depicted in this photo that are

17     in a black box?

18          A     Correct.

19          Q     So this other box here is not a black box?

20          A     No, it is not.

21          Q     And this is the facial cream that we were speaking of earlier?

22          A     Yes.

23          Q     And in one of the wallets?

24          A     Correct.

25          Q     Now, all of these items have T.J. Maxx tags on them; right?



1 A Correct.

2 Q Okay. And they all have prices as well?

3 A Yes.

4 Q So when you completed your report in the instant case, your T.J. Maxx  
5 report that being, did you list all of the items that you saw concealed?

6 A Yes.

7 Q And did you list the values of that?

8 A Yes, of the items that I received back.

9 Q Okay. So, based upon your knowledge, what you've testified to today,  
10 there were approximately five items concealed -- or six -- I apologize, six items  
11 concealed?

12 A Correct.

13 Q Correct at six?

14 A Yes, what I saw that day. Because when I go out to make stops, I go  
15 out based what I see, and that's what I go out to make the arrest on.

16 Q Okay. So what you specifically saw were wallets?

17 A Yes.

18 Q You've indicated three this morning?

19 A Uh-huh; correct.

20 Q And then face cream?

21 A Yes.

22 Q And you actually indicated that you had exited the store at the time  
23 period that we saw the video depicting Mr. Harvey near the perfume bottles?

24 A Yes.

25 Q But you watched that at a later time period?

1 A Yes. And I also believe -- because when we switched --  
2 Q One moment --  
3 A Okay, sorry.  
4 Q There's not a question pending and we can't always get into what you  
5 believe --  
6 A Okay.  
7 Q -- that's some scary territory there.  
8 So, approximately six items you'd say less than \$500?  
9 A Yes.  
10 Q Now, we were previously talking about just how you were feeling kind of  
11 anxious, nervous on this date; right?  
12 A Yes, at the time of the --  
13 Q And you heard the 9-1-1 phone call played today; right?  
14 A Yes.  
15 Q We don't need to replay it, do we?  
16 A No.  
17 Q Okay. So, in that 9-1-1 phone call it sounded like you were out of  
18 breath a little bit; fair to say?  
19 A No, I was nervous.  
20 Q Nervous?  
21 A Yeah, I just had a knife pulled on me.  
22 Q Okay. And when informing the 9-1-1 operators, kind of what was going  
23 on, you had to make a correction to the plate number?  
24 A Yes.  
25 Q And additionally you also had to make a correction as to the direction

1 that you believe Mr. Harvey to be traveling?

2 A Yes.

3 Q Okay. At first you indicated he was traveling, I believe north on one  
4 street, and the operator came back and said that street runs a different way?

5 A Yeah.

6 Q It runs east and west?

7 A Yes.

8 Q And being very anxious, being very nervous, you wanted to tell them  
9 everything that was going on?

10 A Yes.

11 Q You were trying to get everything out?

12 A Yes.

13 Q And you heard the -- we heard the call this morning, the 9-1-1 operator  
14 says, wait just one moment, let me ask the questions?

15 A Yes.

16 Q Okay. And then she wanted you to respond to the questions that she  
17 was asking?

18 A Yes.

19 Q We were speaking previously and you indicated that there's certain  
20 blind spots in the store?

21 A Yes.

22 Q Okay. Now, the location of loss prevention office that's not something  
23 known to everybody; right?

24 A No.

25 Q Like I'm not going to go into a store and know where your LP office is?

1 A Correct.

2 Q And additionally the location of your cameras, that's not just public  
3 knowledge?

4 A I mean, it is if you look up.

5 Q Okay. So if you go in the store and you look up --

6 A Yes.

7 Q -- then it may be public knowledge?

8 A Yes.

9 Q So you don't have any hidden cameras in your store?

10 A I don't believe we do in that store, no.

11 Q So there are T.J. Maxx stores that have hidden cameras?

12 A Yes, they're called coverts. But they're usually used for internal  
13 investigations.

14 Q And internal investigations is part of your job as well; right?

15 A Yes.

16 Q So we've been talking about this, you travel from different T.J. Maxx  
17 stores?

18 A Yes.

19 Q And you're not exactly sure whether this location has the coverts or  
20 not?

21 A Correct.

22 Q In your experience, you were speaking earlier, you said that you have  
23 certain things that you have to do based upon your company policies?

24 A Yes.

25 Q And you indicated that there are times when you do not call the police?

1           A     Correct.

2           Q     You stated that if it's just a few items you don't want to be waiting a long  
3 time for the police to arrive?

4           A     Correct.

5           Q     In your experience, being loss prevention officer, you've been doing this  
6 for five years, what is the average wait time?

7           A     It's a good two to three hours. Depending on the day, sometimes they'll  
8 show up in twenty minutes.

9           Q     And do you recall what time this happened at during the day?

10          A     Midafternoon. I can't recall the exact time.

11          Q     This was quite some time ago; right?

12          A     Yes.

13          Q     Do you recall what your shift was on that day?

14          A     I believe it was a swing.

15          Q     Do you normally work swing shifts or do you rotate?

16          A     Yeah, I rotate throughout the week. Opens, closes, and swings. I at  
17 least try to get one of each through each week -- through each day of the week.  
18 And then it rotates on those two extra days.

19          Q     Okay. So, you rotate, you work mornings, you work swings, and you  
20 work evenings?

21          A     Yes.

22          Q     And what you try to do is within a week try to work all those different  
23 shifts?

24          A     Yes.

25          Q     Now, you indicated on the 9-1-1 phone call that there was an individual

1 following this -- following this U-Haul van?

2 A Yes.

3 Q Did you have contact with that individual?

4 A I believe Shaun contacted them, but I was right next to him when he  
5 did.

6 Q Okay. Did you have a conversation with that individual?

7 A I don't believe so.

8 Q When you were right next to Shaun, and Shaun was speaking to the  
9 individual who followed this van, can you tell me where that was at? We're going to  
10 go back to the map, but I just want to get an idea as to where that conversation took  
11 place.

12 Okay. And at this point all of our handy dandy notations have been taken  
13 away. So let's go ahead and put a circle around the T.J. Maxx.

14 A [Witness complies]

15 Q And let's go ahead and put the triangle that we had where you believed  
16 the U-Haul van was parked.

17 A [Witness complies]

18 Q And so now I'm looking at this map again can you tell me where you  
19 believe that conversation took place?

20 A You know, I can't -- I don't really recall. Because I know at one point we  
21 did start walking back and I don't remember, you know, I was still on the phone with  
22 the 9-1-1 operator when he pulled up to us. But it was somewhere between the  
23 triangle and the T.J. Maxx. I can't tell you exactly where.

24 Q Okay. Just somewhere in that location?

25 A Yes.

1 Q Now, I want to go back and speak with you about this conversation you  
2 had with Mr. Harvey, and you and Mr. Harvey are both on the sidewalk at this time  
3 period?

4 A Yes.

5 Q You indicated you are just to the right of the entrance to T.J. Maxx?

6 A Yes.

7 Q And which side of him are you standing on?

8 A I'm standing on his right side.

9 Q And which direction are you facing?

10 A We're facing -- I'm facing him and he's kind of facing the Dollar Tree.  
11 But, I mean, we repositioned ourselves a couple of times.

12 Q So you repositioned yourself a couple of times what --

13 A So when I first made contact to him we were face to face.

14 Q Okay.

15 A And then he -- we had the conversation and then he eventually gave  
16 me my stuff back and he started walking towards the Dollar Tree.

17 Q So he's walking towards the Dollar Tree?

18 A Yes.

19 Q On the sidewalk?

20 A Yes.

21 Q And does he get in front of the Dollar Tree?

22 A Eventually. But not -- yeah, I mean, eventually, yes, he does walk past  
23 the Dollar Tree.

24 Q You indicated that when you asked him to come back into the store he  
25 refused?

1 A Yes.

2 Q And you stated at that time point he put his pocket in his left hand in  
3 his -- he put his hand in his left pocket?

4 A No, at that point he started walking away and then --

5 Q He walked away --

6 A -- and then I walked --

7 Q -- where did he walk to -- one moment.

8 A Okay.

9 Q He walked away, where did he walk to?

10 A He was walking towards the direction of the Dollar Tree.

11 Q And you walked after him?

12 A Yes, I walked next to him.

13 Q Next to him, you were walking side-by-side?

14 A Yes.

15 Q Now, we talked about the Dollar Tree and we talked about the trinket  
16 store as well, neither of us knew the name of the trinket store; right?

17 A Correct.

18 Q Okay. From T.J. Maxx, is it the Dollar Store first or the trinket store  
19 going towards Ross?

20 A It's the Dollar Tree first.

21 Q Dollar Tree comes first?

22 A Yes.

23 Q So you guys are walking right next to each other and then do you say  
24 something else to him?

25 A So I asked him to step back into the store, he refuses, he starts



1 walking, and I tell him, listen, we don't have to do this outside, there's a lot of people  
2 out, we don't have to do this, you know, with all these people here. At that point he  
3 reaches into his pocket, snaps out the knife and says, we're not doing anything.  
4 And he brings it over his head.

5 Q Okay. So you guys are still walking or you guys are still at this time?

6 A We were still walking at this point but we had not passed boundaries  
7 yet.

8 Q You guys walking fairly slow?

9 A Fairly, yes.

10 Q So he reaches into which pocket, left or right?

11 A His left pocket.

12 Q With which hand?

13 A His left-hand.

14 Q And he's holding this alleged knife in which hand?

15 A The left-hand.

16 Q Now, you've told us this morning that black knife, given us approximate  
17 size of the blade, no other characteristics with regard to this knife; right?

18 A Correct.

19 Q Okay. And it happened fairly quickly?

20 A Correct.

21 Q And you stayed back at the T.J. Maxx?

22 A I -- what do you -- could you clarify, please.

23 Q So, we -- you've told us earlier that another individual started following  
24 Mr. Harvey; right --

25 A Oh --

1 Q -- did you leave this plaza?

2 A -- yes, I did not follow him off property, no.

3 Q Okay. So you stayed at this plaza, you went back to T.J. Maxx?

4 A Yes, after the incident -- yes, after he had left.

5 Q Approximately how long after this, the end of the conversation with

6 Mr. Harvey, did Mr. Bramble come outside?

7 A Almost immediately.

8 Q Okay. And you're on the phone with him?

9 A No, I got off the phone with him when I go to make the arrest on

10 Mr. Harvey.

11 Q I understand that. But we talked earlier and you said you were on the

12 phone with him, you get off the phone so that you can see Mr. Harvey in the front of

13 the store, and then after this incident you call Mr. Bramble again?

14 A No, Mr. Bramble comes outside.

15 Q Okay. Mr. Bramble comes outside --

16 A Yes.

17 Q -- and you have a conversation with him there?

18 A Yes.

19 Q And then from there do you continue to walk towards this car to give

20 information with regards to license plate or you go back to T.J. Maxx?

21 A Yeah. Mr. Bramble walks past me and then I follow, follow him.

22 Q So after this conversation that's the last you see of this knife?

23 A Yes.

24 Q You never saw it on the ground in between the Dollar Store and T.J.

25 Maxx?

1 A No.

2 Q The police didn't bring a knife to you?

3 A No.

4 MS. SPELLS: Court's brief indulgence.

5 Your Honor, may I approach the witness?

6 THE COURT: Sure.

7 BY MS. SPELLS:

8 Q And I am approaching him with a copy of your report. We've talked  
9 about this, you wrote a report in this case?

10 A Yes.

11 Q T.J. Maxx incident report?

12 A Yes.

13 Q And to show you what's on three pages of piece of paper. Please let  
14 me know if those look familiar to you.

15 A Yes.

16 Q This is your report; right?

17 A Yes.

18 Q Now, I want to direct your attention to page two of the report; right?

19 A Yes.

20 Q And on page two do you make a list of the property as far as what was  
21 recovered and what was not recovered?

22 A Yes.

23 Q Okay. And we've talked previously that what you saw were wallets and  
24 hand cream?

25 A Yes.

1 Q And you went outside at the time period in the closed-circuit television  
2 where we saw the fragrances?

3 A Yes.

4 Q Okay. And so on your report you are listing the wallets and the hand  
5 cream?

6 A Yes.

7 Q Okay. How many wallets do you list on this report?

8 A Two.

9 Q And what do you indicate next to that, with regards to those wallets?

10 A The price.

11 Q Okay. Do you have an indication as to whether or not these wallets  
12 were recovered or not recovered?

13 A Yes.

14 Q And what does that state?

15 A Recovered.

16 Q Okay. And what else do you list on this page, did you list the hand  
17 cream?

18 A Yes.

19 Q And with regard to the hand cream, what all did you list?

20 A What do you mean?

21 Q Did you list the price as well?

22 A No.

23 Q And did you list whether or not that was recovered or not recovered?

24 A Yes, I put not recovered.

25 Q Okay. Now, when you were watching the video earlier and you were

1     testifying you indicated that Mr. Harvey concealed the hand cream?

2             A     Yes.

3             Q     Do you recall where you stated he concealed it at?

4             A     In his -- you mean in regards to the --

5             Q     Where upon his person?

6             A     Oh, on his person, in the shorts pocket.

7             Q     In which shorts pocket?

8             A     To the left, the left side.

9             Q     The left-hand shorts pocket?

10            A     Yes.

11            MS. SPELLS: Your Honor, may we approach?

12            THE COURT: Sure.

13   [Bench conference begins].

14            MS. SPELLS: I guess there's an issue that they can't hear me on the record

15     when I walk away from the microphone.

16            THE COURT: You might want -- carry that microphone over there if you walk

17     away. Tom got that for him it's plugged into the system, so, okay.

18            MS. SPELLS: Do we need to review any of the record?

19            MR. SCHWARTZ: I have a separate issue. Are you almost done with your

20     cross?

21            MS. SPELLS: Yeah.

22            MR. SCHWARTZ: Okay. Because my next witness needs to be out of here

23     by 2:30-ish.

24            MS. SPELLS: What time is it?

25            MR. SCHWARTZ: I anticipate --

1 MR. ROSE: It's almost 2.

2 MR. SCHWARTZ: -- I have only one question for this redirect.

3 THE COURT: Is it going to take as long as him?

4 MR. SCHWARTZ: No, no, no. Ten minutes direct.

5 THE COURT: All right.

6 MR. SCHWARTZ: But if you're almost done, then we should be fine.

7 MS. SPELLS: I think I'm almost done.

8 MR. SCHWARTZ: Thank you.

9 [Bench conference concludes]

10 MS. SPELLS: Pass the witness.

11 THE COURT: Done?

12 MS. SPELLS: Yes.

13 THE COURT: Okay. Any redirect?

14 MR. SCHWARTZ: Just briefly, Your Honor.

15 **REDIRECT EXAMINATION BY MR. SCHWARTZ**

16 BY MR. SCHWARTZ:

17 Q Mr. Munoz, to be fair, those photos -- the photo we looked at with the  
18 different T.J. Maxx items on it --

19 A Yes.

20 Q -- those weren't returned to you; correct?

21 A No.

22 Q The only two items returned to you were the two wallets?

23 A Yes.

24 Q And at the time you created your report, you were aware of the two  
25 wallets that were returned to you and the face cream that had been pocketed?

1 A Yes.

2 Q That's why you included those three in the report?

3 A Yes.

4 Q Ms. Spells asked you, you know, you're comfortable with confrontation,  
5 fair?

6 A Yes.

7 Q You have a lot of confrontations when you approach people outside  
8 your store?

9 A Yes.

10 Q Fair to say that this was a little bit of a different situation?

11 A Yes.

12 Q Okay. You're not comfortable with a knife being pulled on you, are  
13 you?

14 A No.

15 MR. SCHWARTZ: Nothing further.

16 THE COURT: Anything else?

17 **RE-CROSS EXAMINATION BY MS. SPELLS**

18 BY MS. SPELLS:

19 Q Mr. Munoz, you just indicated that when you wrote that report those  
20 were the items that you were aware of?

21 A Yes.

22 Q Okay. So you listed what was taken from the store; is that correct?

23 A Yes. Well, I was also aware of -- because, like I said, when we were on  
24 the phone with Shaun, he continues to watch, and at one point he did say he  
25 concealed something else. I don't know. I've never gotten with Shaun about this

1 before. But it was stated on the phone so I knew he had more merchandise.

2 Q Okay.

3 A But I didn't put it into my report.

4 Q Okay. And you didn't have that conversation with Shaun?

5 A No. Except on the phone that he concealed. Again, I don't -- I believe  
6 he said it was a fragrance but I couldn't tell you for sure.

7 Q So let me just clarify, prior to writing the report, you did not have a  
8 conversation with Shaun?

9 A No.

10 Q And you did not list in your reports miscellaneous other items?

11 A No.

12 Q Now, these reports that you write for T.J. Maxx what's the purpose of  
13 them?

14 A The purpose is to document what I see.

15 Q Okay. In some aspects some individuals who have the same job  
16 category as you are also called asset protection managers?

17 A Yes.

18 Q Yes. And so the function is to protect the stores merchandise as well;  
19 right?

20 A For the manager?

21 Q No, for loss prevention.

22 A Oh, yes. So, yeah, asset protection and loss prevention are essentially  
23 the same thing.

24 Q Okay. And so in writing these reports you do want to have some detail  
25 with regard to what was taken from the store?



1 A Yes. But it's -- they can't also be for sure known.

2 Q Sure, okay. But you do want to try and do that?

3 A Yes.

4 Q And to the best of your ability?

5 A Yes.

6 Q And there are some times when you turn these reports over to officers  
7 as well?

8 A I don't usually turn over my company report over to officers. I write up a  
9 different statement 'cause Metro doesn't usually accept them.

10 Q Okay. Do you utilize your initial reports in crafting the separate  
11 statement that you write for Metro?

12 A Sometimes. Sometimes I write the Metro report first if I know they're  
13 coming.

14 Q So it just depends on the circumstances of the order in which you're  
15 doing your work?

16 A Yes.

17 Q But either way you try to be as detailed as possible in both the Metro  
18 reports and your own reports?

19 A Yes.

20 THE COURT: Is that it?

21 MS. SPELLS: I'll pass the witness. Yes, Your Honor.

22 MR. SCHWARTZ: Nothing further. Thank you.

23 THE COURT: Thank you very much for your testimony. You can go ahead  
24 and step down. You'll be excused. I caution you not to discuss any testimony while  
25 you're waiting outside.

1           You've got a witness that's got some time issues?

2           MR. ROSE: Yes, Your Honor.

3           THE COURT: Okay.

4           MR. ROSE: The State will call Shaun Bramble.

5           THE COURT: This next witness is going to be considerably shorter than this  
6 last witness and then when we get done with this we'll take a break, okay.

7                                   **SHAUN BRAMBLE**

8           [having been called as a witness and being first duly sworn, testified as follows:]

9           THE COURT CLERK: Please be seated and then state and spell your name  
10 for the record.

11          THE WITNESS: My name is Shaun Bramble. It's --

12          THE COURT: Spell your first and last name.

13          THE WITNESS: First name S-H-A-U-N, last name Bramble, B-R-A-M-B-L-E.

14          THE COURT: Very good.

15                   Go ahead.

16          MR. ROSE: May I proceed, Your Honor?

17          THE COURT: Yes.

18          MR. ROSE: Thank you.

19                                   **DIRECT EXAMINATION BY MR. ROSE**

20          BY MR. ROSE:

21           Q     Good afternoon, Mr. Bramble. Are you currently employed?

22           A     Yes.

23           Q     And how are you employed?

24           A     I work for T.J. Maxx, Marshalls Corporation.

25           Q     And how long have you worked for T.J. Maxx?

1 A About eight years now.

2 Q And what role do you play within T.J. Maxx?

3 A Easiest way to put it is a loss prevention supervisor type role.

4 Q Okay. And have you been doing that all eight years with T.J. Maxx?

5 A Most of that time, yes.

6 Q And did you have any loss prevention work prior to those eight years  
7 with T.J. Maxx?

8 A Yes, about 18 years total.

9 Q And you said that the easiest way to describe it is as loss prevention. Is  
10 your job your typical loss prevention?

11 A No.

12 Q What's the difference between your job and typical loss prevention?

13 A My job is to focus more on what's considered organized retail crime. So  
14 tends to lean more towards people who make a career out of shoplifting or habitual  
15 shoplifters, things like that.

16 Q Okay. So is it fair to say that you have kind of specific targets that  
17 you're looking for on a day-to-day basis?

18 A Yes.

19 Q Okay. I want to draw your attention to March 30th of 2016, were you  
20 working that day?

21 A Yes.

22 Q And were you working at the T.J. Maxx located at Sahara and Decatur?

23 A Yes.

24 Q Were you working with anybody else?

25 A Me and Julian.

1 Q Was that the guy who just left?

2 A Yeah.

3 Q Okay. Now, you said that the two of you were working together, do you  
4 perform the same roles?

5 A No.

6 Q Now, you said that you have specific targets that you tend to look for in  
7 your particular role. What happens if you see somebody entering or leaving the  
8 store that isn't one of your targets?

9 A I'm generally not too concerned with it.

10 Q Okay. Are you concerned with kind of your average run-off shoplifter?

11 A No.

12 Q Do you arrest shoplifters?

13 A Nope.

14 Q Are you allowed to?

15 A No.

16 Q Okay. So on March 30th, 2016, you were working with Julian at that  
17 particular location; right?

18 A Yes.

19 Q Where in the store are you guys located?

20 A We were in the loss prevention office.

21 Q Within that office is it fair to say that there's a bunch of camera  
22 monitors, you can move the cameras and look at different things?

23 A Yes.

24 Q Do you remember if something happened that afternoon which brings  
25 you to court today?

1 A Yes.

2 Q Just kind of very briefly could you describe what happened?

3 A Julian had a shoplift suspect run out on him, suspect fled, and now

4 we're here.

5 Q Okay. Now, had you been in the office with Julian while some of the

6 shoplifting was occurring?

7 A Yes.

8 Q Were you able to also see the monitors?

9 A Yes.

10 Q Was this one of your targets?

11 A No.

12 Q Now, you mentioned that if it's typically not one of your targets you just

13 kind of, you know, let loss prevention do what loss prevention does because they're

14 not part of your responsibility; right?

15 A Yes.

16 Q Did you do that with this one too?

17 A Yes.

18 Q You weren't really paying as close attention to him?

19 A No.

20 Q Okay. At some point in time did Julian leave the office?

21 A Yes.

22 Q And do you know where he went?

23 A Yeah, he went out front to make the stop on the suspect.

24 Q And did you remain in the office at that point?

25 A Yes.

1 Q Did you take over the controls on the cameras?

2 A Yes.

3 Q So at that point even though it wasn't somebody that necessarily you

4 were particularly focused on you knew who Julian was focused on?

5 A Right.

6 Q And did you continue to focus on him?

7 A Yes.

8 Q Follow him with the cameras at that point?

9 A Yes.

10 Q And the person that we're talking about, do you see that person in the

11 courtroom today?

12 A Yes.

13 Q Could you point to whoever that person is and describe something that

14 that person is wearing?

15 A Blue shirt and blue tie, white stripes.

16 MR. ROSE: Would the record reflect identification of the Defendant,

17 Your Honor?

18 THE COURT: Yes, the record will so.

19 BY MR. ROSE:

20 Q Were you able to keep in contact with Julian during this time period?

21 A Yes.

22 Q You guys have your cell phones?

23 A Yes.

24 Q Personal phones?

25 A Yes.

1 Q Okay. At some point in time do you leave the office?

2 A Actually my phone was a work phone.

3 Q Yours is a work phone?

4 A His is -- his would be his personal cell. Mine was a work phone.

5 Q Okay.

6 A Yeah.

7 Q Any particular reason that you have a work phone?

8 A Yes. Company doesn't want me spending tons of money on work  
9 related issues so they give me a cell phone to handle all my business.

10 Q Okay. So because of the nature of your role you're going to be  
11 handling a lot more company business so they have a specific cell phone for you to  
12 do that?

13 A Yes.

14 Q Okay. But Julian has his own phone?

15 A Yeah, he's own cell.

16 Q Okay. At some be point do you leave the office?

17 A Yes.

18 Q And why do you leave the office?

19 A I left the office just to go assist Julian. By the time the suspect had left,  
20 so I made my way up to the front door just to help Julian out.

21 Q Okay. Have you had the chance to actually look back at the  
22 surveillance video?

23 A Not really. I did a little bit.

24 Q Okay. And do you know whether or not on those surveillance video you  
25 can actually see yourself leaving the store?

1 A Yeah, you can, yes.

2 Q Okay. So you ease in there kind of towards the end?

3 A Yes.

4 Q Okay.

5 A Yeah.

6 Q Whom, if anybody, did you see outside of the store?

7 A As soon as I left the store the first person I saw was Julian.

8 Q And could you describe briefly how he looked to you?

9 A He looked shocked, kind of, I mean, shocked would probably be about  
10 the best way to describe it.

11 Q Okay. And do you see anybody else at that point in time?

12 A I saw the suspect running towards the vehicle.

13 Q Now, by the suspect, are you referring to the Defendant?

14 A Yes.

15 Q Okay. Now, you say that when Julian -- when you first saw Julian he  
16 looked shocked to you, what did you do after you saw him?

17 A Just headed towards the direction that the Defendant was walking  
18 towards -- running towards.

19 Q Okay. Did Julian say anything to you?

20 A Yes. As soon as I got out, he turned around looked at me --

21 MS. SPELLS: Objection, hearsay.

22 MR. ROSE: Your Honor, I believe it's an excited utterance. He just said that  
23 Julian looked shocked.

24 THE COURT: I agree, overruled. Go ahead.

25 MS. SPELLS: We would object to foundation, Your Honor. Understanding



1 the Court's ruling; we still object.

2 THE COURT: All right, go ahead.

3 THE WITNESS: He turned around and looked at me and said something to  
4 the effect of, that guy just pulled a knife on me.

5 BY MR. ROSE:

6 Q Okay. Now, at that point in time you hadn't actually seen the interaction  
7 between the Defendant and Julian, have you?

8 A No, sir.

9 Q Okay. And you said that the Defendant was either walking or running  
10 towards the vehicle?

11 A Yeah.

12 Q Do you remember what kind of vehicle we're talking about?

13 A U-Haul moving van, the kind with the garage door on the back.

14 Q Okay. Kind of distinctive?

15 A Yeah.

16 Q After you hear Julian say something to the effect of, he pulled a knife on  
17 me, and you see the Defendant running towards this U-Haul, what did you do?

18 A Well, I told Julian to call 9-1-1 and then followed the suspect over to the  
19 vehicle that he had gotten in and started backing out. I had my work phone in my  
20 hand so I have started snapping photos with my work phone.

21 Q Okay. And those photos did you end up later deleting those photos?

22 A I did, yes.

23 Q And was that because you didn't think they were relevant anymore?

24 A Yes, it didn't seem like there was any reason for me to need them. I  
25 wasn't going to be building a case file on anything. So I just deleted the photos.

1 Q Had you been informed that someone was in custody?

2 A Yes, yes.

3 Q Okay. Did you have any other interactions with anybody else?

4 MS. SPELLS: Your Honor, may we approach?

5 [Bench conference begins]

6 MS. SPELLS: Just to let the Court know that we're objecting to that last  
7 statement. Not only is it hearsay but, you know, he has no personal knowledge of it.  
8 Moreover, this witness shouldn't be talking about whether or not someone was in  
9 custody. His answer as to why he deleted the photos was sufficient.

10 THE COURT: You can make a record but it's already said. Do you want me  
11 to tell them not to consider it, would that -- he said that somebody -- he was told  
12 someone was in custody.

13 MR. ROSE: And, Your Honor, just to inform for Your Honor's knowledge.  
14 The witness didn't show-up for this [indiscernible].

15 THE COURT: Who did the show-up? Him or Munoz?

16 MR. ROSE: Julian Munoz.

17 THE COURT: Okay.

18 MR. ROSE: They're trying to [indiscernible] not to get into that but she also  
19 said that, you know, has to show why it was he thought that things were  
20 [indiscernible] approach him, why he didn't get that information.

21 THE COURT: Okay. Well, let's just keep moving and just leave it alone.

22 MR. ROSE: Yes, Your Honor.

23 [Bench conference concludes]

24 BY MR. ROSE:

25 Q Now, while you're outside in front of the T.J. Maxx, did you have any

1 interactions with anybody else?

2 A Not -- well, I guess, briefly, yes.

3 Q And you said, briefly, was that with an older white gentleman?

4 A Yes.

5 Q Did you know that person at all?

6 A I did not.

7 Q Can you kind of describe how that interaction occurred?

8 A I was turning around to head back towards the store, the vehicle pulled  
9 up, the gentleman yelled out, give police my license plate --

10 MS. SPELLS: Objection, hearsay.

11 THE WITNESS: -- I'm following the suspect, something to that regard.

12 MS. SPELLS: Your Honor, there's an objection pending.

13 THE WITNESS: Sorry.

14 THE COURT: Okay. Don't repeat what was told. The objection is to you  
15 repeating what somebody else outside of court said to you, you had a conversation  
16 with somebody.

17 THE WITNESS: Okay.

18 THE COURT: Okay, go ahead.

19 MR. ROSE: I'll rephrase.

20 THE COURT: All right.

21 BY MR. ROSE:

22 Q Did you have a brief interaction with this person?

23 A Yes.

24 Q And did you tell this person what happened?

25 A Yeah -- I don't recall if I did or not.

1 Q Well, do you remember if either you or Julian somebody, even if you  
2 can't remember exactly who it was, told the individual what happened?

3 A I don't recall.

4 Q Okay. Now, where did that individual go?

5 A He followed the Defendant off the parking lot.

6 Q So, the Defendant was he -- you said he ran towards the U-Haul, did  
7 you ever see him get into the U-Haul?

8 A Yeah -- no, when I looked up he was already in the U-Haul.

9 Q And do you remember if he was in the driver's seat or the passenger  
10 seat?

11 A Driver's seat.

12 Q Okay. And where did the U-Haul go?

13 A At the time the U-Haul was facing the store, so it just backed out of the  
14 spot and eventually backed out and went out the west exit of the parking lot on  
15 Decatur.

16 Q And this other gentleman, was he in a car as well?

17 A Yes.

18 Q And where did that car go?

19 A It followed through the west exit off on to Decatur going north.

20 Q Okay. The same direction as the U-Haul?

21 A Yes.

22 MR. ROSE: Okay. I have no further questions at this point in time,  
23 Your Honor.

24 THE COURT: Cross.

25 ///

**CROSS-EXAMINATION BY MS. SPELLS**

BY MS. SPELLS:

Q Good morning, Mr. Bramble.

A Good morning.

Q Actually, good afternoon.

A Yes.

Q So you're in the loss prevention office with Mr. Munoz?

A Yes.

Q And are you also watching closed-circuit television?

A Not to the extent that he's watching it.

Q But you are aware that it's running?

A Yes.

Q Briefly looking at it?

A Yes.

Q Upon him exiting that room he asked you to take over?

A Yes.

Q And you do such?

A Yes.

Q So you are at that point familiar with the individual that he's looking for?

A Yes.

Q Or looking at.

Now, you're aware that you're here based upon a robbery charge, right?

A Yes, ma'am.

Q And when you were in the closed-circuit television room watching these video cameras, did you ever see any weapons?

1 A No, ma'am.

2 Q At some point you decide to exit that room?

3 A Uh-huh.

4 Q Yes?

5 A Yes, ma'am.

6 Q And is that after you see -- when is it that you decide to exit that room?

7 A When the Defendant exited the store is when I got up to leave the

8 room.

9 Q Okay. And so Mr. Munoz had left prior to that?

10 A Yes, ma'am.

11 Q Now, I know that this room is like secret location, kind of like the bat

12 cave. So I'm not asking you to give me the location of the room. What I am asking

13 you to do is to tell me from that room to the store based upon the pace that you

14 were walking -- were you walking?

15 A Yes.

16 Q Approximately how long did it take you to get to the front of the store?

17 A 20 seconds or so.

18 Q So are you walking at a brisk pace?

19 A Kind of. Not -- I don't -- kind of a lazy man's jog-walk type thing. I don't

20 know how to describe it. I wanted to be up there to assist my partner so I was kind

21 of moving but there were people, there's obstacles. I got stuck behind a door for a

22 second so.

23 Q Okay. So you're trying to move quickly, but based upon the hour of the

24 day, the busyness of the store you don't have a straight shot?

25 A Right.

1 Q But you're not kind of moseying along?  
2 A No.  
3 Q Tiptoeing?  
4 A No.  
5 Q So you run outside?  
6 A Uh-huh.  
7 Q Yes?  
8 A Yes.  
9 Q And do you see Mr. Munoz?  
10 A Yes.  
11 Q Where exactly do you see him at?  
12 A Within about ten feet of the front door.  
13 Q Okay.  
14 A Just off to the -- south of the door, just out to the side of it.  
15 Q So to the left?  
16 A Yeah. You walk out, make a left, he was within about ten feet of there.  
17 Q Okay. I'm actually going to show you that map again so that we can get  
18 a clear location.  
19 MS. SPELLS: May I publish, Your Honor?  
20 THE COURT: Yes.  
21 BY MS. SPELLS:  
22 Q Can you see that there?  
23 A Yes, I can.  
24 Q This is T.J. Maxx, where my pen is located?  
25 A Right.

1 Q So you walk out this door; right?

2 A Yes, ma'am.

3 Q Front door is right there?

4 A Yes.

5 Q And when you walk out, where do you see Mr. Munoz? Can you put a  
6 rectangle?

7 THE COURT: It's a touch screen so you can put your finger on the screen  
8 and then make a mark.

9 THE WITNESS: All right.

10 BY MS. SPELLS:

11 Q I think if you tap it, it goes away.

12 A All right.

13 Somewhere in that vicinity.

14 Q Somewhere in this vicinity?

15 A Yeah.

16 Q So just right outside the front door?

17 A Yeah, it's -- yeah, it's still underneath that overhang, right outside the  
18 front door there, yeah.

19 Q Okay. And do you see any interaction between Mr. Harvey and  
20 Mr. Munoz?

21 A No, ma'am, I don't.

22 Q And from that period do you see Mr. Harvey walk off?

23 A Yes.

24 Q Where does he walk off to?

25 A Am I showing you on the map or am I just talking --



1 Q Yes, let's do it a swirly.  
2 A All right. About that direction there.  
3 Q At the beginning of your swirly or the end of your swirly?  
4 A Kind of --  
5 Q Or the middle?  
6 A Kind of where it starts at. There's approximately, probably where he  
7 was at in that vicinity moving towards the end of the line there.  
8 Q Okay, got it.  
9 And where was his car parked at? Let's do a triangle for that.  
10 A Okay. Somewhere in one of those spots there.  
11 Q Okay. And the store that you have your semi-triangle --  
12 A It's pretty bad.  
13 Q -- what store is that?  
14 A It's the Dollar Store, next door.  
15 Q Dollar Store?  
16 A Yeah.  
17 Q And this store is the Ross where my pen is?  
18 A I believe so, yes.  
19 Q Okay. What's this store?  
20 A Vacant, nothing in there.  
21 Q Vacant?  
22 A Yeah.  
23 Q Was it vacant back in March 2016?  
24 A I think so. I think it's been vacant for a while actually.  
25 Q Is it vacant as of today to your knowledge?