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Respondent.

Docket 72829 Document 2018-41585

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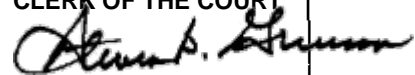
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,  
  
v.  
  
ALFRED C. HARVEY,  
  
Defendant,

CASE NO. C-16-314260-1  
  
DEPT. NO. VIII  
  
DATE: 04/16/18  
TIME: 8:00 AM

**MOTION FOR A NEW TRIAL PURSUANT TO NRS 176.515**  
**BASED ON GROUNDS OF NEWLY DISCOVERED EVIDENCE AND MOTION**  
**FOR EVIDENTIARY HEARING AND DECISION BY TRIAL JUDGE**

COMES NOW, Defendant, Alfred Harvey, by and through Deputy Public Defender, JAMIN SPELLS, and files this motion for a new trial pursuant to NRS 176.515(3) based on the grounds of newly discovered evidence. Alfred Harvey also asks for an evidentiary hearing and that this motion for a new trial be decided by the trial judge, Judge Bixler, because he is the only person who knows about the jury note



1 discussed in this motion. This motion is based on the points and authorities attached and  
2 on such argument as this court will entertain at a hearing on this motion.

3 DATED this 3 day of April, 2018.

4  
5 PHILIP J. KOHN  
6 CLARK COUNTY PUBLIC DEFENDER

7 By: /s/ Sharon G. Dickinson  
8 SHARON G. DICKINSON, #3710  
9 Chief Deputy Public Defender

10 PHILIP J. KOHN  
11 CLARK COUNTY PUBLIC DEFENDER

12 By: /s/ Jasmin D. Spells  
13 JASMIN D. SPELLS, #11635  
14 Chief Deputy Public Defender  
15  
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## POINTS AND AUTHORITIES

### I. FACTS

On November 18, 2016, the jury returned a guilty verdict against Alfred Harvey for the crime of robbery. Exhibit A. The Judgment of Conviction was filed on March 17, 2017. Exhibit B. Alfred filed a notice of appeal on April 10, 2017.

During the appellate process, on November 15, 2017, Appellate Counsel discovered a jury note within the court exhibits that was not discussed on the record. Exhibit F. The jury note said: "Can we have elaboration on the definition by means of force or violence or fear of injury. Michelle Moline," Exhibit C. At the top of the note, was a typed response: "The Court is not at liberty to supplement the evidence." Exhibit C.

Appellate Counsel contacted the trial attorneys and learned that neither had any knowledge of the note. Exhibits D and E. While in the process of investigating the note and the reasons why the trial attorneys never saw the jury note, another attorney substituted in on behalf of Alfred Harvey. Exhibit F. Thereafter, further investigation into the matter ceased.

On or about February 21, 2018, the Public Defender's Office was reassigned to represent Alfred Harvey when his prior counsel withdrew. Exhibit F. The lead trial attorney, Jasmine Spells was out of the office until March 26, 2018. Upon her return to the office, this motion was put together for court's consideration. Exhibit F.

## II.

**THIS COURT HAS JURISDICTION TO GRANT THIS MOTION FOR A NEW TRIAL PURSUANT TO NRS 176.515 BECAUSE THE MOTION IS FILED WITHIN THE TWO YEAR TIME LIMIT.**

NRS 176.515(3) allows this court to hear a motion for a new trial if the motion is based on newly discovered evidence and within two years after either the verdict or finding of guilt. Accordingly, this court has jurisdiction to decide this motion because it falls within the two year time limit.

Although Alfred Harvey's case is on appeal at this time, the Nevada Supreme Court holds that the district court has the authority to hear a motion for a new trial based on newly discovered evidence even though an appeal is pending in the Nevada Supreme Court. *Vest v. State*, 120 Nev. 669 (2004).

## III.

**A NEW TRIAL IS WARRANTED BASED ON NEWLY DISCOVERED EVIDENCE FOUND IN COURT RECORDS – JURY QUESTION.**

### **A. Granting a motion for a new trial.**

The test for the court granting a motion for a new trial based on newly discovered evidence directs the court to determine if the evidence was:

1. newly discovered
2. material to movants defense
3. such that it could not with reasonable diligence have been discovered and produced for the trial
4. not cumulative
5. such as to render a different result probable upon retrial
6. such that it does not attempt only to contradict a former witness or impeach or discredit him, unless the witness to be impeached is so important that a different

1 result must follow and  
2 7. that these facts be shown by the best evidence the case admits.

3 *McLemore v. State*, 577 P.2d 871 (1978); NRS 176.515(3).

4 **B. The note was newly discovered.**

5 As addressed above, on November 18, 2016, the jury returned a guilty verdict  
6 against Alfred Harvey for the crime of robbery. The jury's note to the trial court was  
7 found in the court exhibits in the District Court evidence vault on or about November 15,  
8 2017. Neither trial attorney as aware of the note prior to it being found on or about  
9 November 15, 2017. *Exhibits D and E.*

10 Alfred Harvey brought this motion for a new trial as quickly as possible. The  
11 motion for a new trial was not brought to the court's attention sooner because on  
12 November 15, 2017, Alfred hired another attorney who substituted in and took over  
13 Alfred Harvey's case.

14 The Public Defender's Office was reappointed as Alfred's attorney in February of  
15 2018. His current Appellate Attorney was reassigned his case on March 8, 2017. Alfred  
16 Harvey's trial attorney was out of the office until March 26, 2018. *Exhibit F.* Appellate  
17 Counsel needed to wait for Alfred's Trial Attorney to write an affidavit. Thus, this  
18 motion for a new trial is being brought in a timely manner.

19 **C. Jury notes discovered after the verdict are new evidence.**

20 Juror misconduct or court errors involving jury notes discovered after the jury  
21 verdict are within the definition of newly discovered evidence under NRS 176.515(3).  
22

1 In *Brioady v. State*, 396 P.3d 822, 824 (Nev. 2017), *reh'g denied* (Oct. 2, 2017),  
2 the Nevada Supreme Court found juror misconduct discovered more than 7 days after  
3 verdict was newly discovered evidence falling within the umbrella of a NRS 176.515(3)  
4 motion for a new trial. In *Brioady*, a juror failed to answer truthfully when asked if she  
5 had ever been a victim of a crime, hiding the fact she was a victim of childhood sexual  
6 abuse. Her response was important because the charges were lewdness with a minor. On  
7 appeal, the *Brioady* Court held the trial court abused its discretion by not granting a new  
8 trial because the juror would likely have been excused for cause if she had answered  
9 truthfully or the Defense would have removed her with a peremptory challenge.  
10  
11

12 A bailiff's improper ex parte contact with the jury after receiving a jury note may  
13 also be newly discovered evidence warranting a new trial. *Lamb v. State*, 127 Nev. 26,  
14 43-46 (2011). In *Lamb*, the trial judge left for the day, leaving the bailiff and another  
15 judge to handle the deliberating jury. When the jury sent a note, the bailiff did not inform  
16 anyone, taking it upon himself to respond by telling the jurors to read the jury  
17 instructions. The bailiff's actions were in direct violation of NRS 175.391 and NRS  
18 175.451. Defense learned of the bailiff's actions during the penalty hearing of the case  
19 and moved for a new trial. The trial court held an evidentiary hearing and denied the  
20 motion, finding the ex parte communication to be innocuous and not likely to impact the  
21 jury deliberations.  
22  
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24

25 In *Manning v. State*, 348 P.3d 1015 (Nev. 2015), the Nevada Supreme Court found  
26 constitutional error violating due process when a trial court failed to notify and seek input  
27  
28

1 from the parties after receiving a note from the jury that it was deadlocked. The *Manning*  
2 Court held:

3 [W]e believe that due process gives a defendant the right to be present  
4 when a judge communicates to the jury (whether directly or via his or her  
5 marshal or other staff). A defendant also has the right to have his or her  
6 attorney present to provide input in crafting the court's response to a jury's  
7 inquiry. Accordingly, we hold that the court violates a defendant's due  
8 process rights when it fails to notify and confer with the parties after  
9 receiving a note from the jury... *Id.* at 1019.

10 However, the *Manning* Court found the error harmless beyond a reasonable doubt  
11 because the trial court did not give the jury any legal instructions and merely excused  
12 them for the day, telling them to return the next day for further deliberations. The  
13 *Manning* Court found the trial court did not abuse its discretion in denying the motion for  
14 a new trial.

15 Based on the above, the jury note found in the District Court's Evidence Vault  
16 falls within the definition of newly discovered evidence under NRS 176.515(3) and Trial  
17 Counsel is allowed the opportunity to craft response in accordance with holding in  
18 *Manning*.

19  
20 **D. Material to movants defense.**

21 The jury note was material because the question focused on the crux of Alfred  
22 Harvey's defense.

23  
24 Defense Counsel argued to the jury in closing:

25 ...there was no fear, no force, or no violence. Kind of rewind, go back to  
26 the interaction between Mr. Munoz and Mr. Harvey, and we hear that Mr.  
27 Munoz asked Mr. Harvey for the wallets. He freely gave them back. He's  
28 not screaming at him. He's not pushing him. He's not throwing those

1 wallets at him. He just gave him the wallets back. Mr. Munoz testified  
2 there's no yelling, there's no body contact, there's no force or fear of  
3 violence in that interaction. He says at that point Mr. Harvey refuses to  
4 turn back to the store...at the end of the day, he's thief, not a violent  
5 robber...And I submit to you that here Mr. Harvey is not guilty of robbery  
6 with use of a deadly weapon but he's also not guilty of robbery because he  
7 didn't use force or violence here. He stole items and refused to come back  
8 into the store. Mr. Harvey is also not guilty of robbery.

9 Exhibit G at 50-52.

10 The jury note focused on the defense by asking the court to elaborate on the  
11 definition of the words "by means of force or violence or fear of injury" – the same  
12 argument Alfred Harvey's attorney made in closing. Exhibit C. Accordingly, the jury  
13 note was material and important to Alfred Harvey's defense because Defense Counsel  
14 argued Alfred did not have a knife and did not use force, violence or fear of injury.

15 **E. Could not be found with reasonable diligence.**

16 Trial court's decision to not inform the trial attorneys about the note is not a  
17 common practice in the courts. Because of this uncommon occurrence along with Jury  
18 Instruction 23 that told the jury the court would supplement the law if they were  
19 confused, the trial attorneys had no reason to search for a jury note.

20 The jury note was found with reasonable diligence after verdict. Court exhibits  
21 are placed in the District Court evidence vault after trial. Trial Counsel does not have  
22 direct access to documents placed in the evidence in the vault. Trial Counsel had no  
23 reason to know trial court communicated with jury during deliberations.  
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1 **F. Not cumulative**

2 The trial court not discussing the jury note with the trial attorneys is not  
3 cumulative of other issues at trial.

4 **G. Would have rendered a different result probable.**

5 The Legislature enacted NRS 175.451 to allow the jury to receive additional  
6 information on the law if confused. Accordingly, in *Gonzales v. State*, 366 P.3d 680, 682  
7 (Nev. 2015), the Nevada Supreme Court held: [W]here a jury's question during  
8 deliberations suggests confusion or lack of understanding of a significant element of the  
9 applicable law, the court has a duty to give additional instructions on the law to  
10 adequately clarify the jury's doubt or confusion." However, no error occurs if the  
11 Defense does not provide the court with proffered instructions to clarify the jury's doubt  
12 or confusion. *Jeffries v. State*, 397 P.3d 21, 28 (Nev. 2017), *reh'g denied* (Sept. 29, 2017)

13 Here, as addressed below, a different result would have occurred if Defense  
14 Counsel had been allowed to submit input on the jury note as allowed by Jury Instruction  
15 23, NRS 175.451, *Gonzales*, and *Jeffries*.

16 Initially, Defense Counsel would have objected to the response the trial gave as  
17 being nonresponsive to the question and confusing. *Exhibit E*. The jury clearly asked for  
18 clarification of the law and the court's response indicated it would not supplement the  
19 evidence.

20 Defense Counsel would have asked the trial court give an answer because Jury  
21 Instruction 23 told the jury the court would respond to a question on the law. Jury  
22 Instruction 23 directed the jury as follows:  
23  
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1 If, during your deliberation, you should desire to be further informed on  
2 any point of the law...you must reduce your request to writing signed by  
3 the foreperson. The officer will then return you to court where the  
4 information sought will be given to you in the presence of, and after notice  
5 to, the district attorney and the Defendant and his counsel. Exhibit H.

6 NRS 175.451 required the trial court to discuss the note with the parties.

7 Had trial counsel been advised by the court of the jury note, she would have asked  
8 the court to direct the jury to review jury instructions 6, 11 and 12. Exhibit E and H.  
9 Jury instructions 6 and 11 told the jury that force or fear "must be used to either: (1)  
10 obtain or retain possession of taken property, (2) prevent or overcome resistance to the  
11 taking of property, or (3) to facilitate escape with the property." Jury instruction 12  
12 further directed the jury that in order for there to be a robbery, "the taking must be  
13 accomplished by force or intimidation." By pointing to these instructions, the trial court  
14 would help the jury focus on examples of force and fear and how/when force or fear was  
15 used if at all.

16 Trial Counsel would also have asked the court to supplement the jury instructions.  
17 Counsel would have requested the trial court reconsider some of the defense proposed  
18 instructions that were not used at trial. Exhibit I. The defense proposed instruction on  
19 page 7 reminds the jury that the State has the burden of proof and again details the three  
20 ways in which force or fear must be used for a robbery to be committed. The proposed  
21 instruction on page 10 is a lesser instruction which informs the jury that if they are not  
22 convinced beyond a reasonable doubt that a robbery occurred, then they may find the  
23 defendant guilty of the lesser included offense of petit larceny. Exhibit E.  
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1 Trial Counsel would have also requested the court give the jury the *Crane* jury  
2 instruction, as submitted in the Defendant's Proposed Jury Instructions and Verdict Form,  
3 which instructs the jury how to proceed when there are two reasonable interpretations,  
4 one pointing to guilt and one not. *Crane v. State* 88 Nev. 684, 504 P.2d 12 (1972).  
5 Exhibits E and J. Given the jury's question, its arguable the jury found two reasonable  
6 interpretations of the facts of the case.  
7

8 Additionally, Trial Counsel would have requested that the Court give the legal  
9 definitions of force, fear and violence as defined in Black's Law Dictionary, as these  
10 terms are legal terms, which are not defined by Nevada statutes. Exhibit E. Specifically  
11 these definitions are:  
12

- 13 • *Actual force*- force consisting in physical act, esp. a violent act  
14 directed against a victim.
- 15 • *Fear*- the strong, negative feeling that a person experiences when  
16 anticipating danger or harm.
- 17 • *Violence*- the use of physical force, usu. Accompanied by fury,  
18 vehemence, or outrage; especially physical force unlawfully  
19 exercised with the intent to harm.

20 Black's Law Dictionary (10<sup>th</sup> ed. 2014). These definitions directly answer the jury's  
21 question and Jury instruction 23 allowed the court to inform the jury of these definitions.  
22

23 Based on the above, if Defense Counsel had knowledge of the jury note and had  
24 been allowed to submit requests on how the court should respond, it is probable the jury  
25 would have found him not guilty. Further clarification on these words on retrial would  
26 render a different result probable.  
27  
28

1 **H. Does not contradict a witness or involve facts shown by the best evidence.**

2 The jury not does not contradict or impeach a witness and does not involve facts  
3 shown by the best evidence.

4 **CONCLUSION**

5  
6 In view of the above, Alfred Harvey asks this court to hold an evidentiary hearing  
7 and/or grant his motion for a new trial.

8  
9 DATED this 3 day of April, 2018.

10 PHILIP J. KOHN  
11 CLARK COUNTY PUBLIC DEFENDER

12 By: /s/ Sharon G. Dickinson  
13 SHARON G. DICKINSON, #3710  
14 Chief Deputy Public Defender

15 PHILIP J. KOHN  
16 CLARK COUNTY PUBLIC DEFENDER

17 By: /s/ Jasmin D. Spells  
18 JASMIN D. SPELLS, #11635  
19 Chief Deputy Public Defender  
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YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION FOR NEW  
L PURSUANT TO NRS 176.515(3) BASED ON THE GROUNDS OF NEWLY  
COVERED EVIDENCE will be heard on 16 day of April, 2018, at  
AM            in Department No. VIII District Court.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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By: /s/ Carrie M. Connolly  
An employee of the  
Clark County Public Defender's Office

# EXHIBIT A

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ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 18 2016

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY,   
PHYLLIS I. BY, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

Case No: C-16-314260-1

ALFRED C. HARVEY,

Defendant,

Dept No: VIII

VERDICT

We, the jury in the above entitled case, find the Defendant ALFRED C. HARVEY, as follows:

*(please check the appropriate box, select only one)*

☐ Not Guilty

☒ Guilty of Robbery

☐ Guilty of Robbery with use of a Deadly Weapon

DATED this 18 day of November, 2016

  
FOREPERSON

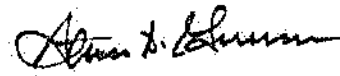
C-16-314260-1  
VER  
Verdict  
4600417



1037

## EXHIBIT B



  
CLERK OF THE COURT

JOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C314260-1

-VS-

DEPT. NO. VIII

ALFRED C. HARVEY  
#7013098

Defendant.

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 8<sup>th</sup> day of March, 2017, the Defendant was present in court for sentencing with counsel JASMIN SPELLS, Deputy Public Defender, and good cause appearing,

<input type="checkbox"/> No Plea Entered (for trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Jury Trial (during trial)	<input type="checkbox"/> Jury Trial (during trial)
<input type="checkbox"/> Jury Trial (during trial)	<input type="checkbox"/> Jury Trial (during trial)
<input checked="" type="checkbox"/> Jury Trial (during trial)	<input type="checkbox"/> Jury Trial with Sent. (during trial)
<input type="checkbox"/> Jury Trial (during trial)	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Jury Trial (during trial)	

*spg*

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in  
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00  
3 Indigent Defense Civil Assessment Fee and \$150.00 DNA Analysis Fee including  
4 testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is  
5 SENTENCED as follows: a MAXIMUM of ONE HUNDRED FORTY-FOUR (144)  
6 MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS in the  
7 Nevada Department of Corrections (NDC), with THREE HUNDRED FORTY-FOUR  
8 (344) DAYS credit for time served.

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10  
11 Ms. Spells advised that the November 30, 2016, Presentence Investigation (PSI)  
12 report indicates on page 3 that the Deft. is a confirmed active member of the "Blood,  
13 456 Pomona Island Piru" street gang; however, Defendant has denied any gang  
14 membership; colloquy. COURT ORDERED that the following shall be added to the  
15 Judgment of Conviction and noted for the PSI.

16 **CORRECTIONS TO THE PRESENTENCE INVESTIGATION (PSI) REPORT:**  
17 the Defendant, at this point, disavows any gang affiliation.

18 DATED this 17 day of March, 2017

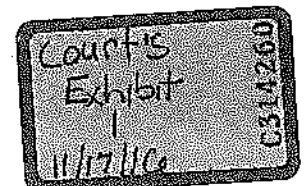
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22 DOUGLAS E. SMITH  
23 DISTRICT COURT JUDGE  
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## EXHIBIT C

The Court is not at liberty to supplement the evidence.

Can we have  
elaboration on the  
definition, by  
means of force or  
violence or fear of  
injury.

Michelle Moline



# EXHIBIT D

AFFIDAVIT

KELLEY JONES makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender who assisted in representing the Defendant in the instant matter.

2. The criminal prosecution of *State of Nevada v. Alfred C. Harvey*, case #C-16-314260-1, was in the Eighth Judicial District Court, Clark County, Nevada, which is a court of record in this State. The Defendant, Alfred C. Harvey, was accused and charged with the offense of robbery with a deadly weapon.

3. I was informed a jury question was located in the post-conviction file. The juror's question asked for elaboration of "by means of force or fear of injury."

4. To my knowledge, this question was never presented to the defense.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

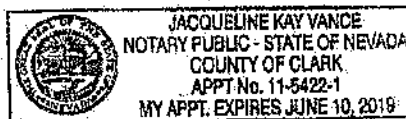
EXECUTED this 5<sup>th</sup> day of December, 2017.

COUNTY OF CLARK  
STATE OF NEVADA

Kelley R. Jones  
KELLEY R. JONES

SUBSCRIBED and SWORN to before me  
this 5<sup>th</sup> day of December, 2017.

Jacqueline Kay Vance  
NOTARY PUBLIC



# EXHIBIT E

## AFFIDAVIT

JASMIN D. SPELLS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Chief Deputy Public Defender assigned to handle the case of *State of Nevada v. Alfred C. Harvey*. I was the lead attorney for Mr. Harvey's trial.

2. The criminal prosecution of *State of Nevada v. Alfred C. Harvey*, case #C-16-314260-1, was in the Eighth Judicial District Court, Clark County, Nevada, which is a court of record in this State. The Defendant, Alfred C. Harvey, was accused and charged with the offense of robbery with a deadly weapon. The jury found Mr. Harvey guilty of robbery.

3. After filing a notice of appeal, Appellate counsel informed me that the jury foreman submitted a question during deliberations, asking for an elaboration on the definition of "by means of force or violence or fear of injury" during jury deliberations. Exhibit C.

4. I was not informed of this question during the trial. Appellate counsel notified me of the question after verdict and sentencing.

5. Upon information and belief, Appellate counsel discovered the jury question in the district court evidence vault, labelled as a court exhibit.

6. Counsel believes that this question is very significant because the question goes to the very crux of the defense: that the defendant did not have a weapon and that the State did not prove robbery beyond a reasonable doubt because there was no force, violence or fear of injury.

7. Had I been aware of this question during jury deliberations, I would have done a number of things. I would have objected to the court responding that the evidence could not be supplemented. See Exhibit C, because the jury question did not ask for a playback/readback or for additional evidence. The jury question asked for clarification on a point of law.

8. Specifically, I would have requested that the Court direct the jury to jury instructions 6, 11 and 12. Exhibit H. Jury instructions 6 and 11 instruct the jury that force or fear "must be used to either: (1) obtain or retain possession of taken property, (2) prevent or overcome resistance to the taking of property; or (3) to facilitate escape with the property." Jury instruction 12 further instructs the jury that in order for there to be a robbery, "the taking must be



1 accomplished by force or intimidation." These instructions are important because they direct the  
2 jury to focus on examples of force and fear and how/when force or fear was used if at all.

3 9. Furthermore, in instruction 23, Exhibit H, I also would have also requested  
4 the Court supplement the jury instruction packet with the jury instructions contained on pages 7  
5 and 10 of the *Proposed Jury Instructions Not Used at Trial*, Exhibit I. The instruction on page 7  
6 reminds the jury that the State has the burden of proof and again details the three ways in which  
7 force or fear must be used for a robbery to be committed. The instruction on page 10 is a lesser  
8 instruction which informs the jury that if they are not convinced beyond a reasonable doubt that a  
9 robbery occurred, then they may find the defendant guilty of the lesser included offense of petit  
10 larceny.

11 10. I would have also request that the court give the jury the *Crane* jury  
12 instruction Exhibit J, which instructs the jury how to proceed when there are two reasonable  
13 interpretations, one pointing to guilt and not. *Crane v. State* 88 Nev. 684, 504 P.2d 12 (1972).  
14 Given the jury's question, its arguable the jury found two reasonable interpretations of the facts of  
15 the case.

16 11. Additionally, I would have requested that the Court give the legal  
17 definitions of force, fear and violence as defined in Black's Law Dictionary, as these terms are  
18 legal terms, which are to counsel's knowledge are not defined by Nevada statutes. Specifically  
19 these definitions are:

20 *Actual force*- force consisting in physical act, esp. a violent act directed against a  
21 victim.

22 *Fear*- the strong, negative feeling that a person experiences when anticipating  
23 danger or harm.

24 *Violence*- the use of physical force, usu. Accompanied by fury, vehemence, or  
25 outrage; especially physical force unlawfully exercised with the intent to harm.


26 Black's Law Dictionary (10<sup>th</sup> ed. 2014). These definitions directly answer the jury's question. Jury  
27 instruction 23, which the court gave informed the jury that should they have a question, the  
28 information sought would be given.

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12. I was informed of the jury question on or about late November, 2018. Counsel was out of the office from early December 2017 to the end of March 2018. I reviewed the instant case and prepared this affidavit upon my return.

13. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

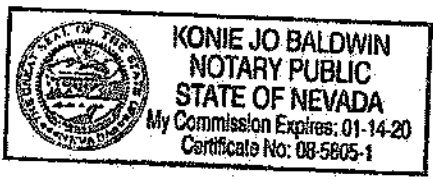
EXECUTED this 3<sup>rd</sup> day of April, 2018.

  
JASMIN D. SPELLS

County of Clark  
State of Nevada

SUBSCRIBED and SWORN to before me  
this 3<sup>rd</sup> day of April, 2018.

  
NOTARY PUBLIC



# EXHIBIT F

### DECLARATION OF SHARON G. DICKINSON

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. Our office filed the Notice of Appeal in this matter on April 10, 2017.

3. On November 15, 2017, while working on Alfred Harvey's appeal of this case, I found Court Exhibit 1 which is a note from the jury asking clarification of the definition of "by means of force or violence or fear of injury." Exhibit C. I did not find this document discussed in the trial transcripts.

4. On November 15, 2017, I contacted the trial attorney, Ms. Spells, and she told me she did not know about the jury note. Subsequently, her co-counsel, Ms. Jones agreed that she had never seen the jury note.

5. On November 15, 2017, another attorney filed a substitution of attorney motion with the Nevada Supreme Court; and, our office was removed from Alfred Harvey's appeal on December 4, 2017. On January 2, 2018, the new attorney filed a motion to withdraw. The Nevada Supreme Court granted his motion on January 25, 2018, and remanded the case to district court for appointment of counsel.

6. On or about February 14, 2018, the Clark County Public Defender's Office was reappointed. On March 5, 2018, I was reassigned to handle Albert Harvey's appeal.

7. Because Ms. Spells was out of the office until March 26, 2018, I was unable to meet with her before that date. Ms. Spells met with me on March 30, 2018, and subsequently prepared an affidavit for this motion.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 2<sup>nd</sup> April, 2018.

By: /s/ Sharon G. Dickinson  
SHARON G. DICKINSON

# EXHIBIT G

1 deliberate, we ordered you guys some lunch about an hour ago. So you can have  
2 some food.

3 **CLOSING ARGUMENT BY THE DEFENSE**

4 MS. SPELLS: Good afternoon, ladies and gentlemen of the jury. I want to  
5 thank you for being attentive throughout this time, for bearing with us, and just  
6 listening to all of the evidence. Now, is the time for our closing argument, after I  
7 make argument, the State will have another opportunity to speak with you. During  
8 that time period we just want to remind you that what you decide is the fact -- are the  
9 facts in evidence in the case, that's your decisions.

10 So perception is not reality, everybody has different perception and our  
11 perception is our point of view. Everyone has a point of view based on what their  
12 story is, the way it happened according to you. Sometimes that is based on just  
13 who you are as a person. Perception and memory go hand in hand. The way you  
14 perceive something is going to be the way that you tell the story and that is going to  
15 also come into play with your memory. I want you guys to remember when you are  
16 thinking about all of the different witnesses and what they have said to you and all of  
17 the different evidence that came from the stand, that memory is not a tape recorder,  
18 you don't get to press pause, come back and resume like a movie. It's just not the  
19 way it works. But our memory is definitely influenced by perception.

20 I don't know if you guys recall this or if you saw it or if you are a big avid  
21 Facebook users or what have you, but this is a just an illustration as perception.  
22 This is a picture of the exact same dress. Some people saw this dress as being  
23 gold and white, other people saw this dress as being blue and black. Again,  
24 perception and what you see, what occurs, is going to be based on the person that  
25 you are and then when you get to tell your side of the story what you saw, what you

1 heard, that's going to be based upon your perception.

2           Let's talk about some of the things that affect your memory. Obviously,  
3 we know this, this is just common experience, some of the things that would affect  
4 your memory are stress, adrenaline, your emotions. Those are some of the things  
5 that we have in this case, with the interactions of the different individuals. Now, you  
6 heard from Julian Munoz, who got on the stand, and he told you that he's been  
7 employed in loss prevention for approximately five years. But that each time he has  
8 interaction with someone he still feels nervous. He still has some of that stress. So  
9 that's going to be one of the factors that affect his memory, affect his perception of  
10 what's going on.

11           Now, in my opinion this is a classic movie, it may not be a classic movie  
12 for everyone, but I want to use this just as an illustration as perception and memory  
13 and how things come and tie together. So you're looking at the case of Forrest  
14 Gump, you have a lot of different players, and it's very important to note where does  
15 the story start, who are the players, and what their story is. So, for instance, for  
16 Forrest's mother, the story to her may be about Forrest breaking out of his braces  
17 and learning how to run and that's a very significant story. It talks about tenacity and  
18 things that are going on there. For Jenny, however, the story is completely different.  
19 For her, her story, her perception, her memory is going to be about a childhood  
20 relationship, being in love with someone and that love growing into adulthood. Now,  
21 if you take Lieutenant Dan, his story is about friendship, about actions that  
22 happened in the war. And if these individuals were to come into court and to testify  
23 about things that happened, they're going to recount their story in a different way.  
24 Some of them may be able to tell the story in a very linear fashion. Forrest's mom  
25 being able to talk about tenacity and she can tell you the beginning to the end.



1 Other people may be coming in at the middle, they don't necessarily see the entire  
2 incident so they can't tell you a very linear story, their story starts at a different time,  
3 ends at a different time. Jenny may be able to give you her highlights. Her favorite  
4 experiences. She may not tell you the full story. And Lieutenant Dan, well, if he  
5 was telling a story, maybe he would use flashback, maybe he would tell you what  
6 was the most important thing in flashback to other things that he found important.

7           Each witness in this case their story starts at a different time period,  
8 they have their own point of view, their memory is going to be different as well.  
9 We've talked about this, factors that are at play in our case, the adrenaline, common  
10 sense, stress, and also training because we had a number of individuals who came  
11 and talked to you about some training that they had, how they write reports, how  
12 they are quote/unquote experts in a certain area, they at least have a lot of  
13 experience, they have accustom of doing things and they're been taught and trained  
14 that that's the best way to do it, and they -- there are reasons that they conduct  
15 certain actions.

16           So let's talk about Julian Munoz. He is kind of the lead of this story. He  
17 gives you a story about his employment with T.J. Maxx and he came and he told  
18 you that he would consider T.J. Maxx a clothing store. He was an individual who in  
19 telling you his story he wasn't very detail oriented. He said maybe two wallets,  
20 maybe three wallets, at one point, during questioning on the stand, he indicated that  
21 possibly there were up to four wallets that Mr. Harvey either concealed or stolen or  
22 took. But when we talked about that he brought up his report and kind of went back  
23 and forth.

24           He does not speak to Mr. Bramble, this is his co-worker, and he says  
25 that he left outside of the store and Mr. Bramble was doing video surveillance and

1 mentioned some, like through a telephone call or what have you, that there were  
2 additional items concealed, possibly taken. But before he goes to write his report,  
3 which he indicated that he would look at, it would go to his upper management in the  
4 store, it could possibly be used at a trial in a case, other people would be looking at  
5 it. He didn't take the time to go speak to Mr. Bramble about other things that had  
6 occurred, to finish documenting, and to be as detailed oriented as possible in his  
7 reporting.

8           He talks to you about his boundaries and that's important because  
9 that's his company policy and that ties into a person's motives and a person's  
10 recollection of what they did, what they said, how they reacted.

11           Now, let's talk about the knife. And for Mr. Munoz it's unclear whether  
12 we get the entire story for him. I would submit that to you. He came and he testified  
13 and he said that he stopped short and the State, just in their closing argument,  
14 indicated, that, you know, he retreated. He didn't continue to follow him. But we  
15 heard from Mr. Appel that there were -- there was more than one person taking  
16 pictures. You also heard from Mr. Munoz that he told the 9-1-1 operator, and you  
17 guys heard the 9-1-1 phone call for yourself, information about the individual and  
18 about the vehicle.

19           And I submit to you that you're not going to be able to see the vehicle  
20 parked and the license plate of the vehicle parked in front of a Dollar Tree store, if  
21 you're retreating back to the T.J. Maxx. And we showed you the map on a number  
22 of different occasions and just the difference between those two stores would have  
23 required some further advancement.

24           In looking at and weighing his testimony, I'd ask you to consider his  
25 perception and his memory, the fact that he was anxious, he told you that on the

1 stand that he was nervous, whether or not he was compliant with his company  
2 policy when he indicated that he was not supposed to pursue someone outside of  
3 those boundaries, the width of T.J. Maxx and to the sidewalk, and his comments  
4 about time and waiting. He doesn't necessarily like to wait for the police. It takes a  
5 couple of hours unless it's something significant, something significant here like the  
6 report of a knife being present.

7 Now, when considering the testimony of Mr. Bramble we get his story  
8 and it's important to note that he didn't see anything. I mean, we've talked a lot  
9 about his actions and some of the other people's actions, but what it boils down to  
10 what you are all here to decide is whether or not Mr. Alfred Harvey is guilty of  
11 robbery with use of a deadly weapon. Mr. Bramble didn't see anything. With regard  
12 to that interaction he wasn't able to tell you that he saw a weapon. In fact, he didn't  
13 see a weapon. He indicated that his role was very limited. He didn't share his  
14 knowledge or the fact that he was taking photographs with officers. He didn't show  
15 those photographs to Mr. Munoz.

16 He said Julian looked shocked. He didn't tell you that Julian looked  
17 scared or frightful or in fear for his life. He said Julian looked shocked, like maybe  
18 something had occurred that wasn't part of the ordinary. Now, I would submit to you  
19 that there are a number of different reasons that a person looks shocked and we  
20 talked about this. We talked about this when we were discussing circumstantial  
21 evidence during our jury selection where the State submitted to you that if you were  
22 in your home late at night, you'd gone to the bed, and before you went to bed there  
23 was no water on the ground, you come outside and you see water on the ground,  
24 would you conclude that it has been raining? And we talked about, okay, that may  
25 be one conclusion, but there are a number of different conclusions that you could

1 come to. In fact, one of you indicated that maybe there was a movie set there and  
2 they were filming a portion of the movie with rain and so they had water there to  
3 make it appear that it was raining but it had not actually rained.

4           So here there are a number of different things. What we do know is  
5 that Mr. Munoz asked Mr. Harvey to come back into the store with him and he  
6 refused, okay, that's something that's a little different than the ordinary when he told  
7 you normally, just come back, I fill out some paperwork, that's it.

8           With regard to Mr. Bramble's perception, his memory, and we've  
9 discussed that he wasn't there. He didn't have much investment in this interaction,  
10 in this case, because he works for organized retail crime. So this wasn't something  
11 that was really something he did on his day-to-day job. He was trying to assist  
12 Mr. Munoz to a certain degree but didn't have much investment. He told you that it's  
13 not part of his job or company policy, his job description to apprehend someone, so  
14 it's not something that he was going to be doing here. His actions weren't going to  
15 be with regard to that. And that's important to note as well because you have the  
16 interaction between Mr. Munoz and Mr. Bramble and Mr. Bramble coming out to  
17 help Mr. Munoz and what are Mr. Munoz' thoughts and perceptions about his  
18 actions and how Mr. Bramble may view those actions.

19           We heard from Mr. Appel. Now, I would agree with the State that  
20 Mr. Appel indicated that he was happy to be a part of it. He was the Good  
21 Samaritan. He wanted to be helpful. He was coming to the aid and to the rescue  
22 and he follows the van. Now, when we're thinking about his perception and his  
23 memory, I submit to you, listen to the 9-1-1 phone call, what we get from Mr. Appel  
24 is that although he's trying to be helpful, he gives a lot of information that he really  
25 has no ability to give. He says, oh, someone just pulled a knife out on these people.

1 He wasn't there. He didn't see it. He's in the parking lot in his vehicle. We don't  
2 know where the knife is. Well, that's true he doesn't know where the knife is. But  
3 the reality of the situation is that his story starts at the end of the story, that's  
4 important as to whether or not a robbery with use of a deadly weapon occurred  
5 because he's coming in after that. He didn't see any of the interactions with  
6 Mr. Munoz and Mr. Harvey.

7           And there's a very significant difference of hearing something versus  
8 seeing something. You hear something from a person, you tell another person, they  
9 hear it, and by the time they retell the story there's going to be some things that may  
10 be a little bit different, may sound a little bit different, somethings may be  
11 emphasized, somethings may be de-emphasized. There is a huge difference when  
12 you are viewing something firsthand or where you're hearing something from  
13 another individual. And the perception of Mr. Appel is that he knew everything about  
14 the case, he was able to give all the information that he was asked of.

15           We heard from Officer Nelson and Officer Humpherys, their story is that  
16 they're trained officers, they've been working for the Metropolitan Police Department  
17 for quite some time, they did a thorough investigation here, they told you that there  
18 was also air traffic patrol involved, and they told you that, you know, you didn't hear  
19 any stories of any issues. They conducted searches. Officers came and tell you  
20 that Mr. Harvey consented to them going into his pockets, to doing the search, and  
21 all of that. He was cooperative with that search. And upon finishing the search, not  
22 only of Mr. Harvey, of his person, but also of this vehicle, they didn't find any knife.  
23 What they did find was T.J. Maxx property. Their perception and their memory, they  
24 indicated that they were concerned about officer safety, safety of others because  
25 there had been a phone call out that maybe a knife was involved. So they wanted to

1 make sure that other people weren't going to be harmed.

2 Now, we heard from Officer Humpherys and he told you clear as day,  
3 without any type of hesitation, that sometimes witnesses are mistaken in what they  
4 speak, they don't always get it right. He told you that. He said here there was not a  
5 knife found.

6 So we briefly heard from Mrs. Harvey. In considering her testimony,  
7 you can consider the fact that she is married to Alfred Harvey. She was the  
8 passenger in this vehicle and she told you that she was nervous. She was nervous  
9 then, on that date, it was an unfamiliar situation for her, and she was nervous  
10 coming here to testify to you guys. She indicates that she was the passenger in the  
11 car, that there were two individuals taking photos. She saw two of them walk right  
12 up to that vehicle and take photos with their cell phones, and that's not the same  
13 story that we got from Mr. Munoz because he says he never took any photographs.  
14 He didn't go up to that U-Haul vehicle.

15 She told you that Mr. Harvey is right-handed. We're going to discuss  
16 that a little bit. She told you there was never a knife and that Mr. Harvey doesn't  
17 generally carry a knife. Again, there was no knife found. She told you also that  
18 when they were going to that school her daughter needed to use the restroom.  
19 They were stopping at the school, this is not the situation where the cops are pulling  
20 the individual over and stopped them at that school. They stopped at that school  
21 and the cops then met them there.

22 Now, I submit to you, ladies and gentlemen of the jury, Mr. Harvey is  
23 not guilty of robbery with use of a deadly weapon. The State -- it's kind of like  
24 spaghetti, they're trying to throw a whole bunch of stuff at you guys to make some  
25 things stick. We had a lot of different information that came back that really is just a

1 distraction as to what this case is about. There was a lot of different indications  
2 about kids being present, where they were, what they were doing, different  
3 merchandise in the car, driving, how an individual was driving, how Mr. Harvey was  
4 driving, they questioned both Mr. Appel as well as Mrs. Harvey with about that, and  
5 we spent a lot of time about the path taken to get to this school, what happened at  
6 the school, what side people were at the school, nothing but distractions. What  
7 does that have to do with the robbery with use of a deadly weapon?

8           So, let's look at the Information, you guys have that in your packet,  
9 that's instruction number three, and it tells that you that an Information is but a  
10 formal method of accusing a person of a crime. So this is what the State has  
11 charged Mr. Harvey with and they lay it out for you. And they say that -- we're not  
12 going to read it through its entirety, we're going to skip down to line 13, it says,  
13 Alfred C. Harvey did willfully, unlawfully, and feloniously take personal property,  
14 to-wit: miscellaneous clothing items, from the person of Julian Munoz, or in his  
15 presence, by means of force or violence, or fear of injury to, and without the consent  
16 and against the will of Julian Munoz, with the use of a deadly weapon, to-wit: a  
17 knife. They go on to say, Defendant using force or fear to obtain or retain  
18 possession of the property, to prevent or overcome resistance to the taking of the  
19 property, and/or to facilitate escape. That's what they've charged Mr. Harvey with,  
20 that's what's important in this case.

21           So, we know that there's absolutely no miscellaneous clothing items. It  
22 can characterize T.J. Maxx as being a clothing store all they want to, the items in  
23 this case have nothing to do with clothing.

24           We know that there's no knife, there's no weapon ever found. I submit  
25 to you there was no fear, there's no violence. What really occurred here is that

1 Alfred Harvey stole some items but theft is not robbery.

2 Mr. Munoz on the stand said T.J. Maxx is a clothing store. When I went  
3 back and said, well, don't they sell water and food and accessories and all these  
4 other items. He said, oh, yes, it's a department store. I agree with you.

5 The one piece of clothing item that was kind of thrown out there was  
6 this blue shirt. So we see Mr. Harvey in the store, he's wearing, what I submit to  
7 you is two different blue shirts, one light, one dark blue, very similar to the blue shirt  
8 that was shown to you guys later as a piece of evidence. These are not clothing  
9 items, these are the items that were taken, wallets, some type of hand or face  
10 cream, and perfume.

11 So let's go on to this knife. Absolutely no witness, outside of  
12 Mr. Munoz, testifies that there was a knife here involved. Now, let's think about this,  
13 Mr. Munoz came on the stand and he told you that he was standing on Mr. Harvey's  
14 right-hand side. He told you that Mr. Harvey reached into his left pocket with his  
15 left-hand and pulled out the knife and held it above his head with the left-hand. We  
16 know from the video surveillance, as well as Mr. Munoz' testimony, that what was in  
17 the left pocket was the face cream or the hand cream, the cream that had been  
18 taken from the store. We also know that there are wallets tucked into this left-hand  
19 side. This is the surveillance video and the photographs that you were shown  
20 yesterday with regard when the State was stating that the items were concealed, the  
21 wallets were concealed in the jacket. And unfortunately we didn't get to see that  
22 jacket, that blue shirt thing. We don't know necessarily what does it look like? Are  
23 we dealing with inside pockets here? Are we dealing with him concealing things  
24 under the arm like this, into the arm of the shirt, just underneath here? What are we  
25 dealing with? We don't know. But it is significant because the items are going into



1 the left-hand side.

2 I want to talk to you guys about a timeline here, and you guys have the  
3 9-1-1 phone call, you can listen to the call again, it gives you the date and the time  
4 at the beginning of the phone call. First call comes in at 16:34, that would be 4:34  
5 p.m., that call is by Mr. Julian Munoz. At 16:38 we have Mr. Appel calling and he is  
6 informing the 9-1-1 operators he's following the guys, already in motion, following  
7 these individuals. And then just before three minutes into that phone call, you guys  
8 heard it, you listened to it, you can check my timeline if you like, he says, Appel  
9 says, the suspects are in custody. So we're talking about a total of approximately  
10 seven to eight minutes.

11 From all the testimony that we've heard we know that Mr. Munoz goes  
12 outside, he's talking to Mr. Harvey. Mr. Bramble told you that within approximately  
13 30 seconds he's outside. He said he had to get through some people, he arrived  
14 outside approximately 30 seconds later, and saw both Mr. Harvey and Mr. Munoz  
15 but he doesn't see a knife.

16 We know that at that point Mr. Bramble and Mr. Munoz are going  
17 towards the vehicles. We know that because Mr. Munoz is calling in the 9-1-1  
18 phone call.

19 MR. SCHWARTZ: Your Honor, I hate to interrupt. Could we please  
20 approach?

21 THE COURT: Sure.

22 [Bench conference begins]

23 MR. SCHWARTZ: Sorry, I didn't want to interrupt. I just have a concern that  
24 with the redacted version of the 9-1-1 call it might have a difference because the  
25 CAD doesn't seem to indicate the three minutes from when Errol calls the

1 Defendant's in custody. So if I could just make that clear in my closing, I mean,  
2 rebuttal. I don't know how much more we're going into it.

3 THE COURT: I don't see any problem with that. Okay. If you want me to, I  
4 can say there might be a slight discrepancy because I reviewed -- the Court had  
5 redacted irrelevant material. So if there's a discrepancy, it's understandable. Do  
6 you think that's going to be a big issue point?

7 MR. SCHWARTZ: If you can just move on at this point from this argument,  
8 we could. It's not a big deal.

9 THE COURT: Well, because if there is going to be a discrepancy because of  
10 the timeline because of the redaction then don't emphasize the discrepancy.

11 MS. SPELLS: I'll just move on, I guess.

12 THE COURT: Okay.

13 MS. SPELLS: At least it would be appropriate for us to notate the redaction.  
14 And looking at the CAD what is the difference, a minute?

15 THE COURT: Then avoid the issue but just don't --

16 MS. SPELLS: I'll move on.

17 THE COURT: -- don't bring up there's a discrepancy.

18 MR. SCHWARTZ: Okay. Thank you.

19 MS. SPELLS: All right. Thank you.

20 [Bench conference concludes]

21 MS. SPELLS: So let's talk about what we know, okay. We know that  
22 Mr. Bramble tells you he's outside within approximately 30 seconds, from there  
23 Mr. Munoz is calling 9-1-1, he is approaching this vehicle, getting the license plate  
24 information. We know that Mr. Appel is on scene before this U-Haul takes off, he  
25 tries to block the U-Haul. We know that air unit traffic control is somewhere in here.

1 We didn't get to hear from them but we know that they were out there; right? We  
2 know that the cops are trained, they're trained to search for things, they're trained to  
3 look for things, not only did they search the car, they searched Mr. Harvey.

4 Now, we had an indication yesterday about well maybe the knife was  
5 dumped. So we talked about what exactly was communicated and the specific line  
6 that Officer Humpherys testified to, subject possibly just dumped property, and that's  
7 coming at the school. Well, we know that these trained officers searched these  
8 locations, no knife ever found. Officer Humpherys testified to you all that sometimes  
9 witnesses do misunderstand, they don't see what they thought they saw.

10 So let's talk about a few of Mr. Munoz' [indiscernible]. And, again,  
11 understand that he's nervous. He indicates with every stop he's nervous. So we  
12 need to talk about his perception and his memory. But he testifies that there were  
13 two wallets, there were three wallets, there were four wallets, now there were three.  
14 And then when I questioned him about his report, what did you write in your report?  
15 He comes back, yeah, there were two wallets written in the report.

16 The license plate number, and the State went over this with you just  
17 briefly, that he came back, had to clarify with regard to what the actual license plate  
18 number was. There was some misunderstanding about the streets, which directions  
19 they went, where this car was traveling. There's no follow-up with his co-worker to  
20 conduct his report. He says that he never took any photographs, but, again, we  
21 have Mr. Appel and Mrs. Harvey testifying there were two people out there taking  
22 photographs. Who else is out there? We know it's only Munoz and Mr. Bramble.  
23 Mr. Bramble told you he took photos.

24 When the State carries the burden of proving to you beyond a  
25 reasonable doubt that this knife was used in the commission of the crime that being

1 robbery with use of a deadly weapon.

2 I wanted to talk to you all about credibility, and that's your instruction  
3 number ten, and I'm not going to belabor the point and read it all to you because the  
4 State did a lot about credibility. So I think everyone clearly understands what  
5 credibility is. I want to submit to you, however, that consistency is not necessarily  
6 indicative of credibility especially in cases where people have written reports  
7 because you're going to testify consistently with your reports, you're going to review  
8 them before you come and testify. Additionally, when you make up a story about  
9 something, you tell the story, you're going to be consistent in that. So consistency  
10 by itself is not necessarily indicative of honesty or credibility.

11 When you consider all of the factors and all of the things here what you  
12 have is the fact that Mr. Harvey's vehicle never out of sight. Mr. Appel immediately  
13 blocks it in, he's following the vehicle the entire time period, tells you he wanted to  
14 know where it goes. We have the air traffic unit control there and then we have the  
15 police immediately arriving, okay. As Mr. Harvey is walking to this vehicle we have  
16 Mr. Bramble and Mr. Munoz going towards the vehicle, getting the information. We  
17 heard yesterday that in Mr. Appel's statement he said three people were running  
18 towards this car taking photographs. Where was the opportunity for Mr. Harvey to  
19 ditch this alleged knife? If it's ditched on the way to the vehicle, then we have  
20 Mr. Munoz and Mr. Bramble following him to the vehicle, they would have seen it on  
21 the ground. If it's ditched on the way to the school, we have the air traffic control.  
22 We have Mr. Appel following this car the entire time period and he wanted to be  
23 helpful. He was giving up all types of information that he did not even have the  
24 answer to. If he would have seen anything, if this knife would have been ditched  
25 somewhere, we would have heard some indication of that but we didn't hear

1 anything because there was not a knife.

2           There was also no fear, no force, or nor violence. Kind of rewind, go  
3 back to the interaction between Mr. Munoz and Mr. Harvey, and we hear that  
4 Mr. Munoz asked Mr. Harvey for the wallets. He freely gave them back. He's not  
5 screaming at him. He's not pushing him. He's not throwing those wallets at him.  
6 He just gave him the wallets back. Mr. Munoz testified there's no yelling, there's no  
7 body contact, there's no force or fear of violence in that interaction. He says at that  
8 point Mr. Harvey refuses to turn back to the store.

9           So I submit to you there's absolutely no knife, there's no knife found,  
10 there's no indication that Mr. Munoz actually saw a knife. We have the officer saying  
11 that people are mistaken a lot of times in what they see, what is actually occurring.  
12 So at that point we have a hand-up, possibly some hand cream in this hand, coming  
13 out of the left pocket. Is that force or violence? Does that put you in fear? Again,  
14 perception is not reality.

15           Let's talk about the actions of Mr. Alfred Harvey. He stole merchandise  
16 from T.J. Maxx. Mr. Munoz told you that it was less than \$500. He didn't have a  
17 weapon. He's not being forceful in giving back those wallets. He's not being  
18 threatening. At the end of the day, he's thief, not a violent robber. I'm not saying he  
19 didn't do anything; yes, he absolutely went into that T.J. Maxx store, concealed  
20 items, left the store with items that did not belong to him. He stole items from T.J.  
21 Maxx. There's no option for that in your verdict form.

22           The State is the person who charged him, you saw that in the  
23 information, and they have the burden of proving to you beyond a reasonable doubt  
24 the charge that they've submitted to you, robbery with use of a deadly weapon.

25           I submit to you that snapshots, highlights don't work, and we see that

1 with the story and the illustration with Forrest Gump, because if you just get one  
2 person's snapshot or one person's highlight you don't know the full story.

3 Perception drives memory but your perception is not reality. What color  
4 is that dress? We don't know. What are some of the things that influences memory,  
5 again, adrenaline, bias, emotions.

6 So you're the trier of facts and you have to put this story together using  
7 credibility, common sense, analyzing the evidence with regard to perception and  
8 memory.

9 So as I said, the State will get to speak to you again because they do  
10 have the burden of proof here. So there were just a few final things I wanted to go  
11 over with you all.

12 Court's indulgence.

13 The State spoke to you a little bit at length about this knife and the fact  
14 that they don't have to show you that it was recovered. I submit to you that's the  
15 law, they don't have to actually have the knife here for you today for you to find that  
16 a knife was utilized. I submit to you there was absolutely no knife. When we're  
17 talking about memory and perception, it is important to consider the fact that you  
18 guys don't have the knife because there's no one else to tell you that they saw a  
19 knife. There's the brief testimony that it's four inches. We don't know any of that.  
20 The facts instead show that there was not a weapon, that Mr. Munoz was just  
21 mistaken.

22 And, lastly, I want to draw your attention to your jury instruction number  
23 six. It says, if you are not convinced beyond a reasonable doubt that the Defendant  
24 used a deadly weapon in the commission of an unlawful taking of personal property  
25 from the person of another -- again, here the State has charged miscellaneous

1 clothing items -- or in his presence, by means of force or violence or fear of injury,  
2 immediate or future, to his person or property and that such force was used to  
3 obtain or retain possession of the property, prevent or overcome resistance to the  
4 taking of the property, or to facilitate escape with the property you must find the  
5 Defendant not guilty of robbery with use of a deadly weapon. And I submit to you  
6 that here Mr. Harvey is not guilty of robbery with use of a deadly weapon but he's  
7 also not guilty of robbery because he didn't use force or violence here. He stole  
8 items and refused to come back into the store. Mr. Harvey is also not guilty of  
9 robbery. We'd ask that the appropriate verdict here and we're confident that once  
10 you've analyzed all of the evidence you will find Mr. Harvey not guilty.

11 Thank you.

12 THE COURT: Thank you, counsel.

13 How long do you think your last portion is going to take?

14 MR. SCHWARTZ: Ten, fifteen minutes.

15 THE COURT: You guys want to stay or you want to take a little break?

16 UNKNOWN JUROR: Stay.

17 THE COURT: You want to get it over with?

18 UNKNOWN JUROR: Yes.

19 MR. SCHWARTZ: If you could switch over back to our computer, please.

20 Is it okay if I move this, Your Honor?

21 THE COURT: Sure.

22 MR. SCHWARTZ: May I proceed, Your Honor?

23 THE COURT: Yes, please.

24 **[REBUTTAL CLOSING ARGUMENT BY THE STATE]**

25 MR. SCHWARTZ: The State's whole case is a distraction; right? That's what

# EXHIBIT H



ORIGINAL

1 INST

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 17 2016

BY Carol Donahoo  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO: C-16-314260-1

DEPT NO: VIII

12 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

13 MEMBERS OF THE JURY:

14 It is now my duty as judge to instruct you in the law that applies to this case. It is  
15 your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
16 you find them from the evidence.

17 You must not be concerned with the wisdom of any rule of law stated in these  
18 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
19 would be a violation of your oath to base a verdict upon any other view of the law than that  
20 given in the instructions of the Court.  
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C-16-314260-1

INST

Instructions to the Jury  
4800987



If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 30th day of March, 2016, the Defendant committed the offense of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138).

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offense charged.

COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), on or about the 30th day of March, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, ALFRED C. HARVEY did willfully, unlawfully, and feloniously take personal property, to-wit: miscellaneous clothing items, from the person of JULIAN MUNOZ, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of JULIAN MUNOZ, with use of a deadly weapon, to-wit: a knife, defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

If you are not convinced beyond a reasonable doubt that the defendant used a deadly weapon in the commission of an unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property and that such force was used to:

- (1) Obtain or retain possession of the property,
- (2) To prevent or overcome resistance to the taking of the property, or
- (3) To facilitate escape with the property,

you must find the defendant not guilty of Robbery with use of a Deadly Weapon.

1. You are here to determine whether the defendant is not guilty or guilty from the evidence.  
2.  
3. in the case. You are not called upon to return a verdict as to the guilt of any other person. So, if  
4. the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant,  
5. you should so find, even though you may believe one or more persons are also guilty.  
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.



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2 Before you may rely on circumstantial evidence to conclude that fact necessary to find  
3 the defendant guilty has been proved, you must be convinced that the State has proved each fact  
4 essential to that conclusion beyond a reasonable doubt.

5 Also before you may rely on circumstantial evidence to find the defendant guilty, you  
6 must be convinced that the only reasonable conclusion supported by the circumstantial evidence  
7 is that the defendant is guilty. If you can draw two or more reasonable conclusions from the  
8 circumstantial evidence and one of those reasonable conclusions points to innocence and another  
9 to guilt, you must accept the one that points to innocence. However, when considering  
10 circumstantial evidence, you must accept only reasonable conclusions and reject any that are  
11 unreasonable.  
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2 The credibility or believability of a witness should be determined by his or her  
3 manner upon the stand, his or her relationship to the parties, his or her fears, motives,  
4 interests or feelings, his or her opportunity to have observed the matter to which he or she  
5 testified, the reasonableness of his or her statements and the strength or weakness of his or  
6 her recollections.

7 If you believe that a witness has lied about any material fact in the case, you may  
8 disregard the entire testimony of that witness or any portion of his or her testimony which is  
9 not proved by other evidence.  
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Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property. Such force or fear must be used to:

- (1) Obtain or retain possession of the property,
- (2) To prevent or overcome resistance to the taking of the property, or
- (3) To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

The value of property or money taken is not an element of the crime of robbery, and it is only necessary that the State prove the taking of some property or money.

1  
2 It is unnecessary to prove both violence and intimidation. If the fact be attended with  
3 circumstances of terror, such threatening word or gesture as in common experience is likely to  
4 create an apprehension of danger and induce a man to part with his property for the safety of his  
5 person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such  
6 case.

7  
8 In order to constitute robbery, the taking must be accomplished either by force or  
9 intimidation, this element being the gist and distinguishing characteristic of the offense; but there  
10 need not be force and intimidation, either being sufficient without the other.

INSTRUCTION NO. 13

You are instructed that if you find a defendant guilty of Robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a defendant committed Robbery with the use of a deadly weapon, then you are instructed that the verdict of Robbery With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Robbery, but you do find beyond a reasonable doubt that the Robbery was committed, then you are instructed that the verdict of Robbery is the appropriate verdict.

You are instructed that you cannot return a verdict of both Robbery With the Use of a Deadly Weapon and Robbery.

INSTRUCTION NO. 14

As used in these instructions, a "deadly weapon" means:

(1) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death;

OR

(2) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.

INSTRUCTION NO. 16

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

However, you must still find beyond a reasonable doubt that a deadly weapon was used in the commission of the robbery.



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2 In order to "use" a deadly weapon, there need not be conduct which actually produces  
3 harm but only conduct which produces a fear of harm or force by means or display of the  
4 deadly weapon in aiding the commission of the crime.  
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2 The flight of a person after the commission of a crime is not sufficient in itself to  
3 establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt  
4 or innocence.

5 The essence of flight embodies the idea of deliberately going away with  
6 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The  
7 weight to which such circumstance is entitled is a matter for the jury to determine.  
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2 Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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INSTRUCTION NO. 20

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

1 It is a constitutional right of a defendant in a criminal trial that he may not be compelled  
2 to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice  
3 and counsel of his attorney. You must not draw any inference of guilt from the fact that he does  
4 not testify, nor should this fact be discussed by you or enter into your deliberations in any way.  
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2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a playback, you must carefully describe the testimony to  
9 be played back so that the court recorder can arrange her notes. Remember, the court is not  
10 at liberty to supplement the evidence.

1  
2 When you retire to consider your verdict, you must select one of your member to act  
3 as foreperson who will preside over your deliberation and will be your spokesperson here in  
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into  
6 evidence, these written instructions and forms of verdict which have been prepared for your  
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it  
9 signed and dated by your foreperson and then return with it to this room.



Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

November 17, 2016

GIVEN:

  
DISTRICT JUDGE

# EXHIBIT I

ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 17 2016

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY: Carol Donahoo  
CAROL DONAHOO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALFRED C. HARVEY,

Defendant.

CASE NO. C314260

DEPT. NO. VIII

**PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL**

Attached hereto are the Defendant's Proposed Jury Instructions which were offered to the Court, but not submitted to the Jury in the above entitled action.

DATED: This 17<sup>th</sup> day of November 2016.

Steven D. Grierson, Clerk of the Court

By: Carol Donahoo  
Carol Donahoo, Deputy Clerk

C-18-314260-1  
PINU  
Proposed Jury Instructions Not Used At Trial  
4800988



1  
2 In deciding the facts of this case you may have to decide which witnesses to believe and  
3 which witnesses not to believe. You may believe everything a witness says, only part of it or  
4 none of it.

5 In considering the weight or value of the testimony of any witness you may consider the  
6 appearance, attitude and behavior of the witness when testifying and a number of other things  
7 including:

- 8 1. The witnesses ability to see or hear or know of the things the witness testifies;
- 9 2. The quality of the witness's memory;
- 10 3. The inclination of the witness to speak truthfully;
- 11 4. Whether or not the witness has any interest in the outcome of the case or any motive,
- 12 bias or prejudice;
- 13 5. Whether the witness is contradicted by anything the witness said or wrote before trial;
- 14 and
- 15 6. How reasonable is the witness's testimony when considered with other evidence
- 16 which you believe;
- 17

18  
19 In deciding whether or not to believe a witness, keep in mind people sometimes forget  
20 things. You need to consider whether a contradiction is an innocent lapse of memory or an  
21 intentional falsehood, and that may depend on whether it has to do with an important fact or with  
22 only a small detail.

23  
24 The weight or value of evidence does not necessarily depend on the number of witnesses  
25 testifying for one side. You must consider all the evidence and you may decide the testimony of  
26 a smaller number of witnesses on one side has more weight or value than that presented by the  
27 larger number of witnesses on the other side.  
28

1 Every person charged with the commission of a crime shall be presumed innocent unless  
2 the contrary is proved by competent evidence beyond a reasonable doubt.  
3

4 The burden is on the State to prove beyond a reasonable doubt that the defendant  
5 committed an unlawful taking of personal property to wit: miscellaneous clothing items from the  
6 person of another, or in his presence, against his will, by means of force or violence or fear of  
7 injury, immediate or future, to his person or property and that such force was used to:  
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9 (1) Obtain or retain possession of the property.

10 (2) To prevent or overcome resistance to the taking of the property, or

11 (3) To facilitate escape with the property.  
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INSTRUCTION NO. \_\_\_\_\_

Petit larceny is the intentional stealing, taking, carrying away or driving away personal goods with a value of less than \$650, with the specific intent to permanently deprive the owner of said property.

1  
2 When a person is accused of committing a particular crime and at the same time and by  
3 the same conduct may have committed another offense of lesser grade or degree, the latter is  
4 with respect to the former, a lesser included offense.

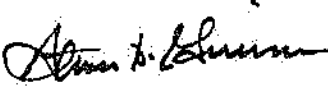
5 If you are not convinced beyond a reasonable doubt that the defendant is guilty of the  
6 offense charged, he may, however be found guilty of any lesser included offense, if the evidence  
7 is sufficient to establish guilty beyond a reasonable doubt of the lesser included offense.

8 The offense of Robbery necessarily includes the lesser offense of petit larceny. You are  
9 instructed that if you are not convinced beyond a reasonable doubt that the defendant is guilty of  
10 Robbery, you may find the defendant guilty of Robbery, if you so find beyond a reasonable  
11 doubt.  
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13 You are instructed that you may only mark one box on the verdict form.  
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# EXHIBIT J



  
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
JASMIN D. SPELLS, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 11635  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Lillyjd@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

ALFRED C. HARVEY,

Defendant,

CASE NO. C-16-314260-1

DEPT. NO. VIII

**DEFENDANT'S PROPOSED JURY INSTRUCTIONS AND VERDICT FORM**

COMES NOW, the Defendant, ALFRED C. HARVEY, by and through JASMIN  
D. SPELLS, Deputy Public Defender and hereby submits his proposed jury instructions.

DATED this 16<sup>th</sup> day of November, 2016.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Jasmin Spells  
JASMIN D. SPELLS, #11635  
Deputy Public Defender

INSTRUCTION NO. \_\_\_\_\_

1           You are here to determine whether the defendant is not guilty or guilty from the evidence  
2  
3 in the case. You are not called upon to return a verdict as to the guilt of any other person. So, if  
4 the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant,  
5 you should so find, even though you may believe one or more persons are also guilty.  
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2 In deciding the facts of this case you may have to decide which witnesses to believe and  
3 which witnesses not to believe. You may believe everything a witness says, only part of it or  
4 none of it.

5 In considering the weight or value of the testimony of any witness you may consider the  
6 appearance, attitude and behavior of the witness when testifying and a number of other things  
7 including:

- 8 1. The witnesses ability to see or hear or know of the things the witness testifies;
- 9 2. The quality of the witness's memory;
- 10 3. The inclination of the witness to speak truthfully;
- 11 4. Whether or not the witness has any interest in the outcome of the case or any motive,
- 12 bias or prejudice;
- 13 5. Whether the witness is contradicted by anything the witness said or wrote before trial;
- 14 and
- 15 6. How reasonable is the witness's testimony when considered with other evidence
- 16 which you believe.

17 In deciding whether or not to believe a witness, keep in mind people sometimes forget  
18 things. You need to consider whether a contradiction is an innocent lapse of memory or an  
19 intentional falsehood, and that may depend on whether it has to do with an important fact or with  
20 only a small detail.

21 The weight or value of evidence does not necessarily depend on the number of witnesses  
22 testifying for one side. You must consider all the evidence and you may decide the testimony of  
23 a smaller number of witnesses on one side has more weight or value than that presented by the  
24 larger number of witnesses on the other side.

INSTRUCTION NO. \_\_\_\_\_

1           It is a constitutional right of a defendant in a criminal trial that he may not be compelled  
2  
3 to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice  
4 and counsel of his attorney. You must not draw any inference of guilt from the fact that he does  
5 not testify, nor should this fact be discussed by you or enter into your deliberations in any way.  
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INSTRUCTION NO. \_\_\_\_\_

1           The flight, or absence of flight, of a person immediately after the alleged commission of a  
2 crime is not in itself sufficient to establish guilt or lack of guilt; it is however, a circumstance  
3 which may be considered in reaching your verdict. The weight which should be placed on this  
4 circumstance is left entirely to the jury.  
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2 It is unnecessary to prove both violence and intimidation. If the fact be attended with  
3 circumstances of terror, such threatening word or gesture as in common experience is likely to  
4 create an apprehension of danger and induce a man to part with his property for the safety of his  
5 person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such  
6 case.

7  
8 In order to constitute robbery, the taking must be accomplished either by force or  
9 intimidation, this element being the gist and distinguishing characteristic of the offense; but there  
10 need not be force and intimidation, either being sufficient without the other.

1 Every person charged with the commission of a crime shall be presumed innocent unless  
2 the contrary is proved by competent evidence beyond a reasonable doubt.  
3

4 The burden is on the State to prove beyond a reasonable doubt that the defendant  
5 committed an unlawful taking of personal property "specifically, miscellaneous clothing items"  
6 from the person of another, or in his presence, against his will, by means of force or violence or  
7 fear of injury, immediate or future, to his person or property and that such force was used to:  
8

9 (1) Obtain or retain possession of the property,

10 (2) To prevent or overcome resistance to the taking of the property, or

11 (3) To facilitate escape with the property,

12 you must find the defendant not guilty of Robbery.  
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1 If you are not convinced beyond a reasonable doubt that the defendant used a deadly  
2 weapon in the commission of an unlawful taking of personal property "specifically,  
3 miscellaneous clothing items" from the person of another, or in his presence, against his will, by  
4 means of force or violence or fear of injury, immediate or future, to his person or property and  
5 that such force was used to:  
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7 (1) Obtain or retain possession of the property,  
8

9 (2) To prevent or overcome resistance to the taking of the property, or  
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11 (3) To facilitate escape with the property,  
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13 you must find the defendant not guilty of Robbery with use of a Deadly Weapon.  
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INSTRUCTION NO. \_\_\_\_\_

Petit larceny is the intentional stealing, taking, carrying away or driving away personal goods with a value of less than \$650, with the specific intent to permanently deprive the owner of said property.

1  
2 When a person is accused of committing a particular crime and at the same time and by  
3 the same conduct may have committed another offense of lesser grade or degree, the latter is  
4 with respect to the former, a lesser included offense.

5 If you are not convinced beyond a reasonable doubt that the defendant is guilty of the  
6 offense charged, he may, however be found guilty of any lesser included offense, if the evidence  
7 is sufficient to establish guilty beyond a reasonable doubt of the lesser included offense.

8 The offense of Robbery necessarily includes the lesser offense of petit larceny. You are  
9 instructed that if you are not convinced beyond a reasonable doubt that the defendant is guilty of  
10 Robbery, you may find the defendant guilty of Robbery, if you so find beyond a reasonable  
11 doubt.  
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13 You are instructed that you may only mark one box on the verdict form.  
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Human memory is not foolproof. Research has revealed that human memory is not like a video recording that a witness need only replay to remember what happened. Memory is far more complex. The process of remembering consists of three stages: acquisition – the perception of the original event; retention – the period of time that passes between the event and the eventual recollection of a piece of information; and retrieval – the stage during which a person recalls stored information. At each of these stages, memory can be affected by a variety of factors.

1  
2 If the evidence permits two reasonable interpretations, one of which points to the  
3 Defendant's guilt and the other to the Defendant being not guilty, you must adopt the  
4 interpretation that points to the Defendant being not guilty, and reject that interpretation that  
5 points to his guilt.

6 If, on the other hand, one interpretation of this evidence appears to you to be reasonable  
7 and the other interpretation to be unreasonable, you must accept the reasonable interpretation and  
8 reject the unreasonable.  
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2 Before you may rely on circumstantial evidence to conclude that fact necessary to find  
3 the defendant guilty has been proved, you must be convinced that the State has proved each fact  
4 essential to that conclusion beyond a reasonable doubt.

5 Also before you may rely on circumstantial evidence to find the defendant guilty, you  
6 must be convinced that the only reasonable conclusion supported by the circumstantial evidence  
7 is that the defendant is guilty. If you can draw two or more reasonable conclusions from the  
8 circumstantial evidence and one of those reasonable conclusions points to innocence and another  
9 to guilt, you must accept the one that points to innocence. However, when considering  
10 circumstantial evidence, you must accept only reasonable conclusions and reject any that are  
11 unreasonable.  
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3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

Case No: C-16-314260-1

10 ALFRED C. HARVEY,

11 Defendant,  
12

Dept No: VIII

13  
14 **VERDICT**

15 We, the jury in the above entitled case, find the Defendant ALFRED C. HARVEY, as  
16 follows:

17 *(please check the appropriate box, select only one)*

- 18 ☐ Not Guilty  
19 ☐ Guilty of Robbery with use of a deadly weapon  
20 ☐ Guilty of Robbery  
21 ☐ Guilty of Petit Larceny  
22

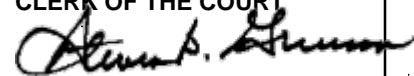
23 DATED this \_\_\_\_\_ day of November, 2016  
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FOREPERSON  
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CERTIFICATE OF ELECTRONIC SERVICE

A. copy of the above and foregoing DEFENDANT'S PURPOSED JURY INSTRUCTIONS AND VERDICT FORM was served via electronic e-filing to the District Attorney's Office at Motions@clarkcountydade.com on this 16th day of November, 2016.

By: /s/ Kristina Byrd  
Secretary, Clark County Public Defender



**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
BRYAN SCHWARTZ  
Deputy District Attorney  
Nevada Bar #013244  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

ALFRED C. HARVEY,  
#7013098

Defendant.

CASE NO: C-16-314260-1

DEPT NO: VIII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL AND  
EVIDENTIARY HEARING**

DATE OF HEARING: APRIL 30, 2018  
TIME OF HEARING: 8:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through BRYAN SCHWARTZ, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For New Trial and Evidentiary Hearing.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 1, 2016, the State filed a Criminal Complaint against Alfred C. Harvey  
4 (hereinafter "Defendant") charging him with Robbery with use of a Deadly Weapon. On April  
5 18, 2016, the preliminary hearing was held in justice court. At the conclusion, the justice court  
6 held Defendant to answer the above charges in district court.

7 On April 20, 2016, Defendant was arraigned in District Court on the above count.  
8 Defendant subsequently pled not guilty. On November 15, 2016, the jury trial began. On  
9 November 18, 2016, the jury found Defendant guilty of Robbery. On March 8, 2017, the  
10 Court sentenced Defendant to a minimum of 36 months and a maximum of 144 months in the  
11 Nevada Department of Corrections. His Judgment of Conviction was subsequently filed on  
12 March 17, 2018.

13 On April 10, 2018, Defendant filed a Notice of Appeal. The case was subsequently  
14 remanded for defense counsel to withdraw and the public defender was appointed.<sup>1</sup> On April  
15 5, Defendant filed the instant Motion for New Trial. The State opposes as follows.

16 **STATEMENT OF THE FACTS**

17 On March 30, 2016, Defendant entered T.J. Maxx with his two children, stole various  
18 items, and left the store. Loss prevention officer Julian Munoz observed Defendant picking  
19 up items and concealing them on his person; Defendant's actions were also captured on video  
20 by the T.J. Maxx surveillance system. Transcript of Proceedings, Jury Trial – Day 2, 11/16/16,  
21 pg. 14-31 (attached as "Exhibit 1"). After Defendant and his two children exited the store  
22 without paying for the items, Munoz approached Defendant, identified himself, and asked for  
23 the merchandise back. Id. at 36. In response, Defendant stated that he put the merchandise  
24 back in the store. Id. at 37. Munoz responded that he wanted the wallets out of his coat, which  
25 Defendant handed over. Id. Munoz then asked Defendant to step back in the store with him.  
26 Id. However, Defendant refuses. Id. Munoz again asks him to step inside the store. Id. at  
27 39. Defendant then reached into his pocket and pulled out a knife, raised it above his head,  
28

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<sup>1</sup>The public defender was trial counsel, however Defendant retained different counsel initially for his appeal.

1 and stated, "We're not doing anything today." Id. Once Defendant pulled out the knife,  
2 Munoz stopped, retreated back towards the store, and called the police. Id. at 41. Defendant  
3 then got into a U-Haul with his children, and fled from the area. Id. at 41-43. Munoz was able  
4 to maintain a visual on the U-Haul as Defendant backed out of the parking lot, and provided  
5 the police with the Defendant's license plate number. Id. at 43. As Defendant is fleeing,  
6 Shaun Bramble, a fellow loss prevention officer, responded to assist Munoz. Id. at 42. Munoz  
7 immediately told Shaun that Defendant has a knife. Id.

8 Errol Appel was in the same shopping center that day. Id. at 128. He observed Munoz  
9 and Bramble outside the store, and further observed Defendant and his children running  
10 toward a U-Haul van. Id. at 129-31. Appel approached Munoz and Bramble in his vehicle  
11 and asked what was going on. Id. at 130. Munoz told him that he had just been held up at  
12 knife point, indicating toward the Defendant and the U-Haul van. Id. In response, Appel  
13 followed the U-Haul van. Id. at 131. During the pursuit, Appel called the police and updated  
14 them on his location and what was happening. Id. at 132. Appel described Defendant driving  
15 "[v]ery recklessly and very disregard for a lot of people." Id. at 133. Appel continued  
16 following Defendant until he came to a stop, a few miles away, in front of a school. Id. at 137.  
17 Appel observed the Defendant exit the vehicle, and run toward the school, however the front  
18 doors were locked, so he ran back to the U-Haul. Id. at 137-38. At that point, the police had  
19 arrived. Id. at 138.

20 At this point, officers arrived and arrested the Defendant. Id. at 174. Subsequently,  
21 several items were recovered from the U-Haul van. Id. at 166-67. Many of the items were  
22 merchandise that Munoz had observed Defendant steal from T.J. Maxx that day. Id.

23 Defendant's wife subsequently testified and acknowledged that she, the Defendant, and  
24 her children had driven to T.J. Maxx in a U-Haul truck that day. Id. at 204. She testified that  
25 she stayed in the van while Defendant and her children had gone inside. Id. at 205. She further  
26 testified that she observed loss prevention officers running after Defendant as he entered the  
27 van after leaving the store. Id. at 211.  
28

**ARGUMENT**

**I. THIS COURT SHOULD DENY DEFENDANT'S MOTION FOR NEW TRIAL**

Defendant requests a new trial because of a jury question regarding the definition of "Robbery."

Pursuant to NRS 176.515(3), "a motion for new trial based on newly discovered evidence may be made within 2 years after the verdict or finding of guilty." The Nevada Supreme Court set forth additional requirements for a new trial based on newly discovered evidence: "the evidence must be (1) newly discovered, (2) material to Defendant's defense, (3) such that it could not with reasonable diligence have been discovered and produced for the trial, (4) not cumulative, (5) such as to render a different result probable upon retrial, (6) that it does not attempt only to contradict a former witness or impeach or discredit him, unless the witness to be impeached is so important that a different result must follow, and (7) that these facts be shown by the best evidence the case admits." McLemore v. State, 94 Nev. 237, 239-40, 577 P.2d 871, 872 (1978).

Defendant fails to demonstrate the above requirements as set forth by the Nevada Supreme Court. Most importantly, Defendant fails to show that this newly discovered "evidence" would render a different result probable upon retrial. Defendant merely claims that it is probable that he would have been found not guilty because defense counsel would have requested numerous additional instructions be given to the jury. To start, the court has wide discretion in responding to questions from the jury and properly instructed the jury that it "is not at liberty to supplement the evidence." Defense Exhibit C. More importantly, Defendant fails to show a probability of a different result at a retrial because there is no new evidence to be presented to the jury. This new "evidence" has nothing to do with the actual evidence presented at trial, including (1) the video surveillance showing Defendant stealing merchandise inside T.J. Maxx, (2) the victim identifying Defendant as stealing property inside the store, leaving without paying, then pulling out and raising a knife at him when he approached the Defendant, (3) the witness who followed the Defendant as the Defendant fled in a U-Haul van, or (4) the officers who apprehended Defendant in the U-Haul van and

1 recovered T.J. Maxx merchandise from inside. The mere fact that defense counsel would have  
2 suggested instructions and definitions does not make a different result probable at trial.

3 **CONCLUSION**

4 Therefore, the State requests that the Court DENY Defendant's Motion for New Trial  
5 and Evidentiary Hearing.

6  
7 DATED this 17th day of April, 2018.

8 Respectfully submitted,

9 STEVEN B. WOLFSON  
10 Clark County District Attorney  
Nevada Bar #001565


11  
12 BY 

BRYAN SCHWARTZ  
13 Deputy District Attorney  
Nevada Bar #013244

14  
15 **CERTIFICATE OF ELECTRONIC FILING**

16 I hereby certify that service of State's Opposition to Defendant's Motion for New Trial  
17 and Evidentiary Hearing, was made this 17th day of April, 2018, by Electronic Filing to:

18 Kelli DeVaney-Sauter, Deputy Public Defender  
Kelli.DeVaney-Sauter@ClarkCountyNV.gov

19  
20   
21 M. HERNANDEZ  
22 Secretary for the District Attorney's Office

23  
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25  
26  
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28 BS/mah/L1

# EXHIBIT “1”



1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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ALFRED HARVEY,

13

Defendant.

CASE NO. C314260

DEPT. VIII

14

BEFORE THE HONORABLE JAMES M. BIXLER, SENIOR DISTRICT COURT JUDGE

15

WEDNESDAY, NOVEMBER 16, 2016

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**TRANSCRIPT OF PROCEEDINGS**  
**JURY TRIAL - DAY 2**

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19

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20

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RECORDED BY: JILL JACOBY, COURT RECORDER

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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.

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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

20 A Yes.

21 Q And then the Defendant raised the knife above his head and said, we're  
22 not doing this today?

23 A Yes.

24 Q Can you describe for me the knife?

25 A I believe it was black.

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 then 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 like 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 ///

1 **CROSS-EXAMINATION BY MS. SPELLS**

2 BY MS. SPELLS:

3 Q Good morning, Mr. Bramble.

4 A Good morning.

5 Q Actually, good afternoon.

6 A Yes.

7 Q So you're in the loss prevention office with Mr. Munoz?

8 A Yes.

9 Q And are you also watching closed-circuit television?

10 A Not to the extent that he's watching it.

11 Q But you are aware that it's running?

12 A Yes.

13 Q Briefly looking at it?

14 A Yes.

15 Q Upon him exiting that room he asked you to take over?

16 A Yes.

17 Q And you do such?

18 A Yes.

19 Q So you are at that point familiar with the individual that he's looking for?

20 A Yes.

21 Q Or looking at.

22 Now, you're aware that you're here based upon a robbery charge; right?

23 A Yes, ma'am.

24 Q And when you were in the closed-circuit television room watching these  
25 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?

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 **REDIRECT EXAMINATION BY MR. ROSE**

2 BY MR. ROSE:

3 Q You just testified that you didn't see anything that happened outside of  
4 the store; right?

5 A Right.

6 Q But you did see Julian right outside?

7 A Yes.

8 Q From almost immediately after these events?

9 A Yes.

10 Q And he looked shocked?

11 A Yes.

12 MR. ROSE: No further questions.

13 THE COURT: Anything else?

14 MS. SPELLS: Yes.

15 THE COURT: Is that no?

16 MS. SPELLS: That's a, yes.

17 THE COURT: Oh, yes.

18 MS. SPELLS: Am I that low? I feel like I'm screaming.

19 **RECROSS-EXAMINATION BY MS. SPELLS**

20 BY MS. SPELLS:

21 Q Okay. Mr. Bramble --

22 A Yes.

23 Q -- do you rotate stores the same as Mr. Munoz?

24 A I do not.

25 Q You do not.

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 **RECROSS-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

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ALFRED C. HARVEY, ) No. 72829/75911  
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 THE STATE OF NEVADA, )  
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 Respondent. )  
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