

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVOHN MARKS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 80469

Appeal from a Judgment of Conviction
Following a Jury Trial and Verdict
Eighth Judicial District Court, Clark County
The Honorable Carolyn Ellsworth, District Judge
Case No. C-18-337017-2

**APPELLANT'S APPENDIX
VOL. 5 OF 9**

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CERTIFICATE OF SERVICE

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AFFIRMATION


Pursuant to NRS 239B.030, this document contains no social security numbers.

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11-6-20

Date



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DEVOHN MARKS,)
)
Defendant.)

CASE NO. C-18-337017-2
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, JULY 22, 2019

JURY TRIAL - DAY 4

APPEARANCES:

FOR THE STATE: NICOLE J. CANNIZZARO, ESQ.
Chief Deputy District Attorney
LINDSEY MOORS, ESQ.
Deputy District Attorney

FOR THE DEFENDANT: JESS Y. MATSUDA, ESQ.

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LAS VEGAS, CLARK COUNTY, NEVADA, JULY 22, 2019, 11:14 A.M.

*** * * * ***

(In the presence of the jury.)

THE COURT: Thank you. Please be seated. And the record will reflect that this is the continuation of Case Number C337017, State of Nevada versus Devohn Marks. The record will reflect the presence of Mr. Marks with his counsel. The prosecutors are also present, as are all officers of the court.

Good morning, ladies and gentlemen. Welcome back. As I told you when I last saw you, we were going to be starting today. The first thing we'll be doing is reading -- having the clerk read to you the charging document. Just keep in mind of course that this is just a charging document. It's not evidence in the case. It doesn't prove anything, but it's just to let you know officially what the charges are.

And so the clerk shall now read the charging document and state the plea of the defendant thereto.

(Reading of the Superseding Indictment not transcribed.)

THE CLERK: To which the defendant has pled not guilty.

THE COURT: Thank you.

Ladies and gentlemen, so you've heard that there was -- the clerk read the charge, the charging document that there was a Mr. Johnson. He is not being tried at this time,

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1 and so this is the time for opening statements.

2 State.

3 MS. MOORS: Thank you.

4 **OPENING STATEMENT FOR THE STATE**

5 MS. MOORS: Over the course of this week you are
6 going to hear a story of three men, three men that ultimately
7 participated in an armed robbery of the Torrey Pines Pub
8 located in Clark County, Las Vegas, Nevada on October 29th,
9 2018, but these three men have three very different stories.

10 As you heard in the charging document, we have one of
11 these men is essentially an unknown coconspirator that we have
12 been unable to reach or to get as of yet. The other two are
13 two very differently situated individuals. We have the
14 defendant Devohn Marks, who is one of the armed robbers. And
15 we have a third codefendant Antwaine Johnson, who you will
16 actually hear from throughout the course of this trial.

17 But what actually happened? What are you going to
18 here? We are going to hear that Antwaine and Devohn lived in
19 the same apartment complex and that they during the course of
20 October 2018 had been in contact on their cell phones no less
21 than 1222 times via text message, call. They were obviously in
22 contact. And you're going to hear from Antwaine Johnson that
23 he had just recently lost his job, that he was kind of down on
24 his luck in terms of money and that the defendant came to him
25 and said, hey, I know a bar. I have some inside information.

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1 I think that we can maybe rob this bar and alleviate you of
2 some of your money troubles. Unfortunately Antwaine agreed.

3 And what you're going to hear is that at first he
4 participated in a way that he essentially -- we appeared -- or
5 it appeared at first that he might be a victim. He went to
6 this bar several times ahead of time in what you'll hear from
7 detectives is known as casing, where he goes to a bar to try to
8 get information of how they run their place of work, where is
9 the money at, when it would be a good time to rob this bar.

10 So Antwaine has been going to this bar for weeks
11 leading up to this robbery that occurred at the end of October.
12 He had been establishing himself as a regular at this pub.

13 Now, this pub is located on Lake Mead here in Clark
14 County. It's one of those establishments that we have in Las
15 Vegas that would be open 24 hours. And as such, there are
16 people that are there essentially that are regulars. They come
17 almost daily. And you're going to hear from the four of them
18 that were present on the night of this robbery: Gerald Ferony,
19 Kathy Petcoff, Myer Goldstein, as well as Shaylene Bernier --
20 she was the bartender that was on duty.

21 The robbery occurred at around 5:14 a.m. This was a
22 Monday morning. And ultimately the robbery was very quick.
23 Two armed gunmen came in. They demand money. They take the
24 money from the cash register. During the course of this they
25 ultimately pistol whip Mr. Ferony, who was 70 years at the

1 time, on the back of his head. They also hit Myer Goldstein on
2 the back of his head and take both of their personal wallets.
3 Ultimately leave. They're in and out within two minutes.
4 They're masked. They're gloved. You'll get to see the video.
5 Literally, you cannot see any part of their skin.

6 At this point in time, once they've left, police are
7 called, and Detective David Miller gets involved. He is a
8 14-year veteran. He's a robbery detective. And immediately he
9 just doesn't think something feels right about Antwaine
10 Johnson. And the reason for it is this. So ultimately, as
11 Antwaine is leaving at around 5:14, we have video surveillance
12 of him on his phone texting. Within 30 seconds of his last
13 text message -- you're also going to get to see video
14 surveillance outdoors. Within 30 seconds of that text message,
15 you see two men jump over a fence, run out to the side door,
16 hide behind a car that's actually Antwaine Johnson's.

17 And at this point in time, Antwaine is inside, and
18 he's starting to leave the establishment. And you'll hear from
19 him that later this was all planned. And as he's going to
20 leave, he's saying his goodbye. He does one of those things
21 that I feel like we commonly do. Say if we want to hold the
22 door open for someone, but we're not really going to wait the
23 whole time to hold it for them so we kind of just push it a
24 little more and keep walking through, that's exactly what he
25 does in this video.

1 In so doing, these two other individuals -- one of
2 them being Devohn Marks, the other this individual that we
3 haven't been able to apprehend yet -- pushed him to the ground.
4 They rush in, and they circle around the bar. What's
5 interesting is the patrons that are there, these four
6 individuals that I mentioned, are all either over 50 or not
7 necessarily in tip top physical shape. And these two guys are
8 on them like glue with their guns. But they leave Antwaine
9 near the door an able-bodied 30-year-old man, don't even take
10 anything from him, never have any encounter with him, and this
11 makes Detective Miller a little suspicious, thinking that
12 Antwaine might be involved.

13 So when he ultimately gets to this establishment and
14 says -- speaks with everyone, speaks with Antwaine, Antwaine
15 says, yeah, you know, I -- we just got robbed. I wasn't
16 involved. The last text message that I sent was at 3:18 in the
17 morning. The detective looks at his phone, sees that that is
18 the last text message that was sent.

19 But then once we go look at the video surveillance,
20 he sees, actually I saw him literally doing something on his
21 phone around 5:12, 5:14. So he goes and gets what's called a
22 pen register. Now, this is a way to be able to figure out what
23 phone numbers are contacting what other phone numbers, and it's
24 on Antwaine's phone. He notices a certain number that's
25 contacted 1200 times in the month of October, over a hundred

1 times between 3:18 and 5:12 on that morning alone. Lo and
2 behold, that phone number is registered to the defendant Devohn
3 Marks.

4 Now, once we get this information, Antwaine Johnson
5 is confronted again with the cell phone records. And when you
6 can't fight these facts, he ultimately decides to tell the
7 truth and gives a full confession to what happened on this
8 particular morning. He admits that it was the defendant Devohn
9 Marks who got him involved in this whole plan, talks about how
10 they planned it out over the course of several weeks. He even
11 mentions how on that particular morning, the morning of the
12 robbery -- now, Antwaine had been at this establishment from
13 late in the evening Sunday to early in the morning Monday. And
14 he indicates that around 2:18 in the morning there is a 33
15 minute phone call between him and Devohn Marks, and he even
16 indicates there was no conversation happening. The defendant
17 had wanted him to call and to just leave his phone open, maybe
18 playing on it a little bit, so that he could hear what was
19 going on within the bar so that he knew when is a good time to
20 come with this other individual and to continue this, you know,
21 course of conduct that they've entered into.

22 So ultimately, as I've discussed, that robbery
23 happens. They are in and out of there in two minutes. And
24 you're going to hear that once we establish Devohn Marks is a
25 suspect, that ultimately the detective in this case, Detective

1 Miller had previous involvement with the defendant. In fact,
2 he committed a very similar if not identical type of robbery in
3 2011. And you're going to hear from the victim in that case.

4 She was Miriam Odell at the time. She's now Miriam
5 Byrd. You'll hear that she was a bartender in a bar, just like
6 in this case. You'll hear that it involved case men, meaning
7 the defendant actually was identified as being the person going
8 in ahead of time to check to see how we're going to conduct
9 this robbery and then three other individuals come in and
10 ultimately rob the place. You're going to hear that it was
11 also a takeover-style robbery where they come in and take full
12 control. There were only two people in the bar on this
13 previous robbery.

14 You will also hear that the two people that were in
15 the bar were personally robbed as well, meaning items were
16 taken. Their wallets were taken from both of them, as well as
17 money from the bar, just like in this case where ultimately
18 Myer Goldstein, as well as Gerald Ferony had their wallets
19 personally taken from them. The money was taken from the bar.
20 It was a takeover-style robbery. And ultimately casing was
21 used, just in our case the defendant has graduated to
22 essentially be a sole perpetrator or one of the main
23 perpetrators.

24 And you'll hear that you get to use that evidence as
25 proof of his identity, as proof of the fact that it was him

1 that committed this very similar type robbery in 2018.

2 And, ladies and gentlemen, you will also hear from a
3 cell phone expert from the Las Vegas Metropolitan Police
4 Department that will describe to you some of the movements of
5 defendant's phone on this previous night in question and in the
6 morning of the robbery that shows he was in that proximity.

7 And essentially, once you've heard from all of these witnesses,
8 ladies and gentlemen, you will see that this, yes, indeed is a
9 story of three different men but is a trial against one.

10 And at that point in time, we will come back before
11 you and request that you find a -- excuse me -- a verdict of
12 guilty on all eight counts because at that point time the facts
13 will have proven beyond a reasonable doubt that the defendant
14 Devohn Marks committed these crimes on October 29th of 2018.

15 Thank you.

16 THE COURT: Thank you.

17 Would the defense like to make an opening statement
18 at this time?

19 MR. MATSUDA: Yes, Your Honor. Thank you.

20 THE COURT: Thank you.

21 **OPENING STATEMENT FOR THE DEFENSE**

22 MR. MATSUDA: Good morning, ladies and gentlemen.
23 Now, what you just heard was the State's opening statement, and
24 what we refer to this is a roadmap. It's what they believe the
25 evidence is going to show.

1 The reason why we took so long in the jury selection
2 process was we wanted to make sure we could sit a panel that
3 was going to be unbiased and impartial and that you guys were
4 going to be able to sit through all the evidence and then make
5 an informed decision on what happened.

6 Now, remember this is the State's case to prove.
7 They must prove to you beyond a reasonable doubt all the
8 allegations that you heard. But I want you to remember their
9 star witness has some motivation. He has motives to tell the
10 story. Keep that in mind. Because at the end of this trial,
11 we're going to ask that you return a not guilty verdict on all
12 counts.

13 Thank you.

14 THE COURT: Thank you.

15 The State will call its first witness.

16 MS. CANNIZZARO: The State calls Shaylene Bernier to
17 the stand.

18 THE COURT: If you want to stand there, then you need
19 to move the microphone.

20 **SHAYLENE BERNIER**

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

23 THE CLERK: Please state and spell your name for the
24 record.

25 THE WITNESS: Shaylene Bernier. S-h-a-y-l-e-n-e,

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1 B-e-r-n-i-e-r.

2 THE COURT: You may be seated. Thank you. Scoot
3 your chair up so you'll be able to get closer to the
4 microphone. There you go.

5 You may proceed.

6 MS. CANNIZZARO: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. CANNIZZARO:

9 Q Good morning, Ms. Bernier. Where are you currently
10 employed?

11 A Torrey Pines Pub.

12 Q And where is that located?

13 A Lake Mead and Torrey Pines. 6374 West Lake Mead.

14 Q And so you mentioned Lake Mead and Torrey Pines. Is
15 that located in Las Vegas, Clark County, Nevada?

16 A Yes.

17 Q How long have you been employed at the Torrey Pines
18 Pub?

19 A About three and a half years.

20 Q And what is your position at the pub?

21 A I'm a bartender.

22 Q Have you always been a bartender during that three
23 and a half years?

24 A Uh-huh. Yes.

25 Q Is that a yes?

1 A Yes.

2 Q So we're recording -- that microphone right in front
3 of you -- and so you have to say yes out loud.

4 A Yes. Okay.

5 Q Perfect. Perfect.

6 So you mentioned that you'd been a bartender for
7 three and a half years. What shift you currently work?

8 A I'm on day shift now.

9 Q Have you ever worked another shift at the bar?

10 A I was working graveyards.

11 Q And what is the graveyard shift?

12 A Midnight till 8:00 a.m.

13 Q When you first started at the pub, were you working
14 the graveyard shift?

15 A Uh-huh. Yes.

16 Q Or the day shift.

17 A Yes.

18 Q Yes, to which?

19 A I started working graveyards.

20 Q And at what point in time did you switch over to the
21 day shift?

22 A January of 2019.

23 Q And so as a bartender at the Torrey Pines Pub, can
24 you kind of walk us through what your general job duties would
25 include while you're on the shift.

1 A Making drinks, dealing with the gaming cash outs,
2 IDing people, just making sure that the business runs
3 successfully, profitable.

4 Q You mentioned gaming.

5 A Uh-huh.

6 Q Do these -- does this pub have gaming machines --

7 A Yes, it does.

8 Q -- in the bar --

9 And what are your duties with respect to those gaming
10 machines?

11 A To pay gamers their cash outs. If there is any
12 jackpots, we call that in, have the gaming company deal with
13 that. Making sure everybody is playing what they need to to
14 earn any comps for drinks that they want.

15 Q Because this bar has gaming, do you also have then
16 money on-site to pay people for certain levels of jackpots?

17 A Yes, we do.

18 Q And what -- can you describe for us what that would
19 be.

20 A The dollar amount?

21 Q Yes. What those levels would be that the bar would
22 ordinarily keep cash for.

23 A My gaming drawer starts out at 2500, and both
24 registers for sales are starting out at 100.

25 Q So you mentioned both registers, and then you also

1 mentioned a gaming, sort of a gaming register?

2 A Correct.

3 Q Are those separate?

4 A Yes.

5 Q The two registers that you mentioned with the \$100
6 amounts, are those cash registers related to the business?

7 A Yes. They're for sales of alcohol and food.

8 Q Would you ever pay a gaming jackpot out of those
9 registers?

10 A Out of the sales, no. They're completely separate.

11 Q Is that also why you would have that separate gaming
12 register?

13 A Yes.

14 Q Do you keep more cash then in the gaming register
15 than in the ordinary sales registers?

16 A Yes.

17 Q And where in the bar is that money kept?

18 A Like in the middle of the bar. It's on the island
19 area.

20 Q So you would have access to it then as a bartender?

21 A Yes.

22 Q And is there any money that's ordinarily kept in a
23 cooler?

24 A Yes.

25 Q And can you describe what you mean by that.

1 A Those are usually our extra ones.

2 Q And extra ones, what would you use as extra ones for?

3 A Change.

4 Q Okay. During the graveyard shift, are any of the
5 doors to the Torrey Pines Pub kept locked?

6 A They all are from the outside.

7 Q How many doors are in this Pub?

8 A Three total.

9 Q And can you describe for us where those doors are.

10 A The one is in the back kitchen. The other is on the
11 side to the parking lot. And the last one is the front door.

12 Q And all three of those doors would be kept locked
13 during your graveyard shift?

14 A Yes.

15 MS. CANNIZZARO: Permission to approach your clerk,
16 Your Honor?

17 THE COURT: Granted.

18 MS. CANNIZZARO: Permission to approach the witness,
19 Your Honor?

20 THE COURT: Granted.

21 BY MS. CANNIZZARO:

22 Q And, Ms. Bernier, I'm showing you what has been
23 marked as State's Proposed Exhibit Numbers 1 and 6. If you
24 could take a look at those photos and let me know if you
25 recognize them.

1 A Yes.

2 Q You recognize these photos?

3 A Yes, I do.

4 Q How do you recognize these photos?

5 A This one is of our side back door because it's going
6 out to the parking lot. And this one is to our front door
7 which is also to the front parking lot.

8 Q Would it be fair to say that you recognize these as
9 photos of the bar we've been discussing?

10 A Yes.

11 Q And are these fair and accurate depictions of the
12 Torrey Pines Pub where you currently work?

13 A Yes.

14 Q And would these also be fair and accurate depictions
15 of how the pub looked in October of 2018?

16 A Yes.

17 MS. CANNIZZARO: The State would move to admit
18 State's Proposed 1 and 6 into evidence, Your Honor?

19 THE COURT: Any objection?

20 MR. MATSUDA: No, Your Honor.

21 THE COURT: Those will be admitted.

22 (State's Exhibit Number(s) 1, 6 admitted.)

23 MS. CANNIZZARO: Permission to publish, Your Honor?

24 THE COURT: Granted.

25 / / /

1 BY MS. CANNIZZARO:

2 Q And, Ms. Bernier, I'm going to show you -- and you'll
3 see it on that screen right in front of you -- State's Exhibit
4 Number 1. Quickly got to turn the Elmo on.

5 (Pause in the proceedings.)

6 BY MS. CANNIZZARO:

7 Q The screen right in front of you, Ms. Bernier, is a
8 touchscreen, and so you can actually touch that screen and be
9 able to point out things that we're talking about.

10 THE COURT: No. It upgraded.

11 MS. CANNIZZARO: Just kidding. It's not a
12 touchscreen.

13 THE COURT: Now there's a mouse.

14 BY MS. CANNIZZARO:

15 Q There's a mouse right in front of you in front of
16 that computer that --

17 THE COURT: And there is more. It's not that easy.
18 It used to be easy, but now they've made it more complicated.
19 So there's got to be a toolbar, and you've got to click so that
20 she can use the toolbar.

21 MS. CANNIZZARO: I think maybe I can walk her through
22 it, Your Honor.

23 THE COURT: Okay.

24 MS. CANNIZZARO: If that would be okay?

25 THE COURT: That would be fine.

1 BY MS. CANNIZZARO:

2 Q Ms. Bernier, you were just mentioning that there is a
3 front door to the Torrey Pines Pub. Do you see that in this
4 photograph?

5 A Yes.

6 Q Okay. There appears to be this 24-hour video poker
7 sign that I'm pointing to, and there appears to be a door
8 underneath that. Would that be a fair representation?

9 A Yes.

10 Q Is that -- which door would that be?

11 A That's the front door.

12 Q You mentioned that there's is also two back doors; is
13 that right?

14 A Right.

15 Q Are the back doors then on the other side of this
16 building?

17 A [No audible response.]

18 Q That we're looking at in the front?

19 A On the other side, like -- the one's in the back by
20 the kitchen, and the other one, which is like the side back
21 door is right just like.

22 Q Off to the side?

23 A Yeah, off to the side.

24 Q And I'm going to show to you State's Exhibit
25 Number 6. In this particular photograph, there appears to be a

1 door with an awning over it. Is that the side door you were
2 just referencing?

3 A Yes.

4 Q And then there appears in the left side of this
5 photograph to be sort of some pillars that resemble what we
6 looked at in State's Exhibit 1. Would that be fair to say?

7 A Yes.

8 Q Okay. Now, you mentioned that these doors are locked
9 during your shift. How would one get into the bar given that
10 the doors are locked if they came during the graveyard shift?

11 A They would come into the front door, and we would ID
12 them, and they would buzz the door, and then we would let them
13 in. That's how customers come in generally on graveyard.

14 Q So you -- would it be fair to say you have a process
15 then to allow folks into the bar?

16 A Yes.

17 Q At what point in time during the evening do you use
18 that method to allow people to enter the bar?

19 A They lock the door I believe at 11:30, which takes
20 place on swing shift.

21 Q Okay.

22 MS. CANNIZZARO: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Granted.

25 / / /

1 BY MS. CANNIZZARO:

2 Q Ms. Bernier, I'm showing you what's been marked as
3 State's Proposed Exhibit Number 22. Do you recognize this
4 photograph?

5 A Yes.

6 Q And how do you recognize this photograph?

7 A That is the hallway when you enter through the front
8 door of the business.

9 Q Is this a fair and accurate depiction of -- is that a
10 fair and accurate depiction then of the inside of the door to
11 the bar?

12 A Yes, it's the foyer area.

13 Q And would this also be a fair and accurate depiction
14 of how that appeared in October of 2015?

15 A Yes.

16 MS. CANNIZZARO: Permission to -- or State would move
17 to admit State's Proposed Exhibit 22 into evidence.

18 THE COURT: Any objection?

19 MR. MATSUDA: No, Your Honor.

20 THE COURT: It'll be admitted.

21 (State's Exhibit Number(s) 22 admitted.)

22 MS. CANNIZZARO: And, Your Honor, permission to
23 publish?

24 THE COURT: Granted.

25 / / /

1 BY MS. CANNIZZARO:

2 Q Ms. Bernier, I'm going to show you up on this screen
3 State's 22, which we were just discussing, and you mentioned
4 that this was the front foyer to the bar; is that correct?

5 A That is correct, yes.

6 Q We do see sort of a metal gate here to the left side.
7 And is that a yes?

8 A Yes.

9 Q Sorry. I saw you shaking your head.

10 A Yes.

11 Q And then there appears to be an open door here.
12 Where does this door lead to?

13 A Into the bar.

14 Q And would this be the place where someone would enter
15 into the bar, and you'd be able to ID them?

16 A Yes.

17 Q And do you have cameras in that area then --

18 A Yes.

19 Q -- that would allow you to see that person?

20 The side door that we were referencing previously, is
21 there any way to enter that door during your shift?

22 A No, not from the outside. That was locked.

23 Q When you were working the graveyard shift, were there
24 other employees that would work with you, or would you be
25 alone?

1 A The kitchen is open until 2:00 on the weekends. So I
2 would generally have a cook there until about 2:00,
3 3:00 o'clock.

4 Q After 2:00 or 3:00 o'clock --

5 A But that's only on Friday and Saturdays.

6 Q So let me ask -- let me back up for just a moment.
7 During the other days of the week, were there any other
8 employees that would work with you?

9 A No. I'm alone.

10 Q After 2:00 or 3:00 on a Friday or Saturday, were
11 there any other employees in the bar with you?

12 A No, there is not.

13 Q The graveyard shift, is that a busy shift?

14 A It can get busy at the beginning and at the end.

15 Q Do you have any regular customers?

16 A I have a lot of regular customers.

17 Q Okay. On the graveyard shift did you also have
18 regular customers on that shift as well?

19 A Yes.

20 Q And by regular customer, how would you define
21 somebody to be a regular customer?

22 A Somebody that comes in daily, gambles and drinks.

23 Q Would it be fair to say you often speak with them?

24 A Yes. I spend extended periods of time with them.

25 Q Okay. Are there also security cameras inside of this

1 bar?

2 A Yes.

3 Q And are those security cameras regularly recording
4 during your shifts?

5 A Yes.

6 Q Is there anywhere in the bar where you're able to see
7 anything that's on those security cameras?

8 A Yes.

9 Q And can you describe for us where that would be.

10 A We have security cameras -- screens behind the bar
11 for the bartender to see so we can check the parking lot or
12 someone coming in.

13 Q And so are there also then video surveillance cameras
14 on the outside of the bar?

15 A Yes.

16 Q And you mentioned that you would be able to see
17 those; is that right?

18 A Yes.

19 MS. CANNIZZARO: Court's brief indulgence.

20 BY MS. CANNIZZARO:

21 Q When customers would leave the bar during your shift,
22 how would they ordinarily leave the bar?

23 A Out the door.

24 Q Which door?

25 A The front door.

1 Q Was it typical for customers to leave using the side
2 door?

3 A It's not uncommon with regulars or people that are
4 establishing themselves as a regular. You're not supposed to,
5 but there are sometimes because of it being late and their car
6 parked there they'll go out the back.

7 Q But ordinarily folks would use the front door?

8 A Correct. Yes.

9 Q You mentioned that you're not supposed to use the
10 side door; is that right?

11 A Right. There's even a sign posted.

12 Q And I want to talk a little bit about the late
13 evening hours of October 28th, 2018, leading into the early
14 morning hours of October 29th, 2018. Were you working on that
15 day?

16 A Yes, I was.

17 Q And what shift were you working?

18 A Graveyard.

19 Q When you arrived for that shift, do you remember
20 what -- do you remember who was in the bar at that point?

21 A When initially coming in?

22 Q When you first come in.

23 A It just seemed to -- a couple of regulars that are in
24 there, not anybody out of the blue or anything.

25 Q During the course of your shift, were there ever any

1 additional customers that came to that bar?

2 A Yes.

3 Q That day, were there any other employees that were
4 working with you?

5 A No.

6 Q I want to go towards about 5:00 a.m. Do you remember
7 who was in the bar with you at that time on that day?

8 A I do. Yes.

9 Q Who was in the bar with you?

10 A I had four regulars plus -- and this newer regular or
11 established himself as a regular. Antwaine I believe his name
12 was.

13 Q Okay. You mentioned you had some regulars.

14 A Uh-huh.

15 Q Who were those?

16 A Gerry Ferony, Kathy Petcoff, Myer Goldstein.

17 Q With Gerry, Kathy and Myer, would it be fair to say
18 that you had seen them in the bar previously?

19 A Yes.

20 Q How often would they come in during your shift?

21 A Daily.

22 Q And when they would come in, would they stay? Would
23 they chat with you?

24 A Yes, for hours at a time.

25 Q And how long had they been coming to the bar while

1 you worked there?

2 A I inherited them when I took the job, and they've
3 been going there for decades.

4 Q You mentioned that there was another individual as
5 well, and can you describe for us how long you had known that
6 individual.

7 A He started coming in about two weeks maybe.

8 Q Prior to the 29th?

9 A Yes.

10 Q You mentioned that you believed his name was
11 Antwaine; is that right?

12 A I believe so, yeah.

13 Q Had he ever introduced you -- himself to you as
14 anything else?

15 A No.

16 Q Okay.

17 A And I IDed him, which was valid.

18 Q And so you remember his name being Antwaine or
19 something similar?

20 A Yes.

21 Q Is that a yes?

22 A Yes.

23 Q You mentioned he had been coming there for about two
24 weeks. How often would he come in?

25 A A couple times a week maybe.

1 Q How long would he stay when he would come in?

2 A Hours, three or four maybe.

3 Q Is it unusual for customers in your bar to come in
4 for hours at a time?

5 A No, not at all.

6 Q Was there anything particular about Antwaine that he
7 would wear that you regularly noticed?

8 A A safety vest, a fluorescent safety vest which led me
9 to believe that maybe he just got off of work, and it's not
10 uncommon for people to work crazy hours in this city.

11 Q And when you say safety vest, like what would you --
12 how -- what color was it? Can you describe it for us.

13 A Like a yellow reflective safety vest.

14 Q When Antwaine would come into the bar, would he come
15 in alone?

16 A Yes.

17 Q And you mentioned he had been there a few times; is
18 that right?

19 A Yes.

20 Q On this evening, do you remember approximately what
21 time Antwaine had come to the bar?

22 A I don't know the exact time, but it was a couple
23 hours into my shift. So I want to say after 2:00 maybe.

24 Q Okay. You remember him coming in during the course
25 of your shift; is that right?

1 A Yes.

2 Q Okay. Do you remember speaking with him during your
3 shift?

4 A Yes.

5 Q Anything on that day about Antwaine being in the bar
6 that seemed unusual to you?

7 A No.

8 Q Do you remember whether you noticed if Antwaine had a
9 phone with him that day?

10 A He did.

11 Q And what was he doing with the phone?

12 A He seemed to be on it whether -- I couldn't see what
13 he was doing on his phone, but, like, it's not uncommon for
14 people to be on their phone at a bar.

15 Q We all kind of have cell phones.

16 A Yeah.

17 Q And it's not uncommon then to see someone on a cell
18 phone?

19 A Right.

20 Q At about 5:15 or so that morning, do you remember
21 Antwaine ever getting up to leave?

22 A Yes.

23 Q Prior to that, do you remember whether he had been
24 gambling at all?

25 A He sat at the machine, and he had gambled before on

1 his other visits. I found out after the fact that he was
2 sitting at the machine and not actually gambling.

3 Q So you don't recall -- you don't recall him gambling
4 on that particular day?

5 A Right. I would see him hit the buttons, which just
6 led me to believe, but I never checked on that in the mix of
7 things.

8 Q Okay. So you don't know whether or not he was
9 actually gambling, but he did appear to be touching the
10 machines?

11 A Yes.

12 Q Would that be fair, a fair characterization?

13 A Yes, that's a fair assessment.

14 Q Okay. When Antwaine got up to leave, what if
15 anything do you remember about him getting up to leave that
16 morning?

17 A I believe I gave him a bottle of water on his way
18 out, as I do to a lot of customers.

19 Q That's pretty typical of you?

20 A Yes.

21 Q When he was getting up to leave the bar, what were
22 you doing in the bar?

23 A I was in the process of beginning my side work.

24 Q And what --

25 A Cleaning the bar, stocking, stuff to get ready for

1 your next bartender to relieve you.

2 Q And that's what you would call side work?

3 A Yes.

4 Q What was everyone else in the bar doing at this point
5 in time when Antwaine got up to leave?

6 A Gambling. Gerry and Kathy were sitting there
7 gambling and drinking. Myer was sitting there on his little
8 laptop or something. I don't know what he was doing.

9 Q Do you remember watching Antwaine leave the bar?

10 A I don't remember watching him.

11 Q Were you aware of how it is that he exited the bar?

12 A I'm aware that he went out the side door to let them
13 in.

14 Q Okay. So you mentioned that he was leaving, and he
15 went out the side door?

16 A Correct.

17 Q Is that the same side door we were looking at
18 previously?

19 A Yes.

20 Q And is that the same door that is not typically an
21 exit?

22 A Correct.

23 Q At this point in time, were you watching him actually
24 leave the bar?

25 A No.

1 Q What happens after he takes the water from you and
2 goes to leave? What's the next thing that you remember
3 happening?

4 A The next thing I remember is two men coming and
5 yelling. At first I didn't know what was going on. I was in
6 the process of putting my fruit caddy for cocktails into the
7 cooler. And when that happened, I threw that. The next thing
8 I know, then there's a guy behind the bar demanding money with
9 a gun, disguised.

10 Q You mentioned them. How many people did you see come
11 into the bar?

12 A Two men.

13 Q Okay. What -- can you describe for us what these two
14 men looked like.

15 A I can't because they were disguised, like masks,
16 guns, I believe a hoodie. Everything happened so fast.

17 Q Okay. Were you able to see any part of either one of
18 their faces?

19 A No.

20 Q Were you able to see any part of either one of their
21 bodies?

22 A No.

23 Q You mentioned that one guy came behind the bar; is
24 that right?

25 A That is correct.

1 Q And where were you when he came behind the bar?

2 A By the register.

3 Q When he came behind the bar, did he ever come up to
4 you?

5 A Yeah. He demanded money.

6 Q Okay. When he was demanding money, was he saying --
7 what was he saying specifically?

8 A Give me the money.

9 Q Okay. Did you notice anything in his hands?

10 A He had a gun.

11 Q Okay. Are you familiar with firearms at all?

12 A No, I'm not.

13 Q Okay. But you saw what you would describe to be a
14 firearm?

15 A [No audible response.]

16 Q Is that a yes?

17 A Yes.

18 Q Okay. Was he ever pointing this at you?

19 A I believe so.

20 Q Okay. Was he doing that at the same time that he was
21 demanding money?

22 A Yes.

23 Q Did he have anything else in his hands?

24 A A garbage bag to put the money in.

25 Q Okay. You mentioned that you were by a cash

1 register; is that right?

2 A That is correct.

3 Q What did you do when he demanded the money from you?

4 A Gave him the money.

5 Q Where did you give him money from?

6 A The slot drawer, the register, the cooler where the
7 ones were. And then they moved me to the other side where the
8 last register was and got the money out of there.

9 Q You mentioned that these were two men; is that right?

10 A [No audible response.]

11 Q Is that a yes?

12 A Yes.

13 Q And one of them was speaking to you; is that right?

14 A Yes.

15 Q What specifically made you think that they were two
16 men?

17 A It sounded like a dude.

18 Q So you actually empty out the cash drawer?

19 A Uh-huh. Yes.

20 Q And then you also mentioned the gaming drawer; is
21 that right?

22 A Yes.

23 Q Okay. And you mentioned there was a second cash
24 drawer. Where is that in relation to the first cash drawer?

25 A On the other side of the bar. It's an island, and

1 there's a register on either side.

2 Q At any point did you attempt to alert the police
3 during the course of this?

4 A I did.

5 Q How did you try to do that?

6 A With a silent alarm.

7 Q Where is the silent alarm in the bar?

8 A On the register.

9 Q Were you successful in being able to activate the
10 silent alarm?

11 A No, I was not.

12 Q Why is that?

13 A Because there was a kitchen bell ringer right next to
14 it, and the whole time I thought I was getting the silent alarm
15 I was calling the kitchen.

16 Q After you put the cash into the plastic bag, what
17 happens once you're done with that second register?

18 A I squatted down by the cooler and waited until it was
19 safe to come up or seemingly so.

20 Q While the man was with you behind the bar, did you
21 ever see what the second man was doing?

22 A No.

23 Q Once you squat down, do you ever see them leave?

24 A No.

25 Q At some point do you stand back up?

1 A Yes.

2 Q How does that happen? What triggers you to be able
3 to stand back up?

4 A I believe Myer, the one customer who was sitting on
5 the outside of the bar saw that they were gone.

6 Q So at some point you become aware that they've left?

7 A Right.

8 Q What happens at that point? What do you do next?

9 A I call 9-1-1.

10 Q Okay. Which phone did you used to call 9-1-1?

11 A I believe I used the bar phone.

12 Q Do you ever notice any injuries to anyone?

13 A After the fact, yes.

14 Q And specifically to whom?

15 A Gerry Ferony.

16 Q And what kind of injury?

17 A He had his head split open and bleeding.

18 Q Okay. What did you do when you saw that he was
19 injured?

20 A I -- I don't know. I maybe got some bar towels, but
21 I believe I was on the phone and dealing with the police and
22 then the ambulance and stuff came.

23 Q Did police respond then?

24 A Yes.

25 Q How long did it take for the police to respond?

1 A Maybe 5, 10 minutes. I'm not sure.

2 Q How long approximately did it feel that this incident
3 took place?

4 A Like the length of the robbery itself?

5 Q Yes.

6 A It seemed like forever. I would have guessed 5
7 minutes.

8 Q You mentioned that there were surveillance videos in
9 this bar; is that right?

10 A Yes.

11 MS. CANNIZZARO: Okay. Permission to approach your
12 clerk, Your Honor?

13 THE COURT: Granted.

14 MS. CANNIZZARO: Your Honor, permission to --
15 permission to briefly publish a video portion of State's
16 Proposed Exhibit 64 for identification purposes.

17 THE COURT: Any objection to that?

18 MR. MATSUDA: None. None, Your Honor.

19 THE COURT: Okay. Granted.

20 MS. CANNIZZARO: And, Your Honor, I do believe that
21 the defense has stipulated to State's Proposed Exhibit 64 --
22 excuse me, 63 and 64.

23 THE COURT: Is that correct?

24 MR. MATSUDA: That is correct, Your Honor.

25 THE COURT: So you're stipulating to the admission of

1 State's 63 and 64. Those will be admitted by stipulation which
2 means that counsel has agreed to that.

3 (State's Exhibit Number(s) 63-64 admitted.)

4 MS. CANNIZZARO: Madam recorder, what was the pass
5 code again?

6 THE COURT RECORDER: 1604. And remember to push the
7 button to switch out.

8 (Pause in the proceedings.)

9 MS. CANNIZZARO: Court's brief indulgence.

10 BY MS. CANNIZZARO:

11 Q Ms. Bernier, on the screen in front of you, you
12 should be able to see the State's Exhibit 64, which is a copy
13 of video surveillance. Do you see that in front of you?

14 A Yes.

15 Q And do you see yourself in this video?

16 A I do.

17 Q What are you wearing?

18 A I'm wearing a red UNLV cap, black V-neck tee, pants
19 and some Chuck's.

20 Q And it appears that you are sitting at the corner of
21 the bar in this particular angle of the video. Would that be
22 fair to say?

23 A Yes.

24 Q Who are you talking to to your right in this video?

25 A That's Kathy Petcoff.

1 Q And who is sitting next to her?

2 A Gerry Feron.

3 Q And do you see another individual on the other corner
4 of the bar?

5 A Yes.

6 Q And who would that be?

7 A That is Antwaine.

8 Q You mentioned that there was another individual named
9 Myer in this bar. Do you see him in the video?

10 A Yes. I see part of him.

11 Q What part do you see of him?

12 A He's all the way to the right of the screen. This is
13 his arm.

14 Q Okay. And so we see a little elbow in the corner.
15 Would that be fair to say?

16 A Yes.

17 Q Would it be common for you to sit and converse with
18 your regulars at the bar?

19 A Yes.

20 Q What we're observing in this portion of the video at
21 5:07:15 and as it's playing on, would this be typical for a
22 shift at the bar?

23 A Yes.

24 Q Okay. And is this a fair and accurate video of the
25 video surveillance from October 29th?

1 A Yes.

2 Q We're going to go ahead and fast-forward part of this
3 video. And we'll start it again at 5:11:53 and counting.

4 Ms. Bernier, would it be fair to say at this point
5 everyone is still in the same position they were previously?

6 A Yes.

7 Q Okay. I'm going to go ahead and stop it at 5:14:26,
8 and, Ms. Bernier, can you describe for us what we just observed
9 in this portion of the video.

10 A Gerry Ferony being assaulted.

11 Q Okay. Did you also get --

12 MR. MATSUDA: I'm going to object to that. That
13 calls for a legal conclusion, Your Honor.

14 THE COURT: All right. So the jury -- that term will
15 be defined for you, and you'll make a decision whether an
16 assault has occurred or not occurred. So disregard what the
17 witness said.

18 Just describe what you're talking about.

19 THE WITNESS: He was hit in the head.

20 BY MS. CANNIZZARO:

21 Q We also, the last time we were discussing this video,
22 you were seated at the bar. Did you actually see yourself get
23 up?

24 A Yes.

25 Q Okay. And what happened as you got up from your

1 seat?

2 A I went to get a water.

3 Q Okay. Earlier you mentioned you had given a water to
4 Antwaine. Did we observe that in this portion of the video?

5 A Yes, we did.

6 Q You mentioned that there was a man that had come
7 behind the bar. Did we see that in this portion of the video?

8 A Yes.

9 Q Okay. And where are you at this point in time?

10 A I'm I believe -- well, I'm out of camera view. So I
11 believe by the register.

12 Q Okay. And where is the register in relation to this
13 camera view?

14 A Just like around the corner, like at the -- where
15 this bar is at on the left-hand side is where the registers sit
16 and bottles.

17 Q Okay. And we had seen you earlier sort of grab
18 something and put it in front of the person you identified as
19 Gerry. Is that the side of the bar that you referring to?

20 A I refilled Jerry's Johnny Walker Black.

21 Q Okay. And is the cash register somewhere along that
22 outside of the bar as well?

23 A Yes.

24 Q I'll go ahead and start playing that again.

25 Ms. Bernier, we did see you put something on top of

1 the bar. Do you remember what you had put on top of the bar at
2 that point in time?

3 A The bar towels for Jerry's head.

4 MS. CANNIZZARO: Court's brief indulgence.

5 BY MS. CANNIZZARO:

6 Q Ms. Bernier, I'm going to show you what has been
7 stipulated to admission as State's Exhibit 63.

8 I apologize. It is going to be on State's
9 Exhibit 64.

10 Ms. Bernier, on this video right in front of you
11 which we are going to fast-forward to 5:12:25 and counting.
12 Earlier you mentioned that there was a side of the bar that you
13 had gone around where there was a cash register. Where is that
14 in this particular video?

15 A The islands that the registers sit on is to the left
16 in this video.

17 Q And then it appears as though we can see in the
18 corner of this video on the right-hand side an individual
19 sitting at the bar; is that right?

20 A Yes.

21 Q And who is that?

22 A That is Antwaine or Antwaine.

23 Q And so is this just another angle then of this other
24 side of the bar?

25 A Yes.

1 Q Would that be fair to say? Yes?

2 A Yes.

3 Q Okay. And at 5:13:43 and counting, do we see you
4 appear in the video at that point?

5 A Yes. I'm grabbing a bottle of water. There I am
6 ringing in Jerry's comp for his Johnny Walker Black, which you
7 previously saw me pour.

8 Q And you mentioned that there was a cash register on
9 that side; is that correct?

10 A Yes.

11 Q Now, Shaylene, I'm going to go ahead and stop the --
12 Ms. Bernier, I'm going to stop the video at 5:15:22. We saw
13 you pull some cash from a number of places in this video.
14 Would that be fair to say?

15 A Yes.

16 Q Where specifically did we see you pull cash from?

17 A From cash register 1, the slot drawer and the cooler
18 which had the bag of ones.

19 Q And is the cooler open in this portion of the video?

20 A It is.

21 Q You mentioned that the police actually arrived
22 shortly after this. Is that right?

23 A Yes.

24 Q Did you ever speak with police?

25 A I did.

1 Q And you remember giving an interview with them?

2 A I did.

3 Q Did you -- did you ever call your employer or your
4 boss?

5 A Yes.

6 Q When did you do that?

7 A Immediately after. But with the alarms, he's alerted
8 automatically.

9 Q And who is that?

10 A Robert Bonner.

11 Q Did he ever show up at the bar as well?

12 A He did.

13 MS. CANNIZZARO: Court's brief indulgence.

14 I have no further questions, Your Honor. I'd pass
15 the witness.

16 THE COURT: Cross.

17 MR. MATSUDA: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MATSUDA:

20 Q Good afternoon, ma'am. How are you doing today?

21 A I'm doing well. Thank you.

22 Q Okay. So I'm going to ask you some questions that
23 the -- about the night in question or the early morning in
24 question.

25 Okay. So the gentleman that we just saw in the

1 video, you said he goes by the name Antwon -- Antwaine?

2 A Yes.

3 Q Okay. And how long or prior to this early morning,
4 how often did you see him inside the bar?

5 A He had been coming in for the past two weeks, a
6 couple times each week.

7 Q So a couple times, about four times prior to this?

8 A Probably.

9 Q Each time was he wearing that yellow construction
10 vest?

11 A Um --

12 Q Or fluorescent vest?

13 A I don't know if -- what his outfits were every visit.

14 Q But personally you recall seeing him --

15 A I recall seeing him wearing that vest before, yes.

16 Q Okay. And how long was -- did he stay in the bar?

17 A He usually stayed a couple hours each time.

18 Q Typical -- I keep on trying to say night, but early
19 morning hours, is that a typical representation of how many
20 people are in the bar?

21 A Yes, but it can fluctuate.

22 Q Okay. Now, and we just see in a couple videos from
23 two different angles in the bar. The guys are wearing hoodies;
24 correct?

25 A Yes.

1 Q And I say "guys" because you said it sounded like a
2 male.

3 A Right. They had the physique of a male.

4 Q Okay. Physique or they sounded like a male?

5 A Physique.

6 Q Okay. So not only do they sound like --

7 A Both as well.

8 Q Okay. So physical size and voice sounded like a man?

9 A Yes.

10 Q Okay. What were they wearing on their face?

11 A A mask.

12 Q Okay. You look kind of unsure about that. Were you
13 able to see their face?

14 A No, I was not.

15 Q Okay. Now, is that because it was covered by
16 something, or you just didn't physically look in that
17 direction?

18 A I think it would be a combination of both and also
19 having a gun to me.

20 Q Okay. So you didn't see their face?

21 A Correct.

22 Q Okay. And do you know if they're wearing anything on
23 their hands?

24 A The man that was on me I remember having gloves.

25 Q Okay. And is that because you actually saw gloves?

1 A Yes.

2 Q Okay. And in the video we can see persons wearing
3 all black?

4 A Correct.

5 Q Correct? Okay. At some point were you able to size
6 them up?

7 A How so?

8 Q Seeing how tall this person was?

9 A Not really.

10 Q Okay. Now, we can see you in the video; correct? Is
11 that --

12 A That is correct.

13 Q Okay. And how tall are you?

14 A I'm 5-7.

15 Q 5-7. And is that with or without heels?

16 A That's flat feet.

17 Q Okay. And that night I can't really see, but are you
18 wearing flats?

19 A Yeah. I'm wearing Chuck's.

20 Q Okay. I'm having the State play the video of when
21 the person comes behind the bar.

22 Okay. So it didn't really -- do you recall how tall
23 that person was?

24 A No. I couldn't give you -- like taller than me.

25 Q Okay. And you said you're 5-7?

1 A Yes.

2 Q Now, do you remember giving a statement shortly after
3 this incident to some detectives?

4 A I had an interview with them, yes.

5 Q Okay. And that would be early morning hours of
6 October 29th?

7 A That's correct.

8 Q Okay. Now, do you remember stating to the officers
9 that you could kind of -- by the way they were speaking, you
10 thought they were a certain person?

11 A Yes.

12 Q Okay. And do you recall what you said?

13 A Yes, I do.

14 Q And what did you say?

15 A I said that -- I described them as African American.

16 Q Okay. And why did use it describe them as African
17 American?

18 A His voice sounded.

19 Q And how does one sound like an African American?

20 MS. CANNIZZARO: Objection, Your Honor. Calls for
21 speculation.

22 MR. MATSUDA: And, Your Honor, she just testified
23 that she described to detectives that the person sounded --

24 THE COURT: It's overruled.

25 If you can tell the jury why you thought that.

1 THE WITNESS: He sounded like a character on the TV
2 show *Power*.

3 MR. MATSUDA: I'm not familiar with the.

4 THE WITNESS: Which the actor happens to be African
5 American.

6 BY MR. MATSUDA:

7 Q Okay. So and does this --

8 A He sounded like a black actor basically, like
9 somebody that I've seen in a TV show. That's why I said that.

10 MR. MATSUDA: Okay. Thank you, ma'am.

11 Nothing further.

12 THE COURT: Redirect?

13 MS. CANNIZZARO: Nothing from the State, Your Honor.

14 THE COURT: Does the jury have any questions?

15 I have one.

16 You'll need to write the question down. Hand it to
17 the marshal, please. Make sure you put your badge number on
18 there.

19 THE MARSHAL: Let me help you out with that. Madame
20 Clerk, can you recite her last three of her badge.

21 THE CLERK: Yes.

22 THE MARSHAL: Thank you.

23 THE CLERK: 053.

24 THE COURT: Counsel, approach.

25 (Conference at the bench not recorded.)

1 THE COURT: All right. So, ma'am, I think when you
2 first started your testimony you indicated that there were four
3 regulars, one regular, and so the jury was a bit confused about
4 how many people were --

5 THE WITNESS: There were three regulars, plus four.

6 THE COURT: Wait. Wait. Let me say it. Don't talk
7 over me.

8 THE WITNESS: Okay. I apologize.

9 THE COURT: Because we keep a record. Okay.
10 Okay. So clarify for the jury: How many people were
11 in the bar?

12 THE WITNESS: There were four total.

13 THE COURT: Okay. Four regulars, and that would
14 include the person who you've identified as Antwaine?

15 THE WITNESS: That would be three regulars plus
16 Antwaine, four total.

17 THE COURT: Okay. All right. Thank you.

18 And the question will be marked as Court's Exhibit 1.

19 THE CLERK: 2.

20 THE COURT: 2. Oh. Thank you.

21 All right. And any questions as a result of that
22 question from the jurors?

23 MS. CANNIZZARO: None from the State, Your Honor.

24 MR. MATSUDA: None from the defense, Your Honor.

25 THE COURT: May this witness be excused?

1 MS. CANNIZZARO: Yes, Your Honor.

2 THE COURT: Thank you very much for your testimony,
3 ma'am.

4 All right. Approach.

5 (Conference at the bench not recorded.)

6 THE COURT: All right. So we're going to hear from
7 another witness before we break for lunch since the witness has
8 been waiting in the hall.

9 So you'll call your next witness, please.

10 MS. CANNIZZARO: The State would call Gerald Ferony.

11 THE COURT: Follow the marshal there.

12 **GERALD FERONY**

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

15 THE CLERK: Please state and spell your name for the
16 record.

17 THE WITNESS: Gerald Ferony. G-e-r-a-l-d, F as in
18 Frank, e-r-o-n-y.

19 THE CLERK: Thank you.

20 THE COURT: And you may be seated now, sir.

21 THE WITNESS: Thank you.

22 THE COURT: And if you'll scoot your chair up there
23 so you're in front of the microphone.

24 THE WITNESS: Okay.

25 THE COURT: You may proceed.

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1 MS. CANNIZZARO: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. CANNIZZARO:

4 Q Good afternoon, Mr. Ferony. May I ask, how old are
5 you?

6 A Today?

7 Q Today.

8 A 71.

9 Q How about in October of 2018 --

10 A About two weeks short of 71.

11 Q And when is your birthday?

12 A November 11th.

13 Q So --

14 A 1947.

15 Q Perfect. So let me ask you, where do you currently
16 live?

17 A 2051 North Torrey Pines Road. I get the road and the
18 drive confused sometimes. 1042.

19 Q And is that nearby a place called the Torrey Pines
20 Pub?

21 A Pretty close, a stones throw.

22 Q And by "stones throw," how would you get to the
23 Torrey Pines Pub from --

24 A Well, if I drive, it takes three tenths of a mile
25 coming out of the driveway and across the street.

1 Q So it's just across the street from where you live?

2 A At least that's what my auto meter says. It could be
3 a quarter-mile. I don't know.

4 Q Is it just across the street from where you live
5 then?

6 A Yes. Well, and a little -- and a wee bit to the
7 south.

8 Q Okay. So very close?

9 A Yes.

10 Q And is that a place that you often go to?

11 A It keeps me out of trouble going there.

12 Q Is that a yes?

13 A Yes.

14 Q How often do you go to the Torrey Pines Pub?

15 A Hard to say, depending on the season, fall season or
16 whatever, but I would go safely four to six times a week.

17 Q Do you usually go at any particular point in the day?

18 A I'm a graveyard shift man.

19 Q And so you're talking about from about midnight to
20 the early morning hours?

21 A Right.

22 Q And when you go to the Torrey Pines Pub, is there any
23 usual things that you do while you're there?

24 A Play some video poker, have a drink or two.

25 Q And is that pretty -- that's pretty typical of every

1 time you've been there?

2 A Pretty much.

3 Q When you go to the Torrey Pines Pub, do you often
4 stay for a longer period of time, or is it a, you know, a 30
5 minute visit?

6 A 30 minutes maybe but usually longer depending. The
7 night in question, I got up in the middle of the night because
8 I woke up, and I went over there. So I might have stayed a
9 little bit longer, but I couldn't tell you. I don't remember
10 what time I got there.

11 Q So safe to say it would vary --

12 A Yes.

13 Q -- depending on if you stay up for a little bit
14 longer, sometimes a short visit?

15 A Usually I take a nap or I get tired because --
16 because I have leukemia, I get tired during the day, and I take
17 naps all the time. But that means I don't sleep so well at
18 night. So --

19 Q So you spend your nights at the Torrey Pines Pub?

20 A That's better than any place else without getting
21 into trouble.

22 Q So would it be fair to say that you know some of the
23 people who work there?

24 A Yes.

25 Q Okay. Did you just see a young woman on the way into

1 the courtroom today?

2 A Shaylene.

3 Q Shaylene. And what is -- how do you know her?

4 A She's the bartender.

5 Q I want to talk a little bit about October, the late
6 evening hours of October 28th, 2018, going into the morning
7 hours of October 29th, 2018. Were you at the Torrey Pines Pub
8 on that day?

9 A No.

10 Q You were not at the Torrey Pines Pub on that day?

11 A No, not at that time.

12 Q Okay. What time did you get to the Torrey Pines Pub
13 around that date?

14 A A rough guess would probably be about 4:00 maybe.

15 Q 4:00 a.m.?

16 A Yes. Give or take a half, you know, quarter of an
17 hour.

18 Q So that would have been into the 29th?

19 A Yes.

20 Q Okay. And when you arrived at the Torrey Pines Pub
21 on October 29th, 2018, what did you do when you get there?

22 A Sat down, ordered a drink, put 20 bucks in the
23 machine, talked to a couple of the people in there that I know.

24 Q Where specifically in the bar did you sit?

25 A Let's see. It would be the northwest corner.

1 Q Where is that in relation to the front door?

2 A Go in, straight back, around the corner, right there.

3 Q And you mentioned that there were some other people
4 in the bar. Who --

5 A Three. Three customers and the bartender.

6 Q And so who specifically was in the bar with you?

7 A Myer, Kathy and another gentleman that was sitting
8 right across from me.

9 Q Okay. When you say across --

10 A Kitty-corner.

11 Q Kitty-corner. Okay. Had you ever met that gentleman
12 before?

13 A I think I might have seen him two or three times.
14 I'm not sure.

15 Q You mentioned that you were also there with a person
16 named Kathy and a person named Myer?

17 A Correct.

18 Q Had you ever seen those two at the bar before?

19 A Several times, yes.

20 Q Fair to say you were familiar with Kathy and Myer?

21 A Yes. First name basis.

22 Q Did you order anything to drink on that morning?

23 A A bottle of Becks and a shot of scotch.

24 Q Is that a typical order for you?

25 A More than typical.

1 Q You mentioned that you had put \$20 into the machine.
2 Were you playing video poker?

3 A Yes.

4 Q At any point in time did you see the man that was
5 sitting kitty-corner from you start to leave the bar?

6 A Yes.

7 Q Can you describe for us how that happened.

8 A Well, he got up. He went around behind me. He got a
9 bottle of water from the bartender. I don't know if he went
10 into the men's room or not because that was -- now, you're
11 talking my peripheral vision is straight down, but then I seen
12 him going up the side and to the door.

13 Q So you mentioned that you had seen him get up and go
14 towards the side door?

15 A Right. He walked right on behind me. Yes.

16 Q Where is the side door in relation to where you were
17 sitting?

18 A Kitty-corner all the way across.

19 Q Can you see the side door from where you're sitting?

20 A Yes.

21 Q And the side door, did you come in that door?

22 A No.

23 Q What door did you come in?

24 A The front door, the one facing Lake Mead.

25 Q Is it typical for patrons to use that side door to

1 exit?

2 A It is during the day, but it's not supposed to be
3 used at night after 12:00.

4 Q And why is that?

5 A There's a sign on it that says don't use it after
6 12:00.

7 Q Did you actually observe him leave through that door?

8 A Absolutely.

9 Q And what happened as he was walking out the door?

10 A He disappeared for a second, and then two gentlemen
11 pushed him in, knocked him down on the ground, and one went one
12 way, the other went the other way and came around the bar.

13 Q You mentioned that two gentlemen had come into the
14 bar.

15 A Correct.

16 Q Can you describe what they looked like when they came
17 in?

18 A No.

19 Q Why?

20 A Because they were masked and covered with a hoodie.

21 Q How do you know --

22 A Gloves and everything.

23 Q How do you know they were gentlemen?

24 A Well, I -- one spoke to me, and he certainly didn't
25 sound like a lady.

1 Q You mentioned that they were -- they were wearing or
2 that you couldn't see them --

3 A Ski masks and hoodies.

4 Q Okay.

5 A And gloves.

6 Q Could you see any part of their facial features at
7 all?

8 A Eyes maybe.

9 Q Okay. You mentioned that one went one way and one
10 went the other.

11 A Right.

12 Q Did either one of them come towards you?

13 A Yes.

14 Q And where did they go when they came by you?

15 A Right up to me, stuck a gun in my face and told me to
16 put my hands up.

17 MS. CANNIZZARO: And for the record, the witness did
18 motion towards his right-hand side.

19 BY MS. CANNIZZARO:

20 Q Would that be fair to say?

21 A What do you mean "motioned"?

22 Q You sort of put your hand up by your right-hand side?

23 A I was sitting there like this. I said -- they were
24 like this. They are up.

25 Q Okay.

1 A And that's when he hit me in the head with the gun.

2 MS. CANNIZZARO: And for the record, the witness sort
3 of put both of his hands up in front of him.

4 THE WITNESS: No. They were my hands. I had -- my
5 hands were like this.

6 BY MS. CANNIZZARO:

7 Q So that -- so --

8 A I went like that. They said they are up, and that's
9 when he hit me with the gun.

10 Q Okay.

11 THE COURT: Okay. So -- so what she's doing is she
12 has to make a record. So she's just saying that you're holding
13 your hands up so the record will reflect that.

14 THE WITNESS: And, yes.

15 THE COURT: And he was holding his hands up with his
16 palms out and about parallel with his head.

17 THE WITNESS: Yes.

18 THE COURT: All right. Thank you.

19 BY MS. CANNIZZARO:

20 Q Why did you put your hands up?

21 A Well, when people come in with a gun, it usually
22 means I'm getting robbed. What else are you going to do?

23 Q So you mentioned that they came in. Did you see
24 whether both men had guns?

25 A Yes.

1 Q The one that was by you, do you remember anything
2 about the gun?

3 A It was a semiautomatic. I'd say the finish -- to the
4 best of my knowledge was probably brushed steel. It looked
5 like a silver grayish finish. The barrel I'd say was at least
6 a .38 but more than likely a .44 or .45.

7 Q Fair to say that you recognized it as being a
8 firearm?

9 A Four years in the Marine Corps I think I know a
10 firearm when I see one.

11 Q You mentioned that the gun was pointed at you. Where
12 was it pointed?

13 A (Witness demonstrates.)

14 Q Okay. And for the record, the witness is pointing
15 towards your right head?

16 A Yeah, for right. About, what, a foot away, maybe, if
17 that.

18 Q When the gun was pointed at you, do you ever
19 remember -- you mentioned that they had spoken to you. That
20 individual, did they say anything to you?

21 A He told me to put my hands up.

22 Q Okay. What happened after you put your hands up?

23 A He hit me in the head with the gun.

24 Q Where on the head?

25 A Right in the back at the top of the crown.

1 Q How do you know he hit you with the gun?

2 A He hit me with the gun. I can tell you that. It
3 wasn't no bare hand; that's for sure, and that's all he had it
4 in his hand. I mean, unless he -- he'd have to put the gun
5 down to hit me with his hand because his other hand was still
6 in front of me.

7 Q Okay. What happened when you got hit in the head?

8 A I started bleeding. I got -- I fell out of the chair
9 and went down on the floor.

10 Q Once you were on the floor, did he ever say anything
11 else to you?

12 A Give me -- where's your wallet?

13 Q Did you have your wallet on you?

14 A Yes.

15 Q Where was your wallet?

16 A My right hip pocket.

17 Q Did you point it out to him?

18 A Yes.

19 Q Did he take it?

20 A Yes.

21 Q Was that while you were still on the ground?

22 A Yes.

23 Q What else did you see while you were on the ground?

24 A He went past me after that towards the other two
25 people. He stopped at Kathy who was two seats over from me. I

1 didn't really see what was going on there, and then he went
2 over to Myer who was at the other corner of the bar, and I
3 didn't -- you know, because I was looking over my head now. So
4 I didn't really see much of what was going on.

5 Q At some point did you see the two individuals leave?

6 A Yes.

7 Q And did you see which direction they went?

8 A They went up that side of the bar that Myer was
9 sitting on. In other words, the side opposite from me. But
10 once they got a little ways up, they were on the side; I was
11 still laying on the ground.

12 Q After they left, what did you do?

13 A Got up, sat down, got some bar towels and tried to
14 stop bleeding all over the place.

15 MS. CANNIZZARO: And, Your Honor, permission to
16 publish State's 64?

17 THE COURT: Granted.

18 BY MS. CANNIZZARO:

19 Q Mr. Ferony, right on that screen, right in front of
20 you.

21 A Yes.

22 Q Do you see video surveillance playing on that screen
23 in front of you?

24 A Well, now they're moving. Yes.

25 Q Okay. Do you see yourself in this video?

1 A Sure.

2 Q Where are you in this video?

3 A At the left end of the -- that side of the bar.

4 Q And it appears like you might be putting something or
5 taking something from your pocket. Would that be fair to say?

6 A Yes.

7 Q And that's that 5:06:20.

8 Who is sitting next to you to your left?

9 A To my left, that's Kathy.

10 Q And then --

11 A And then the bartender Shaylene. And that's Myer's
12 elbow over there.

13 Q So in the far right-hand screen of the video, but to
14 your far left there's Myer. Would that be fair to say?

15 A To my right, yes.

16 Q And --

17 A Actually, to my left as I was sitting there, but to
18 my right now, yes.

19 Q On the video. Okay. And you mentioned that there
20 was a man sitting kitty-corner to you at the bar as well?

21 A Yes. He's there with the green vest or whatever.

22 Q Okay. We're going to go ahead and fast-forward this
23 video.

24 MS. CANNIZZARO: Court's brief indulgence.

25 / / /

1 BY MS. CANNIZZARO:

2 Q And at 5:13:15, what are you doing at this portion of
3 the video?

4 A I seem to be playing video poker.

5 Q And do you see that individual that was sitting
6 kitty-corner from you? Is he --

7 A I seen him come towards me --

8 Q -- getting up right now?

9 A -- but I didn't catch him. See, I just turn there.
10 That's when I seen him again.

11 Q Okay.

12 A But it was really straight out peripherally. So
13 my -- what's going on over there is not that good.

14 Q Okay. And we're just going to watch the rest of this
15 video for the next minute were so.

16 And we're going to pause it right there at 5:14:20.
17 Earlier you mentioned that when they came in you sort of put
18 your hands up. Did you see yourself do that in this video,
19 this portion of the video?

20 A It seemed to be going faster than I remembered it.

21 Q Fair enough.

22 A Of course, at the time it seemed to be in slow
23 motion. So I can understand that.

24 Q Then you mentioned that you had been hit in the back
25 of the head.

1 A Yes.

2 Q Did we also just witness that happen?

3 A I think so, but it seemed like it was in fast motion.

4 Q Okay. We'll go ahead and play it from 5:14:20.

5 A That was where he grabbed my wallet, and then he went
6 to -- now, I could see him there pretty much but.

7 Q And at 5:15:59, it looks like you stand up back at
8 the bar. Is that fair to say?

9 A Yes. Uh-huh, and I got some bar towels there.

10 Q Okay. And it appears that you're pressing them to
11 your head.

12 A Yes.

13 Q Were you bleeding at this point in time?

14 A Yes. I don't know. You probably -- the cops I think
15 probably took some pictures of --

16 Q Well, we'll talk about that, but you did feel
17 yourself bleeding at this portion of the video?

18 A Oh, yeah. Uh-huh.

19 Q Did police eventually show up at the bar?

20 A Yes.

21 Q And were you ever taken to a hospital?

22 A Yes.

23 Q Where were you taken?

24 A Mountain View.

25 Q What, if anything, did -- what if anything happened

1 when you went to Mountain View?

2 A They put three stitches in me, and they stopped the
3 bleeding.

4 MS. CANNIZZARO: Permission to approach your clerk,
5 Your Honor?

6 THE COURT: Granted.

7 THE WITNESS: Oh, did I say stitches? They were
8 staples.

9 MS. CANNIZZARO: Okay. And, Your Honor, permission
10 to approach the witness?

11 THE COURT: Granted.

12 BY MS. CANNIZZARO:

13 Q Mr. Ferony, I'm going to show you what has been
14 marked as State's Proposed Exhibits Numbers 54 through 59, a
15 set of photographs. I'm going to have you just take a look at
16 those photographs to yourself.

17 A Okay.

18 Q And if you could flip through them for me.

19 A Three staples. I guess I didn't miscount.

20 Q Do you recognize these photographs?

21 A I hadn't seen them before.

22 Q Okay. Do you recognize what's depicted in these
23 photographs?

24 A Yes. Except I couldn't -- I never did see the
25 staples.

1 Q Okay.

2 A Because I don't have eyes in the back of my head.

3 Q And, Mr. Ferony, are these fair and accurate
4 depictions of yourself at Mountain View Hospital?

5 A I would say they are.

6 Q And that would be on the day of October 29th, 2018?

7 A Right.

8 Q You mentioned that you had -- earlier that you had
9 been given staples. Did you have or have an opportunity to
10 feel those staples in the back of your head?

11 A Curiosity. Yes.

12 Q So while you didn't take these particular photos, do
13 these appear to be accurate photos of your --

14 A Yes.

15 Q -- injuries on that day?

16 A Yes.

17 MS. CANNIZZARO: The State would move to admit
18 State's Proposed 54 through 59 into evidence.

19 THE COURT: Any objection?

20 MR. MATSUDA: None, Your Honor.

21 THE COURT: Those will be admitted.

22 (State's Exhibit Number(s) 54-59 admitted.)

23 MS. CANNIZZARO: Permission to publish, Your Honor.

24 THE COURT: Granted.

25 / / /

1 BY MS. CANNIZZARO:

2 Q Okay. Mr. Ferony, I'm going to switch you back over
3 to this -- to this monitor in front of you, and I'm going to
4 show you State's Exhibit 54. Let me zoom out. Just a second.

5 Okay. And what are we looking at in this photograph?

6 A Apparently I'm sitting on a gurney of some sort or
7 the other.

8 Q Okay. And is this you at the hospital?

9 A Yeah.

10 Q Okay. Showing you State's 55, what is depicted in
11 this photograph?

12 A A close-up of my face I guess.

13 Q And State's 56, what are we looking at in this
14 photograph?

15 A The back of my head I'd say.

16 Q State's 57, what are we looking at in this
17 photograph?

18 A More of the top than the back.

19 Q Okay. And do you see those three staples in your --

20 A I surely do.

21 Q And is that where you remember having those staples
22 as well?

23 A I never did see them, but --

24 Q When you felt them in the back of your head?

25 A Yes. Yes.

1 Q Okay. State's 58, what is in that photograph?

2 A I don't see a whole lot of difference in that one
3 than the previous one.

4 Q Another photo of the back of your head?

5 A Yes.

6 Q And State's 59, what are we looking at in this photo?

7 A Another photo of the back of my head with the rulers
8 on the, you know.

9 Q Mr. Ferony, you mentioned that you had received three
10 staples --

11 A Correct.

12 Q -- to the back of your head. How long did you have
13 those staples in for?

14 A About 10 days.

15 Q When those staples were removed, have you ever had an
16 opportunity to notice whether you have any scarring to the back
17 your head?

18 A No.

19 Q Okay. When you were hit in the head, was that
20 painful?

21 A Yes.

22 Q Did it hurt when they were taking the staples out?

23 A It hurt more to take them out than it did to put them
24 in. Let me tell you that right now.

25 Q Do you still have any pain in that area?

1 A I get headaches, but I've always had headaches. So
2 it's not that. I can't tell you which is which.

3 MS. CANNIZZARO: Court's brief indulgence.

4 No further questions, Your Honor. I'd pass the
5 witness.

6 THE COURT: Cross.

7 MR. MATSUDA: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MATSUDA:

10 Q Good afternoon, sir. How are you doing?

11 A So so.

12 Q Okay. That bar seems like it's -- you ever watched
13 *Cheers*?

14 A Once or twice.

15 Q It's kind of like that. Everyone just knows each
16 other?

17 A No, not quite as much so as *Cheers*, but, yeah,
18 somewhat.

19 Q Okay. So --

20 A Especially the night -- I mean, the graveyard pretty
21 much. Yes. That shift, but the day shift, maybe not so much.

22 Q Okay. So when you were there, you kind of knew
23 everyone?

24 A Well, I didn't know the gentleman in the green vest.

25 Q But you said you've seen him before; correct?

1 A To the best of my recollection, but I'm not -- I
2 couldn't -- couldn't identify him from seeing him before.

3 Q Okay. When the two suspects came in, you testified
4 that you saw kind of what they were wearing; correct?

5 A I didn't really see it so much then as when they got
6 closer.

7 Q Okay. And what -- do you remember what kind of pants
8 they were wearing?

9 A No.

10 Q The color of the pants?

11 A No.

12 Q Okay.

13 A I wasn't looking at them below the waist to be
14 truthful with you.

15 Q Okay.

16 A I was more interested in what was going on with the
17 gun in their hands.

18 Q Okay. Now, you said -- did they both have guns?

19 A Yes.

20 Q Okay. And you said they were covered -- they were
21 covering their face with a ski mask?

22 A Or a similar facsimile, yes.

23 Q Okay. And their hoodies were up?

24 A Yes.

25 Q Okay. But you said you could see their eyes. Is

1 that accurate?

2 A Somewhat, yes.

3 Q Okay. Could you tell what color their eyes were?

4 A No.

5 Q Okay.

6 A I probably might have then, but I couldn't tell you.

7 I couldn't remember.

8 Q Okay. Did you see if they were wearing gloves?

9 A I believe they were.

10 Q Okay. You believe they were as in you vaguely
11 remember, or you're assuming?

12 A Both probably. I vaguely remember, and I'm assuming
13 I was correct from my remembering.

14 Q Okay. So you couldn't see any facial characteristics
15 other than maybe their eyes?

16 A Correct.

17 Q Okay. Nothing -- no other part of their body was
18 exposed?

19 A I was more interested in the gun than the rest of
20 their body.

21 Q Okay. And you said that. But anything else that
22 could identify someone?

23 A No.

24 Q Just their eyes were showing?

25 A If there was something else, I probably would have

1 remembered it, but it was not anything that I would remember.

2 Q Okay. And you would've told the detectives that
3 night or that day?

4 A Yes.

5 Q Okay. But you didn't?

6 A My recollection was probably a little better then
7 than it is now, yes.

8 MR. MATSUDA: Okay. Thank you, sir.

9 Nothing further, Your Honor.

10 THE COURT: All right. Any redirect?

11 MS. CANNIZZARO: Nothing else from the State, Your
12 Honor.

13 THE COURT: Thank you.

14 And any questions from the jury?

15 All right. I see none.

16 May this witness be excused?

17 MS. CANNIZZARO: Yes, Your Honor.

18 THE COURT: Thank you very much for your testimony,
19 sir.

20 THE WITNESS: Okay. I just need a minute to get out
21 of here.

22 THE MARSHAL: Watch your step.

23 THE COURT: Yeah, watch your step going down.

24 THE WITNESS: I'm not as steady as I used to be.

25 THE COURT: All right. Ladies and gentlemen, we're

1 going to take our lunch recess. It's about 1:00 o'clock. So
2 I'll ask you to please return at 2:00 o'clock.

3 And during this recess, it is your duty not to
4 converse among yourselves or with anyone else on any subject
5 connected with the trial; or to read, watch or listen to any
6 report of or commentary on the trial by any person connected
7 with the trial, or by any means of information, including
8 without limitation, newspaper, television, radio or Internet.
9 You are not to form or express an opinion on any subject
10 connected with this case until it's finally submitted to you.

11 As well, you're not to do any research on your smart
12 phones or on any computer or electronic device. You're not to
13 post on Facebook anything about this trial.

14 All right. So everything that you need to determine
15 or learn in this case you'll learn in the courtroom while court
16 is in session.

17 I will see you at 2:00 o'clock.

18 (Jury recessed at 12:59 p.m.)

19 THE CLERK: I think one of them had their notebook,
20 Steve.

21 THE MARSHAL: Pardon me?

22 THE CLERK: I think one of them took their notebook.

23 THE COURT: Better go check.

24 All right. The record will reflect the jury has
25 departed the courtroom. We need to memorialize the one bench

1 conference we had concerning the jury question. Everybody
2 approached. I read what the actual question said.

3 Let me have that, and I will read it into the record,
4 which was by Juror Badge Number 053, and it just said,

5 Earlier in the statement she mentioned
6 four regulars and one newer regular, but only
7 named three. I am looking to clarify exactly
8 how many people were in the bar.

9 Everybody agreed that that needed some clarification,
10 and so I restated it a little bit as, you know, to pose a
11 question.

12 But does that significantly memorialize our bench
13 conference for you?

14 MS. CANNIZZARO: Yes, Your Honor.

15 MR. MATSUDA: Yes, Your Honor.

16 THE COURT: All right. I'll see you in an hour.
17 Anything else outside the presence?

18 MS. CANNIZZARO: Nothing from the State.

19 MR. MATSUDA: Nothing from the defense, Your Honor.

20 THE COURT: Thank you.

21 Court will be in recess until 2:00.

22 (Proceedings recessed at 1:01 p.m., until 2:03 p.m.)

23 (Outside the presence of the jury.)

24 (Colloquy off the record.)

25 THE COURT: Are you guys ready?

1 MS. CANNIZZARO: I believe so, yeah.

2 THE COURT: You're going to force me to use the
3 decorative --

4 MS. CANNIZZARO: Yeah, we're getting there.

5 MR. MATSUDA: We're good.

6 THE COURT: Good.

7 (Colloquy off the record.)

8 THE COURT: All right. Are you ready?

9 MS. CANNIZZARO: We are.

10 THE COURT: Okay. Let's bring them in.

11 (Jury reconvened at 2:08 p.m.)

12 THE COURT: Thank you. And the record will reflect
13 the jury is present as well as the four alternates. The record
14 will further reflect the presence of the defendant with his
15 counsel, the prosecutors and all officers of the court.

16 You may call your next witness.

17 MS. MOORS: Thank you, Your Honor. The State calls
18 Myer Goldstein.

19 (Pause in the proceedings.)

20 **MYER GOLDSTEIN**

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

23 THE CLERK: Please state your name and spell it for
24 the record.

25 THE WITNESS: Myer Goldstein. M-y-e-r,

1 G-o-l-d-s-t-e-i-n.

2 THE CLERK: Thank you.

3 THE COURT: Have a seat, sir.

4 THE WITNESS: Thank you.

5 THE COURT: You may proceed.

6 MS. MOORS: Thank you.

7 DIRECT EXAMINATION

8 BY MS. MOORS:

9 Q Good afternoon, sir.

10 A Hi.

11 Q I want to direct your attention to October 29th of
12 2018. On that date, how were you employed?

13 A I was a taxi driver.

14 Q And when you were working as a taxi driver, what were
15 your customary work hours?

16 A Like noon to midnight or 10:00 to 10:00, depending on
17 the day.

18 Q Okay. And, sir, are you familiar with an area or a
19 bar known as the Torrey Pines Pub?

20 A Very much so.

21 Q How are you familiar?

22 A I am a daily customer.

23 Q And when you say daily, like literally every day?

24 A Literally every day. It's across the street from
25 where I live.

1 Q Okay. And how long have you been a daily customer?

2 A Years.

3 Q Years?

4 A Possibly decades.

5 Q Okay. So a fair amount of time.

6 A Yeah.

7 Q Specifically, sir, I want to direct your attention to

8 October 29th of 2018, which would have been a Monday morning.

9 Were you a patron at the Torrey Pines Pub on that date?

10 A Yes, I was.

11 Q Do you recall approximately what time you would have
12 gotten to the pub?

13 A Depending on my work shift, if I got off at 10, I
14 would have got there about 10:40. If I worked until midnight,
15 I would've got there at about 12:40.

16 Q And normally when you would go there after work,
17 about how long would you usually stay?

18 A Until about 5:00 or 6:00 in the morning.

19 Q Okay. So I guess your schedule at that point would
20 be maybe sleeping during the day?

21 A Uh-huh. I'm a daytime sleeper. Well, I was until I
22 got the new job.

23 (Pause in the proceedings.)

24 THE COURT: I apologize, sir.

25 THE WITNESS: It's all my fault.

1 THE COURT: Okay.

2 MS. MOORS: Thank you.

3 BY MS. MOORS:

4 Q All right. So fair to say this Torrey Pines Pub that
5 we've been discussing, is that an establishment that's open 24
6 hours a day?

7 A Yes.

8 Q So this would kinda be your normal hang out to wind
9 down after work?

10 A Correct.

11 Q Now, when you're there, what are you customarily
12 doing?

13 A Well, I used to gamble. I don't gamble anymore. But
14 pool. They have pool tables. They have trivia on the TVs.
15 The food is good. I don't drink alcohol, which is weird, but I
16 do spend almost all of my time sitting in a bar with friends
17 and just being social.

18 Q Okay. So at this point in time, if -- I know you
19 said you didn't remember what shift you had been working, but
20 somehow you had been at the pub either from around 10:30 at
21 night or about a little after midnight; is that right?

22 A Correct.

23 Q Now, you said that you don't gamble. So then I'm
24 assuming you don't play video poker?

25 A No.

1 Q And while you're there, you said you don't drink
2 alcohol?

3 A No.

4 Q So if I were to sort of direct your attention to
5 around 5:00 in that morning, what would you have been doing?

6 A Talking with friends, playing games on my tablet,
7 reading on my tablet. I'm not a hundred percent sure. I
8 think -- I think we were just talking at that point.

9 Q Okay. And are you familiar with an individual named
10 Gerald or Gerry --

11 A Ferony.

12 Q Ferony. His last name just escaped me.

13 A Yes.

14 Q Yes. And is he also a regular?

15 A Yes.

16 Q What about Kathy Petcoff?

17 A Yeah.

18 Q And are you familiar also with the bartender Shaylene
19 Bernier?

20 A Yes.

21 Q So on this date, were all of those individuals in the
22 pub with you?

23 A Yes.

24 Q And when you go to this place that's sort of your
25 local joint, do you have a place that you customarily sit?

1 A Yes, I do. I have my own little corner that I
2 usually occupy.

3 Q Okay. And where is that within the bar?

4 A It's literally on the -- let's see. That would be
5 the northeast corner of the actual bar itself.

6 Q Okay. And are you aware that this bar has video
7 surveillance in it?

8 A Yes.

9 Q And have you had a chance to review the video
10 surveillance from this morning?

11 A Yes, I -- well, from this morning? From that --

12 Q From that morning.

13 A From this morning we're talking about, yes.

14 Q Yeah. Not this morning.

15 A Yeah.

16 Q Okay. And so on this date that we're talking about,
17 you were in that particular spot?

18 A Yes.

19 Q Okay. And do you remember anything unusual happening
20 a little after 5:00?

21 A Yeah. I would say it's definitely unusual for people
22 to run into the place and hold it up. Yes.

23 Q Okay. What's the first thing that you remember
24 happening in terms of this?

25 A I remember hearing -- I remember the gentleman that

1 was sitting on the opposite corner of the bar. He got up and
2 walked out, which I didn't really take a special note of
3 because, you know, people leave, and I heard -- I wasn't -- I
4 wasn't watching him go out the door, but I heard the door open,
5 and I heard him go out that door. And then the next thing I
6 heard was these two guys rushing in, throwing him on the floor
7 with guns yelling this is a hold up. Everybody put your hands
8 up.

9 Q Okay. Let me back up a little bit. So when you said
10 a gentleman, and you were sort of pointing in front of you that
11 you said was sitting kind of maybe kitty-corner or across the
12 away from you, what did you know about this gentlemen?

13 A He had been coming in for a short time, maybe a week
14 or two, and he -- I didn't really interact with him a whole
15 lot. I did speak with him at least once, small talk, you know.
16 He -- I don't know what he drank. I don't know what he played,
17 but he was -- he had been there a few times.

18 Q Okay. So at this point he had sort of started to
19 start showing up at this place that you're at daily?

20 A Yes.

21 Q Now, when -- when you said he goes to leave outside
22 of the door, in this particular establishment, is there more
23 than one entrance?

24 A Yes.

25 Q Describe for me the entrances.

1 A Well, the door he went out of is kind of a side
2 entrance, and it's locked from the outside on graveyard. You
3 can't come in that way. The way to get out, you know, you push
4 the door to unlock it, and you can go out. The main door is a
5 double door, like a foyer set up. You come in the main wooden
6 door, which is unlocked, and then you get to a glass door where
7 you have to press a buzzer to be let in.

8 Q Okay.

9 A And those are the controls to make sure that the
10 place is secure.

11 Q Sure. So this front door with the double door
12 system, is that going to be something where you always have to
13 buzz in? Like if I were to go there say for lunch --

14 A No.

15 Q -- would I be buzzing in?

16 A No. They lock the door at about anywhere between
17 10:00 o'clock and midnight.

18 Q Okay. So this is sort of like a graveyard
19 precaution?

20 A Uh-huh.

21 Q Okay. Now, you said that you then saw I think you
22 said two men come in; is that right?

23 A Yes.

24 Q What do you remember about sort of their physical
25 appearance?

1 A They were -- well, they weren't overweight. They
2 weren't heavy. Beyond that they were wearing, you know,
3 hoodies and masks, and I really didn't pay much attention to
4 their build specifically.

5 Q Okay. So you weren't able essentially to see any --
6 really any portion of their skin?

7 A Not really, no.

8 Q Okay. I noticed you said they were male. What made
9 you think that they were male?

10 A Well, I heard them speak. When they yelled, when
11 they came in and they yelled, you know, this is a hold up, you
12 know, put your arms up -- put your hands up, those were
13 definitely male voices, and they weren't -- I -- they were men.

14 Q Okay. So they sounded like men is what you're
15 saying?

16 A Yes.

17 Q Was there anything else that was distinctive that you
18 noticed about their voices?

19 A They sounded to me like they were black men. I mean,
20 that's -- you can -- I'm not an expert in voice analysis, but,
21 you know, in 51 years of living in society, you tend to learn
22 what certain voices sound like.

23 Q Okay. So essentially that was all you could really
24 say is that they appeared -- or they sounded like black men?

25 A Yes.

1 Q But you couldn't see anything else?

2 A Yes. And they didn't seem older men. You know,
3 their voices hadn't reached that well, you know, older men have
4 a little graininess in their voice. These voices were clear,
5 but they weren't young. They weren't teenagers. They were,
6 you know, somewhere in that I'm going to say 20s or 30s.

7 Q Okay. So sort of like younger middle-aged-ish?

8 A Yeah.

9 Q Okay. Now, when you said that they came in and they
10 said, you know, hold your hands up, this is a stick up, what
11 happened when the two of them entered? Where did they go?

12 A After entering, they both ran around behind me to
13 gain access to the bar because that's the only place to go into
14 behind the bar is around me, next to me. So they both came
15 behind me. One of them went behind the bar, and the other one
16 stayed on our side of the bar, the patron side of the bar, and
17 they both had their guns out, and they were both telling us,
18 you know, keep your hands up, keep quiet. And the one that
19 went behind the bar was demanding the money.

20 Q Okay. And who was he demanding the money from?

21 A The bartender, Shaylene.

22 Q Do you remember anything in particular about the two
23 firearms?

24 A They were black. They were not revolver types. They
25 were guns that had a clip, and the barrels looked awfully big

1 to me.

2 Q Okay. And so when this happened and you have one of
3 them behind the bar and one that's back with you, the one that
4 was on the patron side, did you observe him do anything?

5 A Well, I was kind of facing directly ahead, you know,
6 hands up facing straight ahead. So I had the peripheral vision
7 on the side. I didn't -- the one that was on our side kept
8 telling us keep your hands up, and I don't know what happened
9 with Gerry, but apparently he didn't comply fast enough or
10 didn't -- I don't know what happened, but he got hit on the
11 head and pulled off of his chair.

12 Q Okay. Did you ultimately look over and see him on
13 the ground?

14 A I did after that point, I looked over, and I saw him
15 on the ground.

16 Q Okay. And did he stay in that position throughout
17 the rest of --

18 A Yes.

19 Q Of the time they were there?

20 A Yes.

21 Q Okay. What about with regards to you? Did he do
22 anything with regards to you?

23 A After they -- after they had gotten the money from
24 behind the bar, when they're on their way out, I don't know
25 which one of them it was, but one of them said -- again, I have

1 my hands up -- he said give me your wallet. And I'm looking at
2 him. I just kind of -- that threw me. I'm, like, really? And
3 then he went and actually took it out of my back pocket
4 himself.

5 Q Where was your wallet located?

6 A In my back pocket.

7 Q Do you remember which one?

8 A The back right pocket.

9 Q Okay. And can you tell me about your wallet.

10 A It's a brown leather trifold Walmart special.

11 Q Okay. And so that was taken from your back pocket
12 you said?

13 A Yes.

14 Q What happened after he took that wallet?

15 A One of them hit me in the back of the head on the way
16 out with the gun that he was holding in his hand.

17 Q How did you know that it was a gun?

18 A Because what hit the -- what hit my head was not
19 fleshy.

20 Q Okay. And when you say not fleshy, meaning it didn't
21 feel --

22 A Metal. It felt like metal hitting my head.

23 Q Okay.

24 A And I got -- and it hurt.

25 Q Sure.

1 Now, after he hits you on the head, then what's the
2 next thing that you see?

3 A The two of them run out the door.

4 Q And which door did they go out?

5 A The same one they came in.

6 Q Okay. So that would've been this side door?

7 A The side door.

8 Q Now, when all of this was happening, did you notice
9 where this other individual who I guess was sort of the
10 outlier --

11 A Yeah.

12 Q -- did you notice where he was at?

13 A No. Funny thing about that, he -- I forgot about
14 him. I forgot he even existed until after they left. He got
15 up and like, you know, dusting himself off, shaking -- shaking
16 it off. So I actually literally forgot he was there until he
17 actually stood up, and the two guys that were watching all of
18 us didn't give him any attention at all. They -- they just
19 left him there.

20 Q Okay. So when this ultimately happens, and you said
21 the guy at the door came over, and all of you are together, did
22 9-1-1 ultimately get called?

23 A Yes.

24 Q And were you there when police arrived?

25 A Yes.

1 Q How long would you say that it took them to get
2 there?

3 A Minutes. I don't know for sure. Maybe less than 5
4 for sure. Maybe 2 or 3 or 4 minutes.

5 Q Okay. Was it you that called 9-1-1 or someone else?

6 A I don't remember. I just don't remember.

7 Q Okay. Now, when the police arrived, did you
8 ultimately speak with them?

9 A Yes.

10 Q And did you fill out a voluntary statement?

11 A I did.

12 Q Did you also do you a recorded interview with them?

13 A Yes.

14 Q Okay. And essentially fair to say what you told me
15 is what you would have told them?

16 A Very -- pretty much identical.

17 MS. MOORS: Okay. Court's indulgence.

18 BY MS. MOORS:

19 Q All right. And for the record, I am showing you what
20 has previously been stipulated and admitted as State's
21 Exhibit 64. It's a video. And this appears we are starting it
22 at 5:06:10. What are we seeing in this video, sir?

23 A Okay. So on the top corner of this screen in the
24 yellow vest is the gentleman that went out the door. And then
25 to the right, his left, out of the corner is Gerry Ferony and

1 then Kathy and then Shaylene and myself that you can -- that's
2 my elbow in the bottom corner there.

3 Q Okay. So fair to say that's your right elbow?

4 A Yes.

5 Q And when you were talking earlier about how these
6 individuals ultimately got to the bar, I think you said the
7 only way to get there was to come behind you and then come
8 through, I'm assuming, this break that we're seeing?

9 A That break right there, yes.

10 Q Okay. So essentially, if I'm understanding you
11 correctly, this bar would be entirely enclosed, but for that
12 area?

13 A Correct.

14 Q And does this fairly and accurately depict the way
15 that the bar looked to you on this particular morning?

16 A Yes.

17 Q Okay. I'm going to go ahead and fast-forward if I
18 can.

19 Okay. So for the record right now, we're looking at
20 a time stamp of May -- May --

21 A October.

22 Q 5:12:52 and does this appear to be a little farther
23 in time from the video we were looking at previously?

24 A Uh-huh.

25 Q Okay. While we're waiting, would you say this is

1 sort of an average amount of people that might be at the bar at
2 this point in time on a Monday morning?

3 A It can vary. It just depends. You know, it could be
4 as few as one or two people. It could be as many as 10 or 12
5 people.

6 Q Okay. So it just kind of depends on the day?

7 A Uh-huh.

8 Q So at this point in time, you indicated that you
9 don't gamble. So is there -- is there even a video poker
10 machine where you sit?

11 A No, there's no poker machine where I sit.

12 Q Okay. And this spot that we see you in, that's your
13 customary spot?

14 A Yeah. That little black -- the corner of that black
15 thing right there is my tablet. I'm playing a game on my
16 tablet.

17 Q Okay. And so you're pointing to it looks like the
18 right-hand area of the screen?

19 A Yeah. Yeah. You can see the light coming off of it
20 on to my hand.

21 Q Okay.

22 A Okay. They must have just come in. Oh, he went
23 around the other side. Okay. They didn't both come around my
24 back side.

25 Q Okay. If we can pause it for one second. So I guess

1 what you're saying is --

2 A They split up.

3 Q Okay.

4 A One went one way, and one went the other way.

5 Q All right. So you just happened to remember both of
6 them coming behind you?

7 A Yes. Yes.

8 Q Okay.

9 MS. MOORS: If we can continue playing.

10 BY MS. MOORS:

11 Q So at this point, it's 5:14:37. It appears that
12 Mr. Ferony is already on the floor. So you had observed that
13 he was on the floor; correct?

14 A Yes. At some point the guy over here kept telling
15 the guy on the other side hurry up. We got to go. Hurry up.
16 And the guy on this side is saying, you know, Where's the rest
17 of the money? Give me more. He said -- he was yelling at
18 Shaylene, Give me the money. Give me more money. She was,
19 like, That's all there is. And he said, There's more.

20 And I don't know what happened at that point. She
21 must have found more.

22 Q Okay. I'll ask you about that here in a second when
23 we finish this.

24 So does this appear to be the time where he's
25 ultimately taking your wallet?

1 A I guess so because he just -- it looks like he just
2 took it and put it in his pocket. And then he took Gerry's.
3 So he's out. This guy is on the way out. I think he's the one
4 that hit me just now.

5 Q Okay. So at the end there --

6 MS. MOORS: We can go ahead and stop it.

7 BY MS. MOORS:

8 Q At the end of that, you said it looked like that it
9 might have been that second individual that hit you in the
10 head?

11 A Yeah, because that's -- you could see me -- yeah.

12 Q Move forward?

13 A Yes.

14 Q All right. Okay.

15 So I want to clarify what you just said to make sure
16 that I understood correctly, but you said something about one
17 of the males was telling the other male to hurry up.

18 A Yes.

19 Q Was it the male that was on the patron side that was
20 telling the other one?

21 A The one that pulled Gerry off the chair. Yes.

22 Q Okay. So that male --

23 A Yes.

24 Q -- the one that was on your side of the bar --

25 A Yes.

1 Q -- was telling the male in the center to hurry up?

2 A Hurry up. We got to go.

3 Q Okay. And then what was that one in the center
4 saying in return?

5 A Give me the money. Give me the rest of the money.

6 Q Okay. And you made it sound like he was -- he was
7 saying that to the bartender --

8 A Yes.

9 Q -- looking for more money?

10 A Yes.

11 MS. MOORS: Okay. Court's indulgence.

12 I have no -- I have no further questions of this
13 witness.

14 THE COURT: Cross.

15 MR. MATSUDA: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MATSUDA:

18 Q Good afternoon, sir.

19 A Hi.

20 Q How are you doing?

21 A Alrighty.

22 Q Okay. Now, you just saw the video. What were these
23 two guys wearing?

24 A Dark outfits with masks and gloves.

25 Q Okay. So is it correct to say that nothing -- any

1 part of their body was showing?

2 A Nothing identifiable.

3 Q Okay. Were you able to look at their eyes?

4 A I don't remember. I don't remember.

5 Q Okay. So and the State just asked you about what
6 ethnicity these two were.

7 A Uh-huh.

8 Q And your statement was you think they were black?

9 A They sounded like they were black men.

10 Q They were sounded like they were black men?

11 A Yes.

12 Q Okay. And this is solely based on how they were
13 speaking?

14 A 51 years of experience growing up in American
15 society, yes.

16 Q Okay. Nothing based on their physical appearance?

17 A No.

18 Q Okay. Do you remember giving a statement to
19 detectives probably shortly after this happened?

20 A Yes.

21 Q Okay. Do you remember how tall you described both
22 suspects?

23 A Well, I was sitting down in a chair.

24 Q Correct.

25 A And I was sitting -- I was sitting in the same size

1 barstool that I was sitting at during the interview during the
2 event. So the officer asked me did I know how tall they were,
3 and I said, well, they're probably about here I guess.

4 Q Right.

5 A And then I stood up and, you know --

6 Q And how tall are you?

7 A I am 5-10-ish.

8 Q Okay. And do you recall how tall you described the
9 suspects?

10 A I told him that they might have been probably
11 somewhere in about the same size as myself, about the same
12 height as myself.

13 Q And you said you're 5-10?

14 A Yes.

15 Q And at some point didn't the detective actually stand
16 up himself?

17 A Yes.

18 Q And do you remember how tall the detective was?

19 A No. I didn't ask him.

20 Q Okay. If I said he was probably about 5-11, does
21 that ring a bell?

22 A If you say so.

23 Q Okay. And he asked you if this was approximately the
24 height of the suspects?

25 A Yeah.

1 Q And what was your response?

2 A That's probably about close.

3 Q Okay. So about 5-10, 5-11?

4 A [No audible response.]

5 Q And you said you, yourself, you're 5-10?

6 A Uh-huh. Yeah.

7 MR. MATSUDA: Okay. Thank you, sir.

8 Nothing further.

9 THE COURT: Redirect?

10 MS. MOORS: I have no redirect, Your Honor.

11 THE COURT: Questions from the jury?

12 I seen none.

13 Thank you very much for your testimony, sir.

14 THE WITNESS: Thank you.

15 THE COURT: You may call your next witness.

16 MS. MOORS: Thank you, Your Honor. The State calls

17 Kathy Petcoff.

18 **KATHLEEN PETCOFF**

19 [having been called as a witness and being first duly sworn,

20 testified as follows:]

21 THE CLERK: Please have a seat, ma'am, and state and
22 spell your name for the record.

23 THE WITNESS: Kathleen Petcoff. K-a-t-h-l-e-e-n,
24 P-e-t-c-o-f-f.

25 THE COURT: You may proceed.

1 MS. MOORS: Thank you.

2 DIRECT EXAMINATION

3 BY MS. MOORS:

4 Q Good afternoon, Ms. Petcoff. I want to direct your
5 attention back to October 29th of 2018. At that point in
6 time, where were you living?

7 A At Portofino Villas at that time was the name of the
8 apartments. They back up to Torrey Pines Pub.

9 Q Okay. And tell me about Torrey Pines Pub. Is that a
10 place that you visit frequently?

11 A When I want to gamble, yes.

12 Q Okay. And about how often would that be?

13 A It depends on how much money I have. Sometimes it's
14 two or three times a week. Sometimes, you know, I have
15 something come up and I'm low on funds. So I'm not in there
16 that often.

17 Q Okay. And how long have you been frequenting this
18 bar?

19 A Probably since I think it was the end of either '14
20 or '15 I moved into those apartments.

21 Q Okay.

22 A And it's walking distance if I wanted to walk.

23 Q All right. Now, in the course of going there, are
24 there people that you see regularly?

25 A Yeah.

1 Q Okay. Are you familiar with Gerry Ferony?

2 A Gerry I know. He sits usually at a machine just down
3 from where I am. I play on usually only one machine.

4 Q Okay.

5 A And there's one next to me, and then the next one
6 down Gerry is at normally. But other than that, I don't know
7 anybody in there, and I don't remember names. It took me a
8 long time to remember the waitresses' names.

9 Q Okay. Are you familiar with a waitress named
10 Shaylene?

11 A Yes. She's one of my friends.

12 Q Okay. And what about Myer Goldstein? Is he familiar
13 as well?

14 A I don't recognize the name. I might know him, but --

15 Q Okay. Did you see the man that walked out of here
16 before you?

17 A Oh, yeah. Yeah.

18 Q Okay.

19 A Yeah. Okay. If that's his, yeah. I'm not a person
20 I can count my friends on one hand.

21 Q Okay.

22 A I don't make acquaintances or --

23 Q Fair enough. So on this particular date, October
24 29th of 2018, it would have been a Monday morning, were you
25 at the Torrey Pines Pub?

1 A Evidently, yes. I was telling you I didn't realize
2 it was that long ago. It didn't seem that long ago.

3 Q Okay. So it seems more recent in time?

4 A I guess you could say that.

5 Q Okay. So when you were there, you said you always
6 play on a certain machine. Are the machines numbered?

7 A Yeah. It's Number 1.

8 Q And what game do you normally play?

9 A Triple play or bonus poker, those two. I don't play
10 anything that might have a payoff that you'd have to claim
11 because I don't have any property or anything to write off
12 winnings. So I make sure the royals are only a thousand
13 dollars if you get one.

14 Q Okay. And on that date, around 5:00, 5:15 in the
15 morning, did anything unusual happen at the pub?

16 A Well, yeah. I didn't even realize it was happening
17 until Gerry about got knocked on the floor. I mean --

18 Q What do you remember first about what happened?

19 A I don't -- to tell you the truth, I don't -- I don't
20 really remember. I think somebody said hold up, but I was
21 playing my machine. I didn't pay any attention until, like I
22 said, Gerry wound up on the floor, and somebody tapped me on
23 the back, and that's when I saw Gerry, and I just kind of put
24 my hands up and --

25 Q Okay. Do you remember anything about these people?

1 Like once you noticed there were people behind you, do you
2 remember anything about how they looked?

3 A They were dressed mainly black. I don't know their
4 faces. It looked like they were black. I don't know if they
5 had something put on their skin. They had hoods. Maybe it was
6 one of these sweatshirts with a hood that came down around
7 their face. I didn't really pay attention. I just minded my
8 own business. When they tapped me on the shoulders, I just
9 nodded my head, yes, and didn't do anything.

10 Q Okay. And do you remember how many there were?

11 A I know the one. I think I might have seen two. But
12 like I said, I wasn't looking to see what was going on. I
13 didn't want to make it seem like I was trying to take notes or
14 whatever. Just like this is none of my business, just --

15 Q Okay. Do you remember anything about their voices
16 that would tell you maybe if they were male or female?

17 A No.

18 Q Okay. And how long would you say that this whole
19 interaction happened with them inside the bar?

20 A It seemed to me forever, but I don't think it was
21 anymore -- it was rather quick. But it seemed like it went on
22 forever, maybe because when the police came and we had to be
23 there for so long.

24 Q Okay. So ultimately at some point, fair to say that
25 they would have left the bar, whoever these people were?

1 A Oh, yeah.

2 Q And then at some point police were called; is that
3 right?

4 A Right.

5 Q And so police ultimately arrived?

6 A Oh, I don't know if they were called after they left
7 or if there was something that might have alarmed the police.
8 I have no idea, but --

9 Q Somehow the police ended up there?

10 A Yes.

11 Q And when they ended up there, did you have a chance
12 to speak with them?

13 A One of them, yes. I just saw him in the hallway.

14 Q Okay. And essentially you told them everything that
15 you've told me as well?

16 A Right.

17 Q Okay. To your knowledge, is there video surveillance
18 within the Torrey Pines Pub?

19 A I found out after this, yes, and that's what you
20 showed me when I saw you Friday.

21 Q Okay. So I showed you the video?

22 A Yes.

23 Q Okay. And that's actually what I would like to do
24 now if I could.

25 MS. MOORS: For the record, we are pulling up State's

1 stipulated and admitted to Exhibit 64, which is several
2 different views of the video surveillance from Torrey Pines
3 Pub.

4 BY MS. MOORS:

5 Q Okay. So, Ms. Petcoff, does this appear to be the
6 video that you said that you had watched with me last Friday?

7 A Yes.

8 Q Okay. And where do we see you within this video?

9 A Right there at the end of the bar. Shaylene with the
10 Red Hat. And then I'm next to her.

11 Q Okay.

12 A And then Gerry is on the corner of the bar.

13 Q So Shaylene with the Red Hat is the bartender; is
14 that right?

15 A Yes.

16 Q All right. And then you said Gerry is two seats to
17 your right?

18 A Yes.

19 Q What about the individual in the upper sort of
20 towards the left-hand corner with the yellow vest on? Do you
21 know that individual?

22 A No.

23 Q Had you seen him before that day?

24 A I don't think so. No.

25 Q Not that you know?

1 A Like I said, I don't pay attention.

2 Q Okay. Fair enough.

3 A I play my machine. I don't want to get involved with
4 people.

5 Q Okay. So if we can fast forward it a little.

6 So now it -- it appears now that we are in the upper
7 left-hand corner. I know we keep mentioning the time, but I
8 don't know if we've ever made the record clear that it says
9 October 29th, 2018, M-O-N and then 5:13:11 is where we're at
10 currently. And I'll just let this play for a second here.

11 So at this point I see you looking up, and it's about
12 5:14:18. If we could pause it. Is that -- fair to say that
13 would have been when you first sort of noticed what was going
14 on?

15 A Yeah, when I --

16 Q And I'm sorry.

17 A When I looked up, because I guess some people were
18 hollering.

19 Okay. Then there was two anyway. And I remember one
20 guy, if it was a guy, a person went behind the bar.

21 Q Okay. So there would have been one behind the bar
22 and then one it looks like is kind of behind you?

23 A Yeah, it looks like there's one there behind the bar
24 right now.

25 Q Okay. I'm going to go ahead and continue to play it.

1 A Until you showed me this, I didn't realize that he
2 put his hands on me twice.

3 Q Okay. So you're saying that you only remember one
4 touch?

5 A Once, yeah. I kind of blocked everything out.

6 Q Okay. So now at this point it appears that the two
7 individuals have left, and now it's just ultimately you with
8 the four other individuals there; is that right?

9 A Right.

10 Q And so you would have then been in the pub until
11 police arrived?

12 A Till what?

13 Q Police arrived?

14 A Yes.

15 Q Okay.

16 A Yeah, we were told we couldn't leave until they were
17 there and got through questioning and --

18 Q Right. So then you spoke with police and then
19 ultimately was able to leave at a later point?

20 A Yes.

21 MS. MOORS: Okay. Court's indulgence.

22 I have no further questions for this witness.

23 THE COURT: Cross.

24 MR. MATSUDA: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. MATSUDA:

2 Q Good afternoon, ma'am. How did you describe what was
3 on their face?

4 A I couldn't tell you. It just seemed black from head
5 down.

6 Q Okay. Now, are you -- when you say it seemed black,
7 are you referring to the material that was on their face or
8 their skin color?

9 A I don't know. All I could see was black. I don't
10 know if they had something on their face or if they were black.
11 I couldn't tell you that.

12 Q Okay.

13 A I didn't bother to take a good look. I just did my
14 own thing and to try and keep out of trouble. I --

15 Q Okay. So you couldn't identify?

16 A Oh, God, no. No way.

17 MR. MATSUDA: Okay. Thank you, ma'am.

18 Nothing further, Your Honor.

19 THE COURT: Any redirect?

20 MS. MOORS: I have no redirect, Your Honor.

21 THE COURT: Any questions from the jury?

22 All right. I see no hands.

23 Thank you very much, ma'am, for your testimony.

24 And you may call your next witness.

25 MS. MOORS: Thank you. The State calls Bob Bonner.

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ROBERT BONNER

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

THE CLERK: Please have a seat and state and spell
your name for the record.

THE WITNESS: Robert Bonner.

THE COURT: If you'll spell your name for the record,
please.

THE WITNESS: Spell?

THE COURT: Yeah.

THE WITNESS: R-o-b-e-r-t, B-o-n-n-e-r.

THE COURT: Thank you.

You may proceed.

MS. MOORS: Thank you.

DIRECT EXAMINATION

BY MS. MOORS:

Q Good afternoon, sir.

A Good afternoon.

Q I want to direct your attention to October 29th of
2018. At that point in time, were you the owner of a pub?

A Yes, I am.

Q What is the name of that pub?

A Torrey Pines Pub.

Q How long have you owned this pub?

A Since October of 1991.

1 Q Okay. And in the course of your ownership of this
2 pub, is video surveillance something that you customarily have?

3 A Absolutely.

4 Q How long have you had that?

5 A Almost from the inception. I just have renewed it
6 multiple times to get much better quality nowadays than we've
7 had originally.

8 Q Okay. When would you say that you upgraded to the
9 newest system?

10 A Right after this October incident. I added four more
11 cameras.

12 Q Okay. Prior to that, do you recall how many cameras
13 that you had?

14 A I had 16 cameras.

15 Q And describe for me how they work. Like did they
16 record items for a period of time?

17 A High definition cameras 24/7 for approximately 30
18 days.

19 Q Okay. So if say you hadn't gone to retrieve
20 something after 30 days, it would sort of be looped over?

21 A It loops over; correct.

22 Q And is that something that you customarily maintain
23 as the owner of this business?

24 A Absolutely.

25 Q Can you tell me where your business is located.

1 A 6374 West Lake Mead Boulevard, Las Vegas, Nevada,
2 89108.

3 Q Okay. And is that here in Clark County?

4 A Yes, it is.

5 Q Is this a 24-hour establishment?

6 A Yes, it is.

7 Q How many different doors are available for patrons to
8 essentially get into this establishment?

9 A Two.

10 Q Can you describe those doors for me.

11 A We have one facing the east side of the building
12 under a green awning. We lock it at 11:00 o'clock at night or
13 10:00 o'clock depending if it's quiet. The only way we lock it
14 legally is you have to leave a panic bar to push on it so in
15 case there's a fire or some major incidents we have access to
16 get out two doors, but you can't get in it after 10:00 o'clock
17 in the evening.

18 The other front doors, we have two wooden front
19 doors, which we keep one of them locked and the other one opens
20 freely, and you step inside to a entryway, and there we have a
21 glass buzzer door. Then we have a gate that closes off the
22 game room or poolroom that's there. So you would step into
23 that corridor. There would be two cameras on you there, plus
24 it's well lit, and you have to ring a buzzer to get in that
25 door.

1 Q Okay. And would you always have to ring a buzzer, or
2 is that only after a certain time?

3 A That's after 11:00 o'clock also.

4 Q Okay. So during the day you would be able to just go
5 through both doors?

6 A Both doors are open all day long.

7 Q And then the other door you were discussing, would
8 you say that's sort of a side door?

9 A It's a side door; correct.

10 Q Is that a door that patrons would come into?

11 A They can come in during the day all the time, yes.
12 They do park there, especially because it's the east side of
13 the building. The afternoon sun, people like to park their
14 cars on the east side so they come in that side of the
15 building.

16 Q Okay. But then you said after 10:00 or 11:00 --

17 A It's locked.

18 Q -- that would be locked?

19 A And most of the regulars know that you have to come
20 in the front door.

21 Q Okay. And on this particular day that we're talking
22 about, October 29th, 2018, would you have been in the bar
23 around 5:00 in the morning?

24 A Myself, no.

25 Q Okay. Were you ultimately notified that a robbery

1 had occurred?

2 A Yes.

3 Q And were you made aware -- or how much money loss did
4 your business suffer?

5 A \$2,446 is what my final tally was.

6 Q Okay. Now I want to talk a little bit more about the
7 set up of your establishment.

8 MS. MOORS: Permission to approach the witness?

9 THE COURT: Granted.

10 BY MS. MOORS:

11 Q Sir, I have several photos here, and I'm going to --
12 I'm going to read the numbers into the record, and then I'm
13 going to have you look at them, and keep them in the same order
14 if you can. Let me know if you recognize them, and then we'll
15 go through them. Okay?

16 A Certainly.

17 Q All right. So I'm showing you State's Proposed
18 Exhibits 2 through 5, as well as 7 through 29, as well as 30
19 through 32, and 42 through 47, and then back at 52 through 53,
20 as well as 60 through 62. Just flip through them.

21 A Do you want me to describe each one?

22 Q No. I just want you to make sure you recognize them.

23 A I was kind of watching what you were flipping there.
24 They are all my establishment. These are all the outside.

25 Q And actually I'm going to wait for a second for you

1 to describe them. But you saw them as I was flipping earlier?

2 A Yes, I did.

3 Q Okay. And they appear to represent your business?

4 A Completely, inside and out.

5 Q Okay. Fairly and accurately?

6 A Accurately.

7 MS. MOORS: Your Honor, the State would request to
8 admit the exhibits that I had previously mentioned.

9 THE COURT: Any objection?

10 MR. MATSUDA: None, Your Honor.

11 THE COURT: Those will be admitted. So 2 through 5,
12 7 through 29, 30 through 32, 42 through 47, 52 and 53, and 60
13 through 62.

14 (State's Exhibit Number(s) 2-5, 7-29, 30-32,
15 42-47, 52-53, 60-62 admitted.)

16 MS. MOORS: Thank you, Your Honor. Permission to
17 publish?

18 THE COURT: Granted.

19 MS. MOORS: Thank you.

20 BY MS. MOORS:

21 Q All right. So, sir, I'm showing you State's Admitted
22 Exhibit 2. What do we see in this photograph?

23 A It's the front of the building, front entrance.
24 That's the two wooden doors I described to you earlier.

25 Q Okay. So this is sort of like the two doors that you

1 have to get through to get in?

2 A Correct.

3 Q I'm showing you State's Exhibit 3. What do we see in
4 this photograph?

5 A That's the two doors close up.

6 Q Okay. And does that show the address of 6374?

7 A Yes, it does.

8 Q This is State's Exhibit 4. What do we see in this
9 photograph?

10 A That's the side door and the front windows. You can
11 see the side windows there also.

12 Q Okay.

13 A That's the door that gets locked. Where the green
14 awning is there, we lock that door at 11:00 o'clock.

15 Q Okay. And so this is the door you said though that
16 even after 11:00 o'clock, because of the fire code, it would
17 have a bar that you can push out of?

18 A Yes; correct. You can push out of it. Correct.

19 Q And so this is also the side I think you said -- did
20 you say it was the east side?

21 A East side. Correct.

22 Q Okay.

23 A And the front of the building there is the south
24 side. That's the south, facing south.

25 Q Okay. And that's the side then that would face Lake

1 Mead?

2 A Correct.

3 Q I'm showing you State's Exhibit 5. What do we see in
4 this photograph?

5 A That's a good shot of the side door.

6 Q Okay. State's Exhibit 7, what --

7 A It shows the side door.

8 Q Okay. And does it appear to show sort of farther
9 down the wall?

10 A Yes, it does.

11 Q And State's Exhibit 8, would that be the end of that
12 sidewall we've been discussing?

13 A It would be the end of the wall, and you'll notice
14 the surveillance camera on the upper right-hand corner of the
15 building there.

16 Q Okay. And that's one of your cameras that you
17 maintain during the ordinary course of your business?

18 A That's one of our cameras.

19 Q Showing you State's Exhibit 9, what do we see in this
20 photograph?

21 A That's the back alleyway.

22 Q If I look to the right, what is that wall? What's
23 behind that wall?

24 A The wall goes to the apartment complex right behind
25 us.

1 Q Okay. So there's an apartment complex directly
2 behind?

3 A Correct.

4 Q What about if I were, say, standing where this camera
5 is and I were looking straight backward, what's along that
6 area?

7 A Straight backwards towards us?

8 Q No. If I were -- say if I were at that wall, and I
9 guess I were looking straight forward, where the photo was
10 taken from, what's along that wall?

11 A That's parking, and also a wall similar to that gray
12 wall to the right has the same metal fencing that you have to
13 climb over.

14 Q Okay. So is there also --

15 A So it continues all the way around. Correct.

16 Q Okay. So there's an apartment complex essentially
17 behind you and sort of to your side?

18 A To the side of us, yes. To the east and to the north
19 of us.

20 Q Showing you State's Exhibit 10, what do we see in
21 this photograph?

22 A That's the wall we were just discussing.

23 Q Okay. So that would be the one that's along sort of
24 the side wall?

25 A Correct.

1 Q State's Exhibit 11, what do we see in this
2 photograph?

3 A It's a further view of that side wall facing east.

4 Q State's Exhibit 12, what do we see here?

5 A That's the side door, the single side door that you
6 can see it has the panic bar to push on it that we have.

7 Q Okay.

8 A We lock it from the inside.

9 Q And does it normally have this keep out sign?

10 A It was Halloween.

11 Q Okay.

12 A We have a great Halloween party there.

13 Q State's Exhibit 13, what do we see in this photo?

14 A All right. That's looking at the southeast corner of
15 the bar coming in from the side door that we just looked at.

16 Q Okay. So that would be the vantage point I would
17 have if I were standing in front of that side door?

18 A Correct.

19 Q Okay. So the bar actually, while I'm looking at it,
20 is it fair to say that it would be fully enclosed except for
21 one spot that allows you to come behind the bar?

22 A That's correct.

23 Q And then within the center of it, there would be what
24 we would call an island?

25 A That's correct.

1 Q Is that where the registers are located?

2 A Yes, they are.

3 Q Okay. Is that also where it looks like maybe the
4 hard alcohol is located?

5 A Correct. Yes. Yeah.

6 Q Okay. State's Exhibit 14, what am I seeing in this
7 photograph?

8 A Okay. That's the east side of the bar, and the
9 windows are facing south.

10 Q So those are the front-facing windows?

11 A Those are the front windows right there of the
12 tavern.

13 Q Okay. Now, does every seat at the bar have a video
14 poker machine?

15 A No. No. We have 15 machines and approximately 32
16 seats at that bar.

17 Q Okay.

18 A So it's about 50-50.

19 Q All right. This is State's Exhibit 15. What do we
20 see in this photograph?

21 A That is the southwest corner of the pub.

22 Q So is this the view that you would have if you were
23 sort of coming in from the front entrance?

24 A If you came in through the glass buzzer door in the
25 front, that's the first view you would see there, yes.

1 Q Okay. State's Exhibit 16, what do we see in this
2 photograph?

3 A Okay. That's your northwest corner of the bar.

4 Q Okay. So if I'm looking at this photograph, would it
5 be fair to say that sort of up in this region here, towards the
6 right left-hand corner would be that side door?

7 A Correct. Straight across actually.

8 Q Okay.

9 A Straight across on an angle would be that side door,
10 yes.

11 Q Okay. What about State's Exhibit 17? What do we see
12 in here?

13 A Okay. That's -- that's looking from the front entry
14 door all the way to the side entry door.

15 Q Okay. So this is that -- in the center is that side
16 entry door we were discussing?

17 A That's the side entry door, yes.

18 Q I also have State's Exhibit 18. What do we see in
19 this photograph?

20 A That's looking in the other direction at that glass
21 buzzer door there at the end.

22 Q Okay. So this is sort of the back corner I guess of
23 the bar?

24 A Right.

25 Q Where we're looking from?

1 A It's near that side door, yes.

2 Q Okay. And State's Exhibit 19?

3 A That's a closer shot of the glass buzzer door there
4 next to the jukebox.

5 Q So this essentially is the front door?

6 A That's correct. That's what you have to buzz to get
7 in after 11:00 o'clock.

8 Q Okay. And State's Exhibit 20, does this just appear
9 to be a close-up of that front door?

10 A Yes, it is.

11 Q So inside that front door is the spot that's sort of
12 I guess like in anteroom?

13 A Correct. That's the entryway, yeah.

14 Q Okay. What about State's Exhibit 21? What do we see
15 here?

16 A Okay. That's standing inside looking into that
17 entryway there. If you see to the right-hand side, is the
18 metal grating that we lock to prevent anyone from getting into
19 the pool room there. And the two double wooden doors are there
20 on the left side of that photo, the front entry. We don't lock
21 them. I just -- I have an old-fashioned thing that I hate to
22 come into a business that has the door locked, and you have to
23 be buzzed in. I always like the idea of you just being able to
24 come in, and you're inside now, and then we have the buzzer
25 door.

1 Q Okay. All right.

2 A It just makes me feel better.

3 Q No. Absolutely. So this is the front entrance then?

4 A Uh-huh.

5 Q Or is this the --

6 A Uh-huh. That's the front entrance right there, yes.

7 Q Okay. So this is the inside of sort of that
8 anteroom?

9 A Correct.

10 Q That we were just discussing?

11 A Uh-huh. You can see the camera there too. There's a
12 camera there right next to the door.

13 Q Oh, I see.

14 A And there's one actually above the door also. Yeah,
15 you're correct.

16 Q So there's one to the left of the photograph --

17 A Right.

18 Q -- as well as you said there's one above the door?

19 A Yeah. It's above the door to the -- to the left --
20 top-left corner there's another one, yes.

21 Q Okay. And what about State's Exhibit 23?

22 A Okay. You're looking back from the jukebox and the
23 front entry way towards the ATM machine heading -- you're
24 looking north now.

25 Q Okay. What is this glass door in the center? What

1 does that go to?

2 A That glass door, we had put that in -- that enters
3 into the waitress station where the servers have all their
4 stuff, also towards the kitchen, that's to access our kitchen
5 window and what have you there.

6 Q Okay. So that would be an area that the public would
7 not be allowed in?

8 A No. Well, there's no reason for them to be there.

9 Q Right. Okay. And then what about State's
10 Exhibit 24?

11 A That's the front door again. The jukebox and --

12 Q So if I'm understanding this correctly, this, to the
13 left of the photo, there's an exit sign, and this is the glass
14 door that would require you to be buzzed in; correct?

15 A That's correct.

16 Q And then if you sort of walk through that, that would
17 get you to the two front doors?

18 A Yeah.

19 Q Those doors would be unlocked; correct?

20 A Correct.

21 Q And so then there's also I guess sort of an inch in
22 from the left side, there is a metal wall that prevents you
23 from getting into this area in the center of the photo that
24 would be the pool room; is that right?

25 A That's correct.

1 Q Okay. Is that metal door ever opened?

2 A Absolutely. We open it -- when we lock up at 11, we
3 lock that at 11:00.

4 Q I see.

5 A But it's open all day long. And once we open up
6 early in the morning, it's -- by 7:00 a.m., everything is open
7 again.

8 Q Okay. So if this were during the day, you could just
9 come in through the double wooden doors --

10 A You can go right into the pool room.

11 Q Exactly. I see. And does Exhibit 25 appear to be a
12 photograph of the pool room?

13 A That's the pool room, and that's --

14 Q And how many pool tables do you have?

15 A There's two.

16 Q State's Exhibit 26, is this another view of the pool
17 room?

18 A Yes, it is.

19 Q And so then to the left of this photograph would be
20 how you would get ultimately into the bar from the pool room?

21 A Right. That's access to the pool room from the bar.
22 Correct.

23 Q And State's Exhibit 27, does this also appear to be
24 another shot of the pool room?

25 A That's correct.

1 Q And State's Exhibit 28, is this another angle of the
2 pool room?

3 A Yes, it is.

4 Q State's Exhibit 29, is this sort of that main
5 entryway between the pool room and the bar?

6 A Yes, it is.

7 Q State's Exhibit 30, where are we at at the bar in
8 this photo?

9 A That's in -- to the left there is where the restrooms
10 are. The big screen TV and the lower tables. You're looking
11 at the northeast corner of the tavern.

12 Q So the wall that we're looking at, is this the wall
13 that would have the side door on it?

14 A That's the east -- yeah, that's the east wall. Yes,
15 it is.

16 Q Okay. And State's Exhibit 31, which angle is this
17 from?

18 A I just have to see what that is there.

19 Okay. That's looking along the north wall.

20 Q And so to the left --

21 A Like that's looking west on the north wall towards
22 the waitress station there.

23 Q Okay. So this is that glass door area that you said?

24 A That's that glass area. That's the waitress station
25 is behind that glass area there.

1 Q And then to our left here, is that that one break in
2 the bar?

3 A That's the only opening you can get in behind the
4 bar.

5 Q Okay. And does State's Exhibit 32 appear to be a
6 close-up of that shot?

7 A Yes, it is.

8 Q Okay. State's Exhibit 42, is this essentially how we
9 get into the bar?

10 A That's correct.

11 Q How many cash registers are behind the bar?

12 A Two cash registers.

13 Q And what about money that would be held like if
14 someone won on a poker machine?

15 A We have a slot bank and the two registers behind the
16 bar. There is a safe system that kicks out the money for all
17 the larger payouts, but the slot bank is still required because
18 of debit card machines, Visa machines and the small change that
19 gets cashed out that the safe doesn't handle.

20 Q Okay. Showing you State's Exhibit 43, does this
21 appear to be a view from within the bar?

22 A Yes, it is.

23 Q State's Exhibit 44, is this another angle from behind
24 the bar?

25 A Yes, it is.

1 Q This is State's Exhibit 45. Is this another view
2 from behind the bar?

3 A Yeah, sure is.

4 Q Do we see one of the cash registers here on the
5 right?

6 A It's the slot bank on the bottom and the cash
7 register right above it.

8 Q Okay. Showing you State's Exhibit 46, is this
9 another viewpoint of the bar?

10 A Yes, it is.

11 Q And State's Exhibit 47, is this yet another viewpoint
12 from behind the bar?

13 A Yes, it is.

14 Q State's Exhibit 52, would this be sort of inside the
15 bar looking out that one way that you can get out?

16 A Yes. That's looking due north. Yes.

17 Q Okay. And State's Exhibit 53, is that another angle
18 of how you can get out of the bar?

19 A Yes, it is.

20 Q State's Exhibit 60, is this TV that I see in the
21 left-hand corner, is that the one that we had seen in a
22 previous photo?

23 A Yes, it is.

24 Q So to the left of that is where the restrooms are
25 located?

1 A That's correct.

2 Q All right. Sir, so ultimately you get contacted.

3 Was it by law enforcement or a silent alarm to let you know
4 that a --

5 A A silent alarm went off, but the bartender herself
6 called me.

7 Q Okay.

8 A And so I first heard from her.

9 Q Did you have occasion to ultimately go to the bar
10 after this happened?

11 A Immediately.

12 Q Were you there at a later point when the detective
13 involved was taking photographs and investigating the scene?

14 A I was there all day.

15 Q Now, at one point did you have occasion to kind of
16 figure out where one of the potential suspects was sitting?

17 A Yes.

18 Q And upon looking at that, did that raise any thoughts
19 in your mind?

20 A Immediately.

21 Q Okay. And I'm showing you State's Exhibit 61. Is
22 this you in that photograph?

23 A That's me in the photograph, yes.

24 Q And what are you doing?

25 A I'm pointing to the officer that where he's standing

1 with that picture is where the other -- the gentleman I
2 suspected involved was sitting, and I was showing him --

3 THE COURT: Okay. Wait. Let's stop.

4 MS. MOORS: Stop for one second.

5 THE COURT: Okay. You've got to stay awake.

6 JUROR NO. 11: Sorry.

7 THE COURT: Everybody has to stay awake.

8 All right. Approach.

9 (Conference at the bench not recorded.)

10 THE COURT: Ms. Pezario, my marshal indicates you've
11 been asleep for the last five minutes. You're dismissed.

12 JUROR NO. 11: Okay.

13 THE COURT: Everybody needs to pay attention. This
14 is a very important matter.

15 And we're going to have to replace with the first
16 alternate. That is Cheryl Ewing.

17 If you'll please take that empty seat.

18 Anyone else feeling drowsy, needing a break to wake
19 up?

20 (No audible response.)

21 THE COURT: Anybody needing a break to use the rest
22 room?

23 Okay. I'm sorry I'm going to interrupt your
24 testimony for a minute, but I think this is important. So
25 we're going to take a -- and it's about the time to take our

1 break anyway -- 15 minute recess. This is your afternoon
2 recess.

3 During this recess, it is your duty not to converse
4 among yourselves or with anyone else on any subject connected
5 with the trial; or to read, watch or listen to any report of or
6 commentary on the trial by any person connected with the trial,
7 or by any medium of information, including, without limitation,
8 newspaper, television, radio or Internet. You are not to form
9 or express an opinion on any subject connected with this case
10 until it's finally submitted to you. And, of course, no
11 investigation, looking on the Internet for things, anything of
12 that nature.

13 I'll see you in 15 minutes.

14 (Jury recessed at 3:13 p.m.)

15 THE COURT: And the record will reflect that the jury
16 has departed the courtroom.

17 Mr. Bonner, I'm sorry we had to interrupt your
18 testimony.

19 THE WITNESS: That's all right.

20 THE COURT: But it's important, and just make sure
21 you don't talk to anybody that's on the jury when you're out in
22 the hall or using the rest room.

23 We'll be in recess for 15 minutes. Thank you.

24 Actually, we'll put it on the record, our conference.

25 All right. And so the marshal went over and woke up

1 the juror. So then I asked you all to come to the bench so I
2 could inquire of the marshal how long she'd been asleep. I
3 didn't notice her because I was watching the photographs and
4 making notes. So when he told me that she had been out for
5 probably five minutes, I said, well, that's just to me beyond
6 the pale, and she needed to be dismissed because she would have
7 missed five minutes worth of testimony, and we can't have
8 somebody that, you know, is not paying attention.

9 And I believe everybody agreed with that, and nobody
10 had an objection. So I went ahead and dismissed her.

11 And is that accurate?

12 MS. CANNIZZARO: That's correct, Your Honor. There
13 was no objection from the State.

14 MR. MATSUDA: That is correct from the defense, Your
15 Honor.

16 THE COURT: Okay. Thank you very much.

17 MS. CANNIZZARO: Thank you, Your Honor.

18 THE COURT: All right. We'll be in recess, 15
19 minutes.

20 (Proceedings recessed at 3:15 p.m., until 3:29 p.m.)

21 (Colloquy off the record.)

22 (Jury reconvened at 3:33 p.m.)

23 THE COURT: Thank you. Please be seated.

24 And the record will reflect the presence of our 12
25 jurors and our three remaining alternates as well as the

1 prosecutors, the defendant with his counsel, all officers of
2 the court.

3 Mr. Bonner is still on the stand and is still under
4 oath.

5 You may continue.

6 BY MS. MOORS:

7 Q Okay. So this is really exciting, and we shouldn't
8 fall asleep. So in this photo, what are we pointing at again?

9 A We're pointing at the side camera that shows the side
10 parking lot that can be plainly seen by sitting at that poker
11 machine right where that picture is being taken from.

12 Q Okay. So where this picture is being taken from, if
13 I'm understanding you correctly, is where the individual who
14 was involved with the robbery was sitting prior to leaving?

15 A For many hours.

16 Q Okay. And then this photo or this video that we are
17 looking at shows essentially the outside where the side door is
18 at?

19 A Correct.

20 Q Okay. And you were the one that sort of noticed
21 the -- this happenstance; right?

22 A Correct.

23 Q Okay. Directing your attention to my last photo
24 exhibit, State's Exhibit 62, what do we see in this photo?

25 A Looking from the opening to get behind the bar

1 towards the side door.

2 Q And now is this view also in this photograph?

3 A No.

4 Q No. Okay. And is this supposed to depict
5 ultimately -- oh, I guess the side door here in the left
6 corner; is that right?

7 A That's correct.

8 Q Okay. Now, sir, I want to talk a little bit about
9 the video surveillance that we just discussed. I think you
10 said there were 16 cameras; is that right?

11 A That's correct.

12 Q Okay. All right. So I'm going to go ahead and show
13 you what's been marked and admitted as State's Exhibit 63.
14 We're just going to show the beginning of it so you can tell me
15 what camera angle we're looking at.

16 A That's the kitchen facing the back door.

17 Q Okay. And, sir, in the upper left-hand corner I see
18 a 10/29/2018, Mon, as well as 5:14:59?

19 A That's correct.

20 Q What is that in reference to?

21 A The date, the day and the time.

22 Q Okay. And that's something that would be, I guess,
23 purporting to represent the correct time that it's showing?

24 A We check it regularly to make sure it stays correct.

25 Q Okay. Great. So if we can X out of that, I'm going

1 to go to the second document on this exhibit. What do we see
2 in this angle?

3 A That's the cook's line.

4 Q Okay. So this would be another area of the kitchen?

5 A Correct.

6 Q And is this also an area that patrons are not allowed
7 to be in?

8 A I think we prefer that.

9 Q Okay. If we can go to the third viewpoint on this
10 exhibit, what angle do we see here?

11 A That's the front entryway there looking into the pool
12 room.

13 Q Okay. And then what is that door to the left? What
14 does that go to?

15 A That door there to the left, that's a storage room.

16 Q Okay. So this would be what I would observe if I
17 came in those front two wooden doors?

18 A Correct.

19 Q Okay. We can X out of that, go to the fourth view on
20 this exhibit.

21 What angle do we see here?

22 A Looking more directly at the buzzer door.

23 Q So this angle, I think when you and I were discussing
24 a photo previously, there were two different cameras and sort
25 of this anteroom; is that correct?

1 A Correct.

2 Q So this is that second view?

3 A Right.

4 Q And the door to the right, that clear door, that
5 would be the room -- or the door that you would have to be
6 buzzed into after hours?

7 A Yes. The buzzer is right there next to the brown
8 sign.

9 Q Okay. Excellent.

10 And that metal door is a door that would normally be
11 open during the day, but it would be closed at nighttime?

12 A That's correct.

13 Q Okay. If we can go to the next view, which I think
14 is the fifth on this exhibit.

15 Which angle is this?

16 A It's looking north in the pool room towards the
17 kitchen window.

18 Q Okay. So that in the back room would be -- or in the
19 back sort of upper area of this view is where the kitchen is
20 located?

21 A That's the waitress area there. You can see the
22 waitress register there.

23 Q I see.

24 A And to the left of it is the kitchen window.

25 Q Okay. And then to the right is that way that we can

1 get into the main bar?

2 A That's correct.

3 Q From the poolroom; correct?

4 A That's correct.

5 Q Okay. If we can go to the next view, which I believe
6 is the sixth on this exhibit.

7 Now, which angle are we looking at here?

8 A We're looking right at the side door.

9 Q Okay. So the side door is the one that we've been
10 talking about. Is that fair to say it's in the upper
11 right-hand corner?

12 A That's correct.

13 Q Okay. We can close out of this.

14 I want to direct your attention to the seventh view
15 on this exhibit. What do we see in this view?

16 A This is the view of the outside camera that I was
17 pointing to.

18 Q Okay. So this is the one that would show cars that
19 are parked sort of immediately outside this side door?

20 A Right. You can see the awning of the side door in
21 the upper right-hand corner there with a couple little lanterns
22 there.

23 Q Okay. I see. Very upper right-hand corner?

24 A Very upper right-hand corner.

25 Q And so then this wall that we're observing in the

1 back would be going into those apartment complexes that are on
2 the side of your business?

3 A That's correct.

4 Q Okay. If we can go to the next view which would be
5 view Number 8 on this exhibit.

6 What angle are we looking at here?

7 A That's our front parking lot looking southeast.

8 Q So is it fair to say that that road that I'm seeing
9 in the upper right-hand corner is Lake Mead?

10 A That's Lake Mead right there.

11 Q Okay. If we can go to the next view.

12 All right. I believe this is the ninth view. And
13 what angle are we looking at here?

14 A This is inside the pub looking from the ATM looking
15 south towards the front entry door there.

16 Q Okay. So in the left-hand corner we see an
17 individual in a yellow vest; is that right?

18 A That's correct.

19 Q And this is the individual that was believed to be
20 involved in the robbery; correct?

21 A That's correct.

22 Q And so that was the location that you were indicating
23 that if you're sitting in that seat you're able to view the
24 outside video surveillance?

25 A Absolutely.

1 Q Okay. And so then behind him, this glass door is
2 back into the kitchen waitress area?

3 A That's correct.

4 Q If we can go to the final view on this. This final
5 view, what direction are we looking at?

6 A This is looking due south from the restrooms. You
7 can see I have it marked there, bathrooms, Number 16.

8 Q Okay. And that's in the lower right-hand corner?

9 A That's correct.

10 Q So is it apparently is this video camera view, is
11 this above that big screen camera that's in the -- or the big
12 screen TV that's in the corner?

13 A Big screen is right to the left there where that
14 black is. So you can see that black line. That's where the TV
15 is located in that cabinet.

16 Q I see. So it's a little to the left?

17 A That's correct.

18 Q Lower left-hand corner?

19 A Yeah. It's actually three TVs there.

20 Q Okay. Thank you.

21 If we can close out of that, I'm going to go ahead
22 and show you what has previously been marked and admitted as
23 State's Exhibit 64 so that we can identify several views from
24 that as well. All right. Directing you to the first view,
25 what angle are we looking at on this first view -- once it

1 calms down a little bit?

2 A All right. This -- for me, this is my west sidebar
3 camera.

4 Q Okay. So this is behind the bar, and it's sort of
5 looking down, I guess, one of the main sides of the bar?

6 A What we do here is we want to see the slot drawer,
7 the register, the cash register and the machines along the side
8 and the waitress station.

9 Q Okay.

10 A These are the key things we're looking for here.

11 Q All right. So the register and the slot drawer you
12 had discussed, that's to the left side of center of this camera
13 frame?

14 A Yes. You can see our logo floating on the screen on
15 the register.

16 Q Okay. And then you said also you wanted to be able
17 to see all of the views of the various machines along sort of I
18 guess the center of the camera view?

19 A Gaming likes us to have cameras on all the machines.

20 Q Okay. And if we can go to the next view. Directing
21 your attention to the second view on this exhibit, what are we
22 seeing in this view?

23 A This is looking due north, and the other waitress
24 station on the other side and the other registers just on the
25 other side of this Jager machine.

1 Q Okay. So fair to say what we had just looked at
2 previously was down along one of the long sides of the bar, and
3 this is down along another long side?

4 A Right. This is the east side, and the other camera
5 looked down the west side.

6 Q Okay. And so the other waitress -- or not waitress.
7 The other cash register is also located within the island sort
8 of in this picture depicted in the middle of the screen?

9 A Correct. When it opens up, the drawer will pop out,
10 and it's in plain view of that camera.

11 Q Okay. Great. If we can go to the next view. This
12 would be the third view on this exhibit. What are we seeing at
13 this angle?

14 A That's the straight-on view of that register we were
15 just talking about.

16 Q Okay. So that's the same register that we just
17 observed in the previous angle?

18 A That's correct.

19 Q Okay. If we can go to the next view. This would be
20 the fourth view on this exhibit. What is this an angle of?

21 A That's showing the entryway coming in to get behind
22 the bar and the slot machines on the north side of the bar.

23 Q Okay. If we can go to the next view. This would be
24 the fifth view on this exhibit. What do we see at this angle?

25 A That's inside our walk-in.

1 Q Your walk-in what?

2 A Walk-in refrigerator.

3 Q Okay. And is this also fair to say an area that
4 patrons would not be allowed in?

5 A Yeah. Most assuredly.

6 Q And we can go to the next view.

7 A That's --

8 Q I think this is the --

9 A That's our back dish line and prep line.

10 Q You're getting ahead of me. Okay. In this view,
11 what are we seeing?

12 A That's our dish line and our prep line and our dry
13 storage heading towards the office door.

14 Q Okay. Excellent.

15 If we can go to the last view.

16 MS. MOORS: That for the record was the sixth view.
17 This will be the seventh view on this exhibit.

18 BY MS. MOORS:

19 Q And what do we see in this view?

20 A That's the end of the cook line and the back door and
21 the front door to the walk-in refrigerator.

22 Q Okay. And we can X out of that. So let me ask you
23 this, sir. All of these different views that we saw, you
24 explained to me the time stamp. Obviously I didn't go through
25 in detail all of them, but did you ultimately preserve any

1 video from around 5:15 on the morning of October 29th, 2018,
2 for police?

3 A Absolutely.

4 Q Did you then I guess have someone transfer that to a
5 disc on your behalf, and does everything that we saw appear to
6 be a fair and accurate depiction?

7 A Absolutely correct.

8 MS. MOORS: Okay. Court's indulgence.

9 I have no further questions for this witness.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. MATSUDA:

13 Q I just want to -- just one question, Mr. Bonner.
14 Were you physically present on October 29th at the bar?

15 A That day I was, but not that evening.

16 Q Okay. When this incident took place, were you
17 physically there?

18 A No, I was not there.

19 MR. MATSUDA: Okay. Thank you, sir.

20 Nothing further, Your Honor.

21 THE COURT: Any questions from the jury?

22 I see no questions. May this witness be excused?

23 MS. MOORS: Yes, Your Honor.

24 THE COURT: Thank you very much for your testimony,
25 sir.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You may call your next witness.

3 MS. MOORS: Thank you, Your Honor. The State would
4 call Officer Weston Ferguson.

5 **WESTON FERGUSON**

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

8 THE CLERK: Please be seated and state and spell your
9 name for the record.

10 THE WITNESS: Officer Weston Ferguson. It's
11 W-e-s-t-o-n, F-e-r-g-u-s-o-n.

12 THE COURT: You may proceed.

13 MS. MOORS: Thank you.

14 **DIRECT EXAMINATION**

15 **BY MS. MOORS:**

16 Q Good afternoon, Officer. Can you tell the members of
17 the jury how you're employed.

18 A Police officer, Las Vegas Metro.

19 Q And how long have you worked for Metro?

20 A Five years.

21 Q I want to direct your attention back to October
22 29th of 2018. Were you a police officer at that time?

23 A Yes.

24 Q And what was your assignment?

25 A Patrol. Graveyard.

1 Q All right. And when does graveyard customarily work?

2 A 10:00 p.m. to 0800.

3 Q Okay. So 10:00 p.m. from one day on to 0800 the next
4 day?

5 A Yes.

6 Q And as a patrol officer, what is your -- what are
7 your common duties?

8 A I patrol to answer calls for service. I'm proactive,
9 conduct stops.

10 Q Okay. Do you do follow-up investigation?

11 A Yes.

12 Q Okay. Are there times when you sometimes hand things
13 off to detectives to do follow up?

14 A Yes.

15 Q So on this particular date, were you working as a
16 patrol officer for Metro?

17 A Yes.

18 Q And I see that you're wearing a uniform here today.
19 Is that what you would normally wear?

20 A Yes.

21 Q When you are working as a patrol officer, are you in
22 a marked patrol vehicle?

23 A Yes.

24 Q On this date were you also in a marked patrol
25 vehicle?

1 A Yes.

2 Q When you're working patrol, how do you sort of divide
3 up what areas of Las Vegas you would work in?

4 A Well, I'm currently assigned to Bolden Area Command.
5 So my sector beat is William 8; however, this was in William 2.
6 So my boundaries would be Rainbow, 15 to the east, Cheyenne to
7 the north, and --

8 Q Okay.

9 A -- Charleston to the south.

10 Q So what you're telling us essentially is that it's a
11 geographically defined area, and that is the area in which you
12 would then be working as a patrol officer?

13 A Yes.

14 Q Okay. So on this particular date, did you have
15 occasion to get called out to 6374 West Lake Mead or the Torrey
16 Pines Pub?

17 A Yes.

18 Q And I forgot to ask you this, but on this date were
19 you -- would you have been traveling by yourself in a car or
20 with a partner?

21 A By myself.

22 Q So when you ultimately got called to this location,
23 why were you called to this location?

24 A It was a report of a -- I can't remember
25 specifically, but it was a robbery call at the Torrey Pines

1 Pub.

2 Q Okay. And were you one of the first responding
3 officers?

4 A Yes.

5 Q How close were you when you ultimately got the call
6 to respond?

7 A I was close, probably within a few minutes or so.

8 Q Okay. So you arrived fairly fast?

9 A Yes.

10 Q Were you actually the first responding officer?

11 A Yes.

12 Q Once you got to the location, what did you do?

13 A I got to the location. I was a few minutes out. So
14 initially I tried to ATO because I had just came from that
15 direction where the details said the suspect left running on
16 foot.

17 Q Let me stop you right there. You said you tried to
18 ATO.

19 A ATO, attempt to locate.

20 Q Okay. So what you're saying is on the way to this
21 call you thought you might locate a suspect?

22 A Yes. I thought I would possibly come that direction
23 and see if I could see him before I made contact.

24 Q Okay. And were you successful at locating anyone?

25 A No.

1 Q So then after that, ultimately you went to the Torrey
2 Pines Pub?

3 A Yes.

4 Q Once you got there, what did you do?

5 A I went inside and contacted the victims.

6 Q Okay. And ultimately did you have a chance to speak
7 with some of them?

8 A Briefly.

9 Q Okay. What else did you do in addition to contacting
10 the victims?

11 A I contacted the victims. I --

12 Q Was it your understanding that there was video
13 surveillance?

14 A Yes.

15 Q Did you or someone else look at that surveillance?

16 A Someone else.

17 Q Was it also part of your duties to ultimately kind of
18 tape off the scene?

19 A Not my duties necessarily, but the responding
20 officers.

21 Q Okay. So that would have been -- was that something
22 that you did on that day?

23 A I didn't -- I did not tape off the area.

24 Q Okay. To your knowledge, was the scene taped off?

25 A Yes.

1 Q Was it your, I guess, understanding that the suspect
2 was potentially wearing -- or the suspects were potentially
3 wearing gloves?

4 A Yes.

5 Q Okay. So you didn't try to have someone come out for
6 fingerprints or anything like that?

7 A Yes. They were called to come out. CSA were called
8 out to take fingerprints and photos.

9 Q Okay. But was it your understanding that gloves were
10 worn by the assailants?

11 A Yes.

12 Q Okay. How long in total would you say that you were
13 there?

14 A Maybe hour and a half, two hours at most.

15 Q Okay. Once you're done with sort of your beginning
16 duties at that location, do you hold onto that case, or do you
17 hand it off to someone else?

18 A Hand it off.

19 Q Who would it have been handed off to?

20 A Detectives. Possibly robbery detectives in this
21 case.

22 Q Okay. So once this day is over, once October 29th,
23 2018, is over, you would have no further involvement?

24 A No.

25 Q Okay. Is that sort of customary with a lot of patrol

1 interactions?

2 A Yes. If we don't have enough PC to make an arrest on
3 the scene, we usually take a report and forward it to the
4 proper area.

5 Q Okay. So you say when you don't have enough PC, what
6 are you meaning?

7 A Probable cause to make an arrest.

8 Q Okay. So at this point in time you didn't have
9 probable cause to arrest anyone?

10 A No.

11 Q And so it was handed off ultimately to a robbery
12 detective?

13 A Yes.

14 Q Okay. Now, when you ultimately got there and you
15 said you spoke with the victims, do you remember how many
16 victims were there?

17 A Possibly three or four.

18 Q Okay. And I know you said you were the first
19 responding, but did ultimately some other officers show up
20 later?

21 A Yes.

22 Q And did they help you in kind of talking to some of
23 the victims?

24 A Yes.

25 Q Okay. Was there anything that stood out to you as

1 odd about these victims?

2 A Yes.

3 Q What was that?

4 A One of the victims, the victim that opened the door
5 for the robbery suspects, I felt kind of odd about him.

6 Q Okay. Why do you say that?

7 A Because when he was giving his statements, things
8 that he said were kind of inconsistent as far as I know that I
9 believe he said that no one took anything from him, but yet all
10 the other victims were either assaulted or battered or had
11 items stolen from them. So I thought that was odd that the
12 suspects would come in, skip over him and rob everybody else
13 and leave.

14 Q All right. And is that something that you would have
15 passed along to -- to the detective?

16 A Yes.

17 MS. MOORS: Okay. Court's indulgence.

18 I have no further questions for this witness.

19 THE COURT: Cross.

20 MR. MATSUDA: I don't have any questions for the
21 officer.

22 THE COURT: All right. Any questions from the jury?

23 I see no hands.

24 Thank you very much for your testimony, sir.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: We'll call the next witness.

2 MS. CANNIZZARO: Thank you. The State would call
3 Officer Tomaino.

4 **JOHNATHAN TOMAINO**

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

7 THE CLERK: Please take a seat. And state and spell
8 your full name for the record.

9 THE WITNESS: Yes, ma'am. My name is Officer
10 Johnathan Tomaino. J-o-h-n-a-t-h-a-n. Tomaino, T-o-m-a-i-n-o.
11 My P number is 16214.

12 THE COURT: You may proceed.

13 MS. CANNIZZARO: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MS. CANNIZZARO:

16 Q Good afternoon, Officer. I recognize that you are in
17 uniform this afternoon. Where are you currently employed?

18 A Las Vegas Metropolitan Police Department. I have
19 been so employed for the past two and a half years, and I
20 worked the Bolden Area Command.

21 Q All right. That was a lot. And what's your position
22 with the police department?

23 A I am a patrol officer, Police Officer II.

24 Q You mentioned that you are assigned currently to the
25 Bolden Area Command; is that right?

JD Reporting, Inc.

1 A Yes, ma'am.

2 Q And what area of town does the Bolden Area Command
3 cover?

4 A So our farthest north border is Cheyenne. And then
5 our farthest south border is Charleston. It goes all the way
6 to the I-15 is our east border, and our furthest west border is
7 Rainbow.

8 Q And so when you say you are assigned to a particular
9 area command, do you then take calls for service within that
10 particular area?

11 A Yes, ma'am.

12 Q And as a police officer, do you regularly work in
13 this uniform that you're wearing today?

14 A Yes, ma'am.

15 Q Do you operate in a marked or unmarked patrol car?

16 A A marked patrol vehicle.

17 Q Have you always worked in uniform in a marked patrol
18 vehicle?

19 A Yes, ma'am.

20 Q Do you usually work with a partner?

21 A Typically we ride solo. Every once in a while we
22 double up, but typically we really we ride solo.

23 Q I want to direct your attention to October of 2018.
24 Were you working any particular shift at that point in time?

25 A I was working graveyard shift at that time.

1 Q And what time frame does that shift include?

2 A Between 2200 hours, so 10:00 o'clock p.m., to 0800,
3 so 8:00 a.m. in the morning.

4 Q And when you're on shift in a marked patrol vehicle,
5 uniformed police officer, can you describe for the members of
6 the jury kind of what your duties would entail.

7 A My job is to respond for calls for service and
8 prevent any kind of violent crime in the Clark County.

9 Q When you say respond to calls for service, how do you
10 get those calls for service?

11 A Citizens call either 9-1-1 or 3-1-1, and depending on
12 the severity of what's going on, it gets just put in our Q list
13 on the priority.

14 Q How is it that you are asked to respond to a
15 particular call?

16 A We are dispatched to that call through the dispatch.

17 Q And dispatch would be the same place you would get if
18 you call through 9-1-1 or 3-1-1; is that right?

19 A Yes.

20 Q On October 29th, in the early morning hours of
21 October 29th of 2018, were you working that day?

22 A Yes, ma'am.

23 Q Were you working the same graveyard shift you
24 mentioned earlier?

25 A Yes, ma'am.

1 Q Were you working alone or with a partner that day?

2 A I was driving alone that night.

3 Q Okay. At some point around 5:15 a.m., do you
4 remember getting a call for service at the Torrey Pines Pub?

5 A Yes. It's reference a robbery.

6 Q And where is the Torrey Pines Pub located
7 approximately?

8 A Lake Mead and Torrey Pines on the northeast corner.

9 Q Is that within the Bolden Area Command?

10 A Yes, ma'am.

11 Q When you receive a call for something like a robbery,
12 which you mentioned, how do you typically respond to that type
13 of call?

14 A Typically it's a priority violent felon crime. So we
15 typically respond with lights and sirens. We get there as fast
16 as possibly we can within the legal limits.

17 Q Do you remember where you were when you received that
18 call on the 29th?

19 A I was on Lake Mead Jones traveling southbound on
20 Jones.

21 Q Okay. How close is that to where the Torrey Pines
22 Pub is?

23 A Maybe 800 meters.

24 Q When you received that call, did you actually get
25 dispatched and assigned to that?

1 A Yes.

2 Q And how quickly were you able to respond to the
3 Torrey Pines Pub?

4 A Pretty quick, with less than a minute.

5 Q When you're responding to a scene like that, is it
6 typical for you to respond alone, or would it be typical for
7 other officers to also respond?

8 A For that kind of call, typically as many officers as
9 needed is going to respond. So two or more.

10 Q You mentioned that usually you would respond to
11 something like a call for a robbery with lights and sirens.
12 Did you do that in this particular instance?

13 A Yes, ma'am.

14 Q And were you -- were you the only officer that was
15 arriving on scene at that time?

16 A No. Myself and Officer Ferguson, who's typically my
17 E partner. So we work a lot together. We both arrived
18 together, almost simultaneously. He showed up maybe five
19 seconds before I did.

20 Q When you show up on scene, do you -- do you see
21 anyone that would match a description for someone you might be
22 looking for?

23 A At that time, no.

24 Q Did you ever receive any descriptions for individuals
25 who were alleged to have committed the robbery?

1 A Yes. So it was two male subjects wearing, to my
2 recollection, they were wearing masks, and they were armed with
3 handguns, and they were running eastbound on Lake Mead. And
4 I'm, like, I'm on Lake Mead, Jones. This is just east of that.
5 I thought I was going to catch them, and then I didn't see
6 anybody. No one matching the description, no one running, and
7 so I turned right into the Torrey Pines Pub to assess the
8 scene, see if we had an actual crime there.

9 Q So even though you were very close in proximity, you
10 actually didn't see anyone kind of coming from the bar or
11 anything like that?

12 A No, ma'am.

13 Q Okay. You mentioned that both yourself and Officer
14 Ferguson had responded to the scene; is that right?

15 A Yes, ma'am.

16 Q Were there any other officers who were responding at
17 that point in time?

18 A Initially, it was just myself and Officer Ferguson,
19 and then shortly officer -- after Officer Fernandez showed up
20 and assisted.

21 Q What do you do when you arrive on a scene typically?

22 A We determine who our victims are, witnesses, who
23 needs medical help, any kind of evidence, what we need to tape
24 off, how big is the scene, is anyone in a life-threatening
25 situation? Does medical have to expedite, or can they just

1 slowly roll in there and do their thing?

2 Q When you arrived at the Torrey Pines Pub on October
3 29th, what specifically did you do when you arrived on scene?

4 A I arrived behind Officer Ferguson. We went inside,
5 separated all the victims and witnesses from each other,
6 determined who all identified everybody that was there and
7 asked if they were willing to do statements about what
8 happened. But we essentially found out that almost everyone in
9 there had property taken from them. An older male had
10 sustained head trauma -- not trauma, but a head injury. He had
11 a small laceration to the head, about 2 or 3 inches. He was
12 bleeding. It's a head injury. It's going to have a lot of
13 bleeding.

14 And we summoned medical attention for him and anyone
15 else that was still there, we asked if they were willing to do
16 written statements, and they did.

17 Q You mentioned, and I want to back up for just a
18 moment. You mentioned that when you arrived on scene you
19 wanted to separate everyone?

20 A Yes. That way we don't contaminate the story. That
21 way people don't -- it's their own words as best we can.

22 Q So fair to say you want them to tell it from --
23 tell --

24 A Their perspective, yes, ma'am.

25 Q Tell the story from their perspective?

1 A Yes.

2 Q And so that was done in this particular case?

3 A Yes, ma'am.

4 Q And is that something that you actually assisted with
5 doing?

6 A Yes.

7 Q Okay. You mentioned that when you arrived on scene
8 there was one individual who had been injured, an older
9 gentleman. Do you remember -- do you remember what if anything
10 was done for him on scene?

11 A We provided basic medical attention to him. Medical
12 was immediately summoned. They kind of cleaned him up, and he
13 got transported to Mountain View Hospital where he was provided
14 stitches.

15 Q Okay. You mentioned that there were several other
16 individuals on scene as well?

17 A Yes.

18 Q Did you assist in sort of gathering statements from
19 those individuals?

20 A So once I handed out the initial written statements,
21 I set up crime scene tape to keep anyone that's not supposed to
22 be there out of the crime scene, uncontaminated. That way
23 detectives when they respond can get the information that they
24 need, and there's nothing superfluous to the information that
25 they have.

1 Q You mentioned that that was so that if detectives
2 were going to respond you would have that as well. When you --
3 when you say when detectives respond, is it typical for a
4 detective to respond to a scene like a robbery?

5 A So what we determined was it was a takeover style
6 robbery to a business. So it's part of their callout criteria.
7 We had injuries, firearms involved. So it's part of their
8 callout criteria to come respond to this.

9 Q Fair to say there are some calls for service then it
10 sounds like that a detective would automatically be called out
11 for?

12 A Yes.

13 Q And this would have fallen within that parameter?

14 A That's correct.

15 Q Before detectives arrived then, you mentioned that
16 you had taped off the scene. How do you do that?

17 A So I utilized our issued crime scene tape that we
18 keep in the back of our cars. It's marked yellow police line
19 do not cross. We marked off from I think the gas station all
20 the way down to the sidewalk, and then we marked it all the way
21 down to the apartment complex so no one could come in that main
22 area. And then I went to the back behind the pub, and I taped
23 that off as well so no cars can come behind the alley.

24 Q You mentioned that you first attempted to get
25 statements from everyone on scene; is that right?

1 A Yes.

2 Q And then did detectives ever arrive?

3 A Yes.

4 Q How about -- how long before detectives arrived on
5 scene?

6 A I ended up going to the hospital about 30 minutes
7 after we arrived, and I went with the victim with the head
8 injury to the hospital.

9 Q Okay. Now, when you left the scene, had detectives
10 yet arrived at --

11 A No.

12 Q -- the establishment. No.

13 So there were other officers that were left on scene
14 then?

15 A Yes. There was a few other officers arrived to
16 assist.

17 Q You mentioned that you actually ended up going with
18 the victim to the hospital.

19 A Yes.

20 Q Was there anything else that you noted about this
21 particular incident before you left?

22 A There was a male that was very, I guess, a little
23 extra cooperative if that makes sense, to a point where
24 everyone kind of pointed at him saying he opened up the
25 emergency exit, and that's when the two males entered. And it

1 was just a little off to me. We didn't -- we didn't detain the
2 guy or anything. We just kind of asked him like, hey, what
3 happened. He said he went out the side door to go to his car
4 to go home, and then the two males pushed him in, and they
5 entered and roughed up everybody else and took their property.
6 And he was relatively untouched. None of his stuff was taken.
7 We ended up finding out the car that the guys were sitting
8 behind was that man's car. I was like, okay, that's a little
9 weird. And then the main entrance to the pub is -- you have to
10 get buzzed in because they've got the big glass door. There's
11 cameras posted, and you have to get buzzed in by the bartender,
12 and even while we were doing our major investigation, we never
13 used that side door. We were just getting buzzed in and out.

14 Q Okay. So fair to say there were some things that you
15 noted of particular concern with that witness?

16 A Yeah. You left an able-bodied male just sitting all
17 by himself by the exit while everyone else is relatively
18 elderly and, yeah.

19 Q At that point in time, you did not arrest him?

20 A No. No.

21 Q Was that something that you would have made note of
22 for detectives?

23 A We did.

24 Q And then you said that you actually went to the
25 hospital?

1 A Yes.

2 Q Was that Mountain View Hospital I think you said?

3 A Yes.

4 Q Okay. And while you were at Mountain View Hospital,
5 what did you do?

6 A I sat with the victim. I interviewed him to a
7 degree. I just essentially sat there and talked to him about
8 his life while he was just waiting to get his head cleaned up.

9 Q While you were at the hospital, do you ever
10 request -- remember requesting any other officers or crime
11 scene investigation to appear?

12 A I think another officer requested ID -- or our CSAs,
13 crime scene analysts, to the scene, and I don't know if they
14 responded to the hospital to take pictures of his injuries or
15 anything, but -- because I left after the detective showed up.

16 Q Would it be ordinary for a crime scene analyst then
17 to appear to take photos of any injuries?

18 A Yes. If it's okay with the victim that we can take
19 photos.

20 Q Okay. And what is the purpose of taking those
21 photos?

22 A To document any evidence because it's going to heal
23 up later on.

24 Q So by the time you left the hospital, that was still
25 in process, and detectives were arriving?

1 A [No audible response.]

2 Q Is that a yes?

3 A That's correct. Yes. Sorry.

4 MS. CANNIZZARO: Brief indulgence.

5 Court's brief indulgence.

6 BY MS. CANNIZZARO:

7 Q And, Officer, do you -- let me get by a microphone.

8 You recall being on scene, of course, when you were called out
9 to the pub?

10 A [No audible response.]

11 Q Is that yes?

12 A Yes.

13 Q Okay. And you mentioned that you had taped off the
14 scene as well; is that right?

15 A Yes.

16 Q When you taped off the scene, did you notice other
17 items of evidentiary value or things that you wanted to leave
18 in place so that they could be collected later on?

19 A Pretty much any property that was out of place or
20 didn't belong to anybody we left untouched, but...

21 Q And did you have an opportunity to actually walk
22 through the bar while you were on scene?

23 A Shortly. Not in the aspect of actually looking
24 around, but just like, oh, there's blood here. That's as far
25 as that went. I didn't review any camera footage or anything

1 personally.

2 Q But just things that you noted that you wanted to
3 make sure weren't touched by other individuals?

4 A Personally, no.

5 MS. CANNIZZARO: Okay. Permission to approach the
6 witness, Your Honor?

7 THE COURT: Granted.

8 BY MS. CANNIZZARO:

9 Q All right. Sir, I am going to show you what has been
10 marked as State's Proposed Exhibits 33 through 41, and also
11 State's Proposed Exhibits 48 through 51.

12 If you could do me a favor, and to yourself, just
13 flip through those photos very briefly.

14 A Okay.

15 Q Do you recognize those photos?

16 A Yes. So typically when we freeze the scene, we kept
17 the cash register relatively untouched. Any of the blood we
18 did our best to not step on it or step -- we just stepped over
19 it or around it. That's kind of one of the things, I'm sorry,
20 that, yeah.

21 Q So you actually recognize -- you actually recognize
22 these as photos --

23 A Yes.

24 Q -- of different things that were present in the bar
25 when you arrived?

1 A That is the inside of the Torrey Pines Pub.

2 Q And are these fair and accurate depictions of the
3 items that were sort of within the bar that day?

4 A Yes.

5 MS. CANNIZZARO: State would move to admit State's
6 Proposed Exhibits 48 through 51, and 33 through 41 into
7 evidence.

8 THE COURT: Any objection?

9 MR. MATSUDA: None, Your Honor.

10 THE COURT: They'll be admitted.

11 (State's Exhibit Number(s) 33-41, 48-51 admitted.)

12 MS. CANNIZZARO: Permission to publish, Your Honor?

13 THE COURT: Granted.

14 BY MS. CANNIZZARO:

15 Q Now, Officer, you mentioned that you -- that you
16 recognize these as being different items that were present
17 inside the bar when you arrived; is that right?

18 A Yes.

19 Q Okay. So I'm going to show you State's Exhibit 33.
20 What are we looking at in this photograph?

21 A It looks like a rag that they used to clean up --
22 James Ferony's head after he got -- James Ferony is the elderly
23 victim that got his head smacked by the pistol.

24 Q Is that the same gentleman that you went to the
25 hospital with?

1 A Yes, ma'am.

2 Q Okay. And showing you State's 34, what are we
3 looking at in that photograph?

4 A It's the same rag.

5 Q Would that be fair to say just an up-close photo of
6 the rag?

7 A Yes.

8 Q State's Exhibit 35, what are we looking at in that
9 photograph?

10 A It's going to be the slot machine that James Ferony
11 was playing on.

12 Q Okay. And State's Exhibit 36, what are we looking at
13 in that photograph?

14 A It looks like his players card and his drink that he
15 had.

16 Q State's Exhibit 37, what is depicted in that
17 photograph?

18 A It's a blood -- a blood pool in the middle of the
19 floor.

20 Q Okay. And that would be sort of this round item in
21 the middle of the photograph?

22 A Yes.

23 Q And State's Exhibit 38, what are we looking at in
24 that photograph?

25 A It looks like there's more blood droplets on the

1 ground as well as another pool of blood, unless it's the same
2 one.

3 Q State's Exhibit 39, what's depicted in that
4 photograph?

5 A Looks more blood dripping.

6 Q Maybe another view of the same blood that we were
7 just looking at?

8 A [No audible response.]

9 Q Is that yes?

10 A Yes.

11 Q State's Exhibit Number 40, what are we looking at in
12 that photograph?

13 A A pool of blood from the side of the pub. It's the
14 same tile.

15 Q And State's Exhibit 41, what's in that photograph?

16 A It's the same blood -- blood pool, but just put to
17 scale.

18 Q State's Exhibit Number 48, what are we looking at in
19 this particular photograph?

20 A It's going to be behind the bar where the cash
21 register is showing that it was rummaged through. There's
22 property strewn about.

23 Q And State's Exhibit Number 49.

24 A It looks like a small purse kind of thing.

25 Q Okay. And would that be -- it says NS Bank, so it

1 was like a bank -- something that has to do with the bank?

2 A Yes.

3 Q Okay. State's Exhibit 50, what are we looking at in
4 that photograph?

5 A It's going to be another angle of the cash register
6 that was opened and ransacked?

7 Q And State's Exhibit Number 51, what are we looking at
8 in that photograph?

9 A You're looking at the inside of the cash register
10 which is now relatively empty.

11 Q And these were all things that you had expected to
12 find given kind of what you understood had happened at that
13 bar?

14 A Yes.

15 MS. CANNIZZARO: No further questions. I'd pass the
16 witness.

17 THE COURT: Cross.

18 MR. MATSUDA: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MATSUDA:

21 Q Good afternoon, Officer.

22 A Good afternoon, sir.

23 Q Did you speak to all the witnesses?

24 A I spoke to a few. As far as everybody, that's going
25 to be a negative, sir. I did not.

1 Q And did any of the witnesses, were they able to
2 identify the suspects?

3 A I believe they were -- to the recollection of my
4 knowledge, they had masks on. So no one actually saw faces or
5 anything like that, and they didn't recognize their -- there's
6 no way that you could see their face.

7 Q Okay. Because they were wearing some -- something?

8 A Yes. Yes, sir.

9 Q Something to obstruct their faces?

10 A Yes, sir.

11 Q Okay. And do you know if the witnesses were able to
12 identify any kind of skin color on them?

13 A The initial description we had were two black male
14 adults, but as far as what I had, I didn't really talk to the
15 witnesses very long. I was more focused on James Ferony and
16 getting him medical attention.

17 Q Okay. Now, why were the initial -- why was the
18 initial description two black males?

19 MS. CANNIZZARO: And, Your Honor, I'm going to
20 object. That calls for speculation.

21 MR. MATSUDA: The witness --

22 MS. CANNIZZARO: As to why.

23 THE COURT: Right. So the question at this point
24 lacks foundation, and so if you want to lay a better foundation
25 maybe you could get there.

1 MR. MATSUDA: Okay. I'll withdraw that question,
2 Your Honor.

3 BY MR. MATSUDA:

4 Q Okay. I'm going back to witnesses that you spoke to.
5 Again, their observations basically were that there was
6 something obstructing their face; correct?

7 A Yes.

8 Q Okay. And did they also say that they were wearing
9 gloves?

10 A I don't remember, sir.

11 Q Okay. No problem. Do you recall any witness saying
12 that some part of their body was exposed?

13 A I think someone said they saw their neck, but I can't
14 for the life of me remember. I'm sorry.

15 MR. MATSUDA: Okay. No problem. Thank you, Officer.
16 Nothing further, Your Honor.

17 THE COURT: Any redirect?

18 MS. CANNIZZARO: Nothing from the State, Your Honor.

19 THE COURT: Questions from the jury?

20 I see no hands. So, Officer, you may be excused.

21 Thank you for your testimony.

22 THE WITNESS: Thank you for your time, ma'am.

23 THE COURT: You're welcome.

24 You may call your next witness.

25 MS. CANNIZZARO: And, Your Honor, the State's next

1 witness is Antwaine Johnson.

2 THE COURT: I'm sorry. Who?

3 MS. CANNIZZARO: Antwaine Johnson.

4 THE COURT: Thank you.

5 **ANTWAINA JOHNSON**

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

8 THE CLERK: Please be seated and state and spell your
9 name for the record.

10 THE WITNESS: Antwaine Johnson. A-n-t-w-a-i-n-e.
11 Johnson, J-o-h-n-s-o-n.

12 THE COURT: You may proceed.

13 MS. CANNIZZARO: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MS. CANNIZZARO:

16 Q Good afternoon, Mr. Johnson. Do you know someone by
17 the name of Devohn Marks?

18 A Yes.

19 Q And do you see that individual in the courtroom
20 today?

21 A Yes.

22 Q Can you please point to that individual and describe
23 an item of clothing that he's wearing.

24 A A white T-shirt -- white long sleeve shirt.

25 MS. CANNIZZARO: Record reflect the identification of

1 the defendant?

2 THE COURT: It will.

3 BY MS. CANNIZZARO:

4 Q Now, Mr. Johnson, you have indicated that you know
5 Mr. Marks. How do you know Mr. Marks?

6 A He stayed in my apartment building.

7 Q What apartment building would that be?

8 A The Bloom Apartments.

9 Q Do you know where that is located?

10 A It is off of -- the cross streets is like Tenaya and
11 Cheyenne.

12 Q When is it that you were staying at the Bloom
13 Apartment Complex?

14 A I moved there in 2016, and I've been staying there
15 since maybe -- maybe at the end of December, around that time.

16 Q The end of December of which year?

17 A This year.

18 Q Of this year?

19 A Last year. I'm sorry. I'm sorry.

20 Q Sorry. It's 2019 currently.

21 A Yes. Yes. Eighteen. 2018.

22 Q So December of 2018?

23 A Yes.

24 Q You mentioned that you first met the defendant
25 because he actually lived in that apartment complex as well?

1 A Yes, ma'am.

2 Q How is it that, can you describe for the members of
3 the jury, how it is that you sort of became to know him as
4 someone who lived in your apartment complex?

5 A Well, we were -- he would walk his dog around, and we
6 would kind of see each other from just walking in and out. I
7 would go to the gym, maybe see him. We would probably hang out
8 a couple of times.

9 Q So fair to say it sounds like you first sort of just
10 noticed him in the apartment complex, and later on started to
11 hang out with him?

12 A Yes.

13 Q And when was it that you were hanging out with him?
14 Like what period of time are we talking about?

15 A I can say -- can you kind of rephrase that? Like
16 what you mean by --

17 Q Sure. So did you -- have you known him like the
18 entire time you lived at the apartment complex, or was it a
19 much shorter period of time?

20 A It was a shorter period of time. I'd say I really
21 only known him maybe about six or five -- five to six months at
22 the most.

23 Q Okay. And that would be in total?

24 A Yes.

25 Q Would that include the time that you sort of saw him

1 initially at the apartment complex and then later on as you
2 began to hang out?

3 A Yes.

4 Q You mentioned that you would sometimes hang out with
5 the defendant.

6 A Yes.

7 Q When you would hang out, what would you guys do?

8 A Oh, we would smoking and probably, you know, just
9 chitchatting, you know, about life. And then stuff like that,
10 you know.

11 Q When you say smoking, do you mean marijuana?

12 A Yes.

13 Q Okay. And how often would you hang out with him?

14 A I'm going to say maybe once or twice a week maybe or
15 sometimes not even that. It might be every other two weeks or
16 something like that. Sometimes I wouldn't even see him every
17 day; it might be like three weeks would go by or maybe two
18 weeks. And then I just see him, you know, randomly. It
19 wouldn't be just, you know, call and let's meet up type stuff.
20 It would probably be random when I would just see him outside
21 or something.

22 Q So random when he would see him outside the apartment
23 complex?

24 A Yes.

25 Q Okay. At that point in time when you were hanging

1 out with him, did you have -- how did you typically get in
2 contact with him? Would it always be this random meet him
3 outside the apartment complex, or did you ever have other ways
4 of contacting him?

5 A Oh, yeah. We also had phone numbers as well, but we
6 were really -- we didn't keep too much in contact, but if we
7 did wanted to link up, we would just text or something like
8 that. He would text me, or I would text him.

9 Q Would it be more common for you to see him in the
10 apartment complex, or would it be more common for you to text
11 or call him?

12 A Probably more see him in the complex, yes.

13 Q I want to direct your attention to October of 2018.
14 Were you still living at that same apartment complex?

15 A Yes.

16 Q Okay. And to your knowledge, was the defendant also
17 living at that apartment complex?

18 A Yes, I believe so.

19 Q You mentioned that you had exchanged telephone
20 numbers with the defendant; is that right?

21 A Yes.

22 Q What number did you have at that point in time?

23 A I believe it was a 424 area code number I had.

24 Q Does (424)375-1085 sound familiar?

25 A Yes.

1 Q Whose number is that?

2 A That is my number.

3 Q Was that a cell phone or like a landline?

4 A A cell phone.

5 Q And was that a cell phone that you would regularly
6 use?

7 A Yes.

8 Q That was your sort of personal cell phone?

9 A Yes.

10 Q Was that the number that you used to communicate with
11 the defendant?

12 A Yes.

13 Q Do you recall what the defendant's number was?

14 A No, I don't.

15 Q Does a 323 area code ring a bell?

16 A Yes.

17 Q Okay. When you -- when you first get his number, do
18 put it in your cell phone?

19 A Yes.

20 Q And did you have a name associated with it?

21 A I believe so, yes. Yes, I did. Yes.

22 Q So you could find him by name?

23 A Yes.

24 Q So fair to say you didn't have his phone number
25 memorized?

1 A No.

2 Q Okay. But you recall it being a 323 number?

3 A Yes.

4 Q Now, on October of 2018, were you working at the
5 time?

6 A I was not.

7 Q Okay. Had you been working previously?

8 A Yes. I think, like, two months prior I had lost my
9 job.

10 Q Okay. And were you able to easily find another job?

11 A It wasn't easy to find a job. That's why I kinda --

12 Q You mentioned that you were living in this apartment,
13 and you had had a job. Were you doing things like paying the
14 rent, paying your cell phone bill?

15 A Yeah. I was getting kind of help, assistance paying
16 my rent and stuff like that, but it was --

17 Q Okay. Did you have other bills you had to pay for?

18 A Yes.

19 Q Okay. And were you supporting anybody else at that
20 point in time?

21 A Just my daughter at the time. Yes.

22 Q At any point in time did you ever share with the
23 defendant that you had lost your job?

24 A Yes.

25 Q And can you describe for us and the members of the

1 jury, like, what -- when you lost your job, what was that like?

2 A Well, actually, one of my son's mother -- had lost my
3 job. I was working full-time doing security at the Springs
4 Preserve, and she just happened to drop my son off to me
5 cruelly, just dropped them off to me, and I didn't have no way
6 to provide daycare for him, and it was just -- it was a real
7 rough time for me, and it caused me to lose my job, and it kind
8 of was hard to get back on track with that situation.

9 Q Would it be fair to say you were sort of struggling
10 financially?

11 A Yes.

12 Q Did you ever share that with the defendant?

13 A I believe so. Yes.

14 Q When you told the defendant that you had lost your
15 job and sort of explained that to him, did he ever offer you
16 any advice?

17 A No.

18 Q Okay. Did he ever offer you any solutions to get
19 money?

20 A Yes.

21 Q And what was that solution that he offered?

22 A He kind of offered he knew a way to get some money.
23 He knew a bar that he knew about that it possibly had some
24 money in there that possibly we can get. That way it would be,
25 like, stable a little bit I guess.

1 Q How did you feel when he sort of said, hey, you know,
2 there's this bar that has money in it as a way to help with
3 your finances?

4 A I kind of felt like it was a good thing, but at the
5 same time, in the back of my head, I kind of thought it wasn't
6 a good thing because doing that route was not like a good
7 situation, something I've never did before, but, yes.

8 Q Okay. Now, when you say that he said he knew about a
9 bar, what specifically about that bar did he tell you about?

10 A He actually told me that it was -- he just knew -- I
11 think he scoped it out a few times, and he knew that it was
12 possibly was money in there. Like it was in a cooler
13 situation. Once you go in there, it's in the cooler, and
14 basically that's what he told me, just to scope it out and, you
15 know, stuff like that, see if I could see what I could see.

16 Q When he first mentions this to you, do you agree to
17 sort of come up with a plan?

18 A Yes.

19 Q Okay. Was it just you and the defendant, or were
20 there other people involved?

21 A It was another guy involved.

22 Q Can you describe what that -- what that guy looked
23 like.

24 A He was a kind of slim black guy, African American,
25 maybe 5-9-or something like that.

1 Q Okay.

2 A Short hair.

3 Q And you said it was sort of a slimmer build?

4 A Yes.

5 Q Okay. Did you ever get that man's name?

6 A No, I did not.

7 Q Okay. So you never knew what his real name was?

8 A No.

9 Q Did you ever have his phone number?

10 A No.

11 Q Did you ever contact him by email?

12 A No.

13 Q Did you ever -- were you ever like Facebook or
14 Snapchat or Instagram friends with him?

15 A No.

16 Q Okay. Was there any point in time when you met up
17 with the other man and the defendant was not there?

18 A No.

19 Q Okay. How many times had you seen this other man?

20 A I probably seen him about the same amount of times
21 I've seen Devohn.

22 Q Okay.

23 A Maybe about the same amount of times. Maybe less.
24 He was always with him.

25 Q But you didn't know what his real name was?

1 A No.

2 Q Did you ever contact him indirectly through someone
3 you knew?

4 A No.

5 Q So would it be fair to say then that all of your
6 contact with this other man was whenever the defendant was
7 around?

8 A Yes.

9 Q So you mentioned that there was going to be a plan to
10 figure out how to get the money from the bar?

11 A Yes.

12 Q Describe for us like what you mean by a plan? What
13 were you -- what was the plan that you were formatting?

14 A The plan basically was just for me to just get a
15 headcount to see who was all in the bar and kind of get a image
16 of where I could see if any money was around or where it was
17 hidden that, if I can look in the cooler and see if it was in
18 there. That kind of was just the plan and then kind of just
19 wait till everything died down at the bar. That was the plan,
20 just to -- and then once that -- once everything was clear, I
21 would give him a text message and tell him that it's good.

22 Q Fair to say then your job was to actually be the
23 person inside the bar?

24 A Yes.

25 Q Were you supposed to pose as a customer?

1 A Yes.

2 Q How were you supposed to pose as a customer?

3 A I guess I'd play games. I will buy a beer or two.
4 You know, just kind of hang around.

5 Q Okay. Did you ever come up with an idea of what you
6 would tell the other people in the bar you were doing at the
7 bar?

8 A If they -- like what you mean? I'm sorry.

9 Q Like if somebody -- let me rephrase that question.

10 A Rephrase that.

11 Q So somebody at the bar who was a customer or an
12 employee.

13 A Right.

14 Q Was talking to you, did you have like a story for
15 what you were going to tell them?

16 A Yes. I would tell the truth regularly if they asked,
17 but they asked where I worked at, I would tell them doing
18 construction or something like that because I had a vest on.
19 So they would ask a question where I would work. I would tell
20 them something like that.

21 Q You mentioned that you were wearing a vest.

22 A Yes.

23 Q Can you describe that vest for us.

24 A It was a yellow vest, like a neon yellow, neon color
25 vest.

1 Q And you mentioned that you, if somebody asked like
2 where you worked, you would tell them you worked on
3 construction?

4 A Yeah.

5 Q Was the plan for you to go into the bar once, or was
6 the plan for you to go into the bar multiple times?

7 A Multiple times.

8 Q And why would you go into the bar multiple times?

9 A Actually just to get the feel for it and kind of act
10 as a customer, as a regular customer and just to get the feel
11 of the bar and see how many people comes in and out.

12 Q Okay. And is this something that you also discussed
13 with the defendant?

14 A Yes.

15 Q And, of course, the other -- the other man?

16 A Yes.

17 Q Did you have a specific period of time that you were
18 going to pose as a customer? Like was there a specific length,
19 or -- or how would you determine what that looked like?

20 A I just kind of stayed in there for more -- kind of
21 more than two hours. I was just kind of -- it wasn't no
22 specific time. I was just hanging in there just to see how
23 empty it would get really. I would just see if it would get
24 empty. Then it would probably be better to go and let them in
25 there. That's what I would -- that's kind of what the plan

1 was.

2 Q So it would always be for a longer period of time; is
3 that fair to say?

4 A Yes.

5 Q Would you always go into the bar around the same
6 time?

7 A Yes.

8 Q Okay. And what time frames are we talking about that
9 you would go to the bar?

10 A Maybe about 12:00 or 11:00, 12:00 to about 3:00 or
11 sometimes 4:00, around that time.

12 Q And would it be the same -- the same routine every
13 time to show up and pose as a customer or coming off your
14 construction job, kind of hang out, get a feel for the bar and
15 then leave?

16 A Yes, ma'am.

17 Q And how many times did you go to the bar?

18 A I can't be sure. I'm not sure how many times. Maybe
19 I could say six to eight times maybe, or maybe it might be
20 less. I'm not quite sure about that.

21 Q So certainly more than once or twice?

22 A Yes.

23 Q Do you remember the name of the bar?

24 A I believe it was Torrey Pines Pub.

25 Q Okay. And was it always the same bar that you went

1 to?

2 A Yes.

3 Q How would you usually get to the bar?

4 A I would drive there.

5 Q Okay. What kind of car were you driving at that
6 point in time?

7 A I had a white Monte Carlo, Chevy Monte Carlo.

8 Q When you were inside of the bar, were you ever
9 sharing information while you were inside of the bar with the
10 defendant?

11 A No -- oh, yes, I was. Yes.

12 Q Okay. And by sharing information, I mean like kind
13 of letting him know what's going on in the bar.

14 A Yes.

15 Q How would you do that?

16 A Through text message, let him know how many people is
17 in the bar, just give him updates and stuff like that.

18 Q And would that be pretty regular as you're giving him
19 updates? Like would it be multiple updates during the course
20 of your time there, or would it be just like one or two?

21 A You know what I can't -- I can't really recall. I
22 know for sure it was once or twice, but I can't -- I don't know
23 if it was throughout the whole thing.

24 Q Fair to say you wanted to share information about
25 what was going on in the bar?

1 A Yes.

2 Q And what sorts of things did the defendant want to
3 know about?

4 A How many people was in the bar, male or females, did
5 I get any visual of the money, stuff like that.

6 Q And you mentioned asking about money.

7 A Yes.

8 Q And so were you ever trying to sort of keep an eye on
9 where money was in that bar?

10 A I did kind of look. I really didn't see exactly
11 where there was money. I just seen the cash register. I
12 couldn't see where the money was. So I never did could tell
13 them there was money in there. So I never did see it in there.

14 Q So you really only saw the cash register?

15 A Yeah. That's all I really seen. Yes.

16 Q You mentioned earlier that the defendant mentioned
17 money being elsewhere in the bar; is that right?

18 A Yeah. Yes.

19 Q Okay. When you went to the bar, would you always
20 kind of sit in the same place, or would you sit in different
21 places in the bar?

22 A I would sit in the same place.

23 Q And over what period of time like -- was this over,
24 you know, six or seven days? Was it over a few weeks, over a
25 few months? How long was it that you were planning this and

1 posing as a customer?

2 A Maybe a few weeks.

3 Q Now, at some point the decision is made that the 29th
4 is the day that this robbery will occur; is that right?

5 A Yes.

6 Q And what was your understanding of what the
7 defendant's role would be in that and what the other man's role
8 would be in that?

9 A The defendant's role was to be just basically just
10 come in there and just tell everybody to lay down and just get
11 the money and go, and the other guy role was to do the same
12 thing.

13 Q Okay. So you're kind of the person who's going to be
14 inside of the bar --

15 A Right.

16 Q -- posing as a customer, and they're going to be the
17 two who are going to come in and make sure they get the money?

18 A Yes.

19 Q And what was sort of the plan for how they were going
20 to come into the bar?

21 A Well, my -- I was supposed to walk out through the
22 side door, through the back door and kind of let them in as
23 they come in, and then they would come in and rob the bar.

24 Q Why the side door?

25 A The side door was because I guess the main door that

1 you go through has to be buzzed in, and there's no way you can
2 get in unless I guess the bartender lets you in that way. So I
3 guess if I go through the side door it's open access right
4 there. You can just walk in or --

5 Q So fair to say if you're coming through the front
6 door someone is going to see you on camera and identify you?

7 A Yes.

8 Q And the bartender would have to allow that person to
9 come in?

10 A Yes.

11 Q Was that the way that you would ordinarily come into
12 the bar?

13 A Yes.

14 Q So you were familiar with that setup in the front
15 door?

16 A Yes.

17 Q And you mentioned there's a side door. Had you ever
18 come in the side door?

19 A No.

20 Q But that was the door that you could exit out of?

21 A Yes. It's an exit the exit door, yes.

22 Q Had you ever exited out of that door before?

23 A I believe I did it the day before or -- but I'm
24 not -- I don't want to recall it. I'm not sure. So I want to
25 say no because I'm not too sure if I did or not.

1 Q And the side door, are you aware of where that side
2 door is in relation to the parking lot?

3 A Yes.

4 Q And where is that in relation to the parking lot?

5 A It's right behind the parking lot. As soon as you
6 open the door, the parking lot is right there.

7 Q Okay. Now, you mentioned that you were going to --
8 the plan was for you to open up the door?

9 A Yes.

10 Q And how would the defendant know when you were going
11 to open up that door?

12 A I would have to send him a text message. So that's
13 what I did. I sent them a text, told them I'm about to come
14 outside, and he would be waiting at the door.

15 Q Okay. So you mentioned that the 29th was the day
16 that you remember this particular robbery occurring; is that
17 right?

18 A Yes.

19 Q And that would have been in the early morning hours?

20 A Yes, ma'am.

21 Q Do you recall what time you got to the Torrey Pines
22 Pub before this incident?

23 A I can't recall. Yeah, I can't recall that time.

24 Q Do you recall this happening around 5:15 in the
25 morning?

1 A Yes.

2 Q How long had you been at the bar by that point?

3 A Maybe about four hours. Three to four hours.

4 Q Okay. So you'd actually been there for a significant
5 period of time?

6 A Yes.

7 Q When you first get to the bar, are there a lot of
8 people in the bar, not a lot of people in the bar?

9 A It was -- when I first got there, it was maybe about
10 seven people that day. And then it just started -- people
11 started leaving, and then it got less and less people.

12 Q As you're sitting there when you first get to the
13 bar, are you, as you've done in the past giving information to
14 the defendant about how many people are inside?

15 A Yes.

16 Q And how are you doing that?

17 A Through text message.

18 Q Now, do you recall making a phone call to the
19 defendant at about 2:18 in that morning?

20 A Yes.

21 Q And what was the purpose of that phone call?

22 A I believe the purpose of that call was just to kind
23 of get a -- just a listening period. It's just to listen and
24 see what was going on inside the bar. They can hear --
25 basically so he can hear how many people was in there and stuff

1 like that.

2 Q Okay. So just to kind of listen to what was going
3 on?

4 A Yes.

5 Q And do you recall that phone call being pretty
6 lengthy?

7 A Yes.

8 Q While you're on the phone doing this sort of
9 listening test, are you talking to him? Do you have the phone
10 up to your ear? What are you doing with your phone?

11 A I don't have the phone to my ear. So I think I -- I
12 think I was kind of talking a little bit. He's kind of on
13 speaker, but I'm not -- he can't -- it's on mute. So he
14 couldn't really -- couldn't nobody hear him, but he could hear
15 me. So I don't know if I was really talking at all. It
16 probably was just a listening part.

17 Q Okay. So you're not actually having a conversation
18 with him?

19 A No.

20 Q You're not giving him a play by play of what's
21 happening in the bar?

22 A No.

23 Q Okay. You are -- it sounds like you're just kind of
24 going about your ordinary business?

25 A Right.

1 Q Okay. And you mentioned that the phone was -- was
2 open so that he could hear what was going on?

3 A Yes.

4 Q Now, that phone call happens about 2:18 in the
5 morning. And this doesn't happen until about -- the robbery
6 doesn't actually happen until about 5:15. So what's happening
7 during that period of time between the phone call and the
8 actual robbery?

9 A Basically just maybe just texting him. We get off
10 the phone and just continue to text just to ask and see is this
11 still what's going on. Did I see anything, just continuous
12 questions saying about the same.

13 Q Okay. And what sorts -- you mentioned questions.
14 Like, what sorts of questions is he asking you on this day?

15 A How many people is still in there, is a certain guy
16 still in there, stuff like that. Do I see anything yet? Any
17 money?

18 Q And do you ever tell him whether you saw money or
19 not?

20 A Yeah. I told him I didn't really see any money. I
21 kept looking for where they said it was going to be. I
22 couldn't really see where it was at. So I couldn't really --
23 the only money I seen was in the cash register. So that's what
24 I told him.

25 Q So can you walk us through what happens that triggers

1 you to sort of get up and start to leave the bar.

2 A Well --

3 Q What's your conversation like with the defendant?

4 A The conversation was -- okay. I just started telling
5 him that it was less and less people there, and then what it
6 was. He was just like do you just want to go in and do it. So
7 I just said, yeah. So then I just walked out the door. I told
8 him I was going to walk out the side door, and then that's when
9 he -- I guess they was ready and prepared. So I basically just
10 gave them the okay, that it's good, less people was there, and
11 it's okay to come in.

12 Q Do you remember how many people were inside of the
13 bar when you decide this is the time that you're going to go
14 let them in?

15 A I believe maybe it was four people.

16 Q Okay. You mentioned that you had sent --

17 A Or five.

18 Q -- a message. Was it a text message?

19 A Yes.

20 Q And did you ever give like a period of time where you
21 would be walking out the door?

22 A Yeah. I think I -- I think so. I'm not exactly what
23 was said -- what was said, but I think I gave them the time.

24 Q Would it be fair to say you let him know you were
25 getting ready to walk out the door?

1 A Yes.

2 Q So you send that text message, and then can you
3 describe for the members of the jury what you do once you stand
4 up.

5 A Once I stand up, I go get a water. Then I walked
6 directly to the door and open the door, and they kind of pushed
7 me in as I open the door a little wider, and they pushed me in,
8 and I get on the floor, and they just come in there.

9 Q Okay. When you say you go out the door, do you
10 remember how it is that you went out the door? Like did you --
11 do you remember like did you quickly walk out the door or
12 slowly walk out the door?

13 A Slowly walked out the door.

14 Q Okay. You mentioned that they kind of pushed you.
15 How did they push you?

16 A They kind of pushed me in because I kind of opened
17 the door up so they can kind of come in, but then they kind of
18 pushed me at the same time. So they kind of pushed me, and
19 then I kind of like landed on the floor, and that was it.

20 Q Did you stay in that same position on the floor?

21 A Yes.

22 Q Okay. Now, do they ever take anything from you?

23 A No.

24 Q Okay. Did you have your cell phone on you still at
25 that point?

1 A Yes.

2 Q Okay. Did you ever call 9-1-1 at that point?

3 A No.

4 Q Could you see anything that was happening in the bar
5 from where you were on the floor?

6 A No.

7 Q At any point did you see them leave?

8 A No, I didn't see them leave. I just heard footsteps
9 leaving.

10 Q So you heard footsteps around you?

11 A Yes.

12 Q At some point you get up off the floor?

13 A Yes.

14 Q How is it that you get up off the floor?

15 A I kind of just jump up off the floor and I go around
16 and check and see if everybody was all right. Then I notice it
17 was a older guy that was struck in the head. So I kind of grab
18 some towels to patch him up because I kind of felt bad about
19 the situation.

20 Q Now, you mentioned that you've been sort of been
21 texting and, you had a call with the defendant.

22 A Yes.

23 Q Are those text and phone calls still on your phone at
24 this point in time?

25 A Yes, I believe so. Yes.

1 Q Okay. At any point in time did you delete those?

2 A Yes.

3 Q When did that happen?

4 A Right before -- like right after the incident
5 happened when I sat back down just to wait for the police to
6 come, I erased the text messages.

7 Q Why did you erase the text messages?

8 A To get rid of the evidence that didn't ever get rid
9 of.

10 Q Okay. Did you at that point in time have any
11 additional contact with the defendant?

12 A Yes.

13 Q Okay. Were the two of you still constantly texting
14 at that point in time, or did that cease?

15 A Just we -- just after that day, there was no more
16 texting after that day.

17 Q You mentioned that you did have some communication
18 with him. When was that?

19 A Right after the bar, like maybe about 7:00 o'clock
20 that morning, 8:00 o'clock, 7:00 or 8:00 o'clock.

21 Q Okay. And was this a text message or a phone call?

22 A I believe it was a phone call.

23 Q Okay. And what was the purpose of you having a
24 conversation with the defendant at that point in time?

25 A I was really just trying to link up and see about the

1 money situation, how we was going to do the split, and we were
2 just going to talk about what was going to happen next and
3 stuff like that.

4 Q Okay. After that 7:00 a.m. -- or 7:00 that day
5 conversation, did you ever have any additional contact with the
6 defendant?

7 A No.

8 Q While you're -- I'm going to back up for just a
9 moment. While you're at the bar, you mentioned that you had
10 sort of help to put some towels on the older gentleman's head.

11 A Yes.

12 Q Did you stick around the bar?

13 A Yes.

14 Q Did police show up?

15 A Yes.

16 Q When the police showed up, did you agree to give them
17 a statement?

18 A Yes.

19 Q Do you remember speaking with a patrol officer?

20 A Yes.

21 Q And so by patrol officer I mean an officer that
22 would've been in a uniform.

23 A Yes.

24 Q Okay. Do you ever remember speaking with any other
25 officers?

1 A A detective I believe shortly after.

2 Q Did you ever try to leave the bar?

3 A Yes. I tried to leave, but then they told me to
4 stick around for the detective to come.

5 Q Okay. Do you ever move your car during that period
6 of time?

7 A Yes.

8 Q Can you describe for us how that happened.

9 A Once -- with the officer I talked to, after I told
10 him what happened, he told me I can leave. So I move my car,
11 and then they stopped me telling me I have to wait. So I
12 parked my car on the other side of the building.

13 Q And then did you speak with the detective after that?

14 A Yes. Yes.

15 Q Okay. When you spoke with the detective, do you
16 remember that being a sort of a recorded interview?

17 A Yes.

18 Q When you spoke with the detective, do you ever -- did
19 you tell them about the plan to rob the bar?

20 A No.

21 Q Do you remember ever showing him your cell phone?

22 A Yes.

23 Q Why is it that you showed him your cell phone?

24 A I guess to make it seem like I was innocent. You
25 know, to show him like, yeah, wasn't nothing deleted on the

1 text messages.

2 Q So you actually physically showed him your cell
3 phone?

4 A Yes.

5 Q And was this after you had deleted all the text
6 messages from the defendant?

7 A Yes.

8 Q Was there anyone else that you had been sort of
9 texting with that particular morning? Like when you're showing
10 him your cell phone, was there anyone else you were talking to
11 you?

12 A It was a girl. I believe I was texting with a girl
13 or something that day. Yes.

14 Q Okay. And do you remember that being around
15 3:30 that morning?

16 A Yes.

17 Q When you speak with him, does he ever ask you if
18 you're involved?

19 A Yes.

20 Q And what do you tell him?

21 A I told him I'm not involved. Yes.

22 Q Did you at that point -- after you're done with the
23 interview, did you ever leave the bar?

24 A Yes.

25 Q So when you first meet with the detective, you show

1 him your cell phone, and you tell him I'm not involved with
2 this at all?

3 A Yes.

4 Q When the detective interviewed you, did he ask you
5 for your cell phone number?

6 A Yes.

7 Q Did you give him your cell phone number?

8 A Yes.

9 Q Did you give him the correct cell phone number?

10 A Yes.

11 Q Okay. Did you ever see that detective again?

12 A Yes.

13 Q When did you see that detective?

14 A I seen him again I think I believe around
15 7:00 o'clock that day. He came to my apartment building I
16 guess just to see if I lived there, or I don't know why he
17 showed up. Just I forgot exactly why he showed up.

18 Q Okay. And you ended up seeing the detective?

19 A Yes.

20 Q Was that detective ever calling or texting you on
21 your cell phone number?

22 A I can't recall at this moment.

23 Q Okay. But you remember actually seeing him at the
24 place where you lived?

25 A Yes.

1 Q Do you remember whether you were ever told that they
2 were trying to get your cell phone records?

3 A Yes.

4 Q Okay. Did you ever share any of that information
5 with the defendant, that they had looked at your cell phone and
6 asked about records?

7 A No. I don't believe -- I can't recall.

8 Q You don't remember?

9 A Yeah, I don't remember.

10 Q Now, at some point in November of 2018, do you recall
11 having another conversation with detectives?

12 A Yes.

13 Q Okay. When you had that conversation with the
14 detectives -- or excuse me December of 2018, you had that
15 conversation with the detectives, had you been arrested?

16 A Yes.

17 Q Okay. And that was in connection with this
18 particular incident?

19 A Yes.

20 Q When you spoke with detectives in December, did they
21 ever show you any records or tell you about some records?

22 A Yeah, they told me about some records. Yes.

23 Q At that point in time, did you admit to being
24 involved in this robbery?

25 A I did not.

1 Q Okay. So you again told them that you had nothing to
2 do with the robbery?

3 A Yes.

4 Q Do you remember at that point in time whether they
5 asked you about a telephone number with a 323 area code that
6 you had been in communication with?

7 A Yes.

8 Q Did you ever admit to them that that was the
9 telephone number belonging to the defendant?

10 A I can't recall if I admitted it. I think I did, but
11 I'm not sure.

12 Q And at that point time detectives had told you they
13 had some cell phone records?

14 A Yes.

15 Q What happens after you speak with detectives in
16 December and denied being involved in this robbery?

17 A Once I -- I'm sorry. Say it again one more time.
18 I'm sorry.

19 Q So what did -- what happened? What did you do after
20 you spoke with the detectives in December?

21 A Oh. After I spoke to the detectives, I was still
22 incarcerated. So I just got a lawyer. I ended up getting a
23 lawyer to try to solve, you know, see what was going on because
24 I did know I was at fault. You know, in my heart I know
25 exactly what happened. So I decided to get a lawyer to help me

1 with the situation.

2 Q You have since retained an attorney; right?

3 A Yes.

4 Q And you have had conversations with myself?

5 A Yes.

6 Q And with other members of the State?

7 A Yes.

8 Q And you have actually pled guilty in this case to the
9 charge of robbery; is that right?

10 A Yes, ma'am.

11 Q Okay. And as part of that, the State has retained
12 the right to argue for your sentence; is that right?

13 A Yes, ma'am.

14 Q Okay. And in conjunction with you pleading guilty to
15 robbery, what is your understanding of what you need to do?

16 A I just need to give this testify, you know, a
17 truthful testimony.

18 Q You said truthful testimony?

19 A Yes.

20 Q Have you ever been asked to do anything other than
21 that?

22 A No.

23 Q At some point did you ask to speak with detectives
24 again? Prior to -- sorry, prior to entering that plea?

25 A Yes.

1 Q When you spoke with detectives, did you tell them
2 what you told us today?

3 A Yes.

4 Q Okay.

5 MS. CANNIZZARO: Court's brief indulgence.

6 BY MS. CANNIZZARO:

7 Q Now, Mr. Johnson, when you were arrested on this
8 case, where were you?

9 A Where I got arrested?

10 Q Yeah.

11 A I was actually in a car with my daughter on the way
12 to my son's house.

13 Q Was this at your apartment complex?

14 A No. They got me like right outside. It seemed like
15 it was as soon as I got out of the apartment complex I was
16 barricaded.

17 Q So just right outside the apartment complex?

18 A Yeah.

19 Q Okay. Now, I'm going to show you what has been
20 admitted as State's Exhibit 63, and up on that screen right in
21 front of you, you're going to see a video pop up, and I'm going
22 to show you Channel 12.

23 MS. CANNIZZARO: Court's brief indulgence. Technical
24 difficulty.

25 (Pause in the proceedings.)

1 BY MS. CANNIZZARO:

2 Q Mr. Johnson, do you recognize the video that's being
3 played in front of you on that monitor?

4 A Yes, ma'am.

5 Q You mentioned earlier we talked about the door that
6 you went out of.

7 A Yes.

8 Q Do you see that in this portion of the video?

9 A Yes, ma'am.

10 Q And there appears to be a door in the right upper
11 corner. Is that the same door we've been discussing?

12 A Yes.

13 Q And we're going to go ahead and fast-forward this a
14 bit. And it's now 5:13:08 on the time stamp, and it's playing,
15 and would we expect to then see you leaving the bar soon?

16 A Yes.

17 Q In this particular video?

18 A Yes, ma'am.

19 Q Okay. And we see someone at 5:13:55. Is that you
20 walking out?

21 A Yes, ma'am.

22 Q And you had mentioned that they sort of -- had sort
23 of pushed you in and then threw you to the floor; is that
24 right?

25 A Yes, ma'am.

1 Q And in this portion of the video at 5:14:24, you're
2 still on the ground. Is that fair to say?

3 A Yes, ma'am.

4 Q You sort of have your legs crossed and are just sort
5 of laying there.

6 A Yes, ma'am.

7 Q And then right there at 5:15:37, we sort of see them
8 going back out that same door; is that right?

9 A Yes, ma'am.

10 Q And it's you getting up?

11 A Yes, ma'am.

12 Q We're going to actually go to the next camera view on
13 channel -- we'll label this Channel 13. You mentioned that you
14 were driving a white Monte Carlo?

15 A Yes, ma'am.

16 Q And do you see that vehicle in this video?

17 A Yes, ma'am.

18 Q There appears to be sort of two cars, one that's
19 closer to us and one that's farther away. Which one is yours?

20 A Mine is the one further away.

21 Q And is that parked near that same side door that we
22 saw you come out of?

23 A Yes, ma'am.

24 Q Okay. We're going to go ahead and fast-forward this
25 one just a bit.

1 MS. CANNIZZARO: Court's brief indulgence.

2 Court's brief indulgence.

3 BY MS. CANNIZZARO:

4 Q While we're sort of getting this video to work --
5 it's being a little uncooperative, I want to ask you a couple
6 questions just about some of the conversations you had with the
7 defendant about this robbery.

8 You mentioned that you had talked with him about
9 dividing up the money, trying to figure that out; is that
10 right?

11 A Yes.

12 Q When you were talking with him, did you ever talk to
13 him about what occurred in the bar?

14 A Yes. I kind of told him that I had gave him my phone
15 number, and I had told him in the statement, tell them what
16 happened, that some guys ran into the bar, and --

17 Q So I'm sorry. We're just gonna back up for a second.
18 Is that what you -- that's what you told the police?

19 A No. That's what I told the defendant.

20 Q Oh, you told him.

21 A I told him exactly what happened. Yeah. I told him
22 exactly, you know, just what I told the police, that I told him
23 that you guys ran into the bar and I gave them the statement
24 and telling them what happened, and I gave him my phone number
25 as well.

1 Q Did you ever discuss with the defendant which one of
2 the individuals in the video he was?

3 A I'm sorry. Can you repeat that one more time.

4 Q Did you ever talk with the defendant about what he
5 did, what the defendant did when he was in the bar?

6 A Oh, yeah. Yeah. I asked him why did he hit the man
7 in the head. I didn't like that.

8 Q And did he admit to you that he was a person that had
9 hit the individuals in the head?

10 A Well, he didn't admit to it. He just said he was
11 talking too much or something like that.

12 Q Okay. So he didn't exactly admit to it, but you told
13 him that that wasn't something that you liked?

14 A Yeah. Right.

15 Q What, if anything, did he say to you when you
16 mentioned that to him?

17 A He just said that he was talking too much or -- I
18 don't know -- recall the exact words that was said.

19 Q And when you say he was talking too much, you mean
20 the customer?

21 A Yeah. The -- I guess the old man was getting mouthy
22 or something he said. I don't -- I'm not too sure what was
23 said.

24 Q I want to talk about one other -- one other item.
25 Now, you mentioned that there was this third man that you

1 didn't know his real name.

2 A Yes, I didn't know.

3 Q And you didn't have any contact information for him.
4 Do you ever remember if detectives had ever asked you to try
5 and identify someone?

6 A Yes.

7 Q And how did they do that?

8 A They actually put some pictures -- they did it twice.
9 They tried to get a description, and that wasn't enough. But
10 then they tried to put pictures. They gave me pictures, but I
11 couldn't recognize none of the pictures.

12 Q So you were not able to identify anyone?

13 A No.

14 Q But the detectives did ask you, and you provided a
15 description?

16 A Yes.

17 MS. CANNIZZARO: And it doesn't look like we're going
18 to be able to get that particular video to work. So for now,
19 Your Honor, Court's brief indulgence.

20 I pass the witness.

21 MR. MATSUDA: If we can approach, Your Honor.

22 THE COURT: Yeah.

23 (Conference at the bench not recorded.)

24 THE COURT: So, ladies and gentlemen, we were just
25 talking about scheduling. Now, the cross-examination is going

1 to go on longer than just a few minutes. And so we're going to
2 break for the evening, and then I'll see you tomorrow.

3 Tomorrow I have drug court because it's Tuesday, and
4 so I won't be able to start trial until 1:30. So you'll be
5 back at 1:30, and I'm going to read to you the admonition.

6 So, ladies and gentlemen, we are taking an overnight
7 recess. During this recess, it is your duty not to converse
8 among yourselves or with anyone else on any subject connected
9 with the trial; or to read, watch or listen to any report of or
10 commentary on the trial by any person connected with the trial,
11 or by any medium of information, including without limitation,
12 newspaper, television, radio or Internet. You are not to form
13 or express an opinion on any subject connected with this case
14 until it's finally submitted to you.

15 Also, no investigation. No driving by the pub in
16 question, any of those kinds of things. No looking anything up
17 on the Internet.

18 And I will see you tomorrow.

19 (Jury recessed for the evening at 5:05 p.m.)'s

20 THE COURT: And the record will reflect that the jury
21 has departed the courtroom.

22 So, Mr. Johnson, you'll need to also come back to
23 court tomorrow at 1:30, promptly at 1:30 because we'll be
24 starting with your testimony.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: So I'll see you tomorrow.

2 THE WITNESS: All right. Again tomorrow.

3 THE COURT: And we should memorialize our one bench
4 conference. I think we just had the one bench conference,
5 which was Mr. Matsuda asked to approach regarding scheduling
6 because he knew that his cross-examination would take longer
7 than a few minutes, and so it was a good stopping point, and so
8 that was it. Is that correct?

9 MR. MATSUDA: I believe so.

10 THE COURT: Okay. Anything else outside the
11 presence?

12 MS. MOORS: Nothing from the State.

13 MR. MATSUDA: Nothing from the defense, Your Honor.

14 THE COURT: All right. I'll see you tomorrow at
15 1:30.

16 (Proceedings recessed at 5:06 p.m.)

17 -oOo-

18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled
20 case.

21 
22

23 Dana L. Williams
24 Transcriber
25

<p>BY MR. MATSUDA: [8] 45/19 50/6 72/9 96/17 108/1 142/12 168/20 170/3</p> <p>BY MS. CANNIZZARO: [29] 13/8 17/21 19/1 19/6 19/14 20/1 22/1 23/1 25/20 39/10 41/20 43/5 53/3 60/19 61/6 61/19 64/18 66/1 68/12 70/1 151/15 163/6 164/8 165/14 171/15 172/3 204/6 205/1 207/3</p> <p>BY MS. MOORS: [13] 79/8 81/3 91/18 94/10 95/7 100/3 105/4 109/16 113/10 114/20 132/6 141/18 143/15</p> <p>JUROR NO. 11: [2] 129/6 129/12</p> <p>MR. MATSUDA: [34] 11/19 11/22 18/20 22/19 38/18 38/24 41/12 45/17 49/22 50/3 50/10 51/24 69/20 72/7 75/8 77/15 77/19 78/5 96/15 99/7 107/24 108/17 114/10 131/14 142/19 150/20 165/9 168/18 169/21 170/1 170/15 209/21 211/9 211/13</p> <p>MS. CANNIZZARO: [62] 12/16 13/6 17/15 17/18 18/17 18/23 19/11 19/21 19/24 21/22 22/16 22/22 25/19 38/11 38/14 38/20 39/4 39/9 43/4 45/13 49/20 50/13 51/23 52/1 52/10 53/1 60/17 61/2 64/15 65/24 68/4 68/9 69/17 69/23 72/3 75/11 75/17 77/14 77/18 78/1 78/4 78/9 131/12 131/17 151/2 151/13 163/4 164/5 165/5 165/12 168/15 169/19 169/22 170/18 170/25 171/3 171/13 171/25 204/5 204/23 207/1 209/17</p> <p>MS. MOORS: [29] 5/3 5/5 78/17 79/6 81/2 91/17 94/9 95/6 96/11 99/10 99/16 100/1 104/25 107/21 108/20 108/25 109/14 113/8 114/7 114/16 114/19 129/4 141/16 142/8 142/23 143/3 143/13 150/17 211/12</p> <p>THE CLERK: [16] 4/20 12/23 50/21 50/23 51/19 52/15 52/19 76/19 76/22 78/23 79/2</p>	<p>99/21 109/4 143/8 151/7 171/8</p> <p>THE COURT RECORDER: [1] 39/6 THE COURT: [128] 4/4 4/22 11/16 11/20 12/14 12/18 13/2 17/17 17/20 18/19 18/21 18/24 19/10 19/13 19/17 19/23 19/25 21/24 22/18 22/20 22/24 38/13 38/17 38/19 38/23 38/25 41/14 45/16 49/24 50/12 50/14 50/24 51/1 51/6 51/9 51/13 51/17 51/20 51/25 52/2 52/6 52/11 52/20 52/22 52/25 61/11 61/15 61/18 64/17 68/6 68/11 69/19 69/21 69/24 72/6 75/10 75/13 75/18 75/23 75/25 76/23 77/16 77/20 77/25 78/2 78/6 78/8 78/10 78/12 79/3 79/5 80/24 81/1 96/14 99/9 99/11 99/15 99/25 107/23 108/19 108/21 109/7 109/10 109/12 113/9 114/9 114/11 114/18 129/3 129/5 129/7 129/10 129/13 129/21 130/15 130/20 131/16 131/18 131/23 142/10 142/21 142/24 143/2 143/12 150/19 150/22 151/1 151/12 164/7 165/8 165/10 165/13 168/17 169/23 170/17 170/19 170/23 171/2 171/4 171/12 172/2 209/22 209/24 210/20 211/1 211/3 211/10 211/14</p> <p>THE MARSHAL: [4] 50/19 50/22 75/22 76/21</p> <p>THE WITNESS: [34] 12/25 41/19 50/1 50/4 51/5 51/8 51/12 51/15 52/17 52/21 52/24 61/4 61/14 61/17 68/7 75/20 75/24 78/25 79/4 80/25 99/14 99/23 109/6 109/9 109/11 130/19 143/1 143/10 150/25 151/9 170/22 171/10 210/25 211/2</p> <hr/> <p>\$</p> <p>\$100 [1] 16/5 \$2,446 [1] 113/5 \$20 [1] 58/1</p> <hr/> <p>'</p> <p>'14 [1] 100/19 '15 [1] 100/20 's [1] 210/19</p>	<p>-</p> <hr/> <p>-oOo [1] 211/17</p> <hr/> <p>.</p> <p>.38 [1] 62/6 .44 [1] 62/6 .45 [1] 62/6</p> <hr/> <p>0</p> <p>053 [2] 50/23 77/4 0800 [3] 144/2 144/3 153/2</p> <hr/> <p>1</p> <p>1 and [2] 17/23 18/18 10 [8] 38/1 71/14 80/13 93/4 98/13 99/3 99/5 117/20 10/29/2018 [1] 133/18 100 [1] 15/24 1042 [1] 53/18 1085 [1] 175/24 10:00 [1] 79/16 10:00 o'clock [4] 85/17 111/13 111/16 153/2 10:00 or [1] 112/16 10:00 p.m [2] 144/2 144/3 10:00 to [1] 79/16 10:30 at [1] 81/20 10:40 [1] 80/14 11 [4] 98/20 99/3 118/1 124/2 11:00 [3] 112/16 124/3 184/10 11:00 o'clock [5] 111/12 112/3 115/14 115/16 121/7 11:14 [1] 4/1 11:30 [1] 21/19 11th [1] 53/12 12 [4] 93/4 118/4 131/24 204/22 1200 [1] 8/25 1222 [1] 5/21 12:00 [2] 59/3 59/6 12:00 or [1] 184/10 12:00 to [1] 184/10 12:40 [1] 80/15 12:59 p.m [1] 76/18 13 [2] 118/13 206/13 14 [1] 119/6 14-year [1] 7/8 15 [8] 119/15 119/19 130/1 130/13 130/23 131/18 145/6 152/6 16 [4] 110/14 120/1 133/10 138/7 1604 [1] 39/6 16214 [1] 151/11 17 [1] 120/11 18 [1] 120/18 19 [1] 121/2 1947 [1] 53/14 1991 [1] 109/25 1:00 o'clock [1] 76/1 1:01 p.m [1] 77/22 1:30 [4] 210/4 210/5 210/23 211/15</p>	<p>1:30 because [1] 210/23</p> <hr/> <p>2</p> <p>2 through [1] 114/11 2-5 [1] 114/14 20 [2] 56/22 121/8 2011 [1] 10/3 2015 [1] 22/14 2016 [1] 172/14 2018 [31] 5/9 5/20 11/1 11/14 18/15 26/13 26/14 53/9 56/6 56/7 56/21 69/6 79/12 80/8 100/5 101/24 106/9 109/20 112/22 133/18 142/1 143/22 148/23 152/23 153/21 172/21 172/22 175/13 177/4 201/10 201/14 2019 [4] 1/13 4/1 14/22 172/20 2051 [1] 53/17 20s [1] 87/6 21 [1] 121/14 22 [6] 1/13 4/1 22/3 22/17 22/21 23/3 2200 [1] 153/2 23 [1] 122/21 24 [3] 6/15 81/5 123/10 24-hour [2] 20/6 111/5 24/7 [1] 110/17 25 [1] 124/11 2500 [1] 15/23 26 [1] 124/16 27 [1] 124/23 28 [1] 125/1 28th [2] 26/13 56/6 29 [4] 113/18 114/12 114/14 125/4 29th [27] 5/8 11/14 26/14 28/8 40/25 49/6 56/7 56/18 56/21 69/6 79/11 80/8 100/5 101/24 106/9 109/19 112/22 142/1 142/14 143/22 148/22 153/20 153/21 154/18 157/3 187/3 189/15 2:00 [2] 24/2 77/21 2:00 maybe [1] 29/23 2:00 o'clock [2] 76/2 76/17 2:00 on [1] 24/1 2:00 or [2] 24/4 24/10 2:03 p.m [1] 77/22 2:08 p.m [1] 78/11 2:18 [1] 190/19 2:18 in [2] 9/14 192/4</p> <hr/> <p>3</p> <p>3 inches [1] 157/11 3-1-1 [2] 153/11 153/18 30 [10] 7/12 7/14 55/4 55/6 110/17 110/20 113/18 114/12 125/7 160/6 30-32 [1] 114/14 30-year-old [1] 8/9</p>	<p>30s [1] 87/6 31 [1] 125/16 32 [5] 113/19 114/12 114/14 119/15 126/5 323 [3] 176/15 177/2 202/5 33 [4] 9/14 164/10 165/6 165/19 33-41 [1] 165/11 34 [1] 166/2 35 [1] 166/8 36 [1] 166/12 37 [1] 166/16 375-1085 [1] 175/24 38 [1] 166/23 39 [1] 167/3 3:00 o'clock [2] 24/3 24/4 3:00 on [1] 24/10 3:00 or [1] 184/10 3:13 p.m [1] 130/14 3:15 p.m [1] 131/20 3:18 and [1] 9/1 3:18 in [1] 8/16 3:29 p.m [1] 131/20 3:30 that [1] 199/15 3:33 p.m [1] 131/22</p> <hr/> <p>4</p> <p>40 [1] 167/11 41 [4] 164/10 165/6 165/11 167/15 42 [3] 113/19 114/12 126/8 42-47 [1] 114/15 424 [2] 175/23 175/24 43 [1] 126/20 44 [1] 126/23 45 [1] 127/1 46 [1] 127/8 47 [4] 113/19 114/12 114/15 127/11 48 [3] 164/11 165/6 167/18 48-51 [1] 165/11 49 [1] 167/23 4:00 [1] 184/11 4:00 a.m [1] 56/15 4:00 maybe [1] 56/14</p> <hr/> <p>5</p> <p>5-10 [3] 98/13 99/3 99/5 5-10-ish [1] 98/7 5-11 [2] 98/20 99/3 5-7 [3] 48/14 48/15 48/25 5-9-or [1] 179/25 50 [3] 8/6 119/18 168/3 50-50 [1] 119/18 51 [6] 86/21 97/14 164/11 165/6 165/11 168/7 52 [3] 113/19 114/12 127/14 52-53 [1] 114/15 53 [4] 113/19 114/12 114/15 127/17 54 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