

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVIN MARVELL TONEY,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
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Elizabeth A. Brown
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Case No. 83246

RESPONDENT'S APPENDIX

TERRENCE M. JACKSON, ESQ.
Nevada Bar #000854
Law Office of Terrence M. Jackson
624 South 9th Street
Las Vegas, Nevada 89101
(702) 386-0001

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #0007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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AARON D. FORD
Nevada Attorney General

TERRENCE M. JACKSON, ESQ.
Counsel for Appellant

TALEEN PANDUKHT
Chief Deputy District Attorney

BY /s/ E. Davis
Employee, District Attorney's Office

TP/Elizabeth Turner/ed



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

CASE#: C-17-323151-1

DEPT. I

vs.

DAVIN M. TONEY,

Defendant.

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 23, 2017

***RECORDER'S TRANSCRIPT OF HEARING
ENTRY OF PLEA***

APPEARANCES:

For the State:

MICHAEL DICKERSON, ESQ.
Deputy District Attorney

For the Defendant:

GEORDAN G. LOGAN, ESQ.
Deputy Public Defender

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 23, 2017

2

3 [Case called at 9:03 a.m.]

4 THE CLERK: The State of Nevada versus Davin Toney, Case
5 Number C323151.

6 THE COURT: Good morning.

7 MR. LOGAN: Geordan Logan, we have Davin Toney. If we
8 could just trail this, we're just going over the GPA.

9 THE COURT: All right. Sure.

10 [Hearing trailed at 9:03 a.m.]

11 [Hearing recalled at 9:11 a.m.]

12 THE CLERK: Recalling page 12, the State of Nevada versus
13 Davin Toney, Case Number C323151.

14 MR. LOGAN: Geordan Logan on behalf of Mr. Toney, who is
15 present, in custody.

16 THE COURT: That was page 12, was it?

17 MR. DICKERSON: May I approach your clerk, Your Honor. I
18 have an amended information.

19 THE COURT: Yes, uh-huh.

20 Mr. Logan, what's the essence of the plea here?

21 MR. LOGAN: So the matter is resolved today. Today
22 Mr. Toney will be pleading guilty to Robbery with Use of a Deadly
23 Weapon, a Category B felony. Burglary while Possession of a Deadly
24 Weapon, two counts of each. We'll be looking at an aggregate sentence
25 of 8 to 35 years in NDOC.

1 THE COURT: Okay.

2 MR. DICKERSON: Correct, Your Honor. The GPA lays out
3 the structure for that sentencing.

4 THE COURT: Okay. I see. So specifically Count 1, Robbery
5 With Use would be a 36 to 144, plus consecutive 12 to 66. Count 2
6 would be, is Burglary with a Deadly 48 to 195, to run concurrent with
7 Count 1. Count 3, Robbery With Use would be 36 to 144, plus
8 consecutive 12 to 66, consecutive to Counts 1 and 2. Count 4 would be
9 Burglary While in Possession, a sentence of 48 to 195 months, to run
10 consecutive to Counts 1 and 2, but concurrent with Count 3.

11 MR. DICKERSON: Correct.

12 THE COURT: Mr. Toney, have you had an opportunity to go
13 over this entirely with your attorney?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Do you have any questions about how the
16 sentence itself would run?

17 THE DEFENDANT: No.

18 THE COURT: Okay.

19 MR. LOGAN: Your Honor, he does have one question that
20 I've answered the best of my ability. I just want to make it clear --

21 THE COURT: Okay.

22 MR. LOGAN: -- that he's to be focused on the aggregate
23 sentence of 8 to 35 years. And he's just a little concerned about the
24 consecutive sentences whether he has to expire Counts 1 and 2 before
25 he begins Counts 3 and 4. I explained to him that the important thing is

1 that the aggregate sentence is listed and that he's eligible for parole at 8
2 years.

3 MR. DICKERSON: That's --

4 THE COURT: I believe that's --

5 MR. DICKERSON: -- correct.

6 THE COURT: -- correct.

7 MR. DICKERSON: That is correct.

8 THE COURT: Yeah. And we can make a record of that at the
9 sentencing.

10 MR. LOGAN: Okay. Thank you, Your Honor.

11 THE COURT: Does that answer your question, sir?

12 THE DEFENDANT: Yes, it does.

13 THE COURT: All right. Mr. Toney, have you been given a
14 copy of an amended information charging you with Count 1, Robbery
15 With Use of a Deadly Weapon; Count 2, Burglary While in Possession of
16 a Deadly Weapon; Count 3, Robbery With Use of a Deadly Weapon;
17 Count 4, Burglary While in Possession of a Deadly Weapon?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had an opportunity to read that
20 amended information and to discuss it fully with your attorney --

21 THE DEFENDANT: Yes.

22 THE COURT: -- so that he could answer any questions that
23 you may have?

24 THE DEFENDANT: Yes.

25 THE COURT: You have any -- do you understand what's in

1 the amended information? What it's charging you with?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you have any questions about the meaning
4 of any of the charges that are in the amended information?

5 THE DEFENDANT: No.

6 THE COURT: How do you plead? Guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: Guilty. All right. Before I can accept your plea,
9 I must be satisfied it's freely and voluntarily given. We've just talked
10 about a Guilty Plea Agreement and I have a written Guilty Plea
11 Agreement here that appears to have been signed by you on today's
12 date. Did you sign this Guilty Plea Agreement?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: And before you signed it, did you have an
15 opportunity to discuss everything that's in it with your attorney?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: Do you have any other questions? We talked
18 about the aggregate sentence and what the sentence is you'd be facing.
19 Do you have any other questions about the meaning of anything else
20 that's in this Guilty Plea Agreement?

21 THE DEFENDANT: No.

22 THE COURT: Okay. That's, you know, that's what, 6, 7
23 pages long. It talks about various things, consequences of the plea. It
24 talks about if you were in the country illegally or if you were an immigrant,
25 what potential it could have. Talks about the rights that you're waiving.

1 You understand you're waiving your constitutional right against self-
2 incrimination? I'm going to ask you what you did that causes you enter a
3 guilty plea in just a minute here. You'd be waiving the constitutional right
4 to a speedy trial, to confront cross-examine any witnesses who would
5 testify against you, as well as some other things. You read that part?

6 THE DEFENDANT: Yes.

7 THE COURT: And the voluntariness part. Is there anything, I
8 mean, let me put it this way, other than what's in this Guilty Plea
9 Agreement and what we've discussed in court, has anyone made you
10 any threats or any promises in order to get you to enter a Guilty Plea
11 here?

12 THE DEFENDANT: No.

13 THE COURT: Okay. The amended information says that you
14 did some things between February 18th and February 22nd of this year in
15 Clark County, Nevada. Count 1 says that on February 18th you did
16 something in relation to a person named Chinthana Thennakoon and
17 Salman Akram. What did you do in relation to those -- in relation to those
18 two people that causes you to enter a plea of guilty to the charge of
19 Robbery With a Use of a Deadly Weapon?

20 THE DEFENDANT: Presented a weapon and demanded
21 money.

22 THE COURT: Okay. You had the weapon on you? Did you
23 show it to them?

24 THE DEFENDANT: Yes.

25 THE COURT: And you demanded their money?

1 THE DEFENDANT: Yes.

2 THE COURT: They gave it to you?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And you pretty well knew that was
5 wrong --

6 THE DEFENDANT: Yes.

7 THE COURT: -- to do? That's a silly question, but I get some
8 people that don't get it.

9 Count 2 says that on February 18th while you were in Clark
10 County, Nevada, you did something in relation to a place called the
11 Smoke Shop Plus 99 Cent Store on East Lake Mead Boulevard. Were
12 you on East Lake Mead Boulevard that day?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you go in the Smoke Shop Plus?

15 THE DEFENDANT: Yes.

16 THE COURT: Is that where you brandished a weapon and
17 got the money?

18 THE DEFENDANT: Yes, a BB gun.

19 THE COURT: I'm sorry.

20 THE DEFENDANT: Yes, a pellet gun.

21 THE COURT: Okay. So -- and I assume this is statutory
22 burglary count for entering the building with that intent?

23 MR. DICKERSON: That's correct, Your Honor, acting with the
24 intent to commit robbery --

25 THE COURT: Yeah.

1 MR. DICKERSON: -- as well as entering Mr. K's Smoke Shop
2 that same day at 5130 South Fort Apache Road.

3 THE COURT: Yeah. On -- okay, I'm going to do these count
4 by count just to make sure our record is clear.

5 Count 3 says that Robbery With Use of a Deadly Weapon,
6 February 22nd, and it lists off some people's names that says that you did
7 as in Coun1. It says that you used a deadly weapon, a hand gun or
8 pneumatic gun. Is that the same type of situation? Did you take some
9 money from somebody named Harbhej Singh and I can't pronounce it
10 Piyadasa, in U.S. currency? Were they inside the USA Smoke Shop?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. So did you take money from them?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. And did you show them the gun?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Count 4 says Burglary While in
17 Possession of Deadly Weapon. Did you go into that smoke shop with the
18 intention of committing that robbery?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. And that was at 4566 East Tropicana
21 Avenue?

22 THE DEFENDANT: Yes.

23 THE COURT: In Las Vegas. All right.

24 State satisfied as to the canvass?

25 MR. DICKERSON: I am. If we could just inquiry as to a

1 couple other of the victims and places here?

2 THE COURT: Yep.

3 MR. DICKERSON: The first one being on Count 2, Mr. K's
4 Smoke Shop at 5130 South Fort Apache Road.

5 THE COURT: Okay. So that was the partic -- that wasn't the
6 Smoke Shop Plus 99 Cent Store.

7 MR. DICKERSON: No, that was an additional one.

8 THE COURT: All right. Count 2 does not include an address.
9 Was that -- I'm sorry, I'm reading the wrong place. Count 2, you're
10 speaking of.

11 MR. DICKERSON: Yes, that's correct, Your Honor.

12 THE COURT: All right. So there was also a Mr. K's. I see it.

13 On back on Count 2, we talked about you going in the Smoke
14 Shop Plus 99 Cent Store to commit a robbery. Did you do the same
15 thing at Mr. K's Smoke Shop --

16 THE DEFENDANT: Yes.

17 THE COURT: -- on 5130 South Fort Apache Road?

18 THE DEFENDANT: Yes.

19 THE COURT: And do the same thing?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Use a gun?

22 THE DEFENDANT: Yeah, that pellet gun was.

23 THE COURT: All right. You showed it to them?

24 THE DEFENDANT: Yes.

25 THE COURT: And got their money.

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 State satisfied with the canvass?

4 MR. DICKERSON: And as to Counts 3 and 4, victim
5 Sujan Narasinghe, being a victim at the A.S. Smoke Shop at 4566 East
6 Tropicana. And the fourth victim of that same count, Count 3, Norma
7 Escobar, being a victim at Texas Liquor at 5020 Broadbend Boulevard.

8 THE COURT: Okay. Do you have Count 4 in front of you
9 there?

10 THE DEFENDANT: Yes.

11 THE COURT: Take a look at it, if you would. Count 4 is
12 Burglary While in Possession. That's a one where you -- if you go into
13 the building with the intention to commit the robbery, then you've
14 committed a burglary as well. It lists off two stores. And so what he's
15 saying is that the people in the stores corresponds to what's in Count 3.,
16 the actual people that you took the money from. Are these people with
17 names that I can't pronounce, Sujan Narasinghe and Harbhej Singh, who
18 would have been in the first one, A.S. Smoke Shop on Tropicana?
19 And --

20 MR. DICKERSON: And Sujan was in the A.S. Smoke Shop
21 and then Harbhej Singh and Angulugaha Piyadasa was in the USA
22 Smoke Shop.

23 THE COURT: USA. All right.

24 So I don't imagine you -- I don't imagine you stopped to ask
25 these people their names, but were there these people in these various

1 stores that we just talked about that you took the money from?

2 THE DEFENDANT: Yes.

3 THE COURT: All right.

4 MR. DICKERSON: And the final one, Your Honor, being
5 Norma Escobar.

6 THE COURT: Norma Escobar in Texas Liquor. Is that
7 correspond to Texas Liquor?

8 MR. DICKERSON: Correct, Your Honor.

9 THE COURT: So when you went into Texas Liquor, which is
10 listed in Count 4 on a burglary count, was it -- did you take money from a
11 lady? I don't imagine you know her name, but her name apparently was
12 Norma Escobar. But you took money from a lady by showing her the
13 gun?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Do you have any reason to think this is
16 inaccurate? That that was in Texas Liquor store at 5020 Broadbend
17 Boulevard in Las Vegas?

18 THE DEFENDANT: No.

19 THE COURT: Okay.

20 MR. DICKERSON: And defendant said he's committed these
21 crimes with a pellet gun. Just that that is in fact a pneumatic gun.

22 THE COURT: Okay. All right. That's -- I don't think that's
23 something that would, that the defendant would be admitting to, would it?
24 You're stating for the record that a pellet gun is a pneumatic gun --

25 MR. DICKERSON: And --

1 THE COURT: -- which qualifies under the statute.

2 MR. DICKERSON: Yeah, and then the defendant is agreeing
3 with that.

4 THE COURT: All right.

5 Mr. Logan, have you had any discussion with your client any
6 reason to contest whether the law regarding pneumatic guns applies to
7 pellet guns?

8 MR. LOGAN: No, that is our understanding.

9 THE COURT: That is my understanding as well.

10 All right.

11 MR. DICKERSON: State's satisfied, Your Honor.

12 THE COURT: All right.

13 Mr. Toney, you're obviously looking at some substantial time
14 here considering the number of crimes involved and the number of
15 people involved, but that's probably a good -- a good negotiation. But I
16 always just have to wonder what drives a guy to the point of thinking
17 that's the way out? Maybe you'll write --

18 THE DEFENDANT: No excuse.

19 THE COURT: -- maybe you'll write a book about it.

20 THE DEFENDANT: There's no excuse.

21 THE COURT: What's that?

22 THE DEFENDANT: There's no excuse.

23 THE COURT: Okay. All right.

24 All right. Court's satisfied that the plea is freely and voluntarily
25 given and we'll set it down for -- accepts the plea and we'll set it down for

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sentencing.

THE CLERK: October 18th at 9 a.m. Trial date is vacated.

THE COURT: Yes.

MR. DICKERSON: Thank you.

[Hearing concluded at 9:24 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Judy Chappell
Court Recorder/Transcriber

1 CASE NO. C323151

2

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
4 COUNTY OF CLARK, STATE OF NEVADA

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7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 vs.) CASE NO. 17F03197X
10 DAVIN TONEY,)
11 Defendant.)

12 REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

13 BEFORE THE HONORABLE ANN E. ZIMMERMAN,
14 JUSTICE OF THE PEACE
15 THURSDAY, APRIL 27, 2017
16 9:30 A.M.

17 APPEARANCES:

18 For the State: M. DICKERSON, ESQ.
19 B. SCHWARTZ, ESQ.
20 DEPUTY DISTRICT ATTORNEYS

21 For the Defendant: G. LOGAN, ESQ.
22 J. BANKS, ESQ.
23 DEPUTY PUBLIC DEFENDERS

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1 EXHIBITS

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CLERK OF THE COURT

Steven D. Grierson

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1 LAS VEGAS, CLARK COUNTY, NEVADA,

2 APRIL 27, 2017 AT 9:30 A.M.

3 P R O C E E D I N G S

4 THE COURT: This is the time set for the

5 State of Nevada Nevada Davin Toney, 17F03197X. Is the
6 state ready to proceed?

7 MR. DICKERSON: Yes, Your Honor.

8 MR. LOGAN: I would invoke the exclusionary
9 rule.

10 MR. DICKERSON: Chinthana Thennakoon.

11 THE COURT: Anybody in courtroom to testify
12 in the matter of Mr. Toney could you please wait outside
13 in the hallway until your name is called.

14 THE CLERK: Do you solemnly swear the
15 testimony you are about to give be the truth, the whole
16 truth, and nothing but the truth so help you God?

17 THE WITNESS: I do.

18 THE COURT: Have a seat. Can state your
19 name spell it for the record please?

20 THE WITNESS: Chinthana Thennakoon,

21 C-H-I-N-T-H-A-N-A, T-H-E-N-N-A-K-O-O-N.

22 THE COURT: K-O-O-N?

23 THE WITNESS: Double O.

24 THE COURT: Two O's?

25 THE WITNESS: Yes.

RA 014

<p>1 THE COURT: Go ahead.</p> <p>2</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. DICKERSON:</p> <p>5 Q. What do you for a living, sir?</p> <p>6 A. I work at a smoke shop.</p> <p>7 Q. Is that the 99 Cent Plus Smoke Shop?</p> <p>8 A. Yes.</p> <p>9 Q. Is that locate at 6895 East Lake Mead?</p> <p>10 A. Yep.</p> <p>11 Q. Is that here in Las Vegas, Clark County, Nevada?</p> <p>12 A. Yes.</p> <p>13 Q. Were you working on Saturday, February 18th,</p> <p>14 2017?</p> <p>15 A. Yes.</p> <p>16 Q. At approximately 12:45 p.m. did something</p> <p>17 happened in your store?</p> <p>18 A. Yep.</p> <p>19 Q. Was anybody else in the store with you?</p> <p>20 A. Just me.</p> <p>21 Q. Just you?</p> <p>22 A. Yeah.</p> <p>23 Q. What happened around this time?</p> <p>24 A. Somebody came in and I got robbed.</p> <p>25 Q. What did that person look like that came into</p>	<p>7</p> <p>1 Q. Cigar?</p> <p>2 A. Yeah.</p> <p>3 Q. Like specifically is it cigar paper or was it a</p> <p>4 cigar he asked for?</p> <p>5 A. Cigar not just paper.</p> <p>6 Q. Do you know what kind of cigar?</p> <p>7 A. I remember Swisher Sweet Diamond.</p> <p>8 Q. Where do you keep Swisher Sweet Diamond cigars?</p> <p>9 A. Behind me.</p> <p>10 Q. You would have turned around and grabbed them?</p> <p>11 A. Yes.</p> <p>12 Q. What was the robber doing at that time?</p> <p>13 A. He just wanted -- he asked me to grab it.</p> <p>14 Q. What did you do?</p> <p>15 A. I turned around. When I turned back I was at gun</p> <p>16 point.</p> <p>17 Q. You were at gun point when you turned back around</p> <p>18 from grabbing the cigar?</p> <p>19 A. Yep.</p> <p>20 Q. I take it you're standing in front of the</p> <p>21 register?</p> <p>22 A. Yes.</p> <p>23 Q. Is that a yes?</p> <p>24 A. Yes, sir.</p> <p>25 Q. How many registers do you have in your store?</p>
<p>6</p> <p>1 your store?</p> <p>2 A. A black gentleman six feet eight, I guess, a</p> <p>3 little bit fat.</p> <p>4 Q. What was he wearing?</p> <p>5 A. I remember a white baseball hat and glasses. A</p> <p>6 jacket kind of brown color.</p> <p>7 Q. Brown color jacket?</p> <p>8 A. Yes.</p> <p>9 Q. You said glasses what kind of glasses?</p> <p>10 A. I'm not sure just black.</p> <p>11 Q. Sunglasses?</p> <p>12 A. Yeah.</p> <p>13 Q. Not prescription?</p> <p>14 A. No.</p> <p>15 Q. How did that individual enter your store?</p> <p>16 A. As a regular person.</p> <p>17 Q. Through the front door?</p> <p>18 A. Yes.</p> <p>19 Q. What happened upon his entry into your store?</p> <p>20 A. He came and talked to me. He asked for something</p> <p>21 to buy.</p> <p>22 Q. When did he ask to buy?</p> <p>23 A. It's a blunt wrap.</p> <p>24 Q. What's a blunt wrap?</p> <p>25 A. It's for smoking purposes like a cigar.</p>	<p>8</p> <p>1 A. Two.</p> <p>2 Q. Are they close by?</p> <p>3 A. Yes, like ten feet.</p> <p>4 Q. As you turned around and the robber has the gun</p> <p>5 pointed at you does he say anything?</p> <p>6 A. Yeah. He asked me the money. I open the</p> <p>7 register, give him the money.</p> <p>8 Q. What was the tone of his voice when he was asking</p> <p>9 you for this things?</p> <p>10 A. I'm sorry?</p> <p>11 Q. What was his tone like?</p> <p>12 A. Deep. Like aggressive.</p> <p>13 Q. Deep and aggressive?</p> <p>14 A. Yes.</p> <p>15 Q. And what exactly do you remember him saying?</p> <p>16 A. I just remember only asking for the money.</p> <p>17 Q. Asking for the money, is that what you said?</p> <p>18 A. Yeah.</p> <p>19 Q. What did you do?</p> <p>20 A. Then I opened the register and he took the brown</p> <p>21 paper bag and took all the money inside after I give him</p> <p>22 the money. He asked me go to the second register. Then</p> <p>23 I went there. Then I had to open that one too. Then I</p> <p>24 gave some money. He grabbed some money from the</p> <p>25 register too.</p>

<p>9</p> <p>1 Q. You opened first register?</p> <p>2 A. Yep.</p> <p>3 Q. There's money inside?</p> <p>4 A. Yeah.</p> <p>5 Q. U.S. currency?</p> <p>6 A. Yep.</p> <p>7 Q. How is it that this individual takes that money?</p> <p>8 A. How much?</p> <p>9 Q. How is it that he does it? Do you give it to him</p> <p>10 or does he grab it?</p> <p>11 A. First I gave to him the first register. I was a</p> <p>12 little bit slow and he was hurry. He was trying to -- I</p> <p>13 am giving and he was trying to take from register the</p> <p>14 second register.</p> <p>15 Q. Does he still have the gun as he is doing this?</p> <p>16 A. Yes.</p> <p>17 Q. With his free hand is he grabbing the money?</p> <p>18 A. No. It was when I tried to take money from the</p> <p>19 register it was left on the table five seconds.</p> <p>20 Q. You're saying the robber reached into the second</p> <p>21 register?</p> <p>22 A. Yes.</p> <p>23 Q. And takes money out?</p> <p>24 A. Yeah.</p> <p>25 Q. You said he had a brown paper bag?</p>	<p>11</p> <p>1 the robber, the robber. I think that is a legal</p> <p>2 conclusion that can only be determined by a jury. I</p> <p>3 don't think it's appropriate.</p> <p>4 THE COURT: Overruled.</p> <p>5 BY MR. DICKERSON:</p> <p>6 Q. What does the robber do?</p> <p>7 MR. BANKS: Same objection.</p> <p>8 THE COURT: Overruled.</p> <p>9 THE WITNESS: Slowly walks away.</p> <p>10 BY MR. DICKERSON:</p> <p>11 Q. He slowly walked away?</p> <p>12 A. Yeah.</p> <p>13 Q. Does he exit the front doors?</p> <p>14 A. Yeah, after he open the front door. I saw him go</p> <p>15 right.</p> <p>16 Q. Did the robber have that brown paper bag in his</p> <p>17 possession when he exited the store?</p> <p>18 MR. BANKS: Same objection.</p> <p>19 THE COURT: I'll give you a continuing</p> <p>20 objection. How about that?</p> <p>21 MR. BANKS: Maybe the context maybe</p> <p>22 different on each witness. My preference would be</p> <p>23 contemporaneous. If Your Honor wants me to stop doing</p> <p>24 it but my preference would be contemporaneous.</p> <p>25 THE COURT: I'll give you a continuing</p>
<p>10</p> <p>1 A. Yeah, smoke shop bag.</p> <p>2 Q. From your store?</p> <p>3 A. Yes.</p> <p>4 Q. Where was that brown paper bag located?</p> <p>5 A. In front of the table in front of the register.</p> <p>6 Q. The robber grabs that to put the money in it?</p> <p>7 A. Yes.</p> <p>8 Q. Does the robber in fact put the money he has</p> <p>9 taken from both registers in this brown paper bag?</p> <p>10 A. Yes.</p> <p>11 Q. Then what happens?</p> <p>12 A. Then one or two customers came in. He was</p> <p>13 telling them the smoke shop is closed. They didn't pay</p> <p>14 attention to that. He was slowly walking away. He put</p> <p>15 the gun inside the jacket.</p> <p>16 Q. So two customers -- one or two customers walk in?</p> <p>17 A. Yeah.</p> <p>18 Q. What does the robber say?</p> <p>19 A. Smoke shop is closed.</p> <p>20 Q. Did it appear those individuals or customers</p> <p>21 realized what was going on?</p> <p>22 A. No. They did after he left.</p> <p>23 Q. Then what does he do, the robber?</p> <p>24 A. He walked away.</p> <p>25 MR. BANKS: Judge, I'm going to object to</p>	<p>12</p> <p>1 objection to him calling him the robber, the defendant,</p> <p>2 it's not going to influence my decision. I am not the</p> <p>3 jury.</p> <p>4 MR. BANKS: Understood. I think the</p> <p>5 defendant is more appropriate. We don't call them the</p> <p>6 molester or the kidnapper. We don't see it. I think</p> <p>7 the defendant is most appropriate.</p> <p>8 MR. DICKERSON: Are we stipulating it's the</p> <p>9 defendant, Your Honor?</p> <p>10 THE COURT: No, they are not.</p> <p>11 MR. BANKS: The accused? The person? I</p> <p>12 don't know.</p> <p>13 THE COURT: The person with the gun who took</p> <p>14 the money.</p> <p>15 MR. BANKS: Maybe. I don't know. I think</p> <p>16 that has to be determined by a jury. How about this</p> <p>17 person?</p> <p>18 MR. DICKERSON: It's a preliminary hearing.</p> <p>19 THE COURT: Could you guys move along? We</p> <p>20 have eight witnesses and we are talking about semantics</p> <p>21 here. Go on.</p> <p>22 BY MR. DICKERSON:</p> <p>23 Q. So the robber left the store with the brown paper</p> <p>24 bag and the money?</p> <p>25 MR. BANKS: Same objection.</p>

1 THE DEFENDANT: He got the money. He went
 2 to the money.
 3 BY MR. DICKERSON:
 4 Q. He took the money with him?
 5 A. Yeah.
 6 Q. Approximately how much money?
 7 A. 350 to 400.
 8 Q. 350 to \$400?
 9 A. Yes.
 10 Q. In cash?
 11 A. Cash.
 12 Q. That was taken out of the two registers and out
 13 of the store?
 14 A. Yes.
 15 Q. Do you have surveillance in your store, sir?
 16 A. Yes.
 17 Q. Are you familiar with the surveillance system?
 18 A. Yep.
 19 Q. Are you familiar with specifically surveillance
 20 from February 18th, 2017?
 21 A. Yes, I was.
 22 Q. You have seen the surveillance of the robbery
 23 that occurred at your store?
 24 A. Yes.
 25 MR. LOGAN: Can we approach?

1 THE COURT: Sure.
 2 (Discussion held off the record.).
 3 MR. DICKERSON: May I approach, Your Honor?
 4 THE COURT: Yes.
 5 BY MR. DICKERSON:
 6 Q. I am showing here what's already been shown to
 7 defense counsel and is premarked as State's Proposed
 8 Exhibits 1 through 4. Take a look at that and tell me
 9 if you recognize them.
 10 A. Yes, this is from my smoke shop.
 11 Q. You've looked at all four exhibits State's
 12 Proposed Exhibit 1 through?
 13 A. Yes, sir.
 14 Q. You've looked at all of them?
 15 A. Yes.
 16 Q. Do you recognize them?
 17 A. Yes. I remember the pictures.
 18 Q. You recognize these images?
 19 A. Yes.
 20 Q. What do you recognize them to be?
 21 A. What happened this day.
 22 Q. Are these from your surveillance system?
 23 A. Yes.
 24 Q. Do they appear to be still images from your
 25 surveillance system at your store?

1 A. Yeah.
 2 Q. They are depicting the events of February 18th,
 3 2017? The robbery that occurred?
 4 A. Are asking about the surveillance system?
 5 Q. Yes, do these show the robbery that occurred that
 6 we just spoke about?
 7 A. Yes.
 8 MR. DICKERSON: State moves to admit State's
 9 Proposed Exhibits 1 through 4.
 10 THE COURT: Defense?
 11 MR. LOGAN: No objection for purposes of
 12 preliminary hearing.
 13 THE COURT: They will be admitted for
 14 preliminary hearing only.
 15 BY MR. DICKERSON:
 16 Q. Showing you here State's Proposed Exhibit 3.
 17 What is it that the individual was wearing when he came
 18 into your store?
 19 A. It's a white hat and jacket. I remember the lips
 20 white color.
 21 MR. LOGAN: Objection. It doesn't appear he
 22 is speaking from memory. He is pointing to the exhibit
 23 and saying what he sees in the exhibit.
 24 MR. DICKERSON: It's admitted into evidence.
 25 THE COURT: Overruled.

1 BY MR. DICKERSON:
 2 Q. You specifically remember white lips?
 3 A. Yes.
 4 Q. A white hat?
 5 A. Yes.
 6 Q. Tell me about the jacket that you remember.
 7 A. At that time I didn't pay attention about the
 8 jacket.
 9 Q. This in fact the individual that robbed you?
 10 A. Yes.
 11 Q. Depicted in Exhibits 1 through 4.
 12 A. Yes.
 13 Q. State's Exhibit 4 what is that depicting, sir?
 14 A. The gun pointing exactly.
 15 Q. You're on the other side of that gun?
 16 A. Yes.
 17 Q. Thank you.
 18 MR. DICKERSON: State will pass the witness.
 19 THE COURT: Defense?
 20
 21 CROSS-EXAMINATION
 22 BY MR. LOGAN:
 23 Q. Good morning. Is it Chinthana?
 24 A. Yes.
 25 Q. I'm going to ask you some quick questions. Do

1 you recall on the day this event occurred you spoke with
 2 police?
 3 **A. Yes.**
 4 **Q.** You filled out a statement?
 5 **A. Yes.**
 6 **Q.** You told the police fresh from your memory what
 7 had just happened?
 8 **A. Yes.**
 9 **Q.** You remember things clearly?
 10 **A. Yep.**
 11 **Q.** No doubt in your what happened to?
 12 **A. At that time, yes.**
 13 **Q.** You described to the police officer that the
 14 gentleman looked liked who held you up?
 15 **A. Yes.**
 16 **Q.** Do you recall how tall you told the police this
 17 gentleman was?
 18 **A. Like big.**
 19 **Q.** Tall?
 20 **A. Tall. A little bit thick.**
 21 **Q.** Like fat? Heavy?
 22 **A. Not that fat.**
 23 **Q.** Do you recall the weight you told the police
 24 officer?
 25 **A. Sorry?**

1 **Q.** Do you recall how much you told the police
 2 officer he weighed?
 3 **A. Weight? I didn't mention weight.**
 4 **Q.** If I showed you a copy of the statement you
 5 filled out for the police officer would that refresh
 6 your recollection?
 7 **A. Okay.**
 8 **Q.** Showing you a copy of your statement does this
 9 appear to be the statement you filled out?
 10 **A. Yes.**
 11 **Q.** Do you see on here where you say the description
 12 of the --
 13 **A. The description?**
 14 **Q.** Do you see the description?
 15 **A. Yes.**
 16 **Q.** How much do you tell the police he weighed?
 17 **A. Weight, it's big. That's it.**
 18 **Q.** How tall did you say he was?
 19 **A. 6'2".**
 20 **Q.** Do you remember telling the police that he
 21 weighed 250 pounds?
 22 **A. No.**
 23 **Q.** You don't recall telling the police that?
 24 **A. I don't remember saying something like that.**
 25 **Q.** What's your occupation?

1 **A. I work in the smoke shop.**
 2 **Q.** Are you a firearms expert?
 3 **A. Firearm?**
 4 **Q.** Guns?
 5 **A. No.**
 6 **Q.** Do you have any training with guns?
 7 **A. No.**
 8 **Q.** You said a couple times he had a gun. Why did
 9 you think it was a gun?
 10 **A. I had a gun or he had the gun?**
 11 **Q.** You testified the gentleman held a gun to you.
 12 Why do you believe it was a gun?
 13 **A. It looks like a gun. It's in front of my face.**
 14 **Q.** Could it have been a toy gun?
 15 **A. No. I know a toy gun or not. I just saw the**
 16 **gun.**
 17 **Q.** I'm sorry. You said you don't know if it was a
 18 toy gun or not?
 19 **A. Yeah. I just saw the gun, yeah. I didn't know**
 20 **that.**
 21 MR. LOGAN: No further questions.
 22 THE COURT: Any redirect?
 23 MR. DICKERSON: Briefly.
 24 ///
 25 ///

1 REDIRECT EXAMINATION
 2 BY MR. DICKERSON:
 3 **Q.** Sir, how tall are you?
 4 **A. 5'2".**
 5 **Q.** How much do you weigh?
 6 **A. 58 kilograms.**
 7 **Q.** Approximate 101 pounds?
 8 **A. I'm not sure.**
 9 **Q.** 58 kilograms; is that right?
 10 **A. Yes.**
 11 MR. DICKERSON: State will pass the witness.
 12 THE COURT: Thank you, sir. You can step
 13 down. You can go now.
 14 THE WITNESS: Thank you.
 15 MR. DICKERSON: State's next witness --
 16 MR. LOGAN: Could I approach, Your Honor?
 17 THE COURT: Sure.
 18 (Discussion off the record.)
 19 THE COURT: For the transportation officer
 20 the males in custody are to remain for awhile. I'm
 21 going to finish Brandy White. I'm going to call Brandy
 22 and then the females may exit.
 23 (Break in proceedings to handle unrelated matters.)
 24 ///
 25 ///

	21
1	THE COURT: Back on the record with
2	Mr. Davin Toney. Who is the state's next witness?
3	MR. DICKERSON: Before the state calls its
4	next witness, Your Honor, the defense has asked Mr.
5	Toney be seated in the gallery in this case. At this
6	point in time they are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
7	male inmates in custody in the gallery including
8	Mr. Toney. Of those we have four lighter skinned
9	individuals and five darker skinned individuals. Darker
10	individuals would be similar to Mr. Toney himself.
11	Would the Court accept those representations?
12	THE COURT: Didn't you there are 10 total?
13	MR. DICKERSON: Yes. So we have 5 and 5. 5
14	lighter skinned individuals and 5 darker skinned
15	individuals. Does the Court agree with that?
16	THE COURT: Yes.
17	MR. DICKERSON: As far as facial hair
18	Mr. Toney has facial himself has facial hair we also
19	have 1, 2, 3, 4, 5 other individuals with noticeable
20	facial hair. Does the Court accept those
21	representations?
22	THE COURT: Yes. I have a question for
23	counsel.
24	(Discussion held off the record.).
25	MR. DICKERSON: Finally, Your Honor, the
	22
1	state would ask Your Honor to recognize all the males
2	sitting in the gallery are in custody and are wearing
3	the same outfit. The Clark County Detention Center blue
4	shirt and blue pants.
5	THE COURT: Correct.
6	MR. DICKERSON: With that, Your Honor, the
7	state would call Salman Akram.
8	THE COURT: I have a question for
9	transportation. Why is the kid sitting in the back with
10	the lady?
11	CORRECTION OFFICER: He has to be separated
12	because he's a juvenile.
13	THE COURT: Okay.
14	THE CLERK: Do you solemnly swear the
15	testimony you are about to give be the truth, the whole
16	truth, and nothing but the truth so help you God?
17	THE WITNESS: I swear to tell all the truth.
18	THE CLERK: You may be seated. Please state
19	your name for the record and spell your first and last
20	name.
21	THE WITNESS: Salmon Akram, S-A-L-M-A-N,
22	A-K-R-A-M.
23	THE COURT: Go ahead.
24	///
25	///

	23
1	DIRECT EXAMINATION
2	BY MR. DICKERSON:
3	Q. What do you do you for a living?
4	A. I manage a smoke shop.
5	Q. Is one of the smoke shops you manage Mr. Kay's
6	smoke shop?
7	A. Yes.
8	Q. Is that located at 5130 Fort Apache?
9	A. Yes.
10	Q. Is that located here in Las Vegas, Clark County,
11	Nevada?
12	A. Yes.
13	Q. Were you working on Saturday February 18th, 2017?
14	A. Yes, I was.
15	Q. At approximately 10:40 p.m.?
16	A. Yes.
17	Q. Were you working with anybody else that day?
18	A. I was working alone.
19	Q. What happened around this time?
20	A. The guy walked in the smoke shop and asked me for
21	-- two guys walked in one behind the counter the display
22	and pretended he was looking for some stuff. The other
23	approached the counter and asked me for a pack of
24	Swishers and a pack of cigarettes Newports. I grabbed
25	the Newports and the Swisher and he told me he didn't
	24
1	want the cigarettes.
2	Q. Two individuals walked in?
3	A. Yes.
4	Q. Both male?
5	A. Both male.
6	Q. One hangs kind of behind a stand?
7	A. Yeah. Jewelry display.
8	Q. Is that near the front door?
9	A. Yeah.
10	Q. The other one comes where?
11	A. He approached the counter the register.
12	Q. What did that individual look like?
13	A. He was black. He was wearing a cap and shades.
14	Q. What kind of cap?
15	A. Baseball cap.
16	Q. Shades being sunglasses?
17	A. Sunglasses.
18	Q. Do you that individual here in the courtroom
19	today?
20	A. Yes, I do.
21	Q. Can you point to that individual identifying
22	where that individual is sitting in the courtroom.
23	A. Right there.
24	Q. Specifically where?
25	A. The first individua on the left side in the

1 corner.

2 Q. Which row, sir?

3 A. The first row.

4 Q. You said left side?

5 A. From my left the first individual.

6 Q. From your left that would be --

7 A. I'm sorry. My right.

8 Q. In relation to the isle where is this individual

9 sitting?

10 A. First isle.

11 Q. First row?

12 A. First row.

13 Q. And in relation to this isle right here?

14 A. First person on my right.

15 MR. DICKERSON: If the record could reflect

16 the witness has identified he defendant Davin Toney.

17 THE COURT: I'm confused to be honest with

18 you.

19 MR. DICKERSON: May he exit the stand?

20 THE COURT: Sure.

21 BY MR. DICKERSON:

22 Q. Can you come down and point to the individual

23 that you're identifying.

24 A. The first individual.

25 Q. Just point to him.

1 MR. DICKERSON: Your Honor, can the record

2 reflect the witness has identified the defendant Davin

3 Toney.

4 THE COURT: So ordered.

5 MR. DICKERSON: Go ahead and take your seat,

6 sir.

7 BY MR. DICKERSON:

8 Q. The defendant comes up to you?

9 A. Yes.

10 Q. Are you at the cash register?

11 A. Yes, I was.

12 Q. How many cash registers do you have?

13 A. One.

14 Q. What did the defendant do as he approached you at

15 the cash register?

16 A. He asked for a pack Newports and then asked for a

17 pack of Swishers.

18 Q. What are Swishers?

19 A. Swishers are the cigarillos like tobacco in them.

20 They come two in a pack.

21 Q. Kind of like a cigar?

22 A. Yes, like a cigar.

23 Q. What happens when the defendant asked you for the

24 Swishers and Newports?

25 A. I got the Newports and then he asked for the

1 Swishers. I get the Swishers then he said he was not

2 going to get the cigarettes. I was like okay. He takes

3 out change from his pocket and starts counting and as

4 soon as I opened the register he pulls out the gun and

5 yells shut up and pointed the gun at me. He leans over

6 the register. I stepped back from the register. He

7 takes the cash from register. I show him my hands. He

8 walks -- starts walking. I get up from the floor. I

9 stand up and he tells me --

10 Q. Let me stop you right there. As he pulled out

11 the gun has he demanded money from you?

12 A. He pulls out the gun and was like I'll shoot you

13 shut up, shut up.

14 Q. Then what happens?

15 A. He snatched the money from my register and was

16 holding the gun, yes.

17 Q. What hand does he use to grab the money?

18 A. I think left one.

19 Q. The opposite hand that the gun was in?

20 A. Yeah.

21 Q. How much money was in the register?

22 A. Around \$400.

23 Q. That's what he took?

24 A. Yes.

25 Q. Approximately 400?

1 A. Approximately.

2 Q. After he grabs the money what does the defendant

3 do?

4 A. He start walking towards the door. I was leaning

5 back towards the cigarette case. He start getting don't

6 pull anything from down there and pointed the gun at me

7 and tells me I'm going to shoot you. Then I show him my

8 hands again. He takes off.

9 Q. Where is the other male?

10 A. He's still standing near the door. He opens the

11 door and they both run outside.

12 Q. They leave together?

13 A. They leave together one after another.

14 Q. When you say opens the door what do you mean?

15 A. He kind of unlocks the door. They both go.

16 Q. Did you lock the door?

17 A. No, I didn't.

18 Q. You never locked the door?

19 A. I never locked the door.

20 Q. Did you see which direction the two individuals

21 the defendant and the other individual ran?

22 A. They ran on the right when they left the store.

23 Q. Do you have a surveillance system?

24 A. Yes.

25 Q. Did surveillance capture the events that occurred

1 that we just spoke about on February 18th, 2017?

2 **A. Yes.**

3 MR. DICKERSON: I'm going to show you what's

4 been marked as State's Proposed Exhibits 5 through 8.

5 Defense counsel had already been shown these exhibit.

6 May I approach?

7 THE COURT: Yes.

8 BY MR. DICKERSON:

9 **Q.** Take a look at Proposed Exhibits State's 5

10 through 8. Look at each one individually tell me if you

11 recognize what you see in those in the photos.

12 **A. The same guy and the same event from this day.**

13 **Q.** You recognize all four of the proposed exhibits?

14 **A. Yes.**

15 **Q.** Do you recognize these as still images from your

16 surveillance system?

17 **A. Yes.**

18 **Q.** These are actually still images of the event from

19 February 18th, 2017?

20 **A. Yes.**

21 **Q.** Specifically the robbery you just testified to?

22 **A. Yes.**

23 MR. DICKERSON: If I may see those? States

24 moved State's Proposed Exhibit 5 through 8.

25 THE COURT: Any objection?

1 MR. LOGAN: No objection for the purposes of

2 the preliminary hearing.

3 THE COURT: They will admitted for

4 preliminary hearing only.

5 BY MR. DICKERSON:

6 **Q.** The individual depicted in State's Proposed

7 Exhibits 5 through 8; is that the individual you robbed?

8 **A. Yes.**

9 **Q.** Is that the defendant you identified here today?

10 **A. Yes.**

11 **Q.** Specifically State's Exhibit 7, what is that

12 showing?

13 **A. He takes cash from the register.**

14 **Q.** The defendant taking cash from the register?

15 **A. Yes.**

16 **Q.** State's Exhibit 8, what is that depicting?

17 **A. He pointed the gun at me and still taking cash**

18 **from the register.**

19 **Q.** You would be on the other side of the barrel?

20 **A. I was on the opposite side ducking down hands up.**

21 **Q.** Thank you. Mr. K's smoke shop where this

22 occurred at 5130 Fort Apache is that here in Las Vegas,

23 Clark County, Nevada?

24 **A. Yes.**

25 MR. DICKERSON: State will pass the witness.

1 THE COURT: Defense?

2

3 CROSS-EXAMINATION

4 BY MR. LOGAN:

5 **Q.** Mr. Akram?

6 **A. Yes.**

7 **Q.** Good morning.

8 **A. Good morning.**

9 **Q.** I have a couple quick questions for you.

10 **A. Okay.**

11 **Q.** You mentioned that the man who came into your

12 store was holding a gun?

13 **A. He wasn't holding it. He took out the gun later**

14 **when he approached the register. I opened the register.**

15 **Q.** Are you training at firearms?

16 **A. No.**

17 **Q.** Do you know if this was a real gun as opposed to

18 a toy gun?

19 **A. Looked like a real gun.**

20 **Q.** Looked like a real gun but you don't know whether

21 it was a toy gun or real?

22 **A. It looked like a real gun.**

23 MR. DICKERSON: Objection, Your Honor.

24 BY MR. LOGAN:

25 **Q.** You say he threatened you with it did he attempt

1 to hit you with it, bludgeon you with it?

2 **A. No, he did not.**

3 **Q.** Did he move in any other way to hold it towards

4 you?

5 **A. No, he was leaned on me with the gun. Next to my**

6 **face. Like that's why I stepped back to the cigarette**

7 **case. That's when I got down.**

8 **Q.** Did you have a subpoena to come her to testify?

9 **A. Yes.**

10 **Q.** After receiving the subpoena did you discuss this

11 case with anyone?

12 **A. No.**

13 **Q.** Did you talk to anyone in the district attorney's

14 office this morning or anytime prior to coming here?

15 **A. No. I just checked in with him. That's it.**

16 **Q.** Just checked in with him you didn't discuss this

17 at all with him?

18 **A. No. He went through the pictures.**

19 **Q.** You did discuss the case with him?

20 **A. He just showed me pictures and signed me up for**

21 **-- tell me how the procedure is going to go. I have**

22 **wait for stuff. It's going to heard.**

23 **Q.** The pictures he showed you what were those

24 pictures?

25 **A. Same pictures.**

1 Q. Which same pictures?
 2 A. **The ones that I --**
 3 Q. Were those the only photographs he showed you?
 4 A. **Yeah.**
 5 Q. Did he ask if you recognized anyone in the
 6 courtroom?
 7 A. **If I can recognize? I did recognize.**
 8 Q. He asked you if you recognized anyone in the
 9 courtroom? What was your conversation with regards to
 10 that?
 11 A. **I was like I have to see look at the person first**
 12 **to recognize.**
 13 Q. You came in court and looked at someone and the
 14 went back outside?
 15 A. **No. I came in and I sat there for the whole time**
 16 **and I did recognize the individual.**
 17 Q. Did he at any point discuss the people sitting in
 18 the box with you?
 19 A. **No.**
 20 MR. LOGAN: No further questions.
 21 THE COURT: Any redirect?
 22
 23 REDIRECT EXAMINATION
 24 BY MR. DICKERSON:
 25 Q. You spoke with me about this case just this

1 morning?
 2 A. **Yes.**
 3 Q. Did I give you any indication of who the
 4 individual was that robbed you?
 5 A. **No.**
 6 Q. You identified the defendant as that individual?
 7 A. **Yes.**
 8 Q. Did the defendant threaten to shoot you with the
 9 gun?
 10 A. **Yes.**
 11 MR. DICKERSON: State will pass.
 12 THE COURT: Thank you, sir. You may step
 13 down.
 14 Next witness?
 15 MR. DICKERSON: States next witness is Sujan
 16 Narasinghe.
 17 THE COURT: Good morning. We need to have
 18 your witness to leave the courtroom for two minutes.
 19 MR. DICKERSON: Your Honor, I have Dave
 20 Miller here. I would ask for permission for the
 21 detective to take a picture of the gallery as they are
 22 seated right now.
 23 THE COURT: The reason why I had the witness
 24 leave was because I had a couple in custodies that need
 25 to use the bathroom. Are any of those guys in the

1 bathroom right now?
 2 MR. DICKERSON: They are all right here.
 3 THE COURT: Take a picture real quick.
 4 MR. LOGAN: Before we do that and thank you
 5 for indulgencing that. Can we shuffle them and then
 6 take the picture?
 7 THE COURT: No. He is going to take it
 8 exactly they way they are seated.
 9 MR. LOGAN: But now there's some belief that
 10 there's been some discussions and I don't like the idea
 11 of them sitting in the same position after those
 12 discussions may have taken place.
 13 THE COURT: No. They are going be in the
 14 same position. It is going to be what was represented
 15 in court the on the day the testimony was had. You
 16 don't get to shuffle them because that's not the way
 17 they were sitting when the last witness made the
 18 identification.
 19 MR. LOGAN: We will stipulate to that
 20 identification. We have three more witnesses coming in
 21 and I don't like the idea of the position he is in and
 22 the fact there was conversations about the
 23 identification in the hallway.
 24 MR. DICKERSON: Your Honor, it's pretty
 25 clear what the conversations were. It was very

1 innocuous, number one. Number two, we definitely want a
 2 picture as they are seated right now as the witness
 3 identified them.
 4 THE COURT: We are not going to do musical
 5 chairs. You asked he remain seated in the gallery and
 6 it's an appropriate request. He can be seated in the
 7 gallery but we are not going to switch it around every
 8 time a witness testifies. Either they recognize him or
 9 they don't. Can you take the picture and we'll move
 10 long.
 11 (Break in proceedings.)
 12 THE COURT: Back on the record with Davin
 13 Toney.
 14 THE CLERK: Do you solemnly swear the
 15 testimony you are about to give be the truth, the whole
 16 truth, and nothing but the truth?
 17 THE WITNESS: The truth.
 18 THE COURT: Do you swear to tell the truth?
 19 THE WITNESS: Yes.
 20 THE COURT: The whole truth?
 21 THE WITNESS: Yes.
 22 THE COURT: Nothing but the truth?
 23 THE WITNESS: I do.
 24 THE COURT: State your name and spell it for
 25 the record.

1 THE WITNESS: Sujan Narasingehe.
 2 THE COURT: Do you spell it S-U-J-A-N?
 3 THE WITNESS: Yes.
 4 THE COURT: And N-A-R-A-S-I-N-G-E-H-E?
 5 THE WITNESS: Yes.
 6 THE COURT: Thank you.

8 DIRECT EXAMINATION

9 BY MR. DICKERSON:
 10 Q. What do you do for a living?
 11 A. **I work at a smoke shop.**
 12 Q. Is that AS smoke shop?
 13 A. **Yes.**
 14 Q. Is that located at 4566 east Tropicana Boulevard?
 15 A. **Yes.**
 16 Q. Is that here in Las Vegas, Clark County, Nevada?
 17 A. **Yes.**
 18 Q. Were you working on Wednesday February 22nd,
 19 2017, at approximately 10:04 a.m.?
 20 A. **Yes.**
 21 Q. Were you working with anybody else that day?
 22 A. **I was by myself.**
 23 Q. Around that time 10:04 in the morning did
 24 anything happen?
 25 A. **Yes.**

1 Q. What happened?
 2 A. **This guy came in the store. He asked for**
 3 **Swishers. At the same time my neighbor who works next**
 4 **door came in the store. My neighbor was right behind**
 5 **him. Surprisingly this guy let my neighbor go first.**
 6 **My neighbor --**
 7 Q. The individual you're speaking of what did he
 8 look like?
 9 A. **He was a black guy.**
 10 Q. Do you see him here in the courtroom today?
 11 A. **Yes.**
 12 Q. Where do you see that individual?
 13 A. **First row. My left corner.**
 14 Q. If you could with the Court's permission step off
 15 the stand and come point to the individual that you saw
 16 on the other side of the rail that you're identifying as
 17 the individual.
 18 A. **Yes.**
 19 Q. Go ahead. You can walk anywhere in the courtroom
 20 as long as you stay on this side of the bar and point to
 21 the individual you're identifying.
 22 A. **Right there.**
 23 Q. I'd ask you to walk right in front of the
 24 individual you're pointing to.
 25 A. **This is him.**

1 MR. DICKERSON: Your Honor, if the record
 2 could reflect the witness has identified the defendant
 3 Davin Toney.
 4 THE COURT: So ordered.
 5 BY MR. DICKERSON:
 6 Q. You were saying when he came in -- when the
 7 defendant came into the store he came in around at the
 8 same time as your neighbor?
 9 A. **The defendant came first. Then my neighbor was**
 10 **right behind him.**
 11 Q. What happened when they came into the store?
 12 A. **He asked for Swishers and my neighbor was right**
 13 **behind him but surprisingly this defendant let my**
 14 **neighbor go first.**
 15 Q. How did he do that?
 16 A. **He was like just go ahead and let my neighbor**
 17 **come to the register first.**
 18 Q. Then did you check your neighbor out?
 19 A. **Yes. He got a can of soda. He didn't take long.**
 20 **He left. After this it was him.**
 21 Q. It was who?
 22 A. **The defendant.**
 23 Q. Just the defendant in the store?
 24 A. **Maybe after a minute or two another customer came**
 25 **into the store.**

1 Q. So after your neighbor leaves it was the
 2 defendant and you at the cash register?
 3 A. **Yes.**
 4 Q. What happens at that point?
 5 A. **I asked him -- I already had Swishers next to the**
 6 **register like I always do.**
 7 Q. And a Swisher is what?
 8 A. **I think it was Swisher Sweets regular cigarillo.**
 9 Q. Swisher is the name brand?
 10 A. **Yes.**
 11 Q. Is that cigar?
 12 A. **Yes, kind of a cigar.**
 13 Q. Swisher is a kind of cigar?
 14 A. **Yes.**
 15 Q. A brand number of cigars?
 16 A. **Yes.**
 17 Q. That's what he asked for?
 18 A. **That's what I remember Swisher Sweets.**
 19 Q. Where are the Swisher Sweets?
 20 A. **It was right next to my hand.**
 21 Q. Did you grab the Swisher Sweets?
 22 A. **Yes.**
 23 Q. What was the defendant doing at that time?
 24 A. **He was waiting by the register.**
 25 Q. Then what happened?

1 **A. Then after my neighbor left I asked him do you**
 2 **want anything else. He said, yeah, I want to get a pipe**
 3 **too. I pointed the pipe cabinet to him. Then he walked**
 4 **to the pipe cabinet and I follow him.**
 5 **Q. Are these smoking pipes?**
 6 **A. Glass pipes.**
 7 **Q. You pointed to the smoking cabinet what happens**
 8 **after he walks over to the cabinet?**
 9 **A. Then he starts looking at the pipes surprisingly**
 10 **he did not take more five seconds to one.**
 11 **Q. To select a pipe?**
 12 **A. Yes, he was looking for a couple seconds and then**
 13 **he said like this one.**
 14 **Q. You said surprisingly what do you mean any that?**
 15 **A. Usually it takes time to pick a pipe.**
 16 **Q. A couple seconds is unusual?**
 17 **A. Yeah. Very unusual in a smoke shop.**
 18 **Q. What happens after he picks up the pipe?**
 19 **A. He pointed to the pipe and I grabbed the pipe**
 20 **from one of the containers. Then he turned around and**
 21 **he pointed to the register and said let's go there.**
 22 **Q. The defendant pointed at the register?**
 23 **A. Yes. I felt a suspicion. My neighbor was in a**
 24 **hurry and then he went back to the register and was**
 25 **waiting for me. I followed him. Right when I got to**

1 **the register he pulled the gun at me.**
 2 **Q. The defendant?**
 3 **A. Yes.**
 4 **Q. Where did he pull the gun from?**
 5 **A. I think he kept the gun between the pants and**
 6 **tummy.**
 7 **Q. The waistband area?**
 8 **A. Yes.**
 9 **Q. When he pulled the gun out what did he do with**
 10 **it?**
 11 **A. He had the gun in his hand he pointed it at me.**
 12 **He asked me to open the register. He said open it, open**
 13 **it.**
 14 **Q. What was the tone of his voice as he was telling**
 15 **you to open the register?**
 16 **A. Aggressive.**
 17 **Q. What did you do?**
 18 **A. I start freaking out. I already ring the Swisher**
 19 **on the register so he when asked me to open. I tried to**
 20 **hit the no sale button that's how we usually open the**
 21 **register but when we have a sale on it the no sale**
 22 **button does not work. I took a little bit of time and**
 23 **he was hurrying me to open it. I ended up hitting the**
 24 **cash button and then it opened.**
 25 **Q. You said you were freaked out?**

1 **A. Yeah, I had my hands up. It was the first time a**
 2 **gun was pointed at me.**
 3 **Q. Were you scared?**
 4 **A. I was very scared.**
 5 **Q. Were you scared of being shot?**
 6 **A. Yes.**
 7 **Q. When you were finally able to get the drawer the**
 8 **cash drawer open what happens?**
 9 **A. He used his left hand to reach into the register**
 10 **and he grabbed all the money I had.**
 11 **Q. How much money was that?**
 12 **A. A bit. It was \$80. After everything was counted**
 13 **it was \$140.**
 14 **Q. Cash?**
 15 **A. Yes.**
 16 **Q. U.S. currency?**
 17 **A. Yes.**
 18 **Q. Originally you thought it was \$80?**
 19 **A. That was the first guess but we were not supposed**
 20 **to touch the register until they got everything done.**
 21 **One they all left we counted and it was exactly \$140.**
 22 **Q. Exactly? Is that right?**
 23 **A. Yes.**
 24 **Q. What did the defendant after he took that \$140 in**
 25 **cash out of the cash register?**

1 **A. He grabbed all the money. I'm not sure if he put**
 2 **money in the pocket or anything. He asked me do you**
 3 **have more. I told him it's early in the morning.**
 4 **There's nothing else here. He was okay. He kept**
 5 **grabbing the money. I don't know what he did do with**
 6 **the gun. He turned around and slowly walked back to the**
 7 **door. By the time I had the other customers in the**
 8 **other corner. Either he did not see what happened or he**
 9 **pretended he didn't see it.**
 10 **Q. There was another customer in the store?**
 11 **A. Yes.**
 12 **Q. Where was he in the store?**
 13 **A. He was right in the corner looking at the pipes.**
 14 **Q. Some distance away from your cash register?**
 15 **A. Yeah.**
 16 **Q. And as that happens and the defendant starts**
 17 **backing away, does he have the \$140 in cash in his**
 18 **possession?**
 19 **A. Yes.**
 20 **Q. What does he then do?**
 21 **A. As I told you I am not sure if he put the money**
 22 **in his pocket or he kept it in this his hand as he**
 23 **turned around and slowly walked to the door. He opened**
 24 **it and then I saw him running away.**
 25 **Q. Did he take that \$140 in cash with him?**

1 **A. Yeah.**
 2 **Q.** Do you have a surveillance system?
 3 **A. Yes.**
 4 **Q.** Do your surveillance system capture the events on
 5 February 22nd, 2017?
 6 **A. Yes.**
 7 **Q.** This specific robbery that we just discussed?
 8 **A. Yes.**
 9 MR. DICKERSON: Showing defense counsel
 10 State's Proposed Exhibits 9 through 11. They have
 11 already been shown to them. With the Court's permission
 12 may I approach?
 13 THE COURT: Yes.
 14 BY MR. DICKERSON:
 15 **Q.** Sir, I'm showing you State's Proposed Exhibits 9
 16 through 11. Please take a look at each one individually
 17 and let me know if you recognize each one of them.
 18 **A. Yes. This is when he came in.**
 19 **Q.** State's Proposed Exhibit 9, he was entering?
 20 **A. Yes. Then when he pulled the gun on me and was**
 21 **robbing?**
 22 **Q.** Is that State's Proposed Exhibit 10?
 23 **A. Yes. That's when he grabbed the money?**
 24 **Q.** That's State's Proposed Exhibit 11?
 25 **A. Yes.**

1 **Q.** Do these appear to be still shots from your
 2 surveillance system at the smoke shop?
 3 **A. Yes.**
 4 **Q.** Are these stills capturing images of the robbery
 5 that you testified to?
 6 **A. Yes.**
 7 **Q.** The individual depicted into each exhibit is the
 8 defendant that you've identified here in court today?
 9 **A. Yes.**
 10 **Q.** Are these fair and accurate depictions of this
 11 surveillance?
 12 **A. Yes.**
 13 MR. DICKERSON: State move admission State's
 14 Proposed Exhibit 9 through 11.
 15 THE COURT: Any objection?
 16 MR. LOGAN: None for the purpose of
 17 preliminary hearing.
 18 THE COURT: They will be admitted for the
 19 preliminary hearing only.
 20 MR. DICKERSON: State will pass the witness.
 21 THE COURT: Defense?
 22
 23 CROSS-EXAMINATION
 24 BY MR. LOGAN:
 25 **Q.** Mr. Sujan, is that right?

1 **A. Yes, sir.**
 2 **Q.** You said another customers was in the store at
 3 the time?
 4 **A. Yes.**
 5 **Q.** What was the distance between you and the other
 6 customer?
 7 **A. Three or four feet. It's from the register to**
 8 **one corner of the store.**
 9 **Q.** Was he there through the entire event?
 10 **A. I think he came in while the defendant was there.**
 11 **I'm not 100 percent sure exactly when he came in. He**
 12 **came in after my neighbor.**
 13 **Q.** You got a good look at the defendant?
 14 **A. Yes.**
 15 **Q.** Or the person that walked in you got a good look
 16 at him?
 17 **A. Yes.**
 18 **Q.** Did you look at his face?
 19 **A. Yes.**
 20 **Q.** Can you describe the face to me as it appeared on
 21 that day?
 22 **A. Yes. First of all he was wearing a gray color**
 23 **beanie and a pair of sunglasses and leather jacket.**
 24 **Again he was a black dude. Then I remember some bigger**
 25 **lips and I think he had like a beard too. Not like very**

1 **well grown beard.**
 2 **Q.** You're not sure about that?
 3 **A. It's been two months since it happened. I think**
 4 **he had some beard on his face too. He did whatever he**
 5 **can to hide his face from me.**
 6 **Q.** Did he have something covering his mouth?
 7 Cheeks?
 8 **A. No. His head was totally covered and the eyes**
 9 **were covered from the sunglasses.**
 10 **Q.** What about his neck?
 11 **A. Because of the jacket I don't remember.**
 12 **Q.** Do you remember any distinctive things about his
 13 neck or face?
 14 **A. To.**
 15 **Q.** His ears?
 16 **A. No. The only thing I remember really well was**
 17 **his lips. They were bigger. That's why I didn't take**
 18 **much time to recognize him. I know it's him.**
 19 **Q.** Do you remember if his ears were pierced?
 20 **A. I don't think so.**
 21 **Q.** Do you remember if he had big rings in his ears?
 22 **A. I don't think so.**
 23 **Q.** Do you remember any tattoos?
 24 **A. No. His body was totally covered.**
 25 **Q.** Certainly no tattoos on his face? RA 025

1 **A. No tattoos on his face.**
 2 **Q.** No tattoos on his neck?
 3 **A. That I'm not sure. He was covered.**
 4 **Q.** What about his hands was he wearing gloves?
 5 **A. I think he was not wearing gloves. He was bare**
 6 **hands to the grab the gun and grab the money as well.**
 7 **Q.** Do you remember anything distinctive about his
 8 hands?
 9 **A. No.**
 10 **Q.** Any tattoos on his hands?
 11 **A. I don't think so. I didn't see tattoos.**
 12 **Q.** You said he was holding a gun?
 13 **A. Yes.**
 14 **Q.** Are you a firearms expert?
 15 **A. No.**
 16 **Q.** Is it possible it was a toy gun?
 17 **A. I don't know if it was a toy or real gun. All I**
 18 **know I was scared. I thought I was going to die on that**
 19 **day.**
 20 **Q.** You were scared?
 21 **A. Yes. I was scared to death.**
 22 **Q.** You were focussed on that gun?
 23 **A. Sir, that was the first time somebody pulled a**
 24 **gun on me. I was very scared.**
 25 **Q.** Absolutely.

1 MR. LOGAN: No further questions.
 2 THE COURT: Any redirect?
 3
 4 REDIRECT EXAMINATION
 5 BY MR. DICKERSON:
 6 **Q.** The gun, sir, what did the gun look like?
 7 **A. Again I'm not an expert in terms of guns. Can I**
 8 **point to something here. It was not like a --**
 9 **Q.** What color was it?
 10 **A. Black.**
 11 **Q.** When you saw --
 12 **A. It's not the circle and you put bullets in it.**
 13 **It's like you load it from the top.**
 14 **Q.** It wasn't a revolver?
 15 **A. I don't recall.**
 16 **Q.** You indicated with your hands the top would slid
 17 back?
 18 **A. It was one of those kind, yeah.**
 19 **Q.** When the defendant pulled the gun out on you, did
 20 you think that's a toy gun?
 21 **A. Not at all.**
 22 **Q.** Did you think I'm going to get shot?
 23 **A. Yeah.**
 24 MR. DICKERSON: State will pass.
 25 THE COURT: Anything else?

1 MR. LOGAN: Nothing further.
 2 THE COURT: Thank you, sir. You may step
 3 down.
 4 Next witness?
 5 MR. DICKERSON: State's next witness is
 6 Harbhej Singh.
 7 THE CLERK: Do you solemnly swear the
 8 testimony you are about to give be the truth, the whole
 9 truth, and nothing but the truth?
 10 THE WITNESS: I do.
 11 THE CLERK: You may be seated.
 12 THE COURT: State your full name.
 13 THE WITNESS: Harbhej Singh.
 14 THE COURT: Can you spell that?
 15 THE DEFENDANT: H-A-R-B-H-E-J, S-I-N-G-H.
 16 THE COURT: Go ahead.

DIRECT EXAMINATION

19 BY MR. DICKERSON:
 20 **Q.** What do you do for a living?
 21 **A. I have a few stores like liquor store this one**
 22 **where I was that day.**
 23 **Q.** Are you speaking specifically the day of February
 24 22nd, 2017?
 25 **A. Yes.**

1 **Q.** What store is it that you were referring to?
 2 **A. I was at the Tropicana Fort Apache the USA Smoke**
 3 **Shop and Mini Mart.**
 4 **Q.** Is that at 9575 West Tropicana?
 5 **A. Yes.**
 6 **Q.** Is that here in Las Vegas, Clark County, Nevada?
 7 **A. Yes.**
 8 **Q.** Were you at this store at 3:25 p.m.?
 9 **A. Yes.**
 10 **Q.** Were you working with anybody else in the store
 11 that day?
 12 **A. Yes. My employee was in the back. He was**
 13 **stocking some stuff. I was doing my paperwork. I was**
 14 **at the front.**
 15 **Q.** Who was the employee that was there working with
 16 you?
 17 **A. Nehal or Piyadasa. We call him Nehal (phonetic).**
 18 **Q.** You indicated one of those names is a nickname?
 19 **A. Yes. Nehal is a nickname.**
 20 **Q.** What is his first name?
 21 **A. Piyadasa. I don't remember the whole name.**
 22 **Q.** How old is he?
 23 **A. He's 67.**
 24 **Q.** And where were you and Piyadasa working in that
 25 store?

1 **A. I was at the front near the register. He was in**
 2 **the back of the store.**
 3 **Q.** What was he doing in back of the store?
 4 **A. He was stocking stuff.**
 5 **Q.** At the time we discussed approximately 3:00
 6 o'clock what happened?
 7 **A. I was helping a few customers. I finished with**
 8 **them. This guy he was standing there in behind the**
 9 **line. When everybody left he came and he asked me --**
 10 **Q.** Let me stop you right there. You said this guy
 11 and you pointed; is that right?
 12 **A. Yeah. The guy sitting over there.**
 13 **Q.** Okay. Do you see the individual that you saw in
 14 your store that day here in the courtroom today?
 15 **A. Yes.**
 16 **Q.** Where do you see the individual sitting?
 17 **A. Right there. The black guy.**
 18 **Q.** If you could with the Court's permission step off
 19 the stand and walk over to me. Stand directly in front
 20 of the individual that you are identifying as the man
 21 who was in your store. Point to him.
 22 **A. This guy.**
 23 MR. DICKERSON: Your Honor, could the record
 24 reflect the witness has identified the defendant Davin
 25 Toney.

1 THE COURT: So ordered.
 2 BY MR. DICKERSON:
 3 **Q.** How was it the defendant entered your store?
 4 **A. He entered. He had like a beanie that goes on**
 5 **his face. He was standing in line. Once his turn came**
 6 **he asked me to give me some cigars or Swishers. He gave**
 7 **me a dollar and there was some change. I thought he was**
 8 **going to pull some change out his of pocket instead he**
 9 **pulled a gun at my head.**
 10 **Q.** What did that gun look like?
 11 **A. It was a Glock black.**
 12 **Q.** It was black?
 13 **A. Yes.**
 14 **Q.** Like a Glock?
 15 **A. Yeah.**
 16 **Q.** Does that indicate whether it was a semiautomatic
 17 or revolver?
 18 **A. It was a semiautomatic.**
 19 **Q.** Where did he pull that gun from?
 20 **A. From his back pocket I think.**
 21 **Q.** From behind?
 22 **A. He had a jacket too. I could not see where this**
 23 **came from.**
 24 **Q.** When he pulled the gun out where exactly did he
 25 point it?

1 **A. I pointed here towards my head and I tried to**
 2 **grab it. He said don't do it. I'm going to shoot you.**
 3 **Q.** After he said that what did you do?
 4 **A. Nothing. I just stepped back. He went to the**
 5 **register. Grabbed the money. My employee he came**
 6 **towards the front.**
 7 **Q.** Is that the individual we were speaking Piyadasa
 8 the 67-year old?
 9 **A. Yes.**
 10 **Q.** What happened --
 11 **A. He came and pointed the gun start did doing like**
 12 **that.**
 13 **Q.** Who did the defendant?
 14 **A. Yes.**
 15 **Q.** So the defendant pointed the gun?
 16 **A. He was like stop there I'm going to shoot you if**
 17 **you move.**
 18 **Q.** Who did he say that to?
 19 **A. To my employee.**
 20 **Q.** Piyadasa?
 21 **A. Yes.**
 22 **Q.** Did you see him point the gun at Piyadasa?
 23 **A. Yes, I did see.**
 24 **Q.** What you just said the defendant said don't move
 25 or I'll shoot you?

1 **A. Yes. That's what he kept saying. If you move**
 2 **I'm going to shoot.**
 3 **Q.** Was that being said to Piyadasa?
 4 **A. Yes.**
 5 **Q.** What happened at that point in time?
 6 **A. Then we stayed there. He grabbed the money and**
 7 **ran.**
 8 **Q.** What did Piyadasa do when the defendant pointed
 9 the gun at him and told him to stay don't move?
 10 **A. Nothing. He was just, no, man it's okay.**
 11 **Q.** You're indicating right now you have your hands
 12 in the air.
 13 **A. He said don't worry, it's okay.**
 14 **Q.** Did Piyadasa have his hands up in the to air?
 15 **A. Yes.**
 16 **Q.** Did you have your hands up?
 17 **A. No.**
 18 **Q.** What were you doing?
 19 **A. I was standing like nearby the register.**
 20 **Q.** Did you back up?
 21 **A. Yeah. I backed up.**
 22 **Q.** Why did you back up?
 23 **A. Because he told me he was going to shoot me. I**
 24 **said take whatever you want.**
 25 **Q.** You backed up because you didn't want to get

1 shot?

2 **A. Yes.**

3 **Q.** Then what happened as you back up and Piyadasa

4 has hands in the air?

5 **A. Then he grabbed the money and ran outside.**

6 **Q.** The defendant grabbed the money?

7 **A. Yeah. He grabbed whatever money he had all the**

8 **money and ran.**

9 **Q.** Was he still holding the firearm?

10 **A. Yes. He hold it like this and grabbing the other**

11 **hand reach to the money. He grabbed the money and put**

12 **it in his pocket and then he left.**

13 **Q.** Okay. For the record you are indicating with

14 your right hand the motion of holding a gun and with

15 your left hand a motion of grabbing money out of the

16 register?

17 **A. Yes.**

18 **Q.** Is that in fact what you saw the defendant do?

19 **A. Yes.**

20 **Q.** How much money did you have in the register?

21 **A. It was close to \$2,000.**

22 **Q.** Did the defendant grab that money out of the

23 drawer?

24 **A. Yes. He grabbed it from there, yes.**

25 **Q.** Was all that in cash U.S. currency?

1 **A. Yes.**

2 **Q.** You are approximating the amount of \$2,000 that

3 was in that drawer?

4 **A. Yes.**

5 **Q.** What happened after the defendant grabbed the

6 money and left your business?

7 **A. I ran behind him to see what I actually -- I want**

8 **to see the car what car he is going to get in and go. I**

9 **ran behind him. They parked the car behind the houses**

10 **back there. They park the car over there. You got in**

11 **the car and they start leaving. I got the number.**

12 **There was a guy behind me and they gave me the pen and I**

13 **wrote the pen -- the car number on my hand.**

14 **Q.** The license plate number?

15 **A. The license plate number, yes.**

16 **Q.** You saw the defendant run to the vehicle?

17 **A. To the vehicle, yes, there was already one guy**

18 **waiting in the car.**

19 **Q.** What did the car look like?

20 **A. It was a blue car old.**

21 **Q.** Old?

22 **A. Blue color.**

23 **Q.** Do you remember how many doors?

24 **A. Four doors. I think it was four.**

25 **Q.** You're not sure?

1 **A. I'm not sure.**

2 **Q.** You saw two individuals in the car?

3 **A. Yeah, one guy sitting in the driver's seat bald**

4 **guy and one black girl sitting in the back.**

5 **Q.** Where did the defendant enter that vehicle?

6 **A. The front seat.**

7 **Q.** Passenger seat?

8 **A. Passenger seat.**

9 **Q.** The white male was driving?

10 **A. Yes.**

11 **Q.** Who drove away from there?

12 **A. White male.**

13 **Q.** With the defendant in the vehicle?

14 **A. No. They was going to drive. When they saw me**

15 **they stopped. They was going to do something. Then**

16 **more people come behind me and then they drove.**

17 **Q.** That entire time the white male was driving the

18 vehicle and the defendant was in the front passenger

19 seat?

20 **A. Yes.**

21 **Q.** You said you got the license plate from that

22 vehicle do you remember that license plate?

23 **A. Not right now.**

24 **Q.** Did you write a voluntary statement in this case?

25 **A. Yes.**

1 **Q.** Would looking at the voluntary statement help

2 refresh your recollection as to the license plate?

3 **A. Yes.**

4 **Q.** If you get to look at that would that help you

5 remember?

6 **A. Yes.**

7 **MR. DICKERSON:** May I approach, Your Honor?

8 **THE COURT:** Yes.

9 **BY MR. DICKERSON:**

10 **Q.** Took a look at the statement and see if that

11 refreshes your recollection. Go ahead and flip through

12 that and look up at me.

13 **A. Yes.**

14 **Q.** Does that refresh your recollection?

15 **A. Yes.**

16 **Q.** What's the license plate number?

17 **A. 79E092.**

18 **Q.** It was a Nevada license plate?

19 **A. Yes.**

20 **Q.** When he was inside your store did you see him

21 touch anything?

22 **A. Yeah. He touched some cookies Oreo. He grabbed**

23 **the Swishers I give him with his hand and left it there.**

24 **Q.** The Oreos were in a package?

25 **A. It was in a package, yes.**

1 Q. Did the defendant touch the package?
 2 A. **He just checked it and put it back.**
 3 Q. When he left the store did he leave the package
 4 of Oreo cookies behind?
 5 A. **Yes.**
 6 Q. Did you see what came of the package of Oreo
 7 cookies?
 8 A. **Excuse me?**
 9 Q. Did you see what happened with the package of
 10 Oreo cookies?
 11 A. **They police came and checked the video and he**
 12 **touched it. They grabbed it and took fingerprint out of**
 13 **it.**
 14 Q. You say the police took fingerprints off the
 15 package of Oreo cookies?
 16 A. **Yes.**
 17 Q. Do you have a surveillance system?
 18 A. **Yes.**
 19 Q. You're obviously familiar with that surveillance
 20 system?
 21 A. **Yes.**
 22 Q. Have you reviewed the images specifically the
 23 video of the robbery that occurred at the USA Smoke Shop
 24 on February 22nd, 2017 at 3:25 p.m.?
 25 A. **Yes, I reviewed it.**

1 MR. DICKERSON: Showing to defense counsel
 2 State's Proposed Exhibits 12 through 15 and 24. If I
 3 may approach, Your Honor?
 4 THE COURT: Yes.
 5 BY MR. DICKERSON:
 6 Q. Please take a look at State's Proposed Exhibits
 7 12 through 15. Tell me if you recognize those images?
 8 A. **I recognize them.**
 9 Q. Please look through all of them, sir. Do you
 10 recognize all of those?
 11 A. **Yes.**
 12 Q. What do you recognize them as?
 13 A. **When he was coming in he had a drink an Arizona**
 14 **Tea and he put it outside in the trash.**
 15 Q. Do you recognize the still images from your
 16 surveillance system?
 17 A. **Yes.**
 18 Q. The individual depicted is the defendant that
 19 you've identified here in court?
 20 A. **Yes.**
 21 Q. Does this depict the robbery as occurred?
 22 A. **Yes.**
 23 MR. DICKERSON: State would move for the
 24 admission of State's Proposed Exhibits 12 through 15.
 25 THE COURT: Any objection?

1 MR. LOGAN: No objection for the purpose of
 2 prelim.
 3 THE COURT: It will be admitted for the
 4 preliminary hearing only.
 5 BY MR. DICKERSON:
 6 Q. State's Proposed Exhibit 12 what are we seeing
 7 there?
 8 A. **He was drinking the Arizona Tea before he put it**
 9 **in the trash.**
 10 Q. Is this outside your store?
 11 A. **Yes.**
 12 Q. Is this before you were robbed?
 13 A. **Yes, it was before when he came in.**
 14 Q. State's Proposed Exhibit 13, what are we seeing
 15 there?
 16 A. **That's when he started grabbing the money.**
 17 Q. When you say he are you referring to the
 18 defendant?
 19 A. **Yes.**
 20 Q. That's the defendant grabbing the money out of
 21 your register?
 22 A. **Yes.**
 23 Q. What is that in his right hand?
 24 A. **That's the gun. The Glock semiautomatic he was**
 25 **holding.**

1 Q. State's 14 and 15. What's depicted in 14?
 2 A. **14 is him standing waiting in line for his turn.**
 3 Q. And 15?
 4 A. **When he was entering the business.**
 5 Q. I also have State's Proposed Exhibit 24. What is
 6 that, sir?
 7 A. **That's surveillance from the store?**
 8 Q. This is actually surveillance video?
 9 A. **Yes.**
 10 Q. It's here on disk?
 11 A. **Yes.**
 12 Q. How do you know that's the surveillance video
 13 from your store?
 14 A. **Because I showed the police and then they made a**
 15 **copy.**
 16 Q. Did you review the surveillance today before
 17 testifying?
 18 A. **Yes.**
 19 Q. In reviewing the videotape did you mark the disk
 20 with any identifying marks?
 21 A. **I put my name on it, yes.**
 22 Q. Is your name here on State's Proposed Exhibit 24?
 23 A. **Yes.**
 24 Q. What is it?
 25 A. **It's here.**

1 **Q.** Up at the top:
2 MR. DICKERSON: States moves for admission
3 of State's Proposed Exhibit 24?
4 THE COURT: Are you going to publish it?
5 MR. DICKERSON: I will publish it.
6 THE COURT: Any objection?
7 MR. LOGAN: No objection for the purpose of
8 prelim.
9 THE COURT: It will be admitted for the
10 purposes of the preliminary hearing.
11 MR. DICKERSON: Thank you.
12 BY MR. DICKERSON:
13 **Q.** I'm February 22nd, 2017, Wednesday at 15:23:11.
14 Sir, if you recognize anybody that's depicted in this
15 image what I'll ask you to do it tell me to stop when
16 you recognize the individual that you recognize here in
17 to court today. Okay.
18 **A. Yes. I recognize him.**
19 **Q.** I'm stopping the video at 15:32:16. Who is it
20 that you're identifying, sir?
21 **A. The same individual that came in the store to rob**
22 **before entering the business.**
23 **Q.** I see two individual depicted on the screen.
24 **A. The one drinking from the can.**
25 **Q.** On the left side of the screen?

1 **A. Yes.**
2 **Q.** Is that the defendant?
3 **A. Yes.**
4 **Q.** I'm going to play it from this point. Stopping
5 here at 15:23:28 specifically what location are we
6 looking at right here?
7 **A. Excuse me.**
8 **Q.** What is the location that we are seeing?
9 **A. The entrance to the business.**
10 **Q.** To your business?
11 **A. Yes.**
12 **Q.** What is that trash can that we just saw the
13 defendant by?
14 **A. He was drinking a can of Arizona Tea. That's in**
15 **front of the empty suite.**
16 **Q.** That is the trash can?
17 **A. Yes.**
18 **Q.** At 15:23:34 did we just see the defendant enter
19 your business USA Smoke Shop?
20 **A. Yes.**
21 MR. DICKERSON: For the record that the
22 video marked channel 5, 20170222152248.
23 BY MR. DICKERSON:
24 **Q.** The video is marked 2/22, 2017, Wednesday
25 15:23:04. What are we seeing here?

1 **A. I was helping the customer on the register.**
2 **Q.** You saw yourself depicted in the video?
3 **A. Yes.**
4 **Q.** What are you wearing in this video?
5 **A. Red hat and red T-shirt.**
6 **Q.** Is that you in the hat just appeared back into
7 the screen here at 15:23:30?
8 **A. Yes, sir.**
9 **Q.** Behind the counter?
10 **A. Yes.**
11 **Q.** I am going to stop the video here at 15:23:40.
12 It appears there are several individuals inside your
13 business?
14 **A. Yes.**
15 **Q.** Any individuals that you recognize?
16 **A. Yes. The defendant has the gray beanie and black**
17 **jacket.**
18 **Q.** The individual that appears to be walking behind
19 the man in the black T-shirt, black pants with the white
20 stripe down the pants?
21 **A. Yes.**
22 **Q.** Playing the video from this point. Stopping at
23 15:25:08. What are we seeing?
24 **A. That's when he was touching the cookies.**
25 **Q.** That's the defendant touching a package of Oreo

1 cookies?
2 **A. Yes.**
3 **Q.** Stopping the video at 15:26:01. It appears
4 there's an individual on the left-hand side of the
5 screen; is that right?
6 **A. Yes.**
7 **Q.** Who is that individual?
8 **A. That's the defendant?**
9 **Q.** On the left-hand side of the screen?
10 **A. Yes.**
11 **Q.** All the way at the edge by the 7Up machine?
12 **A. Oh, that's the employee that works there.**
13 **Q.** Piyadasa?
14 **A. Piyadasa.**
15 **Q.** The 67-year old?
16 **A. Yes.**
17 **(Playing the video.)**
18 **Q.** Stopping the video at 15:26:33. You indicated
19 that that was your employee?
20 **A. Yes.**
21 **Q.** In gray?
22 **A. Yes.**
23 **Q.** Piyadasa?
24 **A. That's Piyadasa.**
25 **Q.** Angulugaha Piyadasa?

1 **A. That's right.**
 2 **Q.** You are the individual in the red hat and red
 3 shirt?
 4 **A. Yes.**
 5 **Q.** The individual that just exited the screen is
 6 who?
 7 **A. That's the defendant, yeah.**
 8 **Q.** We just saw you exit the screen is that when you
 9 went and followed the defendant?
 10 **A. That's when I followed him, yeah.**
 11 **Q.** Just so we are clear we saw on the video the
 12 defendant takes the cash from your register?
 13 **A. Yes.**
 14 **Q.** And exits your business with that cash?
 15 **A. Yes.**
 16 MR. DICKERSON: State will pass.
 17 THE COURT: Defense?
 18
 19 CROSS-EXAMINATION
 20 BY MR. LOGAN:
 21 **Q.** Mr. Singh?
 22 **A. Yes.**
 23 **Q.** Good afternoon. Do you recall after this
 24 happened the police came and spoke with you?
 25 **A. Yes.**

1 **Q.** You spoke to them while this event was all fresh
 2 in your mind?
 3 **A. Mm-hmm.**
 4 **Q.** And you filled out a voluntary statement when it
 5 was fresh in your mind?
 6 **A. Yes.**
 7 **Q.** Do you recall telling the police a description of
 8 the gentleman that was in your store?
 9 **A. Yeah. I give a description.**
 10 **Q.** What was the height you described the defendant
 11 as being or the person in the store as being?
 12 **A. It was like 5'8", 5'9". 5'7" to 5'9".**
 13 **Q.** It was possible you said 5'7"?
 14 **A. Yes.**
 15 **Q.** Do you recall what weight you wrote in your
 16 statement?
 17 **A. Weight I told them around 180.**
 18 **Q.** So 5'7", 180 pound man was in your store?
 19 **A. Yes.**
 20 **Q.** You remember this clearly?
 21 **A. Yes.**
 22 **Q.** Do you remember this person that was in front of
 23 you clearly? This person on this day who robbed your
 24 store do you remember him clearly?
 25 **A. Yeah, I remember him.**

1 **Q.** Do you remember anything distinctive about their
 2 face just from memory?
 3 **A. His nose and big lips.**
 4 **Q.** Were they pierced?
 5 **A. No, not pierced.**
 6 **Q.** What about his nose?
 7 **A. He's got a thick nose.**
 8 **Q.** Was his nose pierced?
 9 **A. Not pierced.**
 10 **Q.** Do you remember his face?
 11 **A. Yes, I remember his face.**
 12 **Q.** Any tattoos on his face?
 13 **A. No.**
 14 **Q.** Were his ears pierced?
 15 **A. No.**
 16 **Q.** Do you remember his neck?
 17 **A. Neck, he had a jacket.**
 18 **Q.** Was his neck tattooed?
 19 **A. No.**
 20 **Q.** What about his hands?
 21 **A. I saw his hands.**
 22 **Q.** Anything distinctive about his hands?
 23 **A. Nothing.**
 24 **Q.** Are you sure of that?
 25 **A. Yes.**

1 **Q.** Any tattoos on his hands?
 2 **A. I'm not clear about that.**
 3 **Q.** Did you receive a subpoena to come here today?
 4 **A. Yes.**
 5 **Q.** Did you speak to anybody from the district
 6 attorney's office or police department about this case
 7 prior to today?
 8 **A. No.**
 9 **Q.** Did you speak to anybody about today?
 10 **A. I just came here and gave my information.**
 11 **Q.** No one from the district attorney's office or the
 12 police department spoke to you about this case?
 13 **A. Nobody said nothing.**
 14 **Q.** Did anyone show you any photographs?
 15 **A. No.**
 16 **Q.** No?
 17 **A. Like photographs? I was there. I saw**
 18 **photographs, yes.**
 19 **Q.** So someone did speak to you about this case
 20 today?
 21 **A. They did.**
 22 **Q.** You were incorrect a moment ago when you said no
 23 one?
 24 **A. I was incorrect. I saw photographs.**
 25 **Q.** Those photographs they showed you were any of

1 those photographs on a cellphone?
 2 **A. No. It was paper.**
 3 **Q.** Who showed you those photographs?
 4 **A. Mr. -- I don't know his name.**
 5 **Q.** Dickerson? Was anybody else there?
 6 **A. Yes. His partner.**
 7 **Q.** What were the photographs they showed you?
 8 **A. Photographs of the defendant.**
 9 **Q.** The photographs of the defendant?
 10 **A. Yes.**
 11 **Q.** You said is it Piyadasa?
 12 **A. Yeah, his name is Piyadasa. It's a long name.**
 13 **Q.** You don't remember his last name?
 14 **A. It's a nickname we call him Nehal or Nemo.**
 15 **Q.** Did you ever see his birth certificate?
 16 **A. No. Why I need to see a birth certificate for?**
 17 **Q.** You said there was a white male that you
 18 recognized in the vehicle?
 19 **A. Yes.**
 20 **Q.** Do you see that person in the box today sitting
 21 back here?
 22 **A. I don't remember.**
 23 **Q.** You don't remember seeing him?
 24 **A. It was like so fast. He got in and they drove.**
 25 **I only saw a white male.**

1 **Q.** You said that the gentleman that was in the store
 2 that held the gun to you it was a semiautomatic black
 3 Glock?
 4 **A. Yes. I don't much about guns. But I think it**
 5 **was that kind of gun.**
 6 **Q.** You don't know much about guns?
 7 **A. Say like most cops carry. I had the idea it was**
 8 **kind of the same gun.**
 9 **Q.** But you're sure it was semiautomatic black Glock?
 10 **A. Yes.**
 11 **Q.** You don't know much about guns but you know --
 12 **A. I know what's a semiautomatic and what's a**
 13 **revolver but if you ask me like more knowledge about**
 14 **guns I don't know much.**
 15 THE COURT: Can counsel approach, please?
 16 (Off the record.)
 17 BY MR. LOGAN:
 18 **Q.** Is it possible that the semiautomatic black Glock
 19 was a toy?
 20 **A. No, it was not a toy.**
 21 **Q.** How do you know that?
 22 **A. I know it.**
 23 **Q.** How?
 24 **A. I saw it. I know. It wasn't a toy.**
 25 **Q.** Your testimony it was a semiautomatic black

1 Glock --
 2 **A. Why would he say I'm going to shoot you if it was**
 3 **a toy. You can't shoot with a toy.**
 4 **Q.** Exactly you can't shoot with a toy.
 5 He said it was a blue car four-door. What kind
 6 of car was it?
 7 **A. I don't remember that.**
 8 **Q.** Do you remember Ford or Buick?
 9 **A. Something like a Buick.**
 10 **Q.** It was a Buick?
 11 **A. Yes.**
 12 **Q.** You sure of that just as sure as you are a
 13 automatic black Glock?
 14 **A. Yes, that's right.**
 15 **Q.** You said that you had not been for a couple of
 16 days prior to that day?
 17 **A. Yes. I work the other side too. I was there in**
 18 **the morning because I had to work in the morning there.**
 19 **Q.** Was the store closed for those couple days?
 20 **A. No. The store was in business but I didn't get**
 21 **time to go there. I have other jobs.**
 22 **Q.** There was \$2,000 left in the cash register?
 23 **A. Yes. He have to pay the delivery.**
 24 **Q.** So when you are not there they just leave the
 25 money in the cash register?

1 **A. Yes, because they pay cash to the delivery. I am**
 2 **not there.**
 3 **Q.** At 3:30 in the afternoon the deliveries had not
 4 yet been made in this case?
 5 **A. Not yet, no.**
 6 **Q.** What time do deliveries get made?
 7 THE COURT: Seriously? Can you move it
 8 along?
 9 MR. LOGAN: We will, Your Honor.
 10 THE COURT: I haven't seen evidence so far.
 11 THE WITNESS: They come in the evenings
 12 mostly.
 13 BY MR. DICKERSON:
 14 **Q.** You said the man came in the store and he took
 15 money from you?
 16 **A. Yes, from the register.**
 17 **Q.** He didn't take any money from Piyadasa?
 18 **A. He didn't take any from Piyadasa.**
 19 MR. LOGAN: No further questions.
 20 THE COURT: Any redirect?
 21 MR. DICKERSON: Yes, Your Honor.
 22
 23 REDIRECT EXAMINATION
 24 BY MR. DICKERSON:
 25 **Q.** Sir, you said we had spoken and before the

1 preliminary hearing today; is that right?
 2 **A. Yes.**
 3 **Q.** We spoke in the back room?
 4 **A. Yes.**
 5 **Q.** You said I showed you pictures; is that right?
 6 **A. Yes.**
 7 **Q.** Those pictures that I showed you were those the
 8 same pictures that we looked --
 9 **A. It was the same ones that you showed me in here.**
 10 **Q.** All the ones that I showed you here on the stand?
 11 **A. Yes.**
 12 **Q.** That ere moved into evidence?
 13 **A. Yes.**
 14 **Q.** No other pictures?
 15 **A. No.**
 16 **Q.** Okay. When you said I showed you pictures of the
 17 defendant, you were referring to the fact the defendant
 18 robbed you that's who was depicted in the surveillance
 19 images?
 20 **A. Yes. It was pictures from surveillance.**
 21 **Q.** Okay.
 22 **A. I know that's from my surveillance, yes.**
 23 **Q.** Did I at any point in time indicate to you who
 24 the individual was that robbed you?
 25 **A. No. I know who the individual is but you didn't**

1 **tell me nothing.**
 2 **Q.** When you identified the defendant here today as
 3 the individual that would be based solely upon your own
 4 memory and nothing that I've told you?
 5 **A. That's my own knowledge. I remember his face.**
 6 **Q.** You had indicated you weren't sure about the car
 7 at first; is that right?
 8 **A. Yes.**
 9 **Q.** When you described it as a Buick were --
 10 **A. It was an old a car. That's why it was hard to**
 11 **tell if it was a Buick or Chevrolet or something like**
 12 **that.**
 13 **Q.** So it was a Buick type car? You can't tell the
 14 Court for sure it as a Buick?
 15 **A. No. I'm not sure.**
 16 **Q.** When you say Glock are you saying that's 100
 17 percent a Glock gun?
 18 **A. Yeah. 100 percent.**
 19 **Q.** You're very familiar with firearms then?
 20 **A. Yes. Especially small firearms not large ones.**
 21 **Q.** You know firearms well?
 22 **A. Yes, small ones.**
 23 **Q.** Do you have firearms of your own?
 24 **A. Yes. I used to have a Smith and Wesson.**
 25 **Q.** How long ago?

1 **A. Four years ago.**
 2 **Q.** That was a revolver?
 3 **A. Yes.**
 4 **Q.** The gun the defendant pointed at you do you have
 5 any doubt that was a gun?
 6 **A. This was a black Glock.**
 7 **Q.** Did you think this was a toy gun when you saw it?
 8 **A. No. I know toy guns what they look like. We**
 9 **sell them in toy stores to like a bb gun I know what a**
 10 **bb gun is.**
 11 **Q.** You believed --
 12 **A. It was a real a gun not a toy.**
 13 **Q.** So you believed the gun that was pointed at you
 14 was real?
 15 **A. It was 100 percent a real gun. It was going to**
 16 **shoot.**
 17 MR. DICKERSON: State would pass the
 18 witness.
 19 MR. LOGAN: Just a couple points of
 20 clarification.
 21
 22 RECROSS-EXAMINATION
 23 BY MR. LOGAN:
 24 **Q.** Were you shown these photographs?
 25 **A. You mean Mr. Dickerson?**

1 **Q.** Yes.
 2 **A. In the office back there.**
 3 **Q.** In that room outside of the courtroom?
 4 **A. Yes.**
 5 **Q.** Who was in that room?
 6 **A. Him and his partner.**
 7 **Q.** Anybody else in the room?
 8 **A. My employee.**
 9 **Q.** Your employee was in the room also?
 10 **A. Piyadasa. Nemo.**
 11 **Q.** Anybody else in the room?
 12 **A. No.**
 13 **Q.** Do you recall when I was asking you questions you
 14 said you don't know much about guns?
 15 **A. Like guns means small guns I call pistols or**
 16 **revolver --**
 17 **Q.** Do you recall telling me --
 18 **A. Guns in my are country bigger guns not like small**
 19 **revolvers or pistols.**
 20 **Q.** Do you recall when I was asking you telling me
 21 you didn't know much about guns?
 22 **A. Guns I said bigger guns --**
 23 **Q.** Yes or no?
 24 MR. DICKERSON: Your Honor, asked and
 25 answered.

1 THE COURT: Sustained.
 2 BY MR. LOGAN:
 3 Q. You are now saying you are an expert in small
 4 guns?
 5 A. **Yeah, I had a revolver. Yes, small guns I know.**
 6 Q. Do you recall that when I was asking you said you
 7 don't know whether it was a revolver or semiautomatic?
 8 A. **I said semiautomatic.**
 9 Q. That's incorrect.
 10 A. **Semiautomatic not a revolver.**
 11 Q. You're 100 percent sure it was Glock not a bb
 12 gun?
 13 A. **Yes, 100 percent.**
 14 Q. 100 percent?
 15 A. **Yes.**
 16 Q. Not a bb gun not a toy?
 17 A. **No.**
 18 MR. LOGAN: No further questions.
 19 THE COURT: Thank you, sir. You may step
 20 down. Next witness?
 21 MR. SCHWARTZ: State calls Norma Escobar.
 22 THE CLERK: Do you solemnly swear the
 23 testimony you are about to give be the truth, the whole
 24 truth, and nothing but the truth so help you God?
 25 THE WITNESS: I do.

1 THE CLERK: You may be seated. Please state
 2 your name for the record.
 3 THE WITNESS: Norma Escobar.
 4 THE CLERK: Spell your first and last name.
 5 THE WITNESS: N-O-R-M-A, E-S-C-O-B-A-R.
 6 THE COURT: You have a nice soft voice.
 7 Make sure you speak into the microphone.
 8
 9 DIRECT EXAMINATION
 10 BY MR. SCHWARTZ:
 11 Q. Ma'am, where do you work?
 12 A. **Texas Liquor.**
 13 Q. Say that again?
 14 A. **Texas Liquor.**
 15 Q. Is that here in Las Vegas, Clark County, Nevada?
 16 A. **Yes.**
 17 Q. 5020 Broadbent Boulevard?
 18 A. **Yes.**
 19 Q. Are you a store clerk there?
 20 A. **Yes.**
 21 Q. I want to direct your attention to February 22nd,
 22 2017, at approximately 10:30 at night. Did something
 23 happen that night?
 24 A. **Yes.**
 25 Q. What happened?

1 A. **I was with my job like a regular basis. Then**
 2 **like someone came in. He was like in for nonsense and**
 3 **he took a gun and took everything.**
 4 Q. Where were you standing when the individual came
 5 inside the liquor store.
 6 A. **Behind the register.**
 7 Q. Did you look up at him when he came inside?
 8 A. **Yes.**
 9 Q. Could you describe him?
 10 A. **He was wearing like a leather jacket brown-ish.**
 11 **He had a beanie on. He was black.**
 12 Q. As he came in what did he do?
 13 A. **He was acting weird. He was like kind of like**
 14 **nervous weird.**
 15 Q. Did he say anything?
 16 A. **He asked for a bottle.**
 17 Q. Pardon?
 18 A. **He asked me for like a bottle and Swishers but**
 19 **was acting weird.**
 20 Q. His demeanor was weird to you?
 21 A. **Yes. I know my regular customers.**
 22 Q. He wasn't a regular customer?
 23 A. **No, he wasn't.**
 24 Q. Did you provide the Swishers and whatever else he
 25 asked for?

1 A. **Yeah.**
 2 Q. What happened when you did that?
 3 A. **He gave me 20 when he pay and is like when he**
 4 **took the gun and took the money from the register.**
 5 Q. Did you have to get him change for the 20?
 6 A. **No. No. He took everything.**
 7 Q. Let's break this down. He hands you 20?
 8 A. **Yeah.**
 9 Q. What did you do?
 10 A. **Open the register.**
 11 Q. Okay. What does he do?
 12 A. **That's when you like pointed the gun and took**
 13 **everything from the register.**
 14 Q. Where was the gun pointed?
 15 A. **To me.**
 16 Q. What color was the gun?
 17 A. **Black.**
 18 Q. Do you know the difference between a
 19 semiautomatic and a revolver?
 20 A. **No.**
 21 Q. That's fine. Did he say anything to you at that
 22 point when the gun was pointed at you?
 23 A. **He said something but I didn't pay attention.**
 24 Q. Why not?
 25 A. **I was in shock at that time. I just**

1 Q. You were in shock?
 2 A. Yeah.
 3 Q. Approximately how much was taken from the
 4 register?
 5 A. Like 200.
 6 Q. That was taken by the individual with the gun?
 7 A. Yeah.
 8 Q. What did he do after he took the money?
 9 A. He was running and then I guess dropped some
 10 money picked it up then he left.
 11 Q. He left the store?
 12 A. Yeah.
 13 Q. Did you see what kind of car he got into?
 14 A. No.
 15 Q. I'm showing you State's Proposed Exhibits 16, 17,
 16 18, and 19.
 17 MR. SCHWARTZ: If I can approach the
 18 witness?
 19 THE COURT: Okay.
 20 BY MR. SCHWARTZ:
 21 Q. Ma'am, if you can look at these four photos
 22 State's Proposed Exhibits 16, 17, 18, and 19. Now, do
 23 you recognize these images?
 24 A. Yes.
 25 Q. Do you recognize them as images from your

1 surveillance system?
 2 A. Yes.
 3 Q. Does these appear to be fair and accurate images
 4 of the man who robbed you on that date?
 5 A. Yes.
 6 MR. SCHWARTZ: State would moved to admit
 7 State's Proposed Exhibits 16 through 19.
 8 THE COURT: Defense?
 9 MR. LOGAN: No objection for the purpose of
 10 prelim.
 11 THE COURT: It will be admitted for purposes
 12 of preliminary hearing only.
 13 BY MR. SCHWARTZ:
 14 Q. Showing you -- focussing on State's 16. You
 15 describe for us the dark colored leather jacket along
 16 with the beanie?
 17 A. Mm-hmm.
 18 Q. And that's consistent with the picture?
 19 A. Yes.
 20 Q. State's 19 what are we looking at here?
 21 A. That's when he like pointed the gun and he was
 22 taking all the money from the register.
 23 Q. In one hand he had what?
 24 A. The gun and the other hand he just reached to the
 25 register.

1 Q. Thank you.
 2 MR. SCHWARTZ: Nothing further.
 3 THE COURT: Defense?
 4 MR. LOGAN: Just a few quick questions.
 5 THE COURT: Can counsel approach?
 6 (Discussion held off the record.).
 7 THE COURT: Back on the record. I apologize
 8 for the delay.
 9
 10 CROSS-EXAMINATION
 11 BY MR. LOGAN:
 12 Q. Miss Escobar, it's pretty scary, wasn't it?
 13 A. It was. The is the first time this happened to
 14 me.
 15 Q. You were in shock?
 16 A. Yes.
 17 Q. All this going on your adrenaline is pumping; is
 18 that accurate?
 19 A. Yes.
 20 Q. The blood is pounding?
 21 A. Yeah.
 22 Q. And the heart is pounding?
 23 A. Yes.
 24 Q. Do you remember the face of the man who was --
 25 A. Yeah. I can recognize him.

1 Q. Do you remember anything distinctive about his
 2 face?
 3 A. I don't know how to describe it but when I see
 4 him I know who he is. I know who he was.
 5 Q. What can you tell me about his face?
 6 A. I don't know like what else can I tell you?
 7 Q. Any tattoos?
 8 A. No.
 9 Q. Do you remember his nose?
 10 A. No. I remember his whole face. I didn't pay
 11 attention to the little things.
 12 Q. You don't remember if his ears were pierced?
 13 A. No. I remember the way he walks.
 14 Q. You don't remember a tattoo around his eye?
 15 A. No.
 16 Q. What about his neck? Do you remember seeing his
 17 neck?
 18 A. No. He was wearing a leather jacket and beanie
 19 any.
 20 Q. Was he wearing a turtle beck?
 21 A. I didn't pay any attention to that.
 22 Q. Do you remember his hands?
 23 A. Yes. He wasn't wearing glove or anything.
 24 Q. Did he have any tattoos on his hands?
 25 A. I don't know.

1 **Q.** You were subpoenaed to come here today?
 2 **A. Yes.**
 3 **Q.** Did you talk to anybody either with the district
 4 attorney's office or police about your testimony today?

5 **A. No.**

6 **Q.** Did you talk anybody this morning about this
 7 case?

8 **A. No.**

9 **Q.** Did anyone show you any photographs today?

10 **A. No.**

11 **Q.** At no point this morning did you speak with
 12 either of these two gentleman out in the hallway?

13 **A. No.**

14 MR. LOGAN: No further questions.

15 THE COURT: Any redirect?

16

17 REDIRECT EXAMINATION

18 BY MR. SCHWARTZ:

19 **Q.** Miss Escobar, I did speak to you briefly in the
 20 hallway when you got here?

21 **A. Mm-hmm.**

22 **Q.** Did we talk really much about anything?

23 **A. We didn't talk about the case. You called me to**
 24 **come here.**

25 **Q.** Talk about how you were late?

1 **A. Yeah. I get off work at 2:00. I didn't wake up**
 2 **and they were calling me to come.**

3 MR. SCHWARTZ: No further questions.

4 THE COURT: Thank you, ma'am. You can step
 5 down.

6 Next witness?

7 MR. SCHWARTZ: Just for the record because
 8 we did make a record about in custodies being here for
 9 the beginning. The in custodies were taken away prior
 10 to cross-examination by defense. The state would note
 11 and object that the defendant was taken with them.
 12 There was no Sergeant motion ever filed to prevent the
 13 defendant from being present. We didn't object at the
 14 time at the bench but we wanted to make the record
 15 clear.

16 THE COURT: Defense have anything to say?

17 MR. BANKS: We were prepared to have
 18 everybody sit here for the duration of the prelim that
 19 was our position.

20 THE COURT: Just for the record, my chambers
 21 has been receiving phone calls from the jail regarding
 22 the whereabouts of all of the in custodies. I asked at
 23 the bench once the state had rested with Ms. Escobar if
 24 I can release the inmates back to the jail and everybody
 25 agreed. Thank you.

1 MR. SCHWARTZ: Thank you.

2 THE COURT: Good morning.

3 THE WITNESS: Good morning.

4 THE CLERK: Do you solemnly swear the
 5 testimony you are about to give be the truth, the whole
 6 truth, and nothing but the truth so help you God?

7 THE WITNESS: I do.

8 THE CLERK: You may be seated. Please state
 9 your name for the record.

10 THE WITNESS: Gayle Johnson.

11 THE CLERK: Spell your first and last name.

12 THE WITNESS: G-A-Y-L-E, J-O-H-N-S-O-N.

13 THE COURT: Go ahead.

14

15 DIRECT EXAMINATION

16 BY MR. SCHWARTZ:

17 **Q.** How are you employed?

18 **A. I am a forensic scientist with the Las Vegas**
 19 **Metropolitan Police Department assigned to the latent**
 20 **print detail.**

21 **Q.** What type of training and experience do you have
 22 to be qualified to do that position?

23 **A. Well, I have a Bachelors of Science degree in**
 24 **natural science with an emphasis in chemistry. I do**
 25 **have 20 years working as a chemist as well as when I was**

1 **promoted to the forensic scientist training I completed**
 2 **an intensive two-year training program.**

3 **Q.** How long have you been with the department?

4 **A. In July six years.**

5 **Q.** All those in the latent fingerprint print
 6 division?

7 **A. I have ten years with the Las Vegas Metropolitan**
 8 **Police Department where I was for about four I worked as**
 9 **an account technician at the jail.**

10 **Q.** Were you asked to do an AFIS admin comparison in
 11 a case that you're here to testify today about?

12 **A. I was.**

13 **Q.** That case number event 170222-2480.

14 **A. May I refer to the report?**

15 **Q.** Yes. Would that refresh your recollection?

16 **A. Yes. Ending 1702222480, yes.**

17 **Q.** Is this a situation where you're assigned this
 18 case or is this just sort of as these need to be
 19 conducted you or other analysts go pick up the
 20 assignment and start working on this?

21 **A. Yes. I was assigned this case. It is classified**
 22 **as an administrative AFIS case.**

23 **Q.** When you were first assigned the case what did
 24 you first do?

25 **A. Once I know this was my responsibility I will**

1 retrieve the packet which contains the lift cards form
 2 the secure storage in our facility. I will transfer
 3 them to my custody. Once I have done that I open the
 4 packet and I will look at all the card that are
 5 considered evidence in that packet and I will mark each
 6 cards and determine which contain the admin AFIS
 7 suitable table latent prints?

8 Q. When you determined what is AFIS suitable what
 9 does that mean?

10 A. Well, in terms of our policy we have criteria
 11 that certain aspects of the print has to meet before we
 12 are able to enter that print into the database.

13 Q. In this case were there some prints you looked
 14 that were AFIS suitable?

15 A. There were eight lift cards that were submitted
 16 as evidence. Five of those lift cards that did contain
 17 administrative AFIS suitable prints.

18 Q. Did you at the conclusion of your work create a
 19 report?

20 A. I did.

21 Q. Is your report organized in a specific way as
 22 such there's a lab item number, a card numbers,
 23 description, and your results?

24 A. That's correct.

25 Q. If we broke it down the first print you looked

1 would be classified as card number what?

2 A. Q1.

3 Q. So you would take that lift card if it was
 4 suitable for AFIS you would then do what?

5 A. What I would do as far as in particular specific
 6 to this card Q1A there was one suitable latent print.
 7 It is entered into the database. Once it's entered into
 8 the database I encode it so I am telling the computer
 9 what to look for. Then I let it run its search and then
 10 it will bring back a candidate list for me with
 11 information that is relative to that specific print.

12 Q. And is what happened did it bring back a
 13 candidate list?

14 A. Yes. I had positive results with the search. So
 15 then my next step I conduct a comparison on screen and
 16 look at the features that are in agreement. Once their
 17 is -- once I've looked at the whole print and I have
 18 determined that there is a certain amount of agreeing
 19 detail then I will go ahead and retrieve the archived
 20 records of those print and I conduct a manual comparison
 21 to confirm the computer results. In this case I made an
 22 identification.

23 Q. What was the result of your identification -- who
 24 did you identify that print to?

25 A. Is it all right to look at my report?

1 Q. You prepared this report?

2 A. Yes, I did.

3 Q. Looking at Q1 we are talking about a lift card
 4 from the exterior upper area of the Arizona green tea?

5 A. That is correct.

6 Q. What was the result of that?

7 A. I was able to identify the right middle finger of
 8 Davin Toney.

9 Q. Moving on to Q3 this is a lift card again from
 10 the exterior upper area of the Arizona green tea. There
 11 is an A and a B, does that mean two prints that
 12 eventually manually compared?

13 A. That is correct.

14 Q. What were the results?

15 A. Q3A was identified to the right middle finger of
 16 Davin Toney. Q3B was identified to the right index
 17 finger of Davin Toney.

18 Q. Finally Q4 which is the description one lift card
 19 from the exterior front side of the Oreo cookie package?

20 A. That is correct.

21 Q. Again this was a print that you manually compared
 22 with that same print that was verified through AFIS?

23 A. Yes.

24 Q. What was the results of that?

25 A. Q4A was identified to the right middle finger of

1 Davin Toney.

2 Q. There were two other lift cards on this report
 3 did they have anything to do with Davin Toney?

4 A. They did not.

5 Q. Okay. We talked about an event number. I want
 6 to talk about the impound package number in this case
 7 13766-1 is the P number of the officer impounding that
 8 package along with the item number?

9 A. That P number is P number from the crime scene
 10 analyst who collected those particular lift cards with
 11 the latent print evidence and submitted it.

12 Q. The event number we spoke about earlier ending in
 13 2480.

14 A. That is correct.

15 Q. Your lab perhaps you would assign this that lab
 16 case No. 17-01839?

17 A. That's correct.

18 Q. Is it correct the items compared in this case
 19 were from this event number?

20 A. That is correct.

21 MR. SCHWARTZ: Nothing further.

22 THE COURT: Defense?

23 MR. LOGAN: I have no questions.

24 THE COURT: Thank you. You may step down.

25 Next witness?

1 MR. SCHWARTZ: Your Honor, the state's final
2 witness is a Detective Miller.

3 THE CLERK: Do you solemnly swear the
4 testimony you are about to give be the truth, the whole
5 truth, and nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: You may be seated. Please state
8 your name for the record and spell it.

9 THE WITNESS: My name is David Miller.
10 D-A-V-I-D, M-I-L-L-E-R.

11 THE COURT: Go ahead.

12
13 DIRECT EXAMINATION

14 BY MR. SCHWARTZ:

15 Q. How are you employed?

16 A. **I am a detective with the Las Vegas Metropolitan**
17 **Police Department.**

18 Q. How long have you been with Metro?

19 A. **Now 17 years.**

20 Q. How long have you been a detective?

21 A. **12 years.**

22 Q. Are you currently with the robbery division?

23 A. **Yes, sir.**

24 Q. I want to direct your attention to a series that
25 you were assigned to investigate a five robbery series

1 involving smoke shops.

2 A. **Yes, sir.**

3 Q. How did you first become involved in that series?

4 A. **I responded to the very first event. Obviously**
5 **we didn't know it was a series at that time. That very**
6 **first event that was the 99 Cent Plus smoke shop out on**
7 **Lake Mead and Hollywood.**

8 Q. That event occurred on February 18th, 2017?

9 A. **It did, yes, sir.**

10 Q. Was there another event that occurred that same
11 say at a similar type business?

12 A. **Yes. That occurred at Mr. K's smoke shop at 5130**
13 **South Fort Apache that night sometime after 10:00 p.m.**
14 **I didn't respond to that. My partner did.**

15 Q. Both of those incidents were you or your partner
16 able to get the surveillance video from the stores?

17 A. **I viewed the surveillance on the first one. But**
18 **the first one they could never burn for us and by the**
19 **time we got our lab people out there it was gone. We**
20 **took some pictures of the video surveillance and we**
21 **viewed it but we don't have a copy of it. In the second**
22 **one at the Mr. K's smoke shop we did obtain a copy.**

23 Q. Moving on to the third event that you would have
24 -- did you respond to the third event eventually also at
25 a similar type smoke shop?

1 A. **I believe it was AS smoke shop at 4566 East**
2 **Tropicana. My other partner I believe a detective on my**
3 **squad.**

4 Q. That was February 22nd, 2017?

5 A. **That was the first one on the 22nd, correct.**

6 Q. Similar situation you were able to obtain you or
7 some of your other detectives were able to obtain video
8 surveillance from that location?

9 A. **Correct.**

10 Q. Was the next one a USA smoke shop on that same
11 date February 22nd, 2017?

12 A. **That's correct. I did respond to that one. That**
13 **was I believe at 9575 West Tropicana.**

14 Q. The final one you were involved in or responded
15 to was Texas Liquor on February 22nd, as well, 2017?

16 A. **Correct. I believe Detective Ryan Rafferty**
17 **responded to that one. He is also on my squad.**

18 Q. As you were gathering the different surveillance
19 videos and investigating each one of these robberies did
20 you come to notice any type of similarities between the
21 five different robberies?

22 A. **Yes.**

23 Q. What where those?

24 A. **After the second of the two happened on Saturday**
25 **the 18th even by that second one I already knew there**

1 **was a possibility that a series might be beginning**
2 **because it was two smoke shops on the same date and the**
3 **suspect was similar and he appeared to be wearing the**
4 **same jacket which I thought was unique. We had our eye**
5 **on it. Then the three again happened on the 22nd.**
6 **Again it was the same type of business being robbed.**
7 **Description suspect, same jacket, same method of**
8 **operation. It was clear it was the same suspect.**

9 Q. I want to talk to you about what I believe was
10 the third one you mentioned at AS smoke shop. Did you
11 have occasion to -- I apologize I believe it was the USA
12 smoke shop where you noticed an Arizona tea can?

13 A. **Yes.**

14 Q. Was that at the USA smoke shop?

15 A. **Yes, sir.**

16 Q. Walk me through how you ended up noticing the
17 can?

18 A. **I responded to the incident along with my**
19 **partner. I was viewing video surveillance and the**
20 **suspect approached the business down to the sidewalk**
21 **from the west to east. Approaching the front doors as**
22 **he was approaching the doors there was a trash can just**
23 **before you reach the doors and he stopped at the trash**
24 **can you see him take one final swig from a tall can.**
25 **You could not tell it was an Arizona ice tea can. You**

1 could not see the label but it was a tall can and he can
2 of screws it like a crunch and sets it on top of the
3 can. We immediately walked outside to the trash can and
4 it was the only such can still sitting there. We
5 secured that until the ID tech could get there to
6 process it.

7 Q. Are you aware of what processing that ID tech
8 would have done on that can?

9 A. Yes. I asked to swab it for DNA or process it
10 for latent prints.

11 Q. You're the submitting detective on these
12 robberies; is that correct?

13 A. Yes, sir.

14 Q. The event number that we are looking at for these
15 robberies as far as the USA smoke shop 117022-2480?

16 A. Yes, sir.

17 Q. Any evidence obtained in that scene would have
18 been impounded under that event number?

19 A. That's correct.

20 MR. SCHWARTZ: If I may approach the
21 Detective, Your Honor?

22 THE COURT: Yes.

23 BY MR. SCHWARTZ:

24 Q. Speaking about the first incident were you able
25 to take some photographs of the surveillance I'm showing

1 you State's Exhibit 1, 2, 3 and 4.

2 A. Yes, sir. These are photographs I took of the
3 actual computer monitor. We were watching video
4 surveillance where we could not actually obtain a copy
5 of their system.

6 Q. You mentioned that throughout these five
7 robberies there was some similarity in clothing. What
8 clothing are we looking at here that stuck out to you?

9 A. All five robberies the suspect wore blue jeans
10 but specifically the jacket is what was most unique. In
11 this jacket what we could tell initially we thought it
12 was possibly a leather jacket. We called it a faux
13 leather jacket because we thought it was maybe partially
14 fake. That turned out to be true. We could see the
15 jacket there was white along the collar. There was
16 white on the sleeve cuffs and that there was sort of
17 leather like material on the shoulder. It was a unique
18 jacket that ended up turning up in all five.

19 Q. Did the hat end up becoming relevant through your
20 investigation?

21 A. The hat became relevant once we identified Davin
22 Toney and once we served the search warrant and
23 recovered a hat like that.

24 Q. Specifically what did this hat have on it?

25 A. It was a white ball cap. In this picture you can

1 see there was a sticker on the brim and there's some
2 black line along sort of a black symbol on the left
3 upper part of the cap a black symbol of some sort.

4 Q. You're indicating on State's Exhibit 1?

5 A. Yes.

6 Q. Okay. In regards to the second event that we
7 discussed showing you State's Exhibits 5, 6, 7 and 8 the
8 sleeves particularly here.

9 A. Right. The same thing. This jacket has white on
10 the collar, white cuffs, and you can see the black patch
11 of leather on the shoulders. This picture becomes
12 significant later on because on the elbows you can see
13 what appears to be a black patch of leather like stripe.

14 MR. LOGAN: Objection. It's not in the
15 photo.

16 THE WITNESS: Right there. In Exhibit
17 Number 7 right there is the leather patch on the elbow
18 there. You see the second one starting right there as
19 well.

20 BY MR. SCHWARTZ:

21 Q. Detective, you are indicating the upper right
22 most corner of the photograph where there's a darker
23 leather patch?

24 A. On the elbow area.

25 Q. Showing you State's Exhibits 9, 10, 11 from the

1 third robbery. Again similar jacket to what you've been
2 describing?

3 A. This was the first of three on the 22nd of
4 February. This first one was a gray beanie that became
5 involved with all three robberies. Again you see the
6 jacket with the white on the upper collar, the white on
7 the cuffs. I'm not sure if it's visible. You can see
8 the same patch striped patch on the elbow left area. I
9 know some pictures are better than others there but yeah
10 the same jacket.

11 Q. State's Exhibits 12, 13, 14, and 15 again similar
12 clothes you mentioned the gray beanie in all the
13 robberies on the 22nd the same gray beanie --

14 A. I actually forget to mention he wore sunglasses
15 in every single one all accept the final one that
16 occurred nighttime at Texas Liquors, same gray beanie.
17 Same jacket with the leather on the shoulders, cuffs
18 white on the collar, white on the cuffs, and I know some
19 of these maybe not this particular one but you can see
20 the leather patch on the elbows again.

21 Q. Finally looking at 16, 17, 18, and 19.

22 A. This would be the Texas Liquor again the gray
23 beanie, same leather jacket white on the collar and
24 cuffs. Leather patches on the shoulders, back of elbows
25 and stripes on the back of the elbows.

1 **Q.** Thank you. Detective, did you have an
2 opportunity to prepare a map with regard to the
3 different location of these robberies?

4 **A. Yes.**

5 **Q.** Did the locations of the robberies also indicate
6 to you that it could potentially be a series?

7 **A. Yes.**

8 **Q.** I'm going to show you State's Proposed
9 Exhibit 20. I'm also showing this to defense counsel at
10 this time. Is this a fair and accurate copy of the map
11 you prepared in regards to the different location of the
12 robberies?

13 **A. Yes, sir.**

14 MR. SCHWARTZ: Move to admit State's
15 Proposed Exhibit 20.

16 THE COURT: Any objection?

17 MR. LOGAN: No objection for the prelim.

18 THE COURT: It will be admitted for the
19 purpose of the preliminary hearing only.

20 BY MR. SCHWARTZ:

21 **Q.** Detective, you are indicating that one of the
22 robberies was somewhat farther from the other ones. The
23 other ones appear more along where?

24 **A. Correct. You can see the USA smoke shop, Mr. K's**
25 **were basically off Tropicana and South Fort Apache. The**

1 **last -- the other two robberies number 3 and 5 and AS**
2 **smoke shop and Texas Liquors are off Tropicana as well**
3 **accept near Boulder Highway.**

4 **Q.** Thank you. You mentioned eventually through your
5 investigation you were able to obtain a suspect?

6 **A. Yes, sir.**

7 **Q.** Who was that suspect?

8 **A. Davin Toney.**

9 **Q.** Were you involved in the apprehension of
10 Mr. Toney?

11 **A. No.**

12 **Q.** How did you become involved in that aspect?

13 **A. I was working on the search warrant for his**
14 **apartment at 5820 Meikle, M-E-I-K-L-E, apartment number**
15 **102. We had other detectives during surveillance on his**
16 **apartment to hopefully take him into custody if he were**
17 **spotted.**

18 **Q.** How was it you guys determined that that
19 apartment was potentially where Toney might be staying?

20 **A. That was his address on the Nevada DMV his Nevada**
21 **DMV records and that is the address of the car that he**
22 **was getting into after the USA smoke shop.**

23 **Q.** Was that vehicle license plate ran and that was
24 the address that was returned?

25 **A. Correct.**

1 **Q.** Eventually a search warrant was created and
2 served were you there for that on the vehicle?

3 **A. No. I was called when they observed him leave to**
4 **apartment. I responded to his location where he was in**
5 **custody and took him into custody myself.**

6 **Q.** Did he have any articles clothing on at that time
7 that you were important to you?

8 **A. He was wearing what appeared to be the same exact**
9 **jacket.**

10 MR. SCHWARTZ: If I may I approach, Your
11 Honor?

12 THE COURT: Yes.

13 MR. SCHWARTZ: Showing defense counsel what
14 is marked State's Proposed 21, 22, 23 and 25.

15 BY MR. SCHWARTZ:

16 **Q.** Detective showing you State's Proposed Exhibit 21
17 what are we looking at here. First of all, does the
18 look familiar to you?

19 **A. Yes.**

20 **Q.** What is that a picture of?

21 **A. This is a picture of the jacket Davin Toney was**
22 **wearing when we took him into custody.**

23 **Q.** Is that a fair depiction of what the jacket
24 looked like when you saw it?

25 **A. Yes, sir.**

1 **Q.** Did you take this photo?

2 **A. Yes, sir.**

3 MR. SCHWARTZ: Move to admit State's
4 Proposed Exhibit 21.

5 THE COURT: Any objection?

6 MR. LOGAN: No objection for the prelim.

7 THE COURT: It will be admitted for purpose
8 of the preliminary hearing.

9 BY MR. SCHWARTZ:

10 **Q.** Detective, this was the jacket he was wearing at
11 the time that you spoke to him at the time he was taken
12 into custody?

13 **A. Correct.**

14 **Q.** What date was that?

15 **A. The 23rd of February 2017.**

16 **Q.** State's 22 and 23, do you recognize the photos?

17 **A. Yes, sir.**

18 **Q.** Are these also photos you took?

19 **A. Yes.**

20 **Q.** Is that a fair and accurate depiction of the
21 items in them?

22 **A. Correct.**

23 **Q.** Were they taken the same day as the jacket on the
24 23rd of February?

25 **A. Correct.**

1 MR. SCHWARTZ: Move for admission of 22 and
 2 23.
 3 MR. LOGAN: No objection.
 4 THE COURT: They will be admitted for the
 5 purpose of the preliminary hearing.
 6 BY MR. SCHWARTZ:
 7 Q. States 23 what are we looking at, Officer?
 8 A. **This is a firearm that was found during the**
 9 **service of the search warrant on Davin Toney's**
 10 **apartment.**
 11 Q. What are we looking at in State's 22?
 12 A. **That is a ball cap that was found in Davin**
 13 **Toney's room during the service of the search warrant.**
 14 Q. Did this ball cap appear to be consistent with
 15 one of the hats worn in the first robbery?
 16 A. **Yes, sir.**
 17 Q. Showing you State's Proposed Exhibit 25. Do you
 18 recognize that individual?
 19 A. **Yes.**
 20 Q. There are two photos on this photo?
 21 A. **Yes. A front shot and a side profile.**
 22 Q. Does that appear to be a fair and accurate
 23 depiction of -- do you know who this individual is?
 24 A. **This is Davin Toney.**
 25 Q. Does this appear to be a fair and accurate

1 depiction of Davin Toney on or about February 23rd?
 2 A. **Correct.**
 3 MR. SCHWARTZ: Move for admission of State's
 4 Proposed Exhibit 25.
 5 MR. LOGAN: No objection for prelim.
 6 THE COURT: It will be admitted for purposes
 7 of preliminary hearing only.
 8 MR. SCHWARTZ: Thank you.
 9 THE COURT: Did you move to admit 22, 23,
 10 and 25?
 11 MR. SCHWARTZ: Yes. No further questions.
 12 THE COURT: Defense?
 13
 14 CROSS-EXAMINATION
 15 BY MR. LOGAN:
 16 Q. Detective Miller, you were unable to obtain the
 17 video surveillance in the first robbery. Why is that?
 18 A. **Because I think it overwrites or something like**
 19 **that. We've had robberies at that business before and**
 20 **difficulty with their system. I already knew that so I**
 21 **submitted to our video forensic lab to go out there.**
 22 **They are the experts in recovering video. The business**
 23 **itself didn't know how to burn us a copy. We tried have**
 24 **them do that but by the time they got out there it was**
 25 **already overwritten.**

1 Q. Fortuitous that you took photos before that
 2 happened?
 3 A. **Yes.**
 4 Q. Had you not taken those photographs it would have
 5 been gone by the time --
 6 A. **I take photos every single time just for exactly**
 7 **this type of scenario.**
 8 Q. You recovered a firearm when you searched
 9 Mr. Toney's residence?
 10 A. **Yes.**
 11 Q. What kind of firearm?
 12 A. **.177 Daisy Powerline.**
 13 Q. A .177 Daisy?
 14 A. **Yes.**
 15 Q. Is that a black semiautomatic Glock?
 16 A. **No, that's a bb gun. A pellet gun.**
 17 Q. Does it look like a black semiautomatic Glock?
 18 A. **It looks like a black semiautomatic. I don't**
 19 **personally think it looks like a Glock that's because I**
 20 **carry a Glock and I know what a Glock looks like.**
 21 Q. You say you recovered a hat on that day?
 22 A. **We did.**
 23 Q. Where was that hat?
 24 A. **I believe in a closet on a shelf in Mr. Davin**
 25 **Toney's room.**

1 Q. It was possibly worn by the defendant in one of
 2 the smoke shops; is that correct?
 3 A. **I do believe that, yeah.**
 4 Q. It was consistent with a hat worn by the
 5 gentleman who entered the smoke shop?
 6 A. **Yes.**
 7 Q. Which smoke shop?
 8 A. **99 Plus smoke shop over on -- I can't remember**
 9 **the exact address -- on Hollywood and Lake Mead. The**
 10 **very first one in the series.**
 11 Q. That's the one that the video didn't work?
 12 A. **Correct. The video worked but we couldn't burn a**
 13 **copy.**
 14 Q. Your recollection of the hat is just from that
 15 fuzzy photograph of the video system?
 16 A. **What we saw on the video is my recollection of**
 17 **the hat?**
 18 Q. When you went to Davin Toney's house were there
 19 any other residents of that house?
 20 A. **Samuel Toney, Sr., I believe. I wasn't**
 21 **personally at the house. It's my understanding that**
 22 **Samuel Toney, Sr., was there.**
 23 Q. In your investigation was he the only other
 24 resident of that house?
 25 A. **To my recollection, yes.**

1 **Q.** Who was the car registered to that you had a
 2 license plate?
 3 **A. I believe to Samuel Toney, Sr.**
 4 **Q.** Samuel Toney, Sr.'s vehicle?
 5 **A. I believe so.**
 6 **Q.** I assume you eliminated him as a suspect?
 7 **A. Yes.**
 8 **Q.** Why?
 9 **A. I believe he is 54, 350 pounds and didn't fit the**
 10 **description.**
 11 **Q.** Was there anybody else related to that household
 12 who you eliminated?
 13 **A. There was no one else living at the house. We**
 14 **did take a look at his brother I believe. Who was 250**
 15 **pounds and was in prison.**
 16 **Q.** Do you remember that brother's name?
 17 **A. I believe Samuel Toney, Jr.**
 18 **Q.** You setup surveillance during at that house
 19 during that surveillance did you see anyone else driving
 20 that vehicle?
 21 **A. No. We saw -- the detective doing the**
 22 **surveillance that saw Davin Toney arrive in that vehicle**
 23 **and go in the house. They remained on the address until**
 24 **Davin Toney exited the house and they followed him and**
 25 **took him into custody.**

1 **Q.** Then you took him into custody and you spoke to
 2 him?
 3 **A. Yes, sir.**
 4 **Q.** Did he make any statements about this?
 5 **A. Yes.**
 6 **Q.** What did he say?
 7 **A. I pointed out a gray beanie in one of the**
 8 **surveillances pictures and asked where we could find it**
 9 **and he said we can find probably in a drawer in his**
 10 **bedroom.**
 11 **Q.** Find a gray beanie?
 12 **A. I said where is this gray beanie and pointed to**
 13 **this surveillance picture and he said probably in my**
 14 **drawer in my bedroom.**
 15 **Q.** Did he say anything about the gun?
 16 **A. Yes. I asked if there were guns in the house and**
 17 **he said there were toy guns in his bedroom.**
 18 **Q.** Okay.
 19 MR. LOGAN: No further questions.
 20 THE COURT: Any redirect?
 21
 22 REDIRECT EXAMINATION
 23 BY MR. SCHWARTZ:
 24 **Q.** Prior to speaking with him detective did you read
 25 his Miranda rights?

1 **A. Yes, sir.**
 2 **Q.** Is that something he acknowledged he understood
 3 those rights and agreed to speak with you?
 4 **A. Yes.**
 5 MR. SCHWARTZ: Nothing further, Your Honor.
 6 THE COURT: Thank you, Detective. You may
 7 step down.
 8 THE WITNESS: Thank you.
 9 THE COURT: Is he excused?
 10 MR. DICKERSON: He is, Your Honor.
 11 THE COURT: State rest?
 12 MR. DICKERSON: Move to amend the amended
 13 criminal complaint. I'd move to add two counts of
 14 conspiracy robbery. The first count would be to
 15 conspire with an unnamed coconspirator or conspirators
 16 to commit the crime of robbery as enumerated in Counts 3
 17 and 4. The second count of conspiracy robbery would be
 18 conspiracy robbery with an unnamed coconspirator or
 19 coconspirators to commit the acts as plead in Counts 7,
 20 8, 9. We would ask to interlineate page 1 line 25 to
 21 change the name of
 22 Chinthana Thennakoon to have two O's so the N prior to
 23 the N in the last name would be replaced with an O.
 24 Same interlineation on line 27 of that page. Page 2 we
 25 would ask for amendment by interlineation on lines 9 and

1 10 are going to be the same that being moving Salman
 2 before the word Akram. It would read Salman Akram on
 3 both line 9 and line 10. 9 and 11 both those lines.
 4 Page 3, Count 8, the state moves for interlineation to
 5 change the spelling of the name Harbhej Singh to read
 6 H-A-R-B-H-E-J, last name the same. That's all.
 7 THE COURT: State rest?
 8 MR. DICKERSON: State rests, Your Honor.
 9 THE COURT: Does the defense have any
 10 witnesses?
 11 MR. LOGAN: I have spoken with Mr. Toney
 12 about his right to testify. He has chosen not to
 13 testify.
 14 THE COURT: Any argument by the state?
 15 MR. DICKERSON: State will reserve and
 16 rebut.
 17 THE COURT: Defense?
 18 MR. LOGAN: First I would object to the
 19 conspiracy. I don't believe there was any evidence
 20 presented there was an agreement between the parties to
 21 deprive somebody by force or fear of force of property.
 22 We have one witness who says he sees somebody in the car
 23 but there's absolutely no evidence that there was an
 24 agreement. Some guy goes into a store come back gets in
 25 the car and says drive. They don't know what's going

1 on. They don't know what this is about. The state has
 2 not met it's burden of slight or marginal that they had
 3 an agreement specific to robbery which is what the state
 4 of the law in Nevada is that they must show evidence
 5 there was an agreement to comit that act at that time.
 6 There was no such evidence was presented. In fact
 7 Counts 3 and 4 I don't know what evidence they are
 8 relying on to this conspiracy. This case, Your Honor,
 9 really comes down to a matter of ID. It comes down to
 10 whether it was this guy irrespective of the hat and the
 11 jacket whether this is the guy that went into the stores
 12 and robbed them. There was absolutely no positive
 13 identification made by Chinthana. No positive
 14 identification by Ms. Escobar. In those cases the state
 15 has not met the burden of showing that this was the guy
 16 that walked in the store that day.

17 The second thing that the state really needs
 18 to identify is a deadly weapon was used. The state of
 19 the law in Nevada is pretty clear that a deadly weapon
 20 needs to be a weapon that is truly deadly. It's deadly
 21 by its design or manufacture is deadly because it's
 22 stated in some statute or is deadly because the manner
 23 in which it was used. It has to be an inherently deadly
 24 weapon. There was absolutely no evidence presented
 25 whatsoever that this was a real gun as opposed to a toy

1 gun. We have one witness who says I am an expert and I
 2 know what a black semiautomatic Glock looks likes.
 3 That's what it was. Then the detective who seizes this
 4 item and he said everything seized was consistent with
 5 what he sees in the video. This is the consistent with
 6 the weapon I saw in the video. He says absolutely
 7 doesn't look like a Glock. It was a toy. He says when
 8 he asks Mr. Toney do you have any weapons in the house
 9 he says all he has are toys. Every single person who
 10 testified other than the one gentleman who was
 11 100 percent sure it was a black Glock semiautomatic
 12 every other witness didn't know whether it was a toy or
 13 real. They don't know if it was a gun.

14 THE COURT: To be fair the detective said it
 15 was a bb gun just because your client called it a toy a
 16 bb gun is not a toy. That's what your client called it.
 17 The detective recovered a bb gun.

18 MR. LOGAN: Right. Even still some evidence
 19 must be presented that that bb gun that was found or the
 20 weapon that was used in these events was in fact a real
 21 deadly weapon an inherently dangerous weapon. They did
 22 not present any evidence as to that. If we are going to
 23 go based on the testimony of all of these people who
 24 state they are non-gun experts and they weren't sure if
 25 it was a toy or not, there's absolutely no evidence of a

1 deadly weapon. He testified that he held it like this.
 2 That's not using something in a manner that is
 3 inherently dangerous or deadly. He held it like this.

4 THE COURT: If he points it at your face
 5 it's not inherently dangerous?

6 MR. LOGAN: It's not. It's not.

7 THE COURT: Okay.

8 MR. LOGAN: If I hold a pen at someone's
 9 face holding something at someone's face is not in and
 10 of itself inherently dangerous. I briefed this matter
 11 pretty extensively. The deadly weapon statute and case
 12 law in Nevada is very clear it has to be an inherently
 13 dangerous weapon. There are three tests. One test is
 14 based on the manner which it was constructed if it was
 15 constructed to be used for something deadly like a real
 16 gun. The other test is that it's used in a deadly
 17 manner. Holding it and pointing it at someone is not
 18 using it in a deadly manner. The third test is it in
 19 fact falls under one of the statutes that lists it as a
 20 deadly weapon. In order to use that test the state must
 21 present some evidence that this gun falls within the
 22 statutes as a deadly weapon. No such evidence was
 23 presented. I don't think they have made their burden on
 24 the deadly weapon on any of the counts.

25 We also have a count of victim over 60. The

1 witness says I know that guy. I know how old he is.
 2 Yet he has never seen his birth certificate and doesn't
 3 know his last name. We have no proof this guy was over
 4 60. We don't know that. He's here to testify. The
 5 witness said he's out in the hallway. He could have
 6 come in and told us how old he was. He could have shown
 7 his driver's license. The state let him leave without
 8 ever establishing his age. He one witness put on the
 9 stand to establish his age never saw a birth certificate
 10 and doesn't remember his last name, I would submit is
 11 insufficient evidence to establish age. On that I would
 12 submit.

13 THE COURT: State?

14 MR. DICKERSON: Conspiracy robbery applies
 15 to the counts here where the defendant walked into the
 16 store number one with another individual on this second
 17 robbery at the Mr. K's smoke shop. It was there he
 18 walked in with a guy that hung out by the front door and
 19 was seen hanging out by the front while the defendant
 20 commits the robbery. They entered together. They
 21 exited together. Notably the witness Akram Salman
 22 testified that that man appeared to unlock the front
 23 door. He also testified at no point he locked the front
 24 door which leads to the inference that individual had
 25 locked the front door while this was occurring. This

1 was absolutely in furtherance of the conspiracy they had
2 to rob this store and Akram Salman. That's why we asked
3 for the amendment of conspiracy robbery for Counts 3 and
4 4.

5 As for Counts 7 through 9 at the USA smoke
6 shop what we have was evidence presented to show that on
7 the 22nd of February the defendant entered the USA smoke
8 shop, committed a robbery, exited the smoke that shop
9 and got in the passenger seat of a vehicle being driven
10 by a man with female in the back seat. That vehicle
11 started moving and what the witness says they were to
12 notice him following them and the vehicle then stopped
13 and contemplating doing something and kept driving. It
14 shows the individual inside knew what was going on.
15 There was an issue there. They were cooperating and
16 that male driver was in fact the get away driver for the
17 robbery here in furtherance of the conspiracy. The
18 agreement can be inferred by the actions of the
19 individuals. That's why we asked for the amendments of
20 for the conspiracy robbery referenced in Counts 7
21 through 9.

22 The deadly weapon even if it was that bb gun
23 found in his home that was used for the robberies that
24 bb gun is a pneumatic weapon and under our deadly weapon
25 statute is a deadly weapon for the purposes of robbery

1 in this case.

2 MR. LOGAN: Judge, I would object. That was
3 never established. There was no evidence that that was
4 a pneumatic weapon.

5 MR. DICKERSON: I would submit to Your Honor
6 it was a bb gun and a bb gun in and of itself is a
7 pneumatic weapon that can be inferred Your Honor.
8 That's a logical jump. Because what we have was a gun
9 that was found the day after robberies conclude but it's
10 a bb gun which does qualify under the statute as a
11 pneumatic gun and a deadly weapon for robbery. We had
12 witness after witness after witness come in here and
13 tell you that what the defendant pointed at them was a
14 gun. They all believed it was a gun. They saw it was a
15 gun. Despite defense counsel's mischaracterization of
16 their testimony none of them said, yeah, I think it was
17 a toy. I was scared of getting shot with a toy. None
18 of them said that. That's not what happened here today.
19 They were all convinced they saw a gun. Do we know that
20 the gun that was found was in fact the same gun that was
21 used during the robbery? We don't know for sure at this
22 point in time. What know it could have been. It also
23 could have been a firearm, an actual firearm that shoots
24 bullets by combustion, which either way no matter how
25 you dice it it's a deadly weapon under the robbery

1 statutes.

2 Angulugaha Piyadasa's age over and over
3 again his employer who hired him testified, yeah, he's
4 67 years old. That's it. He's 67-year old. Your Honor
5 saw him in the video surveillance. You can judge the
6 witness' testimony and his credibility as to the age of
7 his employee by looking at that man yourself and seeing
8 what he looked like. It's slight or marginal evidence
9 at that point in time whether he was 67 years old. We
10 had testimony he was 67 years old and you can look at
11 the video and see he is no spring chicken. For those
12 reasons, Your Honor, we'd ask you to bind over to
13 District Court on all counts in this case including the
14 two counts of conspiracy robbery the state asking for.
15 Thank you.

16 MR. LOGAN: Judge, I would just note there
17 are non-pneumatic bb guns.

18 THE COURT: Based on the evidence and
19 testimony presented here today I believe the following
20 crimes have been committed: Count 1, burglary while in
21 possession of a deadly weapon; Count 2, robbery with use
22 of a deadly weapon; Count 3, burglary while in
23 possession of a deadly weapon; Count 4, robbery with use
24 of a deadly weapon; Count 5, burglary while in
25 possession of a deadly weapon; Count 6, robbery with use

1 of a deadly weapon; Count 7, burglary while in
2 possession of a deadly weapon; Count 8, robbery with use
3 of a deadly weapon; Count 9, robbery with use of a
4 deadly weapon 60 years of age or odder; Count 10,
5 burglary while in possession of a deadly weapon; Count
6 11, robbery with use of a deadly weapon. I'm going to
7 grant the motion to add two counts of conspiracy with
8 respect to the Counts 3 and 4. One count of conspiracy
9 in Counts 7, 8, 9 are the other counts of conspiracy. I
10 will also grant the motion to amend to correct the
11 spelling of the victims' names. I will hold Mr. Toney
12 to answer to these charges in the Eighth Judicial
13 District Court on the date my clerk gives you.

14 THE CLERK: May 1st, 10:00 a.m. lower level.

15 MR. DICKERSON: For the purposes of bind
16 over and the information we'd ask for leave of the Court
17 to organize the counts the two amended counts of
18 conspiracy robbery to be right above the counts they
19 refer to.

20 THE COURT: You're the one that is going to
21 prepare the information. You can organize it that way.

22 MR. BANKS: The victim over 60 I would ask
23 if you bind that one over that it is bound over as an
24 assault with a deadly weapon not a robbery. There was
25 no evidence anybody knew the gentleman was an employee

1 of the store other than his boss. It looked from the
 2 surveillance that the gun was waived but I just don't
 3 know if there was any evidence that whoever was waiving
 4 the gun knew he was an employee or maybe bystander then
 5 we have an assault with a deadly weapon not a robbery
 6 with a deadly weapon on this specific count.

7 THE COURT: State?

8 MR. DICKERSON: Your Honor, it doesn't
 9 matter what the defendant knew at the time he was
 10 robbing him the fact was Mr. Piyadasa being an employee
 11 of that business had a possessory interest in the money
 12 in the cash register because he was an employee there.
 13 Given that fact alone it's a robbery with a deadly
 14 weapon and not an assault with a deadly weapon.

15 THE COURT: I'm going to deny it and let you
 16 guys litigate in District Court.

17 * * * * *

18
 19 ATTEST: FULL, TRUE AND ACCURATE
 20 TRANSCRIPT OF PROCEEDINGS.

21
 22 \s\Christa Broka
 23 CHRISTA D. BROKA, CCR 574
 24
 25

1 ATTEST: I further certify that I am not
 2 interested in the events of this action.

3
 4 \s\Christa Broka
 5 CHRISTA D. BROKA, CCR 574
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1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
 2 COUNTY OF CLARK, STATE OF NEVADA
 3 -o0o-
 4

5 STATE OF NEVADA,)
 6 Plaintiff,)
 7 vs.) Case No. 17F03197X
 8 DAVIN TONEY,) ATTEST RE: NRS 239B.030
 9 Defendant,)
 10 _____)
 11

12 STATE OF NEVADA)
 13) ss
 14 COUNTY OF CLARK)

15 I, Christa D. Broka, a Certified Shorthand
 16 Reporter within and for the county of Clark and the
 17 State of Nevada, do hereby certify:

18 That REPORTER'S TRANSCRIPT OF PROCEEDINGS was
 19 reported in open court pursuant to NRS 3.360 regarding
 20 the above proceedings in Justice Court Department 8,
 21 2017, Lewis Avenue, Las Vegas, Nevada.

22 That said TRANSCRIPT:

23 X Does not contain the Social Security number
 24 of any person.

25 _____ Contains the Social Security number of a
 person.

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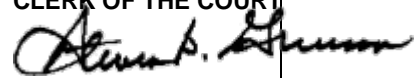
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RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAVIN TONEY,

Plaintiff,

CASE#: A-20-821088-W

DEPT. XXVIII

vs.

WILLIAM HUTCHINGS,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
MONDAY, JUNE 21, 2021

RECORDER'S TRANSCRIPT OF HEARING
PETITION FOR WRIT OF HABEAS CORPUS

APPEARANCES:

For the Plaintiff:

TERRENCE M. JACKSON, ESQ.

For the Defendant:

BERNARD ZADROWSKI, ESQ.
Chief Deputy District Attorney
(via BlueJeans)

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Monday, June 21, 2021

2
3 [Case called at 11:29 a.m.]

4
5 THE COURT: Toney, 821088. This is on for a petition.

6 Counsel, state your appearance.

7 MR. JACKSON: This is Terrence Jackson for Davin Toney.

8 THE COURT: And the defendant is present on Bluejeans on
9 a petition for habeas. Do you have anything to add?

10 MR. JACKSON: Just very briefly, if I can make a few points. I
11 won't take too much time.

12 I think there are two critical issues. One is the State has
13 responded basically arguing this case should be procedurally barred. I
14 urge the Court not to bar this case procedurally. I think there's
15 substantive issues that would be manifestly unjust to bar it. Defendant
16 filed his pro per petition after the United States Supreme Court decision
17 in *Davis* which has substantive changes in the law regarding
18 enhancements in criminal sentencing which defendant raised in his
19 petition. And I think that he waited until that *Davis* decision and he filed
20 his petition. So I think it was proper to raise his petition at time and to bar
21 it would be unfair to him and be a manifest in justice.

22 Second, I raise up supporting points and authorities. I raise
23 the fact that the gun involved was a toy gun and there's substantial case
24 law in Nevada the toy gun shouldn't be considered a deadly weapon. I'd
25 ask the Court to review that case law because it's clear --

1 THE COURT: Well let me ask you. Sorry to interrupt, but you
2 allege it's a toy gun. Apparently it was not a toy gun, it was a BB gun.

3 MR. JACKSON: A BB gun I don't think it is -- it has to be
4 more than .177 centimeters according to NRS that I cited. I don't think a
5 BB gun under the Nevada Revised Statutes qualifies as a firearm.

6 THE COURT: Well that might be the case, but we're not
7 talking, just so the record is clear, it's not --

8 MR. JACKSON: Oh, wait, I think --

9 THE COURT: -- a toy gun.

10 MR. JACKSON: -- a toy gun is analogous to a BB gun. You
11 know, we played with BB guns as a toy when I was a child. Maybe I
12 was -- had a bad upbringing. But I'm simply analogizing a BB gun to a
13 toy gun. I also cited the statute. I think it's NRS 177 point something,
14 where it makes clear that the firearm has to be more -- the projectile has
15 to be more than .177 inches [sic]. And I do not believe the 1.77 [sic]
16 inches requirement was met in this particular alleged firearm. So I think
17 the plea was in that respect. He pled to something that shouldn't have
18 been a crime. I think the counsel was ineffective for allowing him to even
19 plea to that and for that reason the Court should allow him to set aside
20 his plea. At most he should have pled guilty with due to the crime not to
21 the enhancement. We're not arguing that the whole crime should be set
22 aside, just the enhancement.

23 And I'll submit it with that.

24 THE COURT: Thank you. State.

25 MR. ZADROWSKI: Submitted.

1 THE COURT: Okay. Well first of all, and I've had a case
2 somewhat similar, at least on the first issue, the procedural bar. There
3 has to be good cause for the delay or prejudice. And it's not just the fact
4 that he doesn't get to proceed with a habeas. The case came down over
5 a year prior to. In one that I had, they took -- I believe it was two years
6 after the case that was important to file. We have over a year here, I
7 don't know the exact. And therefore if there is no good cause and there's
8 been none shown for the delay, the fact that over a year had passed, it is
9 procedurally barred. There has to be, and the Supreme Court has made
10 it clear, there has to be some importance to the timing -- or to timing. In
11 other words, you can't just let time pass and if there's new cases and
12 bring up years later. And they've been very, I think, strict in that regard.
13 So, first of all, I do think it is procedurally barred.

14 But, and I say but, I am going to address the claims because
15 there is, well basically no reason not to should the Supreme Court
16 disagree. So the first claim is that -- the failure to investigate. But, and
17 really most of these are, in this case, it's a bare and naked allegation
18 that's belied by the record. Looking at my notes from this. And therefore,
19 you can't just say, he failed to investigate. You have to show what a
20 thorough investigation would have done -- or would have shown that
21 would have overturned, if you will, the case. Or overturned his decision
22 to enter the plea.

23 The argument that it was a toy gun has no merit since the gun
24 wasn't found, oh, and I BB gun is not a toy so it's a bare and naked
25 allegation that he didn't use a real gun. They did find a BB gun which I

1 believe the State was arguing is with the 1.77 -- that's exactly what it is.
2 But in any event, the fact that a gun or a BB gun was found isn't
3 substantive, that's probably not the best. It doesn't show what he
4 actually used in this. They didn't, if you will, catch him with the gun and
5 so, again, that's a bare and naked allegation.

6 And for -- I, well I put and I, I put that that was also, let me, oh,
7 here, okay. That that was also a bare and naked allegation. And that's a
8 quote from the Supreme Court, by the way. Probably wouldn't be by --
9 the way I would phrase it. I think that was the -- where they argued that
10 the attorney was ineffective assistance and, again, there's nothing other
11 than the bare and naked allegation that Counsel was ineffective.

12 Trying to look for the -- sorry, in the --

13 THE DEFENDANT: Your Honor, could I speak?

14 THE COURT: -- initial petition.

15 MR. JACKSON: No, I'll speak for you.

16 THE COURT: Did I cover the issues that were raised?

17 MR. JACKSON: The only issue Your Honor hasn't dealt with
18 is my request for an evidentiary hearing because I had some of the
19 issues that you were concerned about. If we had an evidentiary hearing,
20 we could raise these -- or brought more substance or more clarity to
21 these issues with an evidentiary hearing. That was one of my main
22 requests in the supplemental points and authorities that we get an
23 evidentiary hearing.

24 THE COURT: Okay.

25 MR. JACKSON: And --

1 THE COURT: Oh, sorry, are you done?

2 MR. JACKSON: That's it.

3 THE COURT: Well, first of all, as I said, it's procedurally
4 barred which --

5 MR. JACKSON: I understand that.

6 THE COURT: -- takes care of everything. No, I appreciate
7 you going over. I want to cover this in the, as, if you will, an alternative,
8 requesting an evidentiary hearing, but you haven't said, in this case,
9 what, I assume, defense counsel would somehow add to the record that
10 these issues -- that would change the issues. So I'm certainly, I think,
11 obviously denying an evidentiary hearing when, as I said, first of all, this
12 is very much procedurally barred. And there's been no good cause.

13 THE DEFENDANT: My sentence -- and, Judge, excuse me.
14 You can say due to procedurally barred that the ruling on the *United*
15 *States versus Davis* was ruled in June 2019. I received the case law in
16 SDCC in March of 2020 which I filed. Now due to COVID and due to the
17 substantial amount of cases that you guys had, it was submitted
18 September of 2020. But I filed my paperwork within that year of that
19 ruling. So that is good cause and I would be prejudiced if you don't grant
20 me an evidentiary hearing because I filed within the proper time.

21 THE COURT: Well there's, you know, there's always
22 prejudice when, I guess you'd say, when you're denied -- when you fail to
23 do it in a timely manner. And I don't understand what, other than your
24 argument, you got the case at some point long after it was filed, but you
25 haven't showed how the State, and I believe that's a requirement,

1 somehow prejudiced you how, why you didn't get it sooner, that is, you
2 know, there's been no showing. So that's why it is barred.

3 Do you have anything? Sorry, Counsel, anything else?

4 MR. JACKSON: Well, you say we didn't raise issues of fact. I
5 just point out on page 11 and 12 beginning with our request for an
6 evidentiary hearing, we raised the reasons we wanted an evidentiary
7 hearing. Right in the first couple paragraphs state what we wanted to
8 show at the evidentiary hearing. So I think it's not true that we just, you
9 know, just said we just want an evidentiary hearing. You know, talk
10 about, you know, generally we raised specific things we wanted to ask at
11 the evidentiary hearing. And I think there was a factual predicate for an
12 evidentiary hearing and what we needed to call the defense counsel, we
13 needed to call the defendant, we needed to be able to put things on the
14 record. And I think there is sufficient evidence on record that the
15 defendant pled guilty to a charge that really shouldn't have existed, this
16 charge that there was a deadly weapon used in this matter. I think the
17 record would reflect that it wasn't a deadly weapon and that's what an
18 evidentiary hearing would show clearly and conclusively.

19 THE COURT: All right. Thank you. I totally disagree.
20 There's -- an evidentiary hearing wouldn't produce, and the State's
21 argument is it wouldn't produce the weapon that was used. The fact that
22 they didn't find it, that -- anyway, so it's procedurally barred and I think I
23 went through everything else.

24 ...

25 ...

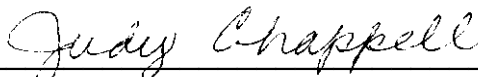
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So State, you need to prepare the order.

[Hearing concluded at 11:43 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Judy Chappell
Court Recorder/Transcriber