

IN THE CIRCUIT COURT IN THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NUMBER: 05-2012-CF-035337-AXXX-XX

Case # 05-2012-CF-035337-AXXX-XX

Document Page # 417

STATE OF FLORIDA,



\*23131254\*

Plaintiff,

versus

**ORIGINAL**

BRANDON LEE BRADLEY

Defendant,

SCOTT ELLIS  
2014 JUL 25 A 11:41  
FILED IN T/VL-01  
CLERK OF CIR. CT.  
BREVARD CO. FL.

VOLUME II OF XV

TRANSCRIPT OF DIGITAL RECORDED JURY TRIAL,  
SPENCER HEARING AND SENTENCING

The transcript of the Digital Recorded  
Proceedings taken in the above-styled cause, at the Moore  
Justice Center, 2825 Judge Fran Jamieson Way, Viera,  
Florida, on the 18th, 19th, 20th, 21st, 26th, 27th, 28th  
and 31st day of March, the 1st, 3rd, 4th and 8th day of  
April, 2014 (Trial), the 5th day of June, 2014 (Spencer  
Hearing), and the 27th day of June, 2014 (Sentencing),  
before the Honorable Morgan Reinman.

RYAN REPORTING  
REGISTERED PROFESSIONAL REPORTERS

1670 S. FISKE BOULEVARD

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THOMAS BROWN, ESQ.,  
and

JAMES MCMASTER, ESQ.,  
Assistant State Attorneys  
State Attorney's Office  
2725 Judge Fran Jamieson Way  
Building D.  
Viera, Florida 32940

Appearing for  
Plaintiff

J. RANDALL MOORE, ESQ.,  
MICHAEL PIROLO, ESQ.,  
and  
MARK LANNING, ESQ.,  
Assistant Public Defender  
Public Defender's Office  
2725 Judge Fran Jamieson Way  
Building E  
Viera, Florida 32940

Appearing for  
Defendant

Brandon Lee Bradley, Defendant, present

\* \* \* \* \*

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## I N D E X

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2				
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## I N D E X

## PLAINTIFF'S EXHIBITS:

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1				
2				
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4				
5	39	Photograph	AP	458
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6	41	Aerial Diagram	G	507
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21	71	Photograph	BT	909
	72	Photograph	BU	909
22	73	Photograph	BV	909
	74	Photograph	BW	909
23	75	Photograph	BX	909
	76	Photograph	BY	909
24				

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## I N D E X

## PLAINTIFF'S EXHIBITS:

	NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1				
2				
3				
4				
5	77	Photograph	CC	922
	78	Photograph	CD	922
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	80	Photograph	CF	922
7	81	Photograph	CG	922
	82	Photograph	CH	922
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9	85	Photograph	CK	922
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10	87	Photograph	CM	922
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	108	Photograph	DT	938
21	109	Photograph	DU	938
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## I N D E X

## PLAINTIFF'S EXHIBITS:

	NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
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2				
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4				
5	113	Photograph	DZ	938
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18	139	Fired Cartridge Case	CV	1050
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## I N D E X

## PLAINTIFF'S EXHIBITS:

	NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
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2				
3				
4				
5	149	Chart	GG	1067
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6	151	Swab	FK	1110
	152	Swab	FL	1110
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15	169	Swab	EU	1354
	170	Swab	EW	1354
16	171	Swab	ET	1357
	172	Swab	EV	1357
17	173	Swab	EX	1357
	174	Swab	EY	1357
18	175	Swab	EZ	1357
	176	Swab	EO	1358
19	177	Swab	EP	1358
	178	Swab	ES	1361
20	179	Swab	ER	1365
	180	Swab	EQ	1366
21	181	Certified Conviction	GK	1851
	182	Certified Conviction	GL	1851
22	183	Certified Conviction	GM	1851
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I N D E X



## I N D E X

## PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
185	Certified Judgment	GP	2305
186	Certified Judgment	GO	2305
187	Photograph	GQ	2323

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NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1	Vials of Blood	A	1444
2	Litigation Package	B	1477
3	DVD	I	2360
4	Power-point Presentation	J	2373
5	Photograph	F	2691
6	Photograph	G	2691
7	Photograph	H	2691

\* \* \* \* \*

1 MR. LANNING: Is he listed in the guilt phase?  
2 He's listed as a penalty phase witness I believe.

3 MR. MCMASTER: We intend to call him during the  
4 penalty phase also to get into the information about  
5 the specific robbery charge.

6 MR. MOORE: We expected that, we didn't expect  
7 him to be coming into the guilt phase. I mean, I  
8 expected when the State gave us a witness list and a  
9 belated one, I think we just had this one disclosed  
10 within the last month, that there would be a penalty  
11 phase related to the prior violent felony and  
12 probationary status but not the guilt phase. So, he  
13 wasn't identified as a guilt phase witness.

14 THE COURT: Response from the State.

15 MR. MCMASTER: Judge, on November 18th of 2013  
16 the State filed its request to take judicial notice  
17 with respect to each of the particular warrants at  
18 issue here. We actually included information about  
19 the charges and warrant, those were the actual  
20 copies. The State has prepared redacted copies  
21 eliminating all the information about the charges,  
22 but the Defense has been on notice at least since  
23 November that the State intended to introduce all of  
24 the warrant information. There's been no objection  
25 filed, there's been no motion in limine directed to

1           it.

2                   I believe as Mr. Brown indicated earlier this  
3 ~~is not William's Rule evidence. This is direct~~  
4 evidence of motive. The cases that the State  
5 provided to you yesterday in connection with the  
6 hearing we had this morning on the proffer, the  
7 Griffin case, the Grossman case and the Escobar case  
8 all basically address that issue on outstanding  
9 arrest warrants and their admissibility in these  
10 types of cases.

11           MR. MOORE: We have a right to rely on -- I  
12 mean, the overriding rule is the Williams Rule notice  
13 rule and we -- you know, regardless of what they give  
14 us and inferences that we can draw from that, in the  
15 absence of a Williams Rule notice, then we have no  
16 reason to expect them, especially at the guilt phase,  
17 to try to introduce that.

18                   What purpose can they make of it if they  
19 haven't filed the Williams Rule notice. I mean,  
20 that's what we look for and that is the signal that  
21 says, well, they're really serious about this and  
22 they're going to try to get in because they've given  
23 us proper notice, but if they don't give us a notice  
24 then they can't get it in, can not introduce it,  
25 especially when it's highly prejudice and especially

1 at the guilt phase. I fully expected this at the  
2 penalty phase and for that reason that's what I  
3 expected it would be but, you know, I think at the  
4 guilt phase it's improperly noticed, it's as simple as  
5 that.

6 THE COURT: The objection by the Defense is  
7 overruled. Thank you.

8 (Thereupon, the benchside conference was  
9 concluded and the proceedings were had as follows:)

10 MR. MCMASTER: May I proceed, Your Honor?

11 THE COURT: Yes, you may.

12 DIRECT EXAMINATION

13 BY MR. MCMASTER:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Would you start out by telling the ladies and  
17 gentlemen of the jury your name and if you would direct  
18 them -- direct your responses directly to them.

19 A My name is Charles Colon, C-O-L-O-N.

20 Q And how are you employed, sir?

21 A I am employed as a high risk specialist officer  
22 with the Department of Corrections.

23 Q Are you essentially a probation officer?

24 A Yes, sir.

25 Q And do you know the defendant, Brandon Lee

1 Bradley?

2 A I do.

3 Q Do you see him here in the courtroom today?

4 A Yes, I do.

5 Q If you would point to him and describe an  
6 article of clothing that he's wearing?

7 A He's sitting at the defense table wearing the  
8 dark gray suit with the pink shirt.

9 Q In May of 2010 did you have an occasion to come  
10 to determine that Mr. Bradley was on probation for three  
11 separate cases with the Florida Department of Corrections?

12 A Yes, sir.

13 Q Were you his initial probation officer?

14 A I was not.

15 Q You have since inherited the files for  
16 Mr. Bradley?

17 A I didn't supervise him for a brief period of  
18 time, another officer transferred the case to me.

19 Q Who was the original officer?

20 A The original officer was Mr. Tom Mulhall.

21 Q As part of the probation Mr. Bradley was on,  
22 was he required to obey all instructions from the  
23 probation office?

24 A Yes, sir.

25 Q And was he also required to report in on a

1 regular basis?

2 A Monthly, yes, sir.

3 Q Did there come a time that Mr. Bradley failed  
4 to obey one of your instructions?

5 A Yes, sir.

6 Q That had to do remaining at the probation  
7 office as he was instructed to do?

8 A Yes, sir.

9 Q And as a result of that failure to obey your  
10 instruction, did you request that arrest warrants, and  
11 other reason, did you request that arrest warrants be  
12 issued for him for violating the terms of his probation on  
13 the three cases that were supervising him?

14 A Yes, I did.

15 Q What were the three cases that you were  
16 supervising him on, what case numbers?

17 A I'd have to refer to my file.

18 Q If it would refresh your recollection to refer  
19 to your file, please do so.

20 A Yes, sir. Case number 2007 --

21 MR. MOORE: Your Honor, objection, reading from  
22 a document not in evidence.

23 THE COURT: Okay. Officer Colon, if you'll  
24 look at those documents and close up your file and  
25 then you'll have to testify not from the document.

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

2 THE COURT: Yes, you may.

3 ~~(Thereupon, a benchside conference was had out~~  
4 of the hearing of the jury as follows:)

5 MR. MOORE: Your Honor, that doesn't solve the  
6 problem. I mean, if he's going to sit there and  
7 memorize it, then he's -- he can either refresh his  
8 memory, which I doubt that he can do, or he can --  
9 the documents if they can be introduced be put in  
10 evidence but it's over our objections. He can't sit  
11 there and memorize something if he has no independent  
12 recollection of it, that's not refreshing his memory  
13 and if that's what the State's trying to do, they  
14 haven't made -- they haven't taken the proper steps  
15 to do it. First they have to ask him if looking at  
16 the documents would refresh his memory and if they  
17 can't do that --

18 THE COURT: They asked him if it would refresh  
19 his memory and he said yes so.

20 MR. MCMASTER: Judge, the State has already  
21 requested that the Court take judicial notice of the  
22 warrants in any event, I just was trying to lay the  
23 record in front of the jury as to what the case  
24 numbers were to show him but the problem obviously is  
25 the redacted warrants don't give a whole lot of

1 information.

2 THE COURT: You know, I mean, I don't think  
3 Mr. Moore, from what I heard he objects --

4 MR. MOORE: Well, he's starting to read from  
5 the documents. I mean, they're not in evidence.

6 THE COURT: He was just going to read the three  
7 numbers.

8 MR. MOORE: What's the relevance of the three  
9 numbers? And if he's --

10 MR. MCMASTER: The redacted -- I'm sorry, I  
11 didn't mean to interrupt you.

12 MR. MOORE: Yeah, I understand. If he can't --  
13 if he doesn't have an independent recollection, then  
14 he can't read from the documents, they're not in  
15 evidence. So, I mean, that's -- that was my  
16 objection.

17 THE COURT: Okay. I haven't heard him yet if  
18 he could look at them and remember them but I don't  
19 think --

20 MR. MOORE: He can't do that, nobody can.

21 THE COURT: Mr. Moore has an objection --  
22 previously had an objection to the documents being  
23 introduced, I overruled that objection. I don't  
24 think he has an objection to them being introduced.

25 MR. MOORE: Let me look at the documents.



1 THE COURT: Okay. I think he's given them to  
2 you.

3 ~~MR. MOORE: I've got them in my hand, I haven't~~  
4 had a chance to... Just give me a moment.

5 THE COURT: Just trying to move the case along.  
6 (Thereupon, a pause was taken in the  
7 proceedings)

8 MR. MOORE: We object to the documents coming  
9 in, they're not relevant. We object to this witness  
10 reading from the documents that are not in evidence  
11 and unless he can refresh his memory, which he hasn't  
12 indicated that he can do, we object to him trying to  
13 refresh his memory.

14 THE COURT: Where we're at right now they asked  
15 him if reviewing the file would refresh your memory  
16 and he said yes. He was looking at the file, you  
17 objected. I don't know if he can refresh his memory  
18 with looking at the file or not. He said he could  
19 so. He hasn't had an opportunity to refresh it and  
20 then there was an objection.

21 MR. MOORE: And also I object to him  
22 identifying himself as a high risk probation officer.  
23 Where did that come from? That's prejudicial. I  
24 move for that to be stricken. I move for a mistrial  
25 because of that. He doesn't -- he's a probation

1 officer, he doesn't need to identify his client, his  
2 probationer, especially Mr. Bradley, as being high  
3 risk, that goes to future dangerousness. There's no  
4 need for him to identify that. That may be his job  
5 title but it's not probative of anything, it's highly  
6 prejudicial and so, you know, I'm even reluctant to  
7 ask the Court to ask the jury to disregard that  
8 because it just accentuates it. So, I move for a  
9 mistrial because of that, he didn't need to put that  
10 in there.

11 THE COURT: Response from the State.

12 MR. MCMASTER: Judge, I didn't know that that  
13 was his title, I assumed it was just basically a  
14 probation officer. When I spoke to him I advised him  
15 to be we were very careful about trying to stay away  
16 from what the charges and things were and that  
17 essentially most of the allegations of the violations  
18 also. The only thing I wanted to show was that  
19 warrants were issued for the probation and the  
20 defendant would be aware of it because of the  
21 requirement for reporting.

22 THE COURT: Okay. The request for a mistrial  
23 is denied.

24 Okay. If he can -- I know you have an  
25 objection but if we could move the case forward. I

1 mean, I've overruled the objection. As to relevancy  
2 I'll overrule the objection and as to your prior  
3 objections that you placed on the record --

4 MR. MOORE: Williams Rule.

5 THE COURT: The Williams -- that's what it was,  
6 I don't need to go through that. Can we introduce  
7 the --

8 MR. MCMASTER: The State would move to  
9 introduce the exhibits pursuant to the request for  
10 judicial notice that we filed.

11 THE COURT: Okay. Based on the Court's prior  
12 ruling, can they step back and he do that so we can  
13 move the case along?

14 MR. MOORE: I understand the Court's ruling,  
15 it's over our objection.

16 THE COURT: Okay. Okay. Thank you.

17 (Thereupon, the benchside conference was  
18 concluded and the proceedings were had as follows:)

19 MR. MCMASTER: Your Honor, at this time  
20 pursuant to the State's request for the Court to take  
21 judicial notice, the State would move into evidence  
22 the Exhibits A, B and C which are the three VOP  
23 arrest warrants.

24 THE COURT: Okay. Based on the Court's ruling  
25 at the bench, B will be received -- it's A, B and C?

1 MR. MCMASTER: That's correct.

2 THE COURT: Okay. A will be received as  
3 State's Number 1, B will be received as State's  
4 Number 2, and C will be received as State's Number 3.

5 (Thereupon, State's Exhibit Numbers 1, 2 and 3  
6 were marked and received in evidence.)

7 BY MR. MCMASTER:

8 Q Officer Colon, I'm showing you what has now  
9 been admitted as State's Exhibits 1, 2 and 3, are they the  
10 redacted versions of the three warrants that you requested  
11 from the court in the three cases that he was on probation  
12 for?

13 A Yes, sir.

14 Q And when were the warrants issued?

15 A February 9th, 2011.

16 Q Did you come to learn that at some point  
17 Mr. Bradley had failed to report further for his probation  
18 after the warrants were issued?

19 MR. MOORE: Objection, predicate.

20 THE COURT: It calls for a yes or no.

21 THE WITNESS: Yes.

22 BY MR. MCMASTER:

23 Q You were still his supervisor?

24 A Yes.

25 Q Even though he didn't obey the one day when you

1 ordered him to remain, did you continue to report as he  
2 was required to do?

3 A No, he did not.

4 Q Did you supplement the affidavit and violation  
5 with respect to his failure to appear to report to  
6 probation?

7 A Yes, I did.

8 Q Did you also subsequently learn that there were  
9 additional warrants that were issued for his arrest and  
10 again amend your application?

11 A Yes.

12 MR. MOORE: Objection, hearsay.

13 THE COURT: Okay. I'll sustain the objection,  
14 subsequently learn.

15 BY MR. MCMASTER:

16 Q As of February of 2012, did you learn that --  
17 or did you amend your affidavit to include additional  
18 charges?

19 A I don't recall the specific date that I amended  
20 the warrants, the original one was February 2011.

21 Q Would it refresh your recollection to look at a  
22 second amended affidavit?

23 A Yes, sir, it would.

24 MR. MCMASTER: Approach the witness, Judge?

25 THE COURT: Yes, you may.

1 MR. MCMASTER: Thank you.

2 BY MR. MCMASTER:

3 Q Just look at that to yourself and see if it  
4 refreshes your recollection as to the date that you  
5 learned of additional charges.

6 A Yes, sir.

7 Q And when was it that you learned that there  
8 were additional charges in addition to the three cases  
9 outstanding warrant?

10 A I amended the affidavit January of 2012.

11 MR. MCMASTER: State at this point would move  
12 into evidence Exhibits D and E, two new warrants for  
13 Mr. Bradley's arrest.

14 THE COURT: Response from the Defense.

15 MR. MOORE: Objection, same grounds.

16 THE COURT: The objection is overruled. D will  
17 be received as State's Exhibit 4, E will be received  
18 as State's Exhibit 5.

19 (Thereupon, State's Exhibit Numbers 4 and 5  
20 were marked and received in evidence.)

21 MR. MCMASTER: May I approach the witness?

22 THE COURT: Yes, you may.

23 BY MR. MCMASTER:

24 Q Showing you State's Exhibits in evidence 4 and  
25 5. Officer Colon, could you look at those and tell me if

1 the case numbers on those warrants match the case  
2 information that you had with respect to the new charges?

3 A Okay. Can you repeat your question? I'm  
4 sorry.

5 Q Yes. I'm just checking if the case numbers on  
6 the two new warrants that have just been admitted match  
7 the information as to the new charges that you included in  
8 your affidavit in January of 2012?

9 A The case number on -- here at the top?

10 MR. MCMASTER: May I approach?

11 THE COURT: Yes, you may.

12 THE WITNESS: Okay.

13 BY MR. MCMASTER:

14 Q With respect to the new allegations that you  
15 include in the second amended warrants.

16 A Okay.

17 Q Same case numbers as the warrants that were  
18 issued by the court?

19 A Yes, they are.

20 Q And finally, when you submitted the  
21 applications for the warrants, did you include identifying  
22 information as to the individual that you were seeking the  
23 warrants for, driver's license number, date of birth, that  
24 information?

25 A On the original warrant. This is -- when I

1 submitted and there was already an arrest warrant issued,  
2 I submitted an amended affidavit, not an additional  
3 ~~warrant but an amended affidavit since there was already a~~  
4 warrant already active.

5 Q And the warrant information included the  
6 driver's license, number date of birth and that  
7 information on the second and third pages?

8 A Yes.

9 MR. MCMASTER: State at this point would move  
10 into evidence State's Exhibit F for identification,  
11 certified copy of the Florida driver's license of the  
12 defendant, Brandon Bradley, with the driver's license  
13 number and identifying information on it.

14 THE COURT: Response from the Defense.

15 MR. MOORE: Relevance. Objection, relevance.

16 THE COURT: Okay. Overruled. F will be  
17 received as State's Exhibit Number 6.

18 (Thereupon, State's Exhibit Number 6 was marked  
19 and received in evidence.)

20 MR. MCMASTER: No further questions for Officer  
21 Colon.

22 THE COURT: Cross examination by the Defense?

23 MR. MOORE: No questions.

24 THE COURT: Okay. Sir, thank you for your  
25 testimony, you're free to step down.



1 THE WITNESS: Thank you.

2 (Thereupon, the witness exited the witness  
3 stand.)

4 THE COURT: Other witnesses on behalf of the  
5 State.

6 MR. MCMASTER: State calls Robert Marks.

7 THE COURT: Sir, if you'll come forward, step  
8 up before the clerk to be sworn.

9 THEREUPON,

10 ROBERT MARKS,

11 having been first duly sworn, was examined and testified  
12 upon his oath as follows:

13 THE COURT: Sir, if you'll have a seat in the  
14 witness chair. Once seated if you will talk into  
15 that microphone, adjust that microphone to fit you,  
16 it does help us hear your testimony, it also aids in  
17 recording your testimony. Mr. McMaster.

18 MR. MCMASTER: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MCMASTER:

21 Q Good after, Mr. Marks. If you would, please  
22 state your full name for the record.

23 A Robert William Marks.

24 Q And how old are you, Mr. Marks?

25 A Forty-two.

1 Q You're obviously here as a prisoner today, is  
2 that correct?

3 A Yes, sir.

4 Q And that's because you were convicted in 2013,  
5 February of last year, for a count of armed burglary of a  
6 conveyance with a firearm, dealing stolen property and  
7 possession of a firearm by a convicted felon, is that  
8 correct?

9 A Yes, sir.

10 Q What is the sentence that you received for  
11 those violations?

12 A Eight years.

13 Q And that had to do with a theft of a firearm?

14 A Yes, sir.

15 Q Who did you steal the firearm from?

16 A My brother-in-law.

17 Q And what's your brother-in-law's name?

18 A Jason Seaton.

19 Q Where did the theft take place?

20 A My house.

21 Q And where were you living at the time?

22 A Off of Pinewood Road in Melbourne.

23 Q And what, if anything, did you do with the  
24 firearm after you stole it from Mr. Seaton?

25 A I hid it in my garage.

1 Q How long a period did you leave it in the  
2 garage?

3 A I'm not sure.

4 Q What did you do with it after that?

5 A I couldn't put it back in the car so I sold it.

6 Q And who did you sell it to?

7 A Boogie.

8 Q And who is Boogie?

9 A I suppose it's Brandon.

10 MR. MOORE: Objection.

11 THE COURT: Object.

12 MR. MCMASTER: I don't want you to suppose.

13 MR. MOORE: Objection, speculation.

14 THE COURT: Okay. Sustained.

15 BY MR. MCMASTER:

16 Q You knew an individual named Boogie?

17 A That's it.

18 MR. PIROLO: Can we approach?

19 THE COURT: Yes, you may.

20 (Thereupon, a benchside conference was had out  
21 of the hearing of the jury as follows:)

22 MR. PIROLO: Court sustained the speculation  
23 objection, I move to strike the answer as well.

24 THE COURT: Response from the State.

25 MR. PIROLO: That's what I trying to get in.

1 MR. MCMASTER: I think he stopped in midstream,  
2 I don't think it makes a difference.

3 ~~MR. MOORE: I heard it. He said I suppose it's~~  
4 Bradley, speculation.

5 THE COURT: I heard I suppose it's Bradley.  
6 I'll instruct the jury to disregard the answer.

7 MR. MCMASTER: That's fine.

8 (Thereupon, the benchside conference was  
9 concluded and the proceedings were had as follows:)

10 THE COURT: Okay. Ladies and gentlemen of the  
11 jury, the answer to the last question which was  
12 sustained by the Court is stricken, it shall not be  
13 considered, it shall be disregarded. Okay.  
14 Mr. McMaster.

15 BY MR. MCMASTER:

16 Q Mr. Marks, you knew an individual by -- that  
17 you referred to as Boogie, is that correct?

18 A Yes, sir.

19 Q How long had you known Boogie?

20 A Not that long, about a year. I met him a  
21 couple of times throughout the year.

22 Q And when you went to sell him the firearm,  
23 where did you do that at?

24 A I drove down to the end of Eau Gallie.

25 Q And met him there?

1 A Yes.

2 Q Do you recall what the area of Eau Gallie was  
3 that you met him?

4 A Behind Last Call.

5 Q That's just off of US1 and Eau Gallie  
6 Boulevard?

7 A Yes, sir.

8 Q And can you describe the person that you knew  
9 as Boogie?

10 A Not really, sir, I was pretty drunk. I mean, I  
11 seen a picture that they showed me and that's the person  
12 that -- I mean, I don't know the weight of him, I don't  
13 know the, you know, I was...

14 Q Did you know anything about the gun itself? I  
15 mean, are you familiar --

16 A No, sir.

17 Q -- with firearms?

18 A No, sir, I'm not.

19 Q You were drunk when the stole the gun?

20 A Yes, sir, I was.

21 Q Where was it that you took it from?

22 A The glove box out of his car.

23 Q And do you recall what color the gun was --

24 A Black.

25 Q -- any details about it?

1 A Black.

2 Q Was it the kind that had a cylinder to it that  
3 the resolver goes around --

4 A No, sir.

5 Q -- or was it a semiautomatic type pistol?

6 A It had a clip to it.

7 Q A clip to it.

8 And the individual that you referred to as  
9 Boogie, are you able to identify him today?

10 A He does not look like Boogie.

11 Q You're referring to someone here in the  
12 courtroom?

13 A Yes, sir, you asked me that earlier.

14 Q And you are unable to identify anyone here in  
15 court as being that person that you knew as Boogie?

16 A Yes, sir.

17 Q Because he looks different today --

18 A Yes, sir.

19 Q -- or the person that you're looking at today  
20 is different?

21 A Yes, sir.

22 Q Was Boogie a black male?

23 A Yes, sir.

24 Q And about how tall was he?

25 A Five five, five six.

1 Q And heavy set, medium build?

2 A Medium build.

3 Q Anything at all about the description of him at  
4 the time that you knew him that you can tell us?

5 A No, sir.

6 Q Now, you were a suspect by -- it's a  
7 brother-in-law, Mr. Seaton is your brother-in-law?

8 A Yes, sir, I'm married to his sister.

9 Q Okay. And you were the suspect at least that  
10 your brother-in-law suspected as having taken the weapon,  
11 is that correct?

12 A Yes, sir.

13 Q And you were interviewed by the police and by  
14 your brother-in-law and sister about this?

15 A Yes, sir.

16 Q And you initially denied that you took the gun?

17 A Yes, sir.

18 Q You at that point had actually already sold it  
19 to Boogie?

20 A Yes, sir.

21 Q Did there come a time after the March 6th,  
22 2012, murder of Deputy Barbara Pill that you were again  
23 interviewed about the gun itself?

24 A Yes, sir.

25 Q Do you recall who it was that interviewed you?

1 A Craig Carson.

2 Q An agent with the Brevard County Sheriff's  
3 Office.

4 A Yes, sir.

5 Q At the time that you were interviewed, were you  
6 asked about how it is you were able to get in touch with  
7 Boogie?

8 A Yes, sir.

9 Q And how was it that you normally got in touch  
10 with Boogie?

11 A I told him I had a phone number which I'm not  
12 sure if I did or not, it happened a little while ago and  
13 I've been incarcerated from then.

14 Q Yes, sir, I understand it's been a couple of  
15 years since then.

16 You did have an opportunity earlier today to  
17 review the video recorded statement that you made on March  
18 9th of 2012 to Agent Carson, did you not?

19 A Yes, sir.

20 Q And in there was the number that you gave to  
21 Agent Carson audible and visible to you when you gave the  
22 interview?

23 A Yes, sir.

24 Q What was the number that you gave to them?

25 MR. PIROLO: Objection, Judge, hearsay, not in



1 evidence.

2 THE COURT: Let's have a bench conference.

3 ~~(Thereupon, a benchside conference was had out~~  
4 of the hearing of the jury as follows:)

5 THE COURT: Okay. Mr. Pirolo, make your  
6 objection.

7 MR. PIROLO: Judge, the objection is hearsay  
8 and it's something that's not in evidence. This  
9 morning during the proffer he was unable to recall  
10 the phone number. Now, clearly he's either memorized  
11 the phone number or he's obviously watched it enough  
12 times to remember the phone number. It's hearsay, he  
13 citing it from the video or the audio, whichever one  
14 he --

15 MR. MOORE: It's just not in evidence.

16 MR. PIROLO: -- was able to view and that video  
17 or audio is not in evidence.

18 MR. MOORE: It's not a refreshing of his memory  
19 either because before he did that he was asked about  
20 the video and he said he may have had a number but he  
21 doesn't recall. So, his memory isn't refreshed.  
22 What the State wants him to testify to is strictly  
23 what he just heard on a video which is not in  
24 evidence of something which he has no memory of  
25 independent of the video which he memorized.

1 THE COURT: Okay. Mr. Master.

2 MR. MCMASTER: Judge, we had the statement  
3 played for him to see if it refreshed his  
4 recollection (unintelligible).

5 THE COURT: Did he say that that refreshed his  
6 recollection?

7 MR. MCMASTER: I didn't ask him that, I asked  
8 him if he remembered -- I was asking him directly if  
9 he remembered what the phone number was.

10 MR. MOORE: He was asked about the phone number  
11 before they even got into the video. So, I don't  
12 know whether it helped him or not. So, how's it  
13 going to refresh a memory of something he doesn't  
14 even know existed. We object to this witness  
15 parroting what he just saw on a videotape.

16 THE COURT: Okay. As the question's framed at  
17 this time without lack of predicate, I'm going to  
18 sustain the objection.

19 (Thereupon, the benchside conference was  
20 concluded and the proceedings were had as follows:)

21 BY MR. MCMASTER:

22 Q Mr. Marks, do you recall today what the phone  
23 number was that you gave or that you contacted this Boogie  
24 at?

25 A Not at all, sir.

1 Q Does the number (914)866 --

2 MR. PIROLO: Objection, leading.

3 THE COURT: Okay sustained.

4 MR. MCMASTER: Just asking him if it sounds  
5 familiar.

6 THE WITNESS: Sir, I've --

7 THE COURT: Sustained.

8 MR. MCMASTER: Fair enough.

9 BY MR. MCMASTER:

10 Q Mr. Marks, during the interview with Agent  
11 Carson, were you shown a photograph of an individual?

12 A Yes, I was, sir.

13 Q And was the individual that you identified the  
14 person you knew as Boogie?

15 A Yes, sir.

16 MR. MCMASTER: No further questions.

17 THE COURT: Okay. Cross examination by the  
18 defense.

19 MR. PIROLO: No questions, Your Honor.

20 THE COURT: Okay. Mr. Marks, thank you for  
21 your testimony, you're free to step down.

22 (Thereupon, the witness exited the witness  
23 stand.)

24 THE COURT: Okay. Other witnesses by the  
25 State.

1 MR. MCMASTER: State would call James Seaton.  
2 I believe he's in the witness center  
3 (unintelligible).

4 THE COURT: Okay.  
5 (Thereupon, a pause was taken in the  
6 proceedings.)

7 MR. MCMASTER: I was going to take him next  
8 because he was coming out of town, Judge, but if --  
9 I'm not sure what the delay is but we can go with  
10 Agent Carson, he's another short witness.

11 THE COURT: Okay. We'll bring in Agent Carson.

12 MR. MCMASTER: He should be just inside.

13 THE COURT: Tell them to run up those back  
14 stairs.

15 MR. MCMASTER: Witness manager claimed that  
16 Mr. Seaton was arrived and was on his way up.

17 THE COURT: We'll take whoever walks through  
18 the door.

19 MR. MCMASTER: Works for me.

20 THE COURT: You just have to tell me who it is.

21 MR. MCMASTER: It's Mr. Seaton.

22 THE COURT: Okay. Mr. Seaton. Sir, if you'll  
23 come forward, step up before the clerk to be sworn.

24 THEREUPON,

25 JASON SEATON,

1 having been first duly sworn, was examined and testified  
2 upon his oath as follows:

3 ~~THE COURT:~~ Sir, if you'll be seated in the  
4 witness chair. Sir, once seated that chair does kind  
5 of roll around, if you'll scoot that chair up, do  
6 adjust that microphone, do talk into that microphone,  
7 it helps us hear your testimony it also aids in  
8 recording your testimony. Okay. Mr. McMaster.

9 DIRECT EXAMINATION

10 BY MR. MCMASTER:

11 Q Good afternoon, sir. If you would please state  
12 your full name for the record.

13 A My name is Jason Randall Seaton.

14 Q And how do you spell the last name, sir?

15 A S-E-A-T-O-N.

16 Q Mr. Seaton, do you know an individual by the  
17 name of Robert marks?

18 A Yes, I do.

19 Q How do you know Mr. Marks?

20 A He's my brother-in-law.

21 Q And how long have you known him?

22 A I would say about six years.

23 Q Where do you reside?

24 A I'm sorry?

25 Q Where do you live, what area?

1 A I live in Deland, Florida.

2 Q And where does Mr. -- where did Mr. Marks  
3 reside?

4 A Melbourne.

5 Q He was married to your sister?

6 A Yes.

7 Q And in July of last year did you have an  
8 occasion to purchase a weapon?

9 A Yes, sir, I did.

10 Q A Glock firearm?

11 A Excuse me, did you say last year?

12 Q I'm sorry, 2011.

13 A Yeah, that's correct.

14 Q And was that a Glock firearm?

15 A It was a Glock.

16 Q What happened to that weapon?

17 A It was stolen from me.

18 Q And when was it stolen?

19 A November 2011 I believe.

20 Q Do you remember the specific date?

21 A I don't remember the specific date.

22 Q Can you tell the jury the circumstances under  
23 which it was stolen?

24 A It was stolen from my car.

25 Q And where was your car at the time?

1 A It was in my sister's driveway.

2 Q Here in Melbourne?

3 A Yes.

4 Q Had you been with your sister and Mr. Marks  
5 earlier in the evening?

6 A Yes, I was.

7 Q And what had you all been doing?

8 A We were just hanging out together.

9 Q And the following day did you discover that the  
10 weapon was missing?

11 A Excuse me?

12 Q The following day did you discover that the  
13 weapon was missing?

14 A Yes, I did.

15 Q Where had you last seen it?

16 A I last seen it in the glove box of my car.

17 Q And you reported it missing to the police?

18 A To the Brevard County Sheriff's Office, that's  
19 the jurisdiction that my sister lives in.

20 Q Showing you what has --

21 MR. MCMASTER: May I approach the witness,  
22 Judge?

23 THE COURT: Yes, you may.

24 BY MR. MCMASTER:

25 Q Showing you what has been marked for

1 identification as State's Exhibit F2, would you look at  
2 that and just read it to yourself and tell me if you can  
3 identify it?

4 A Yeah, this is the application that I filled out  
5 at Shoot Straight in Casselberry when I bought the  
6 firearm.

7 Q And does your signature in fact appear on the  
8 second page?

9 A Yes, it does.

10 Q And does it indicate the date of the purchase?

11 A 7/22/11.

12 Q And does the form accurately reflect the  
13 information with respect to the weapon that you bought?

14 A I'm sorry, my hearing is very bad.

15 Q I'm sorry, sir.

16 Does the form accurately reflect the  
17 information regarding the firearm that you bought there in  
18 Casselberry?

19 A Yes, sir.

20 Q On the third page in particular does it  
21 describe the make, the model, serial number and caliber?

22 A Yes, Glock model 27.

23 MR. MOORE: Objection, reading from a document  
24 not in evidence.

25 MR. MCMASTER: Without reading.



1 THE COURT: Okay. Sustained.

2 BY MR. MCMASTER:

3 Q Does it accurately reflect the information  
4 regarding the weapon that you purchased?

5 A Yes, it does.

6 Q The one that was subsequently stolen here in  
7 Melbourne?

8 A Yes, it does.

9 MR. MCMASTER: State would move Exhibit F2 as  
10 its next exhibit.

11 THE COURT: With all due respect, I think it's  
12 FZ. Can we check that?

13 MR. MCMASTER: That may well be. It looks like  
14 a 2 to me but it's a Z to Sherry. I'll go with  
15 Sherry's.

16 THE COURT: Looks like a Z now.

17 MR. MOORE: Your Honor, if I may?

18 THE COURT: Yes, you may.

19 VOIR DIRE EXAMINATION

20 BY MR. MOORE:

21 Q Mr. Seaton, you say that document accurately  
22 reflects the information describing the firearm, is that  
23 right?

24 A Yes.

25 Q Do you know whether that is in fact the serial

1 number for the firearm? Do you know that that is  
2 accurately -- that is the same serial number for the  
3 ~~firearm that was taken from your glove box?~~

4 A Yes, sir.

5 Q You do?

6 A I know the serial numbers of all my firearms.

7 Q Do you recall the serial number to that  
8 particular firearm right off the top of your head? Do you  
9 remember that?

10 A I know that is the exact --

11 Q No, that's not my question. My question is can  
12 you -- in your memory do you know the serial number of the  
13 firearm that was stolen from your glove box that you  
14 testified about?

15 A Yes, that is the serial number --

16 Q Do you know it? I'm saying do you know that,  
17 do you know that number?

18 A Do I have it memorized?

19 Q Yes.

20 A No, I do not.

21 Q That's what I'm asking.

22 A No, I do not.

23 MR. MOORE: Can we approach?

24 THE COURT: Yes, you may.

25 (Thereupon, a benchside conference was had out

1 of the hearing of the jury as follows:)

2 MR. MOORE: First, he hasn't laid a proper  
3 predicate, he doesn't know whether that fact  
4 accurately reflects the identifying information  
5 related to the firearm. He doesn't know the number  
6 which who would expect him to. And then number --  
7 well, that's my objection to this being introduced.

8 MR. MCMASTER: Mr. Moore expects him to  
9 remember the firearm serial --

10 MR. MOORE: You know, what can I say, you know,  
11 that's not my problem.

12 THE COURT: Response from the State.

13 MR. MCMASTER: Judge, that is the form he  
14 filled out to get the firearm when he purchased it,  
15 that's his signature and the date that he bought the  
16 weapon. When I asked him if he checked the serial  
17 number on the paperwork against the actual firearm he  
18 got (unintelligible) what he testified to and it  
19 should be sufficient to authenticate the document.

20 THE COURT: Okay. The objection's --

21 MR. PIROLO: Judge, it's also -- I'm sorry.  
22 It's also irrelevant and it's hearsay.

23 MR. MOORE: Well, the next step would be before  
24 it goes in it has to be shown to be relevant, it's  
25 not until the firearm is introduced just like --

1 THE COURT: When it's what?

2 MR. MOORE: Until the firearm is introduced  
3 ~~it's not relevant. It's just like a drug test. I~~  
4 mean, the State can lay the predicate but until they  
5 can tie it all up which is at the time the drugs are  
6 tested, then all of the documents, all of the -- and  
7 chain of custody, everything is not admissible until  
8 it becomes relevant which is the time of the testing.

9 Now, similarly with this, until the firearm's  
10 introduced with that serial number, that document's  
11 not relevant. So, it would be premature to introduce  
12 it assuming they can get pass this point.

13 MR. MCMASTER: Judge, under their theory no  
14 evidence could be admitted until it's all been  
15 identified and it's all together in one bunch.  
16 Certainly this is relevant at this point. I  
17 understand that the State may have to link it up but  
18 the next exhibit I'm going to show to him is a  
19 photograph of the weapon taken from the vehicle with  
20 that serial number on it.

21 MR. MOORE: Anything that's not relevant is  
22 inadmissible, that's just a basic rule of law and  
23 until the firearm comes in -- what if they don't  
24 introduce the firearm, how relevant is that? It's  
25 not, it's just a piece of paper. So, until the

1 firearm is introduced, then that piece of paper is  
2 not relevant.

3 ~~THE COURT: Okay. The objection is overruled.~~

4 You can renew the objection in the event they don't  
5 introduce the firearm.

6 (Thereupon, the benchside conference was  
7 concluded and the proceedings were had as follows:)

8 THE COURT: Okay. State's Exhibit FZ will be  
9 received as State's Exhibit Number 7.

10 (Thereupon, State's Exhibit Number 7 was marked  
11 and received in evidence.)

12 CONTINUED DIRECT EXAMINATION

13 BY MR. MCMASTER:

14 Q Mr. Seaton, at the time that you purchased the  
15 weapon, did you check the paperwork against the weapon  
16 itself to make sure it all matched?

17 A Yes, I did.

18 Q And showing you what has now been admitted as  
19 State's Exhibit 7 in evidence, can you tell us what the  
20 serial number is on the weapon that you purchased in  
21 Casselberry in July of 2011?

22 A RFX856.

23 MR. MCMASTER: May I approach the witness,  
24 Judge?

25 THE COURT: Yes, you may.

1 BY MR. MCMASTER:

2 Q Showing you what has been marked as State's  
3 Exhibit DX for identification, can you identify that?

4 A Yes, that's my pistol.

5 Q And is that an accurate photograph displaying  
6 the serial number of your pistol also?

7 A Yes, it is.

8 MR. MCMASTER: State would move Exhibit DX was  
9 it?

10 THE COURT: DX. Response from the Defense.

11 MR. MOORE: Relevance.

12 THE COURT: Okay. Based on the Court's prior  
13 ruling, DX will be received as State's Exhibit Number  
14 8.

15 (Thereupon, State's Exhibit Number 8 was marked  
16 and received in evidence.)

17 MR. MCMASTER: State requests permission to  
18 publish Exhibit 8 and Exhibit 7 to the jury.

19 THE COURT: Okay. You may publish them.

20 Ladies and gentlemen of the jury, what I'll ask you  
21 to do so it goes faster is if you'll look at one  
22 photograph or one exhibit, pass it to the next and  
23 then look at the second one so we can -- other people  
24 can be looking at the exhibits at the same time.

25 Yeah, do -- if they want to compare, I'll give

1           them that opportunity.

2                       (Thereupon, State's Exhibit Numbers 7 and 8  
3 ~~were published to the jury.)~~

4 BY MR. MCMASTER:

5           Q       Mr. Seaton, did you come to learn that in fact  
6 Robert Marks had stolen your weapon?

7           A       Yes, sir.

8           Q       And he's currently serving a prison term for  
9 his actions in connection with that?

10          A       Yes.

11                   MR. MCMASTER: Thank you, sir. Nothing  
12 further.

13                   THE COURT: Okay. Cross examination by the  
14 Defense.

15                   MR. MOORE: No questions.

16                   THE COURT: Okay. Sir, thank you for your  
17 testimony, you're free to step down.

18                   THE WITNESS: Thank you.

19                   (Thereupon, the witness exited the witness  
20 stand.)

21                   MR. MCMASTER: State calls Agent Craig Carson.

22                   THE COURT: Agent Carson?

23                   MR. MCMASTER: Yes.

24                   THE COURT: Sir, if you'll step up to the clerk  
25 to be sworn.

1 THEREUPON,

2 AGENT CRAIG CARSON,

3 ~~having been first duly sworn, was examined and testified~~  
4 upon his oath as follows:

5 THE COURT: Sir, if you'll be seated in the  
6 witness chair. Once seated, if you'll scoot that  
7 chair forward. Do adjust that microphone, do talk  
8 into that microphone. Okay. Mr. McMaster.

9 DIRECT EXAMINATION

10 BY MR. MCMASTER:

11 Q Good afternoon, sir. If you would, please  
12 state your name for the record.

13 A My name is Craig Carson.

14 Q And how are you employed?

15 A With the Brevard County Sheriff's Office as an  
16 agent.

17 Q And how long have you been with Brevard County  
18 Sheriff's Office?

19 A I've been with the sheriff's office for ten  
20 years.

21 Q In March of 2012 did you have an occasion to  
22 become involved in the investigation into the homicide of  
23 Deputy Barbara Pill of the Brevard County Sheriff's  
24 Office?

25 A I did.



1 Q What part were you assigned to investigate?

2 A I work for an ATF sheriff's office Task Force,  
3 ~~we did our investigation on the recovered firearm.~~

4 Q And did you investigate the firearm that was  
5 removed from the vehicle that Mr. Brandon Bradley and  
6 Andria Kerchner were removed from?

7 A Yes, I did.

8 Q Were you ultimately able to determine the owner  
9 of the firearm?

10 A I did.

11 Q And did you -- without saying what it was that  
12 you talked to him about, did you interview the owner,  
13 Mr. Jason Seaton?

14 A Yes.

15 Q Based on the information that you received from  
16 Mr. Seaton as well as the information that Mr. Seaton had  
17 originally provided to the sheriff's office when he  
18 reported the weapon stolen, did you have an occasion to do  
19 a follow up interview with any individuals?

20 A Yes, I did.

21 Q Who did you speak to?

22 A I spoke with Mr. Robert Marks.

23 Q And when did you speak to Mr. Marks?

24 A That day would have been March 8th, 2012.

25 Q So, two days after the murder of Deputy Pill?

1 A Yes, sir.

2 Q During the conversation that you had with, or  
3 ~~interview that you had with Mr. Marks, was Mr. Marks under~~  
4 arrest at that time?

5 A No, he was not.

6 Q And where did the interview take place?

7 A At his residence in Melbourne.

8 Q And who all was present?

9 A Myself and Special Agent Kevin McCann with the  
10 ATF.

11 Q Did Mr. Marks indicate to you that he in fact  
12 had sold the weapon to an individual?

13 A Yes, he did.

14 Q And did he identify the individual by name?

15 A At first he identified him as Boogie.

16 Q And did he indicate whether he knew the  
17 individual's full name or not?

18 A Not at that time he did not.

19 Q Did he give you any other information as to how  
20 you might be able to identify who Boogie was?

21 A Yes, he did.

22 Q What did he do? What did he say?

23 A He advised --

24 MR. LANNING: Objection.

25 THE COURT: Calls for a yes or no. Did he give

1           you any other information?

2                   THE WITNESS: Yes, ma'am.

3 BY MR. MCMASTER:

4           Q        What was the information that he gave you?

5                   MR. LANNING: Objection, hearsay.

6                   THE COURT: Okay. Bench conference.

7                   (Thereupon, a benchside conference was had out  
8 of the hearing of the jury as follows:)

9                   MR. LANNING: Judge, what information he gave  
10 him is hearsay.

11                   THE COURT: I'm going to hear a response from  
12 the State.

13                   MR. MCMASTER: The State's not seeking to  
14 introduce the statement for its truth, I believe that  
15 the way that he identified him was that Mr. Marks  
16 told him it was the guy that's all over the news  
17 about the shooting of the deputy, based on that Agent  
18 Carson pulled up a news photo from what was being run  
19 in the papers at the time which he thinks was a photo  
20 that the sheriff's office had published.

21                   THE COURT: So, what does that have to do with  
22 the phone number?

23                   MR. MCMASTER: It has nothing to do with the  
24 phone number.

25                   THE COURT: I thought you were going to ask

1 him -- maybe I misunderstood. I thought the next one  
2 was what phone number did he give you.

3 ~~MR. MCMASTER: No. No, this is how he got the~~  
4 photograph.

5 MR. MOORE: How is that not hearsay? It's an  
6 out of court statement by a declarant offered for the  
7 truth that it's in the media which of course this is,  
8 it has been for just about daily for the last two  
9 years, that's hearsay.

10 MR. MCMASTER: It's a statement of  
11 identification which is an exception to the hearsay.

12 MR. MOORE: No.

13 MR. MCMASTER: It's not hearsay at all.

14 MR. MOORE: It's I saw the person in the  
15 newspaper, that's hearsay. That doesn't -- it's not  
16 an identification, not of this person right here, not  
17 of the defendant, not of anybody, just an out of  
18 court declarant saying I saw something in the  
19 newspaper and that's what it's being offered for.  
20 It's being offered for its truth value. Its hearsay.  
21 There's no exception to the hearsay rule for that.

22 THE COURT: I'm going to sustain the objection.

23 (Thereupon, the benchside conference was  
24 concluded and the proceedings were had as follows:)  
25

1 BY MR. MCMASTER:

2 Q Based on the information that Mr. Marks gave  
3 you in the interview about the individual Boogie, did you  
4 obtain the photograph of an individual?

5 A Yes, I did.

6 Q Who was the individual that you obtained the  
7 photograph?

8 MR. LANNING: Objection.

9 THE COURT: Okay. Overruled.

10 MR. MOORE: Can we approach on this?

11 THE COURT: Yes, you may.

12 (Thereupon, a benchside conference was had out  
13 of the hearing of the jury as follows:)

14 THE COURT: Ask him.

15 MR. MOORE: Who was the individual in the  
16 picture, that's his opinion. Now, unless they have  
17 laid a proper --

18 THE COURT: He obtained -- he went and got a  
19 picture, who was the individual in the picture, it's  
20 what he did.

21 MR. MOORE: Well, but it's the who that was in  
22 the picture. It's his opinion about who was in the  
23 picture that we're objecting to unless they can  
24 establish a predicate for that. Either he took the  
25 picture of the person and it's a fair and accurate

1 representation of the person in the picture or he's  
2 familiar enough with the person in the picture to  
3 say, well, I know that person and I can identify him.  
4 Those are the only two ways that he can express that  
5 opinion. There's no other way. He just can't -- you  
6 know, what if it would have been handed to him by  
7 somebody else how said that Brandon Bradley.

8 So, unless they can establish his familiarity  
9 with the person in the picture sufficiently enough so  
10 that he can make an identification based upon that  
11 familiarity or he took the picture himself and can  
12 say that's a fair and accurate representation, then  
13 he can answer that question. They have to lay a  
14 predicate first.

15 THE COURT: Okay. I'm not sure a predicate was  
16 laid so, as to who the picture was.

17 MR. MCMASTER: I'll ask him where he got the  
18 photograph and who (unintelligible).

19 THE COURT: Okay. So, I'll sustain the  
20 objection.

21 MR. MOORE: Well, you can't ask him who it was  
22 of, that's what we're objecting to.

23 THE COURT: Well, if they lay a predicate. He  
24 can say what he did as a result of what he was told  
25 even if what he did was go find a picture of Mr.

1 Bradley.

2 MR. MOORE: Well, he can't say this is a  
3 picture of Mr. Bradley unless one of those two  
4 predicates are laid that I just outlined and unless  
5 they do that he cannot give that opinion.

6 MR. MCMASTER: Judge, they use jail photos all  
7 the time.

8 THE COURT: Well, if you say I went and got a  
9 jail photo and -- of a certain individual and --

10 MR. MOORE: That's his opinion about it. If he  
11 says --

12 MR. MCMASTER: It goes to the weight.

13 MR. MOORE: No, no, it doesn't, it goes to the  
14 admissibility. If he can say I was there when the  
15 picture was taken or I'm familiar --

16 THE COURT: I'm not going to require that.

17 MR. MOORE: No, of course.

18 THE COURT: He doesn't have to be there when  
19 the --

20 MR. MOORE: No, no, that's one way, that's not  
21 this way. Or I know the person in the picture, I'm  
22 familiar with him and I would say that is the person  
23 I know in the picture and he hasn't done that.

24 THE COURT: I mean, there's official records  
25 that say who the pictures are. I would accept that.

1 I mean, I'm not --

2 MR. MOORE: But they're not seeking to  
3 introduce those, Your Honor.

4 THE COURT: Okay. I'm going to sustain it on  
5 lack of predicate.

6 (Thereupon, the benchside conference was  
7 concluded and the proceedings were had as follows:)

8 BY MR. MCMASTER:

9 Q Agent Carson, where did you get the photograph  
10 that you showed to Mr. Marks?

11 A It was a photograph provided to the media from  
12 law enforcement.

13 Q And who was the photograph of?

14 MR. MOORE: Objection. Objection, predicate.

15 THE COURT: I'll sustain the objection at this  
16 point.

17 MR. MCMASTER: Approach the witness?

18 THE COURT: Yes, you may.

19 BY MR. MCMASTER:

20 Q Showing you what has been admitted as State's  
21 Exhibit 6 in evidence. Is that a photograph of the  
22 individual whose photograph you obtained on March 8th,  
23 2012, and showed to Mr. Marks?

24 A It's a photograph, I can't be a hundred percent  
25 sure if that's the exact photograph that was shown.



1 Q No, I'm not asking if that's the exact photo.

2 A Okay.

3 Q I'm asking you if the individual that's  
4 depicted in that exhibit is the same individual you pulled  
5 up your photograph of?

6 A Yes, sir.

7 MR. MOORE: Same objection, Your Honor, lack of  
8 predicate. Can we approach?

9 THE COURT: You may.

10 (Thereupon, a benchside conference was had out  
11 of the hearing of the jury as follows:)

12 MR. MOORE: He has to have a basis of  
13 comparison. He can't -- just an opinion by -- this  
14 is for a jury determination. They're trying to  
15 establish identity. They can't have a witness come  
16 and just say I've looked at two pictures and I think  
17 they're the same person unless he's so familiar with  
18 the person in the picture he can say, yeah, I know  
19 him, I know him on sight anywhere, that's a picture  
20 of him there, that's a picture of him there and  
21 they're not doing that.

22 THE COURT: He can say that that was --

23 MR. MOORE: They're skipping those steps.

24 THE COURT: -- the same picture that he -- that  
25 that's the individual, I look at this picture and --

1 MR. MOORE: It's not the same picture, he just  
2 said that, he's not sure.

3 THE COURT: No, he can say that's the same  
4 individual. He can compare pictures, that's --

5 MR. MOORE: No, he can't do that, Your Honor.  
6 An officer cannot make -- nobody can, no person can  
7 take two pictures unless they have sufficient  
8 familiarity with it, that's just an opinion for the  
9 jury to make. That's their decision to make, not  
10 this witness.

11 MR. MCMASTER: He's testified that the picture  
12 he pulled up that he showed to Mr. Marks was a  
13 photograph of Brandon Bradley and that was publicized  
14 by the sheriff's department by someone  
15 (unintelligible) press release and that's why he  
16 specifically pulled it up as Brandon Bradley. This  
17 is official evidence in the record already that this  
18 person is Brandon Bradley. He's saying it's the same  
19 person.

20 MR. MOORE: He's skipping a whole lot of steps.  
21 How does he know that that is a picture of Brandon  
22 Bradley. He just can't -- what's he taking somebody  
23 else's word for it? That's hearsay.

24 THE COURT: Well, this has already come into  
25 evidence.

1 MR. MOORE: That's fine.

2 THE COURT: That this is a picture of Brandon  
3 Bradley.

4 MR. MOORE: That's fine, but he can't take two  
5 pictures and compare them unless he's got a basis for  
6 comparing them unless he's sufficiently familiar and  
7 they're skipping those steps.

8 THE COURT: Okay. At this time I'll going to  
9 overrule the objection.

10 (Thereupon, the benchside conference was  
11 concluded and the proceedings were had as follows:)

12 BY MR. MCMASTER:

13 Q Agent Carson, I understand that may not be the  
14 exact same photograph that you used but it's the same  
15 individual we're talking about?

16 A Yes, it is.

17 Q Where did you get your photograph?

18 A I got it off an Internet website, when you  
19 Googled Barbara Pill it came up with the picture of  
20 Mr. Bradley.

21 Q And was Mr. Marks able --

22 MR. MOORE: Your Honor, that's is exactly  
23 (unintelligible), we object.

24 THE COURT: Okay. Overruled.

25

1 BY MR. MCMASTER:

2 Q And was Mr. Marks able to identify for you in  
3 your interview on March 8th of 2012 an individual in the  
4 photograph as being the person Boogie that he had sold the  
5 weapon to?

6 A Yes, he did.

7 MR. MCMASTER: No further questions.

8 THE COURT: Okay. Cross examination. We'll  
9 give him just a moment. Cross examination by the  
10 Defense.

11 MR. LANNING: No questions.

12 THE COURT: Okay. Agent Carson, thank you for  
13 your testimony, you're free to step down.

14 THE WITNESS: Thank you, ma'am.

15 (Thereupon, the witness exited the witness  
16 stand.)

17 MR. MCMASTER: Can we approach the bench?

18 THE COURT: Yes, you may.

19 Okay. Other witnesses on behalf of the  
20 Defense? I mean on behalf of the State, sorry about  
21 that.

22 MR. MCMASTER: That's what I was going to  
23 approach about, Judge.

24 THE COURT: Other witnesses on behalf of the  
25 State? Oh.

1 MR. MCMASTER: May we approach?

2 THE COURT: Yes, you may.

3 ~~(Thereupon, a benchside conference was had out~~  
4 of the hearing of the jury as follows:)

5 THE COURT: I didn't know that that's what that  
6 was in reference to. I thought it was because I said  
7 Defense instead of State.

8 MR. MCMASTER: We got through them all but I  
9 thought that there was going to be cross examination  
10 on each of them. We don't have any additional  
11 witnesses here this afternoon. I don't think there's  
12 anybody (unintelligible). We do have a long list of  
13 hotel employees that are going to be here early in  
14 the morning.

15 THE COURT: What time did you tell them to be  
16 here?

17 MR. MCMASTER: I think they're going to be here  
18 between 8:00 and 8:30.

19 THE COURT: Okay. Then we'll start at 8:30  
20 tomorrow morning.

21 MR. BROWN: Judge, the first witness we had  
22 flown in so we're going to tend to call him first. I  
23 expect he'll be here at 8:30 but.

24 THE COURT: If not.

25 MR. BROWN: I'm a little concerned if we're

1 running a few minutes late.

2 THE COURT: If he's running a few minutes late  
3 or we're running a few minutes late?

4 MR. BROWN: Well, if he is. I don't want to  
5 delay the court.

6 THE COURT: So, what are you saying?

7 MR. BROWN: Perhaps 8:45?

8 THE COURT: Well, by the time they -- if they  
9 get here at 8:30, by the time they get up it's  
10 usually 8:45. Okay. Okay.

11 (Thereupon, the benchside conference was  
12 concluded and the proceedings were had as follows:)

13 THE COURT: Okay. Ladies and gentlemen, at  
14 this time we're going to recess for the evening. I'm  
15 going to ask you to be back here at 8:30 in the  
16 morning. During this recess you must continue to  
17 abide by the rules governing your service as a jury.  
18 Do not discuss this case among yourselves or with  
19 anyone else. Avoid reading newspaper headlines  
20 and/or articles relating to this trial or it's  
21 participants. Avoid seeing or hearing television or  
22 radio or internet comments about this trial and do  
23 not conduct any research yourself regarding this case  
24 or any of its participants. Report downstairs at  
25 8:30 to jury assembly room. As soon as everyone's

1 here we'll bring you up and we'll get started. So,  
2 court will be in recess until 8:30 tomorrow morning.  
3 Thank you. Put your notebooks on your seat. Thank  
4 you.

5 (Thereupon, the jury was escorted out of the  
6 courtroom by the court deputy and the proceedings were had  
7 as follows:)

8 THE COURT: Okay. You may be seated. Any  
9 matters that we need to address before we recess on  
10 behalf of the State?

11 MR. MCMASTER: No, Your Honor.

12 THE COURT: Any matters we need to address  
13 before we recess on behalf of the Defense?

14 MR. MOORE: No, Your Honor.

15 THE COURT: Okay. Court will be in recess  
16 until 8:30 tomorrow morning. Thank you.

17 (Thereupon, court was in recess for the day,  
18 3/18/2014. Thereafter, court was reconvened on 3/19/2014  
19 and the proceedings were had as follows:)

20 THE COURT: Please be seated. We can bring out  
21 Mr. Bradley.

22 MR. MOORE: Judge, before we get started this  
23 morning, I need to approach.

24 THE COURT: Okay. I just want Mr. Bradley out  
25 here.

1           (Thereupon, the defendant was escorted into the  
2 courtroom by the court deputy.)

3           ~~THE COURT: Okay. Let's go ahead and have a~~  
4 bench conference.

5           (Thereupon, a benchside conference was had out  
6 of the hearing of the audience as follows:)

7           MR. MOORE: Your Honor, I've given the Court a  
8 copy of a Fifth District Court of Appeal case, Ruffin  
9 v. State, 549 So.2d 250 from 1989 and this relates to  
10 the testimony yesterday of Agent Carson and he was --  
11 over our objection he was allowed to testify that in  
12 looking at a driver's license picture of Brandon  
13 Bradley and comparing it to a picture which wasn't  
14 disclosed or introduced of what he said was a picture  
15 of Mr. Bradley which he went and found on the  
16 Internet on a website which is a Deputy Pill web page  
17 and to compare the two and give his opinion that is a  
18 picture of the same guy and the Ruffin case says that  
19 a police officer can't do that, no witness can but  
20 especially a police officer because -- unless the  
21 witness the officer was a witness to a crime, he's an  
22 expert in identification, or he has some special  
23 familiarity with that person in the picture and the  
24 State didn't establish any of that. So, you know,  
25 that is the basis -- the case law basis for the



1 objection that I made yesterday and lays it out and  
2 we move to strike his testimony and have the jury  
3 disregard it. It's an essential link in the firearm,  
4 stolen firearm which the theft, theft of that  
5 firearm, Mr. Marks said in his testimony that he  
6 gave -- sold it to somebody named Boogie and could  
7 not identify Mr. Bradley. So, the State is using  
8 that to link the firearm through Mr. Marks and Agent  
9 Carson to the defendant.

10 THE COURT: Okay. Response from the State.

11 MR. MCMASTER: Judge, the driver's license  
12 photograph is in evidence as is the additional  
13 photograph of Brandon Bradley. Agent Carson  
14 testified that he pulled up on social media, he  
15 Googled essentially Deputy Pill's situation and took  
16 one of the photographs off of there indicating that  
17 it is Brandon Bradley. He's indicated that he is  
18 aware that they are both the same individuals and he  
19 showed that photograph to the witness who identified  
20 the photograph in the social media as being that of  
21 Brandon Bradley. To me it goes to the weight. It's  
22 for the jury to make the determination ultimately  
23 whether or not it is the same individual. That Agent  
24 Carson is participating in the investigation, he's  
25 familiar with the defendant, Brandon Bradley, and is

1           able to make a comparison between the two photographs  
2           and the photograph that was shown to Mr. Marks is one  
3           that came right off of the Internet based on his  
4           information about who the guy was.

5           MR. MOORE: Well, it shouldn't even be weighed  
6           by the jury because it shouldn't be in front of the  
7           jury. It's black or white, either the State has laid  
8           that predicate, which the Fifth DCA Ruffin case lays  
9           out, or they haven't and they didn't and so the jury  
10          shouldn't even be considering this even if he did get  
11          it off the Internet because we all know anything on  
12          the Internet's got to be true, right. And that -- by  
13          the way, the picture was never disclosed to us and it  
14          was not -- certainly not introduced. So, what we're  
15          left with is the opinion of Agent Carson that those  
16          two pictures depict the same person and the Ruffin  
17          case is right on point, it says you can't do that  
18          unless that predicate's laid and it was not.

19          MR. MCMASTER: The problem is the picture was  
20          never generated as a hard copy, he pulled it up on  
21          the computer, showed to Mr. Marks during the  
22          interview and then Mr. Marks confirmed that the  
23          photograph on the Internet that is displayed is -- I  
24          think he said it was one of the photographs issued by  
25          the sheriff's office as the initial press release

1 type situation was in fact the individual that he  
2 knew as Boogie. So, we didn't have a physical  
3 photograph to introduce to the jury, we just have the  
4 testimony of Agent Carson to testify about that.

5 I thought about this last night. You know,  
6 normally when photo lineups are prepared, the officer  
7 preparing them just takes jail photos or driver's  
8 license photos and prepares a six pack and that  
9 officer who prepares the six pack is not physically  
10 present when any of those photos are taken. He may  
11 not have any particular knowledge about the  
12 particular individual but he's allowed to rely on the  
13 official photographs of this person as being that  
14 particular individual. They show these lineups to  
15 witnesses on a regular basis. The witness has  
16 identified a particular photograph and the officer  
17 testifies this is who the person is. If Defense  
18 Counsel wants to argue to the jury, well, the officer  
19 who said that doesn't really know because he wasn't  
20 there, let them argue that. That goes to the weight,  
21 not the admissibility.

22 MR. MOORE: This is not a lineup, this is --  
23 and it also deals with a picture that wasn't even  
24 introduced into evidence nor disclosed. Now, I  
25 understand the reasons why but there's no exception

1 in the Ruffin case for the logistical problems that  
2 the State has and --

3 So, you know, that distinction is -- you know,  
4 clearly mug shots as long as they're properly  
5 authenticate and introduced into evidence can be the  
6 basis of a police officer's testimony that it was  
7 shown to a witness who then made a selection. That's  
8 under 8012(c), but this is not that situation. This  
9 is a photograph which may or may not have been  
10 Mr. Bradley from an unofficial web site, a web page  
11 for the deputy which is the basis of it which we've  
12 never seen and so this is -- the Ruffin case is right  
13 on point. It's not a mug shot, it should have  
14 excluded the officer's testimony. The jury shouldn't  
15 be considering this at all, should not have been  
16 introduced for their consideration under Ruffin.

17 MR. BROWN: Judge, the Ruffin case is a little  
18 bit different, the facts and circumstances. It's a  
19 videotape drug buy and it's clear in the videotaped  
20 drug buy the person's coming in not having been a  
21 witness to the offense. Had he been a witness to the  
22 offense the opinion says he could have testified as  
23 to who it was. Well, the officer who testified  
24 yesterday, Agent Carson, was a witness to the  
25 identification. That's what he's a witness to and he

1 was a direct witness to it. The Ruffin case and the  
2 whole issue with the video buys is unless we can  
3 establish the person's familiarity with the  
4 defendant, we cannot come in and simply watch the  
5 same videotape that the jury's going to watch and  
6 make the identification.

7 In fact, the videotape cases go a step farther  
8 in that an officer can't identify himself as an  
9 officer if he's the one we're going to use to make  
10 the ID and say he's familiar with the defendant  
11 because that would imply some prior contact, but in  
12 effect he's simply watching what the jury watches and  
13 gives his opinion and we have to establish a  
14 predicate. This is different in that this is the  
15 actual witness who's showing the photograph to the  
16 person making the identification from the photograph.

17 MR. MOORE: It is not the actual witness. The  
18 actual witness was Mr. Marks. Mr. Marks could not  
19 make the ID. So, we have a witness one removed  
20 who -- a witness, Mr. Marks, unable to -- who was  
21 unable to make the ID.

22 THE COURT: Okay. But Mr. Marks -- the reason  
23 why he went and got the photo of Mr. Brandon was as a  
24 result of -- Mr. Bradley was as a result of what he  
25 was told by Mr. Marks. So, it wasn't totally

1 arbitrary that this photo came up. That's the reason  
2 why he went to get the photo.

3 MR. MOORE: That's not the point. I mean, he  
4 could have all the legitimate or illegitimate reason  
5 in the world for getting that picture, but the bottom  
6 line is this officer expressed an opinion about a  
7 photograph which he was not -- he's not a witness to  
8 that transaction involving Boogie --

9 MR. BROWN: He was a witness --

10 MR. MOORE: Excuse me. The police officer was  
11 not a witness nor a victim which is the traditional  
12 witness who testifies in looking at a photograph.  
13 The only thing he witnessed was Mr. Marks identifying  
14 a photograph which is not the Ruffin case. The  
15 officer cannot give an opinion about the identity of  
16 a person in the photograph unless the Ruffin standard  
17 is met.

18 MR. BROWN: The Ruffin standard is the person  
19 is not a witness to the crime for what they're using  
20 it for. Agent Carson was a witness to what we were  
21 using. That's the difference between that case and  
22 Ruffin. Ruffin is somebody totally unrelated to the  
23 case, had nothing to do with the drug buy comes in,  
24 makes the identification by viewing the videotape.  
25 Okay.

1           The Ruffin case says if the eyewitness is there  
2 and observed the transaction, they can come and make  
3 the identification. That's what all the cases stand  
4 for. You can come in and make an identification when  
5 you observe it. All Agent Carson did was come in,  
6 he's an eyewitness to the second witnesses, the  
7 photograph identification, Mr. Carson was an  
8 eyewitness to that identification.

9           MR. MOORE: Can we read the Ruffin case and  
10 follow the Ruffin case? It says where the -- where  
11 the police officer can give an opinion from a --  
12 about the identity in a picture is number one. Where  
13 the police officers -- where they can't do it that  
14 is. When the police officers are not an eyewitness  
15 to the crime. Okay. The crime was -- or the  
16 transaction was the sale of the gun. Mr. Marks was a  
17 witness of that. He couldn't identify it. Agent  
18 Carson was not a witness to that. The police officer  
19 did not have any special familiarity with the  
20 defendant, they didn't establish that. The police  
21 officer was not qualified as any type of expert in  
22 identification, they didn't establish that. So,  
23 Ruffin is not met. I mean, they can give all these  
24 convoluted explanations but they're not logical and  
25 they don't apply to this factual situation.

1 MR. BROWN: I disagree with Defense Counsel  
2 with all due respect, he's taking the stretch that  
3 when they say the third officer were allowed to  
4 testify over objection that mere opinion Ruffin was  
5 the man in the videotape. That's the same tape  
6 that's played to the jury. The witnesses who  
7 testified in the Ruffin case had nothing to do with  
8 what they were making their identification off.

9 MR. MOORE: Exactly right, he was not present.

10 MR. BROWN: The difference here is Agent Carson  
11 was an eyewitness to the identification. That's what  
12 he's testified to was the photograph that he showed  
13 to the witness he made the identification. He's an  
14 eyewitness to the event he's testified to.

15 MR. MOORE: No.

16 MR. BROWN: Ruffin is not that.

17 MR. MOORE: He is not the eyewitness which is  
18 the whole purpose of this transaction, this whole  
19 series of witnesses, Ruffin and Carson. He was not a  
20 witness to the gun changing hands and to Boogie's hands  
21 and so it's one step removed. That is not Ruffin.  
22 The police was not there when that happened, he can't  
23 testify about it.

24 THE COURT: Okay. The objection is overruled.

25 I have something if you'll stay up here. What



1 have you done with the jury information sheets? Do  
2 you still have them?

3 MR. MOORE: ~~Sitting on my desk, mine are.~~

4 THE COURT: Do you have any objections to  
5 giving them to the clerk?

6 MR. PIROLO: I have notes on them.

7 MR. LANNING: I do as to mine (unintelligible).

8 MR. PIROLO: Yeah, mine are all --

9 THE COURT: Well, do you need those notes  
10 because they would be destroyed.

11 MR. LANNING: I will need the list for  
12 appellate purposes.

13 MR. MOORE: Can we hang on to them until the  
14 end of the case and then we'll return them.

15 MR. MCMASTER: We don't have any problem with  
16 having the Court issue an order that they're not to  
17 be disposed of.

18 THE COURT: I thought I already issued that  
19 order with all due respect, but we got a call from  
20 the Stat's office yesterday --

21 MR. MCMASTER: I heard it.

22 THE COURT: -- making that request and then my  
23 person asked me and I'm like is that even in dispute.  
24 They asked for the names of the jurors and then they  
25 asked for some demographical information.

1           MR. BROWN: The way it was explained to us is  
2 we got a call from the clerk. Out people has said  
3 that the clerks were going to -- they requested it,  
4 they were going to release it unless we had an issue  
5 with that and our person told them that we don't  
6 think you should, you need to contact the Judge  
7 before you do that.

8           THE COURT: Okay. Because I thought it was  
9 coming from your office, I didn't know it was coming  
10 from the clerk's office.

11          MR. BROWN: No, no, not from us.

12          THE COURT: I'll make sure they know not to  
13 release anything because I said nothing is to be  
14 released without an order of the court. I mean,  
15 that's the purpose -- it's, you know. If I had said  
16 their names on the record it would be public record  
17 but I didn't say their names, I only said their  
18 numbers. So, at this point it's -- the only thing  
19 that's public record is the numbers.

20          MR. PIROLO: Judge, as an officer of the court,  
21 I can tell you I'm not going to disclose the  
22 questionnaires to anyone. I've got a lot of notes on  
23 every single page of --

24          THE COURT: I understand that it may -- I was  
25 just asking that question. If you want to keep that

1 and everyone is with the understanding that that  
2 information is not public record, that information is  
3 not to be disseminated, then I'm okay with that but,  
4 you know, that means with all due respect is it  
5 possible to get a -- is Miss Brook --

6 MR. PIROLO: Butler.

7 THE COURT: Butler.

8 MR. MOORE: Dr. Butler.

9 THE COURT: Maybe Dr. Butler could give you,  
10 whatever information she has could go back to the  
11 attorneys and if any of your investigators, if it's  
12 in the possession of the attorneys and then, you  
13 know, if it comes to a point where we have to address  
14 it by court order, we'll do that.

15 MR. PIROLO: That's fine.

16 THE COURT: Okay. But everyone is  
17 understanding that that information is not to be --

18 MR. MOORE: Oh, yes, yes, ma'am.

19 THE COURT: To go beyond you.

20 MR. PIROLO: Yes, I understand.

21 THE COURT: Okay. Thank you.

22 (Thereupon, the benchside conference was  
23 concluded and the proceedings were had as follows:)

24 THE COURT: Okay. Any other matters that we  
25 need to address on behalf of the State?

1 MR. BROWN: No, Your Honor.

2 THE COURT: Other matters on behalf of the  
3 Defense?

4 MR. MOORE: No, Your Honor.

5 THE COURT: Okay. It looks like -- is the jury  
6 up?

7 THE COURT DEPUTY: They are.

8 THE COURT: It looks like we're ready to bring  
9 the jury in.

10 THE COURT DEPUTY: Yes, ma'am.

11 THE COURT: Okay. Thank you.

12 (Thereupon, the jury was escorted into the  
13 courtroom by the court deputy and the proceedings were had  
14 as follows:)

15 THE COURT: Please be seated. Good morning,  
16 ladies and gentlemen of the jury. Has anyone read or  
17 been exposed to reading newspaper headlines and/or  
18 articles relating to this trial or its participants?

19 THE JURY PANEL: No.

20 THE COURT: Has anyone seen or heard  
21 television, radio or Internet comments about this  
22 trial?

23 THE JURY PANEL: No.

24 THE COURT: Has anyone conducted or been  
25 exposed to any research regarding any matters

1 concerning this case?

2 THE JURY PANEL: No.

3 THE COURT: And have you discussed this case  
4 among yourselves or with anyone else or allowed  
5 anyone to discuss it in your presence?

6 THE JURY PANEL: No.

7 THE COURT: Okay. Thank you.

8 Okay. Other witnesses on behalf of the State.

9 MR. BROWN: Your Honor, the State would call  
10 Christopher Montesano.

11 THE COURT: Sir, if you'll come forward, step  
12 up to the clerk to be sworn.

13 THEREUPON,

14 CHRISTOPHER MONTESANO,  
15 having been first duly sworn, was examined and testified  
16 upon his oath as follows:

17 THE COURT: Sir, please be seated in the  
18 witness chair. Sir, once seated, if you'll scoot  
19 that chair up. Do adjust that microphone, do talk  
20 into that microphone, it aids in us hearing your  
21 testimony and it also aids in recording your  
22 testimony. Okay. Mr. Brown.

23 MR. BROWN: Thank you, Your Honor.  
24  
25

DIRECT EXAMINATION

BY MR. BROWN:

Q Sir, would you please state your name and spell your last name?

A Christopher Montesano, that's M-O-N-T-E-S-A-N-O.

Q Mr. Montesano, what state do you live in?

A I live in Ohio.

Q And I want to bring your attention back March 6th, 2012, were you in the State of Florida at that time?

A Yes, sir, I was.

Q And what were you down here for?

A Tried to move down here actually.

Q Okay. And at that date and time, March 6th, 2012, where were you staying at?

A We were staying at the EconoLodge right off of Route 95 in Brevard County.

Q And when you say we, who were you staying with?

A My fiancée.

Q And on that particular morning of March 6th, were you checking out of a particular room?

A Yes, we were.

Q What were you doing?

A Basically we were cleaning out our room emptying all our trash out, loading up our belongings into

1 our vehicle.

2 Q And do you recall what room you were in?

3 A I do not exactly remember the room number, I  
4 know I was on the first floor.

5 Q And the layout of the hotel itself, the motel,  
6 the front portion, back portion?

7 A In the back portion.

8 MR. BROWN: Your Honor, may I approach the  
9 witness?

10 THE COURT: Yes, you may.

11 BY MR. BROWN:

12 Q I'm going to show you what's been marked as  
13 Exhibit H for identification, do you recognize this?

14 A Yes, sir.

15 Q And what is it?

16 A That's the Econo lodge.

17 Q And is that the area where you were staying?

18 A Yes, sir.

19 Q Does this fairly and accurately depict how it  
20 existed when you were there on March 6th, 2012?

21 A Yes, sir.

22 MR. BROWN: Your Honor, at this time the State  
23 would move to admit what's marked as Exhibit H for  
24 identification into evidence.

25 THE COURT: Response from the Defense?

1 MR. PIROLO: No objection, Your Honor.

2 THE COURT: Okay. H will be received as  
3 State's Exhibit Number 7.

4 MR. BROWN: Judge, we're on Number 9.

5 THE COURT: Did I miss? Oh, you're right,  
6 we're on Number 9. Sorry about that. State's  
7 Exhibit Number 9.

8 (Thereupon, State's Exhibit Number 9 was marked  
9 and received in evidence.)

10 MR. BROWN: Can I ask that the easel be brought  
11 up, please? I'd like to publish this at this time to  
12 the jury.

13 THE COURT: Okay.

14 MR. BROWN: I think the best spot may be  
15 perhaps down by where that spare chair is to be close  
16 enough where they can see it.

17 THE COURT: Okay. If he wants to move it over  
18 there, we can move it over there. If you'll turn it  
19 this way a little bit so the Defense can see it too.

20 MR. BROWN: Your Honor, may I have the witness  
21 step down, please?

22 THE COURT: The witness may step down.

23 (Thereupon, the witness exited the witness  
24 stand.)

25 MR. PIROLO: With the Court's permission, may I



1           move around the?

2                   THE COURT: Yes, you may.

3 BY MR. BROWN:

4           Q       If you can just stand to the side of it please.  
5 Can you point to the jury where approximately you were  
6 staying in the hotel?

7           A       Our room was this one here.

8           Q       And you indicated which floor were you on?

9           A       The first floor.

10          Q       And do you recall where your car was parked at?

11          A       My car was parked right here.

12          Q       And was there -- this area that kind of juts  
13 out from the building, what is that?

14          A       That's the stairwell that goes up to the second  
15 floor.

16          Q       And was there any car parked between your car  
17 and that stairwell?

18          A       Yeah, it was the SUV.

19          Q       Okay. And when you were there, did you notice  
20 anything unusual happening somewhere between 10:00 and  
21 11:00 o'clock?

22          A       Yeah, I noticed that that vehicle was being  
23 loaded with furniture that belonged to the hotel room.

24          Q       Okay. And did you see -- first, did you see  
25 what people -- what, if any, people were loading anything

1 into that vehicle?

2 A I saw the defendant loading furniture into the  
3 vehicle, in the rear of the vehicle.

4 Q And you indicate the defendant, can you please  
5 points him out and describe an article of clothing that  
6 he's wearing?

7 A A jacket sitting.

8 Q And white or black?

9 A Black.

10 MR. BROWN: Your Honor, let the record reflect  
11 the witness has identified the defendant.

12 Q Did you see anybody else carrying stuff out to  
13 that vehicle as well?

14 A I saw a female as well.

15 MR. MOORE: I can't hear, little louder please.

16 THE WITNESS: Female as well.

17 BY MR. BROWN:

18 Q Can you give the jury a description of that  
19 female?

20 A I really can't, sir.

21 Q Was she white or black?

22 A She was white.

23 Q And did you happen to notice what room or what  
24 area they were -- the area their room was?

25 A I believe it was this one here or one of the

1 ones next to one of the rooms but it was on the second  
2 floor.

3 Q Okay. And it was a room close to the  
4 stairwell?

5 A Yes.

6 Q And when you observed them carrying items out,  
7 what items did you observe them carrying out?

8 A Basically furniture. I can't remember exactly  
9 what kind of furniture it was. I knew it didn't belong,  
10 you know, that it belonged there, we had the same stuff in  
11 our room.

12 MR. MOORE: Your Honor --

13 THE WITNESS: Paintings off the wall, stuff  
14 like that.

15 MR. MOORE: -- I can't hear.

16 THE COURT: Can he be seated?

17 MR. BROWN: Yes.

18 THE WITNESS: I'm sorry.

19 THE COURT: Then he'll be picked up on the  
20 microphone.

21 MR. BROWN: Yes, Your Honor.

22 (Thereupon, the witness resumed the witness  
23 stand.)

24 BY MR. BROWN:

25 Q Let me reask that question to you, sir. What

1 items did you see these individuals carrying out?

2 A Basically the furniture that was in the room,  
3 painting off the wall, you know, microwave, you know,  
4 stand, stuff like that.

5 Q How were you able to identify the furniture  
6 as -- in your own mind as knowing that it came from the  
7 room?

8 A Because I was staying in one of the rooms, I  
9 know what furniture belonged in that room.

10 Q Did it look identical to the furniture you had  
11 in your room?

12 A Yes, it did.

13 Q And did you observe these individuals one trip,  
14 multiple trips?

15 A I believe it was just one trip because I -- we  
16 were in the middle of packing our stuff and, you know, I  
17 seen that employees there were on their way to try and  
18 stop these people from taking --

19 MR. PIROLO: Objection, nonresponsive.

20 THE COURT: Okay. Sustained.

21 BY MR. BROWN:

22 Q And after you observed the two individuals  
23 carrying things down to the SUV, what did you then next  
24 observe?

25 A Nothing, I closed my curtain and went back to

1 my business.

2 Q Did you see anybody confront either of these  
3 two individuals?

4 A Yeah, I did, they --

5 Q Tell the jury about that.

6 A The maintenance guy was down there trying to  
7 stop them from leaving with the stuff, you know.

8 Q Was there any other hotel employees in the  
9 area?

10 A I believe there were two upstairs near the room  
11 but I don't know for sure, I couldn't see up there, I was  
12 in my room at that point.

13 Q And once you saw that started to occur, what  
14 did you do?

15 A I closed my curtain and went back to my  
16 business.

17 MR. BROWN: Your Honor, may I have one moment?

18 THE COURT: Yes, you may.

19 (Thereupon, a pause was taken in the  
20 proceedings.)

21 MR. BROWN: Your Honor, I have no further  
22 questions of this witness.

23 THE COURT: Okay. Questions by the Defense.

24 MR. PIROLO: Yes, Your Honor.

25

CROSS EXAMINATION

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BY MR. PIROLO:

Q Mr. Montesano, can you tell the members of the jury whether or not you've been convicted of a felony or a crime of dishonesty?

A Yes, I have.

Q How many times?

A One time.

Q For what?

A It was for --

Q Let me back up for a moment. I'll back up. You've been convicted only one time in your life?

A Yeah.

Q You sure about that?

A Well, it depends what you're asking me.

Q Okay. My question --

A What kind of conviction are we speaking of here?

Q A felony or a crime of dishonesty.

A I have one felony.

Q You sure it's not a crime of dishonesty as well?

A I don't believe so but I'm not exactly sure what you're talking about. I have committed crimes in my

1 past, yes, I have, and I also did my time for my crimes.

2 Q Mr. Montesano, you said earlier you live in the  
3 State of Ohio, correct?

4 A Yes, sir.

5 Q And isn't it true that in the State of Ohio on  
6 May 7th, 2001, you were convicted for a crime of  
7 dishonesty, receiving stolen property?

8 A Yes, sir.

9 Q And that's in addition to the felony that you  
10 were convicted of as well, correct?

11 A Yes, sir.

12 Q Okay. Thank you, sir.

13 You indicated earlier you saw two individuals  
14 carrying furniture?

15 A Yes.

16 Q All right. Did you have a good eye on them?

17 A What do you mean did I have a good eye on them?

18 Q Were you looking at them?

19 A Yeah, of course, I was parked right beside them  
20 cleaning out my hotel room and loading my belongings into  
21 my vehicle.

22 Q Would it be a fair statement that the male that  
23 you saw, the way he appeared was like he was out of this  
24 world?

25 A Huh?

1 Q Would that be a fair statement?

2 A No, I don't understand what you're saying.

3 Q All right. Do you remember -- well, first of  
4 all, you didn't call the police on March 6th, correct?

5 A No, I did not.

6 Q When saw this happened you didn't call the  
7 police?

8 A No, I did not.

9 Q Actually they contacted you by phone March  
10 29th, correct?

11 A Something like that, yes.

12 Q And they told you to go see a detective in  
13 Ohio, right?

14 A Yes, sir.

15 Q Okay. And you and your fiancée Stephannie  
16 Bartoli were inside the interview room together with  
17 Sergeant Munick I believe, the detective?

18 A Munick? Yes, sir.

19 Q Munick. Okay.

20 In fact, both of you were in that room,  
21 correct?

22 A Yes, sir.

23 Q Okay. And you don't recall a conversation  
24 coming up where you indicated the male seemed to be not in  
25 this world?



1 A I don't believe I said anything of the sort.

2 Q All right. Was that Miss Bartoli that said  
3 that?

4 A I don't know what she said truthfully, I know  
5 what I said.

6 Q All right.

7 A And I don't believe I said anything like that,  
8 no.

9 Q You were sitting right next to her, correct?

10 A Yes.

11 Q In the same room?

12 A Okay.

13 Q You were there, you tell us.

14 A I don't know, that's what the statement's for,  
15 that's why that was written down and recorded.

16 Q Right.

17 A I don't know exactly what she said versus what  
18 I said, this was over a year ago, sir.

19 Q Okay.

20 MR. PIROLO: Can I have a moment, Your Honor?

21 THE COURT: Yes, you may.

22 (Thereupon, a pause was taken in the  
23 proceedings.)

24 MR. PIROLO: Judge, I don't have anything else.

25 THE COURT: Okay. Redirect by the State.

1 MR. BROWN: Briefly.

2 REDIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Mr. Montesano, the defendant you observed, did  
5 you see him go up and down the staircase?

6 A Yes, sir.

7 Q Did he have any trouble going up and down the  
8 staircase?

9 A No, sir.

10 Q Did he have any trouble coming down the  
11 staircase carrying items?

12 A No, sir.

13 MR. BROWN: Thank you. No further questions.

14 THE COURT: Recross.

15 MR. PIROLO: No, Your Honor.

16 THE COURT: Okay. Sir, thank you for your  
17 testimony, you're free to step down.

18 THE WITNESS: Thank you.

19 (Thereupon, the witness exited the witness  
20 stand.)

21 THE COURT: Okay. Other witnesses on behalf of  
22 the State.

23 MR. BROWN: Your Honor, the State would next  
24 call Andrew Jordan.

25 THE COURT: Sir, if you'll come forward to the

1 clerk to be sworn.

2 THEREUPON,

3 ANDREW JORDAN,

4 having been first duly sworn, was examined and testified  
5 upon his oath as follows:

6 THE COURT: Sir, if you'll have a seat. Once  
7 seated if you'll scoot that chair up. Do talk into  
8 that microphone. Do adjust that microphone if you  
9 need to, if you need to, but do talk into the  
10 microphone. Thank you, sir.

11 THE WITNESS: Yes.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Sir, would you please state your name and spell  
15 your last name for the jury?

16 A Andrew Jordan, J-O-R-D-A-N.

17 Q And Mr. Jordan, how are you employed?

18 A I work as a maintenance at the EconoLodge.

19 Q And how long have you worked there?

20 A It will be four years now, right close.

21 Q And is that location at 4455 West New Haven  
22 Boulevard --

23 A Yes.

24 Q -- Melbourne?

25 And is that location within Brevard County,

1 State of Florida?

2 A Yes.

3 Q And can you tell the jury that location, what  
4 type of business is it?

5 A It's a hotel, you know what I mean.

6 Q And is there anything unusual about the setup  
7 of the hotel as far as the building?

8 A Yeah, it's -- it's one franchise but it's  
9 actually two franchise. One's personally owned and one's  
10 the EconoLodge franchise. It's actually two separate  
11 organizations in one.

12 Q And what are the two names that are used for  
13 the franchises?

14 A The one is EconoLodge and the other one is -- I  
15 can't remember the right name for it but it's --  
16 Mr. Malik's the one that owns it.

17 Q Okay. Would it be the York Inn?

18 A Well, yeah, there you go.

19 Q Okay. Is that what the --

20 A Yes.

21 Q Okay. And as far as the EconoLodge versus the  
22 York Inn, is there any order to the rooms? Is one section  
23 the Econo, one section the York Inn?

24 A Yes, there's two full buildings is the  
25 EconoLodge and two full buildings is the York Inn.

1 Q And where are they in relationship to each  
2 other?

3 A The York is the first building when you pull in  
4 and then the one right beside it and then in the back  
5 there's two back there in the opposite position but  
6 they're at the back.

7 Q And what are the buildings in the back?

8 A Yeah.

9 Q Which hotel are they technically?

10 A The one in the back is the York Inn and the one  
11 up front is the Budget, or the EconoLodge.

12 MR. BROWN: Your Honor, may I approach the  
13 witness?

14 THE COURT: Yes, you may.

15 BY MR. BROWN:

16 Q I'm going to show you what's been marked as  
17 Exhibit J, do you recognize that document?

18 A Yes.

19 Q What is it?

20 A That's our floor plan of all the buildings.

21 Q Does that fairly and accurately depict the  
22 floor plan --

23 A Yeah.

24 Q -- with the hotel room numbers?

25 A Um-hmm.

1 MR. BROWN: Your Honor, at this time I would  
2 ask to admit Exhibit J for identification into  
3 evidence.

4 THE COURT: Okay. Response from the Defense?

5 MR. PIROLO: No objection, Your Honor.

6 THE COURT: Okay. J will be received as  
7 State's Exhibit Number 10.

8 (Thereupon, State's Exhibit Number 10 was  
9 marked and received in evidence.)

10 MR. BROWN: Your Honor, at this time I'd also  
11 move to admit what's been marked as Exhibit AL.

12 THE COURT: What is it marked, AL?

13 MR. BROWN: AL.

14 MR. PIROLO: May we approach?

15 THE COURT: Yes, you may.

16 (Thereupon, a benchside conference was had out  
17 of the hearing of the jury as follows:)

18 THE COURT: Let me see it.

19 MR. PIROLO: Judge, we're going to object to  
20 that being hearsay. The custodian of records is not  
21 present to properly authenticate the documents that  
22 are in there. Mr. Jordan is not going to have  
23 personal knowledge of the contents of the documents  
24 that are enclosed there. He's the maintenance man,  
25 he's not -- doesn't work behind the desk and in

1 charge of registering guests and printing up the  
2 paperwork and so forth.

3 THE COURT: Okay. Response from State.

4 MR. MCMASTER: Judge, the State filed a notice  
5 of intent to rely on business records certification  
6 pursuant to the statute, that's authorize by the  
7 statute to do it. They've not filed any objection or  
8 motion to strike of any nature. The business records  
9 certification is filed by proper records custodian  
10 and it complies with the rule.

11 THE COURT: Okay. The objection by the Defense  
12 is overruled.

13 (Thereupon, the benchside conference was  
14 concluded and the proceedings were had as follows:)

15 THE COURT: Okay. AL will be received as  
16 State's Exhibit Number 11.

17 (Thereupon, State's Exhibit Number 11 was  
18 marked and received in evidence.)

19 MR. BROWN: Your Honor, may I approach the  
20 witness?

21 THE COURT: Yes, you may.

22 BY MR. BROWN:

23 Q I'm going to show you what has been admitted as  
24 Exhibit 11, do you recognize that document, or those  
25 documents?

1 A Yes.

2 Q And what are those documents?

3 A That's where they signed in into the room.

4 Q And does that indicate a particular room number  
5 and a particular guest name?

6 A Yes.

7 Q And what guest name and room number is there?

8 A It's room 268 and I don't know.

9 Q Would the name be Andria Kerchner?

10 A Yeah, Andria Kerchner.

11 Q And does this indicate the original check in  
12 date and original scheduled check out date?

13 A Yes.

14 Q What's the check in date?

15 A 3/4/12.

16 Q Okay. And does the remaining paperwork  
17 indicate that they stayed an extra day?

18 A I'm pretty sure it does. Yes.

19 Q Now, I'm going to refer you to Exhibit 10.

20 A Okay.

21 Q Does that indicate on there where room 268 is?

22 A Yes, right here.

23 Q And as far as the front or back portion of the  
24 hotel, where would that be at?

25 A Of that building it would be the front of the



1 building.

2 Q Okay. Is that building in the front or the  
3 back of the hotel?

4 A In the back.

5 MR. BROWN: Your Honor, may I have the witness  
6 step down?

7 THE COURT: Yes, you may.

8 (Thereupon, the witness exited the witness  
9 stand.)

10 BY MR. BROWN:

11 Q I want you to look at Exhibit Number 9 and as  
12 you step over there if you can speak up at this point.

13 A Okay.

14 Q Do you recognize the area that Exhibit 9  
15 depicts?

16 A Yes, it's the back part of the York Inn.

17 Q Can you point out to the jury where room 268  
18 would be?

19 A Right about right there, it's off the board.

20 Q Go ahead and have a seat.

21 (Thereupon, the witness resumed the witness  
22 stand.)

23 BY MR. BROWN:

24 Q Mr. Jordan, were you working on the morning of  
25 March 6th, 2012?

1           A        Yes.

2           Q        And were you working at the location we've been  
3 discussing at the EconoLodge, York Inn?

4           A        Yes.

5           Q        And sometime approaching 10:30 towards 11:00  
6 o'clock, did anything unusual occur in the parking lot  
7 area?

8           A        Well, they -- Andria approached me to get into  
9 her room and I said okay. So, I walked across and went up  
10 the steps and I looked down and I seen this picture  
11 sitting there and I'm like that's one of ours. So, I just  
12 grabbed it and walked upstairs with her and went to open  
13 the door and she jumped in front of me, you know, and I  
14 just okay and I walked on over to like the second room  
15 over and I put the picture in there. Well, that just flew  
16 a flag to me so we just sat there and watched, you know  
17 what I mean, I went back to what I was doing but we just  
18 watched and, you know, went from there.

19          Q        And then what was the next thing that occurred?

20          A        That the maids called and said --

21                   MR. PIROLO: Objection, hearsay.

22 BY MR. BROWN:

23          Q        Without going into what the maids told you, did  
24 they make contact with you?

25          A        The maids did, yeah.

1 Q And as a result of your contact, did you go  
2 back to the area near room 268?

3 A Yes.

4 Q And when you went back to that area, did you go  
5 to the parking lot area up to the room or where did you  
6 go?

7 A I went back to the room to knock on the door  
8 and tell them to, you know, they got to go, but then as I  
9 was heading up there I seen all this stuff in their  
10 vehicle.

11 Q Okay. And can you tell the jury, where was the  
12 vehicle?

13 A Directly below the room.

14 Q Can you step over to the picture and please  
15 point it out again?

16 (Thereupon, the witness exited the witness  
17 stand.)

18 A Right here against the corner of the steps.

19 (Thereupon, the witness resumed the witness  
20 stand.)

21 BY MR. BROWN:

22 Q And do you recall how it was parked in that  
23 location?

24 A Backed in.

25 Q And you indicated you saw things in the

1 vehicle?

2 A Yeah.

3 Q First, do you recall what type of vehicle it  
4 was?

5 A I think it was Ford Ex -- or Bronco I think.  
6 It's a white Bronco or Expedition, one or the other.

7 MR. BROWN: Your Honor, may I approach the  
8 witness?

9 THE COURT: Yes, you may.

10 BY MR. BROWN:

11 Q I'm showing you what's been marked as Exhibits  
12 DD and DE.

13 MR. MOORE: Is that D Delta?

14 MR. BROWN: Yes, Delta D.

15 THE WITNESS: Yes.

16 BY MR. BROWN:

17 Q Do you recognize these exhibits?

18 A Yes.

19 Q And what do you -- what is in those exhibits?

20 A This is the bed linen.

21 Q Okay. Well, what do you see in the exhibits?

22 A Well, the car or I mean the, you know.

23 Q And is that the same vehicle that you observed  
24 parked at the EconoLodge on March 6th, 2012?

25 A Yes.

1 Q And is this the vehicle you observed items  
2 within?

3 A Yes.

4 MR. BROWN: Your Honor, at this time the State  
5 would move to admit what's been marked as Exhibits DD  
6 and DE for identification into evidence.

7 THE COURT: Okay. Response from the State --  
8 from the Defense.

9 MR. PIROLO: No objection, Your Honor.

10 THE COURT: Okay. DD will be State's Number 12  
11 and DE will be State's Number 13.

12 (Thereupon, State's Exhibit Numbers 12 and 13  
13 were marked and received in evidence.)

14 BY MR. BROWN:

15 Q Mr. Jordan, can you tell the jury what you were  
16 able to see to the best of your recollection inside of the  
17 vehicle?

18 A I seen the pillow, there was the bedspreads. I  
19 could see those. There was a drawer from one of the  
20 armoires that was in the back of it, and I think the AC  
21 cover was in the vehicle.

22 Q Now, did you see anything outside of the  
23 vehicle?

24 A Yes.

25 Q What did you observe outside of the vehicle?

1           A        There was a nightstand, one of the other  
2 pictures was there, and a pillow was there.

3           Q        And at this point what did you do?

4           A        Well, by that time the defendant there was on  
5 his -- already in the vehicle and I stepped --

6           Q        When you say the defendant was in the vehicle,  
7 can you please point out who you are referring to and  
8 describe an article of clothing that he's wearing?

9           A        He's got a gray shirt on over there and gray  
10 suit, Mr. Bradley.

11          Q        And was this person male or female?

12          A        Male.

13          Q        White or black?

14          A        Black.

15                MR. BROWN: Your Honor, let the record reflect  
16 the witness has identified the defendant.

17 BY MR. BROWN:

18          Q        Where did you see the defendant at?

19          A        In the car behind the steering wheel.

20          Q        In the driver's seat?

21          A        Yes, sir.

22          Q        And at that point was anybody else in the  
23 vehicle?

24          A        No, it was just him at the moment.

25          Q        Okay. Did you see a second person come to the

1 vehicle and get in?

2 A Yes.

3 Q And can you tell the jury what you saw in that  
4 regard?

5 A Well, it was every name under the book.

6 Q Well, tell the jury what you saw --

7 A Yeah.

8 Q -- as far as the second person?

9 A She come down around from -- down the steps and  
10 around the back and she was using, you know, and get in  
11 the vehicle and she was screaming and hollering and.

12 Q Where did she get into?

13 A The passengers side.

14 Q And can you give the jury a description of this  
15 female, white or black?

16 A She was white.

17 Q And is this the same person, this female the  
18 same one that you had previously escorted up to room 268?

19 A Yes, sir.

20 Q Now, once both were in the vehicle, at this  
21 point had any other hotel -- were any other hotel  
22 employees there?

23 A Yes.

24 Q And can you tell the jury what other hotel  
25 employees were there?

1 A Vanessa and Tammy.

2 Q And do you recall where they were located at?

3 A Behind the vehicle.

4 Q And where did you go to?

5 A I went to the front.

6 Q What was the point of that?

7 A Well, you know, I tried hollering through the  
8 windshield towards him, you know, just take the stuff out  
9 of the car and get out of here and he just like never  
10 respond to me.

11 Q Was he looking at you?

12 A Oh, yeah.

13 Q Were you yelling --

14 A I mean --

15 Q -- in a loud voice?

16 A Oh, yes. Yes.

17 Q And do you recall whether the passenger window  
18 was up or down?

19 A No, I couldn't tell you that, my eyes were  
20 trained on him.

21 Q And how far away were you from him?

22 A I was about two and a half foot from the front  
23 of the truck.

24 Q And tell the jury then what was happening.

25 A Well, after, you know, it seemed like forever



1 but it wasn't, it -- I asked him three or four times, you  
2 know, get out of the truck, get the stuff out and leave  
3 and by that time Mr. Malik was standing beside me on the  
4 left side and I said come on buddy or I'm going to call  
5 911, one or the other, and he just stared at me, never  
6 moved, never nothing and --

7 Q As far as standing in front of the truck, can  
8 you tell the jury were you in the middle, more towards one  
9 side or the other?

10 A I was about maybe eight to twelve inches from  
11 the center on the left -- or on the passengers side of the  
12 hood.

13 Q And where you were located at, was there any  
14 possible way the truck could have went -- moved forward  
15 without hitting you?

16 A Not without hitting me or the wall because he  
17 was like caddy whompus in there a little bit.

18 Q How close was the vehicle to the wall?

19 A Maybe eight inches front end.

20 Q And when we're talking the wall, was that the  
21 wall to the stairwell?

22 A Yeah, that's the stone pillar going up that  
23 holds the roof of the stairwell.

24 Q And so you indicated Mr. Malik had made it  
25 there and you were indicating about calling 911?

1 A Yes.

2 Q What happened?

3 A Well, he wouldn't apply to anything I asked so  
4 I just hit 911 and handed the phone to Mr. Malik and I  
5 kept my eye on him because I didn't, you know, didn't what  
6 was going to happen.

7 Q And did there come a time when the car was  
8 started?

9 A Yes, he started it up and then the next thing I  
10 know he started moving forward and I slammed my hands down  
11 on the hood and threw myself sideways.

12 Q Which direction did you throw yourself to?

13 A To the left.

14 Q And did you leave your feet?

15 A Yes.

16 Q Did you fall to the ground?

17 A No, I caught myself before I hit the ground.

18 Q So, basically was it a jumping action?

19 A It was more or less like a jump, you know, and  
20 then move to the left at the same time.

21 Q And while you were doing this, what was the  
22 car, the SUV doing?

23 A It was coming forward.

24 Q And why did you jump?

25 A Because I was feared for my life, you know what

1 I mean. I didn't know what he was going to do, you know,  
2 I was getting the heck out of the road.

3 Q And did the vehicle make contact with you?

4 A Yes.

5 Q Can you tell the jury where that contact was,  
6 what happened?

7 A In my right ribs, right side on the ribs, it  
8 just, you know, come across my... I got the heck out of  
9 there, you know what I mean.

10 Q Was it a hard contact, a brushing contact?

11 A Yeah, I would say more brush, it wasn't hard,  
12 you know what I mean, but it was enough to, you know, I  
13 didn't want to have to do it again.

14 Q And did you ever seek medical treatment for  
15 that?

16 A No. No, it didn't even leave a mark so.

17 Q Now, as you jump out of the way and the car  
18 brushes you, the truck brushes you, what then happens?

19 A Well, next the -- he got away, you know what I  
20 mean, he started out around and as he was making a turn to  
21 the -- it would be his left, he hit the corner of the  
22 pillar and that's when the taillight went out on the  
23 driver's side of the truck and then he got maybe  
24 twenty-five, thirty feet away and it stalled and then he  
25 fired it back up and then he was gone.

1 Q And what direction did he leave?

2 A Towards 192 and that's the last I seen him,  
3 heading towards the front.

4 Q And looking at the map, the diagram, can you go  
5 back and?

6 (Thereupon, the witness exited the witness  
7 stand.)

8 A He was parked here and shut off here and then  
9 he just went straight down the road.

10 Q And at a certain point did you lose sight of  
11 him?

12 A Oh, yeah, after you get up there so far you  
13 can't see, you know, if he wasn't north, south, east,  
14 west, you don't know.

15 (Thereupon, the witness resumed the witness  
16 stand.)

17 BY MR. BROWN:

18 Q And did the police arrive at the location?

19 A Yes, just a few moments later.

20 Q And did you make contact with that officer --

21 A Yes.

22 Q -- and additional officers that arrived?

23 A Yes.

24 Q Mr. Jordan, while you were there with the  
25 police, did you go back into room 268?

1           A        When they got there, yes.

2           Q        And did you have a chance to look around and  
3 observe the condition of the room?

4           A        Yeah. They did most of the walking around in  
5 the room but I was there with them.

6           Q        Okay. And can you tell the jury what was the  
7 condition of the room?

8           A        It was pretty tore up, you know.

9           Q        Were items missing from the room?

10          A        Yes, like I said, the bed linen --

11                   MR. PIROLO: Objection, nonresponsive.

12                   THE COURT: Sustained.

13 BY MR. BROWN:

14          Q        Give the jury a description of the room as far  
15 as what was there, the condition, items that may have been  
16 missing.

17          A        The bed linen was missing, the sheets and  
18 pillows, the AC cover was gone, a couple of the drawers in  
19 the armoire was gone, the one door on the armoire was  
20 broke off laying there, one of the box springs was --  
21 looked like he took a knife to it and sliced it all up.

22                   MR. PIROLO: Your Honor, may I approach the  
23 witness?

24                   THE COURT: Yes, you may.

25

1 BY MR. BROWN:

2 Q I'm going to show you what's marked as Exhibits  
3 K, L, M, N and O.

4 A Um-hmm.

5 Q Do you recognize these exhibits?

6 A Yes.

7 Q And what do these depict?

8 A Everything that was supposed to be in the room  
9 and hanging on the walls and everything else.

10 Q And do these exhibits fairly and accurately  
11 depict the condition of this location as it existed on  
12 March 6th, 2012?

13 A Right.

14 MR. BROWN: Your Honor, at this time the State  
15 would move these exhibits marked for identification  
16 into evidence.

17 THE COURT: Okay. Response from the Defense?

18 MR. PIROLO: No objection, Your Honor.

19 THE COURT: Okay. K will be State's Number 14,  
20 L will be State's Number 15, M will be State's Number  
21 16, N will be State's Number 17, O will be State's  
22 Number 18.

23 (Thereupon, State's Exhibit Numbers 14 through  
24 18 were marked and received in evidence.)  
25

1 BY MR. BROWN:

2 Q Mr. Jordan, first let me start with Exhibit  
3 Number 14.

4 A Okay.

5 Q First, what area of the hotel is depicted in  
6 this picture?

7 A That is right at the bottom of the steps of  
8 where the room is directly above them.

9 Q Okay. And in relationship to where the car,  
10 the SUV was backed into the parking spot?

11 A Right, right behind it.

12 Q So, this would have been at the tail north?

13 A Yes, that would be at the back.

14 Q And what is depicted in this exhibit?

15 A You got a pillow, a nightstand, there's a  
16 drawer out of one of the armoires upstairs.

17 Q And are these items that are in this exhibit,  
18 should they be -- are they hotel property?

19 A Yes.

20 Q And are they normally kept in the room?

21 A Yes.

22 Q And were these items missing from room 268 when  
23 you went up there?

24 A Yes.

25 Q Next want to show you Exhibit Number 15, what

1 is depicted there?

2 A That is the pictures that was on the wall.

3 Q And again is this in the outside parking lot  
4 area?

5 A Yes.

6 Q Is this the same area as depicted in Exhibit  
7 14?

8 A Yes. Yeah, they moved it from -- the officer  
9 moved it from back here, there was a garbage can that was  
10 sitting right beside it and he moved it over here to where  
11 he could take a picture of it.

12 Q I'm going to show you now Exhibit 16, what's in  
13 that?

14 A Yeah, the same pictures you got here.

15 Q And then Exhibit 17.

16 A Yes, that was the pillow, the picture and the  
17 armoire drawer.

18 Q And were all these items that were outside of  
19 the hotel room?

20 A Yes.

21 Q All in the same location --

22 A Yeah, within --

23 Q -- in the parking lot?

24 A Yeah, right there in that area.

25 MR. BROWN: Your Honor, at this time I'd move



1 to publish these to the jury.

2 THE COURT: Yes, you may.

3 (Thereupon, State's Exhibit Numbers 14 through  
4 18 were published to the jury.)

5 BY MR. BROWN:

6 Q Sir, I now want to show you what is marked as  
7 Exhibits U, P, Q, R, S and T, do you recognize these  
8 exhibits?

9 A Yes. That's the room door.

10 Q And what area do these exhibits depict?

11 A 268.

12 Q And do these exhibits fairly and accurately  
13 depict the room as it existed when you observed it March  
14 6th, 2012?

15 A Yes.

16 MR. BROWN: Your Honor, at this time the State  
17 would move these exhibits marked for identification  
18 into evidence.

19 THE COURT: Response from the Defense?

20 MR. PIROLO: No objection.

21 THE COURT: Okay. P will be received as  
22 State's Number 19, Q will be received as State's  
23 Number 20, R will be received as State's 21, S will  
24 be received as State's 22, T will be received as  
25 State's 23, U will be received as State's 24.

1                   (Thereupon, State's Exhibit Numbers 19 through  
2 24 were marked and received in evidence.)

3 BY MR. BROWN:

4           Q       Mr. Jordan, first looking at Exhibit 24, what  
5 does that depict?

6           A       That's the door to the room, 268.

7           Q       Now want to show you Exhibit Number 19.

8           A       That's the AC, the front's off of it.

9           Q       And is there anything else unusual about the  
10 condition of the AC when you observed it?

11          A       The thermostat housing was pulled out of the  
12 grates. That's about it that I can see.

13          Q       Was the AC unit in the same location? Is that  
14 how it's mounted in the --

15          A       Yes, that's the way it's mounted in there, it  
16 just slides in there.

17          Q       Okay. And is it slid all the way in as far as  
18 you know?

19          A       Yes. No, that's about right where it's  
20 supposed to be.

21          Q       But you indicate that there are parts removed?

22          A       Yeah, that -- they go right there in the front  
23 of the radiator.

24          Q       Do those parts, do they have to be physically  
25 taken off?

1           A        I guess if you jerked one of them hard enough  
2 they'd fall off, you know what I mean, the front.

3           Q        Next want to show you Exhibit Number 20.

4           A        Okay.

5           Q        What area is depicted there?

6           A        That's the armoire where the door and the  
7 drawer's missing out of it, the bottom drawer's missing,  
8 the TV was unhooked, the cable was gone.

9           Q        What about Exhibit 21?

10          A        That's one of the drawers, and you can see the  
11 door from the armoire again.

12          Q        How about Exhibit 22?

13          A        That's where they're showing the bed where all  
14 the linen and stuff, pillows and all that was gone. The  
15 lamp was all bent up.

16          Q        And Exhibit 23?

17          A        Yeah, this is showing a view of the pictures,  
18 the AC, beds, armoire and my feet.

19          Q        Okay. Now, you indicated one of the box  
20 springs --

21          A        Yeah, this box spring right here, you can see  
22 this is the pieces of linen that goes over the springs and  
23 stuff, when the cops got there we just laid it back down  
24 because where it was laying like on the side so that they  
25 could take picture of everything. Yeah, this blue.

1 Q Is it the one that I'm pointing to with my  
2 finger?

3 A Yes, the box spring's underneath, just looks  
4 like they took a knife or something to it and just chopped  
5 it all up.

6 Q And also I want to show you Exhibit Number 18.

7 A Right, that's the pictures that's in the corner  
8 there.

9 Q And are those -- normally are they kept on the  
10 wall?

11 A Yeah, they're mounted on the walls, two above  
12 one each bed and one on the bathroom wall.

13 MR. BROWN: Your Honor, at this time I'd move  
14 to publish these photographs to the jury.

15 THE COURT: Yes, you may.

16 (Thereupon, State's Exhibit Numbers 19 through  
17 24 were published to the jury.)

18 BY MR. BROWN:

19 Q I want to show you a set of photographs, first  
20 starting with what's marked as Exhibit DI, do you  
21 recognize any of the items in that exhibit?

22 A Yeah, there's two pillows.

23 Q And the two pillows that are in that exhibit,  
24 where did they come from?

25 A From the room.

1 Q Also want to show you what's marked as Exhibit  
2 DP.

3 THE COURT: Did you say DI?

4 MR. BROWN: Yes.

5 THE COURT: Okay.

6 THE WITNESS: This shows you the comforters.

7 BY MR. BROWN:

8 Q And do you recognize as where those comforters  
9 come from?

10 A Yeah, they come from out of a room.

11 Q Were both the pillows and the comforters that  
12 you observed in these two photographs, were they missing  
13 from room 268 when you observed it?

14 A Yes.

15 Q Next want to show you what's marked as Exhibit  
16 DS, do you recognize what's depicted?

17 A Yeah, that's one of our card covers.

18 Q Is that given to each guest when they check in?

19 A Yes.

20 Q Next show you what is marked as Exhibit DW.

21 A Okay.

22 Q Do you recognize that?

23 A Yes.

24 Q What items are depicted in there?

25 A That's the pillows, the comforters and the AC

1 cover. I can't tell what those two are.

2 Q And again those items, did they come from the  
3 hotel?

4 A Yes.

5 Q Were those items missing from room 268?

6 A Yes.

7 Q I want to show you what's marked as Exhibit DT,  
8 did you recognize what that is?

9 A Yes.

10 Q What is depicted?

11 A That is a rack that holds your towels wash rags  
12 and all that stuff on the wall.

13 Q Was that item also missing from room 268?

14 A Yes.

15 Q I want to show you what's been marked as  
16 Exhibit DU, do you recognize that?

17 A Yes.

18 Q What is depicted in DU?

19 A That is the AC cover.

20 Q And was that item also missing from room 268?

21 A Yes.

22 Q I want to show you what's marked as Exhibit DV.

23 A Um-hmm, that's the comforter from --

24 MR. MOORE: Delta V Victor?

25 MR. BROWN: Yes.

1 BY MR. BROWN:

2 Q Was that item also missing from room 268?

3 A Yes.

4 Q And I also want to show you Exhibit DJ.

5 A Yeah, the garbage can and ice bucket.

6 Q And were those items also missing from room  
7 268?

8 A Yes.

9 Q Show you what's been marked as Exhibit V as in  
10 Victor, do you recognize that exhibit?

11 A Yes.

12 Q And what is that?

13 A That is a list of everything that was missing  
14 and what we found afterwards.

15 Q And did you prepare that list or assist in  
16 preparing this?

17 A I wrote everything down and the owner which is  
18 Mr. Malik, he's the one that put the price tags to it.

19 Q And on that particular list one of the items  
20 listed is the AC unit?

21 A Yes.

22 Q And why did you include that item?

23 A Because of the front being broke off of it and,  
24 you know, to replace the front it's almost just as cheap,  
25 you know.

1 Q Are you familiar with the cost for replacing  
2 the AC unit?

3 A Yeah.

4 Q And how are you familiar with that?

5 A Because I just had to by fifteen of them.

6 Q And at the time back in March 6th of 2012, are  
7 you familiar with the cost to replace it?

8 A Yes.

9 Q And what was the cost at that point in time to  
10 replace it?

11 A At that time --

12 MR. PIROLO: Objection, relevance.

13 THE COURT: Overruled.

14 THE WITNESS: At that time it was Four Hundred  
15 and Fifty Dollars because of it has to have heat and  
16 AC. That's one of the mandatory things that they  
17 have to have.

18 BY MR. BROWN:

19 Q Mr. Jordan, while you, while you were with the  
20 police on March 6th, 2012, did they at a certain point  
21 show you any sets of what are called photo lineups?

22 A Yes.

23 Q And when they showed those to you, were you  
24 separated from the other witnesses?

25 A Yes, there was nobody but me and two officers.



1 Q And did the officers make any indication to you  
2 of any particular photo you ought to pick out?

3 A No, they just -- they gave me a line up like  
4 six or eight different pictures and said pick him out if  
5 he's here.

6 MR. PIROLO: Objection, hearsay.

7 THE COURT: Okay. Sustained.

8 MR. BROWN: Your Honor, may I approach the  
9 witness?

10 THE COURT: Yes, you may.

11 BY MR. BROWN:

12 Q I'm going to show you what first is marked as  
13 Exhibit AF, do you recognize that exhibit?

14 A Yes.

15 Q And how do you recognize it?

16 A My signature.

17 Q And can you tell the jury what does this  
18 depict, what is it?

19 A Let's see. It's a photo lineup witness, you  
20 know, and it's just where I agreed to everything.

21 Q Were these instructions that the officer went  
22 over with you?

23 A Yes, every one of them.

24 Q Where each one is initialed, is that your  
25 initials?

1 A Yes.

2 MR. BROWN: Your Honor, at this time State  
3 would move Exhibit AF for identification into  
4 evidence.

5 THE COURT: Response?

6 MR. PIROLO: May we approach?

7 THE COURT: Yes, you may.

8 (Thereupon, a benchside conference was had out  
9 of the hearing of the jury as follows:)

10 MR. PIROLO: Judge, while we're at it, we can  
11 maybe take a look at the other exhibits as well.  
12 We're going to object to all of these exhibits.  
13 First of all, for AF, it is -- the proper  
14 authentication has not been laid yet. It's got a --  
15 actually the logos for Brevard County Sheriff's  
16 Department all over that, it's hearsay.

17 THE COURT: It's got what?

18 MR. PIROLO: The logos from --

19 MR. MOORE: At the top.

20 MR. PIROLO: The top from the Brevard County  
21 Sheriff's Office, it's complete hearsay, Judge  
22 there's no -- again, proper predicate hasn't been  
23 laid for what that is. That's got to come from the  
24 Brevard County Sheriff's Office but it's hearsay and  
25 it's irrelevant. I mean, he can testify that I spoke

1 to law enforcement officers and I made an  
2 identification. He already identified Mr. Bradley  
3 earlier so. It's cumulative as well.

4 As to AG, AG, Mr. Bradley's photograph, number  
5 five there, he is clearly wearing jail attire. I  
6 know it's come up during probation officer Colon's  
7 testimony that Mr. Bradley is in the system, but it's  
8 unfairly prejudicial. It shows Mr. Bradley's mug  
9 shot prior to March 6th, 2012, which clearly tells  
10 the jurors that they've got his picture on file.  
11 It's hearsay and, Judge, it's irrelevant, it's  
12 cumulative. He's already identified Mr. Bradley in  
13 the courtroom. I can see if somehow the door is open  
14 that we attack his ability to observe and identify  
15 Mr. Bradley at the time, that may then be relevant  
16 but it's not relevant now and it goes to bolster the  
17 witness's testimony. He's identified him here and  
18 trying to bolster that hey, he did it back then to.

19 THE COURT: Okay. Response from the State.

20 MR. BROWN: Judge, first as far as the  
21 relevance, it clearly is relevant. It's an  
22 identification made shortly after the incident, it  
23 was made the day of the incident by this witness  
24 which I don't think there's any authority to limit us  
25 just to an in court ID if the witnesses are able to

1 make it. So, it certainly is more than relevant.  
2 It's not hearsay. By definition it's not hearsay  
3 because it's an identification, recent identification  
4 made.

5 As far as the first document, Judge, he's  
6 identified the document, he signed it, he's the one  
7 that initialed it and for him going through the  
8 instructions to him on how to make that  
9 identification. So, he's not only on initialed, he  
10 signed it at the bottom, that's the document that  
11 they showed to him that he read. So, he's the person  
12 to authenticate it.

13 The fact that it's got the sheriff's logo on it  
14 has no bearing. We're not using it to show the truth  
15 of the matter asserted that it's a Brevard County  
16 Sheriff's Office form but it's the form that he  
17 signed. It's similar to a Miranda form. So, it  
18 certainly is relevant.

19 MR. MOORE: That begs the question what is it,  
20 you know, who says that's a picture of Mr. Bradley.  
21 I mean, there are steps that can be taken to  
22 establish that that is a photo lineup including the  
23 picture of Mr. Bradley and whatever the Court rules,  
24 if the Court allows it in evidence, anything related  
25 to the sheriff's department needs to come out of it

1 because then that implies a mug shot which is  
2 strictly forbidden.

3 MR. BROWN: Judge, the claim that it's a mug  
4 shot picture, the Court gets a chance to observe it,  
5 it's in black and white for a reason, it clearly is  
6 not identified --

7 THE COURT: I can't tell it's a mug shot.

8 MR. PIROLO: Your Honor, with all due respect,  
9 you can tell -- those are all mug shots.

10 THE COURT: I mean, maybe they are, maybe  
11 they're not.

12 MR. MOORE: It's the language at the top.

13 THE COURT: I mean, I'm not sure the general  
14 public would know that. What did you say Mr. Moore?

15 MR. MOORE: Sorry, I didn't mean to interrupt  
16 the Court, but it's the language at the top of the  
17 form in the Court's right hand with that sheriff's  
18 emblem on it and that's the paperwork that goes with  
19 the instruction that goes along with the photographs,  
20 the lineup. So, the top of it can be blocked out  
21 without prejudicing the State. I mean, what they  
22 want is -- and we're not conceding that should even  
23 be in evidence at this point until they establish  
24 what that is, you know, the lineup and that  
25 Mr. Bradley's in it. It's irrelevant. So what if he

1 picks a picture out, that doesn't mean anything. It  
2 doesn't mean it's Mr. Bradley. I mean, they can do  
3 that if they choose but they haven't taken steps to  
4 do that.

5 MR. BROWN: There's no prejudice at all. It's  
6 a sheriff's form, he's already testified that the  
7 deputy showed this to him. So, the idea that a  
8 sheriff form is not going to have the sheriff logo on  
9 it is kind of crazy, there's zero prejudice to that.  
10 It's relevant because it's the form and it should not  
11 be -- just blocking things out with no basis  
12 (unintelligible). It also (unintelligible), a form's  
13 a form, there's zero prejudice the fact that it's a  
14 sheriff logo on there. I'm mean, we've already  
15 talked about the sheriff meeting with him, taking the  
16 photos, going through the other information with him.

17 THE COURT: Okay. As far as AF, I don't see  
18 that that's hearsay. I don't think that -- I mean,  
19 the logos are not prejudicial. And the objection as  
20 to AG and AH are overruled.

21 I can't -- my screen is down so you all have to  
22 get me off bench conference. Go to jury trial.

23 (Thereupon, the benchside conference was  
24 concluded and the proceedings were had as follows:)

25 THE COURT: Thank you. Thank you. My screen

1 is fixed now. They just fixed it.

2 MR. BROWN: Judge, we'd move these to come in  
3 as the next numbered State exhibits.

4 THE COURT: You have to say what they are again  
5 just for the record.

6 MR. BROWN: AF, AG and AH.

7 THE COURT: Okay. AF will be State's Number  
8 25, AG will be State's Number 26, AH will be State's  
9 Number 27.

10 (Thereupon, State's Exhibit Numbers 25, 26 and  
11 27 were marked and received in evidence.)

12 BY MR. BROWN:

13 Q Mr. Jordan, Exhibit Number 25, did the deputy  
14 go over those instructions with you?

15 A Yes.

16 Q Did you understand them before you made any  
17 type of identification?

18 A Yes.

19 Q I want to show you now Exhibit 26, it's a two  
20 page, do you recognize first the photographs?

21 A Yes.

22 Q And there's circle with a date and initial?

23 A Yes.

24 Q Is that -- did you do that?

25 A I did that.

1 Q And who is the person that you identified?

2 A Mr. Bradley.

3 MR. MOORE: Objection. Can we approach?

4 THE COURT: Yes, you may. I can't go to bench  
5 conference, the screen's down. So, go to bench  
6 conference, please.

7 (Thereupon, a benchside conference was had out  
8 of the hearing of the jury as follows:)

9 THE COURT: Okay.

10 MR. MOORE: How does he know that that's  
11 Brandon Bradley. That's his opinion from looking at  
12 that picture. What he can say is I picked a photo  
13 out as the guy who I have been talking about but he  
14 can't say that is a picture of Brandon Bradley  
15 because he doesn't know that. That picture hasn't  
16 been introduced, it hasn't authenticated which was  
17 the basis for our objection for it coming in in the  
18 first place.

19 MR. BROWN: He's already identified the  
20 defendant as Brandon Bradley.

21 THE COURT: I'm going to sustain the objection  
22 as to form of the question. You asked him is that  
23 Brandon Bradley, you can ask him is that the same  
24 person you identified here in court. You can't ask  
25 him if that's Brandon Bradley because he wouldn't



1 know that. So, I'll sustain the objection. Okay.

2 Hold on.

3 (Thereupon, the benchside conference was

4 concluded and the proceedings were had as follows:)

5 THE COURT: All right. Now it's not working.

6 I pushed the button and it's not working. Go to jury

7 trial. Thank you.

8 BY MR. BROWN:

9 Q Mr. Jordan, looking at Exhibit 26, the person  
10 you selected in Exhibit 5, who is that person as far as  
11 what you saw him do?

12 A That -- this picture here is Mr. Bradley over  
13 there.

14 Q Is that the person you observed --

15 A Behind --

16 Q -- behind the wheel?

17 A Yes.

18 Q Is that the person you earlier identified as  
19 the defendant?

20 A Yes.

21 Q And the second page, do you recognize that?

22 A Yeah.

23 Q What is that?

24 A That's my signature where I said I, you know,  
25 that's who I seen.

1 Q Is that also the exhibit that you picked out  
2 photograph number five?

3 A Right. Right.

4 Q Now, the police also show you what's marked as  
5 Exhibit 27?

6 A Yes.

7 Q And when the deputy showed this to you, did you  
8 make an identification?

9 A Yes, I did, but I told him then that I wasn't  
10 absolutely positively sure at that moment because I had my  
11 eyes trained on him, not her.

12 Q And is Exhibit 27 a series of photographs --

13 A Right.

14 Q -- of females?

15 A Yes.

16 Q And is the back page also your identification?

17 A Yes, sir.

18 Q And where you circled and marked, is that your  
19 handwriting where --

20 A Yes.

21 Q -- it says eighty percent?

22 A Yes.

23 MR. BROWN: Your Honor, at this time the State  
24 would move publish these to the jury.

25 THE COURT: Yes, you May.

1 (Thereupon, State's Exhibit Numbers 25, 26 and  
2 27 were published to the jury.)

3 MR. BROWN: Your Honor, I have no further  
4 questions of this witness at this time.

5 THE COURT: Okay. Cross examination by the  
6 Defense.

7 MR. PIROLO: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. PIROLO:

10 Q God morning, Mr. Jordan, how are you?

11 A Good. Yourself?

12 Q Good.

13 Mr. Jordan, it's fair to say that you never saw  
14 Mr. Bradley carrying any of the items from the motel room  
15 to the SUV, correct?

16 A No, sir, I never did.

17 Q Nonetheless, when you a nightstand in the  
18 parking lot, it's very unusual?

19 A Yes, sir.

20 Q In fact --

21 A Nightstand, photos, you know, it's not supposed  
22 to be there.

23 Q Right. And it's very unusual?

24 A Yes.

25 Q Okay. You indicated earlier that you were --

1 your eyes were fixated on Mr. Bradley when he was behind  
2 the wheel, correct?

3 A Right.

4 Q And you were pretty close to him in fact?

5 A Closer than me and you.

6 Q Right. I think you said earlier that you were  
7 about what, eight inches, maybe a foot away?

8 A Eight to a foot away from the front of the  
9 truck.

10 Q Okay. Now, in your lifetime I'm sure you have  
11 seen people that you could tell just the way they acted or  
12 looked that they were under the influence of something,  
13 right?

14 A Yeah, as much as I deal with the public, yes, I  
15 would say yeah.

16 Q You're constantly around people?

17 A All day long. All day long.

18 Q And you've seen people who -- you could tell  
19 their faculties have been altered because of whether it's  
20 alcohol or other substances, right?

21 A Yes.

22 Q And Mr. Bradley appeared to you to be high,  
23 right?

24 A He was something, let's just put it that way.  
25 I don't know what it was but he was something.

1 Q In fact, he was giving you a blank stare?

2 A Totally like as if I wasn't even there.

3 Q And you were looking at him and it was like he  
4 wasn't there? He was there but he wasn't there?

5 A Yeah. Well, nobody else was there but me and  
6 him and I'm watching.

7 Q Right. What I'm saying is when the two of you,  
8 when you're looking at him, it's like he wasn't there?

9 A Yeah.

10 Q And you indicated earlier you had I guess  
11 talked or tried to tell him three or four times to get the  
12 things out --

13 A Yeah.

14 Q -- and he never responded to you?

15 A Never responded, he just stared me right in the  
16 face.

17 Q Just sat there behind the wheel, right?

18 A Yeah.

19 Q Was it like he was sleeping with his eyes open,  
20 could you say that?

21 A Well, I guess you could say that that's about  
22 what it looked like but he just walked down the steps and  
23 sat down in the truck, so.

24 Q Right. I mean, I wasn't trying to get out that  
25 he was actually sleeping behind the wheel, but he looked

1 like someone sleeping just they had their eyes open?

2 A Yeah.

3 Q And I want to get to remember you said earlier  
4 that the car, the SUV brushed you?

5 A Yes.

6 Q Would it be fair to say that the time the car  
7 was moving, probably at most it's going three miles an  
8 hour at most when it brushes you?

9 A At most, yeah.

10 Q And you would -- you have children, correct?

11 A Oh, yes.

12 Q You have young daughters?

13 A Um-hmm.

14 Q And would it be a fair statement that your  
15 young daughters back two years ago, 2012, they kicked you  
16 harder than that car --

17 A Oh, yeah.

18 Q -- brushed you?

19 A Well, yeah. I mean, like I said, that's why I  
20 didn't go get anything done with it because, you know what  
21 I mean, I've been hit harder than that, you know, but it's  
22 just the idea he did it, you know.

23 Q And you indicated earlier I guess the car drove  
24 against the pillar?

25 A Right, he had to either run me over to his

1 right or bust the steps out on the left, so.

2 Q And he went to the left?

3 A He went to the left.

4 Q Instead of running you over?

5 A Yeah.

6 Q All right. And you said the SUV touched the  
7 pillar?

8 A The back quarter panel right about the  
9 taillight area on the side.

10 Q And the pillar I guess just sustained a  
11 scratch, right?

12 A Yeah, more or less, yeah.

13 Q And when Mr. -- when the SUV started out, it  
14 wasn't squealing its tires, correct?

15 A No.

16 Q No, that it wasn't or no, that it I'm correct?

17 A No, it wasn't squealing tires, no.

18 Q All right.

19 MR. PIROLO: Judge, may I have a moment?

20 THE COURT: Yes, you may.

21 (Thereupon, a pause was taken in the  
22 proceedings.)

23 MR. PIROLO: Judge, I don't have anything else,  
24 thank you. Thank you, Mr. Jordan.

25 THE WITNESS: Thank you.

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THE COURT: Okay. Redirect by the State.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Jordan, did you see the defendant come down the stairs and walk to the truck?

A Yeah, I seen him coming down and he was -- when I got eyes on him eye to eye, he was at the back heading to the door of the vehicle.

Q Did he appear to have any difficulty walking?

A No, sir.

Q And did he know the way to get out of the parking lot?

A Yeah, it didn't take him long once he started it up the second time.

Q Knew which was the way to 192?

A Yes, sir.

Q And he knew enough to get out of there because you had called 911, right?

A Oh, yeah, you know what I mean, that was my statement, I called 911 and handed it to Mr. Malik and he talked to the dispatch.

MR. BROWN: Thank you. No further questions.

THE COURT: Okay. Recross by the Defense.



RE CROSS EXAMINATION

1  
2 BY MR. PIROLO:

3 Q Mr. Jordan, from where the car -- how the car  
4 was positioned you said it was backed in.

5 A Yes.

6 Q The car was already pointed at where it needed  
7 to go to exit, correct?

8 A Right.

9 MR. PIROLO: All right. Nothing else, Your  
10 Honor.

11 THE COURT: Okay. Sir, thank you for your  
12 testimony, you're free to step down.

13 THE WITNESS: Yes, ma'am.

14 (Thereupon the witness exited the witness  
15 stand.)

16 THE COURT: Okay. At this time we are going to  
17 take a fifteen minute break. During this break --  
18 I'll ask you to be back at 10:30 and during this  
19 break you must -- the jurors must continue to abide  
20 by the rules governing their service as a juror.

21 Okay. Court will be in recess for fifteen minutes.

22 (Thereupon the, jury was escorted out of the  
23 courtroom by the court deputy and the proceedings were had  
24 as follows:)

25 THE COURT: Okay. You may be seated and we'll

1 be in recess for fifteen minutes as well. Thank you.

2 (Thereupon, a short recess was taken in the  
3 proceedings.)

4 THE COURT: Okay. We can bring out  
5 Mr. Bradley.

6 (Thereupon, the defendant was escorted into the  
7 courtroom by the court deputy.)

8 THE COURT: Okay. Our jurors ready?

9 THE COURT DEPUTY: They're ready.

10 THE COURT: Okay. That's good.

11 (Thereupon, the jury was escorted into the  
12 courtroom by the court deputy and the proceedings were had  
13 as follows:)

14 THE COURT: Please be seated. Okay. Other  
15 witnesses on behalf of the State.

16 MR. BROWN: State would call Vanessa McNerney.

17 THE COURT: Ma'am, if you'll step up before the  
18 clerk to be sworn.

19 THEREUPON,

20 VANESSA MCNERNEY,

21 having been first duly sworn, was examined and testified  
22 upon her oath as follows:

23 THE COURT: Ma'am, please be seated in the  
24 witness chair. Once seated if you'll scoot your  
25 chair forward. Do adjust that microphone, do talk

1           into that microphone, it helps us hear your  
2           testimony, it also aids in recording your testimony.  
3           Okay. Mr. Brown.

4                       MR. BROWN: Thank you, Your Honor.

5                                       DIRECT EXAMINATION

6 BY MR. BROWN:

7           Q       Ma'am, could you please state your name and  
8           spell your first and last name?

9           A       Vanessa McNerney, V-A-N-E-S-S-A,  
10          M-C-N-E-R-N-E-Y.

11          Q       And Miss McNerney, where do you work?

12          A       EconoLodge, Melbourne, Florida.

13          Q       And how long have you worked there for?

14          A       Two years now.

15          Q       I want to go back to March 6th, 2012, were you  
16          working then?

17          A       Yes, sir.

18          Q       And what were your duties then?

19          A       Housekeeping.

20          Q       And as far as the EconoLodge, is it set up into  
21          two separate names for the hotel?

22          A       Yes, sir.

23          Q       And can you tell the jury what are the two  
24          names?

25          A       The EconoLodge and the York Inn.

1 Q And I want to bring your attention to March  
2 6th, 2012, in the timeframe between 10:00 and 11:00  
3 o'clock, did anything occur that was unusual that day?

4 A What do you mean? I don't understand.

5 Q Did anything on March, 6th, 2012, happen that  
6 was out of the ordinary?

7 A No, sir.

8 Q On that day were you back taking care of the  
9 rooms?

10 A Yes, sir.

11 Q Were you in the back section?

12 A Yes, sir.

13 Q The room 268, was that part of your duties?

14 A Yes.

15 Q And do you recall, did you go to that room to  
16 check to clean it?

17 A Yes.

18 Q And what time is check out?

19 A It's 11:00 o'clock.

20 Q And when you went to the room in relationship  
21 to 11:00 o'clock, do you remember approximately what time  
22 it was?

23 A About 10:35, maybe 10:40.

24 Q And when you went to room 268, what happened?

25 A Mr. Bradley opened the door, I asked if they

1 were staying over or checking out and he said to come back  
2 in thirty minutes, that they were checking out that day.

3 Q And at that point did you see anything that  
4 struck you as unusual?

5 A The nightstand was sitting by the door.

6 Q Where would the nightstand normally be?

7 A Up against the wall in between the two beds.

8 Q And at that point did you walk away from the  
9 room?

10 A Yes, sir.

11 Q And did there come a time where you ended up  
12 going back to that area of the hotel?

13 A Yes, sir.

14 Q And was that approaching 11:00 o'clock?

15 A Yes.

16 Q And when you went back there, did you see  
17 anything unusual in the parking lot?

18 A Mr. Bradley was standing behind his truck with  
19 the nightstand behind the truck.

20 Q And I'm going to show you what's Exhibit 9.

21 MR. BROWN: If I may stand next to the witness.

22 THE COURT: Yes, you may.

23 BY MR. BROWN:

24 Q And can you point out the area that you saw  
25 Mr. Bradley standing next to a truck?

1 A (Witness indicates).

2 Q What is this area right here?

3 A That's a staircase that goes up to the second  
4 floor.

5 Q And the truck you indicated, was it parked in  
6 this area?

7 A Yes.

8 Q And was it backed in?

9 A Yes.

10 Q Where did you see the nightstand at?

11 A Right behind the truck.

12 Q Was this the same nightstand that you saw out  
13 of place in the room half hour earlier?

14 A Yes, sir.

15 Q Now, the individual that you saw standing next  
16 to the nightstand, can you give the jury a description of  
17 what he looked like?

18 A A younger black male.

19 Q Do you see him here in the courtroom today?

20 A Yes, sir.

21 Q Could you please point him out and describe an  
22 article of clothing that he's wearing?

23 A He's over there in the gray suit coat.

24 MR. BROWN: Your Honor, let the record reflect  
25 the witness has identified the defendant.

1 BY MR. BROWN:

2 Q When you saw him there, what did you see next?  
3 What happened next?

4 A My friend -- my coworker, Tammy Brown, walked  
5 up to him and asked him what he was doing and I was still  
6 walking up there so I didn't really hear the conversation  
7 and then he got in the truck.

8 Q When you say he got in the truck, where did he  
9 get into the truck at?

10 A To the driver's side.

11 Q Behind the wheel?

12 A Yes.

13 Q Did you ever see a second person come down to  
14 the truck?

15 A Eventually, yes.

16 Q And where did the second person get into the  
17 truck at?

18 A The passengers side.

19 Q And do you recall -- what was the description  
20 of the second person?

21 A Younger white female.

22 Q Now, at this time could you see -- did you walk  
23 up to the truck?

24 A I was standing behind the truck.

25 Q Did you see anything inside the truck?

1 A Pillows and sheets, yes.

2 Q And did you recognize those pillows and sheets?

3 A Yes.

4 Q And what did you recognize them to be or where  
5 from?

6 A The York Inn, the hotel.

7 Q Were these items that were normally in the  
8 rooms?

9 A Yes, sir.

10 Q Would those have been items that would have  
11 otherwise been in room 268?

12 A Yes, sir.

13 Q At this point did any other hotel employees  
14 make it to that area?

15 A Yes, sir.

16 Q Can you tell the jury what other hotel  
17 employees made it to the vehicle?

18 A Two other housekeepers, a maintenance man and  
19 the owner.

20 Q And do you know -- what's the owner's name?

21 A Mr. Malik.

22 Q And what's the maintenance man's name?

23 A Andrew.

24 Q Do you recall his last name?

25 A No, sir.



1 Q Where did you see Andrew go?

2 A He was standing in front of his truck.

3 Q And do you know what, if anything, was he  
4 doing?

5 A Telling him that we need our property back.

6 MR. PIROLO: Objection, hearsay.

7 THE COURT: Okay. Sustained.

8 MR. BROWN: Judge, may I approach on it?

9 THE COURT: Yes, you may.

10 (Thereupon, a benchside conference was had out  
11 of the hearing of the jury as follows:)

12 MR. BROWN: Judge, first, our position is it's  
13 not hearsay because we're not using it to prove the  
14 truth of the matter asserted. Second, if it is it  
15 certainly is a spontaneous statement or excited  
16 utterance. It's certainly spontaneous because it  
17 occurred during the commission of a felony.  
18 Certainly I don't think that's been preplanned, no  
19 forethought so. The simple fact that it's said,  
20 we're not using it to prove the truth of the matter  
21 and either if the Court views it as hearsay then it  
22 clearly is a spontaneous statement.

23 THE COURT: If it's not the truth of the matter  
24 asserted, what are you offering it to prove?

25 MR. BROWN: The simple fact that it's said to

1 the defendant and then what's his reaction, what does  
2 he do.

3 MR. MOORE: I missed what her -- I'm sorry, I  
4 missed what her statement was.

5 MR. BROWN: Pardon me?

6 MR. MOORE: What was the -- what was the  
7 question asked? I missed it.

8 MR. BROWN: The question was what was  
9 Mr. Jordan doing and she said he was standing in  
10 front of the truck telling him we want our stuff  
11 back. If it is hearsay it certainly qualifies as a  
12 hearsay exception under either excited utterance or  
13 spontaneous statement.

14 MR. MOORE: Only if the predicate's laid and  
15 they haven't done that. I mean, they would have to  
16 have a description about it when this was occurring,  
17 who -- whether -- and the demeanor of the declarant,  
18 I mean, if they're going to try to get it in under  
19 that exception. You know, they're just, just  
20 skipping these steps, Your Honor. I mean, they got  
21 to lay a predicate, they just can't say this happened  
22 during the commission of a crime so it's an excited  
23 utterance, doesn't work that way.

24 MR. BROWN: It certainly does work that way,  
25 she said that's what he said. This happened

1 spontaneously, he's in front of the truck telling him  
2 that. I think clearly it's a spontaneous statement.

3 THE COURT: A spontaneous statement normally is  
4 oh, my god, he's going to hit me, that's what  
5 spontaneous is.

6 MR. BROWN: No, that would be excited  
7 utterance.

8 MR. MOORE: It's like the cars are going to  
9 crash, you know, I'm watching it, the cars are going  
10 to crash but to just stand there and say I want my  
11 stuff back, that's not an excited utterance.

12 MR. BROWN: You use that level of something  
13 that happened, an excited utterance you can actually  
14 say that some period of time after the fact.  
15 Spontaneous statement is a statement that simply  
16 occurs during the actions. That's the whole thing  
17 being spontaneous.

18 MR. MOORE: It's being offered for the truth  
19 value regardless of what Mr. Brown says. They want  
20 their stuff back, that proves theft.

21 THE COURT: It is a hearsay statement, the  
22 predicate hasn't been laid. So, I'll sustain the  
23 objection.

24 (Thereupon, the benchside conference was  
25 concluded and the proceedings were had as follows:)

1 BY MR. BROWN:

2 Q Miss McNerney, without going into what  
3 Mr. Jordan said, where was he located at?

4 A In front of the truck.

5 Q And in his position could the truck leave  
6 without him getting out of the way?

7 A What do you mean?

8 Q Was he in a position to block the truck from  
9 leaving?

10 A Yeah, he was right in front of it.

11 Q And at that time was the male in the driver's  
12 seat?

13 A Yes, sir.

14 Q And what period of time elapsed before the  
15 female came down?

16 A At least ten minutes.

17 Q And where -- during the time that Mr. Jordan is  
18 in front of the vehicle, where are you standing?

19 A Behind.

20 Q And are you behind closer to the stairwell,  
21 behind to the other side of the truck?

22 A Closer to the stairwell.

23 Q And did there come a time when the truck  
24 started to move forward?

25 A Yes, sir.

1 Q When that happened, what, if anything, did you  
2 see Mr. Jordan do?

3 A I think -- I'm not sure, I think he moved out  
4 of the way.

5 Q Were you in a position where you were at to be  
6 able to see him?

7 A Not a hundred percent, no.

8 Q And from your vantage point throughout the  
9 process, were you able to get a good look at both the  
10 black male and the white female?

11 A Yes, sir.

12 Q And was 911 called?

13 A Yes.

14 Q Did that occur while this was happening?

15 A Yes.

16 Q And did the police arrive?

17 A Yes.

18 Q And when the police arrived, did they  
19 eventually talk to you and show you a set of photographs?

20 A Yes, sir.

21 Q Now, Miss McNerney, when the female came down  
22 and went to get into the truck, what if anything happened  
23 at that point?

24 A The maintenance man was saying that we needed  
25 our --

1 MR. PIROLO: Objection, hearsay.

2 MR. BROWN: It's the same argument.

3 THE COURT: Let's have a bench conference.

4 (Thereupon, a benchside conference was had out  
5 of the hearing of the jury as follows:)

6 MR. BROWN: Judge, my position is there's way  
7 that this does not meet the definition of spontaneous  
8 statement. It's things being said as it is  
9 occurring. That's the whole essence of the  
10 spontaneous statement.

11 MR. MOORE: Spontaneous statement's describing  
12 the event, not just some random event, you know, that  
13 expresses his state of mind about what he wants. I  
14 mean, you know, that's the disconnect. If somebody  
15 says I see cars are about to crash, they're  
16 describing the event, that's what makes it a  
17 spontaneous utterance. If he says wow, you know,  
18 Mr. Bradley's sitting in the car, we want our stuff  
19 back, that's not a spontaneous statement. I mean, it  
20 has nothing to do with the event, it's a statement of  
21 his intent of wanting his stuff back which is an  
22 element the State has to prove to prove a theft or  
23 robbery.

24 THE COURT: Spontaneous statement does not have  
25 to describe the event, it has to be made at the time

1 or immediately following the event.

2 MR. MOORE: A startling event.

3 THE COURT: Pardon me?

4 MR. MOORE: A startling event.

5 THE COURT: It doesn't -- I have case law  
6 from -- that's Ruff v. State from -- it's a Fourth  
7 DCA 2013. I mean, for the purposes of the exception,  
8 a spontaneous statement must be made at the time of  
9 or immediately following the declarant's observation  
10 of the event, or condition described and the  
11 statement must be made without the declarant first  
12 engaging in reflective thought. So, I'm going to  
13 overrule the objection.

14 (Thereupon, the benchside conference was  
15 concluded and the proceedings were had as follows:)

16 BY MR. BROWN:

17 Q Miss McNerney, what was Mr. Jordan saying at  
18 the front of the vehicle?

19 A He was telling them we needed our property back  
20 for the hotel.

21 Q And during this time did the white female come  
22 down and get into the vehicle?

23 A Yes, sir.

24 Q And once she made it into the vehicle, what if  
25 anything did she do or say?

1           A        She threw out sheets, a pillow and I think a  
2 picture from the wall.

3           Q        And were you in a position still to see into  
4 the vehicle?

5           A        Yes.

6           Q        And did she remove all of the items from the  
7 hotel items that were in the vehicle or just some?

8           A        Just some.

9           Q        And at a certain point you indicated the  
10 vehicle began to leave?

11          A        Yes, sir.

12          Q        Can you tell the jury when the vehicle went to  
13 leave what happened?

14          A        He hit the side of the building as he was  
15 leaving.

16          Q        You say side of the building, is that the  
17 stairwell?

18          A        Yes, sir.

19          Q        And then where did the vehicle go after leaving  
20 the stairwell?

21          A        Out of the parking lot towards 192.

22          Q        Now, the hotel itself, is it on 192?

23          A        Yes, sir.

24          Q        And where's the exit to leave the hotel?

25          A        All the way in the front.



1 Q And again looking at Exhibit Number 9, which  
2 direction did the vehicle take off in?

3 A This way.

4 Q And when you go up this way, does that lead  
5 directly to the exit?

6 A Yes, sir.

7 Q Do you have to make any turns in the parking  
8 lot in order to get to the exit?

9 A No.

10 Q How far were you able to see the vehicle?

11 A Probably right in this area right here.

12 Q And that's when you lost sight?

13 A Yes, sir.

14 Q Did you ever see the vehicle again after it  
15 left your line of view?

16 A No, sir.

17 MR. BROWN: Your Honor, may I approach the  
18 witness?

19 THE COURT: Yes, you may.

20 BY MR. BROWN:

21 Q I want to show you what's marked as Exhibits Z,  
22 AA and AB, do you recognize those exhibits?

23 A Yes, sir.

24 Q On Exhibit Z, is that your signature?

25 A Yes.

1 Q Are those your initials?

2 A Yes, sir.

3 Q And also on Exhibits AA and AB, is that your  
4 handwriting?

5 A Yes.

6 Q And on the back page is that also your  
7 signature?

8 A Yes.

9 Q Are those also your signatures?

10 A Yes.

11 Q Now, did you meet with the representatives from  
12 the sheriff's office there at the hotel on March 6th,  
13 2012?

14 A Yes, sir.

15 Q And did there come a time where they showed you  
16 these exhibits there?

17 A Yes.

18 Q And when they showed those to you, did they  
19 separate you away from everybody else?

20 A Yes, one by one.

21 Q And what did they tell you, do you recall, as  
22 far as directions concerning looking at those photographs?

23 A I'm not sure, I don't recall.

24 Q Did they go over those instructions with you on  
25 the first exhibit?

1 A Yes, I'm sure.

2 Q Did you read those and initial?

3 A Yes.

4 Q And did you understand those?

5 A Yes.

6 Q And did you follow those instructions when you  
7 looked at those photographic exhibits?

8 A Yes.

9 MR. BROWN: Your Honor, at this time the State  
10 would move what's marked as Exhibits Z, AA and AB for  
11 identification into evidence.

12 THE COURT: Response from the Defense.

13 MR. PIROLO: May we approach, Your Honor?

14 THE COURT: Yes, you may exhibit.

15 (Thereupon, a benchside conference was had out  
16 of the hearing of the jury as follows:)

17 MR. PIROLO: Judge, as to Exhibit Z, we object,  
18 hearsay, it's completely irrelevant. And the next  
19 exhibits, AA and AB, the two lineups, same objection  
20 as earlier. First, improper predicate and  
21 authentication of those exhibits. The lineups has  
22 not been established yet and it also goes to  
23 bolstering the witness's credibility. She's already  
24 identified Mr. Bradley in the courtroom, now this  
25 just goes to bolster that hey, you know, she's

1 keeping with her story. I'm not going to attack her  
2 on her ability to observe Mr. Bradley that she saw  
3 somebody else, that's clearly not the angle that  
4 we're taking. She's already identified him in the  
5 courtroom and that should be sufficient.

6 THE COURT: Okay. This is the same --

7 MR. PIROLO: Yes.

8 THE COURT: -- argument as before. So, based  
9 on the Court's prior ruling, the objection's  
10 overruled.

11 (Thereupon, the benchside conference was  
12 concluded and the proceedings were had as follows:)

13 THE COURT: Okay. With regard to Z, Z will be  
14 State's Exhibit Number 28, AA will be State's Exhibit  
15 29, AB will be State's Exhibit 30.

16 (Thereupon, State's Exhibit Numbers 28, 29 and  
17 30 were marked and received in evidence.)

18 BY MR. BROWN:

19 Q Miss McNerney, Exhibit 29, which photograph did  
20 you pick out?

21 A This one.

22 Q And the photograph you picked out, is that the  
23 individual that you saw at the back of the truck where the  
24 nightstand was as well as the driver of the vehicle?

25 A Yes, sir.

1 Q And is that also the same individual that  
2 answered the door when you went up to room 268  
3 approximately one half hour earlier?

4 A Yes, sir.

5 Q And Exhibit 30, the white female you picked  
6 out, is that the white female that you observed getting  
7 into the passengers side?

8 A Yes.

9 Q And that handed back some of the items?

10 A Yes.

11 MR. BROWN: Your Honor, at this time I would  
12 ask to publish these to the jury.

13 THE COURT: Yes, you may.

14 (Thereupon, State's Exhibit Numbers 28, m 29 and  
15 30 were published to the jury.)

16 MR. BROWN: Your Honor, I have no further  
17 questions of this witness at this time.

18 THE COURT: Okay. Cross examination by the  
19 Defense.

20 MR. PIROLO: Yes, Your Honor, thank you.

21 CROSS EXAMINATION

22 BY MR. PIROLO:

23 Q Good morning, Miss McNerney.

24 A Good morning.

25 Q Miss McNerney, you never saw Mr. Bradley

1 placing anything inside the SUV from the motel room,  
2 correct?

3 A No, sir.

4 Q And I know you said the nightstand was outside  
5 but you never saw him place it there or move it around,  
6 correct?

7 A Correct.

8 Q Earlier you had said you went to room 268 and  
9 knocked on the door?

10 A Yes, sir.

11 Q And Mr. Bradley answered the door?

12 A Yes, sir.

13 Q Now, I take it you were very close to him,  
14 right, distance wise?

15 A Yes, sir.

16 Q A lot closer than you and I are, right?

17 A Yes, sir.

18 Q So, you were able to -- as you were talking to  
19 him you were able to look him in the eyes, correct?

20 A Yes, sir.

21 Q His eyes appeared glassy at the time?

22 A Yes.

23 Q Very glassy?

24 A Yes.

25 Q And I take it from life experiences and the

1 place that you work you've encountered a lot of people?

2 A Yes, sir.

3 Q Fair statement?

4 And a lot of people that you've encountered  
5 you've been able to be around people that are under the  
6 influence of whatever it is, alcohol and/or other drugs,  
7 right?

8 A Yes.

9 Q All right. And it's pretty clear to you that  
10 Mr. Bradley was high, was he not?

11 A Yes.

12 Q And would you say he and the female were acting  
13 weird?

14 A Yes.

15 Q At some point Mr. Bradley gets inside the SUV  
16 and gets behind the wheel, he sits in the driver's seat  
17 right?

18 A Yes, sir.

19 Q And I think earlier you said it took about ten  
20 minutes for the white female to meet up with him in the  
21 car?

22 A Yes.

23 Q And during those ten minutes he continued to  
24 sit in that driver's seat, correct?

25 A Yes, sir.

1 Q The door was closed?

2 A Yes.

3 Q And he wasn't talking, right?

4 A No.

5 Q He just kind of sat there?

6 A Yes.

7 Q You didn't hear any music playing?

8 A No.

9 Q He just kind of sat and waited until she came?

10 A Yes.

11 MR. PIROLO: May I approach the witness?

12 THE COURT: Yes, you may.

13 BY MR. PIROLO:

14 Q Miss McNerney, Mr. Brown showed you earlier  
15 State's Exhibit 9, you indicated that the SUV was parked  
16 here?

17 A Yes.

18 Q And facing towards 192, right?

19 A Yes.

20 Q All right. And the manner -- the way your hand  
21 moved when Mr. Brown asked you where 192 would be you kind  
22 of made a gesture like that?

23 A Yes.

24 Q That's how the white SUV left, right?

25 A Right.



1 Q And it was backed in?

2 A Yes.

3 Q So, it was a pretty straight angle for him, for  
4 the SUV to just go down that path, right?

5 A Yes.

6 Q No complicated turns or anything like that?

7 A No.

8 Q The SUV touched the pillar near the staircase?

9 A Yes.

10 Q And the way that the SUV made that turn --

11 MR. PIROLO: May I approach the witness again,  
12 Your Honor?

13 THE COURT: Yes, you may.

14 BY MR. PIROLO:

15 Q You indicated you were behind the SUV?

16 A Right.

17 Q And Mr. Jordan was in front of it?

18 A Right.

19 Q And the angle that you made earlier with your  
20 finger the way the SUV moved was as if the SUV was trying  
21 to void making any contact with people, right?

22 A Right.

23 Q At that moment the tires weren't squealing,  
24 correct?

25 A No.

1 MR. PIROLO: Judge, can I have a moment?

2 THE COURT: Yes, you may.

3 (Thereupon, a pause was taken in the  
4 proceedings.)

5 MR. PIROLO: I don't have any other questions.

6 THE COURT: Okay. Redirect by the State.

7 MR. BROWN: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Miss McNerney, when you went to the room and  
11 the defendant answered the door, what did you say to him?

12 A I said are you staying over or checking out.

13 Q And what was his response?

14 A Come back in thirty minutes.

15 Q Did you have any trouble understanding him?

16 A No.

17 Q Did he speak normally to you?

18 A Yes.

19 Q And outside did you observe him walk from the  
20 back of the vehicle to get inside the vehicle?

21 A I don't recall.

22 Q And when the defendant left he headed -- in the  
23 vehicle when he drove out, he drove out towards the exit?

24 A Yes, sir.

25 Q Thank you.

1 MR. BROWN: Nothing further, Your Honor.

2 THE COURT: Okay recross by the Defense.

3 MR. PIROLO: Nothing else.

4 THE COURT: Ma'am, thank you for your  
5 testimony, you're free to step down.

6 THE WITNESS: Thank you.

7 (Thereupon, the witness exited the witness  
8 stand.)

9 THE COURT: Okay. Other witnesses by the  
10 State.

11 MR. BROWN: State would call Tammy Brown.

12 THE COURT: Okay. Ma'am, if you'll come  
13 forward, step up before the clerk to be sworn.

14 THEREUPON,

15 TAMMY BROWN,  
16 having been first duly sworn, was examined and testified  
17 upon her oath as follows:

18 THE COURT: Ma'am, please be seated in the  
19 witness chair. Once seated if you'll scoot that  
20 chair forward. Do adjust that microphone, do talk  
21 into that microphone, it helps us hear your  
22 testimony, it also aids in recording your testimony.  
23 Okay. Mr. Brown.

24 MR. BROWN: Thank you.

25

DIRECT EXAMINATION

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BY MR. BROWN:

Q Ma'am, could you please state your name and spell your last name?

A Tammy Brown, B-R-O-W-N.

Q And Miss Brown, how are you employed?

A I'm not employed right now.

Q Okay. Back on March 6th, 2012, how were you employed?

A At EconoLodge.

Q And what were your duties there?

A Housekeeping.

Q And did you work there with a Vanessa McNerney?

A Yes.

Q Andrew Jordan?

A Yes.

Q And do you know a person by the name of Mr. Malik?

A Yes.

Q Okay. Who is he?

A The owner.

Q Now, on that date, did you make it to the back area of the hotel near room 268?

A Yes.

Q And when you were there in the parking lot

1 area, did you see anything unusual somewhere timeframe  
2 10:30 to 11:00 o'clock?

3 A Yes.

4 Q And can you tell the jury what you saw?

5 A I was walking around -- I was in the back and  
6 walked around to the front of the back building and I was  
7 with Vanessa and the gentleman was getting into the truck  
8 and the nightstand was behind the truck and I went up and  
9 approached the gentleman and asked him --

10 Q Let me stop you for a little bit. Where was  
11 the truck parked at?

12 A In front of -- basically in front of 268.

13 Q Was it right next to the stairwell?

14 A Yes.

15 Q And when we say truck, was it a white SUV?

16 A Yes.

17 Q And do you recall how it was parked in that  
18 spot?

19 A It was backed in.

20 Q And what did you see behind the truck?

21 A The little nightstand.

22 Q And did you recognize the nightstand?

23 A Yes.

24 Q And how did you recognize it or what was it?

25 A It was a two drawer brown nightstand.

1 Q And is it normally kept -- are those  
2 nightstands the ones that are in the rooms of the motel?

3 A Yes.

4 Q And at that point or shortly after that, did  
5 you have an opportunity to look into the vehicle SUV?

6 A I just looked through the windows.

7 Q And were you able to see or recognize anything  
8 inside of the SUV?

9 A Yes.

10 Q And what were you able to see?

11 A I recognized the comforter that was on the bed  
12 and it looked like there was stuff underneath the  
13 comforter.

14 Q Was that covering other items?

15 A Yes.

16 Q Now, at that point did you -- you indicated you  
17 saw a black male?

18 A Yes.

19 Q And where did you first see him at?

20 A He was getting into the vehicle.

21 Q Okay. Was he already at the door, was he in  
22 the back walking up, what did you see?

23 A Walking up to the driver's side door.

24 Q And when he got up to the driver's side door,  
25 what did he do?

1 A He was getting in the vehicle.

2 Q And did you approach him?

3 A Yes.

4 Q Did you say anything to him?

5 A I asked him about the nightstand behind the  
6 vehicle.

7 Q And what did he say about the nightstand?

8 A He just said it was his.

9 Q And at that point what did you do?

10 A I went upstairs to 268.

11 Q Okay. And did you recognize that black male as  
12 coming from room 268?

13 A I didn't see him coming from 268, he was  
14 already by the vehicle.

15 Q Okay. Did you recognize that he belonged to  
16 room 268?

17 A No.

18 Q But you new to go to room 268?

19 A Yes, because Vanessa told me.

20 Q And when you went to room 268, what did you do?

21 A I went up to 268 and was asking her -- she  
22 wouldn't open the door so I was asking her, you know,  
23 through the glass about the towels and the sheets.

24 Q And at that point did you make it back  
25 downstairs?

1 A Yes.

2 Q Okay. And did the female that you spoke to in  
3 room 268 eventually come downstairs?

4 A Yes.

5 Q And where did she go?

6 A Towards the vehicle.

7 Q Did she get into the vehicle?

8 A Shortly after she came down, yes.

9 Q And where did she get into the vehicle at?

10 A The driver front side.

11 Q And who was behind the wheel?

12 A The gentleman.

13 Q The black male?

14 A Yes.

15 Q Now, at that point did any other -- or during  
16 this period of time, did any other hotel staff make it out  
17 to that vehicle?

18 A Yes.

19 Q And who all made it out to the vehicle?

20 A Jordan, Eve, Mr. Malik.

21 Q And do you recall where Mr. Jordan went to?  
22 What position did he take?

23 A When he came to the vehicle?

24 Q Yes.

25 A He was on the left front side of the vehicle.



1 Q So, was he in front of the vehicle?

2 A Yes.

3 Q And where -- when that was going on, was he  
4 saying or doing anything towards the occupants of the  
5 vehicle?

6 A I don't remember.

7 Q Where were you at?

8 A I was in the back of the vehicle.

9 Q Were you towards the stairwell or away from the  
10 stairwell?

11 A I was on the right hand side of the back.

12 Q So, that would be the side towards the  
13 stairwell?

14 A Yes.

15 Q And did there come a time that the white female  
16 passenger did or said anything while she was in the  
17 vehicle that you could see or observe?

18 A No, I don't remember.

19 Q Were you in a position to see the passengers  
20 side of the vehicle?

21 A Yes.

22 Q Did either of the two return any property?

23 A Yes.

24 Q Who returned something?

25 A The girl.

1 Q And do you recall what she gave back?

2 A I'm not real sure on that.

3 Q Was it all the property that you could see in  
4 the vehicle or was there just some of it?

5 A Just some of it.

6 Q And did there come a time when the vehicle  
7 left?

8 A Yes.

9 Q And did you see what, if anything, Mr. Jordan  
10 did as the vehicle start to go forward?

11 A No, I was in the back of the vehicle, I  
12 couldn't see in the front.

13 Q And afterwards did you have an opportunity to  
14 make it back up to room 268?

15 A No.

16 Q And during the time there, did you have an  
17 opportunity to have a good look at the black male?

18 A No, I didn't.

19 MR. BROWN: Your Honor, may I have a moment?

20 THE COURT: Yes, you may.

21 (Thereupon, a pause was taken in the  
22 proceedings.)

23 MR. BROWN: No further questions, Your Honor.

24 THE COURT: Okay. Cross examination by the  
25 Defense.

CROSS EXAMINATION

1  
2 BY MR. LANNING:

3 Q Good morning. Your contact with the white  
4 female, she was messed up, correct?

5 A She looked like she was.

6 Q Okay. And you never actually even saw the face  
7 of the black male, right?

8 A Not really.

9 Q When you were speaking to him he was turned  
10 away from you walking away, right?

11 A Yes.

12 Q And when you questioned him about this  
13 nightstand he said it's mine, right?

14 A Yes.

15 Q You never saw him or her carrying any items  
16 down from the room, right?

17 A No.

18 Q And when the vehicle pulled away, it pulled  
19 away really slowly, right?

20 A Yes.

21 Q Did you see it hit the pillar?

22 A It hit the side of the building, yes.

23 Q I'm sorry?

24 A It hit the side of the building, the stairway.

25 MR. LANNING: May I have a moment?

1 THE COURT: Yes, you may.

2 (Thereupon, a pause was taken in the  
3 proceedings.)

4 MR. LANNING: Nothing further.

5 THE COURT: Okay. Redirect by the State.

6 MR. BROWN: Yes.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q When you spoke to the black male and he  
10 indicated it's mine, was that direct response to your  
11 question.

12 A Yeah. Yes.

13 Q Did you have any trouble understanding him?

14 A No.

15 Q Thank you.

16 MR. BROWN: Nothing further.

17 RECROSS EXAMINATION

18 BY MR. LANNING:

19 Q Would you agree that it was a rather odd  
20 response to your question considering the nightstand in a  
21 hotel parking lot in the middle of the (unintelligible)?

22 A Yes.

23 Q Little odd, right?

24 A Um-hmm.

25 MR. LANNING: Thank you.

1 THE COURT: Okay. Ma'am, thank you for your  
2 testimony, you're free to step down.

3 (Thereupon, the witness exited the witness  
4 stand.)

5 THE COURT: Other witnesses on behalf of the  
6 State.

7 MR. BROWN: State would call Mohammad Malik.

8 THE COURT: Sir, if you'll step up before the  
9 clerk to be sworn.

10 THEREUPON,

11 MOHAMMAD MALIK,

12 having been first duly sworn, was examined and testified  
13 upon his oath as follows:

14 THE COURT: Okay. Sir, if you'll be seated in  
15 the witness chair. That chair. Once seated, if  
16 you'll scoot your chair up. Do adjust that  
17 microphone, do talk into that microphone, it helps us  
18 hear your testimony, it also aids in recording your  
19 testimony. Okay. Mr. Brown.

20 MR. BROWN: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Sir, would you please state your name and spell  
24 you first and last name?

25 A Mohammad Huesain Malik. Mohammad is

1 M-O-H-A-M-M-A-D. Malik is M-A-L-I-K.

2 Q And Mr. Malik, I understand you're feeling ill  
3 today?

4 A Yes.

5 Q I appreciate your being here.

6 Can you tell the jury how are you employed,  
7 what do you do?

8 A I own and manage my motel named EconoLodge at  
9 US 192 close to I95.

10 Q And you indicated it's the EconoLodge, is there  
11 also a portion of the motel called the York Inn?

12 A Yeah, it has two buildings, one I call  
13 EconoLodge, the other I call York Inn.

14 Q Now, Mr. Malik, I want to bring your attention  
15 back to March 6th, 2012. On that day approaching the  
16 11:00 o'clock hour, were you called to go back to an area  
17 in the parking lot near room 268?

18 A Yes, sir, my employees -- I was at the front  
19 desk and my employees called me, they told me I need to  
20 come over there so I went over there.

21 Q And when you went back there, did you observe a  
22 white SUV type vehicle?

23 A Yes.

24 Q And were other hotel employees there at the  
25 vehicle when you made it there?

1           A        Yes, all my housekeepers was working that area,  
2 they were there too, and my maintenance man was there too.

3           Q        Okay. Was that Andrew Jordan?

4           A        Yes, sir, that's my maintenance man.

5           Q        And when you made it back to the vehicle, were  
6 you able to see inside of the vehicle?

7           A        Yes, sir, the vehicle was next to the, next to  
8 the stairwell and I was able to observe two individuals.

9           Q        Okay. What items, if anything, did you see and  
10 recognize inside the vehicle?

11          A        On the, on the back side all the linen we put  
12 in a room plus the small furniture like end table and all  
13 of the small tables and all the other like pillow,  
14 pillowcases, bags, bedspreads and everything, I saw all  
15 that.

16                   MR. BROWN: Your Honor, may I approach the  
17 witness?

18                   THE COURT: Yes, you may.

19 BY MR. BROWN:

20          Q        I show you Exhibits 12 and 13, does that look  
21 like the vehicle that you saw back in the parking lot?

22          A        Yes, sir.

23          Q        Does that look like some of your items in the  
24 back?

25          A        Yes.

1 Q Now, Mr. Malik, you indicated you saw two  
2 individuals?

3 A Yes.

4 Q Were these two guests?

5 A Yeah, they were guests in room I think 268.

6 Q Can you describe to the jury what these two  
7 individuals looked like, male, female, white, black?

8 A The male guy was black and the female was  
9 white.

10 Q And were they young, old?

11 A Young, not old.

12 Q Now, at the time when you went back there to  
13 what occurred, what if anything did you see Mr. Andrew  
14 Jordan doing?

15 A Mr. Andrew was over there on the side of the  
16 truck and on the like east side and he was trying to I  
17 think convince the guy to not take the stuff, but when  
18 Andrew came in front of the truck he zoomed --

19 MR. PIROLO: Objection, Your Honor,  
20 nonresponsive.

21 THE COURT: Next question, please.

22 BY MR. BROWN:

23 Q Did there come a time when you saw Mr. Jordan  
24 go in front of the vehicle?

25 A Yes.



1 Q And when Mr. Jordan was in front of the  
2 vehicle, did there come a time you saw the truck move?

3 A Yes, he tried --

4 Q When you saw the truck move, can you tell the  
5 jury what happened, what did Mr. Jordan do?

6 A He very, very quickly, you know, he came away  
7 from the front towards me where I was standing over near  
8 the side.

9 Q And as the truck was leaving and Mr. Jordan was  
10 doing that movement, did you see -- was Mr. Jordan hit by  
11 the vehicle?

12 A Not very hard, he pushed him out and very  
13 badly.

14 Q But contact was made between the vehicle and  
15 Mr. Jordan?

16 A Yes.

17 Q Now, during this time did you call 911?

18 A Yes.

19 Q And have you had an opportunity to listen to  
20 your 911 phone call?

21 A Yes.

22 Q And was that an exact copy of the conversation  
23 you had with the 911 operator?

24 A Yes.

25 MR. BROWN: Your Honor, at this time I have

1 Exhibit I which is a copy of the 911, I would move to  
2 admit this exhibit into evidence.

3 THE COURT: Response from the Defense.

4 MR. PIROLO: Can we approach?

5 THE COURT: Yes, you may.

6 (Thereupon, a benchside conference was had out  
7 of the hearing of the jury as follows:)

8 MR. PIROLO: Judge, I'm going to object as it's  
9 hearsay and it's irrelevant, there's no relevancy at  
10 this point. We understand he phoned 911, we're not  
11 going to say he didn't call 911, I think it adds an  
12 emotional appeal to the jury and its probative value  
13 is substantially outweighed by the unfair prejudice.

14 MR. MOORE: Also hearsay.

15 THE COURT: Response from the Defense. I mean  
16 from the State.

17 MR. BROWN: Judge, it's certainly relevant,  
18 it's his reactions to what's happening, it's his  
19 information to the police and furthermore this is  
20 where he gives the tag number to the police that  
21 ultimately leads to the stop and eventual murder of  
22 Deputy Pill.

23 MR. PIROLO: It's hearsay if he's reading from  
24 the license plate to --

25 THE COURT: The relevance is overruled.

1 Address the hearsay.

2 MR. BROWN: Which portion of the hearsay? I  
3 don't understand -- the fact that he saw the tag  
4 number? That's not hearsay.

5 MR. PIROLO: Everything's hearsay.

6 MR. BROWN: It's an observation that he made.

7 MR. PIROLO: Right, it's going to prove the  
8 truth of the matter asserted, the license plate.  
9 He's standing there, he's reading something and he's  
10 saying what he read, it's hearsay. It's going to  
11 prove what the tag number was.

12 MR. BROWN: Correct, the 911 phone call  
13 spontaneous statement. As he's seeing the tag he's  
14 giving it to the police, it's clearly a spontaneous  
15 statement.

16 THE COURT: I'll overrule the objection.

17 MR. BROWN: Judge, we're going to ask -- Mr.  
18 Malik's actually very sick so I'm going to try to get  
19 him out of here other than breaking and setting up  
20 the equipment. So, we're going to ask to publish  
21 this after.

22 THE COURT: Okay.

23 (Thereupon, the benchside conference was  
24 concluded and the proceedings were had as follows:)

25 THE COURT: Okay. State's Exhibit I will be

1 received as Number 31.

2 (Thereupon, State's Exhibit Number 31 was  
3 marked and received in evidence.)

4 BY MR. BROWN:

5 Q Mr. Malik, did you work with Mr. Jordan to come  
6 up with a list of items that were damaged, missing and/or  
7 recovered?

8 A Yes.

9 MR. BROWN: Your Honor, may I approach?

10 THE COURT: Yes, you may.

11 BY MR. BROWN:

12 Q Showing you what's been marked as Exhibit V, do  
13 you recognize that list?

14 A Yes.

15 Q And is that the list that yourself and  
16 Mr. Jordan came up with?

17 A Yes.

18 Q And the values that are on the list, did you  
19 ascertain those values?

20 A Yes.

21 Q You're the owner of the property?

22 A Yes.

23 Q And those are all your items?

24 A Yes.

25 Q And do those items represent the fair market

1 value of the value of the items that were missing or  
2 damaged as March 6th, 2012?

3 A Yes.

4 MR. BROWN: Your Honor, at this time the State  
5 would move Exhibit V marked for identification into  
6 evidence.

7 THE COURT: Response from the Defense.

8 MR. PIROLO: No, Your Honor, no objection.

9 THE COURT: Okay. V will be received as  
10 State's Exhibit Number 32.

11 (Thereupon, State's Exhibit Number 32 was  
12 marked and received in evidence.)

13 BY MR. BROWN:

14 Q And Mr. Malik, did the police arrive at your  
15 motel that day?

16 A Yes, sir.

17 Q And did you ultimately over a period of time  
18 speak and meet with various representatives from the  
19 sheriff's office?

20 A Yes.

21 Q Did there come a time where they showed you a  
22 photo pack, a list -- a package of photographs?

23 A Yes.

24 Q And ask you to -- from those photographs were  
25 you able to make any identifications from those?

1 A Yes.

2 Q And when they showed those to you, did they  
3 separate you from all the other witnesses?

4 A Yes.

5 MR. BROWN: Your Honor, if I can approach?

6 THE COURT: Yes, you may.

7 BY MR. BROWN:

8 Q First I want to show you what is marked as  
9 Exhibit AI and AJ and AK.

10 A Yes.

11 Q And do you recognize these exhibits?

12 A Yes.

13 Q Are these the ones that the sheriff's office  
14 gave to you and looked over with you?

15 A Yes.

16 Q And on Exhibit AI, are those your initials?

17 A Yes.

18 Q Is that your signature?

19 A Yes.

20 Q And on Exhibits AJ and AK, the photographs  
21 marked?

22 A Yes.

23 Q Is that marking that you did with the date and  
24 initials?

25 A Yes.

1 Q And on the back page, is that again your  
2 handwriting and your signatures?

3 A Yes.

4 Q Did you do those on March 6th, 2012?

5 A Yes.

6 MR. BROWN: Your Honor, at this time the State  
7 would move these three exhibits marked for  
8 identification into evidence.

9 THE COURT: Response from the Defense.

10 MR. PIROLO: May we approach?

11 THE COURT: Yes, you may.

12 (Thereupon, a benchside conference was had out  
13 of the hearing of the jury as follows:)

14 MR. PIROLO: If I can see what the numbers are.  
15 Judge, AI, again it's hearsay. And as to AJ and AK,  
16 those are the photographic lineups, they haven't been  
17 properly authenticated, the predicate hasn't been  
18 laid as to the manner of the photographs obtained.  
19 And Judge, it's cumulative. These will be the third  
20 set of lineups we've got in here.

21 We get the point, they've been able to identify  
22 the people at the motel. We've never ever argued  
23 identity or identity being an issue. All the cross  
24 examinations never gone to identity as being an issue  
25 that it's some other man, not Mr. Bradley.

1 Mr. Malik's been able like the other witnesses be  
2 able to identify Mr. Bradley with no problem in the  
3 courtroom. So, it's cumulative. We get it. And it  
4 keeps showing the jurors mug shot after mug shot  
5 after mug shot of Mr. Bradley.

6 MR. BROWN: Mr. Malik actually hasn't made the  
7 in court identification. I haven't asked him, so.

8 THE COURT: Okay. I'm going to overrule the  
9 objection. Okay. Thank you.

10 (Thereupon, the benchside conference was  
11 concluded and the proceedings were had as follows:)

12 THE COURT: Okay. I -- I mean AI will be  
13 State's Exhibit Number 33, AJ will be State's Exhibit  
14 Number 34, AK will be State's Exhibit Number 35.

15 (Thereupon, State's Exhibit Numbers 33, 34 and  
16 35 were marked and received in evidence.)

17 BY MR. BROWN:

18 Q Mr. Malik, I'm first showing you Exhibit 33,  
19 are these the instructions that the sheriff's office went  
20 over with you?

21 A Yes.

22 Q And did you understand those and follow those  
23 instructions in making the identification?

24 A Yes, sir.

25 Q Showing you Exhibit 34, the individual you



1 selected in picture five?

2 A Yes.

3 Q Who was that individual?

4 A Bradley --

5 Q Well, is that the individual that you saw  
6 behind the driver's wheel of the white SUV?

7 A Yes.

8 Q I want to show you Exhibit 35, you indicated  
9 picture two?

10 A Yes.

11 Q And is that the white female that you observed  
12 in the passengers seat in the white SUV?

13 A Yes.

14 Q And the individual you've been discussing  
15 today, the black male, do you see him here in the  
16 courtroom today?

17 A Yes.

18 Q Could you please point him out and describe an  
19 article of clothing that he's wearing?

20 A He's right there, he don't have a tie, his  
21 shirt is not white but maybe off white shirt.

22 MR. BROWN: Your Honor, let the record reflect  
23 the witness has identified the defendant.

24 May I have one moment?

25 THE COURT: Yes, you may.

1 (Thereupon, a pause was taken in the  
2 proceedings.)

3 MR. BROWN: Your Honor, I have no further  
4 questions.

5 THE COURT: Okay. Questions by the Defense.

6 MR. PIROLO: Yes, Your Honor, thank you.

7 CROSS EXAMINATION

8 BY MR. PIROLO:

9 Q Good morning, sir. How are you?

10 A Pretty good.

11 Q You came to the car after Mr. Bradley was  
12 already inside the car, right?

13 A That was not car, sir, it was a truck.

14 Q Okay. The SUV, right?

15 A Yeah.

16 Q All right. He was already inside the SUV,  
17 correct?

18 A Yes.

19 Q So, you never saw him walking inside the car,  
20 or inside the truck?

21 A You don't walk inside the truck, sir.

22 Q Well, walk into the truck, you never saw him  
23 walking into the truck, correct?

24 A You mean getting into --

25 Q Right.

1 A -- the driver's seat, no, sir.

2 Q Okay. And you didn't see him with any items  
3 from the motel room in his hands, right, in his actual  
4 hands?

5 A His hand was on the wheel not --

6 Q Right. He wasn't holding anything from the  
7 motel room, correct?

8 A Sir, I saw him in the front seat of the truck,  
9 his hands were on the wheel and he don't have anything in  
10 his hands.

11 Q Okay. Very good.

12 And you indicated earlier when the SUV started  
13 to move out, it brushed you say Mr. Jordan, correct?

14 A Yes.

15 Q Okay. And at the time you would say the car  
16 was going almost at zero velocity?

17 A Sir, you are stationary at zero velocity.

18 Q Right. That's why you say it brushed Mr.  
19 Jordan as the car left, as the truck left?

20 A Sir, he zoomed.

21 Q Okay. Well -- so, you're saying he zoomed  
22 past?

23 A Zooming, he started from zero and went to sixty  
24 in maybe forty-five seconds.

25 Q Okay. But -- All right. And the car moved to

1 the left, correct?

2 A It was facing north and it went straight.

3 Q Right, straight at him?

4 A Yeah.

5 Q To the left and out, right, towards 192, right?

6 A Not 192, 1 -- yeah, 192, I'm sorry, yeah.

7 MR. PIROLO: Okay. Judge, can I have one  
8 moment, please?

9 THE COURT: Yes, you may.

10 (Thereupon, a pause was taken in the  
11 proceedings.)

12 MR. PIROLO: I don't have anything else. No  
13 more questions.

14 THE COURT: Okay. Redirect by the State.

15 MR. BROWN: No. No, Your Honor.

16 THE COURT: Okay. Sir, thank you for your  
17 testimony, you're free to step down.

18 (Thereupon, the witness exited the witness  
19 stand.)

20 MR. BROWN: May we approach?

21 THE COURT: Yes, you may.

22 (Thereupon, a benchside conference was had out  
23 of the hearing of the jury as follows:)

24

25

(CONTINUED TO VOLUME III)