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FILED

JUN 19 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MABON DEMETRIC JAMES,

Petitioner-Appellant,

v.

SCOTT KERNAN, CDCR Secretary,

Respondent-Appellee.

No. 17-55977

D.C. No.

5:15-cv-01956-SJO-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted June 14, 2019**
Pasadena, California

Before: WARDLAW, BYBEE, and MILLER, Circuit Judges.

Mabon Demetric James filed a habeas petition challenging his state conviction for second degree robbery, asserting there was insufficient evidence that the victim had constructive possession of the stolen property. The district court

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissed his petition; and James appeals. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

We review the denial of a habeas petition de novo. *Lambert v. Blodgett*, 393 F.3d 943, 964 (9th Cir. 2004). Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), we grant a habeas petition only if the state court’s decision “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or “was based on an unreasonable determination of the facts in light of the evidence presented.” 28 U.S.C. § 2254(d). “[W]here a federal habeas corpus claimant alleges that his state conviction is unsupported by the evidence,” we must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Lewis v. Jeffers*, 497 U.S. 764, 781 (1990) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). After AEDPA, we apply this standard “with an additional layer of deference.” *Juan H. v. Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005).

Under California law, to establish robbery, the state must show that the property was in the victim’s actual or constructive possession. *See People v. Nguyen*, 14 P.3d 221, 226 (Cal. 2001); Cal. Penal Code § 211. A person has

constructive possession of property when she “[has] a ‘special relationship’ with the owner of the property such that the victim had authority or responsibility to protect the stolen property on behalf of the owner.” *People v. Scott*, 200 P.3d 837, 841 (Cal. 2009). In *People v. Bekele*, the court found the victim had constructive possession when the owner said, “[l]et’s stop . . . [t]here is somebody in my truck,” and then “[t]he two of them acted in concert to interrupt the burglary.” 39 Cal. Rptr. 2d 797, 798–99 (Ct. App. 1995), *disapproved of on other grounds by People v. Rodriguez*, 971 P.2d 618, 625 (Cal. 1999). The court explained that this statement showed the “obvious implication” that the owner wanted the victim “to help safeguard [his] property.” *Id.* at 799. Thus, the court held, the victim “had a representative capacity with respect to [the] property, in that he had implied authority from [the property owner] to take action to prevent its theft,” which was sufficient to establish constructive possession. *Id.*

Here, the owner specifically told the victim, who was her close friend, “[m]y car’s unlocked. My purse is in there. You need to go back to the car.” This statement showed the “obvious implication” that owner wanted the victim “to help safeguard [her] property” and provided implied authority for her to do so. Viewing this evidence “in the light most favorable to the prosecution,” a rational factfinder could find that the victim had constructive possession of the property. *Lewis*, 497

U.S. at 781. Thus the state court’s decision was not “objectively unreasonable” under AEDPA. *See Howard v. Clark*, 608 F.3d 563, 568 (9th Cir. 2010); *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (explaining that to find a state court’s decision objectively unreasonable on AEDPA review, that decision must have been “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement”).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
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12 MABON DEMETRIC JAMES,

13 Petitioner,

14 v.

15 PROMA, Warden,

16 Respondent.
17

No. ED CV 15-1956-SJO (PLA)

JUDGMENT

18 Pursuant to the Order Accepting Findings, Conclusions, and Recommendation of the United
19 States Magistrate Judge, IT IS ADJUDGED that the Petition is denied and dismissed with
20 prejudice.
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22 DATED: June 22, 2017

S. James Otero

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HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE
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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION
10

11 MABON DEMETRIC JAMES,
12 Petitioner,

13 v.

14 PROMA, Warden,
15 Respondent.
16

No. ED CV 15-1956-SJO (PLA)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

17 On May 31, 2017, the United States Magistrate Judge issued a Report and
18 Recommendation ("R&R"), recommending that the Petition be dismissed on the merits with
19 prejudice. On June 14, 2017, petitioner filed Objections to the R&R.

20 In the Objections, petitioner argues that under the facts and reasoning set forth in two
21 California Court of Appeal cases -- Sykes v. Superior Court, 30 Cal.App.4th 479 (Cal.App. 1 Dist.
22 1994), and People v. Galoia, 31 Cal.App.4th 595 (Cal.App. 4 Dist. 1994) -- Marta Parfeta's role
23 was similar to that of a bystander who had no special relationship with the owner of the stolen
24 property and therefore Parfeta did not have constructive possession of her friend's (Cassandra
25 Smith) belongings. (Objections at 3-4). The court of appeal in petitioner's case adequately
26 distinguished Sykes and Galoia in its reasoned denial, and instead found petitioner's case similar
27 to People v. Bekele, 33 Cal.App.4th 1457 (1995), *disapproved of on other grounds by People v.*
28

1 Rodriguez, 20 Cal.4th 1, 82 Cal.Rptr.2d 413 (1999).¹ (See Lodgment No. 6 at 11-14). In Bekele,
 2 a coworker of the property's owner was found to have constructive possession because the owner,
 3 after he and the coworker saw the perpetrator burglarizing the owner's truck, said to the coworker,
 4 "Let's stop. There is somebody in my truck." The coworker and owner approached the truck and
 5 told the perpetrator to stop, and the coworker struck the perpetrator and chased him yelling "Stop,
 6 drop the bag." 33 Cal.App.4th at 1460. According to the Bekele court, the owner's implied grant
 7 of authority to help stop the theft resulted in the coworker having constructive possession of the
 8 owner's property. Id. at 1462. Here, the court of appeal reasonably determined that, like the
 9 coworker relationship in Bekele, the friendship between Parfeta and Smith created a special
 10 relationship, such that Smith entrusted Parfeta to help safeguard her property. For these reasons,
 11 as well as the reasons set forth in the R&R, the court of appeal's denial of petitioner's insufficiency
 12 of the evidence claim was not objectively unreasonable.

13 The Court also finds unpersuasive petitioner's argument that "there was no evidence that
 14 Parfeta felt it was 'her place' to demand return of the property." (Objections at 4). Although
 15 Parfeta did not expressly testify that she felt it was "her place" to safeguard Smith's belongings,
 16 it could be reasonably inferred from her testimony that she felt responsible for keeping Smith's
 17 items safe from theft, especially after Smith asked Parfeta to return to the car because it was
 18 unlocked and Smith's purse was on the floorboard.

19 The Court has reviewed petitioner's remaining objections and finds that they are adequately
 20 addressed in the R&R.

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 25
 26 ¹ The court of appeal's interpretation of state law is binding on this Court. See Mullaney v.
 27 Wilbur, 421 U.S. 684, 691 n.11, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975) ("state courts are the
 28 ultimate expositors of state law" and a federal court is bound by the state court's construction
 except when it appears to be an obvious subterfuge to evade the consideration of a federal issue);
Oxborrow v. Eikenberry, 877 F.2d 1395, 1399 (9th Cir. 1989) (federal courts are bound by state
 court rulings on questions of state law).

CONCLUSION

Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other records on file herein, the Magistrate Judge's Report and Recommendation, and petitioner's Objections to the Report and Recommendation. The Court has engaged in a de novo review of those portions of the Report and Recommendation to which objections have been made. The Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation is accepted.
2. Judgment shall be entered consistent with this Order.
3. The clerk shall serve this Order and the Judgment on all counsel or parties of record.

DATED: June 26, 2017

S. James Otero

HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
11

12 MABON DEMETRIC JAMES,

13 Petitioner,

14 v.

15 PROMA, Warden,

16 Respondent.
17

No. ED CV 15-1956-SJO (PLA)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

18 This Report and Recommendation is submitted to the Honorable S. James Otero, United
19 States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States
20 District Court for the Central District of California. For the reasons discussed below, the
21 Magistrate Judge recommends that the Petition for Writ of Habeas Corpus be dismissed with
22 prejudice.

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PROCEDURAL HISTORY

On August 29, 2013, a San Bernardino County Superior Court jury convicted petitioner of two counts of second degree robbery (Cal. Penal Code § 211), and one count of dissuading a witness from reporting a crime (Cal. Penal Code § 136.1(b)(1)). The jury found true the allegation that petitioner personally used a deadly and dangerous weapon within the meaning of California Penal Code § 12022(b)(1). Petitioner admitted that he had prior “strike” convictions within the meaning of California Penal Code §§ 667(b)-(i) and 1170.12(a)-(d), and had served prior prison terms within the meaning of California Penal Code § 667.5(b). (Reporter’s Transcript (“RT”) 328-31, 335-42; Clerk’s Transcript (“CT”) 102-06, 112-13, 134-35). The trial court sentenced petitioner to ninety-one years to life in state prison. (RT 346-47; CT 131-35).

Petitioner filed a direct appeal. On April 14, 2015, the California Court of Appeal affirmed his conviction. (Lodgment Nos. 3, 6). Petitioner next filed a petition for review, which the California Supreme Court denied on July 15, 2015. (Lodgment Nos. 7, 8).

On September 23, 2015, petitioner filed a Petition in this Court. On September 28, 2015, he filed the operative Amended Petition (“Am. Pet.”). On January 22, 2016, respondent filed an Answer. On June 13, 2016, the Court appointed counsel to represent petitioner in this action.¹ (Docket No. 32). On April 17, 2017, petitioner filed his Reply.

This matter is deemed submitted and is ready for a decision.

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¹ Petitioner has filed numerous letters with the Court in which he states that he has Alzheimer’s disease and therefore needs legal help. Based on petitioner’s allegations, the Court found that appointment of counsel was proper. (See Docket No. 32).

GROUND TWO: INSUFFICIENT EVIDENCE OF ROBBERY

In Ground Two, petitioner asserts that his conviction on count one for the robbery of victim Parfeta is unconstitutional because the evidence at trial failed to establish the necessary element of possession. (Am. Pet. at 5-6; Reply at 5-8).

A. Federal Law and Analysis

In a federal habeas proceeding, a petitioner challenging the sufficiency of the evidence may obtain relief only if “it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 324, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Id. at 319 (emphasis in original); see also Schell v. Witek, 218 F.3d 1017, 1023 (9th Cir. 2000). A reviewing court’s “reversal for insufficiency of the evidence is in effect a determination that the government’s case against the defendant was so lacking that the trial court should have entered a judgment of acquittal.” McDaniel v. Brown, 558 U.S. 120, 130 S.Ct. 665, 672, 175 L.Ed.2d 582 (2010) (quoting Lockhart v. Nelson, 488 U.S. 33, 39, 109 S.Ct. 285, 102 L.Ed.2d 265 (1988)) (internal quotations omitted).

“[I]t is the responsibility of the jury -- not the court -- to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury’s verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury.” Cavazos v. Smith, 565 U.S. 1, 132 S.Ct. 2, 4, 181 L.Ed.2d 311 (2011) (per curiam). Accordingly, the reviewing court “must respect the province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts by assuming that the jury resolved all conflicts in a manner that supports the verdict.” Walters v. Maass, 45 F.3d 1355, 1358 (9th Cir. 1995). If the record supports conflicting inferences, the Court “must presume -- even if it does not affirmatively appear in the record -- that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.” Jackson, 443 U.S. at 326.

1 Federal courts must look to state law to determine what evidence is sufficient. Jackson,
 2 443 U.S. at 324 n.16. Moreover, a reviewing habeas court applies “an additional layer of
 3 deference” under AEDPA: habeas relief is not warranted unless “the state court’s application of
 4 the Jackson standard [was] ‘objectively unreasonable.’” Juan H. v. Allen, 408 F.3d 1262, 1274,
 5 1275 n.13 (9th Cir. 2005) (as amended) (citation omitted); see also Smith, 132 S.Ct. at 4 (“[A]
 6 federal court may not overturn a state court decision rejecting a sufficiency of the evidence
 7 challenge simply because the federal court disagrees with the state court. The federal court
 8 instead may do so only if the state court decision was ‘objectively unreasonable.’”) (citation
 9 omitted).

10 **B. Relevant California Law and the California Court of Appeal’s Opinion**

11 In California, robbery is defined as “the felonious taking of personal property in the
 12 possession of another, from his person or immediate presence, and against his will, accomplished
 13 by means of force or fear.” (Cal. Penal Code § 211). To support a robbery conviction, the evidence
 14 must show that: (1) the perpetrator took property that was not his own; (2) the property was in the
 15 possession of another person; (3) the property was taken from the other person or his immediate
 16 presence; (4) the property was taken against that person’s will; (5) the perpetrator used force or
 17 fear to take the property or to prevent the person from resisting; and (6) when the defendant used
 18 force or fear to take the property, he intended to deprive the owner of the property permanently.
 19 (Id.; CALCRIM No. 1600).

20 Possession may be actual or constructive. See People v. Bekele, 33 Cal.App.4th 1457,
 21 1461, 39 Cal. Rptr. 2d 797 (Cal.App. 1 Dist. 1995), disapproved on other grounds by People v.
 22 Rodriguez, 20 Cal.4th 1, 13-14, 82 Cal.Rptr 2d 413 (1999). “[N]either ownership nor physical
 23 possession is required to establish the element of possession for purposes of the robbery statute.”
 24 People v. Scott, 45 Cal.4th 743, 750, 89 Cal.Rptr.3d 213 (2009). “For the purposes of robbery,
 25 it is enough that the person presently has some loose custody over the property, is currently
 26 exercising dominion over it, or at least may be said to represent or stand in the shoes of the true
 27 owner.” People v. DeFrance, 167 Cal.App.4th 486, 497, 84 Cal.Rptr.3d 204 (Cal.App. 3 Dist.
 28 2008) (citation omitted). Constructive possession has been found where the victim has “some

1 type of 'special relationship' with the owner of the property sufficient to demonstrate that the victim
 2 had authority or responsibility to protect the stolen property on behalf of the owner." People v.
 3 Weddles, 184 Cal.App.4th 1365, 1369, 109 Cal.Rptr.3d 479 (Cal.App. 3 Dist. 2010) (citation
 4 omitted).

5 On direct appeal, the California Court of Appeal rejected petitioner's insufficiency of the
 6 evidence claim as follows:

7 As to the charged robberies, the jury was instructed, inter alia,
 8 that the property had to have been taken from "another person's
 9 possession and immediate presence." During argument to the jury,
 10 the prosecutor said that the second victim's items that were stolen
 11 were in the possession and control of the first victim when defendant
 took them because the second victim had told the first victim to return
 to the car and "watch over and maintain" them. Defense counsel
 argued, in part, that [petitioner] was not guilty of robbing the first victim
 because the first victim did not possess the second victim's property.

12 [Petitioner] here contends that there was insufficient evidence
 13 that the first victim possessed the second victim's property. He
 14 acknowledges that constructive possession exists where the robbery
 15 victim has a "special relationship" with the owner of the property such
 16 that the victim had authority or responsibility to protect the stolen
 17 property on behalf of the owner." (People v. Scott (2009) 45 Cal.4th
 18 743, 750.) [Petitioner] asserts that the first victim "had no ...
 19 constructive possessory interest in [the second victim's stolen]
 20 property at any time..." We disagree. The second victim, upon
 21 realizing that the first victim was no longer at her car, guarding her
 22 possessions in the car, told the first victim to return to the car,
 23 impliedly telling her to do precisely that. That established the special
 24 relationship between the first and second victims concerning the
 25 property. The fact that the first victim felt it "her place" to demand of
 26 [petitioner] that he return the second victim's cigarettes further
 27 established that such a relationship existed, which gave the first victim
 28 "standing" to demand the return. It was at that point that [petitioner]
 applied the force, i.e., hitting the first victim in the jaw, required to
 retain possession of the property. Thus, this case is like People v.
Bekele (1995) 33 Cal.App.4th 1457 (Bekele) [overruled on other
 grounds in People v. Rodriguez (1999) 20 Cal.4th 1, 13, 14], in which
 a coworker of the property's owner was found to have constructive
 possession of the property because the owner, upon him and the
 coworker seeing the [petitioner] burglarize the owner's truck, said to
 the coworker, "Let's stop. There is somebody in my truck." (Bekele,
 at pp. 1460-1462.) The appellate court reasoned, "[T]he evidence
 demonstrated that [the coworker] had a representative capacity with
 respect to [the owner's] property, in that he had implied authority from
 [the owner] to take action to prevent its theft. When [the owner] saw
 his truck being burglarized, he said to [the coworker], 'Let's stop.' The
 two of them acted in concert to interrupt the burglary; they
 simultaneously left [what they were doing] to approach [the owner's]
 truck, and both told [the defendant] to stop. The obvious implication

1 was that [the owner] wanted [the coworker] to help safeguard [the
 2 owner's] property by putting a stop to the theft. [The coworker] was
 3 acting in that capacity when he struck [the defendant] and then
 4 chased after him, yelling[,] 'Stop, drop the bag.' [The coworker's]
 position was analogous to that of the security guard who has
 constructive possession, though not immediate control, of the property
 he is charged with safekeeping." (*Id.* at p. 1462.)

5 We disagree with [petitioner] that Bekele is distinguishable from
 6 the instant case because the owner of the property and the coworker
 7 in the former were "in the course of employment" unlike the first and
 8 second victims. The owner and coworker in Bekele did not pursue the
 9 robber in the course of their employment -- we greatly doubt that if the
 10 coworker had been injured during his interaction with the robber, he
 11 would have qualified for worker's compensation. Rather, the fact that
 12 they were coworkers created a relationship between the two, such
 13 that the owner entrusted his coworker to help him safeguard his
 14 property. Here, the fact that the first and second victims were best
 friends established the same type of relationship. To whatever extent
 the California Supreme Court has expressed reservations about the
 owner's words, "Let's stop. There is somebody in my truck" implied
 authority from the owner to the coworker to take action to stop the
 theft (People v. Nguyen (2000) 24 Cal.4th 756, 762, fn. 2), the words
 of the second victim here more clearly conveyed the authority she
 delegated to the first victim to act on her behalf in protecting her
 property.

15 We also agree with the People that Sykes v. Superior Court
 16 (1994) 30 Cal.App.4th 479 (Sykes) and People v. Galoia (1994) 31
 17 Cal.App.4th 595 (Galoia) are distinguishable. In Sykes, a security
 18 guard employed by a business across the street from a music store,
 19 ordered to stop and chased down someone who had stolen a
 20 saxophone from the music store. (Sykes, supra, 30 Cal.App.4th at
 21 481.) Distinguishing other cases, the appellate court concluded that
 22 the security guard "had no special obligation to protect the goods of
 [the music store]. Nor did [he] constructively possess the saxophone,
 because he was not an employee of the owner.... [¶] ... Constructive
 possession depends upon a special relationship with the owner of the
 property.... The fact [that the security guard] was employed as a
 guard for another business did not make him an agent of [the music
 store]." (*Id.* at p. 484.) Here, as we have already concluded, there
 was a relationship between the first and second victim and the second
 victim relied on the first victim to protect her possessions.

23 In Galoia, a convenience store "customer" left without paying
 24 for the merchandise he had taken. (Galoia, supra, 31 Cal.App.4th at
 25 596, 597.) A man who was in the store retrieving money from the
 26 video games he owned there, chased the "customer" and was struck
 27 by the latter's companion. (*Id.* at p. 597.) Division Three of this court
 28 reasoned, "[The video games owner] was not an employee or agent
 of the ... store. Nor was he in any way responsible for the security of
 the items taken. Yet, the [People] maintain ... [that the video games
 owner] was acting under the 'implicit authorization' of the store when
 he pursued [the "customer.]" The [People] rel[y] on the fact that a
 store worker followed [the video games owner] outside and yelled for

1 help after [the later] [sic] was hit. However, no one from the store
 2 instructed [the video games owner] to give chase, and there is no
 3 evidence [he] was motivated by anything other than good citizenship.
 4 Under these circumstances, we must reject the [People's] 'implicit
 5 authorization' argument." (*Id.* at pp. 597-598.) Here, in contrast, no
 6 authorization by the second victim had to be implied, the second
 7 victim instructed the first victim to safeguard her possessions and the
 8 first victim was acting out of friendship, not good citizenship. In
 9 comparing the facts in Galoia to those in Sykes, the Galoia court went
 10 on to state, "Like the guard in Sykes, [the video games owner] was
 11 well intended. But good motives alone cannot substitute for the
 12 special relationship needed to create a possessory interest in the
 13 goods." (*Id.* at p. 599.) Here, there was such a special relationship.

14 (Lodgment No. 6 at 10-14).

15 **C. Analysis**

16 Following a review of the record, the Court concludes that the California Court of Appeal
 17 did not unreasonably apply the Jackson standard in finding that the evidence was sufficient to
 18 prove the possession element for the robbery conviction in count one.

19 At trial, Marta Parfeta testified that, on the night of the incident, she and her "best friend"
 20 Cassandra Smith drove in Smith's car to a liquor store. (RT 56-61). Smith parked in front of the
 21 liquor store and left her car unlocked with her purse sitting on the floorboard of the driver's side.
 22 While Smith was inside the store, Parfeta waited outside the car near the passenger's side. (RT
 23 62). Smith exited the store and started "flirting" with some "cute guys" in the parking lot. Parfeta
 24 walked over to join her. (RT 62-66). Smith told Parfeta, "My car's unlocked. My purse is in there.
 25 You need to go back to the car." (RT 67). Parfeta turned back and saw petitioner standing at the
 26 driver's side of Smith's car. Parfeta noticed that petitioner was holding Smith's cigarettes and told
 27 him that he needed to put the cigarettes back. (RT 67-69, 84). Petitioner then hit Parfeta in the
 28 face. (RT 69).

On these facts, it was not unreasonable for the court of appeal to determine that the
 evidence was sufficient to prove the "possession" element because Parfeta and Smith shared a
 "special relationship" concerning the property. Parfeta was not just a bystander who became
 involved to help Smith retrieve her belongings. Rather, Parfeta and Smith were best friends, and
 Smith specifically asked Parfeta to go to Smith's car to protect her purse. The evidence supports
 the state court's conclusion that Smith relied on Parfeta to protect her possessions that were in

1 Smith's car, and that Parfeta had the authority or responsibility to protect Smith's property.
 2 Accordingly, when viewing the evidence in the light most favorable to the prosecution, a rational
 3 juror could have reasonably concluded that a special relationship existed between Smith and
 4 Parfeta such that Parfeta had constructive possession of Smith's belongings that were in Smith's
 5 car, in particular the cigarettes.

6 For these reasons, the California Court of Appeal's rejection of petitioner's insufficiency of
 7 the evidence claim was not contrary to or an unreasonable application of the Jackson standard.
 8 See Richter, 562 U.S. at 102; 28 U.S.C. § 2254(d). Habeas relief is denied for Ground Two.

9 10 **GROUND THREE: DENIAL OF MISTRIAL**

11 Petitioner asserts in Ground Three that the trial court's denial of his motion for a mistrial --
 12 based on testimony by a sheriff's department sergeant about having "prior contact" with petitioner
 13 -- resulted in a due process violation. (Am. Pet. at 6; Reply at 8).

14 **A. The California Court of Appeal's Opinion**

15 On direct appeal, the California Court of Appeal set forth the relevant facts and rejected
 16 petitioner's claim as follows:

17 During a side-bar hearing, a detective testified that he went to the scene
 18 of [petitioner's] detention for one of the robberies and heard [petitioner] give
 19 one of the deputies there his brother's name, Gil Johnson, as his own. Calling
 [petitioner] by his true name, the detective asked [petitioner] why he was lying.
 The detective further testified that he had had prior contacts with [petitioner].

20 The trial court ruled it was not going to allow the prosecutor to let the
 21 detective go into the fact that he had made contact with [petitioner] before,
 22 unless [petitioner] testified or defense counsel attacked the basis for the
 23 detective's knowledge that [petitioner] was who he was. The parties debated
 24 the probative value of [petitioner] giving his brother's name, rather than his
 25 own. The trial court ruled that people who give false names have some
 26 consciousness of guilt and evidence of this is not really prejudicial to the extent
 27 that the police do not testify that they knew who [petitioner] actually was, due
 28 to their prior contacts with him. The trial court summarized its ruling that if the
 evidence was not extremely probative, it was extremely non-prejudicial.
 Specifically, the court ruled that the prosecutor could ask the detective if when
 he came upon the scene of [petitioner's] detention as a possible perpetrator of
 the robberies, he heard someone ask [petitioner] his name and [petitioner]
 gave the name "Gil Johnson." The court added that the prosecutor could ask
 the detective if he was able to determine whether or not that was [petitioner's]

do so in this case. See Weeks v. Angelone, 528 U.S. 225, 234, 120 S.Ct. 727, 145 L.Ed.2d 727 (2000). Finally, the prosecution's case against petitioner was strong. Petitioner was caught with Cassandra Smith's belongings soon after the crimes occurred, and he deliberately misidentified himself to the police after he was apprehended. (RT 165, 170, 180-85). As the court of appeal noted, even though the testimony by the store owner who witnessed part of the incident contradicted the victims' stories to some extent, the owner's testimony did support the robbery claim involving Smith in several aspects: that it was petitioner who had contact with Smith at the time of the crimes; that Smith screamed at petitioner to give back her wallet or her phone; that a phone was smashed during Smith's interaction with petitioner; and that Smith told the owner that petitioner hit her in the face and asked to use his phone to call the police. (RT 31-55). On this record, even if the sergeant had not testified about having "prior contact" with petitioner, there is no reasonable probability that the verdict would have been any different.

For the above reasons, the Court concludes that the California Supreme Court's denial of this claim was not contrary to, or an unreasonable application of, Supreme Court precedent. See Richter, 562 U.S. at 102; 28 U.S.C. § 2254(d). Habeas relief is denied for Ground Three.

VI

RECOMMENDATION

It is recommended that the District Judge issue an Order: (1) accepting this Report and Recommendation; and (2) directing that judgment be entered denying the Petition and dismissing this action with prejudice.



DATED: May 31, 2017

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

SAN DIEGO DOCKETING

JUL 20 2015
No. SD 2014-01363
FO

Court of Appeal, Fourth Appellate District, Division Two - No. E059918

S226561

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

MABON DEMETRIC JAMES, Defendant and Appellant.

The petition for review is denied.

Lodgment 8

Mabon James v. Pramo
15-1956

SUPREME COURT
FILED

JUL 15 2015

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

3:24 pm, Apr 14, 2015

By: M. Parlapiano

THE PEOPLE,

Plaintiff and Respondent,

v.

MABON DEMETRIC JAMES,

Defendant and Appellant.

E059918

(Super.Ct.No. FVI1301842)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed with directions.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
William M. Wood and Heather F. Crawford, Deputy Attorneys General, for Plaintiff and
Respondent.

Lodgment 6

Mabon James v. Pramo

15-1956

A jury convicted defendant, Mabon James, of two counts of second degree robbery (Pen. Code, § 211),¹ dissuasion of a witness (§ 136.1, subd. (b)(1)), and using a knife during the latter and one of the robberies (§ 12022, subd. (b)(1)). In bifurcated proceedings, defendant admitted having suffered three convictions for strike priors (§ 667, subd. (b)-(i)), two convictions for serious priors (§ 667, subd. (a)(1)) and five convictions for priors for which he served prison terms (§ 667.5, subd. (b)). He was sentenced to prison for three consecutive terms of 25 years to life plus 16 years. He appeals, claiming the trial court erred in denying his motion for a mistrial, there was insufficient evidence to support his conviction for robbing the first victim and the sentencing court violated section 654 in imposing consecutive sentences for the second robbery and dissuasion of its victim. We reject his contentions, direct the trial court to correct an error in the abstract of judgment, made an addition to that abstract and otherwise affirm.

FACTS

On June 20, 2013, at 6:00 p.m., the first and second victims, who were best friends and had been drinking together,² drove to a neighborhood liquor store in Adelanto in the second victim's car. The first victim stayed at the car while the second victim went inside the store to purchase cigarettes, soda and alcohol. The second victim testified that

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The second victim testified that she had consumed a half-pint of liquor, but she denied being intoxicated.

while she waited in line in the store, defendant, who was behind her, told her that his mother needed something to eat, he asked her if she had any money, and she gave him three \$1 bills.³ The second victim returned to her car, placed her newly-purchased soda and vodka inside, returned her wallet to and put the cigarettes she had bought in her purse, which was on the driver's side front floorboard, and walked to another car in the parking lot to converse with two men there. The purse contained social security cards for her and her children, her driver's license or identification card, her credit cards, coins, her cell phone, a cigarette case and cigarettes. The first victim walked over to where the second victim was talking to the men to see what the latter was doing, leaving the unlocked car unattended. The second victim told the first victim to return to the car, as her purse was inside and accessible to anyone who happened by. As the first victim returned to the car, she saw defendant standing next to the driver's door holding cigarettes the first victim believed belonged to the second victim. The first victim asked defendant if he put the second victim's cigarettes back. The first victim testified that defendant punched her in the jaw with a closed fist and the second victim testified seeing this from 10 feet away and while defendant held a white handled knife by the blade in his other hand. The first victim screamed and the second victim returned to her car, but by the time she reached it, defendant was gone, having walked towards the back of the store to where dumpsters were located. The second victim told the first victim, "Come

³ The second victim admitted that she had not disclosed this to the authorities until the trial. The deputy who testified said that she had not mentioned this to him.

on . . . let's just go home." When the second victim got in her car, she discovered that her wallet, money, cell phone and cigarettes had been removed from her purse. The second victim returned to the liquor store and asked to use their phone to call the police. She came out of the store with their cordless phone in her hand and went around the corner to where the dumpsters were to see where defendant, who had gone around the store and down the sidewalk, "was going." The second victim testified that she yelled at defendant, who was perhaps 10-15 feet from her, "Do you have my stuff?" She also testified that defendant approached her, still holding the knife by its blade, hit the phone out of her hand and punched her in the face with his fist, knocking her to the ground. She testified that she got up and ran into another store in the strip mall and asked to use the phone there. The first victim testified that when the second victim later returned to the car, she had bruises and was upset. The first victim identified defendant during a show-up and identified the items that the police had seized from him as belonging to the second victim. The second victim testified that she had met defendant twice before June 20, 2013, and knew him as "Demetrius."⁴ She testified that she identified him during his post-detention show-up as the robber. She also testified that the police returned her

⁴ We note that defendant's middle name is "Demetric" and the probation report lists one of his aliases as "Demetric James Mabon."

children's social security cards, her driver's license, credit cards, cigarette case⁵ and cell phone.

The owner of the store into which the second victim went looking for a telephone testified that he heard a male and female screaming in the parking lot outside his store and heard the sounds of wrestling and saw defendant shaking the second victim, who was screaming, "Give me my wallet" or "Give me my phone" while holding her by the shoulders and defendant screamed in response. A short time later, the owner heard the sound of something hitting the ground and he looked to see a phone in pieces on the asphalt. Defendant walked off and the second victim followed him at about a distance of 50 feet, while continuing to scream at him. The second victim later entered the owner's store and asked to use his phone to call the police. The second victim told the owner that defendant had made her urinate on herself and he had hit her in the face. The owner had seen defendant in his store previously.⁶

A sheriff's sergeant testified that he had been dispatched to the scene of the crimes when he saw defendant walking fast through a field 150 yards away. Defendant matched the description of the robber the sergeant had been given. When the sergeant asked

⁵ The second victim testified that the police returned her cigarette case to her. However, the sergeant testified that he could not recall finding the cigarette case during his preliminary search of defendant. He also said, however, that he did not pull all the defendant's pockets out. The deputy who did the secondary search testified that he could not recall a cigarette case being retrieved from defendant in either search.

⁶ The second victim denied that defendant grabbed her by the shoulders and shook her or that she followed him and yelled at him.

defendant his name, defendant gave his brother's name. Defendant was searched a few minutes after the sergeant's arrival at the scene. The white handle of a knife protruded from his back pocket and he had the sheath for the knife blade in his front pocket. He had on his person a social security card and a debit card, belonging either to the first or second victim, the second victim's identification card, two cell phones and cigarettes.

Another deputy who searched defendant a second time testified that defendant had in his possession, inter alia, the second victim's social security card, other people's social security cards, change and three \$1 bills. He testified that the second victim identified the money, cigarettes, cards and cell phones defendant had as hers. She said the knife found on defendant was the same one she had seen in his hand when he had hit the first victim and her. The deputy also testified that the first victim had a red mark and swelling on the left side of her face and the second victim had swelling and a red mark by her eye and on her cheek, swelling to the left side of her face, abrasions on her left elbow, knee and ankle and pronounced bruising to her upper left thigh. Pictures of her injuries were shown to the jury.

1. *Motion for Mistrial*

During a side-bar hearing, a detective testified that he went to the scene of defendant's detention for one of the robberies and heard defendant give one of the deputies there his brother's name, Gil Johnson, as his own. Calling defendant by his true name, the detective asked defendant why he was lying. The detective further testified that he had had prior contacts with defendant.

that a phone had been smashed during the interaction between the two, that the second victim reported to the owner that defendant had hit her in the face and she had asked the owner to use his phone to call the police. Additionally, defendant was caught very soon after the crimes with the fruits of it in his possession, along with the knife, and there was no evidence that either victim had somehow caused her own injuries. Added to this is the fact that defendant deliberately misidentified himself to the police when apprehended. Although defense counsel during argument to the jury made much of the “fact” that the second victim’s cigarette case had not been found on defendant’s person, neither police officer positively testified that it had not been found (the deputy, who conducted the more thorough search simply could not recall if it had) and even if it had not been, defendant could have easily discarded it without being seen by either victim or the store owner as he went behind the store and down the sidewalk.

2. Insufficient Evidence of Possession

As to the charged robberies, the jury was instructed, inter alia, that the property had to have been taken from “another person’s possession and immediate presence.” During argument to the jury, the prosecutor said that the second victim’s items that were stolen were in the possession and control of the first victim when defendant took them because the second victim had told the first victim to return to the car and “watch over and maintain” them. Defense counsel argued, in part, that defendant was not guilty of robbing the first victim because the first victim did not possess the second victim’s property.

Defendant here contends that there was insufficient evidence that the first victim possessed the second victim's property. He acknowledges that constructive possession exists where the robbery victim has a "special relationship" with the owner of the property such that the victim had authority or responsibility to protect the stolen property on behalf of the owner." (*People v. Scott* (2009) 45 Cal.4th 743, 750.) Defendant asserts that the first victim "had no . . . constructive possessory interest in [the second victim's stolen] property at any time" We disagree. The second victim, upon realizing that the first victim was no longer at her car, guarding her possessions in the car, told the first victim to return to the car, impliedly telling her to do precisely that. That established the special relationship between the first and second victims concerning the property. The fact that the first victim felt it "her place" to demand of defendant that he return the second victim's cigarettes further established that such a relationship existed, which gave the first victim "standing" to demand the return. It was at that point that defendant applied the force, i.e., hitting the first victim in the jaw, required to retain possession of the property. Thus, this case is like *People v. Bekele* (1995) 33 Cal.App.4th 1457 (*Bekele*) [overruled on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13, 14],

in which a coworker of the property's owner was found to have constructive possession of the property because the owner, upon him and the coworker seeing the defendant burglarize the owner's truck, said to the coworker, "Let's stop. There is somebody in my truck." (*Bekele*, at pp. 1460-1462.) The appellate court reasoned, "[T]he evidence demonstrated that [the coworker] had a representative capacity with respect to [the

owner's] property, in that he had implied authority from [the owner] to take action to prevent its theft. When [the owner] saw his truck being burglarized, he said to [the coworker], 'Let's stop.' The two of them acted in concert to interrupt the burglary; they simultaneously left [what they were doing] to approach [the owner's] truck, and both told [the defendant] to stop. The obvious implication was that [the owner] wanted [the coworker] to help safeguard [the owner's] property by putting a stop to the theft. [The coworker] was acting in that capacity when he struck [the defendant] and then chased after him, yelling[, 'Stop, drop the bag.' [The coworker's] position was analogous to that of the security guard who has constructive possession, though not immediate control, of the property he is charged with safekeeping." (*Id.* at p. 1462.)

We disagree with defendant that *Bekele* is distinguishable from the instant case because the owner of the property and the coworker in the former were "in the course of employment" unlike the first and second victims. The owner and coworker in *Bekele* did not pursue the robber in the course of their employment—we greatly doubt that if the coworker had been injured during his interaction with the robber, he would have qualified for worker's compensation. Rather, the fact that they were coworkers created a

relationship between the two, such that the owner entrusted his coworker to help him safeguard his property. Here, the fact that the first and second victims were best friends established the same type of relationship. To whatever extent the California Supreme Court has expressed reservations about the owner's words, "Let's stop. There is somebody in my truck" implied authority from the owner to the coworker to take action

to stop the theft (*People v. Nguyen* (2000) 24 Cal.4th 756, 762, fn. 2), the words of the second victim here more clearly conveyed the authority she delegated to the first victim to act on her behalf in protecting her property.

We also agree with the People that *Sykes v. Superior Court* (1994) 30 Cal.App.4th 479 (*Sykes*) and *People v. Galoia* (1994) 31 Cal.App.4th 595 (*Galoia*) are distinguishable. In *Sykes*, a security guard employed by a business across the street from a music store, ordered to stop and chased down someone who had stolen a saxophone from the music store. (*Sykes, supra*, 30 Cal.App.4th at 481.) Distinguishing other cases, the appellate court concluded that the security guard “had no special obligation to protect the goods of [the music store]. Nor did [he] constructively possess the saxophone, because he was not an employee of the owner [¶] . . . Constructive possession depends upon a special relationship with the owner of the property The fact [that the security guard] was employed as a guard for another business did not make him an agent of [the music store].” (*Id.* at p. 484.) Here, as we have already concluded, there was a relationship between the first and second victim and the second victim relied on the first victim to protect her possessions.

In *Galoia*, a convenience store “customer” left without paying for the merchandise he had taken. (*Galoia, supra*, 31 Cal.App.4th at 596, 597.) A man who was in the store retrieving money from the video games he owned there, chased the “customer” and was struck by the latter’s companion. (*Id.* at p. 597.) Division Three of this court reasoned, “[The video games owner] was not an employee or agent of the . . . store. Nor was he in

any way responsible for the security of the items taken. Yet, the [People] maintain . . . [that the video games owner] was acting under the ‘implicit authorization’ of the store when he pursued [the “customer.”] The [People] rel[y] on the fact that a store worker followed [the video games owner] outside and yelled for help after [the later] was hit. However, no one from the store instructed [the video games owner] to give chase, and there is no evidence [he] was motivated by anything other than good citizenship. Under these circumstances, we must reject the [People’s] ‘implicit authorization’ argument.” (*Id.* at pp. 597-598.) Here, in contrast, no authorization by the second victim had to be implied, the second victim instructed the first victim to safeguard her possessions and the first victim was acting out of friendship, not good citizenship. In comparing the facts in *Galoia* to those in *Sykes*, the *Galoia* court went on to state, “Like the guard in *Sykes*, [the video games owner] was well intended. But good motives alone cannot substitute for the special relationship needed to create a possessory interest in the goods.” (*Id.* at p. 599.) Here, there was such a special relationship.

3. *Sentences for Robbing the Second Victim and Dissuading Her*

The sentencing court imposed a consecutive term for dissuading the second victim from reporting a crime to the police. The prosecutor argued to the jury that defendant “maliciously tried to prevent or discourage [the second victim] from making a report that she was the victim of a crime to police” when he “tried to prevent [her] from calling 911, from notifying the authorities that a crime had just happened.” In arguing that defendant acted maliciously, i.e., that he intended to annoy, harm or injure the second victim, the

prosecutor pointed out that defendant punched the second victim in the face, causing her to fall to the ground. In arguing that the fact that defendant acted maliciously could be proved in an alternate way, i.e., that defendant intended to interfere with the orderly administration of justice, the prosecutor pointed out that defendant had slapped the phone out of the second victim's hand, thus preventing her from calling 911, adding, "[a]nd then after he saw the phone had been destroyed on the ground, he then punched her." As to the robbery of the second victim, the prosecutor argued that the force element occurred when defendant punched her in order to retain her property and the alternative fear element occurred, but it was unclear whether that was based merely on the punch or on the punch and slapping the phone out of her hand.

Defendant does not advance his better argument that section 654 prohibits punishment for both offenses until his reply brief. Of course, at that point, the People have no opportunity to respond. In his reply brief, defendant calls our attention to the holdings of *People v. Mesa* (2012) 54 Cal.4th 191, 199 (*Mesa*), *People v. Jones* (2012) 54 Cal.4th 350 (*Jones*) and *People v. Correa* (2012) 54 Cal.4th 331 (*Correa*). In *Mesa*, the defendant, an ex-felon and gang member, shot a victim. (*Mesa, supra*, 54 Cal.4th at p.

193.) The California Supreme Court concluded that the defendant could not be punished for the substantive gang offense (§ 186.22, subd. (a)) in addition to being punished for assault with a firearm and possession of a firearm by an ex-felon. (*Mesa*, at p. 195.) The court said, "Whether multiple convictions are based upon a single act is determined by examining the facts of the case. . . . [¶] . . . [¶] . . . The only acts shown by the

evidence . . . were that defendant possessed the firearm and shot [the] victim. These two acts resulted in three separate punishments [¶] . . . [¶] [The]defendant’s sentence for the [substantive] gang [offense] violates section 654 because it punishes defendant a second time either for the assault with a firearm or for possession of a firearm by a felon. . . . [¶] . . . [¶] Our case law has found multiple criminal objectives to be a predicate for multiple punishments only in circumstances that involve, or *arguably involve, multiple acts*. The rule does not apply where, as here . . . the multiple convictions at issue were *indisputably based upon a single act*. . . . [¶] . . . [¶] . . . Here, the evidence of the shooting or firearm possession offenses committed by defendant was the only evidence [of the third element of the substantive gang offense].” (*Id.* at pp. 196-197, 199-200.) Our high court called attention to *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1346, in which “‘the parties agreed [that the defendant’s] two convictions arose from a single act’” and *People v. Louie* (2012) 203 Cal.App.4th 388, 397, holding, “‘A single criminal act, even if committed incident to multiple objectives, may be punished only once.’” (*Mesa*, at p. 199.)

Although the facts of *Jones* (possession of single firearm punished under three different provisions) and *Correa* (possession of seven different firearms) are so dissimilar to the instant facts that their specific holdings are of little assistance here, some of the language in *Jones* is. “We recognize that what is a single physical act might not always be easy to ascertain. In some situations, physical acts might be simultaneous yet separate for purposes of section 654.” (*Jones, supra*, 54 Cal.4th at p. 358.) The court went on to

point out that the jury had convicted the defendant of three gun possession crimes based on his being caught with a single gun on a particular day in his car and “the prosecutor’s entire jury argument based defendant’s guilt on his possessing the gun when arrested and not earlier.” (*Jones*, at p. 359.) The high court in *Jones* contrasted cases involving a single act with those involving a course of conduct, for which the intent and objective test is appropriate. (*Id.* at p. 359.) It suggested that in single act cases, there is no need to determine the defendant’s intent and objective—the fact that the defendant’s convictions are based on a single act triggers a stay under section 654. (*Id.* at p. 360.)

Finally, another case decided soon after *Mesa*, *Jones* and *Correa* were decided held that where the prosecutor makes an election as to the act that supports a conviction, that election dictates the basis for that conviction for purposes of section 654. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1368; *People v. Siko* (1988) 45 Cal.3d 820, 826.) “[W]here there is a basis for identifying the specific factual basis for a verdict, a trial court cannot find otherwise in applying section 654.” (*People v. McCoy* (2012) 208 Cal.App.4th 1333, 1339.) Unfortunately, here, the prosecutor did not make an election, thus allowing the jury to find the “acted maliciously” element of dissuasion on either the

punch or the smashing of the phone, or, arguably, both. Similarly, he invited the jury to find the force element of the robbery on the basis of the punch, and the alternate fear element on the slapping of the phone or the punch and slapping of the phone. We have no way of knowing on what the jury actually based its conviction of either crime. Therefore, we have no choice but to determine, from the facts, whether the sentencing

court's implied finding that there was more than one act is supported by substantial evidence. (*People v. Brents* (2012) 53 Cal.4th 599, 618.)

There was substantial evidence adduced at trial that the act underlying the dissuasion of the second victim was separate from the act of robbing her. The former was comprised of defendant knocking the phone out of her hand to prevent her from calling 911, the latter was punching her when she demanded the return of her possessions. Having so concluded, we next determine whether the sentencing court's implied finding that there were separate intents or objectives for these two crimes is supported by the evidence. (*Ibid.*) Again, we conclude that there was. Defendant's intent and objective as to the robbery was to obtain the second victim's possessions. His intent and objective as to the dissuasion was to stop her from calling 911 to report the robbery.¹¹ Therefore, the sentencing court did not violate section 654 by imposing sentences for both offenses.

¹¹ The only case, amongst the many cited by defendant, that is at least arguably helpful to our analysis is *People v. Niles* (1964) 227 Cal.App.2d 749, because it involves crimes similar to those here. In *Niles*, the appellate court concluded that the defendant could not be punished for both burglarizing the victim's room, then assaulting the victim during a scuffle which followed the defendant threatening the victim if the latter called the police. The appellate court reasoned that the burglary and the assault were part of one indivisible transaction because the defendant committed the latter in order to avoid being apprehended for the former. (*Id.* at p. 755.) However, we note that at the time, there was no separate offense prohibiting witness dissuasion.

DISPOSITION

The trial court is directed to amend the abstract of judgment to show that it stayed the one-year enhancement for defendant's use of a knife as to the robbery of the second victim (count 2) and imposed the enhancement as to the dissuasion of the second victim (count 5), not the other way around, as the abstract currently states. The trial court is further directed to check box number eight on the abstract of judgment, indicating that defendant was sentenced under the provisions of section 667, subdivisions (b)-(i). In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff/Respondent,) Superior Court

v.) No. FVI1301842

MABON DEMETRIC JAMES,)

Defendant/Appellant.)

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

HONORABLE JOHN M. TOMBERLIN, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

AUGUST 26, 2013; AUGUST 27, 2013; AUGUST 28, 2013

LODGMET I

PART 1 OF 2

MABON JAMES v. PRAMO

15-1956

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1 attorneys on this trial. They would have a conflict of
2 interest.

3 So all they are going to be doing is
4 talking to you about what they think the evidence is
5 going to show. It's going to be up to you to make the
6 determination as to whether or not they successfully do
7 that. We are going to hear from Mr. Haskell first.

8 Mr. Haskell, you may proceed.

9 MR. HASKELL: Thank you, your Honor.

10 (Whereupon an opening statement
11 was given by the People and not
12 included for the purposes herein.)

13 THE COURT: Mr. Figueroa, would you make an
14 opening statement at this time?

15 MR. FIGUEROA: I would, your Honor.

16 THE COURT: You may proceed.

17 MR. FIGUEROA: Thank you very much.

18 (Whereupon an opening statement
19 was given by the Defense and not
20 included for the purposes herein.)

21 THE COURT: Thank you. Mr. Figueroa.

22 Would you call your first witness,
23 Mr. Haskell?

24 MR. HASKELL: Thank you. Your Honor, at this
25 time, the People would like to call Jesus Lopez up to the
26 stand.

27 THE CLERK: Do you solemnly state that the
28 evidence you shall state in this matter shall be the

1 truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please state your full name for the
5 record, spelling your first and last name.

6 THE WITNESS: Jesus Lopez. J-E-S-U-S, L-O-P-E-Z.

7 THE COURT: Good afternoon Mr. Lopez.

8 THE WITNESS: Good afternoon. How are you doing?

9 THE COURT: Good. Thank you.

10 THE WITNESS: Good.

11 THE COURT: Your witness, Mr. Haskell.

12 MR. HASKELL: Thank you, your Honor.

13 JESUS LOPEZ,

14 called as a witness by the People,
15 was sworn and testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. HASKELL:

19 Q Mr. Lopez, do you have a laser pointer up
20 there?

21 A No.

22 MR. HASKELL: Do we have a laser pointer for the
23 witness?

24 THE COURT: How does he know, Mr. Haskell?

25 MR. HASKELL: Well, I was wondering if it was
26 left over from the last trial. I was going to have
27 him --

28 THE COURT: Wait. But how does Mr. Lopez know?

1 MR. HASSELL: What a laser pointer is? It looks
2 like he does know.

3 Q BY MR. HASSELL: Sir, you have a laser
4 pointer up there, sir?

5 A Yes, I do.

6 Q Let me start off with a couple questions.
7 Sir, what is your occupation?

8 A Right now I'm a general manager.

9 Q Where are you a general manager at?

10 A Right now at Sonic.

11 Q Going back to the date of July 20th,
12 two-thousand --

13 THE COURT: Sonic the drive-in?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you. Go ahead.

16 Q BY MR. HASSELL: Going back to the date of
17 June 20th, 2013, where did you work?

18 A Well, I actually was the owner of a store
19 at Bartlett. It's called "Little Outlet," or it was
20 called "Little Outlet."

21 Q What did you sell there, sir?

22 A Little Outlet, I used to outlet for
23 Macy's. So baby items. It was just a small shop.

24 Q Now, you mentioned that your store is at
25 Bartlett. What is the cross street?

26 A It was Bartlett and Bellflower.

27 Q I'm showing you what has been marked as
28 People's Exhibit Number 20 up on the screen there.

1 Now, sir, can you tell us if you recognize
2 that picture?

3 A Yes, I do.

4 Q Can you tell us what it is?

5 A Well, this is the shop that I was, where I
6 was.

7 Q That's an overhead view of the shop?

8 A That is correct, yes.

9 Q With that laser pointer -- we are getting
10 to that point. Now, can you point to where on that
11 particular map your store was?

12 A Right here (indicating).

13 MR. HASKELL: For the record, your Honor, the
14 witness is pointing to the store which would be second
15 from -- second from the bottom in the middle run of
16 stores there in the middle of the diagram.

17 THE COURT: Is that what you see, Mr. Figueroa?

18 MR. FIGUEROA: I would stipulate to that, your
19 Honor.

20 THE COURT: Okay. Sounds good to me. Go ahead.

21 MR. FIGUEROA: Thank you.

22 Q BY MR. HASKELL: Now, you mentioned that
23 that store is on Bartlett Avenue. Is that in the County
24 of San Bernardino, sir?

25 A That is correct, yes.

26 Q Thank you. Were you at work on Thursday,
27 June 20th, 2013?

28 A Where did I work?

1 Q Were you at work?
2 A Where I was?
3 Q Where were you on that date, sir?
4 A I was inside the store.
5 Q Around 6:00 p.m., did you observe anything
6 unusual in the parking lot that day?
7 A Well, yeah. I heard some screaming and
8 some hustling, wrestling.
9 Q What type of -- was it from a male or
10 female that you heard the screaming from?
11 A Both.
12 Q You were inside the store when you heard
13 this screaming?
14 A Correct.
15 Q Once you heard the screaming, what did you
16 do?
17 A Well, I turned. I was like, "What's going
18 on?"
19 Q So you turned to look outside the store?
20 A Yes.
21 Q So you're still inside the store at the
22 time?
23 A Correct, yeah.
24 Q And what did you observe outside?
25 A Well, I see a guy shaking a lady outside.
26 And then I was occupied doing stuff. So when I turned
27 again, I saw -- I heard first a slamming on the floor.
28 When I turned, I saw a phone in pieces.

1 Q Okay.

2 A Pretty much.

3 Q So let's stop. You mentioned that you
4 went to the window then and you saw a guy shaking a lady?

5 A Correct.

6 Q Can you give us a description of the guy?

7 A Um, it was an African-American guy. Um,
8 don't know how tall he was. But I don't know. I'd seen
9 him before there, so --

10 Q Okay.

11 A Kind of recognize the guy.

12 Q And can you give us a description of the
13 lady?

14 A It was a Caucasian lady, same -- around
15 the same size of the guy. I wouldn't say that much
16 different. And she was -- well, all I saw, she was
17 screaming.

18 Q Okay.

19 A That's all I can remember.

20 Q So can you take us step through step when
21 you saw these two people, what happened?

22 A Well, I heard screaming and yelling, and I
23 turned, and I saw these two guys. The guy was holding
24 the lady and shaking her. And then I turned because I
25 was doing stuff. Then I turned back again because I
26 heard a noise. Then I just saw that. And then I didn't
27 see them no more after that. Then the lady came back and
28 asked for my -- for a phone. That's pretty much it.

1 Q Okay. Let's go back then. When you saw
2 the -- you mentioned he was a black male?

3 A Uh-huh.

4 Q Approximately how far away were you when
5 you saw this?

6 A Well, can I use the laser again?

7 Q Sure.

8 A It's a cool toy.

9 Q Sure.

10 A Okay. The trash can is right here. My
11 store is right here. And I was right here (indicating).
12 So pretty much it was this far. They were like right
13 close to the trash can.

14 MR. HASKELL: May the record reflect the witness
15 has pointed to a store adjacent from where he indicated
16 his store was?

17 MR. FIGUEROA: No objection.

18 THE COURT: It will.

19 Q BY MR. HASKELL: And you mentioned that
20 you saw the black male shake the female. Can you
21 describe the shaking that you saw?

22 A Well, as I recall, he was holding her from
23 the shoulders and (indicating), you know, shaking her
24 really fast. That's pretty much what I saw.

25 Q Did the black male appear to be angry at
26 all?

27 MR. FIGUEROA: Objection. Foundation. Calls for
28 speculation.

1 THE COURT: I don't know how you could look at
2 someone through a window and determine whether they are
3 angry.

4 MR. HASKELL: Okay.

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

6 Q BY MR. HASKELL: Was the black male
7 shouting anything?

8 A They were yelling, yeah. They were
9 screaming at each other.

10 Q Okay. And when you first saw the black
11 male shake the white female, what went through your head?

12 A Well, this is the thing, in that corner, I
13 hear a lot of yelling, a lot of screaming, a lot of
14 talking. For me, it was kind of normal to see something
15 like that, to see something like that in that corner. So
16 it wasn't much of -- like, "Oh, maybe it's a couple
17 fighting." That's pretty much all I thought it was.

18 Q That's what you thought it was?

19 A That's why I didn't say anything or do
20 anything in that moment.

21 Q Okay. Now, sir, did you get close enough
22 to actually identify the faces of either the black male
23 or white female?

24 A Well, I recognize the lady because she
25 came inside my store. But the way I recognize the guy,
26 because I saw him before in there. So --

27 Q Okay. Do you see him present in court
28 today?

1 A Yes.

2 Q Can you describe where he's seated and
3 what color shirt he's wearing?

4 A He's seated right next to that guy
5 (indicating).

6 Q The defense counsel?

7 A Yes.

8 MR. HASKELL: May the record reflect the witness
9 has identified the defendant?

10 MR. FIGUEROA: No objection, your Honor.

11 THE COURT: It will then.

12 Q BY MR. HASKELL: Okay. Now, you mentioned
13 that, you know, at first you just thought it was maybe a
14 couple arguing, or something like that?

15 A Correct.

16 Q Then you went back to do something else in
17 your store; correct?

18 A Correct.

19 Q And approximately how much later did you
20 come back to the window to see what was happening?

21 A Well, I wasn't far away. I was just doing
22 something in the counter in the store. I was just middle
23 of turning. I turned back because I was like, maybe they
24 are fighting between each other. It's a couple. I don't
25 know what to do in that case at the moment.

26 So I turn, continue doing my stuff. Then
27 I heard the crash right away. It didn't happen that
28 long, of probably a few seconds. Then I heard the crash

1 on the floor for the phone. And I turn again, and I saw
2 the phone crashing, and then the guy was not with the
3 girl, but he was close by still.

4 Q Okay. Now, when you heard the phone
5 crash, was your back against where this was happening, or
6 were you looking directly at what was said?

7 A No. I actually was side -- it was on the
8 side. So it was not like I had to turn all the way, but
9 just turn my head.

10 Q So you could see what was happening?

11 A Kind of, yeah.

12 Q At that point, can you describe what you
13 witnessed?

14 A What did I witness?

15 Q Yes.

16 A Well, I just saw the lady still screaming
17 at him. If I don't (sic) recall back, it was like, "Give
18 me my wallet," or something like that, or, "Give me my
19 phone." She was asking for something and screaming at
20 him, yelling at him, and that's pretty much what I
21 recall.

22 Q Okay. Now, you mentioned that you heard a
23 crash. Can you describe what you witnessed?

24 A Well, when I turned, I saw a bunch of
25 pieces on the floor. You could see it. You could see it
26 was a phone. I mean, although it's kind of far, but it's
27 not that far where you can see what's going on.

28 Q Okay. So you didn't see the phone

1 actually hit the ground?

2 A Not hit the -- I heard that. I just saw
3 pieces on the floor.

4 Q Okay. Thank you. At that point, what was
5 going through your mind after you saw that occur?

6 THE COURT: Will you speak up?

7 Q BY MR. HASKELL: At that point, based on
8 what you witnessed, what did you do next, sir?

9 A Nothing still.

10 Q Okay.

11 A I mean, you know, if you saw a couple
12 fighting, sometimes you get kicked out of the way if you
13 try to do something about it or say something. I just --
14 well, the lady didn't happen, like she would not be
15 injured or anything, I would not do anything to be in
16 their way. I didn't know a crime was happening or
17 anything. I just saw something going on, and that's it.

18 Q So while you witnessed this, you didn't
19 know that a robbery or anything was occurring?

20 A Nothing at all.

21 Q That wasn't going through your mind?

22 A Hmm-um.

23 THE COURT: That's "no"; isn't it?

24 THE WITNESS: That's a "no." Yes. I'm sorry.

25 THE COURT: That's all right.

26 Q BY MR. HASKELL: I'm sorry. If when we
27 answer, if you can answer yes or no.

28 A I'm sorry. Yes.

1 Q You pointed to a map. Approximately how
2 far in feet or yards away were you from this incident?

3 A I would say no more than 200 feet.

4 Q No more than 200 feet?

5 A I would think so.

6 Q Might have been even closer?

7 A Might be, yeah, because it seems like a
8 big lot, but there's not enough space in there.

9 Q Okay. And when you observed it, was it
10 daytime? Nighttime? Sundown?

11 A It was the daytime still.

12 Q And after you observed the phone broken on
13 the floor, or on the ground, the asphalt out there, what
14 did you observe next?

15 A Well, I saw them walking. Can I use this
16 thing now (indicating)?

17 Q Sure.

18 A They were here. So they were just walking
19 this way. That's all I saw. And then after that,
20 probably a minute later, the lady came inside the store.

21 Q Did they appear to be walking or running?

22 A No, walking. I didn't see them running.

23 Q Were you able to observe anything in the
24 defendant's hand at that point?

25 A No.

26 Q Okay. Not at that point?

27 A Not at that point, no.

28 Q Okay. And what happened next, sir?

1 A Well, the lady came in, asked me for a
2 phone, which I didn't have at that moment, and -- uh, and
3 she was screaming very -- how can I say this -- kind of
4 anxious, kind of agitated, like very, very nervous, kind
5 of like not knowing what to do at that moment.

6 Q Was she screaming in the same way that she
7 was screaming outside?

8 A No. More like, "Help." More like,
9 "Something's happening. I need help."

10 Q Okay.

11 A Not like -- because before the screaming
12 was like more like, "Leave me alone," or, you know,
13 different kind of --

14 Q Okay. And what happened next? What did
15 you do next, sir?

16 A Nothing. She actually went outside, and I
17 didn't see her again after that.

18 Q Were you able to give her a phone call?

19 A No. I didn't have a phone at that moment.

20 Q When you saw the defendant walking away,

21 was that the last time you personally observed the
22 defendant?

23 A Yes.

24 Q Before this date, you mentioned that you
25 thought you were familiar with the defendant and this
26 particular female. Did you know them by name, or
27 anything like that?

28 A No. I just -- since I have a store, I'd

1 seen them walking -- well, I never seen the lady before.

2 I'd seen the guy, not the lady.

3 Q So you had never seen the lady before?

4 A No.

5 Q You don't know anything about either the
6 lady or this particular defendant?

7 A Not at all.

8 Q Okay. Finally, do you recognize what has
9 been marked as People's Exhibit 4? Do you recognize who
10 this is a picture of?

11 A Yeah.

12 Q Can you tell us who, please?

13 A Well, that's -- I think that's the lady
14 that came inside the store.

15 Q Okay.

16 A Yeah.

17 Q But again, you don't know her by name or
18 anything?

19 A No. I don't know her.

20 MR. HASKELL: Thank you. No further questions.

21 THE COURT: Cross-examination?

22 MR. FIGUEROA: Yes. Thank you very much, your
23 Honor.

24

25 CROSS-EXAMINATION

26 BY MR. FIGUEROA:

27 Q Good afternoon, Mr. Lopez.

28 A Good afternoon.

1 Q Okay. You're here testifying about an
2 incident that happened on June 20th; correct?

3 A Yes.

4 Q And your testimony is that you, at that
5 time, were the owner of the Little Outlet Store?

6 A Correct. Yes.

7 Q Are you the manager, or what was your
8 position in that store?

9 A The owner.

10 Q The owner?

11 A Yeah. I was the only person working
12 there, too, basically.

13 Q So you were the owner?

14 A Yes.

15 Q That's a store you pointed out that was on
16 Bartlett Avenue?

17 A It was, yes. Correct.

18 Q And I believe you said then on Thursday,
19 June 20th, you were in your shop?

20 A Correct.

21 Q And this first time you heard screaming --
22 do you remember that?

23 A Yes.

24 Q -- you were still in your shop?

25 A Correct.

26 Q Now, what are the front windows of your
27 store like, Mr. Lopez?

28 A How they look like?

1 Q Yes.

2 A Clear windows.

3 Q Clear windows. There isn't any signs or
4 posters on them?

5 A Very little ones, yes. I actually have a
6 sign as "The Little Store," but it's a see-through sign.

7 Q Then are those windows tinted at all?

8 A Um, slightly. Maybe from outside, yes.

9 Q Okay. Now, when you are inside your
10 store, do you have a clear view of what's outside?

11 A Correct. Yes.

12 Q And I believe you testified that you first
13 heard screaming, and you were inside your store. How far
14 inside your store were you?

15 A Well, maybe around, I'm going to say, five
16 feet away from the door.

17 Q Okay. And between you and the door,
18 Mr. Lopez, are there any display shelves or racks with
19 merchandise?

20 A No.

21 Q So you had a clear view out the front of
22 your door?

23 A Yes.

24 Q And then for the record, what kind of
25 doors do you have at the Little Outlet, or did you have
26 at the Little Outlet Store?

27 A Well, it's just a regular stand-up door.

28 Q Was it one door or two doors?

1 A Just one.

2 Q Was that door usually open or closed?

3 A We usually have it open.

4 Q Open. Okay. You testified you first

5 heard screaming. Was it a female voice?

6 A Yeah.

7 Q Okay. And then you turned and looked

8 outside? Yes?

9 A Yes.

10 Q Okay. And you saw across the parking lot

11 at the trash can area that you pointed out?

12 A Right in front, yes.

13 Q You saw two people?

14 A Yes.

15 Q You saw the lady -- or a lady? Yes?

16 A Yes.

17 Q And then you described an African-American

18 man who was shaking her?

19 A Correct.

20 Q When you indicated to Mr. Haskell how the

21 man was shaking the lady, you used both hands?

22 A Yes.

23 Q And you said he was shaking her shoulders?

24 A Correct.

25 Q Could you see both his hands on her body?

26 A You actually could see that, yes.

27 Q Okay. Now, you also said when you first

28 saw this, it really wasn't that surprising or shocking to

1 you.

2 A Not at all, no.

3 Q That's because at that place and at that
4 location, things like this kind of happen a lot?

5 A Not exactly "things like this," but you
6 know, you can hear a lot of screaming, and there are a
7 lot of loud people around there, yes.

8 Q Okay. So that when you first heard the
9 screaming, you turned to look. You saw the man shaking
10 the lady, and then you went and did something at the
11 counter?

12 A Yes. Well, I was busy doing something. I
13 just turned slow and turned back to what I was doing.

14 Q Okay. Now, do you remember what the lady
15 was screaming?

16 A I can't recall exact words, no.

17 Q Do you remember what the lady was wearing,
18 what kind of clothes she had on?

19 A I -- kind of because when she came inside
20 the store, she actually told me kind of what was

21 happening. Then she said, "He make me pee on my pants,"
22 and she was wearing shorts, white shorts.

23 Q White shorts?

24 A That's kind of what I remember, yeah.

25 Q Do you remember what kind of top or color
26 top she was wearing?

27 A No, I don't. I just remember she pointed,
28 "He make me pee on myself."

1 Q Okay. Now, Mr. Lopez, you said after the
2 initial screaming, you were doing something at the
3 counter. Then you heard another noise. You heard like a
4 phone crash?

5 A Yes.

6 Q What do you mean by "a phone crash"?

7 A You want me to throw my phone on the floor
8 too because that's kind of what I heard? Yes?

9 THE COURT: Maybe you loan him your phone.

10 THE WITNESS: Could you? Well, it has to be
11 concrete for it to break.

12 Q BY MR. FIGUEROA: So you heard -- I guess,
13 how you would describe the noise that you heard is how
14 I'm asking you, Mr. Lopez?

15 A That's pretty much -- if I can describe it
16 like that. Of course, they were in front of the trash
17 cans. There's cars come, you know, the lot. So you can
18 actually hear something on the ground crashing.

19 Q Okay. And then I believe you said the
20 lady was still screaming when you heard the phone
21 crashing noise?

22 A Yes. This screaming was (indicating).

23 Q Throughout?

24 A Yes.

25 Q Was the man screaming anything that you
26 heard?

27 A I remember some screaming from the man. I
28 just don't remember what he was screaming.

1 Q So they were kind of arguing back and
2 forth?

3 A Yes.

4 Q Okay. Now, you also said -- or testified,
5 Mr. Lopez, that after this, you saw them walking away,
6 and you illustrated with a laser pointer on how they went
7 down the parking lot and to the right, to the side;
8 right?

9 A From my side, it was to the left, yes.

10 Q To the left?

11 A Yes.

12 Q When you say they were walking, was it the
13 man and the lady?

14 A Not walking together, of course, but they
15 were going towards that direction, yes.

16 Q Who was walking in front?

17 A The guy.

18 Q The guy?

19 A Yeah.

20 Q So the man was leaving the area?

21 A Yes.

22 Q And the lady was following the man?

23 A Yes.

24 Q How long after you saw the two of them
25 walking away did the lady come to your store?

26 A As I said earlier, maybe a minute later.

27 Q Okay.

28 A It didn't happen that long.

1 Q Okay. And then you never met this lady
2 before?

3 A No.

4 Q When you spoke to the lady, or she came to
5 your store and asked if you had a phone, do you remember
6 seeing any injuries to the lady?

7 A Not bleeding, no. I don't see any
8 bleeding. But I saw -- well, she pointed out that like
9 the peeing, and she pointed at with -- well, actually I
10 kind of remember what happened at that moment. She said,
11 "He hit me on my face. Can you see it?"

12 Q Um-hum.

13 A And well, I'm not going to go like, "Let
14 me see it," okay, but, yeah.

15 Q So the lady said, "He hit me in the face"?

16 A Yeah.

17 Q Could you see it?

18 A I don't recall at that moment because as I
19 said, again, I'm not going to go, "Okay. Let me see it.
20 I just was like, "Oh." I didn't know what happened in

21 that moment.

22 Q As you are testifying today, Mr. Lopez, do
23 you recall seeing any injury to that lady's face?

24 A I don't recall.

25 Q Okay. No black eye? No swollen eye? No
26 blood? She wasn't bleeding?

27 A She wasn't bleeding as far as I -- if she
28 was bleeding, I would look for a phone myself too.

1 Q Sure. But you didn't see that?

2 A No. I didn't see that.

3 Q Unfortunately, isn't it true, Mr. Lopez,

4 you did not have a phone to give her?

5 A Not at that moment, no.

6 Q And she left after that?

7 A Yeah.

8 Q I believe you mentioned you have seen my

9 client, Mr. James, before?

10 A Yes, I have.

11 Q That's just walking around your store?

12 A You can say that, yes.

13 Q Do you know if Mr. James has ever been a

14 customer of the Little Outlet?

15 A No.

16 Q He's never bought or --

17 A Not that I recall. I've seen him in the

18 area before, yes.

19 Q Now, in your store, do you buy items too,

20 or just sell items?

21 A Like games I buy. Like I used to sell

22 games too. So I buy -- I buy games or resell games too.

23 Q So after this incident happened,

24 Mr. Lopez, after the lady left, did you call the police?

25 A No, I did not.

26 Q Why not?

27 A Because I had no phone.

28 Q Oh. Well, if you had had a phone,

1 Mr. Lopez, did you think it was necessary to call the
2 police?

3 MR. HASKELL: Objection. Speculation.
4 Relevance.

5 THE COURT: I don't know if that's speculation,
6 Mr. Figueroa, but I think it's irrelevant.

7 MR. FIGUEROA: Okay.

8 Q BY MR. FIGUEROA: Okay. Well, when the
9 lady was talking to you, did she ask you for a phone to
10 call the police?

11 A I think she mentioned it, yes.

12 Q So you're testifying -- go ahead.

13 A That's why she asked me for the phone.

14 Q Because she wanted to call the police?

15 A Yes.

16 Q Then when you saw the man, he was shaking
17 the lady with both hands?

18 A Um-hum.

19 Q Is that a "yes"?

20 A Well, I don't know if you finish your

21 question.

22 Q Was he shaking the lady with both hands?

23 A Yes.

24 Q Then he was walking away in front of the
25 lady?

26 A Yes.

27 Q After the shaking and the broken phone
28 noise?

1 A Yes.

2 Q Did you ever see the man with a knife in
3 his hand?

4 A I don't recall.

5 Q Did the lady ever say, "The man pulled a
6 knife on me"?

7 A Not to me, no.

8 Q Okay. Thank you.

9 MR. FIGUEROA: I have nothing further.

10 THE COURT: Redirect?

11 MR. HASKELL: Thank you. Very briefly, your
12 Honor.

13 THE COURT: What?

14 MR. HASKELL: Very briefly, your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. HASKELL:

18 Q Now, sir, the total time that you viewed
19 the man out there shaking the lady, that was
20 approximately how long?

21 A Well, I really don't recall how long would
22 that be. You know, if I see somebody arguing, and all
23 that, and then it was like a shake of "Leave me alone,"
24 turn (indicating), that's pretty much it.

25 Q So it happened pretty quickly then?

26 A Kind of, yeah.

27 Q You were doing other stuff at the time; is
28 that correct?

1 A Yeah. I was busy in the store, yeah.

2 Q Okay. Now, you mentioned that you heard a
3 lot of screaming, but you weren't able to decipher what
4 exactly was being said; correct?

5 A Correct.

6 Q Now, as you mentioned, you saw both the
7 lady and the defendant leaving the area. Did you hear
8 any screaming at that point?

9 A Well, there was screaming, yeah.

10 Q But were you able to determine what they
11 were saying at that point?

12 A No, not at that -- not at that point, no.

13 Q But they were still screaming?

14 A Yes.

15 Q And you mentioned, as they were -- you
16 mentioned that after a certain amount of time, they began
17 to both walk away?

18 A Correct.

19 Q But you said on cross-examination that
20 they weren't walking away together; is that correct?

21 A Correct. Yes.

22 Q Approximately how far -- or could you
23 approximate a distance between the defendant and the lady
24 at that time?

25 A Don't know. Would say 50 feet away from
26 each other. He was following her. Wait. She was
27 following him.

28 Q She was following him?

1 A Yes.

2 Q At about 50 feet away?

3 A Around, yeah.

4 MR. HASSELL: Thank you. No further questions.

5 THE COURT: Further cross?

6 MR. FIGUEROA: Just a couple, your Honor. Thank
7 you.

8

9 RECROSS-EXAMINATION

10 BY MR. FIGUEROA:

11 Q Mr. Lopez, when the lady was following the
12 man after the incident, was the lady still screaming at
13 him?

14 A Yes.

15 Q She was still yelling at him, and he was
16 trying to get away from her or walking away from her?

17 A Yes.

18 MR. FIGUEROA: Thank you. Nothing further.

19 MR. HASSELL: Nothing further of this witness.

20 THE COURT: May this witness be excused?

21 MR. HASSELL: Yes, your Honor. Subject to
22 recall, your Honor. Thank you.

23 THE COURT: Mr. Lopez, you may go at this time.
24 We will call you back in the future if we need to.

25 THE WITNESS: Thank you.

26 THE COURT: Call your next witness.

27 MR. HASSELL: Thank you.

28 The People would like to call Marta

1 Parfeta.

2 THE COURT: Mr. Haskell?

3 MR. HASKELL: I was instructing him he's still on
4 recall.

5 THE COURT: Who's going to get Marta --

6 THE BAILIFF: I am.

7 THE COURT: She's right outside?

8 MR. HASKELL: Yes.

9 THE COURT: Thank you.

10 THE CLERK: Do you solemnly state that the
11 evidence you shall state in this matter shall be the
12 truth, the whole truth, and nothing but the truth so help
13 you God?

14 THE WITNESS: I do.

15 THE CLERK: Please state your full name for the
16 record, spelling your first and last name.

17 THE WITNESS: Marta Parfeta, M-A-R-T-A,
18 P-A-R-F-E-T-A.

19 THE COURT: Good morning, Ms. Parfeta.

20 THE WITNESS: Good morning.

21 THE BAILIFF: Good afternoon.

22 THE COURT: Everybody's falling for it.

23 THE WITNESS: Oh. Well, it's good afternoon.

24 THE COURT: Jason is right. It's afternoon in
25 this particular time zone. Although, it could be morning
26 somewhere in the world.

27 THE WITNESS: Yes.

28 THE COURT: Your witness, Mr. Haskell.

1 MR. HASKELL: Thank you, your Honor.

2 MARTA PARFETA,
3 called as a witness by the People,
4 was sworn and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. HASKELL:

8 Q Ma'am, how are you doing today?

9 A I'm okay.

10 Q Is this the first time you've ever
11 testified?

12 A Well, yeah.

13 Q Are you a little nervous?

14 A Yeah.

15 Q Fair enough. What we are going to do is
16 we are going to ask you to recount the events as you
17 remember them from the events a couple months ago.

18 Do you remember what you were doing on the
19 day of June 20th, 2013?

20 A Yeah.

21 Q What had you been doing before
22 approximately 6:00 that day?

23 A Before 6:00 that day?

24 Q Right.

25 A I was at my house.

26 Q Okay. And around 6:00 or so that day, can
27 you describe what you did? Where did you go?

28 A Oh, we went to Michael's Liquor Store.

1 Q Okay.

2 A Me and my best friend.

3 Q Okay. I'm sorry. Best friend?

4 A Well, yeah.

5 Q Okay. And that is Cassandra?

6 A Cassandra Smith.

7 Q So there's no family relation there?

8 A No.

9 Q Okay. Do you remember if it was a hot day

10 or a cold day?

11 A It was hot.

12 Q It was hot? Okay. Middle of June, I

13 imagine it would be up here; right?

14 A Yeah.

15 Q Okay. And now, you mentioned Michael's

16 Liquor Store, do you recall where that is?

17 A Yeah. It's on Bartlett on Bellflower.

18 Q Do you recall if that's in the county of

19 San Bernardino?

20 A It is in Adelanto, yeah.

21 Q It's in Adelanto?

22 A Yeah.

23 Q That's in the county of San Bernardino?

24 A Yeah.

25 Q Can you describe that location around

26 Michael's Liquor Store?

27 A What do you mean "describe it"?

28 Q Is it a strip mall or --

1 A Yeah. It's a little mall.

2 Q A little mall?

3 A Yeah.

4 Q Okay. I'm showing you what has been
5 marked as People's Exhibit Number 20. Actually, scratch
6 that. I'm showing you what has been marked as People's
7 Exhibit Number 1. Let me zoom in here.

8 Ma'am, do you recognize what this picture
9 is of?

10 A Yeah. That's Michael's.

11 Q That's Michael's Liquor Store?

12 A Yeah.

13 Q That's where you were on the date in
14 question?

15 A Yeah.

16 Q Okay. And I want to show you what has
17 been marked as People's Exhibit Number 20. Do you
18 recognize what this is a picture of?

19 A No, not really.

20 Q Okay. Do you see a street name on there?

21 A Yeah, "Bartlett."

22 Q Do you know if that's the street where
23 Michael's Liquor Store is?

24 A Yeah, it's on the corner of Bartlett and
25 Bellflower.

26 Q Okay. Based on the diagram or the
27 satellite picture, does that appear to be a fair and
28 accurate representation of where Michael's Liquor Store

1 is?

2 A Yeah. I guess so, yeah.

3 Q Do you have a laser pointer up there?

4 A No.

5 THE COURT: Why don't you step up there and show
6 her what the laser pointer is, Mr. Haskell?

7 MR. HASKELL: Thank you, your Honor.

8 THE WITNESS: Is that what this is (indicating)?

9 MR. HASKELL: Uh, you got it?

10 THE COURT: Show her where the button is. The
11 gray button.

12 Q BY MR. HASKELL: Okay. What I'm going to
13 ask you to do is point out some things with the gray
14 button.

15 A Okay.

16 Q Okay. Ma'am, on that diagram, can you
17 point out where Michael's Liquor Store is?

18 A I think right there (indicating).

19 Q Okay. It's the first store then by what
20 has been marked -- or what is Bartlett Avenue?

21 A Yeah. This is Bartlett, and then, yeah,
22 right there (indicating).

23 Q Ma'am, if I could ask you with the laser
24 pointer, point out where Bartlett Avenue is?

25 A Bartlett. Right there (indicating).

26 Q Then Michael's Liquor Store is the store
27 closest to Bartlett up in the upper --

28 A Right there. I think right there is the

1 store (indicating).

2 Q Is the store?

3 A I think. Never seen it like that.

4 Q Based on your recollection?

5 A Yeah.

6 Q Okay. Now, who else was with you that --

7 A My best friend Cassandra.

8 Q Her last name?

9 A Smith.

10 Q Okay. And were you there to go to the
11 liquor store you mentioned?

12 A Yeah.

13 Q Okay. And whose car did you drive?

14 A Cassandra Smith's.

15 Q What type of car is that?

16 A A Toyota.

17 Q A Toyota? Do you know what model?

18 A No.

19 Q Okay. Is it a truck or a standard --

20 A It's a car, four door.

21 Q What color?

22 A White.

23 Q Okay. When you first arrived at the
24 location, can you show us where on that diagram, marked
25 in People's Exhibit Number 20, where your car was parked?

26 A We was right in front of the store. So we
27 was right there (indicating).

28 Q Okay. And you're pointing to a location

1 right where the --

2 A Oh, that's the dumpsters. Probably so.
3 It's right there. We was right there right in front of
4 the store (indicating).

5 Q So you're pointing to a location that's
6 the northern most point of the Michael's store?

7 A Yeah.

8 Q Okay. And what did you personally do when
9 you first arrived on the scene?

10 A Well, I stayed out in the car while she
11 went into the liquor store.

12 Q You were outside? Inside the car?

13 A I was standing outside of the passenger's
14 side.

15 Q Is that because it was hot outside?

16 A Yeah.

17 Q Okay. And you mentioned you were standing
18 outside by the passenger's side of the vehicle while
19 Cassandra went into the liquor store; correct?

20 A Yeah.

21 Q Approximately how long were you standing
22 there?

23 A I don't know. I don't know. About ten
24 minutes. Maybe 20. I don't know.

25 Q About 10 to 20 minutes or so?

26 A Maybe.

27 Q Okay. And while you were standing there,
28 what were you doing?

1 A Listening to music from the car.

2 Q Okay. At some point while you were
3 standing outside the passenger's door, did anyone
4 approach the vehicle?

5 A Um, yeah.

6 Q Okay. Can you describe that person for
7 us, please?

8 A Well, what do you mean "describe"? What
9 he looks like?

10 Q Yeah.

11 A He's sitting right over there
12 (indicating).

13 Q Tell you what -- can you point out for us
14 where in the courtroom he's sitting today?

15 A He's right there (indicating).

16 Q Is he sitting next to --

17 A Yeah.

18 Q -- the gentleman in the gray jacket,
19 defense counsel?

20 A Yeah.

21 MR. HASKELL: May the record reflect the witness
22 has identified the defendant in this case?

23 MR. FIGUEROA: No objection, your Honor.

24 THE COURT: It will.

25 MR. HASKELL: Thank you.

26 Q BY MR. HASKELL: Now, when that defendant
27 approached the vehicle, can you tell us whether or not he
28 was running or walking?

1 A He was walking.

2 Q Can you tell us what happened next?

3 A Well, my friend came out of the liquor
4 store. She met some cute guys parked right in the next
5 parking lot over, you know.

6 Q Okay.

7 A So she went over there. I guess she was
8 flirting with them. But, um, I walked over to see what
9 was going on, and then when I came back, I noticed that
10 he, the gentleman right there, stole her cigarettes. And
11 I was trying to get the cigarettes back from him --

12 Q Okay.

13 A -- from him back, and that's when he hit
14 me.

15 Q Okay. Let's back up a little bit. When
16 you say "the gentleman," you're talking again about the
17 defendant?

18 A Yes.

19 Q And did you see him go into the car?

20 A No, I didn't.

21 Q Okay. So how did you know that he had
22 cigarettes?

23 A Because I saw him.

24 Q You saw him with cigarettes?

25 A Yeah.

26 Q What type?

27 A They were Cassandra's cigarettes.

28 Q I'm sorry?

1 A They were Cassandra's cigarettes.

2 MR. FIGUEROA: I'm going to object as foundation.
3 Calls for speculation. Move to strike "Cassandra's
4 cigarettes," your Honor.

5 THE COURT: She testified she saw it. So I think
6 this is a subject for cross-examination. I'm going to
7 overrule your objection, Mr. Figueroa.

8 Q BY MR. HASKELL: Do you recall what type
9 of cigarettes they were?

10 A Yeah. They were Newport Reds.

11 Q Had you seen those cigarettes in
12 Cassandra's car previously that day?

13 A Yeah. They were in her purse.

14 Q Okay. Did you see the defendant with any
15 other items other than --

16 A No. I do not until after we --
17 Cassandra -- after he hit me, Cassandra told me to get in
18 the car, "Let's just go home."

19 Q Okay. Now, let me ask you a couple
20 questions here. So you didn't see the defendant actually
21 reach into the vehicle?

22 A No.

23 Q Okay. Approximately -- did you see the
24 defendant approach the vehicle?

25 A Yes.

26 Q How close did he get to the vehicle?

27 A He was right next to the driver's door.

28 Q And do you recall if the driver's door

1 window was left open or closed?

2 A Oh, I can't remember.

3 Q You don't remember?

4 A I can't remember.

5 Q Do you know if the passenger window was
6 open or closed?

7 A No, because the passenger window doesn't
8 work very good. That's why I was standing outside of the
9 car.

10 Q Do you remember if the car was locked or
11 unlocked?

12 A It was unlocked.

13 Q It was unlocked?

14 A That's why she went in the liquor store,
15 and I stayed in the car.

16 Q Okay. Did you hear the door open at all
17 when the defendant approached the vehicle?

18 A No.

19 Q How far away were you from the vehicle at
20 the time?

21 A Not very far; okay? Okay. That's
22 Michael's, and we were parked over here (indicating).

23 Q Ma'am, if I could ask you to push the gray
24 button.

25 A Sorry. This is Michael's. We was parked
26 right here. He was parked right here in the parking lot
27 (indicating).

28 Q When you say "he was parked," what do you

1 mean "he"?

2 A I don't know. Some cute guys she met.

3 Q So we are talking about cute guys
4 Cassandra met?

5 A Yeah.

6 Q You're over on the other side of the
7 packing lot?

8 A Yeah. We was right there. He was about
9 right there. So we was able to see the car from where we
10 were standing (indicating).

11 Q So you were over there talking with the,
12 quote, unquote, "cute guys"?

13 A She was. I walked over there to see what
14 she was doing.

15 Q Approximately how far did you make it over
16 to where Cassandra was standing?

17 A How far? It wasn't very far.

18 Q Okay. And then what alerted your
19 attention to this particular --

20 A She told me, "My car's unlocked. My purse
21 is in there. You need to go back to the car." So I did.

22 Q So at that point, you turned around --

23 A Yeah.

24 Q -- and you see the car; correct?

25 A Yeah.

26 Q And where is the defendant at that point?

27 A He was standing at the driver's side.

28 Q Okay. And --

1 A But her purse was out.
2 Q And the purse was sitting in the driver's
3 side seat?
4 A No, in the -- on the floorboard.
5 Q On the floorboard?
6 A Yeah, where her feet would go.
7 Q Okay. And that's the driver, not
8 passenger; correct?
9 A Yeah, the driver's side.
10 Q So in the front of the car?
11 A Yeah.
12 Q Did you see the defendant bend over into
13 the car at all?
14 A No, but he could have done that when I
15 was --
16 MR. FIGUEROA: Objection. Move to strike as
17 nonresponsive.
18 THE COURT: The answer, no, is responsive. The
19 rest of it is stricken.
20 MR. FIGUEROA: Thank you.
21 MR. HASKELL: Thank you.
22 Q BY MR. HASKELL: And when you first
23 observed the defendant, was he walking away from the
24 vehicle, or in another direction?
25 A No. He was still standing there when I
26 walked up.
27 Q Was the door open or closed?
28 A I think it was closed.

1 Q What happened next?

2 A Well, I asked him if he put Cassandra's
3 cigarettes back, you know, and he hit me. I couldn't
4 believe he hit me.

5 Q Approximately how far away were you from
6 the defendant when he hit you?

7 A I don't know. We was pretty close.

8 Q Pretty close?

9 A Yeah.

10 Q Okay. Did he say anything to you before
11 he hit you?

12 A No. I don't recall. I don't remember.

13 Q Now, I want to talk to you a little bit
14 about how he hit you. He hit you in -- where did he hit
15 you?

16 A In the face. In the jaw with his fist.

17 Q Did he hit you once or more times?

18 A Just once.

19 Q Okay. Would you say that it was fairly
20 hard, or was it kind of a soft kind of push?

21 A Well, I really -- really, it was kind of
22 hard, but not too hard. He didn't knock me down, or
23 nothing.

24 Q Okay. What did you do as a result of the
25 punch?

26 A I -- I -- I screamed out to Cassandra, and
27 she walked over to my defense.

28 Q Okay. Now, after you were punched, you

1 mentioned you didn't fall. Were you pushed back at all?

2 A I can't recall. I don't remember that. I
3 don't remember.

4 Q Okay. Did it hurt when you got punched?

5 A Yeah, it did, a little bit.

6 Q Okay.

7 A I was upset. I was nervous.

8 Q Do you recall if you were punched with a
9 closed fist or --

10 A It was closed.

11 Q Okay. After you were punched, what was
12 going through your mind, ma'am?

13 A I couldn't believe he hit me.

14 Q Okay. Were you in fear for your safety at
15 all?

16 A After that, yeah, I was scared.

17 Q Okay.

18 A I'm scared to go to that liquor store now.

19 Q Okay. Have you been back to that liquor
20 store?

21 A Yeah, but I always take someone with me.

22 Q Okay.

23 A Because that's the closest liquor store,
24 you know.

25 Q Ma'am, I'm showing you what has been
26 marked as People's Exhibit Number 9. Do you recognize
27 who that's a picture of?

28 A Yeah, that's me.

1 Q That's you?

2 A Yeah.

3 Q Is that picture taken of you on the
4 incident date, June 20th?

5 A Yeah.

6 Q Okay. And you were wearing a red shirt
7 that day?

8 A Yeah.

9 Q Okay. Can you describe any injuries you
10 sustained as a result of the punch?

11 A Well, I didn't really get a bruise or
12 nothing, so it couldn't have been hard. But I was
13 scared, and I'm scared now. I won't walk the streets
14 now, that side of my park. I won't even walk the
15 streets.

16 Q Now, you mentioned that you screamed for
17 Cassandra to come back over?

18 A Yeah.

19 Q Can you tell us after you did that, what
20 did the defendant do?

21 A I don't remember. I was so nervous and
22 upset.

23 Q Okay. At that point, were you looking at
24 the defendant or looking over to Cassandra to come help
25 you?

26 A I don't remember on that either. All I
27 know, I was scared.

28 Q Okay. Tell us what happened next then?

1 A Okay. She told me, "Come on, Marta, let's
2 just go home." So we got in the car. When we got in the
3 car, she noticed her wallet was gone, her phone was gone.

4 Q I'm sorry, what else was missing?

5 A Her cell phone, some money, and her
6 wallet.

7 Q Her wallet was gone?

8 A Yeah.

9 Q Any other items that you remember?

10 A No, not that I -- and cigarettes.

11 Q Okay. Now, you mentioned all these items
12 were in her purse?

13 A Yeah.

14 Q When you saw the purse on the floorboard,
15 had the purse been opened?

16 A Yes.

17 Q Was it closed when it was originally put
18 on the floorboard by Cassandra?

19 A Yeah.

20 Q Okay. So after Cassandra came in the car,

21 noticed that everything is missing, can you describe what
22 happened next?

23 A Yeah. She went straight into Michael's to
24 use the phone.

25 Q Okay. And after she left the vehicle and
26 went into Michael's, what were you doing?

27 A I was sitting in the passenger's side. I
28 was sitting in the car.

1 Q Did anything else occur? In other
2 words -- strike that. Did you see where the defendant
3 was?

4 A No. I didn't know where he went.

5 Q So at that point, you didn't know where he
6 was?

7 A No. I didn't know where he went. She
8 went to get the phone to use the phone to call the cops.

9 Q Okay. Did you see if Cassandra made it
10 inside the store?

11 A Yeah, she got inside the store, and she
12 got one of their phones, yeah.

13 Q Okay. What happened next?

14 A And then she came back out to see where
15 the defendant went.

16 Q Okay.

17 A And she was on the phone to the cops. And
18 I guess he came back because she was on the phone and
19 knocked it out of her hands and broke the phone. So she
20 went into --

21 Q Let me stop you right there. What you
22 just mentioned, did you observe that?

23 A No. I was sitting in the passenger's
24 side.

25 Q So if you didn't see any of that
26 happening, that's what Cassandra said happened?

27 A Yeah. When she came back to the car,
28 yeah.

1 Q Fair enough. At any point, did you
2 observe this defendant with a knife?

3 A No, I didn't.

4 Q You did not?

5 A No, I didn't.

6 Q Okay. What happened? What did you
7 observe next?

8 A What did I observe next?

9 Q Right. You mentioned -- let's go back.
10 You mentioned Cassandra went into the liquor store --

11 A Yeah.

12 Q -- to get a phone; correct?

13 A Yeah.

14 Q Did you see her exit the liquor store with
15 a phone?

16 A Yeah, and she went around the corner where
17 the dumpsters are.

18 Q And you observed this from the passenger's
19 seat of your vehicle?

20 A Well, I'd seen her because I was parked --
21 we was parked right in front of the liquor store.

22 Q Where did you see her from?

23 A What do you mean? I was sitting in the
24 passenger's side of the car.

25 Q Okay. And after she went behind the
26 liquor store, at that point, did you see the defendant at
27 all?

28 A No, I didn't see him there.

1 Q Okay. When did you see Cassandra come
2 back to your vehicle?

3 A After, I guess, everything happened to
4 her.

5 Q Okay.

6 A She came back. She had bruises on her,
7 and everything.

8 Q Okay. Can you describe what her demeanor
9 was when she returned back to your vehicle?

10 A What do you mean "demeanor"?

11 Q Was she like -- can you describe how she
12 was acting?

13 A Yeah. She was nervous. She was hurt and
14 everything, yeah.

15 Q Was she crying at all?

16 A Yeah. A little bit, yeah.

17 Q Did you notice anything unusual about her
18 voice or the way she was talking?

19 A Oh, she was upset. She was very upset.

20 Q What did you guys do next?

21 A We went home. Well, we didn't go home
22 yet. We went down Bartlett because the cops then had
23 him, and I guess they wanted us to do that. He was the
24 guy that did it.

25 Q Okay. There's probably a little bit of
26 time in between that; right?

27 A No. They caught him right away.

28 Q They caught him right away?

1 A More or less.

2 Q But not in like the next minute?

3 A No. It probably took about ten minutes or
4 so. I don't know.

5 Q So it took a little bit of time before the
6 police apprehended him?

7 A Yeah.

8 Q Okay. Before they apprehended him, did
9 you speak to the police?

10 A Um, yeah I believe so.

11 Q And you told the police about what
12 happened?

13 A Yeah.

14 Q Okay. Did you happen to personally see
15 the defendant leave on Bartlett Road?

16 A No. He went through the parking lot.

17 Q Okay. But did you personally observe
18 that, ma'am?

19 A No.

20 Q Okay. And the items that were taken from

21 the car, I imagine that those items, the defendant didn't
22 have consent to take those items; correct?

23 A No, he didn't.

24 Q Okay. Now you mentioned later the police
25 presented you with an individual. Is that the same
26 person who you see here in court today, the defendant?

27 A Yeah.

28 Q Okay. And you were asked to identify the

1 defendant?

2 A Yes.

3 Q Okay. And you recognized him right away?

4 A Yes.

5 Q Was he wearing the same thing that he was
6 wearing when he attacked you?

7 A Yes. I was wearing a red shirt, yeah.

8 Q Okay. No, I'm sorry. Was the defendant
9 wearing the same thing as he was wearing?

10 A Oh, I don't -- yeah.

11 Q Yeah?

12 A Yeah, yeah, yeah.

13 Q And did the defendant or -- I'm sorry.

14 Did the police officers also provide you with some
15 property that was found on the defendant?

16 A Yes, they did.

17 Q Did you recognize that property as
18 belonging to Cassandra?

19 A Yes.

20 Q Okay. Had you seen Cassandra with that
21 property before?

22 A Well, yeah.

23 MR. HASKELL: Thank you. No further questions.

24 THE COURT: Mr. Figueroa, you may inquire.

25 MR. FIGUEROA: Thank you very much, your Honor.

26 ///

27 ///

28 ///

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CROSS-EXAMINATION

BY MR. FIGUEROA:

Q Good afternoon, Ms. Parfeta.

A Good afternoon.

Q You're here testifying about an incident
that happened on June 20th; right?

A Yep.

Q Okay. And you said that prior to going
to, I guess, Michael's Liquor Store, you were at your
house?

A Yeah.

Q And you were with what you described as
your best friend Cassandra?

A Yes.

Q Okay. And it was a hot day? Yes?

A Yes.

Q And you went in her car to Michael's
Liquor Store?

A Yes.

Q And she was driving?

A Yes.

Q It's her car, the white Toyota?

A Yeah. It's her car, yeah.

Q And you parked -- and you showed us with
the laser pointer -- on the north side of Michael's
Liquor Store; correct?

A Yeah. I guess that is, yeah.

Q So that would be on the Bellflower side of

1 that intersection?

2 A Yes.

3 Q And you testified that your friend,
4 Cassandra, went into the store?

5 A Um-hum.

6 Q Yes?

7 A Yes.

8 Q And you stayed in the car?

9 A Yes.

10 Q And you were outside of the car listening
11 to music?

12 A Yes.

13 Q Okay. And I believe you testified,
14 Ms. Parfeta, that Cassandra was in the store for a little
15 bit of time?

16 A Yeah.

17 Q 10 to 20 minutes you said?

18 A Yeah, something like that.

19 Q Okay. What was Cassandra buying in the
20 store?

21 A Buying cigarettes and --

22 Q What else?

23 A Pepsi.

24 Q And alcohol?

25 A Yes.

26 Q Yes? So she was buying alcohol, Pepsi,
27 and cigarettes?

28 A For the house, yeah.

1 Q Is it your testimony you two were drinking
2 earlier that day or before you went to Michael's?

3 A Yes.

4 Q Okay. Now, you also testified that at
5 some point, Cassandra was in -- or in the parking lot
6 flirting with these cute guys?

7 A Yeah.

8 Q Now, so that means she came out of the
9 liquor store; yes?

10 A Yes.

11 Q And where did she put the alcohol, the
12 cigarettes, and the Pepsi?

13 A In the car, and she put her cigarettes in
14 her purse.

15 Q Okay. Now, was the Pepsi and alcohol in a
16 bag?

17 A Yeah.

18 Q Okay. So she came out of the store, went
19 back to her car?

20 A Yeah.

21 Q Put the stuff in the car, and then went to
22 the cute guys?

23 A Yes.

24 Q Was there more than one cute guy?

25 A Yeah. There was two.

26 Q Two cute guys. How far away from
27 Cassandra's car were the cute guys' car?

28 A Well, I was able to see them from

1 Cassandra's car. They are just, you know, not too far
2 apart.

3 Q Were they also parked like in the parking
4 spots for Mike's liquor?

5 A No. They were parked for the stores next
6 on the side.

7 Q So they were across the parking lot?

8 A Yeah.

9 Q How far would that be? Like a hundred
10 yards? 50 yards?

11 A I don't know. I don't know. I don't know
12 those things.

13 Q If you had to estimate, how far would it
14 be -- would it be from you to me?

15 A Maybe a little farther, but that's about
16 it.

17 Q How about from me to like the back wall?

18 A Um, maybe.

19 Q Okay. So they were next to the parking
20 lot?

21 A Yeah.

22 Q Of Michael's Liquor Store?

23 A Yeah.

24 Q And Cassandra was talking to them?

25 A Yeah.

26 Q Okay. And then I believe you testified
27 the next thing you saw was my client, Mr. James, with
28 what you thought was Cassandra's cigarettes?

1 A Yes.

2 Q And you thought they were Cassandra's
3 because they were Newport Reds?

4 A Um-hum.

5 Q Is that a yes?

6 A Yes.

7 Q Okay. But you also testified,
8 Ms. Parfeta, that you never saw Mr. James go into
9 Cassandra's car?

10 A Yeah. No, I didn't.

11 Q Okay. So where were you when you first
12 saw Mr. James with what you thought were Cassandra's
13 cigarettes?

14 A Okay. I was -- I walked over to see what
15 was Cassandra doing, what was holding her up, you know.

16 Q Okay.

17 A And that's when it happened. When I
18 walked away from the car, that's when everything
19 happened.

20 Q That's when what happened?

21 A When he took her stuff, her --

22 Q But you didn't see him take her stuff?

23 A No, I didn't.

24 Q So when you say that's when it happened,
25 that's when you think Mr. James took the stuff?

26 A Well, yeah, but --

27 Q But you cannot testify under oath that you
28 saw Mr. James go into Cassandra's car?

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1 A No, no, not exactly. But when the cops
2 caught him, they had --

3 MR. FIGUEROA: Move to strike as nonresponsive,
4 your Honor.

5 THE COURT: Well, there's really not a statement
6 there. It's just, "When the cops caught him." I will
7 strike that. That's not responsive.

8 MR. FIGUEROA: Thank you.

9 Q BY MR. FIGUEROA: Now, you went over to
10 check on Cassandra with the cute guys? Yes?

11 A Yes.

12 Q Then were you coming back to Cassandra's
13 car?

14 A Yes.

15 Q Where was Cassandra? Did she stay with
16 the cute guys?

17 A Yes.

18 Q Okay. How long were you going to stay
19 there?

20 A Till she got done talking to them, I
21 guess.

22 Q Okay. When you came back to the car,
23 that's when you saw my client, Mr. James, with her
24 cigarettes?

25 A Yes.

26 Q At that time, where did you see the
27 cigarettes?

28 A He's holding them.

1 Q In his hand?

2 A Yes.

3 Q Do you remember which hand he was holding

4 them?

5 A No, I don't.

6 Q Do you remember what clothes Mr. James was

7 wearing?

8 A No, I don't. I was all nervous. I

9 don't --

10 Q Why were you nervous at that time?

11 A Because he hit me. I couldn't believe he

12 hit me.

13 Q Okay. Is this before he hit you, you saw

14 the cigarettes in his hand?

15 A Yes.

16 Q Or after he hit you?

17 A I'd seen the cigarettes first, and then I

18 asked him that he needs to put them back, and that's when

19 he hit me.

20 Q Where were you when you told him, "You

21 need to put them back"?

22 A On the driver's side --

23 Q Okay.

24 A -- of the vehicle.

25 Q Where was Mr. James?

26 A Same spot.

27 Q Okay. And then you said he hit you?

28 A Yeah.

1 Q Okay. Were you like face to face?

2 A Yes, we was.

3 Q Okay. And then, do you remember which
4 hand or which arm he hit you with?

5 A No, not exactly. I just remember he hit
6 me.

7 Q Okay. And your testimony was it was with
8 a closed fist?

9 A Yes.

10 Q And then I believe you said you were
11 upset? You were mad? Yes?

12 A Yes.

13 Q And that you have been afraid to go back
14 into that store; right?

15 A Yes.

16 Q Okay. But didn't you also testify,
17 Ms. Parfeta, that after you got hit, you screamed for
18 Cassandra? Yes?

19 A Yes.

20 Q What happened when you screamed for

21 Cassandra?

22 A Oh, she walked over for my defense, you
23 know.

24 Q Did she walk over or run over?

25 A I don't remember. I don't remember.

26 Q Okay. So then Cassandra comes to your
27 car?

28 A No. Comes to her car, yes.

1 Q Comes to her car. And where is Mr. James?

2 A By then, he was gone.

3 Q Okay.

4 A He was gone by then.

5 Q And I believe you testified that you saw
6 him walk through the parking lot around to where the
7 dumpster is? Yes?

8 A Yes.

9 Q Okay. Now, when you say you saw Mr. James
10 walk around the liquor store to the dumpster, where were
11 you standing?

12 A Right there. Right there on the driver's
13 side of the driver car -- I mean, of the car.

14 Q Okay. So your testimony is from where
15 Cassandra parked her car, you were standing by the
16 driver's side door? You could see Mr. James walk to the
17 dumpster?

18 A Well, I'd seen which way he was going.

19 Q Oh, okay. Let's back up. Did you see
20 Mr. James walk towards the dumpster?

21 A No. I watched -- I watched him walk that
22 way.

23 Q Okay. And then how far did you -- were
24 you able to see Mr. James?

25 A Um, by then, Cassandra told me, "Come on.
26 Let's just get in the car and go home." And we got in
27 the car, and she noticed her zipper part where she keeps
28 her wallet was open, and she noticed that her cell phone

1 and everything else was gone.

2 Q So at this time, Mr. James had already
3 walked away?

4 A Yeah, he was already gone.

5 Q Then why did you testify that you saw him
6 walk to where the dumpster is?

7 A Well, that's the way the dumpster is.

8 Q You've been to Michael's Liquor Store
9 before?

10 A Yeah. I live right down the street.

11 Q I guess you know on the south side of the
12 liquor store is where the dumpster is?

13 A Yeah.

14 Q Isn't it true that the dumpster is on the
15 total opposite side of the building?

16 A Well, yeah.

17 Q From where you park?

18 A No. We was right in front of the liquor
19 store which was on the corner, and you could see, you
20 know.

21 Q Okay. And then when Cassandra got out to
22 go after Mr. James, you stay in the car?

23 A I stayed in the car.

24 Q And you never saw if Mr. James and
25 Cassandra ever --

26 A No.

27 Q So after Mr. James walked around the
28 corner, that's the last time you saw him?

1 A Yes.

2 Q Okay. Now, you also mentioned that you're
3 best friends with Cassandra?

4 A Yes.

5 Q Isn't it true she's also your
6 daughter-in-law?

7 A No.

8 Q Is she married to any relative of yours?

9 A No.

10 Q So there is no family relationship with
11 you and Cassandra?

12 A No.

13 Q And isn't it true that you and Cassandra
14 had been drinking and ran out of alcohol, and that's why
15 you went to Michael's Liquor?

16 A Yes.

17 Q And you went to get more alcohol?

18 A Yes.

19 Q And you were to continue drinking?

20 A Yeah, at home.

21 MR. FIGUEROA: Thank you. I have nothing
22 further.

23 THE COURT: Redirect?

24 MR. HASKELL: Thank you.

25

26 REDIRECT EXAMINATION

27 BY MR. HASKELL:

28 Q Ma'am, how much had you been drinking that

1 night?

2 A Oh, I can't -- I don't recall.

3 Q You don't recall as it was too much?

4 A No. I never drink too much.

5 Q Okay. You weren't driving; correct?

6 A No.

7 Q Okay. You don't recall -- well, let me
8 ask you, what were you drinking?

9 A Vodka.

10 Q Do you remember how much?

11 A No, I don't.

12 Q Okay. Were you coherent when this was
13 occurring?

14 A Yes, I was.

15 Q And you remember everything?

16 A Yes, I do.

17 Q You're testifying truthfully today based
18 on what you recall; right?

19 A Yes, I do. I mean, yes, I am.

20 Q Okay. Thank you.

21 MR. HASKELL: No further questions.

22 THE COURT: Redirect -- further cross?

23 MR. FIGUEROA: No thank you, your Honor. I have
24 nothing further.

25 THE COURT: May this witness be excused?

26 MR. HASKELL: Yes.

27 MR. FIGUEROA: Subject to recall, yes.

28 THE COURT: Okay. Ms. Parfeta, you're going to

1 THE COURT: Okay. So you can just -- I guess the
2 stipulation would be before the jury that he's not Gil
3 Jackson.

4 MR. FIGUEROA: Submit.

5 MR. HASKELL: That's fine.

6 THE COURT: Okay. We all understand each other.
7 That's the end of that.

8 (Whereupon the following
9 proceedings were held in the
10 presence of the jury.)

11 THE COURT: Ladies and gentlemen, good morning.

12 THE JURY: Good morning.

13 THE COURT: As I said, there could be nothing
14 that would possibly delay us this morning. We will get
15 started right at 9:00. Oops. I wish I could say this
16 was my first mistake of the day, but it probably wasn't.
17 But we are all back, and we are on the record in the case
18 of the People of the State of California versus Mabon
19 James.

20 Mr. James is here with his attorney,

21 Mr. Figueroa. Mr. Haskell is here for the People.

22 Who is that seated next to you?

23 MR. HASKELL: That's my investigating officer in
24 this case, Deputy Dave Romero.

25 THE COURT: Okay. Good morning, Deputy Romero.

26 DEPUTY ROMERO: Good morning, sir.

27 THE COURT: You're continuing with your case in
28 chief. Call your next witness.

1 MR. HASKELL: Thank you. Your Honor, at this
2 time, the People would like to call Cassandra Smith up to
3 the stand.

4 THE CLERK: Do you solemnly state that the
5 evidence you shall state in this matter shall be the
6 truth, the whole truth, and nothing but the truth so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Please state your full name for the
10 record, spelling your first and last name.

11 THE WITNESS: C-A-S-S-A-N-D-R-A, S-M-I-T-H.

12 THE COURT: You're going to say it for us also?

13 THE WITNESS: Oh, Cassandra Smith.

14 THE COURT: Thank you. Good morning, Ms. Smith.

15 THE WITNESS: Good morning.

16 THE COURT: Your witness, Mr. Haskell.

17 MR. HASKELL: Thank you, your Honor.

18 CASSANDRA SMITH,
19 called as a witness by the People,
20 was sworn and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. HASKELL:

24 Q Ma'am, how are you doing this morning?

25 A Okay.

26 Q Have you ever testified before?

27 A No.

28 Q What we are going to do is ask you some

1 questions about an incident that occurred about a couple
2 months ago. We are going to ask you to answer them as
3 truthfully as you recall; okay?

4 A Okay.

5 Q Do you remember the date of June 20th,
6 2013?

7 A Yes.

8 Q Okay. What had you been doing around the
9 time of 6:00 or so p.m. that day?

10 A I went up to the liquor store.

11 Q Okay. And can you tell us what liquor
12 store that was?

13 A Michael's Liquor Store.

14 Q And do you remember if it was a hot day or
15 a cold day?

16 A It was nice.

17 Q Okay. I'm showing you a picture that has
18 been marked in People's Exhibit Number 1. It's up on the
19 overhead there. Do you recognize what this is a picture
20 of?

21 A The liquor store.

22 Q That's Michael's Liquor Store?

23 A Yes.

24 Q That's the liquor store that you went to?

25 A Yes.

26 Q Around -- Okay. I'm showing you also what
27 has been marked as People's Exhibit Number 21. Do you
28 recognize what this is a picture of?

1 A It's the back of the liquor store.

2 Q Okay. So that's the same complex there?

3 A Yes.

4 Q And I'm showing you what has been marked
5 as People's Exhibit Number 22. Do you also recognize
6 what this is?

7 A Yes.

8 Q Can you tell us?

9 A It's the same parking lot by the liquor
10 store.

11 Q So those three pictures encompass the
12 entire strip mall where the liquor store is?

13 A Yes.

14 Q Okay. Now, do you know what streets the
15 liquor store's located on?

16 A Bellflower and Bartlett.

17 Q Okay. I'm showing you what's been marked
18 as People's Exhibit Number 20. Taking a look at this
19 picture, do you know what this picture represents?

20 A The parking structure.

21 Q The parking lot you mean?

22 A Yeah, the parking lot.

23 Q Okay. Do you see street names on this
24 picture?

25 A Yes.

26 Q What are the street names?

27 A Bartlett and Bellflower.

28 Q Is that where Michael's Liquor Store is

1 located?

2 A Yes.

3 Q Does that appear to be an aerial view of
4 where the liquor store is?

5 A Yes.

6 Q And when you went up to the liquor store,
7 who else was with you?

8 A Marta Parfeta.

9 Q And whose car did you drive in?

10 A Mine.

11 Q Can you describe what type of car it is?

12 A A white Toyota Corolla.

13 Q Four door; correct?

14 A Yes.

15 Q Now, ma'am, there appears to be like a
16 remote control up there. What it is is a laser pointer.
17 Do you see it?

18 A Yes.

19 Q I ask you to pick it up. Do you see a
20 gray button on the laser pointer?

21 A Yes.

22 Q Using the gray button by pushing it down,
23 can you show us where up on the diagram on People's
24 Exhibit Number 20 where you parked your vehicle when you
25 first got to the location?

26 A I don't know which one's the store.

27 Q Okay. Can you see Michael's Liquor Store
28 up on the map there?

1 A Right there? Is that it?
2 Q Yes.
3 A Okay. Parked right in front.
4 Q So you parked right around the front of
5 the store?
6 A Yeah, right in the front of the store.
7 Q Okay.
8 A It's hard to tell from this.
9 Q So you cannot really see?
10 A Not from this picture, no.
11 Q Okay. Fair enough. If I were to show you
12 People's Exhibit Number 1, can you point with the laser
13 pointer where you might have been parked if you recall?
14 A Um, right behind the -- right there.
15 First parking spot.
16 Q Okay. So that was in the part of the
17 parking lot which faced Bellflower Street; correct?
18 A Yes -- no.
19 Q No?
20 A It was face -- I was facing towards the
21 store.
22 Q Okay.
23 A So --
24 Q The car itself was facing towards the
25 store?
26 A Yeah.
27 Q But in that diagram up there, the portion
28 of the parking lot was closest to Bellflower? Was that a

1 correct statement?

2 A Yes.

3 Q Okay. And when you first arrived there
4 and parked your vehicle, what did you do next?

5 A I went into the store.

6 Q Okay. Did you have a purse with you that
7 day?

8 A Yes, I did.

9 Q What items did you have inside that purse?

10 A My wallet, cigarettes, cell phone,
11 cigarette case, paperwork.

12 Q What sort of paperwork?

13 A Um, immunization records, social security
14 cards.

15 Q Those have your name on them?

16 A Yes.

17 Q Okay. And what did you do with your purse
18 when you exited your vehicle to go to the liquor store?

19 A I left it in there.

20 Q Okay. Do you remember if you left your
21 purse open or closed?

22 A It was closed.

23 Q Where did you leave it?

24 A On the floorboard in the driver's side.

25 Q The front driver's side?

26 A Um-hum, on the floorboard.

27 Q Thank you. As you are walking up to the
28 liquor store, can you describe what happened for us,

1 please?

2 A I walked inside and bought some things and
3 came out and went and talked to a cute guy.

4 Q A cute guy?

5 A Um-hum.

6 Q And with the laser pointer, can you --

7 THE COURT: You're going to have to be in charge
8 of making sure your witness gives responses that can be
9 written by the reporter, Mr. Haskell. I don't want to do
10 it myself.

11 MR. HASKELL: I understand.

12 Q BY MR. HASKELL: Ma'am, when you respond
13 to questions, rather than respond to "um-hum," if you can
14 respond with a yes or no, please?

15 A Okay.

16 Q Thank you. With the laser pointer, can
17 you point up on the map approximately where you were
18 speaking with the cute male, if you will?

19 A Well, like right over here by the smoke
20 shop.

21 Q Okay. And that's towards the top center
22 of the picture of the exhibit for the record. And
23 approximately how long were you speaking with that
24 individual?

25 A Um, maybe five, six minutes.

26 Q Okay. While you were speaking with that
27 individual, were you looking back at your vehicle at all?

28 A Yeah. I was like sideways, but Marta was

1 at the car.

2 Q Okay. Can you tell us where Marta was at
3 the car?

4 A She was standing outside the passenger
5 door.

6 Q Okay. But at this point, you weren't
7 really paying any attention to the vehicle?

8 A No.

9 Q Okay. At what point did you turn your
10 focus back towards your vehicle?

11 A When Marta walked up to where I was.

12 Q Okay. And can you take us through what
13 happened next, ma'am?

14 A Um, I told her she needed to go back to
15 the car because my purse was in there, and it was
16 unlocked, so she went back to the car.

17 Q Okay. And as Marta's walking back to the
18 car, what did you do?

19 A I continued talking, and then the guy said
20 he had to go to work. So I started to walk back, and,

21 um, that's when I'd seen the defendant hit Marta.

22 Q Okay. Well, I want to go into a little
23 more detail about that. But you mentioned you saw
24 somebody hit Marta. Do you see that person present in
25 court today?

26 A Yes, I do.

27 Q Can you describe where he is seated and
28 what color shirt he's wearing?

1 A Um, to the very left at the end of the
2 table, and he's wearing a blue shirt.

3 MR. HASKELL: May the record reflect the witness
4 has identified the defendant?

5 MR. FIGUEROA: No objection, your Honor.

6 THE COURT: It will.

7 MR. HASKELL: Thank you.

8 Q BY MR. HASKELL: Now, you stated you saw
9 the defendant hit Marta?

10 A Yes.

11 Q Can you describe in more detail what you
12 observed?

13 A He hit her with his right hand with a
14 closed fist.

15 Q And once he made impact with the fist,
16 what did Marta do?

17 A I told Marta, "Let's go," and I went to
18 get in my car, and I noticed all my stuff was gone.

19 Q How far away were you from Marta when you
20 saw her getting punched?

21 A Um, maybe 10 feet.

22 Q At that point, did you see any items in
23 the defendant's hand?

24 A A white-handle knife.

25 Q So at that point, you saw when the
26 defendant punched Marta, you saw a knife in his hand?

27 A In his left hand, though.

28 Q In his left hand?

1 A Um-hum. Yes, sorry.

2 Q And can you describe that knife for us,
3 please?

4 A All I'd seen was the white handle.

5 Q Did you see a blade at all?

6 A No.

7 Q Okay. Did you see the defendant raise the
8 knife at all to Marta after he punched her?

9 A No.

10 Q Okay. So he was just holding the knife at
11 his side?

12 A Yes.

13 Q Okay. But it was -- you could see it in
14 plain view; right? It wasn't in his pocket?

15 A No.

16 Q Okay. Now, were you able to see
17 personally if the defendant had taken any items from your
18 car?

19 A No.

20 Q Okay. So after you saw Marta get punched,
21 can you walk us through what happened then?

22 A Um, I got back into my car, and I noticed
23 my stuff was gone. So I walked into the liquor store and
24 asked them to use their phone to call the police.

25 Q Now, you mentioned that you went back in
26 your car. You noticed items were missing from your
27 purse?

28 A Yes.

1 Q Did you notice what items were missing
2 from your purse?

3 A My wallet, my cigarette case, my
4 cigarettes, and my cell phone.

5 Q The items that you identified earlier?

6 A Yes.

7 Q At that point, what was going through your
8 mind?

9 A I was robbed.

10 Q Okay. Did you happen to see where the
11 defendant went after that?

12 A Yeah. He walked, um, around the store and
13 down the sidewalk.

14 Q Okay. With the laser pointer there, can
15 you point on the diagram where the path of travel you saw
16 the defendant take?

17 A Like from the front of the store, he went
18 around this way (indicating) down Bartlett.

19 Q So he started walking down Bartlett then?

20 A Yes.

21 Q Okay. And do you recall if he was walking
22 or running?

23 A Walking.

24 Q Okay. So at that point, you mentioned
25 that you believed you had just been robbed, and you went
26 into the store. Can you describe what happened from
27 there?

28 A I got their phone, and I walked out of the

1 store and went around by the dumpsters, um, to see where
2 he was going so I wouldn't lose my stuff. And, uh, I
3 tried to call the police, and he'd seen the phone in my
4 hand, and he walked up towards me, hit the phone out of
5 my hand, and then punched me and knocked me to the
6 ground.

7 Q Okay. Now, I want to go back and, you
8 know, provide a little bit more details there. How many
9 stores did you have to go to first in order to get the
10 phone?

11 A One.

12 Q Okay. So the first store that you went
13 to, what did you say when you walked into the store?

14 A I said, um, "Somebody just took my stuff.
15 I need to use your phone to call the police."

16 Q Okay. And they gave you a cell phone?

17 A They gave me a, um, cordless phone.

18 Q Okay. And at that point, you didn't have
19 your own phone; correct?

20 A No.

21 Q It had just been stolen?

22 A Yes.

23 Q Okay. On the map, can you point to the
24 store that you first went to that gave you the phone?

25 A (indicating.)

26 Q Is that the liquor store, ma'am?

27 A I believe so.

28 Q Okay. Now, once you exited the store, can

1 you show us on the map where you went?

2 A Around this way. This is the dumpsters
3 (indicating.)

4 Q So you went in the middle of the shopping
5 complex to where the dumpsters are located?

6 A Yes.

7 Q Why did you go there?

8 A To see where the defendant was going with
9 my stuff.

10 Q Did that point give you an advantage point
11 as to Bartlett Avenue?

12 A Huh?

13 Q Could you see Bartlett Avenue from where
14 you were standing at that point?

15 A Yes.

16 Q Let's take it from there then. Can you
17 describe in detail what happened next?

18 A From after he hit me?

19 Q After you went to that point to observe
20 where the defendant is.

21 A Um, he walked -- do you want me to show
22 you?

23 Q Sure. If you can show us with the laser
24 pointer.

25 A He walked from the sidewalk right here
26 towards the dumpsters where I was, and, um, seen that I
27 was on the phone, knocked the phone out of my hand, then
28 punched me, and I fell to the ground. I got back up, and

1 I ran into, um, a local store, another store right there,
2 and asked for another phone.

3 Q Okay. Now, let's back it up again. As
4 you were standing at that point speaking on the phone,
5 can you tell us who you were calling?

6 A I was calling the police.

7 Q Okay. And can you describe your demeanor
8 at the time?

9 A Upset.

10 Q Okay. Were you crying at all or --

11 A Um, I don't believe, no.

12 Q How loud were you speaking?

13 A Um, pretty loud.

14 Q Okay. So were you speaking in a voice
15 that could be heard maybe a couple feet away?

16 A Yes.

17 Q Okay. Maybe 50 to a hundred feet away?

18 A Maybe.

19 Q Okay. And do you recall what you said
20 when you called 911?

21 A I didn't hear anybody on the other line.

22 Q Okay. So you are in the process of
23 calling 911?

24 A Yeah.

25 Q Okay. Now, you mentioned that the
26 defendant was on Bartlett or walking down Bartlett and
27 then he approached you. Can you describe the manner in
28 which he approached you?

1 A Um, just like straight faced, like
2 serious.

3 Q Was he walking or running?

4 A He was walking.

5 Q Did he make any sort of motioning gestures
6 towards you?

7 A What? I don't understand.

8 Q In other words, did he look like he was
9 about to fight you or punch you or anything?

10 A No.

11 Q Okay. Can you tell us as he was
12 approaching you, did you see the knife?

13 A Yes.

14 Q Okay. Was he still carrying it in his
15 hand?

16 A Yes.

17 Q Do you recall which hand at that point?

18 A I believe it was left hand.

19 Q Okay. As the defendant was approaching
20 you, did he say anything?

21 A I don't believe so.

22 Q Okay. Was he looking directly at you?

23 A Yes.

24 Q Okay. As the defendant got within a close
25 vicinity of you, what did you do?

26 A Um, I don't recall.

27 Q Okay. You were still on the phone,
28 though?

1 A Yes.

2 Q And I want to take you back, and I know
3 this is a little traumatic to have to go through again,
4 but I want to take you back. When the defendant
5 approached you, what is the first thing that he did?

6 A The first thing he did?

7 Q Yes.

8 A Knocked the phone out of my hands.

9 Q Okay. Can you describe how he knocked the
10 phone out of your hands?

11 A With his right hand. Like open hand
12 (indicating).

13 Q Okay. So he open hand knocked the phone
14 out of your hand?

15 A Yeah.

16 Q And what happened to the phone?

17 A It broke.

18 Q Okay. Can you tell us how it broke?

19 A It broke on the asphalt.

20 Q Okay. And can you tell us what happened

21 next, ma'am?

22 A He punched me.

23 Q Okay. Where did he punch you?

24 A On my left side by my jaw (indicating).

25 Q Can you tell us how many times he punched
26 you?

27 A Once.

28 Q Did it cause you any injury?

1 A Yes.

2 Q Can you tell us what that injury was?

3 A I had bruises, and from falling on the
4 ground, I had scrapes on my elbow, my knee, my ankle, a
5 big bruise on my left thigh.

6 Q Okay. What did the defendant do -- well,
7 let me ask you. After the defendant punched you in the
8 face, what did you do next?

9 A I fell to the ground, and then I got back
10 up, and I ran into, um, another store right there.

11 Q Okay. Did you make any attempt to try to
12 follow the defendant at all?

13 A No.

14 Q Not that you recall?

15 A No.

16 Q Okay. And at any point there, did the
17 defendant use the knife in a threatening manner on you?

18 A I don't recall.

19 Q Okay. So you basically fall down. At any
20 point, the defendant, did you see him lunge the knife

21 towards you at all or anything?

22 A I don't recall.

23 Q Okay. But he did have the knife out;
24 correct?

25 A Yes.

26 Q And you saw the knife the entire time he
27 was approaching you?

28 A Yes.

1 Q Okay. Now, ma'am, I want to show you a
2 couple of pictures. Showing you what has been marked as
3 People's Exhibit Number 4 -- and let me try to fix that
4 picture there. Okay. Do you recognize what this is a
5 picture of?

6 A Yes.

7 Q Can you tell us?

8 A Myself.

9 Q Okay. And can you tell us when this
10 picture was taken?

11 A After I was punched.

12 Q Okay. And I'm showing you what has been
13 marked as People's Exhibit Number 3. Can you tell us
14 what this picture is?

15 A Myself.

16 Q Okay. And is that a profile view then?

17 A Yes.

18 Q What side of the face is that? Is that
19 the side that was hit?

20 A Yes.

21 Q Okay. Can you tell us any injuries that
22 were visible from that punch?

23 A Do you want me to show you?

24 Q Yeah, if you could?

25 A Right there (indicating).

26 Q Okay. You saw yourself in a mirror?

27 A Yes.

28 Q Can you describe the injuries at the time?

1 I know it's a little foggy up there on the projector, but
2 can you describe the injuries you received as a result of
3 the punch as you recall them?

4 A On my face or --

5 Q Yes, on your face.

6 A Um, a bruise.

7 Q How big was the bruise?

8 A I don't know. Small.

9 Q Okay. But there was some mark left?

10 A Yes.

11 Q Okay. And I'm showing you what has been
12 marked as People's Exhibit Number 10. Is this also a
13 picture taken on the day?

14 A Yes.

15 Q Okay. And that's of the same side of the
16 face?

17 A Yes.

18 Q Okay. Now, I'm showing you what has been
19 marked as People's Exhibit Number 2. Now, it's a little
20 hard to actually --

21 MR. HASKELL: Your Honor, may I approach this
22 witness?

23 THE COURT: Yeah.

24 MR. HASKELL: Okay. Thank you.

25 THE COURT: Sure.

26 Q BY MR. HASKELL: Showing you People's
27 Exhibit Number 2, do you recognize what this is a picture
28 of?

1 A Yes.

2 Q Can you tell us what it's a picture of?

3 A My left thigh.

4 Q Okay. It was a little hard to see up on
5 the overhead, but do you see any injuries on this
6 picture?

7 A Yes.

8 Q Can you describe where?

9 A My upper left thigh.

10 Q Can you describe the injury?

11 A It's a bruise.

12 Q Okay. And can you tell us what that
13 injury bruise was a result of?

14 A Being punched and falling to the ground.

15 Q Okay. So he only punched you in the face,
16 though. Was that bruise as a result of falling to the
17 ground?

18 A Yes.

19 Q Okay. Showing you what has been marked as
20 People's Exhibit Number 16, for the record, now can you

21 tell us what this is a picture of?

22 A My left elbow.

23 Q Okay. And do you see any bruise or injury
24 on this picture?

25 A Yes.

26 Q With the laser pointer, can you describe
27 where?

28 A (indicating.)

1 Q Okay. And that's right on your elbow?

2 A Yes.

3 Q Okay. Can you describe that injury for
4 the record, please?

5 A It's a bruise.

6 Q Okay. Slight cut?

7 A Yeah.

8 Q Okay. Now, I'm showing you what has been
9 marked as People's number 18. Can you describe what this
10 is a picture of?

11 A My left ankle.

12 Q Are there any injuries on this picture?

13 A Yes.

14 Q Can you describe what type of injury?

15 A It's a scrape and bruise.

16 Q Did you sustain that as a result of
17 falling?

18 A Yes.

19 Q Okay. People's Exhibit 19, can you tell
20 us what this is?

21 A A picture of my left knee.

22 Q Okay. Did you suffer a bruise there as
23 well?

24 A Yes.

25 Q Thank you.

26 MR. HASKELL: One moment, please, your Honor?

27 THE COURT: Sure.

28 Q BY MR. HASKELL: Now, do you remember

1 speaking with Deputy Romero in this case?

2 A Yes.

3 Q Okay. And do you recall if Deputy Romero
4 actually took some pictures of the injuries a day later?

5 A Yes.

6 Q Okay. And do you recall where he took
7 those pictures?

8 A At my house.

9 Q Okay. Showing you what has been marked as
10 People's Exhibit Number 11, can you describe what this is
11 a picture of?

12 A My left thigh.

13 Q Okay. And can you describe the -- first
14 of all, do you see any injuries in this picture?

15 A Yes.

16 Q Can you describe that injury for us,
17 please?

18 A It's a big bruise.

19 Q Okay. Can you tell us how you received
20 that bruise?

21 A From the day before when I was knocked to
22 the ground.

23 Q Okay. Showing you People's Exhibit Number
24 12, can you tell us what this is a picture of?

25 A My left thigh, I believe.

26 Q Are there any injuries on that picture?

27 A Yes.

28 Q Again, could you tell us what they are?

1 A A bruise.

2 Q Okay. And did you receive that as a
3 result of being pushed on the ground?

4 A Yes.

5 Q Okay. Now, on the date of the incident,
6 did the bruise swell to the point that it is in this
7 picture?

8 A Um, not to that point.

9 Q Okay. So it was visible, but not to that
10 point?

11 A Yes.

12 Q Okay. Now, we talked about the defendant
13 carrying a knife while this was occurring; correct?

14 A Yes.

15 Q Okay. Did you get a look at that knife?

16 A Just the handle.

17 Q Okay. I'm showing you what has been
18 marked as People's Exhibit Number 8 now. Does this
19 appear to be the handle of the knife?

20 A Yes.

21 Q Okay. And how do you recognize that,
22 ma'am?

23 A Excuse me?

24 Q How do you recognize it as being the
25 handle?

26 A Because it's white.

27 Q Okay. Showing you what has been marked as
28 People's Exhibit Number 7, do you recognize that as the

1 same knife?

2 A Yes.

3 Q Thank you. Now, I want to take you back
4 to the point where you'd been pushed on the ground. Did
5 you see which way the defendant -- did you see what the
6 defendant did after that?

7 A No, I don't believe so. I ran into the
8 store.

9 Q Okay. When the defendant was approaching
10 you, were you scared?

11 A Yes.

12 Q Okay. Do you know if you ever actually
13 made contact with the 911 operator before the defendant
14 destroyed your phone?

15 A I don't believe so.

16 Q You don't remember talking to anyone over
17 the phone?

18 A No.

19 Q Now, after you were able to get up, you
20 mentioned that you eventually went to a store?

21 A Yes.

22 Q Okay. Can you describe what happened in
23 there?

24 A I asked for a phone, and they said they
25 didn't have one yet.

26 Q Okay. And can you tell us what happened
27 next?

28 A Um, I went back to Michael's, and, um, I

1 believe I asked them -- they asked me where their phone
2 was, and I said it was on the side broken. So they went
3 and picked it up.

4 Q Okay. And at some point then, did you
5 contact 911 or --

6 A I don't believe so.

7 Q Okay. So somebody else might have?

8 A Yes.

9 Q All right. Now, when the defendant was
10 approaching you, do you recall -- you mentioned that he
11 wasn't saying anything, but when he actually -- after he
12 punched you, do you recall him saying anything?

13 A I don't recall.

14 Q Do you recall if you were saying anything?

15 A I don't believe so.

16 Q You don't remember what you said, or you
17 don't know if there was anything said?

18 A I don't believe there was anything said.

19 Q Okay. That you recall?

20 A That I recall, no.

21 Q Okay. Next question may seem like kind of
22 a general question, but of course the defendant didn't
23 have any consent to take any of the items; correct?

24 A No.

25 Q Have you ever seen this defendant prior to
26 the incident date?

27 A Yes.

28 Q Okay. Can you tell us when?

1 A Um, on two other occasions. I met him
2 through a neighbor.

3 Q Okay. Did you know him by name?

4 A Um, not by his real name.

5 Q Okay. What name did you know him by?

6 A Demetrius (phonetic).

7 Q Okay. Have you ever like talked to him?

8 A Yes.

9 Q Okay. Can you describe how long you
10 talked to him?

11 A A few minutes here and there.

12 Q Okay. Did you ever like hang out with him
13 or anything like that?

14 A We drank one night together with my
15 neighbor.

16 Q So the night you were drinking with the
17 defendant, how much did you actually speak with him?

18 A Not too much.

19 Q Okay. So you didn't have any like past
20 disagreement, or anything like that, with him --

21 A No.

22 Q -- prior to this date?

23 A No.

24 Q Okay. Did you recognize him when you saw
25 him punch Marta Parfeta?

26 A Yes.

27 Q Okay. So approximately after the
28 defendant -- well, let me back up. Now, you mentioned

1 the defendant was walking away from you; correct?

2 A Yes.

3 Q Okay. And where did he go if you could
4 point out on the map here?

5 A After he hit me?

6 Q Yes.

7 A I believe -- I believe he went back
8 towards the same way, Bartlett.

9 Q So he was traveling southbound?

10 A I don't know. I ran into the store.

11 Q Okay. So you didn't actually see exactly
12 where he went?

13 A No.

14 Q Did you see which direction he was going
15 towards?

16 A No.

17 Q Okay. At some point later on, did the
18 police arrive?

19 A Yes.

20 Q Okay. Can you tell us approximately how
21 long from the point where he punched you and broke your
22 phone, how much longer did it take for the police to
23 arrive?

24 A Maybe five minutes, if that.

25 Q Okay. So it was pretty rapid?

26 A Yes.

27 Q Okay. And at that time, did you speak
28 with our deputy here today, Deputy Romero?

1 A Yes.

2 Q Okay. And you told him about what
3 happened?

4 A Yes.

5 Q Okay. At some point later, did they
6 present you with the defendant?

7 A Yes.

8 Q Okay. And you identified him as the
9 person who had hit you that day?

10 A Yes.

11 Q And did they also provide you with some
12 property?

13 A Yes.

14 Q Can you tell us what that property was
15 that the police provided you with?

16 A Um, all my social security cards from me,
17 and my kids my license, my credit cards, my cigarette
18 case, my cigarettes, my cell phone.

19 Q Okay. And where did you recognize those
20 items from? Where were they located last time you had
21 them?

22 A In my purse.

23 Q And you were able to identify all those as
24 your own?

25 A Yes.

26 Q As to the cell phone, can you tell us
27 approximately what the worth of the cell phone was?

28 A Um, \$50.

1 Q Okay. And inside the wallet, did you have
2 any money or anything?

3 A Yes.

4 Q Can you tell us how much?

5 A Um, I don't know the exact amount. I know
6 I had laundry, quarters, um, a few bucks, and, um, I had
7 some money stashed behind the flap of my wallet that I
8 owed to somebody.

9 Q Okay. And were those items given back to
10 you?

11 A All except for the money I owed to
12 somebody.

13 Q Okay.

14 A I guess they didn't find it.

15 MR. HASKELL: Thank you. Nothing further.

16 THE COURT: Mr. Figueroa, you may inquire.

17 MR. FIGUEROA: Thank you very much, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. FIGUEROA:

21 Q Good morning, Ms. Smith.

22 A Good morning.

23 Q Okay. You're here testifying about an
24 incident that happened on June 20th of this year;
25 correct?

26 A Yes.

27 Q Okay. And I believe you started your
28 testimony by saying around 6:00 p.m. you remembered going

1 to Michael's Liquor Store?

2 A Yes.

3 Q And you also had Ms. Parfeta with you?

4 A Yes.

5 Q And who is Ms. Parfeta to you?

6 A My best friend.

7 Q Okay. Now, you and Ms. Parfeta went to
8 the liquor store to buy something?

9 A Yes.

10 Q What did you buy at the liquor store?

11 A Vodka, Pepsi, cigarettes, and two tacos.

12 Q Okay. And Ms. Parfeta who testified
13 yesterday said you two had been drinking before you went
14 to the liquor store; is that correct?

15 A Yes.

16 Q And that you were out of alcohol so you
17 went to get more alcohol?

18 A Yes.

19 Q Okay. Now, you also testified that after
20 you went into the liquor store -- first of all, did

21 Ms. Parfeta go into the liquor store?

22 A Yes.

23 Q Okay. So she left the car?

24 A Yes.

25 Q Okay. And she went in the liquor store.
26 And did she pay for or purchase the items?

27 A No.

28 Q Who paid for or purchased the items?

1 A I did.

2 Q But you testified that you left your purse
3 with your wallet in the car?

4 A Yes.

5 Q So how did you pay for the items?

6 A Not with the wallet in the car. I took my
7 wallet out of my purse. I left my purse in the car.

8 Q Okay. So your wallet wasn't in the purse
9 in the car?

10 A Not at that time, no.

11 Q Okay. So your testimony is that when you
12 went into Michael's Liquor Store, you took your wallet
13 with you?

14 A Yes.

15 Q Okay. And you paid for the items with
16 money from your wallet?

17 A Yes.

18 Q Okay. Did you come out and put your
19 wallet back in your purse?

20 A Yes.

21 Q And when did that happen?

22 A After I came out of the store.

23 Q Okay. Did Ms. Parfeta come out of the
24 store with you?

25 A Yes.

26 Q Okay. So you went to Michael's, bought
27 the items, went back, put them in the car?

28 A Yes.

1 Q Now, you're saying you returned your
2 wallet back to your purse?
3 A Yes.
4 Q Is that when you went to talk to that cute
5 guy?
6 A Yes.
7 Q How far away from your car was the cute
8 guy?
9 A I don't know. Um, maybe from here to the
10 table.
11 Q Okay. And do you know?
12 A I don't know.
13 Q I'm sorry. What was the last thing --
14 A I don't know. Maybe a little bit further.
15 Q Do you know the name of the cute guy?
16 A No.
17 Q Have you ever met him before?
18 A No.
19 Q So you just saw a cute guy, started
20 talking to him?
21 A Yes.
22 Q And for the record, you had been drinking
23 that day too; right?
24 A Yes.
25 Q Okay. Now, you said you were talking to
26 him for five to six minutes; correct?
27 A Yes.
28 Q And that Marta -- or Ms. Parfeta was

1 standing outside your car?

2 A Yes.

3 Q And that you started walking back to your
4 car?

5 A After the guy said he had to go to work.

6 Q So the guy says he has to go to work?

7 A Yes.

8 Q Was he driving?

9 A Yes.

10 Q So he got in his car and left?

11 A Yes.

12 Q And you were there and you were walking
13 back to your car?

14 A Yes.

15 Q Okay. And then you said that as you were
16 walking back to your car, you saw Mr. James, my client,
17 hit Marta?

18 A Yes.

19 Q Okay. Now, do you remember testifying
20 that Marta came up to you when you were talking to the

21 cute guy?

22 A Yes.

23 Q And you told her to go back?

24 A Yes.

25 Q So now I'm confused. Didn't you just
26 testify that the cute guy left and you started walking
27 back to your car?

28 A Before that, Marta started walking --

1 Q Okay.

2 A -- towards me.

3 Q Okay. So now, you were talking to the

4 cute guy?

5 A Yes.

6 Q Yes. Marta was standing by your car?

7 A Yes.

8 Q Now you're saying Marta went to where you

9 were with the cute guy?

10 A Yes.

11 Q Okay. Was that before or after Mr. James

12 allegedly hit Marta?

13 A That was before.

14 Q Okay. So now Marta and you were both by

15 the cute guy?

16 A Yes.

17 Q And then did Marta go back by herself?

18 A Yes.

19 Q Okay.

20 A I told her to go back because my purse was

21 in the car, and it was unlocked.

22 Q Okay. At any time, did you see anyone

23 near your car?

24 A Not at the time, no. I wasn't paying

25 attention to my car.

26 Q Okay. So Marta walks back to your car?

27 A Yes.

28 Q You're still talking to the cute guy?

1 A Yes.

2 Q Cute guy has to leave and go to work?

3 A Yes.

4 Q And that is when you said you were walking
5 back to your car?

6 A Yes.

7 Q And you saw someone hit Marta?

8 A Yes.

9 Q Now, where exactly was Marta standing in
10 relation to your car?

11 A On the passenger's side.

12 Q Okay. So Marta's on the passenger's side.
13 And where was the person who you said hit Marta coming
14 from?

15 A The sidewalk.

16 Q Okay. And if you could point on the
17 picture up there where exactly. Are you talking about
18 the sidewalk on Bartlett?

19 A On Bartlett, yes.

20 Q And then where was your --

21 A Right there (indicating).

22 Q Where was your car in relation?

23 A Right in front of the store. I believe
24 right here (indicating).

25 Q Where was the cute guy's car if you could
26 point out?

27 A Over here by the smoke shop.

28 Q So it was around the corner at another

1 store?

2 A It wasn't around the corner.

3 Q Okay. So it was --

4 A It was like from here to like the table --

5 Q Okay.

6 A -- away (indicating).

7 Q Okay. Now, you walked back, saw Marta get
8 hit with a closed fist?

9 A Yes.

10 Q And where is it that you saw the knife?

11 A In his left hand.

12 Q In his left hand. Okay. And how was he
13 holding the knife?

14 A By the blade.

15 Q He was holding the knife by the blade?

16 A All I'd seen was the handle.

17 Q Where was the handle? On the front part
18 of his fist?

19 A Top part.

20 Q Left hand?

21 A Top part.

22 Q You're saying the handle was the top part?

23 A Yeah.

24 Q And he was holding it by the blade?

25 A I believe so. All I'd seen was the
26 handle.

27 Q And then how did he hit Marta?

28 A With his right hand.

1 Q With his right hand?

2 A Um-hum.

3 Q Is that a yes? I'm sorry.

4 A Yes.

5 Q When he hit Marta, did he still have the
6 knife by the blade with his hand?

7 A I believe so.

8 Q Okay. Now, you also testified that after
9 that happened, you got in the car and were just going to
10 get out of there?

11 A Yes.

12 Q Okay. So when you get back into the car,
13 it's then you realize that things are missing from your
14 purse?

15 A Yes.

16 Q Okay. Okay. And you said your wallet was
17 missing?

18 A Yes.

19 Q Your cigarette case was missing?

20 A Yes.

21 Q What do you mean by "cigarette case,"
22 Ms. Smith?

23 A It's a case that you put cigarettes into.

24 Q Okay. Can you describe it?

25 A It's pink.

26 Q Pink. Now, is it clear, transparent, or
27 is it fabric?

28 A No. It's a hard case.

1 Q It's a hard case. And do you put the
2 whole carton of cigarettes inside?

3 A No.

4 Q How do you use it?

5 A I stash some away so I don't smoke them
6 all in one day.

7 Q Okay. But the pink case doesn't say
8 "Newports" on it?

9 A No.

10 Q The pink case doesn't say "Newport Reds"?
11 You cannot see what brand of cigarettes they were;
12 correct?

13 A No.

14 Q That's the cigarette case you claim was
15 taken from your purse?

16 A Yes.

17 Q Okay. Now, you also mentioned something
18 about your I.D.s or your cards. Was that within your
19 wallet?

20 A Yes.

21 Q Okay. Now, we have the wallet missing,
22 your cigarette case missing, and the cell phone missing?

23 A And my packs of cigarettes that I had just
24 bought.

25 Q How many packs of cigarettes had you just
26 bought?

27 A I believe two.

28 Q What kind of cigarettes were those?

1 A Newport Reds.

2 Q Okay. Now, you said that after you got in
3 the car, when you had decided just to leave, you went
4 into the store to get the phone?

5 A Yes.

6 Q And that's Michael's Liquor Store?

7 A Yes.

8 Q Okay. So you go into Michael's Liquor
9 Store, and you tell them someone just took your stuff;
10 right?

11 A Yes.

12 Q Those are your words?

13 A Yes.

14 Q Is that what you told the person at
15 Michael's Liquor Store?

16 A Yes.

17 Q Okay. Now, you also testified earlier
18 that you personally did not see anyone take the items out
19 of your car?

20 A Yes.

21 Q You didn't see my client take the items
22 out of your car?

23 A No.

24 Q Okay. And then you went in, asked for a
25 phone, said "someone just took my stuff," and then you
26 went outside? Yes?

27 A Yes.

28 Q And you say my client, Mr. James, had

1 already walked away?

2 A Yes.

3 Q Now, after you got in the car, where was
4 Mr. James?

5 A I believe walking away.

6 Q Okay. So how soon did Mr. James leave the
7 scene where the car was parked?

8 A Right after he hit Marta, he walked away.

9 Q Okay. So Mr. James has left the scene.
10 You and Marta get in the car, and then you go get the
11 phone from Michael's Liquor Store?

12 A I didn't get into the car.

13 Q Okay.

14 A I walked into the liquor store and got the
15 phone, then walked out.

16 Q Okay. When did you get into the car and
17 discover your items missing from your purse?

18 A When we were about to leave right after he
19 punched -- yes. Okay. Sorry.

20 Q So you did get into the car?

21 A Yes.

22 Q Okay. So you got in the car, found out
23 the items were missing, then you went into Michael's
24 Liquor Store?

25 A Yes.

26 Q You came out of Michael's Liquor Store.
27 And where was Mr. James?

28 A Gone.

1 Q Okay. And then did you know where he
2 went?
3 A Because Marta told me.
4 Q What did Marta say?
5 A That he walked around the corner.
6 Q Okay. So you have the phone from
7 Michael's Liquor Store, and you go after Mr. James?
8 A Yes.
9 Q Okay. And then you pointed out that you
10 went around the back of Michael's Liquor Store to where
11 the dumpsters are?
12 A Yes.
13 Q When you got to the dumpsters, where was
14 Mr. James?
15 A On the sidewalk on Bartlett.
16 Q Okay. Which direction was he walking?
17 A Towards -- I don't know.
18 Q Was he walking towards Bellflower?
19 A No. Away from Bellflower.
20 Q Away from Bellflower?
21 A Yes.
22 Q Okay. And did you yell at him or say
23 something to him?
24 A I said, "Do you have my stuff," I believe.
25 I don't recall.
26 Q Okay. What did Mr. James do when you
27 yelled at him?
28 A He came walking up to me.

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1 Q So he stopped walking away and came back
2 to you?

3 A Yeah.

4 Q Okay. How far away was Mr. James when you
5 first yelled at him?

6 A Um, I don't know. Maybe 10, 15 feet. I
7 don't know.

8 Q Okay. Now, did you run to catch up with
9 him?

10 A No.

11 Q So the time that you got in the car, got
12 out of the car, went to get the phone, Mr. James was
13 still within 10 feet of you?

14 A No.

15 Q Okay. Well, how far away was Mr. James
16 when you first went to look for him?

17 MR. HASSELL: Objection. Vague.

18 THE WITNESS: He was --

19 THE COURT: Overruled.

20 Q BY MR. FIGUEROA: You may answer.

21 A How far away was he from me when I had the
22 phone?

23 Q Right.

24 A About 10 or 15 feet.

25 Q So Mr. James only walked 10 or 15 feet
26 from the time after he hit Marta and left the scene?

27 A No.

28 Q Okay. How far did Mr. James walk from the

1 time he hit Marta and left the scene, to the time you
2 yelled at him?

3 A Um, maybe a hundred feet.

4 Q Okay.

5 A Guess. I don't know.

6 Q Okay. So then you're saying Mr. James
7 came back at you?

8 A Yes.

9 Q And you're saying that at that time, he
10 still had the knife in his hand?

11 A I believe so.

12 Q And you're saying that you didn't see the
13 blade? You only saw the handle?

14 A Yes.

15 Q Now, did Mr. James still have the knife by
16 the blade at that time?

17 A I believe so.

18 Q What do you -- you're not sure?

19 A All I'd seen was the handle.

20 Q So again, we only see the handle?

21 A Yes.

22 Q And you said it's like that, illustrating
23 a pen above my fist (indicating)?

24 A Yes.

25 Q Okay. When he came back to you, he still
26 had the knife in his hand by the handle?

27 A Yes.

28 Q Then you said he punched you?

1 A Yes.

2 Q Did he punch you, then knock the phone out
3 of your hand?

4 A No.

5 Q Did he knock the phone out of your hand,
6 then punch you?

7 A Yes.

8 Q Now, Ms. Smith, at any time after this
9 confrontation when you went by the dumpster, did
10 Mr. James ever grab you by the shoulders and shake you
11 with both hands?

12 A No.

13 Q Did Mr. James ever yell anything back at
14 you at this time?

15 A I don't believe so.

16 Q Were you yelling at Mr. James during this
17 time?

18 A I don't believe so.

19 Q So at no time did Mr. James use both hands
20 and grab you physically by the shoulders and shake you?

21 A No.

22 Q Now, you're saying that he punched you,
23 knocked the phone to the ground?

24 A Yes.

25 Q And then he pushed you to the ground?

26 A No. He punched me, and I fell to the
27 ground.

28 Q Okay. When he punched you, how did you

1 fall to the ground?

2 A Backwards.

3 Q Okay. So you're face to face with
4 Mr. James?

5 A Yes.

6 Q And he punches you?

7 A Yes.

8 Q With his right fist?

9 A Yes.

10 Q And where does he hit you?

11 A On my left cheek.

12 Q On your left cheek. Okay. And you fell
13 backwards or fell to the ground?

14 A I fell backwards to the ground.

15 Q Okay. Now, isn't it true that the
16 injuries you received included a bruise to your thigh?

17 A Yes.

18 Q And what part of your thigh was bruised?

19 A My upper left thigh.

20 Q The front part of your thigh or --

21 A Yes.

22 Q -- or the rear? So the bruise was on the
23 front?

24 A Well, it was like right here on
25 the (indicating) --

26 Q How did you get the bruise, from falling
27 backwards?

28 A I guess on the concrete.

1 Q Okay. So Mr. James allegedly punches you
2 in the face. You fall backwards?

3 A Yes.

4 Q You're saying you got a bruise to your
5 left thigh --

6 A Yes.

7 Q -- when you hit the ground?

8 A Yes.

9 Q Okay. Why is the bruise on the front of
10 your thigh?

11 A I don't know. It was kind of on the side
12 right here (indicating).

13 Q Did you twist before you hit the ground?

14 A I don't he -- I might have.

15 Q But you don't recall how you injured your
16 thigh by falling backwards?

17 A No.

18 Q You understand that doesn't make sense?

19 MR. HASKELL: Objection. Argumentative.

20 THE COURT: Sustained.

21 MR. HASKELL: Thank you. Motion to strike.

22 THE COURT: It's just a question. It's not
23 stricken.

24 Q BY MR. FIGUEROA: So, you also said you
25 got injured on your elbow?

26 A Yes.

27 Q And on your ankle?

28 A Yes.

1 Q Okay. You're claiming that those injuries
2 were the result of being punched by Mr. James and falling
3 down?

4 A Yes.

5 Q But your testimony is you fell backwards?

6 A Yes.

7 Q Okay. Now, after Mr. James punched you by
8 the dumpster, you said you went into a store. You ran
9 into another store?

10 A Yes.

11 Q And you asked for a phone?

12 A Yes.

13 Q And that store was next to Michael's
14 Liquor, or where was that store?

15 A In the same parking lot.

16 Q Can you use the laser pointer and show
17 where that store you ran into was?

18 A Here's like the dumpsters, and it's like
19 right across (indicating).

20 Q Okay. And was there anyone in that store?

21 A Yes.

22 Q And did you speak to that person?

23 A I just asked for a phone.

24 Q You asked for a phone. And he said he
25 didn't have a phone?

26 A Yes.

27 Q Now, is that store within sight of where
28 the dumpster is?

1 A Yes.

2 Q And is that store within visible sight of
3 where Mr. James allegedly punched you?

4 A Yes.

5 Q Okay. Now, after you went in the store,
6 he had no phone, where did you go?

7 A I went back to Michael's Liquor Store.

8 Q Okay. So at any time after Mr. James
9 allegedly punched you, did you follow Mr. James and yell
10 at him?

11 A No.

12 Q So at any time after Mr. James allegedly
13 punched you, did you go after him, so to speak?

14 A No, not until the cops arrived.

15 Q Okay. So your testimony is after you got
16 punched, you never went after Mr. James again and kept
17 yelling at him?

18 A No.

19 Q Okay. So your testimony is after he
20 punched you, you got up and went right into the store?

21 A I ran into the store.

22 Q Okay. And then when did Mr. James
23 allegedly knock the phone out of your hand?

24 A Right before he punched me.

25 Q Okay. So before he punched you, he
26 knocked the phone out of your hand?

27 A Yes.

28 Q Which hand did you have the phone in?

1 A My right.

2 Q Okay. And how did Mr. James knock it out
3 of your hand?

4 A With an open hand (indicating).

5 Q So he hits you with an open hand?

6 A Yes.

7 Q Was it the hand with the knife?

8 A No. His right hand.

9 Q Okay. Did you still see the knife in his
10 hand at that time?

11 A No. I don't recall.

12 Q Okay. And then the phone broke?

13 A Yes.

14 Q Okay. And then you are testifying after
15 he knocked the phone out of your hand, he punched you in
16 the face?

17 A Yes.

18 Q You fell down?

19 A Yes.

20 Q You got up, ran into the liquor store, or
21 the other store for another phone?

22 A Yes.

23 Q But they didn't have a phone?

24 A No.

25 Q Okay. Now, you also testified that you
26 had met or known Mr. James from two prior occasions?

27 A Yes.

28 Q And you knew him as Demetrius?

1 A Yes.

2 Q And you met him through your neighbor?

3 A Yes.

4 Q Do you remember the very first time you
5 met Mr. James?

6 A Not too long before this time.

7 Q Okay. And then you said there was another
8 time where you were drinking with him one night?

9 A Yes.

10 Q Okay. Now, on the date of this incident,
11 you knew who Mr. James was; right?

12 A Yes.

13 Q Okay. Now, isn't it true that Mr. James
14 had been in your car with Ms. Parfeta drinking alcohol
15 before you went into Michael's Liquor Store?

16 A I don't recall.

17 Q Isn't it true that right before you went
18 into Michael's Liquor Store, you gave Mr. James three
19 dollars?

20 A No. That was inside of the store.

21 Q You gave Mr. James three dollars inside of
22 the store?

23 A Yes.

24 Q Okay. Let's back up.

25 A He said he needed it for his mom.

26 Q Okay. When did you give Mr. James the
27 three dollars?

28 A Inside the store.

1 Q Before he punched Marta?
2 A Yes.
3 Q Okay. So before this whole incident
4 happened, you were hanging out with Mr. James?
5 A No. He was behind me in line.
6 Q Oh. So you're saying he was in the store?
7 A Yes.
8 Q Did you ever tell the police that?
9 A No.
10 Q Why not?
11 A I didn't think it was relevant.
12 Q Okay. So Mr. James and you are in
13 Michael's Liquor Store at the same time?
14 A Yes.
15 Q You gave him three dollars?
16 A Yes.
17 Q Okay. Now, you bought the stuff. You
18 bought the vodka and the Pepsi?
19 A Yes.
20 Q Where was Mr. James?
21 A I don't know.
22 Q Okay.
23 A I believe right behind me in the store
24 still.
25 Q Still in the store?
26 A Yeah.
27 Q Okay.
28 A I believe so.

1 Q Okay. So you know Mr. James from prior
2 occasions; correct?

3 A Yes.

4 Q Okay. On this date, you had conversation
5 or interaction with Mr. James inside the liquor store?

6 A Yes.

7 Q Okay. But you're denying he was in your
8 car drinking with you and Ms. Parfeta?

9 A I don't recall that.

10 Q Okay. Do you know how much you had been
11 drinking?

12 A When? That day?

13 Q Yeah.

14 A Maybe a half pint before I went up to the
15 store.

16 Q Would you say you were intoxicated at that
17 time?

18 A I don't believe so.

19 MR. FIGUEROA: Okay. I have nothing further,
20 your Honor.

21 THE COURT: Redirect?

22 MR. HASKELL: Thank you.

23

24 REDIRECT EXAMINATION

25 BY MR. HASKELL:

26 Q I want to clarify a couple things. Was
27 the defendant driving with you to the liquor store that
28 day?

1 A No.

2 Q Was he in your vehicle at all?

3 A No.

4 Q Okay. So you didn't give him a ride up to
5 the liquor store; correct?

6 A No.

7 Q Okay. Now, you mentioned that before any
8 of this occurred, that you saw the defendant inside the
9 liquor store; is that correct?

10 A Yes.

11 Q Okay. And you mentioned that he asked you
12 for some money?

13 A Yes.

14 Q And what did he say exactly?

15 A He said, "Do you have any money?" Um, "My
16 mom needs something to eat."

17 Q Okay. So he was basically panhandling for
18 some money?

19 MR. FIGUEROA: Objection. Argumentative. Move
20 to strike.

21 THE COURT: Sustained.

22 MR. HASKELL: Okay.

23 Q BY MR. HASKELL: So he was asking you for
24 money inside the store?

25 A Yes.

26 Q And you gave him some money?

27 A Yes. Three dollars.

28 Q Okay. What happened next then inside the

1 store?

2 A I got my stuff, and/or I left with my
3 stuff, put it in my car.

4 Q Okay. So you were in front of the
5 defendant in line; correct?

6 A Yes.

7 Q Okay. So at that point after you
8 purchased your items, you then went back to your vehicle;
9 correct?

10 A Yes.

11 Q And at that time --

12 A Put my wallet away, put the stuff in the
13 car, and seen the cute guy, walked over, started talking
14 to him.

15 Q Okay. So you actually went back to the
16 vehicle. Then you went over to speak to the cute guy?

17 A Yes.

18 Q And at that point, is that when Marta
19 Parfeta walked over towards you?

20 A Um, it was a little bit after that.

21 Q Okay. So after you started talking to the
22 cute guy?

23 A Yes.

24 Q That's when Marta Parfeta walked over?

25 A Yes.

26 Q Okay. While you were speaking with the
27 cute guy, did you see the defendant approach your vehicle
28 at all?

1 A I don't recall.

2 Q Okay. So you really don't recall anything
3 about what the defendant was doing?

4 A I wasn't really paying attention to my
5 car.

6 Q Fair enough. And you mentioned that
7 during your initial time that you went into Michael's
8 Liquor Store, Marta Parfeta was actually in there with
9 you for a period of time?

10 A Yes.

11 Q Okay. And just to be clear, you didn't
12 give this defendant a ride to the store; correct?

13 A No.

14 Q Had you seen this defendant at all before
15 the time when you saw the defendant inside the liquor
16 store?

17 A No.

18 Q Okay. That day?

19 A No.

20 Q You had not seen him that day?

21 A No.

22 Q Okay. Now, you mentioned that you saw the
23 defendant holding the knife; correct?

24 A Yes.

25 Q And that's the knife I showed you up on
26 the overhead earlier?

27 A I believe so.

28 Q Now, you mentioned, I think, that he was

1 holding it by the blade?

2 A I believe so. All I'd seen was the
3 handle.

4 Q Okay. But you couldn't really -- at any
5 point during this entire confrontation with the
6 defendant, were you able to see the blade?

7 A No.

8 Q Not even a portion of the blade?

9 A No. I don't believe so.

10 Q When he punched Marta, you were kind of
11 far away from him; correct?

12 A Um, yeah, about 10 or 15 feet maybe.

13 Q Okay. While he was holding the knife, how
14 were you -- well, let me ask you a question. Were you
15 able to determine it was a knife while he was holding
16 what you described as the handle?

17 A I wasn't able to tell.

18 Q At that point, you just recognized the
19 handle?

20 A Yes.

21 Q Okay. So at any point during his
22 confrontation with Marta, or when he knocked the phone
23 out of your hand, did he ever expose the blade to you?

24 A I don't recall.

25 Q You don't remember that happening?

26 A No.

27 Q Now, correct me if I'm mistaken here, but
28 you mentioned on cross-examination that as the defendant

1 was approaching you, you thought you might have said
2 something to the effect of, "Hey, give me my stuff back."
3 Do you remember that?

4 A Yes.

5 Q Okay. And again, we are talking while
6 you're over by the dumpsters this was said; correct?

7 A Yes.

8 Q So do you recall any other conversation
9 that might have happened at that point?

10 A No.

11 Q Okay. Do you know if any other words were
12 exchanged?

13 A No.

14 Q You don't recall?

15 A I don't recall any of the words.

16 Q But do you recall this defendant answering
17 your question at all?

18 A No.

19 Q Okay. So is it you don't remember?

20 A I don't remember.

21 Q You don't remember what was said, or you
22 don't remember if anything was said?

23 A I don't remember if anything was said.

24 Q Okay. Fair enough. Is it fair to say all
25 this was happening kind of quickly?

26 A Yes.

27 Q Did you consider the defendant a threat to
28 you when he approached you?

1 A Yes.

2 Q After he punched you in the face, you
3 mentioned you fell backwards; correct?

4 A I believe so, yes.

5 Q If you can recall, do you recall if you
6 fell directly backwards, or did you fall more towards one
7 side or the other?

8 A Um, I didn't fall directly completely
9 backwards like that. I fell back -- back, and I could
10 have fell on my side.

11 Q Were you trying to brace yourself as you
12 were falling?

13 A Probably.

14 Q And do you recall all the injuries that
15 you sustained? Were they all on one side of your body?

16 A Yes.

17 MR. HASKELL: Okay. Thank you. No further
18 questions.

19 THE COURT: Further cross?

20 MR. FIGUEROA: No, your Honor. Thank you.

21 THE COURT: May this witness be excused?

22 MR. FIGUEROA: Subject to recall, yes.

23 THE COURT: Okay. Thank you for being with us,
24 Ms. Smith. I'm going to excuse you now. We will recall
25 you if we need to. I'm going to make an order that you
26 not talk to anyone about your testimony until this case
27 is over except for one of the investigating officers or
28 the attorneys. Okay?

1 THE WITNESS: Okay.

2 THE COURT: Thank you.

3 Call your next witness.

4 MR. HASKELL: Your Honor, at this time, the
5 People would like to call Sergeant Visosky.

6 THE CLERK: Do you solemnly state that the
7 evidence you shall state in this matter shall be the
8 truth, the whole truth, and nothing but the truth so help
9 you God?

10 THE WITNESS: I do.

11 THE CLERK: Please state your full name for the
12 record, spelling your first and last name.

13 THE WITNESS: Timothy Visosky. T-I-M-O-T-H-Y,
14 "V," as in victor, I-S-O-S-K-Y.

15 THE COURT: Sergeant Visosky, good morning.

16 THE WITNESS: Good morning, your Honor.

17 THE COURT: Your witness, Mr. Haskell.

18 MR. HASKELL: Thank you.

19 TIMOTHY VISOSKY,
20 called as a witness by the People,

21 was sworn and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. HASKELL:

25 Q Sir, what is your occupation?

26 A I'm a Sergeant with the San Bernardino
27 County Sheriff's Department.

28 Q Okay. How long have you been with the

1 San Bernardino County Sheriff's Department?

2 A 13 years.

3 Q How long have you been a sergeant?

4 A About one and a half years.

5 Q Okay. On June 20th, 2013, were you
6 assigned to a patrol function out in Adelanto?

7 A Yes, sir, I was.

8 Q Okay. At approximately 6:39 p.m., where
9 were you dispatched to?

10 A We got a call of a robbery at the -- I
11 believe it was the corner of Bellflower and Bartlett.

12 Q Is that location in the county of
13 San Bernardino?

14 A Yes, it is, in the city of Adelanto.

15 Q Thank you. Now, when you arrived on the
16 scene, were you able to -- well, first of all, did you
17 arrive immediately on the scene?

18 A I arrived a couple minutes after. I
19 responded from the station which is fairly close by --
20 I'd say within a mile -- and began conducting an area
21 check for the suspect.

22 Q Okay. Now, you mentioned that you had
23 gotten a call about a robbery. Did you get a description
24 of who the robber was?

25 A Yes.

26 Q Can you tell us what that description was?

27 A It was a black male adult wearing a blue
28 shirt and blue pants.

1 Q Can you tell us any description you
2 received -- where was the defendant or where was the
3 suspect last headed?

4 A I believe it was eastbound on Bartlett
5 Road toward Highway 395.

6 Q Okay. What did you do next?

7 A Just began conducting an area check. I
8 first drove westbound on Bartlett Road up to Bellflower,
9 and then conducted a U-turn and started working my way
10 back towards 395.

11 Q Okay. And at any point during your
12 investigation, did you locate a suspect?

13 A Yes.

14 Q Okay. Do you see that suspect present in
15 court today?

16 A Yes, I do.

17 Q Can you describe where that suspect is
18 seated and what color shirt he's wearing today?

19 A He's seated to the right of defense
20 counsel. He's wearing a blue shirt. He has on some,
21 looks like light brown-framed glasses.

22 MR. HASKELL: May the record reflect the witness
23 has identified the defendant?

24 MR. FIGUEROA: No objection, your Honor.

25 THE COURT: It will.

26 MR. HASKELL: Thank you.

27 Q BY MR. HASKELL: Can you tell us where you
28 located the defendant?

1 A Um, it was, uh, approximately a hundred to
2 150 yards east of Bartlett and Bellflower, the
3 intersection of the liquor store there. He was walking
4 northbound through a field, um, when I contacted him.

5 Q Okay.

6 A North of Bartlett Road.

7 MR. HASKELL: Your Honor, may I approach this
8 witness?

9 THE COURT: You may.

10 Q BY MR. HASKELL: Sir, I'm showing you what
11 has been marked as People's Exhibit Number 20.

12 Can you tell us what this exhibit is?

13 A It shows the liquor store on Bartlett and
14 Bellflower, and then the parking lot just east of. And I
15 believe there's a church next to that, and then the field
16 is just east of that where I located the suspect.

17 Q Okay. And so this Exhibit Number 20 here
18 is the location that you were dispatched to originally?

19 A Yes.

20 Q Okay. With this pen, can you mark with an
21 arrow the direction in which you eventually apprehended
22 the defendant?

23 A Where I located him at or --

24 Q I know it's not going to be on that
25 diagram, but if you could just point to the direction?

26 A Oh, okay. (Witness complies)

27 Q Thank you, sir.

28 MR. HASKELL: Publishing Exhibit Number 20 up to

1 the jury, your Honor.

2 Q BY MR. HASKELL: Now, I see you put an
3 arrow on the exhibit, as well as a circle with an "X";
4 correct?

5 A Yes.

6 Q Is that the approximate area where the
7 defendant was apprehended?

8 A Yes.

9 Q If you could give us a distance, how far
10 away from that is that area from the crime scene?

11 A I'd say about a hundred to 150 yards.

12 Q Okay. When you first viewed the
13 defendant, can you describe what he was doing?

14 A I'd seen him. He came from a house on the
15 south side of the street, walked just across, and was
16 walking through the field at a decent pace. He wasn't
17 running, but he was walking fast.

18 Q Okay. So you saw the defendant exit a
19 house?

20 A He was standing out in front of the yard,
21 in the yard, and he walked across the street.

22 Q Okay. And the defendant at the time was
23 matching the description you received about the blue
24 shirt --

25 A Yes.

26 Q -- and jeans? Okay. Did he appear to be
27 sweaty or not sweaty?

28 MR. FIGUEROA: Objection. Relevance.

1 THE COURT: I can't imagine what the relevance
2 is.

3 MR. HASKELL: It goes to his rate of speed, your
4 Honor.

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

6 MR. HASKELL: Fair enough.

7 Q BY MR. HASKELL: Did you make any other
8 observations about the defendant when you first viewed
9 him?

10 A I'm sorry. As far as?

11 Q When you saw him, did you notice anything
12 else particular about him or --

13 A Um, just his description matching the
14 description. Um, when I asked him what his name was, he
15 advised it was Gil Jackson.

16 Q Okay. And did you conduct a search of the
17 defendant?

18 A Yes.

19 Q Okay. And when did you conduct the search
20 of the defendant?

21 A Um, after he told me his name was Gil
22 Jackson. I recognized him from prior contact.

23 MR. FIGUEROA: Your Honor, may we approach?

24 THE COURT: You may. You know what? This is a
25 good time to make our morning recess. Counsel, wait
26 right there for a brief second.

27 We will have a brief recess, ladies and
28 gentlemen, for our morning recess. 15 minutes. We will

1 actually take an actual couple minutes. Why don't you
2 come back in 20. 20 minutes.

3 You're admonished, it is your duty not to
4 converse among yourselves or anyone else on any matter
5 connected with this case, nor form or express an opinion
6 on it until it's submitted to you.

7 (Whereupon the following
8 proceedings were held out of the
9 presence of the jury.)

10 MR. HASKELL: Your Honor, if I may? My question
11 to the witness was whether or not he --

12 THE COURT: You don't have to tell me. We have
13 somebody writing everything down, Mr. Haskell. So
14 whatever you tell me what your question is, it doesn't
15 matter. We already know what your question was.

16 MR. FIGUEROA: Well, your Honor, naturally the
17 reference to prior contacts is a problem. I don't
18 believe we can unring the bell now. We did have a motion
19 with Deputy Hamilton, and we agreed that prior contacts
20 were not to be mentioned. This is another witness, but I

21 guess for the record, because of that, I'm going to move
22 for a mistrial.

23 THE COURT: I understand your position. And you
24 know, Mr. Figueroa, when it comes right down to it, I
25 guess that during the course of trial, things happen,
26 things that we don't anticipate.

27 I assume that you didn't have any
28 opportunity to talk to Sergeant Visosky and tell him that

1 we didn't want that information before the jury; did you?

2 MR. HASKELL: No, not directly to Sergeant
3 Visosky.

4 THE COURT: Right. So I don't blame anybody on
5 anything that was said. It's unfortunate. I mean, if we
6 had all the time in the world, I suppose it would be nice
7 to have a recess before you called Sergeant Visosky to
8 tell him that I made an order that the mention of prior
9 contacts was something that I didn't want the jury to
10 hear.

11 But I don't think that it rises to the
12 level of a mistrial, Mr. Figueroa. I think that
13 certainly it was appropriate for you to object. As for
14 the order in limine, I don't believe there's been a
15 violation of my order because I don't think Mr. Haskell
16 intentionally elicited that information from this
17 Sergeant.

18 You didn't; did you, Mr. Haskell?

19 MR. HASKELL: No. I did not.

20 THE COURT: And the sergeant was not aware of my
21 preference. And I will just say I think that the record
22 is what the record is. We've discussed it in-depth
23 previously, as Mr. Haskell has indicated. And it's true.
24 You can have contacts with someone that are not
25 necessarily for any evil reason.

26 You could meet someone at a baseball game.
27 You could meet someone in a line at a liquor store. I
28 don't know that that's where Sergeant Visosky previously

1 contacted your client. And I think it's probably a fair
2 inference to say that it's not hard to have the jury
3 imagine that prior contacts might mean there's prior
4 contacts with police.

5 But I think that since there hasn't
6 actually been more said, I think that the damage, if
7 there is any, is very small. I don't think it's
8 substantially prejudicial.

9 And though, this is almost a Hobson's
10 choice for you to be in, I'll be happy to admonish the
11 jury to disregard the comment that Sergeant Viskosky made,
12 but I'm not going to grant the mistrial.

13 MR. FIGUEROA: Submit, your Honor. That would be
14 my next thing is could we tell the jury to disregard that
15 and move on, and that's fine.

16 THE COURT: And just say that Sergeant Viskosky
17 can say that he doesn't -- that this wasn't the man's
18 name.

19 MR. FIGUEROA: Correct. He can say he knew he
20 wasn't Gil Jackson, and that's fine. Submit it.

21 THE COURT: Okay. So now, do you understand,
22 Sergeant Viskosky, what my previous ruling was and --

23 THE WITNESS: Yes, your Honor. I won't make any
24 mention of it again.

25 THE COURT: Okay. And I'm going to tell the jury
26 that to disregard that prior response; okay? Have a nice
27 recess.

28 (Recess.)

1 (Whereupon the following
2 proceedings were held in the
3 presence of the jury.)

4 THE COURT: We are back on the record in the case
5 of the People of the State of California versus Mabon
6 James, along with his attorney, Mr. Figueroa. Mr.
7 Haskell is here, and our jury is back. Our witness,
8 Sergeant Visosky, is back.

9 Ladies and gentlemen, we are going to
10 disregard the last question and answer that you heard
11 from Detective Visosky, and you may proceed.

12 MR. HASKELL: Thank you, your Honor.

13 Q BY MR. HASKELL: Detective Visosky, we
14 were talking about how you were about to conduct a search
15 on the defendant. Can you tell us approximately how long
16 after you'd been dispatched to the scene did you conduct
17 a search?

18 A Within a few minutes.

19 Q Okay. And as you look at the defendant
20 today, did his appearance differ at all?

21 A Yes.

22 Q How did it differ?

23 A When I contacted him, he had dreadlocks,
24 and now today he has a shaved head.

25 Q Okay. Now, I want to talk to you a little
26 bit about the search. Can you describe how you conducted
27 the search?

28 A After I detained the suspect, I walked him

1 over to my patrol car, and I could see -- kind of leaned
2 him up against the car. I could see a knife, the handle
3 of a knife sticking out of his back pocket.

4 Q Okay. And did you pull the knife out of
5 his back pocket?

6 A Yes.

7 Q Now, I'm showing you what has been marked
8 as People's Exhibit Number 7. Do you recognize what this
9 is a picture of?

10 A Yes.

11 Q Can you tell us what the picture is of?

12 A It's a knife with a white plastic handle.

13 Q Okay. Is that the knife you found upon
14 the defendant?

15 A Yes.

16 Q Okay. And exactly where did you find the
17 knife?

18 A In his rear pocket.

19 Q Okay. Was the blade exposed, or was the
20 handle exposed?

21 A The handle was exposed.

22 Q Okay. Showing you what is marked as
23 People's Exhibit Number 5, now do you recognize what this
24 is a picture of?

25 A Yes.

26 Q Could you tell us?

27 A Looks like the same knife with a plastic
28 sheath over the blade.

1 Q Okay. You mentioned when you found the
2 knife, the blade was exposed. Where did you find the
3 cover of the knife?

4 A I don't recall finding the cover. It
5 might have been in his front pocket.

6 Q But you did find the cover on his person?

7 A Yes.

8 Q Moving along, what else did you find upon
9 the defendant?

10 A I found a social security card, debit
11 card, and ID card belonging to the victim.

12 Q Can you tell us who those cards belonged
13 to?

14 A I don't recall the victim's name. Sorry.

15 Q Okay. But it's one of the victims,
16 though?

17 A Yes.

18 Q Okay. And what else did you find?

19 A That was -- oh, I believe that that's all
20 I recall finding.

21 Q Do you recall if you found a cell phone?

22 A Yes.

23 Q Okay.

24 A I believe I found a couple cell phones.

25 Q Okay. Can you describe the cell phones
26 that you found?

27 A They were black. That's all I remember.

28 Q All of them were black?

1 A Yes.

2 Q Did you recall if you found any money?

3 A No, I don't.

4 Q Okay. Do you recall if you found any
5 cigarettes?

6 A Yes, I did find some cigarettes.

7 Q Okay. Can you describe the type of
8 cigarettes you found. If you don't remember the
9 actual --

10 A I don't recall.

11 Q Okay. But you do remember finding
12 cigarettes?

13 A Yes.

14 Q Now, all these items that you found upon
15 the defendant, did you show them to the victim, Cassandra
16 Smith?

17 A No. I just told Deputy Romero about it,
18 and he went over it with the victim.

19 Q Okay. So you weren't present at that
20 point?

21 A No.

22 Q Okay. Thank you.

23 MR. HASKELL: Thank you. No further questions.

24 THE COURT: Mr. Figueroa, you may inquire.

25 MR. FIGUEROA: Thank you very much, your Honor.

26 ///

27 ///

28 ///

CROSS-EXAMINATION

BY MR. FIGUEROA:

Q Good morning, Sergeant Visosky.

A Good morning.

Q Now, you're testifying that you actually had contact with my client, Mr. James, on June 20th?

A Yes.

Q And that you had occasion to detain him and search his person?

A Yes.

Q And that you recovered some items that belonged to one of the victims?

A Yes.

Q Do you recall if any of those items contained -- or was there within those items a pink cigarette case?

A I don't recall finding any.

Q So there was -- other than the cigarettes, the cell phone, and I guess the ID cards, there was no pink cigarette case?

A I didn't find it, no.

Q Okay. And you searched his person at that time?

A I did, I would say, a preliminary search where I found the knife and ID cards, the cigarettes, but we didn't actually pull everything -- I didn't pull everything out of his pockets.

Q Okay. But the items you recovered, there

1 was no pink cigarette case?

2 A Not that I recall, no.

3 Q Thank you very much, Sergeant.

4 MR. FIGUEROA: Nothing further. Thank you.

5 MR. HASKELL: Nothing further.

6 THE COURT: May Sergeant Visosky be excused?

7 MR. HASKELL: Yes.

8 MR. FIGUEROA: Yes, your Honor.

9 THE COURT: Thank you for being with us, Sergeant
10 Visosky. You're excused.

11 THE WITNESS: Thank you.

12 THE COURT: People, call your next witness.

13 MR. HASKELL: Your Honor, the People would like
14 to call Deputy Romero.

15 THE CLERK: Do you solemnly state that the
16 evidence you shall state in this matter shall be the
17 truth, the whole truth, and nothing but the truth so help
18 you God?

19 THE WITNESS: I do.

20 THE CLERK: Please state your full name for the
21 record, spelling your first and last name.

22 THE WITNESS: Sure. It's David Romero.
23 D-A-V-I-D, R-O-M-E-R-O.

24 THE COURT: Good morning, Deputy Romero.

25 THE WITNESS: Good morning, your Honor.

26 THE COURT: Your witness, Mr. Haskell.

27 MR. HASKELL: Thank you.

28 ///

1 DAVID ROMERO,
2 called as a witness by the People,
3 was sworn and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. HASKELL:

7 Q Sir, what is your occupation?

8 A Deputy sheriff with the San Bernardino
9 County Sheriff's Department.

10 Q For how long have you held that position?

11 A About six and a half years.

12 Q Okay. On June 20th, 2013, were you
13 assigned to a patrol function out in the city of
14 Adelanto?

15 A Yes, sir.

16 Q And approximately 6:39 p.m., where were
17 you dispatched that day?

18 A Um, we got a report of a robbery down the
19 street from the station.

20 Q Okay. And what was that location?

21 A Bellflower and Bartlett. Michael's
22 Liquor.

23 Q Is that in the county of San Bernardino?

24 A Yes, sir.

25 Q Thank you. Did you speak with a Cassandra
26 Smith and a Marta Parfeta at the location?

27 A Yes, I did.

28 Q Okay. And did you specifically speak to

1 Cassandra Smith about what occurred?

2 A Yes, I did.

3 Q Okay. Did you also speak with a Jesus
4 Lopez about the incident?

5 A Yes.

6 Q Okay. Were you able to track down any
7 other eyewitnesses from the event?

8 A Um, no.

9 Q Okay. Can you describe what steps you
10 took in order to try to locate any other witnesses?

11 A I went along each of the businesses at the
12 location and talked to everyone that was around to see if
13 anybody had seen anything that took place outside.

14 Q Okay. When speaking with Cassandra Smith,
15 did you get a description of the suspect?

16 A Yes.

17 Q And what was that description?

18 A It was a black male wearing a blue shirt
19 and blue jeans.

20 Q Did you get what direction he was last
21 headed in?

22 A Eastbound on Bartlett.

23 Q What did you do next?

24 A Um, after leaving the station, I conducted
25 an area check looking for the suspect, and I saw that
26 Sergeant Viskosky was pulled over on Bartlett just east of
27 the incident location, and he was contacting a suspect in
28 the field.

1 Q Can you describe the appearance of that
2 suspect?

3 A He matched the description wearing a blue
4 shirt and blue jeans, black male.

5 Q Do you see that person in the courtroom
6 today?

7 A Yes, I do.

8 Q Can you describe where he is seated and
9 what color shirt he's wearing?

10 A To the right of counsel table wearing
11 blue -- left of counsel table, wearing a blue shirt.

12 MR. HASKELL: May the record reflect the witness
13 has identified the defendant?

14 MR. FIGUEROA: No objection, your Honor.

15 THE COURT: Yes, it will.

16 Q BY MR. HASKELL: Now, what did you observe
17 Sergeant Viscosky do to the defendant?

18 A He contacted him in the field and
19 conducted a brief pat-down search, handcuffed him, and
20 walked him back to the unit parked on the street.

21 Q Do you know if any items were found as a
22 result of Sergeant Viscosky's search?

23 A Yes.

24 Q Do you recall what?

25 A Yes.

26 Q What?

27 A Um, I was right there when Viscosky was
28 conducting a search, and I saw him pull a white-handled

1 knife out of his back pocket. He had, I believe, two or
2 three cell phones in his pocket. Um, two packs of
3 Newport Reds, and, um, I believe that was -- oh, and then
4 a stack of cards from his front pocket, I believe.

5 Q From the defendant's front pocket?

6 A I think. I don't remember exactly where
7 the cards were at.

8 Q Okay. But at some point, Sergeant Visosky
9 found cards on the defendant's person; correct?

10 A Yes.

11 Q Okay. And can you describe what those
12 cards were?

13 A Yeah. It was an ID card. It was a
14 California ID card or driver's license, social security
15 card, debit cards. Numerous other cards. I believe also
16 other social security cards belonging to other people.

17 Q Okay. So various items of personal
18 information then?

19 A Yes.

20 Q And were you able to determine who those
21 belonged to?

22 A Yes. Most of them were Cassandra Smith.

23 Q Did they have her name right on the card?

24 A Yes, sir.

25 Q Thank you. Did you conduct another search
26 of the defendant after the preliminary search?

27 A Yes.

28 Q Can you describe what you did?

1 A Um, I basically pulled everything out of
2 his pocket and found, um, money and some coins, and I
3 believe that was it.

4 Q Okay. Now, can you describe the coins and
5 the money that you found?

6 A Um, yeah. It was several dollars in
7 change, around three dollars in quarters, and I think
8 several dollar bills.

9 Q Okay. Now, were the quarters wrapped or
10 unwrapped?

11 A Unwrapped.

12 Q Do you remember what the denominations
13 were of the bills? Were they dollar bills?

14 A Yeah, I believe they were dollar bills.

15 Q Okay. To the best of your recollection?

16 A Yes.

17 Q Okay. Do you remember precisely how many?

18 A I think three -- three dollars I remember.

19 Q About three dollars?

20 A Yeah.

21 Q And did you present these items to
22 Cassandra?

23 A Yes.

24 Q And what did she say when you presented
25 these items to her?

26 A She said that one of the cell phones
27 belonged to her, the stack of cards belonged to her, the
28 cigarettes were hers, and the change was hers.

1 Q And did you show her the knife?

2 A Yes.

3 Q What did she say then?

4 A She said that was the same knife that he
5 had in his hand.

6 Q Okay. Now, before the defendant was
7 apprehended, you spoke to Cassandra Smith; correct?

8 A No. I believe it was after.

9 Q It was afterwards?

10 A Yes, sir.

11 Q Okay. Did you make contact with any of
12 the witnesses before the suspect, or the defendant was
13 apprehended?

14 A No.

15 Q Okay. So when you said earlier that you
16 talked to him, that occurred after the defendant was
17 apprehended?

18 A Yes, sir.

19 Q Do you know where the description came
20 from of the defendant?

21 A Yes. It came out in the reporting party.
22 Whoever called 911 gave the description and the location
23 and a direction.

24 Q Now, are you familiar with that particular
25 mini mall strip mall?

26 A Yes, sir.

27 Q Okay. Do you know if any of the stores in
28 there have any sort of surveillance video?

1 A Yes. Michael's Liquor has surveillance.

2 Q Did you try to track some of that video
3 surveillance down?

4 A Yes. I made several attempts to get a
5 copy of any surveillance video, but they were unable to
6 provide me with a copy.

7 Q How many attempts did you make to try to
8 obtain a copy?

9 A Somewhere between three and six.

10 Q Okay. Now, did you take any pictures of
11 the victims in this case?

12 A Yes, I did, sir.

13 Q Okay. Showing you what has been marked as
14 People's Exhibit Number 9, do you recognize this picture?

15 A Yeah. That's -- yes, sir.

16 Q Can you tell us what it is?

17 A It's a picture of Marta Parfeta.

18 Q Okay. And on the date that you took the
19 picture, did you notice any injuries to Marta Parfeta?

20 A Looked like she had a red mark to the left
21 side of her face, and a little bit of swelling.

22 Q Okay. And on what day did you take this
23 picture?

24 A On the date it occurred.

25 Q On June 20th?

26 A Yes, sir.

27 Q Okay. I'm showing you an exhibit that has
28 been marked as People's Exhibit Number 3. Did you -- do

1 you recognize this picture?

2 A Yes, sir.

3 Q Okay. Can you tell us what this is?

4 A It's a profile picture of Cassandra Smith.

5 Q Okay. And when did you take this picture?

6 A Um, I believe that was on the day of also.

7 Q Okay. On the day of the incident when you
8 took -- and you took more than one picture; correct?

9 A Yes, sir.

10 Q On the day of the incident, did you notice
11 any injuries to Cassandra Smith?

12 A Yes.

13 Q Can you tell us what you noticed?

14 A Cassandra Smith had swelling and a mark,
15 red mark by her eye and on her cheek. Swelling was to
16 the left side of her face. She also had abrasions to
17 several parts to the left side of her body. I believe it
18 was elbow, abrasion to her knee, abrasion to her ankle,
19 and some slight bruising to her left leg, left thigh.

20 Q Okay. So all the injuries that you
21 observed were on Cassandra's left side of the body?

22 A I believe so, yes.

23 Q Okay. Now, you mentioned that there was
24 some bruising. And it's not necessarily clear by the
25 projector image here. But was the bruising more
26 pronounced than what you see in the picture up on the
27 screen here?

28 A Yes.

1 Q Okay. At any point later, did you go back
2 to take additional pictures of Cassandra?

3 A Yes. I went back the next day.

4 Q The next day? And where did you go?

5 A I went to her residence.

6 Q Okay. Did you take several pictures of
7 Cassandra on that date?

8 A Yes, sir.

9 THE COURT: If you're not careful, somebody is
10 going to hear you guys.

11 MR. HASKELL: Sorry, your Honor.

12 Q BY MR. HASKELL: On the date that you
13 took -- the day when you went back to take pictures of
14 Cassandra, do you recognize this picture?

15 A Yes, sir.

16 Q Okay. You took the picture on that date?

17 A Yes.

18 Q Okay. And can you describe any injuries
19 you see in this picture?

20 A Um, pretty pronounced bruising to her
21 upper left thigh.

22 Q Okay. And had you seen that bruising on
23 the incident date?

24 A It was not that pronounced.

25 Q Okay. You mentioned it was her left
26 thigh; correct?

27 A Yes, sir.

28 MR. HASKELL: Thank you. No further questions.

1 THE COURT: Mr. Figueroa, you may inquire.

2 MR. FIGUEROA: Thank you very much, your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. FIGUEROA:

6 Q Good morning, Deputy Romero.

7 A Good morning, sir.

8 Q Okay. We are here about an incident that
9 happened June 20th of this year; correct?

10 A Yes, sir.

11 Q And you were involved in the Michael's
12 Liquor Store incident; correct?

13 A Yes, sir.

14 Q And that you were present when, I guess,
15 Sergeant Viscosky contacted my client, Mr. James?

16 A Yes.

17 Q And you saw, I guess what they call, the
18 pat down or cursory search originally? Yes?

19 A Yes.

20 Q And then there was another search later,
21 more thorough search?

22 A Yes.

23 Q In any of those searches, Deputy Romero,
24 was there a pink cigarette case recovered?

25 A Not that I recall.

26 Q And then you also mentioned, I believe in
27 the secondary search, there was some money found on my
28 client, Mr. James?

1 A Yes, sir.

2 Q Change? Quarters? Yes?

3 A Yes, sir.

4 Q And three dollar bills, or three dollars
5 in currency?

6 A Yes.

7 Q Now, at any time, either on the date of
8 the incident or the day after when you took pictures of
9 Ms. Smith, did Ms. Smith communicate or tell you that on
10 the date of this incident, prior to this incident, she
11 had given Mr. James three dollars?

12 A No, she didn't.

13 Q Did she mention that Mr. James was in
14 Michael's Liquor Store behind her in line prior to this
15 incident?

16 A No, she did not.

17 Q Okay. Thank you.

18 MR. FIGUEROA: I have nothing further.

19 THE COURT: Redirect?

20 MR. HASKELL: No further questions.

21 THE COURT: May this witness step down?

22 MR. FIGUEROA: Yes, your Honor.

23 MR. HASKELL: Yes.

24 THE COURT: He's the investigating officer. So
25 that means you may go or stay, whichever you choose to
26 do.

27 Call your next witness.

28 MR. HASKELL: Your Honor, at this time, the

1 People rest subject to the admission of evidence.

2 THE COURT: Okay. Mr. Figueroa, this is the
3 opportunity that you have, if you choose to put on a
4 case, or will you choose to rely on the state of the
5 evidence?

6 MR. FIGUEROA: Thank you, your Honor. At this
7 time, after discussing the matter with Mr. James, we
8 would rest. So the defense rests also at this time.

9 Correct, Mr. James?

10 THE WITNESS: Correct.

11 MR. FIGUEROA: Thank you.

12 THE COURT: Ladies and gentlemen, that means you
13 heard all the evidence you're going to hear in this case.
14 The only thing you haven't heard yet are the arguments of
15 the attorneys and the instructions on the law which I
16 will read to you at 1:30.

17 So we are going to take -- we've got
18 paperwork to do. You notice I'm up here doing things
19 during the course of the trial. I'm preparing the
20 instructions, but I have to go over and formalize them
21 with the attorneys, and that will take us a little time.

22 So we are going to get an early break for lunch.

23 Remember that even though you heard all
24 the evidence, you haven't heard the law. You haven't
25 heard the arguments of the attorneys.

26 So once again, you're admonished, it is
27 your duty not to converse among yourselves or with anyone
28 else on any matter connected with this case, nor form or

1 express an opinion on it until it's submitted to you.

2 See you at 1:30.

3 (Whereupon the following
4 proceedings were held out of the
5 presence of the jury.)

6 THE COURT: The jury is gone. We are going to
7 talk about some things real quickly. Just a minute.

8 Mr. James, you understand that you've
9 just -- the case has just rested. I know Mr. Figueroa
10 has gone over this with you, but I want to make sure that
11 the record is clear that you understand that you have the
12 right to decide whether or not to testify.

13 THE DEFENDANT: Yes.

14 THE COURT: And you've exercised your discretion,
15 your thought process, after you've discussed it
16 thoroughly with Mr. Figueroa, and you don't want to take
17 the witness stand; is that correct?

18 THE DEFENDANT: No. Correct.

19 THE COURT: Okay. Thank you. Want to make sure
20 of that.

21 MR. FIGUEROA: Thank you, your Honor.

22 THE COURT: Next, I wanted to talk about one more
23 thing. We are going to discuss the jury instructions,
24 and this can be a little bit of a dry subject. We
25 sometimes do it informally, and we cannot do that in
26 chambers informally with you, unfortunately.

27 Do you want us to do this with you, or do
28 you want to waive your right to be here while we discuss

1 these instructions?

2 THE WITNESS: Yeah, I'll sit.

3 THE COURT: You'll sit here? Okay. That's fine.
4 We will do that in one second. And let's go over the
5 exhibits.

6 MR. HASKELL: Your Honor, in this particular
7 case, I think the only exhibits that were not introduced
8 were 13, 14, 15 and 17. I would ask those not be
9 included.

10 MR. FIGUEROA: Submit.

11 THE COURT: The rest of them you want me to order
12 admitted?

13 MR. HASKELL: Yes.

14 THE COURT: Any objection?

15 MR. FIGUEROA: No, your Honor.

16 THE COURT: So then we are going to admit -- what
17 numbers? From one to what?

18 MR. HASKELL: 1 through 12.

19 THE COURT: 1 through 12.

20 MR. HASKELL: 16 all the way up to -- one moment,
21 please. 22.

22 THE COURT: 1 through 12, and 16 to 22. Is that
23 what you are saying?

24 MR. HASKELL: I'm sorry. 18 to 22.

25 THE COURT: 1 through 12, 18 through 22; correct?

26 MR. FIGUEROA: Yes, your Honor.

27 MR. HASKELL: And 16.

28 THE COURT: And Number 16. Those are admitted

1 into evidence.

2 MR. FIGUEROA: Submit.

3 THE COURT: Okay. Now, I know that you brought
4 in a checklist. I just don't know where it is.

5 MR. HASKELL: Your Honor, if I may be excused for
6 just one second to run back to my office? I'd like to
7 get the CALCRIM so I can discuss this matter a little
8 more thoroughly.

9 THE COURT: I know you brought over a checklist.
10 Do you have it? Here's the checklist right here. Thank
11 you. Just one second. Before you go, Counsel, we are
12 going to go off the record. We are not going to do the
13 discussion of these instructions on the record. So I'm
14 going to excuse Ms. Moss.

15 MR. FIGUEROA: Submit. That's fine.

16 THE COURT: And we will bring her back when --

17 MR. FIGUEROA: We are ready.

18 THE COURT: -- we are ready to talk about which
19 instructions will actually be given. Correct?

20 MR. FIGUEROA: Absolutely.

21 MR. HASKELL: Submit.

22 THE COURT: Thank you, Ms. Moss, court reporter.
23 Thank you.

24 (Recess.)

25 THE COURT: Here are the instructions I've
26 indicated I'm going to give in this case. I think
27 there's been a lot of discussion about them, but I'm
28 going to give them in the following order.

1 200, 201, 202, 220. Hold on. I'm going
2 to go back to the beginning here.

3 MR. FIGUEROA: Yes.

4 MR. HASKELL: Your Honor, as to 205, it does say,
5 "Do not speculate about or consider in any way why you no
6 longer need to decide this count." I did want to address
7 it because the evidence after it came out was not
8 sufficient to support that charge.

9 May I do so in front of the jury?

10 THE COURT: Yeah.

11 MR. HASKELL: Okay.

12 THE COURT: That's fine. I think it's really --
13 the point of this is to tell them that they don't need to
14 spend any time on that issue.

15 MR. HASKELL: Fair enough.

16 THE COURT: So I'm going to put this in between
17 202 and 205. So it's Counts 3 and 4; right?

18 MR. FIGUEROA: Yes.

19 MR. HASKELL: Yes.

20 THE COURT: Assault with a knife, because that's
21 what I called it. Okay. So I'm going to give 200, 201
22 202, 205, 220, 222, 223, 224. I'm not giving 225. I'm
23 going to give 226 and 252, a copy of which, Mr. Haskell,
24 you're going to prepare and email to all the people we
25 discussed?

26 MR. HASKELL: Yes.

27 THE COURT: 300, 301, 302, 318, 333, 355, 370,
28 372, 376.

1 1600, let's take a moment to discuss that.
2 1600. Then 2622 -- is it? -- and 23, and then 3130, and
3 then 3550. Is that right? That's what I mean. That's
4 right?

5 Is there anything anybody objects to in
6 what I said I'm going to give?

7 MR. FIGUEROA: No, your Honor.

8 THE COURT: Mr. Haskell?

9 MR. HASKELL: No, your Honor.

10 THE COURT: Are there any instructions you're
11 requesting that I declined?

12 MR. FIGUEROA: No, your Honor.

13 MR. HASKELL: Have we discussed -- one second,
14 please, your Honor. Have we discussed 3250? Does that
15 need to be included for the enhancements?

16 THE COURT: I don't think so.

17 MR. FIGUEROA: No.

18 MR. HASKELL: Okay.

19 THE COURT: I'll look at it. I'll look at it
20 while we are having our lunch. But at this point, is

21 there anything else that you've asked for that I've
22 declined?

23 MR. FIGUEROA: No, your Honor.

24 MR. HASKELL: No.

25 THE COURT: I want to make a real quick statement
26 on the record. We discussed the possibility of a lesser
27 included offense to the crime of robbery as charged. And
28 Mr. Figueroa's analysis and mine is the same. It really

1 is there isn't any issue about whether or not there is --
2 if the jury believes the testimony, the only theory is
3 there was some level of force used.

4 Your position is that there might be an
5 agreement to have given the property, and there would be
6 no theft whatsoever. So it really is not a question of
7 whether or not there would be a lesser degree of theft
8 because your position is that he didn't steal it in any
9 event; right?

10 MR. FIGUEROA: That's correct, your Honor.

11 THE COURT: That's why you are not asking for a
12 lesser included offense.

13 MR. FIGUEROA: Correct.

14 THE COURT: Mr. Haskell, you're going to have to
15 prepare an amended Information.

16 MR. HASKELL: If I can add a couple matters, your
17 Honor?

18 THE COURT: Not now. It's 1:30 (sic).

19 MR. HASKELL: I would like to address the Court.

20 THE COURT: It's 12:00 noon. My staff goes to
21 lunch at noon.

22 MR. HASKELL: Can we come into chambers, your
23 Honor?

24 THE COURT: Sure.

25 (Whereupon the proceedings were
26 adjourned and continued to 1:30 the
27 same day.)

28 ***oOo***

1 VICTORVILLE, CALIFORNIA; WEDNESDAY, AUGUST 28, 2013

2 AFTERNOON SESSION

3 DEPARTMENT V-2

HON. JOHN M. TOMBERLIN, JUDGE

4 ***oOo***

5 APPEARANCES:

6 For THE PEOPLE OF THE STATE OF

7 CALIFORNIA, TIMOTHY HASKELL, Deputy

8 District Attorney;

9 The defendant present with his

10 counsel, WILLIAM FIGUEROA, Deputy

11 Public Defender.

12 (Kellie L. Moss, Official Reporter,

13 C.S.R., 10796)

14 ***oOo***

15 THE COURT: Good afternoon, ladies and gentlemen.

16 We are back on the record in the case of the People of
17 the State of California versus Mabon James.

18 Mr. James is here with his attorney,
19 William Figueroa. Timothy Haskell is here for the
20 People.

21 Ladies and gentlemen, we have some things
22 to attend to of kind of a paperwork issue, if you will.
23 And this is something that we have just learned of and is
24 going to affect our scheduling. I'll tell you about that
25 in just a minute.

26 I believe you have a motion, Mr. Haskell;
27 is that correct?

28 MR. HASKELL: Yes, your Honor. At this time, the

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1 People would be dismissing Counts 3 and 4, and the
2 special allegation as to Count 1. After listening to the
3 evidence in this case, there's insufficient evidence for
4 those counts. We will be proceeding on the other counts,
5 however, and we look forward to presenting those to you
6 in our closing.

7 THE COURT: Okay. And you have no objection?

8 MR. FIGUEROA: No, your Honor. No objection for
9 the record.

10 THE COURT: Okay. So let me explain quickly.
11 Remember I told you the attorneys are never witnesses.
12 They tell you what they think the evidence is going to
13 show, and the assault with the knife as alleged to
14 Ms. Parfeta -- is that her name?

15 MR. FIGUEROA: Yes.

16 MR. HASKELL: Yes.

17 THE COURT: It's down here somewhere. She
18 testified she didn't see the knife. So that's the reason
19 why we are not going to be sending that count to you.
20 This is requiring me to make some changes in the packet
21 of instructions that I was going to be reading to you.

22 And that means that I've got some things
23 that I've got to do before I can start reading the
24 instructions. So I didn't want to leave you sitting out
25 there in the hall waiting while I do this work. I'm
26 going to ask you to come back -- I'm going to say I hope
27 I can get this all done in 45 minutes so that I can read
28 the instructions to you.

1 We will only be here, about I'm going to
2 guess, a half hour this afternoon for that. And then the
3 attorneys are going to have an opportunity to give you
4 their final arguments, and you'll begin deliberations
5 tomorrow morning. All right? So I wanted you to know
6 where we are and what we are doing.

7 That means that once again, I'll have to
8 admonish you, it's your duty not to converse among
9 yourselves or with anyone else on any matter connected
10 with this case, nor form or express an opinion on it
11 until it's submitted to you.

12 You know, I always try to get more into
13 the amount of time I allow myself, and I seem to be
14 successful at doing so. I said 2:30. I'm going to say
15 come back at 2:45. That's 55 minutes. I believe that
16 will be an abundance, that will be plenty of time for us;
17 okay?

18 So rather than having you wait in the
19 hall, that means you can either walk around somewhere
20 else, or go and come back, whatever you choose, but 2:45,

21 we will take up the instructions. Thank you.

22 (Whereupon the following
23 proceedings were held out of the
24 presence of the jury.)

25 THE COURT: Now, so I granted the motion. I'm
26 granting the motion to dismiss the allegation of use of a
27 deadly or dangerous weapon as to Count 1.

28 MR. HASKELL: Yes.

1 THE COURT: Now, I'm going to ask you now, what's
2 this story about the assault with a deadly weapon as to
3 count -- as to Ms. Smith? You don't want that charge?

4 MR. HASKELL: No. I said Counts 3 and 4, and the
5 special allegation as to Count 1.

6 THE COURT: Count 3 is the assault with a deadly
7 weapon as to Ms. Smith; right?

8 MR. HASKELL: Yes.

9 THE COURT: And you want to dismiss that?

10 MR. HASKELL: Yes.

11 THE COURT: Okay. Just so you'll know, I think
12 that it's arguable. There could have been evidence of
13 that, but it doesn't matter. That's your motion. It's
14 your case, and those are granted.

15 MR. HASKELL: Thank you.

16 THE COURT: Mr. Figueroa, I gave you my case.

17 MR. FIGUEROA: Yes. I have it, your Honor. If I
18 may.

19 THE COURT: If you don't mind giving it back.

20 MR. FIGUEROA: May I approach, your Honor?

21 THE COURT: You sure may. This was a discussion
22 now that we are going to have about -- I invited everyone
23 to do some research and give me whatever they wanted to
24 say as to whether or not I should give a lesser included
25 offense as to Counts 1 and 2, the charge of robbery.

26 MR. FIGUEROA: Correct.

27 THE COURT: And so I know that you want to have
28 me do that. You mentioned you wanted me to give theft as

1 a lesser included offense.

2 MR. FIGUEROA: Correct, your Honor.

3 THE COURT: And I want to tell you what I've
4 done, my research. I've come across a case called People
5 versus Cooksey. People versus Cooksey is found at 95
6 Cal.App 4th, 1407. It's a 2002 case. In the Cooksey
7 case, the facts are -- and I should indicate that Cooksey
8 -- it's not like I used some great extensive research
9 techniques. It's contained right in the use note
10 contained on the robbery. Instruction 1600, I think, or
11 whatever that is.

12 In the Cooksey case, there's a lot of
13 discussion by the way on presentence credits, which we
14 don't have to waste our time with. The facts that we are
15 going on is that Ms. Vasquez purchased a newspaper.
16 Defendant ran toward her, grabbed her with both hands,
17 tried to take the small purse that Ms. Vasquez carried.

18 Ms. Vasquez struggled with the defendant
19 for approximately two minutes. She was scared. She
20 screamed and cried. Defendant ran away. One of the
21 people observing this as a witness testified that she saw
22 Ms. Vasquez tussling with the defendant. And in that
23 case, the defense asked for a lesser included of theft,
24 and the trial court declined to give the lesser included
25 of theft.

26 That portion of the trial was upheld. As
27 I said, there was a modification of the judgment with
28 respect to some presentence custody credits. But in this

1 case, the Court of Appeal, in upholding the decision not
2 to give the lesser included, said in part, grand theft
3 person, depending on the facts, can be a lesser included
4 offense of robbery.

5 They then go into an analysis of what I
6 think seems to be the leading cases on this issue. They
7 talk about the case of People versus Roberts. People
8 versus Roberts case is a woman who's having a nice time
9 at the Hollywood Park Race Track, which I understand is
10 either now defunct or soon to be no longer an operating
11 race track. Someone ran up from behind her, pulled her
12 purse down with such force that it --

13 MR. FIGUEROA: Knocked her to the ground.

14 THE COURT: It broke the strap, and ran off. And
15 the determination -- the fact is that the Roberts case
16 apparently was disapproved on other grounds. And in
17 dicta, according to the Cooksey case, the Roberts case
18 said certainly evidence that the purse was grabbed with
19 such force that the handle broke supports the jury
20 implied finding that such force existed.

21 The Court of Appeals said that if the case
22 were to be retried, that the facts of the crime, no
23 matter how remote the possibility would be, the jury
24 could possibly come to a conclusion there was a lesser
25 included of just grand theft person rather than robbery.

26 So the issue they talked about, first of
27 all, Roberts doesn't give us an answer. It's dicta.
28 Wasn't an actual decision that it was based with. That

1 decision was cited by the Morales court. Excuse me. I
2 don't want to get this wrong. I said that that decision
3 was decided by the Morales court.

4 Roberts was a 1976 case. Excuse me. The
5 Morales case was decided in 1975. So I guess Roberts
6 relies on Morales. And Morales, we have a woman who's 79
7 years old, and she's walking with her -- with I guess her
8 daughter walking down a residential street in Anaheim.

9 Defendant passed by the two ladies in the
10 opposite direction. He then turned and approached
11 Ms. Smith from behind, grabbed her purse, then fled down
12 the street. A witness was standing across the street,
13 testified the defendant pushed Ms. Smith as he sees the
14 purse.

15 Ms. Smith fell to the ground suffering a
16 dislocation and fracture of her elbow. She's 79 years
17 old, and she was hospitalized for three days. There was
18 minor surgery performed on her elbow. And the Court
19 said, "We think that the evidence in this case left
20 sufficiently open the question of whether the element of

21 force was present so as to entitle the defendant to have
22 the jury consider the matter.

23 "The witness' distance from the event, her
24 preoccupation with other matters, her inability to
25 remember details, and the fact that the victim fell
26 backwards, all arguably cast doubt about the accuracy of
27 her testimony that the defendant deliberately pushed the
28 victim."

1 So they are asking whether or not, in
2 fact, it's possible that there wasn't force that caused
3 the victim to fall down and suffer these injuries, they
4 said. But it is also plausible that she was startled and
5 lost her balance, or that she fell in an attempt to turn
6 and catch a glimpse of the culprit.

7 So as I look at the -- reading of these
8 cases, the issue is whether or not there was force, or,
9 as I said, in the Morales case, whether or not just this
10 woman was disoriented, excited, confused, and turned the
11 wrong way, and fell and broke her elbow. The issue is
12 whether or not she was even pushed at all by the
13 defendant.

14 In this case, there's no -- I don't see
15 where the question of force is raised, or the lack of
16 force is raised. What facts are there in this case? And
17 again, in the Cooksey case, quote, the Cooksey Court,
18 "There's no deficiency with regard to the prosecution's
19 theory of the case, and the evidence in which the jury
20 could find on the lesser included."

21 So the Cooksey case was well aware of
22 those cases that I talked about, Roberts and Morales, and
23 yet, they said in the Cooksey case, that there was
24 evidence that, you know, force was used, and there was no
25 sufficient reason to conclude that the presence of force
26 wasn't a factor to just have it be a straight theft.

27 MR. FIGUEROA: I agree with the Court a hundred
28 percent, your Honor. The distinction between Cooksey and

1 Roberts is both of those cases, and in particular
2 Cooksey, the Court explicitly stated that the theft was
3 completed by use of force. It was concurrent to the
4 theft. Something was taken from someone without their
5 consent or permission, but by the use of force. That
6 happened at the same time.

7 I believe in the Roberts case, the Court
8 ruled because if they believe the version of the witness,
9 he pulled the purse off her with such force, it broke the
10 strap. Again, the theft was completed by the use of
11 force.

12 In the case we have here with Mr. James,
13 the theft was completed outside the presence of either of
14 the victim. Both Ms. Parfeta and Ms. Smith said they
15 personally did not see Mr. James go into her purse and
16 take the items.

17 The force was used sometime after that.
18 So because of that distinction, I think I have a couple
19 cases that say if the facts would support a theft of
20 person inside the robbery charge, that the lesser should
21 be given.

22 THE COURT: Okay. So I want to hear what those
23 cases are, but just one second because what I've done is
24 I put down my instruction. I'm going to go get my
25 instructions on the subject.

26 MR. FIGUEROA: It would be easier for me to
27 approach and give you what I have on those cases.

28 THE COURT: Sure. Give me the book also, please.

1 Thank you. Well, we certainly are all familiar with
2 hornbook law on robbery. And we know that robbery is a
3 crime that is ongoing until the person, who is the
4 alleged robber -- I shouldn't say "the alleged robber"
5 because we are talking about a case as opposed to
6 Mr. James.

7 But until the person, who is the robber,
8 reaches a place of relative safety, the robbery is
9 ongoing. I know that there are cases that talk about
10 attenuation. I believe that is something we discussed,
11 at least informally in chambers. So attenuation does
12 play a part.

13 But just like in the case of People versus
14 Estes, we are all familiar. We use the term now Estes
15 robbery in our regular daily parlance in resolving cases.
16 We have the support for the notion that the application
17 of force or fear may be used when taking the property.

18 It's not as far as getting out of the car
19 or carrying it away, which is why a person can be guilty
20 of felony murder when he or she is driving a getaway car

21 away from a robbery of a bank, runs into another car, and
22 someone gets killed. That that person, if the robber
23 hasn't reached a place of safe haven, that's an ongoing
24 robbery.

25 Now, as far as -- I see this one case that
26 you handed me. It's the Ramkesoon (phonetic) case. And
27 does that just stand for the -- it stands for the premise
28 that the Court should instruct on theft as a lesser

1 included if the evidence so warrants?

2 I will say right up front, absolutely
3 that's true. We all agree with that. It's right in the
4 Cooksey case. I already read into the record the fact
5 that Cooksey says that it can be, and so I don't think
6 there's any doubt about that. I don't see any recitation
7 of the facts on Ramkesoon where it says why the lesser
8 included should be included there. But let me just look
9 at your other cases here.

10 Right. I'm reading the cases, and I
11 appreciate what you've given me. There's an interesting
12 case. I think that this is an interesting case. People
13 versus Reeds (phonetic) where the defendant went into the
14 sleeping woman's home, took the jewelry box, put it in
15 the living room, and then goes in and assaults the woman
16 who is in bed asleep, and he's on top of her. Since
17 there's sounds of sirens, he runs away. So he used force
18 against her, and there's a struggle.

19 But she's not struggling to protect her
20 property. She's not struggling in such a way as to

21 attempt to resist his taking the property and running.
22 She's struggling to resist the assault.

23 MR. FIGUEROA: Right.

24 THE COURT: In this case, there's -- and the
25 conclusions that even -- if I may, I'm looking at your
26 own memo -- says, you know, person walks into a bank
27 threatening with a gun. You don't have to give the
28 lesser related because it's obvious.

1 MR. FIGUEROA: Right.

2 THE COURT: There's a use of force. Then where
3 the cases find that there could have been some other
4 basis for the assault then later on -- of course, we all
5 know if you want to shoot somebody and you do shoot them
6 while they are on the ground and you notice, "Hey, that's
7 a nice watch that guy is wearing," and you then take that
8 person's watch and you leave, that's not a robbery. It's
9 a theft.

10 But in this case, there's no -- I'm
11 looking for some articulable reasonable inference that is
12 in the evidence, Mr. Figueroa, that says that force
13 wasn't used to effectuate this robbery. In other words,
14 if the evidence that we've been given is believable,
15 there's definitely force used to accomplish the taking
16 and the keeping of the property.

17 MR. FIGUEROA: Correct.

18 THE COURT: I don't know. Again, I don't know of
19 a case where that says that you have to give the lesser
20 included. But, you know, again, I would much rather make

21 a mistake of giving the lesser included if I thought
22 there was any justification for it. I frankly am not
23 seeing in terms of finding where the jury could conclude
24 that this was something other than a robbery.

25 MR. FIGUEROA: Well, under the Court's analysis,
26 I concur. I'm asking for the theft just based on the
27 fact that the theft and the force weren't concurrent, and
28 that's the elements. But I agree with the Court's

1 analysis that per Estes, in Estes, he stole a fur coat
2 from a vendor, was running down the street.

3 He tried to stop him. He then pulled a
4 knife which prevented them from getting the fur coat
5 back. We can analogize to the facts in this case and
6 that it is similar. Although, it wasn't used
7 concurrently to steal the items. It was used to complete
8 the crimes. Just because of that subtle distinction, I
9 felt, for the record, I needed to submit theft as a
10 lesser, and submit on the Court's ruling.

11 THE COURT: Mr. Haskell, what do you have to say
12 on the subject?

13 MR. HASKELL: I had another point to bring up.
14 487(c) -- actually (3)(c) seems to indicate that one of
15 the elements of 487(c) is when the property is taken from
16 a person of another.

17 In this particular case, the case we heard
18 the evidence on here today, the property actually wasn't
19 taken from either person. It was taken from the vehicle
20 within the immediate presence, within the possession, but

21 not from the person. So in this particular case, I
22 wouldn't say that 487(c) applies at all.

23 THE COURT: Okay. So forget 487(c). How about
24 487?

25 MR. HASKELL: I don't think it's a grand theft.

26 THE COURT: How about 488?

27 MR. HASKELL: I mean, again, used force to
28 effectuate the theft. So --

1 THE COURT: Well, you see, when you said, "I've
2 got something else to bring up," all you're saying is
3 that 487(c) doesn't apply. Okay, 487 doesn't apply. But
4 488 would be what Mr. Figueroa would, I think, counter
5 with.

6 MR. HASKELL: Well, again, you know, there's
7 been -- because of the force that's used in this case,
8 there's really no question that force has been used, and
9 it's been used against our victims to obtain this
10 property. So I wouldn't say that 488 would be either.

11 THE COURT: To obtain the property? No. No.
12 Force was used to retain the property and to effect the
13 getaway from the scene where the crime I believe was
14 ongoing. I don't think there's any evidence that somehow
15 someone had reached a safe haven.

16 You look at the -- Ms. Parfeta says, "Give
17 us back that property," and gets socked in the mouth for
18 her trouble. There's no -- I don't see how there's any
19 attenuation there.

20 MR. FIGUEROA: Submit, your Honor.

21 THE COURT: I guess what I'm saying is, I'm
22 looking for any reason to give it rather than to have
23 somebody say later on that I should of because it's so
24 easy to plug it in. But I'm going to go back to this,
25 how confusing this is starting to become.

26 I see that there's allegations of many
27 prior offenses by Mr. James. Does he have prior
28 convictions that would qualify him that a petty theft

1 would be a felony?

2 MR. FIGUEROA: I think he does.

3 MR. HASKELL: Probably.

4 MR. FIGUEROA: I think he does, your Honor. I
5 think with the strike.

6 THE COURT: Yeah. Does that do it?

7 MR. FIGUEROA: In and of itself -- or res
8 burglary in and of itself precludes the other two
9 convictions. I think a strike or a residential burglary,
10 that is enough to make a petty theft a felony. For the
11 Court's analysis, it's three prior theft convictions or a
12 certain felony. And I believe robbery is one of those
13 qualifying felonies.

14 MR. HASKELL: I think it's beyond the fact of --
15 we already bifurcated this trial. There's been no
16 admission to any of the prior felonies, and the case is
17 closed at this point.

18 THE COURT: The case is what?

19 MR. HASKELL: The evidence is closed in this
20 case.

21 THE COURT: Well, the evidence is closed, but --
22 I mean, I can bifurcate the issues. We already
23 bifurcated the issues anyway. I can just give this petty
24 theft but bifurcate the issue of whether or not it's
25 petty theft with a prior. I can just define it as petty
26 theft.

27 Mr. James can make a decision later on
28 because I believe there's authority in the law for

1 someone who has a 666 to have a trial as a petty theft,
2 and then have the jury later make a determination as to
3 whether or not it's, indeed, a 666.

4 I think the law provides for that. Don't
5 you think so too, Mr. Haskell?

6 MR. HASKELL: Well, I've never handled a case
7 like that myself.

8 THE COURT: I believe I have. I believe I was
9 surprised when that was presented to me, but that's what
10 the law allows. It's fairly -- I think it's fairly
11 recent law.

12 MR. FIGUEROA: Yes.

13 THE COURT: That said that it could be done that
14 way. But see, again, I could have read this instruction
15 a hundred times during the amount of time I've spent
16 thinking and we've been discussing it. I could ask that
17 Ms. Eickhoff just include 1800. It would be real simple
18 to put it in.

19 I mean, this is not something that would
20 be a problem for me to give, and it's not going to be

21 something that's going to be a problem for you,
22 Mr. Haskell because I don't think there's any question
23 about the fact that you've shown sufficient evidence to
24 define that there was force used.

25 But Mr. Figueroa, I'm sorry to keep going
26 back to you.

27 MR. FIGUEROA: No.

28 THE COURT: Will you articulate for me how there

1 could be the crime of theft here but not robbery?

2 MR. FIGUEROA: It would mainly deal with the
3 attenuation issue, your Honor. Arguments would be the
4 items were removed from the car. Neither Parfeta or
5 Smith were present. Some time passed by. Then there was
6 an assault where Mr. James allegedly struck Ms. Parfeta.

7 So my argument would be that the theft was
8 an independent and separate act of the assault. But I
9 don't think -- I think the case law on attenuation was
10 clear. That Ms. Parfeta said it was right away that she
11 noticed Mr. James had the cigarettes in his hand, so the
12 attenuation issue would be a problem for me in that
13 argument.

14 That was why, as to Counts 3 and 4, I was
15 asking for the misdemeanor battery because that was my
16 intention to say that there were two independent acts.
17 There was the act of Mr. James taking the stuff from the
18 purse with neither person there, and then there was a
19 separate act of an assault against Ms. Parfeta, and more
20 time attenuated with the assault on Ms. Smith.

21 But I cannot in good faith argue that
22 because of the case law in attenuation. I do believe the
23 assault was instantaneous to her noticing something
24 happen, or that the theft occurred. So for the record, I
25 appreciate the chance to articulate that, but I'm not
26 going to make the argument. One, in light that 3 and 4
27 is dismissed, and case law is not in my favor in
28 attenuation.

1 THE COURT: Okay. And I'm satisfied. And I
2 appreciate you all giving me your thoughts on it. I hate
3 to spend so much time on it, but it's a very, very
4 important point.

5 MR. FIGUEROA: Right. And I agree.

6 THE COURT: I wanted to give it due
7 consideration. And I think we have given it due
8 consideration. I've Shepardized it. I'm confident that
9 Cooksey is valid, up-to-date. I agree with Cooksey. I
10 agree with the cases that you've cited to me,
11 Mr. Figueroa, that grand theft or grand theft person can
12 be lesser included offenses depending on the facts that
13 are presented.

14 But I don't find a plausible scenario
15 presented in this particular case that lends itself to an
16 interpretation of the facts that there was force used,
17 but that the force used was not in relationship and in
18 the context of keeping the property of another if it was
19 obtained.

20 Now, don't get me wrong, you know. Maybe
21 this property was given and then --

22 MR. FIGUEROA: Correct.

23 THE COURT: -- and then Mr. James was insulted or
24 something else, and popped somebody in the jaw.

25 MR. FIGUEROA: Correct.

26 THE COURT: I'm not saying that didn't happen,
27 but that wouldn't be a theft. So that, again, I can't
28 think of what the circumstances of the theft would be

1 that don't include the use of the force if, in fact,
2 there was a theft.

3 MR. FIGUEROA: Submit, your Honor. Thank you
4 very much.

5 THE COURT: Thank you very much. And now, we had
6 just been given a copy of a draft of the instructions.
7 For the record, we have changed 252 to comport with the
8 new -- you have provided me with a new Information;
9 right?

10 MR. HASKELL: Yes, your Honor. However, it does
11 still -- I believe the latest Information provided it
12 does still contain the special allegation as to Count 1,
13 which I've dismissed. I don't know if we can just cross
14 that off, or if you want an entirely new Information
15 which would take some more time.

16 THE COURT: The second amended Information, Count
17 1, and it's the bottom of page 3. Let's see. Do you
18 state it elsewhere in here? Is that the only time you
19 mention the knife?

20 MR. HASKELL: In every allegation of the knife,
21 it says, "It's further alleged as to Counts 1, 2 and 5."
22 That should only reflect 2 and 5 now, I believe.

23 MR. FIGUEROA: Oh, correct.

24 THE COURT: You do have it included. So I can
25 simply, by interlineation, strike the paragraph at the
26 bottom of page 3, and it goes to the top of page 4.

27 And that's what you're moving for me to
28 do?

1 MR. HASKELL: Yes.

2 THE COURT: Amending by interlineation. The
3 first two lines also are being stricken on page 4. On
4 page 5, it says, "It's further alleged as to Counts 1, 2
5 and 5." I'm striking the "1" and the comma. On page 6,
6 in the first full paragraph on page 6, it says, "It's
7 further alleged as to Counts 1, 2 and 5." I'm striking
8 the "1" and the comma.

9 MR. HASKELL: Yes.

10 THE COURT: Otherwise, the Information is in
11 order.

12 MR. FIGUEROA: Yes, your Honor. I would submit.

13 THE COURT: And you waive further formal
14 arraignment, advisal of rights?

15 MR. FIGUEROA: Yes, your Honor.

16 THE COURT: Enter pleas of not guilty, deny any
17 and all special allegations as to the second amended
18 Information?

19 MR. FIGUEROA: Yes, your Honor.

20 THE COURT: Okay. Thank you. So 252 now is in

21 proper form. No one gave me any information how to
22 properly fill out 2622 and 2623. So once again, I've
23 done your work for you, Mr. Haskell. Do you think I
24 should have done it differently? There were several
25 options.

26 MR. HASKELL: I apologize, your Honor.

27 THE COURT: You don't have to apologize. I
28 didn't ask you these questions. I should have asked you

1 the questions when we were going over it, but you were
2 off doing something else, like eating lunch probably
3 while I was slaving at my desk.

4 MR. HASKELL: I can confirm to the Court I was
5 slaving as well. These look to be fine, your Honor.

6 MR. FIGUEROA: Yeah, submit, your Honor. They
7 both appear fine.

8 THE COURT: That's the form that I've used.
9 There were options that could have been used. I think I
10 picked up the appropriate options. One of the
11 questions -- honestly, I'll tell you. I looked at the
12 Penal Code 2633. I'm not sure that you need to have
13 "maliciously" and "use force." I don't know that it's
14 required. But that's the way it's worded. So you are
15 going to have to just live with that unless you want me
16 to try to change it.

17 MR. HASKELL: That's fine, your Honor.

18 MR. FIGUEROA: Submit.

19 THE COURT: Okay. Then let's go to the rest of
20 it.

21 Do you have the copies now? Ms. Eickhoff
22 handed everybody 11 pages.

23 MR. FIGUEROA: Yes.

24 MR. HASKELL: Yes.

25 THE COURT: I think these are in the acceptable
26 form.

27 MR. HASKELL: Just to confirm, your Honor. Count
28 1 is staying on the PowerPoint. It's just the special

1 allegation taken off.

2 THE COURT: All right. Have we ended our
3 discussions so that everyone understands what I'm going
4 to instruct on now?

5 MR. FIGUEROA: Yes, your Honor.

6 MR. HASKELL: Yes.

7 THE COURT: Other than obviously your request for
8 a theft lesser -- which we are not going to spend more
9 time on. You've asked for it. I've denied it -- is
10 there anything else anybody has in the way of an
11 objection to lodge?

12 MR. FIGUEROA: No, your Honor.

13 MR. HASKELL: No, your Honor.

14 THE COURT: All right. Take a break. 15
15 minutes. We are going to bring in the jury, and I'm
16 going to read them the instructions. See everybody back
17 in 15 minutes.

18 MR. FIGUEROA: Thank you very much, your Honor.
19 Thank you, Mr. Haskell.

20 (Recess.)

21 (Whereupon the following
22 proceedings were held in the
23 presence of the jury.)

24 THE COURT: Okay. As usual, we are right on
25 time. 2:45.

26 Ladies and gentlemen, I'm going to invite
27 everyone to put their books -- what I was going to say
28 is, you can put your books and pencils down because I'm

1 going to read the instructions to you. And I'm going to
2 also use a PowerPoint. I am going to be flashing it up
3 there for you. I'm of the opinion that to read something
4 while you're listening will just about double your
5 comprehension of the material that you are getting.

6 So the only thing better would be if you
7 were writing it along with me, but that would be awfully
8 hard for you to do since it takes a trained professional,
9 like Ms. Moss. You'll see her busily working through the
10 entire time that I'm reading these instructions. Okay.
11 So here we go.

12 By the way, I have actually read that it
13 is well understood, and people that do this kind of
14 research, that reading things more slowly does not
15 increase comprehension. So I will be going at a rather
16 rapid clip, which is a conversational clip, which is the
17 way we usually take in information. And that is the way
18 we absorb it best. So with that in mind, here we go.

19 "Members of the jury, I will now
20 instruct you on the law that applies to

21 this case. I will give you a copy of
22 the instructions to use in the jury
23 room. You must decide what the facts
24 are. It is up to all of you, and you
25 alone, to decide what happened based
26 only on the evidence that has been
27 presented to you in this trial.

28 "Do not let bias, sympathy,

1 prejudice, or public opinion influence
2 your decision. Bias includes, but is
3 not limited to, bias for or against the
4 witnesses, the attorney, the defendant,
5 or alleged victim based on disability,
6 gender, nationality, national origin,
7 race or ethnicity, religion, gender
8 identity, sexual orientation, age, or
9 socioeconomic status.

10 "You must follow the law as I
11 explain it to you even if you disagree
12 with it. If you believe that the
13 attorneys' comments on the law conflict
14 with my instructions, you must follow
15 my instructions.

16 "Pay careful attention to all
17 these instructions and consider them
18 together. If I repeat any instruction
19 or idea, do not conclude that it is
20 more important than any other

21 instruction or idea just because I
22 repeated it.

23 "Some words or phrases used
24 during this trial have legal meanings
25 that are different than their meanings
26 in everyday use. These words and
27 phrases will be specifically defined in
28 these instructions. Please be sure to

1 listen carefully and follow the
2 definitions that I give you.

3 "Words and phrases not
4 specifically defined in these
5 instructions are to be applied using
6 their ordinary everyday meaning.

7 "Some of these instructions may
8 not apply depending on your findings
9 about the facts of the case. Do not
10 assume just because I give you a
11 particular instruction, that I am
12 suggesting anything about the facts.

13 "After you have decided what the
14 facts are, follow the instructions that
15 do apply to the facts as you find them.

16 "Do not use the Internet in any
17 way in connection with this case,
18 either on your own or as a group. Do
19 not investigate the facts or the law or
20 do any research regarding this case,
21 either on your own or as a group.

22 "Do not conduct any tests or
23 experiments or visit the scene at any
24 event involved in this case. If you
25 happen to pass by the scene, do not
26 stop or investigate.

27 "You have been given notebooks
28 and may have taken notes during the

1 trial. You may use your notes during
2 deliberations. Your notes are for your
3 own individual use to help you remember
4 what happened during the trial.

5 "Please keep in mind your notes
6 may be inaccurate or incomplete. If
7 there's a disagreement about the
8 testimony at trial, you may ask that
9 the court reporter's record be read to
10 you. It is the record that must guide
11 your deliberations, not your notes.

12 "You must accept the court
13 reporter's record as accurate. Please
14 do not remove any notes from the jury
15 room. At the end of the trial, your
16 notes will be collected and destroyed.

17 "Counts 3 and 4 charging the
18 defendant with assault with a knife no
19 longer needs to be decided in this
20 case. Do not speculate about or

21 consider in any way why you no longer
22 need to decide this count.

23 "The fact that a criminal charge
24 has been filed against the defendant is
25 not evidence that the charge is true.
26 You must not be biased against the
27 defendant just because he has been
28 arrested, charged with a crime, or

1 brought to trial.

2 "A defendant in a criminal case
3 is presumed to be innocent. This
4 presumption requires that the People
5 prove a defendant guilty beyond a
6 reasonable doubt. Whenever I tell you
7 the People must prove something, I mean
8 they must prove it beyond a reasonable
9 doubt unless I specifically tell you
10 otherwise.

11 "Proof beyond a reasonable doubt
12 is proof that leaves you with an
13 abiding conviction that the charge is
14 true. The evidence need not eliminate
15 all possible doubt because everything
16 in life is open to some possible or
17 imaginary doubt.

18 "In deciding whether the People
19 have proved their case beyond a
20 reasonable doubt, you must impartially
21 compare and consider all the evidence
22 that was received throughout the entire
23 trial. Unless the evidence proves the
24 defendant guilty beyond a reasonable
25 doubt, he is entitled to an acquittal,
26 and you must find him not guilty.

27 "Evidence is the sworn testimony
28 of witnesses, the exhibits admitted

1 into evidence, and anything else I told
2 you to consider as evidence.

3 "Nothing that the attorneys say
4 is evidence. In their opening
5 statements and closing arguments, the
6 attorneys discussed the case, but their
7 remarks are not evidence. Their
8 questions are not evidence. Only the
9 witnesses' answers are evidence.

10 "The attorneys' questions are
11 significant only if they helped you to
12 understand the witnesses' answers. Do
13 not assume that something is true just
14 because one of the attorneys asked a
15 question that suggested it was true.

16 "During the trial, the attorneys
17 may have objected to questions or moved
18 to strike answers given by the
19 witnesses. I ruled on the objections
20 according to the law.

21 "If I sustained an objection,
22 you must ignore the question. If the
23 witness was not permitted to answer, do
24 not guess what the answer might have
25 been or why I ruled as I did.

26 "If I ordered testimony stricken
27 from the record, you must disregard it
28 and must not consider that testimony

1 for any purpose.

2 "You must disregard anything you
3 saw or heard when the Court was not in
4 session, even if it was done or said by
5 one of the parties or witnesses.

6 "The court reporter has made a
7 record of everything that was said
8 during the trial. If you decide that
9 it is necessary, you may ask the court
10 reporter's record be read to you. You
11 must accept the court reporter's record
12 as accurate.

13 "Facts may be proved by direct
14 or circumstantial evidence, or by a
15 combination of both. Direct evidence
16 can prove a fact by itself. For
17 example, if a witness testifies he saw
18 it raining outside before he came into
19 the courthouse, that testimony is
20 direct evidence that it was raining.

21 "Circumstantial evidence also
22 may be called indirect evidence.
23 Circumstantial evidence does not
24 directly prove the fact to be decided,
25 but is evidence of another fact or a
26 group of facts from which you may
27 logically and reasonably conclude the
28 truth of the fact in question.

1 "For example, if a witness
2 testifies that he saw someone come
3 inside wearing a raincoat covered with
4 drops of water, that testimony is
5 circumstantial evidence because it may
6 support a conclusion that it was
7 raining outside.

8 "Both direct and circumstantial
9 evidence are acceptable types of
10 evidence to prove or disprove the
11 elements of a charge, including intent
12 and mental state and acts necessary to
13 a conviction, and neither is
14 necessarily more reliable than the
15 other. Neither is entitled to any
16 greater weight than the other. You
17 must decide whether a fact in issue has
18 been proved based on all the evidence.

19 "Before you may rely on
20 circumstantial evidence to conclude
21 that a fact necessary to find the
22 defendant guilty has been proved, you
23 must be convinced that the People have
24 proved each fact essential to that
25 conclusion beyond a reasonable doubt.

26 "Also, before you may rely on
27 circumstantial evidence to find the
28 defendant guilty, you must be convinced

1 that the only reasonable conclusion
2 supported by the circumstantial
3 evidence is that the defendant is
4 guilty.

5 "If you can draw two or more
6 reasonable conclusions from the
7 circumstantial evidence and one of
8 those reasonable conclusions points to
9 innocence and another to guilt, you
10 must accept the one that points to
11 innocence.

12 "However, when considering
13 circumstantial evidence, you must
14 accept only reasonable conclusions and
15 reject any that are unreasonable.

16 "You alone must judge the
17 credibility or believability of the
18 witnesses. In deciding whether
19 testimony is true and accurate, use
20 your common sense and experience.

21 "You must judge the testimony of
22 each witness by the same standards
23 setting aside any bias or prejudice you
24 may have. You may believe all, part,
25 or none of any witness's testimony.
26 Consider the testimony of each witness
27 and decide how much of it you believe.

28 "In evaluating a witness's

1 testimony, you may consider anything
2 that reasonably tends to prove or
3 disprove the truth or accuracy of that
4 testimony. Among the factors that you
5 may consider are:

6 "How well could the witness see,
7 hear, or otherwise perceive the things
8 about which the witness testified?

9 "How well was the witness able
10 to remember and describe what happened?

11 "What was the witness's behavior
12 while testifying?

13 "Did the witness understand the
14 questions and answer them directly?

15 "Was the witness's testimony
16 influenced by a factor such as bias or
17 prejudice, a personal relationship with
18 someone involved in the case, or a
19 personal interest in how the case is
20 decided?

21 "What was the witness's attitude
22 about the case or about testifying?

23 "Did the witness make a
24 statement in the past that is
25 consistent or inconsistent with his or
26 her testimony?

27 "How reasonable is the testimony
28 when you consider all the other

1 evidence in the case?

2 "Did other evidence prove or
3 disprove any fact about which the
4 witness testified?

5 "Do not automatically reject
6 testimony just because of
7 inconsistencies or conflicts. Consider
8 whether the differences are important
9 or not. People sometimes honestly
10 forget things or make mistakes about
11 what they remember. Also, two people
12 may witness the same event, yet see or
13 hear it differently.

14 "If you do not believe a
15 witness's testimony that he or she no
16 longer remembers something, that
17 testimony is inconsistent with the
18 witness's earlier statement on that
19 subject.

20 "If you decide that a witness
21 deliberately lied about something
22 significant in this case, you should
23 consider not believing anything that
24 witness says.

25 "Or if you think the witness
26 lied about some things but told the
27 truth about others, you may simply
28 accept the part that you think is true

1 and ignore the rest.

2 "The crimes and other
3 allegations charged in Counts 1, 2 and
4 5 require proof of the union, or joint
5 operation, of act and wrongful intent.
6 The following allegation requires
7 general criminal intent: Special
8 allegation: Use of a Deadly Weapon, to
9 wit, a knife, alleged as to Counts 2
10 and 5."

11 I hate those two words together, "to wit."
12 They shouldn't be included as far as I'm concerned in
13 anything that I'm asking you to understand because we've
14 all heard them, and I think we all think of them as
15 jokes.

16 "To wit" should be replaced in your minds,
17 whenever you see it, with the words "that is to say."
18 And I really think that we should remove it from our use
19 in modern language. But another way you could read that
20 is, Use of a Deadly Weapon, that is to say, a knife,
21 alleged as to Counts 2 and 5.

22 "For you to find the allegations
23 true, that person must not only commit
24 the prohibited act, but must do so with
25 wrongful intent.

26 "A person acts with wrongful
27 intent when he or she intentionally
28 does a prohibited act; however, it's

1 not required that he or she intend to
2 break the law. The act required is
3 explained in the instructions for that
4 crime or allegation.

5 "The following crimes require a
6 specific intent: Robbery as charged in
7 Counts 1 and 2, and Dissuading a
8 Witness from Reporting a Crime, as
9 charged in Count 5.

10 "For you to find a person guilty
11 of these crimes, that person must not
12 only intentionally commit the
13 prohibited act, but must do so with a
14 specific intent. The act and specific
15 intent required are explained in the
16 instruction for that crime.

17 "Neither side is required to
18 call all witnesses who may have
19 information about the case or to
20 produce all physical evidence that
21 might be relevant.

22 "The testimony of only one
23 witness can prove any fact. Before you
24 conclude that the testimony of one
25 witness proves a fact, you should
26 carefully review all the evidence.

27 "If you decide there's a
28 conflict in the evidence, you must

1 decide what evidence, if any, to
2 believe. Do not simply count the
3 number of witnesses who agree or
4 disagree on a point and accept the
5 testimony of the greater number of
6 witnesses.

7 "On the other hand, do not
8 disregard the testimony of any witness
9 without a reason or because of
10 prejudice or desire to favor one side
11 or the other. What is important is
12 whether the testimony or any other
13 evidence convinces you, not just the
14 number of witnesses who testify about a
15 certain point.

16 "You've heard evidence of a
17 statement that a witness made before
18 the trial. If you decide that the
19 witness made that statement, you may
20 use that statement in two ways:

21 "1. To evaluate whether the
22 witness's testimony in court is
23 believable;

24 "AND

25 "2. As evidence that the
26 information in that earlier statement
27 is true.

28 "Witnesses gave their opinions

1 during the trial. You may, but are not
2 required to, accept those opinions as
3 true or correct. You may give the
4 opinions whatever weight you think
5 appropriate.

6 "Consider the extent of the
7 witness's opportunity to perceive the
8 matters on which his or her opinion is
9 based, the reasons the witness gave for
10 any opinion, and the facts or
11 information on which the witness relied
12 in forming that opinion.

13 "You must decide whether
14 information on which the witness relied
15 was true and accurate. You may
16 disregard all or any part of an opinion
17 that you find unbelievable,
18 unreasonable or unsupported by the
19 evidence.

20 "A defendant has an absolute
21 constitutional right not to testify.
22 He or she may rely on the state of the
23 evidence and argue that the People have
24 failed to prove the charges beyond a
25 reasonable doubt.

26 "Do not consider for any reason
27 at all the fact that the defendant did
28 not testify. Do not discuss that fact

1 during your deliberations or let it
2 influence your decision in any way.

3 "The People are not required to
4 prove that the defendant had a motive
5 to commit any of the crimes charged.
6 In reaching your verdict, you may,
7 however, consider whether the defendant
8 had a motive.

9 "Having a motive may be a factor
10 tending to show that the defendant is
11 guilty. Not having a motive may be a
12 factor tending to show the defendant is
13 not guilty.

14 "If the defendant fled
15 immediately after the crime was
16 committed, that conduct may show that
17 he was aware of his guilt. If you
18 conclude that the defendant fled, it is
19 up to you to decide the meaning and
20 importance of that conduct. However,

21 evidence that the defendant fled cannot
22 prove guilt by itself.

23 "If you conclude that the
24 defendant knew he possessed property
25 and you conclude that the property had,
26 in fact, been recently stolen, you may
27 not convict the defendant on robbery
28 based on those facts alone.

1 "However, if you also find that
2 supporting evidence tends to prove his
3 guilt, then you may conclude that the
4 evidence is sufficient to prove he
5 committed robbery.

6 "The supporting evidence need
7 only be slight and need not be enough
8 by itself to prove guilt. You may
9 consider how, where and when the
10 defendant possessed the property, along
11 with any other relevant circumstances
12 tending to prove his guilt of robbery.

13 "Remember that you may not
14 convict the defendant of any crime
15 unless you are convinced that each fact
16 essential to the conclusion that the
17 defendant is guilty of that crime has
18 been proved beyond a reasonable doubt."

19 Okay. That last instruction was a little
20 bit more specific, starting to talk about robbery. Other
21 than that one, every instruction that I read to you so
22 far might have been used in just about any kind of a case
23 talking about general legal principals.

24 Now I'm going to get down to the specifics
25 of the charges and allegations in this case. I'm going
26 to read to you what is called, "The Statement of the
27 Offense." Okay. Well, I'll do it this way.

28 "The defendant is charged in

1 Count 1 with the crime of robbery of
2 Ms. Parfeta. The defendant is charged
3 in Count 2 with robbery of Ms. Smith.
4 The defendant is charged in Count 3
5 with dissuading a victim from reporting
6 a crime.

7 "The defendant is charged in
8 Counts 1 and 2 with robbery. To prove
9 that the defendant is guilty of this
10 crime, the People must prove that:"

11 And here are those elements that we talked
12 about.

13 "1. The defendant took property
14 that was not his own.

15 "2. The property was taken from
16 another person's possession and
17 immediate presence.

18 "3. The property was taken
19 against that person's will.

20 "4. The defendant used force or
21 fear to take the property or to prevent
22 the person from resisting.

23 "AND

24 "5. When the defendant used
25 force or fear to take the property, he
26 intended to deprive the owner of it
27 permanently.

28 "The defendant's intent to take

1 the property must have been formed
2 before or during the time he used force
3 or fear. If the defendant did not form
4 this required intent until after using
5 force or fear, then he did not commit
6 robbery.

7 "If you find the defendant
8 guilty of robbery, it is robbery of the
9 second degree. A person takes
10 something when he or she gains
11 possession of it and moves it some
12 distance. The distance moved may be
13 short.

14 "The property taken can be of
15 any value, however slight.

16 "Fear, as used here, means fear
17 of injury to the person himself or
18 herself.

19 "An act is done against a
20 person's will if that person does not

21 consent to the act. In order to
22 consent, a person must act freely and
23 voluntarily and know the nature of the
24 act.

25 "The defendant is charged in
26 Count 5 with intimidating a witness, in
27 violation of Penal Code Section 136.1.

28 "To prove that the defendant is

1 guilty of this crime, the People must
2 prove that:

3 "1. The defendant maliciously
4 tried to prevent Cassandra Smith from
5 making a report that she was the victim
6 of a crime to local law enforcement;

7 "2. Cassandra Smith was a crime
8 victim;

9 "AND

10 "3. The defendant knew he was
11 trying to prevent Cassandra Smith from
12 making a report to local law
13 enforcement and intended to do so.

14 "A person acts maliciously when
15 he or she unlawfully intends to annoy,
16 harm or injure someone else in any way,
17 or intends to interfere in any way with
18 the orderly administration of justice.

19 "A person is a victim if there's
20 reason to believe that a federal or

21 state crime is being or has been
22 committed or attempted against him or
23 her.

24 "It is not a defense that the
25 defendant was not successful in
26 preventing or discouraging the victim.

27 "It is not a defense that no one
28 was actually physically injured or

1 otherwise intimidated.

2 "If you find the defendant
3 guilty of intimidating a witness, you
4 must then decide whether the People
5 have proved the additional allegation
6 that the defendant acted maliciously
7 and used, or threatened to use, force.

8 "To prove these allegations, the
9 People must prove that:

10 "1. The defendant acted
11 maliciously;

12 "AND

13 "2. The defendant used force or
14 threatened either directly or
15 indirectly to use force or violence on
16 the person or property of a victim.

17 "A person acts maliciously when
18 he or she unlawfully tends to annoy,
19 harm or injure someone else in any way,
20 or intends to interfere in any way with

21 the orderly administration of justice.

22 "The People have the burden of
23 proving each allegation beyond a
24 reasonable doubt. If the People have
25 not met this burden, for any
26 allegation, you must find that the
27 allegation has not been proved.

28 "If you find a defendant guilty

1 of the crimes charged in Counts 2 and
2 5, you must then decide whether for
3 each crime the People have proved the
4 additional allegation that the
5 defendant was personally armed with a
6 deadly or dangerous weapon during the
7 commission of that crime."

8 Just give me one minute here. Okay. I'm
9 going to have Volume 2 here in front of me. I notice
10 this is the "Armed" allegation, and it should be the
11 "Use" allegation. This "Armed" allegation is not
12 appropriate.

13 Do we all agree with that?

14 MR. FIGUEROA: Yes, your Honor.

15 MR. HASKELL: Yes.

16 THE COURT: So here is where we are. I'm going
17 to say this. This was the last one I was going to read
18 to you today, and so ignore this one. This talks about
19 an "Armed" allegation which can apply in certain cases,
20 but that's not what is alleged in this case. This case,
21 it is a "Use" allegation.

22 So I'll talk about the possibilities of
23 how you can rule, or you can decide on the facts of this
24 case tomorrow. I'll give you the verdicts that you can
25 use, and all that will be done along with the
26 instructions. So we are going to take our recess today
27 so that someone can get to a class anyway.

28 JUROR: Thank you.

1 THE COURT: Even get homework done perhaps.

2 JUROR: Yes.

3 THE COURT: People walk in and want to get
4 something changed in their cases, and that happens a
5 little bit in the morning. We also have arraignments.
6 So I'm going to assume that we should be able to start
7 promptly at 9:00 a.m. I will give you the correct 3145,
8 the corrected allegation, then you'll hear the attorneys
9 argue, and then I will give you the possible verdicts and
10 your closing instructions. Then you'll begin to
11 deliberate sometime tomorrow morning.

12 So though you've heard almost all the law
13 that applies to the case, you haven't heard the arguments
14 yet. One more time I'm going to admonish you.

15 You're admonished, it is your duty not to
16 converse among yourselves or anyone else on any matter
17 connected with this case, nor form or express an opinion
18 on it until it's submitted to you.

19 See you tomorrow at 9:00 a.m. Have a nice
20 evening.

21 (Whereupon the following
22 proceedings were held out of the
23 presence of the jury.)

24 THE COURT: Okay. Counsel, the jury is gone now.

25 Did anybody else see a problem?

26 MR. FIGUEROA: Other than that?

27 THE COURT: Yeah. Okay. What is the way they
28 find the allegation true of 2623?

1 MR. FIGUEROA: If he's guilty then --

2 THE COURT: You see?

3 MR. FIGUEROA: Yeah.

4 THE COURT: 2622, was that the number?

5 MR. FIGUEROA: I believe so.

6 THE COURT: 2622 defines "Witness Dissuasion."

7 2623 reads:

8 "If you find the defendant
9 guilty of intimidating a witness, you
10 must then decide whether the People
11 have proved the additional allegation
12 that the defendant acted maliciously,
13 and used or threatened to use force."

14 So they need a verdict form for that.

15 MR. FIGUEROA: Right.

16 MR. HASKELL: A separate verdict form?

17 MR. FIGUEROA: Yeah.

18 THE COURT: How else do you do it?

19 MR. HASKELL: Okay. I can provide one.

20 THE COURT: I mean --

21 MR. FIGUEROA: I agree.

22 THE COURT: Remember, I told you that I looked at
23 this one, and I came up with this question of, do you
24 even need to have malice if you use force in threatening
25 or attempting to dissuade a witness?

26 MR. FIGUEROA: Correct.

27 THE COURT: So that's something I don't have any
28 problem going back and starting over on a couple of

1 instructions, and we need to have some form in which they
2 can make a determination of and a finding as to whether
3 they believe that Mr. James used force or not.

4 Again, I don't know what -- as long as
5 you're doing it, Mr. Haskell, you should look and make a
6 determination as to whether or not it's even appropriate
7 to include this "malicious," the word "malicious." And
8 it also raises the question now about 252 because I
9 explained that the use of a weapon is a general intent,
10 special allegation.

11 Now I have an allegation here of use of
12 force and/or malice, and we need to deal with that in
13 252. So I'm going to have to go back and add -- and I'm
14 not going to make a big deal about it.

15 I'm just going to say, you know, I'm going
16 to read 3145 as it's going to be changed. Then I'm going
17 to read to them that the allegation of "use of force," or
18 "malice and force," whichever one we are going to say it
19 is, and you're going to tell me tomorrow what that is.

20 And you're going to discuss it with
21 Mr. Figueroa before you do, so that when you tell me we
22 are all in agreement, hopefully, if I'm going to change
23 something, to remove "malice."

24 I'm not saying I'm going to, but you're
25 going to tell me if you think I should. And you should
26 talk to Mr. Figueroa so he understands if there's going
27 to be an agreement or disagreement, we can hammer it out
28 so the jury is not waiting. So this will be at 8:30 in

1 the morning we will talk about this.

2 Actually, I'd like you to answer this
3 question before you go home. I'd like you to answer this
4 question. Just send me an email this afternoon sometime
5 with and a copy to Mr. Figueroa so I can have, if
6 necessary, Ms. Eickhoff make the appropriate changes.

7 You should be able to make that decision
8 in about a half hour or so; right?

9 MR. HASKELL: Approximately that time, yeah.

10 THE COURT: So there's that. And I need a form,
11 as I said, for a finding on this 2623.

12 MR. HASKELL: Okay.

13 THE COURT: Again, it has to be the way that
14 these instructions read. You need to be able to say --
15 the jury has to be able to say that he's guilty of 2622.

16 MR. HASKELL: Okay.

17 THE COURT: And if they do, then there's going to
18 be a separate special allegation.

19 MR. HASKELL: Okay. I understand.

20 THE COURT: Thank you.

21 (Whereupon the proceedings
22 were adjourned and continued to
23 August 29, 2013.)

24 ***oOo***

25

26

27

28

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff/Respondent,) Superior Court

v.) No. FVI1301842

MABON DEMETRIC JAMES,)

Defendant/Appellant.)

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

HONORABLE JOHN M. TOMBERLIN, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

AUGUST 29, 2013; OCTOBER 18, 2013

Lodgment 1

Part 2 of 2

Mabon James v. Pramo

15-1956

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1 "The defendant, Mabon Demetric
2 James, is charged in Count 5 of the
3 Information with the special allegation
4 of personally using a deadly and
5 dangerous weapon, to wit, a knife."

6 Okay. That's what I wanted to do this
7 morning before the attorneys get a chance to give their
8 final arguments. You remember what I told you before,
9 what the attorneys say is not evidence. This is
10 argument. They are going to tell you how they think you
11 should interpret the evidence.

12 You heard what you should make of it. And
13 this is usually my favorite part of the trial, an
14 opportunity to get the insight they are going to bring to
15 it. They are both very intelligent, highly educated and
16 experienced lawyers.

17 We are going to hear from Mr. Haskell
18 first. After Mr. Haskell, we will hear from
19 Mr. Figueroa. And because Mr. Haskell has the burden of
20 proof, he will have the last word as well. He will have
21 an opportunity to give what is called rebuttal to the
22 things Mr. Figueroa has said. But he's not going to be
23 able to bring up things that Mr. Figueroa hasn't talked
24 about.

25 All right. Mr. Haskell, you may proceed.

26 MR. HASKELL: Thank you, your Honor.

27 Good morning, ladies and gentlemen of the
28 jury.

1 THE JURY: Good morning.

2 MR. HASKELL: The defendant in this case has a
3 right to a fair trial, and we provided him with that.

4 What has that trial revealed about this
5 particular case? Well, that trial reveals the defendant
6 was caught red handed with a cell phone that belonged to
7 the victim and was taken without her consent.

8 It revealed that the defendant was caught
9 red handed with the cigarettes that were taken from the
10 victim and were taken without consent. It proves again
11 that we caught the defendant red handed with other
12 personal items, including credit cards, including ID
13 cards that belonged to the victim and were taken without
14 consent.

15 It proved that even spare change, the
16 defendant was found with spare change that our victim had
17 for, you know, laundry money, found caught red handed in
18 his possession taken without consent. It proves that
19 this defendant was caught red handed with a knife that he
20 used during the commission of the robbery.

21 It proved also we saw that the defendant
22 used force in this case. When after the defendant took
23 the property, he then -- the first person who tried to
24 stop him, he punched that person. The second person who
25 tried to stop him, he punched that person as well.

26 So just looking at this case, what does it
27 sound like? Well, it sounds like Counts 1 and 2, it
28 sounds like a robbery. There are a couple more elements

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1 to that. We are going to get into those in a little bit,
2 but what we have here, ladies and gentlemen, is a
3 robbery.

4 What else do we have? Well, as Cassandra
5 Smith was watching the defendant walk away, trying to
6 call 911, this defendant approached her, and he
7 approached her with a knife, which is significant because
8 that tells her that, if anything happens here, you try to
9 fight back, I have a weapon on me.

10 And what happens next? The defendant
11 approached her, slapped the phone out of her hand
12 prohibiting her from calling 911, and then punched her.
13 What does that sound like? Well, that sounds like he's
14 trying to prevent that witness from calling 911, from
15 having the authorities respond, which is the basis of
16 Count 5.

17 Now, in this case, ladies and gentlemen,
18 no witness saw everything that happened from beginning to
19 end. But when you listen to the testimony of each of the
20 witnesses, or each witness, you see basically a pattern

21 of what exactly happened here from beginning to end, and
22 that's what we are going to discuss here first.

23 We heard from Marta Parfeta. She was our
24 second witness. She was Cassandra Smith's friend. Let's
25 go over her testimony here.

26 Marta Parfeta testified that she arrived
27 at the shopping center with her friend Cassandra. When
28 she went to the store, they went in. They bought a

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1 couple items, and then she came back to the car with
2 Cassandra. And at that point, Cassandra, you know, put
3 the groceries in the car, and stuff like that, put her
4 items back in her purse.

5 And then you heard Marta stood by the
6 passenger's side of the vehicle while Cassandra went over
7 to go speak with the cute boys, or boy. Cassandra -- or
8 actually what happened next, according to Marta is, Marta
9 then proceeded to try to go over to talk to Cassandra,
10 and Cassandra instructed her to go back to the vehicle.

11 And the reason why Cassandra instructed
12 her to go back to the vehicle is because Cassandra knew
13 her purse was in there, and she sent Marta to go back to
14 the vehicle to make sure nobody would steal anything from
15 her purse.

16 Now, as Marta was going back to the
17 vehicle, she noticed the defendant by the driver's side
18 door. She was truthful to you. She said, "Yeah, I
19 didn't actually see him going into the car stealing the
20 items," but she did see him within immediate proximity to
21 the driver's side of the vehicle, and we know that is
22 where Cassandra's purse was located.

23 She noticed then next the defendant was
24 carrying Cassandra's cigarettes, the Newports they said
25 she had. At that point, she begins to try to confront
26 the defendant. Marta told the defendant to give back the
27 items. And what happened at that point? Well, after he
28 took the items, that's when he used force. That's when

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1 he punched Marta.

2 And you'll remember Marta's testimony
3 after that is she doesn't remember exactly what happened
4 because she was a little, you know, discombobulated
5 because she had just been punched in the face. She said
6 she didn't remember any knife.

7 But we also heard from Cassandra, that as
8 Cassandra was walking up right after Marta had gotten
9 punched, Cassandra saw the defendant with a knife. And
10 if somebody punches you, you're probably looking at the
11 punch. You're not necessarily looking at what he has in
12 the other hand. As I stated, Marta said that she
13 couldn't believe she was just hit.

14 Cassandra then comes over. And we are
15 going to get into what Cassandra witnessed right in a
16 little bit here. And then you heard from Marta. You
17 know, at that point, she just went back to the vehicle.
18 She went back to the passenger's side. She didn't really
19 see too much else at that point.

20 Now, who is the next witness we have?

21 Well, we have Cassandra Smith. And she gave us a little
22 bit more of a detailed account as to what exactly
23 happened. You heard Cassandra Smith say she drove to the
24 Michael's Liquor Store with Marta Parfeta. They went in
25 the store, made a purchase of some goods in there.

26 And we heard on cross-examination that the
27 defendant was actually standing behind her in the store.
28 And we heard the defendant asked her for some money, and

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1 we also heard that Cassandra gave him a couple dollars,
2 or gave the defendant a couple dollars.

3 But what does that exchange tell you right
4 there? Well, that exchange tells you Cassandra must have
5 gone into her purse to get the money, and that the
6 defendant's standing right there, knew she had money. So
7 that gives him motive to go back to the car and try to
8 take her money or take her ID cards or take her credit
9 cards or her phone so she can't call anyone, or just
10 merely her cigarettes because he wanted a cigarette.

11 What happened next according to Cassandra?
12 Cassandra told us, after she purchased the items, the
13 defendant was still in the store. She went back to the
14 car, dropped off the items, and decided to then go back
15 to the cute boys, or the cute boy.

16 What happened next after that is Marta was
17 left at the car where she was standing by the passenger's
18 side of the vehicle, and then she proceeds to go over to
19 try to talk to Cassandra. Of course, again, Cassandra
20 instructs her to go back to the, car and that's when

21 Marta sees the defendant.

22 Now, at this time, Cassandra's still
23 talking to that gentleman over in the corner, or over on
24 the other side of the parking lot, again within the
25 immediate vicinity just a short distance away. Cassandra
26 isn't really alerted anything is going on, according to
27 her testimony, until she hears Marta scream after she's
28 been punched.

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1 She observes at that point the defendant
2 walked away with the items. And what else does she
3 observe? She observes the white handle of the knife.
4 And you saw a picture of the cover the defendant had on
5 the knife. So when Cassandra sees that white handle,
6 that's indicating to you, based on what was recovered by
7 Visosky later on the defendant was, in fact, carrying the
8 knife.

9 So what happens next? Cassandra
10 immediately goes back to the vehicle knowing that her
11 purse is in the vehicle, and she looks inside, and she
12 notices that several items are missing, including her
13 cell phone, which is probably the first thing she's going
14 for because she wants to alert authorities. She notices
15 other items are missing, including personal ID cards,
16 and, of course, the cigarettes.

17 What does she notice next? Well, she sees
18 the defendant walking away from the scene trying to get
19 away, and he's going down Bartlett Avenue. What does she
20 do next? Not having a phone, she goes into Michael's

21 Liquor Store, asks them for a phone, and they are
22 actually nice enough to give her a cellular phone to call
23 911.

24 Now, you remember Cassandra's testimony at
25 this point. Obviously she just knew her friend had been
26 punched, and she knew somebody was getting away with some
27 of her personal items. So she was a little bit
28 distressed and a little upset. And so at this point when

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1 she had the cell phone from Michael's Liquor Store, she
2 called 911.

3 When she did so, she went over to the
4 dumpster, as what we saw from the exhibit was a vantage
5 point to watch the defendant walking away. We know that
6 she was on the phone, and the defendant saw her. And we
7 know that the defendant approached her, and we know that
8 the defendant approached her while she was on the phone
9 trying to call 911.

10 As he's approaching her, we heard from
11 Cassandra that she actually asked him, "Hey, will you
12 return the property," or words to that effect. And we
13 know at that point, the defendant knows exactly what
14 she's doing. And we know that as the defendant's
15 approaching her, you know, he hasn't put the knife away.

16 He still wants that knife out for use of
17 intimidation, for use. That, you know, "If something
18 goes wrong here, if you try to fight back, hey, look, I
19 have a weapon on me," and that's supposed to be
20 communicated to Cassandra. That is what the defendant is
21 thinking at that point.

22 So as the defendant walks up to Cassandra,
23 he slaps the phone out of her hand and shatters it. What
24 does that do? That prevents her from making that call to
25 911. That prevents her from getting through to the 911
26 operator, and that prevents the operator from actually
27 sending police authorities out there to catch this
28 defendant.

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1 After he slaps the phone out of her hand,
2 the defendant then punches her, and he punches her to the
3 ground. Now, you heard the testimony. There was some
4 question about how she fell. And you'll remember
5 Cassandra's testimony is that she didn't just fall
6 straight back. As she was falling, she might have gone
7 over to the side.

8 And you'll remember the testimony of not
9 only Cassandra, but also Deputy Romero who indicated that
10 all the injuries from getting punched were on the left
11 side of her body. So what does that tell you? That
12 tells you as she was falling, all the injuries, she must
13 have fallen on her left side as indicated by the pictures
14 taken by Deputy Romero and the testimony we heard in the
15 case.

16 What happens next? Well, Cassandra, after
17 she had been punched -- and this is understandable --
18 didn't exactly see what -- she stated that she thought
19 the defendant continued down Bartlett, but at that point,
20 she was very panicked. She had just been punched, and

21 she went into the store where Jesus Lopez was, trying to
22 get a phone, trying to go to other stores trying to get a
23 phone.

24 And now moving forward, eventually police
25 are contacted, and thankfully Sergeant Visosky is able to
26 find the defendant a short, short distance away, and very
27 soon after the event.

28 And what do we hear from Cassandra? Well,

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1 all these items that were found upon the defendant were
2 presented to both her and Marta Parfeta. And they said,
3 "Yeah, that's my phone. Yeah, those are my cigarettes.
4 Yeah, those are my ID cards," with her very name on the
5 cards. That, ladies and gentlemen, is a definition of
6 being caught red handed, and this defendant was.

7 Now, going over witness testimony. I also
8 want to bring up our first witness in this case, and that
9 is Jesus Lopez. You'll remember Jesus Lopez was pretty
10 much an independent witness stating there was violence on
11 the part of the defendant. He did not know the victim,
12 not really talked to her. Stated he might have seen her
13 at the location before, but didn't have any personal
14 knowledge, or anything like that. It's not like he's
15 really biased.

16 What else did we hear though? We heard
17 that Jesus Lopez can confirm, in fact, there was a
18 confrontation going on, but that he was busy inside of
19 his work. He thought there's nothing really that
20 surprising out there. There's a couple people outside.

21 He only took a couple glances over to what happened from
22 his store, which is as he testified, was about 200 feet
23 away I think. He wasn't sure about the exact distance,
24 but it's not a considerable distance.

25 He said that he was working, and that he
26 saw the defendant shake the female, and in this case, of
27 course, the female is Cassandra Smith. But then he said
28 he turned away, and he heard a phone drop, and he saw a

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1 broken phone as well.

2 Now, certainly -- I mean, Cassandra will
3 testify that the phone was broken. There's really no
4 question there. The only question is about, you know,
5 the defendant -- I'm sorry -- Jesus Lopez said he saw the
6 defendant shake her, the victim, and Cassandra said, "I
7 don't remember being shaken. I remember being punched."

8 Now, remember Jesus Lopez is probably
9 looking at this from inside, and he's busy doing other
10 stuff. And one, you also remember him testifying that he
11 wasn't really sure at the time when this was all
12 happening, that this was a robbery. He just knew two
13 people were having a dispute outside, and he saw the
14 defendant use violence against Cassandra Smith.

15 So the way to interpret his testimony is
16 yeah, this was going on. This isn't something somebody
17 is just making up. We actually have an eyewitness to
18 what happened there. Jesus said that he saw the victim
19 start to follow the defendant, but he wasn't able to say
20 much more about that. Again, he was more concerned about

21 his work at the time.

22 He also testified that there was a
23 considerable distance between the defendant and
24 Cassandra. So it's not like they are just merely walking
25 away after she had been punched, or something like that.
26 There's a considerable distance of about 50 feet, which
27 would make sense -- right? -- because Cassandra probably
28 doesn't want to just go up and try to confront this guy

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1 who had just punched her who is obviously stronger than
2 her.

3 Later Jesus Lopez actually had Cassandra
4 come into a store, looking for a phone, some way to call
5 911. And he described her as very anxious, you know,
6 very nervous, and he repeated some of the things that she
7 had said that she had just been robbed. He also
8 indicated that she was so scared, that she appeared to
9 have urinated on herself.

10 Moving on, we also heard from some
11 deputies in this case. We heard from Sergeant Visosky, a
12 sergeant with the San Bernardino County Sheriff's
13 Department, who was alerted about the crime, received a
14 description of this defendant, and what the defendant was
15 wearing on that day, a blue shirt and jeans.

16 And luckily Sergeant Visosky was able to
17 get to the area pretty quickly after the crime occurred.
18 He testified about probably about five or ten minutes, or
19 so, I believe. When Sergeant Visosky was driving the
20 neighborhood, he saw somebody matching that description.

21 He did what any sheriff's deputy should. He stopped the
22 person, and he conducted a search on that person.

23 And what did that search reveal? Well, it
24 revealed Cassandra's ID cards. It revealed her credit
25 cards, you know, more access for the defendant to try to
26 get money. Maybe still her personal information. It
27 revealed in the defendant's pocket, that he also had a
28 number of cell phones, but one of those cell phones was

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1 identified later by Cassandra as Cassandra's cell phone.

2 The cigarettes were found on the defendant.

3 And then Sergeant Viskosky, of course, he's
4 the Sergeant there. He passes the search over to Deputy
5 Romero to conduct an additional search. And we heard
6 from Deputy Romero briefly. We heard that when he went
7 to the scene, he conducted some witness interviews with
8 both Cassandra and -- both Cassandra and Marta Parfeta.

9 You know, we didn't hear anything
10 different from what they testified to up on the stand.
11 We observed Sergeant Viskosky that he searched -- or that
12 Deputy Romero was present when Sergeant Viskosky conducted
13 the search. And we learned about some additional items,
14 including the change, what appeared to be three dollars,
15 that was found on the defendant.

16 Now, that's just additional evidence of
17 what this defendant took away from Cassandra Smith.
18 Remember, Cassandra indicated that she had a number of
19 quarters that she was using for laundry, and that those
20 were in her purse, and those quarters, presumed, were
21 found on this particular defendant.

22 He also found an amount of three dollars,
23 or so, which is consistent with what Cassandra told -- or
24 gave the defendant inside of the liquor store. Once
25 again, ladies and gentlemen, the theme here is that the
26 defendant is caught red handed.

27 We also heard from Deputy Romero about the
28 location, and the type of bruising and injuries that

1 Cassandra received from the punch, and also Marta Parfeta
2 as well. Deputy Romero testified that he witnessed both
3 injuries on the victims a day immediately after the
4 incident. And then actually later on, went back to find
5 some additional injuries, swelling that Cassandra Smith
6 had on her a day later also as a result of being punched
7 and going to the ground.

8 Now, obviously in this case, ladies and
9 gentlemen, we went over the facts. Now, I want to go
10 over a little bit of the law. The law is what the judge
11 instructed you on both yesterday and today. And as you
12 heard, there's a number of counts in this case. There's
13 a number of allegations that have been brought by the
14 People of the State of California, by me as well, and
15 against as to every count, we have to prove them beyond a
16 reasonable doubt.

17 We are going to talk a little bit about
18 what that means in a bit. But to start off here, I want
19 to say that each crime, Count 1, Count 2, and now Count
20 5, has to be proven beyond a reasonable doubt. And the
21 way the Court does it is it breaks down into elements.

22 So rather than giving you some jumbled law
23 that is multiple pages long, or something like that, the
24 Court gives you a set of several elements, and I have to
25 prove each one of them beyond a reasonable doubt, and I'm
26 going to do that right now.

27 The first element is to robbery. And
28 you'll hear in this case that the first element actually

1 goes to robbery of Ms. Parfeta. "The defendant took
2 property that was not his own."

3 Now, as to Count 1, there's no question
4 the defendant took property that was not his own. He
5 took the property from the vehicle that belonged to
6 Cassandra Smith.

7 As to Count 2, that, "The property was
8 taken from another person's possession and immediate
9 presence." Now, it doesn't say anything about ownership
10 there. So this property doesn't have to be owned by
11 Marta in order to be robbed or in order to rob her of the
12 property.

13 Think about it as kind of like a dog, or
14 something like that. Let's say somebody has a dog, and
15 they are going off on vacation, and, you know, they have
16 one of their friends take that dog and, you know, watch
17 over that dog. Does the owner of the dog lose possession
18 because they are having somebody watch the dog? No.

19 Does the person who watches the dog have
20 possession over the dog? Yes. So it's possible that two

21 or more people can possess something at the same time.

22 Now, we talked about possession, and we talk about
23 immediate presence.

24 Now, in this case as to Marta Parfeta. We
25 heard the testimony that Cassandra actually told Marta,
26 as she was walking over to her while she was talking to
27 the cute boy to, you know, "go back to my car, I need you
28 to watch over my purse." So based on that, Marta Parfeta

1 has possession over the items because she's in control of
2 the items. She has to watch over and maintain the items.

3 And was it within her immediate presence
4 then? Well, what does immediate presence mean? Does a
5 person actually have to touch the property for it to be
6 in the immediate presence? No. That's not what the law
7 states. Property is within a person's immediate presence
8 if it is sufficiently within his or her physical control,
9 that he or she could keep possession of it if not
10 prevented by force and fear.

11 Well, we know that Marta Parfeta was
12 within a couple feet of the car, very close distance she
13 was walking back to the car. That she saw the defendant
14 actually standing right next to the driver's side door.

15 And we know that the items themselves were
16 inside the vehicle because that's what Cassandra
17 testified to. She put them back in the vehicle. So was
18 the property within the possession and immediate presence
19 of Marta Parfeta? Yes. Yes, based on the testimony you
20 heard from the witnesses.

21 Was the property taken against the
22 person's will? Well, being in charge of taking control
23 of the property, Marta Parfeta actually went over to the
24 defendant, said, "Hey, give those back. What are you
25 doing," or words to that effect. So was the property
26 taken against Marta's will? Yes.

27 And did the defendant use force or fear to
28 take the property to prevent a person from resisting?

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1 Now, the judge has given you a couple instructions on
2 this, and we are going to go over those right here.

3 "A person takes something when
4 he gains possession of it and moves it
5 some distance. The distance moved may
6 be short."

7 So on the first part of Element 4, where
8 it says, "Defendant used force and fear to take
9 property," the definition of "take" is given to you right
10 there, and it means, to move property any distance. And
11 in this particular case, we know the defendant took the
12 property, and then proceeded to walk down Bartlett,
13 actually after he punched Marta Parfeta and Cassandra
14 Smith. And we know he was located by Viscosky a few
15 moments later.

16 I want to go over something here. The
17 judge instructed, "The defendant's intent to take the
18 property must have been formed before or during the time
19 he used force and fear." What does that mean?

20 In the state of California, we actually
21 have two versions of what a robbery can be. "The
22 defendant's intent to take the property must have been
23 formed during the time he used force." That is where we
24 have cases where the defendant goes into a liquor store,
25 pulls a gun on the person behind the counter, and says,
26 "Give me all your money." That is one form of robbery.
27 But the laws in the state of California
28 also indicate another type of robbery. That's when the

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1 defendant intends to take property, and must have formed
2 intent before he used force and fear, and that is the
3 type of case that we have here today.

4 The defendant formed the intent to take
5 the property, actually did take the property, and then
6 used force in order to retain the property. In order to
7 get away, he used force on the people trying to stop him,
8 on not one, but two occasions.

9 And as to Count 1, right after he took the
10 property, he was confronted by Marta Parfeta, and Marta
11 Parfeta told him that, "Hey, what are you doing with
12 that? Give that back." And what did he do? He punched
13 her. Does that cause force or fear? Yes.

14 And what else do we have here? Well, the
15 fifth element is very simple. When the defendant used
16 force or fear in taking the property, he intended to
17 deprive the owner of it permanently, or to remove it from
18 the owner's possession for some extended period of time
19 that the owner would be deprived of a major portion of
20 the value or enjoyment of the property.

21 Well, clearly the first part of this, what
22 the defendant was trying to do when he took the property,
23 he wasn't intending to give it back, otherwise he would
24 have. He would have stopped and not tried to get away
25 with it. And he tried getting away with it by using
26 force on the victims when they told them not to. So
27 clearly there's really no question about the elements.

28 We are getting to Count 2. Let me stop.

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1 I put this little slide here. I might as well bring it
2 up. If there are any questions about any of these
3 elements or any charges, or anything like that, when you
4 guys are excused back to the jury room, you do have the
5 ability to ask us questions, both the judge, myself and
6 Mr. Figueroa, the defense attorney.

7 So if there is any sort of confusion, if
8 you guys have any sort of problem interpreting what the
9 judge has given you, feel free to let us know, and we
10 will try our best to inform you how to properly
11 understand certain portions of the law.

12 Right now I want to go to Count 2, and
13 Count 2 again is the robbery. And we discussed the
14 different forms of robbery. Count 2 deals specifically
15 with our victim Cassandra Smith now.

16 The first element that I have to prove is,
17 "The defendant took property that was not his own."
18 Again, we've been over this. He was caught red handed
19 with a whole bunch of Cassandra Smith's property.

20 Element Number 2, "The property was taken
21 from another person's possession and immediate presence."
22 Now, the property was taken from Ms. Cassandra Smith's
23 possession because the property laid within her purse.
24 So there's really no question. Of course Cassandra Smith
25 is someone who is different than the defendant who took
26 the property.

27 Now, we heard the testimony that Cassandra
28 Smith was only a short distance away from the car, and as

1 a matter of fact, as soon as she heard the shouting going
2 on, she was able to respond to the scene directly. Is
3 that within her immediate presence? You remember that
4 you don't have to actually be touching the property. You
5 have to be within the general vicinity within the
6 immediate presence. So that element is met as well.

7 Again, the property was taken against the
8 person's will. You heard Cassandra Smith say on several
9 occasions that -- well, first of all, she told the
10 defendant, "Hey, are you going to give me back my
11 property?" She also testified today that no, this
12 defendant did not have any consent to take this property.
13 So again, Element Number 3 is a slam dunk.

14 Element Number 4, "The defendant used
15 force or fear to take the property or prevent the person
16 from resisting." Now, again, this is the same analysis
17 that we used for Marta Parfeta's Count 1 charge. "The
18 defendant used force or fear to take property." Remember
19 there are two types of robbery.

20 There's a robbery where you pull a gun on
21 somebody and demand the money. Then there's the type of
22 robbery where you take the items, and then you use force
23 to get away, or force to try to retain the items, and
24 that's exactly what this defendant did to Cassandra
25 Smith.

26 Now, the defendant punched Marta Parfeta
27 first, but then what happens? Remember, the defendant
28 was trying to go away down Bartlett. And we know that

1 the defendant noticed Cassandra Smith by the dumpsters
2 right behind Michael's Liquor Store because she was on
3 911, and that concerned this defendant enough where he
4 actually diverted his course back over to confront
5 Cassandra Smith.

6 And we know that he did so with a knife,
7 and we know that as soon as he saw that Cassandra Smith
8 was on the phone calling 911, what did he do? Well, with
9 his knife in his hand, he punched her. He slapped the
10 phone out of her hand first, and that prevented her from
11 calling 911.

12 So what did he do here? He used force or
13 fear in this case both because he actually used force and
14 punched her, and he used fear because she was scared out
15 of her mind, in order to accomplish robbery, and that is
16 what Count 4 is.

17 Now, Count 5. The same intent applies to
18 the property because he's still in the possession of that
19 property. We go back to our discussion of -- I'm sorry.
20 Count 2, Element Number 5. We go back to our discussion

21 there, the same sort of discussion that we had with Marta
22 Parfeta's count.

23 Did the defendant use force or fear to
24 take the property -- or when the defendant used force or
25 fear to take the property, he intended to deprive the
26 owner of it permanently. Now, clearly, based on the
27 evidence in this case, this defendant had absolutely no
28 inclination of giving that property back, otherwise he

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1 wouldn't have acted in the way that he did.

2 Now as you heard, Counts 3 and 4 were
3 removed. You do not have to consider those. We move now
4 to Count 5. Count 5 is dissuading a witness from
5 reporting a crime.

6 And just like robbery, these elements,
7 there's multiple elements of this particular count. The
8 first element I have to prove is the defendant
9 maliciously tried to prevent or discourage Cassandra
10 Smith from making a report that she was the victim of a
11 crime to police. And the Court -- you know, it's pretty
12 easy to understand. That means that, you know, the
13 defendant tried to prevent Cassandra from calling 911,
14 from notifying the authorities that a crime had just
15 happened.

16 But the element in there that you have to
17 look at is the word "maliciously," and the Court provides
18 a definition that says, "A person acts maliciously when
19 they unlawfully intend to annoy, harm or injure someone
20 in any way, or," and again it doesn't have to be both

21 elements in this particular one it has to be, "or,
22 intends to interfere with the orderly administration of
23 justice."

24 Now, let's look at the first part of that
25 there, the first definition of "maliciously." And again,
26 you can use either definition of the word "malicious."
27 "A person acts maliciously when they unlawfully intend to
28 annoy, harm or injure someone in any way."

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1 Clearly he intended to injure her. He
2 punched her in the face. Did he intend to annoy her?
3 Yeah, that is kind of a repercussion of punching
4 somebody. Did he intend to harm her? Well, the force in
5 which he used to punch her did clearly harm her. And by
6 the fact that she had fallen to the ground is also an
7 indication.

8 You can also use the second element as
9 well. "Did the defendant intend to interfere with the
10 orderly administration of justice?" Again, you only need
11 one or the other, but in this particular case, the
12 defendant confronted the victim because she was on the
13 phone with 911. And he was so concerned about that, that
14 he slapped the phone out of her hands so that she
15 couldn't contact 911. And then after he saw the phone
16 had been destroyed on the ground, he then punched her.

17 What is that ladies and gentlemen? Well,
18 that's interfering with the orderly administration of
19 justice. When somebody's robbed, when a crime is
20 committed against somebody, they need the ability to call

21 911. So when this defendant interferes with that in his
22 attempt to get away, that's a crime.

23 There are two more elements to Count 5.
24 Cassandra Smith was a crime victim. We heard that
25 already. We heard the testimony that the items were
26 stolen from her. We heard she was punched. We heard
27 that, you know, even her friend was punched. She needed
28 to report this to 911.

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1 Count 3, the defendant knew that he was
2 trying to prevent or discourage Cassandra Smith from
3 making a report that she was the victim of a crime to
4 police, and intended to do so. Well, think about what
5 the defendant was doing at that point. He had just
6 stolen property from the vehicle. He had just punched
7 somebody who tried to prevent him from getting away with
8 that property.

9 But he knew he committed a crime, and then
10 he was walking in the opposite direction trying to get
11 away from the scene of the crime. And as he was walking
12 away, he heard Cassandra on the phone because remember,
13 Cassandra stated that she was pretty upset at that point,
14 and she was calling 911.

15 We also heard Jesus Lopez indicating there
16 was a lot of screaming and shouting going on. As the
17 defendant is a clear distance from Cassandra, at that
18 point, he changes direction, then he goes to confront
19 her. And of course, he confronts her with a knife. We
20 all know what happens next once the defendant actually
21 reaches Cassandra.

22 So what is he thinking at that point?
23 What is the defendant thinking? He's thinking, "Okay.
24 She's calling the cops right now. I'm going to go try to
25 intimidate her. I'm going to go prevent her from calling
26 the cops." And he did that, first of all, by slapping
27 the phone out of her hand. She cannot call the cops if
28 her phones broken. You know, he's got the other phone

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1 right there on him.

2 And then what does he do? He punches her
3 to indicate that, "Hey, you know, you call the cops on
4 me, you're going to get hurt." He's got his knife at
5 that point. We know after that, after she falls down,
6 she's completely disoriented. Then he continues to take
7 off, trying to get away. Ladies and gentlemen, all three
8 counts -- or all three elements of this particular charge
9 have been proven to you as well.

10 Now, there are what are called special
11 allegations as well. And in this particular case, I'll
12 read them off to you right here. If you find the
13 defendant was guilty of the crimes charged in Counts 2
14 and 5, and again, a special allegation. It's not an
15 independent charge. It's kind of like in addition to one
16 of the base charges in which we have just discussed.

17 And as to Count 2, which is the robbery of
18 Cassandra Smith, and as to Count 5, which is the
19 dissuading her from calling 911, there is what's called a
20 "special allegation." And what that essentially consists

21 of is that the defendant, while conducting the robbery,
22 conducting -- or preventing Cassandra Smith from calling
23 911, was using a knife in furtherance or in the
24 commission of that crime.

25 Let's take a look at that instruction.
26 "If you find the defendant guilty of the crimes charged
27 in Counts 2 and 5, you must then decide whether, for each
28 crime," and again, this is an independent analysis, "for

1 each crime, that the People have proved the additional
2 allegation that the defendant personally used a deadly or
3 dangerous weapon during the commission of that crime."

4 Deadly or dangerous weapon. I think you
5 all know where I'm going with that. This one, I'm
6 talking about the knife. But we have a definition given
7 to us by the Court. "A deadly or dangerous weapon is any
8 object, instrument or weapon that is inherently deadly or
9 dangerous, or one that is used in such a way, that is
10 capable of causing or likely to cause death or great
11 bodily injury."

12 Now, we don't have evidence in this case
13 that the defendant really took any stabbing motions or
14 anything towards our victim Cassandra Smith. But what we
15 do have is she knew he was armed with the knife. She
16 knew that he had the knife.

17 And the reason why the defendant had that
18 knife displayed was because he wanted Cassandra Smith to
19 know that if she tried anything else, "Listen, I'm going
20 to punch you right now, but if you try to fight back, I
21 have a knife on me. I've got a weapon."

22 This is why we have an enhancement in this
23 case. Not only do we have a robbery, but we also have
24 the knife, a robbery where he used a knife in the
25 commission of that robbery in order to effectuate that
26 robbery. In order to make that robbery successful, he
27 had a backup, which was his knife.

28 Now, the Court will also give you another

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1 instruction as well, and it says that, "Someone
2 personally uses a deadly or dangerous weapon, in this
3 case, a knife, if he intentionally displays the weapon in
4 a menacing manner."

5 Well, anytime you confront somebody and
6 punch them after stealing their items, and you have a
7 knife right in visible view right there right in front of
8 them, that's displaying it in a menacing manner because
9 you're telling that person, "Look, I've got a weapon
10 too."

11 That's like if you go up to somebody and
12 you punch them and you've got a gun, what does that say?
13 "Well, there's nothing you can do because I've got a gun
14 here too." Why do we charge this? Again, because a
15 knife was used in the commission of the robbery to make
16 the robbery more successful, and the defendant thought he
17 was going to get away with it. Luckily he didn't.

18 We talk now about the standard that is
19 placed on me. Again, this standard goes to each and
20 every charge, each and every special allegation, and it
21 goes to each element of each charge and allegation.

22 Beyond a reasonable doubt.

23 Now, again, we hear this on Law and Order.
24 I think I was watching like House, or something, last
25 night, and it came up, or something like that, but that's
26 TV. What we are dealing with here is the actual
27 instruction that the judge is going to give you, and I
28 want to go over part of that right here.

1 "Proof beyond a reasonable doubt is proof
2 that leaves you with an abiding conviction that the
3 charge is true." Now, it's pretty straight forward;
4 right? But what exactly does "an abiding conviction"
5 mean? And that's a term that is going to be left up to
6 each and every one of you.

7 Now, the defense attorney may get up here
8 and may give you a bunch of examples of what an abiding
9 conviction means, you know, try to make this sound,
10 "Well, none can be proven beyond a reasonable doubt."

11 Well, I would submit to you, ladies and
12 gentlemen, that when you come to your definition of what
13 "an abiding conviction that the charge is true" means, I
14 submit to you that you use common sense. Each and every
15 one of you has common sense.

16 I think that is one of the questions I
17 asked. Does everyone agree they have common sense here?
18 And I ask you to use that when evaluating the evidence
19 here, when evaluating what you heard to come to a
20 decision on these charges.

21 Now, the judge will also instruct you in
22 that same instruction, "The evidence need not eliminate
23 all possible doubt because everything in life is open to
24 some possible or imaginary doubt." In other words, this
25 is reasonable doubt. This is not beyond anything in the
26 entire world. This is not an impossible standard.

27 This is, you must believe the defendant is
28 guilty of this crime beyond a reasonable doubt, and if

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1 you believe the defendant committed these crimes, then
2 you must believe beyond a reasonable doubt that he has
3 committed the crimes, and you must vote guilty.

4 Now, again ladies and gentlemen, I close
5 my initial closing arguments by stating that I provided
6 you with the evidence in this case, with the witness
7 testimony. We've gone over the elements of each and
8 every crime, and we've gone over the standard of proof.

9 Now, when you go back in the jury room, I
10 expect you all to discuss the matter, consider the
11 matter, but I also expect you all to come back with
12 verdicts of guilty because we have proven our case beyond
13 a reasonable doubt. Thank you.

14 THE COURT: Okay. Mr. Haskell, thank you very
15 much.

16 Now we will hear from you, Mr. Figueroa.

17 MR. FIGUEROA: Thank you very much, your Honor.

18 Good morning, ladies and gentlemen.

19 THE JURY: Good morning.

20 MR. FIGUEROA: I agree with the judge, closing

21 arguments is one of my favorite parts in the trial, and
22 it's basically what the lawyers think the evidence has
23 shown.

24 Now, we heard the People's side, and we
25 heard Mr. Haskell's interpretation of what the evidence
26 in this case has shown. And it was a very compelling
27 argument. He wrapped up all the elements, the evidence,
28 and connected the dots very well.

1 Well, the problem is, in order for
2 Mr. Haskell's version of what the evidence proved to be
3 true, we have to ignore some things. We have to ignore
4 what Mr. Haskell didn't talk about.

5 We have to presume that Mr. Lopez,
6 Ms. Parfeta and Ms. Smith all told the truth. We have to
7 assume that the testimony was believable or credible, and
8 that's what Mr. Haskell failed to talk about. So when he
9 gets up in his rebuttal, let's see if he connects the
10 dots with all the problems that I saw in the case that he
11 presented.

12 In opening statement, I said this case is
13 going to be about June 20th, 2013. We weren't there. We
14 don't know what happened. Well, now that the People have
15 put their evidence on, I submit to you, ladies and
16 gentlemen, we still don't know what happened.

17 Well, what evidence did the People put on?
18 Well, the percipient witnesses, the people who actually
19 were there, the alleged victims who actually suffered
20 these injuries and these crimes, were the three main
21 witnesses in this case.

22 Now, first they call Mr. Jesus Lopez. He
23 owned the store called, I think, The Little Outlet Store
24 in the same mini mall that Michael's Liquor was at.
25 Well, let's step back a minute. Looking back, do you
26 think Mr. Lopez's testimony was credible? Personally, I
27 said yes. He was an independent witness, did not know my
28 client, Mr. James, and he said he may have seen Ms. Smith

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1 on that mini mall before.

2 Well, what motive does Mr. Lopez have to
3 fail to remember things? What motive did Mr. Lopez have
4 to lie or make up things? I would submit to you, none at
5 all. He was just a guy in a store. And what did he
6 testify to? Well, he remembers June 20th, he remembers
7 the afternoon, and then he remembers people screaming.

8 Remember, he said, "I couldn't understand
9 what they are saying. I just heard a lot of screaming."
10 And he was working at the counter because in that area,
11 it's not unusual to hear people screaming or a man and
12 woman arguing. Remember, he said it's almost normal, so
13 he didn't think much of it.

14 He then said that he saw a couple by the
15 dumpsters, a black male adult and white female adult.
16 Remember what he said he saw? He said he saw the male
17 shaking the female. He said he had a clear view of the
18 man with both hands on the female's shoulders and shaking
19 her. He said after that, he was concerned, but he didn't
20 really think much of it, so he went back to the counter.

21 He then heard the noise of a breaking
22 phone, and on cross-examination I said, "What kind of
23 noise is that?" And the judge said, "Why don't you give
24 him your phone, Mr. Figueroa, and have him throw it on
25 the ground." But he was close enough to hear the sound
26 of the breaking phone. He never saw the black male adult
27 punch the female. He never saw the female fall down
28 after she was hit. Remember that? He said he never saw

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1 any injuries.

2 He also said he never saw anything in the
3 black male's hands. And quite frankly, ladies and
4 gentlemen, how was Mr. James shaking Ms. Smith with both
5 hands if he had a knife in his fists? Mr. Lopez didn't
6 say, "Well, in his left hand, there was something
7 sticking out that had a white handle, and he wasn't
8 really gripping her." No. He said he gripped her with
9 both fists. So there was nothing in Mr. James's hands
10 when Mr. Lopez saw those two people by the dumpster.

11 The important thing about Mr. Lopez's
12 testimony, he never saw the knife. He never saw any
13 injuries on Ms. Smith. Do you remember that? I asked
14 him. "Well, she was upset and crying, and she had wet
15 herself." She was embarrassed about that. Mr. Haskell
16 would have you believe she wet herself because she was so
17 scared of Mr. James.

18 What about the fact that she was drunk,
19 ladies and gentlemen? What about the fact that she drank
20 a fifth of vodka and went to Michael's Liquor Store for
21 more booze? What about that?

22 MR. HASKELL: Objection. Argues facts not in
23 evidence.

24 THE COURT: Ladies and gentlemen, you've heard
25 the testimony and evidence here. What the attorneys say
26 is not evidence. This is argument.

27 You may proceed.

28 MR. FIGUEROA: Thank you, your Honor.

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1 The other thing Mr. Lopez said, ladies and
2 gentlemen, was after he shook her, he started walking
3 away. Remember with the laser pointer, he pointed out in
4 the parking lot how he walked maybe 50 feet away from the
5 female, and he still heard screaming? And that was
6 because Ms. Smith chased after Mr. James.

7 Remember he said that, "Yeah, he was in
8 front of her, and she was coming behind him yelling and
9 screaming at him." He could still hear her screaming.
10 If Ms. Smith was so terrified of Mr. James, so scared
11 that he had the knife by the blade of his hand, why does
12 she go after him?

13 And let's even back up a little. Why did
14 Ms. Smith go after Mr. James from the liquor store? If
15 he really punched Ms. Parfeta and he really took her
16 stuff, why didn't she just call the police from the
17 liquor store and say -- what would she have said, ladies
18 and gentlemen? "This black male adult stole my stuff"?

19 No. She could have said, "Mabon James, a
20 guy who I know, who I met through my neighbor, who I've
21 drank with before, who I may have been drinking with that
22 day but I failed to recall that, stole my stuff." Why
23 did she go after him? She didn't have to.

24 And I submit to you, if she was really
25 scared, she wouldn't have gone after him. So she pursued
26 Mr. James. Ultimately Mr. Lopez was my favorite witness
27 because that is a neutral objective version of what
28 happened on June 20th.

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1 Ms. Parfeta testified next. Again, she
2 had been drinking vodka with Ms. Smith. They ran out of
3 alcohol. They went to the store. She says she was
4 standing by the car. Ms. Smith went in for 10 to 20
5 minutes, which I submit to you is an awful long time to
6 be in a liquor store. Came out, put the stuff in the
7 car. What did they buy? They bought Pepsi and more
8 vodka. So they were going to keep on drinking. Went to
9 talk to some cute guy Ms. Smith sees.

10 So Ms. Smith has been partying. She saw a
11 cute guy. She went on to go flirt with him. Then they
12 are saying they saw Mr. James standing by the car.
13 Neither Ms. Smith nor Ms. Parfeta testified they saw
14 Mr. James reach into the driver's side, go down to the
15 floorboard, take out her purse, and take the cell phone,
16 the wallet, and the pink cigarette case. Neither one of
17 them saw that.

18 Why not? Well, were they so drunk they
19 couldn't have seen it? Was Mr. James such a secret agent
20 he was able to do it without being detected? And the
21 other thing that bothered me about this whole scenario,
22 ladies and gentlemen, is Ms. Smith was very clear and
23 adamant.

24 When I kept asking her on
25 cross-examination, "How far away was the cute guy's car
26 from where your car was," she said, "To the front of the
27 table. No more than 10 feet." Well, Ms. Parfeta said it
28 was to the back wall of the courtroom. Ladies and

1 gentlemen, remember that?

2 How come they have two different versions?
3 For argument sake, let's say Ms. Smith was actually
4 telling the truth about that and it was 10 feet away.
5 You mean to tell me that 10 feet away, you cannot tell a
6 person's getting into your driver's door, getting your
7 purse out? Is that believable? No, of course not. So
8 we know something is up. Something is rotten in Denmark,
9 according to Ms. Parfeta's version.

10 The other thing Ms. Parfeta said, never
11 did she see a knife. Never did she see anything in
12 Mr. James's hand, never. She did say he hit her. And I
13 believe on cross-examination she said, "Well, it hurt a
14 little bit." There were no bruises, no physical
15 injuries. You saw the picture of Ms. Parfeta allegedly
16 after this incident. There was no visible signs of being
17 punched.

18 The other thing that Ms. Parfeta said was,
19 after she tried to get the cigarettes back from
20 Mr. James, Ms. Smith came over, and they were just going
21 to leave. Remember that? So if they were so scared of
22 Mr. James, so upset at what he did, why didn't they go
23 for the phone then? Why didn't they call 911 or try to
24 call 911?

25 They had decided that it really wasn't
26 that big a deal. They were going to go away. They were
27 going to leave. Even Ms. Smith said, "We got back in the
28 car, and we were going to get out of there." So how

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1 scared of him were they if they didn't think they needed
2 to report it or call the police?

3 Then Ms. Smith testified. And Mark Twain
4 said, "People who tell the truth don't have to remember
5 anything." Well, I submit to you, ladies and gentlemen,
6 Ms. Smith sure had a lot to remember. And what bothered
7 me most about Ms. Smith's testimony is how conveniently
8 she threw out the answer, "I don't recall," or, "I don't
9 know." Well, that's not good enough, ladies and
10 gentlemen.

11 What was the most important question I
12 asked her on cross-examination that she didn't have an
13 answer for? Well, I said, "Isn't it true Mr. James had
14 been sitting in your car in the parking lot of Michael's
15 Liquor drinking with you?" What did she say? "I don't
16 recall." Why not?

17 Was she so drunk she didn't know who was
18 in the car? She didn't know he was in the car drinking
19 at that time? No. She didn't want to tell the truth.
20 She lied. She covered up the fact that Mr. James was in
21 her car drinking with them.

22 And I will assure you, Mr. Haskell was
23 just as surprised as you were when on cross-examination I
24 asked Ms. Smith, "Well, isn't it true prior to this
25 alleged robbery, you gave Mr. James three dollars?" "Oh,
26 yeah, but that was for his mother." Wait a minute.
27 Where did that come from? Obviously there's more going
28 on between Ms. Smith and Mr. James than she was willing

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1 to disclose.

2 Obviously something else was going on that
3 day. Was Mr. James in her car drinking with them in the
4 parking lot? We don't know. Is that an important fact?
5 I submit to you it sure was because the People's case
6 made it sound like this strange black male adult came and
7 robbed these two ladies.

8 Well, that's far from the truth. It was
9 an acquaintance of Ms. Smith. It was someone who she
10 partied with. It was someone who she couldn't even
11 recall was in her car or not. What if Ms. Smith was so
12 drunk, she doesn't remember telling Mr. James, "Take my
13 wallet. Take my cell phone," and she saw that Mr. James
14 had a knife in his pocket with the white handle.

15 And when Ms. Smith testified, the thing
16 that made me mad, ladies and gentlemen, is she expects us
17 to believe Mr. James had a knife and he held it by the
18 blade. Why did she have to say that, ladies and
19 gentlemen? Because the only way she could say she saw
20 the white handle on the knife was by saying he held it by
21 the blade.

22 Now, how many of you really believe that a
23 person is going to threaten someone with a handle of a
24 knife? Is that how he's going to hold the knife, ladies
25 and gentlemen? No. Come on. There was no knife in
26 Mr. James's hand, ladies and gentlemen. Ms. Parfeta
27 didn't see a knife. Mr. Lopez didn't see a knife.

28 Yes, there was a knife found on Mr. James,

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1 but why wasn't he holding it by the blade or by the
2 handle? Because then she couldn't have seen the white
3 handle. She had to lie and say he was holding it by the
4 blade. That's a lie. Is he going to hit her with a
5 blade? Yes. Is he going to hit her with a handle? Not
6 likely.

7 Neither one of the witnesses except for
8 Cassandra Smith said he ever brandished it or ever
9 threatened with the knife. How could the People say the
10 knife was a threat? "The knife was how he used force."
11 Well, I don't believe he held a knife like that. Do you?
12 No.

13 Now, why did Ms. Smith follow Mr. James?
14 Why did she go after him? It's all about credibility.
15 Count 1 is the robbery charge against Ms. Parfeta. First
16 of all, if he hit her in the face, don't you think there
17 would be some indication of some kind of injury? Well,
18 we know Ms. Parfeta had been drinking. Maybe she doesn't
19 remember what happened. Maybe she saw him with the
20 cigarettes and got mad, and then who knows what happened
21 after that.

22 Why did Ms. Smith lie, ladies and
23 gentlemen? She had been drinking. She ran out of vodka.
24 Went to get more booze, saw a cute guy in the parking
25 lot, went to go flirt with the cute guy. Yet her car was
26 10 to 15 feet away, and she never saw Mr. James get her
27 stuff out of the car? Why not?

28 Why did they decide to leave after the

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1 attack on Ms. Parfeta and not call the police? Well, she
2 says that while she discovered her stuff was gone. Why
3 didn't she call the police then? Well, she tried to.
4 She got the phone from Michael's Liquor Store, went after
5 him. She was so trembling, so nervous and scared, she
6 followed him. She ran him down. She went to confront
7 him.

8 The other thing that bothered me most
9 about Ms. Smith's testimony was her injuries. He punched
10 her in the face so hard, she fell back. Oh, but wait a
11 minute. She had a bruise on her upper left thigh. How
12 the hell -- pardon my language, your Honor. How the heck
13 did she get a bruise on the side of her thigh? She lied
14 about the injuries. Who knows how that happened. She
15 was probably so drunk, she fell somewhere else.

16 Mr. Lopez never saw her fall. Mr. Lopez,
17 the only independent witness we have, never saw Mr. James
18 hit her. He shook her. Not with the knife in his hands,
19 but with two hands. Why wasn't the pink cigarette case
20 found on Mr. James? All these are reasonable doubt

21 issues that the People have to overcome in order to
22 believe their version of the facts.

23 "You have to ignore the fact that
24 Ms. Smith lied about knowing Mr. James." Why would she
25 cover that up? It wasn't until I cross-examined her and
26 asked her, "Well, didn't you give him three dollars?"
27 "Oh, yeah. That was for his mother." "Why didn't you
28 tell the police that?" "Oh, I didn't think that was

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1 important." Why wasn't that important? Because she
2 didn't want the police to know that she knew Mabon James,
3 that he wasn't some strange guy that robbed her.

4 So for Count 1, there is no use of the
5 knife because even Ms. Parfeta said he never had a knife.
6 "I never saw a knife in his hand." I submit to you that
7 it was Ms. Smith's property that was alleged to be taken.
8 If there were drugs in Ms. Smith's purse, you think
9 Ms. Parfeta would say, "Oh, yeah. That's my purse. I'm
10 in charge of that purse"?

11 So I disagree when the People say Ms. Parfeta
12 possessed Ms. Smith's property. No. How can Mr. James
13 be guilty of robbing somebody when he didn't take
14 anything from them. Basically that is another thing the
15 People need to tell you on rebuttal.

16 Count 2 is robbery against Ms. Smith. If
17 you believe Mr. James held the knife by the blade with
18 the white handle sticking out, and she kept saying, "Oh,
19 yeah. He punched me with his right hand and had the
20 knife in his left hand," why didn't Mr. Lopez see a white

21 object sticking out of his hand? Because it wasn't
22 there, ladies and gentlemen.

23 The only credible witness the People
24 presented was Mr. Lopez. Why did Ms. Smith chase
25 Mr. James after all this? He shook her, Mr. Lopez heard
26 the phone break, and Mr. James walked away. If Ms. Smith
27 was so terrified, so scared that he was going to use the
28 knife that he threatened to use by the handle, why did

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1 she go after him? She wasn't afraid of him. She knew
2 who he was.

3 Reasonable doubt is the credibility of the
4 witnesses. Reasonable doubt is holding the knife by the
5 blade with the white handle shown. Reasonable doubt is
6 both Ms. Parfeta and Ms. Smith failing to explain things.
7 "I don't recall," to the question, "Was Mr. James in your
8 car," which in my opinion is a very big factor in this
9 case.

10 I mean, they were associated, and they
11 were hanging out before this incident. So who knows what
12 really happened. How drunk was Ms. Smith? How drunk was
13 Ms. Parfeta? She wet her pants. People who drink too
14 much cannot control their bodily functions. People that
15 drink too much are impaired, ladies and gentlemen. They
16 have trouble perceiving trouble, understanding. They
17 have trouble processing things.

18 So I'm going to submit to you, we don't
19 know what happened. Even if you believe the People's
20 version, there is still too much reasonable doubt for you
21 to find my client guilty. Count 1, no. Count 2,
22 absolutely not because of Ms. Smith's less than credible
23 testimony.

24 And Count 3. Ms. Smith said, "Mr. James
25 knew I was calling the police." How did he know?
26 Because Ms. Smith said so? Not enough evidence, ladies
27 and gentlemen. How did Mr. James know or intend to
28 prevent her from calling the police? Where is the

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1 evidence of that?

2 Count 3 -- or Count 5, I should say, the
3 third element is Mr. James must have known, and there's
4 no evidence. So when Mr. Haskell gets back up here and
5 says, "Why didn't Ms. Smith tell the police she knew
6 Mr. James, they were there together? In fact she had
7 even given him three dollars in line in the store," why
8 didn't she say that? Because she didn't want the police
9 to know.

10 Ask Mr. Haskell why Ms. Smith had not
11 recalled if Mr. James was in her car. She remembers all
12 the details, all the details about the knife, but yet,
13 she couldn't tell you if this person was in her car?
14 Come on. Less than truthful. Honesty and credibility,
15 and lack thereof, is the same thing as reasonable doubt.

16 So, as you examine the evidence, as you
17 look it over for yourself, why, if they were so afraid of
18 Mr. James, did they try to leave after he allegedly
19 punched Ms. Parfeta? Why, if they were so afraid of
20 Mr. James, did she chase him? Why didn't she just stay

21 in Michael's Liquor Store, use the phone there? No.

22 She could have said, "This guy I know,
23 Mabon James, stole my stuff." She didn't do that. What
24 else was going on? Unfortunately, we don't know, and we
25 may never know, but that's the big problem. All the
26 pieces of this puzzle have not been completed.

27 Finally, ladies and gentlemen, in opening
28 statements I said, I like to think of trials as a

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1 vacation. You make your plans. You go on your trip, but
2 until you actually go on the trip, we don't know what's
3 going to happen. Well, on this vacation, we know it was
4 a lot shorter than it was supposed to be. We know the
5 People dismissed Counts 3 and 4 because clearly there was
6 never an assault with a knife.

7 Well, I like to go on cruises. The
8 cruises are wonderful because you can order food, you can
9 order drinks, and they give you like this wristband and
10 just check it, charge it to the room. So that is
11 wonderful.

12 The problem is at the end of the cruise,
13 ladies and gentlemen, they won't let you off the ship
14 until you get in line with the cashier. It's funny
15 because as you're exiting, you see all these happy people
16 you saw at the pool, you saw in the spa. They are mad;
17 and they have this horrible look on their face. They are
18 saying, "What did we order?" "This, this, this." Well,
19 it's time to pay the piper, so to speak.

20 And in our little case, the People are
21 giving you a bill for robbery, robbery and persuading a
22 witness not to testify in court. And I think you need to
23 say, "No. We are not going to pay that bill, not on this
24 evidence, not on these witnesses." And that's what I'm
25 going to ask you to do, is that after you consider
26 everything that happened, question mark. Why?

27 Why would she say he held the knife by a
28 blade? Why would she deny he was in her car drinking?

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1 Why? And that's reasonable doubt. And because there's
2 too much reasonable doubt, ladies and gentlemen, you
3 cannot convict my client of any of those last three
4 charges, and I'm going to ask you to do that. Thank you
5 very much for your time.

6 Thank you, your Honor.

7 THE COURT: Thank you very much, Mr. Figueroa.

8 Mr. Haskell, you may have your rebuttal.

9 MR. HASKELL: Thank you, your Honor.

10 Ladies and gentlemen, I'm going to take
11 you back to jury selection. I indicated at the time,
12 there's various roles in the justice system. Of course
13 we've already been over my role in my initial closing,
14 which is the prosecutor's case to prove the case beyond a
15 reasonable doubt. We've been over the judge's role.
16 That role is to ensure that there's a fair trial in this
17 case, rule on objections. We went over the defense
18 attorney's role, which is to represent the interest of
19 his client.

20 Now, in this particular case, the facts
21 are dead set against him. It's pretty clear from all our
22 witnesses here what happened here on June 20th, 2013. So
23 what does he do? Well, he's got to do something. He's
24 got to go up there and give a closing to you. What is he
25 going to do?

26 Well, he's going to try to tar witnesses
27 as much as possible. Try to undermine. As he said, try
28 to make them look bad in front of you so you won't

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1 believe our witnesses, so you don't believe anything that
2 they say. That's his job as a defense attorney.

3 I want to introduce something else to you,
4 however, ladies and gentlemen. That is the fourth person
5 in this component. That is you, the jury. You, ladies
6 and gentlemen, are the fact finders in this case. It's
7 your job to go back in the jury room and decide what is
8 true, what is not true, what was real, and what is just a
9 smoke screen from the defense attorney.

10 Now, in this particular case, the defense
11 attorney has basically challenged me to address a lot of
12 the points that he's made. And I was writing down a lot
13 of points he's made, and I don't think this is going to
14 be too hard, but let's start off from the top.

15 First he tried to compare the testimony
16 from Cassandra Smith to Jesus Lopez. And what do we
17 know? Well, we know that Jesus Lopez observed a black
18 male identified as the defendant, and as Jesus Lopez
19 said, was shaking the white female. But what do we also
20 know from the testimony of these two witnesses?

21 Well, we know that Cassandra Smith was
22 right there with the defendant knocking the phone and
23 punching her right in front of her. And we know also
24 from Mr. Jesus Lopez's testimony that he was in his store
25 at the time about 200 yards away.

26 And what else do we know from Mr. Jesus?
27 We know that, you know, at first before the incident
28 ended, before Cassandra came back in the store, that he

1 wasn't even really paying attention to exactly what was
2 going on, that he was busy doing his work, that he didn't
3 really think anything of it.

4 So who has the more accurate perception of
5 what occurred there? The person who was right there in
6 front of the defendant, or the person who doesn't really
7 even think much about it and is tending to his work
8 throughout this entire incident?

9 Now, I'm not saying Mr. Lopez got up there
10 and testified untruthfully. I don't think that at all.
11 I think he did get up there and testify truthfully. I
12 think he's testifying to what he recalls from an event
13 that occurred two to three months ago from the best of
14 his recollection.

15 So I'm not saying Jesus Lopez got up there
16 and lied or anything like that, but what I'm saying is
17 that what he will tell you as well is, he wasn't really
18 paying much attention. He did see a couple things. He
19 can confirm that the phone was broken.

20 And this is the funny part. The defense
21 is putting all their eggs in the basket, that the
22 defendant was shaking Ms. Cassandra Smith. Well, that
23 alone is force or fear, ladies and gentlemen. So the
24 defense has even proven my case for me.

25 You remember Jesus Lopez's testimony that
26 he heard screaming, but he wasn't able to identify whose
27 exactly voice it was coming from. We know. We had Marta
28 Parfeta at the scene, and other people at the scene.

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1 There was probably a lot of pandemonium. He didn't
2 testify exactly when he heard the scream. He could have
3 heard screaming from when Marta was getting punched.
4 Jesus did seem to indicate he thought there was more
5 conversation between the two. But again, a lot was going
6 on at the time, and Jesus Lopez was trying to tend to his
7 own business, wasn't exactly trying to peer out and find
8 out what exactly was happening here.

9 Now, Jesus Lopez stated that he didn't see
10 a knife. And of course, Cassandra Smith was right there,
11 said, "Yeah, I did see the knife." But let's take a look
12 at what happened here. We know that the defendant
13 probably was punching the victim. And according to Jesus
14 Lopez's testimony, he was shaking her, but we know that
15 was probably happening with at least one hand.

16 And so the other hand, the one that might
17 have been carrying the knife might have been on the
18 opposite side of the defendant. So it is possible
19 Mr. Lopez just didn't see the knife. You know he saw the
20 hand grabbing Ms. Smith, but he might not have had the
21 vantage point from the other side.

22 So again, like I said earlier, not every
23 witness has every single aspect of this case. They
24 cannot testify to everything. But when you put
25 everything together, it makes sense.

26 As far as the walking away,
27 Mr. Smith didn't really testify about how long he saw
28 them walking away. All he could testify was that after

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1 he saw Ms. Smith being shaken, that it appeared as if the
2 victim, Ms. Smith, was walking behind the defendant.

3 But remember again what he said too. He
4 said that there was a considerable distance between them.
5 He said there was about 50 feet, and we don't know
6 exactly how long he viewed this. So we know that, you
7 know, after she got punched, or after she got shook, or
8 the force that was used on her, we know that they weren't
9 walking away together, and that again is consistent with
10 Cassandra Smith's story.

11 And again, both parties saw the phone
12 broken. So while again, while defense counsel was trying
13 to bring up little differences in the testimony between
14 Jesus Lopez and between Cassandra Smith, when you put
15 them together, they make sense. It's not that any party
16 is lying here. It's just they only viewed certain
17 aspects of what happened.

18 Now, of course, the defense attorney also
19 brought up injuries, said that, you know, Jesus Lopez
20 didn't really see any injuries on Cassandra Smith when
21 she came into the store. And there are going to be a
22 number of pictures that are provided to you, and you're
23 going to be able to see a number of injuries. But you're
24 going to see most major injuries and visible injuries are
25 actually on Ms. Cassandra Smith's body on her left side.

26 You'll remember Lopez indicated that
27 Cassandra Smith went into the store. He was probably
28 only viewing her face. And you remember the testimony

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1 from both Cassandra Smith and also Deputy Romero, who
2 arrived at the scene and witnessed the injuries, that she
3 had a little bit of redness. As you can see from that
4 picture, it's not large redness. It's not like the whole
5 side of her face was a completely different color, but
6 there was some redness there.

7 And, you know, we don't know what the
8 lighting was like in Lopez's store. You know, we don't
9 know how good a look he got. All we know is a couple
10 months later when Lopez came in to testify, he didn't
11 notice much redness, but we don't know how good of a look
12 he got on her.

13 So is it consistent that Lopez didn't see
14 any redness, but as a matter of fact, Ms. Cassandra Smith
15 had redness? Well, yeah, we have Cassandra Smith's and
16 Lopez's testimony. We also have Deputy Romero's
17 testimony that he did have time to look at her, looked at
18 her closer up, and took pictures of her.

19 Defense also then tries to say that not
20 only is she a liar, but she's a drunk. He tried to say
21 both Marta Parfeta and Cassandra Smith were so drunk, out
22 of their minds, that, you know, they might have been
23 lying, or they might have just been drunk. He wants you
24 to believe either or. And I submit to you, ladies and
25 gentlemen, based on the evidence, they really weren't
26 either to the point where they couldn't accurately
27 reflect what happened that day.

28 Now, the defense attorney will try to have

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1 you thinking they were they are falling down drunk, just
2 irrational, couldn't believe them at all. However, the
3 deputies responded. And you didn't hear the deputies
4 testify about taking them into custody for public
5 intoxication, or anything like that. So obviously they
6 weren't to the point where the deputies felt that they
7 couldn't be believed, or anything like that. That's not
8 any evidence that we have here.

9 So what do we have? Well, they testified
10 that they might have been drinking. We don't know how
11 much Cassandra Smith was drinking. We know that she
12 drove to the location. We know she wasn't taken in for
13 DUI. Marta Parfeta was the passenger. She testified,
14 yeah, she probably had some vodka. They were going back
15 to the store to get some more vodka.

16 So it's not an issue whether or not they
17 were drinking. They admitted it. The question is
18 whether or not that would in any way interfere with their
19 abilities to understand everything, and whether or not
20 they would lie based on them being drunk, and that's not

21 what's supported by the evidence here, ladies and
22 gentlemen. There's really no evidence of that.

23 The defense attorney brings up, why didn't
24 the victim just call 911 from the store if the victim was
25 so scared? Cassandra Smith was so scared of the
26 defendant, why didn't she just make a 911 call from the
27 store? You heard her testimony.

28 She went out to the store and specifically

1 picked what she described as a safe location right by the
2 dumpsters so that she could kind of hide a little bit
3 from the defendant, and hide where she was going so when
4 she made the 911 call, she could tell them this guy was
5 going down Bartlett. She told you that is why she went
6 to that vantage point.

7 We also hear as the defendant was walking
8 away, it was actually the defendant himself that turned
9 around and goes back and approaches Cassandra Smith
10 because she was on the phone with 911.

11 Now, defense attorney also tries to bring
12 up little facts to try to get you to think maybe this is
13 not proven beyond a reasonable doubt. And he tries to
14 bring up the fact that one witness says that they were
15 about 10 feet away from the car, and the other witness
16 says, "Well, it might have been a little bit more towards
17 the back of the room." Well, we are talking about only a
18 distance of a few feet here, ladies and gentlemen.

19 Again, it's not like they are out there
20 with tape measures measuring the scene as this all was
21 going on. They were reflecting on what they remember,
22 and they are trying to answer as truthful as possible.
23 So there might be a little bit of a discretion. But I
24 submit to the distance from the witness stand to this
25 table is 12 feet or so, and the distance to the back of
26 the room is just a little bit more, and really not that
27 material.

28 Both witnesses got up there, tried to

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1 recollect what happened to the best of their
2 capabilities. When the defense attorney uses that and
3 says this case wasn't proven beyond a reasonable doubt,
4 you're not to take anything into account what he says.

5 The witness, Cassandra Smith, says she
6 didn't recall Michael (sic) was in the car drinking. You
7 remember the questions preceding that. She was a little
8 confused, and, you know, she never did observe the
9 defendant go into the vehicle.

10 THE COURT: There's nobody named Michael
11 involved.

12 MR. HASKELL: I'm sorry. She never did observe
13 the defendant go into a vehicle. She was answering a
14 series of questions where she was probably a little bit
15 confused.

16 I ask you to submit to that as, you know,
17 she never testified before, and this was a long -- over a
18 period of at least a half hour of questions from myself
19 and defense counsel. She testified she had seen this
20 defendant before. Apparently there was one night she was

21 hanging out drinking with somebody, and she was at a
22 party. Also indicated she met him on another occasion.

23 However, she did testify that, "Yeah, I
24 don't really know the guy that well. I've never really
25 hung out with him all that much. I may know his name.
26 I've seen him before." It's not like they had some
27 ongoing beef, or anything like that.

28 And consider that when the defense

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1 attorney tries to say, "Oh, they were just trying to
2 frame my client." Let's take a look at the situation.
3 They weren't trying to frame his client.

4 I also want to talk a little bit about
5 evidence. Cassandra testified to when she was in the
6 store. Now, the defense would have you believe that
7 these two, the defendant and Cassandra Smith, are like
8 best friends. They are hanging out together all the
9 time. That, you know, they are going everywhere
10 together. They are drinking together. They are just two
11 crazy people hanging out with each other.

12 Well, what did the defendant do? He was
13 standing behind her in line, and he asked for some money
14 for his mom. I mean, has anyone ever been confronted
15 like at a gas station, or something like that, and
16 someone says, "Hey, my car is running low on gas," or
17 something? What are they doing? They are begging,
18 asking for money.

19 What did Cassandra Smith do? Well, she
20 actually gave him three dollars because she felt sorry
21 for him. But when she did, what did that signify to the
22 defendant? Well, that signified that Cassandra Smith had
23 money. She probably had to go into her purse, open up
24 the purse, take out her wallet. The defendant standing
25 right there probably saw exactly what was in the wallet.

26 And the defendant then thought to himself,
27 "I've got some money. I'm going to try to get some more.
28 I'm going to go back to the car and steal more items,"

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1 her credit cards, ID cards, cell phones. Wants some
2 cigarettes too, the change that she had for the laundry.

3 So this exchange in between the store,
4 it's either between two best friends, you know, and
5 Ms. Smith is just so compassionate, she gives him three
6 bucks, or this defendant sees she has money, then tries
7 to victimize her more.

8 That would be consistent with the facts in
9 this case because we know that this defendant then
10 punched her best friend, and then punched her as she was
11 calling 911. So don't let this defense attorney mislead
12 you.

13 Now, defense attorney also indicates that
14 the knife, you know, that Cassandra Smith only saw part
15 of the knife, and that he submits to you the defendant --
16 or that Cassandra Smith actually didn't see the defendant
17 with the knife. But we know better than that because
18 remember Sergeant Visosky's testimony. Sergeant Visosky
19 indicated that he found not only the knife on the
20 defendant, but he also found the cover for the knife.

21 So when Cassandra Smith indicates that she
22 sees a knife and that she recognized the cover of the
23 knife, she could have been looking at this, what has been
24 marked in People's Exhibit Number 6. That's a knife,
25 ladies and gentlemen. You'll see both the cover and the
26 handle are white, which is what she identified the knife
27 by. So once again, the defense attorney is trying to
28 mislead you.

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1 MR. FIGUEROA: Objection. Improper argument.

2 THE COURT: Yeah. Sustained.

3 MR. HASKELL: Okay.

4 MR. FIGUEROA: Thank you.

5 MR. HASKELL: The defense attorney is trying to
6 bring out points that aren't necessarily supported by the
7 evidence because when you look again at all the witness
8 testimony, in combination with one another, it makes
9 sense.

10 Defense attorney brings up the pink
11 cigarette case. Remember, Cassandra Smith said a pink
12 cigarette case was taken, never located. Really that
13 doesn't have any bearing on what happened here. You
14 know, I don't know why he brought that up.

15 Defense also tries to bring up that there
16 can only be one owner of the property, but again, we
17 discussed this already. On Counts 1 or 2, there's no
18 requirement. There's no element that I have to prove
19 beyond a reasonable doubt that Ms. Smith is the owner of
20 the property.

21 The only thing you are concerned of is
22 possession and immediate presence as to that particular
23 element. I already explained what those are and how to
24 interpret those. So he's trying to confuse you there has
25 to be an owner because that's not an element, ladies and
26 gentlemen.

27 Finally, the defense attorney tries to
28 bring up that the defendant wouldn't have known that the

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1 victim in this case, Cassandra Smith, was calling 911.
2 Now, let's take a look at what happened in this case, and
3 let's take a look at the claim of the defense attorney
4 that the defendant didn't know Cassandra Smith was
5 calling 911.

6 Well, let's look at the defendant's own
7 actions. He just stole some items from somebody's
8 vehicle. He just punched somebody who tried to prohibit
9 him from stealing those items, who tried to get in his
10 way. He then was taking off in the other direction,
11 heard somebody on the phone on 911.

12 He then diverted his direction down
13 Bartlett Avenue to go approach that person, and as he was
14 approaching that person, remember, there is a
15 considerable distance from where Cassandra Smith first
16 saw the defendant and his path over towards where she was
17 standing behind Michael's Liquor Store.

18 Well, remember that as the defendant is
19 approaching Cassandra Smith, he sees her on the phone.
20 He hears her ask him, "Give me my property back." So

21 what is he to think? Well, he's actually so concerned
22 about her calling 911, that he goes back to approach her,
23 to confront her with the knife in his hand.

24 And what does he do next? Well, as he
25 approaches her after he gets right next to her, he slaps
26 that phone out of her hand. You know, if she's just on
27 the phone, you know, calling, let's say, the cute guy, or
28 something like that, why does he feel the need to slap

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1 that out of her hand? Why does he feel he needs to punch
2 her as well?

3 So we have to think what was going through
4 the defendant's mind in this case. And it's clear he
5 knew that Cassandra Smith was calling 911, and he had to
6 prevent her from doing that because he couldn't escape.
7 He already tried to use force on Ms. Parfeta because he
8 was trying to escape.

9 He had to make sure he could escape from
10 the other person, from Cassandra Smith, so he knocked the
11 phone out of her hand, prohibited her from being able to
12 contact the authorities. Then he punched her. Then he
13 took off in the same direction he was going to originally
14 try to flee from the crime.

15 In closing, ladies and gentlemen, I want
16 to talk about some of the details in this case and what
17 they show about this particular defendant. This is a
18 particular defendant that not only steals, but will use
19 force to take items, to take somebody's cell phone, to
20 take somebody's change, to break into their car, and to
21 take their personal ID cards.

22 You know, this isn't like he's stealing
23 like multiple millions of dollars' worth of property, or
24 anything like that. He's stealing cigarettes, cigarette
25 holders. This just shows you the callousness of this
26 particular defendant, ladies and gentlemen.

27 Both Marta Parfeta and Cassandra Smith
28 witnessed that themselves on the day in question,

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1 June 20th, 2013. And they tried -- Cassandra Smith tried
2 to call 911, but she wasn't able to by this defendant.
3 The police arrive. They were able to locate this
4 defendant, and they were able to take him into custody.
5 They were able to search him.

6 But again, they cannot do anything about
7 this case. Obviously the prosecution, myself and the
8 District Attorney's Office, have brought charges against
9 this particular defendant, but again, we don't have the
10 authority in this case to say what happens. That
11 authority, ladies and gentlemen, lies in your hands.

12 Now, as I stated before, the jury in this
13 case is the fact finder. We ask you guys to consider the
14 evidence. We ask you guys to discuss the evidence. Once
15 you do, we are confident you are going to return a
16 verdict of guilty. Thank you.

17 THE COURT: Okay. Ladies and gentlemen, that is
18 all you're going to hear from the attorneys. You've
19 heard almost all the instructions, but not quite all.
20 You've got all the evidence, so let's finish this up and
21 get you to deliberate.

22 "When you go to the jury room,
23 the first thing you should do is choose
24 a foreperson. The foreperson should
25 see to it that your discussions are
26 carried out in an organized way, and
27 that everyone has a fair chance to be
28 heard.

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1 "It is your duty to talk with
2 one another and to deliberate in the
3 jury room. You should try to agree on
4 a verdict if you can. Each of you must
5 decide the case for yourself, but only
6 after you have discussed the evidence
7 with the other jurors.

8 "Do not hesitate to change your
9 mind if you become convinced that you
10 were wrong, but do not change your mind
11 just because other jurors disagree with
12 you.

13 "Keep an open mind and openly
14 exchange your thoughts and ideas about
15 this case. Stating your opinion too
16 strongly at the beginning or
17 immediately announcing how you plan to
18 vote may interfere with an open
19 discussion.

20 "Please treat one another

21 courteously. Your role is to be an
22 impartial judge of the facts, not to
23 act as an advocate of one side or the
24 other.

25 "As I told you at the beginning
26 of the trial, do not talk about the
27 case or about any of the people or any
28 subject involved in it with anyone,

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1 including, but not limited to, your
2 spouse or other family, friends,
3 spiritual leaders, or advisors or
4 therapists.

5 "You must discuss the case only
6 in the jury room, and only when all
7 jurors are present. Do not discuss
8 your deliberations with anyone. Do not
9 communicate using Facebook, et cetera,
10 during your deliberations.

11 "It is very important that you
12 not use the Internet in any way in
13 connection with this case during your
14 deliberations.

15 "During the trial, several items
16 were received into evidence as
17 exhibits. You may examine whichever
18 exhibits you believe will help you in
19 your deliberations. These exhibits
20 will be sent into the jury room with
21 you when you begin to deliberate.

22 "If you need to communicate with
23 me while you are deliberating, send a
24 note through the bailiff, signed by the
25 foreperson or by one or more members of
26 the jury.

27 "To have a complete record of
28 this trial, it is important you not

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1 communicate with me except by a written
2 note.

3 "If you have questions, I will
4 talk with the attorneys before I
5 answer, so it may take some time. You
6 should continue your deliberations
7 while you wait for my answer. I will
8 answer any questions in writing or
9 orally here in open court.

10 "Do not reveal to me or anyone
11 else how the vote stands on the issues
12 in this case unless I ask you to do so.

13 "Your verdict on each count and
14 any special findings must be unanimous.
15 This means to return a verdict, all of
16 you must agree to it. It's not my role
17 to tell you what your verdict should
18 be.

19 "Do not take anything I said or
20 did during the trial as an indication

21 of what I think about the facts, the
22 witnesses, or what your verdict should
23 be.

24 "You must reach your verdict
25 without any consideration of
26 punishment.

27 "You'll be given verdict forms.
28 As soon as all jurors have agreed on a

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1 verdict, the foreperson must date and
2 sign the appropriate verdict forms and
3 notify the bailiff.

4 "If you are able to reach a
5 unanimous decision on only one or only
6 some of the charges, fill in those
7 verdict forms only, and notify the
8 bailiff. Return any unsigned verdict
9 form.

10 "In this case, as to Count 1,
11 your verdict may be in one of the
12 following forms:

13 "1-A. We, the jury in the above
14 entitled action, find the defendant,
15 Mabon Demetric James, guilty of the
16 offense of second degree robbery of
17 Marta Jenine Parfeta, Penal Code
18 Section 211, as charged in Count 1 of
19 the Information."

20 I'm going to start that again. I don't
21 know that I read that correctly.

22 "In this case as to Count 1,
23 your verdict may be in one of the
24 following forms:

25 "Count 1-A.

26 "We, the jury in the above
27 entitled action, find the defendant,
28 Mabon Demetric James, guilty of the

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1 offense of second degree robbery of
2 Marta Jenine Parfeta, Penal Code
3 Section 211, as charged in Count 1 of
4 the Information;

5 "Or

6 "1-B.

7 "We, the jury in the above
8 entitled action, find the defendant
9 Mabon Demetric James, not guilty as to
10 Count 1.

11 "In this case, as to Count 2,
12 your verdict may be in one of the
13 following forms:

14 "2-A.

15 "We, the jury in the above
16 entitled action, find the defendant,
17 Mabon Demetric James, guilty of the
18 offense of second degree robbery of
19 Cassandra Smith, Penal Code Section
20 211, as charged in Count 2 of the

21 Information;

22 "Or

23 "2-B.

24 "We, the jury in the above
25 entitled action, find the defendant,
26 Mabon Demetric James, not guilty as to
27 Count 2.

28 "In this case as to Count 5,

1 your verdict may be in one of the
2 following forms:

3 "5-A.

4 "We, the jury in the above
5 entitled action, find the defendant,
6 Mabon Demetric James, guilty of the
7 offense of dissuading a witness from
8 reporting a crime, PC 136.1(b)(1), as
9 charged in Count 5 of the Information.

10 "Or

11 "5-B.

12 "We, the jury in the above
13 entitled action, find the defendant,
14 Mabon Demetric James, not guilty as to
15 Count 5.

16 "As to Count 2, if, and only if,
17 you find the defendant, Mabon Demetric
18 James, guilty of the crime of second
19 degree robbery of Cassandra Smith,
20 then, and only then, may you make a

21 finding with respect to the Special
22 Allegation of Count 2 of the
23 Information, and your verdict may be in
24 one of the following forms:

25 "Special Allegation as to Count
26 2, true.

27 "We, the jury in the above
28 entitled action, find the allegation

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1 that in the attempted commission of the
2 above offense, the defendant, Mabon
3 Demetric James, personally used a
4 deadly and dangerous weapon, to wit, a
5 knife to be true.

6 "Special Allegation as to Count
7 2, not true.

8 "We, the jury in the above
9 entitled action, find the allegation
10 that in the attempted commission of the
11 above offense, the defendant, Mabon
12 Demetric James, personally used a
13 deadly and dangerous weapon, to wit, a
14 knife to be not true.

15 "As to Count 5, if, and only if,
16 you find the defendant, Mabon Demetric
17 James, guilty of the crime of
18 dissuading a witness from reporting a
19 crime, then, and only then, may you
20 make a finding with respect to Special

21 Allegation of Count 5 of the
22 Information, and your verdict may be in
23 one of the following forms:

24 "Special Allegation as to Count
25 5, true.

26 "We, the jury in the above
27 entitled action, find the allegation
28 that in the commission of the above

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1 offense, the defendant, Mabon Demetric
2 James, personally used a deadly and
3 dangerous weapon, to wit, a knife,
4 Special Allegation as to Count 5, true.

5 "We, the jury in the above
6 entitled action, find the allegation
7 that in the commission of the above
8 offense, the defendant, Mabon Demetric
9 James, personally used a deadly and
10 dangerous weapon, to wit, a knife, to
11 be not true."

12 Now I'm going to back up. I read to you
13 the Special Allegation as to Count 2. And in the form
14 itself, Special Allegation true, not true, the same word
15 is used, two words together, "attempted commission."
16 There's no crime of attempt at anything here. So I'm
17 modifying this, deleting that word "attempted," and
18 that's not going to be in the final form of the Special
19 Allegation that you receive.

20 That's it. Swear the bailiff, please.

21 ~~(Whereupon the bailiff was sworn.)~~

22 THE BAILIFF: I do.

23 THE COURT: "To the alternate jurors,
24 the jury will now begin deliberating,
25 but you are still alternate jurors and
26 bound by my earlier instructions about
27 your conduct.

28 "Do not talk about the case or

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1 about any of the People or any subject
2 involved in it with anyone, not even
3 your friends or family, and not even
4 with each other.

5 "Do not have any contact with
6 the deliberating jurors. Do not decide
7 how you would vote if you were
8 deliberating.

9 "Do not form or express an
10 opinion about the issues in this case
11 unless you are substituted for one of
12 the deliberating jurors."

13 So with that, I'm going to be excusing
14 you. You know that we will call you and let you know if
15 we need you. If we do call you and let you know that we
16 need you, we would expect you to be able to come in about
17 an hour's notice to begin deliberating.

18 So if you have a job and you need to, you
19 can come in and get a pink slip every day because you're
20 still on jury service until this case has been decided by

21 this jury. We will tell you as soon as the jury reaches
22 a verdict, if the jury does reach a verdict, without the
23 necessity of calling you in.

24 So we are not going to inconvenience you
25 by having you come to court just to hear a verdict read.
26 That would delay the jury as well.

27 This means that if you are not called in,
28 this is the last opportunity I would have to say thank

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1 you for your service in the administration of justice in
2 this community.

3 As I said, we have to have 12 jurors reach
4 a verdict, and we cannot do that unless we have someone,
5 like you yourself, to step in if there's a need. So
6 you're a very vital part of this process.

7 Again, I hope I've been generous in my
8 praise and thanks for your willingness to participate.
9 But I hope this hasn't all been a one-way street. I hope
10 you each have taken something of value from this
11 experience, if it's nothing more than a better
12 understanding of this third coequal branch of government
13 called the judiciary.

14 So with that, I thank you very much. Hope
15 to see you again next year. You can wait right outside.
16 Jason will excuse you. Please leave your juror badges
17 and notebooks.

18 (Whereupon the following
19 proceedings were held out of the
20 presence of the jury.)

21 THE COURT: Okay. It seems like the work never
22 gets done right, but I think we are going to be giving
23 the last round of corrections.

24 MR. HASKELL: This is the Statement of the
25 Offense, your Honor? You stated you wanted changes to
26 the Statement of the Offense?

27 THE COURT: Hang on. I'll tell you what I want
28 you to change. It's going to be the Statement of

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1 Offense, but also going to be the Statement of Possible
2 Verdicts, and also be the verdict form themselves of the
3 Statement of the Offense. It has to say, "The defendant,
4 Mabon Demetric James, is charged in Count 1 of the
5 Information of the offense of second degree robbery of
6 Marta Jenine Parfeta."

7 Count 2 has to say "of Cassandra Smith."
8 that means then, you have to change possible verdicts as
9 to 1-A and 1-B which don't have to have PC 211. I would
10 take those out of the possible verdicts. "1-A and 1-B,
11 second degree robbery," is the way we have referred to it
12 throughout the trial.

13 So you have to add "Of Marta Jenine
14 Parfeta," as to Count 1-A. You have to add the name
15 "Cassandra Smith" as to Count 2-A, verdict 2-A. So that
16 would also require you make that change on the verdict
17 form itself.

18 MR. HASKELL: Okay.

19 THE COURT: As to the Special Allegations, you
20 have the first one, "As to Count 2, if and only if you

21 find the defendant, Mabon Demetric James, guilty of the
22 crime of second degree robbery," you have to add the
23 words "of Cassandra Smith." That's on the Special
24 Allegation.

25 That same Special Allegation in the body
26 of it, second paragraph, it says that "In the attempted
27 commission of the above offense." The word "attempted"
28 has to be taken out. Under "not true," the last

1 paragraph it also says that, "In the attempted commission
2 of the above offense." So the word "attempted" must be
3 taken out there as well.

4 And I assume that that word "attempted"
5 got into the corresponding verdict form because they
6 probably pull off of the same information. So check that
7 and make sure that the words are not included there.

8 MR. HASKELL: Okay.

9 THE COURT: On the next page, Possible Verdict as
10 to Special Allegation for Count 5, once again, the first
11 paragraph, I should say in this case is okay. But the
12 second two paragraphs have the words "attempted
13 commission," and there's no attempt alleged in this case.
14 So you need to delete the word "attempted" from the part
15 that says "Count 5, true," and the part that says, "Count
16 5, not true."

17 Do you understand all the corrections that
18 I've said that we need to have?

19 MR. HASKELL: Yes.

20 THE COURT: Okay. Would you, please, ask that

21 those be done immediately and bring them back? The Court
22 is going to be in recess for 15 minutes.

23 (Recess)

24 THE COURT: We are back on the record, and this
25 is in the case of People versus Mabon James. And though
26 we didn't talk about it officially, we did reserve the
27 issue of the 1118.1 matter so there was no delay to the
28 jury. And Mr. Haskell is here for the People. And

1 Mr. James is here.

2 You wish to make that motion?

3 MR. FIGUEROA: Thank you very much, your Honor.
4 For the record, pursuant to Penal Code 1118.1, I would
5 move for a judgment of acquittal as to Counts 1, 2 and 5.

6 I believe as to Count 1, there is
7 credibility problems with the victim, Ms. Parfeta. The
8 same situation as to Count 2, the victim Ms. Smith.

9 As to Count 5, I don't believe there's
10 been sufficient evidence to show that Mr. James intended
11 to stop her from calling the police, or that he knew that
12 the phone call was to the police or 911.

13 So based on those reasons, for the record,
14 your Honor, I would move for judgment of acquittal as to
15 Counts 1, 2 and 5. Thank you very much.

16 THE COURT: Mr. Haskell?

17 MR. HASKELL: Your Honor, in response, all the
18 charges have been -- all the elements of the charges have
19 been supported by the evidence, supported by the evidence
20 in this case, and we submit.

21 THE COURT: Okay. I'm going to respectfully deny
22 the 1118.1 motion. I believe there is adequate evidence
23 presented to the jury to have an opportunity to make a
24 decision in this case.

25 That's also, of course, without prejudice
26 to a possibility of a judgment notwithstanding verdict if
27 there's a verdict you consider to be unfavorable on
28 behalf of your client, Mr. Figueroa.

1 So with that, the Court will be in recess
2 while we wait to see what the jury is going to do. I
3 know the two of you will be available if there's a
4 question. Thank you.

5 (Whereupon the proceedings
6 were adjourned and continued to
7 1:30 the same day.)

8 ***oOo***
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1 VICTORVILLE, CALIFORNIA; THURSDAY, AUGUST 29, 2013

2 AFTERNOON SESSION

3 DEPARTMENT V-2

HON. JOHN M. TOMBERLIN, JUDGE

4 ***oOo***

5 APPEARANCES:

6 For THE PEOPLE OF THE STATE OF

7 CALIFORNIA, TIMOTHY HASKELL, Deputy

8 District Attorney;

9 The defendant present with his

10 counsel, WILLIAM FIGUEROA, Deputy

11 Public Defender.

12 (Kellie L. Moss, Official Reporter,

13 C.S.R., 10796)

14 ***oOo***

15 THE COURT: Good afternoon, ladies and gentlemen.

16 We are back on the record in the case of
17 the People of the State of California versus Mabon James.
18 Mr. James is here along with William Figueroa for him,
19 and Tim Haskell is here for the People.

20 It's my understanding that the jury has
21 reached verdicts; is that correct?

22 I'm seeing nods of the head affirmatively.
23 Who's our foreperson?

24 FOREPERSON: I am, your Honor.

25 THE COURT: Juror Number 3. Did you bring in all
26 the verdict forms, leaving the ones that are not your
27 verdicts unsigned, and signing the ones that are your
28 verdicts?

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1 FOREPERSON: I have both of them, but separate.

2 THE COURT: Yeah. You have them all?

3 FOREPERSON: Yes.

4 THE COURT: The record should reflect, by the
5 way, that Jason Patrick, who is our bailiff, had to go to
6 a doctor's appointment, and we've sworn in, in your
7 absence, Deputy Michelle Morgan, who is now going to be
8 our bailiff for the remainder of the trial.

9 She's going to bring me the forms. I
10 haven't looked at them. I don't know what's on those
11 forms. So it is now that I want to say thank you to you.
12 Point being, I'm not thanking you for any particular
13 verdict which you've arrived, but I'm thanking you for
14 the fact you were willing to take the time out of your
15 busy lives to dedicate it to the administration of
16 justice in your community. Thank you.

17 Madam Judicial Assistant, will you,
18 please, read the verdicts?

19 THE CLERK: "San Bernardino County.

20 "Superior Court District for the
21 State of California.

22 "The People of the State of
23 California versus Mabon Demetric James.

24 "Case Number FVI1301842.

25 "Verdict.

26 "We, the jury in the above
27 entitled action, find the defendant,
28 Mabon Demetric James, guilty of the

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1 offense of second degree robbery of
2 Marta Jenine Parfeta, as in Count 1 of
3 the Information.

4 "Dated August 29th, 2013.

5 "Signed by the Foreperson.

6 "Same Court and Cause.

7 "We, the jury in the above
8 entitled action, find the defendant,
9 Mabon Demetric James, guilty of the
10 offense of second degree robbery of
11 Cassandra Smith, as charged in Count 2
12 of the Information.

13 "Dated August 29th, 2013.

14 "Signed by the Foreperson.

15 "Same Court and Cause.

16 "We, the jury in the above
17 entitled action, find the defendant,
18 Mabon Demetric James, guilty of the
19 offense of dissuading a witness from
20 reporting a crime, witness Cassandra

21 Smith as charged in Count 5 of the
22 Information.

23 "Dated August 29th, 2013

24 "Signed by the Foreperson.

25 "Same Court and Cause.

26 "We, the jury in the above
27 entitled action, find the allegation
28 that in the commission of the above

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1 offense, the defendant, Mabon Demetric
2 James, personally used a deadly and
3 dangerous weapon, to wit, a knife, to
4 be True.

5 "Dated August 29th, 2013.

6 "Signed by the Foreperson.

7 "Same Court and Cause.

8 "We, the jury in the above
9 entitled action, find the allegation
10 that in the commission of the above
11 offense, the defendant, Mabon Demetric
12 James, personally used a deadly and
13 dangerous weapon, to wit, a knife, to
14 be True.

15 "Dated August 29th, 2013.

16 "Signed by the Foreperson."

17 THE COURT: Ladies and gentlemen, are the
18 verdicts and the findings as you just heard them read
19 representative of your own personal verdict and findings,
20 so say you one, so say you all?

21 THE JURY: Yes.

22 THE COURT: Counsel, do either of you wish me to
23 have this jury polled?

24 MR. FIGUEROA: No, your Honor.

25 MR. HASKELL: No, your Honor.

26 THE COURT: Well, that's going to complete your
27 service. Before I let you go, I get to read you yet
28 another instruction. I get to also advise you that back

1 in the jury room where you first came in when you first
2 assembled, you can go now and cash your big paychecks in.
3 Not a lot of money. I know that.

4 Certainly it isn't representative of the
5 value that you've given in terms of the work that you
6 provided for us. But should be enough money to take that
7 person that you haven't been talking to out to lunch now
8 and tell them about all the things, if you want to, that
9 you experienced here, and what you thought about the
10 case, the attorneys or judge, or any of that kind of
11 stuff.

12 You're welcome to talk about all those
13 things now all you want to, but you are under no
14 obligation to do that. I'm going to read you something
15 as I mentioned in a minute an instruction, but I want to
16 also explain it to you a little bit. All your
17 information is going to be sealed.

18 On that, if anybody wanted to find out
19 information about who was on this jury and how do we
20 contact them, that is all something that they would not

21 be able to get unless they were to apply to the Court,
22 have a hearing, and you'd be notified that someone was
23 requesting that information before it would be released
24 to anyone.

25 I'll also mention this. The lawyers in
26 this case will be coming outside in just a few minutes,
27 and if you wish to talk to them, I'm sure that they would
28 be happy to discuss what you thought about the case.

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1 "You've now completed your jury
2 service in this case. On behalf of all
3 the judges of the court, please accept
4 my thanks for your time and effort.

5 "Now that the case is over, you
6 may choose whether or not to discuss
7 the case and your deliberations with
8 anyone. Let me tell you about some
9 rules the law puts in place for your
10 convenience and protection.

11 "The lawyers in this case, the
12 defendant or their representatives, may
13 now talk to you about the case,
14 including your deliberations or
15 verdict.

16 "Those discussions must occur at
17 a reasonable time and place, and with
18 your consent. Please tell me
19 immediately if anyone unreasonably
20 contacts you without your consent.

21 ~~Anyone who violates these rules is~~
22 ~~violating a court order and may be~~
23 ~~finned.~~

24 "I order that the Court's record
25 of personal juror identifying
26 information, including names, addresses
27 and telephone numbers be sealed until
28 further order of this Court.

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1 "If in the future the Court is
2 asked to decide whether this
3 information will be released, notice
4 will be sent to any juror whose
5 information is involved.

6 "You may oppose the release of
7 this information and ask that any
8 hearing on the release be closed to the
9 public. The Court will decide whether
10 and under what conditions any
11 information may be disclosed."

12 As I try to tell people every time I
13 finish a trial, I try my best to let you know during the
14 course of the trial how much I appreciate you and do
15 everything I can to make the best use of our time and to
16 not keep you waiting out in the hall eternally.

17 I usually misjudge the timing a little
18 bit, but I still never let you stand out in the hall
19 without thinking about the fact that you're out there.
20 Hope I've shown that. We all care about you and

21 appreciate you, but I hope it hasn't just been a one-way
22 street.

23 I hope that you're going to have taken
24 away from this experience something of value, even if
25 it's just a better understanding of this third coequal
26 branch of government called the "judiciary."

27 Also, if I have the time, and I'll take a
28 minute to say if I were you, I would feel very proud of

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1 myself. The reason I say that is because I ask you all a
2 huge number of questions, and followed by the incisive
3 questioning by Mr. Figueroa. And then on top of that,
4 Mr. Haskell waited and asked you a bunch of questions
5 also. So you were put on the spot; weren't you? Didn't
6 you feel a little bit put on the spot?

7 But after having an opportunity to listen
8 to all the answers that you gave to all three of our
9 questions, these attorneys believed that you were the
10 kind of person who could be reasonable and fair to solve
11 these very important questions in a fair and reasonable
12 manner, and you've done that.

13 So again, on behalf of all the judges of
14 this state and county, on behalf of the People, and on
15 behalf of Mr. James and Mr. Figueroa, thank you very
16 much, and now you are excused. See you next year.

17 (Whereupon the following
18 proceedings were held out of the
19 presence of the jury.)

20 THE COURT: Okay. So the jury is gone.

21 Mr. James, the jury has spoken. And I'm
22 sure you are disappointed with what you heard, but that's
23 what happens in trials. And now we have those bifurcated
24 issues which you've talked about it. You've waived your
25 right to have this jury hear the case on the bifurcated
26 issues.

27 And I'm just going to ask you now, what
28 would you like to do? Would you like to have a trial on

1 whether or not you suffered those prior convictions and
2 whether or not you served those prior prison terms? Do
3 you want to hear that?

4 MR. FIGUEROA: It's called a court trial. I
5 don't mean to interrupt, your Honor, but it would be a
6 court trial where you would have the judge.

7 THE COURT: Or if you looked at the evidence and
8 you are satisfied with what my conclusion is going to be,
9 you can waive your right, and you can admit that you
10 suffered those prior convictions.

11 MR. FIGUEROA: And we wouldn't have the trial.
12 We would just admit them. It's your decision, Mr. James.
13 You can have the judge do the Court trial and have him
14 decide if they prove those priors, or you can waive any
15 kind of trial and just admit those priors are your
16 priors. So it's your choice.

17 Do you just want to admit them?

18 THE DEFENDANT: It's all going to be found out.
19 I'm not playing games, you know.

20 MR. FIGUEROA: So you are willing to just waive

21 both? You already waived the jury trial on the priors.
22 You want to waive the Court trial with the judge, and you
23 just want to admit the priors?

24 THE DEFENDANT: Yes.

25 MR. FIGUEROA: That's fine, your Honor.

26 THE COURT: Okay. So may I have the current
27 second amended Information and --

28 THE CLERK: It's in the file.

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1 THE COURT: Thank you. Let me get this pleading
2 out. We will go over this real quickly. You better go
3 over it too and make sure I get these all right.

4 MR. HASKELL: Your Honor, may we approach?

5 THE COURT: Why do you need to approach? I mean,
6 why don't you just spit it out. Jury's not here.

7 MR. HASKELL: If there has been an admission,
8 then I assume we can proceed right now.

9 THE COURT: Right. What I'm saying is, I'm going
10 to go through the allegations as they are, and I don't
11 want to miss any. So I want you to go over the
12 allegations with me while I ask him if he suffered these
13 particular convictions. Okay?

14 MR. HASKELL: Okay.

15 THE COURT: So they come after Count 5 it looks
16 like. First of all, there's an allegation here that at
17 the time of the commission of these offenses, you were on
18 a grant of felony probation in case number FVI1203158,
19 within the meaning of Penal Code Section 12022.(1)(f).

20 Do you admit or deny that?

21 THE DEFENDANT: I admit.

22 THE COURT: You also are alleged then to be in
23 violation of your felony probation in that case.

24 MR. FIGUEROA: Your Honor, I believe that that
25 case is actually a misdemeanor.

26 THE DEFENDANT: Yeah.

27 MR. FIGUEROA: And it's a grant of misdemeanor
28 probation.

1 THE DEFENDANT: Sorry.

2 MR. FIGUEROA: Do we have that file?

3 THE COURT: Can we find that out?

4 THE DEFENDANT: It is. It is a misdemeanor.

5 THE COURT: Is there another case that was a
6 felony for which he was on probation?

7 MR. FIGUEROA: Not that I'm aware of, your Honor.

8 THE CLERK: It is a misdemeanor.

9 THE COURT: So we are going to deny that one.

10 MR. FIGUEROA: So you're not on felony probation.
11 We are not admitting that one.

12 MR. HASKELL: Submit.

13 THE COURT: So now let's go to what I think is
14 important. It's alleged that prior to the commission of
15 these offenses, that you suffered a conviction for the
16 crime of robbery in the County of Los Angeles on February
17 18th, 1993, in the Superior Court in Case Number
18 BA383620, and that's a qualifying strike under Penal Code
19 Section 1170.12(a) through (d), and 667(b) through (I).

20 Do you admit that?

21 MR. FIGUEROA: These are '83.

22 THE DEFENDANT: He said '93.

23 THE COURT: I meant to say '83. I'm sorry.

24 Do you admit that?

25 THE DEFENDANT: Yes.

26 MR. FIGUEROA: I'm glad you're paying attention.
27 That's all right.

28 THE COURT: There's another case that is also an

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1 alleged strike offense, case BA 383620, violation of
2 Penal Code Section 459, residential burglary, conviction
3 date February 18th, 1983.

4 Do you admit or deny that?

5 THE DEFENDANT: Admit sir.

6 THE COURT: There's another strike allegation
7 that alleges that in case NA058666, you were convicted of
8 the crime of attempted robbery, again in the County of
9 Los Angeles, on October 10th, 2003, pursuant to Penal
10 Code Section 1170.2(a) through (d) and 667(b) through
11 (i), do you admit or deny that?

12 THE DEFENDANT: Yes, your Honor. Admit.

13 THE COURT: And then there's an allegation that
14 you suffered -- let's see. Those are already -- those
15 convictions are already admitted. So those admissions
16 would also be true as to 66(f)(a) allegations that are
17 found in the Information.

18 Do you admit that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Then there's an allegation that you
21 served prior prison terms. And these have got to be
22 incorrect. For one thing, the BA383620 is alleged twice.

23 MR. FIGUEROA: Twice, yes.

24 THE COURT: Under 667.5(b). That had to be one
25 term.

26 Do you agree, Mr. Haskell?

27 MR. HASKELL: I would agree with that. I would
28 agree to striking one of those, your Honor.

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PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 MR. FIGUEROA: Submit.

2 THE COURT: Are all the rest of these separate
3 prior prison terms?

4 MR. FIGUEROA: I believe just the --

5 MR. HASKELL: Yes.

6 MR. FIGUEROA: I believe just the last three ones
7 are, your Honor. The first three, he essentially already
8 admitted.

9 THE COURT: Now, these allegations relate to an
10 admission that he served a separate prior prison term and
11 did not remain free of prison custody for a period of
12 five years after his release. And on this, I'm just
13 going to ask, even though there's an admission.

14 On this alleged 11550, October 29th, 1996,
15 do you know how long you did prison on that case?

16 THE DEFENDANT: 16 months.

17 THE COURT: 16 months. Then after that, you
18 would have been paroled?

19 THE DEFENDANT: Yes.

20 THE COURT: When did you violate? When did you
21 next go back to prison? 2006?

22 THE DEFENDANT: 2006, yeah. 2006 I went back
23 after.

24 THE COURT: Because there's a crime here of 245.

25 Mr. Haskell, do you have the evidence
26 yourself that during this period of time, that he didn't
27 have a break of five years?

28 MR. HASKELL: Your Honor, that's why I wanted to

1 approach. If I may, with Mr. Figueroa?

2 THE COURT: Yes.

3 (Off-the-record discussion.)

4 THE COURT: We have the admission you suffered a
5 prior prison term and failed to remain free of custody
6 for a period of five years pursuant to Penal Code Section
7 667.5(b) on the case BA383620.

8 Do you admit or deny that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Admit?

11 THE DEFENDANT: Yeah, admit.

12 THE COURT: Then the next one would be 2003. We
13 already talked about the attempted robbery.

14 Did you suffer a prior prison term on
15 that?

16 THE DEFENDANT: Admit.

17 THE COURT: And then in 1990, there was an 11550.

18 Did you suffer a prior prison term on
19 that?

20 THE DEFENDANT: Admit.

21 MR. FIGUEROA: Your Honor, I believe it's 11350.

22 THE COURT: Thank you. 11350 of the Health and
23 Safety Code. Then another 11350, Health and Safety Code
24 conviction on October 29th, 1996.

25 Did you serve a separate prison term on
26 that?

27 THE DEFENDANT: Yes.

28 THE COURT: And then another one that we haven't

1 talked about yet would be a prior 245(a)(1).

2 Is that a misdemeanor, or is that the
3 felony?

4 MR. HASKELL: That's a felony, your Honor.

5 THE COURT: Okay. That's not the one from here
6 then. Okay. So you suffered, in case NA069595, Penal
7 Code Section 245(a)(1), July 24th, 2006, and failed to
8 remain free of prison custody for a period of five years.

9 Do you admit or deny that?

10 THE DEFENDANT: Admit.

11 THE COURT: Okay. Do you join in all of his
12 admissions?

13 MR. FIGUEROA: I so join in all his admissions,
14 your Honor.

15 THE COURT: Do you accept those for the People?

16 MR. HASKELL: Yes, your Honor. And I'd just like
17 to state for the record that I printed out a copy for
18 defense counsel the 969(b) packets that we have. There's
19 three of them, as well as the prior conviction paperwork,
20 and I provided those to counsel far before the trial
21 began.

22 MR. FIGUEROA: That's true. I do have those.

23 THE COURT: Okay. Now, what do you want to do,
24 Mr. James? Do you want to have your matter referred to
25 the probation department and hang around for a little
26 while and see what's going to happen next, see what they
27 recommend?

28 MR. FIGUEROA: We can set another date for your

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PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 formal sentencing. They would refer your case to
2 probation. Probation would prepare a report with the
3 actual sentencing range, all your credits and all the
4 fees and fines.

5 Now, you have a right to have that
6 sentencing hearing within 20 court days of today, or you
7 can waive time and put it out farther. Whatever you want
8 to do. If you want to do it as soon as possible, we
9 would have to set it on September 27th. If you want to
10 waive time and give probation more time and just continue
11 your sentencing, we can put it past the 20 days. It's
12 your call.

13 Do you want to remain local more so you
14 could have family visits before you actually get
15 sentenced and go to state prison?

16 THE DEFENDANT: Yeah.

17 MR. FIGUEROA: You do want to waive time and
18 continue it?

19 THE DEFENDANT: Yeah.

20 MR. FIGUEROA: Okay. Like how long? Another
21 couple weeks? A month?

22 THE DEFENDANT: How long does probation normally
23 take?

24 MR. FIGUEROA: Probation will do it as soon as we
25 have you come back, or as late as we have you come back.

26 Why don't we go into October? Is that
27 okay?

28 THE COURT: How about October 4th?

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PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 VICTORVILLE, CALIFORNIA; FRIDAY, OCTOBER 18, 2013
2 MORNING SESSION
3 DEPARTMENT V-2 HON. JOHN M. TOMBERLIN, JUDGE
4 ***oOo***

5 APPEARANCES:
6 For THE PEOPLE OF THE STATE OF
7 CALIFORNIA, TIMOTHY HASKELL, Deputy
8 District Attorney;
9 The defendant present with his
10 counsel, WILLIAM FIGUEROA, Deputy
11 Public Defender.
12 (Kellie L. Moss, Official Reporter,
13 C.S.R., 10796)

14 ***oOo***
15 MR. HASKELL: Tim Haskell for the People.
16 MR. FIGUEROA: William Figueroa, public defender,
17 on behalf of Mr. James, second from the left in custody.
18 Today is the date set for pronouncement of
19 judgment. We are ready to proceed.

20 THE COURT: Waive further formal arraignment,
21 advisal of rights, and reading of the Information?
22 MR. FIGUEROA: Yes, your Honor. Indicate there's
23 no legal cause.

24 MR. HASKELL: No cause for the People.
25 THE COURT: Is there someone here that wishes to
26 make an impact statement today?

27 MR. HASKELL: I spoke with our victims in this
28 case, and they indicated they did not wish to make an

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PURSUANT TO GOVERNMENT CODE SECTION 69954 (d)

1 impact statement.

2 THE COURT: All right. I've discussed the
3 probation report. I've read and considered it. We found
4 it to be not completely accurate and made revisions to
5 it.

6 After those revisions, does anyone wish to
7 have anything to say before I proceed with pronouncement
8 of judgment?

9 MR. FIGUEROA: Just simply, your Honor, I believe
10 we need to modify the credits. The report is dated
11 October 4th. I believe he has 17 more days. So the
12 actual total days would be 124, not 107. Other than
13 that, I submit.

14 THE COURT: Agreed?

15 MR. HASKELL: I submit, your Honor.

16 THE COURT: Mr. James, your matter is on today
17 for pronouncement of judgment after trial. The Court has
18 really nothing much in the way to do with discretion.
19 Your case involves new strikes, and you've already been
20 convicted of prior strikes qualifying you for the
21 three-strikes sentencing.

22 There's three separate cases. So I'm
23 going to sentence you to 75 years to life in the state
24 prison. For Counts 1, 2, and 5, I'm going to order
25 you're going to serve an additional one year for the use
26 of a deadly weapon on each of those counts, but I'm only
27 imposing one year on the Count 5, and I'm staying the one
28 year on the other two counts.

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1 I'm also sentencing you to in addition to
2 that one year determinant, I'm sentencing you to an
3 additional ten-year period which is two separate 667
4 priors, prior serious or violent felonies which you've
5 been convicted. That's five years each for ten years.

6 For five separate prior prison terms which
7 you have served and failed to remain free from prison
8 custody for a continuous period of five years after your
9 release, sentencing you to an additional five years. So
10 that comes out to 16 years determinant followed by a
11 period of 75 years to life, with custody credits a matter
12 of?

13 MR. FIGUEROA: I have 124 actual. I believe 19
14 pursuant to 2933.1.

15 THE COURT: Do you agree?

16 MR. HASKELL: Yes.

17 MR. FIGUEROA: For a total of --

18 THE COURT: That will be the order. I'm also
19 going to order that you'll pay a restitution fine of
20 \$10,000 to be collected by the Department of Corrections,

21 a separate restitution fine of \$10,000 which I'm going to
22 be ordering stayed unless you are placed on parole. If
23 you violate that parole in this case, it will be imposed.

24 When you're released from custody, if you
25 are Mr. James, you will be on parole for the rest of your
26 life. And during that period of time should you be found
27 in violation of your parole, you could be sent back to
28 state prison up to one year for each violation up to an

1 additional four years. Excuse me no. Up to the rest of
2 your life, one year at a time.

3 I'm going to find there was no motor
4 vehicle involved in or incidental to the commission of
5 the offense. And you do not have the money or means to
6 reimburse court-appointed counsel. You cannot afford to
7 pay for any of the investigation costs.

8 I am going to order the sheriff's
9 department to collect from you the appropriate specimens
10 under Penal Code Section 296 unless they have already
11 been collected and are currently on file.

12 I'm going to order that the weapon in this
13 case will be disposed of pursuant to Penal Code Section
14 12028. Going to reserve jurisdiction over actual
15 restitution.

16 I'm going to order that you'll pay a court
17 security and conviction fee of \$210. Going to order that
18 collected by the Department of Corrections payable to the
19 County of San Bernardino.

20 Mr. James, you have a right to appeal from
21 my sentence and from the trial in this case. In order
22 for you to have the right to appeal effected somebody
23 needs to file a notice of appeal on your behalf. It has
24 to be filed within 60 days.

25 Are you going to file that?

26 MR. FIGUEROA: I will file that notice, your
27 Honor.

28 THE COURT: Thank you. If that notice is not

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PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 filed, then you can lose your right to bring an appeal,
2 even if there was a valid right to pursue.

3 The Court of Appeal will appoint a lawyer
4 to represent you at no charge to you if you cannot afford
5 to hire your own lawyer. Those are your appellate
6 rights.

7 Is there anything else either side?

8 MR. FIGUEROA: No, your Honor. Thank you.

9 MR. HASKELL: No, your Honor.

10 THE COURT: Mr. James, I'm going to order you
11 delivered to the Department of Corrections to begin
12 serving your state prison commitment forthwith and wish
13 you good luck.

14 Now, I do have a separate file. Were
15 there other cases we did not resolve? One is a
16 misdemeanor to which he was on misdemeanor probation.
17 I'm going to order his probation terminated
18 unsuccessfully in that matter.

19 MR. FIGUEROA: Submit.

20 MR. HASKELL: Submit.

21 THE COURT: The other case we had was on for
22 pre-preliminary hearing conference.

23 Mr. Haskell, what do you want to do with
24 that?

25 MR. HASKELL: Your Honor, at this time, there's a
26 motion to dismiss in the interest of justice.

27 THE COURT: No sentence benefit?

28 MR. HASKELL: Yes.

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PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 MR. FIGUEROA: No objection.
2 THE COURT: Okay. It is dismissed.
3 (Whereupon the proceedings were adjourned.)
4 ***oOo***
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PHOTOCOPYING OF TRANSCRIPT PROHIBITED
PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff/Respondent,) Superior Court

v.) No. FV11301842

MABON DEMETRIC JAMES)

Defendant/Appellant.)

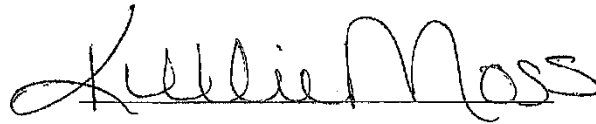
REPORTER'S CERTIFICATE

I, KELLIE L. MOSS, C.S.R. 10796, OFFICIAL
REPORTER of the above-named court, do hereby certify:

That I am a Certified Shorthand Reporter of the
State of California, duly licensed to practice; that I
did report in Stenotype oral proceedings had upon hearing
of the aforementioned cause at the time and place herein
before set forth; that the foregoing pages numbered 1
through 350, inclusive, constitute to the best of my

knowledge and belief a full, true, and correct
transcription from my said shorthand notes so taken for
the dates of August 26, 2013; August 27, 2013; August 28,
2013; August 29, 2013; October 18, 2013.

Dated at Victorville, California, this 15th day
of January, 2014.



KELLIE L. MOSS, C.S.R. 10796

PHOTOCOPYING OF TRANSCRIPT PROHIBITED
PURSUANT TO GOVERNMENT CODE SECTION 69954(d)

1 STATE OF CALIFORNIA)

2)
3 COUNTY OF SAN BERNARDINO)

SS. FVI 1301842
E059918

4 CLERK'S CERTIFICATION OF SERVICE RE: CRIMINAL

5
6 I, a sworn Deputy clerk of the Superior Court of California, County of San Bernardino,
7 State of California, do hereby certify that:

- 8
9 1. Copies of the **REPORTER'S TRANSCRIPT(S)/AFFIDAVIT(S)** were served on
10 the following parties on the dates indicated:

11 **ATTORNEY(S) FOR APPELLANT(S):** JAN 17 2014

12 **ATTORNEY(S) FOR RESPONDENT(S):** _____

13 **ATTORNEY GENERAL:** JAN 17 2014

14 **DISTRICT ATTORNEY:** _____

- 15
16 2. The original and _____ copies of the **REPORTER'S MARSDEN TRANSCRIPT**
17 for the following dates(s) _____, were certified to the Court of Appeal, State of
18 California, Fourth District, Division Two on: _____

- 19
20 3. The original **REPORTER'S TRANSCRIPT(S)/AFFIDAVIT(S)** were certified to
21 the Court of Appeal, State of California, Fourth District, Division Two
22 on: JAN 17 2014

23 CHRISTINA M. VOLKERS, Court Executive Officer

24 DATED: JAN 17 2014



25 By _____

Deputy Clerk

RHONDA HANCE

#373
**COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO**

PEOPLE OF THE STATE OF CALIFORNIA

Court Case No. : FVI 1301842

VS

Appeal Case No : E059918

MABON DEMETRIC JAMES

Volume 1 of 1

Pages 1 through 138 inclusive

☐

Supplemental -

☐

Augment

CLERK'S TRANSCRIPT ON APPEAL

Appeal from the Superior Court of California, County of San Bernardino
Appeals Division, 401 North Arrowhead Avenue, San Bernardino, CA 92415-0063

Trial Judge: HONORABLE JOHN M TOMBERLIN

- ☐ Barstow District, 235 East Mountain View Avenue, Barstow, CA 92311
- ☐ Big Bear District, 477 Summit Boulevard, P.O. Box 2806, Big Bear Lake, CA 92315
- ☐ San Bernardino, 351 N. Arrowhead Avenue, San Bernardino, CA 92415-0210
- ☐ Chino District, 13260 Central Avenue, Chino, CA 91710
- ☐ Fontana District, 17780 Arrow Highway, Fontana, CA 92335
- ☐ Joshua Tree District, 6527 White Feather Road, Joshua Tree, CA 92252
- ☐ Juvenile District, 900 E. Gilbert Street, San Bernardino, CA 92415-0942
- ☐ Needles District, 1111 Bailey Street, Needles, CA 92363
- ☐ Rancho Cucamonga District, 8303 N. Haven Avenue, Rancho Cucamonga, CA 91730
- ☒ Victorville District, 14455 Civic Drive, Victorville, CA 92392

Appearances:

For Appellant and ☒ Defendant ☐ Plaintiff

APPELLATE DEFENDERS INC.
555 W. BEECH STREET, SUITE 300
SAN DIEGO, CA 92101

For Respondent and ☐ Defendant ☒ Plaintiff

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
110 W. "A" STREET, SUITE 1100
SAN DIEGO, CA 92101

Lodgment 2
Debon James v. Proma
15-1956

Clerk's Transcript on Appeal – Court of Appeal

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

AUG 29 2013

BY Shirley Jauregui
SHIRLEY JAUREGUI, DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff,)

vs.)

MABON DEMETRIC JAMES)

Defendant(s))

Case No. FV11301842

GIVEN
NO UNUSED OR REFUSED JURY INSTRUCTIONS

INSTRUCTIONS
TO THE JURY

DEPARTMENT V2

1600.

The defendant is charged in Counts 1 and 2 with Robbery.

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took property that was not his own;
2. The property was taken from another person's possession and immediate presence;
3. The property was taken against that person's will;
4. The defendant used force or fear to take the property or to prevent the person from resisting;

AND

5. When the defendant used force or fear to take the property, he intended to deprive the owner of it permanently.

The defendant's intent to take the property must have been formed before or during the time he used force or fear. If the defendant did not form this required intent until after using the force or fear, then he did not commit robbery.

If you find the defendant guilty of robbery, it is robbery of the second degree.

A person *takes* something when he or she gains possession of it and moves it some distance. The distance moved may be short.

The property taken can be of any value, however slight.

Fear, as used here, means fear of injury to the person himself or herself.

An act is done *against a person's will* if that person does not consent to the act. In order to *consent*, a person must act freely and voluntarily and know the nature of the act.

2622.

The defendant is charged in Count 5 with intimidating a witness in violation of Penal Code section 136.1.

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant maliciously tried to prevent Cassandra Smith from making a report

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

AUG 29 2013

Shirley J. Jaregui
SHIRLEY JAREGUI, DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

CASE # FVI1301842

MABON DEMETRIC JAMES)

Defendant.)

USED X

UNUSED

VERDICTS

DEPARTMENT V2

SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
FOR THE STATE OF CALIFORNIA

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
(for filing stamp only)
AUG 29 2013
BY Shirley Jauregui
SHIRLEY JAUREGUI, DEPUTY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MABON DEMETRIC JAMES,

Defendant.

CASE NO. FVI1301842

VERDICT

1-A

We, the jury in the above-entitled action, find the defendant, MABON DEMETRIC JAMES, guilty of the offense of SECOND DEGREE ROBBERY of Marta Jenine Profeta as charged in Count 1 of the Information.

Dated: 8/29/13

#3

Foreperson

SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
FOR THE STATE OF CALIFORNIA

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
(for filing stamp only) VICTORVILLE DISTRICT

AUG 29 2013

BY Shirley J. Jaregui
SHIRLEY JAREGUI, DEPUTY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MABON DEMETRIC JAMES

Defendant.

CASE NO. FVI1301842

VERDICT

2-A

We, the jury in the above-entitled action, find the defendant, MABON DEMETRIC JAMES, guilty of the offense of SECOND DEGREE ROBBERY of Cassandra Smith as charged in Count 2 of the Information.

Dated: 8/29/13

#3

Foreperson

SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
FOR THE STATE OF CALIFORNIA

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
(for filing stamp only) VICTORVILLE DISTRICT

AUG 29 2013

BY Shirley Jauregui
SHIRLEY JAUREGUI, DEPUTY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MABON DEMETRIC JAMES,

Defendant.

CASE NO. FV11301842

VERDICT

5-A

We, the jury in the above-entitled action, find the defendant, MABON
DEMETRIC JAMES, guilty of the offense of DISSUADING A WITNESS FROM REPORTING
A CRIME, witness Cassandra Smith as charged in Count 5 of the Information.

Dated:

8/29/13
#3

Foreperson

SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
FOR THE STATE OF CALIFORNIA

FILED
(for filing stamp only) SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

AUG 29 2013

BY Shirley Jauregui
SHIRLEY JAUREGUI, DEPUTY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MABON DEMETRIC JAMES,

Defendant.

CASE NO. FV11301842

FINDING
AS TO
SPECIAL ALLEGATION
AS TO COUNT 2

We, the jury in the above entitled action, find the allegation that in the
commission of the above offense, the defendant, MABON DEMETRIC JAMES, personally
used a deadly and dangerous weapon, to wit, a knife, to be:

TRUE X

NOT TRUE _____

Dated: 8/29/13

#3

Foreperson

SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
FOR THE STATE OF CALIFORNIA

(for filing stamp only)

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
AUG 29 2013
BY Shirley Jauregui
SHIRLEY JAUREGUI, DEPUTY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MABON DEMETRIC JAMES,

Defendant.

CASE NO. FV11301842

FINDING
AS TO
SPECIAL ALLEGATION
AS TO COUNT 5

We, the jury in the above entitled action, find the allegation that in the
commission of the above offense, the defendant, MABON DEMETRIC JAMES, personally
used a deadly and dangerous weapon, to wit, a knife, to be:

TRUE X

NOT TRUE _____

Dated: 8/29/13

#3
Foreperson

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
MINUTE ORDER

CASE NO: FVI1301842

DATE: 08/29/13

CASE TITLE: PEOPLE OF THE STATE OF CALIFORNIA
vs.
MABON DEMETRIC JAMES

DEPT: V2 08/29/13 TIME: 9:00 am JURY TRIAL (IN PROGRESS)

CHARGES: 1) 211 PC-F, 2) 211 PC-F, 5) 136.1(B)(1) PC-F, 999) 667(A)(1) PC-
999) 667(A)(1) PC-F, 999) 667.5(B) PC-F, 999) 667.5(B) PC-F
999) 667.5(B) PC-F, 999) 667.5(B) PC-F, 999) 667.5(B) PC-F

JOHN M TOMBERLIN, JUDGE
Clerk: Shirley Jauregui
Certified Court Reporter: Kellie Moss; CSR# 10796
Deputy District Attorney TIMOTHY HASKELL present.
Deputy Public Defender WILLIAM FIGUEROA present
Defendant present in custody.
-

PROCEEDINGS
Action came on for Jury Trial-In Progress
4th DAY OF TRIAL.
-

8:45
Court reconvenes OUT OF THE PRESENCE OF THE JURY
Hearing held outside presence of the jury.
-

9:07
Court reconvenes, all parties present. All jurors and alternate
jurors are present and in their places.
Court gives jury instructions.
-

9:15
Closing arguments presented by THE PEOPLE.
-

9:55
Closing arguments presented by THE DEFENSE.
-

10:17
Rebuttal by THE PEOPLE.
-

10:39
Court gives jury instructions.
-

10:47
Bailiff sworn.

8/29/13

Page: 2

Case Number : FVI1301842 People vs. MABON JAMES

(DEPUTY JASON PATRICK)

Jury admonished and commences deliberations.

THE COURT ADMONISHES AND INSTRUCTS THE ALTERNATE JURORS.

11:29

Hearing held outside presence of the jury.

DEFENSE Motion PURSUANT TO PC1118.1 is DENIED.

12:00

Recess declared FOR LUNCH

1:30

Bailiff sworn.

(DEPUTY MICHELLE MORGAN-OFF RECORD)

Jury REASSEMBLES deliberations RESUME.

1:35

Jury advises court that they: HAVE A VERDICT

1:40

Court reconvenes, all parties present. All jurors and alternate jurors are present and in their places.

VERDICT

We the Jury in the above-entitled action, find the defendant MABON DEMETRIC JAMES, GUILTY in Count 1, a violation of Section 211 PC.

We the Jury in the above-entitled action, find the defendant MABON DEMETRIC JAMES, GUILTY in Count 2, a violation of Section 211 PC.

We the Jury in the above-entitled action, find the defendant MABON DEMETRIC JAMES, GUILTY in Count 5, a violation of Section 136.1(B)(1) PC.

We the Jury find the Allegation UD-12022(B)(1)PC in Count 2 TRUE.

We the Jury find the Allegation UD-12022(B)(1)PC in Count 5 TRUE.

Polling of Jurors waived.

1:43

THE COURT GIVES THE JURY FINAL INSTRUCTIONS.

1:46

Jurors thanked and excused.

1:48

THE DEFENDANT WAIVES JURY TRIAL AND COURT TRIAL

8/29/13

Page: 3

Case Number : FVI1301842 People vs. MABON JAMES

AS TO PRIORS.

PLEA INFORMATION

Defendant admits prior 1 2 3 5 6 7 8.

Defendant admits prior/strike.

Defendant admits prior/strike.

DISMISSALS

Court orders Prior # 4 stricken.

(THE COURT FINDS IT TO BE A DUPLICATE CASE NUMBER)

Court orders allegation CC-12022.1(F)PC in Count 1 stricken.

Court orders allegation CC-12022.1(F)PC in Count 2 stricken.

Court orders allegation CC-12022.1(F)PC in Count 5 stricken.

Court orders allegation GV-1192.7(C)(37)PC in Count 5 stricken.

1:55

OFF THE record, Court and Counsel at Bench.

Bench conference ends at 1:57.

HEARINGS

Defendant waives time for Sentencing.

Sentencing set for 10/04/2013 at 8:30 in Department V2.

Defendant ordered to appear on hearing date.

REFERRAL

Referred to Probation Office for presentence investigation and report.

CUSTODY STATUS

Case Custody - In Custody

Probation Office notified.

===== MINUTE ORDER END =====

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
MINUTE ORDER

CASE NO: FVI1301842

DATE: 10/18/13

CASE TITLE: PEOPLE OF THE STATE OF CALIFORNIA
vs.
MABON DEMETRIC JAMES

DEPT: V2 10/18/13 TIME: 8:37 am SENTENCING

CHARGES: 1) 211 PC-F, 2) 211 PC-F, 5) 136.1(B)(1) PC-F, 999) 667(A)(1) PC-
999) 667(A)(1) PC-F, 999) 667.5(B) PC-F, 999) 667.5(B) PC-F
999) 667.5(B) PC-F, 999) 667.5(B) PC-F, 999) 667.5(B) PC-F

Minutes updated by Shirley Jauregui.

-
JOHN M TOMBERLIN, JUDGE
Clerk: JANA WESTBROOKS
Certified Court Reporter: Kellie Moss; CSR# 10796
Deputy District Attorney TIMOTHY HASKELL present.
Attorney DPD WILLIAM FIGUEROA present.
Defendant present in custody.
-

PROCEEDINGS
OFF THE record, Court and Counsel confer in Chambers
Court has read and considered Probation Officer's Report..
Issues submitted.
-

FINDINGS/ADVISALS:
Formal arraignment for Pronouncement of Judgment is waived; no
legal cause why Judgment should not now be pronounced.
Pursuant to Section 13350, Vehicle Code, the Court finds a motor
vehicle WAS NOT used in the commission of the offense.
Court finds Defendant is NOT able to reimburse the County for
attorney fees.
The Court finds that the Defendant does not have the present
ability to pay the cost of conducting the pre-sentence
investigation and preparing
the report pursuant to Section 1203.1(b) of the Penal Code.
Pursuant to PC296(a)(1) the Sheriff is directed to obtain the
required samples from the defendant unless the Sheriff verifies
that a PC 296 sample
has been previously been obtained from the defendant and is
currently on file
Weapon ordered disposed of pursuant to PC18005(c)
Criminal Assessment and court operations assessment of \$60 per
conviction for count(s) 1 2 5 payable to the Department of
Corrections.

10/28/13

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Case Number : FVI1301842 People vs. MABON JAMES

Rest Fine of \$1000.00 pursuant to 1202.4 PC
payable to Rest Fund to be collected by DOC.
Rest Fine of \$1000.00 pursuant to 1202.45 PC
stayed pending successful completion of parole.
Court retains jurisdiction on issue of restitution pursuant to
PC1202.46.

SENTENCING INFORMATION

Probation is DENIED and sentence is imposed as follows:

DEFENDANT TO SERVE AN INDETERMINATE SENTENCE

AS FOLLOWS:

As to Count 1 the court imposes the indeterminate sentence of 25
years to Life.

Principal count deemed Count # 1.

As to Count 2 the court imposes the indeterminate sentence of 25
years to Life.

Count 2 to run consecutive to Count 1.

As to Count 5 the court imposes the indeterminate sentence of 25
years to Life.

Count 5 to run consecutive to Count 2.

DEFENDANT TO SERVE A DETERMINATE SENTENCE

AS FOLLOWS:

As to allegations UD-12022(B)(1)PC in count 2 the court imposes
the LOWER term of 1 years and 0 months.

Allegation UD-12022(B)(1)PC in Count 2 to run consecutive to
Count 2.

As to allegations UD-12022(B)(1)PC in count 5 the court imposes
the LOWER term of 1 years and 0 months.

PC654 stay granted as to allegation UD-12022(B)(1)PC in Count 5.

As to prior 1, the Court imposes 5 years and 0 months.

Prior # 1 to run consecutive to sentence imposed in Count 1.

As to prior 2, the Court imposes 5 years and 0 months.

Prior # 2 to run consecutive to sentence imposed in Count 2.

As to prior 3, the Court imposes 1 years and 0 months.

Prior # 3 to run consecutive to sentence imposed in Count 5.

As to prior 5, the Court imposes 1 years and 0 months.

~~Prior # 5 to run consecutive to sentence imposed in Count 5.~~

As to prior 6, the Court imposes 1 years and 0 months.

Prior # 6 to run consecutive to sentence imposed in Count 5.

As to prior 7, the Court imposes 1 years and 0 months.

Prior # 7 to run consecutive to sentence imposed in Count 5.

As to prior 8, the Court imposes 1 years and 0 months.

Prior # 8 to run consecutive to sentence imposed in Count 5.

Sentenced to State Prison for a total term of 91 years and 0
months.

**DEFENDANT SENTENCED TO A DETERMINATE SENTENCE

10/28/13

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Case Number : FVI1301842 People vs. MABON JAMES

=====

OF 16 YEARS FOLLOWED BY AN INDETERMINATE
SENTENCE OF 75 YEARS TO LIFE.

-

Credit for time served (124 actual + 19 conduct) for a total of
143 days.

conduct credit pursuant to PC2933.1

Sentence to run concurrent to ANY OTHER TIME OBLIGATED TO SERVE.

Court fully advises Defendant of Parole Rights.

Court fully advises Defendant of his/her Appeal Rights.

-

CUSTODY STATUS

Case Custody - State Prison

Defendant remanded to the custody of the Sheriff to be delivered
to California Department of Corrections at CHINO.

Firearms Prohibition notification form given to
defendant/defense counsel.

Firearms Prohibited.

Probation Office notified.

===== MINUTE ORDER END =====

CR-292

ABSTRACT OF JUDGMENT-PRISON COMMITMENT-INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO		FILED Victorville SAN BERNARDINO COUNTY Superior Court OCT 30 2013 JOY E. COLLY, DEPUTY	
PEOPLE OF THE STATE OF CALIFORNIA vs. MABON DEMETRIC JAMES DOB: 04/08/1954		FVI1301842	-A
DEFENDANT: AKA: CII#: A06431310			-B
BOOKING # 1306342177 ☐ NOT PRESENT			-C
COMMITMENT TO STATE PRISON ☐ AMENDED ABSTRACT OF JUDGMENT ABSTRACT			-D
DATE OF HEARING 10/18/2013	DEPT. NO. V2	JUDGE JOHN M TOMBERLIN	
CLERK JANA WESTBROOKS	REPORTER KELLIE MOSS	PROBATION NO. OR PROBATION OFFICER	
COUNSEL FOR PEOPLE TIMOTHY HASKELL	COUNSEL FOR DEFENDANT WILLIAM FIGUEROA		☐ APPTD

1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment
(number of pages attached)

CNT	CODE	SECTION NO	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO/DAY/YR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	654 STAY
						JURY	COURT	PLEA			
1	PC	211**	2 ND ROBBERY	2013	08/29/13	X					
2	PC	211**	2 ND ROBBERY	2013	08/29/13	X				X	
5	PC	136.1(B)(1)	PREVENT/DISSUADE	2013	08/29/13	X				X	

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
2	PC12022(B)(1)	01							1
5	PC12022(B)(1)	S							

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
	PC667(A)(1)	05	PC667(A)(1)	05	PC667.5(B)	01			11
	PC667.5(B)	01	PC667.5(B)	01	PC667.5(B)	01			3
	PC667.5(B)	01							1

Defendant was sentenced State Prison for an INDETERMINATE TERM as follows:

4. ☐ LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____
 5. ☐ LIFE WITH THE POSSIBILITY OF PAROLE on counts _____
 6. a. ☐ 15 years to Life on counts _____ c. ☐ 40 years to Life on counts _____
 b. ☒ 25 years to Life on counts 1,2,5 d. ☐ _____ years to Life on counts _____
 e. ☐ For other term: _____

PLUS enhancement time shown above.

- 7.
- ☐
- Additional determinate term (see CR-290).

8. Defendant was sentenced pursuant to
- ☐
- PC 667(b)-(f) or PC 1170.12
- ☐
- PC 667.61
- ☐
- PC 667.7
- ☐
- Other (specify): _____

This form is prescribed under PC 1212.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

Page 1 of 2

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: MABON, DEMETRIC JAMES			
FV11301842	-B	-C	-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution: Fine(s):

Case A: 1,000.00	Per PC 1202.4 (b) forthwith per PC 2085.5	1,000.00	Per PC 1202.45(b) suspended unless parole is revoked
Case B:	Per PC 1202.4 (b) forthwith per PC 2085.5		Per PC 1202.45(b) suspended unless parole is revoked
Case C:	Per PC 1202.4 (b) forthwith per PC 2085.5		Per PC 1202.45(b) suspended unless parole is revoked
Case D:	Per PC 1202.4 (b) forthwith per PC 2085.5		Per PC 1202.45(b) suspended unless parole is revoked

b. Restitution per PC 1202.4(f):

Case A:	☐ Amount to be determined to ☐ Victim(s)* ☐ Restitution Fund Victim Compensation Board payable to DOC
Case B:	☐ Amount to be determined to ☐ Victim(s)* ☐ Restitution Fund
Case C:	☐ Amount to be determined to ☐ Victim(s)* ☐ Restitution Fund
Case D:	☐ Amount to be determined to ☐ Victim(s)* ☐ Restitution Fund

* List victim name(s) if known and amount breakdown in item 11, below.

c. Fine(s)

Case A:	per PC 1202.5	per VC 23550 or	days	☐ county jail	☐ prison in lieu of fine	☐ CC	☐ CS
Case B:	per PC 1202.5	per VC 23550 or	days	☐ county jail	☐ prison in lieu of fine	☐ CC	☐ CS
Case C:	per PC 1202.5	per VC 23550 or	days	☐ county jail	☐ prison in lieu of fine	☐ CC	☐ CS
Case D:	per PC 1202.5	per VC 23550 or	days	☐ county jail	☐ prison in lieu of fine	☐ CC	☐ CS

d. Lab Fees and Drug Program Fee

Case A: Lab Fee	per HS 11372.5(a) for counts	☐ Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee	per HS 11372.5(a) for counts	☐ Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee	per HS 11372.5(a) for counts	☐ Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee	per HS 11372.5(a) for counts	☐ Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA Pursuant to PC 296 c. ☐ other: (specify):

11. Other orders (specify): Criminal Assessment and court operations assessment of \$60 per conviction for counts 1 2 5 payable to the Department of Corrections. **DEFENDANT SENTENCED TO A DETERMINATE SENTENCE OF 16 YEARS FOLLOWED BY AN INDETERMINATE SENTENCE OF 75 YEARS TO LIFE. Sentence to run concurrent to ANY OTHER TIME OBLIGATED TO SERVE.

12. EXECUTION OF SENTENCE IMPOSED

- a. ☒ at initial sentencing hearing
b. ☐ at resentencing per decision on appeal.
c. ☐ after revocation of probation
d. ☐ at resentencing per recall of commitment. (PC 1170(d))

e. ☐ other (specify):

13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	143	124	19 ☐ 4019 ☒ 2933.1
B			☐ 4019 ☐ 2933.1
C			☐ 4019 ☐ 2933.1
D			☐ 4019 ☐ 2933.1
Date Sentenced Pronounced: 10/18/13		Time Served in State Institution: ☐ DMH ☐ CDC ☐ CRC	

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays and holidays.

To be delivered to ☐ the reception center designated by the director of the California department of Corrections.

☒ other (specify): CHINO

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

DEPUTY'S SIGNATURE

DATE

Jay X. Colley 10-30-13

1 **PHYLLIS K. MORRIS**
2 Public Defender,
3 G. Christopher Gardner,
4 Assistant Public Defender, Main Unit.
5 By: William Figueroa, SBN 139348
6 14455 Civic Drive, #600
7 Victorville, CA 92392
8 Attorney for Defendant:
9 MABON JAMES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
OCT 31 2013
BY JENNA EASLEY, DEPUTY

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
8 DESERT DIVISION

9 **PEOPLE OF THE STATE OF**
10 **CALIFORNIA, Plaintiff,**

11 v.

12 MABON JAMES, Defendant.
13
14
15

) Case No. FVI-1301842
)
) NOTICE OF APPEAL
)
) (AFTER TRIAL)
)
)
)
)
)

16
17 TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE, that the Defendant, MABON JAMES, hereby appeals from the
19 judgment entered against him on or about, October 18, 2013, in the above-entitled matter, and all
20 special findings, enhancements, sentences and terms of probation thereunder.

21 DATED: October 30, 2013

22 William Figueroa
23 Attorney for Defendant.
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