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APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2019

FOR THE NINTH CIRCUIT

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

CRAIG KEYON WHITE,

Petitioner-Appellant,

v.

ROBERT W. FOX, Warden,

Respondent-Appellee.

No. 17-56307

D.C. No.

5:14-cv-02480-R-GJS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted December 9, 2019**
Pasadena, California

Before: O'SCANNLAIN, PAEZ, and OWENS, Circuit Judges.

Craig White appeals the district court's denial of his petition for a writ of habeas corpus following his conviction for first degree robbery, attempted robbery, and first degree burglary in California state court. As the facts are known to the

* 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).

parties, we repeat them only as necessary to explain our decision.¹

I

The district court did not err in determining that the pretrial identification procedures were not unduly suggestive and thus did not violate due process. Although Deputy Bodnar did not read the admonishment aloud to Estevez and asked him to take his time when viewing the six-pack photo lineup, such actions did not direct Estevez's attention to one photo in particular and did not render the procedure impermissibly suggestive. *Simmons v. United States*, 390 U.S. 377, 383–84 (1968). Bodnar's additional comments to Estevez did not suggest to Estevez that White was "the man." *See Foster v. California*, 394 U.S. 440, 443 (1969). The record does not support the claim that Bodnar suggested to Estevez that White was the correct choice or even that there was any evidence that any of the men pictured had committed the crime. *See Simmons*, 390 U.S. at 383–84; *see also United States v. Bagley*, 772 F.2d 482, 493 (9th Cir. 1985). Bodnar's assertion that the report mentioned a man with braids did not prompt Estevez to choose White because all of the photos depicted men with braids. Finally, the poor quality of the photos did not make the procedure impermissibly suggestive. *See United States v. Burdeau*, 168 F.3d 352, 357 (9th Cir. 1999).

¹ Appellant's Request for Judicial Notice, filed with this court December 10, 2018, is **GRANTED**.

Even if there were any suggestiveness in the procedure, the witness identifications were independently reliable based on the *Biggers* factors. *Manson v. Braithwaite*, 432 U.S. 98, 114 (1977). First, all four victims had adequate opportunity to view White during the crime, which occurred in a lighted house and lasted about 45 minutes. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). Second, the witnesses paid a fair degree of attention to White and were able to recall these details at trial. *Id.* Third, despite the slight variations in descriptions of White's hair and clothing, the witnesses gave an accurate physical description of White. *Id.* Fourth, the witnesses were fairly certain to very certain in their pretrial identifications of White. *Id.* Fifth, the time between the crime and identifications was relatively short. *Id.*; see also *United States v. Barron*, 575 F.2d 752, 755 (9th Cir. 1978).

Because the procedure was not impermissibly suggestive and was independently reliable, the district court did not err in concluding that the state court's decision was not contrary to clearly established federal law and was not based on an unreasonable determination of the facts. *Harrington v. Richter*, 562 U.S. 86, 98 (2011).

II

The district court did not err in determining White's counsel was not ineffective for failing to challenge the identification procedure or failing to

introduce audio recordings of the witness identifications. White has not demonstrated deficient performance and so his claim fails. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, White failed to demonstrate that the pretrial identification procedures were impermissibly suggestive or unreliable. Therefore, counsel's motion to suppress would have been futile. Counsel was not deficient under *Strickland* for failing to file a meritless motion. *Ceja v. Stewart*, 97 F.3d 1246, 1253 (9th Cir. 1996). Second, counsel's decision to impeach the witnesses with the written transcripts rather than the audio recordings was a tactical decision that falls under the "wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

Because there was, in fact, a reasonable argument that counsel did satisfy *Strickland*, the district court did not err in concluding that the state court's decision was not contrary to clearly established law. *Richter*, 562 U.S. at 105.

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.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	REQUESTED (each column must be completed)			
	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Supplemental Brief(s)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee				\$ <input type="text"/>
TOTAL:				\$ <input type="text"/>

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);

TOTAL: $4 \times 500 \times \$.10 = \200 .

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 2 2018

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

CRAIG KEYON WHITE,

Petitioner-Appellant,

v.

NEIL MCDOWELL, Warden,

Respondent-Appellee.

No. 17-56307

D.C. No.

5:14-cv-02480-R-GJS

Central District of California,
Riverside

ORDER

Before: CLIFTON and CHRISTEN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is granted with respect to the following issues: (1) whether the unduly suggestive pretrial identification violated appellant's right to due process, (2) whether counsel was ineffective for failing to challenge the pre-trial identification procedures, and (3) whether counsel was ineffective for failing to introduce audio recordings of the witness identifications. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

Appellant's motion for appointment of counsel (Docket Entry No. 4) is granted. *See* 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Counsel will be appointed by separate order.

The Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone

number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

The opening brief is due July 11, 2018; the answering brief is due August 10, 2018; the optional reply brief is due within 21 days after service of the answering brief.

Counsel in this case may access the state lodged documents by logging into Appellate ECF and then choosing Reports > PACER Report.

The Clerk shall serve on appellant a copy of the “After Opening a Case - Couseled Cases” document.

If Neil McDowell is no longer the appropriate appellee in this case, counsel for appellee shall notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).

UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT**Office of the Clerk****After Opening a Case – Counseled Cases**
(revised April 2016)**Court Address – San Francisco Headquarters**

<i>Mailing Address for U.S. Postal Service</i>	<i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>	<i>Street Address</i>
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

Court Addresses – Divisional Courthouses

<i>Pasadena</i>	<i>Portland</i>	<i>Seattle</i>
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	The Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

Court Website – www.ca9.uscourts.gov

The Court's website contains the Court's Rules and General Orders, information about electronic filing of documents, answers to frequently asked questions, directions to the courthouses, forms necessary to gain admission to the bar of the Court, opinions and memoranda, live streaming of oral arguments, links to practice manuals, and an invitation to join our Pro Bono Program.

Court Phone List

Main Phone Number.	(415) 355-8000
Attorney Admissions.	(415) 355-7800
Calendar Unit.	(415) 355-8190
CJA Matters (Operations Unit)	(415) 355-7920
Docketing.	(415) 355-7840
Death Penalty.	(415) 355-8197
Electronic Filing – CM/ECF.	Submit form at http://www.ca9.uscourts.gov/cmecf/feedback
Library.	(415) 355-8650
Mediation Unit.	(415) 355-7900
Motions Attorney Unit.	(415) 355-8020
Procedural Motions Unit.	(415) 355-7860
Records Unit.	(415) 355-7820
Divisional Court Offices:	
Pasadena.	(626) 229-7250
Portland.	(503) 833-5300
Seattle.	(206) 224-2200

Electronic Filing - CM/ECF

The Ninth Circuit's CM/ECF (Case Management/Electronic Case Files) system is mandatory for all attorneys filing in the Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use CM/ECF. Registration and information about CM/ECF is available on the Court's website at www.ca9.uscourts.gov under *Electronic Filing–CM/ECF*. Read the [Circuit Rules](#), especially Ninth Circuit Rule 25-5, for guidance on filing documents electronically via CM/ECF, and see the [CM/ECF User Guide](#) for a complete list of the available types of filing events.

Rules of Practice

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at www.ca9.uscourts.gov under *Rules*.

Practice Resources

The [Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeals for the Ninth Circuit](http://www.ca9.uscourts.gov) is available on the Court's website www.ca9.uscourts.gov at *Guides and Legal Outlines > Appellate Practice Guide*. The Court provides other resources in *Guides and Legal Outlines*.

Admission to the Bar of the Ninth Circuit

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

For instructions on how to apply for bar admission, go to www.ca9.uscourts.gov and click on the *Attorneys* tab > *Attorney Admissions > Instructions*.

Notice of Change of Address

Counsel who are registered for CM/ECF must update their personal information, including street addresses and email addresses, online at: <https://pacer.psc.uscourts.gov/pscof/login.jsf> 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using CM/ECF must file a written change of address with the Court. 9th Cir. R. 46-3.

Motions Practice

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-14.

- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.

- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A); Fed. R. App. P. 26(c). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- A motion filed in a criminal appeal must include the defendant's bail status. 9th Cir. R. 27-2.8.1.
- A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel. 9th Cir. R. 25-4.

Emergency or Urgent Motions

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

Briefing Schedule

The Court generally issues the briefing schedule at the time the appeal is docketed.

Certain motions (e.g., a motion for dismissal) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The opening and answering brief due dates are not subject to the additional time described in Fed. R. App. P. 26(c). 9th Cir. R. 31-2.1. The early filing of

appellant's opening brief does not advance the due date for appellee's answering brief. *Id.*

Extensions of Time to File a Brief

Streamlined Request

Subject to the conditions described at 9th Cir. R. 31-2.2(a), you may request one streamlined extension of up to 30 days from the brief's existing due date. Submit your request via CM/ECF using the "File Streamlined Request to Extend Time to File Brief" event on or before your brief's existing due date. No form or written motion is required.

Written Extension

Requests for subsequent extensions or extensions of more than 30 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

Contents of Briefs

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2. After the electronically submitted brief has been reviewed, the Clerk will request 7 paper copies of the brief that are identical to the electronic version. 9th Cir. R. 31-1. Do not submit paper copies until directed to do so.

Excerpts of Record

The Court requires Excerpts of Record rather than an Appendix. 9th Cir. R. 30-1.1(a). Please review 9th Cir. R. 30-1.3 through 30-1.6 to see a list of the specific contents and format. For Excerpts that exceed 75 pages, the first volume must comply with 9th Cir. R. 30-1.6(a). Excerpts exceeding 300 pages must be filed in multiple volumes. 9th Cir. R. 30-1.6(a).

Appellees may file supplemental Excerpts and appellants may file further Excerpts. 9th Cir. R. 30-1.7 and 30-1.8. If you are an appellee responding to a pro se brief that did not come with Excerpts, then your Excerpts need only include the contents set out at 9th Cir. R. 30-1.7.

Excerpts must be submitted in PDF format in CM/ECF on the same day the filer submits the brief. The filer shall serve a paper copy of the Excerpts on any party not registered for CM/ECF.

If the Excerpts contain sealed materials, you must submit the sealed documents electronically in a separate volume in a separate transaction from the unsealed volumes, along with a motion to file under seal. 9th Cir. R. 27-13(e). Sealed filings must be served on all parties by mail, or if mutually agreed by email, rather than through CM/ECF noticing.

After electronic submission, the Court will direct the filer to file 4 separately-bound paper copies of the excerpts of record with white covers.

Mediation Program

Mediation Questionnaires are required in all civil appeals except cases in which the appellant is proceeding pro se, habeas cases (28 U.S.C. §§ 2241, 2254 and 2255) and petitions for writs (28 U.S.C. § 1651). 9th Cir. R. 3-4.

The Mediation Questionnaire is available on the Court's website at www.ca9.uscourts.gov under *Forms*. The Mediation Questionnaire should be filed within 7 days of the docketing of a civil appeal. The Mediation Questionnaire is used only to assess settlement potential.

If you are interested in requesting a conference with a mediator in any type of appeal, you may call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. More information about the Court's mediation program is available at <http://www.ca9.uscourts.gov/mediation>.

Oral Hearings

Approximately 14 weeks before a case is set for oral hearing, the parties are notified of the hearing dates and locations and are afforded 3 days from the date of those notices to inform the Court of any conflicts. Notices of the actual calendars are then distributed approximately 10 weeks before the hearing date.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34(a)(2).

Oral arguments are live streamed to You Tube and can be accessed through the Court's website.

Ninth Circuit Appellate Lawyer Representatives APPELLATE MENTORING PROGRAM

1. Purpose

The Appellate Mentoring Program is intended to provide mentoring on a voluntary basis to attorneys who are new to federal appellate practice or would benefit from guidance at the appellate level. In addition to general assistance regarding federal appellate practice, the project will provide special focus on two substantive areas of practice - immigration law and habeas corpus petitions. Mentors will be volunteers who have experience in immigration, habeas corpus, and/or appellate practice in general. The project is limited to counseled cases.

2. Coordination, recruitment of volunteer attorneys, disseminating information about the program, and requests for mentoring

Current or former Appellate Lawyer Representatives (ALRs) will serve as coordinators for the Appellate Mentoring Program. The coordinators will recruit volunteer attorneys with appellate expertise, particularly in the project's areas of focus, and will maintain a list of those volunteers. The coordinators will ask the volunteer attorneys to describe their particular strengths in terms of mentoring experience, substantive expertise, and appellate experience, and will maintain a record of this information as well.

The Court will include information about the Appellate Mentoring Program in the case opening materials sent to counsel and will post information about it on the Court's website. Where appropriate in specific cases, the Court may also suggest that counsel seek mentoring on a voluntary basis.

Counsel who desire mentoring should contact the court at mentoring@ca9.uscourts.gov, and staff will notify the program coordinators. The coordinators will match the counsel seeking mentoring with a mentor, taking into account the mentor's particular strengths.

3. The mentoring process

The extent of the mentor's guidance may vary depending on the nature of the case, the mentee's needs, and the mentor's availability. In general, the mentee should initiate contact with the mentor, and the mentee and mentor should determine

together how best to proceed. For example, the areas of guidance may range from basic questions about the mechanics of perfecting an appeal to more sophisticated matters such as effective research, how to access available resources, identification of issues, strategy, appellate motion practice, and feedback on writing.

4. Responsibility/liability statement

The mentee is solely responsible for handling the appeal and any other aspects of the client's case, including all decisions on whether to present an issue, how to present it in briefing and at oral argument, and how to counsel the client. By participating in the program, the mentee agrees that the mentor shall not be liable for any suggestions made. In all events, the mentee is deemed to waive and is estopped from asserting any claim for legal malpractice against the mentor.

The mentor's role is to provide guidance and feedback to the mentee. The mentor will not enter an appearance in the case and is not responsible for handling the case, including determining which issues to raise and how to present them and ensuring that the client is notified of proceedings in the case and receives appropriate counsel. The mentor accepts no professional liability for any advice given.

5. Confidentiality statement

The mentee alone will have contact with the client, and the mentee must maintain client confidences, as appropriate, with respect to non-public information.

APPENDIX C

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 CRAIG KEYON WHITE,
12 Petitioner

13 v.

14 NEIL McDOWELL,
15 Respondent.
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17


Case No. EDCV 14-2480-R (GJS)

JUDGMENT

18 Pursuant to the Court's Order Accepting Findings and Recommendations of
19 United States Magistrate Judge,

20 IT IS ADJUDGED THAT this action is dismissed with prejudice.
21

22
23 DATE: August 14, 2017

24 
25 _____
26 MANUEL L. REAL
27 UNITED STATES DISTRICT JUDGE
28

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRAIG KEYON WHITE,
Petitioner
v.
NEIL McDOWELL,
Respondent.

Case No. EDCV 14-2480-R (GJS)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition ("Petition"), all pleadings and other documents filed in this action, the Report and Recommendation of United States Magistrate Judge ("Report"), and Petitioner's Objection to the Report. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a de novo review of those portions of the Report to which objections have been stated.

Having completed its review, the Court concludes that nothing in the Objections affects or alters the analysis and conclusions set forth in the Report and accepts the findings and recommendations set forth in the Report. Accordingly, **IT IS ORDERED** that: (1) the Petition is DENIED; and (2) Judgment shall be entered dismissing this action with prejudice.

DATE: August 14, 2017



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

APPENDIX E

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
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12 CRAIG KEYON WHITE,
13 Petitioner

14 v.

15 NEIL MCDOWELL,
16 Respondent.

Case No. EDCV 14-2480-R (GJS)

**REPORT AND
RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

17 This Report and Recommendation is submitted to United States District Judge
18 Manuel L. Real, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the
19 United States District Court for the Central District of California. For the reasons
20 that follow, the Court recommends that the District Judge deny Petitioner's request
21 for federal habeas relief.
22

23 **INTRODUCTION**

24 On December 24, 2014, Petitioner, a prisoner in state custody, filed a first
25 amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254
26 ("Petition"). Respondent filed an Answer and lodged the pertinent portions of the
27 state record ("LD"), and Petitioner filed a Traverse. Thus, the matter is submitted
28 and ready for decision.

PETITIONER'S HABEAS CLAIMS

Ground One: The unduly suggestive pretrial identification procedures violated Petitioner's right to due process. [Petition at 5, Att. at 6-16.]

Ground Two: The prosecutor engaged in misconduct by presenting false evidence, misrepresenting facts, and failing to correct improperly admitted evidence, in violation of Petitioner's right to due process and a fair trial. [Petition at 5, 16-28.]

Ground Three: Trial counsel provided ineffective assistance and deprived Petitioner of the right to present a defense by failing to challenge pretrial identification procedures, failing to object to the admission of certain witness statements and exhibits, failing to impeach witnesses with their recorded interview statements, failing to properly question or call witnesses at trial, failing to object to misrepresentations made by the prosecutor during closing argument, and failing to obtain juror identifying information. [Petition at 6, Att. at 28-42.]

Ground Four: The combined effect of multiple trial court errors rendered Petitioner's trial fundamentally unfair and violated Petitioner's right to due process. [Petition at 6, Att. at 42-44.]

Ground Five: Appellate counsel provided ineffective assistance by failing to raise meritorious arguments, as set forth in the Petition, on direct appeal. [Petition at 6, Att. at 44-45.]

PROCEDURAL HISTORY

On October 14, 2011, a Riverside County Superior Court jury found Petitioner guilty of four counts of first degree robbery (Cal. Penal Code §§ 211, 212.5(a)), two counts of attempted robbery (Cal. Penal Code §§ 644/211), and one count of first degree burglary (Cal. Penal Code § 459). [LD 1, Reporter's Tr. ("RT") 801-04; LD 2, Clerk's Tr. ("CT") 522-23, 526-31, 533, 612-14.] In a bifurcated proceeding, Petitioner admitted he had two strike convictions (Cal. Penal Code §§ 667, 1170.12) and had served a prior prison term (Cal. Penal Code §

1 667.5(b)). [RT 811-12; CT 591.] The trial court sentenced Petitioner to 100 years
2 to life in state prison. [RT 827; CT 592-93, 612-14.]

3 Petitioner appealed, raising the following claims: (1) the trial court denied
4 Petitioner the right to effective assistance of counsel, the right to present a defense,
5 and the right to a fair trial by limiting defense counsel's closing argument; (2) the
6 trial court erred by denying Petitioner's request to review the investigating deputy's
7 personnel records in accordance with *Pitchess v. Superior Court*, 11 Cal.3d 531
8 (1974); and (3) the trial court erred by denying Petitioner's request for juror
9 identification information. [LD 3, 6.] On August 28, 2013, the California Court of
10 Appeal issued an unpublished opinion affirming Petitioner's conviction. [LD 6.] A
11 petition for rehearing was denied on September 24, 2013. [LD 7, 8.]

12 Petitioner then filed a petition for review in the California Supreme Court
13 raising the same claims he raised on direct appeal. [LD 9.] That petition was denied
14 without comment on November 26, 2013. [LD 10.]

15 Petitioner returned to the California Court of Appeal and his counsel filed a
16 brief pursuant to *People v. Wende*, 25 Cal.3d 436 (1979) (allowing appellate counsel
17 to file no merits brief and to ask the California Court of Appeal to independently
18 review the record for error). [LD 13.] Petitioner did not file a supplemental brief.
19 On April 9, 2014, the California Court of Appeal issued an unpublished opinion
20 affirming the trial court's judgment ordering restitution be paid to two of the
21 victims. [LD 15.] The remittitur issued on June 11, 2014. [LD 16.]

22 Petitioner then filed a habeas petition in the California Supreme Court, raising
23 the five claims asserted in the Petition. [LD 17.] The habeas petition was
24 summarily denied on November 12, 2014. [LD 18.]

25 26 **FACTUAL BACKGROUND**

27 The Court has reviewed the record in this case, as well as the California Court
28 of Appeal's summary of the evidence in its first unpublished opinion on direct

1 appeal. [LD 6 at 3-5.] The state appellate court's summary is consistent with the
2 Court's independent review of the record. Accordingly, the Court has quoted it
3 below to provide an initial factual overview. The relevant portions of the trial
4 record will be discussed further in connection with the Court's analysis of
5 Petitioner's claims.¹

6 What happened in this case is undisputed – four men, one
7 of whom was armed with a chrome handgun, entered a
8 house and initially robbed four people, taking items from
9 them personally and also taking things found in the house,
10 including a Sony PlayStation® 3. [Petitioner] was
11 arrested three weeks after the robbery, when he tried to
12 pawn the PlayStation® 3. The only issue at trial was
13 whether [Petitioner] was one of the robbers.

14 The four initial robbery victims were Dennis Estevez and
15 Arian Valdez [a.k.a. Arian Ibarra], who lived together in
16 the house where the robbery occurred, Patricia Alvarado,
17 who is Estevez's girlfriend, and Marcus Harden, a friend
18 of Estevez and Valdez. During the robbery, Tyler
19 Gonzalez and Jose Reyes, who are both friends of Valdez
20 and Estevez, came to the house. Before they could be
21 warned away, Gonzalez and Reyes were directed into the
22 house by one of the robbers, later identified as [Petitioner],
23 who was holding a gun to the back of Estevez's head as
24 Estevez stood at the open door. [Petitioner] directed them
25 both to lie down on the floor with the three other victims,
26 all of whom had been directed to cover their heads and not
27 look at [Petitioner] or the other robbers. When the
28 robbers' attention was diverted, Reyes got up and ran from
the house to a convenience store where he convinced the
clerk to call the police.

The robbers left the house before the police arrived, but
after taking three of the remaining five victims into the
bathroom and directing them to count to 100. After they
determined the robbers had left the house, one of the
victims ran next door and also called 911.

¹ On federal habeas review, "a determination of a factual issue made by a State court shall be presumed to be correct" unless rebutted by the petitioner by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *see also Schriro v. Landrigan*, 550 U.S. 465, 473-74 (2007).

1 Estevez, Valdez, Harden, and Alvarado each identified
 2 [Petitioner] from a photographic lineup prepared by
 3 Deputy Jonathan Bodnar. Although only some of them
 4 identified [Petitioner] as the gunman, they all said
 [Petitioner] was one of the robbers.

5 To support his defense of misidentification, [Petitioner]
 6 presented an alibi (that he had been at the hospital on the
 7 night of the robbery visiting his recently born son, then at
 8 his mother's house for the rest of the night and until the
 9 next morning) and the testimony of an expert on memory
 and suggestibility, which involves the influence that new
 information obtained after an event has on one's memory
 of that event.

10 [LD 6 at 3-4 (footnote omitted).]
 11

12 GOVERNING STANDARD

13 Under the Antiterrorism and Effective Death Penalty Act of 1996, as
 14 amended ("AEDPA"), Petitioner is entitled to habeas relief only if the state court's
 15 decision on the merits "(1) resulted in a decision that was contrary to, or involved an
 16 unreasonable application of, clearly established Federal law, as determined by the
 17 Supreme Court" or "(2) resulted in a decision that was based on an unreasonable
 18 determination of the facts in light of the evidence presented in the State court
 19 proceeding." 28 U.S.C. § 2254(d); *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

20 For purposes of Section 2254(d)(1), the relevant "clearly established Federal
 21 law" consists of Supreme Court holdings (not dicta), applied in the same context to
 22 which the petitioner seeks to apply it, existing at the time of the relevant state court
 23 decision. *See Lopez v. Smith*, 135 S. Ct. 1, 2, 4 (2014) (*per curiam*); *Premo v.*
 24 *Moore*, 562 U.S. 115, 127 (2011); *see also Greene v. Fisher*, 565 U.S. 34, 37 (2011)
 25 (holding that "the 'clearly established Federal law' referred to in § 2254(d)(1) is the
 26 law at the time of the state-court adjudication on the merits.").

27 A state court acts "contrary to" clearly established Federal law if it applies a
 28 rule contradicting the relevant holdings or reaches a different conclusion on

1 materially indistinguishable facts. *Price v. Vincent*, 538 U.S. 634, 640 (2003). A
2 state court “unreasonably appli[es]” clearly established Federal law if it engages in
3 an “objectively unreasonable” application of the correct governing legal rule to the
4 facts at hand. *White v. Woodall*, 134 S. Ct. 1697, 1705-07 (2014). “[A]n
5 ‘unreasonable application of’ [the Supreme Court’s] holdings must be ‘objectively
6 unreasonable,’ not merely wrong; even ‘clear error’ will not suffice.” *Id.* at 1702
7 (citation omitted). “The question . . . is not whether a federal court believes the state
8 court’s determination was incorrect but whether that determination was
9 unreasonable — a substantially higher threshold.” *Schriro v. Landrigan*, 127 S. Ct.
10 1933, 1939 (2007).

11 Habeas relief may not issue unless “there is no possibility fairminded jurists
12 could disagree that the state court’s decision conflicts with [the Supreme Court’s]
13 precedents.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011). To obtain habeas
14 relief, a petitioner “must show that” the state decision “was so lacking in
15 justification that there was an error well understood and comprehended in existing
16 law beyond any possibility for fairminded disagreement.” *Id.* at 103. This standard
17 is “difficult to meet,” *Metrish v. Lancaster*, 133 S. Ct. 1781, 1786 (2013), as even a
18 “strong case for relief does not mean the state court’s contrary conclusion was
19 unreasonable,” *Richter*, 562 U.S. at 102. “[S]o long as ‘fairminded jurists could
20 disagree’ on the correctness of the state court’s decision,” habeas relief is precluded
21 by Section 2254(d). *Id.* (citation omitted). “AEDPA thus imposes a ‘highly
22 deferential standard for evaluating state-court rulings,’ . . . and ‘demands that state-
23 court decisions be given the benefit of the doubt.’” *Renico v. Lett*, 559 U.S. 766,
24 773 (2010) (citations omitted).

25 The claims alleged in Grounds One through Five of the Petition are subject to
26 the foregoing standard of review, because the California Supreme Court rejected
27 these claims on their merits, albeit without analysis. [LD 18.] See *Richter*, 562 U.S.
28 at 99 (“When a federal claim has been presented to a state court and the state court

1 has denied relief, it may be presumed that the state court adjudicated the claim on
2 the merits in the absence of any indication or state-law procedural principles to the
3 contrary.”).

4 5 **DISCUSSION**

6 **I. Ground One: Pretrial Identification Procedures**

7 Petitioner claims that unduly suggestive pretrial identification procedures
8 violated his right to due process. [Petition at 5, Att. at 6-16.] Petitioner argues that,
9 under the totality of the circumstances, the pretrial identifications of him made by
10 Dennis Estevez, Arian Valdez, Patricia Alvarado, and Marcus Harden were not
11 reliable.

12 **A. Background**

13 About five weeks after the robberies, on September 2, 2010, Deputy Jonathan
14 Bodnar showed Estevez a photographic lineup of six African American men with
15 their hair in braids. [CT 340-41; RT 213, 241, 551-52.] Deputy Bodnar noticed
16 Estevez looking at one of the photos in particular. [CT 340; RT 243.] When asked
17 about the pictures, Estevez pointed to Petitioner’s picture, which was in position
18 number six of the six-pack lineup. [CT 340; RT 213-14, 243.] Estevez circled and
19 initialed Petitioner’s photo and stated that he was “50 percent” certain of the
20 identification. [CT 340-41; RT 214, 238, 245, 548.] Estevez also stated that he
21 thought the guy with braids was “a stockier guy.” [CT 341.]

22 At trial, Estevez identified Petitioner as the robber with the gun and stated
23 that he was 100 percent certain. [RT 195, 213-14.] He explained that he had been
24 only 50 percent sure of his identification at the photographic lineup, because
25 Petitioner wore a do-rag covering his braids during the robberies, but had his braids
26 out and was not wearing a do-rag in the photographic lineup. [RT 214, 241, 245.]

27 Deputy Bodnar showed Valdez a photographic lineup containing Petitioner’s
28 picture on September 2, 2010. [CT 337-38; RT at 146.] Valdez selected

1 Petitioner's picture in position number six and indicated that he was 50 percent
2 certain of his identification. [CT 337-38; RT 146, 149.] Valdez stated that the
3 robber had the similar facial features as Petitioner, but the robber looked a lot older
4 on the night of the incident. [CT 337-38; RT 146-47,184.] After Valdez identified
5 Petitioner's picture from the photographic lineup, Valdez told Deputy Bodnar that
6 he needed to see a picture of Petitioner's teeth. [RT 145-46, 187.] Valdez testified
7 that he specifically remembered Petitioner's grin and crooked teeth and believed
8 that he had mentioned Petitioner's teeth to the police on the night of the robberies.
9 [RT 145-46, 184, 187.] After Deputy Bodnar showed him a photograph of
10 Petitioner's mouth and teeth, Valdez reported that he was 100 percent certain that
11 Petitioner was one of the robbers. [RT 148, 177, 184.]

12 At trial, Valdez positively identified Petitioner as the robber with the silver
13 revolver. [RT 101, 111.] Although Petitioner's hair was much shorter at trial,
14 Valdez explained that his identification was based on Petitioner's teeth, grin, and
15 facial features. [RT 101, 137, 174, 184.] When the prosecutor asked Valdez to look
16 at Ex. 9, a photograph of a person's mouth and teeth, Valdez stated that Ex. 9 was "a
17 portion of a photo" he had previously seen. [RT 177.] The prosecutor proceeded to
18 ask Valdez, "What is this photograph?" but the trial court sustained defense
19 counsel's objection based on a lack of foundation. [RT 177-78.] When questioned
20 about Ex. 9 by defense counsel, Valdez stated he had not seen Ex. 9 before that
21 morning in court. [RT 186.] Valdez explained, however, that the prosecutor had
22 showed him a photographic six-pack containing Petitioner's picture before he took
23 the stand. [*Id.*] Later, upon redirect examination, the prosecutor showed Petitioner
24 three additional photos of Petitioner's mouth, Exs. 45, 47, and 48, which had been
25 recently taken by the prosecutor's investigator. [RT 179, 190-91.] Valdez
26 identified the photos as depicting Petitioner with his mouth open in varying degrees.
27 [RT 190-91.]

28 Deputy Bodnar showed Alvarado a photographic lineup containing

1 Petitioner's picture on September 2, 2010. [CT 343-44; RT 402-03.] Alvarado
2 selected Petitioner's photo, which was in position number six. [RT 403, 439.]
3 Alvarado stated that she knew Petitioner was the person who robbed her based on
4 his facial features and fuzzy hair. [RT 404.] After Alvarado circled and initialed
5 Petitioner's picture, she asked to see Petitioner's teeth, as there had been "something
6 wrong with his teeth." [RT 404-05, 443-44.] Alvarado also testified that she told a
7 female officer about Petitioner's teeth on the night of the robberies. [RT 427.]
8 When Deputy Bodnar showed Alvarado a photograph displaying Petitioner's teeth,
9 Alvarado stated, "That was just it." [RT 404, 443-44.]

10 At trial, Alvarado positively identified Petitioner as the robber with the gun.
11 [RT 390-92.] Alvarado explained that she recognized Petitioner from the night of
12 the robberies and from a court appearance in August 2011. [RT 391-92, 406.]

13 Harden identified Petitioner as one of the robbers from a photographic lineup
14 he was shown on September 10, 2010. [CT 353-55; RT 278-79.] Harden reported
15 that he was 80 percent sure of his identification, because the photograph was dark
16 and the robber was wearing a head covering during the robberies. [CT 354; RT 279,
17 358.] At trial, Harden testified that he was "absolutely" certain that Petitioner was
18 the robber with the silver revolver. [RT 280, 362.]

19 **B. Federal Law**

20 A pretrial identification procedure violates due process only when it was "so
21 impermissibly suggestive as to give rise to a very substantial likelihood of
22 irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384 (1968).
23 This may occur when the procedure "emphasize[s] the focus upon a single
24 individual," thereby increasing the likelihood of misidentification. *See United*
25 *States v. Bagley*, 772 F.2d 482, 493 (9th Cir. 1985); *see also Foster v. California*,
26 394 U.S. 440, 443 (1969) (an identification procedure is impermissibly suggestive if
27 it in effect says to the witness, "'This is the man'" (citation omitted)); *Simmons*, 390
28 U.S. at 383 ("This danger [of misidentification] will be increased if the police

1 display to the witness only the picture of a single individual who generally
2 resembles the person he saw, or if they show him the pictures of several persons
3 among which the photograph of a single such individual recurs or is in some way
4 emphasized.”).

5 If the pretrial identification procedure was impermissibly suggestive, the
6 totality of the circumstances are examined to determine whether the witness’s
7 identification was nonetheless reliable. *Perry v. New Hampshire*, 565 U.S. 228, 235
8 (2012) (citing *Neil v. Biggers*, 409 U.S. 188, 198-99 (1972), and *Manson v.*
9 *Brathwaite*, 432 U.S. 98, 114 (1977)). The factors to be considered in determining
10 reliability are: (1) the witness’s opportunity to view the criminal at the time of the
11 crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior
12 description of the criminal; (4) the level of certainty demonstrated by the witness at
13 the confrontation; and (5) the length of time between the crime and the
14 confrontation. *Biggers*, 409 U.S. at 199-200. If the flaws in the pretrial
15 identification procedures are not so suggestive as to violate due process, “the
16 reliability of properly admitted eyewitness identification, like the credibility of the
17 other parts of the prosecution’s case is a matter for the jury.” *Foster*, 394 U.S. at
18 443 n.2.

19 C. Analysis

20 Petitioner claims that the pretrial photographic lineup procedures were unduly
21 suggestive. [Petition, Att. at 8, 14.] In particular, he alleges that Deputy Bodnar
22 “prompted” Estevez into believing that the gunman had braids [Petition, Att. at 8]
23 and caused Valdez and Alvarado to become “focused” on Petitioner’s teeth as a
24 distinguishing feature by showing them an individual photo of Petitioner displaying
25 his teeth before they identified him from the photographic lineup [*id.* at 10, 12, 14].
26 Petitioner also suggests that the identification procedures were improper because
27 Alvarado and Valdez saw Petitioner at a courtroom proceeding in August 2011
28 [Petition, Att. at 10] and Valdez knew that Petitioner had been in possession of

1 Estevez's stolen Play Station® 3 [*id.* at 15; Traverse at 5].

2 Petitioner's contention that the Deputy Bodnar prompted Estevez to select
3 Petitioner's picture from the photographic lineup because of his braids is not
4 supported by the record. The transcript of Estevez's pretrial interview with Deputy
5 Bodnar shows that Estevez independently selected Petitioner's photo from the
6 lineup and stated that he was 50 percent sure of his identification. [CT 340.] In
7 making the selection, Estevez said, "Maybe this one with the du-rag. I don't
8 remember braids, though." [CT 340.] When Deputy Bodnar responded that one of
9 the reports had mentioned braids, Estevez stated, "But the guy who had braids, he
10 was, like, a stockier guy. Like I said, maybe with the du-rag." [CT 340-41.] Thus,
11 the record from the lineup procedure shows that Estevez was not influenced by
12 Deputy Bodnar's comment about braids. At trial, Estevez explained that he had
13 been 50 percent certain of his identification at the lineup because Petitioner's do-rag
14 had been covering his hair on the night of the robberies, and the photo in the lineup
15 showed Petitioner with his braids out and not wearing a do-rag. [RT 214, 241, 245.]
16 Moreover, any comment Deputy Bodnar made about braids would not have
17 improperly focused Estevez's attention on Petitioner as the suspect, given that all of
18 the individuals in the photographic lineup had braids. [RT 551-52.] Thus, there is
19 no basis for finding that the pretrial identification procedure in which Estevez
20 participated was "so impermissibly suggestive as to give rise to a very substantial
21 likelihood of irreparable misidentification." *Simmons*, 390 U.S. at 384.

22 Petitioner's allegation that Deputy Bodnar improperly showed Alvarado and
23 Valdez an individual photograph of him with his mouth open before they selected
24 his picture from the six-pack lineup also has no support in the record. Both
25 Alvarado and Valdez testified that they were shown a photograph of Petitioner
26 displaying his teeth *after* they identified Petitioner from the six-pack photographic
27 lineup. [RT 147, 404, 444.] Alvarado testified that she chose Petitioner's picture
28 from the lineup because she recognized his facial features and hair. [RT 404.]

1 Similarly, Valdez testified that he identified Petitioner from the six-pack based on
2 Petitioner's facial features. [RT 146.] Both of these victims also testified that they
3 told law enforcement about Petitioner's unusually crooked teeth before they were
4 shown the photograph of Petitioner exposing his open mouth and teeth. [RT 145,
5 146, 187, 427-28.] Thus, Petitioner has failed to demonstrate that Deputy Bodnar
6 improperly directed Alvarado and Valdez to focus their attention on Petitioner's
7 photo at the lineup.

8 Alvarado's opportunity to view Petitioner in a court proceeding in August
9 2011 did not render her subsequent in-court identification unreliable. Alvarado
10 identified Petitioner from the photographic lineup in September 2010, almost a year
11 before the proceeding. [CT 343; RT 406.] She testified that, in addition to
12 recognizing Petitioner from August 2011, she remembered him from the night of the
13 robberies. [RT 391-92.] In particular, she remembered his teeth and face. [RT 390,
14 396.]

15 Petitioner's claim that Valdez's in-court identification was improperly
16 influenced by Petitioner's August 2011 court appearance also is belied by the
17 record. Unlike Alvarado, Valdez testified that he had not seen Petitioner in person
18 since the night of the robberies. [RT 176-77.]

19 Finally, Petitioner's assertion that Valdez knew Petitioner had been in
20 possession of Estevez's stolen Play Station® 3 does not establish improper
21 identification procedures. Valdez knew Petitioner was one of the robbers and had
22 taken Estevez's PlayStation® 3, as he was an eyewitness to the robberies. Valdez
23 explained that he identified Petitioner in court because, "I remembered his face from
24 the incident," "he did take the [PlayStation® 3], and he was there. I'm not going to
25 forget it." [RT 141-42.]

26 In short, Petitioner's arguments about the allegedly impermissibly suggestive
27 procedures in obtaining the victims' identifications of Petitioner lack factual support
28 and are belied by the record. But even if there was some minimal suggestiveness in

1 the identification procedures utilized in Petitioner's case, it is quite evident that the
2 relevant factors support a finding that the identifications were nonetheless reliable.

3 First, all of the victims who identified Petitioner from the photographic lineup
4 (Estevez, Valdez, Alvarado, and Harden) had adequate opportunity to observe
5 Petitioner. The lights were on in Estevez's and Valdez's home. [RT 133, 407.]
6 Estevez testified that when he opened the door, Petitioner pointed a gun at him and
7 then entered the house. [RT 196-97.] Later, while sitting on the living room floor,
8 Estevez kept looking up and was able to see Petitioner. [RT 206.] Valdez observed
9 Petitioner walk into his home holding a gun to Estevez's head and while lying down
10 on the living room floor, Valdez watched Petitioner enter the master bedroom. [RT
11 100-01, 105.] Valdez also testified that when he got up from the living room floor,
12 he had the opportunity to look at Petitioner for three to five minutes. [RT 110-11.]
13 Alvarado saw Petitioner walk into the house. [RT 390-92.] Alvarado testified that
14 she looked up from the living room floor when one of the suspects began to pull
15 down her pants and she saw Petitioner's face, as he stood over her. [RT 395.]
16 Harden testified that he was sitting in the living room when Petitioner walked in
17 holding the back of Estevez's hair and pointing a gun at Estevez's head. [RT 269-
18 70.]

19 Second, the victims' testimony showed a fair degree of attention to Petitioner
20 and his appearance. On the night of the robberies, Estevez gave police a detailed
21 description of Petitioner's appearance. [RT 238.] Valdez testified that Petitioner
22 had a "particular grin" and teeth that he would never forget. [RT 101-02, 137, 184.]
23 Valdez also remembered Petitioner's facial features and a mark or pigmentation on
24 his left cheek. [RT 139-40, 184.] Alvarado testified that she specifically noticed
25 that Petitioner's teeth were "crooked or shiny" and "messed up." [RT 390, 396.]
26 Harden described Petitioner as having a "much older look," based on his rough
27 voice and general demeanor. [RT 277.]

28 Third, while there were some differences in the victims' descriptions of

1 Petitioner's hair and clothing, they gave a physical description that was roughly
2 consistent with Petitioner's overall appearance. The victims consistently described
3 Petitioner as the African American male robber with the gun. [CT 178, 192, 203;
4 RT 101, 195, 222, 238, 270, 390.] In addition, four of the victims remembered the
5 gunman wearing a do-rag or head covering [CT 185, 205; RT 238, 270, 362, 390],
6 and two of the victims described the gunman as being between five-foot, seven
7 inches to five-foot, ten inches tall and in his twenties or thirties [CT 192, 205; RT
8 238].

9 Fourth, the victims were fairly certain of their pretrial photographic
10 identifications. Estevez repeatedly looked at Petitioner's photo and was 50 percent
11 certain he was one of the suspects. [CT 340 RT 243.] Valdez was also 50 percent
12 certain of his identification, noting that Petitioner's facial features looked like one of
13 the suspects. [CT 337; RT 140, 146-47, 149.] Alvarado selected Petitioner's photo
14 from the lineup, but did not indicate her level of certainty. [CT 343; RT 402-04.]
15 Harden was 80 percent certain of his identification, noting that Petitioner's face and
16 facial hair were similar to the suspect. [CT 354; RT 356-58.]

17 Fifth, the time that elapsed between the robberies and the photographic
18 identifications was relatively minimal. Estevez, Valdez, and Alvarado identified
19 Petitioner's photo from the lineup about five weeks after the robberies and Harden
20 viewed the lineup less than seven weeks after the incident. [CT 337, 340, 343, 354.]
21 Such a minimal delay fails to suggest a significant diminution of reliability of the
22 photographic identifications. *See, e.g., United States v. Barron*, 575 F.2d 752, 755
23 (9th Cir. 1978) (accepting timeliness of identification, even though "two months had
24 elapsed between the robbery and the pretrial identifications").

25 In sum, the totality of the circumstances indicate that the pretrial
26 identifications were sufficiently reliable and, thus, admission of the identification
27 evidence was not a violation of due process. *Biggers*, 409 U.S. at 198-99. While
28 Petitioner cites shortcomings in the victims' initial identifications of Petitioner and

1 points out inconsistencies in the victims' descriptions of the gunman and events that
2 occurred, these are matters that were generally explored by the defense on cross-
3 examination and properly left for the jury to resolve. *See Foster*, 394 U.S. at 443
4 n.2; *see also Perry*, 565 U.S. at 237 ("Constitutional safeguards available to
5 defendants to counter the State's [questionably reliable] evidence include the Sixth
6 Amendment rights to counsel; compulsory process; [] confrontation plus cross-
7 examination of witnesses . . . statutes and rules ordinarily [to] govern the
8 admissibility of evidence, and juries [] assigned the task of determining the
9 reliability of the evidence presented at trial.") (citations omitted). Mere doubts or
10 weaknesses in the validity of pretrial identifications are not sufficient to warrant
11 suppression. *See Brathwaite*, 432 U.S. at 116 ("Juries are not so susceptible that
12 they cannot measure intelligently the weight of identification testimony that has
13 some questionable feature.").

14 Although not presented as separate claims, Petitioner makes a series of
15 additional conclusory allegations. For example, Petitioner asserts that he was
16 "denied the public assistance of counsel, a fair tribunal, and an impartial jury to
17 determine the truth," but fails to adequately explain the factual and legal bases of
18 these assertions. [Petition, Att. at 7.] These bald complaints are insufficient to
19 warrant further examination, because vague and conclusory allegations like these do
20 not warrant habeas relief. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994)
21 ("Conclusory allegations which are not supported by a statement of specific facts do
22 not warrant habeas relief."); *see also Jones v. Gomez*, 66 F.3d 199, 204-05 (9th Cir.
23 1995) (conclusory allegations unsupported by a statement of specific facts do not
24 warrant habeas relief).

25 Petitioner has not satisfied the showing required by Section 2254(d) to
26 warrant rejecting the state court's decision on his first claim. Accordingly, the
27 Court concludes that habeas relief may not issue based on Ground One.
28

II. Ground Two: Prosecutorial Misconduct

Petitioner asserts that his due process rights were violated, because the prosecutor elicited false testimony from Valdez and Alvarado and failed to correct such false evidence. [Petition, Att. at 17-24.] Petitioner also asserts that the prosecutor misrepresented facts that were not in evidence during closing argument. [Petition, Att. at 24-28.]

A. Presentation of False Testimony and Failure to Correct False Evidence

1. Federal Law

The knowing use of perjured testimony against a defendant to obtain a conviction violates a criminal defendant's federal right to due process of law. *See Napue v. Illinois*, 360 U.S. 264, 268-70 (1959); *see also Hayes v. Brown*, 399 F.3d 972, 978 (9th Cir. 2005) (*en banc*). "In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears." *Id.*; *United States v. Bagley*, 473 U.S. 667, 680, n.8 (1985) (under *Napue*, "the knowing use of false testimony to obtain a conviction violates due process regardless of whether the prosecutor solicited the false testimony or merely allowed it to go uncorrected when it appeared.").

A habeas petitioner seeking relief based on the presentation of false testimony by a prosecution witness must show not only that the witness testified falsely, but also that the prosecution knew or should have known that the witness testified falsely and that the false testimony was material. *See Hayes*, 399 F.3d at 984; *Gentry v. Sinclair*, 705 F.3d 884, 903 (9th Cir. 2013). A *Napue* violation is material whenever there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Hayes*, 399 F.3d at 985. Under this materiality standard, the question is whether, in the absence of the false testimony, the defendant "received a fair trial, understood as a trial resulting in a verdict worthy of

confidence.” *Id.* at 984 (internal quotation marks and citations omitted).

2. Analysis

Petitioner alleges that Valdez and Alvarado lied or testified falsely at trial, because some of their statements were inconsistent with or uncorroborated by other evidence. [Petition, Att. at 18-24.] In essence, Petitioner faults the prosecutor for failing to “impeach” Valdez and Alvarado by pointing out conflicts in the evidence or the lack of supporting evidence. [*Id.* at 18.]

For example, Petitioner asserts that the prosecutor engaged in misconduct by soliciting and failing to correct testimony from Valdez as follows: Valdez gave “testimony pertaining to an African American male with single pony tail dreads[] and an intimidating grin and teeth,” but the prosecutor failed ask Valdez, “who he told this evidence to [and] when did he give this information” [Petition, Att. at 18-19]; Valdez lied when he “testified that he lifted his head up about four times [and] when Valdez testified that the gunman escorted Estevez and Alvarado around the house[] and made them both take off their clothes” [*id.* at 19]; Valdez testified that he “had a 3 to 5 minute chance to look at the suspect with the silver revolver,” but “Alvarado testified that when she peeked from under the blanket, a suspect told her to ‘get down bitch!’ . . . also no other witness corroborated that side of Valdez’s story” [*id.*]; “an unknown police officer interviewed Valdez, which was unrecorded and undocumented, calls for solicitation of facts not in evidence” [*id.*]; and Valdez denied “seeing the [] Exhibit #9 (photo of [Petitioner’s] teeth from the prosecutor prior to testifying,” and testified “to only seeing a six-pack line-up in the backroom, prior to Valdez testifying,” but Valdez testified that “the prosecutor did in fact show Valdez a single photo of [Petitioner’s] teeth” [*id.* at 21].

Similarly, Petitioner asserts that the prosecutor engaged in misconduct by soliciting and failing to correct uncorroborated and false testimony from Alvarado, as follows: Alvarado testified “that her description of the suspect with the silver [revolver] contained crooked teeth” and “she’s positive that she told the female

1 deputy about seeing crooked teeth, the night of the crime,” but Deputy Cui’s report
2 on Alvarado “never mentions anything about crooked teeth, or anything about teeth”
3 [Petition, Att. at 22]; and Alvarado testified that she felt sick after viewing
4 Petitioner’s picture in the six-pack photo lineup, but “[i]t is apparent from the
5 [pretrial lineup] transcript, that Alvarado possibly was ill from taking Xanax” [*id.* at
6 23].

7 Portions of Valdez’s and Alvarado’s testimony may have been inconsistent
8 with their prior statements or other evidence introduced at trial. Any such
9 inconsistencies, however, are insufficient to establish that they actually testified
10 falsely. *See United States v. Croft*, 124 F.3d 1109, 1119 (9th Cir. 1997) (“The fact
11 that a witness may have made an earlier inconsistent statement, or that other
12 witnesses have conflicting recollections of events, does not establish that the
13 testimony offered at trial was false.”); *United States v. Bingham*, 653 F.3d 983, 995
14 (9th Cir. 2011) (a witness’ inconsistent statements “is not enough for a *Napue*
15 violation”). Petitioner proffers nothing demonstrating any actual falsity in their
16 testimony.

17 Petitioner also fails to demonstrate that the prosecutor knew or should have
18 known that the victims testified falsely. Petitioner does not point to anything in the
19 prosecutor’s questioning or the answers given that may be construed “to reflect an
20 intention by the prosecutor to mislead the jury.” *United States v. Etsitty*, 130 F.3d
21 420, 424 (9th Cir. 1997).

22 In addition, Petitioner has not shown the challenged testimony to be material.
23 Indeed, the evidence supporting Petitioner’s conviction was extremely strong even
24 in the absence of the contested testimony. Estevez and Harden identified Petitioner
25 from the photographic lineup [CT 340-41, 353-55; RT 213, 279] and testified that
26 they were absolutely positive that Petitioner was the suspect with the silver gun who
27 came to the front door on the night of the robberies [RT 195, 213, 270, 362.] It is
28 also undisputed that, a few weeks after the robberies, Petitioner took Estevez’s

1 stolen PlayStation® 3 to a pawnshop near Estevez’s home and pawned it. [CT 433;
 2 RT 204-05, 449-52.] Moreover, as Petitioner points out, defense counsel
 3 highlighted many alleged inconsistencies and the lack of corroborating evidence to
 4 challenge the witnesses’ statements on cross-examination. [Petition, Att. at 21-23
 5 (noting that defense counsel asked questions beginning with “Isn’t it true,”
 6 approximately “38 times” during cross-examination of Valdez and “10 times”
 7 during cross-examination of Alvarado).] Thus, there is no reasonable likelihood that
 8 the testimony from Valdez and Alvarado, when evaluated in the context of the entire
 9 record, could have affected the jury’s decision. *See Gentry*, 705 F.3d at 903.

10 The state court’s rejection of Petitioner’s *Napue* claim was objectively
 11 reasonable legally and factually. Accordingly, Petitioner is not entitled to habeas
 12 relief on his claim based on alleged false testimony and a failure to correct such
 13 false testimony.

14 **B. The Prosecutor’s Closing Argument**

15 Petitioner argues that the prosecutor misstated the evidence during closing
 16 argument. [Petition, Att. at 24-28.]

17 **1. Federal Law**

18 A prosecutor’s improper comments will be held to violate the Constitution
 19 only if they “‘so infected the trial with unfairness as to make the resulting conviction
 20 a denial of due process.’” *Darden v. Wainwright*, 477 U.S. 168, 181 (1986)
 21 (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). While a prosecutor
 22 may not make statements of fact not supported by the evidence, “[i]t is not
 23 misconduct for the prosecutor to argue reasonable inferences based on the record.”
 24 *United States v. Younger*, 398 F.3d 1179, 1190 (9th Cir. 2005); *see also United*
 25 *States v. Sayetsitty*, 107 F.3d 1405, 1409 (9th Cir. 1997) (confirming that
 26 prosecutors are allowed “wide latitude” in closing argument, including “latitude that
 27 embraces reasonable inferences from the evidence presented at trial”) (internal
 28 quotations and citations omitted). Closing arguments are not evidence and

ordinarily carry less weight with the jury than the court's instructions. *Boyde v. California*, 494 U.S. 370, 384 (1990).

Furthermore, a trial error is presumed to be harmless unless the error had "substantial or injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).

2. Analysis

a) Statements that Petitioner Had Two Ponytails

Petitioner claims that the prosecutor misstated the evidence by arguing that: (1) the victims described the gunman as having ponytails [Petition, Att. at 25 (citing RT 701 ("the victims gave a description of the person with the silver revolver as having two ponytails"), 735 ("Estevez said the man who robbed him had two ponytails"), 738 (Petitioner was "described by all of the victims as being a black male with [ponytails]")]]; and (2) "Estevez said[] Petitioner has crooked teeth" [Petition, Att. at 24]. While the record shows that Valdez was the only witness who testified about Petitioner's ponytails at trial and Estevez did not discuss Petitioner's crooked teeth, the prosecutor's misstatements did not deprive Petitioner of a fair trial in light of the substantial evidence against Petitioner.

As previously mentioned, the evidence against Petitioner included the eyewitness identifications of Petitioner as the gunman made by four of the victims and the fact that Petitioner pawned Petitioner's PlayStation® 3 just a few weeks after the incident. In light of this evidence, the above comments by the prosecutor did not have a substantial and injurious effect on the jury's verdict. *See Brecht*, 507 U.S. at 637. Critically, the jury was instructed that the lawyers' remarks and statements were not evidence. [CT 462 (instructing the jury to "use only the evidence that is presented in the courtroom" in determining the facts in the case and "[n]othing the attorneys say is evidence")]; *see Darden*, 477 U.S. at 181-83; *see also Donnelly*, 416 U.S. at 645 (finding that an improper statement by a prosecutor during closing argument did not amount to a due process violation in part because

the judge instructed the jury that the remark was not evidence); *Allen v. Woodford*, 395 F.3d 979, 997 (9th Cir. 2005) (“[G]iven the trial court’s instruction that statements by counsel were not evidence, and given the weight of the evidence against him, the prosecutor’s comments did not deprive Allen of a fair trial.”). The jury is presumed to have followed its instructions. *See Weeks v. Angelone*, 528 U.S. 225, 234 (2000); *Richardson v. Marsh*, 481 U.S. 200, 211 (1987). There is nothing in the record that indicates the jury did not do so in this case.

b) Other Improper Comments

Petitioner challenges three other statements made by the prosecutor during closing argument as improper: Petitioner knew the PlayStation® 3 was stolen; “the victims mentioned Petitioner’s teeth prior to coming to trial”; and the victims “[have been consistent] the whole time with the night of the crime, when they described who robbed them.” [Petition, Att. at 24-26.] These statements were all reasonable inferences from the evidence presented at trial and fall within the “wide latitude” of closing argument allowed to prosecutors. *Sayetsitty*, 107 F.3d at 1409. The prosecutor did not misrepresent the evidence by arguing that Petitioner knew the PlayStation® 3 was stolen [RT 700, 740], because Estevez and Valdez both testified that Petitioner took Estevez’s PlayStation® 3 from their home on the night of the robberies [RT 142, 202-03]. In addition, after Petitioner pawned Estevez’s PlayStation® 3, Petitioner essentially admitted during a recorded jail phone call that he had pawned stolen property. [CT 433 (“ I tripped out on buying something that [was] possibly stolen and I pawned it you know so basically I am just trying to get, um, receiving stolen property. . . .”).] Similarly, the prosecutor’s comment that “the victims mentioned teeth prior to coming to trial” [RT 702] was a reasonable inference based on Valdez’s and Alvarado’s testimony that they mentioned Petitioner’s crooked teeth to the officers on the night of the incident and to Deputy

1 Bodnar at the pretrial lineup [RT 145-46, 148, 187, 404, 427-28.]² Finally, the
 2 prosecutor's statement that the victims "[have been consistent] the whole time with
 3 the night of the crime, when they described who robbed them" [RT at 741] was
 4 reasonable, as Estevez, Valdez, Alvarado, and Harden all selected Petitioner's
 5 picture from the photo lineup, positively identified Petitioner at trial as the African
 6 American gunman who robbed them, and provided generally consistent descriptions
 7 as to how the robberies occurred [CT 337-38, 340-41, 354; RT 98-114, 193-214,
 8 267-80, 358, 388-405]. Thus, the prosecutor's comments did not infect Petitioner's
 9 trial with unfairness or rise to the level of a due process violation. *See Darden*, 477
 10 U.S. at 181.

11 For the reasons set forth above, the Court finds that the state court's rejection
 12 of Petitioner's claims of prosecutorial misconduct was not contrary to, or an
 13 unreasonable application of, clearly established federal law. Accordingly, Section
 14 2254(d) requires that Ground Two be denied.

15 16 **III. Ground Three: Ineffective Assistance of Counsel**

17 Petitioner claims that his trial counsel rendered ineffective assistance as
 18 evidenced by numerous alleged errors during and after trial.

19 **A. Applicable Law**

20 Petitioner's claim is governed by the standard enunciated in *Strickland v.*
 21 *Washington*, 466 U.S. 668, 684-85 (1984). *See Brown v. Ornoski*, 503 F.3d 1006,
 22 1011 (9th Cir. 2007) ("In addition to the deference granted to the state court's
 23 decision under AEDPA, [federal habeas courts] review ineffective assistance of
 24 counsel claims in the deferential light of" *Strickland*).

25
26
27 ² The Court notes that, although the prosecutor misstated Estevez's testimony
 28 that Petitioner had crooked teeth, there was no reasonable likelihood that this
 isolated improper statement affected the judgment of the jury given the other
 evidence at trial and instructions to the jury.

1 To establish ineffective assistance by defense counsel, Petitioner must
2 demonstrate both that: (1) counsel's performance was deficient; and (2) the
3 deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687-88. As
4 both prongs of the *Strickland* test must be satisfied to establish a constitutional
5 violation, failure to satisfy either prong requires that an ineffective assistance claim
6 be denied. *See id.* at 687.

7 The first prong of the *Strickland* test – deficient performance – requires a
8 showing that, in the light of all the circumstances, counsel's performance was
9 “outside the wide range of professionally competent assistance.” *Strickland*, 466
10 U.S. at 690. Judicial scrutiny of counsel's performance “must be highly
11 deferential,” and this Court must guard against the distorting effects of hindsight and
12 evaluate the challenged conduct from counsel's perspective at the time in issue. *Id.*
13 at 689. There is a “strong presumption that counsel's conduct falls within the wide
14 range of reasonable professional assistance.” *Id.*; *see also Pinholster*, 563 U.S. at
15 189.

16 The second prong of the *Strickland* test -- prejudice -- requires showing a
17 “reasonable probability that, but for counsel's unprofessional errors, the result of the
18 [trial] would have been different.” *Strickland*, 466 U.S. at 694. A reasonable
19 probability is a probability “sufficient to undermine confidence in the outcome.” *Id.*
20 “The likelihood of a different result must be substantial, not just conceivable.”
21 *Richter*, 562 U.S. at 112. The court must consider “the totality of the evidence”
22 before the jury in determining whether a petitioner satisfied this standard. *Berghuis*
23 *v. Thompkins*, 560 U.S. 370, 389 (2010).

24 “The standards created by *Strickland* and § 2254(d) are both ‘highly
25 deferential,’ and when the two apply in tandem, review is ‘doubly’ so.” *Richter*,
26 562 U.S. at 105 (citations omitted); *see also Knowles v. Mirzayance*, 556 U.S. 111,
27 123 (2009) (review of a *Strickland* claim pursuant to Section 2254(d)(1) is “doubly
28 deferential”). To succeed on an ineffective assistance of counsel claim governed by

1 Section 2254(d), the petitioner must show that the state court “applied *Strickland* to
 2 the facts of his case in an objectively unreasonable manner.” *Bell v. Cone*, 535 U.S.
 3 685, 699 (2002); *see also Richter*, 562 U.S. at 105 (the “question is not whether
 4 counsel’s actions were reasonable,” but rather, “whether there is any reasonable
 5 argument that counsel satisfied *Strickland*’s deferential standard”). “[B]ecause the
 6 *Strickland* standard is a general standard, a state court has even more latitude to
 7 reasonably determine that a defendant has not satisfied that standard.” *Mirzayance*,
 8 556 U.S. at 123; *see also Richter*, 562 U.S. at 105 (given the general nature of the
 9 *Strickland* standard, “the range of reasonable applications [of the *Strickland*
 10 standard] is substantial”).

11 **B. Analysis**

12 **1. Trial Counsel’s Failure to Challenge the Suggestive Identification** 13 **Procedures**

14 Petitioner claims that his trial counsel rendered ineffective assistance by
 15 failing to move to suppress or object to the witnesses’ identifications of him at trial
 16 based on earlier suggestive photographic lineup procedures. [Petition, Att. at 28,
 17 30-35 (citing *U.S. v. Wade*, 388 U.S. 218 (1967),³ and Cal. Evid. Code § 402).]

18 As discussed above in Section I.C., Petitioner has failed to demonstrate that
 19 the pretrial lineup procedures were impermissibly suggestive or that the relevant
 20 factors support a finding that the identifications were unreliable. Thus, any
 21 challenge to the admission of the identification evidence would have been
 22 unsuccessful, and defense counsel was not ineffective for failing to file a futile
 23 motion. *See Ceja v. Stewart*, 97 F.3d 1246, 1253 (9th Cir. 1996) (defense counsel

24
 25 ³ Respondent argues that *Wade*, 388 U.S. 218, pertains to a defendant’s right to
 26 counsel at a physical lineup and, therefore, does not support Petitioner’s claim of
 27 ineffective assistance. [Answer at 32.] In the Traverse, Petitioner responds that he
 28 is not challenging live lineup procedures. [Traverse at 10.] Rather, Petitioner states
 that he cited *Wade* to support his argument that defense counsel should have moved
 to suppress the identification evidence based on suggestive pretrial identification
 procedures. [Traverse at 10-12.]

1 was not ineffective for failing to file a suppression motion “which would have been
 2 ‘meritless on the facts and the law’” (citation omitted)); *Carter v. Hopkins*, 92 F.3d
 3 666, 671 (8th Cir. 1996) (“Because the identifications were independently reliable
 4 and thus, admissible, counsel’s failure to object to their admission was not deficient
 5 performance.”).

6 **2. Failure to Challenge Introduction of Photos of Petitioner’s Teeth**

7 Petitioner contends that defense counsel was ineffective for failing to object
 8 to the introduction of Ex. 9, a portion of Petitioner’s parole photo showing his teeth,
 9 without proper foundation. [Petition, Att. at 31.] Petitioner also contends that
 10 defense counsel should not have allowed the prosecutor to show Valdez and
 11 Alvarado new “individual photos of Petitioner’s teeth [Exs. 45-48], without any
 12 foundation being [laid] and without any evidence that these witnesses had an
 13 [independent recollection of a suspect] with a silver revolver, as having crooked
 14 teeth, or any distinctive features that would without a doubt inculcate [Petitioner].”
 15 [Petition, Att. at 31-32, 40.]

16 **a) Ex. 9: Portion of Petitioner’s Parole Photo**

17 Prior to trial, the trial court ruled that one of Petitioner’s parole photos was
 18 relevant to establishing Petitioner’s identity and would be admissible if the
 19 prosecution could lay proper foundation for the photo. [RT 59-63.] At trial, after
 20 Valdez had identified Petitioner as the robber with the gun, Valdez testified that
 21 Deputy Bodnar had shown him a photograph of Petitioner’s teeth. [RT 101, 111,
 22 177.] The prosecutor then showed Valdez Ex. 9 and asked Valdez if he recognized
 23 it. [RT 177.] Valdez testified that Ex. 9 was a portion of the photo he had
 24 previously seen. [*Id.*] Although the trial court sustained a defense objection to
 25 Valdez’s testimony identifying Ex. 9 as a photo of the mouth of the robber based on
 26 a lack of foundation, defense counsel also questioned Valdez about Ex. 9. [RT 177-
 27 78, 185-86.] Valdez testified that he saw Ex. 9 when the prosecutor showed it to
 28 him in court earlier that morning and indicated that Petitioner’s teeth were a “big

clue” in his identification of Petitioner. [RT 186.] Because Valdez recognized Ex. 9 as a portion of the photo that Deputy Bodnar previously showed him and the photo was relevant to establishing identity, proper foundation had been laid for its admission. [RT 61, 177, 186.] Thus, any motion to exclude Ex. 9 based on a lack of foundation would have been denied and defense counsel’s failure to make a futile motion does not constitute ineffective assistance of counsel. *See, e.g., Juan H. v. Allen*, 408 F.3d 1262, 1273 (9th Cir. 2005) (“[T]rial counsel cannot have been ineffective for failing to raise a meritless objection.”); *Rupe v. Wood*, 93 F.3d 1434, 1445 (9th Cir. 1996) (“failure to take a futile action can never be deficient performance”). Further, Petitioner has not established that he was prejudiced by any omission of defense counsel, given the significant evidence supporting the jury’s verdict, as discussed above.

b) Exs. 45-48: New Photos of Petitioner’s Teeth

During trial, the prosecutor’s investigator took photographs of Petitioner’s mouth, which were marked as Exhibits 45, 46, 47, and 48. [RT 179, 190.] Defense counsel did not object when the prosecutor showed Valdez and Alvarado some of these photos. [RT 190, 396.] Valdez identified Ex. 45 as a picture of Petitioner smiling slightly with a little bit of crooked teeth showing, Ex. 47 as a picture of Petitioner with a bigger smile, displaying “really, really crooked” top and bottom teeth, and Ex. 48 as a picture of Petitioner using his index fingers to pull his mouth apart and showing his top teeth. [RT 190.] The prosecutor also showed Alvarado Exs. 45, 46, and 48. [RT 396-97.] Alvarado testified the pictures showed Petitioner’s teeth as she saw them on the night of the robberies. [RT 397-98.] The prosecutor showed Exhibits 45, 46, 47, and 48 to the jury without objection from defense counsel. [RT 191, 398.] Because Valdez and Alvarado properly identified these exhibits as photos of Petitioner’s teeth, and Petitioner’s teeth were relevant to the issue of identity, any objection to the introduction of the photos based on lack of foundation would have lacked merit. Thus, it was not ineffective assistance for

1 defense counsel to fail to raise such an objection. *See Juan H.*, 408 F.3d at 1273;
2 *Rupe*, 93 F.3d at 1445.

3 Petitioner asserts that his claim presents the issue raised in *Gilbert v.*
4 *California*, 388 U.S. 263 (1967), but fails to offer any argument in support of this
5 contention. [Petition, Att. at 40.] In any event, Petitioner's reliance on *Gilbert* is
6 misplaced. In *Gilbert*, the Supreme Court held that compelling a criminal defendant
7 to submit a handwriting exemplar does not violate the privilege against compulsory
8 self-incrimination. 388 U.S. 263. Here, Petitioner was not asked to provide a
9 handwriting exemplar nor does he assert a violation of his privilege against self-
10 incrimination. But even if Petitioner may be attempting to argue that defense
11 counsel should have asserted Petitioner's privilege against self-incrimination to
12 prevent the prosecutor's investigator from photographing Petitioner's mouth and
13 teeth (Exs. 45-48), his claim is without merit. "It has long been held that the
14 compelled display of identifiable physical characteristics infringes no interest
15 protected by the privilege against compulsory self-incrimination." *United States v.*
16 *Dionisio*, 410 U.S. 1, 5-6 (1973); *see also Holt v. United States*, 218 U.S. 245, 252-
17 53 (1910) ("[T]he prohibition of compelling a man in a criminal court to be witness
18 against himself is a prohibition of the use of physical or moral compulsion to extort
19 communications from him, not an exclusion of his body as evidence when it may be
20 material."). Thus, defense counsel did not perform deficiently or act outside the
21 bounds of professional conduct by failing to object to the admission of the photos of
22 Petitioner's mouth (Exs. 45 through 48).

23 **3. Failure to Object to Prosecutor's Closing Argument**

24 Petitioner argues defense counsel provided ineffective assistance by failing to
25 object to assertedly misleading misstatements of fact made by the prosecutor during
26 closing and rebuttal arguments. [Petition, Att. at 29, 41.] Petitioner, however, has
27 not substantiated his claim with any supporting facts or evidence, nor has Petitioner
28 identified which of the prosecutor's statements were allegedly misleading or

misstatements of fact. *See Strickland*, 466 U.S. at 690 (“A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.”). To the extent Petitioner may be claiming that defense counsel was ineffective for failing to object to the comments that the prosecution made in closing argument as set forth in Ground Two [Petition, Att. at 24-26; Traverse at 16-17], his contention necessarily fails. As discussed in section II.B., the evidence introduced at trial provided a reasonable basis to support the prosecutor’s arguments that Petitioner knew the PlayStation® 3 was stolen, the victims mentioned teeth prior to coming to trial, and the victims were consistent in their description of the robber. And any misstatements about Estevez’s descriptions of Petitioner’s hair and teeth were not significant enough to affect the judgment of the jury, given the substantial evidence supporting the jury’s verdict and the instructions to the jury. Moreover, “because many lawyers refrain from objecting during . . . closing argument, absent egregious misstatements, the failure to object during closing argument . . . is within the ‘wide range’ of permissible professional legal conduct.” *U.S. v. Necochea*, 986 F.2d 1273, 1281 (9th Cir. 1993) (quoting *Strickland*, 466 U.S. at 689).

4. Failure to Impeach Witnesses with Audio Recordings

Petitioner claims defense counsel was ineffective in failing to “present omitted statements of witnesses into evidence.” [Petition, Att. at 29, 35.] Petitioner asserts that defense counsel should have played Alvarado’s recorded statement identifying Petitioner from the photographic lineup on September 2, 2010, and Estevez’s and Harden’s recorded interview statements from the night of the robberies. [Petition, Att. at 39; CT 195-216, 224-27, 343-44).] Essentially, Petitioner argues that these witnesses’ prior interview statements should have been admitted “for impeachment purposes” and to enable the jury to request a readback or replaying of the statements during deliberations. [Petition, Att. at 38).] Petitioner, however, does not explain how admission of the recordings would have

1 impeached the prosecution witnesses or aided his defense. Without any specific
2 factual support, Petitioner's speculative argument does not suffice to establish
3 deficient performance or resulting prejudice therefrom. *James*, 24 F.3d at 26; *Jones*,
4 66 F.3d at 205; *see also Murtishaw v. Woodford*, 255 F.3d 926, 939 (9th Cir. 2001)
5 ("The defendant bears the heavy burden of proving that counsel's assistance was
6 neither reasonable nor the result of sound trial strategy."). In addition, defense
7 counsel did attempt to challenge the credibility of the prosecution witnesses on
8 cross-examination by pointing out inconsistencies between their pretrial statements
9 and their trial testimony. [See, e.g., RT 138, 146, 187-88, 238-39, 284-85, 426-28,
10 440.] Defense counsel also cross-examined Deputy Bodnar about Estevez's
11 identification of Petitioner at the photographic lineup and referred to inconsistencies
12 in the witnesses' statements during closing argument. [RT 561-62, 719-25.] Thus,
13 even if defense counsel's omissions could be deemed deficient performance,
14 Petitioner has not demonstrated prejudice.

15 **5. Failure to Call Deputy Cui**

16 Petitioner contends that defense counsel was deficient for failing to call as a
17 witness at trial Deputy Cui, the officer who interviewed Alvarado on the night of the
18 robberies. [Petition, Att. at 40.] Although Petitioner claims that Deputy Cui would
19 have impeached Alvarado's testimony, he does not explain what the deputy would
20 have testified to or how her testimony might have altered the outcome of trial.
21 Petitioner's claim is wholly conclusory and falls far short of stating a valid claim of
22 ineffective assistance of counsel. *See Greenway v. Schriro*, 653 F.3d 790, 804 (9th
23 Cir. 2011) (rejecting ineffective assistance claim where petitioner makes only a
24 " cursory and vague " claim and " does not allege what specific facts or information "
25 counsel should have pursued); *Jones*, 66 F.3d at 205; *James*, 24 F.3d at 26
26 (conclusory allegations of ineffective assistance without statement of specific facts
27 do not warrant habeas relief). Additionally, on cross-examination, defense counsel
28 questioned Alvarado about inconsistencies between her trial testimony and her

1 statement to Deputy Cui regarding her description of the robbery suspects. [RT at
2 424-27.] Thus, Petitioner has not met his burden of demonstrating prejudice from
3 the allegedly deficient performance.

4 **6. Failure to Adequately Question Deputy Skiles**

5 Petitioner claims that defense counsel failed to “adequately question” Deputy
6 Skiles and impeach the testimony of Valdez and Estevez. [Petition, Att. at 40.]
7 This assertion is conclusory; Petitioner has not identified what questions his counsel
8 should have asked Deputy Skiles, nor has he explained how asking those questions
9 would have resulted in a more favorable result at trial. Without more, Petitioner’s
10 general allegation that his attorney’s questioning of Deputy Skiles was inadequate is
11 insufficient to meet his burden of demonstrating both deficient performance and
12 prejudice. *See Jones*, 66 F.3d at 204; *James*, 24 F.3d at 26.

13 **7. Failure to Question Deputy Bodnar About Individual Photo of** 14 **Petitioner**

15 Petitioner contends defense counsel was deficient in failing to question
16 Deputy Bodnar “on, why did he bring a single photo of [Petitioner’s] teeth, when no
17 independent source attributed to that evidence?” [Petition, Att. at 40.] Construed
18 liberally, Petitioner contends defense counsel should have asked Deputy Bodnar
19 why he showed Valdez and Alvarado Petitioner’s individual parole photo at the
20 pretrial photographic lineups when the witnesses had not mentioned Petitioner’s
21 teeth.

22 A “counsel’s tactical decisions at trial, such as refraining from cross-
23 examining a particular witness or from asking a particular line of questions, are
24 given great deference and must . . . meet only objectively reasonable standards.
25 *Dows v. Wood*, 211 F.3d 480, 487 (9th Cir. 2000) (“Under *Strickland*, counsel’s
26 representation must be only objectively reasonable, not flawless or to the highest
27 degree of skill.”); *see Strickland*, 466 U.S. at 688-89. Deputy Bodnar testified that
28 he included Petitioner’s photo in the lineup, because Petitioner had pawned an item

1 stolen during the robberies. [RT 563.] Both Valdez and Alvarado stated that they
 2 specifically remembered Petitioner's unusual teeth [RT 184, 186, 396, 404-05] and
 3 mentioned Petitioner's teeth when they were interviewed by police on the night of
 4 the robberies [RT 187, 427-28]. Valdez and Alvarado also stated that Deputy
 5 Bodnar showed them the photo of Petitioner displaying his teeth *after* they identified
 6 Petitioner from the photographic lineup. [RT 147, 404, 444]. Under these
 7 circumstances, it was strategically reasonable for defense counsel to refrain from
 8 asking questions about the photo of Petitioner displaying his teeth, as there was no
 9 indication that such line of questioning would have challenged the credibility of
 10 Deputy Bodnar or any other witness. *See, e.g., Sully v. Ayers*, 725 F.3d 1057, 1073
 11 (9th Cir. 2013) (counsel was not ineffective for failing to impeach a witness with
 12 allegedly prior false statements where petitioner pointed to no evidence that the
 13 witness's statements were actually false).

14 **8. Failing to Properly Request Juror Identifying Information**

15 Petitioner contends defense counsel was deficient for failing to file a timely,
 16 written request for juror identifying information to support a motion for new trial
 17 based on juror misconduct. [Petition, Att. at 29 (citing LD at 56-57).]

18 **a) Background**

19 After the conclusion of trial, Petitioner filed a motion for new trial based on
 20 juror misconduct. [CT 551-57.] Petitioner attached a declaration from defense
 21 counsel in support of the motion. [CT 556.] Defense counsel claimed that during
 22 deliberations, the jurors discussed the fact that defense counsel talked to Petitioner
 23 after cross-examining each prosecution witness and several of the jurors thought
 24 such discussions with Petitioner would have been unnecessary if Petitioner had not
 25 been one of the robbers. [*Id.*] In addition, defense counsel claimed that at least one
 26 juror changed her verdict from "not guilty" to "guilty" based on defense counsel's
 27 discussions with Petitioner. [*Id.*]

28 At the hearing on Petitioner's motion for new trial, defense counsel made an

1 oral motion for release of juror identifying information. [RT at 814.] The trial court
2 denied the request for juror information as well as the motion for new trial. [RT at
3 814-19.] The California Court of Appeal summarized the relevant facts, as follows:

4 [Petitioner] filed a motion for new trial in which he
5 asserted jury misconduct, among other things. According
6 to the declaration of his attorney submitted in support of
7 the new trial motion, after trial concluded and the trial
8 court discharged the jury, about two-thirds of the jury
9 panel stayed and discussed the case with the attorneys;
10 during that discussion the jurors “collectively stated,”
11 among other things, that when the jurors were unable to
12 reach verdicts after several days of deliberations, they
13 discussed their observations that throughout the trial,
14 defense counsel would talk to [Petitioner] after cross-
examining prosecution witnesses; “[t]he jurors . . . opined
that discussion between [defense counsel] and the
[Petitioner] would have been unnecessary if the
[Petitioner] had not been one of the robbers”; and after the
jury’s discussion, at least one juror changed her verdict
from not guilty to guilty.

15 In its opposition the prosecution asserted, first, that
16 defense counsel’s declaration was hearsay to the extent it
17 purported to recount what a juror had said, and in any
18 event, defense counsel’s version of what the juror said was
19 wrong. According to the prosecutor, who was present and
20 also talked with the jurors after they had been discharged,
21 the attorneys had asked for constructive criticism. One
22 juror responded that she did not think it was wise, if they
23 were claiming [Petitioner] was not there, for defense
24 counsel to ask [Petitioner] after each witness testified
whether there was anything else defense counsel needed to
ask. That juror thought it “seemed strange if the
[Petitioner] was claiming he wasn’t there.” According to
the prosecutor, the juror did not say they discussed this
during their deliberations and she did not say that they
changed their verdicts as a result.

25 The trial court heard [Petitioner’s] new trial motion in
26 conjunction with [Petitioner’s] sentencing hearing. At that
27 hearing, the trial court asked defense counsel to address
28 the issue of whether her declaration was inadmissible
hearsay. Defense counsel responded, “Well, your Honor,
if the Court feels as though it needs more factual
information, then I would request to unseal the juror

1 information so that a questionnaire or something of the
2 sort could be sent to the jurors so that the Court can
3 receive the information that it's seeking." The trial court
denied that request and ultimately denied [Petitioner's]
new trial motion.

4 [LD 6 at 12-15.]

5 In denying Petitioner's request for disclosure of juror identifying information,
6 the trial court observed that Petitioner had the opportunity to complete a motion for
7 new trial prior to the hearing. [RT 814.] In denying the motion for new trial, the
8 trial court noted that the motion contained defense counsel's hearsay describing
9 what a juror had said after trial. [RT 813-19.] The trial court explained that "the
10 mental processes of the jurors and how they came to their ultimate conclusion" was
11 inadmissible. [RT 819.] Given the overwhelming evidence presented at trial that
12 Petitioner was present at the robberies, the trial court concluded that the jurors'
13 discussions about the attorneys' conduct did not rise to the level of juror misconduct
14 or warrant a new trial. [RT 818-19.]

15 On direct appeal, Petitioner claimed that the trial court erred in denying
16 Petitioner's request for release of juror identifying information and, alternatively,
17 that defense counsel was ineffective for failing to file a written request for juror
18 identifying information or failing to request that information earlier. [LD 3 at 42-
19 57.] The California Court of Appeal did not discuss the ineffective assistance of
20 counsel claim in its reasoned decision, but found that the trial court did not abuse its
21 discretion in denying the request for juror information. [LD 6 at 12-16.] It
22 explained that, although defense counsel learned of the alleged misconduct on the
23 last day of trial after speaking to some of jurors, she did not report any alleged
24 misconduct or request juror contact information. [LD 6 at 15.] As defense counsel
25 waited until the hearing on the new trial motion to request disclosure of juror
26 information, the California Court of Appeal suspected that "the prosecutor's version
27 more accurately describe[d] what happened when the attorneys talked with the
28

jurors.” [LD 6 at 15-16.]

In a subsequent petition for rehearing filed with the California Court of Appeal, Petitioner asserted that defense counsel provided ineffective assistance by failing to obtain release of juror identifying information in support of his motion for new trial. [LD 7 at 3-4.] The state appellate court summarily denied that petition. [LD 8.]

b) Applicable State Law

After the jury in a criminal case is discharged, a defendant may petition the court for an order releasing information concerning the jurors’ names, addresses, and telephone numbers for the purpose of preparing a motion for new trial. Cal. Civ. Proc. Code § 206(g). To obtain access to sealed juror records, a showing of “good cause” is required. Cal. Civ. Proc. Code § 237(b); *see People v. Wilson*, 43 Cal. App. 4th 839, 852 (1996). To demonstrate good cause, a defendant must make a sufficient showing “to support a reasonable belief that jury misconduct occurred.” *People v. Jones*, 17 Cal. 4th 279, 317 (1998) (internal quotation marks and citation omitted). The alleged misconduct must be “of such a character as is likely to have influenced the verdict improperly.” *People v. Jefflo*, 63 Cal. App. 4th 1314, 1322 (1998) (internal quotation marks and citation omitted). Good cause does not exist where the allegations of jury misconduct are merely speculative. *See People v. Wilson*, 43 Cal. App. 4th 839, 852 (1996).

c) Analysis

Here, defense counsel’s failure to file a written or more timely motion for disclosure of juror information does not constitute ineffective assistance, as the motion would have been without merit. *See Juan H.*, 408 F.3d at 1273; *Rupe*, 93 F.3d at 445. Petitioner’s claim of juror misconduct was founded on hearsay and speculation into the jurors’ thought processes, which are inadequate grounds for releasing confidential juror information. [RT 818-19]; *see Wilson*, 43 Cal. App. 4th at 852; *People v. Steele*, 27 Cal.4th 1230, 1263-64 (2002) (“The rule prohibiting

1 impeachment of a verdict by examining the jurors' mental processes. . . renders the
2 jurors' subjective thought processes immaterial and of no jural consequence")
3 (internal quotation marks and citations omitted); *People v. Hayes*, 21 Cal.4th 1211,
4 1256 (1999) ("Normally, hearsay is not sufficient to trigger the court's duty to make
5 further inquiries into a claim of juror misconduct."). Petitioner also fails
6 demonstrate that the outcome of the trial would have been different had defense
7 counsel filed an earlier, written request for the juror identifying information.

8 The Court cannot say that the state court's rejection of this portion of
9 Petitioner's ineffective assistance of counsel claim was an objectively unreasonable
10 application of the *Strickland* standard.

11 12 **IV. Ground Four: Cumulative Error**

13 Petitioner contends that the cumulative effect of the series of errors discussed
14 in the Petition violated his rights to a fair trial and due process. [Petition, Att. at 42-
15 44.]

16 Under the cumulative error doctrine, the combined effect of multiple trial
17 errors may give rise to a due process violation if it renders a trial fundamentally
18 unfair, even if each error considered individually would not warrant relief. *See*
19 *Parle v. Runnels*, 505 F.3d 922, 928 (9th Cir. 2007). "[T]he fundamental question
20 in determining whether the combined effect of trial errors violated a defendant's due
21 process rights is whether the errors rendered the criminal defense 'far less
22 persuasive,' . . . and thereby had a 'substantial and injurious effect or influence' on
23 the jury's verdict." *Id.* at 928 (citations omitted). Usually, relief is warranted only
24 when there is a "unique symmetry of otherwise harmless errors, such that they
25 amplify each other in relation to a key contested issue in the case" and have a
26 "synergistic effect." *Ybarra v. McDaniel*, 656 F.3d 984, 1001 (9th Cir. 2011).

27 The Court has addressed each of the errors alleged that Petitioner contends
28 gave rise to cumulative error and has found there were no substantial constitutional

errors at trial, and if there were any errors, they were harmless. Thus, there is no basis for habeas relief on Ground Four. *See Hayes v. Ayers*, 632 F.3d 500, 524 (9th Cir. 2011) (“Because we conclude that no error of constitutional magnitude occurred, no cumulative prejudice is possible.”); *Nelson v. Mcewen*, 593 F. App’x 688, 689 (9th Cir.) (“Because the trial errors did not infect the trial with unfairness, and the government’s case was not weak, . . . it was not unreasonable for the Court of Appeal to conclude that the trial errors did not result in a violation of due process[.]”), *cert. denied*, 136 S. Ct. 138 (2015).

V. Ground Five: Ineffective Assistance of Appellate Counsel

In Ground Five, Petitioner asserts that his appellate counsel was ineffective for failing to raise meritorious arguments on direct review, including the suggestive identification procedures, prosecutorial misconduct, and ineffective assistance of trial counsel claims discussed herein. [Petition, Att. at 44-46.]

The right to the effective assistance of appellate counsel is guaranteed by the Due Process Clause of the Fourteenth Amendment. *Evitts v. Lucey*, 469 U.S. 387, 396-97 (1985). Claims alleging ineffective assistance of appellate counsel are reviewed according to the two-part *Strickland* test. *Strickland*, 466 U.S. at 687-88; *see also Morrison v. Estelle*, 981 F.2d 425, 427 (9th Cir. 1992) (finding the standard for assessing the performance of trial and appellate counsel is essentially the same under *Strickland*); *Miller v. Keeney*, 882 F.2d 1428, 1433 (9th Cir. 1989). Under the *Strickland* framework, petitioner must demonstrate the following to prevail: (1) that appellate counsel’s performance was so deficient that it fell below an objective standard of reasonableness under prevailing professional norms; and (2) that petitioner suffered prejudice in that a reasonable probability exists that, but for appellate counsel’s unprofessional errors, he would have prevailed on appeal. *Strickland*, 466 U.S. at 687-88, 694. The Sixth Amendment does not require that appellate counsel raise every colorable or non-frivolous claim, as effective appellate

1 advocacy involves weeding out weaker claims in order to focus on stronger ones.
2 *Jones v. Barnes*, 463 U.S. 745, 751-54 (1983); *Miller*, 882 F.2d at 1434.

3 Petitioner fails to satisfy either prong of *Strickland*. Simply put, there were
4 no meritorious issues that appellate counsel failed to raise. *See Barnes*, 463 U.S. at
5 751-52; *Miller*, 882 F.2d at 1434-35 (appellate counsel's failure to raise a weak
6 issue did not constitute ineffective counsel). As discussed above, Petitioner's claims
7 of unduly suggestive identification procedures, prosecutorial misconduct, and
8 ineffective assistance of trial counsel lack merit. The state courts affirmed
9 Petitioner's conviction and found no meritorious issues. [LD 6; LD 15; LD 18.]
10 Therefore, appellate counsel could not have been ineffective for failing to raise these
11 meritless claims.

12 Accordingly, Petitioner is not entitled to habeas relief on Ground Five.

14 RECOMMENDATION

15 For all of the foregoing reasons, **IT IS RECOMMENDED** that the District
16 Judge issue an Order: (1) accepting this Report and Recommendation; (2) denying
17 the Petition; and (3) directing that Judgment be entered dismissing this action with
18 prejudice.

19 DATED: May 26, 2017

20 
21 _____
22 GAIL J. STANDISH
23 UNITED STATES MAGISTRATE JUDGE

24 NOTICE

25 Reports and Recommendations are not appealable to the United States Court of
26 Appeals for the Ninth Circuit, but may be subject to the right of any party to file
27 objections as provided in the Local Civil Rules for the United States District Court
28 for the Central District of California and review by the United States District Judge

1 whose initials appear in the docket number. No notice of appeal pursuant to the
2 Federal Rules of Appellate Procedure should be filed until the District Court enters
3 judgment.

APPENDIX F

Court of Appeal, Fourth Appellate District, Division Two - No. E055529

S213827

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

CRAIG KEYON WHITE, Defendant and Appellant.

Date Filed:
SAN DIEGO DOCKETING
NOV 27 2013
No. <u>SD2012802740</u>
BY AURORA TAMAYO

The petition for review is denied.

SUPREME COURT
FILED

NOV 26 2013

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

APPENDIX G

Craig Keyon White v. Neil McDowell, Warden

U.S.D.C. Central Dist., 14-02480 R (AN)

LODGMNT 6

Date Filed:
SAN DIEGO DOCKETING

SEP 05 2013

No. SD 2012-2748
BY DAVID CANSECO

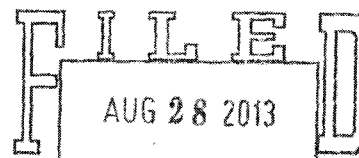
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG KEYON WHITE,

Defendant and Appellant.

E055529

(Super.Ct.No. RIF10004243)

OPINION

APPEAL from the Superior Court of Riverside County. Elisabeth Sichel and Michael B. Donner, Judges. Affirmed.

Suzanne G. Wrubel, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Craig Keyon White (defendant) guilty of four counts of first degree robbery (Pen. Code, §§ 211, 212.5, subd. (a)),¹ two counts of attempted robbery (§§ 644, 211) and one count of first degree burglary (§ 459). After defendant admitted the allegations that he had two strike priors within the meaning of the three strikes law (§§ 667, subds. (c), (e)(2)(A), 1170.12, subd. (c)(2)(A)) and that he had served a prior term in prison (§ 667.5, subd. (b)), the trial court sentenced him under the three strikes law to serve four consecutive terms of 25 years to life in state in prison.²

In this appeal defendant challenges the jury's guilty verdicts on the ground, first, that by sustaining the prosecutor's objection to a statement defendant's attorney made during closing argument, the trial court violated various rights guaranteed to defendant under the federal constitution, including his right to a fair trial and his right to the effective assistance of counsel. Next, defendant contends the trial court abused its discretion by denying defendant's so-called *Pitchess*³ motion. Finally, defendant contends the trial court abused its discretion by denying defendant's oral motion for release of juror identifying information.

We conclude defendant's claims are meritless. Therefore, we will affirm the judgment.

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

² The trial court sentenced defendant to serve one year in state prison on the section 667.5, subdivision (b), prior prison term, and then struck that sentence.

³ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

FACTS

What happened in this case is undisputed—four men, one of whom was armed with a chrome handgun, entered a house and initially robbed four people, taking items from them personally and also taking things found in the house, including a Sony PlayStation®3. Defendant was arrested three weeks after the robbery, when he tried to pawn the PlayStation®3. The only issue at trial was whether defendant was one of the robbers.

The four initial robbery victims were Dennis Estevez and Arian Valdez,⁴ who lived together in the house where the robbery occurred, Patricia Alvarado, who is Estevez's girlfriend, and Marcus Harden, a friend of Estevez and Valdez. During the robbery, Tyler Gonzalez and Jose Reyes, who are both friends of Valdez and Estevez, came to the house. Before they could be warned away, Gonzalez and Reyes were directed into the house by one of the robbers, later identified as defendant, who was holding a gun to the back of Estevez's head as Estevez stood at the open door. Defendant directed them both to lie down on the floor with the three other victims, all of whom had been directed to cover their heads and not look at defendant or the other robbers. When the robbers' attention was diverted, Reyes got up and ran from the house to a convenience store where he convinced the clerk to call the police.

⁴ Valdez also apparently was referred to at trial as Arian Ibarra.

The robbers left the house before the police arrived, but after taking three of the remaining five victims into the bathroom and directing them to count to 100. After they determined the robbers had left the house, one of the victims ran next door and also called 911.

Estevez, Valdez, Harden, and Alvarado each identified defendant from a photographic lineup prepared by Deputy Jonathan Bodnar. Although only some of them identified defendant as the gunman, they all said defendant was one of the robbers.

To support his defense of misidentification, defendant presented an alibi (that he had been at the hospital on the night of the robbery visiting his recently born son, then at his mother's house for the rest of the night and until the next morning) and the testimony of an expert on memory and suggestibility, which involves the influence that new information obtained after an event has on one's memory of that event. The expert, Mitchell Eisen, who has a doctorate in psychology, and is the director of the graduate program in forensic psychology at California State University, Los Angeles, testified about the many things that affect the reliability of memory and that influence the outcome of a lineup. Among other things, Dr. Eisen testified, when the interviewer knows which photo is that of the suspect, the interviewer can inadvertently or unconsciously affect the outcome of the photographic lineup; the viewer of a photographic lineup brings certain expectations to the process including the expectation that one of the photographs will be of the suspect and that the interviewer expects the viewer to identify someone; identification based on the witness's actual memory typically happens quickly, within 10 to 12 seconds after seeing a lineup; once a witness identifies someone as the suspect,

the witness incorporates that image into his or her actual memory of the event and then reconstructs the event around the person identified; and that the most accurate memories of an event are those recounted right after the event.

Additional facts pertinent to the issues defendant raises in this appeal will be recounted below.

DISCUSSION

1.

VIOLATION OF DEFENDANT'S VARIOUS CONSTITUTIONAL RIGHTS INCLUDING THE RIGHT TO PRESENT A DEFENSE

During her closing argument, defense counsel stated, "And if you believe that Miss Alvarado, Mr. Estevez, and Mr. Valdez sharing a household together, all of these individuals being friends, go through this terrifying traumatic incident and never speak a word of it" The prosecutor interrupted objecting that the argument was based on speculation. The trial court sustained that objection. Defendant contends the trial court effectively precluded him from arguing, due to the close relationship between the three victims, that it was likely they had talked with each other about the robbery and the criminal investigation. In other words, defendant contends the trial court precluded him from attacking the credibility of the victims' testimony regarding what happened during the robbery and the validity of their ability to independently identify defendant as one of the robbers.

The right to present a closing argument is not in dispute in this appeal. (See *Herring v. New York* (1975) 422 U.S. 853, 858-860.) What is disputed is defendant's characterization of the effect of the trial court's ruling. That characterization is inaccurate. Therefore, even if the trial court's ruling was incorrect it did not affect defendant's ability to present his defense of mistaken identification.

The record discloses that defense counsel did not miss a beat. Despite the prosecutor's objection and the trial court's ruling, defense counsel completed her argument that it was "unreasonable" for the jury to believe the victims had not talked with each other about the robbery. Before the prosecutor asserted the speculation objection, defense counsel had pointed out that one of the victims, Tyler Gonzalez, not only "admitted that he wouldn't be able to ID anybody from the get go. . . . But even more importantly, Mr. Gonzales [*sic*] told us something else: He told us how many times these witnesses had talked to each other." As defense counsel stated, Tyler Gonzalez "said something like he had been asked so many questions over and over again, he was confusing the details himself. He couldn't remember what he personally remembered anymore versus what someone else had told him."

Defense counsel argued at great length and in detail why the victims' identifications of defendant from a photo lineup were tainted and consequently unreliable. Not only did defense counsel point out that the victims presumably had talked with each other, but also that before they were shown the lineups, Arian Valdez and Dennis Estevez had read the police reports, "[p]olice reports that include[d] witness statements." Defense counsel made similar arguments regarding each of the victims. For

example, he argued that Marcus Harden, as well as Valdez and Estevez, knew defendant was the pawnshop suspect at the time Deputy Bodnar showed him the photo lineup that included defendant's photo.

With respect to Patricia Alvarado, defense counsel argued Deputy Bodnar must have shown her defendant's photo before she identified him from the photo lineup. Otherwise, it was just too coincidental that Deputy Bodnar had a photograph of defendant smiling and revealing his crooked teeth, and produced that photo when Miss Alvarado said she would be more confident of her identification if she could see the teeth of the person she had just identified.

In addition to pointing out the defects and inconsistencies in the testimony of the victims, defense counsel correlated those defects and deficiencies to Dr. Eisen's testimony. For example, defense counsel reminded the jurors that Dr. Eisen had talked about contamination, which results when a witness is exposed to other people's versions of an event. Defense counsel also reminded the jurors that Dr. Eisen had explained the concept of expectancy and how it affects the validity of identification from a photographic lineup: the viewer knows he or she is expected to identify someone and that expectancy can result in an incorrect identification.

We will not recount anymore details of defense counsel's closing argument. From the noted examples, and our review of the record, we are persuaded defendant was able to fully and completely present his defense of misidentification both in cross-examination of witnesses and in closing argument. Because defendant's initial assertion is incorrect, we will not address the remainder of his argument. In short, by sustaining the prosecution's

objection that defense counsel's argument was based on speculation, defendant was not precluded from presenting his defense or otherwise adversely affected and therefore if the trial court erred the error was harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

2.

DENIAL OF DEFENDANT'S *PITCHESS* MOTION

Defendant filed a motion for discovery of the personnel records of Riverside County Sheriff's Deputy Bodnar, the deputy who prepared the photographic lineups and showed those lineups to the robbery victims. Defendant asserted in his motion that the deputy's personnel records were discoverable under Evidence Code section 1043 et seq., which codifies the Supreme Court decision in *Pitchess*. The trial court denied defendant's motion after finding defendant had not made the required showing.

Defendant contends in this appeal that he established the required plausible factual scenario, which in turn triggered the trial court's obligation to conduct an in camera review of the deputy's personnel file to determine if it contains material relevant to defendant's claim. We disagree with defendant's assertion.

The pertinent legal principles are well settled. A criminal defendant is entitled to discovery of a police officer's confidential personnel records if those files contain information that is potentially relevant to the defense. (*Pitchess, supra*, 11 Cal.3d at pp. 537-538; Evid. Code, §§ 1043-1045.) To obtain discovery, the defendant must file a motion, supported by affidavits "showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation." (Evid. Code, § 1043, subd. (b)(3).) If good cause is shown, the trial court

then reviews the records in camera to determine if any of them are relevant to the proposed defense. (Evid. Code, § 1045, subd. (b).)

The good cause showing that triggers the trial court's in-chambers review is "relatively low." (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83.) The defendant must present a specific factual scenario of officer misconduct that is plausible, i.e., one that could or might have occurred. (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1018-1019 (*Warrick*); see also *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1017.) The defendant must also demonstrate how the discovery would support the defense or how it would impeach the officer's version of events. Because the information discoverable under a *Pitchess* motion is limited to "instances of officer misconduct related to the misconduct asserted by the defendant," (*Warrick, supra*, 35 Cal.4th at p. 1021) the defendant must also specifically describe that misconduct. On appeal we review a trial court's ruling on a *Pitchess* motion for abuse of discretion. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.)

In this case, defendant's trial attorney offered the following factual scenario to support defendant's *Pitchess* motion: Defendant was at his mother's house, not at the scene of the crime, on the night in question; defendant did not participate in the crimes, nor did he have any knowledge that the Sony PlayStation®3 was stolen property; Deputy Bodnar assumed defendant had participated in the robberies once the deputy learned defendant had pawned the stolen Sony PlayStation®3; Deputy Bodnar's "overzealousness to turn [defendant] into a robbery suspect caused [defendant] to be wrongfully identified by witnesses who were unable to identify any suspect, or otherwise would not have

identified [defendant] as a suspect”; Deputy Bodnar “falsified his reports regarding the conversations and conduct of himself and of the witnesses surrounding alleged identifications of [defendant] as a suspect”; Bodnar stated in his reports that he had recorded the witness interviews and booked those recordings into evidence, but then he destroyed those recordings in an effort to prevent his misconduct from being discovered; and the “Riverside County District Attorney’s Office and Riverside County Sheriff’s Department have both had reason to question [Deputy] Bodnar’s veracity and conduct as an officer in this and other cases, thus prompting investigations from both agencies.” In a supplemental declaration, defense counsel acknowledged that Deputy Bodnar’s recorded witness interviews had been located but that his reports of what the witnesses said when they identified defendant in the photo lineups conflicted with the recorded interviews.

In short, defendant’s factual scenario is that he was not one of the robbers; he was at his mother’s house on the night of the robbery; Deputy Bodnar must have done something untoward in connection with the photo lineups, such as tampering with the evidence or unduly influencing the victims, which explains why the victims identified defendant; and the deputy destroyed the recordings of those interviews in order to cover up his misconduct. That is a specific factual scenario. The remaining issue is whether that scenario is plausible.

To determine plausibility, i.e., whether the scenario could have or might have occurred, we look to the evidence defendant submitted to support his claim. Defendant’s factual scenario was plausible only until Deputy Bodnar located the recordings of his interviews with the victims. Once the recordings were located, and defense counsel

submitted transcripts of those recordings to the court to support defendant's motion, the plausibility of defendant's factual scenario turned on the content of the transcripts which showed what actually occurred. The trial court found defendant's factual scenario was not plausible because the police reports and transcribed witness interviews of what actually happened contradicted defendant's scenario that Deputy Bodnar had somehow influenced their selection of defendant from the photo lineup.

We agree with the trial court that the evidence does not support, and in fact refutes, defendant's scenario that Deputy Bodnar improperly influenced the victims' identification of defendant from the photo lineups. In arguing otherwise, defendant cites discrepancies between the recordings of the interviews and Deputy Bodnar's written reports. For example, defendant notes Deputy Bodnar's police report does not disclose that when Valdez a.k.a. Ibarra selected defendant's photograph from the so-called six-pack photo lineup he said, "This guy looks closer, but I don't think it was him. The other guy looked older."⁵ That fact does not establish defendant's claim that Deputy Bodnar influenced Ibarra to identify defendant from the photo lineup. It only shows Ibarra was less than 100 percent certain about that identification, a fact Deputy Bodnar included in his report when he stated Ibarra indicated he was 50 percent sure defendant entered the house and committed the robbery.

⁵ The transcript of the recorded interview shows Ibarra also stated, "the whole face structure, very similar. I mean it's been over a month, you know." After Deputy Bodnar said, "Mm-hm," Ibarra continued, "So, it's pretty hard for me to tell, but number six [defendant's photo] looks like he has that, you know, facial features, but"

Similarly, the transcript of Deputy Bodnar's interview of Dennis Estevez does not support defendant's assertion that the deputy prompted Estevez to pick defendant's photograph. The transcript discloses that the deputy asked, "Okay. Is there anyone that looks similar, 'cause I see you—it kinda looks like you keep paying attention to one photograph to me. You keep looking back at the one." Estevez identified a photograph ("Maybe this one with the du-rag") and indicated he was 50 percent positive about the identification.

We will not address each witness identification because defendant has demonstrated only that the recordings of the interviews differ in some respects from some of Deputy Bodnar's reports; they do not show that he improperly influenced any of the victims into selecting defendant's photograph from the photo lineups. In short, we know from the evidence what actually occurred when Deputy Bodnar interviewed each of the witnesses, and that evidence shows defendant's scenario is not plausible. Therefore, the trial court did not abuse its discretion when it denied defendant's *Pitchess* motion based on defendant's failure to establish good cause for the requested discovery.

3.

DISCLOSURE OF JUROR INFORMATION

Defendant filed a motion for new trial in which he asserted jury misconduct, among other things. According to the declaration of his attorney submitted in support of the new trial motion, after trial concluded and the trial court discharged the jury, about two-thirds of the jury panel stayed and discussed the case with the attorneys; during that discussion the jurors "collectively stated," among other things, that when the jurors were

unable to reach verdicts after several days of deliberations, they discussed their observations that throughout the trial, defense counsel would talk to defendant after cross-examining prosecution witnesses; “[t]he jurors . . . opined that discussion between [defense counsel] and the defendant would have been unnecessary if the defendant had not been one of the robbers”; and after the jury’s discussion, at least one juror changed her verdict from not guilty to guilty.

In its opposition the prosecution asserted, first, that defense counsel’s declaration was hearsay to the extent it purported to recount what a juror had said, and in any event, defense counsel’s version of what the juror said was wrong. According to the prosecutor, who was present and also talked with the jurors after they had been discharged, the attorneys had asked for constructive criticism. One juror responded that she did not think it was wise, if they were claiming defendant was not there, for defense counsel to ask defendant after each witness testified whether there was anything else defense counsel needed to ask. That juror thought it “seemed strange if the defendant was claiming he wasn’t there.” According to the prosecutor, the juror did not say they discussed this during their deliberations and she did not say that they changed their verdicts as a result.

The trial court heard defendant’s new trial motion in conjunction with defendant’s sentencing hearing. At that hearing, the trial court asked defense counsel to address the issue of whether her declaration was inadmissible hearsay. Defense counsel responded, “Well, your Honor, if the Court feels as though it needs more factual information, then I would request to unseal the juror information so that a questionnaire or something of the sort could be sent to the jurors so that the Court can receive the information that it’s

seeking.” The trial court denied that request and ultimately denied defendant’s new trial motion.

On appeal, defendant characterizes the statement quoted above as a motion under Code of Civil Procedure section 237 for disclosure of juror identifying information. We do not agree, but we will not belabor the point, because even if we were to agree, defendant has not demonstrated error.

After the jury’s verdict is recorded in a criminal case, the personal identifying information about the jurors who served on the trial is sealed. (Code Civ. Proc., § 237, subd. (a)(2).) A defendant or the defendant’s attorney may request access to that information in order to “communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose.” (Code Civ. Proc., § 206, subd. (g).) The procedure for obtaining that information is set out in Code of Civil Procedure section 237, subdivision (b): “Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror’s personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information” On appeal, we review a trial court’s denial of a petition to disclose juror identifying information for abuse of discretion. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 991.)

The trial court denied defendant's request for disclosure of juror identifying information in part because defendant had not been diligent in making his request. As the trial court observed, defendant had an opportunity to complete his investigation in order to file a new trial motion. The fact defense counsel waited until the hearing on that motion to request disclosure of juror information suggests that information would not aid defendant in developing his juror misconduct claim.

Defense counsel learned of the purported jury misconduct on the last day of trial, when she spoke with the jurors outside the courtroom. Despite that knowledge, defense counsel did not immediately report the purported misconduct to the trial court, nor did she ask for contact information from the juror who reputedly revealed the misconduct. Despite the obvious differences, the circumstances here are equivalent to those in *People v. Carrasco*, in which the court stated, in holding the trial court did not abuse its discretion in denying disclosure of juror identifying information, "What strikes us even more is that defense counsel learned about the claimed juror misconduct during the trial, before a verdict was entered, and had an opportunity to try to rectify any problem she perceived. Defense counsel could have proposed an additional line of inquiry to the trial court if she believed jury misconduct had occurred which the court was overlooking. She did not." (*People v. Carrasco, supra*, 163 Cal.App.4th at p. 991.)

Because defense counsel did not take any action with respect to the jury's purported misconduct other than cite it in a motion for new trial, we suspect the prosecutor's version more accurately describes what happened when the attorneys talked with the jurors. In any event, we conclude the trial court did not abuse its discretion by denying defendant's request to disclose identifying information about the trial jurors.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.

2013 AUG 30 AM 10:19
ATTORNEY GENERAL
SAN DIEGO

APPENDIX H

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

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Court data last updated: 01/22/2015 07:11 AM

Docket (Register of Actions)

WHITE (CRAIG KEYON) ON H.C.
Case Number S220863

Date	Description	Notes
08/28/2014	Petition for writ of habeas corpus filed	Petitioner: Craig Keyon White Pro Per Exhibits attached with petition.
11/12/2014	Petition for writ of habeas corpus denied	

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Judicial Council of California / Administrative Office of the Courts

Craig Keyon White v. Neil McDowell, Warden
U.S.D.C. Central Dist., 14-02480 R (AN)
LODGMNT 18

APPENDIX I

1 A. For two months. I had just moved in in the beginning
2 of June.

3 Q. Were you roommates with Arian Valdez?

4 A. Yes.

5 Q. And you said you had been there how long?

6 A. Two months.

7 Q. How long have you known Arian?

8 A. Two years, a year.

9 Q. Okay. And do you have a girlfriend?

10 A. Yes.

11 Q. What is her name?

12 A. Patricia Alvarado.

13 Q. On the night of July 26th, 2010, were you at home?

14 A. Yes.

15 Q. What were you doing?

16 A. Sitting watching movies.

17 Q. Do you recall what movie you were watching about 11:30?

18 It's okay if you don't remember.

19 A. I went blank on the first part of the name. It's
20 something Wedding -- My Wedding, My Favorite Wedding.

21 Q. And when you were watching movies, who were you with?

22 A. Me, Patricia, Marcus, and Arian.

23 Q. Did someone knock at the door?

24 A. Yes.

25 Q. Can you describe that?

26 A. It was around 11:30, almost 12:00. I heard a knock on
27 the door. I was the one that answered the door; went up to the
28 door; opened the door. There was two males at the door. And

1 person before?

2 A. No.

3 Q. Was it a male or female?

4 A. Male.

5 Q. Black, White or Hispanic?

6 A. Black.

7 Q. Do you see that person in the courtroom today?

8 A. Yes.

9 Q. Okay. Can you tell the jury where that person's seated
10 and what he's wearing?

11 A. Seated in front of me, off-white shirt, tie.

12 Q. When you opened the door --

13 THE COURT: The record shall reflect he identified the
14 defendant.

15 MS. DITTRICH: Oh, I'm sorry.

16 THE COURT: Go ahead. Next question, please.

17 MS. DITTRICH: Thank you, your Honor. Sorry about
18 that.

19 Q. (BY MS. DITTRICH) When you saw the defendant, did you
20 notice if he had anything in his hands?

21 A. When I first went to the door, no. Within those first
22 five minutes of being at the door talking to them, yes.

23 Q. Why don't you tell the jury what happened when you
24 opened the door?

25 A. I opened the door. I asked them -- because he had came
26 back, and I was like, what did you need again? He asked for the
27 guy that didn't live there no more. I told them that he was no
28 longer there, not to come back; like, he no longer lived here

1 A. Yes.

2 Q. What's the date?

3 A. 9-2-10.

4 Q. And then looking at the second page, were you -- is
5 this the photo lineup where you were able to make an
6 identification?

7 A. Yes.

8 Q. And which photograph did you select?

9 A. Sixth one.

10 Q. And did you circle it?

11 A. Yes.

12 Q. And initial it?

13 A. Yes.

14 Q. Is there a number written next to it?

15 A. Yes.

16 Q. What does that mean?

17 A. 50.

18 Q. Do you know what it means?

19 A. (No audible response.)

20 Q. Did you tell the officer anything about being five out
21 of ten percent or --

22 A. Yes.

23 Q. -- 50 out of a hundred percent sure?

24 A. Yes.

25 Q. Okay. And as you sit here today, and you look at the
26 person in court, how sure are you that it's the defendant?

27 A. I'm a hundred percent sure now.

28 MS. DITTRICH: Publish this.

1 Q. (BY MS. DITTRICH) This is the front and that's your
2 signature, correct?

3 A. Yes.

4 Q. And then looking at the back of People's No. 3, photo
5 No. 6 is circled and the initials DE?

6 A. Yes.

7 Q. And did he write the 50 percent?

8 A. Yes -- no. I didn't write the 50 percent.

9 Q. You didn't write it?

10 A. No.

11 Q. Did you see Officer --

12 A. Officer Bodnar wrote the 50 percent.

13 Q. Okay. What makes you a hundred percent sure today that
14 the defendant is the person that robbed you?

15 A. The only reason I was 50 percent sure was because of
16 the do-rag that was covering his hair. But you need more than
17 just a do-rag to cover who you are or what you look like.

18 MS. DITTRICH: I have nothing further, your Honor.

19 THE COURT: Thank you.

20 Do you care to cross-examination this witness?

21 MS. PETROVICH: Yes. Thank you, your Honor.

22 THE COURT: Please proceed. You're welcome.

23 CROSS-EXAMINATION

24 BY MS. PETROVICH:

25 Q. All right. Good afternoon. Mr. Estevez, right?

26 A. Yes. Good afternoon.

27 Q. Okay. Mr. Estevez, how tall are you, sir?

28 A. Five-seven.

1 Q. Yes. Okay. And was there anything distinctive that
2 you recall about any of their voices; something that stood out
3 to you or was unique or different?

4 A. No. They were just talking amongst themselves.

5 Q. Do you recall them mentioning names or anything like
6 that amongst themselves?

7 A. No, not any names.

8 Q. And so when you called -- you said you called 911. Do
9 you remember, did the police arrive quickly after you called
10 911?

11 A. Yes.

12 Q. Do you remember how quickly?

13 A. Three minutes and 17 seconds.

14 Q. Did you know that from memory?

15 A. Ah, no. The call that I had placed to the police
16 department, they gave me a copy of my call, and it has a time
17 limit. And during the call, I told them, like, okay, the cops
18 are here already, so I wasn't even off the phone before they
19 showed up.

20 Q. Oh, I see. Okay. All right. And as you were being
21 escorted, was the person escorting you that had the silver gun,
22 were they next to you, in front of you or behind you?

23 A. Behind me.

24 Q. Was that true the whole time that you were with that
25 person?

26 A. Yes.

27 Q. And did you give a description of the five individuals,
28 the five black males to officers that night?

1 Q. Yes. Okay. And was there anything distinctive that
2 you recall about any of their voices; something that stood out
3 to you or was unique or different?

4 A. No. They were just talking amongst themselves.

5 Q. Do you recall them mentioning names or anything like
6 that amongst themselves?

7 A. No, not any names.

8 Q. And so when you called -- you said you called 911. Do
9 you remember, did the police arrive quickly after you called
10 911?

11 A. Yes.

12 Q. Do you remember how quickly?

13 A. Three minutes and 17 seconds.

14 Q. Did you know that from memory?

15 A. Ah, no. The call that I had placed to the police
16 department, they gave me a copy of my call, and it has a time
17 limit. And during the call, I told them, like, okay, the cops
18 are here already, so I wasn't even off the phone before they
19 showed up.

20 Q. Oh, I see. Okay. All right. And as you were being
21 escorted, was the person escorting you that had the silver gun,
22 were they next to you, in front of you or behind you?

23 A. Behind me.

24 Q. Was that true the whole time that you were with that
25 person?

26 A. Yes.

27 Q. And did you give a description of the five individuals,
28 the five black males to officers that night?

1 A. Yes.

2 Q. Do you remember what your description was of the black
3 male with the silver handgun?

4 A. Yes.

5 Q. What was it?

6 A. He came in wearing an undershirt, and he had a do-rag
7 on, blue jeans.

8 Q. Do you recall anything else --

9 A. No.

10 Q. -- about --

11 A. No.

12 Q. I'm sorry?

13 A. No.

14 Q. Did you report that person as being the same height as
15 you?

16 A. No.

17 Q. Do you remember if you said the person was shorter or
18 taller than you?

19 A. Taller.

20 Q. Now, when you reviewed the police report, there's a
21 section for suspect descriptions, right?

22 A. Yes.

23 Q. Did you have a chance to review that when you looked at
24 it?

25 A. No.

26 Q. All right. Do you recall -- well, isn't it true, then,
27 that you gave -- and if you need to refresh your memory, I'll be
28 happy to share it with you -- that you gave a description of the

1 individual with the silver handgun as having a height of
2 five-foot, seven inches? Would you agree or disagree with that?

3 A. Agree.

4 Q. You agree that you gave that. And you said you're
5 five-seven?

6 A. Yes.

7 Q. And that the weight of the individual was about 130
8 pounds. Does that sound right?

9 A. Yes.

10 Q. Yes?

11 A. Yes.

12 Q. You have to answer yes or no?

13 A. Yes.

14 Q. Between 20 and 35 years old?

15 A. Yes.

16 Q. Now, you said undershirt today. But do you recall
17 telling the officer back on that night that you saw the person
18 with the silver gun wearing a black and brown checkered shirt?

19 A. Yeah, the black was the undershirt, and then the
20 checkered shirt was the over shirt.

21 Q. Oh, I'm sorry. And black jeans instead of blue jeans?

22 A. Yes.

23 Q. Is that what you said back then?

24 A. Yes.

25 Q. Yes. And black bandana over the hair?

26 A. Do-rag, yes.

27 Q. Right. And goatee?

28 A. Yes.

1 Q. Yes. Ace bandage. And that was on the left arm,
2 right?

3 A. Yes.

4 Q. And that individual had some sort of covering or
5 bandana over his face?

6 A. Yes. Me and my girlfriend had just gone shopping
7 earlier that day, so they used my clothes as a facial mask.

8 Q. You said they used. Was there someone --

9 A. Oh, no. It was just that one guy. It was just one
10 person with my shirt over their face trying to cover their face.
11 And then the rest of my stuff -- the rest of the clothes were
12 just taken.

13 Q. I'm sorry?

14 A. The rest of the clothes were just taken. It was just
15 that one guy who used it to cover his face.

16 Q. I see. And you earlier described for us his silver
17 gun. You didn't see any other gun used that night, correct?

18 A. No.

19 Q. And did you see what vehicle these gentlemen either
20 arrived in or left in?

21 A. No.

22 Q. Now, when you talked with the officers back on that
23 night, you told them that you could identify -- positively
24 identify two guys --

25 A. Yes.

26 Q. -- right? The guy with the light-colored eyes, and the
27 guy with the gun --

28 A. Yes.

1 Q. -- right? And you -- back then you felt you could do
2 that a hundred percent?

3 A. What was that?

4 Q. You felt back then --

5 A. Yes.

6 Q. -- when you said that, that you could a hundred percent
7 make an identification?

8 A. Yes.

9 Q. And then when you looked at the photo lineup that you
10 were asked about earlier, that was on September 2?

11 A. Yes.

12 Q. Does that sound right, about a month later?

13 A. Yes.

14 Q. Okay.

15 A. The only reason it was 50 percent was because when he
16 came in, he was wearing the do-rag. And when they showed me the
17 lineup, it was without the do-rag and braids all out. But yeah,
18 he had braids underneath the do-rag.

19 Q. Okay. Now, when you -- you said that you had seen more
20 than one photo lineup, right?

21 A. Yes.

22 Q. Before you looked at this particular lineup with Mr. --

23 A. Yes.

24 Q. -- White in it?

25 A. Yes.

26 Q. And on each of those, I think you said that you had
27 read the same photographic admonishment that we saw on the
28 overhead?

1 A. What do you mean?

2 Q. In other words, when you were presented with the
3 photos, you weren't asked, okay, identify the guy with the gun,
4 or identify --

5 A. No, he just --

6 Q. -- some other guy?

7 A. -- showed me the pictures and asked me, do you
8 recognize anybody in the picture.

9 Q. Okay.

10 A. And he showed me 12 pictures before I got to the third
11 sheet, which was the one the defendant was on.

12 Q. Uh-huh. Okay. And when you made your identification,
13 you just said you didn't specifically say which person it was of
14 the five, right?

15 A. Six. No. No. Yeah. Yeah. Yeah, five.

16 Q. I'm sorry. You didn't indicate which person of the
17 five people that had been in your house?

18 A. No. That's what I meant.

19 Q. Now, would you agree that your ability to identify
20 someone would have been better back in July, August, September
21 of last year?

22 A. No.

23 Q. Why is that?

24 A. I have a pretty vivid memory of his face. That's not
25 something you forget over night.

26 Q. Well, I understand that. But I guess the question is,
27 is that if -- if Mr. White was the person with the gun, or one
28 of the people -- one of the other people there, and your memory

APPENDIX J

1 THE COURT: The record should reflect he's showing a
2 grabbing motion made in a fist as if holding something.

3 Go ahead.

4 MS. DITTRICH: Thank you, your Honor.

5 Q. (BY MS. DITTRICH) When he -- did he then face you?

6 A. Yes. Dennis was turned around facing us. We would
7 have been sitting -- I believe I was in the recliner. Dennis
8 and Patty had been sitting in the love seat to my right, and
9 Arian was sitting on the couch to my left.

10 Q. Okay. And when he got turned around and faced you and
11 you saw the silver revolver, did you see anybody with Dennis?

12 A. Yes.

13 Q. Describe that?

14 A. Well, there was a slim man. Black man. I believe he
15 was wearing some type of overcoat and a head covering. He
16 looked quite a bit like the gentleman sitting right here.

17 Q. Okay. And is the person you described, did that person
18 have the handgun?

19 A. Yes.

20 Q. Is the person that's sitting here that you just pointed
21 to -- I believe that's at counsel table, correct?

22 A. Yes. The defendant.

23 Q. Is that -- go ahead.

24 A. Yeah.

25 Q. Is that -- sorry. Is that the person that you saw that
26 evening?

27 A. Yes.

28 Q. And you said -- was there another person with him and

1 THE COURT: Counsel, he hasn't said he doesn't remember
2 what he said yet.

3 MS. DITTRICH: Oh, I'm sorry.

4 THE WITNESS: I don't know exactly what I said
5 actually. I couldn't tell you what would be in the report. I'm
6 not sure.

7 Q. (BY MS. DITTRICH) Okay. Well, thinking today, do you
8 recall how tall the person with the silver revolver was?

9 A. I described him as being fairly tall. Not a very tall
10 man, but fairly tall. Light to medium build. He did have what
11 seemed to be a puffy coat or jacket of some kind on so judging
12 his exact dimensions was difficult.

13 Q. Okay.

14 A. Black male. Much older look. And that was also
15 determined, I would say, from his voice and his general
16 demeanor.

17 Q. Okay. Can you describe his voice to the jury?

18 A. It was rough. It was kind of scraggly. He had a
19 very -- what is the word I want to use -- I'm not sure exactly
20 how I would like to describe it, but a rough gentleman. Poor
21 speech. Poor dialect.

22 THE COURT: Did you say poor dialect and speech?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 Q. (BY MS. DITTRICH) After talking to police that evening
26 in September, around the 10th, 2010, were you asked by Deputy
27 Bodnar to look at a six-pack photo lineup?

28 A. Yes. I went down to the Moreno Valley Police

1 Department. I met with Officer Bodnar, and he took me into the
2 police station, into one of the offices. It's an -- I think
3 it's one of their specific rooms for this type of thing. And he
4 showed me a series of photos.

5 Q. Okay. I'm going to show you what's been marked
6 People's No. 4.

7 THE COURT: Any objection, Counsel?

8 MS. DITTRICH: Oh, I'm too fast.

9 MS. PETROVICH: I'm sorry. No. No objection.

10 THE COURT: Okay. Go ahead, Counsel.

11 Q. (BY MS. DITTRICH) Do you recognize this front
12 document?

13 A. Yes.

14 Q. How do you recognize it?

15 A. I believe, if I'm fairly certain, that this document I
16 had to sign after looking at his lineup of photos.

17 Q. Okay. And do you see your signature here on the
18 document?

19 A. That's my signature.

20 Q. And is there a date next to it?

21 A. Dated September 10th, 2010.

22 Q. Okay. Look at the second page, do you recognize that
23 six-pack photo lineup?

24 A. Yes.

25 Q. How do you recognize it?

26 A. In this photo I picked out photo No. 6, the gentleman
27 on the bottom right corner.

28 Q. Okay. And can you tell the jury when you looked at

1 those photos, how long did you look at the photos for about?

2 A. I took, let's say, approximately one full minute to
3 decide. It didn't take me long to recognize the individual, but
4 I wanted to be sure looking over the photos several times.

5 Q. Okay. And when you circled the photograph, did you
6 initial it?

7 A. Yes.

8 Q. And there seems to be a number written next to it. Do
9 you see that?

10 A. Yes.

11 Q. What is the number there?

12 A. 80.

13 Q. And what does that represent; do you know?

14 A. Yes. The deputy asked me how sure in a percentage I
15 was that this individual in this photo was the individual that
16 was at the front door. And I told him, if you give me a better
17 photo or put him in front of me, I could tell you for sure, but
18 I'm 80 percent sure with this photo. It's a dark photo. Pretty
19 crappy quality.

20 Q. Okay. I'm just going to publish the front page for the
21 jury that he we talked about.

22 THE COURT: Any objection, Counsel?

23 MS. PETROVICH: No.

24 Q. (BY MS. DITTRICH) Same exhibit, People's 4. Signature
25 and date, correct?

26 A. Yes.

27 Q. Okay. And then you described selecting photograph No.
28 6 with your initials and the percentage, correct?

1 A. Yes.

2 Q. Okay. Sitting here in court today, how certain are you
3 that Mr. White is the individual that had the silver revolver in
4 the home on July 27th, 2010?

5 A. Absolutely.

6 Q. Do you have any doubt?

7 A. No.

8 MS. DITTRICH: I have nothing further, your Honor.

9 THE COURT: Care to cross-examine this witness,
10 Counsel?

11 MS. PETROVICH: Yes. Thank you, your Honor.

12 THE COURT: Sure. You're welcome. Please proceed.

13 **CROSS-EXAMINATION**

14 BY MS. PETROVICH:

15 Q. All right. Good afternoon, Mr. Harden.

16 A. Good afternoon.

17 Q. All right. Mr. Harden, you had been drinking that
18 night, right?

19 A. Yes.

20 Q. And do you remember how much you had to drink before
21 you went over to Dennis' house?

22 A. I filled my flask. It holds five ounces.

23 Q. Okay. What did you fill it with?

24 A. Could have been any series of liquors, but I'm assuming
25 rum. At the time I was drinking a lot of rum when I would go
26 out. Let me rephrase that: I wasn't drinking a lot of rum when
27 I would go out. If I went out, I would drink rum.

28 Q. So you don't have a specific memory it being rum.

1 THE COURT: Thank you. Go ahead, Counsel.

2 MS. PETROVICH: Thank you, your Honor.

3 Q. (BY MS. PETROVICH) All right. Now, when you first saw
4 the man who had the silver gun -- and that was the only gun you
5 saw, right, was the silver gun?

6 A. Yes. The only gun I saw was the silver revolver. Had
7 the other assailants had weapons, I have no knowledge. My head
8 was down.

9 Q. Okay.

10 A. I assumed as much.

11 Q. But you didn't see any?

12 A. No.

13 Q. Right. Just the one?

14 A. Just the one.

15 Q. Okay. Now, when you saw the man with the gun, you only
16 saw him for a moment, correct?

17 A. Just a moment, yes.

18 Q. And you recall telling Deputy Zimolzak that you
19 couldn't really place him because you had only seen him for a
20 moment?

21 MS. DITTRICH: Objection. Vague.

22 THE COURT: Overruled.

23 THE WITNESS: I remember giving the officer a
24 description. I told him he looked older, and he was a black
25 gentleman. That he reminded me of a Hollywood actor -- Charlie
26 Murphy.

27 Q. (BY MS. PETROVICH) All right.

28 A. He had that look. Not that he was exactly -- he looked

1 exactly like Charlie Murphy, but -- this would be Eddie Murphy's
2 brother, if anybody's familiar with that. But I remember saying
3 that specifically. That kind of is in my head floating around
4 the events of a year ago.

5 Q. Okay. So since you brought that up, we'll go ahead
6 and -- all right. I'm going to show you what's marked as
7 Defense B, as in boy.

8 THE COURT: Any objection?

9 MS. DITTRICH: No objection.

10 THE COURT: Go ahead.

11 Q. (BY MS. PETROVICH) Can you take a look at that
12 photograph and tell me if you recognize who is in this picture?

13 A. This is Charlie Murphy; Hollywood actor Eddie Murphy's
14 brother.

15 Q. Okay.

16 THE COURT: Any objection to publish it?

17 MS. DITTRICH: No.

18 THE COURT: Any objection to it being published?

19 MS. DITTRICH: No, your Honor.

20 THE COURT: Go ahead.

21 Q. (BY MS. PETROVICH) All right. I'm going to show you
22 what's marked as Defense Exhibit B, as in boy. So when you say
23 that the person looked like Charlie Murphy, are you saying that
24 the person looked like the person in this photograph?

25 A. He looked like a much more rough version of Charlie
26 Murphy. I mean, this is a pretty nice picture of the guy. He
27 has a facial -- big smile. It might be photo-shopped to make
28 him look a little nicer. I don't know. Hollywood.

1 time people were taken into the bathroom?

2 A. Yes.

3 Q. And how do you know that they were taken into the
4 bathroom?

5 A. I could hear what was going on.

6 Q. Did you hear someone say something about, go to the
7 bathroom, or get in the bathroom?

8 A. At the end of the incident, I could hear the men that
9 were in the bathroom, the other victims, counting. You could
10 hear the echo of the numbers. It was obvious they were in the
11 bathroom. If it was said they were going to the bathroom, I
12 don't recall.

13 Q. All right. Do you recall that there was an unpleasant
14 odor in the living room --

15 A. Oh, yes.

16 Q. -- at that time?

17 A. I do, actually.

18 Q. And is that related, if you know, to someone going into
19 the bathroom?

20 A. Someone said, he shit his pants. He shit his pants. I
21 don't actually know if somebody shit their pants, but I wouldn't
22 be surprised if that would have happened.

23 Q. All right. Now, when you talked with Deputy Zimolzak,
24 you never mentioned that particular statement before with him,
25 correct -- he shit his pants, the statement I talked about?

26 A. I don't know. I don't believe so.

27 Q. Would it refresh your memory to take a look at that
28 ~~portion of the transcript with Deputy Zimolzak?~~

1 A. Yes.

2 Q. You didn't want to make an improper identification?

3 A. Absolutely.

4 Q. Okay. So then, when you went back to and took another
5 look or continued to look at the photographs, how much longer
6 was it, if you recall, before you signed it with the 7.5 or 8?

7 A. I don't recall the amount of time.

8 Q. Would it be more than a minute? Less than a minute?
9 Five minutes? An hour?

10 A. I don't recall. It was much less than an hour.

11 Q. So a few minutes?

12 A. I don't recall.

13 Q. Okay. And then you told Deputy Bodnar that you would
14 on a scale of one to ten rank Mr. White's photo as a 7.5 or an
15 8; is that right?

16 A. Yes.

17 Q. And then you ultimately circled the photo and either
18 you or Deputy Bodnar wrote 80 percent next to the photo?

19 A. Yes.

20 Q. Is that right? And when you went -- where was it that
21 you viewed the photo lineup? Do you remember?

22 A. I believe I was at the Moreno Valley Police Department.
23 They have -- the main station's on Day Street. I'm not sure of
24 the address.

25 Q. All right. And did you go there alone?

26 A. I don't remember, actually. I think so.

27 Q. And when you made that identification with Deputy

28 Bodnar, did he ask you to specifically identify the person with

1 the gun, or did he ask you to identify -- see if you could
2 identify any suspects?

3 A. He asked me to identify any suspects, I believe is what
4 he said. I believe he may have even showed me more than one
5 page, a nine-plex I think it was.

6 Q. I'm sorry. A what?

7 A. Nine photos. Another page of nine photos. Is that
8 what you call a nine-plex?

9 Q. We can call it that in court. I think it's fairly
10 obvious. If I could for the record, what you've demonstrated in
11 front of you, it looks like two rows --

12 A. It was three rows.

13 Q. Three rows?

14 A. Of three.

15 Q. Three rows of three photos?

16 A. Yeah.

17 Q. All on a single page?

18 A. Yes.

19 Q. And other than the description that you've already
20 given to us about the voice that you heard from the man with the
21 gun, was there anything else distinctive about that voice that
22 you recall that you have not already described to us?

23 A. I thought of a couple of descriptors. Raspy maybe
24 would be a possible description. The word gutter comes to mind.
25 I don't know if that would be a very good description of a vocal
26 rather, but that's what it makes me think of.

27 Q. Okay.

28 MS. PETROVICH: If I could just have a moment?

APPENDIX K

1 you tell the jury, what's that photograph?

2 A. It's my walk-in closet, part of the walk-in closet, and
3 obviously, the window.

4 Q. I'm going to show you what's been marked People's 39.
5 Can you tell the jury what's in that photograph?

6 A. My closet and a mess.

7 Q. Okay. I'm going to also show you what's been marked
8 People's 41. Where is this in the house?

9 A. This is in my room as well. It's on -- if you're
10 looking at my room directly inside of it, you're standing at the
11 doorway, this would be on the right-hand side. This is my desk
12 where I have my computer. It's here on the floor. And this
13 wall leads to Dennis's room; divides my room and his room.

14 Q. So that night on the 27th when you had Mr. Harden,
15 Mr. Estevez, and Ms. Alvarado over, what were you doing?

16 A. I believe we were watching the Modern Family.

17 Q. The Modern Family?

18 A. Modern Family; something like that.

19 Q. Were you watching -- so was it a movie or TV show?

20 A. TV show. I believe we were watching it on Netflix.

21 Q. And when you were watching it, were you expecting other
22 people to come over?

23 A. No, ma'am.

24 Q. Did someone knock at your front door?

25 A. Yes, ma'am.

26 Q. About what time did that happen, if you remember?

27 A. I want to say approximately anywhere between 11:30 and
28 midnight.

1 Q. Did you know that person?

2 A. I have no idea who this person was. I never ever seen
3 him in my life before he walked into my house.

4 Q. Can you tell the jury what the person looked like?

5 A. Um, it was an African/American male. He had -- I
6 believe he had a -- like a single ponytail dreads on his head.
7 He had a particular grin to him that I will never forget; very
8 intimidating grin. When I saw him, the only thing I would --
9 was thinking about was if he's going to kill my friend.

10 Q. Was he saying anything when you saw him?

11 A. Yes, ma'am.

12 Q. What did he say when he first walked in?

13 A. "Get on the floor."

14 Q. Do you see that person in the courtroom today?

15 A. Yes, ma'am.

16 Q. Can you tell the jury where that person is seated, or
17 standing, and what the person's wearing?

18 A. To the left of me and a tie, the shirt -- with the
19 long-sleeved shirt.

20 MS. DITTRICH: May the record reflect he's identified
21 the defendant?

22 THE COURT: Yes.

23 MS. DITTRICH: Thank you.

24 Q. (BY EUFPLT) What about the defendant makes you know
25 that it was the person that came to the door with the silver
26 revolver?

27 A. The grin and his teeth. That's something that stayed
28 in my head ever since that night, and something I'm not going to

1 got to see him that time?

2 A. I would say approximately three to five minutes.

3 Q. And as you sit here in court today, do you have any
4 doubt as to whether or not the defendant is the person that
5 robbed you?

6 A. No, ma'am.

7 Q. After they took your wallet, your iPhone, the
8 miscellaneous items out of your bedroom, correct -- the TV --
9 what happened after that?

10 A. Um, actually, a friend of ours came to the door, and
11 everything came to a halt at that moment. Um, eventually, the
12 defendant and his buddies were saying it's hot. It's hot. We
13 need to get out of here. We need to get out of here. And at
14 the same time they pulled in another friend that had came to the
15 house.

16 And as he walked in, um, the other friend had somebody
17 else with him. And he walked in as well. And after that, they
18 were standing here in front of the chimney, and the friend that
19 had walked in through the door the first time, he was like, no,
20 no, no, leave me alone. He was basically trying to fight back;
21 not necessarily fight back physically, but trying to calm down
22 the situation. And that's when he was hit by the defendant;
23 pistol whipped, I believe.

24 Q. Mr. Valdez, when you're describing the two people at
25 the front door, is that Tyler Gonzalez and Jose Reyes?

26 A. Yes, ma'am.

27 Q. And when you describe the first one coming through the
28 door, do you recall which one it was?

1 A. He had two -- two -- I don't know what they're called.
2 Two big giant braids or some -- I don't remember. I don't know
3 what they're called.

4 THE COURT: The witness is demonstrating with his hands
5 one hand at each side of his head before his ears. Go ahead.

6 MS. PETROVICH: All right.

7 Q. (BY MS. PETROVICH) So when you testified just a little
8 bit ago that the gentleman had a single ponytail, did you make a
9 mistake?

10 MS. DITTRICH: Objection. Argumentative and misstates
11 testimony.

12 THE COURT: Sustained.

13 Q. (BY MS. PETROVICH) Do you recall testifying a little
14 bit ago that the person that you saw that you believed was
15 Mr. White had a single ponytail?

16 A. Um, if I said that, um, I don't remember right now if I
17 said that or not. But there was some sort of dread ponytail on
18 his head, yes.

19 Q. Okay. So when you say a dread ponytail, I'm confused.
20 Are we talking about a single ponytail or more than one
21 ponytail?

22 A. From what I recall, he had two ponytails on top of his
23 head; one on each side.

24 Q. And when you say dreads, you -- describe that. What
25 are you talking about?

26 A. Um, just -- how would you describe a dreadlock? Let's
27 see. They looked like two ponytails on individual sides, but
28 not long. They were short.

1 covering?

2 A. No. No. Actually, no. Because I remember the grin
3 specifically. So there was no -- there was nothing on his face.

4 THE COURT: And which person are you referring to, sir?

5 THE WITNESS: The defendant.

6 THE COURT: Go ahead, please.

7 MS. PETROVICH: All right.

8 Q. (BY MS. PETROVICH) Now, you said that things like
9 shoes and pants and clothing were insignificant. Is that fair?

10 A. Um --

11 Q. Given the circumstances.

12 A. From when I was on the floor, yes.

13 Q. Okay. But -- now, you said that this person had a -- I
14 think you said an intimidating grin that you would never forget?

15 A. Yes, ma'am.

16 Q. That's not a detail that you ever gave to Deputy Skiles
17 when you interviewed with him?

18 A. I don't recall if he asked the question or not.

19 Q. Would it refresh your recollection to take a look at
20 the transcript from the interview?

21 A. I can take a look at it, yes.

22 MS. PETROVICH: May I approach, your Honor?

23 THE COURT: Yes. Thank you for the courtesy. You need
24 not ask permission when approaching this witness again.

25 MS. PETROVICH: Okay. Thank you, your Honor.

26 THE COURT: You're welcome.

27 Q. (BY MS. PETROVICH) Mr. Valdez, it's rather short.
28 It's two pages and a little piece.

1 A. So as far as me picking something from today, no.

2 Q. Okay. So when you say something picking from today, or
3 picking something from today, I'm sorry, I don't know what you
4 mean by that. Can you explain that?

5 A. You're assuming I picked his mark on his face because
6 he's in front of me, but no. I remember his face from that same
7 day.

8 Q. All right. Mr. Valdez, this morning you told us that
9 you were able to identify this gentleman seated right here in
10 the cream colored shirt as the same person who was in your house
11 that night with the gun and the braids because of his grin and
12 his teeth, right? That was the first thing you said, right?

13 A. Exactly.

14 Q. Okay. And if I understand you correctly, because,
15 correct me if I am wrong, then you said that you identified this
16 gentleman sitting in court today as the person who was there
17 that night with the gun and the braids because of a dark mark on
18 his left cheek; is that right?

19 A. Um, I pointed out the -- I described what he had on his
20 face from the prior incident when he was at my home, not because
21 of today, or because I saw him here today. It's because I
22 remembered his face from the incident.

23 Q. So Mr. Valdez, are you saying that your identification
24 of Mr. White in court today is based on a dark mark on his left
25 cheek?

26 A. No, I'm not saying that.

27 Q. What is it based on?

28 A. It's based on pictures that I was shown by a deputy

1 from Moreno Valley PD, and I pointed him out there. So I'm sure
2 if it wasn't him, he wouldn't be here.

3 Q. All right. So your identification of Mr. White in
4 court is because he's the defendant?

5 A. Yes. I mean, he did take the play station, and he was
6 there. I'm not going to forget it. When the deputy from the
7 Moreno Valley PD showed me the pictures, I identified him then.
8 So as far as me identifying him now, that's irrelevant, because
9 I identified him when the Moreno Valley PD officer showed me the
10 pictures?

11 MS. PETROVICH: Your Honor, defense is going to have a
12 motion. Would you like to do that now?

13 THE COURT: Please ask your next question.

14 Q. (BY MS. PETROVICH) All right. So you mentioned that
15 you had made an identification with the Moreno Valley Police
16 Department, right?

17 A. Yes.

18 Q. Okay. Now, when you -- well, first of all, you looked
19 at more than one photo lineup on more than one occasion,
20 correct?

21 A. Yes.

22 Q. Do you remember how many photo lineups you looked at?

23 A. I believe it was three different occasions when the
24 officer came to my work place.

25 Q. So on all three occasions you viewed the photographs at
26 your work place?

27 A. I believe so, if my memory doesn't fail me, yes.

28 Q. And on one of those occasions, you made an

1 Q. Now, when you were shown the set of photographs that
2 included Mr. White's photo, do you recall -- do you recall
3 saying that you were only about 50 percent sure that that person
4 in the photograph was someone who was at your house that night?

5 A. I don't recall I said that. I do remember mentioning
6 to -- Officer Bodnar, was it?

7 Q. Deputy Bodnar, yes, sir.

8 A. -- Deputy Bodnar when he came to show me, I told him
9 that this was him, but I needed to see a picture of his teeth.
10 And he turned a page over, and then there he was.

11 Q. All right. Mr. Valdez, were you aware that that
12 interview was recorded?

13 A. No, I was not aware of that.

14 Q. Well, isn't it true that you never said anything to
15 Deputy Bodnar about the person's teeth?

16 A. I don't recall.

17 Q. Would it refresh your memory to take a look at the
18 transcript of your interview with Deputy Bodnar on that day that
19 you were shown the photographs including Mr. White?

20 A. Possibly.

21 THE COURT: Any objection?

22 MS. DITTRICH: No, your Honor.

23 THE COURT: Go ahead.

24 Q. (BY MS. PETROVICH) Mr. Valdez, if you could just read
25 this to yourself. Let me know when you're ready. And if I
26 could get that back when you're done.

27 (Short pause in the proceedings.)

28 All right. Thank you, Mr. Valdez. Does that help you

1 remember your conversation with Deputy Bodnar?

2 A. Yes, ma'am.

3 Q. Isn't it true that you never said anything to Deputy
4 Bodnar about teeth, correct?

5 A. Not at that time.

6 Q. All right.

7 A. Whether he was recording when I told him or not, I
8 wasn't sure.

9 Q. I'm sorry? You're saying you weren't sure about the
10 recording or you weren't sure about something else?

11 A. I wasn't sure if the recording had ended after I
12 mentioned that or whatnot, but I did mention that to him.

13 Q. All right. Now, isn't it true that when you were shown
14 the photographs on this particular occasion, which included a
15 photograph of Mr. White, you made an identification without
16 making any reference to teeth whatsoever? Isn't that true?

17 A. Correct, because of the face he had; the facial
18 features.

19 Q. Okay. And when you were shown the photographs which
20 included Mr. White, isn't it true that you said that Mr. White
21 looked close to the guy that was there that night, but you
22 didn't think it was him?

23 A. Um, it says so here. Because it says so, because he
24 looked a lot older that night. Not just because it wasn't him.
25 Because of that night, because of the situation I was in, he
26 looked a lot older.

27 Q. All right.

28 A. So he looked the same, but just he looked older when I

1 picked him out in the lineup.

2 Q. All right. So Mr. Valdez, isn't it true that you said
3 when you made the identification of Mr. White in the photo
4 lineup that day with Deputy Bodnar that you said that
5 Mr. White's photo was close to the gentleman that you had seen
6 that night, but you didn't think Mr. White's photo was the guy?

7 A. That's what it said on -- on the paper, yes -- on the
8 recording, yes.

9 Q. Is that what you said, sir?

10 A. Yes.

11 Q. And then isn't it true that you were then asked to rate
12 how sure you were of your identification by Deputy Bodnar,
13 correct?

14 A. Right.

15 Q. All right. And the way that Deputy Bodnar suggested
16 that you do that was to kind of rank it on a scale of one to
17 ten?

18 A. Right.

19 Q. And you assigned a level of five to how sure you were
20 that Mr. -- the photograph of Mr. White was the person that had
21 been at your house that night?

22 A. This was before, prior to him showing me the second
23 picture of the defendant.

24 Q. Okay. So my question, Mr. Valdez, is when you were
25 given that scale to rank Mr. -- the certainty you were that that
26 was the person in your house, you told Deputy Bodnar that you
27 were only certain as to a level of five, is that true?

28 A. Correct.

1 THE COURT: Thank you.

2 Q. (BY MS. DITTRICH) We're going to zoom in. Looking at
3 this photo of the defendant, do you know whether or not his
4 mouth is open or closed or partial?

5 A. From the picture, shows that it's closed here.

6 Q. Okay. And when you made the identification and you
7 said you were about one and five -- five out of ten sure that it
8 was the person that robbed you, um, were you considering the
9 mouth when you made that identification?

10 A. Um, when I made the identification to the -- to this
11 picture, um, I told them that when I saw this picture only this
12 picture.

13 Q. And you picked this picture out of all these other
14 ones, correct?

15 A. Yes.

16 Q. And what was the reason that that picture of that
17 person reminded you of the individual that robbed you that
18 night?

19 A. The face structure.

20 Q. I'm sorry?

21 A. The face structure. I mean, there's certain -- um,
22 when I picked this picture out, it was very recent up to the
23 date, but the facial features is what got me. Because I
24 focus -- that night, when I saw his face that -- it was a face I
25 couldn't forget.

26 Q. And today in court, when you identified the defendant
27 as being the person with the gun in your house, was this the
28 first time you've seen that person in person since the night of

1 THE COURT: The first two photos or first two
2 six-packs?

3 MS. DITTRICH: The first two six-packs. And when I'm
4 talking about a six-pack, I'm referring to what's been in
5 Peoples' No. 2, six different photos of six different people.

6 THE WITNESS: The two prior six-packs I was shown, the
7 defendant was not on there.

8 Q. Okay. And then do you know whether or not those photos
9 were shown for you to identify possible other suspects?

10 A. Yes, ma'am.

11 Q. Okay. And then you were asked whether or not you were
12 shown a six-pack after you had already identified the defendant,
13 right?

14 A. Correct.

15 Q. And do you have any information if you were trying to
16 make an identification for someone else?

17 A. No.

18 Q. Okay. As you sit here today, and remembering that
19 evening, having a chance to look at the defendant, can you tell
20 the jury how you know that the defendant is the person that
21 robbed you?

22 A. Um, again --

23 MS. PETROVICH: I'm going to object. Asked and
24 answered.

25 THE COURT: Overruled.

26 THE WITNESS: Um, there's a lot of features that I do
27 remember from that night that I wouldn't be able to forget; just
28 the fact of the matter that it was just a dramatic thing that

1 happened to me. Again, there's a lot of facial features.
2 Again, the teeth is one big thing that I do remember from that
3 night.

4 So like I said, a lot of the facial features. But the
5 big one is the teeth. For me, that was the one -- there's one
6 particular, I wish I would have taken a picture of it, because
7 that's the picture that flashes in my head every single time --
8 the defendant's grin and teeth when he was telling me to do
9 things.

10 Q. (BY MS. DITTRICH) Can you describe to the jury what
11 his teeth looked like that were so particular to you?

12 A. They weren't straight. Really crooked. One particular
13 tooth was really, really crooked, and that's when I saw the
14 picture that the deputy, the officer showed me. I knew that
15 that was him because of his teeth. That was the biggest thing
16 that gave it away.

17 Q. When you're describing the crooked tooth, is it on the
18 bottom set of the teeth or on the top set of the teeth?

19 A. I would to say the top, top middle.

20 Q. You also described that you recognized some
21 pigmentation or different coloring on the defendant's face; is
22 that correct?

23 A. Correct.

24 Q. Is that in addition to recognizing his teeth?

25 A. Yes, ma'am.

26 Q. What about the fact that the defendant is black? Is
27 that something else that you take into consideration when
28 identifying he's the defendant?

--
1 remember seeing that photograph before lunch?

2 A. The half of it, yes.

3 Q. And this is the photograph that was shown to you in the
4 back room this morning also?

5 A. I never saw this picture prior to earlier this morning
6 here in the courtroom.

7 Q. Okay. So which is the photo then that you saw in the
8 back room with Ms. Dittrich before you testified?

9 A. Excuse me?

10 Q. Which photo?

11 A. The six-pack.

12 Q. In the back room with Ms. Dittrich this morning?

13 A. The six-pack.

14 Q. And then you were also shown the photograph with the
15 teeth, right?

16 A. In court, yes.

17 Q. And so you were just describing to us the teeth that
18 you just saw in the photograph an hour and a half ago, right?

19 A. I'm describing the set of teeth I saw the night of the
20 incident.

21 Q. And you said that the teeth was a big thing?

22 A. Yes.

23 Q. Okay.

24 A. That to me was like -- say, like, having a birthmark on
25 your face; that was a big clue to me.

26 Q. All right. And so then it was such a big clue that you
27 mentioned it to Deputy Skiles, right?

28 A. I believe so. I'm not quite too sure on that.

APPENDIX L

1 THE COURT: Please proceed.

2 MS. DITTRICH: Thank you, your Honor.

3 PATRICIA ALVARADO,

4 called as a witness by and on behalf of the People, having
5 been first duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. DITTRICH:

8 Q. Do you know a person by the name of Dennis Estevez?

9 A. Yes, I do.

10 Q. How do you know him?

11 A. My boyfriend.

12 Q. How long have you been boyfriend and girlfriend?

13 A. It's been three years now; since 2008.

14 Q. Okay. And does he have a roommate?

15 A. Yes.

16 Q. What's his name?

17 A. Arian Valdez.

18 THE COURT: You're very soft spoken. Could you repeat
19 that?

20 THE WITNESS: Arian Valdez.

21 THE COURT: Thank you.

22 Q. (BY MS. DITTRICH) Do you know where they live?

23 A. Um, the address, no, I don't.

24 Q. Okay. Is it -- if I said it, do you think that might
25 help you remember?

26 A. Yes. It's 24 -- I know the last two are 71 number, and
27 Stonebridge.

28 Q. 240741 Stonebridge?

1 A. Yes.

2 Q. And have you been over to their house often?

3 A. Yes.

4 Q. Prior to 2010, had you been into the home before?

5 A. Yes.

6 Q. About how many times would you say?

7 A. I would spend the night quite a few times during the
8 week. I would work in the area, so maybe like Monday through
9 Thursday.

10 Q. Okay. So you would say you almost lived there
11 part-time?

12 A. Practically. Well, sometimes it was just like during
13 the week. Sometimes I would stay the night. Not all the time.
14 Practically.

15 Q. The night of July 27th, 2010, were you over at Dennis'
16 house?

17 A. Yes.

18 Q. What were you doing in the later evening?

19 A. Um, we were watching a movie.

20 Q. Do you recall what movie it was?

21 A. It was a wedding movie.

22 Q. Okay. And who else was there?

23 A. It was Marcus, Dennis, Arian and me.

24 Q. Were you watching the movie in the living room?

25 A. Yes.

26 Q. About 11:45, did you hear a knock at the door?

27 A. Yes.

28 Q. Can you describe that to the jury?

1 A. There was a knock. I was laying down on the sofa. And
2 as soon as Dennis opened the door, he whispered something. They
3 were just talking. Didn't quite listen. And he turned around,
4 and there was a person with a gun behind his head, and he just
5 waives it at us and says to get down on the floor.

6 Q. You said you were sitting on the sofa. Were you
7 sitting on the love seat or the three-seat sofa?

8 A. The love seat.

9 Q. When Dennis went to the door, was his back to you?

10 A. Yes.

11 Q. And you heard him whispering, right?

12 A. Uh-huh.

13 THE COURT: Is that yes?

14 THE WITNESS: Yes.

15 Q. (BY MS. DITTRICH) Sorry about that. She's typing down
16 what we're saying, so they don't like uh-huh and huh-uh.

17 THE COURT: It's not that they don't like it. It's
18 that it could be spelled similarly. We want to make sure we
19 have a clear record. It's very common when people do that.
20 Please don't be offended if we remind you to say yes or no.

21 Go ahead.

22 MS. DITTRICH: Thank you, your Honor.

23 THE WITNESS: No problem.

24 Q. (BY MS. DITTRICH) When Dennis whispered, was he
25 whispering to the person at the door or to you and your friends
26 in this house?

27 A. To the person at the door.

28 Q. Could you make out what he said?

1 A. I don't recall.

2 Q. How long would you say he was at the front door before
3 he turned?

4 A. Seconds.

5 Q. And then you said he turned his body, turned around and
6 faced you?

7 A. Yes.

8 Q. And somebody was with him, right?

9 A. Uh-huh.

10 THE COURT: Is that a yes?

11 THE WITNESS: Yes. Sorry. Yes.

12 THE COURT: Could you pull the microphone closer to
13 your mouth too? You can slide the microphone. It will slide.

14 Thank you. Go ahead.

15 Q. (BY MS. DITTRICH) Was there more than one person at
16 the front door?

17 A. No, I didn't see anybody else.

18 Q. Okay. And did you see the person that was with Dennis
19 at the front door?

20 A. Yes.

21 Q. Can you describe to the jury what that person looked
22 like?

23 A. It looked like him.

24 Q. And what do you mean, it looked like him?

25 A. It looked -- he was black, had a do-rag, I think, on
26 his head. He had -- he had a gun. Um, his teeth were crooked
27 or shiny. It was something -- well, that's the first thing I
28 look at when I look at a person. So he had a dark jacket or

1 shirt. It was long. Don't recall the color of his shorts or
2 jeans.

3 Q. And do you see that person in the courtroom today?

4 A. Yes.

5 Q. Can you tell the jury where he's seated and what color
6 he's wearing?

7 A. He's wearing a blue shirt.

8 MS. DITTRICH: Your Honor, may the record reflect she's
9 pointed and identified the defendant?

10 THE COURT: Yes.

11 Q. (BY MS. DITTRICH) Is this the first time since the
12 incident you've seen the defendant?

13 A. Um, I'm sorry. That last other time that I came into
14 court, which was --

15 Q. You saw him before?

16 A. The time that we came in for -- I think it was
17 September -- no, August 3rd.

18 Q. Okay. So in August you came to court?

19 A. Yes.

20 Q. And did you see the defendant?

21 A. Yes.

22 Q. And at that time did you recognize him?

23 A. Yes.

24 Q. Today, sitting in court, looking at him, do you
25 recognize him from the night of the incident or from seeing him
26 in August?

27 A. From seeing him in August.

28 Q. Okay.

1 A. And the night of the incident of course.

2 Q. Of course. Okay. When the defendant was standing at
3 the door with Dennis, describe -- he had Dennis' hair, you said,
4 and a gun?

5 A. He had his hair and a gun.

6 Q. Did he have his hair with one hand and a gun in the
7 other?

8 A. Yes.

9 Q. What color was the gun?

10 A. It was shiny. It was just a metal looking gun.

11 Q. Okay. And when Dennis turned around, can you describe
12 to the jury how he looked to you?

13 A. He looked scary.

14 Q. What did you --

15 A. He --

16 Q. Go ahead.

17 A. He looked scary. I just did whatever he asked me to
18 do.

19 Q. What happened after the defendant put or moved Dennis
20 and had him at the front door? What did you do?

21 A. I -- I looked at him because I thought it was a joke,
22 and he waived his gun to get on the floor. So I just grabbed
23 the blanket and covered my head and laid on the floor.

24 Q. Are you okay right now?

25 A. (No audible response.)

26 Q. Is this difficult for you?

27 THE COURT: Is there any tissue for the --

28 ~~(Short pause in the proceedings.)~~

1 A. Uh-huh.

2 Q. Which is the front on the top?

3 A. Yes.

4 Q. Okay. And then I'm going to show you the last picture
5 that's been marked People's 48. What do you see there?

6 A. His teeth are pretty crooked, and yeah, you can tell
7 how it's slanted and with the camera light has a glare too.

8 Q. Okay.

9 A. Shine to it.

10 Q. And again, is this the teeth that you saw the night of
11 the incident?

12 A. Yeah.

13 Q. Okay. The jury's seen these, but I'll publish them for
14 the record. People's 45, you identified it being Craig White.
15 People's 46 where we discussed the No. 9 tooth, and then
16 People's 48.

17 All right. After the defendant smacked the other guy's
18 hand away, what happened after that?

19 A. I covered myself up with the blanket again and just
20 tried to scoot in underneath the sofa as much as I could. And I
21 held on to Marcus. I was shaking too much. I never shook that
22 much in my life.

23 Q. Can you describe how you felt?

24 A. I felt like that was it. I was going to die. That was
25 just it. I wasn't going to see my mom or my dad again.

26 Q. Did the defendant say anything to you that made you
27 feel like you were going to die?

28 A. He was just -- when -- I don't know. I just felt like

1 A. Yes.

2 Q. I'm going to show you what's been marked People's 5?

3 THE COURT: Any objection?

4 MS. PETROVICH: No, your Honor.

5 THE COURT: Go ahead.

6 Q. (BY MS. DITTRICH) Do you recognize this document?

7 A. Uh-huh.

8 THE COURT: Is that yes?

9 THE WITNESS: Yes.

10 Q. (BY MS. DITTRICH) How do you recognize it?

11 A. I signed it.

12 Q. Okay. And is there a date next to your signature?

13 A. Yes.

14 Q. Yes?

15 A. September 2nd, 2010.

16 Q. Looking at the second page, do you recognize the
17 photographs here?

18 A. Yes.

19 Q. And do you see one that's selected?

20 A. Yes.

21 Q. Which one is that?

22 A. Photo No. 6.

23 Q. Did you select that?

24 A. Yes.

25 Q. And next to photo No. 6, did you put your initials?

26 A. Yes.

27 Q. Publish for the jury the first page. And this is your
28 signature, correct?

1 remember if there were any lights on inside the house?

2 A. There was one light.

3 Q. Okay. Do you remember which light?

4 A. Yes.

5 Q. Which light was that?

6 A. It was right next to the door.

7 THE COURT: Are you talking about in the living room?

8 THE WITNESS: In the living room. Sorry.

9 Q. (BY MS. PETROVICH) And that's the only light that was
10 on inside the house?

11 A. I don't recall the rest of the lights.

12 Q. And at some point in time that light was turned off; is
13 that right?

14 A. Not that I remember. Like, I had my blanket over me.
15 But actually, yeah, it was on when I turned around.

16 Q. All right. And this is -- I'm going to show you what
17 was shown to you a little bit ago, People's 22. That green
18 blanket there that we see in the bottom right-hand part of the
19 photo, that's the one that you said you had over your head?

20 A. Yes.

21 Q. Is that, like, an -- it looks like it's kind of a
22 comforter; is that what it is?

23 A. Yeah, comforter.

24 Q. It's not anything that you could see through?

25 A. No.

26 Q. All right. Now, you said that -- you said that that
27 night you spoke with a deputy, and you told that person
28 everything that you could remember, correct?

1 this photograph with him, and he also had with him another photo
2 which showed an individual's teeth; is that right?

3 A. Yes.

4 Q. And so when you -- when he came to your work and met
5 with you, he showed you that photograph with the individual's
6 teeth in it; is that right?

7 A. Yes.

8 Q. Okay. And then he asked you if the suspect had crooked
9 teeth or something to that effect, correct?

10 A. Yes.

11 Q. And after you looked at the photograph, you said, yes,
12 the person did have crooked teeth, or however you phrased it?

13 A. Yes.

14 Q. Is that true? Okay. And then Deputy Bodnar showed you
15 the photographs that we see here in People's No. 5 there that
16 you see on the screen, and you made the identification of
17 Mr. White down there, No. 6; is that correct?

18 MS. DITTRICH: Objection. Misstates the testimony.

19 THE WITNESS: Yes.

20 THE COURT: Overruled. It's cross-examination.

21 Q. (BY MS. PETROVICH) I'm sorry. What was your answer?

22 A. Can you repeat that one more time?

23 Q. Okay. Once you had -- it was then after this that
24 Deputy Bodnar shows you the six photos, you circle the
25 photograph of Mr. White shown as No. 6 that we see there on the
26 screen, and you put your initials. And that's correct, I think
27 you said; correct?

28 A. Yes.

1 or not when you talked to the female officer the night of the
2 incident, if after you laid down on the ground with the blanket,
3 if you, um -- she asked you whether or not you told the officer
4 that you did not look up the remainder of the time? Do you
5 remember that?

6 A. Yes, I remember.

7 Q. You remember her asking you that?

8 A. Her asking me, yes.

9 Q. But you don't remember saying that to her, correct?

10 A. I don't remember saying that.

11 Q. Okay. Do you recall that you told the officer that you
12 grabbed the blanket from the couch, threw it over your head and
13 laid face down on the floor, and then you told the officer that
14 you peaked up from under the blanket and glanced up?

15 A. Uh-huh, yes.

16 Q. You do remember saying that?

17 A. Yes.

18 Q. And that's true, correct; that's what happened?

19 A. Yes.

20 Q. And then with regards to the six-pack photo lineup,
21 People's 5, that we've been talking about, when Deputy Bodnar
22 showed this to you, did you make the identification of the
23 person in No. 6 before you saw the picture of the teeth?

24 MS. PETROVICH: Objection. Asked and answered.

25 THE COURT: Overruled.

26 THE WITNESS: Yes, I had already picked it.

27 Q. (BY MS. DITTRICH) Okay. So you picked it, you circled
28 it, and you put your initials, correct?

1 A. Yes.

2 Q. And then after you did that, that is when you looked at
3 the photograph of the teeth, correct?

4 A. Yes.

5 Q. And then do you recall when you looked at this
6 photograph, whether or not you told Deputy Bodnar how you felt
7 when you looked at his photograph?

8 A. Do I recall?

9 Q. Yeah, do you remember what you told him?

10 A. I don't remember. I can imagine it made me feel sick.
11 I remember feeling sick that day.

12 Q. And was that because you looked at the photograph?

13 A. Yes.

14 Q. Okay.

15 MS. DITTRICH: I have nothing further, your Honor.

16 THE COURT: Do you have anything else, Ms. Petrovich?

17 MS. PETROVICH: Just briefly, your Honor.

18 RECROSS-EXAMINATION

19 BY MS. PETROVICH:

20 Q. Miss Alvarado, were you aware that your conversation or
21 at least part of it was recorded with Deputy Bodnar?

22 A. The conversation -- I'm sorry. Can you repeat?

23 Q. I'm sorry. I'll make that more specific. Were you
24 aware that at least a portion of your conversation was recorded
25 with Deputy Bodnar on the day that you had circled Mr. White's
26 photograph?

27 A. Yes.

28 Q. Okay. And have you had a chance to review that

APPENDIX M

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION II

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	DCA No. <i>EOSSS29</i>
Plaintiff/Respondent,)	
vs.	)	Case No. RIF10004243
)	
CRAIG KEYON WHITE,	)	Volume 3 of 4
)	
Defendant/Appellant.	)	Pages 305 - 587
)	

REPORTER'S TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MICHAEL B. DONNER, JUDGE

OCTOBER 6 & 7, 2011

APPEARANCES:

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and Respondent:

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For the Defendant
and Appellant:

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Reported by: CHRISTINA M. FOSTER, CSR No. 11982

COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

Case No. RIF10004243

CRAIG KEYON WHITE,)

Defendant.)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE MICHAEL B. DONNER, JUDGE

OCTOBER 6 & 7, 2011

APPEARANCES:

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OFFICE OF THE DISTRICT ATTORNEY
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Riverside, California 92501

Reported by:

CHRISTINA M. FOSTER, CSR No. 11982

1 M-A-R-N-I-S-H-A; last name, P-E-R-K-I-N-S.

2 THE COURT: Good morning, Miss Perkins.

3 THE WITNESS: Good morning.

4 THE COURT: Please make yourself comfortable. Make
5 sure you're close to the microphone. Slide it toward you or you
6 towards it, or a combination of both.

7 Please proceed.

8 MS. PETROVICH: Thank you, your Honor.

9 MARNISHA PERKINS,

10 called as a witness by and on behalf of the Defense, having
11 been first duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. PETROVICH:

14 Q. Good morning Miss Perkins.

15 A. Good morning.

16 Q. Miss Perkins, do you know the gentleman seated there in
17 the cream-colored shirt or tan-colored shirt?

18 A. Yes, I do.

19 Q. Who is that?

20 A. That is my brother, Craig White.

21 Q. I'm going to show you what's been previously marked as
22 People's 45. Is that also your -- I'm sorry. If you could just
23 turn around to the screen behind you. Is that also a photograph
24 or does the picture show your brother in that photograph as
25 well?

26 A. Yes, ma'am.

27 Q. Okay. All right. Miss Perkins, do you recall the day
28 of July 27, 2010?

1 A. Yes, I do.

2 Q. And how do you recall that day? Was there anything
3 about that day that stands out in your mind?

4 A. Yes, it was -- that was the day my nephew came home
5 from the hospital.

6 Q. And how is it that you recalled that July 27 was the
7 day that your nephew came home from the hospital? Did you make
8 a note of it?

9 A. It was -- my brother was with me, and I took him home
10 the next morning for his son coming home, so that he could get
11 his son.

12 Q. Okay. So when you say his son, who are you talking
13 about -- Mr. White's son or someone else's son?

14 A. Mr. White's son. His only son.

15 Q. All right. Now, you said that you -- did you say you
16 had picked him up?

17 A. Uh-huh. I picked him up on the 26th, the night before.

18 Q. Okay.

19 THE COURT: When you say you picked him up, you're
20 talking about your brother?

21 THE WITNESS: Yes. I'm sorry. I picked my brother up
22 the night before.

23 THE COURT: On July 26th?

24 THE WITNESS: On July 26th.

25 THE COURT: Thank you.

26 Q. (BY MS. PETROVICH) Now, when you picked your brother
27 up, where did you pick him up from? Where did you pick him up?

28 A. I picked him up from the hospital.

1 Q. Okay. And did you -- where did you go from there?

2 A. After I picked my brother up, I picked my daughter up
3 from daycare, and we went to my mom's house.

4 Q. Okay. Now, you said that you had picked him up the
5 night before on July 26th. Are you sure that it was July 26th,
6 or was it July 27th, or was it a different date?

7 THE COURT: Counsel, that's argumentative.

8 MS. PETROVICH: I'm sorry.

9 THE COURT: Next question, please.

10 MS. PETROVICH: Okay.

11 Q. (BY MS. PETROVICH) How is it that you know what the
12 date was versus just remembering the event?

13 A. Because I remember the date and the event because it
14 was a big thing, because my nephew was coming home from the
15 hospital. He was sick. He was born prematurely, so there was a
16 big time going on at that time. That's how I remember.

17 Q. Okay. All right. Do you remember -- do you remember
18 speaking with an investigator back in January of this year?

19 A. Yeah.

20 Q. And do you remember telling that person that you had
21 picked your brother up on July 27 instead of July 26?

22 A. No, I don't remember.

23 Q. Would it help you remember if I show you the report
24 from that interview?

25 A. It probably will.

26 THE COURT: Has that report been shown to the
27 prosecutor?

28 MS. PETROVICH: It has, your Honor.

1 MS. DITTRICH: Yes, your Honor.

2 THE COURT: Any objection?

3 MS. DITTRICH: None.

4 THE COURT: Go ahead.

5 Q. (BY MS. PETROVICH) I'm just going to go ahead and give
6 you the page and a half. If you could just read that over to
7 yourself. Let me know if that helps you remember, and let me
8 know when you're ready.

9 (Short pause in the proceedings.)

10 Have you read enough to help you remember?

11 A. Uh-huh.

12 THE COURT: Is that yes?

13 THE WITNESS: Yes.

14 THE COURT: If you could, and this is common with every
15 witness, avoid utterances such as uh-huh or huh-uh. They're
16 similarly spelled. We want to make sure we have a clear record.

17 THE WITNESS: I apologize.

18 THE COURT: No apologies are necessary. It's a very
19 common issue.

20 Go ahead, Ms. Petrovich.

21 MS. PETROVICH: Thank you, your Honor.

22 Q. (BY MS. PETROVICH) Okay. Does that -- did reading
23 that over help you remember your conversation with the
24 investigator back in January?

25 A. Uh-huh.

26 THE COURT: Is that yes?

27 THE WITNESS: I'm so sorry. Yes.

28 Q. (BY MS. PETROVICH) All right. And do you recall now

1 whether or not you told the investigator the date that you had
2 picked your brother up that you just discussed with us?

3 A. Yeah. I recall that, but I understand how it could
4 have been -- it's been about almost over a year. So I can see
5 why I was confused. But the period in time I know my nephew was
6 coming home the next morning. That was the main thing that was
7 going on. Also, I was in trouble at work that day, so that was
8 another main thing that was going on. So those are the main
9 things that went on that night and that day.

10 Q. Uh-huh. Okay. Well, when the investigator -- when the
11 investigator spoke with you, did he -- was it a gentleman?

12 A. Yes, ma'am.

13 Q. Okay. When the investigator spoke with you, did he
14 tell you specifically that he had questions for you about the
15 night of July 27th and the early morning hours of July 28th?

16 A. Yes.

17 Q. Okay. Now, when you -- when you talked with him about
18 what you had done with regards to your brother, did you tell him
19 that you had -- or I'm sorry -- did you pick up your brother
20 then?

21 A. Yes.

22 Q. You said that you had picked him up from the hospital?

23 A. Well, if I -- my brother had been back and forth from
24 the hospital all week long. So I was picking him up from the
25 hospital, taking him home. Picking him up. That night in
26 question I picked him up and brought him to my mom's house.

27 THE COURT: What night is that, ma'am?

28 THE WITNESS: It was either the 26th or the 27th, the

1 night before his son came home from the hospital. He was at my
2 mom's house with me.

3 Q. (BY MS. PETROVICH) Okay. Now, when you say that you
4 had picked him up and was taking him back and forth from the
5 hospital, what period of time are you talking about that that
6 happened?

7 A. Within that whole week. The whole week prior. The
8 whole week his son was in the hospital.

9 Q. Okay. And during that week, how much time was your
10 brother spending with you?

11 A. A lot when he was at the hospital with his son.

12 Q. Okay. Are you aware of where your brother was sleeping
13 during that week?

14 A. He was either sleeping at my mom's house in our other
15 bedroom or in the living room, because he wasn't at home. He
16 was with us the majority of the week.

17 Q. Okay. And how do you know that he was sleeping at your
18 house that week?

19 A. Because I get off work at night, so everybody's asleep
20 kind of. Everybody's up around the same time. Everybody knows
21 where everybody is at nighttime so --

22 Q. So --

23 A. So he has no vehicle.

24 Q. Okay. So did you actually see him that week?

25 A. Uh-huh. Yes.

26 Q. Okay. Now, when you would get home, did you -- do you
27 remember if you saw him every night that week?

28 A. From what I can recall, yes. I know I seen him every

1 day that week, and nighttime. If he was asleep when I got home
2 that day, we probably didn't have a conversation. But he was in
3 the room asleep. He was at home.

4 Q. Okay. And when you were working, what hours were you
5 working back then, if you remember?

6 A. 11:00 to 7:00; 10:00 to 6:00; 12:00 to 8:00.

7 THE COURT: Would you identify a.m. and p.m., please?

8 THE WITNESS: Oh, yes. 11:00 a.m. to 7:00 p.m., 12:00
9 p.m. to 8:00 p.m., and sometimes 10:00 p.m. to 6:00 p.m.

10 THE COURT: Thank you.

11 Q. (BY MS. PETROVICH) Okay. And so on different days
12 would you work different shifts, or how did that work? Did you
13 work one set of hours all week?

14 A. Yeah.

15 Q. Okay. Do you remember which set of hours you worked
16 that particular week?

17 A. That week I believe it was 11:00 a.m. to 7:00 p.m.,
18 because that's when -- I remember that because that's when my
19 daughter had first started her new child care. And those were
20 the hours that were enlisted.

21 Q. Okay. Now, do you remember -- do you remember what
22 time -- on the day that you had picked your brother up, that you
23 were talking to us about earlier, do you remember what time that
24 was that you picked him up?

25 A. Yeah. It was around 11:00 -- I mean, around 8:00 p.m.
26 In between 8:00 p.m. and 9:00 p.m.

27 Q. All right.

28 A. Enough time for me to get off work and get to him and

1 get him.

2 Q. Okay. And did you -- do you remember if you spoke on
3 the phone with your brother --

4 A. Yes.

5 Q. -- that night? Do you remember about how many times
6 you spoke with him on the phone?

7 A. I spoke with my brother at least two to three times.

8 Q. Okay. And then when you had picked him up between 8:00
9 and 9:00 p.m., did you go to your mom's house at that time or
10 somewhere else?

11 A. Went to get -- well, I went to get my kid and then went
12 home.

13 Q. Okay. So do you remember when it is that you got home?

14 A. The exact time? No, I don't. I didn't look at the
15 clock. I know it was late, because right when I got home, it
16 was time to get my daughter ready for bed.

17 Q. Okay. What time were you putting your daughter to bed
18 back then?

19 A. She goes to sleep no later than 10:30.

20 Q. All right. And was Craig -- or I'm sorry, was
21 Mr. White still with you?

22 A. Yes, ma'am.

23 Q. And what did you do after you put your daughter to bed?

24 A. I put my daughter to sleep -- fed her, put her to bed,
25 and me and my brother went and sat in the garage and were
26 talking about his son and about his day at work and just about
27 life. Just everything that had been going on; until it got too
28 late, and then we both went inside and went to sleep because we

1 had to get up early the next day.

2 Q. Okay. So after the two of you were done talking, did
3 you go to bed?

4 A. Yes, ma'am.

5 Q. Do you know or are you aware if Mr. White went to bed?

6 A. Yes.

7 Q. How do you know that?

8 A. He went to sleep before me.

9 Q. How do you know that?

10 A. Because I had to get myself, like, clothes ready for
11 the next day. I had to get my daughter's clothes out and ready
12 for the next day. And I had to take a shower, get ready for the
13 next day. By the time I got done, my brother was already
14 knocked out on the couch.

15 Q. All right. Now, did your brother continue to stay with
16 you after that night, if you remember?

17 A. The next morning I got up, got dressed, got my daughter
18 dressed, and I took my brother to him and his wife's house.

19 Q. Do you remember if he spent the night any more that
20 week or after that?

21 A. His son came home.

22 Q. So are you saying that once his son came home, that
23 that's when Mr. White stopped spending the night at your house?

24 A. Yes.

25 Q. All right. Have you ever seen your brother -- well,
26 let me ask you this: Back in July of last year, did your
27 brother have any injuries to either of his arms?

28 A. No.

1 Q. Significant injuries. Something like a -- that
2 would -- did you ever see him, like, with a cast or with his arm
3 wrapped?

4 A. No.

5 Q. And Miss Perkins, do you know where it was that
6 Mr. White was -- you said you had taken him to his wife's house
7 or he and his wife's house. Do you remember where that was?

8 A. Yes.

9 Q. Last year?

10 A. Yes.

11 Q. Where was it?

12 A. In Perris.

13 Q. Okay. And how often, back, say, around the time of
14 July of last year, would you speak with your brother? Would you
15 say it was daily? Weekly? Monthly?

16 A. Every day.

17 Q. Every day. And does Mr. White stutter?

18 A. Yes.

19 Q. Can you describe his stutter to us? Like how often
20 does he stutter?

21 A. He stutters if something, like, exciting is going on,
22 or if he's rushing to get something out, or his mind is moving
23 fast.

24 Q. So does he -- so does he stutter all the time or just
25 sometimes?

26 A. Sometimes.

27 THE COURT: Any further questions?

28 ~~MS. PETROVICH: I don't believe so, your Honor. If I~~

1 could just check with Mr. White real quick.

2 THE COURT: Sure.

3 (Short pause in the proceedings.)

4 MS. PETROVICH: All right. Thank you. I have nothing
5 further.

6 THE COURT: You care to cross-examine this witness?

7 MS. DITTRICH: Yes, your Honor. Thank you.

8 THE COURT: Please proceed.

9 MS. DITTRICH: Thank you, your Honor.

10 THE COURT: You're welcome.

11 CROSS-EXAMINATION

12 BY MS. DITTRICH:

13 Q. Miss Perkins, do you and Mr. White have any other
14 brothers and sisters?

15 A. Yes.

16 Q. How many brothers and sisters do you have?

17 A. We have two more sisters.

18 Q. Are they older or younger?

19 A. We have one that is younger, and I have one that is
20 older. But we both are younger than him.

21 Q. Would you say that you're close with Mr. White?

22 A. Yes.

23 Q. And do you love him very much?

24 A. Yes.

25 Q. Is the defendant married?

26 A. Yeah.

27 Q. Where does he live?

28 A. With his wife.

1 Q. Where do they live?

2 A. In Perris, California.

3 Q. Do you know the street they live on?

4 A. I believe it started with a D. I don't know the whole
5 name.

6 Q. Okay. If I mentioned 80 East Dawes Street, Space 84,
7 does that ring a bell?

8 THE COURT: Spell the Dawes, please.

9 MS. DITTRICH: D-A-W-E-S.

10 THE COURT: Thank you.

11 MS. DITTRICH: Yes.

12 THE WITNESS: Yes.

13 Q. (BY MS. DITTRICH) How long has he lived there?

14 A. I could say about -- when it happened, probably about a
15 year.

16 Q. Okay. So maybe in 2009 they moved in there?

17 A. Yeah.

18 Q. Okay. And in 2010, in July of 2010, can you describe
19 your brother's hairstyle?

20 A. Yes. He had braids or ponytails. His hair was long.

21 Q. I'm going to show you what's been previously marked
22 People's No. 9.

23 THE COURT: Look over your right shoulder, ma'am.

24 Q. (BY MS. DITTRICH) Is that what you're describing as
25 far as his hairstyle?

26 A. Yes.

27 Q. And do you know if in July 2010, if he had that
28 hairstyle at the end of the month?

1 A. I don't remember that.

2 Q. Okay. Do you recall him ever having his hair out of
3 the braids?

4 A. No.

5 Q. Do you recall him ever having his hair short like it is
6 in People's 48?

7 THE COURT: In July?

8 Q. (BY MS. DITTRICH) In July of 2010.

9 A. No.

10 Q. No, you don't recall, or no, he did not have it short?

11 A. No, I don't recall.

12 Q. Okay. But typically, would you say that he would wear
13 his hair like I showed you in People's No. 9?

14 A. On an everyday basis, no.

15 Q. Well, can you tell the jury what he would do with his
16 hair?

17 A. It will be either braids, or it could be in one
18 ponytail or two ponytails. But it's never like out everywhere.

19 Q. It's never lose, right?

20 A. It's never --

21 Q. Is that right?

22 A. Yes, ma'am.

23 Q. Okay. Good. You described that Mr. White has a
24 stutter, correct?

25 A. Yes, ma'am.

26 Q. Is that a stutter where someone cannot get a word out?
27 Like, if I were going to say, I'm going to go home, the person
28 would not be able to say home. They would say -- they wouldn't

1 be able enunciate it?

2 A. Yes, that's the kind of stutter he has. Like the word
3 won't come out.

4 Q. So it would be a break in the word, a struggle to say
5 the word?

6 A. Yes.

7 Q. Okay. And would that sound forced and difficult out of
8 someone's voice?

9 MS. PETROVICH: Objection. Speculation in regard to
10 someone's voice.

11 THE COURT: Overruled.

12 THE WITNESS: I don't understand the question.

13 Q. (BY MS. DITTRICH) Sure.

14 THE COURT: By the way, hold on. If I say overruled,
15 if you hear me say that, go ahead and answer the question. If
16 you hear me say the word sustained, don't answer the question.

17 THE WITNESS: Okay.

18 THE COURT: Okay. Thanks.

19 MS. DITTRICH: Sustained starts with an S, so it means
20 stop.

21 THE WITNESS: Okay.

22 Q. (BY MS. DITTRICH) Okay. So when you say -- that's my
23 trick with that. When he would say a word where he was
24 stuttering, would it sound like it was forced coming from his
25 throat or chest area?

26 A. Just sound like it's hard for him to get it out. I
27 don't understand forced. I'm sorry.

28 Q. That's okay.

1 A. But I don't understand that. It sounds like a stutter.
2 I'm used to it, so I don't know how to describe it other than it
3 being a stutter.

4 Q. Okay. Would he actually ever be able to say the word
5 home, or would it not be able to come out of his mouth?

6 THE COURT: Is this ever, Counsel?

7 MS. DITTRICH: Sure.

8 Q. (BY MS. DITTRICH) When you heard the defendant's
9 stutters.

10 A. There's times when he said the word home that he
11 doesn't stutter, and there's times when he said the word home
12 and he does stutter. It depends on how excited he is or how fast
13 he's talking. It all has to do with that.

14 Q. And I thought you described that you hear the stutter
15 when he's rushing or something exciting is going on, correct?

16 A. Yes.

17 Q. What about when he's under a lot of stress?

18 A. I don't think so.

19 Q. You don't think he stutters when he's under stress?

20 A. I don't think it has to do with stress. I think it has
21 to do with the excitement and whatever's going on. That's how I
22 take it.

23 Q. Okay. Does he stutter with you at home?

24 A. Yes, he does.

25 Q. How about when you talk to him on the telephone, does
26 he stutter?

27 A. Yes, he does.

28 Q. In those situations when he's at home, are things

1 rushed and excited going on?

2 A. It depends on what the conversation is about. If he's
3 telling me something that he's excited about, he may stutter.
4 If he's telling me something that's more common, like something
5 simple about household things, he may not.

6 Q. Well, when you talk to him, how much, in a percentage,
7 would you say that he stutters? Half the time?

8 A. Yes. At least 50 percent.

9 Q. Okay. And I just want to be clear with this stutter,
10 it's not something where someone pauses, right? It's something
11 where the word is like jagged, where you're going uh, uh, uh,
12 uh?

13 A. Yes.

14 Q. Does your brother work?

15 A. Yes. He was working.

16 Q. Where does he work?

17 A. He was working for a warehouse.

18 Q. And did he work full-time?

19 A. Yes, at that time.

20 Q. In July of 2010?

21 A. Yes, he was working.

22 Q. And so he was the supporter of the household?

23 A. They both were.

24 Q. So his wife worked also?

25 A. Yeah, they both do. I don't live with them, so they
26 both do.

27 Q. Where does his wife work?

28 A. She was doing

1 MS. PETROVICH: Objection. Relevance.

2 THE COURT: Sustained.

3 Q. (BY MS. DITTRICH) Well, would -- so then you're saying
4 the defendant would work full-time. Did he work Monday through
5 Friday?

6 A. I don't know his everyday schedule.

7 Q. Well, you said earlier you talked to him on the phone
8 every day, right?

9 A. Yes, I did. But when I spoke with him on the phone, I
10 didn't ask him, are you at work? He worked every day. How are
11 you doing? How's your day going? And everything about what was
12 going on with his son. So that particular week I don't know.

13 Q. When was his son born?

14 A. His son was born on the 16th, July 16th.

15 THE COURT: Of 2010?

16 THE WITNESS: I'm sorry. 2010.

17 THE COURT: Thank you.

18 Q. (BY MS. DITTRICH) Do you know any of your brother's
19 friends?

20 A. Yeah, a few. Yes, I do.

21 Q. Okay. Do you know a person by the name of Raphael,
22 shown in People's or Defense Exhibit A?

23 A. No, I don't.

24 Q. Have you ever seen your brother with that person?

25 A. No, I haven't.

26 Q. Okay. What day was your brother arrested in this case?

27 A. I don't know. I was at work.

28 Q. Can you tell the jury about what month it was?

1 A. It was August, I believe.

2 Q. 2010?

3 A. August 2010.

4 Q. Okay. And prior or after he was arrested, have you had
5 an opportunity to talk to your brother?

6 A. I spoke with him twice on the phone since he's been
7 arrested.

8 Q. Okay. And when you spoke with him, did he talk to you
9 about what he was being charged with?

10 A. No. He keeps us out of the dark kind of a little bit
11 about it. Just told us a summary, but not much, no.

12 Q. Did he tell you what day the crime was that he got
13 arrested about?

14 A. No.

15 Q. He's never mentioned that to you?

16 A. No.

17 Q. What about the defendant's wife? Has she mentioned it
18 to you?

19 A. The day?

20 Q. The date of the crime.

21 MS. PETROVICH: Objection. Hearsay.

22 THE COURT: Sustained.

23 Q. (BY MS. DITTRICH) Do you know the date of the alleged
24 home invasion robbery in this case?

25 A. Yes.

26 Q. When did it happen?

27 A. It was supposed to be on the 26th, 27th.

28 Q. The 26th or the 27th?

1 A. The 26th in the middle of the night.
2 Q. To the 27th?
3 A. Yes, ma'am.
4 Q. Okay. How did you learn about that?
5 A. I learned about that through the public -- the guy who
6 came to see me.
7 Q. And is that Mr. Young, the investigator?
8 A. Yes.
9 Q. Okay. I'm going to show you what's been marked
10 People's 52.
11 MS. DITTRICH: Any objection?
12 MS. PETROVICH: No.
13 THE COURT: Any objection?
14 MS. PETROVICH: No, no objection.
15 MS. DITTRICH: Okay.
16 THE COURT: Go ahead.
17 MS. DITTRICH: Thank you, your Honor.
18 Q. (BY MS. DITTRICH) I'm going to ask you to look at this
19 map; okay?
20 THE COURT: It's not a map.
21 MS. DITTRICH: I'm sorry. You're right, your Honor.
22 Q. (BY MS. DITTRICH) This calendar. Is that a calendar?
23 Do you recognize that?
24 A. Yes.
25 Q. Okay. And what month is that a calendar for?
26 A. July.
27 Q. What year?
28 A. Of 2010.

1 Q. Okay. Looking at that calendar, you know that the home
2 invasion happened on the night of the 26th, correct?

3 A. Yes, ma'am.

4 Q. Okay. And you mentioned earlier that the defendant's
5 son was born on July 16th, right?

6 A. Yes.

7 Q. Okay. So I'm just going to write here, son. So when
8 the defendant's son was born, did you work that day?

9 A. Yeah, yes.

10 Q. What time did you work that day?

11 A. That day was 11:00, 11:00 to 7:00.

12 Q. And you said that the -- his son was born prematurely,
13 correct?

14 A. Yes.

15 THE COURT: The numbers 11 hyphen 7 were written below
16 the word son. Go ahead.

17 MS. DITTRICH: Thank you, your Honor.

18 Q. (BY MS. DITTRICH) When his son was born, was he born
19 in the hospital?

20 A. Yes.

21 Q. What hospital?

22 A. He was born in the hospital on Iris.

23 Q. And that's in Moreno Valley?

24 A. Yes.

25 Q. Okay. And prior to his son being born, was his -- the
26 mother or the defendant's wife at the hospital?

27 A. What do you mean?

28 Q. ~~What day did they go into the hospital?~~

1 A. Oh, I don't know.

2 Q. Okay. But you know that they were in the hospital on
3 the 16th, correct?

4 A. Yes.

5 Q. Okay. And then you said that the son was sick and
6 needed to stay in the hospital, correct?

7 A. Yes.

8 Q. What day did the son come out of the hospital?

9 A. It was five days later so.

10 Q. Okay. So --

11 A. I mean, the day that she came home or the son came
12 home? The son came home on the 27th, that morning.

13 Q. So I'm going to write on here, son home. And then what
14 day did the mother come home?

15 A. She came home on the 21st. And then she was also
16 having problems, so she had to go back to the hospital.

17 Q. Did she go back on the 21st?

18 A. No. I think she went back on either the 22nd or 23rd.
19 It was either a day or two days later. It wasn't long.

20 Q. So was the defendant's wife in the hospital then
21 through the 27th with the baby?

22 A. Yes.

23 Q. Did they both come home then on the 27th?

24 A. Yes.

25 Q. All right. So when you're describing that week as
26 being a crazy week, are we talking about the week of the 19th
27 through the 23rd?

28 A. We're talking about the 26th; that -- from that week,

1 that whole weekend.

2 THE COURT: There's a laser pointer in front of you,
3 Miss Perkins. Looks like a pen. Please don't shine it in your
4 eyes or anyone else's. There you go.

5 THE WITNESS: From this week.

6 Q. (BY MS. DITTRICH) The 23rd and the 24th?

7 A. The 23rd all the way on was a hectic week for me at
8 work. So -- and also, it was a lot of stuff going down because
9 we were worried about my nephew's health.

10 Q. Okay. So let me ask you this: You stated that you
11 picked up Mr. White from the hospital about 8:00 to 9:00 p.m.
12 after you got off work, right?

13 A. Yes.

14 Q. And you were working an 11:00 to 7:00 shift?

15 A. Yes.

16 Q. What day was that?

17 A. On -- what do you mean what day? You just said the
18 27th.

19 Q. No, I didn't. I asked what day were you working 11:00
20 to 7:00 that you picked up Mr. White from the hospital at
21 8:00 o'clock?

22 A. The day that I was working from 11:00 to 7:00 that I
23 had picked my brother up was that day.

24 Q. The 26th?

25 A. (No audible response.)

26 THE COURT: Is that yes?

27 THE WITNESS: Yes.

28 Q. (BY MS. DITTRICH) ~~So I'm going to write on here again,~~

1 11:00 to 7:00, and I'm going to put 8:00 p.m. that you picked
2 him up, right?

3 A. Yeah.

4 Q. Okay. So then after you did that, you went and you
5 picked up your daughter at daycare, right?

6 A. Yes.

7 Q. And Mr. White was with you that entire time?

8 A. Yes.

9 Q. Then you went to your mother's house, correct?

10 A. Yes.

11 Q. Is that located at 25649 Buena Village Court in Moreno
12 Valley?

13 A. Yes.

14 Q. Do you know where the crime occurred in this case?

15 A. No, I don't.

16 Q. I'm going to show you what's been previously marked
17 People's 53.

18 THE COURT: Any objection?

19 MS. PETROVICH: Yes.

20 MS. DITTRICH: Your Honor, I would like to show the
21 witness People's 53.

22 THE COURT: Is there an objection?

23 MS. PETROVICH: Yes, your Honor.

24 THE COURT: What's the legal objection?

25 MS. PETROVICH: Well, she found --

26 THE COURT: Legal. Not a speaking objection. Legal
27 objection.

28 MS. PETROVICH: Foundation. Relevance. No question

1 pending.

2 THE COURT: There is no question pending. I'll sustain
3 on that ground.

4 Go ahead.

5 Q. (BY MS. DITTRICH) Your mother lives at --

6 THE COURT: By the way, it's overruled on the other
7 grounds.

8 Q. (BY MS. DITTRICH) I mentioned an address on Buena
9 Village Court in Moreno Valley.

10 A. Yes.

11 Q. Do you also live there?

12 A. No.

13 Q. Okay. Did you live there in July 2010?

14 A. No.

15 Q. Have you been to her house?

16 A. Yes.

17 Q. Okay.

18 THE COURT: Her being her mother?

19 MS. DITTRICH: I'm sorry.

20 Q. (BY MS. DITTRICH) Have you been to your mother's house
21 on Buena Village Court?

22 A. Yes.

23 Q. If I showed you a map of that area, do you think you
24 would be able to look at it and recognize that area?

25 A. Yeah. If I can see the house, yeah.

26 Q. Okay.

27 MS. DITTRICH: Can I show what's been marked People's

28 53?

1 THE COURT: I don't see a map. Take the map off,
2 please. You referred to a map. There you go. Any objection to
3 a map being shown to a witness?

4 MS. PETROVICH: No, your Honor.

5 THE COURT: Go ahead.

6 MS. DITTRICH: Thank you, your Honor.

7 THE COURT: Sure. And that's People's 23?

8 MS. DITTRICH: No. It's People's 53.

9 THE COURT: 53. I'm sorry.

10 Q. (BY MS. DITTRICH) Okay. Looking at People's 53, do
11 you see the area marked B?

12 A. Yes.

13 Q. And do you also see Iris Avenue here?

14 A. Yes.

15 Q. Do you recognize the marker here at B?

16 A. I don't remember that from the -- I don't remember this
17 map.

18 Q. Okay.

19 A. Honestly, that could be anywhere with the name. I
20 can't -- it doesn't have like a picture of the house.

21 Q. Okay. Is the house that your mother lives at across
22 Perris Boulevard?

23 A. Yeah. It's -- yeah.

24 Q. Okay. And do you know on the other side of Perris
25 Boulevard, is there a Circle K at John F. Kennedy and Heacock?

26 A. On JFK and Heacock? That's way on the other side of
27 there. That's not on -- that's far.

28 Q. Far, meaning two miles?

1 A. No. That's a little bit further than two miles from my
2 mom's house, I would think.

3 Q. Okay. If I showed you a map that described how far it
4 was, would that help you?

5 A. I mean, if you showed me a map, and then you showed me
6 the exact thing, then you're probably right. But I would think
7 it's off -- off JFK and Heacock. From my mom's house that's
8 pretty far to me.

9 Q. How long would it take you to drive there?

10 A. Probably about 10, 15 minutes.

11 Q. Is there a lot of stoplights?

12 A. Yeah.

13 Q. When you spoke with the investigator, Peter Young, in
14 January of 2011, do you recall telling him that you could not
15 give exact dates as to when you picked up your brother?

16 A. I told him that -- my exact words to him were that I
17 know the date of the things that were going on. So it had
18 nothing to do with anything whatsoever going on with my brother
19 in this. It had to do with my nephew and what I was going
20 through at work. So these were the dates that I was able to
21 give him.

22 Q. Were you -- you weren't able to give him those dates
23 when he interviewed you, isn't that true?

24 A. I don't recall that.

25 Q. You never said to him that you picked up your brother
26 on the night of the 26th, did you?

27 A. I don't recall that.

28 ~~Q. Looking at this, after you picked up Mr. White, I'm~~

1 assuming he was in a car with you, correct?

2 A. Yes.

3 Q. What kind of car do you have?

4 A. A white Honda Civic.

5 Q. And you and the white Honda Civic and your brother went
6 to the daycare?

7 A. And my daughter.

8 Q. Pick up your daughter -- sorry, you're ahead of me --
9 and then went from -- where is the daycare?

10 A. Daycare was on Moreno Beach Drive.

11 Q. And then after you went to the daycare, did the three
12 of you then go to your mother's house?

13 A. Yes.

14 Q. Why did you go to your mother's house if you weren't
15 living there?

16 A. Because I had to be at work the next day early for a
17 meeting, so it was pointless for me to go all the way home to
18 Hemet and have to come back the next morning. It was better for
19 me to stay the night at my mom's house, which is what I did.

20 Q. Okay. And when you went to your mother's house, you
21 said that you put your daughter to sleep about 10:00 or 10:30?

22 A. No later than 10:30.

23 Q. And then you and the defendant were in the garage for
24 how long?

25 A. At least two hours.

26 Q. Okay. So from 10:30, 11:30, until 12 :30?

27 A. Yeah. The 12:30 or probably a little bit before 12:30,
28 because I was asleep by 1:00 o'clock. And I had to get myself

1 ready for the next day and take a shower.

2 Q. And at that time did anybody swing by your mother's
3 house to pick up your brother?

4 A. No.

5 Q. And did you at any point see your brother leave the
6 house that night?

7 A. No.

8 Q. When you went to bed, you said that when he was
9 sleeping there that week, that you saw him there at nighttime;
10 that he was home asleep in the room. Do you know if he slept in
11 the room or on the couch on the night of the 26th?

12 A. The night -- that night he slept on the couch because
13 my daughter -- it was a three-bedroom house. My daughter was in
14 one room. My mom was in one room. And my little sister was in
15 one room. I was going to sleep with my daughter that night. My
16 brother was on the couch. If I'm not there -- he's not there --
17 he's in the third bedroom if I'm not home.

18 Q. And that night when you got out of the shower and were
19 getting ready to go to sleep about 12:00 -- so you were almost
20 in bed by 1:00?

21 A. Yeah.

22 Q. When you were doing that, did you look at him in the
23 bedroom?

24 A. He was in the living room when I got out of the shower.

25 Q. Did you see him?

26 A. Yes.

27 Q. If your mom stated that she saw you and Craig at home

28 ~~at 8:00 o'clock at night before she went to bed, would that be a~~

1 truth or a lie?

2 MS. PETROVICH: Objection. Calls for hearsay.

3 THE COURT: Overruled.

4 MS. PETROVICH: Improper impeachment.

5 THE COURT: Overruled.

6 THE WITNESS: My mom could have possibly got the hours
7 mixed up. I know she seen us, but I wouldn't say, like, she
8 wrong like that. But I could be wrong. She could be wrong.
9 But I don't think it was that early.

10 Q. (BY MS. DITTRICH) If your mom said that she saw you at
11 8:00 o'clock in the garage on the 26th, and that she went to bed
12 because she had to get up early --

13 A. Uh-huh.

14 Q. -- is that inaccurate? Is that not true?

15 A. Her timing is inaccurate. Her seeing us is not
16 inaccurate.

17 Q. Have you had a chance to talk to your mom since your
18 interview in January?

19 A. We don't talk about -- no.

20 Q. No, you haven't talked to her?

21 A. No, not about this. I'm not going to say I don't talk
22 to my mom, but --

23 MS. DITTRICH: I have nothing further, your Honor.

24 THE COURT: Do you have anything else?

25 MS. PETROVICH: Yes, your Honor.

26 REDIRECT EXAMINATION

27 BY MS. PETROVICH:

28 Q. Miss Perkins.

1 A. Yes.

2 Q. You -- when I asked you earlier about the dates, you
3 gave us both July 26th and then July 27th. So are you sitting
4 here today -- are you -- are you saying that it was the 26th or
5 the 27th because you know that it was the day that Mr. White --
6 you had picked up Mr. White, because it was the day before his
7 son came home?

8 A. Yes.

9 Q. So if it's actually true that his son came home on July
10 28th, of 2010, is it your memory that the interaction that you
11 said you had with Mr. White the night before would have occurred
12 on July 27th instead of July 26th?

13 A. Yes, it could have.

14 Q. All right. Thank you.

15 MS. PETROVICH: I have nothing further.

16 THE COURT: Do you have anything else?

17 MS. DITTRICH: No, your Honor.

18 THE COURT: May the witness be excused?

19 MS. PETROVICH: Yes, your Honor.

20 MS. DITTRICH: Yes, your Honor.

21 THE COURT: May the witness be excused?

22 MS. DITTRICH: Yes, your Honor.

23 THE COURT: You can step down, Miss Perkins. Thank you
24 for your testimony. Please watch your step.


25 Please call your next witness.

26 MS. PETROVICH: Defense calls Deputy Jonathan Bodnar.

27 (Short pause in the proceedings.)

28 ~~THE CLERK: Please raise your right hand.~~

APPENDIX N

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 12 2011 	
People of the State of California vs		
Craig Keyon White	Jury request No. 1	Time: 9:53
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

 RLH
 OCT 14 2011

We, the jury in this case, submit the following request or question to the court:

Testimony - Dennis Estevez

Dated: 10/12

Juror # 7

Foreperson

Response:

The readback will be prepared. Please continue
to deliberate in the interim.


 Honorable Michael B. Donner

Jury Request or Question

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 12 2011 <i>ka</i>	
People of the State of California vs		
Craig Keyon White	Jury request No. 2	Time: 2:30
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

 RLH
 OCT 14 2011

We, the jury in this case, submit the following request or question to the court:

- Testimony - Patricia Alvarado (Spouse to being faisted
And pants pulled down.)
- Police Reports (Each witness statements from
evening of July 27th.)
- Statements from photo lineup suggestion
~~Patricia Alvarado~~

Dated: 10/12

 Juror # *7*
 Foreperson

Response:

- The testimony will be prepared for readback. Please continue
to deliberate.
- The Police Reports ARE NOT EVIDENCE IN THIS CASE.
- Please clarify your last request
- TESTIMONY of witness can be readback - Police reports not
admissible

Michael B. Donner
 Honorable Michael B. Donner

Jury Request or Question

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 13 2011 <i>ea</i>	
People of the State of California vs		
Craig Keyon White	Jury request No. <u>3</u> Time: <u>11:55</u>	
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

CLAR
 OCT 19 2011 PM

We, the jury in this case, submit the following request or question to the court:

~~Exhibit~~

Deputy Bodnar testimony #1

Dated: 10/13/11

Juror # 7

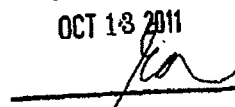
Foreperson

Response:

I will be prepared to read to you. Please
continue to deliberate

[Signature]
 Honorable Michael B. Donner

Jury Request or Question

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 13 2011 	
People of the State of California vs		
Craig Keyon White	Jury request No. 4 Time: 3:30	
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

LAR

OCT 13 2011 103

We, the jury in this case, submit the following request or question to the court:

Patricia Alvarado - Testimony

Dated: 10/13/11

Juror # 7
Foreperson

Response:

The testimony will be read back. Please continue to deliberate w/o interim


Honorable Michael B. Donner

Jury Request or Question

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 13 2011 <i>ea</i>	
People of the State of California vs		
Craig Keyon White	Jury request No. <u>3</u> Time: <u>11:55</u>	
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

CLAR
OCT 19 2011 PM

We, the jury in this case, submit the following request or question to the court:

~~Exhibit~~

Deputy Bodnar testimony #1

Dated: 10/13/11

Juror # 7

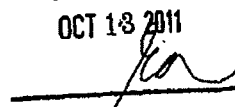
Foreperson

Response:

I will be prepared to read to you. Please
continue to deliberate

[Signature]
 Honorable Michael B. Donner

Jury Request or Question

Superior Court of California, County of Riverside Riverside Branch	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 13 2011 	
People of the State of California vs		
Craig Keyon White	Jury request No. 4 Time: 3:30	
JURY REQUEST OR QUESTION	Case Number RIF10004243	Dept 62

LAR

OCT 13 2011 103

We, the jury in this case, submit the following request or question to the court:

Patricia Alvarado - Testimony

Dated: 10/13/11

Juror # 7
Foreperson

Response:

The testimony will be read back. Please continue to deliberate w/o interim


Honorable Michael B. Donner

Jury Request or Question

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION II

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	DCA No. <i>EDSS529</i>
)	
Plaintiff/Respondent,	)	Case No. RIF10004243
)	
vs.)	
	)	Volume 4 of 4
CRAIG KEYON WHITE,)	
	)	Pages 588 - 831
Defendant/Appellant.	)	(Pages 750-799
	)	Block numbered)

REPORTERS' TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MICHAEL B. DONNER, JUDGE
OCTOBER 11, 12, 13, 14, 2011; JANUARY 20, 2012

APPEARANCES:

For the Plaintiff
and Respondent:

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For the Defendant
and Appellant:

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Reported by: CHRISTINA M. FOSTER, CSR No. 11982
TISHA L. KOTICK, CSR NO. 11796
ADELE C. FRAZIER, CSR NO. 9690

COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

Case No. RIF10004243

CRAIG KEYON WHITE,)

Defendant.)

REPORTERS' TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE MICHAEL B. DONNER, JUDGE

OCTOBER 11, 12, 13, 14, 2011; JANUARY 20, 2012

APPEARANCES:

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1 OCTOBER 12, 2011; RIVERSIDE, CALIFORNIA

2 THE COURT: We're on the record in the White case. The
3 attorneys are not present, but were contacted by my clerk. The
4 jury has requested read back of the testimony of Dennis Estevez.

5 And the attorneys responses were what, Ms. Anderson?

6 THE CLERK: The court reporter may read the read back.

7 THE COURT: All right. Then the answer will be, the
8 read back will be prepared. Please continue to deliberate in
9 the interim.

10 And we can now go off the record.

11 (Recess was taken at this time.)

12 THE COURT: We're on the record in the White matter.
13 Both attorneys and the defendant are present. The first request
14 from the jury, ladies, is to have the testimony of Patricia
15 Alvarado read; specifically about being frisked and her pants
16 pulled down. My response would be that the testimony will be
17 prepared. Please continue to deliberate in the interim.

18 Is that acceptable?

19 MS. DITTRICH: Yes, your Honor.

20 MS. PETROVICH: Yes.

21 THE COURT: The answers I've written down, the other
22 two, are the police reports are not evidence in this case. And
23 then, three, please clarify your last request.

24 Is that acceptable?

25 MS. DITTRICH: Yes, your Honor.

26 THE COURT: Ms. Petrovich?

27 MS. PETROVICH: Yes.

28 THE COURT: Thank you.

1 MS. PETROVICH; I'm reading it, though. When I see
2 police reports, and then they have in parenthesis "each witness
3 statements from evening of July 27th."

4 THE COURT: The police reports are not evidence in this
5 case, Ms. Petrovich.

6 MS. PETROVICH: It sounds like they are searching for
7 the witness statements from that evening first and foremost. So
8 I think that it would be most appropriate to either give them
9 that information or to ask if they're asking for the testimony
10 in that regard.

11 THE COURT: They asked for the police reports. The
12 answer is no. I disagree with your interpretation. And the
13 statements in the police reports are not evidence and can't be
14 evidence.

15 MS. PETROVICH: Well, I understand that, your Honor,
16 but what I think that they are asking for is the testimony with
17 regard to what they said on the evening of July 27th, and that
18 would be evidence to the extent that there's testimony on that
19 subject.

20 THE COURT: I don't read it that way. So I don't know
21 what -- I can't deal in what's speculated. They asked
22 specifically for police reports and then parenthetically what
23 they want from the police reports. There's a parenthesis around
24 everything after the word police reports. And I read that to be
25 what they want out of the police reports. And the statements
26 were not read.

27 MS. PETROVICH: Right. But I think that it would be
28 appropriate to advise them that if they are requesting witness

1 statements from the evening of July 27th, that that can be
2 provided to them by testimony read back.

3 THE COURT: They were not evidence in this case,
4 statements from the witnesses.

5 MS. PETROVICH: No, your Honor. I'm saying what the
6 witness testified to regarding what they said on July 27th. I'm
7 not suggesting we should give them police reports. I'm
8 suggesting that what they're asking for is what the witnesses
9 had said on July 27th, and there was testimony regarding those
10 statements.

11 THE COURT: I disagree with your analysis,
12 respectfully. But I will put testimony witnesses can be read.
13 Police reports are inadmissible.

14 MS. DITTRICH: That's good.

15 THE COURT: Is that acceptable?

16 MS. DITTRICH: Yes, your Honor.

17 MS. PETROVICH: Yes your Honor.

18 THE COURT: There you go. Thank you.

19 (Recess was taken at this time.)

20 (PROCEEDINGS WERE ADJOURNED.)

21 (NO OMISSIONS.)

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(NO OMISSIONS.)

1 RIVERSIDE, CALIFORNIA - OCTOBER 13, 2011

2 (BEFORE THE HONORABLE MICHAEL B. DONNER)

3 (Outside the presence of the jury)

4 THE COURT: On the record first in the matter of the
5 People of the State of California versus Craig K. White. The
6 jury asked for the read back of testimony of Deputy Bodnar.
7 The attorneys agreed that could be done. They contacted my
8 clerk. I answered as follows: It will be prepared and read to
9 you. Please continue to deliberate. And that has been
10 accomplished.

11 (Unrelated matter reported - Not contained herein)

12 THE COURT: On the record in the Craig White matter.
13 The jury has requested the read back of all of the testimony of
14 Patricia Alvarado. The attorneys have been contacted. They
15 did not need to come in. They said that was acceptable. The
16 answer will be: The testimony will be read back. Please
17 continue to deliberate in the interim.

18 THE CLERK: Your Honor, it will be read back tomorrow
19 morning because they requested to leave today at 3:30.

20 (Proceedings concluded)

1 RIVERSIDE, CALIFORNIA - OCTOBER 14, 2011

2 (BEFORE THE HONORABLE MICHAEL B. DONNER)

3 (Outside the presence of the jury)

4 THE COURT: We're on the record in the matter of
5 People of the State of California versus White. Both attorneys
6 and the defendant are present.

7 Good morning to all ladies and gentlemen. We have
8 been advised that the jury has reached verdicts in this case.

9 (In the presence of the jury)

10 THE COURT: On the record in White.

11 Good morning, ladies and gentlemen. Thank you again
12 so much for your service. And who is the foreperson, please?

13 TJ07, has the jury reached verdicts?

14 TJ07: Yes, we have.

15 THE COURT: Would you please provide all the verdict
16 forms to the deputy. Were any forms left in the jury room, any
17 forms at all?

18 TJ07: Any forms at all?

19 THE COURT: Yes.

20 TJ07: Yes, the ones we didn't sign.

21 THE COURT: We need all the verdict forms. If the
22 deputy would be kind enough to grab all of them. Thank you.

23 People of the State of California versus Craig Keyon
24 White, Case RIF10004243. Verdict: We the jury in the above
25 entitled action find the defendant, Craig Keyon White, guilty
26 of a violation of Section 211/212.5, subdivision (a) of the
27 Penal Code, robbery upon victim Arian Ybarra Valdez as charged
28 under Count 1 of the amended Information. We the jury further

1 find true that the robbery was committed in an inhabited
2 dwelling house. And it has been written in "first degree."

3 We the jury in the above entitled action find the
4 defendant, Craig Keyon White, guilty of a violation of Section
5 211/212.5, subdivision (a) of the Penal Code, robbery upon
6 victim Dennis Estevez as charged under Count 2 of the amended
7 Information. Written below that is "first degree." We the
8 jury further find true that the robbery was committed in an
9 inhabited dwelling house. Both of those, by the way, were
10 dated October 14th, 2011, signed by the foreperson.

11 We the jury in the above entitled action find the
12 defendant, Craig Keyon White, guilty of a violation of Section
13 211/212.5, subdivision (a) of the Penal Code, robbery upon
14 victim Jose Luis Reyes as charged under Count 3 of the amended
15 Information. Written below that is "first degree." We the
16 jury further find true that the robbery was committed in an
17 inhabited dwelling house, dated October 14th, 2011, signed by
18 the jury foreperson.

19 We the jury in the above entitled action find the
20 defendant, Craig Keyon White, guilty of a violation of Section
21 211/212.5, subdivision (a) of the Penal Code, robbery upon
22 victim Marcus Harden as charged under Count 4 of the amended
23 Information. Written below that is first degree. We the jury
24 further find true that the robbery was committed in an
25 inhabited dwelling house, dated October 14th, 2011, signed by
26 the jury foreperson.

27 We are jury in the above entitled action find the
28 defendant, Craig Keyon White, guilty of a violation of Section

1 664/211 of the Penal Code, attempted robbery upon victim
2 Patricia Alvarado as charged under Count 5 of the amended
3 Information. Written below that is "first degree." We the
4 jury further find true that the attempted robbery was committed
5 in an inhabited dwelling house, dated October 14, 2011, signed
6 by the jury foreperson.

7 We the jury in the above entitled action find the
8 defendant, Craig Keyon White, guilty of a violation of Section
9 664/211 of the Penal Code, attempted robbery upon victim Tyler
10 Gonzales as charged under Count 6 of the amended Information.
11 Written below that is "first degree." We the jury further find
12 true that the attempted robbery was committed in an inhabited
13 dwelling house, dated October 14, 2011, signed by the jury
14 foreperson.

15 We the jury in the above entitled action find the
16 defendant, Craig Keyon White, guilty of a violation of Section
17 459 of the Penal Code, burglary, parenthetically, residential,
18 as charged under Count 7 of the amended Information and fix the
19 degree as burglary in the first degree, dated October 14th,
20 2011, signed by the jury foreperson.

21 We the jury in the above entitled action find the
22 defendant, Craig Keyon White, not guilty of a violation of
23 Section 496, subdivision (a) of the Penal Code, receiving
24 stolen property, to wit, Sony PlayStation, as charged under
25 Count 8 of the amended Information, dated October 14th, 2011,
26 signed by the jury foreperson.

27 Ladies and gentlemen, are these your verdicts and
28 findings?

APPENDIX O

1 A. Yes, ma'am.

2 Q. And did she ever come inside?

3 A. I did not see her come inside.

4 Q. Do you know -- did you witness what made her go away?

5 A. No, ma'am.

6 Q. Okay. Eventually she did leave though, right?

7 A. Yes, ma'am.

8 Q. And when you left the house through the back door, did
9 you see anyone driving away from the house?

10 A. No, ma'am.

11 Q. And then you said that your shoe was returned to you,
12 is that because it was left at the house or --

13 A. Yes. It was laying there. It was just right there.

14 Q. All right. And you didn't have to seek any medical
15 treatment, right, for your --

16 A. No, ma'am.

17 Q. And you said -- did you say that you could hear people
18 talking inside the residence while you were lying there?

19 A. Yes.

20 Q. Was there anything distinctive, if you recall, about
21 anyone's voice that stood out in your mind?

22 A. No, ma'am.

23 MS. PETROVICH: Okay. I'm sorry. If I could just have
24 a moment?

25 THE COURT: Any further questions?

26 (Discussion was held off the record.)

27 MS. PETROVICH: Just one other question.

28 Q. (BY MS. PETROVICH) Mr. Reyes, have you ever been shown

1 MS. DITTRICH: Objection. Vague.

2 THE COURT: Overruled. I understand the question. If
3 the doctor understands the question, he can answer.

4 THE WITNESS: Sure. There's a great literature on the
5 potential effects of the person administering the six-pack on
6 witnesses, potentially. I think policy is very clear in
7 California that you should do your best to refrain from talking
8 with folks to whatever extent you can after you admonish.

9 When you give them a six-pack, you're not to
10 communicate anything. And that any communications, verbal or
11 nonverbal at that point could be taken potentially by the
12 witness as an indication that either she should pick somebody or
13 that their pick is maybe the wrong person or their pick -- or
14 that they're encouraged towards picking a single photo or not,
15 and all the variances of that.

16 This is very well understood, and there are
17 jurisdictions in California that have made a decision to go to
18 double blind procedures, which is probably where we'll all go
19 eventually. That's kind of the writing on the wall these days.
20 I wouldn't say that to the jury, but that's where we're going to
21 end up very soon.

22 Q. (BY MS. PETROVICH) And Dr. Eisen, is there support in
23 the literature for differences in the ability of a witness to be
24 able to make an identification where they're exposed during the
25 incident to more than one person suspect?

26 A. Oh, sure.

27 Q. And can you briefly tell us what that is?

28 A. ~~Just goes to divided attention. The more things I have~~

1 A. There's extended literature on the specific effects of
2 the presence of a weapon that's related to issues of stress and
3 trauma, yes.

4 THE COURT: And what is the result of that literature,
5 the general consensus, if you will?

6 THE WITNESS: The general consensus, and it's been
7 understood since observations from the fifties, when a weapon's
8 present, it draws people's attention. It doesn't mean that
9 because a weapon is present, people cannot remember someone's
10 face. But in many instances, because traumatic stress narrows
11 our attention so intensely on the elements of the experience
12 that are threatening our life, for the need to survive for many
13 people, not most, the presence of the weapon -- the weapon
14 becomes the focal point; that thing that could end their life.

15 And it's not that folks are blind to every other aspect
16 of the experience. But we know that if we're focused on
17 something, that if our attention is divided, that we often won't
18 remember other details as well. Like when we're talking with a
19 friend, and we're focused on something we've got to do later,
20 something's really on our mind, and they're talking, and we're
21 looking at them, but we're really thinking about the other
22 thing. We may have no recollection of what they just said just
23 seconds ago because our attention was so sufficiently divided
24 and so focused on this other element. It's not that I was blind
25 to my friend or didn't hear the words. I just didn't register
26 them well enough to accurately recall them, because I was so
27 focused elsewhere. And that's the essence of the weapons focus
28 effect.

1 A. It was less bright. He does not have that many lights
2 in his house.

3 Q. I'm sorry. I didn't hear the last part.

4 A. It was less bright. He does not have that many lights
5 in his house.

6 Q. Okay. Thank you. And regarding the voices that you
7 heard inside the house, was there anything distinctive about any
8 of them that stood out for you in your memory?

9 A. Distinctive, pertaining to what? Like, how they
10 sounded?

11 Q. In any way that you found unique that stuck in your
12 memory?

13 A. I know one of their voices, but that's it. I remember
14 one of their voices really distinctly; like, if they were to
15 talk to me, I would know. But I didn't -- but that's it.

16 Q. Okay. Is there anything that you could describe about
17 that voice that you would recognize it? For example, was it
18 high pitched or --

19 A. It was kind of -- it's not very raspy, but too -- not
20 too -- I don't know if it was a lisp or not, but like a
21 minuscule -- like a small lisp. But it was distinctive enough
22 for me to hear it. And I don't know I feel if I heard that
23 person say, where's the money? Where's the money? I would be
24 able to tell you if that was him or not.

25 Q. Anything else about the voices that you recall that
26 stood out to you?

27 A. No. That's the one that stood out the most; that I
28 heard the most.

1 THE COURT: Thank you.

2 Q. (BY MS. DITTRICH) And when you get certain electronic
3 equipment, like a Play Station, do you look at serial numbers?

4 A. Yeah. Anything that -- like, TVs, Play Station,
5 anything that has a serial number, we have to get it.

6 Q. What do you do with it?

7 A. We have it in a record in the computer, and then we put
8 it in the contract too.

9 Q. Okay. And when you're putting it in the computer, do
10 you know whether or not your computer communicates with law
11 enforcement?

12 A. No. We have on the contract, the bottom portion of the
13 contract, that one we send it to the PD station with the serial
14 number, the person that brought it in and the thumb print.

15 Q. Okay. And why do you do that?

16 A. We do that just in case the items are stolen.

17 Q. Okay. Were you working on August 16th, 2010?

18 A. I can't remember. What day was it?

19 Q. All right. If I showed you a pawn slip from that day,
20 would it help --

21 A. Yeah.

22 Q. -- refresh your memory?

23 A. Yeah.

24 Q. Okay.

25 MS. DITTRICH: Any objection?

26 MS. PETROVICH: No, thank you.

27 THE COURT: Go ahead.

28 MS. DITTRICH: Thank you.

1 individual's race?

2 A. Black.

3 Q. Can you tell me his height?

4 A. Five-ten.

5 Q. And his weight?

6 A. 158.

7 Q. And the driver's license?

8 A. The number?

9 Q. Yes, please.

10 A. D2351526.

11 Q. Thank you.

12 MS. DITTRICH: I have nothing further at this time,
13 your Honor.

14 THE COURT: Do you care to cross-examine this witness,
15 Counsel.

16 MS. PETROVICH: Yes. Thank you, your Honor.

17 THE COURT: Please proceed.

18 CROSS-EXAMINATION

19 BY MS. PETROVICH:

20 Q. Good afternoon, Mr. Contreras.

21 A. Good afternoon.

22 Q. You had said that -- something about at the bottom of a
23 contract that you put in information that the serial number's
24 going to be sent to law enforcement. Did I get that right?

25 A. Uh-huh.

26 THE COURT: Is that yes?

27 THE WITNESS: Yes.

28 ~~THE COURT: Thank you.~~

1 Q. (BY MS. PETROVICH) When you said contract, what
2 contract are you talking about?

3 A. We send the contract -- not the contract for the four
4 months, but the information of the customer with the whole
5 information of the item that he brought or she brought.

6 Q. Okay. What I heard earlier was that you said at the
7 bottom of the contract there's something like a disclosure that
8 tells someone that the information could be sent to law
9 enforcement. Did I understand you correctly?

10 A. No.

11 Q. Okay. What were you talking about?

12 A. What was that again?

13 Q. When you testified a little bit ago --

14 A. Okay.

15 Q. -- I believe that -- you said that at the bottom of the
16 contract there is some sort of language that the serial number
17 from the item is going to be sent to law enforcement. Is that
18 right?

19 A. Yeah. It's -- that's not the contract. That's just
20 the information of the customer with the information of the
21 item. That we send them to the police station. We have to
22 daily. Every day.

23 Q. Okay.

24 THE COURT: Just a second. Do I understand that that
25 disclosure that's being done -- is that printed somewhere on
26 your form so if the customer pawns something, he reads or she
27 reads and knows that that information is being sent to law
28 enforcement.

1 THE WITNESS: Yeah. Yes. On the contract, yeah.

2 THE COURT: Okay.

3 MS. PETROVICH: Thank you.

4 Q. (BY MS. PETROVICH) All right. And the information
5 that you were just asked about on People's No. 50, five zero,
6 you were asked about height, weight and so forth. Do you recall
7 that?

8 A. Uh-huh.

9 Q. And you said that this information you got from a
10 driver's license?

11 A. Yes.

12 Q. Is that right?

13 A. Uh-huh.

14 Q. So that means that the person who pawned this
15 particular item had to show you a photo ID; is that right?

16 A. Yes, ma'am.

17 Q. And you would have looked at the person depicted in the
18 photo ID and looked at the person standing in front of you to
19 make sure it looked like it was the same person?

20 A. Yes, ma'am. Now we have a new system like that one.
21 We take pictures of customers just in case they forget their ID,
22 and they want to do business. We can compare the picture and
23 the signature too.

24 Q. Okay. So that's something that took place after this
25 date?

26 A. Well, in this case we had, you guys have the picture
27 from the system, so it was done when we had the system.

28 Q. By picture from the system, you're talking about the

1 Q. Can you tell the jury where he's seated and what he's
2 wearing, please?

3 A. He's sitting on the right of his attorney, wearing a
4 blue long-sleeved shirt with a black and blue tie.

5 MS. DITTRICH: May the record reflect he's identified
6 the defendant?

7 THE COURT: Yes.

8 MS. DITTRICH: Thank you, your Honor.

9 Q. (BY MS. DITTRICH) On that day, did you take him to
10 jail for booking?

11 A. Um, we transported him to the police department.

12 Q. I'm sorry?

13 A. Yes.

14 Q. Okay. So you usually take him to the police department
15 first and then they transport them to the jail?

16 MS. PETROVICH: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, ma'am.

19 Q. (BY MS. DITTRICH) Okay. During that booking process,
20 were you able to obtain the defendant's date of birth?

21 A. Yes.

22 Q. Can you please tell the jury what his date of birth is?

23 A. Your Honor, I have a photo.

24 THE COURT: Do you have an independent recollection of
25 his date of birth?

26 THE WITNESS: No, I don't.

27 THE COURT: You need to refresh your recollection?

28 THE WITNESS: Yes, sir.

1 THE COURT: What is it that you care to use to refresh
2 your recollection?

3 MS. DITTRICH: He has a copy.

4 THE COURT: If he could answer my question, I would
5 appreciate it.

6 MS. DITTRICH: Sure, your Honor.

7 THE WITNESS: I have a copy of a mugshot profile.

8 THE COURT: Any objection?

9 MS. PETROVICH: Not as to its use being used by the
10 witness to refresh his recollection.

11 THE COURT: Okay. Refresh your recollection from that,
12 and then please turn it over. Do not simply read from the
13 photograph.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: You're welcome.

16 (Short pause in the proceedings.)

17 Q. (BY MS. DITTRICH) What is the date of birth?

18 A. 9-21-82.

19 Q. Okay. And are you also able to determine the person's
20 race?

21 A. Yes.

22 Q. What is that?

23 A. African/American.

24 Q. Okay. And what about his sex?

25 A. Yes. Male.

26 Q. Great. Hair color?

27 A. Black.

28 Q. Eye color?

1 A. Brown.

2 Q. And height?

3 A. About five-seven.

4 Q. Weight?

5 A. About 160 -- 150, 160.

6 Q. And his driver's license number?

7 A. I'll have to refer to my --

8 THE COURT: With that same admonition.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: You're welcome.

11 (Short pause in the proceedings.)

12 THE COURT: Go ahead and read it.

13 THE WITNESS: Okay. Thank you, your Honor.

14 THE COURT: Is that acceptable?

15 MS. PETROVICH: That's fine.

16 THE WITNESS: D2351526.

17 Q. (BY MS. DITTRICH) Is that a California --

18 A. Yes, ma'am.

19 Q. Okay. And then I'm going to show you what's been
20 marked People's 10.

21 THE COURT: Any objection?

22 MS. PETROVICH: No, thank you.

23 THE COURT: Go ahead.

24 Q. (BY MS. DITTRICH) Looking behind you, the other way,
25 whichever way, when someone is booked or arrested, is a
26 photograph typically taken?

27 A. Yes, ma'am.

28 Q. And is that a copy of the photograph from the time he

1 A. Yes.

2 Q. And upon reviewing that, did Dennis Estevez ever state
3 that statement that he wasn't sure if he was there at all?

4 A. Correct.

5 Q. Okay.

6 A. He never said that.

7 Q. In fact, didn't Mr. Estevez, when you showed him the
8 six-pack, tell you the reason he was only 50 percent sure was
9 because he was uncertain because it didn't have a do-rag on?

10 A. Correct.

11 Q. Additionally, defense counsel asked you whether or not
12 Mr. Estevez told you specifically that the person he identified
13 in -- I'm sorry -- People's No. 3, the six-pack, whether or not
14 he was the person with the gun. Do you recall her asking you
15 those questions?

16 A. Yes.

17 Q. Did you ever ask the witnesses what role the suspect
18 played?

19 A. No, I did not.

20 Q. Did you instead ask them whether or not they recognized
21 anyone in the photograph as being there that night?

22 A. Yes.

23 Q. In fact, wasn't -- during those six-packs, the only
24 person to say the person with a gun when they made the
25 identification was Patricia Alvarado?

26 A. Correct.

27 Q. And did she do that without you asking her?

28 A. Yes, she did.

1 pictures are possible based on what the witnesses are looking
2 for.

3 What do we know the witnesses are looking for? What
4 they told us they're looking for. They said I'm looking for a
5 white guy in his forties with brown hair and thin face. So you
6 can't make them with twins. You've got to make them different.
7 But they all have to be viable choices. They all have to match
8 the basic description provided by the witnesses to the extent
9 your suspect does. So your suspect doesn't stick out as being
10 the only possible one.

11 Q. All right. Now, as far as -- as far as the actual
12 procedure for a witness to view a photo lineup and either make
13 an identification or not, is there research that gives us
14 information about the role that the person administering the
15 photo lineup plays in that situation?

16 A. Sure.

17 Q. And what sort of information is that based on your
18 review of the literature and research?

19 A. Well, what role does the person administering it play.

20 Q. Yes.

21 A. Yeah, they're really just there to present the
22 pictures. Well, that seems obvious. But it warrants some
23 explanation. In saying that they're just there to present the
24 picture and to read the instruction and obviously -- and to read
25 the instructions, which is important. They're not there to
26 explicitly say -- so they're not there to do anything more.
27 Because there's the chance that if a person administering the
28 thing, administering the task, does more, talks with, gives cues

1 to, encourages, that they could potentially effect the outcome.

2 They can effect the witness by communicating
3 information to them. So this is not a minor issue. And so in
4 regards to this, the point is very specific: That the
5 administrator really is there to administer the thing, read the
6 instructions and otherwise, not be absent, but not effect the
7 process in any way.

8 Q. Would you agree or disagree that the administering of a
9 photo lineup is akin to, say, collection of evidence?

10 A. Oh, it is, in fact, a core element in the collection of
11 the eyewitness evidence. I mean, anything -- this is probably
12 the most central behavior done by law enforcement in the
13 collection of the eyewitness evidence. You interview the
14 witness and you collect identifications. These are the most
15 crucial actions done by law enforcement in regards to selecting
16 and preserving eyewitness evidence.

17 Q. Now, is there research that supports that there are
18 occasions where there's a phenomenon called experiment or bias
19 that plays a part in the selection or identification of a photo
20 in a lineup proceeding?

21 A. Yes.

22 Q. And what is that?

23 A. Sure. Experiment or biases or experiments are also
24 known as irrelevant experiment or expectancy. Same term. It's
25 a phenomena in all behavior science research. It had been
26 identified for maybe a hundred years. And it's the idea that
27 the person administering a task could consciously or
28 ~~unconsciously inadvertently effect the subject and effect the~~

1 test, the outcome, based on their knowledge of what the right
2 answer is.

3 The idea is -- well, let me just give you an example:
4 Most of you are probably most familiar with this one, drug
5 studies. Because you see this in the media. Where half the
6 people are taking the actual drug and half are taking the
7 placebo. And of course, the patients don't know who is taking
8 the drug or the placebo, right?

9 But also, in all federally funded studies in the
10 North Carolina, the doctor doesn't know who's taking the
11 doctor -- or the placebo either. And why doesn't the doctor
12 know? Because of experiment or bias, experiment or expectancy.
13 It is well understood, very well understood that if the
14 experimenter knows what the right answer is, that the
15 experimenter could potentially inadvertently or on purpose
16 communicate information to the patient that could effect the
17 study. They might treat the people in the placebo group
18 differently because they're worried about their health. Or they
19 might treat the people in the drug group different because
20 they're worried about the outcome of the study.

21 Either way, those studies are also done double blind
22 because it's so well understood that an experimenter can effect
23 the subject. And if this happens, if this happens in the study,
24 if the experimenter is not double blind, and knows the right
25 answer, then it opens the door to the possibility, the
26 possibility that the study may come out because the drug is
27 better, right? Maybe it's right. Maybe the hypothesis was
28 right. Or the experiment might have come out that way because

1 the experimenter had some effect. It's a possibility, right? .
2 It's a plausible hypothesis because they knew the right answer.

3 So because of that, to close the door on that other
4 possibility that it was the experimenter who did it, it's done
5 double blind. The idea is that administering a six-pack is an
6 experiment. The experiment is, the experimenter is the officer.
7 The subject is the witness. And the hypothesis on the part of
8 the officer is that their guy, the guy they suspect, is the real
9 bad guy and will be picked.

10 And if he's picked, then that's evidence of that,
11 right? And so it's obvious that -- it's possible sitting
12 together like on a piece of paper between us, and we're just
13 sitting here alone in the room, that it's possible that the
14 experimenter could purportedly or just inadvertently give cues
15 to the witness on who to pick.

16 I mean, it could be so innocent as, oh, it could be two
17 or three. Three you say? What's interesting about three?
18 Because it's understood, well understood, if you ask law
19 enforcement, that they have a partnership with the victim.
20 They're working together to get the bad guy. A shared goal. An
21 important shared goal, right, to get the bad guy.

22 MS. DITTRICH: Objection. Narrative.

23 THE COURT: Sustained.

24 Q. (BY MS. PETROVICH) All right. Dr. Eisen, you were
25 saying that there's some sort of a partnership, whether it be a
26 formal or informal partnership, between law enforcement and the
27 victim or witness who is coming in to make the -- or is making
28 the identification. Is this a common goal, then, that the two

1 of them share?

2 A. Same one we all share. We all want justice to be done
3 and to get the bad guy, and these are the two intimate parties
4 working toward that goal at that moment in time.

5 Q. So what does the research and literature tell us about
6 what effect, if any, that common goal can have on the
7 identification of an individual in the photo lineup?

8 A. Well, the -- the witness doesn't know the right answer,
9 obviously. And they're looking for whatever cues or help they
10 can get if they don't recognize a picture right. I mean,
11 some -- I'm looking at the six-pack and recognize the picture
12 right off. Happens all the time. Right away recognize the
13 face, it's over. But sometimes they don't. And they still
14 press forward to try to pick somebody out.

15 And of course, they're going to look for whatever help
16 they can get from, you know, to do their best to get the bad
17 guy. Everybody wants to do just. Everybody wants to get the
18 bad guy.

19 So it's universally recommended amongst researchers
20 that in lineups that the person administering the lineup doesn't
21 know who the person is, so there's no possibility they can
22 influence the subject. In California it's done. In Santa Clara
23 County. All of New Jersey. All of North Carolina. Most of
24 Wisconsin. Most of Minnesota. Dallas. Austin. This procedure
25 is catching on.

26 Q. All right. Now. When you say that the witness would
27 look for help to pick out the bad guy, are you talking about a
28 situation where somebody would say, hey, help me out here? Or

1 are there other ways based on the literature and research that
2 you've reviewed that that might occur or has occurred?

3 A. It's my belief, my strong belief, that most law
4 enforcement officers follow the procedures as well as they can
5 and would not collaborate somehow to point the picture out
6 purposely to someone.

7 But this can happen inadvertently. That's the whole
8 problem. It can happen through very casual behavior that maybe
9 they don't even understand is effecting the process, either
10 conscious or unconscious, as I explained earlier.

11 Q. Okay. Now, if a witness were to be shown a photograph
12 of a particular suspect, and then later shown a lineup that
13 included that same photograph, or included a photograph of the
14 same suspect, is there anything in the literature and research
15 that you've reviewed that would give us any information about
16 whether viewing that first photograph would have an effect on
17 the later identification procedure?

18 A. Yes.

19 Q. Okay. And could you explain that for us?

20 A. Sure. This is very well understood, and it's known in
21 the literature as the carryover effect. Essentially, let's look
22 at two examples of how this can work: One, let's say I make a
23 selection and I remember my selection, right. I see the
24 picture, I say yes, I believe that's the guy. And now I'm
25 committed to that selection.

26 Now, we know from many studies, if you show me a
27 six-pack, I'm looking for that picture. From some studies, we
28 know that if you show me an individual picture and it results in

1 Q. All right. And can you explain that for us?

2 A. Sure. In the original studies on this, the point of
3 the research is that recognition memory, this type of memory
4 where we recognize something, happens very fast. And it's a
5 type of memory that happens out of our awareness that it just
6 kind of happens to us. You can't really in retrospect think
7 about, how did I recognize the face when I see it, or recognize
8 the sons, or recognize something. It just hits you. So we know
9 recognition memory happens quickly.

10 And as this applies to six-packs, it's well understood
11 that IDs that might happen very quickly are right more often
12 than those that happen after a long delay. Does that mean I'm
13 always right if I make a fast decision? No. Does that mean I'm
14 always wrong if it takes me a long time? No, of course not.

15 However, we know that recognition memory happens
16 quickly. So if I really truly recognize a face, the chances are
17 my response is going to come out quick. It used to be known as
18 the 10- to 12-second rule of positive IDs, because you're only
19 scanning six pictures. Generally, those made within 10 to 12
20 seconds, at least those made in that time frame, are very
21 accurate with a very high rate.

22 More event research looking at all of the studies,
23 examining this ticket through what's called metaanalysis because
24 you can look at lots of studies as ones with thousands of
25 people, showed that maybe 25 is more reasonable. And the reason
26 is, although it doesn't make me investigate to scan six pictures
27 and see if I recognize the face, many people are cautious and
28 don't want to say anything at first. Takes them longer, just

1 personality and style, to put forth the identification.

2 However, once you get past 30, 35 seconds, towards a
3 minute, and longer, then we're generally not dealing with
4 recognition memory anymore. We're dealing with a decision
5 process. Where I'm looking at these six pictures, and I don't
6 recognize anybody right off. And despite the admonishment, I'm
7 pressing forward anyway and just looking at studying each one to
8 see which one more closely matches my memory of the perpetrator.

9 And so this longer extended decision process is -- it's
10 not recognition memory. It doesn't mean it's wrong, but it's
11 not that the person recognizes the face, because that happens
12 quickly. It's a different type of process. Oh, this one's too
13 dark. This one's too light. This one's too tall. This one's
14 too short. This one's too this. This one's too that.

15 And it's a process of elimination as folks try to
16 figure out which picture most closely matches their memory
17 relative to the others in the group. And this is referred to in
18 the literature as a relative judgment. Where you pick the
19 picture that's closest or closest matches your memory, given all
20 the alternatives you've being given at that moment, right? I'm
21 only given six, so I'll tell you which one of these six is
22 closest.

23 Now, relative judgment doesn't mean it's wrong --

24 MS. DITTRICH: I'm going to object as nonresponsive at
25 this point and narrative.

26 THE COURT: Overrule. You can finish that thought.

27 THE WITNESS: Relative judgment doesn't mean it's
28 wrong. If the bad guy's there, and I pick the one that's

1 over members our mechanism, threatens the life or safety of
2 ourselves or someone else around us. We all respond
3 differently. I mean, some folks are overwhelmed by drastic
4 situations. Other folks handle them relatively well. But we
5 also know that all of us share a common impulse during life
6 threatening situations. You remember from school the fight or
7 flight reflection that we either -- we focus in on what's key to
8 surviving the experience. How this man tests itself cognitively
9 thinking wise is that intensive focus limits the information we
10 normally would be able to take in during a traumatic event.
11 This is limiting effect that's best understood.

12 Right now, no trauma. Shift your attention around.
13 Take in everything at your leisure, but if someone bursts
14 through the door with a gun, chances are we would all become
15 intensively focused on some experience of that aspect of that
16 experience at the time. Some might be focused on the uniform;
17 probably be focused on how they're going to overwhelm and assist
18 the average perpetrator.

19 Others of us might have a panic attack; just lost in
20 panic and thought, and we're not going to process anything very
21 well. Others of us might focus on how we're going to escape
22 internal death. My God. Is my life going to end? Am I going
23 to see my family again? The point is, all these other areas of
24 focus detract from our ability to remember the details of the
25 experience as well because of the trauma.

26 And so it's well understood, this limiting effect, as
27 an adverse effect on our ability to understand the experience.

28 ~~Remember, nobody's saying you're blind to what's going on; that~~

1 you didn't see it. But you can read every word in the sentence.
2 And if your attention is divided, if you're thinking about other
3 things at that moment, you're likely not going to remember what
4 you read just now. And you're going to have to read it again.

5 If I'm talking with a friend, and I'm thinking about
6 other things, I might not recollect what they're saying, let
7 alone if it was a traumatic moment. So you can see how trauma
8 detracts from our attention and makes it more difficult to
9 recall the details of the experience.

10 Q. Dr. Eisen, is it possible for a stressful event to
11 improve memory?

12 A. Well, stress and trauma are different. Let's be
13 careful. You know, stress -- trauma is kind of an overwhelming
14 stress, not being stuck on the freeway. I was stuck on the
15 freeway today. That's not traumatic. So -- but traumatic
16 stress, there was a lot of writings in the 1980s, 90s, early
17 part of 2000, that there was some focusing effects of highly
18 arousing events that made us remember certain details of them or
19 feel like we remembered certain details; very well watching the
20 space shuttle blow up or remembering the aspects of the birth of
21 a child or weddings; highly arousing effects, right?

22 But the literature over the past decade plus is
23 converged where folks agree that the overwhelming nature of
24 traumatic stress, the negative effects in general, outweigh any
25 potential benefits; that just being aroused or sharpened might
26 have on our attention and our ability to remember the details.

27 THE COURT: Ladies and gentlemen, it's time for our
28 morning break. Please recall the previous admonitions. Please

1 be outside the courtroom doors at 11:00. We'll reconvene and
2 enjoy your morning break.

3 (Outside the presence of the jury panel.)

4 THE COURT: All right. The record should reflect that
5 our jury has left the courtroom. We're in recess until 11:00.

6 (Recess was taken at this time.)

7 THE COURT: We're back on the record in the White
8 matter. Both attorneys and the defendant are present.

9 Doctor, do you understand you're still under oath?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Let's get our jury in.

12 (Inside the presence of the jury panel.)

13 THE COURT: Welcome back, ladies and gentlemen. I hope
14 you enjoyed your break. Again, thank you very much for being
15 here.

16 We are, again, in session. Our jurors are present and
17 getting comfortable. Everybody looks like they're seated.

18 Go ahead, Counsel.

19 MS. PETROVICH: Thank you, your Honor.

20 Q. (BY MS. PETROVICH) All right. Good morning again, Dr.
21 Eisen.

22 A. Good morning.

23 Q. You were talking about presence of a weapon. Is there
24 any -- is -- is there any support in the research or literature
25 regarding whether or not, if a gun is pointed at someone versus
26 being seen by a witness versus being pointed at the witness, is
27 there any research and literature on that, and that description
28 is exaggerated?

1 MS. DITTRICH: Object to being vague.

2 THE COURT: Overruled.

3 THE WITNESS: Pointed versus seeing? Yeah. Obviously,
4 having a gun pointed at you can be traumatizing, and people
5 react differently to trauma.

6 THE COURT: The question is, is there anything in the
7 literature?

8 THE WITNESS: Yeah, right, in the literature. But in
9 regards to memory, pointing at versus seeing a gun present, the
10 effect is similar overall.

11 Q. (BY MS. PETROVICH) And is there any support in the
12 research and literature regarding the ability to accurately
13 recall the time period of an event versus just what happened
14 during the event?

15 A. Yes.

16 Q. And what is that?

17 A. Most people during trauma, because trauma's
18 disorienting for many people, it seems surreal, and it leads to
19 skewed sense of time is the most common observation. And we see
20 it in our literature for centuries, right? Time stood still.
21 My life flashed before my eyes.

22 So it's easy enough to study. You ask people after
23 known traumatic stressors, how long did it take? And the most
24 common response is this elongated sense of time. It seemed to
25 have lasted much longer than it did. Still some people are
26 accurate and other people can't estimate at all, because it
27 happened in the flurry. It was so disorienting. But it's most
28 common that it's elongated for most people.

1 a minute of his voice. It's deep, raspy. Exactly as described.
2 No stutter. The defendant also pawns the stolen
3 property three weeks after the robbery. Again, how could
4 everyone have it where the person that's pawned the property is
5 the same person everyone's picking. I keep repeating this. But
6 it's just -- it doesn't work. Nobody else in these photographs
7 pawned the property.

8 Then you have additional information. Let's say I stop
9 there, and I didn't ask the victims in court if they knew the
10 defendant, if they could ID him, you could convict him beyond a
11 reasonable doubt based on the six-pack photo lineups. In fact,
12 the Court read to you jury instructions, and there's a jury
13 instruction that talks about witness identifications. And in
14 one of those instructions, and it's 315, it asks, was the
15 witness able to identify the defendant in a photograph, physical
16 lineup? Your answer is yes. Yes. Four witnesses were able to
17 identify him in a six-pack photo lineup.

18 Did the witness ever fail to identify the defendant?
19 Your answer is no. All four witnesses have been -- always been
20 able to identify the defendant.

21 Arian -- Arian Valdez says in court, that's him. I'm a
22 hundred percent certain. He was the witness that we showed the
23 defendant's teeth. He stared at that and looked at him and
24 said, oh, correct. Yeah. You saw him.

25 Dennis Estevez, I asked him, do you have a doubt it's
26 the defendant? No. I have no doubt. That's him. But they do
27 more than that. They're not just blanket stating, I have no
28 doubt. Believe me. They're telling you factors; things. Ever

APPENDIX P

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CONTINUATION SHEET

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1 I relocated to 24071 Stonebridge Ct. residence. I
2 contacted Dennis' girlfriend, (VIC) Patricia ident.

3
4 The following is a summary of Patricia's statement.

5
6 On 07/27/10, at around midnight, Patricia was watching a movie in the living room with Dennis,
7 Adrian, and Marcus, when there was a knock at the door. Patricia told me Dennis stood up from the
8 couch and opened the door. Patricia told me she was unable to see who was at the door. Patricia
9 heard Dennis and someone else talking, but she was unable to understand what they were saying.

10
11 Patricia told me she saw Dennis turn around and put his hands up in the air. Dennis walked into the
12 living room and Patricia saw S-1 walking behind Dennis. S-1 had his hand behind Dennis' head.
13 Dennis told them, "Be cool. Get down on the floor." Patricia told me she grabbed the blanket from
14 the couch, threw it over her head, and laid faced down on the floor.

15
16 Patricia told me she peeked from under the blanket and glanced up. Patricia told me she saw S-2, a
17 black male adult, about 25 years old, approximately 6'01", weighing about 200 lbs. S-2 was
18 wearing a gray or turquoise bandana over his face. S-2 saw her looking and yelled, "Get down,
19 bitch!" Patricia told me she immediately faced her head down and did not look up the remainder of
20 the time the suspects were there.

21
22 A few minutes later, Patricia told me one of the suspects began searching the back and side pockets
23 of her pants. The suspect asked her, "Do you have any money?" Patricia replied, "No." Patricia told
24 me one of the suspects began pulling her pants down; however, she heard another suspect smack the
25 hand away and heard him say, "No."

26
27 Patricia heard a suspect ask for two people to stand up. Patricia told me she heard people stand up,
28 but she was unable to see who they were. Patricia said she heard the suspect tell them to go into the
29 bathtub. Patricia stated she heard the suspects rummage through the house, throwing items
30 everywhere.

31
32 Patricia told me the suspects took Dennis into his bedroom. A few moments later, Dennis walked
33 out of the bedroom. Patricia heard Dennis say, "This is all I have. You have all my money. You can
34 take my car; I'll even help you load up."

35
36 A few minutes later, Patricia heard someone counting down. As someone was counting, she heard
37 someone run out of the living room and out the rear sliding door. Patricia told me the counting
38 stopped and she looked up. Patricia saw Marcus stand up and she stood up, but Marcus told her to
39 lie back down. Marcus walked around the house, came back, and told her everyone was ok.

40
41 Patricia told me she has never met and has never seen the suspects before. Patricia stated she would
42 not be able to identify the suspects should she see them again.

43

MV102080010

CONTINUATION SHEET

Page 4

1 anyone else in the residence. Harden told me he knows "Denis" (Denis Estima) and "Patty"
2 (unknown last).

3
4 After a short period of time, "Monica" left the location and did not return. Harden and the
5 other subjects decided to watch movies. During the movie, Harden was sitting in a reclining chair
6 located in the family/living room. Everyone else was sitting on the couches or the floor in the same
7 area of the residence.

8
9 At an unknown time, Harden noticed "Denis" walking towards the front door. Harden did
10 not hear the door bell ring or knocking, but believes he was answering the door for someone.
11 Harden did not pay much attention to "Denis" and continued to watch the movie. Seconds after
12 "Denis" went to the door, Harden heard a commotion. Harden looked in the direction of "Denis"
13 and the front door and saw a Black male adult, 5'07" to 5'10", approximately 25 to 30 years old,
14 dark skinned, wearing a dark jacket (Suspect), standing next to "Denis".

15
16 Harden noticed the suspect was standing behind "Denis" and had his left arm around the
17 upper portion of "Denis'" chest area. Harden then looked in the suspect's right hand and saw a
18 gun/weapon. Harden described the gun as a large caliber chrome revolver. The suspect yelled at
19 everyone to get on the ground. While getting off the recliner and going to the floor, Harden could
20 hear several other suspects enter the residence. Harden did not look at the suspects, but noticed they
21 were entering the residence through the front door.

22
23 While on the floor, Harden heard one of the suspects yell "where's the money." Harden did
24 not respond to the question. Harden was on his stomach and faced down to the floor. Harden told
25 me he was scared and did not want to upset the suspects. Harden told me an unknown suspect
26 walked over to him and searched his pant pockets. The suspect found his wallet and removed it
27 from his rear pocket. Harden did not say anything or attempt to stop him.

28
29 Approximately ten minutes into the incident, Harden heard knocking at the front door.
30 Harden saw the feet of several suspects walk past him and answer the door. Harden then heard
31 more yelling and noticed two additional victims inside the residence. Harden did not know their
32 names and never seen them before. The two additional victims were escorted to an unknown
33 location of the residence (possible the bathroom). Harden stayed on the floor until the suspects left
34 the residence. Harden estimated the time of twenty minutes that the suspects were inside the
35 residence.

36
37 Once Harden knew all the suspects had left the residence, he got up from the floor to check
38 on everyone's status. Harden had nothing further regarding the incident. I ended the conversation
39 with Harden and continued to help Deputy Chavez with the scene. I escorted Forensic Technician
40 (ID Tech) Reidman #N886 through the residence while he collected evidence. After ID Tech
41 Reidman took photos and fingerprints, he left the location. I stayed at the scene until Deputy
42 Chavez' investigation was completed.

1 MH: No, um...like I said, I tried to offer some liquor, and she's like "aahh, I used to drink."
2 OZ: Yeah.
3 MH: ...and you know, she's j
4 OZ: Okay. All right. Uh, and then all of a sudden – roughly what time did this whole thing –
5 what were you guys doing? Hanging out in the front room, or something? Or...?
6 MH: We were watching a movie. It was just about to end. Um, it was like getting up to the
7 main wedding scene, or whatever. And, uh, Dennis gets the door, uh...
8 OZ: Okay. What – okay. Was the doorbell, was it knocking, was it...?
9 MH: Uh, damn. I can't recall if it was both, or if it's just a knock. But, uh, Dennis went to the
10 door like he went to greet somebody. Um...(police radio)...and, um, he just, he opened
11 it like nothing was going on. And, uh, I was sitting there on the, uh, recliner with, uh,
12 Patty next to me. Uh, and, uh, she was in the loveseat. And then Arian was on the left
13 of me, on the couch. And, uh, like I said, Dennis opened the door, and then...
14 OZ: So you don't know if it was a knock, it was "hello," it was, uh...?
15 MH: He came to the door, knocking, you could say. I'm pretty sure he knocked. He might of
16 rung as well. Um, the specifics are kind of leaving my mind at the moment.
17 OZ: Okay. All right. (dog barking) Okay. So he went up and answered the door. And then
18 what?
19 MH: We were watching TV. I look up. The guy has a silver revolver. Um, long nose. Uh...
20 OZ: And is this – are you talking about one of the bad guys?
21 MH: Yeah, yeah. He, he had...
22 OZ: Okay. Describe him first.
23 MH: Okay. (laugh) He was African-American. Uh, very, uh, dark skin.
24 OZ: How old?
25 MH: Anywhere from mid-twenties to late thirties, really. I couldn't really place him. I only
26 saw him for one moment. (police radio) He was the only one of the assailants that I
27 actually saw, and, uh...
28

1 OZ: Okay, dark skinned. Did he have facial hair and all that madness, or was it just
2 piercings? Tattoos on his neck, anything?
3 MH: Uh, I don't have any other type of physical description. He kind of looked like Charlie
4 Murphy, Eddie Murphy's brother.
5 OZ: Okay.
6 MH: The actor, the comedian.
7 OZ: Yes.
8 MH: He looked like that guy. You know, kind of rough looking.
9 OZ: Was he, did he have something over his head, uh...?
10 MH: He may have had some facial hair. Um, yeah. I don't remember it specifically designed
11 in any certain way. It wasn't a full beard. Uh...
12 OZ: So you definitely couldn't positively I.D. him if you seen him again?
13 MH: If you line him up with five guys that look just like him, no.
14 OZ: Right, but if I line him up with four other White guys...?
15 MH: (laugh) Oh, yeah. (laugh)
16 OZ: (laugh)
17 MH: Pretty close, yeah.
18 OZ: All right. So, really, you couldn't a hundred percent I.D. this guy?
19 MH: I only saw the man for...
20 OZ: Couple seconds.
21 MH: I don't know if you ever had a gun pull on you on that type of situation, but you react...
22 OZ: Yes, I have. (laugh)
23 MH: ...you react. I didn't have a firearm to defend myself.
24 OZ: Right, right.
25 MH: And, uh, we just complied.
26 OZ: Okay.
27 MH: He asked us to put our heads down. He had Dennis in a...
28

1 MH: I was going to use the word amateur.
2 OZ: Oh, amateur?
3 MH: I was thinking about situations when gunmen come in. You don't really want to be too
4 close with your firearm to the individuals you're trying to shoot.
5 OZ: Right.
6 MH: And he was not, um, following any of those types of, uh, strategies.
7 OZ: (unintelligible)
8 MH: He was very, uh, uh...I had my head down. But at one point he, he put the gun to
9 everybody's heads, you know, going on about how he was going to kill somebody.
10 "Where's the money?" (laugh) We're a bunch of fucking guys with, like, not great jobs.
11 You know what I mean? So we're just, like, "Take everything; leave us alone."
12 OZ: Mm-hm.
13 MH: And like I said, we just complied to everything that they said. Uh, heads down on the
14 ground. Right off the bat, walked in the door...
15 OZ: Describe the weapon for me.
16 MH: Uh, chrome or silver. Um, large caliber revolver. Um, not too familiar with weapons,
17 but it wasn't a, it wasn't a small weapon, by any means. It wasn't, like, as big as Dirty
18 Harry's revolver, but somewhere in between there.
19 OZ: Okay. It was all chrome. Did it have a different kind of handle?
20 MH: Couldn't see the handle.
21 OZ: It just looked all chrome. Like all silver or chrome.
22 MH: The barrel and the, uh, chamber, or whatever you guys call that, was all chrome.
23 OZ: Mm-hm.
24 MH: You could see the firing fucking head, or whatever you call it.
25 OZ: Yeah. Okay. So then he tells you to lay down on the ground, I'm assuming?
26 MH: We're all sitting on the couch. He tells the three of us to lay down, put our heads down.
27 OZ: And this is still on the living room? (unintelligible)
28

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CONTINUATION SHEET

Page Number:
5

1 PROPERTY STOLEN:

2
3 See attached stolen property report.

4 PROPERTY DAMAGED:

5
6
7 None.

8 EVIDENCE:

9
10
11 ITEM DESCRIPTION

12
13 01 Computer Disc recording of victim Estevez's interview. BARCODE 1079190
14 02 Computer Disc recording of victim Ibarra's interview. BARCODE 1079191

15
16 The above items were booked into evidence at the Moreno Valley Police Station.

17 DETAILS:

18
19
20 On Tuesday, 07/27/10, at 0041 hours, I responded to 24071 Stonebridge Ct., in the City of Moreno
2 Valley, reference a past robbery investigation. Upon arrival, I contacted the victim, Dennis Estevez, who
22 stated the following:

23
24 On 07/26/10, at about 2345 hours, Estevez was at his residence with his roommate (Arian Ibarra) and
25 friends (see supplemental reports by assisting deputies for interviews of friends). Estevez heard a knock
26 at the front door to the residence and opened the door. Estevez observed two black male adults standing
27 at the entryway to the front door. Estevez recognized the first black male adult (S-1) standing closest to
28 the door as an acquaintance of an old roommate, but Estevez did not know his name. Estevez's old
29 roommate was named Raphael (unknown last name) and went by the moniker "Stage". Estevez did not
30 know where Raphael had moved too. Estevez said S-1 had been to his residence about three times in
31 the past to visit Raphael and recalled S-1 stating he belonged to a neighborhood near Gentian Ave.

32
33 Estevez also observed a second black male adult (S-2) standing behind (S-1). Estevez said he had never
34 seen him before. Estevez observed (S-2) with a gun (silver plated semi-automatic handgun with
35 about a 4 in barrel) in his right hand. Both (S-1) and (S-2) pushed the door open and came inside the
36 residence. (S-2) grabbed Estevez, got behind him, and put him in a choke hold with his left arm. S-2
37 then held the gun to the right side of Estevez's head.

38
39 The suspects were yelling, "This is Blood and Piru" and "Give us your money, phones, wallets, and
40 electric shit." S-2 took the gun away from Estevez's head and ordered everyone else to the ground, but
41 allowed Estevez to remain standing. Estevez said he observed his friends lying on their stomachs on the
42 living room floor with the S-1 and S-2 going through their pockets. Estevez said he saw the suspects
43 grab phones and wallets from his friends pockets.

FILE NUMBER
MV102080010

CONTINUATION SHEET

Page Number:
6

1 S-1 and S-2 ordered Estevez to his bedroom and told him to give them everything. The suspects yelled,
2 "We want the money, give everything up. If we find something your not telling us; will kill you."
3 Estevez said they picked up his television fr
4 Estevez said the suspects went into to his roommate's (Ibarra) bedroom and rummaged through his
5 items.
6
7 Estevez was pushed back into the living room by S-1 and S-2. Estevez said he noticed three more
8 suspects (S-3, S-4, and S-5) in the living room going through his friends pockets. They were also yelling
9 "This is Piru and Mob."
10
11 Next, Estevez, Valdez, and Tyler Gonzales (see supplemental report for Gonzales's statement) were
12 ordered into the bathroom by the suspects. Estevez said the suspects closed the door and ordered them
13 to count to 100. Estevez said the door was opened by Marcus Harden (see supplemental report for
14 Harden's statement) about 10 minutes later. Estevez said he desires prosecution and would be able to
15 identify S-1, S-2, and S-4 if he saw them again.
16
17 I interviewed Arian Ibarra, and he gave the following statement:
18
19 On 07/26/10, at about 2345 hours, he was sitting on the sofa in the living room. Ibarra heard the door
20 knock and watched his roommate (Estevez) go to the door. Ibarra said Estevez opened the door and two
21 black males (S-1 and S-2) forced themselves into the residence. Ibarra watched S-2 grab Estevez and
22 put a gun to his head. S-2 then pointed the gun at Ibarra, and Ibarra stood up. S-1 yelled at Ibarra to get
23 on the floor and Ibarra complied.
24
25 Ibarra said S-1 and S-2 ordered everyone to lie down on the ground, and said, "No one try anything
26 stupid and do what we tell you." Ibarra said he lay down on his stomach on the ground. Ibarra said
27 S-1 and S-2 started going through everyone's pockets.
28
29 Ibarra said Estevez stayed standing because the suspects were ordering him from room to room. Ibarra
30 noticed three more suspects (S-3, S-4, and S-5) come into the residence through the front door. All three
31 were yelling, "Give us your shit. This is Piru." Ibarra observed S-3, S-4, and S-5 going room to room
32 grabbing items from dresser drawers, tables, and from the pockets of his friends.
33
34 After about 15 to 20 minutes, Ibarra was ordered into the bathroom with Estevez and Gonzales. Ibarra
35 said the suspects ordered them to count to 100. Ibarra's friend, Marcus Harden, (see supplemental report
36 for Harden's statement) opened the door after about 15 minutes. Ibarra said he desires prosecution and
37 can positively identify S-1 and S-2.
38
39 Ibarra and Estevez provided multiple items taken from the residence and provided the serial numbers for
40 a LG LCD television (003RMCJ6Q851) and a Sony Playstation (CL913983209). Both items were
41 entered into the system as stolen.
42
43 CASE STATUS: OPN/SUSP

MV102080010
Deputy J. Bodnar #3770

CONTINUATION SHEET

Page
Moreno Valley Police Department

EVIDENCE:

<u>Item:</u>	<u>Qty:</u>	<u>Description:</u>
(01)	(01)	Pawn slip from Valley Jewelry and loan.
(02)	(02)	Color Photograph of Craig White taken at Valley Jewelry and Loan.
(03)	(01)	Best Buy receipt for the Sony Playstation 3.
(04)	(01)	Photo lineup containing Craig White, signed by Dennis Estevez.
(05)	(01)	Photo lineup containing Craig White, signed by Adrian Ibarra.
(06)	(01)	Photo lineup containing Craig White, signed by Patricia Alvarado.
(07)	(01)	Surveillance video from Valley Jewelry and Loan.

The above-listed item was booked into an evidence locker at the Moreno Valley Police Department. The pawn slip containing the fingerprint was sent to CALD-ID for a latent comparison.

ATTACHMENTS:

- 01) Copy of Deputy Chavez' initial report.
- 02) Copy of Deputy Skiles supplemental report.
- 03) Copy of Deputy Zimolzak's supplemental report.
- 04) Copy of Deputy Cui's supplemental report.
- 05) Copy of pawn slip from Valley Jewelry and Loan.
- 06) Color Photograph of Craig White taken at Valley Jewelry and Loan.
- 07) Copy of Best Buy receipt depicting the Sony Playstation 3 serial number.

DETAILS:

On 07/28/10, approximately 0700 hours, I received a report of a home invasion robbery that occurred at 24071 Stonebridge Ct., in the city of Moreno Valley. Deputy Chavez conducted the primary investigation with the assistance of Deputies: Skiles, Cui and Zimolzak. I had the opportunity to read all the reports written regarding this incident and also spoke with all of the victims involved.

On 09/02/10, approximately 0800 hours, I was notified by an Office Assistant at the Moreno Valley Police Department while entering a Sony Playstation 3 into the NCIC/CLETS system from a pawn slip she received a message showing the Playstation 3 entered as "Stolen" on 07/27/10. I was given the original pawn slip from Valley Jewelry and Loan, located at 24525 Alessandro Blvd., Moreno Valley.

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Deputy J. Bodnar #3770

CONTINUATION SHEET

Page
Moreno Valley Police Department

1 The pawn slip showed Graia Keyon White pawned a black Sony Playstation 3 with 1
2 controller and cables. White provided his California Driver License (CA #D2351526) as
3 identification to the staff at Valley Jewelry and Loan. White placed his right thumbprint on the pawn
4 slip and also provided an address of 80 E. Dawes St. space 84, Perris California as his address.
5

6 I conducted a computer check of White and found he is on CDC Parole for 459 P.C.
7 (Burglary) and 212.5 P.C. (Home invasion robbery). I verified White's correct name was Craig
8 Keyon White by his California Driver License and by his parole record.
9

10 Due to the fact White matched the description of a suspect in the original home invasion
11 robbery, I created a six pack photographic lineup depicting White in position 6.
12

13 I called (VIC) Dennis Estevez and asked him to come to the Moreno Valley Police
14 Department to look at some photographs. Upon Estevez' arrival, I spoke to him alone in an interview
15 room. I read Estevez the photographic lineup admonishment and had him sign and date the form. I
16 then signed and dated the form.
17

18 I showed Estevez the lineup and he chose the photograph that depicted White in position
19 number six. I asked him to give me a value of his decision. Estevez told me he was %50 sure White
20 was the subject that entered the residence and committed the robbery. Estevez was grabbed
21 immediately after opening the door to the residence by the suspects and spun around to face away
22 from them. I had Estevez circle and initial the photograph he chose. I then wrote the percentage
23 Estevez gave me near White's photograph.
24

25 I then drove to (VIC) Adrian Ibarra's place of employment and spoke to him. I read Ibarra the
26 photographic lineup admonishment and had him sign and date the form. I then signed and dated the
27 form.
28

29 I showed Ibarra the lineup and after a short time he chose the photograph that depicted White
30 in position number six. I asked him to give me a value of his decision. Ibarra told me he was %50
31 sure White was the subject that entered the residence and committed the robbery. I had Ibarra circle
32 and initial the photograph he chose. I then wrote the percentage Ibarra gave me near White's
33 photograph.
34

35 Next, I drove to (VIC) Patricia Alvarado's place of employment and spoke to her. I read
36 Alvarado the photographic lineup admonishment and had her sign and date the form. I then signed
37 and dated the form.
38
39
40
41

MV102080010
Deputy J. Bodnar #3770

CONTINUATION SHEET

Page
Moreno Valley Police Department

1 I showed Alvarado the lineup ----- depicted White
2 in position number six. I asked her to give me a value of her decision. Alvarado told me he was %100
3 sure White was the subject that entered the residence and committed the robbery. I had Alvarado
4 circle and initial the photograph she chose. I then wrote the percentage Alvarado gave me near
5 White's photograph. While Alvarado was circling White's photograph she told me she did not like
6 looking at White's photograph because it reminded her of the night of the incident and made her heart
7 beat fast and did not make her feel well.

8
9 I Alvarado if there were and other distinguishing characteristics about the suspect she chose.
10 She told me the suspect had bad teeth. She explained his teeth as crooked. Alvarado said the person
11 she identified in the photographic lineup was the person that grabbed Estevez and put the gun to his
12 head and ordered Estevez around the residence.

13
14 Alvarado also explained that while she was lying on the floor face down, a suspect pulled her
15 sweatpants down past her knees. At that point she was only wearing a shirt and panties. Alvarado
16 looked back and saw White standing above her telling the other suspect, "No! Don't fuck with that."
17 Alvarado thought to herself she was going to be raped and killed.

18
19 Later that afternoon, Investigator Rodriguez and Deputy Murphy responded to Valley Jewelry
20 and Loan and met with Estevez. Estevez provided Deputy Murphy with a Best Buy receipt depicting
21 the serial number of the stolen Sony Playstation 3. Deputy Murphy took the receipt as evidence and
22 provided Estevez with a property receipt. Deputy Murphy also provided Estevez with the Sony
23 Playstation 3 from the pawn shop.

24
25 On 09/08/10, Investigator Rodriguez, Deputy Vasquez and I responded to the Dawes address
26 and contacted White as he was walking outside of the residence. White was detained in handcuffs and
27 transported to the Moreno Valley Police Department.

28
29 Deputy Vasquez and I spoke to White in an interview room. I read White his Miranda Rights
30 from my department issued card. White on stated he understood his rights. I asked White a few more
31 questions and he willingly answered questions implying he was waving his rights. The following is a
32 summary of White's statement.

33
34 White admitted to being a member of the Park Village Compton Crips. He also told me he has
35 tattoo's (PVCC) on his arms showing his affiliation with the Park Village Compton Crips. White said
36 he is not into gang activities anymore. However, if someone yells that they are from a gang to him, or
37 bangs on him, he will claim to be a member of Park Village Compton Crips.

MV102080010

Deputy J. Bodnar #3770

CONTINUATION SHEET

Page 2

Moreno Valley Police Department

1 ADDITIONAL STOLEN PROPER

2 See attached property sheet.

3
4 EVIDENCE:

5 <u>Item:</u>	6 <u>Qty:</u>	7 <u>Description:</u>
8 (01)	(02)	Color Photograph of Craig White taken at Valley Jewelry and Loan.
9 (02)	(01)	Best Buy receipt for the Sony Playstation 3.
10 (03)	(01)	Photo lineup containing Craig White, signed by Dennis Estevez.
11 (04)	(01)	Photo lineup containing Craig White, signed by Adrian Ibarra.
12 (05)	(01)	Photo lineup containing Craig White, signed by Patricia Alvarado.
13 (06)	(01)	Photo lineup containing Craig White, signed by Marcus Hardin.
14 (07)	(01)	Surveillance video from Valley Jewelry and Loan.
15 (08)	(01)	DVD containing interview with Craig White.
16 (09)	(01)	Photo lineup signed by Dennis Estevez.

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24
25 The above-listed items were booked into an evidence locker at the Moreno Valley Police
26 Department.

27
28 DETAILS:

29
30 On 07/28/10, approximately 0700 hours, I received a report of a home invasion robbery that
31 occurred at 24071 Stonebridge Ct., in the city of Moreno Valley. Deputy Chavez conducted the
32 primary investigation with the assistance of Deputies: Skiles, Cui and Zimolzak. I had the opportunity
33 to read all the reports written regarding this incident and also spoke with all of the victims.

34
35 On 08/25/10, I created a photo line-up containing random photographs of subjects matching
36 the physical description given of the suspect who had green eyes. I called Dennis Estevez and asked
37 him to come to the Moreno Valley Police Department to look at the photographic line-up.

38
39 Once Estevez was at the station, I read Estevez the photographic line-up admonishment.
40 Estevez said he understood the admonishment and signed and dated the form. I showed Estevez the
41 line-up I created and he was unable to identify anyone.

42

1 THE WITNESS: With Mr. Estevez, I did; I went over some
2 of his statements again.

3 There was just three people from the incident that I
4 was still unable to c

5 THE COURT: But according to your statement, Alvarado
6 ID'd the defendant and said he was the one with the gun.

7 THE WITNESS: Correct.

8 THE COURT: The other two were only 50 percent sure
9 that the defendant was there at all?

10 THE WITNESS: Yes, sir.

11 THE COURT: And neither one put him with the gun?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. All right. Nothing further.

14 Go ahead. You may be excused.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Any further evidence on behalf of the
17 People?

18 MR. KIM: No, your Honor.

19 THE COURT: Any affirmative defense?

20 MS. PETROVICH: No, your Honor.

21 THE COURT: All right. I would like to hear as to
22 several of the counts. Maybe the Defense wants to go first or
23 Prosecution want to go first?

24 MR. KIM: I'll reserve subject to rebuttal, but I will
25 let the Court know now, and Ms. Petrovich, I'm only going to be
26 asking for an attempt 211 on Counts 5 and 6.

27 THE COURT: Okay. Hold on.

28 All right. Counsel?

1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 08/25/10 INTERVIEW OF DENNIS ESTEVEZ
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 DE: DENNIS ESTEVEZ
9

10 **BEGIN TRANSMISSION**
11

12 JB: All right. Today is August 25th. I don't know what time it is, but...um, this is a
13 photographic show-up admonishment. I'll read it to you; then, I'll let you look over it,
14 and we'll sign and date it. In a moment, I'm going to show you a group of photographs.
15 This group of photographs may or may not contain a picture of the person who
16 committed the crime now being investigated. Keep in mind that hair styles, beards, and
17 mustaches may be easily changed. Also, photographs may not always depict the true
18 complexion of a person. It may be lighter or darker than shown in the photo. Pay no
19 attention to any markings or numbers that may appear on the photos, or any other
20 differences in the type or style of the photographs. When you have looked at all the
21 photos, tell me whether or not you see the person who committed the crime. Do not tell
22 other witnesses that you have or have not identified anyone. Understand?

23 DE: Yeah.

24 JB: I need you to sign and date.

25 DE: Today is August, what, 25th?

26 JB: 25th, yeah.

27 DE: That the Droid X, or...?
28

1 JB: Uh, Incredible.

2 DE: Incredible?

3 JB: Okay. Now, let's go through these one by one. I mean, it's a bunch of random photos,
4 so...Hello. Yeah. Hey, can you call me in about five minutes? I'm in the middle of an
5 interview. Yeah, he will. Okay? Yeah, it's about that, mm, those prints. We don't
6 (unintelligible). Okay? So just call me in about five, ten minutes. I'm a run in there. All
7 right. Thanks. Bye. Okay. (Unintelligible) through with these. It's the same one on
8 top – it's just, I have a paper clip.

9 DE: It's all the same pictures?

10 JB: Yeah, just – nobody? No?

11 DE: Mm-mm.

12 JB: Like I said, some may, may not be. Okay. This also helps me rule people out, you
13 know. We're done with these. Okay. Now, here's the last one. You already saw the
14 other ones. None of those? Okay. That's why I say it's, uh, it's easier just to, um....

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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/02/10 INTERVIEW OF ADRIAN IBARRA
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 AI: ADRIAN IBARRA
9

10 **BEGIN TRANSMISSION**
11

12 JB: Okay. In a moment, I'm going to show you a group of photographs. This group of
13 photographs may or may not contain a picture of the person who committed the crime
14 now being investigated. Keep in mind that hair styles, beards, and mustaches may be
15 easily changed. Also, photographs may not always depict the true complexion of a
16 person. It may be lighter or darker than shown in the photo. Pay no attention to any
17 markings or numbers that appear on the photos, or any other differences in the type or
18 style of the photographs. When you have looked at all the photos, tell me whether or
19 not you see the person who committed the crime. Do not tell other witnesses or people
20 whether or not you have identified anyone. Okay? Just have a look at these. Nobody?

21 AI: This guy looks closer, but I don't think it was him. The other guy looked older.

22 JB: In number -- the guy looks like him in number six?

23 AI: Yeah, but, the, the whole face structure, very similar. I mean, it's been over a month,
24 you know.

25 JB: Mm-hm.

26 AI: So, it's pretty hard for me to tell, but number six looks like he has that, you know, facial
27 features, but...
28

1 JB: On a scale of one to ten...
2 AI: ...the guy looks...
3 JB: ...on a scale of one to ten, ten being, like, absolutely sure, where would you put number
4 six?
5 AI: I'll give him a five.
6 JB: A five?
7 AI: Yeah, just because I know the other guy looks, the other guy looked older to me that
8 night.
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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/02/10 INTERVIEW OF DENNIS ESTEVEZ
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 DE: DENNIS ESTEVEZ
9

10 **BEGIN TRANSMISSION**
11

12 JB: Okay. This the same thing again. I want you to, uh, read this photo show-up
13 admonishment real quick up top there in English. Sign and date it when you're done.
14 It's the same one we did before.
15 DE: Today's the third?
16 JB: Second.
17 DE: That one, too?
18 JB: No, that's in Spanish.
19 DE: I put three instead of nine.
20 JB: All right. I'll change it. Three, huh? A couple months off. This time I only have one set
21 of photographs, but look at these and tell me what you think. I know some of them are
22 kinda dark, so just take your time and look at 'em.
23 DE: Un-unh.
24 JB: Okay. Is there anyone that looks similar, 'cause I see you – it kinda looks like you keep
25 paying attention to one photograph to me. You keep looking back at the one.
26 DE: Maybe this one with the du-rag. I don't remember braids, though.
27 JB: 'Cause somebody in the report mentioned something with, uh, braids.
28

1
WHITE, CRAIG RIF10004243

1 DE: Yeah. But the guy who had braids, he was, like, a stockier guy. Like I said, maybe with
2 the du-rag.

3 JB: If, if you were – that one you're pointing at – on a scale of, like, let's just say, like, zero
4 to ten, ten being positive, where would you put that picture?

5 DE: Five. Just 'cause I remember the, the braids, the du-rag.

6 JB: Who, who else, who else was the ones that saw the other guys?

7 DE: Me, Adrian, and my girlfriend.

8 JB: Okay. Do me a favor. Circle the one, that one you're 50% on, and just put your initials
9 by the circle.

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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/02/10 INTERVIEW OF PATRICIA ALVARADO
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 PA: PATRICIA ALVARADO
9 UF: UNIDENTIFIED FEMALE
10

11 **BEGIN TRANSMISSION**
12

13 JB: Yeah?
14 PA: Cool.
15 JB: Okay.
16 UF: (unintelligible)
17 PA: Yeah, no. It's just, like, uh. It's my stomach.
18 JB: Why, what's wrong with your stomach?
19 PA: Nothing.
20 UF: They put her on Xanax because of that incident. And I told her not to take it, though.
21 JB: Hm.
22 UF: (unintelligible)
23 JB: Yeah?
24 PA: (unintelligible) looking, like, uh, I think it's...this one.
25 JB: Okay. Circle and put your initials next to it. Circle the whole picture, and put your
26 initials next to it for me.
27 PA: (unintelligible)
28

1
WHITE, CRAIG RIF10004243

1 JB: Okay.

2 PA: (unintelligible)

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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/07/10 INTERVIEW OF DENNIS ESTEVEZ
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 DE: DENNIS ESTEVEZ
9

10 **BEGIN TRANSMISSION**
11

12 JB: Today is September 7th, 2000, uh, 2010. Time is 18:50 hours. Case number is
13 MV102080010. And could you state your name for me real quick?
14 DE: Dennis.
15 JB: What's your last...?
16 DE: Estevez.
17 JB: ...name?
18 DE: Estevez.
19 JB: I know I read to you one of these, uh, photographic admonishments a couple of times
20 already, but I gotta do it again, just to remind you. Okay? In a moment, I'm going to
21 show you a group of photographs. This group of photographs may or may not contain
22 a picture of the person who committed the crime now being investigated. Keep in mind
23 that hair styles, beards, and mustaches may be easily changed. Also, photographs
24 may not always depict the true complexion of a person. It may be lighter or darker than
25 shown in the photo. Pay no attention to any markings or numbers that may appear on
26 the photos, or any other differences in the type or style of the photographs. When you
27 have looked at all the photos, tell me whether or not you see the person who committed
28

1
WHITE, CRAIG RIF10004243

1 the crime. Do not tell other witnesses that you have or have not identified anyone.
2 So...let's have you sign this real quick. Go ahead and sign and date it.
3 DE: Is today the 7th?
4 JB: Yeah. Okay. Take a look at these photographs, and tell me if you recognize anybody
5 in those. None? Okay.
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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/07/10 INTERVIEW OF PATRICIA ALVARADO
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 PA: PATRICIA ALVARADO
9

10 **BEGIN TRANSMISSION**
11

12 JB: Okay. Today is September 7th. It's 18:45 hours. The file number is MV102080010.

13 And I am here with -- what's your name?

14 PA: Patricia Alvarado.

15 JB: Alvarado?

16 PA: Mm-hm.

17 JB: Okay. Read you this admonishment real quick, the same one I read you the other day
18 when I showed you those photographs. I'm going to have you sign and date it, and
19 then have you look at some pictures.

20 PA: Okay.

21 JB: In a moment, I'm going to show you a group of photographs. This group of
22 photographs may or may not contain a picture of the person who committed the crime
23 now being investigated. Keep in mind that hair styles, beards, and mustaches may be
24 easily changed. Also, photographs may not always depict the true complexion of a
25 person. It may be lighter or darker than shown in the photo. Pay no attention to any
26 markings or numbers that may appear on the photos, or any other differences in the
27 type or style of the photographs. When you have looked at all the photos, tell me
28

I
WHITE, CRAIG RIF10004243

1 whether or not you see the person who committed the crime. Do not tell other
2 witnesses that you have or have not identified anyone. Understand?
3 PA: Yes.
4 JB: Okay. Sign right there and date it real quick.
5 PA: Okay. Mm – what's the (unintelligible) now?
6 JB: 7th. 9-7.
7 PA: 9-7.
8 JB: On the bottom.
9 PA: Okay.
10 JB: Okay. Now, if any of these people in this photograph, photographic line-up, uh, look
11 like the person that you believe may have been there, go ahead and circle him, and
12 initial it.
13 PA: This one.
14 JB: Okay. And how sure are you on that guy?
15 PA: 85%.
16 JB: Like 85%?
17 PA: A hundred.
18 JB: Huh?
19 PA: To a hundred.
20 JB: So...
21 PA: It's like, 85 to a hundred.
22 JB: So, like, 80 to a hundred, okay. So 8 to 10. You're not a 100% positive, though, right?
23 PA: No.
24 JB: That's why I say if you're...
25 PA: (unintelligible)
26 JB: Like, the last time I asked you, if you're gonna to pick him on a scale of one to ten, you
27 have to pick a specific number, ten being positive, where would he be? Like, one being
28

1 nobody on here kind of deal, or ten being, "oh, it's actually 100% the guy," where would
2 he fall?

3 PA: He would fall under 8.

4 JB: Okay. It's like 80%. Okay.

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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/10/10 INTERVIEW OF MARCUS HARDEN
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 MH: MARCUS HARDEN
9

10 **BEGIN TRANSMISSION**
11

12 JB: Okay. Like I said, I'm Deputy Bodnar. I never met you, so...
13 MH: That's cool.
14 JB: ...what's your name?
15 MH: Marcus, Marcus Harden.
16 JB: Marcus, all right. Marcus, what's your date of birth, just for the recording?
17 MH: Uh, [REDACTED]
18 JB: Okay. Today is September, Friday, September 10, 2010. And it's 17:55 in the
19 afternoon. Hey, uh, I just called you down here so I can show you some photographs.
20 Um, you can take a look at 'em, see if there's anybody you think might have been
21 involved in the crime that night, the robbery. This is a photographic admonishment. I'm
22 gonna read it to you, then have you sign and date it if you understand it. Then I'll sign
23 and date it at the bottom. Okay?
24 MH: Cool.
25 JB: In a moment, I'm going to show you a group of photographs. This group of
26 photographs may or may not contain a picture of the person who committed the crime
27 now being investigated. Keep in mind that hair styles, beards, and mustaches may be
28

1
WHITE, CRAIG RIF10004243

1 easily changed. Also, photographs may not always depict the true complexion of a
2 person. It may be lighter or darker than shown in the photo. Pay no attention to any
3 markings or numbers that may appear on the photos, or any other differences in the
4 type or style of the photographs. When you have looked at all the photos, tell me
5 whether or not you see the person who committed the crime. Do not tell other
6 witnesses that you have or have not identified anyone.

7 MH: Okay.

8 JB: Okay? All right. Sign there. Date.

9 MH: Okay. 9-10?

10 JB: Mm-hm.

11 MH: Okay. Great.

12 JB: You go ahead and look at these photographs.

13 MH: I'm thinking number six.

14 JB: Okay.

15 MH: Yeah.

16 JB: If you think it's number six, go ahead and circle and initial that, and circle.

17 MH: Let me take another look at these guys.

18 JB: Okay. And then, just, uh, on a scale of one to ten – one being, like, not positive at all,
19 and ten being, like, 100%, what would you say that guy in number six is?

20 MH: Well...

21 JB: The photo's kind of dark, I know.

22 MH: Yeah, the photo's a little dark, but, uh, the face is very similar. Um, it looks like he has
23 similar facial hair. Um, he was wearing a head covering, so I couldn't say anything
24 about the hair, but I'm gonna go, uh, 7.5, 8.

25 JB: Like 80%?

26 MH: Yeah.

27 JB: Okay.

28

1 MH: Pretty sure.

2 JB: All right. That's fine.

3 MH: Yeah.

4 JB: And there's, uh, nobody else that you saw?

5 MH: Uh, not....

6 [recording ends]

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1 DEFENDANT: WHITE, CRAIG
2 CASE NUMBER: RIF10004243
3 MEDIA: 09/14/10 INTERVIEW OF ADRIAN IBARRA
4

5 LIST OF IDENTIFIABLE PERSONS ON TAPE:
6

7 JB: DEPUTY JONATHAN BODNAR
8 AI: ADRIAN IBARRA
9

10 **BEGIN TRANSMISSION**
11

12 JB: Today is September 14, 2010 at 14:00 hours. I'm here with Adrian Ibarra. All right,
13 Adrian. Same thing as last few times. In a moment, I'm going to show you a group of
14 photographs. This group of photographs may or may not contain a picture of the
15 person who committed the crime now being investigated. Keep in mind that hair styles,
16 beards, and mustaches may be easily changed. Also, photographs may not always
17 depict the true complexion of a person. It may be lighter or darker than shown in the
18 photo. Pay no attention to any markings or numbers that may appear on the photos, or
19 any other differences in the type or style of the photographs. When you have looked at
20 all the photos, tell me whether or not you see the person who committed the crime. Do
21 not tell other witnesses that you have or have not identified anyone. Sign it on that.

22 AI: None of these guys look like the guys that I saw.

23 JB: None of them look like the guys that you saw?

24 AI: No.
25
26
27
28

1
WHITE, CRAIG RIF10004243

1 PAUL E. ZELLERBACH
 2 District Attorney
 3 County of Riverside
 4 3960 Orange Street, First Floor
 5 Riverside, California 92501
 6 Telephone: (951) 955-5400
 7 Kimberly R. Dittrich, Deputy District Attorney
 8 State Bar No.: 254259

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE
 OCT 07 2011
[Signature]

RLH
 OCT 12 2011

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF RIVERSIDE

(Riverside)

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

NO. RIF10004243

12
 13 Plaintiff,

STIPULATION

14
 15 vs.

16
 17
 18
 19 CRAIG WHITE,

20 Defendant.
 21

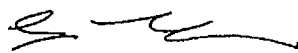
22
 23
 24 STIPULATION #3

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 26 People, defendant's attorney and the defendant agree, or stipulate, that People's exhibits
 27 marked 2, 3, 4, 5 contain a photo of the defendant, Craig White in position #6.

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 29 Dated: October 6, 2011

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 31
 32
 33 *[Signature]*
 34 KIMBERLY R. DITTRICH
 35 Deputy District Attorney
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LINDA PETROVICH
Attorney for defendant, Craig White

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 COUNTY OF RIVERSIDE
 OCT 07 2011
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 OCT 12 2011

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF RIVERSIDE

(Riverside)

11 THE PEOPLE OF THE STATE OF CALIFORNIA, NO. RIF10004243

12
 13 Plaintiff, STIPULATION

14
 15 vs.

16
 17
 18
 19 CRAIG WHITE,

20
 21 Defendant.

22
 23
 24 STIPULATION #4

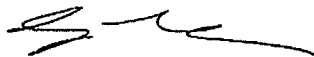
25
 26 People, defendant's attorney and the defendant agree, or stipulate, that picture in People's

27 8 was taken at Valley Jewelry and Loan on 08/16/2010 at the same time People's
 28 EO (the pawn slip) was created.

29
 30 Dated: October 6, 2011

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 KIMBERLY R. DITTRICH
 Deputy District Attorney

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LINDA PETROVICH
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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE
 OCT 11 2011

RLH
 OCT 14 2011

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF RIVERSIDE
 11 (Riverside)

12 THE PEOPLE OF THE STATE OF CALIFORNIA, NO. RIF10004243

13 Plaintiff, STIPULATION

14
 15 vs.

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 18
 19 CRAIG WHITE,

20 Defendant.
 21

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 24 STIPULATION #5

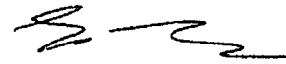
25
 26 People, defendant's attorney and the defendant agree, or stipulate, that the defendant's son
 27 was born on July 16, 2010 and was discharged from the hospital on July 27, 2010.

28 People, defendant's attorney and the defendant further agree, or stipulate, that the 911 call
 29 received into evidence as People's Exhibit # 51 was made on July 27, 2010 at 12:40 a.m.

30 Dated: October 11, 2011
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 35 KIMBERLY R. DITTRICH
 36 Deputy District Attorney

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE
 OCT 11 2011
La

RLH
 OCT 14 2011

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF RIVERSIDE
 11 (Riverside)

12 THE PEOPLE OF THE STATE OF CALIFORNIA, NO. RJF10004243

13 Plaintiff, STIPULATION

14 vs.

15 CRAIG WHITE,

16 Defendant.

17 STIPULATION #6

18 People, defendant's attorney and the defendant agree, or stipulate, that Debra Gonzales is
 19 unavailable, but if she had been available to testify in this matter, she would have stated the
 20 following:

21 On July 27, 2010 at approximately 12:05 a.m., she arrived at 24071 Stonebridge Court to
 22 drop off Tyler Gonzales and Jose Reyes. Tyler asked her to drive them to the residence to pick up
 23 a video game. She parked her vehicle right in front of the residence, and Tyler and Jose walked to
 24 the house. She waited in her Dodge Durango.

25 At approximately 12:15 a.m., she honked the horn because Tyler and Jose were taking too
 26 long. At 12:30 a.m., she walked to the house and knocked on the door. A white male adult opened
 27 the door, and she told him, "Tell Jose and Tyler to hurry up because I'm leaving." She
 28 immediately turned around, walked back to her vehicle, and drove home. She left Jose and Tyler
 29

1 because they were taking too long, and she thought they could walk home since it was a short
2 distance.

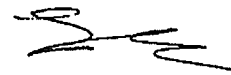
3 She noticed the lights at the residence were all turned off, except for the kitchen light. She
4 was unable to see anything in the house because it was too dark. The house did not appear
5 suspicious, and she didn't really look into the house because she was upset and wanted to go home.

6 Dated: October 11, 2011

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KIMBERLY R. DITTRICH
Deputy District Attorney



LINDA PETROVICH
Attorney for defendant, Craig White

APPENDIX Q



Riverside County Sheriff's Department

PHOTOGRAPHIC SHOW-UP ADMONISHMENT

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. Keep in mind that hairstyles, beards, and moustaches may be easily changed. Also, photographs may not always depict the true complexion of a person – it may be lighter or darker than shown in the photo. Pay no attention to any markings or numbers that may appear on the photos or any other differences in the type or style of the photographs. When you have looked at all the photos, tell me whether or not you see the person who committed the crime. Do not tell other witnesses that you have or have not identified anyone."

[Signature] 9-2-10
Signature Date

ADMONICION ACERCA DE FOTOGRAFIAS EXHIBIDAS

"En un momento le voy a mostrar un grupo de fotografias puede o no puede contener la imagen de la persona que cometio el crimen que ahora se esta investigando. Tenga en cuenta que estilos de la cabellera, barbas y bigotes pueden cambiarse facilmente. Tambien fotografias no muestran siempre el verdadero color de la piel de una persona- podria ser mas claro o mas oscuro de lo que se ve en la fotografia. No preste atencion se las fotografias muestran marcas o numeros o cualquier diferencia en tipo o estilo. Despues de haber mirado todas las fotografias, digame si Ud. ve o no ve a la persona que cometio el crimen. No diga a otros testigos si Ud. Ha identificado o no identificado a alguien."

Signature Date

[Signature] #3770 09/02/10
Person Investigating / ID Date

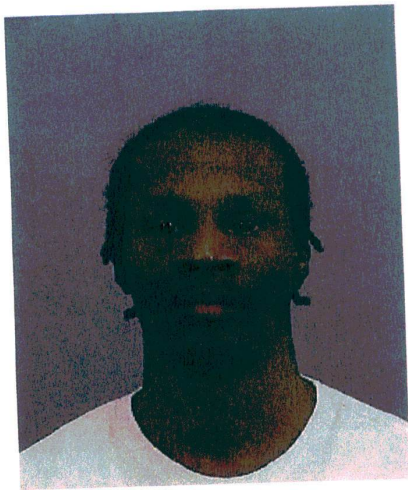


Photo 1



Photo 2



Photo 3

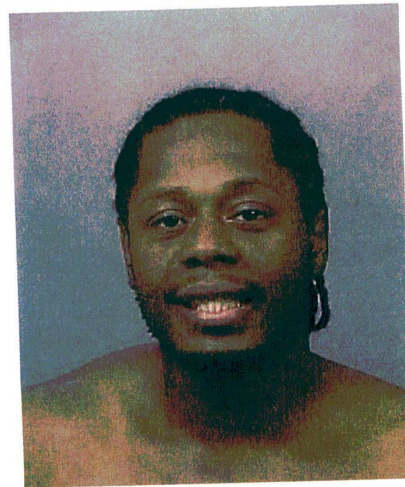


Photo 4



Photo 5

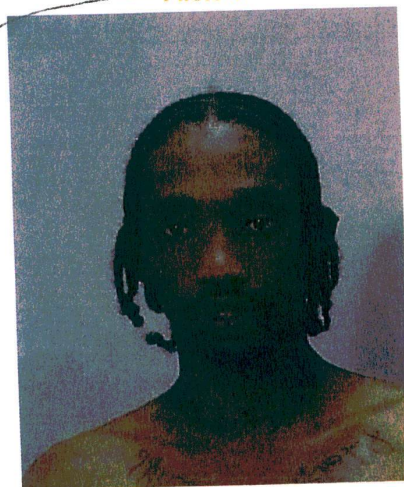


Photo 6

Case No: RIF 10004243
Date: OCT 05 2011
People/Plaintiff Exhibit No.: 2
☒ Marked for Identification
☒ Admitted
Sherri R. Carter, EXECUTIVE OFFICER
By E Anderson, Deputy



Riverside County Sheriff's Department

PHOTOGRAPHIC SHOW-UP ADMONISHMENT

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[Signature] 09-2-10
Signature Date

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Signature Date

[Signature] #3770 090210
Person Investigating / ID Date

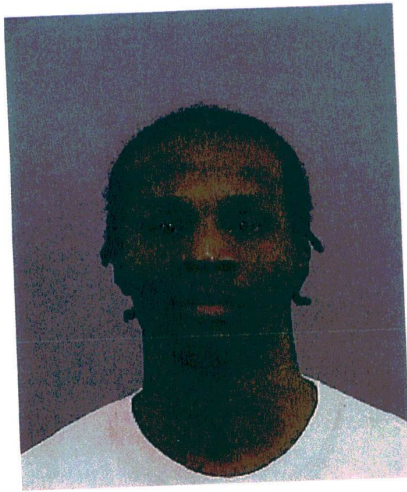


Photo 1



Photo 2



Photo 3



Photo 4

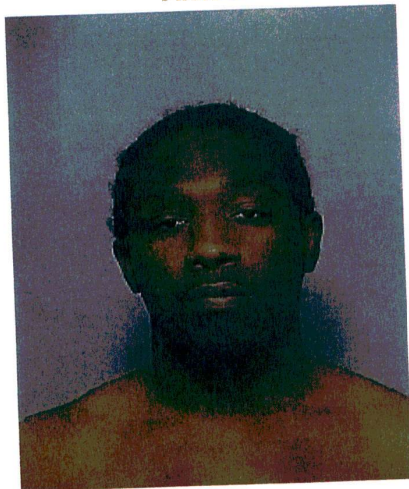


Photo 5



Photo 6

DE. 50/6

Case No: REF 10004243
Date: OCT 05 2011
People/~~Plaintiff~~ Exhibit No.: 3
☒ Marked for Identification
☒ Admitted
Sherri R. Carter, EXECUTIVE OFFICER
By: E Anderson, Deputy



Riverside County Sheriff's Department

PHOTOGRAPHIC SHOW-UP ADMONISHMENT

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X [Signature] 9/10/10
Signature Date

ADMONICION ACERCA DE FOTOGRAFIAS EXHIBIDAS

"En un momento le voy a mostrar un grupo de fotografias puede o no puede contener la imagen de la persona que cometio el crimen que ahora se esta investigando. Tenga en cuenta que estilos de la cabellera, barbas y bigotes pueden cambiarse facilmente. Tambien fotografias no muestran siempre el verdadero color de la piel de una persona- podria ser mas claro o mas oscuro de lo que se ve en la fotografia. No preste atencion se las fotografias muestran marcas o numeros o cualquier diferencia en tipo o estilo. Despues de haber mirado todas las fotografias, digame si Ud. ve o no ve a la persona que cometio el crimen. No diga a otros testigos si Ud. Ha identificado o no identificado a alguien."

Signature Date

X [Signature] 3770 09/10/10
Person Investigating / ID Date
1755

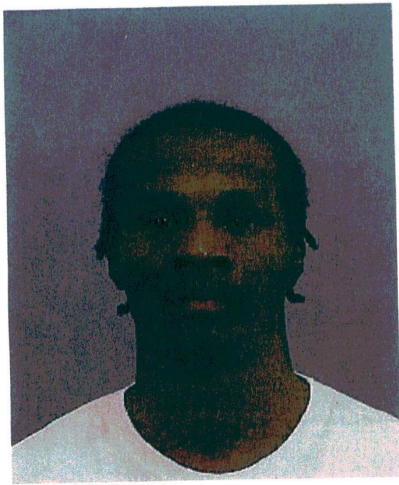


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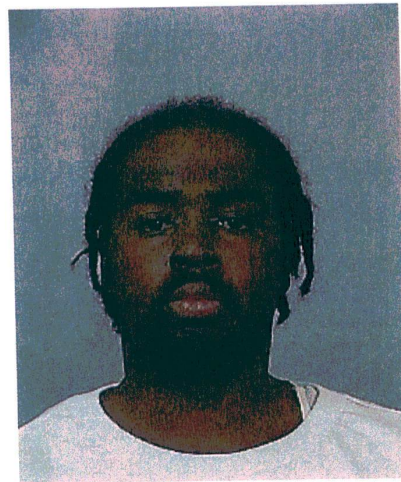


Photo 2

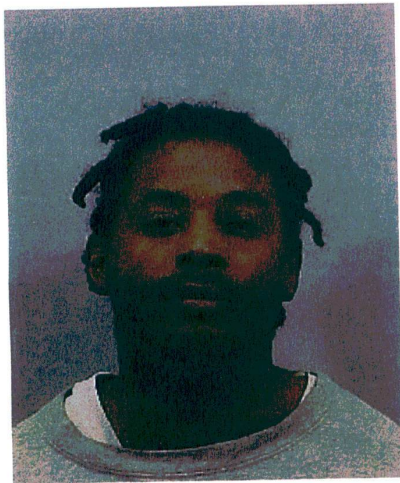


Photo 3



Photo 4

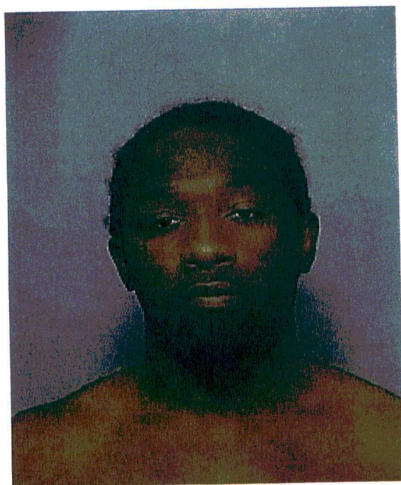


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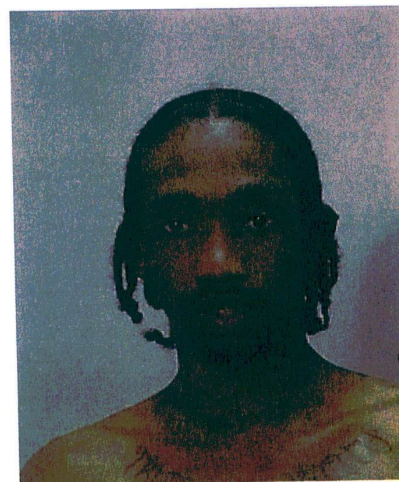


Photo 6

MRH

Case No: RIF 10004243
Date: OCT 05 2011
People/Plaintiff Exhibit No.: 4
☒ Marked for Identification
☒ Admitted
Sherri R. Carter, EXECUTIVE OFFICER
By K Anderson, Deputy



Riverside County Sheriff's Department

PHOTOGRAPHIC SHOW-UP ADMONISHMENT

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[Signature] 9/2/10
Signature Date

ADMONICION ACERCA DE FOTOGRAFIAS EXHIBIDAS

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Signature Date

1. BmD #3770 09/02/10
Person Investigating / ID Date

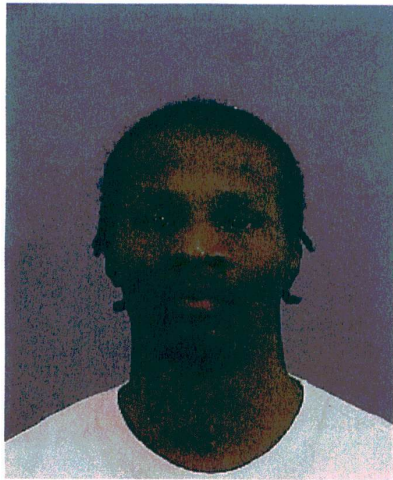


Photo 1

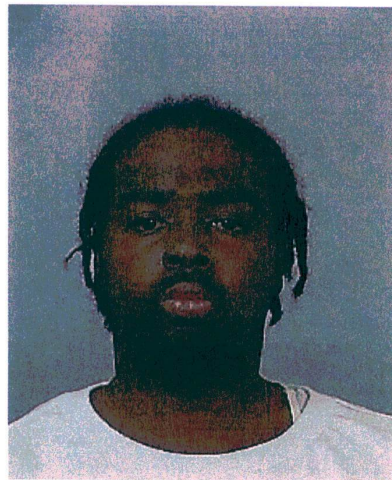


Photo 2



Photo 3



Photo 4

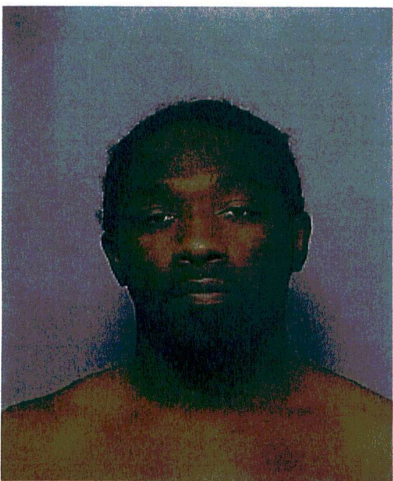


Photo 5

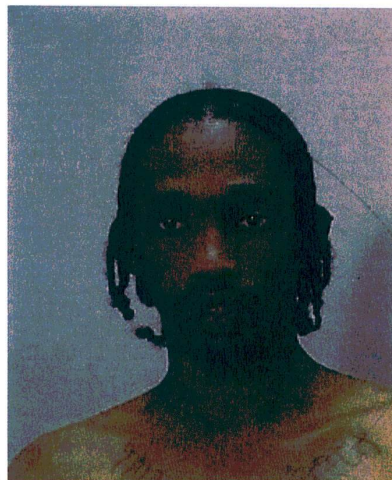


Photo 6

[Handwritten signature]

Case No: RF 10004243
Date: OCT 05 2011
People/~~Plaintiff~~ Exhibit No.: 5
☒ Marked for Identification
☒ Admitted
Sherri R. Carter, EXECUTIVE OFFICER
By E Anderson, Deputy