

No. _____

In the
Supreme Court of the United States

IN RE DAVID CHARLES THATCHER,
Petitioner.

APPENDIX VOL. 2

ANDREA RENEE ST. JULIAN
Counsel of Record
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San Diego, California 92130
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arstjulian@icloud.com

Counsel for Petitioner, David Charles Thatcher

Question received from the jury during deliberations on 11-8-01

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

FILED
TULARE COUNTY
SUPERIOR COURT

NOV 08 2001

LARAYNE CLEEK, CLERK
BY: *[Signature]*

WE, THE JURY, REQUEST THE FOLLOWING INFORMATION:

Count #2 It states:
WE, the jury, find the defendant
_____ as charged in Count 8
I believe it should say Count 2
[Signature]

Date: 11-8-01

Time: 3:52

0 239

TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

FILED
TULARE COUNTY
SUPERIOR COURT

NOV 08 2001

LARAYNE CLEEK, CLERK
BY: [Signature]

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
DAVID CHARLES THATCHER,)
)
)
Defendant(s).)
_____)

CRT. NO. 01-77196

VERDICT

VISALIA, CALIFORNIA

COUNT 1

We, the Jury, find the defendant Guilty as charged in Count 1
Guilty/Not Guilty
of the Information, of SECOND DEGREE ROBBERY(VICTIM: F.O.; DATE: 6/18/01), in
violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that
True/Not True
defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

DATED: 11-8-01

[Signature]
Foreperson

0 240

TULARE COUNTY SUPERIOR COURTS

STATE OF CALIFORNIA, VISALIA DIVISION

NOV 08 2001

LARAYNE CLEEK, CLERK
BY: 

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
DAVID CHARLES THATCHER,)
)
)
Defendant(s).)
_____)

CRT. NO. 01-77196

VERDICT

VISALIA, CALIFORNIA

COUNT 2

We, the Jury, find the defendant Guilty as charged in Count **2**
Guilty/Not Guilty
of the Information, of SECOND DEGREE ROBBERY (VICTIM: D.L.; DATE: 6/27/01), in
violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that
True/Not True
defendant personally used a deadly and dangerous weapon, to wit: KNIFE, said use not being an
element of the above offense, within the meaning of Penal Code section 12022(b)(1) and
causing the above offense to be a serious felony within the meaning of Penal Code section
1192.7(c)(23).

DATED: 11-8-01


Foreperson

0 241

TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

FILED
TULARE COUNTY
SUPERIOR COURT

NOV 08 2001

LARAYNE CLEEK, CLERK
BY: [Signature]

THE PEOPLE OF THE STATE OF CALIFORNIA,) CRT. NO. 01-77196
)
Plaintiff,)
)
vs.) VERDICT
)
DAVID CHARLES THATCHER,) VISALIA, CALIFORNIA
)
)
Defendant(s).)
_____)

COUNT 3

We, the Jury, find the defendant Guilty as charged in Count 3
Guilty/Not Guilty
of the Information, of SECOND DEGREE ROBBERY (VICTIM: M.A.; DATE: 6/30/01), in
violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that
True/Not True
defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

DATED: 11-8-01

[Signature]
Foreperson

0 242

TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

NOV 08 2001

LARAYNE CLEEK, CLERK
BY: *[Signature]*

THE PEOPLE OF THE STATE OF CALIFORNIA,) CRT. NO. 01-77196
)
Plaintiff,)
)
vs.) VERDICT
)
DAVID CHARLES THATCHER,) VISALIA, CALIFORNIA
)
)
Defendant(s).)
_____)

COUNT 4

We, the Jury, find the defendant Guilty as charged in Count 4
Guilty/Not Guilty
of the Information, of SECOND DEGREE ROBBERY (VICTIM: D.V.; DATE: 6/30/01), in
violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that
True/Not True
defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

DATED: 11-8-01

[Signature]
Foreperson

0 243

TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

FILED
TULARE COUNTY
SUPERIOR COURT

NOV 08 2001

LARRYNE CLECK, CLERK
BY: *[Signature]*

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
vs.)
DAVID CHARLES THATCHER,)
Defendant(s).)
_____)

CRT. NO. 01-77196
VERDICT
VISALIA, CALIFORNIA

COUNT 5

We, the Jury, find the defendant *Guilty* as charged in Count 5
Guilty/Not Guilty
of the Information, of GRAND THEFT FIREARM (VICTIM: M.A.; DATE: 6/30/01), in
violation of Penal Code section 487(d).

DATED: 11-8-01

[Signature]
Foreperson

0 244

1

Counsel for Plaintiffs: Melinda Aiello, Deputy District Attorney

Counsel for Defendant: Paul Storey

10:40 a.m. Court in session. All parties present and ready to proceed. Jury present and seated in the jury box.
Counsel for Defense rested.

11:15 a.m. Court in recess.

Opening closing argument by Counsel for the People.

12:10 p.m. Court in recess.

Defense Counsel resumed closing argument.

(continued on page two)

2:11 p.m. Sidebar conference held.

2:16 p.m. Proceedings concluded.

Counsel for the People resumed closing argument.

Concluding jury instructions read by the court.

2:37 p.m. Jury excused to commence deliberations.

People's exhibit #20a, modified version of People's exhibit #20, marked and received.

People's exhibit #14a, modified version of People's #14, marked and received.

3:15 p.m. Jury in recess.

3:25 p.m. Jury present in jury room and resumed deliberations.

4:23 p.m. Court in session. All parties present and ready to proceed.

OUTSIDE THE PRESENCE OF THE JURY:

Comments by Court regarding question received from the jury.

Defendant waived right to jury trial on priors if convicted. Counsel for the People waived jury trial on priors.

Court finds a knowing and intelligent oral waiver of rights.

Proceedings concluded.

4:30 p.m. Jury now present and seated in the jury box.

Jury foreperson stated that verdicts have been reached.

Verdicts read and verified as follows:

VERDICT

VISALIA, CALIFORNIA

COUNT 1;

We, the Jury find the defendant GUILTY as charged in Count 1 of the Information, of SECOND DEGREE ROBBERY (VICTIM: F.O.; DATE: 6/18/01), in violation of Penal Code section 211.

COUNT 1 continued:

We, the Jury, further find to be TRUE the special allegation that defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

Dated: November 8, 2001

/s/Foreperson

VERDICT

VISALIA, CALIFORNIA

COUNT 2:

We, the Jury, find the defendant GUILTY as charged in Count 2 of the Information, of SECOND DEGREE ROBBERY (VICTIM: D.L.; DATE: 6/27/01), in violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that defendant personally used a deadly and dangerous weapon, to wit: KNIFE, said use not being an element of the above offense, within the meaning of Penal Code section 12022(b)(1) and causing the above offense to be a serious felony within the meaning of Penal Code section 1192.7(c)(23).

Dated: November 8, 2001

/s/Foreperson

VERDICT

VISALIA, CALIFORNIA

COUNT 3:

We, the Jury, find the defendant GUILTY as charged in Count 3 of the Information, of SECOND DEGREE ROBBERY (VICTIM: M.A.; DATE: 6/30/01), in violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

Dated: November 8, 2001

/s/Foreperson

VERDICT

VISALIA, CALIFORNIA

COUNT 4:

We, the Jury, find the defendant GUILTY as charged in Count 4 of the Information, of SECOND DEGREE ROBBERY (VICTIM: D.V.; DATE: 6/30/01), in violation of Penal Code section 211.

We, the Jury, further find to be TRUE the special allegation that defendant personally used a firearm within the meaning of Penal Code section 12022.53(b).

Dated: November 8, 2001

/s/Foreperson

0 247

VERDICT

VISALIA, CALIFORNIA

COUNT 5:

We, the Jury, find the defendant GUILTY as charged in Count 5 of the Information, of GRAND THEFT FIREARM (VICTIM: M.A.; DATE: 6/30/01), in violation of Penal Code section 487(d).

Dated: November 8, 2001

/s/Foreperson

Jury polled pursuant to request of Defense Counsel.

Jury thanked and excused.

COURT TRIAL ON PRIORS:

People's exhibit #21, 969b Packet, marked and received.

Both counsel submit.

FINDINGS AND ORDERS:

Court finds priors alleged in the Information TRUE beyond a reasonable doubt as to Counts 1, 8, 13, 14 and 15 as follows:

Special Allegation -- Three Strikes pursuant to Penal Code Section 1170.12(c)(2)(a):

CONVICTION DATE	COURT	COUNTY	CASE#	CHARGE
01/15/98	SUPERIOR	TULARE	CR37306	PC211
01/15/98	SUPERIOR	TULARE	CR37306	PC211

SPECIAL ALLEGATION pursuant to Penal Code Section 667.5(b):

CONVICTION DATE	COURT	COUNTY	CASE#	CHARGE
01/15/98	SUPERIOR	TULARE	CR37306	PC211
01/15/98	SUPERIOR	TULARE	CR37306	PC211

SPECIAL ALLEGATION pursuant to Penal Code Section 667(a)(1):

COURT CASE	CODE/ STATUTE	CONVIC. DATE	COUNTY	STATE	COURT TYPE
CR37306	PC211	01/15/98	TULARE	CA	SUPERIOR
CR37306	PC211	01/15/98	TULARE	CA	SUPERIOR

Matter referred to Probation for report and recommendation.

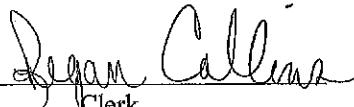
0 248

Matter set for JUDGMENT PROCEEDINGS on December 4, 2001 at 8:30 a.m. Dept. 4.

Defendant ordered back on that date.

Defendant remanded without bail.

4:50 p.m. Court adjourned.


Clerk

ORIGINAL

IN AND FOR THE COUNTY OF TULARE

NOV 30 2001

LARAYNE CLEEK, CLERK
BY: C. D. Hutchins

The People of the State of California

Plaintiff

Court Number: 01-77196

vs

Hearing Date: 12-4-2001

DAVID CHARLES THATCHER

**REPORT AND RECOMMENDATION
OF THE PROBATION OFFICER**

Defendant

P.O. No: PA-294164

JUDGE: Gerald F. Sevier

CID: B4403085

Department: Visalia Division, Dept. #4

SO ID No: 258795

Attorney: Paul Storey

CII No: A10409711

Address: 225 No. "M" St., Tulare, CA 93274

FBI No: 608017FB2

FAX: 686-4222

SS No:

CDC No: K81267

Defendant's Last Address:

Visalia, CA

Phone No:

DOB: 80

Age: 21

Birthplace: Visalia, CA

Marital Status: Single

Citizenship: United States

Spouse: None

Race/Nationality: Cauc Height: 5'10" Weight: 185 Hair: Brown Eyes: Blue

CUSTODY STATUS: In Custody

COURT PROCEEDINGS:

<u>Case #</u>	<u>Plea Date</u>	<u>Ct</u>	<u>Offense</u>	<u>Action</u>	<u>Indicated Sentence</u>
01-77196	11-9-01	1	F, 211 PC-2nd Deg	Jury Conviction	None indicated
			SA 1170.12(c)(2)(A) PC		
			SA 12022.53(b) PC		
			SA 667(a)(1) PC		
			SA 667.5(b) PC		

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

<u>Case #</u>	<u>Plea Date</u>	<u>Ct</u>	<u>Offense</u>	<u>Action</u>	<u>Indicated Sentence</u>
01-77196	11-9-01	2	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022(b)(1) PC SA 667(a)(1) PC SA 667.5(b) PC	Jury Conviction	None indicated
		3	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022.53(b) PC SA 667(a)(1) PC SA 667.5(b) PC	Jury Conviction	None indicated
		4	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022.53(b) PC SA 667(a)(1) PC SA 667.5(b) PC	Jury Conviction	None indicated
		5	F, 487(d) PC SA 1170.12(c)(2)(A) PC SA 667(a)(1) PC SA 667.5(b) PC	Jury Conviction	None indicated

15 BRIEF SUMMARY OF FACTS:

16 On June 18, 2001, the defendant robbed F.O. of personal property at gunpoint. On June 27, 2001,
17 the defendant robbed B&C Recycling and D.L. of personal property at knifepoint. On June 30, 2001, the
18 defendant robbed USA Market and M.A. at gunpoint and stole a firearm. The defendant also robbed D.V.
19 at gunpoint on June 30, 2001.

20 OFFENSE:

21 According to reports of the Visalia Police Department, on June 18, 2001, at approximately 3:45
22 p.m., officers were dispatched to a recycling trailer on North Dinuba Boulevard regarding an armed
23 robbery. Upon arrival, contact was made with the Spanish speaking victim, F.O. He indicated a subject,
24 later identified as the defendant, approached him and pulled a small black handgun from the waistband of
25 his pants. F.O. stated the defendant ordered him to enter the recycling trailer and open the cash drawer.
26 F.O. advised he did so, however, there was no money in the drawer and, when the defendant saw there was
27

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 no money, removed F.O.'s wallet from his pants. F.O. indicated the defendant then fled the scene on foot.
4 The victim reported his black wallet was worth about \$5, however, contained \$235 cash.

5 On June 27, 2001, at approximately 3:00 p.m., reports of the Visalia Police Department indicate an
6 officer was dispatched to the same recycling trailer on North Dinuba Boulevard where the robbery
7 occurred on June 18, 2001. It was reported the trailer had once again been robbed, this time at knifepoint.
8 Upon arrival, contact was made with the employee, D.L. He advised he was approached by a subject
9 holding a knife, later identified as the defendant. D.L. indicated the defendant began yelling at him in
10 English, which he did not understand. However, a second subject accompanying the defendant, later
11 identified as Leo Palafox, yelled at the victim in Spanish, ordering him to get on the ground. D.L. stated
12 that as he was lying on the floor of the trailer, the defendant removed his wallet from his pants pocket. The
13 victim further indicated the defendant took money from the cash drawer of the recycling trailer. D.L.
14 advised \$103 cash was stolen from B&C Recycling. The victim reported his wallet contained \$40 cash.

15 Reports of the Tulare County Sheriff's Department indicate that on June 30, 2001, deputies were
16 dispatched to the USA Market in Goshen, regarding an armed robbery in progress. En route, deputies
17 were advised two subjects, later identified as the defendant and Palafox, were robbing the clerk at gunpoint.
18 At approximately 2:39 p.m., deputies arrived on the scene and contacted the store clerk, M.A. He stated
19 he and his 10 year old brother were inside the family business when he observed a subject, later identified as
20 the defendant, standing by the pay phone in the parking lot. M.A. also identified a second subject with the
21 defendant, Leo Palafox. The victim advised he waited on customers in the market and, when the last one
22 left, began cleaning the counter area. At that time, M.A. reported the defendant and Palafox entered the
23 store and pulled bandanas over their faces. The victim stated Palafox then produced a firearm, pointed it at
24 him and ordered him to open the cash register. As he did so, M.A. advised the defendant entered the store,
25 came up behind him and held a gun to his head. The victim reported the defendant ordered him to lay
26 down on the floor and, when he did so, Palafox placed his foot on the victim's neck. The defendant then
27

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 removed \$1,600 from the cash register.

4 The victim stated Palafox then demanded the victim give him the surveillance video tape. M.A.
5 advised he pretended to act as though he did not know what Palafox was talking about, however, Palafox
6 stated, "Don't fucking play stupid with me. If you don't tell me, I'll blow your brains all over the store."
7 The victim then removed the video tape from a VCR and gave it to Palafox. M.A. advised Palafox began
8 looking through the store and took a box containing 26 cartons of cigarettes. Palafox then returned to the
9 victim and ordered him to remove all his jewelry. M.A. reported he gave Palafox his gold and diamond
10 wedding ring and a watch. In addition, M.A. reported Palafox took his wallet from his pants pocket, which
11 contained \$740 cash.

12 As the robbery was occurring, M.A. stated a customer, identified as D.V., entered the store. M.A.
13 reported he heard the defendant and Palafox yell at D.V., but was not able to see what was happening. A
14 short time later, M.A. stated he heard the defendant and Palafox went out of the store, at which point he
15 contacted police. M.A. stated that in addition to the money from the cash register, the box of cigarettes
16 and his personal property, Palafox and the defendant also stolen a .380 caliber semi-automatic handgun.

17 Contact was made with M.A.'s younger brother. He stated he observed the two subjects standing by
18 the pay telephone in a parking lot. When the last customer left the store, he indicated he saw the two
19 subjects enter the store, pull masks over their faces and produce firearms. He stated he immediately ran out
20 of the store, to his adjacent residence and called 9-1-1.

21 Contact was made with D.V. He stated he stopped at the USA Market, saw nothing unusual and
22 entered the store, leaving his girlfriend and two year old son waiting in the car. D.V. advised as he entered
23 the market, he saw two unknown subjects with bandanas over their faces, each armed with a firearm. D.V.
24 indicated he heard someone threaten to kill the store clerk. At that time, D.V. indicated he was observed
25 by the subjects and ordered to lay down on the floor. D.V. advised the subjects demanded he give them his
26 money, at which time he produced \$29 cash and gave it to one of the subjects. Shortly thereafter, D.V.
27

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 indicated the subjects ran out of the store and he went outside to check the welfare of his family. Officers
4 spoke with D.V.'s girlfriend, who confirmed seeing two subjects with bandanas over their faces run out of
5 the market carrying firearms.

6 As officers continued to investigate these and other robberies, they became convinced all the crimes
7 were committed by the same group of individuals. At some point, contact was made with Freddie Patino,
8 whose vehicle was used as a getaway car in some of the robberies. Patino admitted participation in three
9 robberies, one of which occurred on June 18, 2001. Patino stated that in that robbery, he drove two
10 friends, identified as the defendant and Palafox, to the recycling trailer on North Dinuba Boulevard. Patino
11 reported he knew the defendant was planning to rob the trailer at gunpoint and, after the crime occurred,
12 admitted driving the defendant and Palafox to a nearby residence. Photographic lineups containing the
13 defendant's picture were shown to victims F.O. and D.L., however, both were unable to absolutely identify
14 the defendant as the person who had robbed them. A live lineup was conducted on July 11, 2001. F.O.
15 was unable to positively identify anyone. However, D.L. stated the defendant, "looks the most like the
16 person."

17 The defendant was taken into custody on July 8, 2001, after officers received information he was
18 hiding in an apartment in North Visalia. Visalia police officers and parole agents contacted the defendant
19 and, after some negotiation, the defendant exited the residence and was taken into custody by his parole
20 agent.

21 The defendant was interviewed at the Visalia Police Department. He stated he was using
22 methamphetamine, but denied any involvement in any of the robberies. He acknowledged knowing Palafox
23 and Patino, but refused to say he committed any crimes with them. He denied ever owning or possessing a
24 firearm, but reported he did have a small knife, of which he had already disposed. However, at one point,
25 the defendant asked who had "snitched" on him.
26
27

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 **DEFENDANT'S STATEMENT:**

4 The defendant was interviewed at the Bob Wiley Detention Facility on November 27, 2001. He had
5 no comment regarding the offense, other than to say he plans to appeal his conviction.

6 **VICTIM'S INFORMATION:**

7 The victim of the robbery on June 18, 2001, F.O., reported his wallet, valued at \$5, was stolen by
8 the defendant. In addition, F.O. advised he had \$235 cash in his wallet. It is recommended \$240
9 restitution be paid to F.O.

10 The employee of B&C Recycling who was robbed by the defendant on June 27, 2001, indicated
11 \$103 cash was stolen from the recycling company. In addition, the victim's wallet, containing \$40 cash,
12 was stolen from his person. It is recommended \$103 restitution be paid to B&C Recycling and \$40
13 restitution be paid to D.L.

14 Attempts were made to reach M.A., the store clerk at USA Market, with unsuccessful results.
15 Should M.A. contact Probation prior to the defendant's sentencing, his statement will be provided to the
16 Court in a separate memorandum. According to the Sheriff's Department report, M.A. stated \$1,600 cash
17 was stolen from the register of USA Market. In addition, a box containing 26 cartons of cigarettes was
18 also stolen. The cigarettes were valued at \$608.75. A .380 caliber semi-automatic handgun was also
19 stolen from the store. The gun was valued at \$300. It is recommended a total of \$2,508.75 in restitution
20 be paid to USA Market. M.A. was also robbed of personal property. These items consisted of a wallet
21 containing \$740 cash, a gold and diamond wedding ring, valued at \$800, and a \$50 men's watch. It is
22 recommended a total of \$1,590 restitution be paid to victim M.A.

23 Sheriff's reports also indicate victim D.V. was robbed of \$29. It is recommended restitution in that
24 amount be paid to D.V.
25
26
27

REPORT OF THE PROBATION OFFICER
DAVID CHARLES THATCHER

PRIOR RECORD:

JUVENILE

<u>DATE</u>	<u>DEPARTMENT</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
12-30-87	Visalia PD	Petty theft	Handled informally
7-20-89	Visalia PD	Battery	Counseled & released
9-11-89	Visalia PD	Petty theft	Counseled & released
10-1-90	Visalia PD	Battery of school employee	6 mos informal prob
5-17-94	Tul Co Juv Crt	Poss deadly weapon	Infml prob; review 10-20-94
11-28-94	Tul Co Juv Crt	Viol of Prob	Prob; Grp Hm; 3-16-95: Minor absconded prior to placement
4-20-95	Tul Co Juv Crt	Vandalism; Poss deadly weapon; false info to Peace Off; Viol of Prob	Prob; Grp Home
5-22-96	Tul Co Juv Crt	Poss deadly weapon; Viol of Prob	Dispo transfer to Monterey Co.
Pet filed	Tul Co Juv Crt	1 st Deg Residential robbery w/SA; 1 st deg residential Robbery w/SA; 1 st deg residential robbery w/SA; 1 st deg residential robbery w/SA	9-9-97: 707(c) W&I petition filed 11-26-97: Minor found unfit for Juv Crt; 1-9-98: Juv prob term'd unsatisfactory

ADULT

1-9-98	Visalia SC#CR-37306	F, 211 PC-1st deg w/SA 12022(a)(1) PC; F, 211 PC-2nd deg w/SA 12022(a)(1) PC	6 years state prison
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Circumstances of the above robbery convictions involved the defendant robbing a victim in the victim's residence at gunpoint; and robbing a video store clerk at gunpoint. The crimes were committed three days apart. During the robbery in the residence the defendant was armed with a shotgun, which he used to strike the victim on the face. The victim received lacerations on his nose. During the video store robbery the defendant was armed with a .22 caliber rifle.

3-30-01	CDC Parole	Parole Viol	Return to custody
	CDC Parole	Parole Viol	Pending

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 **DRUG /ALCOHOL FACTORS:**

4 The defendant reported he used "everything," indicating many controlled substances. He advised he
5 was released from state prison on parole about one month prior to his arrest. During that time, he
6 described his lifestyle as, "just partying."

7 **PERSONAL HISTORY:**

8 The defendant has no contact with his father, Gary Thatcher. He maintains contact with his mother,
9 Cindy Ravenscroft, who resides in Marysville, California. The defendant has one older sister, who also
10 lives in Marysville.

11 The defendant is single, having never been legally married nor fathered any children. He reported he
12 is engaged to be married, but those plans are currently on hold. The defendant claimed to be in good
13 physical and mental health. He advised he obtained his GED in 2000, while incarcerated in state prison.

14 **RESIDENCE:**

15 The defendant stated he was paroled to his step-mother's residence in Visalia. He indicated he lived
16 at that residence for about one month prior to his arrest. The defendant claimed to be a lifetime resident of
17 Tulare County.

18 **EMPLOYMENT HISTORY:**

19 The defendant reported he was employed by Tulare County Recycling for about one month prior to
20 his arrest. He advised he earned minimum wage.

21 **FINANCIAL STATUS:**

22 As his only personal liabilities, the defendant claimed to owe about \$850 for back phone bills and
23 \$200 for medical expenses. He claimed no assets.

24 **COLLATERAL INFORMATION:**

25 Contact was made with the defendant's Parole Agent, Gary Paden. He reported the defendant was
26 initially released from custody, on parole, on February 6, 2001. Agent Paden advised the defendant was
27 employed for only about one week. He confirmed the defendant was employed by a recycling company and

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 stated he believes the defendant later returned and robbed his former employer. During the defendant's period
4 of parole, Agent Paden advised the defendant was unstable, did not maintain regular employment and was not
5 living where he was supposed to be living. Agent Paden indicated he spent the majority of his time tracking
6 down and arresting the defendant, rather than supervising him normally. Agent Paden reported the defendant
7 maintains white supremacist, "skinhead" gang affiliations.

8 **PROBATION FACTORS:**

9 There are statutory provisions prohibiting a grant of probation pursuant to special allegation
10 1170.12(a)(2) of the Penal Code. (Rule 4.413(a))

11 **MITIGATION FACTORS:**

12 None.

13 **AGGRAVATION FACTORS:**

14 **FACTS RELATING TO THE CRIME:**

15 The crimes involved great violence and the threat of great bodily harm, disclosing a high degree of
16 cruelty, viciousness and callousness. (Rule 4.421(a)(1))

17 The manner in which the crimes were carried out indicates premeditation on the part of the defendant.
18 (Rule 4.421(a)(8))

19 The crimes involved the theft of substantial monetary value. (Rule 4.421(a)(9))

20 **FACTS RELATING TO THE DEFENDANT:**

21 The defendant has engaged in violent conduct which indicates a serious danger to society.
22 (Rule 4.421(b)(1))

23 The defendant's prior convictions as an adult and sustained petitions in juvenile delinquency proceedings
24 are numerous and serious. (Rule 4.421(b)(2))

25 The defendant was on parole when the crime was committed. (Rule 4.421(b)(4))

26 The defendant's prior performance on parole and juvenile probation was unsatisfactory. (Rule
27 4.421(b)(5))

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 **CRITERIA AFFECTING CONCURRENT OR CONSECUTIVE SENTENCES:**

4 The crimes were committed at different times and places, rather than being committed so closely in time
5 and place as to indicate a single period of aberrant behavior. (Rule 4.425(a)(3))

6 **ENHANCEMENTS:**

7 Penal Code Section 1170.12(c)(2)(a) - If a defendant has two or more serious violent felony
8 convictions that have been pled and proved, the term for the current felony conviction shall be an
9 indeterminate term of life imprisonment with a minimum term of twenty-five (25) years. Further, the
10 defendant is ineligible for a grant of probation and consecutive sentences are mandatory.

11 Penal Code 12022.53(b) - Notwithstanding any other provision of law, any person who is convicted
12 of a felony specified in subdivision (a) and who in the commission of that felony personally used a firearm,
13 shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in
14 addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or
15 loaded for the enhancement to apply.

16 Penal Code Section 12022(b) - any person or persons using a deadly or dangerous weapon in the
17 commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony,
18 in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or
19 she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous
20 weapon is an element of the offense for which he or she was convicted.

21 Penal Code Section 667(a)(1) - any person convicted of a serious felony, who previously has been
22 convicted of a serious felony in this state or of any offense committed in another jurisdiction, which
23 includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the
24 court for the present offense, a five year enhancement for each such prior conviction on charges brought
25 and tried separately. The terms of the present offense and each enhancement shall run consecutively.

26 Penal Code Section 667.5(b) - Where the new offense is a felony for which a prison sentence is
27 imposed, in addition and consecutive to any other prison terms therefore, the Court shall impose a one year

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 term for each prior separate prison term served for any felony.

4 ANALYSIS:

5 Appearing before the Court is 21 year old David Charles Thatcher for sentencing on four felony
6 counts of 211 of the Penal Code - Second Degree Robbery, all with a special allegation 1170.12(c)(2)(A)
7 of the Penal Code, two prior violent/serious felony convictions, special allegation 667(a)(1) of the Penal
8 Code, prior serious felony conviction, and special allegation 667.5(b) of the Penal Code, prior prison. In
9 addition, three of the four counts of 211 of the Penal Code, include special allegation 12022.53(b) of the
10 Penal Code, personal use of a firearm, and the one remaining 211 Penal Code count, includes special
11 allegation 12022(b)(1) of the Penal Code, use of a knife. The defendant also has one count of 487(d) of
12 the Penal Code, Grand Theft of a Firearm, with special allegations. The defendant was convicted by a jury
13 and no indicated sentence was given.

14 Circumstances of the offense involve the defendant robbing an employee of a recycling trailer on
15 June 18, 2001, at gunpoint. The defendant stole victim F.O.'s \$5 wallet, containing \$235 cash. The
16 defendant robbed another employee of the recycling trailer on June 27, 2001. On this occasion, the
17 defendant was armed with a knife and was able to remove \$103 cash from the recycling company in a cash
18 drawer. He also personally robbed employee D.L of his wallet, containing \$40. On June 30, 2001, the
19 defendant and co-defendant entered the USA Market in Goshen, both armed with firearms. They robbed
20 store clerk, M.A., of \$1,600 cash from the cash register, as well as \$608.75 worth of cigarettes and a .380
21 caliber handgun. The defendant and co-defendant also stole personal property from M.A., including his
22 gold and diamond wedding ring, a watch and \$740 cash. During the robbery of USA Market, customer
23 D.V. entered the store. The defendant and co-defendant confronted him and stole \$29 from his person.

24 The defendant's prior record reflects he first had contact with Visalia Police at the age of seven.
25 His juvenile record includes three different sustained petitions for possession of a deadly weapon, among
26 other offenses. The defendant was found unfit for Juvenile Court in November, 1997, and was sent to state
27 prison for six years in 1998, for one count of First Degree Robbery and one count of Second Degree

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 Robbery. He was released on parole, according to his parole agent, on February 6, 2001. He was thus out
4 of custody for approximately four and a half months, with one period of incarceration for a parole
5 violation, before committing the first known crime on June 18, 2001. The defendant has been a Ward of
6 the Juvenile Court since November, 1994, when he was first placed in a group home. It appears the
7 defendant has spent the greater part of his teen and early adult years in custody and/or under strict
8 supervision. His conduct in the instant matter certainly reflects his commitment to a violent, dangerous
9 criminal lifestyle. This defendant is precisely the type of individual for whom the three strikes law was
10 written. In the interest of protection of the community and pursuant to statute, it is respectfully
11 recommended the defendant be committed to state prison for the total term of 162 years to life. Full terms
12 for each weapons enhancement are recommended pursuant to Penal Code Section 1170.1(h).

13 CUSTODY

<u>FACILITY</u>	<u>DATE</u>	<u>ACTUAL TIME SERVED</u>	<u>2933.1 CREDITS</u>	<u>TOTAL</u>
BWDF	7-8-01 to 12-4-01	150 Days	26 Days	176 Days

16 TERM:

<u>Case No:</u>	<u>Ct</u>	<u>Offense</u>	<u>Range</u>	<u>Base</u>	<u>Enhancements</u>	<u>Total</u>
01-77196	1	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022.53(b) PC SA 667(a)(1) PC SA 667.5(b) PC	25 yrs to life		+ 10 yrs + 5 yrs + 1 yr	41 yrs to life
	2	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022(b)(1) PC SA 667(a)(1) PC SA 667.5(b) PC	25 yrs to life		+ 1 yr + 5 yrs(stayed) + 1 yr(stayed)	26 yrs to life c/s to Ct 1
	3	F, 211 PC-2nd Deg SA 1170.12(c)(2)(A) PC SA 12022.53(b) PC SA 667(a)(1) PC SA 667.5(b) PC	25 yrs to life		+ 10 yrs + 5 yrs(stayed) + 1 yr(stayed)	35 yrs to life c/s to Ct 2

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

<u>Case No:</u>	<u>Ct</u>	<u>Offense</u>	<u>Range</u>	<u>Base</u>	<u>Enhancements</u>	<u>Total</u>
01-77196	4	F, 211 PC-2nd Deg	25 yrs to life			35 yrs to life c/s to Ct 3
		SA 1170.12(c)(2)(A) PC				
		SA 12022.53(b) PC			+ 10 yrs	
		SA 667(a)(1) PC			+ 5 yrs(stayed)	
		SA 667.5(b) PC			+ 1 yr(stayed)	
	5	F, 487(d) PC	25 yrs to life			25 yrs to life c/s to Ct 4
		SA 1170.12(c)(2)(A)PC				
		SA 667(a)(1) PC			+ 5 yrs(stayed)	
		SA 667.5(b) PC			+ 1 yr(stayed)	

9 **TOTAL RECOMMENDED TERM:** ONE HUNDRED SIXTY TWO (162) YEARS to LIFE.

10 **IT IS THEREFORE RESPECTFULLY RECOMMENDED THAT:**

- 11 1. The defendant's Application for Probation be DENIED.
- 12 2. In Count One, the defendant be committed to State Prison for the indeterminate term of TWENTY
13 FIVE (25) YEARS to LIFE, with an additional and consecutive TEN (10) YEARS, pursuant to
14 special allegation 12022.53(b) PC, an additional and consecutive FIVE (5) YEARS, pursuant to
15 special allegation 667(a)(1) PC, and an additional and consecutive ONE (1) YEAR pursuant to
16 special allegation 667.5(b) PC, for a total of FORTY ONE (41) YEARS to LIFE, with credit for
17 150 days actually served awaiting sentence, plus 26 days 2933.1 PC credit, for a total of 176 days.
- 18 3. In Count Two, the defendant be committed to State Prison for the indeterminate term of TWENTY
19 FIVE (25) YEARS to LIFE, with an additional and consecutive ONE (1) YEAR, pursuant to special
20 allegation 12022(b)(1) PC, for a total of TWENTY (26) YEARS to LIFE, with zero presentence
21 credits. Said term to run consecutive to Count One.
- 22 4. In Count Three, the defendant be committed to State Prison for the indeterminate term of TWENTY
23 FIVE (25) YEARS to LIFE, with an additional and consecutive TEN (10) YEARS, pursuant to
24 special allegation 12022.53(b)(1) PC, for a total of THIRTY FIVE (35) YEARS to LIFE, with zero
25 presentence credits. Said term to run consecutive to Count Two.
- 26 5. In Count Four, the defendant be committed to State Prison for the indeterminate term of TWENTY
27 FIVE (25) YEARS to LIFE, with an additional and consecutive TEN (10) YEARS, pursuant to

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER

3 special allegation 12022.53(b) PC, for a total of THIRTY-FIVE (35) YEARS to LIFE, with zero
4 presentence credits. Said term to run consecutive to Count Three.

5 6. In Count Five, the defendant be committed to State Prison for the indeterminate term of TWENTY
6 FIVE (25) YEARS to LIFE, with zero presentence credits. Said term to run consecutive to Count
7 Four.

8 7. The defendant be placed on Parole for life, (if granted Parole) pursuant to Section 3000.1 of the
9 Penal Code.

10 8. The defendant pay restitution to the victims, F.O., D.L., B&C Recycling, USA Market, M.A., and
11 D.V., all payable through the California Department of Corrections who shall collect and disburse
12 said amounts as follows:

F.O.....	\$ 240.00
D.L.....	\$ 40.00
B&C Recycling.....	\$ 103.00
M.A.....	\$1,590.00
D.V.....	\$ 29.00
USA Market.....	\$2,508.75
30602 Rd 68	
Goshen, CA 93227	

13 9. The defendant pay a Restitution Fine pursuant to Section 1202.4 of the Penal Code in the amount of
14 \$10,000, subject to the Court's determination that the defendant has the ability to pay such amount.

15 10. The defendant pay a restitution fine pursuant to Section 1202.45 of the Penal Code in the amount of
16 \$10,000. Said fine to be suspended unless the defendant's parole is revoked.

17 11. That restitution to the Tulare County Victim's Advocate's Office remain open pursuant to Section
18 1202.4 of the Penal Code.

1 REPORT OF THE PROBATION OFFICER
2 DAVID CHARLES THATCHER
3
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7

8 Respectfully submitted,

9
10 FREDERICK E. ALLEN
INTERIM CHIEF PROBATION OFFICER

11 BY: Lori Brewer
12 LORI BREWER
13 DEPUTY PROBATION OFFICER III

14 Read & Approved:

15 BY: Leanne Williams
16 LEANNE WILLIAMS
SUPERVISING PROBATION OFFICER

17 Dated: 12-4-2001
18 LB/pd
19 Typed: 11-29-2001

20 Pursuant to the Provisions of Section 1203 of the Penal Code, I have read and considered
21 the Report and Recommendation of the Probation Officer on File.

22 David Thatcher
23 JUDGE OF THE SUPERIOR COURT
24
25
26
27

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF TULARE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Visalia, California:	December 4, 2001
	)	No.: 01-77196	Dept.: 4
Plaintiff,	)	Judge, Hon.: Gerald F. Sevier	
vs.	)	Clerk: Regan Collins	
	)	Bailiff: David Lacy	
DAVID CHARLES THATCHER	)	Reporter: Cindy Holway	
	)	Interpreter:	
Defendant	)		

Nature of Hearing: JUDGMENT PROCEEDINGS
() FOLLOWING VIOLATION OF PROBATION

Counsel for the People: Melinda Aiello, Deputy District Attorney
Counsel for the Defendant: Paul Storey

Defendant: ☒ present () not present () formal arraignment for judgment waived

ORDERS: Matter continued to December 11, 2001 at 8:30 a.m. Dept. 4 pursuant to request of Defense.

ORDERS:

Probation () denied () granted for a period of ___ subject to the following terms and conditions () additional terms and conditions on page two (Imposition of sentence suspended during this term.)

Defendant committed to () State Prison () California Youth Authority () Tulare County Jail
for the term as follows:

Defendant given credit for ___ days actual time plus ___ days conduct credit for a total of ___ days served awaiting sentence.

() Defendant shall pay a restitution fine in the sum of \$___ pursuant to 1202.4 P.C.

() Defendant shall pay an additional restitution fine in the sum of \$___ pursuant to 1202.45 P.C., which shall be STAYED pending successful completion of parole.

() Court finds that defendant was convicted of one of the offenses specified in Sec. 1202.5 P.C. and that a victim thereof was a child under the age of 18 years. It is therefore ordered that all visitation between the defendant and any victim under the age of 18 years is prohibited.

Defendant advised of () appeal rights; () parole obligation upon release from prison; () consequences of violation of probation.

Court finds the defendant () does not () does have the ability to pay attorney fees in the sum of \$_____.

() Remaining counts dismissed
☒ Defendant remanded
() Bail Bond/Cash Bail Exonerated
() Defendant released on probation


Clerk

cc: () PO () DA () PD () TCSO () DOC () SB

0 265

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF TULARE

The People of the State of California	)	Visalia, California	<u>December 11, 2001</u>
Plaintiff	)	No. <u>77196</u>	Dept. <u>10</u>
vs	)	Judge, Hon. <u>Melinda Reed</u>	
	)	Clerk <u>Nicole Michau</u>	
David Thatcher,	)	Bailiff <u>David Lacy/John Setzer</u>	
Defendant	)	Reporter <u>Rhonda Flanagan</u>	

Nature of Hearing:

JUDGMENT PROCEEDINGS

() FOLLOWING VIOLATION OF PROBATION

Counsel for the People: Melinda Aiello, Deputy District Attorney

Counsel for the Defendant: Paul Storey

Defendant: ☒ present () not present () formal arraignment for judgment waived

Continued to December 18, 2001 @ 8:30a.m. in Department 4 for Judgment Proceedings.

☒ Defendant remanded
() Bail Bond/Cash Bail Exonerated
() Defendant released on probation/OR
cc: () PO () DA () PD () TCSO () DOC () R

Nicole Michau
Clerk

0 266

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF TULARE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Visalia, California:	December 18, 2001
	)	No.: 01-77196	Dept.: 4
Plaintiff,	)	Judge, Hon.:	Gerald F. Sevier
vs.	)	Clerk:	Regan Collins
	)	Bailiff:	David Lacy
DAVID CHARLES THATCHER	)	Reporter:	Cindy Holway
	)	Interpreter:	
Defendant	)		

Nature of Hearing: JUDGMENT PROCEEDINGS

() FOLLOWING VIOLATION OF PROBATION

Counsel for the People: Melinda Aiello, Deputy District Attorney

Counsel for the Defendant: Paul Storey

Defendant: ☒ present () not present ☒ formal arraignment for judgment waived

Court finds offense to be:

*See page two

ORDERS:

Probation ☒ denied () granted for a period of ___ subject to the following terms and conditions () additional terms and conditions on page two (Imposition of sentence suspended during this term.)

Defendant committed to ☒ State Prison () California Youth Authority () Tulare County Jail
for the term as follows:

*See page two

Defendant given credit for 164 days actual time plus 26 days conduct credit for a total of 190 days served awaiting sentence.

☒ Defendant shall pay a restitution fine in the sum of \$ 5,000.00 pursuant to 1202.4 P.C.

☒ Defendant shall pay an additional restitution fine in the sum of \$ 5,000.00 pursuant to 1202.45 P.C., which shall be STAYED pending successful completion of parole.

*Restitution to Tulare County Victim's Advocate's Office shall remain open pursuant to section 1202.4 PC.

() Court finds that defendant was convicted of one of the offenses specified in Sec. 1202.5 P.C. and that a victim thereof was a child under the age of 18 years. It is therefore ordered that all visitation between the defendant and any victim under the age of 18 years is prohibited.

Defendant advised of ☒ appeal rights; ☒ parole obligation upon release from prison; () consequences of violation of probation.

Defendant advised of Parole obligation pursuant to Section 3000.1 of the Penal Code.

Court finds the defendant ☒ does not () does have the ability to pay attorney fees in the sum of \$ ____.

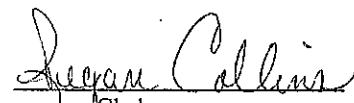
() Remaining counts dismissed

☒ Defendant remanded

() Bail Bond/Cash Bail Exonerated

() Defendant released on probation

(Continued on page two)


Clerk

cc: ☒ PO ☒ DA () PD ☒ TCSO ☒ DOC ☒ SB

267

Court finds offense to be:

Count 1: Felony, PC 211 – SECOND DEGREE ROBBERY (VICTIM: F.O.; DATE: 6/18/01) with Special Allegations 12022.53(b) PC; 1170.12(c)(2)(a) PC; 667.5(b) PC; 667(a)(1) PC

Count 2: Felony, PC 211 – SECOND DEGREE ROBBERY (VICTIM: D.L.; DATE: 6/27/01) with Special Allegations 12022(b)(1) PC; Special Allegation 1192.7(c)(23) PC; 1170.12(c)(2)(a) PC; 667.5(b) PC; 667(a)(1) PC

Count 3: Felony, PC 211 – SECOND DEGREE ROBBERY (VICTIM: M.A.; DATE: 6/30/01) with Special Allegations 12022.53(b) PC; 1170.12(c)(2)(a) PC; 667.5(b) PC; 667(a)(1) PC

Count 4: Felony, PC 211 – SECOND DEGREE ROBBERY (VICTIM: D.V.; DATE: 6/30/01) with Special Allegations 12022.53(b) PC; 1170.12(c)(2)(a) PC; 667.5(b) PC; 667(a)(1) PC

Count 5: Felony, PC 487(d) – GRAND THEFT FIREARM (VICTIM: M.A.; DATE: 6/30/01) with Special Allegations 1170.12(c)(2)(a) PC; 667.5(b) PC; 667(a)(1) PC

ORDERS:

Defendant committed to State Prison for the term as follows:

Count 1: Indeterminate Term TWENTY-FIVE (25) YEARS TO LIFE plus additional and consecutive TEN (10) YEARS pursuant to Special Allegation 12022.53(b) PC plus an additional and consecutive FIVE (5) YEARS pursuant to Special Allegation 667(a)(1) PC plus an additional ONE (1) YEAR pursuant to Special Allegation 667.5(b) PC for a TOTAL TERM of FORTY ONE (41) YEARS TO LIFE

Count 2: Indeterminate Term TWENTY-FIVE (25) YEARS TO LIFE plus an additional and consecutive ONE (1) YEAR pursuant to Special Allegation 12022(b)(1) PC for a TOTAL TERM of TWENTY-SIX (26) YEARS TO LIFE to run consecutive to Count 1

Count 3: Indeterminate Term TWENTY-FIVE (25) YEARS TO LIFE plus an additional and consecutive TEN (10) YEARS pursuant to Special Allegation 12022.53(b)(1) PC for a TOTAL TERM of THIRTY-FIVE (35) YEARS to LIFE to run consecutive to Count 2

Count 4: Indeterminate Term TWENTY-FIVE (25) YEARS TO LIFE plus an additional and consecutive TEN (10) YEARS pursuant to Special Allegation 12022.53(b) PC for a TOTAL TERM of THIRTY-FIVE (35) YEARS TO LIFE to run consecutive to Count 3

Count 5: Indeterminate Term TWENTY-FIVE (25) YEARS TO LIFE to run consecutive to Count 4

FOR A TOTAL INDETERMINATE TERM OF ONE HUNDRED SIXTY TWO (162) YEARS TO LIFE

(Continued on page three)

FURTHER ORDERS:

Defendant shall pay restitution to the victims, F.O., D.L., B&C Recycling, USA Market, M.A., and D.V., all payable through the California Department of Corrections who shall collect and disburse said amounts as follows:

F.O.	\$ 240.00
D.L.	\$ 40.00
B&C Recycling	\$ 103.00
M.A.	\$1,590.00
D.V.	\$ 29.00
USA Market	\$2,508.75
30602 Rd 68	
Goshen, CA 93227	

ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

☒ SUPERIOR COURT OF CALIFORNIA, COUNTY OF: <u>TULARE</u> ☐ MUNICIPAL BRANCH OR JUDICIAL DISTRICT: <u>VISALIA</u>		FILED TULARE COUNTY SUPERIOR COURT DEC 21 2001 <i>LARAYNE CLEEK, CLERK</i> <i>By: [Signature]</i>
PEOPLE OF THE STATE OF CALIFORNIA vs. DOB: 07/13/80 DEFENDANT: DAVID CHARLES THATCHER		
AKA: CII#: A10409711 BOOKING #: ☐ NOT PRESENT ☐ AMENDED ABSTRACT		
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		
DATE OF HEARING DECEMBER 18, 2001	DEPT. NO. 4	JUDGE GERALD F. SEVIER
CLERK REGAN COLLINS	REPORTER CINDY HOLWAY	PROBATION NO. OR PROBATION OFFICER PA-294164
COUNSEL FOR PEOPLE MELINDA AIELLO, DDA		COUNSEL FOR DEFENDANT PAUL STOREY ☒ APPTD.

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment
 _____ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	SENTENCE
						JURY	COURT	PLEA			
1	PC	211	SECOND DEGREE ROBBERY	2001	11 / 09 / 01	☒	☐	☐			
2	PC	211	SECOND DEGREE ROBBERY	2001	11 / 09 / 01	☒	☐	☐			
3	PC	211	SECOND DEGREE ROBBERY	2001	11 / 09 / 01	☒	☐	☐			
4	PC	211	SECOND DEGREE ROBBERY	2001	11 / 09 / 01	☒	☐	☐			
5	PC	487(d)	GRAND THEFT FIREARM	2001	11 / 09 / 01	☒	☐	☐			

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
1	12022.53(b)	10							10
2	12022(b)(1)	1							1
3	12022.53(b)(1)	10							10
4	12022.53(b)	10							10

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
667(a)(1)PC	5	667.5(b)PC	1					6

Defendant was sentenced to State Prison for an INDETERMINATE TERM:

4. ☐ For LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____

5. ☐ For LIFE WITH POSSIBILITY OF PAROLE on counts _____

6. ☒ For 162 years to life, WITH POSSIBILITY OF PAROLE on counts 1,2,3,4,5
 PLUS enhancement time shown above.

7. ☐ Additional determinate term (see CR-290).

8. Defendant was sentenced pursuant to ☒ PC 667(b)-(l) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ PC 667.9
☐ other (specify): _____

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.
 (Continued on reverse)

Form Adopted by the
 Judicial Council of California
 CR-292 (Rev. January 1, 1999)

ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

WEST GROUP
 Official Publisher

Penal Code, §§
 1213, 1213.5

0 270

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: DAVID CHARLES THATCHER			
01-77196	-A	-B	-C
			-D

9. FINANCIAL OBLIGATIONS (Including any applicable penalty assessments):
- RESTITUTION FINE of: \$ 5,000.00 per PC 1202.4(b) forthwith per PC 2085.5.
 - RESTITUTION FINE of: \$ 5,000.00 per PC 1202.45 suspended unless parole is revoked.
 - RESTITUTION of: \$ 4,510.75 per PC 1202.4(f) to ☒ victim(s)* ☐ Restitution Fund
 (*List victim name(s) if known and amount breakdown in item 11, below.)
 (1) ☐ Amount to be determined.
 (2) ☐ Interest rate of: _____ % (not to exceed 10% per PC 1204.4(f)(3)(F)).
 - LAB FEE of: \$ _____ for counts: _____ per H&SC 11372.5(a).
 - DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
 - FINE of: \$ _____ per PC 1202.5.

10. TESTING

- ☐ AIDS pursuant to ☐ PC 1202.1 ☐ other (specify):
- ☐ DNA pursuant to ☐ PC 290.2 ☐ other (specify):

11. Other orders (specify):

Defendant shall pay restitution to the victims, all payable through the California Department of Corrections who shall collect and disburse said amounts as follows:

F.O. \$ 240.00
 D.L. \$ 40.00
 B&C Recycling \$ 103.00
 M.A. \$ 1,590.00
 D.V. \$ 29.00
 USA Market ... \$ 2,508.75

Restitution to Tulare County Victim's Advocate's Office shall remain open pursuant to section 1202.4 PC.

12. Execution of sentence imposed

- ☒ at Initial sentencing hearing.
- ☐ at resentencing per decision on appeal.
- ☐ after revocation of probation.
- ☐ at resentencing per recall of commitment. (PC 1170(d).)
- ☐ other (specify):

13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT	
01-77196 -A	190	164	26	☐ 4019 ☒ 2933.1
-B				☐ 4019 ☐ 2933.1
-C				☐ 4019 ☐ 2933.1
-D				☐ 4019 ☐ 2933.1
DATE SENTENCE PRONOUNCED: DECEMBER 18, 2001		SERVED TIME IN STATE INSTITUTION: ☐ DMH ☐ CDC ☐ CRC		

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE <i>Regan Collins</i>	DATE 12-21-01
--	------------------

CR-292 (Rev. January 1, 1998)

ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE

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Official Publisher

Page two

0 271

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF TULARE COUNTY
3 DEPARTMENT 4 HONORABLE GERALD F. JAN 03 2002, JUDGE
4 THE PEOPLE OF THE STATE
OF CALIFORNIA,) LARAYNE CLEGG
5)
6 Plaintiff,)
7 vs.) NO. 77196
8 DAVID C. THATCHER,) SENTENCING
9 Defendant.)
10 Visalia, California Tuesday, December 4, 2001
11 Tuesday, December 18, 2001
12 ORIGINAL
13 REPORTER'S TRANSCRIPT
14 (Pages 1 through 18)
15
16 APPEARANCES:
17 For the Plaintiff: PHILLIP J. CLINE
DISTRICT ATTORNEY
18 BY: MELINDA AIELLO, DEPUTY
County Civic Center, Rm 224
19 Visalia, CA 93291
20 For the Defendant: PAUL R. STOREY
Attorney at Law
21 225 North M Street
Tulare, CA 93274
22
23
24
25 REPORTED BY: CINDY M. HOLWAY, CSR #4371
OFFICIAL & CM
26

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138

MORNING SESSION

Tuesday, December 4, 2001

(Whereupon, the following
proceedings were had in open court, to wit, at
8:30 a.m.:)

THE COURT: All right. David Thatcher?

MR. STOREY: Paul Storey appearing for
Mr. Thatcher who is present in court in custody,
your Honor.

MS. AIELLO: Melinda Aiello for the
People.

THE COURT: All right. Mr. Thatcher is
present with Mr. Storey, his counsel.

MR. STOREY: Your Honor, my --

THE COURT: Mr. Storey?

MR. STOREY: -- my client has just
indicated that he wishes to have the sentencing
postponed for 30 days. He has indicated to me
there are family problems. I don't know what
those family problems are at this moment. I'd
like to trail this for a few minutes so I can
discuss the matter with him if I may.

THE COURT: All right, that's fine.

(Whereupon, the proceedings went
off the record.)

THE COURT: Thatcher?

0 273

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138)

1 MR. STOREY: Your Honor, Mr. Thatcher is
2 asking the sentencing be put off for 30 days.
3 Part of this has to do with logistical problems
4 and family problems.

5 He hasn't been able to see his --
6 members of his family. He is anticipating that
7 the sentence may be for the rest of his life, most
8 likely. He has previously been in prison. When
9 he was in prison previously, he was in Santa
10 Nella. Now, that is not the Santa Nella over
11 where Anderson's Split Pea Soup is. It's one down
12 near Calipatria, California, which is close to the
13 Mexican border. I think it's about 30 miles from
14 the Mexican border.

15 He was there previously. On that
16 occasion, in the four years that he was there, he
17 did not have the opportunity to visit with his
18 family.

19 He's asking for this continuance
20 today to try to provide his family with the
21 opportunity to come out and visit him. His father
22 who is present in court today, they won't allow
23 him visitation because he doesn't have a picture
24 I.D. He has applied to the California Department
25 of Motor Vehicles. He indicates that he should be
26 receiving that fairly shortly and -- but he

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 40 274
(559 733-6561 EXT. 138)

1 doesn't know when, and he would like to be able to
2 come out and see Mr. Thatcher before he goes.

3 His mother is located in Marysville
4 up near Sacramento. She has livestock. She has
5 difficulty making arrangements to have somebody
6 take care of the livestock and get down here. For
7 this reason, he is asking that the sentencing be
8 put off for 30 days in order to allow them to have
9 a visit with him.

10 I asked Mr. Thatcher. He thought
11 it was approximately a week after sentencing that
12 he would be transported to Department of
13 Corrections. I inquired of Mr. Lacy. He believes
14 that it's taking approximately three weeks at this
15 time. I was thinking if he was sentenced, it
16 might be he could go ahead and be sentenced and
17 they still have the time in order to meet with
18 'em. I don't know that that is true, but that's
19 the basis for the request, and it is to try to
20 have a visit with his family.

21 I don't think there's any adverse
22 consequences to the People by waiting that
23 additional 30 days.

24 THE COURT: Well, it really isn't good
25 cause.

26 MR. STOREY: All I can do is present it

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 275
(559 733-6561 EXT. 138)

1 to the court.

2 THE COURT: I understand.

3 MR. STOREY: It is my client's request,
4 he is willing to waive time and put the sentencing
5 over. He does have a reason for it. I think it's
6 a logical reason. It's a very personal reason.

7 We would ask the court to grant his
8 request for a continuance for that 30 days.

9 MS. AIELLO: Your Honor, the People's
10 preference would be to proceed with the sentencing
11 today because we do agree with the court that this
12 does not appear to be good cause, and that will be
13 my only comment.

14 UNIDENTIFIED MAN: Your Honor, may I say
15 something?

16 THE COURT: No, sir, I'm sorry.

17 MR. STOREY: That was Mr. Thatcher's
18 father.

19 THE COURT: I assumed that.

20 I'm willing to put it over for a
21 week, but no longer.

22 MR. STOREY: We appreciate that, your
23 Honor, and all we can do is try to make the
24 arrangements.

25 THE COURT: All right. Mr. Thatcher,
26 you have the right to be sentenced today; do you

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 276
(559 733-6561 EXT. 138)

1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You're asking that this be
4 put over a week?

5 THE DEFENDANT: Yes.

6 THE COURT: Well, actually, you're
7 asking longer.

8 All right. I'll continue it to
9 December the 12th at 8:30 -- wait a minute.

10 MR. STOREY: Thank you, your Honor.

11 THE COURT: Just a moment. December
12 11th at 8:30.

13 Mr. Thatcher, you're ordered to be
14 here that day.

15 MR. STOREY: Your Honor, could -- this
16 is just my request. My calendar, I would prefer
17 it to be on the 12th.

18 THE COURT: I may not be here the 12th.

19 MR. STOREY: Then I'll be here on the
20 11th.

21 THE COURT: Okay. I'm sorry,
22 Mr. Storey. Thank you.

23 MS. AIELLO: Thank you.

24 (Whereupon, the proceedings were
25 concluded.)

26

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 0 277
(559 733-6561 EXT. 138)

MORNING SESSION

Wednesday, December 12, 2001

(Whereupon, the following
proceedings were had in open court, to wit, at
8:30 a.m.:)

THE COURT: All right. People versus
Thatcher? All right. This is the matter of
People versus David Charles Thatcher.

Mr. Thatcher is personally present
with his attorney, Mr. Storey. Ms. Aiello is here
representing the People.

I have read and considered the
report and recommendation of the probation
officer. This matter has been continued once.

Is there any legal cause why
sentence cannot be pronounced?

MR. STOREY: No, your Honor.

THE COURT: Do you waive arraignment for
judgment?

MR. STOREY: So waived.

THE COURT: All right, proceed.

MR. STOREY: Your Honor, there are a
couple of requests that we would have of the
court, and part of it is looking at my client's
age. Potentially, he's a young man, 22, 23.

THE DEFENDANT: Just turned 21.

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 40 278
(559 733-6561 EXT. 138)

1 MR. STOREY: Excuse me, I mis --

2 THE COURT: He is a young man, he's 21.

3 MR. STOREY: And what we're talking
4 about here is someone that hasn't gained all his
5 maturity. He has been in trouble, and whether or
6 not the court is going to impose a sentence that
7 would not only punish him, it also punishes the
8 public.

9 There is no chance of redemption if
10 the court follows the recommendation by the
11 People, and there are several alternatives that
12 the court could apply which would result in a more
13 equitable sentence and one that fits with the
14 ideas that people can be rehabilitated. They can
15 do things in their life to change.

16 There isn't any sense in keeping
17 Mr. Thatcher in prison after he's 40, 50, 60 years
18 old. It doesn't do us -- doesn't do society any
19 good. It doesn't do him any good. I think it
20 would be better to impose a sentence that could
21 give him some chance of some day seeing the light
22 of day.

23 Part of the reason here is that I
24 would point out there is no hurt, there is no
25 injury in regards to the individuals that were
26 victims here.

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 0 279
(559 733-6561 EXT. 138)

1 There was one person that said that
2 he was a victim, and he thanked Mr. Thatcher for
3 not imposing any violence. Yes, there are
4 threats. Threats are necessary in order to have a
5 robbery, but that's all that occurred. No one is
6 struck, no one is injured by Mr. Thatcher.

7 I would point out that the two
8 strikes that Mr. Thatcher has both were one
9 proceeding. Yes, there happened to be two victims
10 there, and that's why there are two separate
11 counts, but it is one proceeding. On that
12 occasion, he was sent to prison on that occasion.
13 It's alleged here as the prior violent felony.

14 It's a single prior violent felony
15 because it was just one proceeding, and we would
16 ask the court since it was one proceeding to
17 strike a strike. That could lead to a sentence
18 which would be -- and I'm just assuming for the
19 court, if this were done not on a three-strike
20 basis, but a two-strike basis, the court could
21 take the base term as Count 1. It's a 2, 3, 5
22 felony. You double that to make it 10. Then
23 there's the use of a firearm which is an
24 additional 10 to make it 20, plus the prior
25 serious felony to make it 25. You also have an
26 additional year for the prior prison where he has

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 280
(559 733-6561 EXT. 138

1 been in prison previously on this case for
2 possibly 26 years as to Count 1. That by itself
3 would probably be sufficient in this particular
4 case and probably justified because there were
5 separate instances, even though this could be one
6 course of conduct because we're talking about a
7 period of, I believe, ten or eleven days.

8 Count 2 is also a 2, 3, 5 robbery.
9 If you doubled the midterm, took one third of it,
10 that would be 2 years. There's also an
11 indication -- there is also a prior -- excuse me,
12 not a prior, but a principal armed -- no, this is
13 an arming with a knife, I believe. The
14 enhancement there, because this is a violent
15 felony, it would be one-third that enhancement or
16 add an additional 4 months or 2 years, 4 months on
17 Count 2.

18 On Count 3, 4 and 5, those were all
19 in the same market. At that point, my client was
20 armed; that that was the finding by the jury.
21 They said that it wasn't a BB gun, but they felt
22 it was a firearm.

23 On that case, we would ask the
24 court to impose the midterm doubled for the 6
25 years, one-third of that, and then it would also
26 be one-third of that arming with the firearm, 3

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 281
(559 733-6561 EXT. 138)

1 years, 4 months. That gives a total of 32 years,
2 8 months if the court strikes the strike.

3 Additional terms could be added in
4 regards to Count 4 and Count 5 under that same
5 theory which would allow still a sentence of about
6 40 years.

7 There is a second alternative in
8 regards to if the court is inclined not to strike
9 the strike.

10 On Count 1, it's 25 years to life.
11 There is also a ten-year enhancement for the gun
12 use. There's a five-year enhancement for the
13 prior serious felony and a prior -- and a one-year
14 prior prison for a total of 41 years.

15 That, again, is more than
16 sufficient in this particular case, and because it
17 was during one short period of time which has to
18 do with drug use of the individuals that were
19 involved, and it's one course of conduct, the
20 court could impose a term of 41 to life, and we
21 would ask the court to consider that.

22 My preference would be to have the
23 court strike the strike and impose the 32 years, 8
24 months.

25 THE COURT: Well, I'll certainly hear
26 from the People on this, but insofar as an

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138

0 282

1 argument that these can be considered same
2 occasion felonies, under the standards in People
3 versus Hendricks at 16 Cal.4th 508, we have a
4 series of incidents, one on June 18th, one on June
5 27th and one on June 30th. These are not same
6 occasion felonies. The court has no discretion,
7 and even if I had discretion, given Mr. Thatcher's
8 criminal history, I would not exercise it.

9 Insofar as striking the strike is
10 concerned, again, under the standards set forth in
11 Romero and its progeny, I would not exercise my
12 discretion to strike the strike.

13 Ms. Aiello?

14 MS. AIELLO: Thank you. Given the
15 court's comments, I will keep my comments brief.

16 This was a jury trial. The court
17 did hear all the facts, had the opportunity to
18 view the victims, and while no injury was
19 inflicted on any -- no physical injury was
20 inflicted on the victims, the defendant was armed
21 with weapons in each of the robberies.

22 I think it speaks volumes that the
23 second victim who actually did thank the defendant
24 for not harming him demonstrates, I think, what a
25 tremendous amount of fear he had on that day. I
26 think that man thought that he very well could be

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 283
(559 733-6561 EXT. 138)

1 injured and is thankful that he is alive to -- to
2 testify.

3 I would point out that the
4 defendant was only on parole for four and a half
5 months before these offenses were committed. They
6 are identical offenses to what he was on parole
7 for.

8 Even the brief synopsis of facts
9 from the prior robberies indicates how vicious
10 they were. One was a residential robbery. One
11 was a robbery of a video store. Weapons again
12 were involved in those robberies. The defendant
13 has gang ties, and there were multiple robberies,
14 multiple victims, and as the court has recognized,
15 it would not be appropriate and not in the
16 interest of justice to strike the strikes, and I
17 would submit on that and request the court follow
18 the recommendation of the probation department and
19 ask that the restitution be imposed as indicated,
20 as well.

21 MR. STOREY: Your Honor, we would point
22 out that the court does need to update the custody
23 credits because this was prepared for December
24 4th. Today is the 18th. So we'd add 14 days.

25 THE COURT: All right. So what is the
26 result, 164 actual?

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4, 284
(559 733-6561 EXT. 138)

1 MR. STOREY: Yes, your Honor.

2 THE COURT: And what about the 2933.1
3 credits?

4 MR. STOREY: Can't rely on my math.

5 Your Honor, I would also ask the
6 court to -- when looking at the restitution, there
7 is a request for actual restitution. If that's
8 what the People are requesting, those are the
9 amounts that were stated by the victims. I
10 believe that would be appropriate.

11 In regards to the 1202.4 and
12 1202.45, I believe the \$10,000 is exorbitant.
13 There isn't any ability that my client is going to
14 have to actually pay that. It's just saying for
15 the rest of his life, he's not going to get any
16 credits when he's in prison.

17 THE COURT: Mr. Thatcher, I'm not here
18 to give you a lecture. That serves no purpose, I
19 understand that.

20 People argue that the law is
21 harsh. Mr. Storey talks about the prospect of
22 redemption. Mr. Storey talks about how young you
23 are. You are young. This is a waste of a life,
24 but the reality is you've chosen to waste your
25 life.

26 You've been heavily involved as --

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 285
(559 733-6561 EXT. 138

1 as a youngster; apparently, contacts with police
2 started when you were seven years old. You've had
3 a number of sustained petitions for possession of
4 some deadly weapon. You were found unfit for
5 juvenile court in 1997. You went to state prison
6 for 6 years. You got out on parole. You commit
7 three separate robberies, armed. You're committed
8 to a criminal life-style. You made those
9 choices.

10 Given the circumstances of the
11 offenses and given Mr. Thatcher's background,
12 there is no basis to grant Mr. Thatcher probation,
13 obviously.

14 Your application for probation is
15 denied. Your attorney has asked me to strike the
16 strikes. There's no basis to do that. The law
17 sets forth the guidelines to strike the strike.
18 You don't come close to allowing such
19 consideration. The law clearly sets forth what's
20 required on different occasion felonies such as
21 these. The law will be followed.

22 Count 1, you're committed to state
23 prison for the indeterminate term of 25 years to
24 life with an additional and consecutive 10 years.
25 That's pursuant to Penal Code Section 12022.53(b),
26 an additional and consecutive 5 years pursuant to

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138)

286

1 Penal Code Section 667(a)(1), and an additional
2 consecutive one year pursuant to Penal Code
3 Section 667.5(b) for a total of 41 years to life.

4 You get credit for 164 days
5 actually served, plus 26 days 2933.1 credits;
6 total credit of 190 days.

7 Count 2, you're committed to state
8 prison for the indeterminate term of 25 years to
9 life. There's an additional and consecutive one
10 year pursuant to Penal Code Section 12022(b)(1)
11 for a total of 26 years to life with no credits.
12 That's to run consecutive to Count 1.

13 Count 3, you're committed to state
14 prison for the indeterminate term of 25 years to
15 life with an additional and consecutive 10 years.
16 Pursuant to Penal Code Section 12022.53(b)(1),
17 total of 35 years to life with no credits. That's
18 to run consecutive to Count 2.

19 Count 4, you're committed to state
20 prison for the indeterminate term of 25 years to
21 life, an additional consecutive 10 years pursuant
22 to special -- to the special allegation of Penal
23 Code Section 12022.53(b) for a total of 35 years
24 to life with no credits.

25 In Count 5, you're committed to
26 state prison for the indeterminate term of 25

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138

0 287

1 years to life with no presentence credits. That
2 term is to run consecutive to Count 4.

3 You're to be placed on parole for
4 life when you are released, if you are.

5 Insofar as restitution to the
6 victims, that issue shall -- any money earned in
7 state prison by you shall go to the victims in the
8 amount set forth in the probation report and
9 recommendation for 8.

10 So far as a restitution fine is
11 concerned, while you're young and in good health,
12 I'm going to set that restitution at \$5,000 given
13 the restitution you have to pay.

14 Insofar as a restitution fine
15 pursuant to Section 1202.45 of the Penal Code,
16 that's set at \$5,000. That fine is suspended.
17 Restitution to the Victim's Advocate is open.

18 You're committed to serve your
19 sentence.

20 MR. STOREY: Your Honor, we would ask
21 the court make a finding of no ability to pay.

22 THE COURT: There's absolutely no
23 ability to pay.

24 MR. STOREY: Your Honor, Mr. Thatcher
25 will be filing a notice of appeal today. We would
26 ask the court to set bail pending appeal.

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 46 288
(559 733-6561 EXT. 138)

1 THE COURT: There's no bail pending
2 appeal.

3 So you waive advisement as to right
4 on appeal -- a right to file appeal?

5 MR. STOREY: Yes, your Honor. We'll be
6 processing that this morning.

7 THE COURT: All right. Is that document
8 signed?

9 MR. STOREY: That document is signed.

10 THE COURT: All right. Would you please
11 lodge it with the clerk.

12 MR. STOREY: Your Honor, Mr. Thatcher
13 indicates that he had two other things that he
14 would request. One is because he is filing the
15 appeal, he would request the court to release him
16 the names, addresses and phone numbers of the
17 victims.

18 THE DEFENDANT: That's not what I'm
19 asking, your Honor. I'm asking for the case
20 file. He did not want to give that to me because
21 it has the names and addresses of the victims in
22 it. However, I already have that. I've had that
23 since I've been arrested. Parole brought me the
24 paperwork. I already have all that. That's not
25 why I want it.

26 THE COURT: Well, you really shouldn't

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 289
(559 733-6561 EXT. 138)

1 have it, but that's beside the point.

2 THE DEFENDANT: I'm going to be filing
3 this appeal. I need to be able to fight my case.
4 Once I --

5 THE COURT: You're entitled --
6 Mr. Thatcher, you're entitled to the appointment
7 of counsel on appeal.

8 THE DEFENDANT: Right.

9 THE COURT: The record will reflect that
10 I -- that's really up to the Court of Appeal, but
11 you certainly are entitled to appointed counsel,
12 and I'm sure the court will provide that to you.

13 All of those documents will be
14 prepared as part of the process of processing your
15 appeal. All those documents will go to your
16 attorney. There's really no order that I can make
17 in that respect. That's all within the province
18 now of the Court of Appeal.

19 All right. You're remanded.

20 (Whereupon, the proceedings were
21 concluded.)

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CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4
(559 733-6561 EXT. 138

0 280

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF TULARE)

4

5 I, CINDY M. HOLWAY, an Official
6 Certified Shorthand Reporter of the Superior Court
7 of the State of California, do hereby certify:

8 That the foregoing action entitled
9 THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF,
10 versus DAVID C. THATCHER, DEFENDANT, was taken
11 down in stenographic shorthand writing and
12 thereafter transcribed into typewriting, pages 1
13 through 18, and that the foregoing transcript
14 constitutes a full, true, and correct transcript
15 of said proceedings.

16 Dated this 2nd day of January,
17 2002.

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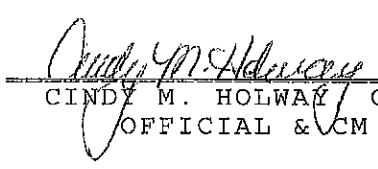
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CINDY M. HOLWAY CSR 4371
OFFICIAL & CM

CINDY M. HOLWAY, CSR 4371
OFFICIAL COURT REPORTER - DEPARTMENT 4 291
(559 733-6561 EXT. 138)

1 DAVID CHARLES THATCHER
Tulare County Jail
2 County Civic Center
Visalia, CA 93291
3 Telephone: (559) 733-6201

FILED
TULARE COUNTY
SUPERIOR COURT

JAN 30 2002

4 Defendant/Appellant In Propria Persona

LARAYNE CLEEK, CLERK

BY

Jinda Lara

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF TULARE

11 PEOPLE OF THE STATE OF CALIFORNIA, §
12 Plaintiffs, §
13 vs. §
14 DAVID CHARLES THATCHER, §
15 Defendant. §
16

Case No. 01-77196

NOTICE OF APPEAL WITH
DECLARATION AND REQUEST
REQUEST FOR APPOINTMENT
OF COUNSEL ON APPEAL

17 Defendant, DAVID CHARLES THATCHER, hereby gives notice of
18 appeal from the judgment of the Superior Court in the above-
19 entitled cause, which was entered on December 11, 2001.

20 DATED: December 11, 2001

21 *David Thatcher*
22 DAVID CHARLES THATCHER
23 Defendant/Appellant

24 DECLARATION

25 I, DAVID CHARLES THATCHER, declare as follows:

26 1. I am the defendant in the above-entitled cause and on
27 December 11, 2001, I was sentenced pursuant to the probation
28 officer's report.

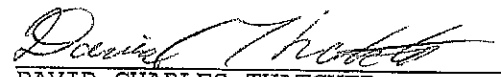
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1 2. I have been in custody since the date of my arrest on
2 July 8, 2001. I am unemployed and I have no independent means of
3 support or funds with which to retain counsel to represent me. I
4 was represented by appointed counsel in the lower court.

5 3. To assist me in my appeal, I respectfully request that
6 counsel be appointed to represent me on appeal.

7 I declare under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed this ¹⁵~~16~~th day of December, 2001, at Visalia,
10 California. *Re*

11
12 
13 DAVID CHARLES THATCHER
14 Defendant/Appellant
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PROOF OF SERVICE BY MAIL

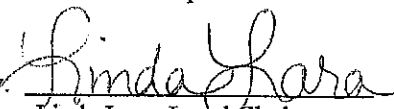
Case No. 01-77196

I declare that I am employed in the County of Tulare, California. I am over 18 years of age, and not a party to the within entitled action. I am employed at, and my business address is :County Civic Center, Rm 303, Visalia, CA 93291. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and in the ordinary course of business, mail is deposited in the United States Postal Service on the same day it is picked up from my office. On this date I served the attached **NOTICE OF APPEAL** on the parties listed below by placing true copies thereof enclosed in a sealed envelope in the receptacle designated for collection in the office and subsequent mailing, following ordinary business practices, at Visalia, California and addressed as shown below:

Executed this 30th day of January 2002 at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct.

Clerk of the Superior Court

By: 
Linda Lara, Legal Clerk

Court of Appeal
Fifth Appellate District
2525 Capitol St
Fresno CA 93721

District Attorney
County Civic Center, Rm 224
Inter Office Mail
Visalia CA 93291

Cindy Holway
County Civic Center, Rm 303
Inter Office Mail
Visalia CA 93291

Paul Storey (conflict counsel)
P.O. Box 1096
Tulare, CA 93275

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**
221 S Mooney Blvd Rm. 303, Visalia CA 93291

PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff/Respondent

vs.

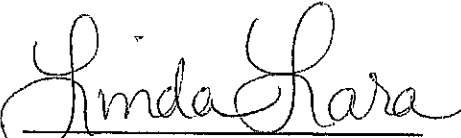
DAVID CHARLES THATCHER,
Defendant/Appellant

Case No.01-77196

NOTICE TO COURT REPORTER RE APPEAL

- 1) To:
 - a. Court Reporter: Cindy Holway 11/5/01, 11/6/01, 11/7/01, 11/8/01
 - b. Court Reporter:
 - c. Court Reporter:
 - d. Court Reporter:
- 2) (X) You are directed to prepare the transcript on a Appeal in this action **within 20 days** from the date of this notice, unless the time is extended as provided in CRC 35(d), as follows:
 - (a) Notice of Appeal was filed on January 30, 2002, by David Charles Thatcher.
 - (b) **Original and 2 copies required**
- 3) () An Appeal in this action is automatic and you are directed to prepare the Transcript on Appeal **within 10 days**.
- 4) (X) Notice to prepare reporter's transcript was filed in this office as follows Copy of Notice of Appeal to prepare is attached:
 - a. Date: January 30, 2002
 1. By: Linda Lara
- 5) () You are directed, **WITHIN 10 DAYS** of this notice, to file with this office your estimated cost for preparing the transcript on appeal in this action OR to notify this office of the date you notified the appellant directly of the estimated cost.
- 6) (X) Appellant has complied with CRC 4(c) and you are directed to prepare and file with this office the transcript on Appeal, in accordance with the Notice of the party, within 20 days from the date of this notice.
- 7) (X) Hearing Dates: Everything required under Rule 33 of the CRC.

Dated: January 30, 2002



Appeals Clerk

295

DEPARTMENT OF CORRECTIONS
Parole and Community Services Division
Case Records North
Aerojet Campus
2015 Aerojet Road
Rancho Cordova, CA 95742



SEP 14 2001

Laurie Collum
Office of the District Attorney
County of Tulare
County Civic Center
221 S. Mooney Blvd., Rm 224
Visalia, CA 93291-4593

RE: **THATCHER, DAVID CHARLES**
NO: K81267
DA NO: F-01-34577-1

Dear Ms. Collum:

This is to certify that the Director of the California Department of Corrections is the official legal custodian of the records of prisoners committed to the California State Prisons, and has authorized the undersigned as Custodian of Records of the Parole and Community Services Division to certify in his behalf the criminal records of persons who have served sentences in California State Prisons, including the certifications required under the California Penal Code Section 969(b).

I further certify that the attached documents, which you requested, are true and correct copies of documents on file in this office.

Sincerely,

(K. Robbins)
K. Robbins

CORRECTIONAL CASE RECORDS ANALYST

cc: Central File
Parole Agent/VIS1

NO. 01-77196 EX. NO. 21

☒ PLTF(s)	☒ ID	☒ EVID
☐ DEFT(s)	☐ ID	☐ EVID
OTHER _____	☐ ID	☐ EVID

Date: 11/8/01

CLERK OF THE SUPERIOR COURT

By: RLC Deputy

0 296

CHRONOLOGICAL HISTORY

[illegible]

Date	Chronological Listings	Initials	Dead Time	Release Date
1-15-98	REC'D WSP-RC NC	DN		
JAN 29 1998	Restitution Ordered Per <u>John</u> INTAKE AUDIT County Case # <u>0037306</u> Amount \$ <u>200</u> REQUESTED NOTICE OF DEATH RELEASE OR ESCAPE FROM DEPARTMENTAL CUSTODY 3058.8 PC	JS	Mindel	9-4-2001
4-2-98		JS		
APR 10 1998	REC'D GEN	JS		
5-28-98	Intake Audit Recal @ A1 effective 5-2-98 Tulare Case # CR0037306			
	Restitution Direct Order # 359.9	JS	1/2 EPRD	11-3-2000
12-18-98	30 day wcr. log # FA 98 10 054 dtd 12/18/98 90 day wcr. log # FA 98 10 054 dtd 12/18/98	JS		
1-22-99	wcr thru 1/8/99. A2 off 1/10/99. A1 off 1/10/99. A2 off 1/10/99. A1 off 1/21/99. wcr thru 1/21/99	JS		
2-22-99	TRANSFER AUDIT WORK GROUP ADJUSTMENT FROM "D1" TO "D2" FROM 12-17-98 THRU 1-7-99; W6 CHANGED TO "D1" EFF. 1-8-99; D2 TIME FROM 10-10-98 THRU 1-7-99 FOR 90 DAYS. WC GAIN THRU 1-31-99 @ A1	JS		
2-25-99	Rec'd CMC-E (F/MED+RTN)	WV		
3-15-99	Intake Audit. ^{6mo} wcr thru 2-28-99 @ A1. NC EPRD.	JS		
7-15-99	WCR 30 days (COE 115 of 10/23/98, Log # 98 10 054) 6 mo wcr. applied thru 6/15/99 @ A1.	JS	1/2 EPRD	2-5-2001
7-15-99	Renewed for compliance with PC 296	JS		
8-25-99	90 day wcr. log # 98-12-045 dated 12-11-98 wcr thru 7-31-99 @ A1	JS		
9-23-99	90 days wcr. log # 98-12-045 per 12.6 of 9/99	JS	EPRD	3-22-2000
1-31-2000		JS	EPRD	2-5-2001
				299
Number	K-81267		Name	THATCHER, DAVID CHARLES
			Page	1

TULARE
K-81 267

GDC-138 (7/85) THATCHER, DAVID CHARLES
15-98 NO. _____

NAME _____ CLASS _____

ALIAS _____ REF. _____

		 Lenthland		
				

Hair BRO	Eyes BLU	Complexion	Height 500
Weight 170	Age 7-13-60	Build MD	Occupation
Rec'd at MSB-EC	Date 1-25-68	County HL	Nativity CA
Offense CHURCH/306(C12 P212.5(A))ROB 1ST W/P12122(A)(1)-		Term 6 YRS	Race WIT

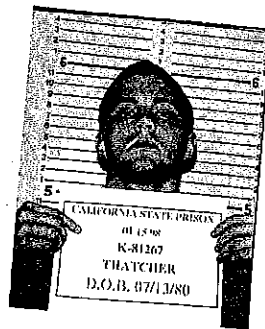
Marks, Scars, Tattoos (Location & Brief Description — Scar Right Eye, Tattoo Eagle Right Forearm. NOTE: If numerous list those most prominent)

Taken by [Signature]

Signature X David J. Latch

Left Hand	Left Thumb	Right Thumb	Right Hand
			

303



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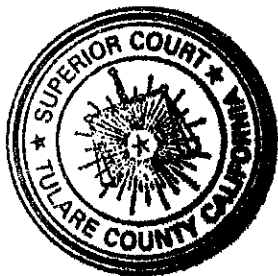
STATE OF CALIFORNIA)
)
COUNTY OF TULARE) ss

As County Clerk of the County of Tulare, State of California, and ex-officio Clerk of the Superior Court in and for said County, same being a court of record, I do hereby certify the foregoing to be full, true and correct copies of the original papers and records on file and of record in the therein entitled action.

In Witness Whereof I have hereunto set my hand and affixed by official seal this

11th day of February, 2002.

Tulare County Clerk



By Imda Hara
Deputy Clerk

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TCSC NO. 77196
	)	5TH NO. _____
DAVID C. THATCHER,	)	
	)	TRIAL DAY 1
Defendant.	)	TRIAL DAY 2
_____	)	

APPEAL FROM THE SUPERIOR COURT OF TULARE COUNTY
HONORABLE GERALD F. SEVIER, JUDGE PRESIDING

COPY

REPORTER'S TRANSCRIPT ON APPEAL
MONDAY, NOVEMBER 5, 2001
TUESDAY, NOVEMBER 6, 2001
VOLUME 1, PAGES 1 THROUGH 227

APPEARANCES:

For Plaintiff/Respondent: WILLIAM LOCKYER
ATTORNEY GENERAL
1515 "K" Street
Sacramento, CA 95814

For Defendant/Appellant:

REPORTED BY: CINDY M. HOLWAY, CSR #4371
OFFICIAL, RPR & CM

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF TULARE
3 DEPARTMENT 4 HONORABLE GERALD F. SEVIER, JUDGE
4 THE PEOPLE OF THE STATE)
5 OF CALIFORNIA,)
6 Plaintiff,)
7 vs.) NO. 77196
8 DAVID C. THATCHER,)
9 Defendant.)

10 Visalia, California Monday, November 5, 2001
11 Tuesday, November 6, 2001
12

13 REPORTER'S TRANSCRIPT
14 (Pages 1 through 227)
15

16 APPEARANCES:

17 For the Plaintiff: PHILLIP J. CLINE
18 DISTRICT ATTORNEY
19 BY: MELINDA AIELLO, DEPUTY
County Civic Center, Rm 224
Visalia, CA 93291

20 For the Defendant: PAUL R. STOREY
21 Attorney at Law
22 225 North M Street
Tulare, CA 93275

23
24
25 REPORTED BY: CINDY M. HOLWAY, CSR #4371
26 OFFICIAL, RPR & CM

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I N D E X

November 5, 2001	IN LIMINE MOTIONS TRIAL DAY 1 (Volume 1, Page 1)
November 6, 2001	TRIAL DAY 2 (Volume 1, Page 26)
November 7, 2001	TRIAL DAY 3 (Volume 2, Page 228)
November 8, 2001	TRIAL DAY 4 (Volume 3, Page 452)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
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25
26

MASTER INDEX

Tuesday, November 6, 2001

FRANCISCO ORTEGA

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	68	1	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	96	23	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	113	5	
	RECROSS-EXAMINATION		
BY MR. STOREY:.....	115	2	

ADAM RAMOS

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	118	8	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	120	20	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	122	4	

MELISSA DEMARAIS

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	124	1	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	127	1	

DOMINGO LOPES

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	129	18	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	143	17	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	153	22	

JEREMY EDIGER

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	159	14	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	162	14	

MARTHA PATINO

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	164	10	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	170	22	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FREDDIE PATINO

DIRECT EXAMINATION

BY MS. AIELLO:..... 178 6

CROSS-EXAMINATION

BY MR. STOREY:..... 194 21

REDIRECT EXAMINATION

BY MS. AIELLO:..... 211 6

1	Wednesday, November 7, 2001		
2	MICHAEL ALRHIMI		
	DIRECT EXAMINATION		
3	BY MS. AIELLO:.....	228	20
	CROSS-EXAMINATION		
4	BY STOREY:.....	277	21
	REDIRECT EXAMINATION		
5	BY MS. AIELLO:.....	298	4
6	DAVID VARGO		
	DIRECT EXAMINATION		
7	BY MS. AIELLO:.....	301	14
	CROSS-EXAMINATION		
8	BY MR. STOREY:.....	320	8
9	VERNA ATILANO		
	DIRECT EXAMINATION		
10	BY MS. AIELLO:.....	322	16
11	CHRIS GLAVEZ (Sworn, but did not testify).	327	15
12	BARBARA WILBORN		
	DIRECT EXAMINATION		
13	BY MS. AIELLO:.....	328	13
	CROSS-EXAMINATION		
14	BY MR. STOREY:.....	348	11
15	HEATHER PARKS		
	DIRECT EXAMINATION		
16	BY MS. AIELLO:.....	353	1
	CROSS-EXAMINATION		
17	BY STOREY:.....	368	15
	REDIRECT EXAMINATION		
18	BY MS. AIELLO:.....	372	22
	RECROSS-EXAMINATION		
19	BY MR. STOREY:.....	376	2
20	CHRIS GALVEZ		
	DIRECT EXAMINATION		
21	BY MS. AIELLO:.....	379	19
	CROSS-EXAMINATION		
22	BY STOREY:.....	383	24
23			
24			
25			
26			

1	GLORYS SLAYTON		
	DIRECT EXAMINATION		
2	BY MS. AIELLO:.....	385	7
	CROSS-EXAMINATION		
3	BY STOREY:.....	406	12
	REDIRECT EXAMINATION		
4	BY MS. AIELLO:.....	413	4
	RE CROSS-EXAMINATION		
5	BY MR. STOREY:.....	416	9
	REDIRECT EXAMINATION FURTHER		
6	BY MS. AIELLO:.....	420	13
7	DOUGLAS WINSLOW		
	DIRECT EXAMINATION		
8	BY MS. AIELLO:.....	423	1
	CROSS-EXAMINATION		
9	BY MR. STOREY:.....	425	21
	REDIRECT EXAMINATION		
10	BY MS. AIELLO:.....	429	19
	RE CROSS-EXAMINATION		
11	BY MR. STOREY:.....	430	16
	REDIRECT EXAMINATION FURTHER		
12	BY MS. AIELLO:.....	431	1
13	MARK LOPEZ		
	DIRECT EXAMINATION		
14	BY MS. AIELLO:.....	432	8
	CROSS-EXAMINATION		
15	BY STOREY:.....	443	19
	REDIRECT EXAMINATION		
16	BY MS. AIELLO:.....	449	8
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

1
2
3
4
5
6
7
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E X H I B I T S

THE FOLLOWING EXHIBITS ARE FOUND IN VOLUME 2:

(Whereupon, People's Exhibit 19 was
marked for identification.)..... 425 7

(Whereupon, People's Exhibit 20 was
marked for identification.)..... 444 17

(Whereupon, People's Exhibits 1 through 19 were
received in evidence.)..... 451 17

THE FOLLOWING EXHIBITS ARE FOUND IN VOLUME 3:

(Whereupon, People's Exhibit 20 was
received in evidence.)..... 455 8

(Whereupon, People's Exhibit 2 was
marked for identification.)..... 572 14

(Whereupon, People's Exhibit 21 was
received in evidence.)..... 572 16

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26

I N D E X

Tuesday, November 6, 2001

FRANCISCO ORTEGA

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	68	1	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	96	23	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	113	5	
	RECROSS-EXAMINATION		
BY MR. STOREY:.....	115	2	

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	DIRECT EXAMINATION		
BY MS. AIELLO:.....	118	8	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	120	20	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	122	4	

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BY MS. AIELLO:.....	124	1	
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BY MS. AIELLO:.....	129	18	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	143	17	
	REDIRECT EXAMINATION		
BY MS. AIELLO:.....	153	22	

JEREMY EDIGER

	DIRECT EXAMINATION		
BY MS. AIELLO:.....	159	14	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	162	14	

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	DIRECT EXAMINATION		
BY MS. AIELLO:.....	164	10	
	CROSS-EXAMINATION		
BY MR. STOREY:.....	170	22	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FREDDIE PATINO		
DIRECT EXAMINATION		
BY MS. AIELLO:.....	178	6
CROSS-EXAMINATION		
BY MR. STOREY:.....	194	21
REDIRECT EXAMINATION		
BY MS. AIELLO:.....	211	6

MORNING SESSION

Monday, November 5, 2001

(Whereupon, the following
proceedings were had in open court, to wit, at
9:40 a.m.:)

THE COURT: All right. This is the
matter of David Charles Thatcher. Mr. Thatcher's
matter has been assigned to this department for
trial. Mr. Storey is present. Ms. Aiello is
present. Mr. Thatcher is present.

We're engaged -- first order of
business is to become engaged in trial management
issues.

MR. STOREY: Your Honor, the first thing
that I would like to take up is my client is
charged with -- this is a Three Strikes case, so
there are certain strike allegations. There's
also a prior serious felony allegation, and
there's a prior prison term allegation.

At this point, we would ask that
the court bifurcate those from the trial in chief
on the charges.

THE COURT: All right. I'll take a look
at the information. So now -- so we have Count 1,
Count 2, Count 8 --

MR. STOREY: Your Honor, Count 2 is out,

1 and I believe it's about Count 15 or 16 or
2 something like that is also out.

3 THE COURT: By way of 995?

4 MS. AIELLO: Yes, your Honor.

5 THE COURT: All right. So 2 is out.

6 MR. STOREY: And the other one was 16.

7 THE COURT: 16. All right, so we have
8 Count 1, Count 8, Count 12 -- no, no.

9 MS. AIELLO: Count 13.

10 THE COURT: Sorry. Count 13, Count 14
11 and Count 15. So we have five counts. So we have
12 four counts of 211 and two counts of 487 -- no.

13 MR. STOREY: No, there should be one
14 count of 487.

15 THE COURT: Right. So four 211's and
16 one 487?

17 STOREY: Yes.

18 THE COURT: Okay. So in Count 1 -- so
19 it's as to the Three Strikes and the felony
20 priors --

21 MR. STOREY: Yes, your Honor.

22 THE COURT: -- and the prior serious
23 felonies, of course. Are those jury issues?

24 MS. AIELLO: They can be.

25 THE COURT: 667(a)(1)?

26 MS. AIELLO: If they're bifurcated, the

1 defendant still has the option to have a court or
2 a jury trial on --

3 THE COURT: All right. So he has the
4 right to a jury trial on whether or not they're
5 serious felonies under 667(a)(1)?

6 MS. AIELLO: Not whether or not it is a
7 serious felony; whether he suffered that
8 conviction.

9 MR. STOREY: Your Honor, it's our
10 position that he would also have a right to a
11 determination as to whether or not that's a
12 serious felony. I believe that law is in a state
13 of flux on that at this point. He would be asking
14 for a jury trial.

15 THE COURT: All right.

16 MR. STOREY: He may be asking for a jury
17 in regards to that issue.

18 THE COURT: All right. Well, he's
19 certainly entitled to -- we'll take that up. I am
20 granting the motion to bifurcate.

21 MR. STOREY: Thank you.

22 The --

23 THE COURT: That is your request,
24 Mr. Thatcher?

25 THE DEFENDANT: Yes, sir.

26 THE COURT: All right.

1 MR. STOREY: The next issue that I'd
2 like to raise is there is a possibility that my
3 client may take the stand. In the event he takes
4 the stand, I would ask the District Attorney be
5 limited in asking him whether or not he has a
6 felony conviction for a crime involving moral
7 turpitude.

8 The underlying convictions are the
9 211's, and if they're allowed to bring out the
10 facts or the charges, there may be a finding by
11 the jury of guilt based on the prior convictions,
12 not on this case.

13 MS. AIELLO: Had the People given notice
14 to the defense attorney, we would have sought his
15 prior convictions admitted pursuant to 1101(b) of
16 the Evidence Code. That was not done. The People
17 are not seeking to admit his prior 211 convictions
18 pursuant to 1101(b).

19 However, the People are sort of
20 analogizing that it would have been or could have
21 been admitted under that. So I'm not so sure that
22 it's necessarily appropriate to sanitize if the
23 defendant chooses to take the stand.

24 I know the nature of the prior
25 convictions is one of the elements that the court,
26 of course, needs to look at in determining whether

1 or not a defendant will be impeached if he takes
2 the stand in his own defense.

3 THE COURT: All right. Insofar as
4 impeachment is concerned, given the fact that they
5 are the same type of crime for which Mr. Thatcher
6 is on trial, I will sanitize them, to use the
7 jargon "and a crime involving -- a felony
8 involving moral turpitude."

9 MR. STOREY: Thank you, your Honor.

10 Your Honor, the next issue has to
11 do with certain evidence, and I don't know whether
12 those tapes are going to be played or not, but
13 there are a number of interviews. One is by an
14 individual by the name Heather. One is by an
15 individual by the name of Barbara. These are both
16 females that are associated with Mr. Thatcher, and
17 they make certain statements within those tapes as
18 to his prior record and prior conduct, and we
19 would ask that those be deleted from any playing
20 of either the videotape or the tape-recording.

21 MS. AIELLO: Well, first of all, the
22 People couldn't even play the tapes in its
23 entirety. The witnesses would have to testify.

24 I am not intending to ask those
25 witnesses if they are aware of the defendant's
26 prior record or prior convictions.

1 What I will be asking is if they've
2 seen him with certain weapons that have been
3 described by the victims of the robberies.

4 MR. STOREY: I would indicate that there
5 is a statement by the witness or potential witness
6 Barbara who does describe seeing Mr. Thatcher and
7 seeing a gun fall out of his pants. There is no
8 date given. There is no description given of that
9 gun that would be consistent with any description
10 as given as to a firearm that is used in the -- in
11 any of the events that's alleged here, other than
12 the fact that it's a revolver and -- and I think
13 it's black in color.

14 MS. AIELLO: Given the fact that the
15 defendant was released on parole in February of
16 this year, and these robberies occurred in June,
17 and given, I believe, what the other statements
18 were made in conjunction, I believe -- or I submit
19 that there will be sufficient evidence to tie
20 seeing this defendant with the gun within a
21 reasonable time frame of the robberies. In
22 fact -- well, I think even -- even if we couldn't
23 even tie it within, say, a month or so of the
24 robberies, we know that it can't be any older than
25 February since that was when he was paroled, and I
26 would submit that it's really a jury determination

1 whether or not they believe that the gun that the
2 defendant is seen with is sufficiently similar to
3 the guns that are alleged to be -- have been used
4 in these robberies.

5 THE COURT: Well, tell me about the
6 purported similarity.

7 MS. AIELLO: Basically, that it's a
8 revolver, a black gun, and I think the detective,
9 if this is the interview I'm thinking of, asked
10 her is it a cowboy gun? And she says yeah, it
11 looks like a cowboy gun with a longer handle.

12 Off the top of my head, I can't
13 think of any more defining details than that, but
14 the fact that she does call it a revolver, she
15 does say it's a black gun, and I think she even
16 says that she saw the defendant Thatcher with it,
17 but she believes that it was defendant Palafox's
18 gun, and certainly, he has been alleged to have
19 been armed with weapons in the robberies that he
20 committed on his own and with Mr. Thatcher.

21 THE COURT: Well, if you can in good
22 faith -- part of the problem is, is the witness
23 has no idea when in the last five years she
24 purportedly saw the revolver fall out of the
25 pants. Then it probably wouldn't come in. If she
26 says -- it depends on what she says. I don't know

1 what your offer of proof is --

2 MS. AIELLO: Well --

3 THE COURT: -- because, obviously, you
4 can't have the start date the day that he's
5 released from parole in front of the jury.

6 MS. AIELLO: No, I understand that.
7 What I'm saying is in her statement, I don't think
8 that it was pinned down; did you see him in the
9 month of June, in the month of May? As sort of a
10 guideline for the court, you know, obviously,
11 we're not talking about he was paroled five years
12 ago and it was within the last five years. I
13 believe I can make a sufficient offer of proof
14 regarding --

15 THE COURT: Well, before -- before I
16 rule on it, that witness -- you'll have to give me
17 an offer of proof as to what the testimony might
18 be.

19 MR. STOREY: Your Honor, I will --

20 THE COURT: It sounds as if it's
21 probably relevant, but --

22 MR. STOREY: I think there are some real
23 problems here.

24 MS. AIELLO: Okay.

25 MR. STOREY: One of those --

26 MS. AIELLO: If I may, before we move on

1 from this point, and I apologize. In the
2 interview, Ms. Wilborn said that the last time she
3 saw a gun is when it fell out of David Thatcher's
4 pants. She described this gun as an old, dark
5 revolver, and she saw it when he had it several
6 weeks ago on Vine Street.

7 We know based upon lease agreements
8 that she rented that house May 26th of 2001, and
9 this interview was done July 2nd, I believe, and
10 she had been evicted out of that house sometime in
11 June. So this is a very narrow time frame.

12 MR. STOREY: Your Honor, in regards to
13 allegations of guns that may fit that, there is
14 only a single charge. That is the one from June
15 18th involving Mr. Thatcher which may potentially
16 have that gun.

17 There's no statement in regards to
18 Barbara as to when it is she sees this, whether
19 it's before or whether it's after.

20 There is a statement by Heather
21 that the gun belongs to Mr. Palafox. A
22 description is given to Mark Lopez as to where
23 that is -- that gun is. It is at the home of
24 Mr. Palafox, and they go and pick it up.

25 There are also charges against
26 Mr. Palafox, who was the codefendant in this case,

1 where there's an indication that he was the one
2 that was using the gun on several robberies.

3 There is an additional witness, a
4 Mr. Patino, who I expect to be called, that will
5 describe it as being Mr. -- Mr. Palafox that has
6 the gun.

7 THE COURT: Well, is there some evidence
8 that Mr. Thatcher used the firearm on June 18th?

9 MS. AIELLO: Yes, your Honor.

10 MR. STOREY: The only evidence is the
11 statement by Mr. Patino.

12 MS. AIELLO: No. The evidence is by the
13 victim who says he was encountered by a white male
14 adult with a gun, with a -- with a small caliber
15 handgun.

16 THE COURT: That was dark?

17 MS. AIELLO: Yes, I believe so, small
18 black handgun. The reports do not indicate
19 whether it was a revolver or an automatic.

20 THE COURT: All right. The relevancy
21 objection is -- is overruled, assuming you can lay
22 the foundation.

23 All right. Any other issues,
24 Mr. Storey?

25 STOREY: Your Honor, there is also a
26 interview of a Mr. Patino. At one point, it

1 looked like he was going to be charged in a number
2 of these offenses. There is -- it's a videotape,
3 as well as a tape-recording, which is rather
4 long.

5 During that tape-recording, he is
6 making statements in regards to my client's
7 previous convictions --

8 THE COURT: Excuse me, Mr. Storey. So
9 you're objecting to the playing of that videotape;
10 correct?

11 MR. STOREY: Yes and no, because on the
12 same videotape, there is also a tape of an
13 interview done by Detective Winslow which I plan
14 on playing. The -- the portion dealing with
15 Officer Winslow doesn't have anything to do with
16 statements concerning Mr. Thatcher. It is a
17 statement by Mr. Patino -- in that particular one,
18 he's asking to take a lie detector test because
19 the statements he gave to Detective Lopez were
20 false.

21 THE COURT: I'm not following your
22 motion. I need to know what your motion is?

23 MR. STOREY: I'm asking to exclude the
24 portion where the interview is done by Mark Lopez
25 and the portion with Mark Lopez in conjunction
26 with Detective Winslow.

1 THE COURT: All right. Well, there's --
2 let me just start out -- counsel can comment, but
3 it would seem to me that any videotape played by
4 the prosecution would be hearsay and not
5 admissible. It's hearsay.

6 MR. STOREY: It may come in --

7 THE COURT: So it seems to me that
8 certainly, the appropriate tentative on excluding
9 the video in the D.A.'s case, the objection, the
10 hearsay objection would be sustained.

11 If -- now, I understand that you --
12 you're going to try to play a statement by
13 Mr. Patino in your defense case?

14 MR. STOREY: Yes.

15 THE COURT: Wouldn't that also be
16 hearsay? What's the exception?

17 MR. STOREY: I don't know what
18 Mr. Patino is going to say because he's not on the
19 stand at this point.

20 THE COURT: You're subpoenaing Mr. --

21 MS. AIELLO: Mr. Patino --

22 MR. STOREY: No.

23 MS. AIELLO: -- was a codefendant at one
24 point in time. He is a subpoenaed witness. I
25 have been in contact with his defense attorney.

26 THE COURT: Oh, I see.

1 MS. AIELLO: He pled out date --

2 THE COURT: I was thinking of
3 Mr. Palafox, I'm sorry.

4 MR. STOREY: No.

5 MS. AIELLO: Yes. Mr. Patino is going
6 to testify as to the identification of the
7 participants in the very first three robberies.

8 At this point in time, Mr. Thatcher
9 would only be involved in the -- in Count 1, the
10 very first robbery.

11 THE COURT: So Mr. Patino is a
12 subpoenaed prosecution witness?

13 MS. AIELLO: He is a subpoenaed
14 prosecution witness.

15 THE COURT: I see.

16 MS. AIELLO: Even given that, the only
17 way that any portions of the tape or even the
18 transcript would be admissible is if we're talking
19 about impeachment, and even then, I'm not sure how
20 an entire portion could be played.

21 And I'm assuming if defense counsel
22 wants to play the tape, he also has transcripts,
23 especially, you know, if he plans to play the tape
24 in front of the jury, so --

25 THE COURT: Well, it's -- any prior
26 statement would be hearsay. So the foundation

1 would have to be laid --

2 MS. AIELLO: Absolutely.

3 THE COURT: -- for an exception to -- as
4 to any particular statement. So it would be very
5 unusual, although it's certainly at least
6 theoretically possible, for a witness to -- within
7 a series of questions or on a videotape to make a
8 prior inconsistent statement as to every one of
9 those statements. So it's something that just has
10 to be analyzed once the testimony on direct is
11 elicited. So I can't rule on that.

12 Are there any other in limine
13 issues?

14 MR. STOREY: Your Honor, I have not
15 yet -- I did not -- or neglected to contact the
16 District Attorney in regards to getting a printout
17 as to a Ms. Slayton and any prior convictions that
18 she has. I would be seeking to go into that. I
19 would ask the People get me a copy.

20 MS. AIELLO: Okay. Well, I'm not sure
21 what he's asking. I cannot provide a rap sheet,
22 and I believe I provided all the criminal
23 histories of my witnesses in discovery previously
24 provided. I'm not sure beyond that what he's
25 asking.

26 I can inform the court that

1 Ms. Slayton's reported she has a 1996 second
2 degree burglary. I believe that's a felony. She
3 has a '91 -- excuse me, yes, '91 petty theft with
4 a prior as a misdemeanor.

5 MR. STOREY: That would be sufficient,
6 thank you.

7 THE COURT: Okay. Any other in limine
8 issues?

9 MR. STOREY: No, your Honor.

10 THE COURT: Ms. Aiello?

11 MS. AIELLO: Yes, just briefly.

12 I have not received a witness list
13 or any discovery from the defense. I just want to
14 make sure that if there is any discovery, that I'm
15 informed about it, assuming that they intend to
16 call witnesses that are outside the police
17 reports.

18 MR. STOREY: Your Honor, there may be,
19 and I apologize to the court. The father of
20 Mr. Thatcher was here and had information for me.
21 He called me to go outside the court when the
22 court took the bench, and I haven't talked with
23 him yet.

24 I don't have names of witnesses,
25 addresses, birth dates or phone numbers, but I got
26 the impression that's what he's going to be giving

1 me.

2 THE COURT: Well, the discovery statute
3 is clear.

4 MR. STOREY: As soon as I get them, I
5 will give them to the District Attorney.

6 MS. AIELLO: The next issue I have is
7 just to let the court know, there is a videotape,
8 a store surveillance tape of one of the
9 robberies. It's very brief. There's no sound.

10 I would be asking to play that; I
11 mean, really, it's the best evidence of the
12 robbery, and it's -- in its sped-up time. So I
13 think the total time is less than even 30 seconds.

14 MR. STOREY: Your Honor, we would
15 make -- I understand, and I do have a copy of the
16 tape that previously has been provided. I was
17 unable to slow that down enough to get a look at
18 one of the particular firearms.

19 There is a second individual who
20 shows up who I believe they are alleging is
21 Mr. Thatcher. He does appear to have a brown
22 object in his hands. That's about all I can see,
23 and I was unable to slow it down or stop it, the
24 video, to get a clear picture as to what that item
25 is.

26 I'd ask if the People have that,

1 that I be provided with a copy of that frame.

2 MS. AIELLO: I haven't taken any
3 pictures off the tape.

4 MR. STOREY: I think it becomes a very
5 big issue when they start to play this and they
6 are alleging that it's a firearm. Testimony from
7 the witnesses there talk about it is somewhat
8 inconsistent. At one point, there are several
9 witnesses who talk about it being a sawed-off
10 shotgun. There are then several --

11 THE COURT: Well, I don't know what --
12 excuse me for interrupting. I don't know what
13 that has to do with the videotape. It's part of
14 the evidence in the case, and it's for the trier
15 of fact to ascertain its -- its weight, if any.

16 So it doesn't sound to me like it's
17 a question of admissibility, and, therefore,
18 there's really nothing for me to rule on. Is
19 there some problem with its admissibility? Okay.

20 Any other issues?

21 MS. AIELLO: Yes. Just want to clarify;
22 when we were talking about the defendant's prior
23 record, the court said a felony involving moral
24 turpitude. Am I allowed to ask that he has two
25 felonies that are involve --

26 THE COURT: Yes.

1 MS. AIELLO: Okay. I just wanted to
2 clarify that.

3 I'm not sure if defense counsel
4 plans to impeach the other prosecution witnesses
5 with their felony records, but there are other
6 witnesses who have records, and since he brought
7 up Mr. -- Ms. Slayton, I just want to talk about
8 the other witnesses to make sure that there's --
9 if there's going to be any limitation of that --

10 THE COURT: Well, I have a trial
11 starting right now, and I am going to take a
12 recess.

13 MS. AIELLO: Okay.

14 THE COURT: And --

15 MS. AIELLO: It's not something that
16 really needs to be addressed right now.

17 THE COURT: Right. If there's some
18 problem, then we'll put it on the record.

19 MS. AIELLO: Okay. All right. Back at
20 1:30?

21 THE COURT: 1:45.

22 MS. AIELLO: 1:45. And starting with
23 opening statements and evidence tomorrow?

24 THE COURT: Yes.

25 MS. AIELLO: Thank you.

26 (Whereupon, a recess was taken at

1 10:04 a.m.)
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AFTERNOON SESSION

Monday, November 5, 2001

(Whereupon, the jury selection proceedings held on Monday, November 5, 2001, were herein omitted, having not been requested on appeal.)

(Whereupon, the following proceedings were had in open court, following jury selection, to wit, at 5:05 p.m.):

THE COURT: Ladies and gentlemen, I know that most of you have obligations after five o'clock, so we're not going to keep you here this evening. You will be going home. I just want to say a few things to you, and then I will -- we will recess for the day.

Probably most of you wished that you were one of the people walking out of the courtroom just now. If you felt that way, that's understandable because, as we acknowledge, jury service is not easy. It does involve sacrifice, it really does. We appreciate very much you being willing to endure that sacrifice in all sincerity.

I hope you also take home with you the fact that we have two very separate sides in this case, and those two very separate sides have

1 chosen you out of all those people who walked into
2 this courtroom today to hear this case, to judge
3 this case. So being a juror involves sacrifice,
4 but I also feel -- hope that in some way you feel
5 somewhat honored because you have been selected as
6 a juror in this case.

7 When you put on that juror badge
8 tomorrow, wear it proudly, and when you do pin it
9 on, remember the duties that you have undertaken
10 to fulfill. They are very critical.

11 It's important that I tell you that
12 you cannot talk about this case with anyone. In
13 just a little while when you go home, it's
14 probably going to be the hardest time during this
15 trial to meet that obligation.

16 Understand, certainly, that you may
17 tell your -- if this is the case -- your employer,
18 your employees and those who need to know that you
19 have been selected as a juror in a trial, that --
20 and you also, of course, can set forth the -- the
21 time estimate and the time during the day when you
22 will be needed.

23 Let me tell you generally that your
24 workday as a juror will start at ten o'clock in
25 the morning and end sometime between 4:30 and five
26 o'clock in the afternoon. We generally can't

1 start any earlier than 10:00 because the court has
2 other business, counsel have other obligations.
3 So a juror's workday usually starts at ten
4 o'clock.

5 If we can start earlier and
6 everyone can start earlier, we will make those
7 exceptions, but we will discuss them, of course,
8 in advance. So generally, you can rely on
9 starting at ten o'clock.

10 You'll get recesses about every
11 hour of ten minutes in duration. Your lunch hour
12 will be longer, I'm sure, than most of you are
13 used to. The lunch hour generally is from 12:00
14 to 1:30. Generally, we don't start before 1:30.

15 Counsel, again, have other
16 obligations, and what we try to do when you aren't
17 here is to take care of as much procedural
18 business as we can. Every trial involves
19 procedural issues, and we try, although I
20 certainly can't guarantee and do not guarantee
21 that when you are here, we'll try to meet that
22 schedule. I don't like to not start at ten
23 o'clock. When we say ten o'clock, I want to start
24 at ten o'clock. Sometimes -- sometimes we can't.

25 I can only promise you that I will
26 do everything I possibly can as a judge to manage

1 my calendar and counsel's issues, if they have
2 any, so you start at ten o'clock. Just know that
3 if you don't start at ten o'clock, it's not
4 because we've forgotten about you. Believe me,
5 when we have jurors here, you are foremost on our
6 minds because of the time that you're investing.

7 When you go home tonight or
8 tomorrow night or at any other time, as I
9 mentioned, you can talk about the schedule, you
10 can talk about the fact that you've been selected
11 as a juror or an alternate, but you cannot talk
12 about the case at all, no exceptions. This is a
13 very definite line, and that line stops with I've
14 been selected as a juror; time estimate is four or
15 five days. It might go into Tuesday. The time
16 that I'll be on a jury during the day is generally
17 from 10:00 to 5:00, 10:00 to 4:30 or 5:00. You
18 can discuss all that, but you cannot even mention
19 that it's a criminal case, much less the type of
20 case that it is. That would be a violation of one
21 of your basic duties as a juror.

22 So if you're asked, and it's normal
23 for people to ask, tell them the judge has
24 directed and ordered that you can't talk about the
25 case.

26 You may say that after -- if you

1 choose to, after the case is over, I'll tell you
2 all about it, but until then, I can't talk about
3 it.

4 When the case is entirely over,
5 when you're discharged from your duties, of
6 course, if you choose to talk about it, you can.
7 On the other hand, if you don't want to talk about
8 it then, you don't have to. That's entirely up to
9 you, but you can't talk about the case with
10 anyone, not even your fellow jurors. It's
11 absolutely critical.

12 I'll be talking with you about
13 other matters tomorrow before we actually get into
14 opening statements. That won't take very long.
15 Deputy Lacy probably has a few words for you.

16 If you get here tomorrow morning,
17 we do plan on starting at ten o'clock, you can
18 come in anytime before then. The jury room, as I
19 said, is behind the flag. There will be coffee
20 and so forth. Deputy Lacy will tell you about
21 that. If we do happen to be in session, just --
22 unless directed otherwise, just come on through
23 the courtroom, go into the jury room.

24 Have a good evening. We'll see you
25 tomorrow at ten o'clock, ladies and gentlemen.
26 Don't talk to anybody about the case. Thank you

1 very much.

2 (Whereupon, the proceedings were
3 recessed at 5:10 p.m. to be reconvened on Tuesday,
4 November 6, 2001, at 10:00 a.m.)

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MORNING SESSION

Tuesday, November 6, 2001

(Whereupon, the following proceedings were had in open court, outside the presence of the jury, to wit, at 9:38 a.m.):

THE COURT: All right, good morning. We're convened outside of the presence of the jury. The District Attorney as I understand it is making a motion to amend the information in part.

MS. AIELLO: Yes, your Honor.

THE COURT: All right. What is your motion?

MS. AIELLO: Specifically, the People move to amend Count 8, changing the date of the offense to on or about the 27th day of June, 2001.

THE COURT: All right. Just a moment, please, I'm sorry for interrupting. Count 8?

MS. AIELLO: Yes.

THE COURT: All right. And would you restate your specific motion again, please.

MS. AIELLO: Yes. The People move to amend Count 8 to reflect a violation occurring on or about the 27th day of June, 2001.

THE COURT: All right. Mr. Storey?

MR. STOREY: Your Honor, we're opposed to that because it's amendment after we've already

1 started jury selection. We're getting ready for
2 trial.

3 One of the defenses has to do with
4 an allegation that Freddie Patino was the
5 perpetrator. Now, he did not work and was not at
6 work on June 30th, so that was a viable defense in
7 the event that we proceeded with the date alleged
8 in the information of June 30th.

9 Those same payroll records indicate
10 an alibi for Mr. Patino on June 27th. So by
11 making this amendment, we are deprived of a
12 defense that we had prior to that amendment.

13 THE COURT: Well, I've taken a look at
14 this. District Attorney in your presence
15 yesterday mentioned she was going to do this, make
16 the motion, that is.

17 I note that in Count 3 of the
18 complaint -- excuse me, Count 2, I should say,
19 wherein the alleged victim was DL, as is the
20 alleged victim in Count 8, that on the complaint,
21 the alleged date was June 27th. The -- I have not
22 read the preliminary hearing transcript, and
23 someone can correct me if I'm mistaken, but I
24 would assume that the evidence adduced at the
25 preliminary hearing was June 27th; am I mistaken
26 or not?

1 MS. AIELLO: You are correct, your
2 Honor. The police reports for that offense have
3 always stated June 27, and the evidence as
4 elicited at the preliminary hearing was on June
5 27th with the victim being DL.

6 MR. STOREY: Excuse me, your Honor.
7 What court was -- what count was the court talking
8 about?

9 THE COURT: In the complaint.

10 MS. AIELLO: The original --

11 MR. STOREY: Are you talking about the
12 original complaint?

13 THE COURT: I'm talking about the
14 complaint as distinguished from the information.

15 MR. STOREY: Okay. And again, I don't
16 even know if I have a complaint. At that time, I
17 didn't represent Mr. Thatcher. I was appointed in
18 the trial court. I have a copy of the
19 information. I've been working off the
20 information.

21 THE COURT: Well, the -- the point is
22 that was the evidence adduced at the preliminary
23 hearing.

24 What do the police reports say
25 about the date of Count 8 --

26 MS. AIELLO: The police reports --

1 THE COURT: -- that I assume were
2 supplied to Mr. Storey as part of the discovery?

3 MS. AIELLO: Yes. The police reports
4 involving the robbery of DL state that the robbery
5 occurred on June 27th.

6 MR. STOREY: Your Honor, I don't -- and
7 again, looking at the -- the statements made by
8 the individuals, I don't think they state that it
9 was on the 27th. There may be dates and times in
10 the police reports as far as recording that would
11 indicate --

12 MS. AIELLO: Well --

13 MR. STOREY: Again, that's not a -- I
14 don't think any of these victims are making
15 statements. I don't think any of the witnesses
16 give us statements as far as times go.

17 I think that's one of the problems
18 that's going to occur with Freddie Patino's
19 testimony.

20 MS. AIELLO: I would direct defense
21 counsel to the police reports, his Bate stamp page
22 116. Officer Ediger of the Visalia Police
23 Department, his report reads that, "On June 27th,
24 2001, at approximately 1457 hours, I responded to
25 a report of an armed robbery which had just
26 occurred at 1845 North Dinuba," and in that

1 report, again, takes a statement from the victim
2 who is -- with the initials of DL.

3 MR. STOREY: I can see in -- on page --
4 Bate's page 1616 that counsel is correct, it is
5 not a portion of an interview by any suspect.
6 It's not a portion of a narrative as to an officer
7 talking about evidence. It's just a time of entry
8 into a report.

9 MS. AIELLO: Well --

10 MR. STOREY: But by -- if he did this on
11 the 27th, it had to have been before the 30th, and
12 I agree with that conclusion in looking at it.

13 THE COURT: What officer responded?

14 MS. AIELLO: Officer Ediger.

15 THE COURT: Okay.

16 MS. AIELLO: Are you looking at the
17 prelim transcript?

18 MR. STOREY: I was looking at page 116.

19 THE COURT: All right. I'm looking at
20 the preliminary hearing transcript, page 37.
21 Question on line 17, "Officer Ediger, were you
22 working on June 27th, the year 2001?"

23 And then later on, "At
24 approximately 1457 hours, did you respond to 1845
25 North Dinuba Boulevard?" so forth; "made contact
26 with the victim Domingo Lopes," DL, and then on

1 page 39, it begins with the testimony of the
2 officer about the report that Mr. Lopes made
3 relating to an incident that occurred that
4 afternoon, being June --

5 MR. STOREY: What page is that, your
6 Honor?

7 THE COURT: That would be on page -- or
8 is on page 39.

9 So there -- I'm going to grant the
10 motion. It's an on or about allegation. The
11 evidence adduced at the preliminary hearing
12 reflects that the alleged -- the actual date was
13 June 27th as -- as to the alleged incident.

14 I don't find any unfair surprise.
15 It's very clear except that -- as to the
16 incident. So the motion is granted.

17 So I'm going to amend the
18 information reflecting on or about June 27th, the
19 year 2001, and Mr. Storey, I assume you're --
20 obviously, your client has objected to this. Your
21 objections are noted.

22 I assume he would waive formal
23 arraignment as to Count 8 as amended. He would
24 waive formal advice as to rights, and he's
25 entering a plea of not guilty?

26 MR. STOREY: Yes, your Honor.

1 THE COURT: All right. Mr. Thatcher,
2 your plea to amended Count 8 is not guilty?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right.

5 All right. Are there any other
6 issues we need to take up?

7 MS. AIELLO: Yes, your Honor. There's
8 an issue about the evidence that the People intend
9 to elicit at the trial.

10 As the court, I know, is aware,
11 since it did trial call yesterday, this originally
12 was a codefendant case involving a total of five
13 robberies. As currently alleged, Mr. Thatcher is
14 involved in three out of the five.

15 The codefendant Leo Palafox was
16 alleged to have committed -- or be involved in all
17 five robberies.

18 Given the fact that Mr. Palafox is
19 out of the case due to 1368 proceedings being
20 initiated, the People still intend to elicit the
21 testimony of the other two robberies that
22 Mr. Thatcher is not involved in, and the main
23 reason is this is a totality of the circumstances
24 type of case.

25 Even though the People have to
26 prove each and every count by proof beyond a

1 reasonable doubt, the fact is there's
2 circumstantial evidence of this defendant's
3 involvement in the charged robberies.

4 One of the key witnesses --

5 THE COURT: Just -- I'm sorry, I don't
6 understand what you just said.

7 MS. AIELLO: That's okay.

8 THE COURT: I heard what you said, but I
9 don't understand it.

10 MS. AIELLO: In the -- in the very first
11 count, very first robbery that's alleged as to
12 Mr. Thatcher's involvement, there is no positive
13 witness identification. The evidence linking
14 Mr. Thatcher to this particular robbery, the first
15 robbery, would be the testimony of the codefendant
16 who pled out on the day of the preliminary
17 hearing, Freddie Patino.

18 The physical description arguably
19 matches the defendant.

20 THE COURT: Okay.

21 MS. AIELLO: The next robbery alleged
22 for Mr. Thatcher is on June 27th, and that would
23 be the Count 8 that we just discussed. That
24 occurred at the very same recycling center and
25 also involved Leo Palafox who is alleged to have
26 committed the first robbery with Mr. Thatcher and

1 Mr. Patino.

2 The final robbery that
3 Mr. Thatcher's alleged to be involved in is one
4 that took place on June 30th. That robbery, the
5 witness was unable to positively identify
6 Mr. Thatcher.

7 Now, there is a -- another witness,
8 a civilian witness, not a victim, who can place
9 Mr. Thatcher and Mr. Palafox together prior to the
10 commission of the robbery, and, um, that is how
11 the People intend to prove Mr. Thatcher as being
12 the one involved in this June 30th robbery, his
13 close placement to the robbery, his association
14 with Mr. Palafox.

15 Even though Mr. Thatcher is not
16 charged in the other two robberies, the ones that
17 took place on June 20th and June 22nd, the fact
18 is, is the codefendant, the first defendant --
19 codefendant, Freddie Patino, will be testifying,
20 and as I'm sure the court is aware of the law of
21 accomplice liability, that testimony must be
22 corroborated before the jury can, in essence,
23 believe that witness.

24 Now, Mr. Patino has provided
25 statements about his involvement in the first
26 three robberies, June 18th, June 20th and June

1 22nd. The People feel that in order to properly
2 educate or explain to the jury Mr. Patino's
3 credibility, then evidence of those other two
4 robberies that Mr. Thatcher's charged with should
5 be brought in to again show Mr. Patino's
6 reliability.

7 THE COURT: His reliability in what
8 sense, being a robber?

9 MS. AIELLO: Well, to be corroborated.
10 Every -- in every place I can corroborate
11 Mr. Patino, I think it's relevant because before
12 they can believe him, because he is an accomplice,
13 I submit, as a matter of law, he must be
14 corroborated, and he's not just corroborated in
15 this first robbery. He's corroborated in every
16 robbery that he testifies to.

17 He has knowledge of when those
18 robberies took place, obviously, because he was,
19 too, involved, but in order for the jury to get
20 the full understanding of the depth of his
21 knowledge, they need to know about all of these
22 robberies.

23 I mean, the law is very clear that
24 accomplice testimony must be corroborated.

25 THE COURT: The problem is the testimony
26 relating to the defendant's culpability has to be

1 corroborated. That's what has to be corroborated,
2 not that he committed -- not that your accomplice
3 as a matter of law committed other crimes.

4 MS. AIELLO: The law of accomplice
5 testimony is that the -- the accomplice testifying
6 must be corroborated.

7 THE COURT: I understand that.

8 MS. AIELLO: Okay.

9 THE COURT: And if you take that
10 logically further, unless you have some authority
11 to the contrary, the corroboration has to be as to
12 the offense charged against the defendant, the
13 accomplice's testimony relating to the charges
14 against the defendant.

15 MS. AIELLO: Yes. I see -- I see what
16 the court is saying.

17 I have taken a look at some of the
18 cases on accomplice liability and -- and I agree,
19 yes, the -- the prosecution must produce
20 independent evidence that without aid or
21 assistance from the testimony of the accomplice
22 tends to connect the defendant with the crime
23 charged.

24 I still believe that in every area
25 that I can corroborate Mr. Patino's testimony,
26 that corroborates him for the charged offenses

1 with -- dealing with Mr. Thatcher that I --

2 THE COURT: The instances you're
3 relating to the court ostensibly have nothing to
4 do with Mr. Thatcher.

5 MS. AIELLO: Well, considering the fact
6 that Mr. Thatcher committed or allegedly committed
7 these robberies with Leo Palafox, and Mr. Palafox
8 is out there committing robberies, I think it
9 tends to support the identity of Mr. Thatcher as
10 the one who committed the charged robberies.

11 MR. STOREY: I think this is -- clearly,
12 they're saying because my client knows
13 Mr. Palafox, and Mr. Palafox commits robberies, my
14 client must be guilty. That's guilt by
15 association.

16 THE COURT: Well, I don't -- I don't
17 know if that's the case, either.

18 MS. AIELLO: Well, to a certain
19 extent -- to a certain extent it is. I mean,
20 certainly, when we're saying that people are out
21 committing robberies together, there should be
22 evidence of them being together, which is what we
23 have.

24 THE COURT: You don't have any -- you're
25 not -- you're not offering evidence Mr. Thatcher
26 was together with Mr. Palafox and Mr. Patino as to

1 these other robberies, are you?

2 MS. AIELLO: I don't have any evidence
3 that the two robberies that Mr. Thatcher is
4 charged with that he was involved; otherwise, he
5 would be charged.

6 THE COURT: I'm denying your motion
7 without prejudice. If you can show me some
8 authority to the contrary, I'll certainly consider
9 it, but it does not appear to me to be at all
10 relevant on the issue of corroboration of the
11 accomplice's testimony.

12 MS. AIELLO: The final issue that I --
13 that I have is these first two witnesses that I
14 will beginning are Spanish speaking. The officer
15 used a -- an employee of the recycling center to
16 assist in the translation interpretation.

17 In the event that those
18 witnesses -- I need to elicit prior consistent or
19 inconsistent statements, I was inquiring of
20 defense counsel prior to court beginning whether
21 or not I need to bring in that actual witness, and
22 I believe he's indicated that he wants me to bring
23 in the -- the interpreter.

24 THE COURT: That would make sense.

25 MR. STOREY: I think they have to
26 because we don't know the qualifications of that

1 individual, and they could have an improper
2 interpretation.

3 THE COURT: I believe it's -- I believe
4 otherwise, it would be hearsay.

5 MS. AIELLO: Well, I think the case of
6 People versus Torres, when a translator is used,
7 they're basically just used as really a conduit,
8 you know. It's not really a level of hearsay.

9 THE COURT: Well, I haven't read Torres
10 for a while. I have read it, but my impression --
11 I probably shouldn't say anything, but my
12 impression is that has to do with the
13 admissibility of preliminary hearing; may not be.
14 I'll take a look at Torres, but I would think that
15 you should have that person who did the
16 interpretation in.

17 What's the cite on Torres?

18 MS. AIELLO: I apologize, I don't have
19 it. I just know the case name.

20 I believe Torres sort of still
21 indicates --

22 THE COURT: Well, let's not guess at
23 it. Let's see what it says.

24 MS. AIELLO: If defense counsel is
25 questioning the interpreter's qualifications, I
26 still think I have to bring him in.

1 THE COURT: I think you have to bring
2 him in, yes.

3 MS. AIELLO: So that's what I wanted to
4 find out.

5 What I would ask for -- because I
6 was not quite sure how the court would rule -- I
7 do have some witnesses here. We have asked to
8 have Mr. Ramos here this morning. He'll be here.
9 I don't know what time he's going to get here, so
10 if I have to put the first officer on, can I put
11 her on subject to exclusion? That's not the right
12 word, I can't think of what it is.

13 MR. STOREY: Subject to a motion to
14 strike; that creates a real problem --

15 MS. AIELLO: Thank you.

16 MR. STOREY: -- because the jury already
17 would have heard it.

18 Yes, you can tell the jury not to
19 listen to it, disregard what's said, but they've
20 still heard it. You can't unring a bell.

21 THE COURT: Excuse me. Let's just get
22 the witnesses here when they're supposed to be
23 here.

24 MS. AIELLO: I am.

25 THE COURT: That's easier said than
26 done, I know that.

1 MS. AIELLO: I appreciate the court
2 acknowledging that. Sometimes I think it's harder
3 than actually trying the case.

4 I do have -- I have a number of
5 witnesses that are already here. If we could just
6 take a five-minute recess, I'll be ready to do
7 openings. I'm sure that the jury is here.

8 THE COURT: Okay, fine.

9 MS. AIELLO: And my interpreter is here;
10 yea --

11 THE COURT: All right.

12 MS. AIELLO: -- the court one.

13 THE COURT: We'll start at 10:05, get
14 the jury in, get them ready to go.

15 (Whereupon, a recess was taken at
16 10:00 a.m.)

17 (Whereupon, the following
18 proceedings were had in open court following the
19 recess, to wit, at 10:08 a.m.):

20 THE COURT: All right. Good morning.
21 We are about to begin the trial of the People of
22 the State of California versus
23 David Charles Thatcher.

24 Ladies and gentlemen, in just a few
25 minutes, we're going to begin with what are called
26 opening statements, but before we do, I want to

1 just take a few minutes and go over with you some
2 of your responsibilities and also acquaint you
3 with the responsibilities of the court and
4 counsel.

5 I think it's important to do this
6 at the outset. I will spend most of the time
7 talking about your duties and elaborating on some
8 of what has already been mentioned and also giving
9 you some new information.

10 Again, I want to thank you for your
11 willingness to serve in this case. It will take a
12 few days to try. I hope we stay within counsel's
13 time estimates. I've explained the schedule to
14 you, and we're all about to begin actually
15 discharging our responsibilities.

16 Let me just briefly mention
17 counsel's responsibilities. Counsel, of course,
18 are professional advocates. They have a high duty
19 to the side they represent to vigorously advocate
20 for their side, and I know and have every
21 confidence that each attorney will do that.

22 Understand that there is a distinct
23 difference between being an advocate and a
24 witness. Nothing either attorney says during this
25 trial is evidence. Counsel will make reference in
26 their opening statements probably -- we'll get

1 into that, but if counsel give an opening
2 statement, they will make references to the
3 evidence that they expect to be introduced at the
4 trial.

5 Their references to evidence is not
6 evidence. You won't decide the case based upon
7 their opening statements, nor will you decide the
8 case ultimately on the argument of counsel.
9 Certainly, you'll consider it carefully, but
10 ultimately, your decision will be based on the law
11 and the evidence that you find in the case. No
12 question asked by an attorney is evidence. So
13 just understand, please, the distinction.

14 Now, counsel will, I'm sure, during
15 the course of the trial from time to time object
16 to a question posed by their counterpart. Don't
17 take offense to that. They have a duty to object
18 if in their legal opinion the evidence is not
19 authorized under the Evidence Code.

20 If I sustain the objection, that
21 means that the question is withdrawn and a new
22 question will be asked. If that occurs, you will
23 totally disregard the question because it has
24 absolutely no significance.

25 If I overrule the objection, then
26 the witness will answer the question as if the

1 objection had never been posed.

2 Understand that the only
3 significance of a question is the meaning it might
4 give in the context of the answer. You're not
5 evaluating the question. A question is not
6 evidence. You're evaluating testimony of the
7 witnesses; that's what you're really doing.

8 Now, as I mentioned, counsel will
9 argue the case. Nothing said during their
10 argument is evidence. Again, you'll consider
11 their arguments, of course, but we've already
12 mentioned how you will ultimately decide this
13 case.

14 Insofar as my responsibilities are
15 concerned, it's my responsibility to rule upon
16 evidentiary objections that are made by counsel,
17 to conduct the course of the trial and,
18 ultimately, to instruct you on the law that will
19 govern your deliberations.

20 Let's talk about you. Each one of
21 you is a judge. As opposed to one judge of the
22 law, we have twelve judges of the facts. Each of
23 you ultimately will vote upon a verdict. It takes
24 unanimity for there to be a verdict; in other
25 words, twelve judges of the facts must unanimously
26 agree one way or another for there to be a

1 verdict.

2 So you are each an independent
3 judge who will, after discussing the case with
4 your fellow jurors during deliberations and after
5 considering the evidence and making determinations
6 under the rule of law, ultimately, you will vote.

7 Now, as we go along, we mentioned
8 yesterday that one of your responsibilities is to
9 judge the credibility of witnesses. I want to
10 remind that you no witness gets any advantage or
11 disadvantage because of what they do or don't do
12 in life. You're judging the individual, not the
13 group association.

14 Let's talk about what you can
15 consider in assessing the credibility of a
16 witness. In weighing and considering the
17 testimony of witnesses, basically, you may
18 consider anything which tends in reason to prove
19 or disprove the truthfulness of what the witness
20 is saying.

21 Among the factors that you may
22 consider is the extent of the opportunity or the
23 ability of the witness to see or hear or otherwise
24 testify about what the witness purportedly
25 perceives through his or her senses.

26 You may also consider the witness's

1 conduct, attitude and manner while testifying;
2 whether what the witness says as to facts are
3 believable or unbelievable in terms of common
4 sense; the witness's ability to remember and talk
5 about the subject; witness's testimony, whether or
6 not there's any bias, interest or other motive of
7 the witness to tell the truth or not tell the
8 truth; and any previous statement made by the
9 witness that is either consistent or inconsistent
10 with the testimony here in court. Again,
11 remember, every witness must be evaluated by these
12 same standards.

13 It's absolutely critical that you
14 maintain the open-mindedness that we talked about
15 yesterday. You cannot, I again remind you and
16 emphasize, form or express any opinion on any
17 issue until you've heard the entire case.

18 Now, for those of you who have not
19 served as jurors before, let's go through the
20 various stages of trial. We have the jury. We're
21 going to get into the case in just a few minutes.
22 We begin with opening statements.

23 An attorney does not have to give
24 an opening statement. Usually, the -- invariably,
25 the prosecutor gives an opening statement.
26 Defense counsel sometimes do and sometimes they

1 don't. It really doesn't make any difference.
2 The only purpose of an opening statement is to
3 give you some idea of what might be coming from
4 the evidence. Then we'll actually get into,
5 obviously, the presentation of the case. Most of
6 the time in this trial will be spent by the
7 presentation of the case to you by way of witness
8 testimony.

9 When all the evidence is in, at
10 that time I will instruct you on the law. The
11 law, of course, is a statement of the rules that
12 you must follow in making your determination. I
13 want to remind you that as to that, you cannot
14 substitute for what you think the law should be.
15 You have taken an oath to follow the law, and you
16 will do so.

17 After I instruct you on the law,
18 we'll hear from counsel as to their arguments.
19 Obviously, arguments are important. They are an
20 attorney's professional statement of what the
21 attorney argues that the evidence shows or does
22 not show.

23 Ms. Aiello, because she has the
24 burden of proof, will begin. Mr. Storey
25 representing Mr. Thatcher -- Mr. Thatcher has no
26 burden of proof -- Mr. Storey has one opportunity

1 to argue to you. Ms. Aiello, again, because she
2 has the burden of proof, gets to close the
3 arguments. So you'll hear from Ms. Aiello twice;
4 Mr. Storey once.

5 After that is done, I will spend
6 about five minutes with you instructing you as to
7 your duties in the jury room, and then, finally,
8 you'll get the case. So that's the order of the
9 trial.

10 Again, you cannot form or express
11 any opinion until you start deliberating on the
12 case.

13 Now, I don't expect that anyone
14 will try to talk to you about the case outside of
15 the courtroom. Obviously, any discussion about
16 the case must take place in formal session, until
17 such time that you get to deliberations, right
18 here when we're all convened together.

19 If anybody attempts to talk to you
20 about the case, be it a fellow juror or someone
21 else, report that immediately to the court, and we
22 will take care of it.

23 There is some awkwardness that
24 occurs during a trial, particularly between
25 counsel and jurors, and that is when you are out
26 in the hallway or in an elevator. Sometimes

1 you'll get into the elevator and find that one of
2 the attorneys is in the elevator with you. You're
3 under a duty, obviously, not to talk about the
4 case. The attorneys don't want to offend you, but
5 professionally, they can't talk to you, either.

6 So let's just set up a ground --
7 some ground rules. Common courtesies are okay.
8 It's all right to say good morning or good
9 afternoon, but that's the extent of the
10 conversation that -- that is allowed.

11 I don't expect that we will be
12 visiting any of the scenes. Frankly, any evidence
13 that is presented to you must be presented in open
14 session. It's very rare to go out to a scene that
15 is alleged to have been a scene of an occurrence
16 pertinent to the case.

17 If we were to do that, and I don't
18 see us doing that in this case, basically, what
19 would happen is Deputy Lacy would get one of the
20 buses. He likes to drive buses; he does that a
21 lot for the sheriff on weekends, but he'd drive
22 the bus. We'd all go out there on the bus
23 together, and Ms. Holway would bring her machine.
24 I'd have to put my robe on, and we'd conduct court
25 out at the scene.

26 That's not going to happen, but I

1 go through that to explain to you how important it
2 is that any information that you receive in this
3 case be done in that formal setting.

4 If some issue should come up
5 wherein you're tempted to visit a scene, don't
6 visit the scene.

7 Let me give you a hypothetical.
8 Let's say that this was a civil case, and the
9 scene of the -- it's an automobile collision case,
10 and the collision occurred right out at the
11 intersection of Mooney and Noble. I'm sure you've
12 all been through that intersection. It's -- it's
13 about a block from the courthouse.

14 What you would be ordered to do is
15 not go through that intersection even if it was
16 the most common route, even if you had usually
17 gone through that intersection every day of the
18 week. You just can't take on information outside
19 of the courtroom, bottom line.

20 If there's some concept that's
21 mentioned in the case, please don't go home and
22 consult with a dictionary or get on the Internet
23 and do research. That would be a violation of
24 your responsibilities. Again, bottom line, all
25 the information on the case has to be presented to
26 you in this courtroom unless otherwise directed.

1 Now, from time to time, I may have
2 conferences with the attorneys outside of your
3 presence, generally over on the side. If that
4 happens, it has to do with the procedural issues
5 that are totally unimportant to you.

6 If we do have such conferences, and
7 they do usually take place during trial, I don't
8 expect this case to be any exception, we will
9 attempt to keep them at a minimum. We will
10 attempt to deal with any such issues before you
11 get here or -- either in the morning or the
12 afternoon, but sometimes they do happen.

13 When we have such conferences, just
14 consider it to be a break for you. You're free to
15 stand up and stretch and talk with your fellow
16 jurors or do anything else, and we will get back
17 to you as soon as possible.

18 Just a few more matters for your
19 consideration. You all have notebooks. You're
20 free to take notes. The notebooks have your juror
21 number on them. If you do take notes, the purpose
22 of note taking, of course, is to refresh your
23 recollection later during deliberations.
24 Sometimes jurors take notes just to frankly help
25 them stay focused on what they're doing.

26 If you choose to take notes, do

1 so. If you don't choose to take notes, you don't
2 have to. If you just want to doodle on the note
3 pads, that's fine. No one else is going to see
4 your note pad. Just don't take your notebook into
5 the jury room or outside of the courtroom at any
6 time. When you're on a recess, simply put it face
7 down on your seat, and when you come back into the
8 courtroom, of course, you can use it.

9 At the end of the day, Deputy Lacy
10 will collect your notebooks and lock them up. No
11 one else will look at them. He will redistribute
12 them in the morning to you right before you come
13 in. Once we start deliberations, you're free to
14 take your notebooks into the jury room.

15 Ms. Holway, the official court
16 reporter, is taking a verbatim record of every
17 word that is uttered in this trial. If during
18 deliberations you want to hear the testimony of a
19 witness or witnesses or partial testimony of a
20 witness relating to a particular subject or any
21 variation of those possibilities, she is prepared
22 to do it, and she will do it absolutely perfectly,
23 I have no doubt about that at all. She's
24 certified to do so. In fact, she's certified
25 above most court reporters. She's taken a test
26 that very few court reporters pass. She is

1 certified to record verbatim at a speed in excess
2 of 260 words a minute. I can't imagine how the
3 test is given. She's done that perfectly. So
4 don't worry, if you want to know what a witness
5 said, she'll provide it to you.

6 That's basically what I want to say
7 to you, ladies and gentlemen. Thank you again,
8 and we're now going to start.

9 Ms. Aiello, are you going to give
10 an opening statement?

11 MS. AIELLO: Yes, I am, your Honor.

12 THE COURT: All right. Proceed.

13 MS. AIELLO: Thank you.

14 Good morning. This is a case about
15 property taken by force or fear.

16 In the month of June, there were
17 three robberies that occurred within the County of
18 Tulare. The first two took place at recycling
19 trailers that were located in supermarket parking
20 lots. The third robbery took place at the USA
21 Market in Goshen.

22 The first robbery occurred on June
23 18th, 2001, and it took place approximately
24 3:25 p.m.

25 Francisco Ortega was at work at the
26 recycling trailer. He was sitting in a chair

1 underneath a tree outside the trailer when a white
2 male adult approached the trailer holding a gun.
3 With the gun in his hand, he kind of motioned for
4 Mr. Ortega to get into the trailer. Mr. Ortega
5 went into the trailer. He got in, and the man
6 told Mr. Ortega -- or motioned for him to go to
7 the back of the trailer.

8 The man then removed Mr. Ortega's
9 wallet from his person, and he also took money.
10 When he found out there was no money inside a
11 drawer, that's when he took Mr. Ortega's wallet.
12 Shortly thereafter, the man fled and was not seen
13 again.

14 Mr. Ortega saw a couple of photo
15 lineups, and he saw a live lineup, and he was
16 unable to make a positive identification of the
17 white male adult that took his wallet containing
18 money inside, about \$235.

19 But a little over a week later, on
20 June 27th, 2001, Mr. Domingo Lopes was working at
21 that very same recycling trailer in the parking
22 lot of Fairway Market on North Dinuba Boulevard,
23 and Mr. Lopes was sitting in the trailer, doing
24 some paperwork or eating lunch or something, when
25 a white male adult and a Hispanic male adult came
26 to the trailer, and the white male adult was armed

1 with a knife, and he made a motion again to
2 Mr. Lopes with this knife, and in this robbery,
3 money was taken from the cash drawer, as well.

4 Mr. Lopes attended a live lineup, a
5 lineup of six gentlemen, and inside that live
6 lineup was the defendant. Mr. Lopes pointed to
7 the position in which the defendant was sitting
8 and says, "That looks like him, looks a little
9 shorter here, but that looks like him."

10 Three days later -- that live
11 lineup took place on July -- I think July 11th.
12 Three days later, at the USA Market,
13 Michael Alrhimi was attending to the store. As he
14 was attending behind the counter, he looked
15 outside and he saw some people by a phone booth.
16 First person was a black gentleman who left
17 shortly thereafter, and then there were two men, a
18 Hispanic male adult and a white male adult.
19 Mr. Alrhimi didn't really think much of it because
20 he recognized the Hispanic male adult as a
21 customer who had been in the store prior.

22 A few moments passed by; there were
23 no longer any customers inside the store. So
24 Mr. Alrhimi tended to the counter or something,
25 cleaning one of the food trays, when the two men
26 that he had just seen outside by the phone booth

1 came inside the market wearing bandannas over
2 their face and both holding guns.

3 And throughout the robbery,
4 Mr. Alrhimi was told to get down on the ground,
5 not to turn around, not to look, and the Hispanic
6 male adult at one point in time came up and he
7 placed his foot on Mr. Alrhimi's neck and sort of
8 held the gun down to him while the Hispanic male
9 adult and the white male adult went through the
10 store, took money from the register, took a store
11 surveillance video, as well as some cigarettes,
12 and you'll actually get to see that brief period
13 of the video before it was removed from the VCR,
14 from the camera. It's in very fast motion, but
15 you get to see the two gentlemen come into the
16 store, bandannas over their face, holding what
17 appears to be guns.

18 A few minutes after this robbery
19 began, David Vargo came to the store, just needed
20 a soda, and he basically walked in on it. At that
21 point in time, the white male adult came to him
22 and told him to get down on the ground or he'd
23 blow his head off, and Mr. Vargo was removed of
24 approximately 28 or \$29. Mr. Alrhimi lost about
25 \$800 in his own pocket, his wedding ring was taken
26 off of his person, as well as a watch.

1 Mr. Alrhimi positively identified
2 the Hispanic male adult, but he could not identify
3 the white male adult who was with the man because
4 he had a bandanna on his face, but through the
5 course of the investigation, the detectives from
6 the sheriff's department contacted a woman by the
7 name of Glorys Slayton who actually is familiar
8 with the defendant and had met him previously, and
9 she picked out both the defendant and the Hispanic
10 male adult from photo lineups and basically told
11 the detectives that she had seen these two
12 gentlemen near the market just prior to the
13 robbery.

14 Throughout the course of the
15 investigation, a gentleman by the name of
16 Freddie Patino was contacted. Mr. Patino admitted
17 involvement in that very first robbery on June
18 18th, and he told the detectives that that robbery
19 was also committed by a Hispanic male adult,
20 Leo Palafox, and David Thatcher, the defendant,
21 and you will hear from Mr. Patino in this trial,
22 and he will tell you about his involvement in that
23 robbery and the defendant's involvement in that
24 robbery.

25 You're also going to hear from a
26 couple of -- of witnesses who are familiar with

1 both Mr. Thatcher and Leo Palafox establishing a
2 friendship between the two.

3 You'll also hear testimony from one
4 of those witnesses that the defendant has been
5 seen with a .22 caliber gun, with a handgun that
6 was familiar -- or similar to the one that the
7 white male adult was armed with on the June 18th
8 robbery.

9 You'll also hear from a couple of
10 other witnesses regarding any physical evidence.
11 There were no fingerprints found, and you will get
12 to see some photographs of the scene, as well as
13 probably the lineups that were shown to these
14 witnesses, and after you hear the evidence, you
15 will hear the law, and after you hear the law, you
16 will see how the evidence fits, and at the end of
17 this trial, I'm confident you will find the
18 defendant guilty of the four counts of robbery and
19 the one count of grand theft firearm.

20 I forgot to tell you that in that
21 June 30th robbery, a firearm was also taken from
22 the store. Thank you.

23 THE COURT: All right, thank you.

24 Mr. Storey, are you electing to
25 give an opening statement?

26 MR. STOREY: I think I will.

1 THE COURT: All right.

2 MR. STOREY: In the opening statement,
3 what we are doing is telling you what we think the
4 evidence is going to be, what it's going to show,
5 and basically, what this evidence is going to show
6 is that David Thatcher's best friend is
7 Billy Wilborn. Billy Wilborn's sister is
8 Barbara Wilborn. Barbara Wilborn lived at a Vine
9 Street address, and David Thatcher went over there
10 from time to time; actually, kind of a member of
11 the family, so he's there quite frequently, and
12 Barbara Wilborn has a daughter named Heather who
13 is going out with an individual by the name of
14 Lionel Palafox.

15 Now, Mr. Palafox is -- I don't know
16 whether he's a Godfather or whether the
17 relationship among the families between Patino
18 and Palafox is that the Godparents and Godchildren
19 relationship between those two families.

20 And when Mr. Patino talks to you,
21 he's going to acknowledge that he -- I don't know
22 how old Mr. Patino is, probably about 19, and I
23 think he's gonna say that he has known
24 Lionel Palafox for probably 15 years.

25 And he talks to Officer Lopez, and
26 when he's talking with Officer Lopez, he says I

1 didn't have anything to do with this.

2 Officer Lopez talks to him for some time, I think
3 it's, you know, between two and three hours, and
4 gradually, he indicates that he was involved in a
5 number of offenses with Lionel Palafox, but he
6 didn't want to blame a Lionel Palafox.

7 Now, he had met David Thatcher
8 approximately two weeks before he was interviewed
9 by Officer Lopez; didn't know him, so he blamed it
10 on David Thatcher, and that's what you're going to
11 have here. We're going to ask you not believe
12 Mr. Patino.

13 One of the other things that you'll
14 learn is that after Mr. Patino had talked with
15 Officer Mark Lopez, then he talked to a different
16 officer, an Officer Winslow, and said I want to
17 take a lie detector test to show that I didn't
18 have anything to do with these things I just
19 admitted to Mark Lopez; lie detector test is never
20 given.

21 You're going to have to make a
22 decision as to the credibility of Mr. Patino
23 because he's the only one that makes any
24 connection between David Thatcher and the first
25 offense.

26 Now, there's a description that's

1 given and taken down by [[- I believe it's
2 Officer -- it's French, so I'll mispronounce it,
3 Demarais, or something of that nature, and she'll
4 come in and testify as far as the description that
5 was given to her; white male. You've got a white
6 male here, must be him, except for the fact the
7 description had the person being 150 pounds,
8 blonde hair and brown eyes. That's the victim's
9 description. None of it fits David Thatcher.

10 There was a description about
11 another individual that's going to come in and
12 identify and make a -- I don't know whether
13 they're saying this is a positive identification
14 or not, but I believe when Ms. Slayton talks about
15 a picture that she picks out of David Thatcher,
16 she says she's 60 percent certain that that was
17 the person that she talked to, 60 percent.

18 So at the conclusion -- well, there
19 are a couple other things I want to bring up
20 because this is going to be conflicts in the
21 evidence.

22 As far as Lionel Palafox and the
23 things that occurred on June 30th, he was a
24 customer of that USA Market. They know
25 Lionel Palafox. Mr. Al -- A-L-R-H-I-M-I --
26 anyhow, he picks out Mr. Palafox. He indicates

1 Mr. Palafox is the one that has the pistol. He
2 indicates he's the one that takes the money; he's
3 the one who takes the gun that's under the
4 counter. He's sure of that. There isn't an
5 identification of the second individual.

6 One of the very interesting things
7 is there's an allegation here that that second
8 individual used a firearm, and there is a
9 description of that firearm being a sawed-off
10 shotgun. Of course, that's in conflict because
11 Mr. Alrhimi and I believe it's his younger brother
12 both initially look at that thing and they say
13 well, we thought it was a sawed-off shotgun, but
14 then when you look at the bore, it wasn't. They
15 thought maybe it would even be a BB gun, real
16 small bore. So there's going to be an issue as to
17 whether or not there's even a firearm there.

18 There are descriptions by two other
19 individuals, and those descriptions are given the
20 day of the occurrence and on a later interview.
21 The first interview, the person that said this
22 other individual was pointing a gun at him
23 couldn't describe it at all. In the later
24 interview, he says he thought it was a sawed-off
25 shotgun.

26 The wife who was initially

1 interviewed says she didn't know what it was.
2 She's not sure it was a gun, but it looked
3 similar. She thought it might have been a toy,
4 but in the second interview, then she says it's a
5 sawed-off shotgun.

6 So we're going to be asking you to
7 look at the differences in the statements and make
8 a determination as far as what they have shown.

9 It is going to be our position,
10 what we're going to be asking you to do at the
11 conclusion of this case is the People will not be
12 able to prove any of these counts in regards to
13 David Thatcher beyond a reasonable doubt, and
14 we're going to ask you to return the appropriate
15 verdict of not guilty. Thank you.

16 THE COURT: All right. Thank you,
17 counsel.

18 Ms. Aiello, call your first
19 witness.

20 MS. AIELLO: Thank you. People call
21 Francisco Ortega.

22 THE COURT: Ladies and gentlemen, while
23 Mr. Ortega is coming in, I want to mention
24 something else to you.

25 It may be that, from time to time,
26 you would wish that you could ask a witness

1 questions. That's understandable. Let me just
2 preface where I'm going to go with this
3 observation.

4 Our law requires that the attorneys
5 exchange information. Both these attorneys are
6 experienced. They know what information is
7 available, and because we have an adversarial
8 system of justice, if there is some pertinent
9 admissible information, one or both attorneys will
10 probably get into that, but, nevertheless, I
11 recognize that there is a possibility that
12 attorneys might not see an issue that you might
13 have, or perhaps there's simply some testimony
14 that you don't understand that you would want to
15 have clarified.

16 If that is the situation, fine.
17 You may ask questions, but please do it in this
18 way: Understand that, again, before you ask a
19 question, think to yourself well, one of these
20 attorneys would probably ask about that area if it
21 was available, but if you want to ask the
22 question, write your question or questions down on
23 a blank piece of paper, fold it in half and get
24 the bailiff's attention. The bailiff will collect
25 your question or your questions, deliver it to
26 me. I will show it to the attorneys.

1 Just make sure that if you have a
2 question of a witness, you engage in this
3 procedure while the witness is in the courtroom.
4 Oftentimes, it's too late once the witness leaves.

5 What will happen is if you get your
6 question to the bailiff, the attorneys will see
7 the question, and if it's allowable under the
8 rules of evidence to ask the question, one or more
9 of the attorneys will probably -- will ask the
10 question, I'm confident of that.

11 The reason that we allow you to ask
12 questions in this way and not in some other way
13 is, quite frankly, if you were to ask the
14 questions directly, that gets -- or can get real
15 awkward, and that's why it just isn't done that
16 way. It can get awkward because your question
17 might not at all be allowed under the rules of
18 evidence, and then the attorney's put in a
19 position well, do I object to the juror's
20 question? I don't want to offend the juror and so
21 forth. This way, it just gets that completely
22 away from that dynamic and, also, doesn't put you
23 in a position where you're asking the questions.

24 While I certainly as a judge have
25 the power to ask a witness questions and, in fact,
26 I may do -- I may do that from time to time if I

1 think that there is some testimony that is
2 unclear. I try not to as a general rule because I
3 know that it's so easy to go from the posture of a
4 person simply wanting to get information to a
5 person wanting to make a point, and we don't want
6 to put you in a position of being an advocate.
7 That's not your role. So just understand that
8 procedure, and again, you're welcome to ask
9 questions if you want.

10 All right. Let's proceed.

11 MS. AIELLO: Thank you.

12 FRANCISCO ORTEGA,
13 a Witness, called on behalf of the People, and
14 after having first been duly sworn through the
15 interpreter, testified as follows:

16 THE CLERK: Thank you. Please take the
17 witness stand.

18 THE COURT: Now, excuse me. There are a
19 lot of dynamics that start -- once we get into the
20 case, I'll -- I probably won't say anything for
21 quite a while, but now we have a situation where
22 we have a witness with an interpreter. Let's talk
23 about that.

24 The gentleman in the white shirt
25 and tie is a certified court interpreter. He's
26 certified by the State of California to interpret

1 verbatim from the Spanish to the English and vice
2 versa.

3 You're under a duty to accept his
4 testimony as being absolutely accurate. Let me
5 find out if that's going to be a problem.

6 Do any of you speak Spanish? We
7 don't have a problem, okay.

8 Go ahead.

9 MS. AIELLO: We did have a juror raise
10 his hand.

11 THE COURT: Oh, I'm sorry.

12 A JUROR: A little.

13 THE COURT: A little bit. Can you
14 accept the testimony of the interpreter as being
15 accurate? Sometimes.

16 A JUROR: It's probably going to be a
17 lot better than mine.

18 THE COURT: Okay. Frankly, it can get
19 real awkward when we have people who are fluent in
20 both languages. I think that would be very hard
21 to do, but that is the duty of such juror. So
22 thank you very much.

23 All right, go ahead.

24 MS. AIELLO: Thank you.

25 / / /

26 / / /

1 DIRECT EXAMINATION

2 BY MS. AIELLO:

3 Q. Good morning. Could you please
4 state your name?

5 A. Francisco Javier Alvarez Ortega.

6 Q. Okay. Is your last name spelled
7 O-R-T-E-J -- G A?

8 A. Yes, yes.

9 Q. Mr. Ortega, how old are you?

10 A. Well, I'm like 47, 46, 47 because
11 the identification that I brought with me is --
12 was not correct.

13 Q. Okay. Mr. Ortega, are you
14 currently working?

15 A. Yes.

16 Q. And where do you work?

17 A. Well, at the 15 -- well, at the
18 address, house maintenance, painting, and I go to
19 the trailers to -- to gather cans, just to collect
20 cans, but I don't buy the cans.

21 Q. Okay. Do you work at one of the
22 recycling trailers?

23 A. The one where I was robbed, yes.

24 Q. Okay. Do you know what street
25 that's on?

26 A. Yes, Tulare, 1526.

1 Q. Tulare Avenue?

2 A. Yes, Tulare Avenue.

3 Q. Did you work at one on
4 Dinuba Boulevard?

5 A. Where the trailer is.

6 Q. Okay. Is the trailer located in a
7 parking lot?

8 A. Yes.

9 Q. What parking lot is it located in?

10 A. Next to the big store, like over
11 here.

12 Q. Do you remember what the name of
13 the store is?

14 A. No, because I don't know English --

15 Q. Okay.

16 A. -- well.

17 Q. Do you remember the day that you
18 were robbed?

19 A. Yes, a Monday.

20 Q. Do you remember what month it
21 occurred in?

22 A. No, not the month, but a Monday.

23 Q. Okay. How do you know it was a
24 Monday?

25 A. Because I was paid on a Sunday, and
26 I had money that Monday.

1 Q. Okay. I want to show you a photo,
2 People's Exhibit 1 for identification.

3 May I approach the witness?

4 THE COURT: Yes, and you need not ask in
5 the future.

6 MS. AIELLO: Thank you, your Honor.

7 BY MS. AIELLO:

8 Q. Mr. Ortega, I'm gonna show you
9 what's been marked as People's Exhibit 1 for
10 identification. Do you recognize what's in this
11 photo?

12 A. Yes.

13 Q. What is in this photo?

14 A. The trailer and the cans that we
15 buy and the scale, the cans. We use -- the
16 containers we use to put the cans that we buy into
17 and the broom to hold the door open --

18 Q. Okay.

19 A. -- and this is my bicycle, this
20 one.

21 Q. Is this the trailer that you work
22 at?

23 A. Yes.

24 Q. Is this the trailer you were
25 working at the day you were robbed?

26 A. Yes.

1 MS. AIELLO: Okay. If I may display?

2 THE COURT: Any objection, Mr. Storey?

3 MR. STOREY: As to the exhibit, no.

4 THE COURT: All right.

5 BY MS. AIELLO:

6 Q. Mr. Ortega, where were you when --
7 when you were robbed?

8 A. Under the tree sitting in a chair.

9 Q. Do you see that chair in the
10 picture?

11 A. Yes, that's the one.

12 Q. Is that -- is that where the chair
13 was when you were sitting in it?

14 A. Yes -- no; that is to say, it was
15 straight where the door is.

16 Q. Okay. Was it not -- was it under
17 the tree on the day that you were there?

18 A. Yes.

19 Q. Okay. Can you explain to me --
20 actually, Mr. Ortega, would you step down and just
21 put an X in the picture where the -- where the
22 chair was.

23 A. The bicycles were not here. Here.

24 Q. Was it in the dirt?

25 A. Yes.

26 Q. Was it just moved over a little

1 bit?

2 A. Yes, towards over here.

3 Q. Okay.

4 A. But it was -- the chair was facing
5 the trailer, straight to it, because I was
6 watching half a sack of cans. I'm not in charge
7 of buying the cans.

8 Q. Okay. Is it possible you just put
9 an X where the chair was?

10 A. (Witness drawing.)

11 Q. Okay, thank you. What happened as
12 you were sitting -- sitting in the chair?

13 A. I was there, and the cars would
14 come by. I would send them over there to the
15 recycling at the address where I stay because
16 those were my boss's orders.

17 Q. Okay. Let me just clarify
18 something with you.

19 A. Uh-huh.

20 Q. On this same street, is -- is there
21 another recycling business?

22 A. Beyond that.

23 Q. Is that what you're talking about
24 when you say you told people to go there?

25 A. No; that is to say, I would send
26 them to 1526.

1 Q. Okay. Tell me what happened on
2 that day.

3 A. It was a Monday, 3:15, 3:20.

4 Q. Who -- who came to you?

5 A. No cars came at that moment for me
6 to send them over.

7 Q. Okay. Then what happened next?

8 A. Then I was sitting on the chair,
9 and I saw a person who was like next to the
10 trailer coming around. I saw -- I saw him from
11 below the door --

12 Q. Okay.

13 A. -- and I realized that he was
14 pressing onto the trailer, walking next to it, on
15 the edge of the trailer. I saw the shoes and like
16 this part.

17 Q. Okay. Mr. Ortega, I'm gonna give
18 you the pen again. Can you show me which side of
19 the trailer he was on?

20 MR. STOREY: Your Honor, excuse me. Can
21 we have a description of "this part" that was
22 stated for the record, please?

23 THE COURT: Go ahead.

24 MS. AIELLO: I'm sorry.

25 MR. STOREY: He said the shoes and this
26 part, and I was asking that the record show what

1 this part was.

2 MS. AIELLO: Okay.

3 BY MS. AIELLO:

4 Q. Mr. Ortega, draw -- draw an X on
5 the side that you saw the man and where you saw
6 his shoes.

7 A. (Witness drawing.)

8 Q. Okay. All right. And just -- and
9 for the record, that X is located what would
10 appear to be underneath the trailer door which is
11 different shaded from the X where he drew next to
12 the chair that he was sitting in that he described
13 earlier.

14 A. But there is -- there is something
15 important.

16 Q. Okay.

17 A. When I was robbed, the trailer was
18 more towards over here. About two or three weeks
19 ago, it was moved over because of the -- there
20 were puddles of water, so that's why the trailer
21 was moved.

22 Q. Okay. Thank you, Mr. Ortega.

23 Why don't you go ahead and have a
24 seat.

25 When you say that the trailer's
26 been moved, is it -- is the trailer now closer to

1 where the tree is?

2 A. No, it's farther away.

3 Q. Okay. So the day that you were
4 robbed, the trailer was closer to the tree?

5 A. Yes, it was closer.

6 Q. What happened after you saw the
7 shoes?

8 A. I thought that person was gonna
9 gather something from the trash, but because the
10 person was well dressed, then I didn't think that.

11 Q. What happened next?

12 A. Got close to the trash can, and
13 that's when took out the weapon and did this.

14 Q. Okay. I'm gonna back you up a
15 little bit.

16 You said he took out the weapon?

17 A. Yes.

18 Q. Where did he take out the weapon
19 from?

20 A. May I stand up?

21 Q. Yes.

22 A. Like this.

23 Q. Go ahead and stand up.

24 And for the record, he's indicating
25 out of his waistband.

26 A. Yes, yes.

1 Q. Okay. So you saw him take the gun
2 out of his waistband?

3 MR. STOREY: Objection, your Honor,
4 misstates the evidence.

5 THE COURT: Sustained. Rephrase,
6 please.

7 BY MS. AIELLO:

8 Q. Where was the gun when you first --

9 MR. STOREY: Objection, misstates the
10 evidence.

11 THE COURT: Sustained.

12 MS. AIELLO: I'm sorry, I'm sorry.

13 BY MS. AIELLO:

14 Q. What kind of weapon did he have?

15 A. A thin one; I just was able to see
16 it, black.

17 Q. Black what?

18 A. I only saw the barrel, thin, black.

19 Q. Okay. And what is that weapon that
20 you're describing?

21 A. I only was able to see the barrel,
22 and he would make movements and would talk in
23 English.

24 Q. Okay. Was the barrel -- what kind
25 of weapon was this?

26 A. I don't know about weapons.

1 Q. Okay. Is it a knife?

2 A. No, gun.

3 Q. Okay. Okay. Where did you first
4 see the gun?

5 A. When he did this.

6 Q. Okay. And when you do this, you're
7 indicating -- you're sort of doing a waving motion
8 with your hand for the record.

9 THE COURT: At waist level.

10 MS. AIELLO: At waist level, thank you.

11 BY MS. AIELLO:

12 Q. When you first saw him with the
13 gun, where was it on his person; where did he have
14 it?

15 A. Inside.

16 Q. Okay. Is that in your -- like in
17 his pants?

18 A. Shirt, like this, but covered.

19 Q. Okay. For the record, he's
20 indicating in his waistband, the waistband level.

21 A. And the trash can was here, right
22 to one side holding the door open, and that's when
23 he did this and he did this with a gun.

24 Q. Okay. Now, which hand was he
25 waving?

26 THE COURT: Excuse me. This witness is

1 engaging in some gestures and referring to them as
2 this and this. We need for the record a
3 description, please.

4 MS. AIELLO: I'm -- I'm gonna try and do
5 that.

6 THE COURT: All right.

7 BY MS. AIELLO:

8 Q. You were doing -- you were doing
9 this, okay, and when I'm doing this, I'm taking my
10 right hand, I'm holding my left wrist, and I'm
11 waving my left hand back and forth.

12 A. He had the gun on his -- in his
13 hand right here, and with a gun he did this.

14 Q. Okay. Which hand did he have the
15 gun in, the right or the left?

16 A. The one below, like this --

17 Q. Okay.

18 A. -- like this.

19 Q. Okay. Like this; is that your
20 right hand?

21 A. Yes, this one, yes.

22 Q. Okay. The gun was in the right
23 hand?

24 A. Yes.

25 Q. Okay.

26 A. And with a gun, he would tell me

1 like this, to go on.

2 Q. Okay. And he's indicating for the
3 record with his right hand, it's sort of a waving
4 back and forth of the wrist.

5 Okay. What happened after he waved
6 the gun with -- with his wrist?

7 A. I went on. I understood that he
8 wanted me to go -- go on from there.

9 Q. Then what happened; where did you
10 go?

11 A. I went on, and I opened the little
12 box for him, and once I opened the little box for
13 him, I saw him, and he told me not to get close to
14 him, for me to go behind the trailer.

15 Q. Okay. Tell me what the man looked
16 like.

17 Mr. Ortega, you can sit down.

18 A. Well, was like this height.

19 Q. Okay. He's taller than you?

20 A. A little bit, yes.

21 Q. Okay. For the record, he's
22 standing up, he's kinda holding his hand, I don't
23 know, about two, three inches over his own head?

24 MR. STOREY: Three.

25 THE WITNESS: May I sit?

26 / / /

1 BY MS. AIELLO:

2 Q. Yes.

3 How tall are you?

4 A. Well, I have not measured myself in
5 some time.

6 MS. AIELLO: Okay. May I ask you,
7 Detective Lopez, to stand next to the witness for
8 comparison purposes?

9 THE COURT: Certainly.

10 BY MS. AIELLO:

11 Q. Detective Lopez, if you could --
12 Mr. Ortega, if you could step down.

13 A. Yes.

14 Q. Why don't you guys go back to back
15 like we did in grade school.

16 All right. Looks like
17 Detective Lopez is probably -- I don't know, four
18 inches taller.

19 MR. STOREY: I wouldn't give him that
20 much stature, but --

21 MS. AIELLO: All right. About three to
22 four inches taller than the witness?

23 MR. STOREY: Yes.

24 BY MS. AIELLO:

25 Q. Okay. Go ahead and have a seat.

26 All right. So the man was a couple

1 inches taller than you?

2 A. Yes.

3 Q. Tell me how else he looked -- what
4 else he looked like?

5 A. Well, I saw him with a little bit
6 of hair here, a little bit --

7 Q. Okay.

8 A. -- and also here hair.

9 Q. And for the record, he's holding
10 his cheeks when he's saying here and also on his
11 chin?

12 A. Yes, and short, but very little.

13 Q. Okay. Did he have hair above his
14 lip?

15 A. A little, very little, also.

16 Q. Okay. Was it the same amount of
17 hair all over his face?

18 A. Yes.

19 Q. What color was his hair?

20 A. I saw it like kind of blonde; that
21 is to say, like he had not shaved because when he
22 shaves, when a person shaves, the hair ends up
23 being thick, but it just appeared to be natural.

24 Q. What kind of hair did he have on
25 his head?

26 A. Well, like a black color or like

1 brownish; I'm not very sure. Like in a second,
2 it -- what happened happened in a second.

3 Q. Happened very fast?

4 THE INTERPRETER: Your Honor, I must
5 make a clarification for the record.

6 THE COURT: Sure.

7 THE INTERPRETER: Earlier, I interpreted
8 it as being he had not shaved. The witness, I
9 must correct myself, actually said "like the
10 person who does not shave."

11 BY MS. AIELLO:

12 Q. What -- do you remember what color
13 his eyes were?

14 A. I saw them kind of brownish,
15 something like that. My intention was to look at
16 the gun for him not to fire at me. It was
17 just -- I just saw -- in a quick movement, I saw
18 his face.

19 Q. What kind of clothes was he
20 wearing?

21 A. Long white shirt.

22 Q. When you say long, what are you
23 referring to?

24 A. Long sleeve.

25 Q. And describe the shirt.

26 A. Like this one, long sleeve.

1 Q. Okay. Did it have any buttons?

2 A. Yes.

3 Q. Okay. And for the record, he's
4 referring down the middle of his own chest when he
5 was saying yes.

6 What kind of pants did he have on?

7 A. Like kinda grayish-type, something
8 like that.

9 Q. And did you notice what kind of
10 shoes he was wearing?

11 A. It was a quick look because it all
12 happened in a matter of seconds, but like black,
13 something like that.

14 Q. How -- how much did the man weigh
15 or how big was he?

16 A. I don't know how to calculate
17 weight, but he was thin.

18 Q. I'm gonna show you what's been
19 marked as People's Exhibit 2 for identification.

20 Do you recognize this photograph?

21 A. Yes.

22 Q. Okay. And what does this
23 photograph show?

24 A. The scale to weigh the can, the can
25 where you put the cans into, the table to put the
26 cash drawer -- with a drawer, cans to put the

1 glass bottles into --

2 Q. Okay.

3 A. -- sack to put plastic into, can to
4 put the cans, the aluminum cans into.

5 Q. Okay. Is this photo like --
6 actually, let me rephrase that.

7 Is this how the recycling trailer
8 was on the day that you were robbed?

9 A. This sack was half full of cans.

10 Q. Okay. Which -- go ahead and put an
11 X on which sack was half full of cans.

12 A. The middle --

13 Q. Do you want to put a line? You can
14 put a line on it.

15 A. (Witness drawing.)

16 Q. Okay. And that line is -- the sack
17 was half full of cans?

18 A. Half full, more or less.

19 THE COURT: All right, excuse me. We're
20 going to take a 10-minute recess, ladies and
21 gentlemen. We'll reconvene a little after 11:15.

22 Keep in mind during periods of
23 recess, you're not to talk about the case, not to
24 form or express any opinion on any issue.

25 Counsel, may we have a stipulation
26 that that admonition need not be given after each

1 recess or adjournment?

2 MS. AIELLO: So stipulated.

3 MR. STOREY: So stipulated.

4 THE COURT: Thank you, ladies and
5 gentlemen.

6 (Whereupon, a recess was taken at
7 11:07 a.m.)

8 (Whereupon, the following
9 proceedings were had in open court following the
10 recess, to wit, at 11:18 a.m.):

11 THE COURT: All right. Continue,
12 please.

13 MS. AIELLO: Thank you.

14 BY MS. AIELLO:

15 Q. Where was -- in this -- in People's
16 Exhibit 2, does it show where the money is
17 supposed to be kept?

18 And can you circle that area.

19 A. (Witness drawing.)

20 Q. Okay. For the record, it's more
21 like a big dot.

22 A. We put the box on top of the
23 drawer -- I mean the table.

24 Q. Okay. All right. And that black
25 dot that's on this photo is where the box is kept?

26 A. Yes, but the day I was robbed,

1 there was no box --

2 Q. Okay.

3 A. -- because I don't -- that's not
4 what I do, is buy cans.

5 Q. Okay. So there was no money taken
6 on that day?

7 A. No, no.

8 Q. Okay, all right. What happened
9 when you say the man got inside the trailer?

10 A. I opened the little drawer because
11 I knew there was no box.

12 Q. What happened after you opened the
13 drawer?

14 A. For him to see that there was no
15 money in the drawer.

16 Q. What happened next?

17 A. Then I turned to see his face for a
18 moment, and he told me not to come close because
19 he didn't move from the door, the entrance, the
20 door at the entrance, standing.

21 Q. Was he on the ground or inside the
22 trailer?

23 A. Inside the trailer.

24 Q. Okay. All right. What happened
25 next?

26 A. Then he would talk to me in English

1 a lot, and I did not understand. He would do with
2 a gun like this for me to go back.

3 MR. STOREY: Let the record show that
4 the witness raised his right hand and made a
5 motion going toward the rear of him.

6 THE COURT: Yes.

7 BY MS. AIELLO:

8 Q. Okay. The gun -- where was the
9 gun?

10 A. He had it in his right hand.

11 Q. And what happened after he would
12 take the gun and wave it or wave his hand?

13 A. For me to go to the back of the
14 trailer.

15 Q. Did you go to the back of the
16 trailer?

17 A. Yes, I went and -- right next to
18 the back of the trailer.

19 Q. What happened when you got to the
20 back of the trailer?

21 A. He would talk to me a lot in
22 English, but I was not understanding, angry, with
23 wrinkles here, so angry -- he was so angry that he
24 had wrinkles in his forehead.

25 Q. What were you feeling at this time?

26 A. It hit me like a heavy trauma

1 because that was the first time -- the first
2 occasion that I suffer that.

3 Q. Were you afraid?

4 A. Yes.

5 Q. What happened once you were at the
6 back of the trailer?

7 A. He would talk to me a lot in
8 English and made signs, and I was not
9 understanding until it occurred to me in my mind
10 that he wanted the gun -- I mean my wallet because
11 he didn't give me a sign or anything that he
12 wanted the wallet.

13 Q. Then -- then what happened; what
14 did you do?

15 A. I walked on the trailer, and I put
16 it on top of the half -- of the sack that was half
17 filled with cans.

18 Q. Did you take -- this was your
19 wallet?

20 A. Yes.

21 Q. Who took the wallet out of your
22 pocket?

23 A. I, myself, because I understood
24 that that's what he wanted once he didn't see
25 money in the drawer.

26 MR. STOREY: Your Honor, I'm going to

1 object to his conclusion as to what someone else
2 wanted, speculation.

3 MS. AIELLO: I think it's what he's
4 really interpreting the situation being.

5 THE COURT: It will be received for the
6 limited purpose as to what the witness believed.

7 BY MS. AIELLO:

8 Q. What happened after you put your
9 wallet on that half stack of cans?

10 A. He went inside, took it and left.

11 Q. Was there any money inside the
12 wallet?

13 A. Yes, because I had just been paid
14 Sunday, and I had not spent any money.

15 Q. How much money did you have?

16 A. About 240.

17 Q. What did you think would happen if
18 you didn't give him your wallet?

19 A. I would have problems in terms of
20 identifying me in Mexico -- identifying myself in
21 Mexico, but because I'm here, it's not valid
22 here. They say the identification from Mexico is
23 not valid because this is the first time I come to
24 the United States.

25 Q. Okay. Mr. Ortega, what did you
26 think would happen to you if you didn't give the

1 man your wallet?

2 A. He would fire because he put a
3 round in the chamber, but I'm not sure if he
4 really did it or he was just pretending to do it.

5 Q. I want to talk about the gun a
6 little bit.

7 Do you know the difference between
8 a revolver and a semiautomatic?

9 A. No, because I have never touched --
10 I have never seen that.

11 Q. How -- how did he put the round in
12 the chamber or what you thought he did?

13 A. Because in my years, I felt when
14 they put a round in the chamber like that.

15 Q. Okay. Did you hear something?

16 A. Yes.

17 Q. What is it that you heard?

18 A. A little pop, a little strong pop.

19 Q. What happened after -- after the
20 man left?

21 A. I stayed sitting in the trailer
22 frightened. I didn't see him leave, but he left
23 the same as he came.

24 Q. What did you then do?

25 A. The first car client who came, I
26 told him that I did not buy cans, that my boss was

1 having me send people over there to the recycling
2 where there was service, and -- and I asked him,
3 the first one that came, to please tell my nephew
4 that my wallet had been stolen, and that's all.

5 Q. Did you leave the trailer?

6 A. No, I stayed because there was a
7 half a can -- I mean half a sack of cans, and I
8 didn't trust that the tecatos would take it
9 because I'm very careful with everything.

10 Q. Did you talk -- talk to a police
11 officer?

12 A. No, it was a client who was
13 bringing cans to sell.

14 Q. I'm sorry. Did you eventually talk
15 to a police officer?

16 A. Yes.

17 Q. Do you know how that police officer
18 was called?

19 A. No; that is to say, a girl arrived
20 and an officer, but the girl talked to me and the
21 officer did not.

22 Q. Okay. Who is Adam Ramos?

23 THE INTERPRETER: I'm sorry, counsel?

24 BY MS. AIELLO:

25 Q. Who is Adam Ramos?

26 A. The one who works with us.

1 Q. Did he help you talk to that lady
2 that came?

3 A. Yes.

4 Q. Where was he when you were being
5 robbed?

6 A. Who?

7 Q. Adam, sorry.

8 A. He works at the recycling, at 1526,
9 all day. He's the one who is in charge when there
10 are robberies at the trailer to speak Spanish or
11 to go talk with the people.

12 Q. Okay. How did Adam know to come to
13 the recycling trailer?

14 MR. STOREY: Objection, calls for
15 speculation.

16 THE COURT: Rephrase, please.

17 BY MS. AIELLO:

18 Q. Did you go tell Adam to come over
19 to the trailer?

20 A. No. I sent the message with a
21 client, the first client arrived at that moment.

22 Q. Okay. And did Adam come to the
23 trailer a little while after you sent that first
24 client over?

25 A. Not at that instant.

26 Q. Okay. How long did it take for

1 Adam to come to the trailer?

2 A. The time it takes from the
3 recycling to the trailer, from -- from where you
4 go with me up to the trailer, I cannot calculate
5 the time.

6 Q. It's on the -- is it on the same
7 street?

8 A. Yes.

9 Q. Now, do you know -- is the man who
10 robbed you in the courtroom?

11 A. Yes.

12 Q. And who is that?

13 A. He's the one.

14 Q. What is he wearing?

15 A. A white shirt and pant like that,
16 black and black shoes.

17 MS. AIELLO: May the record reflect the
18 witness has identified the defendant?

19 THE COURT: Yes.

20 THE WITNESS: I recognize him.

21 BY MS. AIELLO:

22 Q. Go -- I'm sorry, did --

23 A. I recognize him because of his face
24 and the angry here, lines form here when he's
25 angry, and that's the way he approached me.

26 Q. Okay. Did you go to the jail in

1 July and take a look at a lineup of -- of men?

2 A. Yes.

3 Q. Did you see the man that robbed you
4 among those people there?

5 A. I did recognize his face, but I was
6 gonna tell the detective, but my -- my nerves did
7 not allow me to tell him, that he looked like him.

8 Q. Okay.

9 A. When she and the detective were
10 outside, I was nervous. I was not able --

11 Q. I want -- I want to make sure I
12 understand. The men that were lined up, you saw
13 the man in -- among those people?

14 A. Yes.

15 Q. Okay. Did you tell the detective
16 that you saw that man?

17 A. No, because of my nervousness that
18 betrayed me.

19 Q. Mr. Ortega, I'm gonna show you
20 what's been marked as People's Exhibit 3 for
21 identification. Does that look like the six guys
22 that you looked at?

23 A. They're very blurry. I can't see
24 them very well.

25 Q. Okay. Do you -- do you need to
26 wear glasses or anything?

1 A. Yes, when it's dark.

2 Q. I'm gonna show you People's Exhibit
3 4 for identification. Is this photo a little bit
4 better?

5 A. He's the one with the beard here,
6 this one and this one.

7 Q. Okay. Okay. You better circle
8 which one that you think it is.

9 A. (Witness drawing.)
10 This is very blurry, it's
11 difficult.

12 Q. Okay. Okay. Now, the man that you
13 circled in that picture, is that how the man
14 looked when you were robbed?

15 A. No, different.

16 Q. Okay. What were the differences?

17 A. Like hair that has just come out
18 and not bald.

19 Q. Okay. So on the day that you were
20 robbed, the man had hair on his head?

21 A. Yes, he had hair on his head.

22 Q. How long was the hair on his head?

23 A. Well, I didn't notice exactly
24 because it happened in a second.

25 Q. Okay. And on the day that you were
26 robbed, the man had a little bit of head on his --

1 on his face, his cheeks?

2 A. Yes, a little bit, like -- it had
3 just come out, something like that.

4 Q. Okay. Did you go with
5 Detective Lopez to take a look at some photos on a
6 computer screen?

7 A. Yes.

8 Q. And was there a photo that he
9 showed you that looked familiar -- looked like the
10 man?

11 A. Well, yes, but I was very nervous,
12 frightened.

13 Q. Okay. How are you today testifying
14 in court?

15 A. I feel peaceful.

16 Q. Are you nervous at all today?

17 A. A little bit, not -- not like when
18 I was robbed.

19 MS. AIELLO: Okay. I have no further
20 questions.

21 THE COURT: All right. Mr. Storey,
22 cross-examination.

23 CROSS-EXAMINATION

24 BY MR. STOREY:

25 Q. Mr. Ortega, when you saw someone
26 approaching the trailer and you saw the shoes and

1 you said this -- this part, could you show me what
2 "this part" was that you were describing?

3 A. As to what? Oh.

4 Q. I believe you said you were sitting
5 on a chair under the tree?

6 A. Yes.

7 Q. And you saw a person that was
8 approaching or walking along the side of the
9 trailer toward the door that was open?

10 A. Yes.

11 Q. And underneath the door, you could
12 see shoes and you could see this part.

13 A. Yes. By the edge of the trailer,
14 the trailer was like this.

15 Q. Okay. You're moving your hand?

16 A. The distance.

17 Q. You're moving your hand forward and
18 back, but what was this part; part of the leg?

19 A. What one could see from the trailer
20 and down.

21 Q. Okay.

22 A. The door was --

23 Q. Could you stand up and show me?

24 A. Yes.

25 Q. Okay. Okay. And what part could
26 you see? You could see the shoes and what?

1 A. At the level of the trailer, the
2 door.

3 Q. Okay. There was the door. There
4 were the shoes. What else could you see?

5 A. Well, only to the level of the
6 door. That's when I realized he was coming up
7 next to the trailer.

8 Q. What was the level of the door on
9 the person that was approaching?

10 A. I cannot calculate the level.

11 Q. Well, do you know what knees are?

12 A. Knees, here.

13 Q. Okay.

14 A. This.

15 Q. Could you see that person's knees?

16 A. Yes, but like this, yes, but just
17 in a moment, just momentarily.

18 Q. Okay. Could you see that waist as
19 the person was approaching behind the door?

20 A. No, I only -- the gun. I was
21 worried.

22 Q. Okay. So the person that was
23 approaching, you could see from the knees down; is
24 that right?

25 A. Yes.

26 Q. Okay.

1 A. The level of the trailer through --
2 beyond the trailer, I saw the legs.

3 Q. Okay. And at the time that you saw
4 from the knees down, could you see the shoes?

5 A. Yes, they were black.

6 Q. Now, you said that the person
7 seemed to be well dressed?

8 A. Yes.

9 Q. Was there something from the shoes
10 that led you to believe that the person was well
11 dressed?

12 A. The manner of being very clean.

13 Q. The shoes were clean?

14 A. Yes.

15 Q. Okay. And could you tell me the
16 type of shoe that it was?

17 A. I only noticed black, and that's
18 all.

19 Q. Do you remember talking to someone
20 that came to the trailer to interview you?

21 A. Yes, the police officer, the lady
22 police officer and the other male police officer.

23 Q. And did you describe to her that
24 the person was wearing black dress shoes?

25 A. Yes.

26 Q. Now, does that refresh your

1 recollection?

2 A. Yes, very -- he was very clean.

3 Q. And they were black dress shoes
4 that the person was wearing?

5 A. Yes.

6 Q. Okay. I'm sorry, you can be
7 seated; I kept you up too long.

8 And when you were talking with that
9 officer, did you also indicate the person had
10 blonde hair?

11 A. Like black because I had already
12 told the detective like that.

13 Q. Okay. You raised your hands over
14 your head, and you made some motions and then came
15 down.

16 A. Who?

17 Q. Just a moment ago you did.

18 A. Well, yes. When he arrived with a
19 gun, I raised my hands like this.

20 Q. Okay. You raised your hands.

21 What I'm asking you is: When you
22 talked with the officer and the female that was
23 interviewing you, did you indicate that the
24 individual that had approached you had blonde
25 hair?

26 A. It was just in passing that I saw

1 black hair on him like that.

2 Q. Was it black or was it blonde?

3 A. It was like the hair of the lady
4 detective.

5 Q. Fine. The lady detective that was
6 interviewing you?

7 A. Yes.

8 Q. Do you know what color blonde hair
9 is?

10 A. Yes, like gringo style type.

11 Q. The court reporter that's sitting
12 in front of you has lighter-colored hair. Is that
13 blonde hair?

14 A. Like the lady who's dressed in red
15 and like this, also.

16 Q. Excuse me?

17 THE INTERPRETER: "And like this, also."

18 BY MR. STOREY:

19 Q. And when you said like this, also,
20 where were you pointing?

21 A. This young lady here.

22 Q. Are you familiar with brown hair?

23 A. Yes.

24 Q. Okay. Now, when you say blonde, to
25 you, is that a light brown?

26 A. No, like this.

1 Q. And when you talked --

2 THE COURT: Like what is this, I'm
3 sorry?

4 THE WITNESS: What?

5 BY MR. STOREY:

6 Q. When you said like this, did you
7 point toward the court reporter?

8 A. Yes, this young lady here.

9 Q. That's blonde hair?

10 A. Yes.

11 Q. And when you talked with the
12 officer that was interviewing you, the female
13 officer, did you tell the female officer that the
14 person that approached you and took your money had
15 blonde hair?

16 A. No.

17 Q. When you talked with that officer,
18 did you tell the officer that the person that
19 approached you had brown eyes?

20 A. Yes.

21 Q. When you talked with that officer,
22 did you indicate that the person that approached
23 you weighed approximately 150 pounds?

24 A. Well, because I imagined.

25 Q. You saw the person -- I think you
26 testified earlier they were skinny?

1 A. Yes, he was skinny. I still
2 testify to that; he was thin.

3 Q. Okay. And do you know how much you
4 weigh?

5 A. I don't -- well, I weigh 155 pounds
6 because I have a weight -- a scale -- I have a
7 scale in the office, and I weigh myself often.

8 Q. Is that the scale you use for
9 weighing cans?

10 A. No, it's a foot one that you put
11 your feet on it.

12 Q. As the individual approached the
13 trailer or walked toward you, I think your
14 testimony on direct was as you're facing the
15 opening, the person would have been on the right
16 side of the trailer, and he was walking close to
17 the trailer toward you; is that correct?

18 A. Towards the trash can.

19 Q. And the trash can, you're talking
20 about the brown -- the gray trash can in front of
21 the orange chair in the picture?

22 A. Yes.

23 Q. And you indicated as the person
24 left, they left in that same direction?

25 A. Yes.

26 Q. Okay. So they would have been on

1 the right side of the trailer proceeding away from
2 the door?

3 A. When he left, yes.

4 Q. When you were giving a description
5 of seeing the weapon, you described seeing a thin
6 barrel?

7 A. Very thin, like this.

8 Q. Okay. Now, you have your -- your
9 fingers, you had them extended approximately five
10 to six inches; is that correct?

11 A. Yes, like this.

12 Q. Maybe four inches?

13 A. Thin, a small barrel.

14 Q. Okay. That was the barrel that was
15 of the distance between your fingers as you were
16 holding them up?

17 A. That's the way I saw it, more or
18 less like this, thin.

19 Q. Could you see the body of the
20 weapon?

21 A. Yes.

22 Q. And what did the body of the weapon
23 look like?

24 A. Small, small with the barrel kind
25 of big.

26 Q. So there was a long barrel and

1 there was a small section?

2 A. Yes.

3 Q. Okay. Could you see the handle?

4 A. I only noticed the small barrel.

5 Q. Was there anything about that
6 barrel that was unusual?

7 A. For example, what?

8 Q. You know what a sight is? Do you
9 know what a sight is?

10 A. A what, pardon?

11 Q. A sight on the barrel.

12 A. No.

13 Q. As far as this long tube that you
14 could see, what was it about that long tube that
15 led you to believe that it was a barrel?

16 A. Because it was black, and when I
17 heard that he put a round in the chamber, that is
18 to say, pulled the trigger and the little pop.

19 Q. I understand that you said you
20 weren't familiar with guns?

21 A. Yes, but --

22 Q. When you --

23 A. But I, as a child, I've heard the
24 little pops from the ones -- plastic ones.

25 Q. Okay. And did this sound to you
26 like the plastic ones?

1 A. Well, no, like steel to steel --
2 steel on steel.

3 Q. Could you see the end of the
4 barrel?

5 A. Yes.

6 Q. And how large was the opening?

7 A. Small, a little hole there.

8 Q. Very small hole?

9 A. Like -- like a thin bullet like.

10 Q. Are you familiar with a BB gun?

11 A. Only the plastic ones.

12 Q. Are you familiar with a pellet gun?

13 A. No, just the hunting shotguns, the
14 ones with the -- like BBs.

15 Q. Okay. When you're saying a
16 shotgun, you're talking one with a very big bore;
17 a big hole; is that right?

18 A. Yes.

19 Q. And this was much smaller than
20 that?

21 A. Yes.

22 Q. So as far as you, you don't know
23 whether this was a pellet gun, a BB gun or perhaps
24 even a real gun?

25 A. That, I'm not sure of.

26 Q. And as far as the gun, it was never

1 fired; is that correct?

2 A. No.

3 Q. You were asked questions about
4 Detective Lopez.

5 A. Who is Lopez?

6 Q. I was going to ask you if you knew
7 who Mr. Lopez was?

8 A. Mr. Lopez is the detective.

9 Q. Yes. Now, is he the same
10 individual that showed you some photographs?

11 A. The first occasion, yes.

12 Q. You remember how many photographs
13 he showed you?

14 A. Several in one like screen.

15 Q. Okay. Several photographs on the
16 same screen?

17 A. Yes.

18 Q. Okay. Was it one -- one picture or
19 just numerous pictures that came up on that
20 screen?

21 A. Several pictures.

22 Q. Okay. When you say screen, are you
23 talking about a screen like -- like a television
24 screen that has a projection?

25 A. No, where the people come out, the
26 bad people.

1 Q. Okay. Were you given a folder
2 about 8-and-a-half-by-11 that had a number of
3 pictures on it?

4 A. The last time, yes. That -- that
5 was the detective.

6 Q. That was this --

7 A. The lady detective.

8 Q. Ah, okay, the lady detective.

9 Was it before the -- before you met
10 with Mr. Lopez and he showed you the screen?

11 A. What are you referring to?

12 Q. How many times were you asked to
13 look at pictures to see if you could identify the
14 person that met you in the trailer?

15 A. Three, including the lady
16 detective.

17 Q. During any of those times when they
18 were showing you pictures, were you able to
19 identify the person that met you in the trailer?

20 A. Yes.

21 Q. Which time was it that you were
22 able to identify someone that you saw in the
23 picture?

24 A. On likeness to the one -- one of
25 the ones that I saw in the teli, I even jumped,
26 but there was a likeness.

1 Q. Okay. When you say one that you
2 saw -- a likeness that you saw in the teli; is
3 that the one where Mr. Lopez was showing you the
4 screen?

5 A. Yes, the first time that I went
6 with him.

7 Q. Did you make a -- did you notify
8 Mr. Lopez --

9 A. What?

10 Q. -- of your identification?

11 A. Of my robbery, of the robbery of my
12 identification?

13 Q. When you were looking at the teli
14 and you saw someone that looked similar, did you
15 notify Officer Lopez?

16 A. Yes.

17 Q. Did you also go to a live lineup?

18 A. Yes, where they can be seen and
19 they can't see inside; that is to say, that they
20 can be seen from outside -- that is, only one sees
21 them.

22 Q. There's a one-way mirror; you're on
23 one side, they're on the other?

24 A. Yes, only -- only one can see them.

25 THE COURT: All right. Excuse me,
26 Mr. Storey.

1 Ladies and gentlemen, we'll
2 reconvene at 1:30. Please keep in mind the
3 admonitions. Thank you.

4 (Whereupon, a recess was taken at
5 12:02 p.m.)
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AFTERNOON SESSION

^ DATE

(Whereupon, the following
proceedings were had in open court, to wit, at
1:33 p.m.:)

THE COURT: All right. Good afternoon.
Mr. Storey, continue, please.

BY MR. STOREY:

Q. Good afternoon, Mr. Ortega.

A. Good afternoon.

Q. You were talking about looking at
the teli and viewing pictures?

A. Yes.

Q. Okay. And you picked out a
photograph that made you jump?

A. Yes, looked like the one when I saw
him the second time, the glass where they cannot
see one.

Q. What I'm going to show you has been
marked as People's Exhibit Number 5, and is that
the photograph that you saw on the teli that you
identified Mr. Lopes as being the person that was
in the trailer with you?

A. But without this, when I saw him
the first time without this, and the beard like
this; that is to say, a little bit, not a lot.

1 Q. The question is: When you were
2 viewing the teli with Officer Lopez, is this the
3 picture of the person that you picked out?

4 A. At that moment, because of
5 nervousness, I jumped because of the very strong
6 look; that's -- because of that.

7 Q. Okay. Is this the person that was
8 in the trailer with you?

9 A. No. It was the one I saw the first
10 time.

11 Q. When you said the first time, were
12 you talking about what you had marked as People's
13 Number -- excuse me, what has been marked as
14 People's Number 4 where you put the dot on the
15 person's neck?

16 A. This is the blurry one or the
17 recent?

18 Q. Well, I'll show you People's Number
19 3, as well, and you tell me which one the blurry
20 one is?

21 A. This one looks a little bit blurry.

22 Q. Okay. That was People's Number 3.

23 And People's Number 4 is the one
24 where you put the mark on the person's neck that
25 was in the trailer with you?

26 A. Yes.

1 MR. STOREY: Okay. Nothing further,
2 your Honor. Thank you.

3 THE COURT: All right. Redirect?

4 MS. AIELLO: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. AIELLO:

7 Q. Mr. Ortega, I want to talk about
8 the gun again.

9 Did you think that was a real gun?

10 MR. STOREY: Objection, relevance.

11 THE COURT: Overruled.

12 THE WITNESS: Momentarily, yes.

13 BY MS. AIELLO:

14 Q. Did -- thinking back on that day,
15 do you believe that is a real gun or do you think
16 it was a fake gun?

17 A. Real.

18 Q. When you saw a portion of the gun,
19 did you see the portion of the gun where the
20 bullets would be kept?

21 A. Only the little barrel, the barrel.

22 Q. Want to show you People's Exhibit 5
23 again.

24 When you saw that picture on the
25 computer screen, what did you think when you saw
26 it?

1 A. I thought -- because I was nervous,
2 I thought he was the one. I thought he was the
3 one, but when I saw him personally the first time
4 through the glass, then I recognized him well.

5 Q. When you first saw that photo,
6 People's Exhibit 5, did you think it was the man
7 who robbed you or that it looked similar to the
8 man that robbed you?

9 A. That he looked like him.

10 Q. Okay. Did you tell Detective Lopez
11 that you thought that was the man or that it
12 was -- looked like the man?

13 A. Because I was nervous, I told him
14 that he looked like him.

15 Q. Looked like him.

16 A. Yeah.

17 Q. The man in the courtroom today, is
18 he the one that robbed you?

19 A. Yes.

20 Q. Are you sure about that?

21 A. Yes, because he has some marks
22 here, and when he became angry, you notice his
23 anger.

24 Q. Are you more sure today or when you
25 saw the men behind the glass?

26 A. I'm more sure today.

1 MS. AIELLO: Thank you, Mr. Ortega.

2 RECROSS-EXAMINATION

3 BY MR. STOREY:

4 Q. Mr. Ortega, when you talked with
5 the officers before today, were you honest with
6 them?

7 A. When I talked with the officers, I
8 did not talk. I talked with the one who's in
9 charge who talks for one who does not know English
10 towards the officers.

11 Q. When you gave information to the
12 police, did you attempt to tell them the truth?

13 A. Yes, but they came hurriedly, and I
14 was very nervous. I was only able to tell 'em
15 about once I was already in the trailer standing
16 in the trailer. I was not able to tell them about
17 the rest.

18 Q. You attempt -- you attempted to be
19 truthful; is that correct?

20 A. Yes.

21 Q. And your memory, when you talked
22 with the officers, was much better on June 18th
23 than it is today?

24 A. Yes.

25 Q. And now we're several months later?

26 A. Yes. I remember the person. When

1 I've had girlfriends in Guadalajara, if they're
2 lying to me, I recognize it the next day if they
3 don't change their facial expressions, but if they
4 don't change facial expressions, then I get a bit
5 out of control, but then I recognize the same one.

6 Q. You identified the person in
7 People's Number 4 as the person that was in the
8 trailer with you?

9 A. When?

10 Q. Well, today. That picture that you
11 made the mark on the person's neck?

12 A. I did recognize that one.

13 Q. Okay. And you also picked out the
14 person in People's Number 5, and at one time you
15 told Officer Lopez that that was the person that
16 was in the trailer with you?

17 A. I was confused, nervous, but once I
18 saw him in the mirror, it made my memory see him
19 well.

20 Q. And when you talked with the
21 officer on June 18th, you indicated the person had
22 blonde hair, brown eyes; is that correct?

23 A. I was confused.

24 Q. Were you confused when you
25 indicated the person was wearing dress shoes?

26 A. No.

1 MR. STOREY: Nothing further at this
2 time, your Honor.

3 THE COURT: All right. Redirect?

4 MS. AIELLO: Nothing further.

5 THE COURT: All right. May this witness
6 be excused?

7 MR. STOREY: I would ask he remain
8 subject to recall.

9 THE COURT: All right. Mr. Ortega,
10 you -- you may leave, but if either attorney
11 contacts you and asks that you come back to court,
12 you have to come back. Thank you very much.

13 THE WITNESS: You're not saying what
14 day?

15 THE COURT: I can't; within the next
16 five days.

17 THE WITNESS: Am I going to be -- am I
18 going to continue to receive subpoenas to be on
19 time here?

20 THE COURT: No, you're still under
21 subpoena. So if you're not -- sir, if you're not
22 contacted within the next five days, you may
23 forget about it.

24 THE WITNESS: But my nephew can come
25 with me if they --

26 THE COURT: Certainly. Thank you very

1 much.

2 MS. AIELLO: People call Adam Ramos.

3 ADAM RAMOS,

4 a Witness, called on behalf of the People, and
5 after having first been duly sworn, testified as
6 follows:

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MS. AIELLO:

10 Q. Good afternoon. Could you please
11 state your name?

12 A. Adam Ramos.

13 Q. Mr. Ramos, where are you employed?

14 A. B C Recycling.

15 Q. And where is that?

16 A. 1526 North Dinuba Boulevard here in
17 Visalia.

18 Q. Is there another recycling -- is
19 there a recycling trailer near that address?

20 A. Yes, it's approximately a block
21 down north of where I'm at.

22 Q. Okay. And where is that trailer
23 located?

24 A. It's on Fairway Market.

25 Q. Mr. Ramos, were you working at the
26 recycling center at 1526 North Dinuba on June

1 18th, 2001?

2 A. Yes.

3 Q. And did you learn of a robbery that
4 took place at the trailer on that same day?

5 A. Yes, I did.

6 Q. Did you go to where the trailer is
7 located?

8 A. Yes, I did.

9 Q. Did you have contact with
10 Francisco Ortega?

11 A. Yes.

12 Q. And did you also have contact with
13 a police officer, female police officer?

14 A. Yes.

15 Q. Mr. Ramos, do you speak Spanish?

16 A. Yes, I do.

17 Q. And what is your primary language,
18 English or Spanish?

19 A. English.

20 Q. Okay. When you were -- were you
21 born here in the United States?

22 A. Yes, I was.

23 Q. Okay. And were you taught English
24 and learned Spanish or --

25 A. I learned 'em both at the same
26 time.

1 Q. Learned them both at the same time,
2 okay.

3 A. Yes, my parents speak both English
4 and Spanish.

5 Q. Okay. When you went to the
6 recycling trailer and you saw Mr. Ortega and the
7 officer, did you assist in the interview of
8 Mr. Ortega on behalf of the officer?

9 A. Yes. I took Mr. Ortega's testimony
10 and just translated into English for the officer.

11 Q. Okay. And when the officer would
12 ask a question, would you ask that question of
13 Mr. Ortega exactly how she said it?

14 A. Yes, I would.

15 Q. And when Mr. Ortega responded, did
16 you translate into English?

17 A. For the officer, yes, I did.

18 MS. AIELLO: Okay. I have no further
19 questions.

20 CROSS-EXAMINATION

21 BY MR. STOREY:

22 Q. Mr. Ramos, at the time that you
23 were -- first of all, are you related to
24 Mr. Ortega?

25 A. No.

26 Q. You're not his nephew then?

1 A. No.

2 Q. When you were acting as a
3 translator between the officer and Mr. Ortega, do
4 you remember a description of the perpetrator
5 being given to you?

6 A. All I remember was it was a white
7 male, well dressed and, um, that's vaguely all I
8 can remember at that --

9 Q. Do you remember a description of
10 150 pounds, blonde hair, brown eyes?

11 A. No, I don't, I can't recall that.

12 Q. And as far as your personal
13 observations, you weren't present at the time --

14 A. No, I wasn't.

15 Q. -- the act occurred?

16 A. No.

17 Q. So you don't have any personal
18 knowledge as to who the individual was?

19 A. No, I don't.

20 Q. And you don't have any personal
21 knowledge as to what acts took place at that
22 trailer, do you?

23 A. No, just except for what
24 Mr. Ortega --

25 Q. Do you have any personal knowledge?

26 A. No, I don't.

1 Q. Anything that you observed?

2 A. No.

3 MR. STOREY: Okay. Nothing further.

4 REDIRECT EXAMINATION

5 BY MS. AIELLO:

6 Q. I forgot to ask you about June
7 27th. Were you also working on that day?

8 A. Yes.

9 Q. Okay. And did you come into
10 contact with Domingo Lopes?

11 A. Yes, I did.

12 Q. And did you also interpret for
13 Domingo Lopes to a police officer?

14 A. Yes, I did.

15 Q. And did you do the same thing that
16 you described earlier?

17 A. Exactly.

18 Q. Okay. When you went to the trailer
19 on June 18th and saw Mr. Ortega, do you remember
20 what -- how he was acting or what his demeanor was
21 like?

22 A. He was pretty nervous. He -- there
23 was -- see, the trailer at that time was closed,
24 and he was sending customers from that trailer to
25 my location so we could take care of the
26 business. So there was -- he sent a customer to

1 me and let me know what had happened, and then I
2 went over there to see him.

3 MS. AIELLO: Okay. I don't have any
4 further questions. Thank you.

5 THE COURT: Mr. Storey?

6 MR. STOREY: Nothing further at this
7 time.

8 THE COURT: All right. May this witness
9 be excused?

10 MR. STOREY: I don't have any intent to
11 call him, but out of an abundance of caution, I
12 would ask he remain subject to recall.

13 THE COURT: All right. Sir, if either
14 attorney calls you within the next five days, you
15 have to come back to court; otherwise, you can
16 forget about it.

17 THE WITNESS: Okay, okay.

18 THE COURT: Thank you very much.

19 MS. AIELLO: People call
20 Officer Demarais.

21 THE CLERK: Please raise your right hand
22 and be sworn.

23 MELISSA DEMARAIS,
24 a Witness, called on behalf of the People, and
25 after having first been duly sworn, testified as
26 follows:

DIRECT EXAMINATION

BY MS. AIELLO:

Q. Good afternoon. Could you please state your name and spell your last name for the record.

A. Melissa Demarais,
D-E-M-A-R-A-I-S.

Q. Were you working for the Visalia Police Department in June of this year?

A. Yes, I was.

Q. And how long had you been working for them?

A. Approximately seven months.

Q. And were you working on June 18th, 2001?

A. Yes, I was.

Q. And what was your job duty?

A. I was a uniformed patrol officer.

Q. Did you get dispatched to 1845 North Dinuba Boulevard?

A. Yes.

Q. And when you arrived, who did you contact?

A. I contacted Adam Ramos and Francisco Ortega.

Q. Did you interview Mr. Ortega?

1 A. Yes, I did.

2 Q. And did you use the assistance of
3 Adam Ramos?

4 A. I did.

5 Q. And when you asked the questions of
6 Mr. Ramos, did it appear that he was translating
7 them into Spanish for Mr. Ortega?

8 A. Yes, it did.

9 Q. And did Mr. Ortega answer and then
10 Mr. Ramos would give you the answer in English?

11 A. Yes.

12 Q. Did it seem like the -- the answers
13 that you were getting were making sense?

14 A. Yes.

15 Q. Okay. When you first contacted
16 Mr. Ortega, what was his demeanor like?

17 A. He was extremely fearful.

18 Q. Anything else about him?

19 A. Not that I can recall.

20 Q. About what time were you
21 dispatched?

22 A. I was dispatched at 3:30 in the
23 afternoon, approximately 3:30 in the afternoon.

24 Q. And approximately what time did you
25 arrive?

26 A. At about 3:45.

1 Q. When you spoke to Mr. Ortega,
2 did -- did you attempt to get a physical
3 description of the person?

4 A. Yes, I did.

5 Q. Okay. What -- what color hair did
6 Mr. Ortega describe the person having?

7 A. Mr. Ortega stated that the hair --
8 he believed that the hair was blonde.

9 Q. Did you attempt to get any
10 fingerprint evidence or find -- locate any
11 evidence?

12 A. Yes, I did, and there was no
13 evidence available.

14 Q. What -- what efforts did you make,
15 though; what did you do?

16 A. We did look for surfaces which
17 would have been conducive to lifting fingerprints,
18 and there were none available.

19 Q. And when you say there were none
20 available, what do you mean by that?

21 A. We need a very smooth surface to
22 lift fingerprints, and the only surfaces that the
23 suspect in this case may have touched was a wooden
24 desk which was extremely rough.

25 MS. AIELLO: Thank you. I have no
26 further questions.

CROSS-EXAMINATION

BY MR. STOREY:

Q. Ms. Demarais, was there also a description of the eyes of the suspect?

A. Yes. The victim stated that he believed they were brown.

Q. And was there a description of the type of shoes that the person was wearing?

A. The victim indicated that the suspect was wearing what he believed to be black dress shoes.

Q. I'd ask -- the photograph up here is marked People's 1 in the back, and I would -- was there a description given to you as to how the person left that area?

A. According to the -- the victim, he was inside the trailer at the -- at the end of the robbery and that he -- the suspect left the trailer and the victim could not identify which direction the suspect fled.

Q. Okay. If you were in front of the opening --

A. Yes.

Q. -- of that -- on that trailer, which way would be north?

A. That way. It would be --

1 Q. Would it be to the right of the
2 trailer or the left of the trailer?

3 A. It would be to the right of the
4 trailer, sir.

5 Q. Okay. And it would be directly to
6 the right of that opening, or would it be along
7 the trailer, the right side of the trailer?

8 A. I'm sorry, sir, I don't understand
9 what you're asking.

10 Q. Okay.

11 A. The picture here is taken in a
12 westbound -- in a westbound direction. So to the
13 right of that trailer would be northbound.

14 Q. And then if somebody was behind
15 that door proceeding along the right edge of that
16 trailer, they would be proceeding west?

17 A. They would be proceeding westbound,
18 sir.

19 Q. Okay. And you prepared a report in
20 this particular case?

21 A. Yes, I did.

22 Q. And on page 2, first partial
23 paragraph, third to the last line toward the last
24 portion of that particular line, I'd ask that you
25 read that, see if that refreshes your recollection
26 as to the direction the person was leaving.

1 A. I apologize, the victim did tell me
2 that he believed that the suspect fled northbound.

3 MR. STOREY: Nothing further, thank you.

4 MS. AIELLO: I have nothing further.

5 THE COURT: May the officer be excused?

6 MR. STOREY: I don't have an objection.

7 MS. AIELLO: Yes.

8 THE COURT: All right. Thank you very
9 much.

10 Call your next witness, please.

11 MS. AIELLO: People call Domingo Lopes.

12 THE CLERK: Please raise your right hand
13 and be sworn.

14 DOMINGO LOPES,
15 a Witness, called on behalf of the People, and
16 after having first been duly sworn through the
17 interpreter, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. AIELLO:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Could you please state your name.

23 A. Domingo Lopes.

24 Q. Can you spell your last name?

25 A. L-O-P-E-S.

26 Q. Mr. Lopes, how old are you?

1 A. Forty-six.

2 Q. And do you work right now?

3 A. Right now, I'm on vacation.

4 Q. When you finish your vacation, are
5 you going back to work?

6 A. Yes.

7 Q. And where will you go to work?

8 A. The same place, the same company.

9 Q. What do you mean by the same place,
10 the same company?

11 A. The same company and possibly the
12 same business, the same trailer where I worked.

13 Q. Where were you working in June of
14 this year?

15 A. I was in June -- well, I don't
16 remember exactly because they took me out to do
17 some welding for the same company. I don't
18 remember the day, if it was June or at the end of
19 June when I worked at the recycling again.

20 Q. Were you working for the recycling
21 company on the day that -- let me withdraw that
22 question.

23 Do you work for a recycling
24 company?

25 A. Yes.

26 Q. And were you working on a day when

1 something unusual happened to you?

2 A. Yes.

3 Q. And what happened to you on that
4 day?

5 A. It was around 2:00 in the
6 afternoon, let's say, and two people showed up, an
7 American and a Mexican. The American got in,
8 signaled for me to go to the back of the trailer.

9 Q. I'm gonna stop you here before we
10 get too far.

11 I'm gonna show you what's been
12 marked as People's Exhibit 1. Do you recognize
13 this photograph?

14 A. Yeah.

15 Q. What -- what does that show?

16 A. The place where I work, even my
17 bicycle and everything.

18 Q. Okay. Where were you when the two
19 men came to the trailer?

20 A. In the trailer.

21 Q. Okay. Can you, with this red pen,
22 can you put your initials DL to show where you
23 were on this picture in the trailer?

24 A. (Witness writing.)

25 Q. What were you doing in the trailer?

26 A. I was buying material for my client

1 from a gentleman, a gentleman who suffers from an
2 ailment so that he does not speak.

3 Q. What happened then?

4 A. Well, that's when this person
5 showed up and made me go to the back of the
6 trailer, picked the money from the little box and
7 told me to lie down on the floor, and I did lie
8 down.

9 Q. I'm gonna stop you again, okay.
10 Which of the two men are we talking
11 about?

12 A. The American.

13 Q. Okay. And did you see which
14 direction the American came?

15 A. No, because I was in the trailer.

16 Q. Where was -- where was he when you
17 first saw the American?

18 A. Standing towards the front of the
19 trailer.

20 Q. Okay. And when you mean front of
21 the trailer, are you talking about where the
22 doors -- where the doors are open?

23 A. Yes.

24 Q. Okay. Where was the other man that
25 you saw?

26 A. In back of the American.

1 Q. Okay. Tell me what the American
2 looked like.

3 A. Average, 22 years of age or 24,
4 thin-faced. Well, his body was like average, not
5 a robust person.

6 Q. Can you tell me about his hair,
7 what kind of hair he had?

8 A. Normal, not long.

9 Q. Do you remember what color it was?

10 A. Like, to describe it, it would be
11 like a color towards light color, like a light
12 brown, something like that, something like that.

13 Q. Did he have any hair on his face?

14 A. Only like here.

15 Q. Okay. And for the record, he's
16 indicating his chin.

17 A. Only there.

18 Q. What kind of clothes did he have
19 on?

20 A. I'm not very sure.

21 Q. Okay.

22 A. Probably white shirt, but I don't
23 know.

24 Q. Do you remember in this case about
25 the pants?

26 A. No.

1 Q. How good of a look did you get of
2 his face?

3 A. Well, yes, I did -- I did see him
4 well.

5 Q. Do you see him in the courtroom?

6 A. Well, I see him. He looks like
7 him.

8 Q. What do you mean by he looks like
9 him?

10 A. Well, his face looks like his. Of
11 course, at that time I saw his face, as I say, it
12 was thin, and that's some time ago. People
13 change, but some of the features look like.

14 Q. Is that the man who robbed you or
15 is that -- or does he look like the man who robbed
16 you?

17 A. Well, it would be very difficult to
18 tell you exactly that he's the one, but all his
19 here, it's the same.

20 Q. Okay. And you're talking about his
21 eyes?

22 A. Yes.

23 Q. Okay. Okay. Describe -- describe
24 the other man that was there.

25 A. Also, a person who's shorter. He
26 looks shorter; perhaps it was because he was out

1 of the trailer below; thin, a great deal older
2 than the American, and his beard was more or less
3 this size throughout, but very sparse, his beard.

4 Q. Were you -- was -- did his beard
5 cover his -- his face?

6 A. He had it like this long, but it
7 was not a closed beard, just very sparse.

8 Q. Okay. And you were kind of
9 indicating with your fingers, and I don't know if
10 that's a half an inch or --

11 A. More or less like this.

12 Q. Okay. And that's how long the hair
13 was on his face?

14 A. No.

15 Q. Oh, I'm sorry.

16 A. The face?

17 Q. Yeah.

18 A. Yes, like this, this size, the
19 face.

20 Q. Okay. And I think you already said
21 this, but what was the -- the race or the
22 ethnicity of the other man?

23 A. Because of his language, he spoke
24 Spanish well.

25 Q. Okay. Did the -- did the -- the
26 American have anything with him?

1 A. A -- a knife.

2 THE INTERPRETER: Your Honor, it's a
3 type of folding knife; indicates by the word the
4 witness used a folding knife.

5 BY MS. AIELLO:

6 Q. Can you describe it; what did it
7 look like?

8 A. The blade was more or less about
9 four inches, approximately four inches, a bit --
10 the blade was a bit wide, and the metal was like
11 chrome, shiny.

12 Q. Did you see the handle, the part
13 that goes in the hand?

14 A. I don't remember.

15 Q. Did this -- if this knife were to
16 be put away, does it fold in half?

17 A. Well, he didn't fold it. He had it
18 like that there.

19 Q. Okay. It was open or --

20 A. It was open, yes, open always.

21 Q. Okay, okay. Could you tell if it
22 was the type of knife that folded in half?

23 A. I think so.

24 Q. Okay. The American went into the
25 trailer, and he -- what was he saying to you, do
26 you know?

1 A. When -- the first word that he said
2 for me to go backwards. He didn't mention
3 anything about money or anything, just for me to
4 move back. He picked up the money and told me to
5 lie down on the ground -- on the floor.

6 Q. Who told you to lie down on the
7 floor?

8 A. The American.

9 Q. And how did you -- how did you know
10 that's what he was saying?

11 A. Mentioned the word "piso"; that
12 word I understood.

13 THE INTERPRETER: Your Honor, I don't
14 know if he's intending that the original statement
15 was in English or in Spanish. He's saying that.

16 MS. AIELLO: I'll ask that.

17 THE COURT: Clarify, please.

18 BY MS. AIELLO:

19 Q. Did he use the word "floor" in
20 English or Spanish?

21 A. Floor in English.

22 Q. Okay. And you understood what the
23 word floor meant?

24 A. Yes, piso.

25 Q. Did you get down on the ground?

26 A. I went to the ground.

1 Q. Okay. And was that in the front or
2 the back of the trailer?

3 A. Inside the trailer but a little bit
4 beyond the mid part of the trailer towards the
5 back.

6 Q. What happened after you got down on
7 the floor?

8 A. Well, first I want to make this
9 comment: Then the American told me for me to move
10 my hands -- put my hands behind me, and I didn't
11 understand him, and that's when I heard the
12 Mexican. The only words he said, he said, "He's
13 telling you to put your hands behind you," and
14 after that, once the American searched me
15 throughout and took out my wallet, he searched my
16 boots, my feet, and then he searched around my
17 feet and didn't find anything and then exited
18 running.

19 Q. How much money was in your wallet?

20 A. \$40.

21 Q. How much money was taken from
22 the -- the cash box?

23 A. I figure less than \$200.

24 Q. And where was the money from the
25 cash box taken from?

26 A. There's a desk, a table, the box on

1 there, and that's where they took it.

2 Q. I'm going to show you what's been
3 marked as People's Exhibit 2 for identification.
4 Do you recognize this photo?

5 A. Yes. Here's where -- on this piece
6 of furniture is the box, and that's where the
7 money was taken from.

8 Q. Okay. Do you see the black dot
9 that's in that photograph?

10 A. This black dot?

11 Q. Yeah.

12 A. More or less. That's the area of
13 the box. There's a little table and a drawer and
14 then the box in there.

15 Q. So that's about the place where the
16 box would be?

17 A. Yes.

18 Q. Okay. Did -- did the American take
19 the money from the box before he took your wallet?

20 A. No, first the money.

21 Q. Then your wallet?

22 A. Yes.

23 Q. Where -- where was the other man?

24 A. Below out of the trailer. He
25 didn't get in; more or less in this area. He
26 never stood in the middle of the trailer, just

1 over here where this can is --

2 Q. Okay.

3 A. -- very close to the door.

4 Q. Very close to the door, okay.

5 Can you put a 2 with red ink where
6 the other man stayed, not the American?

7 A. (Witness writing.)

8 Q. Okay. All right. After the
9 American took your wallet, what did -- what did he
10 do?

11 A. Exited running.

12 Q. Did you see which direction he ran?

13 A. Yes.

14 Q. Which way did he run?

15 A. They turned here.

16 Q. Would it be better for you to look
17 at this photo?

18 A. Yes.

19 Q. Okay.

20 A. They turned here towards the back
21 and they left through this lot, empty lot to --
22 next to the store that was there. They left over
23 there and they left.

24 Q. In red ink, he's drawing a circle
25 in the direction.

26 A. (Witness drawing.)

1 Q. Okay. What happened after those --
2 after the guys left?

3 A. I got out of the trailer. They had
4 ran. When I got out of the trailer, I was able to
5 see them. They were running. They were
6 approximately 80 feet away from the trailer
7 running when I got out of the trailer and saw them
8 running.

9 Q. When you saw them running, did they
10 run near the -- near the corner of the stores that
11 were there?

12 A. Yes.

13 Q. Did you go to the -- the jail and
14 view lineups of six men?

15 A. Yes.

16 Q. And did you see the man that robbed
17 you in those six?

18 A. Yes.

19 Q. Okay. Do you remember which number
20 he was?

21 A. Five.

22 Q. When you saw him --

23 A. Yes.

24 Q. -- how sure were you that that was
25 the man that robbed you?

26 A. At the moment that I saw him, I

1 recognized that he had been the one. It hadn't
2 been some -- not as much time had passed now. He
3 had not changed as much as now. His beard was
4 different already. He allow it -- allowed it to
5 grow throughout.

6 Q. Okay.

7 A. At the moment that I saw him, I
8 said that's him.

9 Q. Okay. On the day of the robbery,
10 the man -- are we talk -- which of the two men are
11 we talking about, I'm sorry?

12 A. The American one.

13 Q. Okay. On the day of the robbery,
14 how much hair on -- on his face did the American
15 have?

16 A. Only here.

17 Q. Only on -- again, for the record,
18 he's showing his chin.

19 A. Just short.

20 Q. Okay.

21 THE COURT: Can we have an
22 approximation?

23 BY MS. AIELLO:

24 Q. You're doing this again, I can't
25 tell, half an inch?

26 A. More or less, like little, a

1 fourth.

2 Q. When you went to the jail to take a
3 look at the -- at the men, what was different
4 about the American?

5 A. When he went to the trailer, his
6 color was more yellowish. His face looked thinner
7 and longer. In the jail, his color was like more
8 pinkish. His face was no longer thin.

9 Q. What was different about -- was
10 there anything different about his facial hair?

11 A. Yes.

12 Q. What was different?

13 A. He had beard throughout.

14 MS. AIELLO: Okay. I have no further
15 questions.

16 THE COURT: Mr. Storey?

17 CROSS-EXAMINATION

18 BY MR. STOREY:

19 Q. Mr. Lopes, when you were in the
20 trailer and the two individuals came up, they were
21 outside the trailer; is that correct?

22 A. They arrived at the trailer, and
23 immediately, the American with one hand like this
24 and the other with a knife like this below, and
25 immediately, what they were going to do, for me to
26 go backwards and to take --

1 Q. Okay. Then people came up to the
2 trailer, they told you immediately to go to the
3 back of the trailer.

4 Did you go to the back of the
5 trailer?

6 A. Yes.

7 Q. And does the -- does the trailer --
8 the portion of the trailer that opens up, the
9 door, is that facing east or west, north or south?

10 A. Like this.

11 Q. Except the opening faces which
12 direction?

13 A. Towards where the sun rises
14 completely.

15 Q. So it would be facing toward the
16 east?

17 A. Well, where the sun rises. I don't
18 know what direction that is.

19 Q. And what time is this?

20 A. From 2:00 in the afternoon to a
21 little bit later, around then.

22 Q. So as far as the time of day, since
23 the sun is on the other side of the trailer, as
24 you go deeper into the trailer there's less light;
25 right?

26 A. Yes.

1 Q. And the person that was talking to
2 you was behind you; is that correct?

3 A. Behind me? Well, no, cannot be;
4 was in front of the trailer, and I was inside the
5 trailer.

6 Q. And he was in front of the trailer;
7 you were inside the trailer. He told you to go to
8 the rear of the trailer, and you proceeded to the
9 rear of the trailer?

10 A. Yes.

11 Q. And did that person get into the
12 trailer and also go to the rear of the trailer?

13 A. Yes.

14 Q. Okay. And as you go deeper in the
15 trailer, it gets darker?

16 A. A little bit, yes.

17 Q. And you were told to lay on the
18 floor?

19 A. Yes.

20 Q. And did you lay on your stomach or
21 your back?

22 A. Face down with my hands in front,
23 and that's when the Mexican said, "Put your hands
24 behind you," because I could not understand the
25 American.

26 Q. As you're laying on the floor, is

1 your head turned toward the American or away from
2 the American?

3 A. Towards the American because when
4 he finished picking up the money, he walked
5 towards me, and I saw him when he was coming near
6 me.

7 Q. Okay. So you're laying on the
8 floor and you're looking up at this individual?

9 A. Yes.

10 Q. And the source of light is behind
11 that individual; is it not?

12 A. The source of light?

13 Q. Well, the opening to the trailer
14 would have been behind the person?

15 A. Yes, in back.

16 Q. So then what you would have seen
17 would have been just a profile or a shadow on his
18 face; correct?

19 A. It's not so dark so that you can
20 only see a shadow. There's a lot of light to be
21 able to tell, to distinguish. It was still a time
22 of day when the sun was very high. The sunlight
23 lasted a wrong time, and the -- there was sunlight
24 inside.

25 Q. Yeah, but sun's on the other side
26 of the trailer, is it not?

1 A. Yes, but a lot of light,
2 nevertheless.

3 Q. And you're on the floor looking up
4 toward the individual?

5 A. I saw him when he came close to
6 me. I didn't see when he picked up the money from
7 the box. I did not see him because there was a
8 bag with materials inside. He picked up the --
9 picks up the money, he turns a little bit like
10 this and then goes towards where I'm lying down.

11 Q. Are you right or left-handed?

12 A. Right-handed.

13 Q. So is your right hand -- is your
14 right eye dominant?

15 MS. AIELLO: Objection, relevance.

16 THE COURT: I don't see the relevance,
17 Mr. Storey.

18 MR. STOREY: Your Honor, I believe what
19 the testimony will be, 'cause he's laying down and
20 his left eye is the one that he has the best view
21 of the individual.

22 THE COURT: Well, the objection is
23 sustained. That doesn't preclude you from going
24 into that, but right eye dominant doesn't seem to
25 have anything to do with what you're proposing.

26 / / /

1 BY MR. STOREY:

2 Q. As you were laying on the floor and
3 your head is turned in the general direction of
4 this individual, which eye is closer to the
5 individual, your right or left eye?

6 A. Well, I'm lying down towards over
7 there. My leg's here; my head over there. He's
8 coming from the front -- well, you can see which
9 eye.

10 Q. Was he coming from the front or was
11 he coming from behind you?

12 A. From the front.

13 Q. Then your feet were toward the rear
14 of the trailer and your head toward the opening?

15 A. Yes.

16 Q. And was your chin on the floor?

17 A. Yes. It's just that they didn't
18 tell me don't look up. They didn't tell me
19 anything. They didn't prohibit it -- me from
20 doing anything, and I was looking. I saw when he
21 came close.

22 Q. Okay. Did you raise your head?

23 A. Yes.

24 Q. And do you have an estimate about
25 how tall this person was?

26 A. Well, could be between five and a

1 half to six, probably.

2 Q. Okay. Between five and a half and
3 six feet. And how close was the person to you
4 when you made the identification?

5 A. When I did what?

6 Q. You identified the person; right?
7 Or you later identified an individual?

8 A. I don't understand.

9 Q. Okay. You're in the trailer, and
10 you see someone coming towards you?

11 A. Yes.

12 Q. And you've got a vantage point
13 where you are on the floor. You've got your chin
14 close to the floor, but you're looking up. You
15 see the person's face; is that right?

16 A. When I was on the ground, I could
17 not say with certainty that I saw his face, but
18 when he stood in front of the trailer and he said
19 move towards the back, I saw his face completely.

20 Q. Okay. Was that very early on?

21 A. Of the day? Early in the day?

22 Q. No, in regards to contact with this
23 individual.

24 A. That was the first.

25 Q. Okay. And you said that was only a
26 short time, and then you immediately went to the

1 back?

2 A. Yes, he immediately ordered me to
3 go to the back.

4 Q. And at that time, is the individual
5 in front of the trailer?

6 A. When I moved towards the back, he
7 got in and then he got in. He stood in front of
8 the box, and I was standing in the back of --
9 behind a bag of cans looking when he picked up the
10 money. When he was picking up the money, that's
11 when he also told me to lie down.

12 Q. Mr. Lopes, do you know what a photo
13 lineup is?

14 A. I've seen one.

15 Q. And they show you a series of
16 pictures?

17 A. Yes.

18 Q. And the District Attorney asked you
19 about a photo lineup?

20 MS. AIELLO: Objection, misstates the
21 evidence.

22 THE COURT: Rephrase, please.

23 MR. STOREY: I thought that was the
24 question she'd asked initially. If I'm wrong --

25 THE COURT: Just rephrase it,
26 Mr. Storey.

1 BY MR. STOREY:

2 Q. Did you have the opportunity to
3 view a photo lineup?

4 A. Yes.

5 Q. And did you pick an individual out
6 of the photo lineup?

7 A. No.

8 Q. And you don't know whether this
9 gentleman's picture was in the photo lineup or
10 not, do you?

11 A. No.

12 Q. When you were shown that photo
13 lineup, was that before or after you did the live
14 lineup at the jail?

15 A. I was shown a few before. I was
16 shown -- I think two or three times, I'm not sure,
17 but I'm not sure if they showed me after that or
18 not, probably, yes.

19 Q. In all of the photo lineups that
20 you were shown, you were never able to pick out
21 the individual that was in the trailer with you;
22 isn't that correct?

23 A. I never picked one.

24 Q. And you also participated in a live
25 lineup?

26 A. Yes.

1 Q. And when you participated in that
2 lineup, you picked out an individual that looked
3 most like the person that had been in the trailer
4 with you; is that correct?

5 A. Yes.

6 Q. And you didn't tell the officer
7 that that was the person that was in the trailer
8 with you, but it was of the person that looked
9 most like the person who was in the trailer?

10 A. Yes. I told him number five looks
11 like him.

12 Q. Not that it was him, but it looked
13 like him?

14 A. As I said, he had already changed
15 the lot, like to be able to say in a minute or
16 half a minute.

17 Q. Did -- did you have to look at that
18 a long time to make that determination, that
19 lineup?

20 A. No.

21 Q. And when you testified today,
22 you've indicated that Mr. Thatcher, the gentleman
23 over here, looks like the individual; is that
24 right?

25 A. Yes.

26 Q. But you can't say that is the

1 individual?

2 A. A long time has passed since then.
3 Right now, it's like, for example, I see his mouth
4 looks a little bit smaller like this, but I would
5 say that he is -- that he is the person I saw in
6 the photos, and he looks like the one that I saw
7 in the trailer.

8 Q. And the person that you saw in the
9 live lineup, you told the officer that he was
10 shorter than the person who was in the trailer,
11 didn't you?

12 A. No.

13 Q. You didn't say he looks a little
14 shorter in this room?

15 A. Well, I did expect to see him
16 taller, but in any case, his height I figured the
17 same.

18 MR. STOREY: Nothing further, your
19 Honor.

20 THE COURT: All right. Ms. Aiello?

21 MS. AIELLO: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. AIELLO:

24 Q. Mr. Lopes, I forgot to ask you
25 questions about the knife.

26 Where did you first see the knife?

1 A. Before he got into the trailer.

2 Q. And who are we talking about?

3 A. The American.

4 Q. And where was it when you first saw
5 it?

6 A. It was where I showed -- where the
7 Mexican was, the American was in front -- the
8 American was in front and the Mexican in back.

9 So the American was the one who had
10 the knife. He got in, and then the American
11 remained in his place, like this.

12 Q. Where -- where did the American
13 have the knife?

14 A. He was standing with his hands
15 lowered, one hand like this and like this the
16 knife.

17 Q. Okay. Can you go ahead and stand
18 up?

19 MR. STOREY: Can the record --

20 BY MS. AIELLO:

21 Q. Show us again.

22 A. Like this is how he was.

23 Q. For the record, he's holding his
24 right wrist with his left hand crossed in front of
25 him, directly in front of him, facing down.

26 Which hand was the knife in?

1 A. Well, the one he had over here.
2 The one he had on here.

3 Q. The one underneath?

4 A. Like this, and the knife in this
5 one.

6 MS. AIELLO: Okay. For the record, that
7 appears to be his right hand that he's indicating
8 the knife was in.

9 MR. STOREY: Agreed.

10 MS. AIELLO: Thank you.

11 THE COURT: All right

12 BY MS. AIELLO:

13 Q. When he came in, what did he do
14 with the knife?

15 A. A small movement.

16 Q. And he's flicking his wrist up --
17 his right wrist up and down while he's still
18 holding it with his left hand.

19 Q. What did he do after he flicked his
20 wrist or moved his wrist back and forth?

21 A. He made the movement, the sign for
22 me to go towards the back. I moved towards the
23 back, and he got in.

24 Q. Did he do anything else with the
25 knife?

26 A. No.

1 Q. You can go ahead and have a seat,
2 I'm sorry.

3 What were you feeling or thinking
4 when this was happening?

5 A. Fear.

6 Q. What did you think was going to
7 happen to you?

8 A. Well, I've always had in mind not
9 to oppose a person who wants to do that. If they
10 go for money, let 'em have it, and God willing
11 that he would not beat me up.

12 MS. AIELLO: I have no further
13 questions.

14 THE WITNESS: And I'm very grateful, I'm
15 very grateful to the young man that he didn't do
16 anything to me.

17 MS. AIELLO: I have no further
18 questions.

19 THE COURT: Mr. Storey?

20 MR. STOREY: No further questions at
21 this time. I would ask that he remain subject to
22 recall.

23 THE COURT: All right.

24 All right. Mr. -- Mr. Lopes, thank
25 you for coming. You may leave, but if either
26 attorney calls you, you need to come back to

1 court. They will -- if they need you, they will
2 contact you within the next five days. Thank you
3 very much.

4 All right. We'll take our recess,
5 ten minutes, ladies and gentlemen.

6 (Whereupon, a recess was taken at
7 2:43 p.m.)

8 (Whereupon, the following
9 proceedings were had in open court following the
10 recess, outside the presence of the jury, to wit,
11 at 2:53 p.m.):

12 MR. STOREY: I think the court's aware
13 that the only reason I'm putting some of these
14 witnesses on call is in case I ask an officer at
15 some later point about something they may have
16 said. I don't have any intention of calling them,
17 but Mr. Lopes apparently has to go to Sacramento.

18 MS. AIELLO: If he's worried about a
19 technical aspect that the witness needs to remain
20 subject to recall for impeachment purposes, I'll
21 stipulate to that, but I would like to allow the
22 witness to go out of town.

23 THE COURT: Officer Lopez?

24 MS. AIELLO: No, Mr. Lopes, the witness
25 that just finished.

26 THE COURT: Oh, Mr. Lopes.

1 All right. Well, let's -- all
2 right. So what is the stipulation, counsel?

3 MS. AIELLO: The stipulation is if
4 Mr. Storey is requesting that the witnesses remain
5 subject to recall for the purposes of being able
6 to impeach them later with the officer's
7 testimony, I am willing to agree that he is
8 subject to recall for that purpose.

9 I have the officer here who took
10 Mr. Lopes's statement. We can hopefully cover
11 everything that would be needed. So if there's a
12 detail that was not covered and Mr. Storey needs
13 to call the officer back, I will stipulate to
14 whatever needs to be done.

15 MR. STOREY: And I can tell the court
16 the -- the question that I'm gonna ask the
17 officer, and that has to do with his statement,
18 Mr. Lopes's statement, "He looks a little shorter
19 in this room."

20 MS. AIELLO: That's actually
21 Detective Lopez who took it. Okay, all right.

22 MR. STOREY: But that's the only thing I
23 was concerned about, and that's why I have to
24 require; I don't care if he leaves.

25 MS. AIELLO: The witness?

26 MR. STOREY: Yeah.

1 THE COURT: All right. Well, he may be
2 so instructed.

3 (Whereupon, the following
4 proceedings were had in front of the jury, to
5 wit:)

6 THE COURT: All right. Call your next
7 witness, please.

8 MS. AIELLO: Thank you. The People call
9 Officer Ediger.

10 JEREMY EDIGER,
11 a Witness, called on behalf of the People, and
12 after having first been duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. AIELLO:

16 Q. Good afternoon. Could you please
17 state your name and spell your last for the
18 record.

19 A. Jeremy Ediger, E-D-I-G-E-R.

20 Q. Where are you employed?

21 A. Visalia Police Department.

22 Q. How long you been with the Visalia
23 Police Department?

24 A. Approximately six months.

25 Q. And prior to that, were you with
26 another agency?

1 A. Yes, I was.

2 Q. And who were you with?

3 A. Tulare County Sheriff's Department.

4 Q. And how long were you with the
5 sheriff's department?

6 A. Approximately three years.

7 Q. Officer Ediger, were you working on
8 June 27th, 2001?

9 A. Yes, I was.

10 Q. And were you dispatched to go to
11 1845 North Dinuba Boulevard?

12 A. Yes, I was.

13 Q. Approximately what time were you
14 dispatched?

15 A. Approximately 2:57 in the
16 afternoon.

17 Q. Do you recall approximately what
18 time you arrived?

19 A. I was roughly -- I was there when
20 I -- basically when I was called there. I was
21 nearby, so --

22 Q. Very shortly thereafter?

23 A. Very shortly, within a minute.

24 Q. Okay. And when you arrived, who
25 did you contact?

26 A. I made contact with subject

1 identified as Domingo Lopes.

2 Q. Was there anyone else present?

3 A. Yes, there was.

4 Q. Do you recall that person's name?

5 A. Right offhand, no, I don't.

6 Q. Does Adam Ramos sound familiar?

7 A. Yes, it does.

8 Q. And did Adam Ramos assist you in
9 interviewing Mr. Lopes?

10 A. Yes, he did.

11 Q. And when you were interviewing
12 Mr. Lopes, did Adam Ramos ask the questions in
13 Spanish to Mr. Lopes?

14 A. Yes.

15 Q. And did Mr. Lopes respond and then
16 Mr. Ramos translate in English?

17 A. Yes.

18 Q. And did it appear to you that the
19 questions and answers were making sense?

20 A. Yes.

21 Q. After you interviewed -- well, let
22 me go back.

23 What was Mr. Lopes's demeanor like
24 when you contacted him?

25 A. He appeared nervous, visibly
26 shaken. He was -- he was kind of upset.

1 Q. After you interviewed Mr. Lopes,
2 did you attempt to search or collect any evidence?

3 A. After the incident -- correction.
4 After the interview, I attempted to locate a
5 surface where I could get fingerprints; however, I
6 wasn't able to locate fingerprints.

7 Q. Is there a reason why you weren't
8 able to locate fingerprints?

9 A. Due to the texture of the surface
10 of the items within the trailer there, there was
11 no way to lift prints.

12 MS. AIELLO: Okay. I have no further
13 questions.

14 CROSS-EXAMINATION

15 BY MR. STOREY:

16 Q. Officer Ediger, this incident on
17 the 27th, was it a trailer?

18 A. Yes, it was.

19 Q. Okay. And if you look at People's
20 1, does that appear to be the same trailer? Let
21 me show you People's 1. People's 1.

22 A. Okay. Yes, it does.

23 Q. Okay. And surrounding the trailer,
24 what's the surface?

25 A. There's dirt on one side, as well
26 as pavement on the other.

1 Q. And which side is the dirt on?

2 A. The dirt is on the north side.

3 Q. And did you look at the dirt to see
4 whether or not there were any shoe prints?

5 A. There was numerous shoe prints; I
6 mean, that's a frequently traveled area with
7 numerous pedestrians.

8 Q. Okay. And did you make any molds
9 or were any of those shoe prints pointed out to
10 you as being different?

11 A. No.

12 Q. Did the victim point any shoe
13 prints out to you?

14 A. No.

15 Q. Did you make any attempt to make
16 molds of any of those shoe prints?

17 A. No.

18 Q. Did you make any attempts to
19 identify any of those shoe prints?

20 A. No.

21 MR. STOREY: Nothing further.

22 MS. AIELLO: I have nothing further.

23 THE COURT: All right. May the officer
24 be excused?

25 MR. STOREY: No objection.

26 MS. AIELLO: No objection.

1 THE COURT: All right. Thank you very
2 much.

3 MS. AIELLO: People call Martha Patino.

4 MARTHA PATINO,
5 a Witness, called on behalf of the People, and
6 after having first been duly sworn, testified as
7 follows:

8 THE CLERK: Thank you. Please take the
9 witness stand.

10 DIRECT EXAMINATION

11 BY MS. AIELLO:

12 Q. Good afternoon. Could you please
13 state your name?

14 A. My name is Martha Patino.

15 Q. And how do you spell your last
16 name?

17 A. P-A-T-I-N-O.

18 Q. Mrs. Patino, what town do you live
19 in?

20 A. Farmersville.

21 Q. And how long have you lived in
22 Farmersville?

23 A. For almost 25 years.

24 Q. Do you have children?

25 A. Yes.

26 Q. How many children do you have?

1 A. I have seven. I'm raising my
2 stepson, so I have eight total.

3 Q. And do you have a son by the name
4 of Freddie?

5 A. Yes, I do.

6 Q. How old is he?

7 A. He's 19.

8 Q. And how long has -- is Freddie
9 currently living with you?

10 A. Yes, he is.

11 Q. And has he always lived with you?

12 A. Yes.

13 Q. Was there a period this summer that
14 Freddie moved out for a little while?

15 A. Yes, he did.

16 Q. Do you remember when that was?

17 A. It was in the month of June, right
18 before his birthday.

19 Q. When's his birthday?

20 A. June 21st.

21 Q. Approximately how much prior to his
22 birthday did he move out?

23 A. I think it was around the 15th;
24 almost five, six days.

25 Q. He moved -- he moved out of the
26 house around the 15th of June?

1 A. Yes, he had an argument with my
2 husband, and he moved out.

3 Q. I'm sorry, can you repeat that?

4 A. Yes. He had an argument with my
5 husband and he moved out.

6 Q. Okay, an argument.

7 When did he move back in?

8 A. Um, about a week or so after, he
9 called me; mom, can I come home? I go yes; you
10 know, there was no reason for you to get mad. He
11 just call home. I go yeah, come back, this is
12 your house.

13 My husband didn't have no -- he
14 wasn't angry at him, but Freddie thought my
15 husband was angry, so he left.

16 Q. So about a week or so later, he
17 called and asked if he could move back home?

18 A. Yes.

19 Q. Okay. Did he move back home then?

20 A. He went back home, yes.

21 Q. Okay. Was he home on his birthday?

22 A. No, it was right after his birthday
23 when he -- when he came.

24 Q. About how many days after his
25 birthday did he come back home?

26 A. About eight, nine, ten; more or

1 less eight or ten days.

2 Q. What do you mean eight or ten days;
3 total that he was gone, or he moved back in eight
4 or ten days later?

5 A. Oh, no, he moved back in a day
6 after his birthday, was the 22nd.

7 Q. Okay. Mrs. Patino, are you
8 familiar with a person by the name of Lionel or
9 Leo Palafox?

10 A. Yes.

11 Q. How do you know him?

12 A. He was little when we used to live
13 right next-door from their family and my family.

14 Q. How long have you known him?

15 A. Almost 20 years.

16 Q. Mrs. Patino, I'm going to show you
17 what's been marked as People's Exhibit 6 for
18 identification. Do you recognize the person in
19 this photograph?

20 A. Yes.

21 Q. Who is that?

22 A. That's Leo, Lionel Palafox.

23 Q. Okay. Do you know David Thatcher?

24 A. Yes, I do.

25 Q. How do you know him?

26 A. One time when my son was at the

1 house, I went and looked for him 'cause I was
2 wondering how he was doing, and when I went by my
3 son's job, I saw David Thatcher and on the driver
4 side on my son's car.

5 Q. How did you know that that person
6 in the car was David Thatcher?

7 A. I asked for the name.

8 MR. STOREY: Objection, lack of
9 foundation.

10 THE COURT: Sustained.

11 BY MS. AIELLO:

12 Q. Have you ever actually met the
13 person by the name of David Thatcher?

14 A. I asked for the name. I repeat
15 myself, I asked for the name 'cause there were two
16 Davids there. It was two men.

17 MR. STOREY: Move to strike, foundation.

18 THE WITNESS: My son's car and my son,
19 and I was wondering --

20 THE COURT: Ma'am, excuse me, I'm sorry,
21 the answer is stricken.

22 BY MS. AIELLO:

23 Q. Mrs. Patino --

24 THE COURT: Ladies and gentlemen, when
25 an answer is stricken, that means you shall
26 totally disregard it.

1 BY MS. AIELLO:

2 Q. All I want to know is if you have
3 actually met David Thatcher; like hi, my name is
4 David; hi, my name is Mrs. Patino?

5 A. Oh, no.

6 Q. Okay. When your son moved out for
7 that short period of time, where did he move to?

8 A. I don't know.

9 Q. Okay. After he moved back into
10 your house, did you learn that his car was
11 missing?

12 A. Yes.

13 Q. When you learned that his car was
14 missing, did you have to do something to help him
15 out?

16 A. Yes.

17 Q. What -- what were you doing?

18 A. I was taking, picking him up from
19 work and taking him to work every day.

20 Q. And how many days did you have
21 to -- actually, let me withdraw that question.

22 The day that his car became
23 missing, did you take him home from work?

24 A. Yes.

25 Q. Okay. How many days after that did
26 you have to take him to work and pick him up?