

1 witness.

2 **MR. HAMM:** Thank you, Judge.

3 **MIKE MILLER,**

4 having been previously duly sworn, testified as follows:

5 **CROSS-EXAMINATION**

6 **Q. (BY MR. HAMM)** Investigator Miller, the
7 State went over with you some pictures during your
8 direct testimony. Do you recall State's Exhibits 53
9 through 59?

10 A. I do.

11 **Q.** And do you recall the State admitting the
12 scene video, State's 49?

13 A. I do.

14 **Q.** Now, so that the jury understands, Harris
15 County Police Department and the district attorney's
16 office are the only two individuals -- entities, if
17 you will, that are able to print pictures from that
18 video; is that correct?

19 **MS. JOHNSON:** Objection, relevance.

20 **THE COURT:** Overruled. He may answer
21 if he knows.

22 A. No, I don't believe that's accurate. No.

23 **Q. (BY MR. HAMM)** Okay. So, is your testimony
24 that I have the ability to print pictures from the
25 video?

1 A. Yes.

2 Q. And how do I do that?

3 A. Software program. I have actually done it
4 myself.

5 Q. What is that software program?

6 A. The name of it I'm not sure of.

7 Q. Where did you get it from?

8 A. Downloaded it from the internet.

9 Q. Okay. And how did you find that software
10 program applied itself?

11 A. Download the program, and you freeze the
12 particular portion of the video that you want to
13 present, and hit "print."

14 Q. So, you're the one -- you said you actually
15 did it. You're the one who did that in this case?

16 A. I have done it before. In this case, we
17 had our audio/visual lab print up the pictures.

18 Q. And why was that?

19 A. The amount of photos that we needed to
20 develop.

21 Q. Were there more photos to be developed than
22 what are in State's 53 through 59?

23 A. No, I don't believe there are. I believe
24 that is the entirety.

25 Q. So, because there are six, seven photos, if

1 you will, you had to have an independent special
2 department print those?

3 A. The Houston Police Department has the
4 audio/visual lab within its department.

5 Q. Okay. Now, I want to go back to that
6 video.

7 **MR. HAMM:** Is it in there?

8 **MS. JOHNSON:** It's in the computer.

9 **MR. HAMM:** How do I play and pause it?

10 **MS. JOHNSON:** Over here.

11 Q. **(BY MR. HAMM)** There is no question in your
12 mind who the shooter in this case is, right?

13 A. No, there is not.

14 Q. It's Vondra Joseph, right?

15 A. That's correct.

16 **(Sidebar discussion outside hearing of**
17 **the Court Reporter)**

18 Q. **(BY MR. HAMM)** Officer, and there is no
19 question who the individual that jumped over the
20 counter on the video that we saw was, is there?

21 A. No, there is not.

22 Q. It's fair to say that Dontreal is the
23 person who put names to the faces for identification
24 purposes during his statement; is that accurate?

25 A. I'd have to review his statement --

1 Q. Okay.

2 A. -- to tell you what's in it.

3 Q. Well, let's do this. You interviewed
4 Milton Holiday, right?

5 A. That's correct.

6 Q. And during that interview, he had his
7 attorney with him?

8 A. That's correct.

9 Q. You didn't speak to him without the
10 attorney?

11 A. That's correct.

12 Q. Why is that?

13 A. Because he had an attorney representing
14 him.

15 Q. Okay. And so, you couldn't have spoken to
16 him since he had attorney representing him?

17 A. That's correct.

18 Q. Based upon your conversations with Milton
19 Holiday, you had identified potential individuals who
20 participated in the robbery?

21 A. That's correct.

22 Q. And we know who those were; Vondra Joseph,
23 Dontreal Brown, and Neiman Nelson?

24 A. That's correct.

25 Q. But at that time, that's the only

1 information you had, right?

2 A. That's correct.

3 Q. And it's not -- it is not a fair
4 representation for the jury that Milton Holiday came
5 to your office voluntarily trying to tell you what he
6 knew.

7 A. Did he come to our office voluntarily?

8 Q. No. He came to your office with an
9 attorney?

10 A. Yes, that's correct.

11 Q. But he came to your office after you guys
12 plastered his picture all over the news?

13 A. That's correct.

14 Q. So, some kind of way, he knew people were
15 looking for him?

16 A. That's correct.

17 Q. All right. And the information that he
18 gave you, you obtained a warrant for the arrest of
19 Vondra Joseph and Neiman Nelson, didn't you?

20 A. For Vondra Joseph, yes.

21 Q. You didn't obtain one for Neiman Nelson at
22 that time?

23 A. We obtained a probable cause arrest warrant
24 for Neiman Nelson. That's correct.

25 Q. So, you obtained -- you could have arrested

1 him?

2 A. Yes. Form of a warrant, that's correct.

3 Q. Right. Right. But you did not have a
4 warrant yet for Dontreal Brown?

5 A. That's correct.

6 Q. And you -- you knew Dontreal Brown had an
7 attorney when you went and spoke to him?

8 A. We knew he had attorney, that's correct.

9 Q. And you didn't know then but you have come
10 to know that I was the lawyer?

11 A. That's correct.

12 Q. All right. And you told the jury that at
13 some point during the two hours and 30 some-odd
14 minutes, Dontreal Brown agreed to speak with
15 you-all --

16 A. That's correct.

17 Q. -- right? And based upon what Dontreal
18 said, you were then able to identify who the
19 individuals in the video were?

20 A. I'd have to review his statement.

21 Q. Well, let's do this. Did you have the
22 video on September 5th when you saw Dontreal?

23 A. Did I have the video? No.

24 Q. Yes, sir.

25 A. No, I did not.

1 Q. Had you seen the video?

2 A. Yes, I had.

3 Q. Did you go over the video with Milton
4 Holiday on September 4th?

5 A. Yes, we did.

6 Q. And from what Milton Holiday was saying to
7 you, in relation to watching the video, that assisted
8 you in your interview with Dontreal Brown?

9 A. That's correct.

10 Q. You just didn't have the ability or the
11 video, as it is in evidence now, to go over with
12 Dontreal Brown?

13 A. Did I show the video to Dontreal Brown?
14 No, I did not.

15 Q. And, in fact, you don't show Mr. Brown any
16 of the pictures of suspects either during that
17 September 5th interview?

18 A. I believe I did.

19 Q. Okay. Are you referring to --

20 A. I did.

21 Q. What page of your offense report?

22 A. It's .022, second to the last paragraph at
23 the very bottom.

24 Q. Got you.

25 A. Last sentence.

1 Q. I'm sorry. I'm actually reading from the
2 wrong supplement. That's T.W. Miller's supplement.

3 Okay. Did you direct --

4 A. I showed videos.

5 Q. Showed pictures?

6 A. I'm sorry. Pictures.

7 Q. Right. I'm talking about what you did.

8 A. Correct. I'm sorry. No, I did not. I did
9 not show photos.

10 Q. And I'm not suggesting that you meant to
11 mislead the jury, but we need to make sure we're
12 clear.

13 When you talk -- when you testified
14 that you had pictures of the suspects -- you and your
15 brother are partners in law enforcement, right?

16 A. That's correct.

17 Q. And so, your brother had evidently some
18 pictures of, I'm assuming, Vondra Joseph and Neiman
19 Nelson?

20 A. That's correct.

21 Q. Okay. But you participated in taking the
22 recorded statement of Milton Holiday, right?

23 A. That's correct.

24 Q. You didn't play that for Dontreal, did you?

25 A. No, I did not.

1 Q. Okay. So, I think you told the jury that
2 the way the -- the way the interrogation room is set
3 up, that there is a chair in the middle of the floor.
4 Is that fair?

5 A. There was actually more than one chair. I
6 believe there was like four or five chairs.

7 Q. Yes, sir. And I'm not disagreeing with
8 that. You have Mr. Brown sitting -- is Mr. Brown --
9 was Mr. Brown sitting at a table, as I am now?

10 A. There was a table in the room; and, yes, he
11 was sitting. He was close to the table.

12 Q. Okay. Was there any space in between you,
13 your chair, and Mr. Brown's chair?

14 A. No, there was not.

15 Q. So --

16 **MR. HAMM:** May the witness step down,
17 Your Honor?

18 **THE COURT:** Yes, sir.

19 Q. **(BY MR. HAMM)** For the benefit of the jury,
20 sir, you -- will you sit here, please -- actually,
21 yes, you sit here. The way you like to conduct your
22 interrogations is like to be in the face of the
23 suspect, do you not?

24 A. I like to look at them in the face, that's
25 correct.

1 Q. And that allows you to develop rapport with
2 them and kind of make a judgment on if you believe
3 they're being truthful to you sometimes; is that
4 fair?

5 A. It opens up communication.

6 Q. Is it fair to say that you and Dontreal --
7 I tell you what, why don't you sit in this chair for
8 me, sir, if you will.

9 A. (Witness complies.)

10 Q. Is that the way you had the room set up,
11 that Dontreal is sitting as you are with your back to
12 the jury and if I am sitting in front of you -- I
13 will be you -- that you-all were this close?

14 A. I don't believe we were that close.

15 Q. You don't believe that your knees were
16 touching?

17 A. No.

18 Q. Were you in his face?

19 A. I was talking to him face to face, yes.
20 Yes, that's correct.

21 Q. Okay. So, are you saying that you had a
22 distance that would suffice for a table to be in
23 between y'all?

24 A. There was no table between us, no.

25 Q. Tell me when to stop. If you recall, how

1 close were you and Dontreal when you were speaking?

2 A. About right there.

3 Q. Okay. Now, depending on you -- you would
4 agree with me that, depending upon what I do with my
5 feet, our feet are going to be on top of each other?

6 A. We could be, yes.

7 Q. And this right here, in your mind, is a
8 comfortable level for conducting your interrogation
9 of Mr. Brown?

10 A. That's correct.

11 Q. And during this time, Mr. Brown -- you can
12 step back up, sir. Thank you.

13 A. (Witness complies.)

14 Q. During this time, Mr. Brown is handcuffed,
15 correct?

16 A. He was.

17 Q. Had handcuffs on?

18 A. Yes, he was handcuffed.

19 Q. What was the purpose of you having a
20 recording device?

21 A. To record his statement.

22 Q. Why would that be important?

23 A. So we could play it in court.

24 Q. That's right. So, then if Mr. Brown said
25 something, should he choose to go to trial, it would

1 be memorialized for whomever this jury would be?

2 A. So we could play it in court, yes.

3 Q. And if he deviated from that statement, you
4 would have something to say. This is what you said
5 on that day; is that right?

6 A. That's correct.

7 Q. You told them that Mr. Brown agreed to
8 waive his Miranda rights to you?

9 A. That's correct.

10 Q. That means he agreed to talk to you?

11 A. That's correct.

12 Q. You didn't have any video, right?

13 A. No, I did not.

14 Q. You didn't have any pictures?

15 A. No, I did not.

16 Q. You didn't play any confessions for him?

17 A. No, I did not.

18 Q. What statement did he make?

19 A. To me?

20 Q. Yes, sir.

21 A. He didn't make a statement.

22 Q. So, Dontreal never told you, "Hey, I have
23 my lawyer"?

24 A. No, he did not.

25 Q. He never suggested that he had a lawyer to

1 you, did he?

2 A. No, he did not.

3 Q. It's not true that you just got up after
4 you were speaking with him and went outside. You
5 were frustrated, weren't you?

6 A. That is true. I got up, and I went
7 outside.

8 Q. And you were frustrated?

9 A. I'm frustrated a lot.

10 Q. That is not my question. I didn't ask you
11 that.

12 A. That he didn't give a statement, certainly.

13 Q. You were frustrated that you couldn't get
14 anything from Mr. Brown?

15 A. Certainly.

16 Q. Because he wouldn't answer your questions,
17 right?

18 A. He didn't give me a statement, that's
19 correct.

20 Q. So, then if you -- you testified -- you
21 remember testifying on direct?

22 A. I do.

23 Q. You were on the stand from 11:20 to 12:05.
24 That is a long time, isn't it?

25 A. Okay.

1 Q. Sorry. Go ahead.

2 A. Yes.

3 Q. And you were asked a series of questions
4 from the State, weren't you?

5 A. Yes, I was.

6 Q. You were shown a series of documents that
7 are evidence, weren't you?

8 A. Yes, I was.

9 Q. During that time we actually watched a
10 video, didn't we?

11 A. We did.

12 Q. That still doesn't add up from the time of
13 9:45 to 11:30 that you spent with Mr. Brown, does it?

14 A. Okay. I guess it doesn't now.

15 Q. Sorry?

16 A. What is your question?

17 Q. How long is 9:45 to 11:13?

18 A. Almost an hour.

19 Q. Almost one hour?

20 A. Uh-huh (affirmative.)

21 Q. 9:45 to 11:30?

22 A. Fifteen minutes shy of one hour. 9:45 to
23 10:45 to 11:45 is two hours.

24 Q. Okay. Okay. So, what were you asking him?

25 A. We actually talked about --

1 Q. No, not we. What were you -- I didn't ask
2 what his answer was. What were you ask asking him?

3 A. What was I asking Dontreal Brown?

4 Q. Yes, sir.

5 A. After I read him his Miranda warnings, I
6 asked him if he knew who I was. I introduced myself.

7 Q. Yes, sir.

8 A. I began talking about the investigation.

9 Q. Go ahead.

10 A. And I asked him a series of questions.

11 Q. Investigator Miller, tell me what question
12 you asked him first.

13 A. Sorry.

14 Q. I said tell me what question you asked
15 Dontreal first. After you -- your testimony is: I
16 read him Miranda, and he agreed to give me a
17 statement. But you couldn't get a statement.

18 A. That's correct.

19 Q. You knew he had an attorney. So, tell me
20 what was the first question you asked him?

21 A. I told him I was investigating a murder
22 investigation.

23 Q. Okay.

24 A. And did he know anything about our murder
25 investigation.

1 **Q.** Okay. And I'm assuming your next question
2 would have been identifying Milton Holiday as a
3 potential suspect, correct?

4 **A.** That's correct.

5 **Q.** And then the question after that would have
6 been Milton Holiday has given us information that
7 you, Vondra Joseph, and Neiman Nelson participated;
8 is that right?

9 **A.** What was my very next question?

10 **Q.** No. I'm saying that is a -- that's a
11 logical chronology to the questions that would go
12 into your investigation of this?

13 **MS. JOHNSON:** I object to speculation.

14 **THE COURT:** Sustained. You will need
15 to rephrase.

16 **MR. HAMM:** Yes, ma'am.

17 **Q.** **(BY MR. HAMM)** You're investigating Dontreal
18 Brown's involvement, if any, based upon the
19 information you received from Milton Holiday, sir?

20 **A.** That's correct.

21 **Q.** All right. And you know from Mr. Holiday
22 that there are three other actors in this robbery.

23 **A.** That's correct.

24 **Q.** You know from Milton Holiday that Vondra
25 Joseph is the shooter?

1 A. That's correct.

2 Q. You don't know if that's true at that
3 point, right?

4 A. No, we don't.

5 Q. All right. You watch a video; and the
6 things that Milton Holiday is able to tell you,
7 you -- in your training and experience -- can
8 actually kind of link some of those things up,
9 correct?

10 A. We were able to link things up, yes.

11 Q. And when you naturally go and interview and
12 interrogate Mr. Brown, you want to further your
13 investigation of the statements that Milton Holiday
14 said were true?

15 A. Yes, we did.

16 Q. So, quite naturally, you want to know if
17 Vondra Joseph and Neiman Nelson were involved with
18 Mr. Brown?

19 A. Yes, we did.

20 Q. And you want to know if Mr. Brown was
21 present at the Siesta Mart?

22 A. Yes, we did.

23 Q. Because there are absolutely -- excuse me.
24 There was absolutely no physical evidence that linked
25 Mr. Brown to the robbery, was there?

1 A. No, there was not.

2 Q. There was no DNA, right?

3 A. No, there was not.

4 Q. There was no fingerprints?

5 A. No, there was not.

6 Q. There wasn't and nor has there ever been a
7 positive identification of an independent witness --

8 A. That's correct.

9 Q. -- of Mr. Brown?

10 A. That's correct.

11 Q. So, what else -- what other things are you
12 asking Mr. Brown after he is not giving you answers
13 to his questions -- to your questions? I'm sorry.

14 A. Current events, what's going on.

15 Q. What do you mean?

16 A. In the process of speaking to somebody, we
17 like to develop an open line of communication; and in
18 doing that, we talk about things that are going on
19 outside the investigation, just open up a line of
20 communication.

21 Q. That's -- okay. That's done kind of in the
22 beginning to establish that?

23 A. Sure.

24 Q. After you go over current events, then you
25 build a trust with the person, then you want to talk

1 to them about their involvement?

2 A. Sure.

3 Q. And you built enough trust to get past the
4 current events, right?

5 A. Yes, we did.

6 Q. Then you went into Mr. Brown's involvement?

7 A. Yes, we did.

8 Q. And your testimony to the jury is that you
9 still didn't get a statement?

10 A. That's correct.

11 Q. And you guys are having a conversation,
12 right?

13 A. We were.

14 Q. The purpose of having a recorder is to
15 capture what the person says?

16 A. That's correct.

17 Q. That's the only way these people would know
18 if you're telling the truth.

19 **MS. JOHNSON:** Objection,
20 argumentative.

21 **THE COURT:** Sustained.

22 Q. **(BY MR. HAMM)** That's the only way for the
23 jury to verify what you're telling us today as it was
24 when you first spoke with Mr. Brown.

25 A. Okay. Yeah, that's correct.

1 Q. I mean, is that being fair to you?

2 A. That's correct.

3 Q. All right. So, if you're there with a
4 recorder -- you follow me?

5 A. I do.

6 Q. And the person has agreed to waive his
7 rights, if he has, why didn't you record that?

8 A. Because we don't have a legal obligation to
9 record that.

10 Q. Because he didn't say what you wanted him
11 to say, did he?

12 **MS. JOHNSON:** Objection to the form of
13 the question.

14 **THE COURT:** Sustained.

15 Q. **(BY MR. HAMM)** Because he asked for his
16 lawyer, didn't he?

17 A. No, he did not.

18 Q. Was there anything else that you said for
19 this two hours that you had him in there?

20 A. Was there anything else I said?

21 Q. Yes, sir. Other than the current events
22 that you first established, then you established
23 trust, and then you asked him about the three other
24 codefendants, is there any other questions that you
25 asked him?

1 **Q.** **(BY MR. HAMM)** You don't know what his
2 answer is going to be before he says anything, do
3 you?

4 **A.** No, I do not.

5 **Q.** That's why you have a recorder, right?

6 **MS. JOHNSON:** Objection, asked and
7 answered.

8 **THE COURT:** Sustained.

9 **Q.** **(BY MR. HAMM)** I want to show you some
10 things on this video. I want you to -- do you have
11 anything to write with, sir?

12 **A.** Do I? Yes, I do.

13 **Q.** Do you have something that you can write on
14 that won't interfere with --

15 **A.** Yeah, I do.

16 **Q.** Will you write down for me 22 semicolon 18,
17 semicolon 16? Will you write down 22:18:22. Will
18 you write down 22:17:51? And will you write down
19 22:17:46?

20 Okay -- oh, and there is another one.
21 I'm sorry. There is one more. I think it's 22:31.
22 And I'm going to start with when Milton Holiday
23 enters the Siesta Mart. Okay? Okay, Officer?

24 **A.** Okay.

25 **Q.** Now -- I think I got the numbers wrong.

1 Just bear with me for a second, Officer.

2 **MR. HAMM:** Can y'all see that screen?

3 There is no way to zoom in, is there?

4 **MS. JOHNSON:** No.

5 **MR. HAMM:** All right. If he points on
6 his thing, will it mark?

7 **MS. JOHNSON:** Yes.

8 **Q. (BY MR. HAMM)** Will you, Officer --

9 **MR. HAMM:** May I approach the witness,
10 Judge?

11 **THE COURT:** Yes, sir.

12 **Q. (BY MR. HAMM)** Now, Milton Holiday told you
13 he didn't have a gun, didn't he?

14 **A.** That's correct.

15 **Q.** All right.

16 **MS. JOHNSON:** Objection --

17 **THE COURT:** Excuse me. Excuse me just
18 a moment. May I see you-all at the bench?

19 **(At the Bench)**

20 **THE COURT:** Sir, what you are trying
21 to do is go into the non-recorded statement? Are you
22 trying --

23 **MR. HAMM:** Of whose? Dontreal?

24 **THE COURT:** Sorry. You are asking
25 about your client?

1 **MR. HAMM:** No, no. I'm sorry. I
2 didn't understand you, Judge.

3 **THE COURT:** What was your last
4 question?

5 **MS. JOHNSON:** He was asking about
6 Milton Holiday's statement and what he said in it.

7 **MR. HAMM:** Okay.

8 **THE COURT:** Don't you remember there
9 was a Motion in Limine on that, sir? Don't go into
10 that.

11 **MR. HAMM:** Yes, ma'am.

12 **THE COURT:** It's hearsay.

13 **MR. HAMM:** I -- okay. Yes, ma'am.

14 **(End of Bench Discussion)**

15 **Q.** **(BY MR. HAMM)** Can I -- see where his elbow
16 is?

17 **A.** Uh-huh (affirmative.)

18 **Q.** All right. You see that little thing right
19 there? Can you see that, sir?

20 **A.** Can I see where his elbow is, yes, I can.

21 **Q.** You see the object that appears to be on
22 his waistband? Right here.

23 **A.** It does look like there is something there.
24 That's correct.

25 **Q.** You have never noticed that before, have

1 you?

2 A. No, I have not.

3 Q. Okay. Let me back it up. I'm sorry. I'm
4 trying to get it -- that's -- I didn't want the still
5 photo. I'm trying to get it to where it's clear, if
6 you will bear with me, Officer, because I don't want
7 to mislead the jury. So, please, continue to bear
8 with me.

9 Well, let me ask you this: Would you
10 agree with me that it appears that there is something
11 in the waistband of Milton Holiday, according to what
12 is in evidence as State's 49?

13 A. I see what you are pointing to.

14 Q. Yes, sir.

15 A. I don't know what it is, though.

16 Q. And that's fair. It's possible that it
17 could be a cell phone, right?

18 A. It could be anything.

19 Q. It could be a gun, too, couldn't it?

20 A. It could be anything.

21 Q. It could be a gun, too?

22 A. It --

23 **MS. JOHNSON:** Objection, asked and
24 answered.

25 **THE COURT:** Sustained. Really you

1 should answer the question asked. I'm sorry.

2 **THE WITNESS:** It could be.

3 **MR. HAMM:** Thank you, Judge.

4 **Q. (BY MR. HAMM)** And, again, that's just a
5 piece of evidence that -- let me back up.

6 Your focus was on getting the shooter
7 who committed murder, for one, right?

8 A. Yes, that's correct.

9 **Q.** And getting anybody else who possibly was
10 involved or had information about the crime that you
11 saw on this video; is that fair?

12 A. That's correct.

13 **Q.** Okay. I want to show you another frame.
14 It's actually at the bottom, identified in 49; and it
15 says "camera 7." You see that?

16 Wait. I did it the wrong way. I'm
17 sorry. Bear with me, Officer, please. We're talking
18 about, for purposes of the record, the surveillance
19 camera that is outside of the Siesta Mart, right?

20 A. Yes, that's correct.

21 **Q.** And the reference that this signifies, if
22 you will, that this camera angle has, this is where
23 you were testifying on direct that it shows the
24 vehicle driven by Milton Holiday; is that right?

25 A. That's correct.

1 Q. Do you see -- are you able to see what's at
2 22:07:10 on State's 49? You see the vehicle that's
3 frozen right there?

4 A. Yeah. I do see a vehicle that's frozen.

5 Q. All right. And are you able to give your
6 opinion if it appears to be the same vehicle that is
7 in State's Exhibit 60?

8 A. Can you play it so I can actually see it?

9 Q. Certainly. You need me to back it up?

10 A. I did see it. It appears to be the same
11 vehicle.

12 Q. And, in fact --

13 **MR. HAMM:** May I approach the witness,
14 Judge?

15 **THE COURT:** Yes, sir.

16 Q. **(BY MR. HAMM)** What we see in State's -- in
17 evidence as State's 60, you would agree with me, is
18 also reflected in proposed -- I would hand you, sir,
19 what's proposed Defendant's Exhibits 64 and 65. Do
20 you recognize those as being -- do you recognize
21 those?

22 A. I do.

23 Q. Are those consistent with the vehicle that
24 is in evidence now as State's 60?

25 A. It appears to be, yes.

1 **MR. HAMM:** Judge, I'd hand this to
2 opposing counsel for any objections. Defense 64 --
3 I'm sorry, Your Honor -- and 65.

4 **THE COURT:** Thank you.

5 **MS. JOHNSON:** No objection, Your
6 Honor.

7 **THE COURT:** Admitted.

8 **Q. (BY MR. HAMM)** And now, sir, as we're going
9 forward, you -- what's -- let me back it up a little
10 bit. Okay. There we go.

11 At 22:07:52, in State's 49, you see a
12 vehicle that is frozen on the screen in front of you,
13 do you not?

14 A. I do.

15 **Q.** And it also appears to be the vehicle
16 driven by Milton Holiday, correct?

17 A. You will have to play it so I can see it,
18 but it --

19 **Q.** I'm going to hit play.

20 A. Okay.

21 **Q.** The vehicle is going to make a right-hand
22 turn, and tell me if you get a better view of it.

23 **(Exhibit Published)**

24 A. It does appear to be the vehicle, yes.

25 **Q. (BY MR. HAMM)** Okay. And that is frozen at

1 22:07:57. Now, Milton Holiday's vehicle, do you know
2 the name of that street that -- it looks like it's
3 running north to south.

4 A. Cotillion.

5 Q. Cotillion. What is the -- Aldine Bender?

6 A. Correct.

7 Q. All right. So, where he first began,
8 Milton Holiday's vehicle was on Cotillion heading
9 south; is that right, when it would have been -- when
10 it would have been back by the headlights across the
11 street on the freeze frame of 22:07:57?

12 A. The direction it's heading, I'm not sure.

13 Q. And I will give you that. I'm not either.
14 But you see the headlights in that freeze frame?

15 A. I do.

16 Q. Milton Holiday's vehicle came from that
17 direction, correct?

18 A. That's correct.

19 Q. Made a right on Aldine Bender?

20 A. Cotillion.

21 Q. Cotillion. I'm sorry. And went whichever
22 way is. I don't know. It would have made a right,
23 whatever way it is, north or south; is that fair?

24 A. That's correct.

25 Q. And then we see the vehicle reappear in

1 front of the gas station, and it makes a right where?

2 A. Can you play it and tell me what you are
3 talking about?

4 Q. Certainly. This street that is on the
5 right now, what is the name of that street?

6 A. Cotillion.

7 Q. Okay. Make a right on Cotillion. And do
8 you know where the car goes from there?

9 A. It does. If -- can you keep playing it,
10 please?

11 Q. Oh, certainly. I'm sorry. Okay.

12 A. And you can stop it.

13 Q. Okay.

14 A. It makes a u-turn on Cotillion and then
15 pulls back into the Siesta Food Mart parking lot in
16 front of the gas station pump.

17 Q. And at no time did you get any information
18 from your investigation that Milton Holiday was
19 forced at his will to drive the vehicle that evening,
20 did you?

21 A. That he was forced?

22 Q. Yes, sir.

23 A. Against his will, no, we did not.

24 Q. Okay. Okay. This is camera -- looks like
25 1, and this is the frame where we know that the

1 individual that just jumped over that counter was
2 Neiman Marcus (sic), correct?

3 A. Neiman Nelson, that's correct.

4 Q. I'm sorry. I'm sorry. Sorry. Let me show
5 you that.

6 Can you see 22:17:51, that freeze
7 frame, 328?

8 A. Yes, you can.

9 Q. Tell the jury what he is doing.

10 A. Looks like he is directly addressing
11 Mr. Fernandes.

12 Q. In what manner?

13 A. A very aggressive manner.

14 Q. Is there anything in his hands that you can
15 see?

16 A. No, there is nothing that I can see in his
17 hands.

18 Q. Let me back that up for you. You can
19 assume that there is a conversations. You would
20 assume that there is a conversation going on between
21 the individuals inside and the -- Mr. Fernandes?

22 A. Yes, that's correct.

23 Q. They are trying to find the money?

24 A. That's correct.

25 Q. And so the record is clear, the only

1 individual that we're able to see right now is Neiman
2 Nelson?

3 A. That's correct.

4 Q. Okay. And you can -- although you can see
5 Mr. Fernandes' lips moving, we are unable to hear
6 what he is conveying?

7 A. That's correct.

8 Q. It appears to be in frame 22:17:51, 328,
9 that Mr. Fernandes is pointing to the left underneath
10 the register -- register somewhere. Would you agree
11 with that?

12 A. His arm looks like it could be extended, if
13 you could replay it.

14 Q. Certainly. You see his head?

15 A. Looked like his hands did come out, yes,
16 and is extended away from his body.

17 Q. Right. Now, you see that?

18 A. I did.

19 Q. That 22:17:51, 187, tell the jury what
20 Neiman Nelson is doing to Mr. Fernandes.

21 A. What is he doing to him?

22 Q. He is threatening, isn't he?

23 A. Robbing him, threatening.

24 Q. With his hand?

25 A. His hand is up and extended, yes.

1 Q. And your information is that Mr. Nelson
2 never had a weapon; is that right?

3 A. That's correct.

4 Q. It appears there is a portion on that frame
5 that Neiman Nelson is going through the pockets of
6 Mr. Fernandes, doesn't it?

7 A. Yes, it does.

8 Q. That's 22:17:59, correct?

9 A. Yes, it is.

10 Q. You don't have any doubt in your mind that
11 Mr. Fernandes is in fear of bodily injury, do you?

12 A. No doubt in my mind, no.

13 Q. And you have no doubt in your mind that
14 that's an aggravated robbery right there, isn't it?

15 A. That's correct.

16 Q. Based upon -- based upon your
17 investigation, the individual we see in frame
18 22:18:15 on camera 6 is Dontreal Brown, isn't it?

19 A. Could you replay it?

20 Q. Certainly.

21 A. From the beginning, from the first person
22 exiting.

23 Q. Oh, yes. I'm sorry. That's prior to any
24 gunshot?

25 A. That's correct.

1 Q. Okay. And we know based upon your
2 investigation and the information you have received
3 that that person exiting is Dontreal Brown?

4 A. That's correct.

5 Q. At 2218 -- sorry. At 22:18:17, 187,
6 Dontreal Brown is no longer in the view of camera 6;
7 is that fair?

8 A. That's correct.

9 Q. The area that camera 6 is pointing to is
10 within 2 feet of the exit, is it not, if you recall.

11 A. I don't know. 2 feet. Certainly within
12 5 feet.

13 Q. Okay. That's fair. How far do you think
14 it would take someone to walk 5 feet? How long?

15 A. Not very long.

16 Q. And you would agree with me that based upon
17 what we're looking at -- count the seconds for me --
18 that when he disappears -- I will stop it. And you
19 would agree that he is walking at a fast pace in that
20 frame, right?

21 A. That's correct.

22 Q. We're at 22:18:16, and it appears to be
23 265. And in this frame -- it might be my eye, but I
24 believe we can see what would be like the back arm of
25 Dontreal Brown; is that fair?

1 A. That's correct.

2 Q. Okay. Count the seconds for me from the
3 16, sir, until you see Vondra Joseph appear.

4 A. Five.

5 Q. Five seconds. It's fair to say that
6 Dontreal Brown had left the store?

7 A. If he was walking out the door, he had the
8 opportunity to get out of the door in that five
9 seconds, yes.

10 Q. Thank you. And you know that Vondra
11 Joseph, in that frame, is the individual who shoots
12 the gun?

13 A. That's correct.

14 Q. The person we see running is Neiman Nelson.

15 A. That's correct.

16 Q. Now, Officer --

17 **MR. HAMM:** How do I get this on? I
18 want this to be on. I don't know what to do on that.

19 Q. **(BY MR. HAMM)** It is clear that based upon
20 your investigation, all of these -- Vondra Joseph,
21 Neiman Nelson, and Dontreal Brown, and Milton
22 Holiday, knew each other, right?

23 A. I believe they did, yes.

24 Q. That's your belief. And at least with
25 respect to Dontreal Brown, he was there to commit a

1 robbery, right?

2 A. It's obvious --

3 Q. What was Dontreal Brown there for? He was
4 there to get some money?

5 A. To commit a robbery.

6 Q. To commit a robbery. And what we see on
7 the video is after the information you received from
8 Dontreal Brown Or your brother received from Dontreal
9 Brown, we know that that was his involvement,
10 correct?

11 A. That's correct.

12 Q. I want to show you this. Sometimes your
13 investigation as an officer has lead to there being
14 more than one individual that's left injured or dead
15 on the scene; is that fair?

16 **MS. JOHNSON:** Objection to relevance.

17 **THE COURT:** Sustained.

18 Q. **(BY MR. HAMM)** Do you recognize what this
19 is, sir, in State's Exhibit 30 -- looks like 8? Do
20 you recognize what that is?

21 A. What exactly are you referring to? The
22 number?

23 Q. Yeah. Yes, sir, number. I'm sorry. I'm
24 sorry. The number 2.

25 A. Appears to be a shell casing.

1 Q. And that shell casing was found at the head
2 end of the direction Mr. Fernandes was lying; is that
3 right?

4 A. I'm sorry. Say -- can you repeat that?

5 Q. Certainly. Mr. Fernandes, in that picture,
6 38, were extended -- what you would see in front of
7 evidence marker No. 2 would be -- at some point would
8 be the head of Mr. Fernandes; is that right?

9 A. I'm not sure where this -- do you have
10 another picture of it where I can see --

11 Q. Certainly.

12 A. -- the shell casing in relation to the
13 decedent?

14 Q. Certainly.

15 A. Or the diagram.

16 Q. I can do it for you this way.

17 You watched the video when it appeared
18 to be -- appeared that Mr. Fernandes, as you said,
19 convulsed and fell. Do you remember saying that?

20 A. Yes, I did.

21 Q. Now, you see this area that I'm showing you
22 in State's 53?

23 A. I do.

24 Q. You see where my finger is pointing?

25 A. I do.

1 Q. Can you touch that area so your screen
2 lights up?

3 That is the answer that Vondra -- I'm
4 sorry. That is the area that Neiman Nelson was
5 taking the items from?

6 A. That's correct.

7 Q. And when Vondra Joseph shot Mr. Fernandes,
8 Mr. Fernandes fell down.

9 A. Right. He did fall down, yes.

10 Q. And based upon what you saw on the video, I
11 think it was frame 6, Neiman Nelson was the last
12 person to run out of the door?

13 A. Yes, he was.

14 Q. Which meant that Vondra Joseph would have
15 shot with Neiman Nelson directly behind
16 Mr. Fernandes?

17 A. It would have been close.

18 Q. And it -- it would have been very close,
19 right?

20 A. Yes, it would have.

21 Q. That doesn't make sense if they are going
22 to just take someone's money, does it?

23 A. To me, no, it does not.

24 Q. It seems like that was something that just
25 happened, right?

1 A. It did just happen, yes.

2 Q. And the purpose, you would agree with me,
3 of Milton Holiday driving around the location is to
4 make sure that there was no one else inside that
5 store, as you testified to, right?

6 A. The purpose in Milton Holiday going in
7 prior to the robbery, yes.

8 Q. To make sure the store doesn't pose a
9 danger, isn't it?

10 A. I'm sure it's a number of reasons.

11 Q. Is that a fair -- did I describe it right?
12 He wants to -- I'm sorry. He wants -- Milton Holiday
13 wants to tell everybody -- Vondra, Dontreal, and
14 Neiman -- it's okay to go in there, right?

15 A. That's fair.

16 Q. The guy is not armed.

17 A. I don't know what the conversation was
18 between them.

19 Q. I understand. And in your training and
20 experience as a 17-year veteran, it was clear; and it
21 was -- it is clear and it was clear on that video
22 that the purpose for them boys going in there was to
23 rob that store?

24 A. That's correct.

25 Q. And you saw nothing from Mr. Fernandes that

1 indicated the threat -- that a threat was posed to
2 any of the three, did you?

3 A. That he is posing a threat to any of those
4 three?

5 Q. Yes, sir.

6 A. That's correct, I did not.

7 Q. There was no resistance from either
8 Mr. Fernandes or any of the patrons that may have
9 been around there, was there?

10 A. No, there was no resistance.

11 Q. There were no police officers immediately
12 outside or in a close pursuit, was there?

13 A. No, there was not.

14 **MR. HAMM:** Judge, may we approach?

15 **THE COURT:** All right.

16 **(At the Bench)**

17 **MR. HAMM:** Judge, in keeping with your
18 order in the State's objection, I would like to ask
19 the officer if Milton Holiday made the statement that
20 Dontreal asked Vondra Joseph, "Why did you shoot that
21 man?" That is --

22 **THE COURT:** Go slowly. What now?

23 **MR. HAMM:** I want to ask the officer:
24 "Is it true that Dontreal asked Vondra Joseph why did
25 you shoot that man?" It's a statement by a

1 co-conspirator in furtherance of the conspiracy. I
2 think it would be admissible.

3 **MS. JOHNSON:** Based on hearsay.

4 **THE COURT:** But it's hearsay, and it's
5 not to this witness.

6 **MR. HAMM:** Co-conspirator's statement.

7 **MS. JOHNSON:** But the co-conspirator
8 is not testifying. What other coconspirators said --

9 **THE COURT:** I can't hear you. Sorry.

10 **MS. JOHNSON:** There is no
11 co-conspirator on the witness stand.

12 **THE COURT:** Why don't I let the jury
13 take the break a little early.

14 **(End of Bench Discussion)**

15 **THE COURT:** Members of the jury, we're
16 going to let you take a break a little earlier. And
17 if some of you want to smoke, the deputy will take
18 you out to smoke. Thank you.

19 All rise, please, for the jury.

20 **(Jury released)**

21 **THE COURT:** Thank you. Please be
22 seated.

23 And, Officer, you can have a break,
24 too, if you'd like one. Okay.

25 Okay. Give me the statement again

1 that you're trying to get in.

2 **MR. HAMM:** Yes, ma'am. The statement
3 was why -- Dontreal asked --

4 **THE COURT:** Sorry. You're asking
5 him --

6 **MR. HAMM:** Ma'am?

7 **THE COURT:** You're asking the officer
8 what now?

9 **MR. HAMM:** Yes. Isn't it true that
10 Dontreal Brown asked Vondra Joseph, "Why did you
11 shoot that man? Why did you shoot that man?"

12 **MS. JOHNSON:** That Milton Holiday told
13 the officer.

14 **MR. HAMM:** But it's --

15 **THE COURT:** Hold on just a minute.
16 Isn't it true that the defendant asked --

17 **MR. HAMM:** Why did -- asked Vondra
18 Joseph -- or Vondra Joseph -- I'm sorry, Judge --
19 "Why did you shoot that man?"

20 **THE COURT:** First of all, this officer
21 wouldn't know if that was true or not if he said
22 that, right?

23 **MR. HAMM:** If his -- if his
24 investigation lead to his uncovering that
25 information, I would have no way of knowing until I

1 ask him.

2 **THE COURT:** Well, did the defendant
3 say that in his statement, that I asked Joseph why
4 did you shoot that man? Is that in his tape-recorded
5 statement?

6 **MR. HAMM:** Not to -- no. No. That's
7 Milton Holiday's statement.

8 **THE COURT:** Okay. Well, we're not --
9 not having anything to do with Milton Holiday.

10 **MR. HAMM:** I understand. My question
11 is: The statement -- at the time the statement was
12 made, it was a co-conspirator statement made in
13 furtherance --

14 **THE COURT:** You're talking about --
15 let me make sure I got you.

16 **MR. HAMM:** Okay.

17 **THE COURT:** You're saying that a
18 statement made by Milton Holiday to the officer --

19 **MR. HAMM:** Go ahead. Yes, ma'am.
20 Saying --

21 **THE COURT:** What?

22 **MR. HAMM:** What Dontreal Brown said
23 immediately when they got in the car from the -- what
24 we just saw. When he got in the car, he immediately
25 said, "Why did you shoot that man?" And I'm saying

1 that that would be a co-conspirator's statement. I
2 understand what you are saying; but at the time it
3 was made, at the time Dontreal made the statement,
4 that it was --

5 **THE COURT:** How does that further the
6 conspiracy?

7 **MR. HAMM:** The conspiracy was to
8 commit robbery. So, it was a statement made in
9 furtherance, it can be inferred.

10 **THE COURT:** I mean, they're not trying
11 to hide the weapon or do anything. So, that's -- I
12 mean, how does that further the conspiracy just to
13 ask why you did something? That isn't furtherance of
14 the conspiracy. First of all, that's a very
15 preliminary question.

16 **MR. HAMM:** Yes, ma'am. My response
17 would be that it is during, after, or while the
18 commission of the robbery is taking place.

19 **THE COURT:** It's context.

20 **MR. HAMM:** Yes, ma'am.

21 **THE COURT:** Okay.

22 **MR. HAMM:** Thank you.

23 **THE COURT:** And so, assuming that is
24 just for --

25 **MR. HAMM:** I understand.

1 **THE COURT:** -- admissible normally,
2 how would that officer know if that was said other
3 than through hearsay?

4 **MR. HAMM:** Right. Right. And if I
5 understand you right, the hearsay being what Milton
6 Holiday is repeating the statement was made, right?

7 **THE COURT:** Right.

8 **MR. HAMM:** And I'm saying --

9 **THE COURT:** It's all hearsay to this
10 officer.

11 **MR. HAMM:** But it's a con -- it's --
12 it -- the substance of the statement would still be a
13 co-conspirator's statement. I'm not saying that it
14 has any reliability, although I don't think the
15 individual would lie to the police officer while he
16 is there, by his co-conspirators. I understand. I
17 don't -- I don't think --

18 **THE COURT:** How is that different than
19 anything else that Milton Holiday said to the
20 officers? It's all hearsay.

21 **MR. HAMM:** Well, it is all hearsay.
22 And mainly because it's not made in furtherance of
23 the conspiracy. He is -- it is -- could be
24 self-serving, whatever you want to call it; but
25 Milton Holiday -- the crime has already been

1 committed. Excuse me. And Milton Holiday is telling
2 the officers what his involvement was. But should
3 Mr. Holiday be conveying what the communication back
4 and forth between the suspects, my position is just
5 that that would maybe be admissible under
6 co-conspirator's statement.

7 **MS. JOHNSON:** Hearsay, Judge. And
8 counsel is misrepresenting the statement of
9 co-conspirators. If Dontreal Brown wants to testify
10 to what Milton Holiday said Vondra Joseph and Neiman
11 Nelson said during the robbery, during the
12 furtherance of the robbery, then, yes, he can
13 testify, because those are statements of
14 co-conspirators. But this officer -- it is double
15 hearsay to --

16 **MS. KNECHT:** Even this -- it wouldn't
17 be admissible because to be admissible, a
18 co-conspirator's statement --

19 **THE COURT:** First of all, it's
20 context. What they said in the car, I think, is
21 still the getaway of the robbery.

22 **MS. JOHNSON:** And that --

23 **THE COURT:** That's not the issue. The
24 issue is how can this witness testify to it, and he
25 cannot. So, the State objects?

1 **MS. JOHNSON:** State objects.

2 **THE COURT:** That's sustained. I don't
3 think it's a gray area. Okay. We will take a
4 20-minute recess. If you would start heading back
5 about 10 after. Thank you.

6 **(Recess taken)**

7 **(Jury enters the courtroom)**

8 **THE COURT:** Please be seated. You may
9 continue on cross-examination.

10 **MR. HAMM:** Thank you, Judge.

11 **Q. (BY MR. HAMM)** Investigator Miller, to get
12 back into context of where we left off, now, your
13 partner, during the entire time of your meeting with
14 Dontreal Brown on September 5th, he possessed a
15 recording device, too, didn't he?

16 A. Yes, he did.

17 **Q.** And your testimony is immediately after you
18 read Miranda, Todd Miller got up and left the room?

19 A. That's correct.

20 **Q.** And that's because he figured that you --
21 Dontreal had waived -- according to your testimony,
22 he waived his right to an attorney and agreed to
23 speak with you, right?

24 A. Is that the reason T.W. Miller left the
25 room?

1 Q. He didn't go and investigate any of the
2 other suspects, did he?

3 A. You're talking about the interview with
4 Dontreal Brown?

5 Q. Yes.

6 A. And the reason for T.W. Miller leaving the
7 room?

8 Q. Yes, sir.

9 A. Because that's the way we conduct our
10 questioning.

11 Q. Right. My point was: Officer Miller left
12 the room and was -- he didn't leave the room and go
13 back to the HPD facility?

14 A. Okay. No, he did not.

15 Q. While you're inside talking with Dontreal,
16 investigator -- the other investigator, Todd Miller,
17 is outside?

18 A. That's correct.

19 Q. But he doesn't hear or know what's going on
20 between you two, right?

21 A. That's correct.

22 Q. Now, once you go outside and you're
23 discussing your frustrations with your partner, it's
24 decided that Todd Miller will have a try at Dontreal
25 Brown; is that fair?

1 A. That's correct.

2 Q. And had Dontreal told you to -- you two,
3 Todd Miller and Mike Miller, that he wanted his
4 attorney, meaning not waiving Miranda, that would
5 have been a violation of his rights to have any
6 further contact with him, wouldn't it?

7 A. If he would have told us he wanted an
8 attorney, yes, we would have ended the interview.
9 That's correct.

10 Q. From the very beginning?

11 A. That's correct.

12 Q. And any other later requests, unless
13 Dontreal initiated it, would have been a violation of
14 his rights, wouldn't it?

15 A. That's correct.

16 Q. So the ladies and gentlemen understand,
17 when you get up and go out, Dontreal is not beating
18 on the door, "Hey, hey," trying to get your attention
19 to come back and speak with him, is he?

20 A. No, he was not beating on the door.

21 Q. He wasn't trying get your attention either,
22 was he?

23 A. No, he was not.

24 Q. He never initiated any conversation between
25 you and your -- and Todd Miller when you first made

1 contact with him, right?

2 A. Did Dontreal Brown initiate the
3 conversation with me?

4 Q. Yes, sir.

5 A. I believe I initiated the conversation.

6 Q. And, to your knowledge, Dontreal didn't
7 initiate any conversation between he and your -- and
8 Todd Miller, did he?

9 A. You have to ask Todd Miller.

10 Q. Okay. And when I -- when you -- I'm sorry.
11 You never went back in when
12 Investigator Todd Miller reentered the room to speak
13 with Dontreal Brown?

14 A. Did I?

15 Q. Yes, sir.

16 A. No, I did not. Not to further question
17 him, no.

18 Q. Did you go in any time else?

19 A. Well, I'm sure after they were completed,
20 yeah, the door was opened; and he was ushered out.

21 Q. Okay. Let me -- okay. But while your
22 partner was inside questioning Mr. Brown, after you
23 had finished, you didn't go in and join in on the
24 questioning, did you?

25 A. No, I did not.

1 Q. You don't go in just to sit there while
2 your partner was questioning Mr. Brown, did you?

3 A. No, I did not.

4 Q. And what was the reason for that?

5 A. Chose not to.

6 Q. Okay. Chose not to. When you -- when your
7 partner went in, if you know, did he Mirandize
8 Mr. Brown again, re-Mirandize him, if you will?

9 A. You have to refer to his supplement or ask
10 him what he did when he reentered the room.

11 Q. Have you read the reports to refresh your
12 recollection in preparation --

13 A. I can read his supplement and tell you what
14 he wrote in his supplement.

15 Q. You know that Dontreal had gave a
16 statement, right?

17 A. Did Dontreal give a statement to me?

18 Q. No. No. We know he gave a statement to
19 you. You just didn't record it. I'm saying do you
20 know if Dontreal gave a statement to Todd Miller?

21 A. Yes, I do.

22 Q. Do you know if Dontreal was Mirandized by
23 Todd Miller?

24 A. I believe he was.

25 Q. Why did you have to re-Mirandize him?

1 A. For the purpose of memorializing the
2 Miranda warnings.

3 Q. Okay.

4 **MR. HAMM:** May I have a moment, Judge?
5 I'm sorry. May I have a moment?

6 **THE COURT:** Yes, sir.

7 **(Brief pause)**

8 Q. **(BY MR. HAMM)** And, lastly, Investigator,
9 your testimony is that, to your knowledge, Dontreal
10 wasn't promised between 7 and 25 years on a plea of
11 guilty to an aggravated robbery by either you or your
12 brother --

13 A. No.

14 Q. Let me finish.

15 A. I'm sorry.

16 Q. -- in exchange for his statement, was he?

17 A. No, he did not make him that offer.

18 Q. And, in fact, if that -- if that offer
19 would have been made to Dontreal, that is a violation
20 of his rights, as well, is it not?

21 A. That would be a violation.

22 Q. And you would agree with me that, depending
23 upon the circumstances, the punishment range of an
24 aggravated robbery is between 5 and 99 years, right?

25 A. I believe it is 5 to 99.

1 **Q.** And so, that punishment range of 7 to 25 is
2 still consistent with the range of punishment an
3 individual could possibly receive, is it not?

4 **A.** I do not understand the question.

5 **Q.** If the punishment range is from 5 to 99,
6 the 7 to 25 --

7 **A.** Is within that range?

8 **Q.** Yes, sir.

9 **A.** Yes, it is within that range.

10 **MR. HAMM:** I pass the witness, Judge.

11 **THE COURT:** Thank you.

12 Redirect?

13 **MS. JOHNSON:** Yes, Your Honor.

14 **REDIRECT EXAMINATION**

15 **Q.** **(BY MS. JOHNSON)** Now, Officer Miller,
16 you're familiar with guns, right?

17 **A.** I am.

18 **Q.** Very familiar, right?

19 **A.** I am.

20 **Q.** And as a police officer, are you trained
21 that if you pull out your gun, better be prepared to
22 use it?

23 **MR. HAMM:** Object to calls for a legal
24 conclusion, improper argumentative.

25 **THE COURT:** The question is about his

1 training.

2 **MS. JOHNSON:** Yes, ma'am.

3 **THE COURT:** But please don't lead.

4 So, can you rephrase?

5 **Q. (BY MS. JOHNSON)** How are you trained to use
6 and, I guess, respect guns?

7 **A.** We're trained when we sense a threat and we
8 determine that the situation presents itself to draw
9 our weapon, we need to be prepared to use it.

10 **Q.** And when you're trained to anticipate
11 things and situations, how are you trained about
12 that?

13 **A.** In various situations, depending on what a
14 person is doing, as determined by the police officer,
15 some situations may be more threatening than others;
16 and we're taught to sense or sort of predict
17 movement.

18 **Q.** And sometimes you never know what's going
19 to happen?

20 **A.** That's correct.

21 **Q.** Now, are gunshots loud?

22 **A.** They are.

23 **Q.** Can you describe it for the jury, in case
24 we have a juror who has never made heard a gunshot?

25 **A.** Extremely deafening. Typically it causes a

1 ringing if you're too close to the discharge of the
2 gun. Your attention certainly would be directed
3 towards the gunshot.

4 Q. Now, on the video, Defense counsel showed
5 the parts of the defendant, Dontreal Brown. In that
6 video did he have a gun in his hands?

7 A. He did.

8 Q. How did he have that gun? How was he
9 holding that gun? Up and out and present, in other
10 words?

11 A. To be able to use it.

12 Q. Will you show the jury what you saw, how he
13 had that gun in the video?

14 A. Just by simply grasping a gun and have --
15 not hold -- I guess not in your waist band, have it
16 in your hands is what we consider to be a threat,
17 where you're prepared to use it in whatever
18 circumstance you're presented with.

19 Q. And based on your experience in
20 investigating homicides and capital murders, have you
21 come into contact with a lot of robberies, aggravated
22 robberies, where someone ends up hurt or dead?

23 A. I have.

24 Q. And that's not unusual, is it?

25 A. No, it's not.

1 Q. Did you look at the individual and see the
2 complainant, Mr. Fernandes, down on the ground? Did
3 he ever open any of the cash registers for the
4 robbers?

5 A. No, he did not.

6 Q. Did he ever open any kind of safe for the
7 robbers?

8 A. No, he did not.

9 Q. And talking about guns again, they are
10 deadly weapons, aren't they?

11 A. Yes, they are.

12 Q. Are they capable of causing serious bodily
13 injury or death?

14 A. They are.

15 Q. And when I say "gun," I mean firearm,
16 right?

17 A. That's correct.

18 Q. Now, when you -- would you agree that when
19 someone brings a gun to a robbery, bad things can
20 happen?

21 A. Yes, I would agree.

22 Q. Someone could die?

23 A. Yes, that's correct.

24 Q. That's common sense, right?

25 A. It is common sense.

1 **Q.** Now, when you talked to the defendant on
2 September 5, 2009, you testified earlier that you
3 gave him his warnings. Did the defendant agree to
4 talk to you?

5 **A.** He did.

6 **Q.** Now, were you able to tell, looking at the
7 guns that both the defendant and the shooter Vondra
8 Joseph had, what type of guns they were?

9 **A.** It's difficult to tell you, but they
10 appeared to be semiautomatic.

11 **Q.** And do semiautomatic guns have what's known
12 as a safety?

13 **A.** Some do, some don't.

14 **Q.** What are safeties?

15 **A.** A device on a gun rendering it not able to
16 be used. For instance, Glock 45 -- sorry -- Colt 45s
17 have a very defined thumb safety; whereas, a Glock
18 doesn't have a safety.

19 **MS. JOHNSON:** I pass the witness, Your
20 Honor.

21 **THE COURT:** Thank you.

22 Any recross?

23 **MR. HAMM:** Briefly, Judge.

24 **REXCROSS-EXAMINATION**

25 **Q.** **(BY MR. HAMM)** When you spoke to Dontreal

1 Brown on September 5th, you determined that he was 17
2 years old? Do you recall what his date of birth was,
3 sir?

4 A. I believe he was 18 years of age.

5 Q. Eighteen years old. And now, you told the
6 State that he agreed to waive his Miranda rights when
7 you first met him to give you a statement, right?

8 A. That's correct.

9 Q. And he gave you a statement, right?

10 A. That's correct. He talked to me.

11 Q. But then you went outside because you
12 couldn't get a statement from him?

13 A. That's correct.

14 **MR. HAMM:** I pass the witness, Judge.

15 **THE COURT:** Thank you.

16 **MS. JOHNSON:** Nothing further, Your
17 Honor.

18 **THE COURT:** Is this witness excused or
19 on call?

20 **MS. JOHNSON:** On call.

21 **THE COURT:** All right. Thank you.

22 **THE WITNESS:** Thank you, Judge.

23 **THE COURT:** You will be in town in
24 case we need you back?

25 **THE WITNESS:** Yes, ma'am.