

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

A Yes.

Q Your review of any transcript or any document change the truth?

A No.

MR. SKELTON: No other questions.

THE COURT: Mr. Reynard?

MR. REYNARD: Nothing further.

THE COURT: You may step down, Mr. Moffitt, and we'll go on to the next witness.

(Witness excused.)

(Witness sworn.)

D A N N Y M A R T I N E Z

called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. GRIFFIN:

Q Would you state your name, please?

A Danny Martinez.

Q And, Mr. Martinez, where do you live?

A I live in Bloomington.

1 Q And are you employed?

2 A Yes.

3 Q And where are you employed?

4 A I'm employed at Mitsubishi Motors of America.

5 Q And are you married?

6 A Yes.

7 Q Have any children?

8 A Yes, two children.

9 Q Two children?

10 A Yes.

11 Q I want to direct your attention back to the date of  
12 March 31st, 1991 and ask you where you were living at at  
13 that time?

14 A I was living at 806 East Empire.

15 Q That's in Bloomington, is that correct?

16 A That's correct.

17 Q And where was your residence in relation to the  
18 Clark gas station which used to sit at the corner of Empire  
19 and Linden Streets in Bloomington?

20 A Right beside the Clark gas station, east.

21 Q How long did you live at that residence there on  
22 Empire Street?

23 A Approximately nine years.

24 Q And over the course of time that you lived there,

1 did you have occasion to visit the Clark gas station on  
2 multiple occasions?

3 A That's correct.

4 Q In fact, did you have any kind of routine on Sunday  
5 evening with regards to the Clark Station?

6 A Yes, I would go over there to get something to drink  
7 so me and my wife would watch a program on Sunday evenings  
8 together; and I'd go get the pop, and she'd make the  
9 popcorn.

10 Q Okay. I want to direct your attention specifically  
11 to that Sunday, March 31st, 1991 and ask do you recall that  
12 being Easter Sunday?

13 A That's correct.

14 Q And had you done anything to celebrate Easter with  
15 your family or gone anywhere?

16 A Yes, we had just came home from Peoria, Illinois, my  
17 in-laws.

18 Q And do you recall about what time it was that you  
19 returned back to Bloomington?

20 A It was around 7:30.

21 Q Now, after you returned to your residence there on  
22 Empire from Peoria, did you ever go to the Clark gas station  
23 that night?

24 A That's correct.

1 Q And do you recall about when that was that you went  
2 over there?

3 A Yes, after we arrived at home, I -- we parked my  
4 vehicle at the house, and I told my wife I'd run over there  
5 and get some pop and I had another car that had -- I always  
6 would put air in the tire; and I would pull the car up to  
7 the air pump and fill the air and then run in and get our  
8 drinks.

9 Q So sometime shortly after 7:30 or then sometime  
10 after 7:30 that night is when you went to the Clark Station?

11 A That's correct.

12 Q And when you went to the Clark station you already  
13 indicated you took a vehicle?

14 A That's correct.

15 Q Do you recall what kind of vehicle that was?

16 A Yes, I think it was a 74 Nova that I had.

17 Q And where did you go when you took your vehicle to  
18 the parking lot at the Clark Station?

19 A The air pump was at the east side of the building  
20 along the east side of the fence and right -- right next  
21 door to the fence there by the building.

22 Q Now, at the time of this incident back on March  
23 31st, 1991, what kind of a fence was it that separated your  
24 residence from the Clark parking lot?

1 A It was only a four foot chain-link fence.

2 Q There wasn't a wooden fence?

3 A No.

4 Q Now, when you got to the Clark Station with your car  
5 and you pulled up to the air pump, do you know how your car  
6 was faced or positioned?

7 A Yes, it was facing north, facing north and, like I  
8 said, on the east side of the building.

9 Q Okay. And did you proceed to start to put air in  
10 your tire?

11 A That's correct.

12 Q And as you were doing that did you hear anything,  
13 notice anything?

14 A Yes, while I was putting air in the tire, I heard  
15 two bangs and at first I thought maybe it was my car  
16 backfiring and after I started doing -- finishing that up I  
17 started -- I got up, started walking towards the gas station  
18 and I saw somebody coming out of the gas station backwards.  
19 And I started walking to the gas station, and when I heard  
20 my car like it was dying, I turned around to see if my car  
21 was going to die because it was still on. And when I turned  
22 back around, I saw a gentleman just, you know, the person  
23 that I just noticed, you know.

24 Q Now, when you indicated the first time that you

1 started heading towards the gas station and you saw this  
2 person you say coming out backwards, what do you mean by  
3 backwards?

4 A Backwards like if you backing up, you're still  
5 facing inside the gas station, but you're backing up towards  
6 the door.

7 Q Okay. And so that you would -- if the door swung  
8 out you would open the door by leaning into it with the back  
9 portion of your back?

10 A That's correct.

11 Q Now when you indicate that you looked back to your  
12 car, thought it was dying and you turned back around, you  
13 saw this person, how were they faced at that point?

14 A They were facing -- they just right to me, maybe a  
15 foot, together, I mean me and him were a foot facing each  
16 other.

17 Q And what was your reaction at that time?

18 A I was really shocked, and I saw the person; and he  
19 was like shocked himself. And his eyes were wide opened and  
20 like we -- it was like if you bump into someone and  
21 you're -- you're about to say excuse me, but you're just too  
22 shocked to notice each other was there. So...

23 Q And you indicated about like when you're bumping  
24 into a person, but did you actually ever physically touch

1 this person?

2 A No.

3 Q You were far enough way away?

4 A That's correct.

5 Q After you saw this person, did you see where that  
6 person went?

7 A Yes, he went on the east side of the building.  
8 There was a piece of -- in between the house and the gas  
9 station there was a piece of grass where you could go north  
10 to the back of the alley, and I saw the gentleman walk  
11 around the corner of the gas station.

12 Q And did you go then north towards that alley?

13 A Yes, he went north towards the alley, and I started  
14 walking towards the gas station.

15 Q Okay. And you're familiar with that alley behind  
16 that gas station?

17 A That's correct.

18 Q It also would be the alley behind your house?

19 A Yes.

20 Q When you lived there?

21 A That's correct.

22 Q Was that an east west alley?

23 A That's an east west alley, and also it's like a T  
24 alley. It runs north also.

1 Q Now, you indicated that you kept going and were  
2 heading towards the gas station again. And did something  
3 happen before you got to the gas station?

4 A Yes, at that time when I got to the gas station I  
5 saw a vehicle -- another vehicle pull up and next thing you  
6 know I heard somebody says hey, back up. And I turned  
7 around, and there was an officer across the street. And he  
8 came up, and he asked me did you see anything. And I said,  
9 yeah, I just saw a gentleman just go around the corner. And  
10 I don't know if he recognized me from being the person next  
11 door cause I -- he asked me to get in my car and back up  
12 and, and so I pulled my car back to across the street where  
13 I usually park it. And I went on home.

14 Q And later on that evening while you were at your  
15 house you became aware then there was a lot of activity  
16 going on at the gas station?

17 A That's correct.

18 Q Other police cars and emergency vehicles arrived?

19 A Yeah, at that time when I was heading to the house  
20 there was about three or four squad cars that had just  
21 arrived, you know, so quickly.

22 Q And later on did some officer come to your house and  
23 speak with you about what you might have seen?

24 A That's correct.



1 Q And eventually did you go down to the Bloomington  
2 Police Department?

3 A Yes.

4 Q And give a formal statement?

5 A That night I did.

6 Q Can you describe what you saw about this individual  
7 that you saw initially backing out and then facing towards  
8 you?

9 A Yes, this individual is about my height, oh, five  
10 seven, five eight. He wore like blue jeans, dark tennis  
11 shoes and he had a ball cap on and didn't have, just regular  
12 ball cap, didn't have like a logo on the hat. And his hair  
13 was about shoulder length high. And what I really  
14 recognized him was his eyes. They looked like, you know,  
15 like he had been out that night and looked like he was under  
16 the influence of alcohol or drugs. And he had looked like  
17 he hadn't shaved in a day or so. So he had not a full  
18 beard, but just stubbles [sic]. He also had like it was  
19 spring time, it was warm. So he had like a spring jacket.  
20 And he had his hands in his pocket like if he was carrying  
21 something.

22 Q Mr. Martinez, I'm going to show you what's been  
23 marked as People's exhibit number one and ask you if you  
24 recognize what that is.

1 A Yes, that's the gas station beside the house.

2 Q And can you see your house on this particular  
3 exhibit, exhibit number one?

4 A No.

5 Q And can you indicate what direction it would be?

6 A Yes, it's east of the gas station. I don't know if  
7 you can see the pump there to the right side of the gas  
8 station, just right beside there.

9 Q And you're indicating the pump that you referred to  
10 is shown on this picture?

11 A That's correct.

12 Q And where is that located?

13 A That's just on the east side of the gas station,  
14 right in front of the blue van there.

15 Q And what's showing up is what --

16 A The bottom is white and from this picture here, I  
17 don't know if -- it's just got a pole with a hose in there.

18 Q Okay. That area depicted there is where the hose  
19 was where you had pulled your vehicle up to. Is that right?

20 A That's correct.

21 Q Now, I'm showing you what's been marked as People's  
22 exhibit number 12, ask if you recognize what that is?

23 A Yes, that's also the gas station, in front of the  
24 gas station.

1 Q And previously you made reference to the east side  
2 of the station and the alley that's to the north of that.  
3 Are those areas depicted there in that photograph?

4 A That's correct.

5 Q Okay. And showing you what's People's exhibit  
6 number 14, do you recognize what that is?

7 A Yeah, that's the part of the east of the gas station  
8 where the grass is located heading north.

9 Q Okay.

10 A The back alley.

11 Q And is that again the area showing where this  
12 individual that you saw come out of the gas station went  
13 once you saw him leave the area?

14 A That's correct.

15 Q Okay. Now, do any of these photographs help to  
16 depict where it was that you were at in the gas station lot  
17 when you came face-to-face with this individual?

18 A Yes, I think probably on this one.

19 Q And that would be People's exhibit number one. Is  
20 that correct?

21 A That's correct, and --

22 Q If I could have you just a second --

23 A Okay.

24 Q With the court's permission I'd perhaps ask you to

1 step down, if you could maybe indicate on there.

2 A Sure.

3 THE COURT: You may do so.

4 THE WITNESS: Right there.

5 MS. GRIFFIN:

6 Q You're pointing to the corner area there where the  
7 north of the building and east of the building kind of meet?

8 A Yes.

9 Q That's about the area where you were at?

10 A Yes.

11 Q Okay. Thank you. I'm going to show you what's  
12 marked as People's exhibit number ten and ask you if you  
13 recognize what's shown in that particular exhibit.

14 A That's shown the house that I lived in and the van  
15 that I own and also the pump and the fence that was there at  
16 that time.

17 Q Okay. And this was a picture that was taken later  
18 after the Clark Station was closed. You recognize that to  
19 be true?

20 A Yes, that's correct.

21 Q And it does show a chain-link fence in front of your  
22 residence or beside your residence. Is that correct?

23 A That's correct.

24 Q That's the chain-link fence that you described

1 earlier that was there back on March 31st of 1991?

2 A That's correct.

3 Q Now, that night after the police had  
4 initially -- had come to your residence and asked if you  
5 could come down to the police department, you indicated you  
6 did go down to the police department?

7 A That's correct.

8 Q Did you happen to work with a detective to try to  
9 put together a composite drawing?

10 A Yes, I did.

11 Q By that were you trying to give him a description of  
12 hair, eyes, things like that?

13 A Yes.

14 Q And did ultimately he show you his final results of  
15 what you had described to him?

16 A That's correct.

17 Q And you had a chance to review that?

18 A Yes.

19 Q And did you indicate whether or not you felt that  
20 drawing came close to the person you had seen there at the  
21 station?

22 A That's correct.

23 Q I'm going to show you what's been marked as People's  
24 exhibit number 21, ask you if you recognize that.

1           A Yes, that's the gentleman I saw at the gas station  
2 that night.

3           Q Is that the composite drawing that you worked with  
4 with the detective that night to show the person that you'd  
5 seen at the gas station?

6           A Yes, that's right.

7           MR. SKELTON: Excuse me, the exhibit number again,  
8 please.

9           MS. GRIFFIN: 21.

10          MR. SKELTON: Thank you.

11          MS. GRIFFIN:

12          Q And except for me putting this exhibit sticker on  
13 there, there is nothing different about this from when the  
14 detective finished drawing it that night?

15          A No.

16          MS. GRIFFIN: I'd move to admit and ask to publish  
17 exhibit 21, Your Honor.

18          THE COURT: Is there any objection to 21?

19          MR. SKELTON: No.

20          THE COURT: All right. That will be admitted.

21          MS. GRIFFIN:

22          Q Now that night while you were at the police station,  
23 and I think you were there in the early morning hours of the  
24 next day. Is that right?

1 A That's correct.

2 Q Did you have a chance to look at some pictures that  
3 were kind of referred to as mug shots?

4 A Yes.

5 Q Were you able to positively identify anybody from  
6 those pictures?

7 A No, it was -- no, I did not.

8 Q Later on, and I think specifically around June 21st,  
9 1991, did you have a chance to go to the McLean County jail  
10 to view an in person lineup of some people?

11 A That's correct.

12 Q And do you recall how that was done?

13 A Yes, the Detective took me into a room where it was  
14 kind of dark from where I was at; and they brought in a  
15 group of men and lined them up, and they showed me the men.  
16 It was -- I couldn't really see cause it was farther from me  
17 to you it seemed like. And I couldn't pick out anybody  
18 there at that time.

19 Q Now, did you recently, talking about approximately a  
20 month ago, around July 18th of 2000, have a chance to see a  
21 photograph of the lineup that was presented to you nine  
22 years ago?

23 A That's correct.

24 Q And was that the first time you've seen that lineup

1 again since the day you went to the jail and saw them?

2 A That's correct.

3 Q And where were you at when you saw that lineup  
4 photograph?

5 A I was here at the McLean County.

6 Q Okay. And who were you with at that time?

7 A I was here with yourself and Detective Crowe. I  
8 mean, I'm sorry, Detective Katz.

9 Q And was Mr. Reynard also there?

10 A That's correct.

11 Q And at that time were we doing trial preparation  
12 interview?

13 A Yes, yes, I had came in.

14 Q And did you then ask to see that photograph of the  
15 lineup?

16 A Yes, that's correct.

17 Q And when you looked at that photograph, were you  
18 able to recognize anybody in that photograph?

19 A That's correct. That was...

20 Q Showing you what's marked as People's exhibit number  
21 11, ask if you recognize what that photograph is.

22 A Yes, that's the photograph of the lineup that I saw.

23 Q And is that the same photograph you saw just for the  
24 first time again last month in July?



1 A That's correct.

2 Q Here in my office?

3 A That's correct.

4 Q And as you sit there and you look at that photograph  
5 now, are you able to identify anyone in that photograph as  
6 the person that you saw there at the Clark gas station  
7 coming out of the station back on March 31st, 1991?

8 A Yes.

9 Q Who are you able to identify?

10 A Number six.

11 Q And how are you able to identify and recognize  
12 number six?

13 A By the eyes and the facial.

14 Q Now, before you had seen this photograph last month,  
15 had you seen any other photographs of the person that you  
16 saw and you thought you recognized them?

17 A That's correct, the photograph that was in the  
18 Pantagraph.

19 Q Okay. And do you recall when that was?

20 A No, I don't. I think is when they had arrested  
21 somebody for the -- for this incident.

22 Q And so you saw a photograph of the person arrested  
23 in -- for this incident?

24 A That's correct.

19

1 Q And when you saw that photograph in the paper, did  
2 something stand out at you at that point?

3 A Yes, it was the eyes.

4 Q I'm going to show you what's marked as People's  
5 exhibit number 36, ask you if you recognize what that is.

6 A Yes.

7 Q What do you recognize that to be?

8 A The person that was at the gas station that night.

9 Q And do you recognize having seen that photograph  
10 before or a copy of that photograph?

11 A Yes, right.

12 Q Okay. What do you recognize that to be? Where have  
13 you seen that photograph before?

14 A I saw the photo of him in the Pantagraph.

15 Q Do you recognize this picture to be a copy of the  
16 picture that was run in the paper when he was arrested?

17 A That's correct.

18 Q And at that time what drew your attention were the  
19 eyes?

20 A Were the eyes.

21 Q Now, Mr. Martinez, when you were in my office about  
22 a month ago and you saw that lineup photo for the first  
23 time, did anyone in the office ask you to identify anybody  
24 or ask you to pick anybody out?

1           A No, as a matter of fact I even asked you for  
 2 the -- if you had a copy of the lineup that I saw back in  
 3 91. And you said you did. And I saw the lineup, and I said  
 4 this is the guy, this is the guy, isn't it, this is the guy.  
 5 I noticed it right away.

6           Q And did any of us within the office answer your  
 7 question when you said is this the guy, is this the guy?

8           A I'm not sure if -- if you did or not. And I -- but  
 9 I just kept saying this is the guy, isn't it, this is the  
 10 guy.

11          Q Do you have any notion of a level of certainty you  
 12 have when you look at People's exhibit 36, the photograph in  
 13 the newspaper and People's exhibit number 11, which is the  
 14 photo lineup photograph --

15          A Yes.

16          Q -- that the person you picked out is the person you  
 17 saw at the gas station?

18          A That's correct.

19          Q What is your level of certainty?

20          A About 85 percent.

21          Q Mr. Martinez, from the time that you first spoke to  
 22 the police and told them what you had seen at the station,  
 23 which was on March 31st of 1991, and over the next year or  
 24 two, did you have an occasion to meet with Detective Crowe

1 and view various photographs?

2 A Yes.

3 Q And were you ever able to positively identify  
4 anybody from those photographs?

5 A No, not really.

6 MS. GRIFFIN: I don't believe I have any other  
7 questions. Thank you.

8 MR. SKELTON: Could we approach briefly, Your  
9 Honor?

10 THE COURT: Sure.

11 (The following proceedings were had outside  
12 the presence and hearing of the jury.)

13 MR. SKELTON: My cross-examination will be  
14 lengthy, and I would suggest we break until one o'clock at  
15 this point in time, Judge.

16 THE COURT: Can you all do it at one?

17 MR. REYNARD: I think 1:15 would be a little  
18 better.

19 THE COURT: Okay. We'll do it at 1:15.

20 (The following proceedings were had in the  
21 presence and hearing of the jury.)

22 THE COURT: Folks, we're going to take our lunch  
23 recess under the circumstances. So we're going to do it at  
24 1:15 so it will give you the same amount of time. I'll ask

1 the bailiffs to take charge of the jurors.

2 (The following proceedings were had outside  
3 the presence and hearing of the jury.)

4 THE COURT: Mr. Martinez, you're excused. If  
5 you'll be back at 1:15, we'll finish your testimony. And  
6 you're not to discuss your testimony with anyone. I'm sure  
7 you realize that.

8 THE WITNESS: Okay.

9 THE COURT: We'll see you at 1:15.

10 (Noon recess.)

11 THE COURT: We'll go on the record in 99 CF 1017.  
12 Parties appear same as before. We're prepared to bring in  
13 the jury for after our lunch recess and continue with the  
14 State's case. Actually we're going to begin with the cross,  
15 Mr. Skelton, of you. Is that right?

16 MR. SKELTON: (Nods.)

17 THE COURT: We need the witness back. Where did  
18 he go. Is Katz getting him?

19 MS. GRIFFIN: (Nods.)

20 (The following proceedings were had in the  
21 presence and hearing of the jury.)

22 THE COURT: All right. Show for the record the  
23 jury has return. We're prepared to continue with  
24 Mr. Skelton's examination of the witness. And Mr. Martinez,

1 if you'll resume the stand at this time.

2 Mr. Skelton, you may inquire.

3 MR. SKELTON: Thank you, Your Honor.

4

5 CROSS EXAMINATION BY MR. SKELTON:

6

7 Q Mr. Martinez, could you give us a more complete  
8 description of the Chevy vehicle that you drove over to the  
9 Clark Station after arriving at your home that evening on  
10 Easter of 1991, please? Such as, you've already told us it  
11 was a 74 Nova. What kind of or color of paint did it have  
12 on it?

13 A It had blue paint.

14 Q Was it a standard color or anything out of the  
15 ordinary?

16 A Just blue paint.

17 Q And I assume from your earlier testimony that the  
18 tire on that vehicle on the right front or the passenger's  
19 front side, you were having some trouble maintaining the air  
20 pressure in that tire, right?

21 A That's correct.

22 Q And that was the same tire that you were having  
23 trouble with that night?

24 A That's correct.

1 Q And it was just this one particular tire?

2 A I would always check all my tires, but the tire on  
3 the right side would always go low on the front side.

4 Q And the checking that you're referring to would have  
5 taken place after you had arrived home but before you had  
6 gone to the Clark Station with that Nova, right?

7 A That's correct.

8 Q So you knew which tire you wanted to put air into?

9 A That's correct.

10 Q And from earlier experiences that you had had with  
11 that, you were familiar with where you would go to do that?

12 A That's correct.

13 Q And frankly, if there had been a long enough hose  
14 you could have just dragged it over your fence and done it  
15 in your driveway almost, couldn't you?

16 A The only reason I couldn't do that cause I had my  
17 other vehicle parked in the driveway at that time.

18 Q So it was more convenient for you to back out with  
19 your rear end pointed east on your car, and I guess on you  
20 too, and then pull up into the lot, which was adjacent or  
21 right next to your home?

22 A That's correct, but I would always park my vehicle  
23 across the street from my home so instead of taking my  
24 vehicle from my driveway and making it so many --

1 Q And the home right across the street, that was the  
2 Luna home, was it not?

3 A No.

4 Q Did you know the Lunas?

5 A Yes.

6 Q And you know Carlos Luna, not well, but you knew who  
7 he was?

8 A That's correct.

9 Q About 14 years old at that time?

10 A I don't know what his age was.

11 Q But he was a younger man?

12 A That's correct.

13 Q So you walked across the street, drove a little bit  
14 west and then turned north into the parking lot?

15 A No, I got in my car there across the street, and  
16 it's just maybe 25 feet, I just take the turn right into the  
17 parking lot.

18 Q Right, but you had to come back just a little bit  
19 west to get into the parking area?

20 A No, east -- the pump was on the east side so...

21 Q I may be confusing here.

22 A Okay.

23 Q It's not important so I'm not going to try to  
24 confuse you or anybody else anymore about that. You ended



1 up in the position that you earlier described and I'm going  
2 to be showing you what's been marked for identification as  
3 People's exhibit number 54. Have you ever seen this exhibit  
4 before, Mr. Martinez?

5 A Yes.

6 Q And based on your recollection and your memory and  
7 having lived right over here, just off of this document or  
8 this exhibit, you're familiar with the layout of the Clark  
9 parking area and the gas pump area and the building area  
10 from your frequent visits there back to and including  
11 1991, right?

12 A That's correct.

13 Q If you look in not the complete lower right-hand  
14 level but the lower right-hand level of the lot itself, we  
15 see a small square with a zero or an O inside that. Is that  
16 consistent with your memory of the approximate  
17 location -- I'm sorry, Judge.

18 THE COURT: That's all right.

19 MS. GRIFFIN: Your Honor, could we also indicate  
20 right-hand according to whose view.

21 MR. SKELTON: As the jury looks at it right now.

22 Q It would be on the southeast quadrant of this  
23 diagram we see that small square with an O in it or a circle  
24 in it?

1 A That's correct.

2 Q I'm pointing to it now. You can see it clearly?

3 A That's correct.

4 Q And that would be consistent with your memory of  
5 where the free air was located?

6 A That's correct.

7 Q And that sat on like a concrete post or pillar of  
8 some sort and then it had the hose that came off of it?

9 A It had a pole and then the hose.

10 Q Could you step down here, please, Mr. Martinez? I  
11 don't want you to write on this document, but could you  
12 place the tip or the cap of this pen in the approximate  
13 location where your car was parked relative to that air hose  
14 that we've earlier talked about?

15 A When I pulled in?

16 Q Yes. After you stopped.

17 A (Pointing.)

18 Q Okay. So you would have the front bumper just even  
19 with the portion that contained that air hose. Is that  
20 right?

21 A That's correct.

22 Q Thank you. You can resume the stand now. If you're  
23 like me, when you're putting air in the tire, depending on  
24 where the valve stem point sticks out, sometimes you lean

1 over, sometimes you kneel down. Do you recall which of the  
2 two you were doing that night?

3 A I think I was kneeling over.

4 Q And you're tall enough at that point in time even  
5 though you're kneeling over, if you wanted to look up, you  
6 would still be able to see over the hood of your car, right?

7 A That's correct.

8 Q Was the tire completely flat, Mr. Martinez?

9 A No, it would usually just go down low that I'd be  
10 worried that I'd get a flat on the way to work the next  
11 morning.

12 Q This was your work vehicle?

13 A That's correct.

14 Q And you weren't working at Mitsubishi at that point  
15 in time, were you?

16 A No.

17 Q You were working out of the laborer's hall which is  
18 located by what used to be the Howard Johnson's and U P S?

19 A That's correct.

20 Q And you continued to work out of that hall for  
21 another three years or so?

22 A That's correct.

23 Q And you started your work with Mitsubishi about  
24 when?

1 A In 97.

2 Q So three years ago roughly?

3 A That's correct.

4 Q With the tire not being totally deflated, what would  
5 you estimate it took you to get it up to a pressure that you  
6 thought was okay, five seconds, ten seconds?

7 A I don't recall how quick that -- it depends on how  
8 the air came out of the hose so...

9 Q Certainly didn't take a minute, though, did it?

10 A No.

11 Q So we're confining ourselves to somewhat less than a  
12 minute that you would have been in that position leaning  
13 over putting air in the tire?

14 A That's correct.

15 Q And it was during that time that you saw a person  
16 exit the Clark Station. Is that correct?

17 A It was after I heard the two pops from my vehicle  
18 that I was getting up and I noticed someone backing out of  
19 the gas station.

20 Q Since you mentioned that, you didn't have any idea  
21 when you heard those two sounds, however you characterize  
22 them, as pops or bangs, but you didn't have any idea that  
23 those were the reports from a firearm or shots being fired,  
24 did you?

1 A No, no.

2 Q And that came as a surprise to you at a later point  
3 in time, correct?

4 A That's correct.

5 Q Now, was it while you were still there at the car  
6 that you saw this person push open the door and come out  
7 front wards?

8 A No, he was backing out, and it was after -- after I  
9 had put air in the tire and I was standing up to go towards  
10 the gas station at that time.

11 Q So and you're clear on that recollection that the  
12 person backed out instead of in a different fashion (pushing  
13 the door open with his left hand?) *CARLOS LUNA* ↗  
*SAID THAT*

14 A No, he was backing out.

15 Q So he'd be coming out and assuming this is the door,  
16 in the fashion that I am now?

17 A That's correct.

18 Q And there is approximately -- there was  
19 approximately a two and a half foot sidewalk that was raised  
20 about four inches right outside that door, and that kind of  
21 ringed the building, didn't it?

22 A That's correct.

23 Q And that's shown in some of the photographs you were  
24 shown before, correct?

1 A That's correct.

2 Q Now, you said that person was wearing a windbreaker  
3 type jacket?

4 A It was, yeah, it's like a spring jacket.

5 Q Would it be somewhat shorter than the suit coat that  
6 I've got on today?

7 A It depends. I mean with my height I usually wear a  
8 jacket down to my waist.

9 Q Okay. And you can see assuming I have a waist, that  
10 this jacket that I've got on now goes below my belt line,  
11 right?

12 A That's correct.

13 Q And would the jacket that you're referring to be  
14 more consistent with the jacket that I'm now putting on in  
15 terms of its length?

16 A I would say a little bit longer.

17 Q Okay. By a little bit, you mean two inches?

18 A I'd say close to like pocket wise to where your  
19 pockets, pants pocket are located at. Not that far down but  
20 in between.

21 Q So for the record the jacket that I've got on now  
22 would come would you estimate approximately five inches  
23 above the bottom slit of my pockets?

24 A Like I -- like I said, I mean, to me that jacket

1 would be small on me, I think, but -- it's probably in the  
2 middle of your pocket there.

3 Q So maybe two and a half inches below where mine is  
4 right now?

5 A That's correct, that's correct.

6 Q And it was a spring type jacket, correct?

7 A That's correct.

8 Q And you couldn't tell the material it was made of,  
9 whether it was leather or cloth or vinyl or anything of that  
10 nature, right?

11 A I would say it was in between the jacket that you  
12 just had, that kind of material, you know, but I wasn't  
13 quite certain of what kind of material it was.

14 Q And you also indicated that the person you saw  
15 wearing that jacket, excuse me, I've got to change clothes  
16 again, had his hands in his pockets, correct?

17 A That's correct.

18 Q Was the jacket zipped or fastened in the front?

19 A It was zipped.

20 Q Okay. And how far up was it zipped?

21 A All the way up.

22 Q As much as I'm doing with my windbreaker type  
23 jacket?

24 A Yeah, you could say so.

1 Q And the person had his hands in pockets?  
2 A That's correct.  
3 Q That would be both his left hand and his right hand?  
4 A That's correct.  
5 Q And you didn't ever see his hands at any point in  
6 time, right?  
7 A No.  
8 Q Now, on the outside of the jacket but beneath an arm  
9 you didn't see him carrying any objects, did you?  
10 A Not --  
11 Q Yes or no?  
12 A No, I'm sorry.  
13 Q Did you see anything under a jacket that was being  
14 clamped in by either of the arms that you recall?  
15 A To me it considered like he was holding something in  
16 the front.  
17 Q But you didn't see what that something might be?  
18 A No.  
19 Q And obviously that person didn't do the changing  
20 that I've been doing here in the courtroom. He maintained  
21 that clothing during the entirety of the time that you saw  
22 him?  
23 A That's correct.  
24 Q Zipped up the same, fastened the same, worn the



1 same?

2 A You could say so.

3 Q And according to your testimony earlier today, it  
4 was at a later point in time after you left your car and  
5 were walking toward the station that you appeared to  
6 be -- you told us that you were startled or surprised in  
7 some fashion and from your description of the other person,  
8 it appeared to you that he was startled or surprised,  
9 correct?

10 A That's correct.

11 Q Now, that's after you had finished putting the air  
12 in, put the hose back, whatever you had to do, and were  
13 walking toward the station, correct?

14 A That's correct, the hose usually just laid there.

15 Q Do you recall being spoken to by Detective Charles  
16 Crowe the very next morning at about ten minutes 'til three  
17 a.m. on April 1st of 1991?

18 A That could have been Detective Crowe I spoke to that  
19 morning when I was down at the station.

20 Q But from your earlier testimony you clearly recall  
21 being at the Bloomington Police Department in the A.M.  
22 hours of April 1st of 1991?

23 A That's correct.

24 Q And you recall talking to a police officer, although

1 you can't tell us with absolute certainty which one that  
2 was, right?

3 A That's correct.

4 Q And you did, in fact, execute a statement that  
5 morning, didn't you?

6 A That morning, yeah, that's correct.

7 Q Mr. Martinez, I'd now like to show you what I've  
8 marked for identification purposes as defendant's exhibit  
9 number seven, which would correlate with discovery page 25,  
10 counsel, ask you to take a look at that and there is some  
11 underlining and some highlighting on that. Please ignore  
12 that. I put that on there. But take a look at that for a  
13 moment, if you would, please. Have you now had an  
14 opportunity to review that, Mr. Martinez?

15 A That's correct.

16 Q And although this is a Xerox copy, or a copy that's  
17 been made, down in the lower right-hand corner I see the  
18 words Danny Martinez or the names Danny Martinez written.  
19 Is that a copy of your signature?

20 A That's correct.

21 Q Before signing this document, the original of this  
22 document on April 1st of 1991, you had gone through some  
23 questions and answers with Detective Crowe and had read  
24 this, correct?

1           A   That's correct.

2           Q   And this bears the date of first day of April and  
3 it's cut off here, but it says 91, right?

4           A   That's correct.

5           Q   Follow along with me, if you would, please.  Do you  
6 recall the following words on the first page of that?  I  
7 finished filling the tire and started walking towards the  
8 front door and saw this guy come out of the gas station, and  
9 he had his hands in his pockets; and I looked at him, and he  
10 looked at me as if he was surprised.  Is that an accurate  
11 reading of what's contained there?

12          A   Yes.

13          Q   So the surprised look that you saw was when you were  
14 going from the air pump toward the front door, right?

15          A   That's -- that's correct.

16          Q   And you said earlier today that the surprised look  
17 came when you and this person almost met each other at the  
18 southeast corner of the Clark Station, right?

19          A   Yes.

20          Q   And that was after you had turned to look at your  
21 car because you had heard what you thought was the engine  
22 stumbling and maybe dying, right?

23          A   That's correct.

24          Q   After that sentence that I just read, you follow

1 along with me, please, you then said, I heard my car  
 2 sounding as if it was going to die, and I turned around  
 3 towards my car; and when I turned back around he was turning  
 4 the corner on the east side of the station heading north.  
 5 Is that what that says?

6 A That's correct.

7 Q And this is the statement you gave on April 1st of  
 8 1991?

9 A That's correct.

10 Q Now, assuming for argument's sake that the diagram  
 11 that I'm putting on the floor -- I only meant to put one  
 12 down there -- was the corner of the Clark Station and let's  
 13 assume that I'm looking west now. I'll tell you what. I'll  
 14 turn this so I am looking west so we're kind of square to  
 15 the world. You would have been walking from the southeast  
 16 portion of the lot toward the door, correct?

17 A That's correct.

18 Q So you would have been travelling in a west by  
 19 northwesterly direction, correct?

20 A You would say north to west cause I had to go around  
 21 the car.

22 Q Predominantly west.

23 A Okay.

24 Q Fair enough?

1 A Fair enough.

2 Q So you're walking in this direction toward the  
3 station?

4 A That's correct.

5 Q Assuming that the front door is along this line,  
6 this is the front wall?

7 A That's correct.

8 Q But the other person would have, after backing out,  
9 would have turned in some fashion, either to his right or to  
10 his left, but he ended up going in an easterly direction,  
11 correct?

12 A That's correct.

13 Q Assuming this is the corner of the station, he then  
14 turned north, correct?

15 A Correct.

16 Q I'm sorry?

17 A When he was backing out, he backed out and turned  
18 towards me.

19 Q Okay. In this fashion?

20 A No, the other way around.

21 Q So he turned to his left, rotated to his left?

22 A Right.

23 Q And then began walking east?

24 A That's correct.

1 Q And then he turned north and went dead north as far  
2 as you know?

3 A That's correct.

4 Q And his back would have been to you at that point in  
5 time?

6 A That's correct.

7 Q Your height is what, please, Mr. Martinez?

8 A I would say five seven.

9 Q And you don't fudge on it like I do?

10 A Well, I usually say five eight, but five seven  
11 probably do.

12 Q And this person was, from your earlier description,  
13 same height as you?

14 A That's correct.

15 Q And this person was wearing a baseball type cap?

16 A That's correct.

17 Q And that was pulled down on to his forehead. Is  
18 that correct?

19 A You could say so. I mean I wear quite a few hats,  
20 and I don't put them all the way down my forehead.

21 Q I'm not talking about you, Mr. Martinez.

22 A Okay.

23 Q I'm talking about the person you saw. How was he  
24 wearing that hat? Did he have the bill forward?

1 A Different people wear different hats.

2 Q No, I'm asking about the person you saw in the  
3 parking lot on March 31st of 1991. Was the bill forward or  
4 backward?

5 A Oh, no, it was forward.

6 Q And from previous experience at the Clark Station,  
7 as well as the experience that you had on March 31st of  
8 1991, you were familiar with the fact that as reflected in  
9 People's exhibit number one, on the east side of the door  
10 almost all the way to the wall that contained the windows,  
11 that was boarded up, wasn't it?

12 A That's correct.

13 Q And although in the past before that boarding or  
14 that plywood went up there, there was light that would shine  
15 out on to that sidewalk area that we've earlier discussed,  
16 on the night in question, March 31st, it wasn't, was it?

17 A No, but I'll tell you there is a light there on the  
18 corner of Empire, big pole, that it would shine up that  
19 whole parking lot because there is times in the past that we  
20 had asked the gas station if they could turn that light at a  
21 certain time off because it was so bright.

22 Q Into your bedroom windows?

23 A That's correct.

24 Q With the lights off?

1 A That's correct.

2 Q It disturbed your sleep to some degree?

3 A That's correct.

4 Q Now, referring once again to People's exhibit number  
5 one, in the lower left-hand corner of the plywood, that  
6 appears to be a standard size sheet of plywood, does it not?

7 A That's correct.

8 Q You know from your experience working in the  
9 laborer's hall that a sheet of plywood is four feet by eight  
10 feet, correct?

11 A That's correct.

12 Q So assuming for argument's sake that this lower  
13 left-hand piece of plywood is a standard size sheet from the  
14 edge of the door on the east side you come over eight feet,  
15 right?

16 A That -- it looks like, yes, that's correct.

17 Q Okay. Then there is some additional there, correct?

18 A That's correct.

19 Q That appears to be approximately two feet, maybe  
20 three feet?

21 A It looks like the bottom part is four feet because  
22 that front -- the one on the left side is laying down, like  
23 they laid it down. It's a four by eight sheet.

24 Q Okay. So adding eight plus four, we get 12, right?



1 A That's correct.

2 Q And the person that you saw would have walked from  
3 the door in an easterly direction approximately 12 feet and  
4 then turned north, right?

5 A That's correct.

6 Q How would you describe the pace at which that person  
7 was walking?

8 A At a regular pace.

9 Q Would you agree with me that I'm approximately 12  
10 feet away from you?

11 A You could say so.

12 Q And as I'm demonstrating now, would you say, and  
13 tell me whether or not I'm walking at a regular pace or not  
14 when I approach you.

15 A I walk a little bit slower, but, yes, you could say  
16 you -- that you are.

17 Q About three seconds?

18 A Yes.

19 Q And once that 12 feet was past, he turned with his  
20 back toward you and went north?

21 A That's correct.

22 Q You weren't able to see any shirt from the zipped up  
23 windbreaker type jacket, right?

24 A That's correct.

1 Q And you were able to observe the length of the coat  
2 and the color of the coat. Is that correct?

3 A It was a dark color, I think I said, tan, dark.

4 Q Was it brown?

5 A A tan color, I mean brown, you could consider -- I  
6 consider it as a tan color so, I mean depends.

7 Q Referring once again to defendant's exhibit number  
8 seven, the statement that we've talked about, and the very  
9 bottom line on page one, does it say brown jacket?

10 A That's correct.

11 Q And this was just a few hours, about seven hours  
12 after you had seen what you had seen, right?

13 A I'm sorry, the statement that I had --

14 Q Yes, assuming that you were there at the station at  
15 about eight o'clock?

16 A That's correct.

17 Q Which is consistent with your earlier testimony, and  
18 that this statement started at 2:50 a.m., we'll take four  
19 hours 'til midnight, three hours after that, so this is  
20 about seven hours after the event?

21 A That's correct.

22 Q Now, you earlier testified that you thought the  
23 person had something that he was carrying. Do you recall  
24 being asked in your statement, question, was he carrying

1 anything, and answering, no, he had his hands in his  
2 pockets?

3 A That's correct.

4 Q This is once again your signed statement given to  
5 Detective Crowe on April 1st of 1991?

6 A That's correct.

7 Q You had indicated earlier that you had established  
8 essentially a routine on Sunday evenings of watching TV or a  
9 movie. Do you recall which you were doing that evening or  
10 planning on doing before all this came up?

11 A I'm not sure what movie was, but we used to watch  
12 Cops all the time on those evenings I think it...

13 Q Excuse me, Mr. Martinez. I'll be right with you.  
14 Until -- let me rephrase that. From the point in time that  
15 you parked your car where we described before -- I'm sorry  
16 if you can't see that, excuse me -- until you finished  
17 putting air in the tires, were there any other vehicles on  
18 the lot that you noticed?

19 A Not that I recall.

20 Q At a later point in time, however, that changed,  
21 didn't it?

22 A That's correct.

23 Q And you saw I believe it was a black pickup truck  
24 pull in?

1 A That's correct.

2 Q And could you show us on the exhibit, People's  
3 exhibit number 54, where it was that vehicle pulled in and  
4 using a different cap that I'm giving you this time, show us  
5 approximately where it stopped, Mr. Martinez. I'm sorry.

6 A Right in front of the station.

7 Q So just south of the southwest corner of the Clark  
8 Station, right?

9 A That's right.

10 Q Thank you. While you were there at the Bloomington  
11 Police Department you were asked to look at certain  
12 photographs. Is that correct?

13 A That's correct.

14 Q And you knew or assumed at that point in time that  
15 the identification of the person that you saw coming out of  
16 that station might be of some importance in this case?

17 A That's correct.

18 Q And that knowledge has been with you since March  
19 31st of 1991, some nine and a half years until today?

20 A That's correct.

21 Q Do you remember picking out two photographs when you  
22 were down there at the Bloomington Police Department  
23 that -- those morning hours of April 1st?

24 A No, I can't recall. It was quite early in the

1 morning.

2 Q I'm going to show you defendant's exhibit number  
3 four and defendant's exhibit number six, ask you to take a  
4 look at those for a moment. Those are in fact photographs  
5 that you picked out at the Bloomington Police Department in  
6 the morning hours of April 1st of 1991, aren't they?

7 A If that's what you have down. I don't recall.

8 Q Just one moment, sir. Just one moment, Your Honor,  
9 I'm sorry.

10 THE WITNESS: Excuse me, Your Honor, could I get a  
11 glass of water, please?

12 THE COURT: Yes. Vince, would you get the witness  
13 a glass of water?

14 THE WITNESS: Thank you.

15 MR. SKELTON:

16 Q When you were looking at photographs -- have you had  
17 a chance to get a drink? I wasn't paying any attention.

18 A Yes.

19 Q When you were looking at photographs at about one  
20 o'clock on April 1st of 1991, do you recall picking out  
21 number 6395 and 6558?

22 MS. GRIFFIN: Your Honor, I believe this has  
23 already been asked and answered, and I believe he's already  
24 indicated twice, in fact, he doesn't remember picking out

1 any photographs.

2 MR. SKELTON: I'll withdraw the question, Your  
3 Honor.

4 THE COURT: All right.

5 MR. SKELTON:

6 Q Do you recall saying to Officer Thomas Sanders at  
7 the Bloomington Police Department when you did so that it's  
8 between these two?

9 A No, I don't recall.

10 Q At a later point in time and specifically I direct  
11 your attention, if I could, please, to June 21st of 1991 you  
12 were asked to come down to the Bloomington Police  
13 Department. Is that correct? I'm sorry, to the McLean  
14 County sheriff's department, is that correct?

15 A That's correct.

16 Q And the purpose, as far as you know, was for you to  
17 view six people in a person to person lineup, right?

18 A Yes.

19 Q That's what you did, isn't it?

20 A That's correct.

21 Q And in so doing, you were taken into a room by  
22 Detective Crowe, and in that room there was a window in  
23 front of you, wasn't there?

24 A That's correct.

1 Q And on the other side of that window there were the  
2 six people that you've earlier talked about, right?

3 A That's correct.

4 Q And they were all holding numbers one, two, three,  
5 four, five, six, right?

6 A Yes, sir.

7 Q In the area where you were it was either dimly lit  
8 or not lit, correct?

9 A Well, yes.

10 Q In the area where they were there was lighting,  
11 isn't that correct?

12 A Yes.

13 Q Isn't it correct, Mr. Martinez, that the approximate  
14 distance between you and the persons you were viewing is  
15 about ten or 12 feet?

16 A I'm not sure how big the room is.

17 Q It's been a long time since you've been down there?

18 A Yes.

19 Q And you didn't measure it while you were down there?

20 A That's correct.

21 Q You were told during the course of that lineup that  
22 if you wanted to look more closely at people they could be  
23 asked to step forward, isn't that correct?

24 A That's correct.

1 Q And you did, in fact, ask that two persons step  
2 forward, didn't you?

3 A That's correct.

4 Q And those would be numbers three and number four,  
5 correct?

6 A That's correct.

7 Q And do those persons correspond to the persons in  
8 People's exhibit number 11 that are holding numbers three  
9 and four?

10 A Yes.

11 Q And it appeared to you that number three was given  
12 the direction to step forward and did so?

13 A That's correct.

14 Q And then step back in line and then number four was  
15 given the same instructions and did the same things?

16 A That's correct.

17 Q I'd now like to show you what's been marked  
18 for -- let me ask a couple questions first, excuse me. You  
19 said that the person that you saw appeared to have neglected  
20 shaving for a couple days. Is that right?

21 A Yes.

22 Q And that's to differentiate from a mustache or a  
23 goatee, right?

24 A That's correct.



1 Q So it just looked like the entire face, the hair had  
2 grown out on it?

3 A Whiskers you could say.

4 Q Not a beard by any means?

5 A No.

6 Q I'd now like to show you what's been marked for  
7 identification purposes as People's exhibit number 61. Take  
8 a look at that photograph for a moment, if you would,  
9 please. The person you saw the evening of March 31st, the  
10 hair on that person's face is not consistent with the hair  
11 that's on this person's face, right?

12 A No, it's a little bit more grown out.

13 Q Well, on People's exhibit number 61 it would appear  
14 that there is a light mustache and then some growth on the  
15 bottom of the chin. Is that correct?

16 A Yes.

17 Q But where you would consider the side of the face,  
18 the cheeks, there appears to be no hair there, correct?

19 A I can't tell by this picture here.

20 Q You don't see any, do you?

21 A I can't tell by the picture.

22 Q Approximately six months later, excuse me, four  
23 months later, you were asked to look at a number of  
24 photographs at the Bloomington Police Department, right?

1 A Yes, that's correct.

2 Q And those photographs, although they may not be the  
3 same ones, were consistent with the format that is set forth  
4 in defendant's exhibits number four and number six, right?

5 A I guess.

6 Q Well, were they or were they not?

7 A I don't recall, excuse me.

8 Q So you don't know if they were mug shots or booking  
9 photos that you looked at at the Bloomington Police  
10 Department in October of 1991?

11 A No, it was a book.

12 Q I may have confused you on that, and I apologize.  
13 We customarily refer to the type of photograph that is  
14 represented by defendant's exhibit number four as a booking  
15 photograph or a mug shot.

16 A Okay, I don't know the difference.

17 Q You looked through basically what were some photo  
18 albums, didn't you?

19 A I don't -- yes.

20 Q Lots of pages?

21 A No.

22 Q Okay. Several pages?

23 A I wouldn't say that thick of a book that you have on  
24 your desk.

1 Q I've got lots of books on my desk.

2 A Oh, okay, I'm sorry. That's correct, the one right  
3 there.

4 Q And I've got this marked I believe as volume one,  
5 right?

6 A That's correct.

7 Q And for the record would counsel stipulate that my  
8 volume one is approximately two and a quarter to two and a  
9 half inches thick?

10 MS. GRIFFIN: Or three, yes.

11 MR. SKELTON: I beg your pardon.

12 MS. GRIFFIN: Two and a half to three, somewhere  
13 in there.

14 MR. SKELTON:

15 Q So it wasn't that thick, but there were a number of  
16 pages in there that contained photographs that you looked  
17 at?

18 A That's correct.

19 Q And you looked at more than one book, didn't you?

20 A I don't recall.

21 Q And did you pick out two photographs and identify  
22 picture A from one of those books as being a person you had  
23 seen in Clark on numerous occasions, you thought it might be  
24 a friend of Bill Little's?

1 A Possibility.

2 Q So you don't remember that specifically, right?

3 A Specifically.

4 Q Do you remember picking out a picture that was  
5 lettered O or zero and saying it looks a lot like the  
6 suspect -- subject you saw coming from the station?

7 A I don't recall.

8 (Off the record discussion between  
9 Ms. Griffin and Mr. Skelton.)

10 MR. SKELTON:

11 Q Going back to that lineup of June 21st, going back  
12 in time, and I apologize for doing that, approximately four  
13 months, you weren't able to identify anyone, were you?

14 A No.

15 Q Now, after the shooting and the death of Bill Little  
16 on March 31st of 1991, you have earlier indicated that you  
17 were working out of the laborer's hall?

18 A That's correct.

19 Q Did you know a person by the name of Billy  
20 Hendricks?

21 A That's correct.

22 Q You and he had struck up a friendship that arose  
23 from your working together?

24 A That's correct.

1 Q And you gave him rides to and from work after Easter  
2 of 1991?

3 A That's correct, I would pick him up.

4 Q And you and he discussed the Clark Station case,  
5 didn't you?

6 A No.

7 Q You don't recall telling Billy Hendricks on more  
8 than one occasion in 1991 and more than one occasion in 1992  
9 that it was not James Snow that you had seen coming out of  
10 the Clark Station?

11 A No.

12 Q Do you recall telling Billy Hendricks during one of  
13 those conversations that the person you thought you saw  
14 coming out of the Clark Station was a Steve VanNote?

15 A No.

16 Q Did you in 1991 or in 1992 know a person named James  
17 Snow or James Christopher Snow or Jamie Snow?

18 A No.

19 Q Were you aware from your conversations with  
20 Mr. Hendricks that he knew James Snow or Jamie Snow?

21 A Yes.

22 Q So how did that come up in your conversations with  
23 Mr. Hendricks if it didn't relate to the Clark Station?

24 A Well, Billy knew that I lived right next door to the

1 Clark gas station; and he brought up the conversation,  
2 saying that they had brought in Mr. Snow and that he  
3 was -- I don't know if he was friends with him or not, but I  
4 would pick him up, cause he had gotten a DUI so he didn't  
5 have a license. So I'd pick him up at his wife's  
6 restaurant.

7 Q And that was located on West Front Street in  
8 Bloomington?

9 A That's correct.

10 Q You either go from there to the hall or to your  
11 workplace?

12 A I picked him up from work. We never go to the hall.  
13 We both worked at State Farm.

14 Q Which project was that?

15 A Corporate South.

16 Q Thank you. During the time that you were filling up  
17 your tires with air, getting that job done and then walking  
18 over toward the station, do you recall that time frame that  
19 I'm talking about?

20 A Yes.

21 Q You knew where the alley was. You had lived close  
22 to that alley for some time at that point in time?

23 A That's correct.

24 Q That's a gravel alley. It doesn't have either

1 asphalt or concrete as a roadway, does it?

2 A No.

3 Q And you were familiar with the makeup of the surface  
4 in the alley?

5 A That's correct.

6 Q Being gravel?

7 A That's correct.

8 Q Did you hear any car doors slam shortly after that  
9 person turned north at the southeast corner of the Clark  
10 Station?

11 A No.

12 Q Did you hear any engines revving?

13 A No.

14 Q Did you hear an engine start?

15 A No.

16 Q Did you hear tires on gravel?

17 A No.

18 Q Did you see headlights?

19 A No.

20 Q Your intention, as you were walkin across that lot,  
21 let me use one of my many legal pads here to give us a  
22 general direction in which you were travel ing. Would you  
23 have been travelling in a direction somewh like this,  
24 Mr. Martinez, to get to the front door?

1           A I would have to go up north cause the way my car was  
2 parked and then around my car.

3           Q Just a moment, please. Didn't you earlier indicate  
4 that you had your car parked in such a fashion that the  
5 front bumper was even with the south portion of that air  
6 hose?

7           A You had asked me where I parked my car, and I told  
8 you that that's where I parked it.

9           Q And that's where you put air in the tire?

10          A Yeah, I would say my tire was right with the air  
11 hose.

12          Q Okay. So would it be up just a little bit farther  
13 north?

14          A That's correct, maybe.

15          Q So now the front bumper is even with the north end  
16 of the pier that held the air hose, right?

17          A That's correct.

18          Q So you would have gone from approximately position  
19 A, which is by the air hose, to position B, which is toward  
20 the front door of the Clark Station, right?

21          A That's correct.

22          Q And the route you indicated the other person was  
23 travelling would be consistent with the way I've got my  
24 legal pad now, correct?



1 A That's correct.

2 Q Now was he on the sidewalk or was he out on the  
3 paved parking area?

4 A It was on the paved parking area. If you noticed on  
5 the picture that you showed me, it's blocked up with  
6 plywood. So he had to come off the sidewalk there to get on  
7 the...

8 Q And went once again first east then north?

9 A That's correct.

10 Q And out of your line of sight?

11 A That's correct.

12 Q Now, when you were putting air in the tires Easter  
13 Sunday evening, it wasn't a horribly heavy traffic night?

14 A No, it was nice and quiet.

15 Q Pretty quiet that night?

16 A That's correct.

17 Q Before you made it to the entryway of the Clark  
18 Station, your attention was grabbed by -- you weren't  
19 grabbed by somebody, but somebody got your attention by  
20 saying something either to you or the two people that were  
21 getting out of the truck parked down here, right?

22 A That's -- that's correct, excuse me.

23 Q And at that point in time, you turned toward the  
24 direction you thought that voice was coming from and saw a

1 police officer on foot. Is that correct?

2 A That's correct.

3 Q And, excuse me, would he have been somewhere behind  
4 your car but proceeding northbound?

5 A I --

6 Q Or was he across the street?

7 A I noticed him across the street.

8 Q Okay. And by across the street we're talking about  
9 on the south edge of Empire Street?

10 A That's correct. There used to be a credit union  
11 there.

12 Q Before that it was Laesch Dairy Barn?

13 A I don't go that far back.

14 Q Well, I'm a lot older than you are, sir. That's  
15 very understandable. That would be all the way across  
16 Empire Street?

17 A That's correct.

18 Q Did he, in fact, walk up into the parking lot area,  
19 the police officer?

20 A That's correct, when I turned around after he  
21 mentioned something to me, I turned around and he was  
22 walking towards me.

23 Q Now, I'm getting a little out of sequence again and  
24 I apologize, but at some point in time after you spoke or

19  
1 were spoken to or both by the police officer, you moved your  
2 car?

3 A That's correct.

4 Q Did you take it back to the spot where you had  
5 parked it before?

6 A That's correct.

7 Q What route did you travel to get there?

8 A I just backed up.

9 Q All the way across the street?

10 A Yes, back into Empire.

11 Q And from -- because of the sparse traffic  
12 conditions, that was -- you were able to do that safely?

13 A That's correct.

14 Q So once again, your car would have been pointed west  
15 on the south side of Empire Street kind of in front of your  
16 house?

17 A Across the street from my house.

18 Q Not too far from the Luna household?

19 A That's correct.

20 Q In People's exhibit number 11, you said that you  
21 first saw this photograph last month in the State's  
22 Attorney's office, right?

23 A That's correct.

24 Q Never seen that photograph before?

1 A No.

2 Q And from that photograph, you were able to look at  
3 the eyes of the person, the persons that are depicted in  
4 this photograph, right?

5 A That's correct.

6 Q Now, would you agree with me, Mr. Martinez, that  
7 defendant's exhibit number four and defendant's exhibit  
8 number six give you a closer up view of the eyes of a person  
9 than is depicted in People's exhibit number 11?

10 A That's correct.

11 Q These are pretty -- these are pretty close up  
12 photographs, and I'm referring to numbers four, defendant's  
13 number four, and defendant's number six, right?

14 A That's correct.

15 Q This person had on a billed hat with the bill toward  
16 the front, right?

17 A That's correct.

18 Q And if there was light from above, that would tend  
19 to cast shadow on to a face, right?

20 A That's correct.

21 Q That's the purpose of a bill, to shade ones eyes  
22 from light, correct?

23 A That's correct.

24 Q And for a period of time you were able to look at

1 the face of the person that was walking essentially in the  
2 opposite direction from you?

3 A That's correct.

4 Q You would have been able to see, from the clothing  
5 description you gave or the head wear description that you  
6 gave, the nose of that person?

7 A That's correct.

8 Q The mouth of that person?

9 A That's correct.

10 Q The chin and the cheeks of that person?

11 A That's correct.

12 Q The neck or the throat of that person?

13 A That's correct.

14 Q Possibly the ears or the hair on the side of the  
15 face or the head of that person?

16 A That's correct.

17 Q As well as facial hair that we've already talked  
18 about, correct?

19 A Yes.

20 Q You indicated that at some point in time in late 99,  
21 in the fall of 99 you saw a photograph in the Bloomington  
22 Pantagraph that you tell us that you recognized, right?

23 A That's correct.

24 Q Now, as we earlier talked, you indicated that back

1 on March 31st and April 1st of 1991, you realized that the  
2 identity of the person that you had seen at the Clark  
3 Station was of importance?

4 A That's correct.

5 Q So in the fall of 1999, you still had that  
6 knowledge?

7 A That's correct.

8 Q And that you knew from your location and the other  
9 factors that information that you had might be of importance  
10 to the police or the prosecutors in the preparation of their  
11 case?

12 A That's correct.

13 Q And it wasn't until July of 2000, we go from let's  
14 assume that Mr. Snow was arrested in late September,  
15 October, November, December, January, February, March,  
16 April, May, June, and July, ten months. Did you ever call  
17 Detective Crowe or any member of the Bloomington Police  
18 Department?

19 A No.

20 Q About that information that you now had?

21 A No.

22 Q Did you ever call the State's Attorney's office?

23 A No.

24 Q Did you ever call anyone in a position of authority

1 relative to law enforcement to advise them of the  
2 information that you tell us you had since October of 1999?

3 A No.

4 Q Why not?

5 A Because I knew I was going to be subpoenaed anyhow  
6 for the trial, and I would give my information then.

7 Q How did you know that in 1999? Had you been  
8 subpoenaed to testify in front of the grand jury in August  
9 of 1999?

10 A No.

11 Q And you knew that when you looked at photographs in  
12 the police department that you told them, I can't really  
13 pick anybody out? You knew that?

14 A That's correct.

15 Q You knew that when you went to the lineup in June,  
16 June 21st of 1991, that you were unable to make an  
17 identification, although you asked to look at two people  
18 more closely? You knew that?

19 A That's correct.

20 Q And you told the police in June of 1991 you couldn't  
21 make an identification?

22 A That's correct.

23 Q How did you know you were going to be subpoenaed?

24 A With all my information that I had given and I

1 figured I probably be asked to come and testify.

2 Q That's the issue I want to talk to you about. The  
3 information that you had given prior to October of 1991 was  
4 consistently that you could not make an identification,  
5 correct?

6 A That's correct.

7 Q Were the police -- strike that. You have met a man  
8 in the course of this case in the last three months by the  
9 name of Mark Foster?

10 A That's correct.

11 Q And you understand Mr. Foster is a private  
12 investigator who is employed by me to ask people some  
13 questions?

14 A That's correct.

15 Q And you spoke to him a total of -- in person three  
16 times. Is that correct?

17 A Twice, the third time I spoke to him was just --

18 Q You told him to buzz off basically?

19 A Right, because he kept on bugging me the first two  
20 times, and he wanted to speak with me. I had told him, you  
21 know, I don't want to talk. If you want any statements, get  
22 it from the State's Attorneys, and he kept on bugging me and  
23 bugging me; and I said, okay, you got five minutes for the  
24 first time.



1 Q And you told him during the first conversation,  
 2 which would have been in late June or early July of  
 3 1990 -- the year 2000, excuse me, that the police had the  
 4 wrong guy?

5 A No, he had --

6 Q During the second conversation --

7 MS. GRIFFIN: Excuse me.

8 MR. SKELTON: -- with Mr. Foster you told him the  
 9 same thing.

10 THE COURT: Hold on. Is there an objection?

11 MS. GRIFFIN: Yes, your Honor. I believe he has  
 12 not let the witness answer the question before he started  
 13 the second question.

14 THE COURT: The objection is overruled. You may  
 15 continue to ask him questions.

16 MR. SKELTON:

17 Q The second time you talked to Mr. Foster, you  
 18 understood that he was working for the defense. He'd  
 19 identified himself, right?

20 A That's correct.

21 Q And he referred to me by name?

22 A That's correct.

23 Q And you were aware that he wasn't with the  
 24 Bloomington Police Department, the State Police, the F B I,

1 C I A or anybody other than the defense, right?

2 A That's correct.

3 Q And on the second time you talked to him you told  
4 him they've got the wrong guy, didn't you?

5 A No, the second time I talked to him, he called me up  
6 to say that he had a picture -- not a picture but a piece of  
7 paper and he wanted me to point out where I was at the gas  
8 station that day.

9 Q And he showed you that piece of paper, didn't he?

10 A That's correct.

11 Q And he asked you to point out where you were at the  
12 gas station as specifically as you could, didn't he?

13 A That's correct.

14 Q And then there were some other questions that were  
15 asked?

16 A No, we just -- we just talked.

17 MR. SKELTON: Just one moment, Your Honor.

18 Mr. Martinez, I thank you very much for your patience with  
19 me. I have no further questions at this time.

20 THE COURT: Miss Griffin?

21

22 REDIRECT EXAMINATION BY MS. GRIFFIN:

23

24 Q Mr. Martinez, when the police got information from

1 you back in March 31st, 1991 and early morning of April 1st,  
2 1991, would it be fair to say they either were taking notes  
3 or they actually took a written statement from you?

4 A Taking notes.

5 Q And then they actually took a type written statement  
6 from you. Is that correct?

7 A That's correct.

8 Q And other times when you followed up with other  
9 officers, sometimes they've had tape recorders to take a  
10 taped statement from you, is that correct?

11 A That's correct.

12 Q Or else they've taken notes, is that correct?

13 A That's correct.

14 Q When Mr. Foster came to your house first in late  
15 June, early July in 19, excuse me, 2000, talked with you for  
16 the first time did he take any notes?

17 A No.

18 Q Did he have a tape recorder?

19 A No.

20 Q Second time when he came to your house to talk to  
21 you did he take any notes?

22 A No.

23 Q Did he have a tape recorder?

24 A No.

1 Q The third time he talked to you did he take any  
2 notes?

3 A No.

4 Q Did he have a tape recorder?

5 A No.

6 Q And it's your testimony today that you never told  
7 him, whether it was the first time, second time or the third  
8 time, you never told him that the police had the wrong guy.

9 A That's true.

10 Q Is that correct?

11 A That's correct.

12 Q Do you have any interest here in seeing the wrong  
13 guy convicted of this offense?

14 A No.

15 Q I assume the opposite would be true. Is that  
16 correct?

17 A That's correct.

18 Q Now, when you saw the individual that you have now  
19 indicated you're 85 percent sure is Jamie Snow coming out of  
20 the gas station and when you came -- when you were actually  
21 face-to-face with him, you previously indicated that you  
22 termed you were both kind of startled by that?

23 A That's correct.

24 Q At that point when you're face-to-face with that

1 individual you're 85 percent sure is Jamie Snow were you  
2 both moving or did you both kind of stop because you were  
3 startled?

4 A We both stopped.

5 Q For a brief moment?

6 A That's correct.

7 Q And then that individual turned to the east and  
8 went --

9 A That's correct.

10 Q -- north?

11 A That is correct.

12 Q At the time that you saw this individual there at  
13 the Clark Station there on March 31st, 1991 and you saw him  
14 face-to-face in that turned startled position, was there a  
15 particular feature that stands out in your mind that has  
16 stood out over the past nine years?

17 A His eyes.

18 Q I'm going to show you what's previously been marked  
19 as People's exhibit number 21 that you've identified before  
20 and you recall that you indicated that's the composite  
21 drawing that was made late in the evening on March 31st,  
22 1991 or early in the morning on April 1st, 1991 after you  
23 gave your description to the detective?

24 A That's correct.

1 Q And does the hat that's featured here in this  
2 composite that shows the bill facing forward, does this  
3 exhibit reflect how that hat was positioned on the head of  
4 the individual you saw?

5 A That's correct.

6 MS. GRIFFIN: I don't believe I have any other  
7 questions. Thank you.

8 THE COURT: Mr. Skelton?

9 MR. SKELTON: No other questions, Your Honor.

10 THE COURT: You may step down. Thank you.

11 MR. SKELTON: Oh, one, Judge, if I may. I'm  
12 sorry.

13 THE COURT: Hold on, hold on.

14

15 RE-CROSS EXAMINATION BY MR. SKELTON:

16 Q Have you been aware for several years of the  
17 existence of the offer for a reward in this case?

18 A No.

19 MR. SKELTON: Thank you, no other questions.

20 THE COURT: Anything on that, Miss Griffin?

21 MS. GRIFFIN: No, your Honor.

22 THE COURT: All right. You may step down. Thank  
23 you.

24 (Witness excused.)