

1 prepared to continue with the State's case.

2 And, Miss Griffin, you may call your next witness.

3
4 (Witness sworn.)

5
6 G E R A D R O G U T I E R R E Z
7 called as a witness on behalf of the plaintiff herein, being
8 first duly sworn, was examined and testified as follows:

9
10 DIRECT EXAMINATION BY MS. GRIFFIN:

11
12 Q Would you state your name, please?

13 A Yes, my name is first name is Gerardo,
14 G E R A D R O. My last name is Gutierrez, spelled
15 G U T I E R R E Z.

16 Q Thank you. Mr. Gutierrez, where do you live now?

17 A Right now I live in Orlando area in Orlando,
18 Florida.

19 Q And how long have you lived down in Florida?

20 A Approximately three years and a half.

21 Q Now, I just want to ask you a couple questions, and
22 from there let's get it out of the way up front here and
23 that is is that correct in 1991 you were convicted of
24 burglary here in McLean County?

1 A That's correct.

2 Q And in 1990 you were convicted of retail theft here
3 in McLean County?

4 A That's correct.

5 Q And 2000 you were convicted of theft down in
6 Florida. Is that correct?

7 A That's correct.

8 Q Now, did you previously live here in
9 Bloomington-Normal then?

10 A Yes, I did.

11 Q And do you know about when that was that you were
12 here in Bloomington-Normal?

13 A Yes, approximately I live in this town since 88 to
14 1997.

15 Q Okay. Now, I want to direct your attention
16 specifically to March and towards the end of March of 1991,
17 ask you if you were living in Bloomington-Normal area at
18 that time?

19 A That's correct.

20 Q And do you know where you were living at
21 specifically at that time?

22 A Yes, I was living the address was 1402 East College,
23 Normal, Illinois.

24 Q And can you just give us some landmarks of what's

1 around there?

2 A Could you repeat that, please?

3 Q Could you just give us an idea of what kind of
4 places were around there where you lived?

5 A This pretty much neighborhood area, like residential
6 area.

7 Q Okay. Now, I want to ask you specifically about
8 March 31st, 1991, do you recall that that was Easter Sunday?

9 A That's correct.

10 Q And do you have a good recollection of Easter
11 Sunday, 1991?

12 A Basically I was not really this case has been out of
13 my mind for several years until State's Attorney started
14 getting a hold of me and starting reminding me of little
15 things. Little by little, yes, I do remember some things.

16 Q So it's something you try to forget about, put out
17 of your mind for awhile?

18 A It's not like pretty much I'm trying to do it. It's
19 just basically time take care of that.

20 Q Do you recall that on March 31st, 1991, that Easter
21 Sunday, do you recall going to the Clark gas station at the
22 corner of Empire and Linden Streets in Bloomington?

23 MR. PICL: Objection to the leading nature of the
24 question.

1 THE COURT: Objection is overruled.

2 THE WITNESS: Yes, that's correct.

3 MS. GRIFFIN:

4 Q And were you familiar with that Clark gas station at
5 the intersection of Empire and Linden?

6 A Yes, pretty much.

7 Q When you lived here in town did you go there?

8 A Yes, I did.

9 Q Now, on that day, March 31st, 1991, Easter Sunday,
10 1991, do you know now as you sit here today what time it was
11 that you went to the Clark gas station?

12 A Approximately it was between seven and eight
13 o'clock, around that time. I -- because I can not really
14 recall exactly what time I was there until a few hours later
15 because I don't wear a watch, but that was sometime there.

16 Q Now, when you went to the gas station that day do
17 you know why you went to the gas station that day?

18 A Yes, to put a little fuel in my car so I was running
19 low and I had a little bit of change in my pocket.

20 Q Okay. Do you know where you were going to or where
21 you were coming from at the time you stopped at the gas
22 station?

23 A Yes, I was going to my -- I had my friend call me
24 that he had a pool table in his basement or apartment that

1 he just bought, and he just invited me to come over so we
2 can play some pool.

3 Q Do you know where he lived?

4 A Well, not exactly the physical address, but I
5 remember I recall this big building, brick apartments that
6 was in Mulberry Street. That's all I remember.

7 Q And would that be in Bloomington or Normal?

8 A That would be Bloomington.

9 Q Okay. When you got to the Clark gas station on
10 Empire and Linden Street that day, Easter Sunday, what did
11 you do?

12 A Well, I normally pull my car right in front of the
13 pump and after just normal procedure to put a little fuel in
14 my car, and after that I put my cap back on my car; and I
15 went inside and hand my money to the person.

16 Q How much gas did you put in your car?

17 A I believe that was approximately around three
18 dollars that I had in change in my car.

19 Q Okay. So you pumped three dollars worth of gas and
20 then you went inside to pay for it. Is that correct?

21 A That's correct.

22 Q When you went inside to pay for it, what did you see
23 when you went inside?

24 A Basically what I saw inside was gentleman inside,

1 which there was a second person besides the attendant.
2 There was another second person outside of the counter,
3 very, very suspicious to me.

4 Q Now, you indicated that you -- the attendant was
5 behind the counter. Is that correct?

6 A That's correct.

7 Q And had you seen that attendant before?

8 A Yes, I have.

9 Q So you knew that was the attendant. Is that
10 correct?

11 A Yes, that's correct.

12 Q And then you saw this other individual that just
13 kind of got your attention. Looked suspicious?

14 A That's correct.

15 Q What was that other individual doing?

16 A He was just -- absolutely he was not doing anything,
17 just really staying there suspicious because the way I'm
18 saying that he was really suspicious because I noticed right
19 away when I opened the door that he didn't want to be seen
20 by me, and he turned his back around me and kind of side is
21 how I come out with the -- he was suspicious.

22 Q Okay. So as soon as you walk into the door, this
23 individual turns away from you?

24 A Yeah, kind of sides, kind of turn his back on me.

1 Q You, I believe you indicated that that individual
2 was standing at the end of the counter initially. Is that
3 correct?

4 A Yes.

5 Q And when he turned away from you, then what would he
6 be against or near?

7 A It would be the opposite side of when you open the
8 door there would be way in that side but right straight to
9 the door.

10 Q And so when you saw that, you went on into the
11 station? Did you keep going inside to the counter then?
12 Did you keep walking to the counter?

13 A Yes, yes.

14 Q When you got to the counter then what did you do?

15 A I handed the money to the attendant person.

16 Q Okay. And I believe do you recall what kind of
17 money it was you gave him?

18 A Yes, I believe it was like couple dollars and some
19 change.

20 Q Okay. And what happened when you gave him the
21 money?

22 A He -- he dropped a few coins. I don't know exactly
23 what kind of coins it was, but like nickels and I believe a
24 couple quarters on the floor.

1 Q And --

2 A And I saw his hand kind of shaking.

3 Q Okay. And did you see him pick up or start to pick
4 up any of that money?

5 A Well, really, not really recall that. But I believe
6 the first I remember now I think I left the place and
7 he -- the money still on the floor.

8 Q When you left there, I assume you got back in your
9 car? Did you get back in your car?

10 A Yes, that's correct.

11 Q Where did you go then?

12 A To where I was going to go to my friend's house.

13 Q And at some point later did you return to the Clark
14 or go by or return to the Clark station?

15 A Yes, I did.

16 Q And do you know how that happened or how that came
17 about?

18 A There is a little bit confusion about myself that I
19 can not really remember at this point if I went home and see
20 the news or I was on my way back to my house and then I saw
21 a lot of police activity there. And there is a little bit
22 of confusion myself there if I went home and find out by
23 news and TV or I was just riding back to my house and I see
24 a lot of police activity.

1 Q And, and at any rate you know you ended up back at
2 the police station -- excuse me -- the gas station and
3 talked to the police there?

4 A Yes, that's correct.

5 Q And told them what you've seen earlier?

6 A I told them I was there earlier and what I saw.

7 Q And did you have a chance then to actually go down
8 to the police department?

9 A Yes, yes, we did, that same night.

10 Q And did you give a statement to them?

11 A Yes, I believe, yes.

12 Q And did you also give them a description of the
13 person you saw there?

14 A That's correct, the gentleman that I saw.

15 Q As you sit there today, can you tell us what you
16 remember about the description of the individual you saw
17 there at the gas station when you went in that was turned
18 away from you?

19 A Yes, what I have right now in mind that as far as I
20 remember seeing this person, tall person. I'm five nine,
21 and he was probably I assume three, four inches taller than
22 me. And kind of long hair with really remarkable injury in
23 his chin wearing a black leather type of motorcycle leather
24 coat or jacket.

1 Q Did he have anything on his head or anything?

2 A No, didn't see anything.

3 Q And that's what you remember just thinking back now.

4 Is that correct?

5 A That's correct, yes.

6 Q Did you work with an individual at the police
7 station to try to come up with a drawing that you thought
8 might look like the person you saw at the station?

9 A Correct.

10 Q And once that officer got done with that did he show
11 you that drawing then and ask if that kind of looked like
12 the person?

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

14 Q Showing you what's marked as State's exhibit number
15 22, ask you if you recognize what that is.

16 A Yes, that's the same drawing that we did that night.

17 Q Okay. And State's exhibit number true -- excuse me,
18 number 22 is the same as the drawing you did that night.
19 And the only thing different would be the evidence sticker I
20 put on it. Everything else is the same?

21 A Yes, that's correct.

22 Q Okay. And this exhibit number 22 reflects what you
23 thought best looked like the person you saw at the station
24 that night?

1 A Yes, that's correct.

2 MS. GRIFFIN: Your Honor, I'd move to admit 22 and
3 ask to publish.

4 THE COURT: Is there any objection to 22?

5 MR. PICL: No objection.

6 THE COURT: All right. That's admitted.


7 MS. GRIFFIN:

8 Q Mr. Gutierrez, that State's exhibit number 22 that's
9 reflected on the screen, that appears to be a copy of what
10 I'm showing you here that's marked 22. Is that correct?

11 A That's correct.

12 Q And it appears in that photograph that in fact there
13 is a cap, a ball cap of some type on the head?

14 A Yeah.

15  Q Does that refresh your memory as to whether or not
16 this person was wearing a ball cap at the time?

17 A No, I don't really remember the head at this time.

18 Q Okay. Mr. Gutierrez, showing you again the actual
19 copy of 22, is your writing, is that your signature there at
20 the bottom?

21 A Yes, it is.

22 Q And that -- there is a number two there right above
23 where your signature is. Is that correct?

24 A Yes, that's correct.

1 Q Now, Mr. Gutierrez, when you were in the station
2 paying for your gas and you saw this individual, did he have
3 anything in his hands?

4 A I not remember seeing him anything in his hands
5 basically, no.

6 Q Do you remember seeing his hands?

7 A I can not really remember. He had his hands on his
8 pocket or he had his pocket but I not remember seeing any
9 object, anything and...

10 Q I believe previously, Mr. Gutierrez, you indicated
11 you did give a written statement to the police that night or
12 early the next morning. Is that correct?

13 A I not --

14 Q Where they asked you questions and they typed out
15 the questions and typed out your answers and then they asked
16 you to look at it?

17 A The same night?

18 Q Or early into the next morning?

19 A Yeah, I not really recalling. I mean remember this
20 part, if I -- that happened the same night or, like you say,
21 the next morning. I don't really remember.

22 Q Okay. Well let me show you what's marked as State's
23 exhibit number 72 and just ask you if you recognize what
24 that is.

1 MR. PICL: May I approach at this time before he
2 starts reading that, please?

3 THE COURT: Sure.

4 (The following proceedings were had at the
5 bench out of the hearing of the jury.)

6 MR. PICL: Before he starts reading that please,
7 sir, could we have that? There. Has he been given this
8 document to refresh recollection?

9 THE COURT: I don't have a clue. Are you
10 objecting?

11 MR. PICL: (Nods.)

12 THE COURT: Okay. The objection is sustained.

13 (The following proceedings were had in the
14 presence and hearing of the jury.)

15 MS. GRIFFIN:

16 Q Mr. Gutierrez, you indicated that some of these
17 details are not fresh in your mind. Is that correct?

18 A That's correct.

19 Q Specifically, for example, about when you saw his
20 hands and where his hands were?

21 A That's correct.

22 Q If I showed you a copy that you gave to the police
23 either that night or the next morning would that help
24 refresh your memory regarding his hands?

1 A Yes.

2 MR. PICL: Still object. I don't believe that's
3 proper foundation.

4 THE COURT: Do you want to cross him on that?

5 MR. PICL: Yes.

6 THE COURT: Go ahead.

7

8 CROSS EXAMINATION BY MR. PICL:

9

10 Q Do you have any memory at all about whether or not
11 this guy had something in his hands?

12 A No, I don't really recall, remember anything.

13 Q So your memory is exhausted. Is that correct?

14 A Yeah, from now and ten years ago, yes, I do, because
15 I do remember that that's not really clear in my mind that
16 he had his hands on his pocket or not.

17 Q So you do remember something about his hands. It's
18 just not clear. Is that correct?

19 A That's correct.

20 MR. PICL: Okay. I have nothing else.

21 THE COURT: All right. He may review it.

22

23 FURTHER DIRECT EXAMINATION MS. GRIFFIN:

24 Q Mr. Gutierrez, I'm going to show you this and just

1 ask that you review that to yourself, not reading out loud,
2 just review it yourself, and I'll ask whether or not that
3 refreshes.

4 MR. PICL: I object to this procedure. I ask that
5 he be allowed to review only the portion that deals with
6 what he has testified his memory is exhausted about.

7 THE COURT: That's okay with me if you can
8 identify that.

9 MS. GRIFFIN: That's fine.

10 THE COURT: Rather than take the time to read the
11 whole thing.

12 MS. GRIFFIN:

13 Q I would ask you to look towards the bottom portion
14 of that and read just the last I believe it would be about
15 the last three, three and a half, four lines and see if that
16 refreshes your memory?

17 A Yes.

18 Q Does that refresh your memory?

19 A (Nods.)

20 Q And after having your memory refreshed, what do you
21 recall about his hands?

22 A Yes, I -- and that's one of the things, yes, I don't
23 know why it's out of my mind but it was kind of a surprise
24 for me to see the gentleman smoking, yes, yes, he pulled out

1 a pack of cigarettes and started smoking.

2 Q Okay. Now, when you were at the station that night,
3 did you ever see this individual have any weapons, whether a
4 gun, knife, any kind of weapon?

5 A No, no, no, no. Otherwise I would have, I don't
6 know what I would do, if I would call 911 right away or run
7 outside, but, no, I didn't see anything dangerous besides
8 just the suspicious person and that was it.

9 Q Now, when you were at the police station either the
10 night of March 31st, 1991 or into the early morning hours of
11 April 1st, 1991 you had a chance to look at some
12 photographs, what they call mug shots. Is that correct?

13 A Yes, that's correct.

14 Q And over the course of several months after this
15 incident you looked at numerous other photographs. Is that
16 correct?

17 A Yes, I do remember pretty clear that I was looking
18 at all the new pictures. They'd get them and basically take
19 to where I used to work, to my workplace to look at them.

20 Q Now, did you ever positively identify anybody as the
21 person that you saw at the Clark gas station?

22 A No.

23 Q Now, did you also have a chance to come to this
24 building downstairs and see an in person lineup or do you

1 remember that, doing that?

2 A Well, basically I remember that that probably 70
3 percent of that but not really. It's not really clear that
4 I was there, but like 70 percent I do remember a little bit
5 about it, being, seeing this lineup of person.

6 Q And did you pick anybody out of that lineup? Do you
7 remember?

8 A No, I don't think.

9 MS. GRIFFIN: I don't believe I have any other
10 questions. Thank you, Mr. Gutierrez.

11 THE COURT: Okay. Mr. Picl?

12 MR. PICL: Judge, could I ask for a minute before
13 I -- before I start?

14 THE COURT: A break or just a minute?

15 MR. PICL: A five minute break, please.

16 THE COURT: All right. I'll ask the bailiffs to
17 take charge of the jurors.

18 (The following proceedings were had outside
19 the presence and hearing of the jury.)

20 THE COURT: Okay. Mr. Gutierrez, you can step
21 down and get a drink or something. But you're not to talk
22 to anybody about your testimony, and then we'll need you
23 back in just five minutes we'll start up, okay?

24 THE WITNESS: Okay.

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(Recess.)

THE COURT: We'll go back on the record in 99 CF 1016. Vince, they're not looking.

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

THE COURT: Ladies and gentlemen, please be seated, and we're prepared to go on with the cross. And, Mr. Picl, you may inquire.

MR. PICL: Thank you, Judge.

FURTHER CROSS EXAMINATION BY MR. PICL:

Q Mr. Gutierrez, is that the correct pronunciation of your name?

A Yeah, that's correct.

Q Okay. I'm going to review with you a couple of statements that you made just so I'm clear on them, if you don't mind.

A Okay.

Q When you viewed the -- strike that. All you recall about the time that you went to the station was that it was between seven and eight o'clock. Is that right?

A Yes, pretty much.

Q Okay. You've pulled your car up to the pump, pumped

1 your gas and went to the inside the station to pay for the
2 gas, right?

3 A That's correct.

4 Q And you pumped three dollars of gas. Is that
5 correct?

6 A Yes.

7 Q Did you pay for that with two dollar bills and some
8 change or all change?

9 A I believe it was like maybe a couple of bills and
10 some change.

11 Q All right. Did you hand your money to the attendant
12 or the cashier or did you lay it on the counter?

13 A No, I handed it to his hand.

14 Q He took it in his hand, right?

15 A Yeah.

16 Q What did he do with the bills?

17 A I don't know. I don't really remember.

18 Q What did he do with the coins?

19 A The coins, I do remember that he dropped some on the
20 floor.

21 Q Dropped some on the floor?

22 A Yeah.

23 Q Okay. Did he pick them up while you were there?

24 A Don't really pay any attention to that. That, I

1 don't really see anything he picking up the money.

2 Q You don't remember him or you didn't see?

3 A Don't see him.

4 Q Do you remember did he drop all the coins on the
5 floor or just one or two?

6 A There was probably like half the coins were was
7 which I believe maybe two or three.

8 Q Two or three coins he dropped on the floor?

9 A Yeah, yeah.

10 Q What did he do with the rest of the coins? Do you
11 remember?

12 A No, don't remember.

13 Q At the time you went into the gas station you saw
14 this other man inside. Is that right?

15 A That's correct.

16 Q Now, think back to when you went into the door of
17 the gas station, the counter where you paid was to the left,
18 right?

19 A Yes, that would be my left, yes.

20 Q Okay. The man, the other man in the gas station --

21 A Uh-huh.

22 Q -- where was he, to the left over by the counter or
23 to the right?

24 A To my right.

1 Q To the right?

2 A To -- kind of to the other side of the counter, way,
3 way inside.

4 Q I'm going to show you I think maybe this is the
5 easiest way to do this. Let's look at this big diagram
6 here. This is State's exhibit 55. Do you recognize that as
7 a diagram of the gas station?

8 A No.

9 Q No, okay. Well let's start something else then.

10 A I remember being a smaller place, I mean really
11 small. I don't know how the walls, the way the walls are
12 or...

13 Q Well, was the other man in the station behind the
14 counter with the cashier?

15 A No, not behind, no, the outside, the outside, the
16 outside.

17 Q He was outside of the counter?

18 A Yeah.

19 Q When you went in you went up and paid at the
20 counter, right?

21 A That's correct.

22 Q Did the other man, was he standing right there and
23 did he move out of the way when you stepped to the counter?

24 A Yes, he make probably I'd say a couple of steps

1 towards the -- in the opposite direction.

2 Q To get out of your way?

3 A Yeah, correct.

4 Q And was it at that time that he had turned his back
5 to you?

6 A Yes, when I was -- this happened pretty much when I
7 was in the same time open the door.

8 Q Right.

9 A To walk in he slow motion, really slow, he don't
10 really went like real fast.

11 Q Didn't spin around?

12 A Yeah, kind of like, pretend like everything is okay
13 like, and he would makeup steps.

14 Q So he slowly turned from you and you didn't see his
15 face again after that, did you?

16 A After that, no.

17 Q Because he turned his back on you?

18 A Right, when I was getting in my car I take a look
19 for before I take off inside but I was never clear.

20 Q You didn't see the man doing anything at that time
21 before you took off, did you?

22 A No.

23 Q You never did hear the man say anything to the
24 attendant, did you?

1 A No.

2 Q You never heard the attendant say anything to the
3 man, did you?

4 A No, there was no words.

5 Q The man was wearing a waist length black like a
6 motorcycle jacket, right?

7 A Yeah.

8 Q Had a scar on his chin?

9 A Yes.

10 Q Is that what it was?

11 A Yes.

12 Q I think you may have earlier told some officer about
13 a one inch scar on his chin?

14 A Yeah.

15 Q And he had a gold earring in his left ear, right?

16 A Yeah, that's correct.

17 Q Now, you didn't think that the gas station was being
18 robbed at the time, did you?

19 A Not at the time. There was more, more in my mind
20 that there were kind of friends and they had a little
21 confrontation, you know, somebody owe somebody.

22 Q There had been an argument going on?

23 A Something like that, maybe, pretty much.

24 Q You sensed a little tension in the air?

1 A Yes, that's what it was, a little bit of tension.

2 Q You didn't know then and you don't know now whether
3 the cashier and this man knew each other, do you?

4 A No, never knew.

5 Q Okay. Now when were you in the station you told us
6 on direct examination that you saw the man take some
7 cigarettes out of his pocket, take a cigarette out and light
8 it and start smoking, right?

9 A Yeah, that's correct.

10 Q Okay. His back was to you? How did you see that?

11 A Because he -- he was like this, kind of in the
12 sides.

13 Q Yeah.

14 A He was not really complete to my back like this.

15 Q Right.

16 A You could see his pocket like that and pull out a
17 pack of cigarettes.

18 Q Took one out?

19 A And lighting up.

20 Q How did he light it?

21 A How he light it?

22 Q Yeah. Matches or a lighter?

23 A Don't know.

24 Q Put the cigarettes back in his pocket after he lit

1 one, right?

2 A Yeah.

3 Q How long had the man been there before you arrived?

4 A How long the man was been there?

5 Q Yeah.

6 A I don't understand exactly the question.

7 Q Well, had the man been there for one minute, ten
8 minutes, 30 minutes before you got there.

9 A Oh, I don't know.

10 Q Okay.

11 A I don't know how long this person was inside before
12 I got there.

13 Q All right. Excuse me. While I'm up here let me see
14 if I can find something else. Here we go. You told us that
15 on direct exam that you viewed a lineup sometime after
16 the -- sometime after the -- the -- that night?

17 A Yeah, that was very possible.

18 Q And you didn't pick anybody out of the lineup,
19 right?

20 A Not that I remember.

21 Q I'm going to show you what's been marked as State's
22 exhibit 11 and ask you if this is a photograph of the lineup
23 that you viewed.

24 A Have no idea. I have no idea if that's the same

1 lineup that I saw.

2 Q How many lineups did you see?

3 A Don't remember, don't remember whether it was once
4 or maybe they call me again or again, no.

5 Q Uh-huh. That I guess leads me to ask another
6 question. During your direct testimony you told us I
7 believe that the State's Attorney's contacted you and
8 started reminding you of little things. What did you mean
9 by that?

10 A Oh, yes, basically when the first time I have
11 State's Attorney over my house in Orlando, basically I have
12 no idea what there for until little by little you started
13 remind me. You remember this day happened this. But like I
14 said, this case has been out of my mind for the past maybe
15 seven years, several years.

16 Q So your memories about what actually you saw or
17 did that night aren't very clear, are there?

18 A Pretty much, yeah.

19 Q Pretty much they're not very clear or pretty much
20 they are clear?

21 A No, no, not pretty clear.

22 Q They're not pretty clear?

23 A No.

24 Q The night that you were down at the police station

1 when right after this happened and just let me back up,
2 that's not my question. Do you recall your testimony
3 correctly that as you were driving back home later that
4 night you saw the police cars at the gas station so you
5 stopped and volunteered that you had been there earlier? Is
6 that how your involvement as a witness came about?

7 A No, I -- I come -- I make a comment a little while
8 ago about this that it's not really clear in my mind if I
9 make it all the way home and look at the news, what's going
10 on there and drive back over there or this actually happened
11 when I was on my way home back again same, same direction.
12 I don't really remember which of the two, what it was.

13 Q Mr. Gutierrez, you told us on direct exam that if
14 you had seen this man in the Clark station with a weapon you
15 would have called 911 or the police, right?

16 A Of course.

17 Q So when you told us that this man looked very, very
18 suspicious to you, you didn't think that he was committing
19 any sort of crime, did you?

20 A Not at the time.

21 Q Okay.

22 A Until this kind of my mind right after I find out
23 what's going on and is how come I come forward with the
24 information.

1 Q All right. Sounds to me like when you were in the
2 station you actually only saw the man's face for a second or
3 two, is that right, before he turned around?

4 A Yeah, I can not really recall if it was one second,
5 two seconds, three seconds, but that was matter of seconds.

6 Q Matter of seconds, okay. The night that
7 you -- well, strike that. After you went back to the
8 station and, strike that. I'm not clear. Did you go home
9 after you left the station or after you left your friend's
10 house and then go back to the station?

11 MS. GRIFFIN: Your Honor, I'm going to object to
12 this. It's been asked and answered, and he's already
13 testified to twice. He said he doesn't remember which of
14 the two situations it was.

15 THE COURT: Okay. Hold on. Don't answer. The
16 objection is sustained. It's been asked.

17 MR. PICL:

18 Q When did you first talk to the police about this
19 incident?

20 A When I arrived -- when I arrived back in the scene
21 of the crime and the gas station I was when I come out
22 forward to a couple detectives.

23 Q Later that night?

24 A Right after, yes.

1 Q Okay. So you did go back to the gas station it
2 sounds like?

3 A Of course.

4 Q Okay. Did you then go down to the police station
5 that night and look at some photographs?

6 A That's correct.

7 Q Did you pick out a photo that night of a person who
8 you thought might have been -- that there might have been a
9 90 percent chance that that was the person that you saw in
10 the station?

11 A I don't know how much at this point --

12 MS. GRIFFIN: Objection.

13 THE COURT: Hold it. What's the objection?

14 MS. GRIFFIN: Never mind, I'll withdraw it and
15 proceed to follow-up.

16 THE COURT: Okay. Go ahead, Mr. Gutierrez.

17 THE WITNESS: At this point I don't really
18 remember how much percentage I picked up a person whether it
19 was 50 percent or a little bit more or less. But it's run
20 through my mind that, yes, I do remember something but not
21 really a fact that, yes, this is the person that fits the
22 description, I not remember doing that.

23 Q But did you at least identify one photo that you
24 thought might have been the person you saw?

1 A Yes.

2 Q But you weren't positive?

3 A No.

4 Q Okay. Mr. Gutierrez, on June 21, 1991 did you view
5 a lineup at the McLean County jail?

6 MS. GRIFFIN: Your Honor, I'm going to object to
7 this.

8 THE COURT: Objection sustained.

9 MS. GRIFFIN: It's been asked --

10 MR. PICL: May I approach?

11 THE COURT: Sure.

12 (The following proceedings were had at the
13 bench out of the hearing of the jury.)

14 MR. PICL: I'm being very careful about laying the
15 proper foundation here for -- I'm not sure it would be
16 impeaching but the fact is he did see a lineup while he was
17 down here and he didn't pick anybody out. Now he's already
18 testified that he doesn't remember so I guess is
19 that -- that's adequate foundation to impeach him I guess.

20 THE COURT: What's your objection?

21 MS. GRIFFIN: This has already been gone over and
22 asked and answered.

23 THE COURT: It's asked and answer. He has no
24 recollection of the lineup. So that's the basis upon which

1 I'm sustaining it only.

2 MR. PICL: Okay.

3 THE COURT: Okay.

4 (The following proceedings were had in the
5 presence and hearing of the jury.)

6 THE COURT: That objection is sustained then.

7 MR. PICL:

8 Q Had you ever seen this man before that you saw in
9 the gas station with the attendant that night?

10 A No. I'm sorry, let me -- the attendant?

11 Q No. No.

12 A The second person?

13 Q No, the other guy, the person that you thought was
14 kind of strange or suspicious. After you left the gas
15 station you didn't phone the police and tell them you
16 thought something might be going on at the gas station, did
17 you?

18 A No.

19 Q You didn't think a crime was being committed --

20 MS. GRIFFIN: Objection, Your Honor. He's already
21 asked this.

22 THE COURT: Objection sustained.

23 MR. PICL:

24 Q Did you when you were in the gas station ask either

1 of the men in the gas station what was going on between
2 them?

3 A No, I did not.

4 MR. PICL: Nothing else, thank you.

5 THE COURT: Miss Griffin?

6 MS. GRIFFIN: Thank you, Your Honor.

7

8 REDIRECT EXAMINATION BY MS. GRIFFIN:

9

10 Q Mr. Gutierrez, when you used the word scar and you
11 say the person that you saw in the station that night had a
12 scar on your face and earlier I believe on direct
13 examination you called it a fresh injury, what is it you're
14 referring to?

15 A A fresh injury more than a scar. Scar I believe is
16 like happens long time ago, but this was like recently,
17 maybe three, four days. The basis I go because it was fresh
18 because the color. It was kind of look pink.

19 Q Do you have any scars on your face?

20 A Yes, I do. I have one here.

21 Q That's kind of permanent. Is that correct?

22 A Yes.

23 Q Is that what you're talking about?

24 A Yeah.

1 Q But the person that you saw that night, did they
2 have one like you have on your face?

3 A No, no, it was more fresh.

4 Q And I just want to clarify when you make reference
5 to the fact this case was kind of out of your mind until the
6 State's Attorney and that started coming to your house in
7 Florida, I've never been to your house in Florida, have I?

8 A That was you I think, yeah.

9 Q Did you have detectives from the Bloomington Police
10 Department?

11 A Yes.

12 Q Detective Katz?

13 A Yes.

14 Q And Detective Barkes?

15 A Yes.

16 Q Come and see you?

17 A Yes, that's correct.

18 Q And you think I was at your house?

19 A I have really bad memory. I don't remember if you
20 went or I believe you did.

21 Q Okay.

22 A Think so.

23 Q And when you say they were refreshing your memory,
24 when the officers came there they started asking you

1 questions about that night again and that you started
2 thinking about it again?

3 A That's correct, little by lit.

4 Q Now, do you have any recollection of how long it was
5 that you were at your friend's that you went on over on
6 Mulberry Street to play pool? Do you know how long you
7 stayed there or anything?

8 A No, I really don't know -- it was not a long time
9 cause...

10 Q Now, you've answered some questions from defense
11 counsel about your recollection that when you paid the
12 attendant that the attendant dropped some of the coins and
13 you thought it might have been two or three that he dropped.

14 A Yeah.

15 Q Okay. Do you recall when you talked to the police
16 that night that this happened or the early morning of the
17 next day and you were telling them about what happened, did
18 you discuss with them about him dropping -- the person you
19 saw, excuse me, the attendant dropping coins, did you tell
20 the police about that?

21 A I don't really remember if I -- if I did or not.

22 Q If I showed you your statement that you saw earlier,
23 would that refresh your memory as to whether or not --

24 A Yeah.

1 Q -- you told them that or whether or not you
2 discussed that with them?

3 A Yeah.

4 THE COURT: Are you able to point it out?

5 MS. GRIFFIN: Yes.

6 THE COURT: Okay.

7 MS. GRIFFIN:

8 Q I would ask you to read about the fourth line down
9 and into the fifth line there.

10 A Uh-huh.

11 Q And ask you to just read that to yourself. Does
12 that refresh your memory as to whether or not you discussed
13 that or talked about that to the police?

14 A Yeah, it refresh my memory.

15 Q Okay. And did you tell them that he dropped any
16 coins?

17 A Yeah.

18 Q Okay. Do you recall stating to the officers that
19 when I handed him the money he almost dropped it?

20 A No, he dropped them.

21 Q Okay. Well, the statement that you gave to the
22 police that night.

23 A Uh-huh.

24 Q That's what I'm showing you in exhibit number 72.

1 Do you see anything in there where you actually said he
2 dropped the coins?

3 A No, it says here he almost dropped the --

4 Q Okay. That's what you told the police that night.
5 Does that appear to be correct?

6 A Yeah.

7 MS. GRIFFIN: Okay. I don't believe I have any
8 other questions. Thank you, Mr. Gutierrez.

9 THE COURT: Mr. Picl, anything further?

10

11 RE-CROSS EXAMINATION BY MR. PICL:

12

13 Q Well, just so we can clear this up, do you remember
14 now as you're testifying whether the attendant dropped the
15 coins or didn't drop the coins?

16 A Yes, he dropped the coins.

17 Q He dropped the coins?

18 A Yes.

19 Q Now, you told -- you've told Miss Griffin on
20 redirect that the man you saw with the black jacket on in
21 the gas station when you were paying for your gas had a
22 fresh injury to his chin, correct?

23 A That's correct.

24 Q Could you see his chin clearly?

1 A Well, I do remember pretty clear the scar though.

2 Q The scar?

3 A Uh-huh.

4 Q So he had a scar not a fresh injury?

5 A Well, I go by scar, but I know it's not the
6 pronunciation for it, but the injury.

7 Q An injury?

8 A An injury.

9 Q Could you see stitches or stitch holes?

10 A No, there was no -- there was no -- I don't think
11 there was any stitches.

12 Q And this was about an inch long, this cut or injury
13 to his chin?

14 A Yeah, approximately.

15 Q Did it appear as if it had been recently bleeding?

16 A Appears to be the way, yes, kind of like two, three
17 days, something like that. It was not really healed.

18 Q So it was kind of -- kind of scabbed over maybe?

19 A It was just the color, no, an injury has been
20 completely, no dry, like kind of fresh.

21 Q Was this injury covered at all by his mustache?

22 A No.

23 Q So it was lower on his face towards the point of his
24 chin. Is that right?

1 A That's correct.

2 Q So when you told the police that it was a scar, you
3 meant a fresh injury?

4 A Yeah.

5 MR. PICL: Okay. Nothing else. Thank you.

6 THE COURT: Anything else, Miss Griffin?

7 MS. GRIFFIN: No.

8 THE COURT: You may step down then.

9

10 (Witness excused.)

11

12 (Witness sworn.)

13

14 R A N D A L L M A R K H O W A R D

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

17

18 DIRECT EXAMINATION BY MR. REYNARD:

19

20 Q Would you state your name, please?

21 A Randall Mark Howard.

22 Q Spell your last name.

23 A Spell it?

24 Q Yes, please.