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APPEALS  
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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3  
4 UNITED STATES OF AMERICA, )  
5 )  
6 PLAINTIFF, )  
7 vs. )  
8 WILBERT MCKREITH, )  
9 Defendant. )

CASE NUMBER  
01-6095-CR-WDF

VOLUME 5 of 6:  
PAGES 1070-1212

10 TRANSCRIPT of JURY TRIAL had before THE HONORABLE  
11 JOSE A. GONZALEZ, JR., in Fort Lauderdale, Broward County,  
12 Florida, on Tuesday, December 17, 2002, in the above-styled  
13 matter.

14 APPEARANCES:

15 FOR THE GOVERNMENT:

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1 Q. Okay. Another function that can be performed, is image  
2 manipulation, correct?

3 A. Actually detecting image manipulation, yes, sir.

4 Q. All right. Another function that your department does is  
5 detection of image manipulation. Tell the members of the jury  
6 what that is.

7 A. Basically, detection of image manipulation is a thorough  
8 analysis of imagery to determine if an image is, one, an  
9 original; or two, whether it has been altered in some way.

10 Q. And the fourth function that I recall you talking about  
11 is -- will you tell me what that word is?

12 A. Would that be photogrammetry?

13 Q. That's it. Spell that for the benefit of the court  
14 reporter, please.

15 A. Photogrammetry is spelled p-h-o-t-o-g-r-a-m-m-e-t-r-y.

16 Q. Okay. Tell the members of the jury what photogrammetry is.

17 A. Photogrammetry is the art and science of obtaining  
18 dimensional information from images.

19 Q. Okay. Measurements --

20 A. Yes.

21 Q. -- from photographs?

22 A. Yes.

23 Q. Broken down in terms that I can understand, is that fair to  
24 say?

25 A. Measurements from photographs is another way of putting it,

[Court called to order at 9:05 a.m.]

1 [Court called to order at 9:05 a.m.]

2 THE COURT: Members of the Jury, good morning. Be  
3 seated, please.

4 Mr. Kogan, you look very sheik there this morning,  
5 covered with dogs.

6 JUROR #7: I'm wearing my puppy shirt. It's my dog  
7 training shirt, actually.

8 THE COURT: All right. Be seated, please.

9 RICHARD VORDER BRUEGGE, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN.

10 THE COURT: Mr. Vorder Bruegge, you were sworn  
11 yesterday, sir, you are reminded that you are still under oath.

12 And you may cross-examine the witness, Mr. Howes.

13 MR. HOWES: Thank you.

14 CROSS EXAMINATION

15 BY MR. HOWES:

16 Q. Mr. Vorder Bruegge, let me be the first today to  
17 mispronounce your name. Good morning.

18 A. No, you said it correctly.

19 Q. The FAVIA Group can perform a number of different  
20 functions, correct?

21 A. That is correct.

22 Q. You discussed yesterday two of those functions?

23 A. Yes.

24 Q. Image enhancement and comparison analysis?

25 A. That is correct.

1 yes.

2 Q. Okay. When you have a bank surveillance photograph, and  
3 you know where a camera is mounted, let's say on the wall where  
4 the clock is, and the image that you are -- that is depicted is  
5 where you are, your department then has the ability to  
6 determine the size of that image, correct?

7 A. It is possible at times to determine the size of objects in  
8 the image in such --

9 Q. Of objects in the image?

10 A. Objects in the image.

11 Q. Okay. The image being the photograph?

12 A. Yes.

13 Q. Okay. And an object being such as a person?

14 A. That is correct.

15 Q. Okay. Such as the height of a person?

16 A. In some cases, yes.

17 Q. Okay. And you testified that in this particular case you  
18 went to each of the banks, correct?

19 A. That is correct.

20 Q. And you looked at the cameras that were used in each of the  
21 banks?

22 A. Yes, that's correct.

23 Q. To determine what type of camera it was?

24 A. Yes.

25 Q. And determine what type of filter it had?

1 A. Yes.

2 Q. And determine distances with respect to where the cameras

3 were in relation to the area that was portrayed in the videos?

4 A. No, I did not measure any distances.

5 Q. You certainly could have measured distances, correct?

6 A. Yes, I could have.

7 Q. And you could have then used those measurements to

8 determine, for example, the height of an individual in an

9 image, correct?

10 A. Theoretically.

11 Q. Well, I mean that's what photogrammetry is all about,

12 correct?

13 A. Yes, it is.

14 Q. I mean, and that's one of the things that you did?

15 A. It's one of the things we can do, yes.

16 Q. Can do, okay.

17 You were not asked to do that in this case, correct?

18 A. That is correct.

19 Q. Okay. As a matter of fact, you were asked to perform only

20 two of the four functions that your department can perform,

21 correct?

22 A. That's correct.

23 Q. Okay. There are no -- well, let me back up. Is there a

24 measurement device in any of the photographs that have been

25 introduced into evidence?

1 A. A measurement device?

2 Q. A ruler.

3 A. No. No, there are not. Not that I saw at least.

4 Q. Okay. Or a pencil to give relevance for scale, correct?

5 A. No, there are objects in the scene that could be used for

6 scale.

7 Q. But none of those measurements were taken; is that correct?

8 A. That's correct.

9 Q. So when -- and I'm just going to pick the one that's on top

10 here. This is one of the ones we had from Kislak Bank.

11 A. Okay.

12 Q. When we look at Government's Exhibit VB-1-C, you're not

13 trying to portray to the jury that this photograph, the one on

14 the bottom left, and the one in the center bottom, are of the

15 same scale, correct?

16 A. That is correct.

17 Q. All right. Now to the scale of the shirt?

18 A. You are pointing to the image on the far right of that

19 chart; and, no, they have not been scaled to be exactly one to

20 one.

21 Q. Okay. Was it your testimony yesterday that you were asked

22 to determine if you could identify the articles worn or carried

23 by the robber or robbers during the course of the robberies?

24 A. Yes.

25 Q. Okay. You cannot state that the defendant was the robber

1 in any of the eight counts; is that correct?

2 A. That is correct.

3 Q. You cannot say it was the same robber in all of the eight

4 counts, correct?

5 A. That is correct.

6 Q. You cannot say it is the same robber in any two of the

7 eight counts, correct?

8 A. That is correct.

9 Q. You cannot say it was not eight different robbers in --

10 each different robber for each different count, correct?

11 A. No, I can't say that.

12 Q. Okay. You talked yesterday about the shirt, which is

13 Government's Exhibit 11. This shirt was sent to you?

14 A. Yes.

15 Q. Okay. And a Mary Kay bag, which I couldn't find, that was

16 sent to you, correct?

17 A. That is correct.

18 Q. What else was sent to you?

19 A. I also received the black jacket that we discussed

20 yesterday.

21 Q. All right. The black jacket, I left it up here, this item.

22 Now, let me stop you with the black jacket for a minute, and I

23 want to talk in broader terms than your professional terms for

24 a minute, so let's talk generally instead of scientifically.

25 You described this as a black jacket?

1 A. Yes, sir.

2 Q. A ski jacket?

3 A. That would be a reasonable description.

4 Q. Mass produced?

5 A. Yes.

6 Q. Nothing out of the ordinary?

7 A. Nope.

8 Q. Regular old Colorado brand jacket?

9 A. I suppose.

10 Q. You could go into any of the stores in the area where you

11 live and maybe purchase one like this?

12 A. Something like that I'm sure.

13 Q. Okay. And you said that there were some small pinholes on

14 this somewhere. Are you talking about like where feathers like

15 this were coming out?

16 A. Yes. They were coming out, now they're not.

17 Q. Do you have any down pillows at home?

18 A. Oh, yes.

19 Q. Do you get this out of down pillows at home?

20 A. Coming out at the seams, yes.

21 Q. Okay. Or sometimes out of the middle of the pillows, too,

22 right?

23 A. Little holes.

24 Q. So when you were talking yesterday about something and

25 identifying class characteristics, what you were really talking



1 about was down feathers coming out of places in the jacket?  
 2 A. On that jacket, yes.  
 3 Q. But other than saying it's a mass produced jacket that is  
 4 black in color and has seams at whatever distances those seams  
 5 are apart, you can't distinguish this from any other that was  
 6 made in the same run of production; is that correct?  
 7 A. That is correct.  
 8 Q. And you can't even tell if it's made -- if you had this  
 9 Colorado jacket from this year, and last year, and the year  
 10 before, if they used the same pattern year after year, you  
 11 wouldn't know the difference between them based on class  
 12 characteristics; is that correct?  
 13 A. If they were making them in the same way, it wouldn't be  
 14 possible to tell the difference between them, except probably  
 15 at the microscopic level if you were looking at the individual  
 16 seams and the way the stitches were put in.  
 17 Q. Okay. Do you recognize Government's Exhibit --  
 18 MR. STEFIN: 15.  
 19 MR. HOWES: Where's the sticker.  
 20 BY MR. HOWES:  
 21 Q. We're going to put a sticker on this, but Agent Lewis says  
 22 this is Government's Exhibit 15.  
 23 A. Okay.  
 24 Q. Do you recognize that item?  
 25 A. No.

1 A. No, I'm not.  
 2 Q. Would you agree that that is a pearl handle semi-automatic  
 3 pistol?  
 4 A. Yes, I would.  
 5 Q. Maybe fake pearl, but for our simple purposes, what we  
 6 would call pearl handle?  
 7 A. Yes.  
 8 Q. Okay. Now, that would be something, that pearl handle, it  
 9 would be something that would be distinguishable to you by use  
 10 of your scientific technology to determine whether or not it  
 11 was a particular item involved in one of these cases, correct?  
 12 A. If you could see it, the firearm, held by an individual in  
 13 one of the videotapes well enough to distinguish those  
 14 characteristics, yes.  
 15 Q. Okay. And in order for you to make that determination,  
 16 just like you needed the shirt, wherever it is, you would need  
 17 the firearm to do the same, correct?  
 18 A. That is correct.  
 19 Q. You received -- did you receive, and this isn't a trick  
 20 question, I want you to open the bag and look at it carefully,  
 21 because I'm going to give you two, 12-A and B.  
 22 And I want you to tell me whether or not you recognize  
 23 those two items?  
 24 A. I do not recognize 12-A, nor do I recognize 12-B.  
 25 Q. All right. So that the jury's clear, those are ski hats,

1 Q. Do you recognize Government's Exhibit 18 and 18-A?  
 2 A. No, I do not.  
 3 Q. How about 17 and 17-A?  
 4 A. No, I do not.  
 5 Q. Now, in some but not all of the photographs that you showed  
 6 to the jury yesterday, there were firearms present, correct?  
 7 A. Yes.  
 8 Q. And firearms have class characteristics, correct?  
 9 A. That is correct.  
 10 Q. You have firearm examiners at the FBI, correct?  
 11 A. That is correct.  
 12 Q. You have the use of, if you needed them, firearm examiners  
 13 at ATF, Alcohol, Tobacco and Firearms?  
 14 A. That is correct.  
 15 Q. And although it's a different agency, you all do get  
 16 together sometimes if need be, right?  
 17 A. From time to time.  
 18 Q. From time to time. But you have your own experts there to  
 19 talk about firearms, right?  
 20 A. Yes.  
 21 Q. Somebody you can get on the phone and call and say, hey,  
 22 Susie, hey, Bill, I got this gun, can you tell me what kind  
 23 this is, right?  
 24 A. Yes.  
 25 Q. Are you a gun fan?

1 right?  
 2 A. Knit caps, yes.  
 3 Q. Knit caps, okay.  
 4 Now, when you get a knit cap to examine, like you got  
 5 this shirt to examine, you can tell this jury now that you just  
 6 have not looked at those hats, 12-A and B, but you have looked  
 7 at 11, because you put some type of identifying mark on it,  
 8 correct?  
 9 A. That is correct.  
 10 Q. And that is so that today, tomorrow, whenever you're asked,  
 11 you can say, yes, I've seen this item; or, no, I've not seen  
 12 that item?  
 13 A. That's correct.  
 14 Q. Lighting conditions are important, correct?  
 15 A. Yes.  
 16 Q. Important for purposes of determining color and contrast,  
 17 correct?  
 18 A. Yes, that's correct.  
 19 Q. Even in -- particularly in black and white?  
 20 A. Absolutely.  
 21 Q. You say you went to the banks?  
 22 A. Yes, I did.  
 23 Q. Do you remember what month it was?  
 24 A. I believe it was October.  
 25 Q. Okay. Of 2001?



1 A. 2001.  
 2 Q. Okay. When you went to the banks -- well, no, let me be  
 3 broader.  
 4 Have you ever received any information to tell you  
 5 what the weather was like on the day of any of the robberies  
 6 that you've discussed here with us?  
 7 A. The only information relating to the weather, particularly  
 8 the sun conditions, that I received, if you you want to put it  
 9 received, I actually determined by looking at the images on the  
 10 videotape to see any outside scenes to see whether there were  
 11 strong shadows, which would indicate strong sunlight.  
 12 Q. I'm going to ask you to -- excuse me just a second, please.  
 13 Let me show you Government's Exhibit VB-3-L.  
 14 A. Okay.  
 15 Q. Can you tell from that picture what the sun condition is,  
 16 sunlight condition is?  
 17 A. It is either strong sunlight or light overcast, causing  
 18 maybe not sharp shadows but bright light.  
 19 Q. Okay. So you could tell that much from looking at this  
 20 photograph?  
 21 A. Yes. Because you can see outside the window, outside the  
 22 glass door.  
 23 Q. Well, on the photographs where somebody's inside the bank,  
 24 let's use for example VB-8-5-H and look at this photo up here,  
 25 the upper left-hand corner, can you tell the difference in this

1 15 have black straps. One is an Ironman Triathlon watch. The  
 2 other one only has superbright -- I'm trying to see --  
 3 Q. You don't know which one of those goes off at about 4:30  
 4 every afternoon; do you?  
 5 Because one of them does. You don't know which one it  
 6 is, right?  
 7 A. No.  
 8 Q. Okay. Have you ever seen those two items before?  
 9 A. I'm trying to see ---  
 10 Q. I'm sure that the government will let you open the bag if  
 11 you need to, to see a little better?  
 12 A. No, I don't see any marks, any identifying marks that --  
 13 no, I haven't seen any of these watches.  
 14 MR. HOWES: Judge, may I stand next to the witness so  
 15 it's easier to --  
 16 THE COURT: Surely. Yes, sir.  
 17 BY MR. HOWES:  
 18 Q. This is Government's Exhibit VB-1-C. Upper left-hand  
 19 corner photograph is a person holding a gun in what hand?  
 20 A. The left hand.  
 21 Q. What's on the left hand?  
 22 A. On the left hand?  
 23 Q. On the left wrist.  
 24 A. There doesn't appear to be anything on the left wrist.  
 25 Q. What's on the right wrist?

1 photograph between what's bad video quality and what's exterior  
 2 sunlight?  
 3 A. I can tell in that photo that there is a strong component  
 4 of light coming from outside, the closer to the door. If you  
 5 look closely at that photograph, you see that the floor is a  
 6 lot brighter on the right, which is closer to the exterior  
 7 windows.  
 8 It's so much brighter that the grid pattern of the  
 9 tiles is overwhelmed by the brightness of the overall scene.  
 10 Whereas on the left, which is closer -- which is more inside  
 11 the bank, the lighting is less strong, because there's less  
 12 direct outside light. And so you can see that grid of tiles.  
 13 Q. Okay. All of your photos for comparison purposes were done  
 14 inside; is that correct?  
 15 A. That is correct.  
 16 Q. None with sunlight present, correct?  
 17 A. None with sunlight present.  
 18 Q. Okay. And you cannot reproduce sunlight, correct?  
 19 A. Actually we have tungsten lighting, which are lamps, strong  
 20 lamps, which are used inside in laboratory setting to recreate  
 21 the color and brightness in some cases of sunlight.  
 22 Q. I've put before you here Government's Exhibit 15 -- I'm  
 23 sorry, that's 16. That's 15, and this is 16. Two's in 15,  
 24 one's in 16.  
 25 A. Two watches in 15, and one watch in 16, the two watches in

1 A. There appears to be a dark band on the right wrist.  
 2 Q. If you would have had the two items in Government's Exhibit  
 3 Number 15, could you possibly have used those to compare to the  
 4 item on the right wrist in this particular photograph, to see  
 5 if they are -- if they have even common class characteristics  
 6 with that item?  
 7 A. Yes, that would have been possible.  
 8 Q. Let me ask you a broad question about all of the photos  
 9 you've seen here. Does Government's Exhibit 16 appear to you  
 10 to be present in any of the photographs that are in evidence  
 11 here?  
 12 A. Since Government's Exhibit 16 shows a silver banded wrist  
 13 watch, I was not looking for any silver banded wrist watches in  
 14 any of the images, so I can't tell you if there are any in the  
 15 images or not.  
 16 Q. Well, if you're looking at wrists and what the robbers are  
 17 doing, then you would certainly have paid attention to this  
 18 kind of item, if it was present, right?  
 19 A. There were -- let me state, I was looking at the left wrist  
 20 of the individual in this case, and --  
 21 Q. Never the right wrist?  
 22 A. I was not paying attention to the right wrist.  
 23 Q. When you testified before about how you determine  
 24 individual characteristics of a person, you talked about class  
 25 characteristics as being the -- what was it -- nose, chin, what

1 else?

2 A. For the face; nose, chin, shape of the mouth, profile,

3 shape of the eyes, overall shape of the head.

4 Q. Okay. One of the things that you would do for

5 individualization of someone's hands, would be to look for any

6 specific characteristics that would be unique to a particular

7 person's hands, correct?

8 A. That would be correct.

9 Q. A deformity?

10 A. Yes.

11 Q. Arthritis, a missing joint --

12 A. Yes.

13 Q. -- missing digit, anything of that nature, right?

14 A. Yes.

15 Q. Okay. So you didn't -- you did not conduct that type of

16 examination with respect to any of these items; is that fair to

17 say?

18 A. Looking for missing digits, no, that was not something I

19 was -- I did.

20 Q. Did you conduct any examination to try to determine

21 individual identifying characteristics for any of the

22 photographs that you looked at with respect to any of the eight

23 bank robberies?

24 A. Oh, as far as the arms and hands go?

25 Q. Yes.

1 A. We can't see the right hand in that photo, that's right.

2 Q. And that was from the Commerce Bank robbery, correct?

3 A. That is Commerce Bank.

4 Q. And the first one was Kislak?

5 A. Yes.

6 Q. Okay. Let's go to VB-4-K, which is from Bank of America.

7 A. Okay.

8 Q. Now, first of all, I want you to look at this mask. Did

9 you ever see any mask with holes in it?

10 A. Ever?

11 Q. In this case.

12 A. In this case, I did not receive any masks with holes in it.

13 Q. I've got to be careful with you, but let's limit ourselves

14 to this case. In this case, you did not see any mask with

15 holes in it?

16 A. Only in the videos did I see masks with holes in them.

17 Q. Okay. That particular photograph, the one in the upper

18 left-hand corner, is from the video, correct?

19 A. Yes.

20 Q. And does it or does it not appear to have holes in the

21 mask?

22 A. In this particular image, one would be hard-pressed to see

23 if there are any holes.

24 Q. Do you recall if there is a different image where there

25 might be holes in it?

1 A. Oh, well, yes. No, let me correct that. I was trying to

2 see if the arms and hands had any distinguishing marks, such as

3 tattoos or other large clearly visible features.

4 Q. And you made no such determination; is that fair to say?

5 A. No.

6 Q. No, you did not make any such --

7 A. I did not find any features that I could use to

8 individualize the individual in question in each of the

9 robberies.

10 Q. Okay. Now, you and I pulled out together today VB-2-II,

11 correct?

12 A. Yes.

13 Q. And I told you this was another photo I was going to have

14 you look at?

15 A. Yes.

16 Q. Now, in this particular photo, what's on the left wrist?

17 A. The left wrist appears to have a single dark band on it,

18 and some type of lighter object on the band itself.

19 Q. Okay. You can't even say that's a watch; can you?

20 A. That's correct.

21 Q. Okay. As opposed to the photograph I showed you just a

22 minute ago where the band was on the right hand and nothing was

23 on the left hand, on this one there's something on the left

24 hand and at least from this photo, we can't see the right hand,

25 right?

1 A. Offhand I can't recall whether there are any or there are

2 not any. I'd need to go back and look to see if there are any

3 with holes in the mask.

4 Q. Let me show you VB-4-M. Now, what do we have in that one?

5 A. There is definitely a hole in the area of the eye, right

6 here in the upper left.

7 Q. Okay. If you had -- if you had the mask with two holes in

8 it, whatever number it is --

9 A. Yes.

10 Q. -- could you use this mask and make some determinations as

11 to whether or not it matches that mask?

12 A. Yes, I could.

13 Q. Were you asked to do that?

14 A. No, I was not.

15 Q. I'm going to use my terminology instead of yours, okay.

16 A. Okay.

17 Q. Measurements, making measurements, okay.

18 Could you make a measurement on the gun depicted in

19 Government's Exhibit VB-5-E?

20 And I don't want to use your term, because the word's

21 too long?

22 A. I'm sorry, did you say could I or did I?

23 Q. Could you.

24 A. It might be possible to make a measurement on that gun.

25 What would be necessary, would be to have other pictures better

1 showing that gun in order to identify the make and model so  
2 that a reconstruction of the scene could be performed taking a  
3 similar make and model to that weapon into the bank, and then  
4 physically trying to position it.

5 Without having that information, knowing -- one needs  
6 to know exactly where that gun is in order to make an accurate  
7 measurement of it. Not just where it is, but how it's  
8 positioned. Because differences in the angle can greatly  
9 affect the measurements.

10 Q. In other words, somebody would have to go to this teller  
11 window, to camera number two at that bank, and hold up a series  
12 of guns at about that height to make that determination?

13 A. For the most accurate result, yes.

14 Q. But you could still give us to a reasonable degree of  
15 scientific certainty a measurement on the length of that  
16 barrel, correct, even without the specifics?

17 A. It would be possible to calculate some size, but with an --  
18 but with -- I don't know what uncertainty that would have.

19 Q. You're measuring mountains on Venus, you can certainly do  
20 this, right?

21 A. It's possible to make a measurement of that weapon, yes.

22 Q. All right. I have fillings, they're silver. Will they  
23 show up on a video camera?

24 A. It depends.

25 Q. It depends upon?

1 A. Whether your mouth is open, whether you point your mouth  
2 with it being open in the right direction towards the camera.  
3 Whether your mouth is close enough to the camera to see them,  
4 and whether there is light going into your mouth that reflects  
5 then back out onto the video camera to reflect the silver  
6 fillings.

7 If those teeth are close enough to the front of your  
8 mouth to be seen.

9 Q. All right. Did you notice anything like dental work in any  
10 of the photographs -- in any of the videos that you watched,  
11 let alone the photographs that are here in evidence?

12 A. I'm sorry, did I look for --

13 Q. Did you notice?

14 A. Did I notice in the videotapes -- I didn't notice any  
15 fillings or silver teeth.

16 Q. Or gold teeth?

17 A. Or gold teeth.

18 Q. Or any type of dental work that would individualize a  
19 person as the robber in any of these cases?

20 A. Not in any of the videos.

21 Q. Well, you're limiting it, so let me -- do you need to  
22 broaden your answer?

23 A. As I --

24 Q. Did you have anything besides videos?

25 A. Sorry?

1 Q. Did you have anything besides videos?

2 A. I had some photographs.

3 Q. Okay. They're not in evidence, correct?

4 A. No, I believe two photographs that depict the defendant are  
5 in evidence.

6 Q. Okay. Well, I'm talking about the bank photographs. You  
7 didn't have any bank photographs?

8 A. There were no -- I did not notice any dental work on the  
9 bank robber in any of the videos or the film from the Commerce  
10 Bank.

11 Q. Bank robber or robbers?

12 A. Yes, bank robber or bank robbers.

13 Q. Okay. On VB-4-M, take a look at the right wrist area, and  
14 tell me if you see something there?

15 A. Yes, there appears to be a bright band on the right wrist  
16 of the individual -- of the bank robber.

17 Q. Something shiny like this?

18 A. It looks a bit broader than that bracelet.

19 Q. Good. Okay.

20 A. There also is -- there also appears to be a raised bright  
21 area on the top side.

22 Q. Did you get any jewelry at all to compare?

23 A. No, I did not.

24 Q. All right. You and I are now going to walk down the road  
25 of -- you and I are going to go down the road of cosmetics.

1 Got any expertise in this area?

2 A. Not in cosmetics.

3 Q. Okay. You said yesterday this bag was made by Mary Kay,  
4 manufactured by Mary Kay, right?

5 A. I'm not sure I said that it was manufactured by Mary Kay,  
6 it is a Mary Kay bag.

7 Q. Are you sure you didn't say it was manufactured by Mary  
8 Kay?

9 A. If I said that it was manufactured by Mary Kay, then I was  
10 in error.

11 Q. Okay. Have you ever heard of Mary Kay?

12 A. Yes, I have.

13 Q. Cosmetics?

14 A. Mary Kay cosmetics.

15 Q. Not your brand. And I don't mean that in a smart way, I'm  
16 just saying, nothing you know anything about except that you  
17 know that it exists, right?

18 A. I know that there is a Mary Kay Corporation.

19 Q. You know there's a Mary Kay Corporation that sells  
20 cosmetics?

21 A. Yes.

22 Q. You know that Mary Kay has promotions from time to time?

23 A. Yes.

24 Q. Do you know if this is a promotional bag or a bag that is  
25 used by the people that sell Mary Kay product?



1 A. I do not know anything about this bag outside of what I can  
2 see with my eyes.  
3 Q. Okay. And you don't know how many of those bags there are,  
4 right?  
5 A. That's correct.  
6 Q. And you don't know how many of them were ultimately  
7 produced, correct?  
8 A. I do not know specific numbers, no.  
9 Q. Okay. You said yesterday, I believe, that there's no  
10 significant individual characteristics about the Mary Kay bag  
11 that you can use to individually identify it; is that correct?  
12 A. No, I didn't say that. There are individual  
13 characteristics on this bag that can be used to identify it.  
14 Q. But you were not able to use those?  
15 A. Exactly.  
16 Q. Okay. Would you -- would it be your opinion that all bags  
17 made in the same run as that bag, same production run as that  
18 bag, would have the same class characteristics as that bag?  
19 A. Yes.  
20 Q. Okay. Based upon the photographs that you have -- or the  
21 videos that you have available for you to use here, would any  
22 bag in that same run be indistinguishable from the bags  
23 depicted on the videos?  
24 A. I don't think so. I don't think that any bag would be  
25 indistinguishable, I think that it would be possible to

1 distinguish some bags from other bags.  
2 Q. But not all?  
3 A. Not all.  
4 Q. Okay. So you can't give us a thirty to the eighth power  
5 kind of number with respect to this, right?  
6 A. Not in this case.  
7 Q. Okay. Is a prominent cheek bone a facial characteristic  
8 that one can use to give individual characteristics to a  
9 person?  
10 A. No, cheek bones are a class characteristic. The quality of  
11 one's cheek bones, in general, is a class characteristic.  
12 MR. HOWES: Could I have just a minute, Judge?  
13 THE COURT: Yes, sir.  
14 MR. HOWES: Thank you. Nothing further.  
15 THE COURT: Redirect.  
16 MR. HOWES: Oh, I'm sorry, Judge, there is.  
17 THE COURT: Okay.  
18 MR. HOWES: No, I don't have any other questions of  
19 the witness.  
20 Thank you, sir.  
21 MR. STEFIN: One moment, please, Your Honor.  
22 **REDIRECT EXAMINATION**  
23 BY MR. STEFIN:  
24 Q. Mr. Vorder Bruegge, a lot of bank surveillance films were  
25 sent up to you, plus there was thirty-five millimeter film, as

1 well?  
2 A. That is correct.  
3 Q. And you spent time extracting information from those  
4 photographs and doing the comparison analysis that you've  
5 described.  
6 Approximately how many man hours have you spent  
7 working on this case, if you can estimate it?  
8 A. Well, I know I spent weeks on this case. So at least a  
9 hundred hours. Over two and-a-half weeks, two and-a-half full  
10 weeks, possibly as many as two hundred hours.  
11 Q. And would it be fair to say that this is not the only case  
12 that you have worked -- or was working during the time period  
13 that you were looking at these materials?  
14 A. That is correct.  
15 Q. Now, the defense lawyer asked you whether or not you can  
16 testify as an expert as to the person that was wearing the  
17 shirt, and I believe your answer would be?  
18 A. I'm not sure I --  
19 Q. Can you identify the person who was wearing the shirt in  
20 the robberies?  
21 A. Right, I cannot identify the person who was wearing the  
22 shirt in each robbery.  
23 Q. But can you say whether or not that shirt, Government's  
24 Exhibit -- I believe it's 11, is the shirt that was at seven of  
25 the eight robberies?

1 MR. HOWES: Objection, beyond the scope.  
2 THE COURT: Sustained.  
3 BY MR. STEFIN:  
4 Q. You were asked questions about the jacket, and I believe  
5 you testified at some length about it. Is there anything about  
6 the photographs which distinguish those photographs from this  
7 jacket, as depicted in the bank robbery surveillance  
8 photographs?  
9 A. No, there's nothing in those photographs that show  
10 differences on that jacket, any characteristics of the jacket  
11 in the video from the bank robbery that are different from that  
12 jacket.  
13 Q. And, in fact, you pointed out some of the features of this  
14 jacket which match features in the bank surveillance video of  
15 the jacket worn by the robber?  
16 A. Yes, I did.  
17 Q. And with respect to the Mary Kay bag, Government's Exhibit  
18 14, didn't you identify individual characteristics of that bag  
19 which makes it different than other Mary Kay bags that may have  
20 come off the same assembly line?  
21 A. Yes, I did.  
22 Q. And, in fact, how many different individual characteristics  
23 were you able to identify looking at that exhibit, in  
24 comparison with the bank surveillance photographs of a bag  
25 being carried by the robber?

1 A. There were four specific characteristics that I noted.  
 2 Q. And would you remind us of what those four individual  
 3 characteristics were?  
 4 A. The first one was the alignment of the black and silver  
 5 stripes from the back side of the bag with the end of the bag,  
 6 the fact that the silver lines on the inside line up with the  
 7 black lines on the back side.  
 8 The second characteristic was the location of the  
 9 snaps at the top on a silver line. The third characteristic  
 10 was the very small silver line at the top of the back piece.  
 11 And the last characteristic was the silver line at the very top  
 12 of the back piece.  
 13 Q. And did you come up with any probabilities as to, again,  
 14 the odds or probabilities that these items would appear exactly  
 15 as they are on that bag in a random fashion?  
 16 A. Yes, I did.  
 17 Q. And, for example, let's take the first item of individual  
 18 characteristic. Just pick one for example.  
 19 A. Well --  
 20 MR. HOWES: Your Honor, I object. There's not a  
 21 sufficient basis established. He said he doesn't know how many  
 22 were made.  
 23 THE COURT: Sustained.  
 24 MR. STEFIN: Your Honor, the --  
 25 THE COURT: Go ahead, next question.

1 BY MR. STEFIN:  
 2 Q. With respect to the bag in front of you, how were you able  
 3 to arrive at a probability as far as the individual  
 4 characteristic that would exist?  
 5 A. Basically I'm dealing with a black or white situation. In  
 6 this case, black or silver. Either you're going to get the  
 7 black line in one place or you're going to get the silver line  
 8 in that place.  
 9 I'm not breaking down by fifty percent of the black  
 10 line or fifty percent of the silver line. I'm just saying,  
 11 it's either a black line or a silver line, which is a  
 12 fifty/fifty. You got like one chance in two of a specific  
 13 feature being black or silver.  
 14 In particular, these silver snaps on the end can  
 15 either be on a silver line or a black line. They're on a  
 16 silver line. That eliminates all of the other bags that would  
 17 have the snaps on a black line.  
 18 Likewise at the top, there's either a silver line at  
 19 the top or there's a black line at the top. One chance in two,  
 20 fifty/fifty. So with this, the snaps and the top of the side  
 21 of the back, it's one in four.  
 22 With the addition of the back of the bag silver at the  
 23 top, it's one in eight; two times two times two. And then with  
 24 the sides here having silver aligning with black, the silver's  
 25 either going to align with black, or the silver's going to

1 align with silver.  
 2 That's another one in two chance. So two times two  
 3 times two is one in sixteen.  
 4 Q. Two times two times two times two?  
 5 A. Yes, correct. Two to the fourth power.  
 6 Q. Two to the fourth power.  
 7 So it is possible then to eliminate fifteen out of  
 8 sixteen bags that would be coming off the manufacturing process  
 9 from whatever company made those bags?  
 10 A. That would be the hypothesis, correct.  
 11 Q. And did you, in fact, find those same four characteristics  
 12 in the photographs depicting the robber carrying the same bag?  
 13 A. Yes. Yes, I did.  
 14 Q. Now, you were asked some questions about this brown bag,  
 15 and it's your testimony that this was never submitted up to the  
 16 lab to you for an examination; is that correct?  
 17 A. I don't recall seeing it, and I couldn't find my initials  
 18 on the bag.  
 19 Q. Let me show you Government's Exhibits 8-E and 8-G, which  
 20 are from the Union Bank robbery. Now, I realize you haven't  
 21 done this before, but I'm going to ask you to look at these  
 22 photographs and then just -- if you're able to do this, tell me  
 23 if you're not -- look at these photographs and tell me if you  
 24 can identify any class characteristics of the bag depicted in  
 25 these photographs from Union Bank, and compare it visually with

1 the brown bag that was shown to you a few minutes ago?  
 2 MR. HOWES: Objection, Judge, beyond the scope.  
 3 THE COURT: Sustained.  
 4 BY MR. STEFIN:  
 5 Q. Did you in fact compare those photographs with the brown  
 6 bag that was seized on 69th Terrace?  
 7 A. I'm sorry?  
 8 Q. Can you look at the -- let me do it this way. Can you look  
 9 at those photographs and tell me what features you observe in  
 10 the bag depicted in the photographs?  
 11 MR. HOWES: Objection, beyond the scope.  
 12 THE COURT: Sustained.  
 13 BY MR. STEFIN:  
 14 Q. Let me show you, with respect to the gun that was seized in  
 15 this case, Government's Exhibits 5-G, E, and F. Those are  
 16 photographs from the Bank United robbery?  
 17 A. Yes.  
 18 Q. And those are photographs you made from the bank  
 19 surveillance film?  
 20 A. Yes, they are.  
 21 Q. Were those pictures of a sufficient quality, the resolution  
 22 and quality of the pictures, such that you could identify what  
 23 type of firearm that is?  
 24 A. No, I could not identify what type of firearm that is from  
 25 these pictures.

1 Q. As you sit here today, can you say whether or not the  
2 firearm depicted in those photographs is consistent or  
3 inconsistent with Government's Exhibit 18?  
4 A. Without having the objects back in the lab, and a chance to  
5 fully examine that gun to any handgun or any pistol, I would  
6 not be capable of conclusively saying that that gun is or is  
7 not possibly the same gun.  
8 Q. And it would be a matter of trying to determine whether it  
9 was consistent or not consistent?  
10 A. That is correct.  
11 Q. Not that it is the gun or it's not the gun?  
12 A. That is correct.  
13 MR. STEFIN: That's all I have.  
14 THE COURT: Thank you, sir, you may come down.  
15 Please call your next witness.  
16 MS. MITRANI: Your Honor, the government calls Anna  
17 Jimenez, Officer Anna Jimenez.  
18 ANNA JIMENEZ, GOVERNMENT'S WITNESS, SWORN.  
19 THE CLERK: You may take your seat.  
20 Will you please state your name and spell your last  
21 name for the record.  
22 THE WITNESS: My name is Anna Jimenez, J-i-m-e-n-e-z.  
23 DIRECT EXAMINATION  
24 BY MS. MITRANI:  
25 Q. Good morning.

1 A. Good morning.  
2 Q. Are you presently employed?  
3 A. Yes, ma'am.  
4 Q. By whom are you employed?  
5 A. City of Miami Police Department.  
6 Q. And in what capacity are you employed by the City of Miami  
7 Police Department?  
8 A. I work in the patrol division.  
9 Q. So you are a patrol officer?  
10 A. Yes, ma'am.  
11 Q. How long have you been a patrol officer?  
12 A. Four and-a-half years.  
13 Q. And very briefly, what are your responsibilities as a  
14 patrol officer?  
15 A. I patrol the streets of Little Haiti right now, and I make  
16 sure that crime is low, any criminal activities are not going  
17 on within the streets.  
18 Q. You said Little Haiti, I guess that's a certain area in  
19 Miami?  
20 A. Yes, ma'am.  
21 Q. Has your territory changed throughout the years?  
22 A. Yes, ma'am.  
23 Q. Okay. In terms of responding to criminal activities, do  
24 you focus in on a certain type of crime or not?  
25 A. Multiple crimes.

1 Q. Multiple crimes.  
2 And what type of crimes do you investigate?  
3 A. Narcotics, burglaries, robberies, theft.  
4 Q. Directing your attention to on or about January 30th, 2001,  
5 do you recall what area you were assigned to that day?  
6 A. Yes, I was working the Model City area.  
7 Q. The what city area?  
8 A. Model City.  
9 Q. And did you respond to a burglary attempt on that day?  
10 A. Yes, I did.  
11 Q. And did you respond to 1540 Northwest 69th Terrace, Miami,  
12 Florida?  
13 A. That's correct.  
14 Q. And how is it that you went to this location?  
15 A. Our dispatcher dispatched me to the call, a burglary at  
16 1540 Northwest 69th Street. 69th Terrace, correction.  
17 Q. So your dispatcher told you to go there basically?  
18 A. That's correct.  
19 Q. And you went there?  
20 A. Yes, ma'am.  
21 Q. Okay. And do you have -- I mean, I know this was almost  
22 three years ago, a little less than three years ago, but do you  
23 have an independent recollection of this response?  
24 A. Yes, ma'am.  
25 Q. Okay. Is it your practice and procedure to write a report

1 when you make responses?  
2 A. Depends on the type of call, the nature of the call.  
3 Q. Okay. Did you write a report in this incident?  
4 A. Yes, ma'am.  
5 Q. Okay. And when was that report written?  
6 A. On January 30th, 2001.  
7 Q. The same day that you responded to this residence?  
8 A. Yes, ma'am.  
9 Q. Now, do you recall what time you got to the residence?  
10 A. At 3:27.  
11 Q. In the afternoon?  
12 A. Yes, ma'am. I'm sorry, it's going to be 4:27, correction.  
13 I got dispatched 4:27, arrived at 4:50.  
14 Q. 4:50, about ten to five in the afternoon?  
15 A. Yes. Yes.  
16 MS. MITRANI: Your Honor, may I approach?  
17 THE COURT: Yes, ma'am.  
18 BY MS. MITRANI:  
19 Q. I'm showing you Government's Exhibit 10-A.  
20 A. That's the house I responded to.  
21 Q. This is the house you responded to on that day?  
22 A. Yes, ma'am.  
23 Q. What did you do when you got there?  
24 A. I made contact with the victim, Mr. McCreith, Wilbert.  
25 Q. How is it that you made contact with the victim?



1 A. He was outside the location.  
 2 Q. Did you ask him to identify himself?  
 3 A. Yes, ma'am.  
 4 Q. And how did you do that?  
 5 A. He produced ID to me.  
 6 Q. Did you write down the information pertaining to his  
 7 identification?  
 8 A. Yes, ma'am. There was a difference in the address where he  
 9 resided. He told me that he resided at that location where I  
 10 responded to, he recently moved -- had purchased that house and  
 11 moved there.  
 12 Q. Okay. Now, let me get this straight. He produced for you  
 13 what -- a Florida driver's license?  
 14 A. A Florida driver's license with a different address on the  
 15 license, and stated that he recently purchased that house, and  
 16 that's where he lives at right now.  
 17 Q. Which house -- the 1540?  
 18 A. 1540 Northwest 69th Terrace.  
 19 Q. Okay. And what identifying information did the defendant  
 20 provide to you?  
 21 A. The only identification he provided to me was a Florida  
 22 driver's license.  
 23 Q. Okay. And on your report, you noted the victim's name,  
 24 correct?  
 25 A. That's correct.

1 A. He received a phone call from his alarm company stating  
 2 that his house, the alarm was going off. And he responded  
 3 immediately to his house, 1540 Northwest 69th Terrace.  
 4 Q. Okay.  
 5 A. And he observed two black males running to the rear of the  
 6 location jumping the gate, and that's when he called the  
 7 police.  
 8 Q. And when you got there, what did you observe?  
 9 A. I made contact with the victim, he showed us the drywall on  
 10 the side frame door -- on the side frame inside his house was  
 11 damaged, the wood door was also damaged, and the AC vent was  
 12 damaged. That's what he showed me inside the house.  
 13 Q. And did he tell that that was as a result of this burglary,  
 14 this break-in?  
 15 A. Yes, ma'am.  
 16 Q. And you wrote that down on your report?  
 17 A. Yes, ma'am.  
 18 Q. I believe that you -- before, just a few minutes ago, you  
 19 had testified that you have an independent recollection. In  
 20 addition to the report, you kind of remember this incident,  
 21 correct?  
 22 A. Yes, ma'am.  
 23 Q. Was there something about the house that you had -- was  
 24 distinctive to you that stood out?  
 25 A. Yes, ma'am. He had a security camera in the front as you

1 Q. And what was the victim's name?  
 2 A. Wilbert McCreith.  
 3 Q. Okay. Did you note whether he was an adult or a juvenile?  
 4 A. He was an adult.  
 5 Q. And did you note his race and sex?  
 6 A. Yes, ma'am. He was a black male.  
 7 Q. And did you note his date of birth slash age?  
 8 A. Date of birth was 9/17/58. I don't recall the age.  
 9 Q. Okay. I suppose we could all do the math, but his date of  
 10 birth was 9/17/58?  
 11 A. Yes, ma'am.  
 12 Q. Okay. Did you ask him about his occupation?  
 13 A. I don't recall.  
 14 Q. Okay. Is there anything filled in on your report regarding  
 15 Mr. McCreith's occupation?  
 16 A. No, ma'am.  
 17 Q. And was this the first thing that you did, was identify the  
 18 victim of this burglary?  
 19 A. Yes, ma'am.  
 20 Q. Okay. After you identified Mr. McCreith, did you talk with  
 21 him?  
 22 A. Yes, ma'am.  
 23 Q. And what did he say?  
 24 A. I asked him what happened.  
 25 Q. And what did he say?

1 entered the gate, right by the door.  
 2 Q. Was this something that you would -- you had been  
 3 patrolling --  
 4 Is this neighborhood the neighborhood that you were  
 5 assigned to?  
 6 A. Yes, ma'am.  
 7 Q. And are you familiar with the neighborhood?  
 8 A. Yes, ma'am.  
 9 Q. Is that something that's normal in that neighborhood?  
 10 A. No, ma'am.  
 11 Q. I believe -- just doubling back to fill in some blanks.  
 12 When you said that he told you, Mr. McCreith told you that he  
 13 had just moved to 1540 Northwest 69th Terrace, did he tell you  
 14 how long he had been there at that point?  
 15 A. No, ma'am.  
 16 Q. Okay. Did you go inside the house, though?  
 17 A. Yes, ma'am.  
 18 Q. And was it furnished?  
 19 A. Yes, ma'am.  
 20 Q. Did it appear to you to be lived in?  
 21 A. Yes, ma'am.  
 22 Q. Is there anything that you remember distinctive about the  
 23 inside of the house?  
 24 A. As soon as you walk in, the house was furnished. On the  
 25 right side there was a kitchen. As you walk down the hallway,

1 there's a bathroom on the right-hand side, and then there's a  
 2 bedroom on the left-hand side.  
 3 Q. And again, I know this was almost three years ago, anything  
 4 else you remember about the inside of the house?  
 5 A. No.  
 6 Q. After Mr. McKreith provided you the information about the  
 7 side wall -- side frame drywall and the wood door and the AC  
 8 vent, that there was damage to all those three, correct?  
 9 A. Yes, ma'am.  
 10 Q. Okay. What did you do?  
 11 A. I asked him was there anything missing. He stated that  
 12 nothing was missing at the time.  
 13 Q. And then what happened after that?  
 14 A. I got a brief description of the individuals that he  
 15 observed running, and he also stated that they left their bikes  
 16 at the scene.  
 17 Q. Did you see those bikes?  
 18 A. Yes, ma'am.  
 19 Q. Did you confiscate them?  
 20 A. No, ma'am, he refused to give the bikes.  
 21 Q. Were they later confiscated?  
 22 A. Yes, ma'am.  
 23 Q. And what did you do with your report?  
 24 Were you writing the report as you were taking the  
 25 information from Mr. McKreith?

1 A. Yes, ma'am.  
 2 Q. So by the time you left the house, the report had been  
 3 completed?  
 4 A. Yes, ma'am.  
 5 Q. Okay. And what did you do with that report?  
 6 A. I turned it in to my supervisor.  
 7 MS. MITRANI: Your Honor, may I have a moment?  
 8 THE COURT: Yes, ma'am.  
 9 BY MS. MITRANI:  
 10 Q. Now, do you have the report in front of you?  
 11 A. Yes, ma'am.  
 12 Q. Okay. Is that the report that you completed?  
 13 A. Yes, ma'am.  
 14 Q. I'd ask you to take a moment to look at it.  
 15 Have there been any changes or alterations to the  
 16 report; in other words, has anybody added anything to it that  
 17 wasn't what you had completed?  
 18 A. No, ma'am. No.  
 19 Q. Okay.  
 20 MS. MITRANI: Your Honor, we would move the report  
 21 into evidence.  
 22 MR. HOWES: Objection, Judge.  
 23 THE COURT: Sustained.  
 24 MS. MITRANI: No further questions.  
 25 THE COURT: Cross-examine.

1 CROSS EXAMINATION  
 2 BY MR. HOWES:  
 3 Q. Mr. McKreith said he was living there part of the year?  
 4 A. I don't recall.  
 5 Q. Well, look at your number eight, your subsection number  
 6 eight under --  
 7 A. Okay. Yes.  
 8 Q. And he said he would prosecute?  
 9 A. Yes.  
 10 Q. He let you into the house?  
 11 A. Yes.  
 12 Q. He let you look around?  
 13 A. Yes.  
 14 Q. He showed you where they came in the front door?  
 15 A. Yes.  
 16 Q. He showed you where they had ransacked the house?  
 17 A. Yes.  
 18 Q. Okay. He told you that one of the people had short hair?  
 19 A. Yes.  
 20 Q. Dreadlocks?  
 21 A. No. Oh, yes.  
 22 Q. Clean shaven?  
 23 A. Yes.  
 24 Q. Medium build?  
 25 A. Yes.

1 Q. Neat appearance?  
 2 A. Yes.  
 3 Q. So he gave you -- he filled in every descriptive portion of  
 4 your report that you asked for, other than whether or not the  
 5 persons were right or left handed, and their speech, correct?  
 6 He gave you information that allowed you to fill in  
 7 your report to all those things?  
 8 A. Yes.  
 9 Q. He did not limit your movement through the house?  
 10 A. No.  
 11 Q. He did not tell you that you could not go into any of the  
 12 rooms?  
 13 A. No.  
 14 Q. Do you know if anyone was apprehended, arrested in this  
 15 case?  
 16 A. No, not that day, not to my knowledge.  
 17 Q. Well, do you know if someone was arrested another day?  
 18 A. No.  
 19 Q. Okay. Were you the one that came back and got the bikes?  
 20 A. No, it was another officer.  
 21 Q. Were you present?  
 22 A. No.  
 23 Q. Okay. Do you know what was done with the bikes?  
 24 A. I believe they were turned in to our property unit.  
 25 Q. Okay. Do you know if any follow-up was ever done to find

1 who owned the bikes, to determine who had broken into the  
 2 house?  
 3 A. No, I don't.  
 4 MR. HOWES: Thank you.  
 5 MS. MITRANI: No further questions.  
 6 THE COURT: Thank you, ma'am, you may step down.  
 7 Please call your next witness.  
 8 MS. MITRANI: I'm sorry, Your Honor. The government  
 9 would call Officer Sampson, the Miami Police Department.  
 10 GARY SAMPSON, GOVERNMENT'S WITNESS, SWORN.  
 11 THE CLERK: You may take a seat, please.  
 12 Will you please state your name and spell your last  
 13 name for the record.  
 14 THE WITNESS: My name is Gary Sampson. Last name is  
 15 spelled S-a-m-p-s-o-n.  
 16 DIRECT EXAMINATION  
 17 BY MS. MITRANI:  
 18 Q. Good morning. Are you presently employed?  
 19 A. Yes, I am.  
 20 Q. And by whom are you employed?  
 21 A. By the City of Miami Police Department.  
 22 Q. In what capacity are you so employed?  
 23 A. I'm a police officer.  
 24 Q. And how long have you been a police officer?  
 25 A. Five years.

1 MS. MITRANI: Your Honor, may I approach.  
 2 THE COURT: Yes, ma'am.  
 3 BY MS. MITRANI:  
 4 Q. Now, this was -- let's see, it's December 2002. So this  
 5 was a little over two years ago?  
 6 A. Yes.  
 7 Q. Okay. As you sit here today, do you have an independent  
 8 memory of responding to this house?  
 9 A. A little bit.  
 10 Q. A little bit, okay.  
 11 And I think you testified that you wrote a report  
 12 concerning your response?  
 13 A. Yes.  
 14 Q. And was that report written on the same day as your  
 15 response?  
 16 A. Yes.  
 17 Q. And it contained all the information as you knew it then?  
 18 A. Yes.  
 19 Q. So do you recall about what time you got to 1540 Northwest  
 20 69th Terrace?  
 21 A. Well, I responded there twice. The first time I responded,  
 22 I don't remember the time that I responded. But the second  
 23 time I responded, I responded at 8:25 p.m.  
 24 Q. Starting with the --  
 25 MS. MITRANI: Your Honor, may I approach?

1 Q. And what are your responsibilities?  
 2 A. Routine patrol.  
 3 Q. Is there a certain type of incident or crime that you  
 4 respond to, or do you respond to anything and everything?  
 5 A. I respond to everything.  
 6 Q. Are you assigned to a particular neighborhood?  
 7 A. I'm assigned to Liberty City.  
 8 Q. And were you assigned to Liberty City in December of 2000?  
 9 A. Yes, I was.  
 10 Q. Directing your attention to December 14th, 2000, did you  
 11 respond to a burglary at 1540 Northwest 69th Terrace?  
 12 A. Yes, I did.  
 13 Q. Is that in Liberty City?  
 14 A. Yes, it is.  
 15 Q. And how is it that you came to respond to 1540 Northwest  
 16 69th Terrace?  
 17 A. I was dispatched.  
 18 Q. Okay. So somebody told you that something was going on  
 19 there, and you were to investigate it?  
 20 A. Yes.  
 21 Q. Okay. And did you, in fact, go to 1540 Northwest 69th  
 22 Terrace?  
 23 A. Yes, I did.  
 24 Q. And did you fill out a report on that day?  
 25 A. Yes, I did.

1 THE COURT: Yes, ma'am.  
 2 BY MS. MITRANI:  
 3 Q. Showing you Government's Exhibit 10-A. Is that a picture  
 4 of the house that you responded to on December 14th, 2000?  
 5 A. Yes.  
 6 Q. Tell us what happened the first time you went to that house  
 7 on that day?  
 8 A. Well, the first time I responded, I was dispatched to a  
 9 possible break-in. When I arrived, no one answered the door.  
 10 I took a quick check of the premises, and I observed that  
 11 the -- there was a break in the rear window.  
 12 Q. Were you able to determine whether any entry was made  
 13 through that rear window?  
 14 A. No.  
 15 Q. And did you go into the house that first time you  
 16 responded?  
 17 A. No, I didn't. There was nobody home.  
 18 Q. How did you know there was nobody was home?  
 19 A. I knocked on the door.  
 20 Q. And nobody answered?  
 21 A. No.  
 22 Q. Okay. I believe you just testified that you went back  
 23 there a second time on that date; is that correct?  
 24 A. Yes.  
 25 Q. Why did you go back there a second time?



1 A. I responded back the second time because the victim was  
2 home.  
3 Q. Well, how did you know that?  
4 A. Because they call again and I was dispatched again.  
5 Q. So the dispatcher told you to go back to this place?  
6 A. Yes.  
7 Q. Okay. And what time did you get there the second time?  
8 A. At 8:25 p.m.  
9 Q. And what did you do when you arrived at that house?  
10 A. I made contact with the victim.  
11 Q. Where was the victim?  
12 A. At home.  
13 Q. Was he inside his home, outside his home?  
14 A. Inside.  
15 Q. Okay. So you went up and knocked on the door?  
16 A. Yes.  
17 Q. Okay. And somebody responded?  
18 A. Yes.  
19 Q. Okay. And when that person responded, what did you do?  
20 A. What I normally do, is when I'm doing any type of report, I  
21 ask for identification. And I ask for some type of -- I ask  
22 what had happened, and they explain.  
23 And when I got ready to do the report, I ask for some  
24 type of identification, and I started my report.  
25 Q. Okay. And who was the victim?

1 A. Last name is going to be McKeith (sic), Wilbert.  
2 Q. Okay. Is that M-c-K-r-e-i-t-h?  
3 A. Yes.  
4 Q. So McKeith, Wilbert?  
5 A. Yes.  
6 Q. Okay. And what kind of identifying information did you get  
7 from Mr. McKeith?  
8 A. I got his first name, last name, that he was an adult, his  
9 race and his date of birth and his address.  
10 Q. And what was his race and sex?  
11 A. He's going to be an adult black male, and he was born 9/17  
12 of '58.  
13 Q. Okay. And what was his address?  
14 A. 1540 Northwest 69th Terrace, Miami.  
15 Q. And, by the way, when you're shown identification, is it  
16 your practice to make sure that the picture on the  
17 identification matches the person whose in front of you?  
18 A. Yes, it is.  
19 Q. Did Mr. McKeith tell you about his occupation?  
20 A. At the time, he told me he was self-employed.  
21 Q. Okay. Did you then, after identifying Mr. McKeith, did  
22 you then take down information concerning the incident?  
23 A. Yeah.  
24 Q. Tell us what happened.  
25 A. Basically, he told me that he returned home and he

1 discovered that some unknown persons had entered his home  
2 through the rear window, and had taken some items that are --  
3 and the items are listed on my report.  
4 Q. So when he told you that people had entered his home  
5 through the rear windows, was that the same window that you had  
6 observed earlier that day?  
7 A. Yes.  
8 Q. Okay. And he told you that people had taken items from his  
9 home?  
10 A. Yes.  
11 Q. What was taken, and what was the value of what was taken?  
12 A. Listed on my report is one DVD player, value of three  
13 hundred and fifty dollars. One Sony stereo, four hundred  
14 dollars. A TV watch, four hundred and thirty.  
15 Twelve pairs of sneakers, six hundred dollars.  
16 Miscellaneous clothing items valued at two thousand three  
17 hundred dollars. An AT&T phone, cell phone, sixty dollars.  
18 And I also listed the damage to the rear window, which  
19 was fifty dollars.  
20 Q. Okay. When you were taking down this information, were you  
21 inside the house or outside the house?  
22 A. I believe I was outside the house.  
23 Q. Okay. Did you ever go inside the house?  
24 A. Yes, I did.  
25 Q. Again I know it's been a couple of years, is there anything

1 you remember about the inside of the house?  
2 A. Not really.  
3 Q. Did you look in any closets or anything like that?  
4 A. No.  
5 Q. After McKeith, Mr. McKeith, identified what had been  
6 taken from his home, what did you do?  
7 A. I finished my report, I had -- I dispatched Crime Scene to  
8 come to the house, you know, to see if they could get any  
9 fingerprints reference the broken window. Like I say, I just  
10 finished my report and left.  
11 Q. Okay. Do you know whether anybody was ever arrested for  
12 this?  
13 A. No. After I turn in my report, the report would be  
14 forwarded to a detective, and he takes it from there.  
15 Q. Okay. So I guess as the police officer you're like the  
16 first one on the scene, you take down the information, then it  
17 gets -- in the normal course of practice, it gets transferred  
18 to a detective?  
19 A. Yes.  
20 Q. I know Mr. McKeith told you that his occupation was self.  
21 Do you remember whether you asked or he elaborated more on what  
22 he did for a living?  
23 A. No.  
24 Q. Okay. As you sit here today, you don't remember anything  
25 else about his occupation?

1 A. No.  
 2 Q. Have you been back to that house; have you had any further  
 3 contact with Mr. McKreith at that house after this date?  
 4 A. No.  
 5 Q. Never dispatched again?  
 6 A. No.  
 7 MS. MITRANI: Your Honor, may I have a moment?  
 8 No further questions.  
 9 THE COURT: Cross-examine.  
 10 MR. HOWES: If I could have just a minute, Judge.  
 11 CROSS EXAMINATION  
 12 BY MR. HOWES:  
 13 Q. There was not a security camera outside the house when you  
 14 went there, correct?  
 15 A. No.  
 16 Q. Okay. Was this date the only time that you responded to a  
 17 burglary at that particular residence?  
 18 A. Yes.  
 19 Q. Did Mr. McKreith allow you in the house?  
 20 A. Yes.  
 21 Q. Did he restrict your movement inside the house in any way?  
 22 A. I don't remember.  
 23 Q. Well, you don't remember him keeping you out of any rooms?  
 24 A. No.  
 25 Q. You don't remember him telling you not to look in any

1 drawers?  
 2 A. No, I wouldn't do that.  
 3 Q. Well, but I'm just saying, he didn't stop you from doing  
 4 anything with respect to your investigation, right?  
 5 A. No.  
 6 Q. Okay. And Crime Scene was called out?  
 7 A. Yes.  
 8 Q. Were you there when they came?  
 9 A. No, I wasn't on scene.  
 10 MR. HOWES: That's all I have. Thank you, Your Honor.  
 11 THE COURT: Mr. Sampson, thank you, you may come down.  
 12 Your next witness, please.  
 13 MS. MITRANI: Your Honor, could we have -- is it  
 14 possible --  
 15 THE COURT: No.  
 16 MS. MITRANI: Okay. Could I have a minute.  
 17 Your Honor, United States rests.  
 18 THE COURT: Members of the Jury, you've now heard all  
 19 the evidence and testimony in this case on behalf of the United  
 20 States.  
 21 At this time, the Court will ask the defendant to  
 22 please reserve any motions which he might have to make at the  
 23 conclusion of the government's case in chief until the morning  
 24 recess.  
 25 And you may proceed on behalf of Mr. McKreith,

1 Mr. Howes.  
 2 MR. HOWES: Thank you, Your Honor.  
 3 Your Honor, based upon the motion made yesterday  
 4 outside the presence of the jury, I would move to introduce  
 5 Exhibit 15.  
 6 THE COURT: Exhibit 15 for the defense is received in  
 7 evidence.  
 8 [Defense Exhibit Number 15 was marked and received in  
 9 evidence].  
 10 MR. HOWES: And, Your Honor, based upon stipulations  
 11 with the government, I would move to introduce the bank records  
 12 of Wilbert R. McKreith, Government's Exhibit Number 4, from  
 13 City National Bank in Miami, Florida, for the period of  
 14 February 28th to March 31st, this would be 1999, and also --  
 15 That's Number 4. Exhibit Number 3 would be the bank  
 16 records of Karin McKreith and Jacqueline McKreith from  
 17 Ridgewood Savings Bank, as well as copies of United States  
 18 Postal money orders from Karin McKreith as Defendant's Exhibit  
 19 Number 3.  
 20 THE COURT: Those exhibits will be received into  
 21 evidence.  
 22 [Defense Exhibit Numbers 3 and 4 were marked and  
 23 received in evidence].  
 24 MR. HOWES: Excuse me, Judge, for just a second,  
 25 please.

1 Judge, may we approach the sidebar, please?  
 2 THE COURT: Yes, sir.  
 3 [Bench conference].  
 4 MR. HOWES: I recently went through a 2255 hearing  
 5 when I stood up and said before Judge Moore, Your Honor, my  
 6 client is prepared to proceed with the colloquy. He said to  
 7 me, is there any need to proceed.  
 8 And I said, no, sir, because there wasn't, because I  
 9 had had a conversation. I just -- I spent about an hour on the  
 10 witness stand --  
 11 THE COURT: I know where you're going and we'll --  
 12 MR. HOWES: I would to have that colloquy occur before  
 13 I announce I rest.  
 14 THE COURT: I understand. All right. So we'll take a  
 15 recess, and then I'll hear your brief motions, and I will  
 16 inquire of the defendant.  
 17 MR. HOWES: Thank you.  
 18 THE COURT: Okay.  
 19 [End of bench conference]  
 20 THE COURT: Member of the Jury, we'll take our morning  
 21 recess at this time. We'll be in recess for fifteen minutes,  
 22 and when we reconvene, we'll continue with the case on behalf  
 23 of the defendant.  
 24 Please take the jury out.  
 25 Actually, it may be more like twenty minutes.

1 [Jury leaves the courtroom].

2 THE COURT: Mr. McCreith, your lawyer has announced to  
3 the Court that he intends to rest the case on behalf of the  
4 defense in this matter. However, before I will permit him to  
5 do so, I must inquire of you concerning certain rights that you  
6 have.

7 First of all, you have the right to testify in this  
8 case if you wish to do so. You likewise have the right not to  
9 testify in this case if you elect not to. You have every right  
10 to appear as a witness in your own defense, if that is what you  
11 elect to do.

12 Have you discussed with Mr. Howes the issue of  
13 testifying as a witness at the trial of this case?

14 THE DEFENDANT: In a small bit. I need a few minutes  
15 more, please.

16 THE COURT: All right, sir. Go ahead.

17 [Defendant conferring with counsel]

18 MR. HOWES: Judge, for Mr. McCreith's benefit, when I  
19 said Government's Exhibit 4, the records of Mr. McCreith's  
20 father --

21 THE COURT: I understood it. You described them as  
22 Government's Exhibits 3 and 4, but they're really Defendant's  
23 Exhibits 3 and 4.

24 THE COURT: Okay. But they're in evidence?

25 THE COURT: Yes, they are.

1 MS. MITRANI: Your Honor, may I step out for a moment?

2 THE COURT: Yes, ma'am.

3 [Defendant conferring with counsel]

4 MR. HOWES: Judge, may we inquire of the government if  
5 they have any rebuttal?

6 THE COURT: Well, they won't know that until you rest.

7 MR. HOWES: Well, I understand that, but presuming  
8 that the defendant rests. The reason --

9 MR. STEFIN: We won't have any rebuttal to what has  
10 been introduced as far as the items --

11 MR. HOWES: The reason is, my client would like to  
12 have a couple of words with me so that he can impart his  
13 thoughts with respect to closing argument before we get to  
14 closing argument.

15 THE COURT: Well, we're going to do that, but that's  
16 another issue. We're certainly going to do that, but that's  
17 another issue.

18 MR. HOWES: I certainly understand that, Judge, but  
19 I'm trying to solve these problems.

20 [Defendant conferring with counsel]

21 MR. HOWES: Thank you, Judge, we can proceed.

22 THE COURT: Okay. Mr. McCreith, you understand that  
23 pursuant to the Fifth Amendment to the Constitution of the  
24 United States, you have the right to remain silent. You  
25 likewise have the right to testify as a witness in your own

1 defense.

2 If you elect to testify in this case, you would of  
3 course be subject to cross-examination by the United States.  
4 If you elect to remain silent, the Court is going to instruct  
5 the jury that no inference whatever may be drawn, and further  
6 that they may not consider the fact that you have elected not  
7 to testify in this case.

8 Now, have you discussed with Mr. Howes, your lawyer,  
9 whether or not you want to testify in this case?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: What is your wish; do you wish to testify  
12 in your own defense, or do you wish to exercise your  
13 constitutional right pursuant to the Fifth Amendment of the  
14 Constitution of the United States to remain silent.

15 THE DEFENDANT: I wish to exercise my right to Fifth  
16 Amendment to remain silent, sir.

17 THE COURT: All right. Do you have any questions  
18 about your right to testify or not to testify in this case?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right, sir, thank you.

21 MR. STEFIN: Judge, could you ask him as far as there  
22 being any coercion or force or --

23 THE COURT: Oh, well, of course. Is your decision not  
24 to testify in this case made freely and voluntarily?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And no one's used any threats, force,  
2 pressure, coercion, or intimidation to cause you to waive your  
3 right to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Anything further for the  
6 defendant, then, Mr. Howes?

7 MR. HOWES: Judge, we're going to announce that we  
8 rest at this time.

9 THE COURT: All right. The Court will now hear any  
10 motions to be made at the conclusion of the government's case  
11 in chief.

12 MR. HOWES: Your Honor, the defendant at this time  
13 pursuant to Rule 29 would move for a judgment of acquittal to  
14 Counts 1 through 10 of the superseding indictment, based upon  
15 the fact that the government has failed to establish a prima  
16 facie case of guilt.

17 Specifically, that the government has failed to prove  
18 that the defendant, Wilbert McCreith, is in fact the one who  
19 committed the bank robberies charged in those counts, and who  
20 possessed a firearm with respect to those particular counts.

21 Judge, excuse me, I'm forgetting the numbers because  
22 of the two other counts. Is it 1 through 12?

23 Okay. I'm sorry, I stand corrected, it's 1 through  
24 12. Thank you. And we're still not done with the other two  
25 counts. So with respect to those counts, Judge, I would move



1 for a judgment of acquittal with respect to the defendant.  
 2 THE COURT: The Rule 29 motion of the defendant, made  
 3 at the conclusion of the government's case in chief, with  
 4 respect to Counts 1 through 12 of the superseding indictment in  
 5 this case will be denied.  
 6 We can have the charge conference now. Of the  
 7 government's requested jury instructions, all will be granted.  
 8 The Court has prepared a special instruction with regard to  
 9 note taking, copies of which I now pass to counsel for the  
 10 defendant and the United States.  
 11 Also, do you have any special requested instructions,  
 12 Mr. Howes?  
 13 MR. HOWES: I want the standard on identification.  
 14 THE COURT: I'm going to give that. I'm looking for  
 15 it even as you speak.  
 16 MR. HOWES: It's on page 50, Judge.  
 17 THE COURT: All right.  
 18 MR. HOWES: Page 50, Judge, if you have the '97 --  
 19 THE COURT: All right. The Court will grant the  
 20 defendant's request for the standard instruction on  
 21 identification.  
 22 Are there any objections to the Court's proposed  
 23 instructions on behalf of the United States?  
 24 MR. STEFIN: May we just have a moment with respect to  
 25 that instruction?

1 have to start putting all of that together.  
 2 Court's in recess for ten minutes.  
 3 [Brief recess].  
 4 THE COURT: Who is going to open.  
 5 MS. MITRANI: I am, Your Honor.  
 6 THE COURT: Okay. That's fine.  
 7 MR. STEFIN: Is the Court anticipating taking a lunch  
 8 break after the government's opening?  
 9 THE COURT: Yes.  
 10 MS. MITRANI: Does the Court give warnings.  
 11 THE COURT: Yes. Time's up.  
 12 MS. MITRANI: Can you give us a warning before time's  
 13 up?  
 14 THE COURT: Sure. What do you need?  
 15 MS. MITRANI: Could you please tell me when I have  
 16 fifteen minutes left.  
 17 THE COURT: Fifteen minutes, okay.  
 18 [Jury enters the courtroom].  
 19 THE COURT: Please be seated.  
 20 Mr. Howes, you may proceed, sir.  
 21 MR. HOWES: Your Honor, at this time the defendant  
 22 would rest.  
 23 THE COURT: Members of the Jury, you've now heard the  
 24 evidence and the testimony on behalf of the defendant.  
 25 Does the government have any evidence to offer in

1 THE COURT: Yes, sir.  
 2 MR. STEFIN: We just question whether that instruction  
 3 is appropriate, given that there has been no witness who  
 4 identified the defendant as the bank robber.  
 5 MR. HOWES: If the government's not going to argue  
 6 that Ms. Morris didn't identify him then --  
 7 MR. STEFIN: Well, I take that back.  
 8 MR. HOWES: I think they want to concede that  
 9 argument.  
 10 MR. STEFIN: I was thinking in terms of the bank  
 11 robbery victims.  
 12 MR. HOWES: I think they'll concede that argument, but  
 13 there's --  
 14 MR. STEFIN: Never mind.  
 15 THE COURT: Any objections for the United States?  
 16 MR. STEFIN: No objection.  
 17 THE COURT: Objections for the defendant?  
 18 MR. HOWES: None, Your Honor.  
 19 THE COURT: All right. You have ninety minutes to the  
 20 side in argument. It appears that since this lady has to leave  
 21 to take her husband to the pace maker store, we're going to  
 22 recess at 3 o'clock, but we should be able to conclude the  
 23 arguments before that.  
 24 And it's ninety minutes to the side. And we'll be in  
 25 recess for ten minutes. And when we come back, I guess you'll

1 rebuttal?  
 2 MS. MITRANI: No, sir.  
 3 THE COURT: Does the government rest in rebuttal?  
 4 MS. MITRANI: Yes, sir.  
 5 MR. HOWES: Your Honor, I would renew the motions  
 6 previously made.  
 7 THE COURT: All right.  
 8 MR. HOWES: For purposes of the record.  
 9 THE COURT: The Court will reserve ruling on those  
 10 motions at this time.  
 11 Members of the Jury, you've now heard all the evidence  
 12 and the testimony in this case, and it but remains for you to  
 13 hear the closing arguments of the attorneys and the Court's  
 14 instructions as to the law.  
 15 As you know, what the lawyers will say to you at this  
 16 time is not evidence in the case. The evidence in the case  
 17 consists of the testimony of the witnesses that you heard here  
 18 from this witness stand, and also those many items of physical  
 19 evidence or documentary evidence that the Court has admitted  
 20 into evidence and made a part of the record of the trial.  
 21 The purpose of the closing arguments is to permit the  
 22 lawyers for each side to argue to you at this time what they  
 23 believe the evidence in the case has either proved or failed to  
 24 prove, and also to argue to you the instructions of law that  
 25 the Court will give you in its charge.

1 You will find that the order of argument is identical  
2 to the order of proof. The government will open the argument,  
3 you'll then hear from Mr. Howes on behalf of the defendant, and  
4 the prosecution then has the opportunity to conclude and close  
5 the arguments in rebuttal.

6 At the conclusion of the arguments, the Court will  
7 instruct you on the law that you must follow and apply in  
8 reaching your verdict.

9 Because of the time constraints, and because one of  
10 your members has to be excused early, we're going to first hear  
11 from the United States in their opening argument. We're then  
12 going to recess for lunch.

13 We'll come back after lunch and then you'll hear from  
14 Mr. Howes and the argument in rebuttal, and then we'll recess  
15 for the day so that this lady can get to the doctor's office.

16 And we'll ask you to come back in the morning, and at  
17 that time, tomorrow morning, the Court will instruct you on the  
18 law that you are to follow and apply in reaching your verdict,  
19 and you should then retire to deliberate your verdict.

20 So, Ms. Mitrani or Mr. Stefin, if you're ready to  
21 proceed on behalf of the United States in argument, you may do  
22 so at this time.

23 MS. MITRANI: May it please the Court, Your Honor,  
24 Mr. Howes. Members of the Jury.

25 There's no doubt or no dispute that between January

1 20th, 2000, and March 1st, 2001, eight banks were robbed in  
2 Broward County. And there is no doubt and no dispute that one  
3 man, one man alone, entered each and every one of these banks.  
4 And in each one of these robberies, this bank robber covered  
5 his face with a ski mask.

6 This robber was very scary and very intimidating. He  
7 would enter the banks yelling and screaming. He followed a  
8 pattern. He knew his stuff, Members of the Jury. He would  
9 come in, face covered, go up to the tellers, say he wanted  
10 money, big money, lots of money. Money from the second drawer,  
11 no bait, no dye packs.

12 He was menacing. He had a gun during four of these  
13 robberies, and he did not hesitate to stick this gun in front  
14 of his victims' face. He did not hesitate to turn around and  
15 point at others in that bank as he was taking over that bank.  
16 And this robber didn't discriminate, male or female, young or  
17 old, they were all his victims.

18 And even in those four robberies where he didn't  
19 physically have a gun, he was threatening and intimidating and  
20 abusive. You recall that testimony. He hit these bank  
21 robberies -- he hit these banks early. Seven of the eight  
22 robberies occurred between 9:00 and 10:15 in the morning. And  
23 he was quick, he was in, he got his money, he filled up his  
24 bag, and he was out.

25 And there's no doubt, Members of the Jury, that he was

1 successful. He carried away, he successfully robbed all of  
2 these eight bank robberies -- all these eight banks. So  
3 really, at the end of the day, most of what happened isn't in  
4 dispute. You didn't hear any evidence, any real evidence to  
5 the contrary.

6 Really, what this case boils down to is just two  
7 questions, two questions for you to answer. One, did the same  
8 man rob these eight banks; and two, is the defendant the bank  
9 robber. Yes and yes.

10 We submit to you, Members of the Jury, that there is  
11 no reasonable doubt that the defendant, Wilbert McKreith, is  
12 the bank robber. And you know that, you know that because of  
13 the hats that were found in his house. You know that because  
14 of the bag, the Mary Kay bag found in his house. The black  
15 nylon jacket found in his house.

16 The guns found in his house. The getaway car, the red  
17 burgundy Mercedes, his car at his house. And you know this,  
18 Members of the Jury, of course, because of the smoking gun in  
19 this case. Actually, it wasn't a smoking gun, but the smoking  
20 shirt.

21 The shirt, the defendant's shirt, which was found  
22 hanging so nicely in his closet at Northwest 69th Terrace on  
23 the day of the search. This proves beyond a reasonable doubt  
24 that the defendant is the bank robber.

25 Members of the Jury, on behalf of the United States,

1 my colleagues, Mr. Stefin, Special Agent Lewis, we thank you  
2 for your time and attention to this case. This is a very, very  
3 serious case. This is a very serious crime. I know there have  
4 been some moments of levity during the trial, talking about  
5 Mr. Howes' hair, what have you.

6 But make no mistake about it, this is very serious.  
7 The crimes which the defendant is charged are important crimes,  
8 they're serious crimes, they're dangerous crimes. And we've  
9 had a very full week of testimony. And many of you, most of  
10 you didn't ever think you would be sitting as jurors, and lo  
11 and behold here you are, in a sense having your live obstructed  
12 for a week, and we thank you for your time and attention.

13 Now, as His Honor told you, this is our opportunity to  
14 sum up the evidence. And, gosh, there's been a lot of evidence  
15 in this case, and I'm going to do that for you all in just a  
16 moment. But before I do that, I want to talk about the law  
17 briefly, because His Honor's going to tell you the law, but we  
18 need to understand what --

19 We need to put this in context, because you all in a  
20 very short while are going to be deliberating, deciding the  
21 questions in this case, and you're going to be finding the  
22 facts and applying them to the law, as His Honor instructs. So  
23 three points on the law.

24 First, reasonable doubt. It is our obligation, it is  
25 the obligation of the United States of America to prove the

1 defendant's guilt beyond a reasonable doubt. What is a  
2 reasonable doubt? His Honor will instruct you that a  
3 reasonable doubt is a real doubt, based upon reason and common  
4 sense, after careful and impartial consideration of all of the  
5 evidence.

6 While the government's burden of proof is a strict or  
7 heavy one, it is not necessary the a defendant's guilt be  
8 proved beyond all possible doubt. That's not the standard,  
9 it's just reasonable doubt.

10 Second, circumstantial evidence versus direct  
11 evidence. During voir dire when you all were being selected to  
12 be the jury, Mr. Stefin briefly talked about it. However,  
13 that's not something for you all to be too concerned about,  
14 whether something is direct or circumstantial.

15 In fact, His Honor will tell you that the law makes no  
16 distinction, make no distinction between the weight you should  
17 give either direct or circumstantial evidence. In the eyes of  
18 the law they're the same. In fact, His Honor will tell you,  
19 you should not be concerned about whether the evidence is  
20 direct or circumstantial.

21 And finally, and very importantly, as you decide the  
22 issue in the case, the most important thing you have is your  
23 common sense. The jury system works because we have twelve  
24 people who bring their life experiences and their good common  
25 sense to bear on a case.

1 And in fact, again, His Honor will tell you that in  
2 considering the evidence you may make deductions and reach  
3 conclusions which reason and common sense lead you to make.  
4 And I know we have people from different walks of life and  
5 different backgrounds, we have some scientific backgrounds and  
6 some teachers and some from the ministry.

7 And that's the beauty of it, you don't need any  
8 technical skill or any special skill, just take in all that  
9 you've heard and use your common sense, applying it to the law.

10 So, let's get on to the facts of the case. Members of  
11 the Jury, the indictment charges twelve counts. Eight counts  
12 of bank robbery, and four counts of using a gun during the  
13 commission of the bank robbery. His Honor is going to instruct  
14 you on the elements of the case; that is, what do we have to  
15 prove for bank robbery.

16 He'll tell you, for example, that banks have to be  
17 FDIC insured, that money had to be taken, that there had to be  
18 force, violence, or intimidation. For the gun charge, he'll  
19 tell you that a gun had to be used or brandished. Those parts  
20 of the case are very simple. I mean, for example, FDIC  
21 insured, there's no dispute that the banks were FDIC insured.

22 So I'm really not going to waste your time talking  
23 about that. I'd like to instead get to the heart of the case,  
24 which is how do you all know beyond a reasonable doubt that the  
25 defendant is the bank robber.

1 Well, Richard Vorder Bruegge, you heard him here  
2 yesterday. He is a very talented and experienced forensic  
3 photographic examiner. We spent the better part of the day  
4 yesterday hearing his qualifications, hearing his testimony.  
5 And I'm sure I couldn't even do it justice to try to summarize  
6 all of that in a few short minutes.

7 But you did hear about his background and  
8 qualifications, and you heard about the analysis that he  
9 performed. And you heard about how this shirt has such a  
10 distinctive -- I mean, it looks like an ordinary shirt. In  
11 fact, you all will have these two shirts to look at in the jury  
12 room.

13 And, you know, they look alike, but he even pointed  
14 out, and you all can see, if you start to look at the little  
15 details, they're not identical. They're alike, but they're not  
16 identical. Well, by doing the points of comparison by using  
17 this thin line, which is one-tenth of an inch, and the  
18 repeating pattern he told you was three point five inches, so  
19 it's one in thirty-five chance of this aligning.

20 And doing a comparison, and you'll have the charts,  
21 you'll have the charts to look at, he was able to tell you to a  
22 one and -- what was it -- six billion million probability that  
23 this is the shirt. This is the shirt. He told you, I'm sure  
24 you all remember, that all he would need would be three points  
25 of comparison, or thirty to the third power in order to say

1 it's identical.

2 Well, heck, you heard at Kislak Bank, the first  
3 robbery, he found eight points that matched. And for each and  
4 every robbery -- and, you know, and you all will have the  
5 photographs. I mean, you could see to your naked eye it  
6 certainly looks like the same shirt. And it is.

7 For every robbery he had -- for every bank robbery  
8 surveillance photograph, except SunTrust with the jacket, he  
9 had at least four and up to eight points of comparison. So  
10 this is the shirt that was used in Kislak, this is the shirt  
11 the defendant wore in Commerce, this is the shirt the defendant  
12 wore at First Southern.

13 This is the shirt the defendant wore in Bank of  
14 America. This is the shirt the defendant wore at Lauderdale  
15 Lakes at SouthTrust. I guess it was his lucky shirt. You  
16 know, he wore it for the bank robberies, because he was  
17 successful until he got caught.

18 Now, really, I could sit down now. I mean, the shirt  
19 alone, the defendant's shirt found at his house, that alone  
20 proves beyond a reasonable doubt that the defendant is the bank  
21 robber. But there's so much more, there is so much more. Oh,  
22 and let's, you know, let's talk about the search of the  
23 defendant's house, 1540 Northwest 69th Terrace in Miami,  
24 Florida.

25 You heard the testimony, you heard the testimony from



1 Ron Amira he was the guy, I'm sure you'll remember, the  
2 gentleman who purchased houses and fixed them up and sold them.  
3 And you heard Ron Amira tell you how he met the defendant in  
4 Liberty City, how he sold him the house at 4600 Brooker Street,  
5 and then sold him the house he lived at, 1540 Northwest 69th  
6 Terrace, and sold him the house at 1532 Northwest 68th Street.

7 So him three houses. And by the way, just as an  
8 aside, we have introduced the records of the purchase of these  
9 three properties. And there are -- Exhibit 101 is the Brooker  
10 Street, Exhibit 106 is the 1532 Northwest 68th Terrace. And  
11 Exhibit 108 is the purchase of his house.

12 And when you look -- it's very interesting, because  
13 when you look through the purchase records, you see that in  
14 order to buy these houses, the defendant lied about his  
15 employment. I mean, you heard Mr. Vidal testify that he never  
16 worked for Vidal Construction. Yet, on those applications, he  
17 says that.

18 And you heard Mr. Amira tell you that on another  
19 application it said the defendant worked for the pool and patio  
20 company, which was his company, which wasn't even in existence  
21 when that application was submitted. So you've got to ask  
22 yourself, why is the defendant lying about his employment.

23 You have to have employment to get a mortgage, and I  
24 guess the banks wouldn't look too favorably upon him putting  
25 bank robber as an occupation. We all know that's what he was

1 doing. So anyway, that's the significance of those records.  
2 In any event, you heard Mr. Amira testify that he sold the  
3 house on Northwest 69th Terrace to the defendant.

4 He would see the defendant in the neighborhood. He  
5 would pass down that house all the time, because he would drive  
6 down Liberty City and see the defendant's car there. And so on  
7 April 11th, 2001, a search warrant is executed. And Agent  
8 Lewis, Agent Sager, other FBI agents, as well as local law  
9 enforcement, they go to the house.

10 And you recall the testimony, they get there at about  
11 6:30, 7 o'clock in the morning. They see the defendant's red  
12 Mercedes parked in front. Nothing's going on. They see the  
13 defendant get out of his house, open the chain link fence, get  
14 into the car, drive the car back a little bit, get out, and  
15 then they arrest him.

16 Some local law enforcement, they go into the house,  
17 they do what's called a sweep to make sure nobody else is  
18 there, it's safe. They go in, nobody else was there, it was  
19 safe to go in, and they went in. And they began the search.  
20 What did they find?

21 Well, lo and behold, they find ski masks. Two.  
22 Actually more than two. These that we've introduced into  
23 evidence, one with the holes punched out.

24 Now, Members of the Jury, how many people who aren't  
25 bank robbers have masks with holes hand cut out like this? You

1 could even see from the surveillance photos that in some of the  
2 photos the holes are cut out, in some they aren't. And some  
3 may even appear to be third mask.

4 Richard Vorder Bruegge didn't compare, this is not a  
5 very distinctive item, unlike the shirt, which is conclusive.  
6 But you all, again using your common sense, can certainly see  
7 this is consistent with the photographs. And, of course, you  
8 had all the tellers' testimony. They all told you it was a  
9 black ski mask type of thing.

10 And one of them even noticed that the hole was pulled  
11 down on the cheek, and she was able to get the defendant's  
12 complexion from that. And these were found in the house; one  
13 in the pile of clothing, and one in the room. There was a lot  
14 of talk, you know, about what Agent Sager did with these, how  
15 he labeled the bag.

16 Well, you saw the bag, the brown bags are there and  
17 the labels. It was handled carefully. I mean, that really is  
18 a distraction, what we call a red herring to distract you from  
19 the issues in the case, because he was there, he remembers  
20 seeing these hats. He seized them, he put them in evidence.  
21 Now we've got the hat, we've got the shirt.

22 What else do we find in the house? The brown striped  
23 Mary Kay bag. Now, this was used in the SouthTrust robbery,  
24 and again in the jury room you'll have the eight by tens that  
25 we were passing around. But even to your eye, it sure looks

1 like the same bag. I mean, gosh, there's stripes, you see the  
2 two little holes on the side. Sure looks like the bag.

3 Well, we sent it up to Richard Vorder Bruegge, and he  
4 examined it. Now, unlike the shirt, which had such a  
5 distinctive pattern, this did not have enough individual  
6 identifying characteristics for him to say that it was the bag,  
7 but remember what he told you, this bag is indistinguishable,  
8 indistinguishable, from the bag that the defendant used.

9 Everything lined up. Remember how he told you there's  
10 the dark line and the silver line, and the buttons on there.  
11 He did that analysis, and the button's there on the same dark  
12 line, as well as all of the other characteristics he told you.  
13 Indistinguishable, in the SouthTrust robbery. What else do we  
14 have in the house?

15 The coat. Again, you can see right here in the  
16 picture, you'll have the pictures with you in the jury room.  
17 To an ordinary layman's comparison, it looks just like the  
18 coat. See the indentations here, this one has the indentation.  
19 You can see yourself the sleeve is bunched up. You can see how  
20 the sleeve is bunched up here.

21 But we even have even stronger evidence than that,  
22 because this also was sent up to Richard Vorder Bruegge, and  
23 you heard him testify yesterday, just like the Mary Kay bag,  
24 this coat, it's indistinguishable, indistinguishable, from the  
25 coat that the robber wore. The defendant, Wilbert McCreith's

1 coat. Wilbert McKreith, the bank robber, one in the same  
2 person.

3 What else did we find at the house? Well, we found  
4 guns. The FBI found two guns, loaded guns, and lots and lots  
5 of ammunition. The bank robber had guns, the defendant has  
6 guns. Agents also saw a lot of black pants and a lot of black  
7 T-shirts, consistent with what the tellers and the other  
8 employees told you that the bank robber was wearing.

9 In fact, you can see in some of the pictures the  
10 T-shirt underneath the plaid shirt. And you also heard about  
11 the fancy electronic equipment that was found in the house; the  
12 big screen TV in the living room, the other TV's, the DVD  
13 players, the CDs. In fact, you even heard the officer testify  
14 this morning, Officer Sampson, about the break-in that had  
15 happened at his house where the equipment was taken, and he had  
16 to replace it.

17 And this is from a man who didn't have steady  
18 employment. I mean, you heard Kelly Morris testify that the  
19 defendant was required to report his employment to her, and he  
20 had at best spotty employment. In fact, you all remember that  
21 incident where he told Kelly Morris that he was working for Ron  
22 Amira, so Kelly Morris met the defendant and Ron Amira at the  
23 home.

24 When Kelly Morris got there, she saw he was there with  
25 Ron Amira. Kelly Morris left, and the defendant left. No

1 legitimate employment, yet all of this fancy electronic stuff.  
2 Now, let's talk about Kelly Morris for a few minutes. Kelly  
3 Morris, you heard her testify here, she was a government  
4 employee who had a professional relationship with the  
5 defendant. Known him for a very long time.

6 She first met him in October 1998. She met with him  
7 monthly through December 1998, and resumed those monthly  
8 meetings from September 1999 through March or April 2001. So  
9 almost two years. This lady has known the defendant for almost  
10 two years. You heard her testify that they would meet at least  
11 once a month, up to four times a month.

12 It was one-on-one meetings, nobody else in the room.  
13 They would last anywhere from twenty minutes, thirty minutes,  
14 depending. So she knows the defendant. And you heard her  
15 testify how Agent Lewis, during the course of this  
16 investigation, went and saw her and showed her some  
17 surveillance photographs.

18 And she looked at the photographs, and in fact one in  
19 particular, she saw this photograph and she said, gee, that  
20 looks like Wilbert McKreith. Now, I guess as an aside, because  
21 we heard some cross-examination, Mr. Howes is taking issue with  
22 Ms. Morris saying it looks like Wilbert, it's Wilbert, it  
23 appears to be Wilbert.

24 That's semantics, right. She saw the picture. She  
25 saw the picture and identified the defendant right here to you

1 all as this person, the bank robber, as the defendant Wilbert  
2 McKreith. And we asked her, well, what is it about this  
3 picture that, you know, helped you recognize him. She told  
4 you, she said she was able to see the profile a little bit.

5 She was able to get a sense of his stature, that was  
6 her term. And when we asked her to explain that, the height  
7 appeared to be the same as Wilbert. And the gut, I believe she  
8 said that Wilbert had been gaining weight, and that's  
9 consistent with this picture of the bank robber.

10 And, you know, I want to remind you, and Richard  
11 Vorder Bruegge talked about this, you know, the difference  
12 between identification and recognition, because Richard Vorder  
13 Bruegge also talked to you about this chart. And he compared  
14 the profile, the defendant's profile, the bank robber's  
15 profile, with a known picture of the defendant.

16 And they compared them, and he said to you that the  
17 nose, the mouth, and the chin were consistent with -- and I  
18 apologize if I'm blocking anybody -- the nose, the mouth, and  
19 the chin. He even rotated it so it would be at the same angle.  
20 Now, he said from a scientific point of view he could not  
21 identify it as the defendant, but he could identify the shirt.

22 But he also told you there's a difference between  
23 identification and recognition. Kelly Morris recognized the  
24 defendant. And, Members of the Jury, I want you to notice  
25 something else about this picture, this surveillance

1 photograph, when you see it with some of the others. Notice  
2 how the hair is bunched up.

3 There's almost a little pointy tip on the top, which  
4 of course is consistent with the dreadlocks being up in that  
5 manner. If you look at some of the other photographs, you will  
6 see that same bunching up. Now, this wasn't the only  
7 photograph that Kelly Morris was shown, she was shown some  
8 others.

9 And she said, hey -- in the others, the bank robber  
10 had his face covered, she said, hey, that guy's wearing --  
11 looks like he's wearing two watches, Wilbert always wears two  
12 watches. In fact, you remember she told you that one day she  
13 was meeting with the defendant and he only had one watch, and  
14 she said, hey, where's your other watch, what happened. He  
15 said it had been broken.

16 And that was very consistent to what she knew the  
17 defendant to be wearing. On the issue of the two watches,  
18 Members of the Jury, we have introduced into evidence, I  
19 believe it's the 21 series, pictures of the defendant which  
20 were found in his car. And you will have the opportunity to  
21 see these pictures, I think we passed them around.

22 But you'll have an opportunity to see them in the jury  
23 room. But it is clear, the defendant is wearing two watches in  
24 each of these pictures here. And, in fact, Members of the  
25 Jury, let's not forget, two black banded watches were found in

1 the defendant's house. And if you look at the face head of  
2 these watches, they certainly appear consistent with what the  
3 bank robber's wearing.

4 Because if you then turn over to some of the bank  
5 photographs, surveillance photographs, and look closely, you  
6 can see that the defendant is wearing two watches in the  
7 surveillance photographs. And I encourage you to look at these  
8 photographs, especially focusing your attention on the  
9 SouthTrust robbery, which is the 7 series; the Bank of America  
10 and the First Southern.

11 You will see, if you look closely, what appears to be  
12 two watches. Now, Richard Vorder Bruegge also testified about  
13 this, that he did an examination and blew it up, and he could  
14 not identify these objects as watches, but he identified it as  
15 two bands on the right wrist. There was also found, although  
16 not in the defendant's house, in his car, this brown bag. And  
17 we'll talk about the car in a second.

18 This brown bag, and if you look at the pictures from  
19 the Union robbery, which is the last robbery, you can certainly  
20 see that it's very consistent in terms of the shape of the bag  
21 and the handles. Isn't it very interesting, you have the  
22 defendant, this male, has so many bags. Of course, the bank  
23 robber always used a bag. That was also part of his modus  
24 operandi.

25 Now, let's talk about the car. But before I talk

1 about the car -- well, let's just talk about the car. How else  
2 do you know that the defendant is the bank robber? Well, there  
3 is the getaway car. There is no doubt or dispute that the  
4 defendant owns the red burgundy Mercedes. We introduced the  
5 records into evidence showing his ownership of that car.

6 He was seen driving that car by agents. The car was  
7 parked in front of the house on the day of the search. Kelly  
8 Morris saw him driving it. He reported it to Kelly Morris.  
9 That's his car. Well, this is the car that's identified in  
10 robbery after robbery after robbery as the getaway car.

11 Starting with the first bank robbery, this is taking  
12 you back to the first day of trial, Kislak Bank, Jackie Sivers.  
13 You remember her, she was the pregnant lady who was the first  
14 victim of the defendant, the one who passed out after the  
15 robbery. Well, she had identified the car as a red boxy  
16 burgundy type of car.

17 She never got close to the car, because it was in the  
18 parking lot, but that's what it looked like to her. That same  
19 robbery, you had Robin Yablonsky. She actually saw the  
20 defendant get into the red Mercedes. And she identifies it as  
21 a Mercedes, and you might remember her mother drove a Mercedes,  
22 so she has reason to be familiar with Mercedes.

23 Robbery number four, that's the Bank of America  
24 robbery. Again, Andrea Fernandez, you might recall her, she's  
25 the lady from Uruguay who told you about the genius who dialed

1 911 on the speaker phone, and you know, she wasn't too happy  
2 about that. And of course the robber, the defendant wasn't too  
3 happy about that either, because he turned around and pointed  
4 at Greg Farias and said, hang up that phone or I'll kill you.

5 But anyway, that's the witness I'm talking about. And  
6 you recall that she saw the car through the windows of the Bank  
7 America, and she identified it as a red Mercedes, boxy type of  
8 Mercedes. And you remember, she recognizes Mercedes, that's  
9 the car she drove in her country.

10 In that same robbery, we had the genius, we had Greg  
11 Farias testify that he also saw the defendant get into the red  
12 burgundy Mercedes. And, in fact, he added one detail, he  
13 distinctly remembers what he calls I think the Jesus fish,  
14 which was on the back of the Mercedes. Defendant's Mercedes  
15 has that Jesus symbol.

16 And I guess just one word on Mr. Farias. I think  
17 there was a lot of cross-examination, you might recall,  
18 Mr. Howes was asking Mr. Farias, well, did you tell the agents  
19 that, is that on your report, is that on the agent's report.  
20 Well, I mean, you heard Agent Lewis and Agent Sager testify,  
21 it's almost like a circus like atmosphere following these bank  
22 robberies.

23 A lot of people come on the scene, they're trying to  
24 identify victims, witnesses. They're trying to get the  
25 evidence, the surveillance tape, and get as much information as

1 they can. They're not sitting down in a nice calm relaxed  
2 atmosphere conducting one-on-one interviews, they're just  
3 taking down some notes. Some of the reports are very scant.

4 Mr. Howes was suggesting to you that Mr. Farias made  
5 that up. He remembered something after the fact. That ever  
6 happen to any of you all, telling somebody a story and all of a  
7 sudden remember a fact that maybe you didn't remember a little  
8 while ago? Why would he lie? What interest does he have?

9 Robbery number six. This is the SouthTrust robbery.  
10 Mercedes Miller. That name ring a bell? Who better than to  
11 recognize a Mercedes than somebody by the name of Mercedes  
12 Miller. In fact, you remember her, she was very courageous,  
13 she was the lady who actually left the bank and stood on the  
14 corner.

15 Now, she testified that she didn't actually see the  
16 defendant get in the car, but that was the only car that was  
17 moving in the seconds following the robbery. And because she  
18 was the first witness to actually leave the bank and have an  
19 opportunity to see it, she got a great look at that car,  
20 describing it as Mercedes emblem, four door, dark tinted  
21 windows, dent in the left front bumper area, chrome molding  
22 around the wheel wells, two antennas on the rear.

23 That's the description she gave the police officers  
24 that day of the robbery. And also that robbery, you remember  
25 Dennis Flandreau, he is the yacht guy who was standing outside



1 who had dropped his doctor friend to go inside the bank. And  
2 you recall that he remembered seeing the defendant all dressed  
3 in black.

4 In fact, Mr. Flandreau identified the coat as the coat  
5 that the bank robber -- or at least looking like the coat that  
6 the bank robber wore. And he remembered thinking to himself,  
7 gosh, if I was going to rob a bank, I should be dressed that  
8 way, all in black. Little did he know. Well, you'll recall he  
9 also had the opportunity to see the Mercedes leave that parking  
10 lot and go onto Commercial Boulevard.

11 And, Members of the Jury, there are other -- you know,  
12 all the witnesses are consistent in color, everybody describes  
13 it as a red burgundy. Jeraline Johnson at SouthTrust; Dian  
14 Ramsamroj at Union. Some of them thought maybe it was an Acura  
15 or something, but none of them had gotten very close up. A  
16 word on -- another interesting point actually on this Mercedes  
17 is, you recall that there was a Sun Pass on the car.

18 And so now we're kind of going back to the same  
19 SouthTrust robbery, and you heard Mr. Pettenato, and I'm sure  
20 I'm mispronouncing his name again, testify that the records of  
21 the defendant's Sun Pass were pulled, and on the same date as  
22 the SouthTrust robbery on January 23rd, 2001, you heard the  
23 testimony, not from Mr. Pettenato but from the tellers, that  
24 the robbery happened first thing in the morning.

25 In fact, you could even see from the surveillance

1 films that it happened at 9:05 in the morning. Well, the  
2 defendant's car with the Sun Pass is registered through the Sun  
3 Pass on the Turnpike hitting the Cypress Creek toll at 9:30 in  
4 the morning, heading in a southerly direction.

5 Then at 9:47 in the morning, the defendant's car and  
6 the defendant, with his Sun Pass, go through the Golden Glades  
7 toll at 9:47. And as we all know, the defendant lives in  
8 Miami, which is consistent with him going home.

9 Now, the defendant, you heard from the record, had  
10 that Sun Pass during some of the other robberies, and there was  
11 no record of him going through the Turnpike on those other  
12 robberies. But, you know, what does that prove, that just  
13 proves that he didn't take the Turnpike. Maybe this was the  
14 exception to the rule.

15 This is the only time he took it, for whatever  
16 reasons, because we don't know why, but records don't lie.  
17 Defendant's heading southbound right at the time of that  
18 robbery. There's overwhelming physical evidence in this case.  
19 There's also documentary evidence in this case. You all will  
20 have an opportunity to review Government's Exhibit Number 20,  
21 which is a compilation of all the receipts found at the  
22 defendant's house.

23 Many, although not all of these receipts, have the  
24 defendant's name right on there. Many of the receipts have --  
25 many of the receipts are for cash purchases, some are for

1 credit purchases. And, you know, you'll also have the  
2 opportunity to review the summary sheet of it.

3 Let me ask you, or ask yourselves a question. How  
4 many of you all here on the jury have made a single cash  
5 purchase of seventeen hundred dollars?

6 MR. HOWES: Objection, Judge, golden rule.

7 THE COURT: Sustained.

8 MS. MITRANI: It's very interesting that there are  
9 several multiple cash purchases made by the defendant. And the  
10 timing of these cash purchases, for example, there's a  
11 seventeen hundred dollar purchase on January 26th, 2000, just  
12 six days after the Kislak robbery. There is a sixteen hundred  
13 dollar purchase on November 1st, which is approximately twenty  
14 days after the First Southern robbery.

15 There's an eleven hundred dollar purchase on December  
16 18th, just a few days after the Bank United. Won't go through  
17 all that, you'll have the opportunity to review that. But all  
18 these cash purchases in proximity to the bank robberies. Now,  
19 let's take a moment to talk about money.

20 It's a very interesting or very unusual aspect of this  
21 case, in the sense that there was no money found on the  
22 defendant's person. There was no money found in his house.  
23 There's no money, in fact, in the First Union records that were  
24 subpoenaed. Very little money, a hundred dollars, in those  
25 First Union accounts. But surely he kept his money somewhere.

1 After all, we know that he owns three properties, and  
2 he's collecting rent on two of them. And what is he using to  
3 make the mortgage payments? I mean, maybe some of the rent  
4 money covers the mortgage payments, but certainly they don't  
5 cover all of the mortgage payment.

6 Where does he have his money? Hidden? Maybe he has  
7 it hidden somewhere in some secret account or in the ground.  
8 There is no way to know where it is. And it's cash. Remember,  
9 Members of the Jury, what was stolen from the bank, what was  
10 robbed from the bank is cash. It's impossible to trace cash  
11 purchases.

12 And we don't know what the defendant spent it all on.  
13 We know about the properties, but we don't know anything about  
14 his lifestyle, things he likes to do. But it's certainly easy  
15 to spend cash, and certainly very difficult, if not impossible,  
16 to try to trace it.

17 THE COURT: You have fifteen minutes left,  
18 Ms. Mitrani.

19 MS. MITRANI: Thank you, Your Honor.

20 And one other note on the money, you heard Kelly  
21 Morris testify that the defendant reported to her that his  
22 parents, his mother and father, would give him money. And the  
23 defendant has introduced some records of cash withdrawals, or  
24 withdrawals from the defendant's mother's bank account and the  
25 defendant's father's bank account.

1 Well, first, there's no evidence that the defendant's  
2 parents gave him that money. Ms. Morris testified that she  
3 asked for verification as to where that money came. Defendant  
4 never provided any verification that that money came from his  
5 parents. And likewise, some records of cash withdrawals being  
6 made, what does that prove?

7 Doesn't prove that they gave it to him, and you're not  
8 to speculate what the parents did with that money. So what do  
9 we have at the end of the day? At the end of the day, what we  
10 have, Members of the Jury, is proof beyond a reasonable doubt.  
11 Perhaps during any -- perhaps the robber was never physically  
12 unmasked during any of these robberies.

13 All the witnesses testified the robber never took off  
14 his mask. Nobody was able -- none of the tellers were able to  
15 identify him; although, they were able to catch glimpses of his  
16 skin color and decide whether it was a black male or a light  
17 skinned black male at various points. And they were able to get  
18 some idea of his height and his weight.

19 They never saw him, but he was unmasked. He was  
20 unmasked during the search of the house, which revealed what's  
21 really the fingerprint in this case, or the DNA in this case,  
22 this shirt, which is the defendant's shirt, which is the bank  
23 robber's shirt, to a six billion million probability.

24 The mask, the gun, the bags, catch receipts, the  
25 Mercedes, and all the documents found in the Mercedes. What

1 that is, Members of the Jury, is proof beyond a reasonable  
2 doubt. And we ask that when you go back there and deliberate,  
3 you vote guilty on each and every count of the indictment, all  
4 the bank robberies, all eight bank robberies, including the  
5 four bank robberies with the additional charge of using the  
6 gun.

7 Thank you.

8 THE COURT: Thank you, Ms. Mitrani.

9 Members of the Jury, that concludes the opening  
10 argument on behalf of the government. We're going to be in  
11 recess at this time for lunch. We're going to recess early, so  
12 we can come back early.

13 When we reconvene, you'll be able to hear from  
14 Mr. Howes on behalf of the defendant. So the jury will be  
15 excused until 12:45.

16 If you'll come back at a quarter to one, we'll proceed  
17 to hear the argument on behalf of the defendant. Thank you  
18 very much.

19 You may take the jury out.

20 **[Jury leaves the courtroom].**

21 THE COURT: At the close of all the evidence, the  
22 defendant renewed his Rule 29 motions for judgment of acquittal  
23 as to Counts 1 through 12 of this indictment.

24 At that time, the Court reserved ruling on the motions  
25 for judgment of acquittal.

1 The Court at this time will deny the motions for  
2 judgment of acquittal of the defendant, made pursuant to Rule  
3 29 of the Federal Rules of Criminal Procedure, which motion was  
4 made at the close of all the evidence in the case, as to Counts  
5 1 through 12 of the superseding indictment.

6 Mr. Stefin, you have forty-two minutes left.

7 MR. STEFIN: That will be Ms. Mitrani.

8 THE COURT: Pardon?

9 MR. STEFIN: Ms. Mitrani will do the rebuttal.

10 THE COURT: Oh, you're going to do the whole thing,  
11 okay. That's fine.

12 You have forty-two minutes left.

13 MS. MITRANI: Thank you, Your Honor.

14 THE COURT: Okay. We'll be in recess for one hour.

15 **[Luncheon recess].**

16 THE COURT: Ready, Mr. Howes?

17 MR. HOWES: No, sir. There's a couple of matters I  
18 need to -- I need to do this by way of proffer, Your Honor,  
19 because there are certain matters which my client wishes me to  
20 address, and in order that I not present arguments that are  
21 inappropriate, I would ask the Court for a pre-argument ruling  
22 with respect to certain matters.

23 THE COURT: All right.

24 MR. HOWES: My client asks, in essence, that I read --  
25 well, that I read the 23rd Psalm to the jury.

1 THE COURT: That will not be allowed.

2 MR. HOWES: Judge, is it your ruling that I am  
3 prohibited from reading the 23rd Psalm to the jury?

4 THE COURT: Well, you can refer to it, but I don't  
5 think you ought to stand -- I mean, obviously, you can refer to  
6 it in argument, but you shouldn't stand up there and preach us  
7 a sermon about the 23rd Psalm.

8 To the extent that it's a relevant argument, of course  
9 you can say whatever you want.

10 MR. HOWES: And my client also, Judge, asks that I be  
11 allowed to tell the jury that he has a strong belief in the God  
12 of Israel Yahweh, and that he ask that Yahweh find him not  
13 guilty.

14 THE COURT: Well, you may not do that. Of course not.  
15 I mean, what Mr. McCreith says to Yahweh, or Yahweh says to  
16 him, is a personal matter between the two of them, not of any  
17 concern to the jury.

18 MR. HOWES: I've tried to explain, Your Honor, that I  
19 am in charge of his temporal well-being here in this courtroom,  
20 and that whichever God he prays to, be it Yahweh or God, that  
21 that is between them on a spiritual level.

22 THE COURT: I think that's what I tried to say a  
23 minute ago.

24 MR. HOWES: And that is not acceptable with my client,  
25 so if I may just have another minute.

1 [Defendant conferring with counsel]

2 THE COURT: So to make it clear, you can certainly  
3 refer to the 23rd Psalm in your argument, but --

4 MR. HOWES: Yes, Judge. My client had a specific  
5 request that I be allowed to read it. And before I addressed  
6 that particular matter in the presence of the jury, I wanted to  
7 address it with the Court so that there is no question on the  
8 part of my client that I did not --

9 I have told him that I cannot quote Scripture verbatim  
10 to the jury, that that is not an acceptable argument to make.  
11 And I have told him that I could address certain of those  
12 issues.

13 There's one other issue that my client wishes me to  
14 address, which deals with his employment background. And I  
15 have told him I can deal with those matters as far as it is  
16 presented within the evidence.

17 THE COURT: That's correct.

18 MR. HOWES: And that I will do.

19 THE COURT: Okay. Very good.

20 MR. HOWES: Is there anything else, Mr. McCreith,  
21 before I can begin my argument?

22 THE DEFENDANT: No.

23 MR. HOWES: Your Honor, on that note, then I'm ready  
24 to proceed.

25 THE COURT: All right. Would you bring in the jury,

1 please, Madam Clerk.

2 [Jury enters the courtroom].

3 THE COURT: Be seated, please.

4 Members of the Jury, you've heard the opening argument  
5 on behalf of -- the opening of the closing arguments on behalf  
6 of the United States. We'll now hear from Mr. Howes, who will  
7 argue to you on behalf of the defendant.

8 MR. HOWES: May it please the Court, Your Honor.  
9 Counsel. Good afternoon, ladies and gentlemen.

10 It was my honor and privilege to be asked to represent  
11 Mr. McCreith, and it is my honor and privilege to be able to  
12 stand before you today to present an argument on his behalf  
13 with respect to what we feel the evidence shows, and what we  
14 feel the evidence does not show.

15 And I would suggest to you that when I complete my  
16 argument, or I would ask that when I complete my argument and  
17 the government presents its rebuttal to my arguments, that you  
18 think about what I'm saying to you now, because I don't have a  
19 chance to answer them, and think to yourselves about what I  
20 might say in response to those arguments.

21 Generally speaking in a case like this, I begin  
22 talking about the burden of proof and the presumption of  
23 innocence, and I go through with the jury so that it is one of  
24 the last things that I have you hear, that I have control over,  
25 the reminder to you of your obligation as jurors in this case.

1 Many times people ask me how do I feel about a  
2 situation, how do I feel about representing a particular  
3 client, how can I represent certain people in certain  
4 circumstances. And I have no problem answering those questions  
5 with them. And I have no problem, if we were in a discussion,  
6 answering those questions with you.

7 But I try to tell people that it's really not  
8 important what my feelings are, and it's really not important  
9 how I feel about something, because I am not the judge, and I  
10 am certainly not the jury. You are the judges of the facts in  
11 this case. And so, therefore, I am always concerned with how  
12 you perceive things and how you begin this entire process.

13 We all have prejudices, one of our past presidents  
14 named Bush didn't like broccoli. I like broccoli. I feel that  
15 former president Bush is prejudiced against broccoli. That's  
16 okay. Nobody's asking you to eat broccoli. But it is  
17 important for to you remember that when you come into this  
18 courtroom in most instances you're going to feel in your mind,  
19 to some degree deep inside, you know, there's some reason why  
20 we're here.

21 Something had to have happened for us to be here. And  
22 the government has to have something, or that man wouldn't be  
23 sitting over there. And you know what, when you think that,  
24 and you think about your oath, if you allow that to go with you  
25 after you have sworn that oath, you are violating what you have

1 sworn to do.

2 Because you must be put those preconceived beliefs,  
3 those feelings, those ideas, the favoritism some of you have  
4 for the University of Miami or the University of Florida,  
5 whatever it is, out of your mind when you decide this case.  
6 And I usually spend a lot of time talking about the fact that  
7 my client is presumed to be innocent, and that that means that  
8 you as jurors must believe him to be innocent.

9 That right now, at the beginning of the trial, and  
10 until the trial is over, that presumption stays with the  
11 defendant not until you believe that he's guilty, not until,  
12 well, you know he's guilty, not until you think he's guilty, or  
13 that he's probably guilty. Not until he is guilty, until they  
14 prove to you that he is guilty. Now, that is a different  
15 standard.

16 And what Ms. Mitrani did with you today was very  
17 subtly and very effectively try to reduce the burden that she  
18 has with respect to this case. Because -- well, there were a  
19 series of ways in which it occurred. I have placed before you  
20 the scare tactics that were presented in the government's  
21 closing.

22 The scary intimidation, the yelling and screaming,  
23 those are facts of the case. Those are the facts, that's one  
24 of the elements. But when it is presented in a manner which  
25 plays to your emotions, it takes away from your detached



1 unbiased, unprejudiced, objective view of the facts which you  
2 as jurors must have in determining this case.

3 And that's something you need to watch out for. She  
4 talked to you about direct and circumstantial evidence and says  
5 there's no difference between how the two should be treated.  
6 And I agree that that's what the law is. There's a difference  
7 I suggest to you in how it must be considered.

8 The difference is, if it is a chain of circumstances,  
9 that chain is no stronger than its weakest link. And when that  
10 weakest link breaks, the entire chain is broken. Think about  
11 the proverbial bus in the movie dangling by the wire over the  
12 side of the cliff. And as the action movie goes on and on, a  
13 little bit more breaks and a little bit more breaks.

14 When that chain finally breaks and that bus drops on  
15 down the cliff, and Steve Segal or whoever it is takes the lady  
16 lead up the rope and gets back to safety, that chain is broken,  
17 the government's case is broken, and the government's case is  
18 over at that point. Because they have put this case to you  
19 squarely in an all or nothing position.

20 They have said to you clearly and unambiguously in  
21 their arguments and in their presentation that there's one and  
22 only one person that is responsible for this case. So I  
23 suggest to you that when you begin to consider the  
24 circumstances, things like left-handed robbers, right-handed  
25 robbers, jewelry on left hand, jewelry on right hand, that

1 you're going to see that their circumstances don't match up.

2 And what they want you to do is take on blind faith  
3 that what they presented to you is, in fact, what they need to  
4 do. Not to prove something to you, but to convince you of  
5 something. And you see, I suggest that there's a difference  
6 between proof. Those things which you would unhesitatingly  
7 rely on in the most serious of your daily affairs, in the most  
8 serious matters of your life.

9 Would you buy a house without getting it tested to  
10 make sure the roof didn't leak? No. Would you get married,  
11 have children, get divorced, would you have surgery without a  
12 second opinion? When you get to those kinds of decisions, you  
13 see, you can't just rely upon an argument and, well, you know,  
14 it's got to be, to get you to the level of proof that you have  
15 to have.

16 For example, the government concentrates on one of  
17 three properties that the defendant owned, to the exclusion of  
18 the other two and the house where his registered residence was.  
19 They do that because they want to direct your attention only to  
20 that particular house, because that's where they got some items  
21 that they suggest to you prove the defendant's guilt.

22 Well, let's turn that sheet over and look at the other  
23 side of things. It isn't quite that simple, because you see I  
24 think the words were bank robbers used to have lots of bullets.  
25 I challenge each of you individually and collectively to

1 remember a single instance when a single shot was fired in this  
2 case.

3 I challenge the government to present to you any  
4 proof, and their time for doing that is done, that either of  
5 these weapons were used in any way. They've got a man that can  
6 try to find the Himalayas on Venus, and they don't even ask  
7 him, they don't even ask him to try to see if he can find  
8 whether or not one of these could have been a gun used in these  
9 robberies.

10 I sometimes don't want to ask my girlfriend if she  
11 still loves me when she's mad at me, because I'm afraid of the  
12 answer I'll get. That's exactly what was the situation here.  
13 They want you to accept on blind faith what they will not  
14 present to a place where they have, to a resource where this  
15 gentleman works, and he is a gentleman, where this gentleman  
16 works, where he has every authority to have things done.

17 They won't present the evidence that they're asking  
18 you -- they're arguing to you to believe is used or could have  
19 been used in the robberies. They won't present it for  
20 comparison. They don't want to know. I don't want to know.  
21 It's like the opposite of the three mice, hear not evil, see no  
22 evil, speak no evil, they don't want to know. Don't tell me, I  
23 don't want to know, I just really don't want to know.

24 I embrace this shirt. Sometimes we as counsel are  
25 accused of avoiding certain things that are evidence in a case

1 because they cause us problems. Ladies and gentlemen of the  
2 jury, I want to read to you the verdict form in this case. The  
3 United States District the Southern District of Florida, Case  
4 Number 01-6095-CR-Gonzalez, United States of America versus  
5 Wilbert McCreith, defendant.

6 Verdict. And then it proceeds. If you get a  
7 different verdict form than this, if you get a verdict form  
8 back there that says United States of America versus One Van  
9 Huesen shirt, extra large, known as Government's Exhibit Number  
10 11, and you want to check guilty on that verdict form, check it  
11 to your heart's content. This shirt is not on trial.

12 That man, this human being right here, Wilbert  
13 McCreith, is on trial. Not a shirt. Not in a hundred and  
14 fifty photographs, not in surveillances when they're looking  
15 for him. Not at any time that they can have a person other  
16 than Kelly Morris, and I'll get to Kelly Morris in a minute.

17 No one who speaks to you with credibility can say to  
18 you that Wilbert McCreith was the man in that shirt at the time  
19 of any of the seven robberies that Mr. Vorder Bruegge says was  
20 being worn for the robberies. No one, to paraphrase a nursery  
21 rhyme, all the king's horses and all the king's men can't put  
22 that shirt on Wilbert McCreith's back. They can't do it. They  
23 cannot do it.

24 Not only can they not do it, they did not do it. They  
25 didn't even try to do it. That leaves us only with Kelly

1 Morris. What does Kelly Morris say? What does she say to  
2 Agent Lewis in March of last year, not a year or so later when  
3 Wilbert's lost some weight maybe and his skin's a little  
4 lighter than it was before; what does she say to him then? It  
5 looks like it could be.

6 When does she say it for the first time? To you fine  
7 folks. Now, I used to have a lot of trouble with something  
8 called the stockholm syndrome, and it's really the opposite of  
9 that that applies here. The stockholm syndrome, as I  
10 understand it, is that sometimes when captives are held long  
11 enough, they developed a bond or a tie with their captors  
12 because they want to have that connection and that bond.

13 They need something, they're in a bad spot, so  
14 sometimes they bond with their captors. Patty Hearst is an  
15 example of that. I guess the opposite of that is the, I want  
16 to be part of the team, syndrome. And I suggest to you that  
17 that, I want to be part of the team syndrome, has permeated  
18 this trial.

19 And again, I want to make it clear, I do not cast  
20 aspersions to Mr. Stefin, to Ms. Mitrani, who are both fine  
21 prosecutors, to Mr. Lewis who is an excellent agent who has  
22 worked this case. I'm talking about a more fundamental thing  
23 that I'm asking you to use your common sense on.

24 If it's a rose, and you're looking for a rose and you  
25 want to see a rose, and you keep looking long enough, you're

1 going to find a rose in here. If you keep getting shown the  
2 same photos time and again, if you keep talking about the same  
3 photos time and again, if you get together and you meet about  
4 the same thing time and again, it necessarily becomes locked in  
5 your mind because there's a reaffirmation of the correctness of  
6 what it is.

7 And it is that reaffirmation of the correctness of  
8 what it is that I suggest to you has occurred in this case.  
9 Let me give you the example of the best of -- of one of the  
10 best of the witnesses in this particular instance. Was a young  
11 man who Ms. Mitrani didn't mention in her remarks. I don't  
12 know, I would call him Jerry Kroese (phonetic), but the younger  
13 black gentleman that had the short kind of curly hair that  
14 testified, who was the only one from the one bank.

15 He testified that it was a black male. But he gave a  
16 description of him being Arabian. Remember I asked him a  
17 couple of times, he said Arabian, Arabian, Arabian. Well, he  
18 says Arabian, Arabian, Arabian, he's sitting here in court, he  
19 sees a black man sitting over there, and he wants to get it  
20 done, he wants to get it over, so Arabian is now equal in his  
21 mind to black.

22 Because it is the easy way to get it done, it is the  
23 easy way to get it out of the way. And I must address  
24 Mr. Farias, because I respectfully disagree with some of the  
25 comments that Ms. Mitrani made with respect to Mr. Farias, the

1 one she called twice the genius who dialed 911. For those of  
2 you who watch sporting events, sometimes you'll hear the  
3 announcer say, ooh, he really flubbed that play, he didn't  
4 catch that pass, let's see if he'll make up for it later in the  
5 game.

6 Mr. Farias is the genius, to use Ms. Mitrani's term,  
7 who made the 911 call on the phone, on the speaker phone. She  
8 attributed to Mr. Farias the statement that he saw the  
9 defendant get in the car, and I suggest to you that she's  
10 mistaken. You have to rely on your own memory, but if you  
11 recall Mr. Farias was the one who became a little troubled by  
12 my examination of him, who admitted that it could well have  
13 been that the robber jumped the wall behind the bank and went  
14 over the fence, and that he saw the bag smoking behind the car  
15 that was leaving.

16 And so you're going to have to determine whether or  
17 not he said, as Ms. Mitrani said, that he saw the robber get  
18 into the car or not. But I think that you'll all recall that I  
19 got him to admit he didn't see the robber get in the car, he  
20 saw the car leave. He said he told two people. Now, think  
21 about this.

22 This is in a series of robberies that the government  
23 agent theorizes is being committed by a person. And they're  
24 getting descriptions of vehicles, and they're different, but  
25 they're all burgundy. Think about it. Are trained detectives

1 from the Fort Lauderdale Police Department, trained road patrol  
2 officers --

3 You saw people today who came in and could describe  
4 which side of the house the kitchen's on two years later. I  
5 mean, this officer from Dade County comes in and can do that.  
6 Do you think these people are going to forget something, what  
7 he called the Jesus fish, but let's just call it the fish  
8 symbol to make it simple.

9 Do you think that if he would have said that to those  
10 people, do you think if he would have said it to a trained FBI  
11 agent in a robbery squad who he talked to that day, do you  
12 really believe that they would be all, all, be so incompetent  
13 that they would leave it out?

14 Or do you believe that he dropped that pass he should  
15 have had for a touchdown, and now in the, I want to show you  
16 I'm on the team, sees this. Mr. Farias made one other comment  
17 which I found intriguing. The lady from Uruguay, Andrea  
18 Fernandez I believe was her name, she had on a yellow top and  
19 brown pants, described the robber as bigger than her.

20 Said she was scared to death. Mr. Farias says she's  
21 the one helping everybody else out in the robbery. It's  
22 interesting that he says he told everybody else he's joking  
23 about somebody with a Jesus fish on the back robbing the bank,  
24 that nobody, nobody else from that bank, was called by the  
25 government, after his credibility was called into question, to

1 say to you, as crazy as it was, as nutsie as things were going  
2 on, this man, as irreverent as it was at the time, is making  
3 fun of this car.

4 Don't you think that somebody would have heard it if  
5 it was said? Of course, you know, we're all really jumping the  
6 gun there anyway, excuse the pun, because nobody ever really  
7 says that the robber got into the car. So they're making the  
8 assumption and they're wanting you to accept that assumption as  
9 what is a fact in order to establish what they believe to be  
10 the situation because it furthers their theory.

11 Now, let me give you another example. Ms. Mitrani  
12 talked to you about the Sun Pass. I love the little device,  
13 it's a great little thing. It's made to be mobile, so that  
14 more than one person can use it. It's made in such a way that  
15 husbands and wives, friends and neighbors, in-laws and out-laws  
16 can use it. What's the Government's theory on this one? Now,  
17 stick with me here.

18 The robbery occurs here. He goes to Oakland Park  
19 Boulevard or somewhere on Oakland. He goes past the interstate  
20 somehow. He's got to go north to Atlantic, which is in  
21 Pompano. This says Coconut Creek, but really this is probably  
22 Atlantic right here. He's got to go past, he's got to go past  
23 the interstate, past US1, go north to go west to go south to  
24 fit their pattern.

25 And you know what, as lovely as this is, their expert

1 witness can't even say, doesn't even know that there is another  
2 toll booth before the exit that you get off to go to his house.  
3 Of course nobody's bothered to tell you that the times match  
4 up. Nobody's gone in a car and driven from that robbery scene  
5 at or about that time of day, that time of year when the  
6 traffic pattern's the same in the last two years, and driven it  
7 to see if it works.

8 Nobody's told you how long it takes to get on the  
9 Turnpike from here to there. That might be common sense, and  
10 it might be logical for you to say, yeah, we can probably get  
11 from Coconut Creek to Golden Glades in that kind of time, and  
12 that's a common sense kind of think. But, you know, the only  
13 way you get to that common sense is to throw all of yours out  
14 the window.

15 Because you've got to have bought into this theory  
16 that somehow the robber, whoever it was in that case, passes  
17 two major roads going south, somehow goes north, skips an  
18 entrance to the interstate where he can get on, goes further --  
19 or the Turnpike, goes further up and gets on where he's not  
20 going to get hit going south, so that he gets hit in Cypress  
21 Creek so he can go down there.

22 But yet, when he's within almost sight at University  
23 and Broward in the Kislak Bank robbery, where he can jump on  
24 595 and get on 75 and go the same way when he's right there,  
25 when he's on that side of town, doesn't happen. What does that

1 tell you? It tells you this doesn't help them at all.

2 I'm also troubled by the fact that we can't find it on  
3 an inventory anywhere, and we can't put exactly where it is.  
4 And that kind of brings me to Agent Sager and the tale of the  
5 two watches. I don't know and you don't know, and we will  
6 never know, how it is that these two watches got put in one  
7 bag. Agent Sager, according to the inventory from Agent Lewis,  
8 gave him one watch.

9 The government's introduced three. We know from Agent  
10 Lewis' report that he fills out that one watch was taken from  
11 the defendant. I guess they want you to think that these are  
12 the two dark bands that are in some of these pictures. Don't  
13 ask. Don't. Don't. Whatever you do, don't ask Mr. Vorder  
14 Bruegge to do anything with this.

15 Do not ask him, because God forbid he doesn't give you  
16 the answer that you want to hear. He has the skill, he has the  
17 training, he has the technology, he has the expertise. But  
18 don't ask. Don't ask. Because you just might not like the  
19 answer. Now, that same Agent Sager's the one, you recognize  
20 this writing as being yours on that bag? No.

21 Recognize the blue writing on this one as being your  
22 writing? No. Wait a minute, wait, wait, wait, sorry, I do,  
23 now I recognize it. These are so now crossed up nobody knows  
24 which is which and which came from where, when the trial  
25 started, let alone what happened originally, because it wasn't

1 done properly, because it was all mixed together.

2 And here again, if you want to put this shirt on  
3 Wilbert McCreith's back, do what Agent Sager's only heard about  
4 on TV, test it for DNA. It's certainly beyond my  
5 understanding, other than in the simplest of terms, but the  
6 simple fact of the matter is, is that there's sample parts of  
7 our bodies they can get samples from on this to test to compare  
8 to see if it was worn by Mr. McCreith.

9 Of course, even if they did that, they've got another  
10 little problem, they've got to prove it that day. And that  
11 gets us back to the little thing, remember what Kelly Morris  
12 says, oh, Wilbert always wore a plaid shirt. What did the  
13 agent say? The agent said that's not what she said when I  
14 talked to her on the 19th, T-shirts and black pants.

15 She wants to help. Is she wanting to cover, is she  
16 wanting to make up for not getting the confirmation that she  
17 needs? Is she wanting to help do something? Think about it,  
18 here's a government employee whose sitting with an FBI agent  
19 who says, I'm investigating Wilbert McCreith for bank robberies  
20 and I want you to look at some pictures. Looks like him.

21 She's looking at this photo, but what does she tell  
22 him? Wears T-shirts, black pants. Now, Ms. Mitrani made  
23 comment about the fact that some of the witnesses testified  
24 about T-shirts underneath. You're going to have to really,  
25 really, really challenge your recollection to see if you recall



1 that, or if that could have been some of the other witnesses  
2 that were at these bank robberies that the government didn't  
3 call.

4 But you're not I don't think going to have to remember  
5 very back to yesterday or the day before when I asked Agent  
6 Lewis about what Ms. Morris said on the 19th of March of last  
7 year when she doesn't mention the thing that the government's  
8 entire case is hinged on, this shirt. Now, this is not a  
9 matter of semantics. This is a matter of words, of plainly  
10 what was said. What did she say?

11 She did not say Wilbert always wears plaid shirts.  
12 T-shirts and black pants, that's what she said. Why does it  
13 change now? Do we even care what her motive is? The fact is,  
14 is that her testimony has changed. It's changed to the benefit  
15 of the government, and to the detriment of the defendant, but  
16 it's changed.

17 It's changed from when it was fresh in her mind, from  
18 when we can remember what type of stripe shirt the last juror  
19 on the -- Number 12 had on yesterday with the fine print in it  
20 and the multiple stripes, and some of you might be able to  
21 remember what somebody else had on.

22 It's changed from yesterday, that was March 19th,  
23 2001, to December 16th, 2002, after she's shown these pictures  
24 here in the courtroom, after she's met with the government  
25 before, and after she's had the chance to review the

1 photographs again. You hear the agent say he met with her two  
2 or three times to discuss these matters.

3 So that is, that is their only, only witness that says  
4 that he's the one in that photo. Now, when you consider that,  
5 I doubt that you have a doubt, or that there is a doubt about  
6 the fact that you have a reasonable doubt. In other words, no  
7 way can you accept the words of Kelly Morris about that one  
8 incident.

9 And you know what's so funny about it? If she's  
10 wanting to describe him, and they're whole thing is, well, this  
11 is a picture, why don't they show her the videos? They're in  
12 evidence. They've got them, they're right here. Let her look  
13 at the videos. If the whole think is, is they were talking  
14 about movement and recognition, as the government calls it,  
15 recognition versus identifications, let's look at the  
16 recognition for Kelly Morris.

17 Give her the chance to do it. For goodness sakes,  
18 show her this picture. Show her this picture. Show them all  
19 to her. They don't do it. Now, I've given you my rebuttal to  
20 their closing, so you have some idea of what I would say to  
21 what is about to come that I'm not going to have the chance to  
22 respond to.

23 And now I'd like to address you for a few moments in a  
24 more direct manner about what I suggest to you the evidence  
25 fails to show in this case with respect to the guilt of -- the

1 proof of the guilt of the defendant Wilbert McCreith. Jackie  
2 Silvers is on several times shown photographs of a car. She  
3 never picks out the car.

4 She says the windows are clear windows. The windows  
5 on McCreith's car are clearly tinted, are deeply tinted. She  
6 says the man's wearing a blue sweater and has dark wavy hair,  
7 and the robbery occurs at 3 o'clock. Now, if that's the  
8 beginning of the chain, let's get to the next link. Our next  
9 link is Ms. Robin Yablonsky, saw the rear of what looks like a  
10 Mercedes, no two antennas, no fish.

11 And Agent Lewis tried to say, well, that's assuming  
12 that the fish was on there from beforehand. Well, let me  
13 suggest to you, ladies and gentlemen, that if the United States  
14 of America can go to the trouble, time, and effort to have  
15 someone spend two hundred hours preparing all these wonderful  
16 charts and diagrams and comparisons that they have, they can  
17 spend twenty minutes calling the former owner of that car to  
18 find out whether or not that fish symbol was on the back of it;  
19 couldn't they?

20 Wouldn't take them long, they've got the certified  
21 records, they've got the documents here. Don't tell me, I  
22 might not want to know. Robin Yablonsky described the robber  
23 in that case as being in his late twenties and slender.  
24 Slender. Now, I know the government's going to say, well,  
25 Mr. McCreith was putting on weight during this time, and so he

1 might have been slender there.

2 And he put on forty years in the process, too, you  
3 know, in eighteen months. Some of us have lived hard in  
4 eighteen months, but it's kind of hard to put on twenty  
5 calendar years in eighteen months. But that one, you see, is  
6 the one that doesn't fit the pattern anyway. So if that's the  
7 beginning of the chain, the second link breaks it.

8 Because, ma'am, Maria Morales described the black male  
9 as having -- you were the closest one in skin tone. Sylvia  
10 Calvet says she saw somebody pull the mask down over his face,  
11 and the eyes on the mask were crooked. This is not the lady,  
12 we'll get to the lady later who says that it looked like that's  
13 the way the mask was.

14 And if you remember the last lady that testified at  
15 the last bank robbery, Ms. Ramsarooj, try as they may, try as  
16 they might, they did their best to get her to talk about he  
17 lifted that mask enough so that she could see something  
18 underneath there. She wanted to get out of here, she never  
19 really gave them what they wanted, right?

20 Here's the problem with that. You see, the problem  
21 with that is, is that they're trying as hard as they can there,  
22 and they want to ignore Mercedes Miller, I forgot what now her  
23 last name is, because she says the bank robber in that case has  
24 on two eyeholes in a mask. Well, you've seen me poking those  
25 masks around here long enough. I'd put it on, but it would

1 mess up my glasses.

2 You find the mouth piece in these masks. I dare you.  
3 I dare you. But you know what, you know what's so interesting  
4 about that is, if that lady upon whom they hinge their entire  
5 identification of the defendant's car, her recollection is so  
6 good, and if that was the person, if that would have been the  
7 person that would have done it, she'd have had about twenty  
8 opportunities to see something shiny in his mouth.

9 And what do we have? No testimony on it from this  
10 witness stand. What do we have? Another break in that chain  
11 of circumstances. First Southern Bank's the third robbery.  
12 Birsen Kummanay thinks it's an older Toyota, a long black gun.  
13 Remember what I told you at the beginning, what I had up there  
14 for you, what I was calling scare tactics? Long black gun.  
15 It's certainly not these two.

16 That's why I wanted you to begin with remembering what  
17 you've got to put aside, which is sympathy, which is emotion.  
18 Now, they might be wanting to argue to you that it's this gun  
19 with the red dye on it. The problem is, the top of it's steel.  
20 Another break in the chain of circumstances. Another of their  
21 weakest links. I've already talked to you about the --

22 Do you need some water ma'am?

23 Okay. I've already talked to you about Andrea  
24 Fernandez, Bank of America, and Mr. Farias, so I'll leave that  
25 to your prior recollections. But I think most significant with

1 respect to Mr. Farias is, is that when he had to read that  
2 report that he wrote, thank goodness the guns were over there  
3 and he didn't have one with him when I had made him read that  
4 report where it doesn't mention anything about what he says he  
5 saw on the back of that car.

6 Courtney Fields was the man's name at Bank United who  
7 kept saying he didn't recall any holes in the mask, but he kept  
8 saying the man was Arabian, Arabian, Arabian, and then comes in  
9 here and says a black male. That was who I was referring to  
10 earlier is Courtney Fields.

11 Judith Aiken at Surftrust talks about prints being  
12 lifted, and talks about the man being taller. And you've seen  
13 Mr. McCreith as he stood up each time respectfully as you've  
14 come in, and you can decide on your own whether or not he's  
15 taller. You've got the pictures here of him at or about -- on  
16 the day of the arrest, so you can see whether or not he's  
17 considered a pale black man.

18 There's prints lifted, but no match, and there's no  
19 gun. You know, the interesting thing about that is, is that  
20 they've got guns, and they have the Bureau of Alcohol, Tobacco  
21 and Firearms and the FBI that can trace guns. But they don't  
22 trace any of these guns in any manner, shape, or form to  
23 Wilbert McCreith.

24 Ms. Miller says that there was a mask with two eye  
25 holes and mouth area, as I previously said. And she said there

1 was a radio antenna on the back besides the regular antenna.  
2 And she said, and Ms. Mitrani got her to qualify a little bit,  
3 but her statement at that time was that the robber had close  
4 cropped hair. Doesn't recall any accent.

5 It's important, because some witnesses are talking  
6 about the person being Hispanic or Arabic. And Ms. Miller  
7 can't say where the other antenna was, on the front or the  
8 back, when she's talking about this. At one time she says she  
9 can't say if it's the ones on the front or the back, but at  
10 other times she says it's a radio antenna on the back besides  
11 the regular antenna.

12 The most interesting part of Mercedes Miller's  
13 testimony is how she never mentions Dennis Flandreau at all.  
14 And Dennis Flandreau is the man who says that this, what their  
15 expert has described as a regular run of the mill plain old  
16 black ski jacket, type jacket, was so unique to him because it  
17 had elastic around here.

18 I guess Mr. Flandreau spends a lot more time on his  
19 boats than a lot of the rest of us, because I think that you  
20 would not find that elastic on the end of a winter coat would  
21 be that unique a factor. But he says, she says, things that  
22 she doesn't say occurred. He says, she says, there he is  
23 getting into the car.

24 She says, I didn't see him get into the car. I  
25 figured because I'd been there for twenty odd years that this

1 is the way he would go, that a robber would go, and so that's  
2 the way I went to look. And what do I see? The first car I  
3 see going out of the parking lot, it kind of stopped and then  
4 it went on and got away, and I saw this car going westbound.

5 Again, giving them even the benefit of the doubt that  
6 Ms. Miller is describing a car, they still can't say that  
7 that's the man in the mask, in the shirt, in the bank, robbing  
8 the bank. They have no one to do it. And again, and I know  
9 you're getting sick of it, they don't do what they need to do  
10 to prove it to you. It's a simple thing. Fill out a form,  
11 send the request up, get it done.

12 They want you to go on the blind faith of it's found  
13 somewhere. Now, that's an interesting concept, because you  
14 know what else is found there? Three bicycles. Agent Lewis,  
15 did you ever see Wilbert McCreith on three bicycles? No. Did  
16 you ever see him on one bicycle? No. Do you have a witness  
17 here --

18 They want to talk about this being Wilbert McCreith's  
19 house. Wilbert McCreith's house. Wilbert McCreith had three  
20 houses. They want to talk about it being Wilbert McCreith's  
21 house, but they don't put a witness on the stand to put him  
22 there at night and put him there the next morning. Put him  
23 there at night, and put him there the next morning, follow him  
24 around, and do anything.

25 They don't do it. I asked him, were you doing it?

1 No. Were other people? Yeah. They don't bring them in here.  
 2 They don't give you what you need to believe what you as  
 3 law-abiding citizens might want to believe, that the government  
 4 is right. And you know what, that's why you're here. That's  
 5 why you took that solemn oath that you took.

6 Because you are for all of our protection, and I  
 7 will not let you forget it, because I think it is that  
 8 important for to you remember that.

9 Now, I want to change pace a little bit and deal with  
 10 the man who I have coined the name of the Donald Trump of  
 11 Liberty City, Ron Amira. Mr. Amira is an interesting figure.  
 12 He comes in here, doesn't want to cooperate, gets a promise  
 13 from the government and says, yeah, I know this guy Mr. Vidal,  
 14 the one we all joked about that doesn't pay the taxes.

15 Yeah, I did some business with him. Mr. Vidal's come  
 16 in and said, I don't know that man over there. Mr. Amira wants  
 17 you to believe that somehow, some way, from five years before,  
 18 he's still got one of his brother's old business cards, and on  
 19 the back of the business card he wrote a note to Wilbert.

20 That's his best explanation for telling you how on  
 21 some piece of paper that is submitted for a bank loan where he  
 22 can make fifty percent on his money on a short term basis, that  
 23 Wilbert McKreith has supposedly filled out this paperwork. The  
 24 government wants you to believe -- and the government wants you  
 25 to believe something, and I'll tell you what that is in a

1 minute, but I'm going to tell you what the Judge says first.

2 The Judge says, Ladies and Gentlemen of the Jury,  
 3 Wilbert McKreith is not on trial for bank fraud, he's on trial  
 4 for bank robbery, and for having a gun in his possession during  
 5 the course of a bank robbery. He is not on trial for filing  
 6 fraudulent bank loan applications. And he's only on trial for  
 7 what he's been indicted for, not for something else.

8 But I suggest to you that what the government's  
 9 wanting you to say is, is that Wilbert McKreith's the one that  
 10 fills out this paperwork, because otherwise they can't get Ron  
 11 Amira to go up here and testify.

12 But I suggest to you that the only logical explanation  
 13 for how all of Ron Amira's brother's ex-companies get on these  
 14 records, and how who worked for Ron Amira's name gets on these  
 15 records, is the same way that when you check with the records  
 16 that you see that the closings are all happening at the same  
 17 place, it's Ron Amira's work.

18 Because Wilbert isn't the one with the wherewithal to  
 19 do it. Think about it. If the government is to be believed,  
 20 their theory is to be believed, he robbed seven banks and is  
 21 dumb enough to keep the shirt around and the masks around in  
 22 his house. But yet, on the other hand, he's smart enough to  
 23 engage in this manipulative bank fraud scheme where he somehow  
 24 is writing I have eleven thousand dollars in the bank, and  
 25 producing records of it.

1 Well, let me tell you how simply that one falls.  
 2 Agent Lewis, do you recall seeing a computer in Mr. McKreith's  
 3 house; do you recall seeing a typewriter in Mr. McKreith's  
 4 house? No. Look at the documents. Who has the office? Ron  
 5 Amira. Whose the person who has the most to gain? Ron Amira.  
 6 And while we're on money, let me go to a couple of  
 7 exhibits that have been introduced here, if I can find my notes  
 8 on Ron Amira and money. I asked everybody I could ask, I  
 9 thought might know, whether or not Mr. McKreith had paid any of  
 10 his mortgage payments on the third property, and they said they  
 11 didn't know.

12 I thought that was pretty interesting, because one of  
 13 the things you're going to get is a copy in there of the  
 14 paperwork that I introduced, one of the defense exhibits, where  
 15 it's saying, Wilbert, Wilbert, pay your bills, you owe us  
 16 money. We went through, the agent and I, and I was two hundred  
 17 and fifty dollars off, but we figured up eleven thousand one  
 18 hundred and eighty-five dollars in money that he got from the  
 19 tenants.

20 Now, this is during this time period when they're  
 21 trying to say that, you know, he robs a bank in the morning and  
 22 he gets his brakes fixed in the afternoon. He's got a positive  
 23 cash flow from Ron Amira of sixteen thousand one hundred and  
 24 fifty dollars. He loses a thousand on the first one, he gets  
 25 five thousand back, that's four thousand ahead.

1 You're going to get the check for seven thousand one  
 2 hundred and fifty dollars, that puts him eleven thousand one  
 3 hundred and fifty dollars ahead. He gets another five thousand  
 4 on the third one, the one he never makes any payments on, that  
 5 puts him sixteen thousand one hundred and fifty dollars ahead.

6 So you got sixteen thousand one hundred and fifty, and  
 7 eleven thousand one hundred and eighty-five right there, that's  
 8 twenty-seven thousand and change okay. Then you're going to  
 9 have the records from his mother and his father. And remember,  
 10 when they say like -- you know, let me just say it's  
 11 undisputed, it's uncontested, there is no evidence to dispute.

12 They say, well, Kelly Morris asked him for  
 13 documentation and he never gave it to her. Well, the fact that  
 14 Kelly Morris didn't do her job isn't to be placed on the  
 15 shoulders of Wilbert McKreith. You're going to find out where  
 16 his father withdrew five thousand dollars, he told Kelly Morris  
 17 about that.

18 You're going to find out where his mother withdrew on  
 19 March 15th one thousand; on August 3rd, one thousand; on  
 20 November 19th, one thousand; on December 6th, three thousand --  
 21 I'm sorry, November 19th, two thousand; on December 6th, three  
 22 thousand; on December 24th, five hundred; on December 27th, two  
 23 thousand; on December 31st, two thousand; on June 24th, one  
 24 hundred seven hundred and sixty dollars.

25 Minus my two hundred and something that I'm off, the



1 records that you have before you show that Wilbert McCreith had  
2 forty-five thousand five hundred eighty-five dollars of money  
3 coming in, besides what he got from the work that Kelly Morris  
4 confirmed that he was doing. Forty-five thousand dollars.

5 And some of you might not understand, but what's the  
6 first thing a single man gets? A bike screen TV. I mean, you  
7 know, they're making a big deal out of that. Look at the  
8 bills. He's got a BrandsMart bill, it's max'd out. He's got  
9 credit cards that are max'd. I mean, he's living beyond his  
10 means, but you're not seeing the big cash payment.

11 They wanted you to use this Exhibit Number 20, and  
12 they said look at all these cash disbursements in there. Look  
13 at all the stickers on there. Look at all the ones that don't  
14 show they're from Wilbert. Have they ever said he doesn't have  
15 friends? No. I asked the agent, and he forgot.

16 He said there was another McTaggart (phonetic),  
17 Christen McTaggart, and somebody else there when the Coral  
18 Gables Police came around the first time when they were looking  
19 at the houses. He's got friends. Not the only person in the  
20 world that ever goes anyplace. He's got friends. People come  
21 over to his house.

22 They brought in witnesses to talk about burglaries.  
23 They had the agent the other day making a big deal out of the  
24 fact that he had a video camera outside. Well, now we see once  
25 again why Agent Sager might -- well, might have missed a few

1 things during the course of his picking up evidence in this  
2 case. And why do I say that?

3 Because today we know, because the government put the  
4 witnesses on, they put them on in reverse order. The second  
5 witness was the first burglary. And what happens after the  
6 first burglary? It's a house he owns, a house he's trying to  
7 fix up. What does Ron Amira say? I'm selling these --

8 I'm letting him have these houses, man, I put an air  
9 conditioner in there, and if nobody's living there, the next  
10 day it's stolen. They're taking windows out of the walls. So  
11 they make it something horrible that he's got a camera out  
12 front so he can see people -- see if somebody's broken in.  
13 Well, why? Because the lady officer who was here today says  
14 they went in and came out the front door.

15 Well, shock and disbelief. I mean, it's amazing,  
16 isn't it, that someone whose house gets burglarized takes  
17 precautions to protect it from happening again. Is that so  
18 unreasonable? I think not. I think not at all. But they want  
19 you to think something else, because you see it fits with what  
20 they want you to believe.

21 Kelly Morris grudgingly admitted that she had  
22 confirmed his employment at three different times in three  
23 different places. She confirms that he had told her about  
24 receiving money from his family on multiple occasions. Agent  
25 Sager I leave to your own memory, because I suggest to you

1 that in the end you'll find that, well, his work was just  
2 sub-par, he just didn't do what needed to be done in a case of  
3 this nature.

4 And frankly, ladies and gentlemen, that leaves us with  
5 where we are today. We fear not being here in this valley, in  
6 the shadow of the United States Government. We fear not asking  
7 for this trial, we fear not you as our jury. We ask you to  
8 consider the evidence and the facts, to put aside your emotion  
9 and your beliefs that you might have come into this courtroom  
10 with, those deep ones that you have to think hard about.

11 We fear not your verdict. We ask you to return fair  
12 verdicts, and we feel confident that those fair verdicts will  
13 all be verdicts of not guilty.

14 I thank you on behalf of Mr. McCreith very much.

15 THE COURT: Thank you, Mr. Howes.

16 Ms. Mitrani, you may close.

17 MS. MITRANI: Fear tactics. Fear tactics. The fear  
18 tactics in this case, Members of the Jury, is not what the  
19 government has done. The fear tactics in this case is what  
20 that man did to those bank tellers and those victims during the  
21 eight robberies. These are eight bank robberies, four armed  
22 bank robberies. That's scary stuff.

23 He was a scary man. You heard all of the evidence.  
24 The charges in this case, the bank robberies, are that he took  
25 by force, violence, or intimidation the money. That's why you

1 heard the evidence that you heard, to understand what happened  
2 on those bank robberies on those days. Like Ms. Calvet told  
3 you, which is the Commerce Bank, even when he wasn't -- and it  
4 wasn't just Ms. Calvet, because even when he wasn't brandishing  
5 a gun, he was using his finger.

6 Several of the witnesses said that his finger was --  
7 his hand was as I am indicating to you, his index finger and  
8 his thumb like a gun. And you will see the boards. You saw  
9 the boards during my opening closing, you have the pictures.  
10 You will see the trend when he was using his fingers, pointing  
11 in each and every robbery.

12 That is fear and intimidation. That is the elements  
13 of the crime. Likewise, with the four additional counts of  
14 using or brandishing a gun during a bank robbery, again His  
15 Honor will instruct you on the law. Mr. Howes challenged the  
16 government to say something that it was never fired, and thank  
17 God it wasn't, but that's not the element.

18 The element is not that the gun needed to be  
19 discharged. You're not going to hear His Honor tell you that  
20 that's what the government has to prove. What you're going to  
21 hear, in essence, His Honor will instruct you that the gun  
22 needed to be used or brandished. Brandished, shown.

23 I said it to you before, Members of the Jury, and I'll  
24 repeat it, the burden of proof is on the government. And we  
25 welcome, we welcome our burden to prove this case beyond a

1 reasonable doubt, and that is exactly what we have done here,  
2 is proven this case beyond a reasonable doubt.

3 This case is not about, and the evidence that you saw  
4 and will see and will examine is not about what the government  
5 wants you to believe. That plays no factor in your  
6 deliberations, it's what we have proven in this case. And it  
7 is proof beyond a reasonable doubt.

8 I want to first talk to you about the getaway vehicle.  
9 I think Mr. Howes stood up here and tried to point out what he  
10 contends to be some discrepancies in the witnesses'  
11 descriptions. Well, you know -- and there is perhaps whether  
12 people saw him get in or didn't see him get in.

13 What a coincidence, you know, what a coincidence that  
14 in each of the bank robberies where that car was identified --  
15 the Kislak bank robbery, the Bank of America bank robbery, the  
16 SunTrust Bank robbery -- what a coincidence that each and every  
17 time within seconds of the robbery it is a red burgundy boxy  
18 Mercedes that is seen leaving.

19 And that that red and burgundy boxy Mercedes belongs  
20 to the defendant. With the exception of Mr. Flandreau and  
21 Ms. Miller, nobody left the bank to get a closer view of all of  
22 the identifying features. But for different reasons, as you've  
23 heard, they had reasons to recognize the car, whether it's  
24 because like Ms. Yablonsky, her mother had the car, or  
25 Ms. Fernandez, she drove one.

1 robberies in context. None of these witnesses here, none of  
2 the bank tellers, none of the victims, knew they were going to  
3 be victimized that day. They were shocked. This event  
4 happened quickly. The robber came in -- and I think it was  
5 Ms. Fernandez even said that at first she couldn't even believe  
6 it was happening, she thought it was a joke.

7 They were startled, it happened quickly, the robber  
8 was in, the robber was out. So to the extent that some  
9 witnesses might remember slight details differently, place that  
10 in that context. Mr. Howes was talking something about some  
11 psychological theory of correctness that the witnesses somehow  
12 -- some theory that they want to help or please or this or that  
13 or the other.

14 Well, I don't know where that's coming from, that's  
15 not the evidence in this case. I mean, you saw the witnesses  
16 testify as to what -- they were there, they were there, as to  
17 what they saw and what they heard. They reported it to law  
18 enforcement. What interest do they have in not reporting it  
19 accurately?

20 Likewise, when they were all shown pictures of the  
21 car, does it appear to be the car? Well, yes, it does, it  
22 appears to me to be the car. I mean, what reason would they  
23 have to make that up, to not tell the truth about it? One last  
24 point on the car, Members of the Jury, and that's the Sun Pass.  
25 The evidence that you have on the Sun Pass is not something

1 And let's talk to you about something about that  
2 something that His Honor will tell you. His Honor's going to  
3 tell you that you had an opportunity here to see all the  
4 witnesses, and it is your job to assess their credibility. I  
5 mean, you heard them right here live, it's for you to decide.

6 And some of the things that His Honor will tell you  
7 that in deciding whether you believe or do not believe any  
8 witness, I suggest that you ask yourself a few questions. Did  
9 the witness impress you as one who was telling the truth? Did  
10 the witness have any particular reason not to tell the truth?

11 Did the witness have a personal interest in the  
12 outcome of the case? Did the witness seem to have a good  
13 memory? Did the witness have the opportunity and ability to  
14 observe accurately the things that he or she testified about.

15 His Honor will also tell you that you should keep in  
16 mind, or course, that a simple mistake by a witness does not  
17 necessary mean that that witness was not telling the truth as  
18 he or she remembered it, because people naturally tend to  
19 forget some things or remember other things inaccurately.

20 So if a witness has made a misstatement, you need to  
21 consider whether it was simply an innocent lapse of memory or  
22 an intentional falsehood. And the significance of that may  
23 depend on whether it has to do with an important fact, or only  
24 with an unimportant detail.

25 So, Members of the Jury, let's put these bank

1 that was made up here.

2 You have the actual records. In fact this Sun Pass,  
3 wherever it is, and you know what it looks like, that little  
4 white box, you heard Mr. Pettenato testify that Wilbert  
5 McCreith bought that. It was registered to him. The serial  
6 number on the Sun Pass, which Agent Lewis got from Wilbert  
7 McCreith's car, matched the serial number that Mr. Pettenato  
8 had in his records.

9 And Mr. Howes says something that this Sun Pass is  
10 designed to be mobile. Well, what evidence is there that it  
11 wasn't in the Mercedes? That's where it was on the day of the  
12 search. And then you have the SunTrust robbery happening at  
13 9:05 a.m. on Commercial Boulevard near where AIA, not Oakland  
14 Park Boulevard, on Commercial Park Boulevard.

15 And then twenty minutes later you have the defendant's  
16 Sun Pass going through the Cypress Creek toll. That is hard  
17 evidence. That is based on the electronic transmission. And  
18 you have that same Sun Pass going through the Golden Glade in a  
19 southerly direction. Can we explain why the defendant chose  
20 that route? Well, of course not. But you know the facts.

21 Facts that the robber was there at 9:05, and  
22 Mr. McCreith just coincidentally, just coincidentally, his Sun  
23 Pass happens to be right in Broward County on the Turnpike.  
24 It's not a coincidence, of course it's not a coincidence.  
25 Mr. Howes told you that this shirt is not on trial. But of

1 course, the bank robber is on trial.

2 This is the bank robber's shirt, there's no dispute.  
3 One in a six billion chance that there could be another shirt  
4 just like this. This is the defendant's shirt. It was found  
5 in his house, hanging in his closet. Mr. Howes said something  
6 about the defendant owning three properties, but somehow the  
7 government not wanting you to consider the other two  
8 properties.

9 Well, we presented evidence, Members of the Jury, that  
10 he had purchased the three houses. But he wasn't living in  
11 three houses, he was living in one house. He was living in the  
12 69th Terrace house. You have the records that he bought the  
13 house, right? You had Ron Amira testify that the defendant  
14 was living there.

15 You recall his testimony that he would be in Liberty  
16 City, and he knows the defendant having done the deals. And he  
17 drives by up and down to look at houses to buy, and he would  
18 see the defendant's car, the defendant's Mercedes, parked in  
19 front of the 69th Street Terrace, his house. And the defendant  
20 himself identified the 69th Street Terrace house as his  
21 residence in the two burglaries, right?

22 You saw the officers, Officer Sampson and Officer  
23 Jimenez, testify this morning that the victim, the victim of  
24 these robberies was Wilbert McCreith, black male adult born in  
25 1958, reported items stolen from his house. Wilbert McCreith

1 indistinguishable from the SurfTrust coat in the defendant's  
2 house.

3 You have the Mary Kay bag in the defendant's house.  
4 Again, indistinguishable. And the masks. In his house. As  
5 well as the watches in his house.

6 Now, Mr. Howes said something to you to the effect, I  
7 don't want to know, I don't want to know, the government  
8 doesn't want to know. Well, the government, Special Agent  
9 Lewis, sent up things to the crime -- to Mr. Vorder Bruegge for  
10 him to examine. We had the shirt, very distinctive shirt. And  
11 the interesting thing is, you had what appears to be two other  
12 distinctive items of clothing; a striped bag and a coat.

13 Mr. Vorder Bruegge was able to perform his analysis,  
14 and he said it's indistinguishable. But the watches, were  
15 asked blow up these pictures and see what you could identify on  
16 the wrists. And you heard him testify that the resolutions  
17 wasn't fine enough, so he can say there's two things on the  
18 wrist, but he couldn't say that they were two watches, because  
19 there's not enough detail, because the resolution wasn't good.

20 Was that hiding anything? And of course you'll have  
21 the opportunity to look at the pictures and see for yourself.  
22 Likewise, there was talk of that the gun wasn't sent to  
23 Mr. Vorder Bruegge. Well, you had the one gun, you know the  
24 defendant used this gun at Bank of America because it was left  
25 there. I mean, what's the point of bringing that up.

1 reported that his house had been broken into on two separate  
2 times in two separate years, 2000 and 2001.

3 And he tells the officer, Officer Sampson, my DVD was  
4 taken, my clothing was taken, my TV watch was taken. In the  
5 case of Officer Jimenez, the defendant mentions that the  
6 security alarm company notified him when the alarm went off on  
7 the 69th Street Terrace house, on his house.

8 The defendant explained, you remember, to Officer  
9 Jimenez, she was pretty diligent, she noticed the change in  
10 address. The driver's license had the Coconut Grove address,  
11 but here we were on 69th Street Terrace. And he told her,  
12 yeah, I used to live there, but this is where I live now.

13 And it's funny, because Mr. Howes said you don't have  
14 somebody putting him there at night and putting him there in  
15 the morning. Well, Officer Jimenez was there at night --  
16 excuse me, not Jimenez, Officer Sampson said he got there about  
17 8:30 at night. Then him being there in the morning, well, you  
18 all know the day of the search the agents set-up on the house  
19 anywhere 6:30, 7 o'clock in the morning, and they saw the  
20 defendant leave his house.

21 There's all the property that was found inside the  
22 house, the receipts with his name on it. And there's no  
23 evidence that anyone else lived there. So what a coincidence  
24 that we find -- I mean, you have the shirt worn by the bank  
25 robber in the defendant's house. You have a coat that's

1 And, you know, it's interesting because there was some  
2 talk in this trial of like fingerprints, and fingerprints being  
3 done and not done, or DNA. And, you know, as you recall, Agent  
4 Lewis attempted to to get fingerprints from this because this  
5 was left on the scene, but was unable to do so.

6 But the guns that were found in the house, or the  
7 shirt that was found in his house, or the hat that was found in  
8 the defendant's house, well, what would that have proven? You  
9 know, it's found in the house, you know it's the defendant's  
10 stuff. It's a distraction. It's a distraction.

11 Because in every case -- in this case, Mr. Howes can  
12 sit here and try to tell you a laundry list, he can tell you  
13 five things that the government, the FBI, could have, would  
14 have, should have done. He could give you fifty things that  
15 the government would have, could have, should have done. And  
16 for what?

17 Like we said, try to get -- assume you can even get  
18 DNA from this, because there's no evidence, there's no evidence  
19 that you can get DNA from an article of clothing like this,  
20 what would it have proven? The defendant is not on trial here  
21 for bank fraud, that is true. But the documents are not  
22 significant for that purpose.

23 The documents are significant to show that he needs to  
24 get a mortgage. And this whole notion of, well, there's no  
25 computer or there's no typewriter in the defendant's house and



1 you look at those documents and they're typewritten, well, of  
2 course, the mortgage company, the title company, there's a  
3 person or entity that prepares those documents.

4 But when you see those documents, you'll see something  
5 that is not typewritten, and that's the defendant's signature.  
6 The defendant's signature stating that he worked for Pool and  
7 Patio King or Vidal Construction. And his need to make up  
8 employment because he couldn't tell the banks how he actually  
9 earned income.

10 Mr. Howes said Mr. Amira couldn't explain how the  
11 defendant got or possibly could have gotten his brother's  
12 business card, well, that's not up to Mr. Amira to do. I mean,  
13 the point is, the defendant never worked there, and he lied  
14 about it.

15 Kelly Morris. First, Members of the Jury, you will  
16 recall that Kelly Morris was shown more than one photograph of  
17 the defendant. In addition to being shown the photograph where  
18 the defendant is rolling up his hat, she was shown other  
19 pictures which helped her to identify the defendant. And  
20 particularly she was shown Exhibit 4-F, which is a bank robbery  
21 picture from Bank of America; and 7-D, which is from Bank  
22 United.

23 She told Agent Lewis on March 19th, that looks like  
24 Wilbert, looks like Wilbert. Same body type, the profile looks  
25 to her to be him. There's a little bit of a gut, he'd been

1 gaining weight. And the two watches, the two watches. All  
2 were very significant to her. Mr. Howes says something that on  
3 March 19th she did not tell Agent Lewis that the defendant  
4 always wears plaid shirts, she said black pants and black  
5 T-shirts.

6 Well, first, we know the defendant wears black pants  
7 and black T-shirts, we see it in the surveillance photographs.  
8 That was found in his house and witnesses testified to that.  
9 But secondly, and remember, Agent Lewis met with Kelly Morris  
10 on more than one occasion. March 19th was only the first time.

11 And I believe, and you'll have to rely on your own  
12 memories, that Agent Lewis testified that at a later date Kelly  
13 Morris had made the statement, yeah, that the defendant wears  
14 plaid shirts. Mr. Howes said something about hundreds of  
15 pictures, or something to that effect, found in the defendant's  
16 car, some he's in and some he's not, he's not wearing a plaid  
17 shirt. Like we all know, this is his bank robbery shirt.

18 And he kept it. Just like he kept the shirt and his  
19 mask and his bag and his coat, because it was working for him.  
20 This was not one bank robbery, here we have a string of eight  
21 bank robberies. Little did he know what was going to be  
22 happening on April 11th, that the search was going to be  
23 happening in his house.

24 And again, Mr. Howes made some point about why didn't  
25 we show -- why didn't Agent Lewis show Kelly Morris the

1 surveillance films. Well, you saw the surveillance film, it  
2 goes pretty quick. She had the photographs which were taken  
3 from those surveillance films. Mr. Howes mentioned I believe  
4 it was Courtney Fields, the teller from Bank United who  
5 described the accent and the complexion as Arabian.

6 But you'll recall when I asked him, well, what do you  
7 mean by Arabian, and remember he sat on that stand and he said  
8 something he's not familiar, he's not an expert on the islands,  
9 but he said some kind of island type of complexion and accent.  
10 And again, I mean Mr. Howes, you know, spent a lot of time, you  
11 know, talking to you about how this pattern, in his view,  
12 believes the evidence doesn't prove the pattern.

13 Because some people heard an Arabian accent, and some  
14 people didn't hear an Arabian accent, and somebody may have  
15 described him as a hundred and eighty pounds and somebody may  
16 have described him as a hundred and thirty pounds. Well,  
17 again, I bring you back to where we started. These events  
18 happened very quickly, and different people perceive things  
19 differently.

20 In fact, some people -- some people detected an  
21 accent, some people didn't. And I think common sense will tell  
22 you that the perception of an accent is like beauty's in the  
23 eye of the beholder.

24 I want to address a few more points Mr. Howes made,  
25 then we'll sum it up on behalf of the United States. Mr. Howes

1 said you're put in an all or nothing situation. Well, His  
2 Honor will instruct you that you are to consider each and every  
3 count separately and decide the defendant's guilt on each  
4 individual twelve counts.

5 Having said that, I submit to you, Members of the  
6 Jury, that it is the same bank robber, but there was a pattern  
7 established. As Agent Sager testified and Agent Lewis, these  
8 were turned over to Agent Lewis for a reason. And you can see  
9 here's one board depicting the first four robberies. You can  
10 see the pattern, you can see the pointing in these photographs.  
11 And you can see in these photographs, although not  
12 every robbery, but many of the robberies, had a pattern of  
13 telling people to hit the floor at the end of the robbery.  
14 Look closely, these are only four, but there are four others,  
15 there's the same pattern of the masked man walking in,  
16 demanding money, big money, saying no dye packs, no bait money,  
17 taking over the bank with the bag.

18 In other words, the bank robbery wasn't -- the money  
19 wasn't given to him in his hands. Give me the money, the money  
20 was always put in a bag as you see in these pictures. And him  
21 getting out. The next four, the last four bank robberies,  
22 again you see the same pattern; the person pointing, bag,  
23 pointing, face covered, of course the plaid shirt.

24 And the fact that one witness may have recalled him --  
25 guessed, made a guesstimate that it was a hundred and eighty

1 pounds, and another witness may have made a guesstimate of a  
2 hundred and thirty pounds, or that two witnesses may have  
3 differed on skin complexion, one thought it was a little darker  
4 than the other, given the defendant his face had been covered,  
5 such a quick item, that's a discrepancy that doesn't matter,  
6 doesn't break the evidence.

7 So at the end of the day, Members of the Jury, what we  
8 have is proof beyond reasonable doubt that the defendant,  
9 Wilbert McKreith, is the robber. As I started my closing and  
10 I'll end with my closing, you know that because of the shirt  
11 that was found, his shirt found hanging in his closet. You  
12 know that because of his coat, which was hanging in the same  
13 closet as the shirt.

14 We know that because of the striped Mary Kay bag found  
15 in the defendant's house, used by the robber in the South Trust  
16 robbery. You know it because of the masks that were found in  
17 the defendant's house, masks with the whole cut out. You know  
18 this because of the watches that were found in the defendant's  
19 house. You know this because of the getaway car, the boxy red  
20 burgundy Mercedes, the defendant's car, the getaway car  
21 identified in so many robberies.

22 Mr. Howes spoke to you about a verdict form, and you  
23 will be getting a verdict form which is going to say United  
24 States of America versus Wilbert McKreith, verdict. And it's  
25 going to list all of the Counts 1 through 12, and there are

1 going to be two columns, guilty and not guilty.

2 And on behalf of the United States, we will ask that  
3 based on the evidence, the proof beyond reasonable doubt, you  
4 check off guilty to each count of the indictment.

5 Thank you.

6 THE COURT: Thank you, Ms. Mitrani.

7 Members of the Jury, that concludes the closing  
8 arguments in this case, and it but remains for you to hear the  
9 Court's instructions as to the law. As I indicated to you  
10 earlier, we are going to recess for the day at this time to  
11 accommodate one of your members.

12 I hope that everything will work out fine for you, I'm  
13 sure it will.

14 And we'll be in recess until tomorrow morning at 9:00  
15 a.m. If you'll report to the jury room at 9:00 a.m., at that  
16 time the Court will instruct you on the law and then ask that  
17 you retire to deliberate your verdict.

18 And we should have the case to you for your  
19 consideration by about 9:30. So I hope you have a pleasant  
20 evening. And you are excused until tomorrow morning at 9:00.  
21 Thank you very much.

22 You may take the jury out.

23 [Jury leaves the courtroom].

24 THE COURT: All right. Ladies and gentlemen, we will  
25 be in recess until tomorrow morning at 9 o'clock.

1 MR. HOWES: Judge, may we discuss one matter with you  
2 before we leave?

3 THE COURT: All right, sir.

4 MR. HOWES: Wilbert, is there anything that you want  
5 to tell the Judge about what was going on in the closing  
6 argument; is there something you want to tell him?

7 THE REPORTER: Please speak up, I can't hear you.

8 THE DEFENDANT: Yes.

9 MR. HOWES: What do you want to tell the Judge?

10 THE DEFENDANT: That many statements that --

11 MR. HOWES: No, no, no, I'm not talking about what  
12 they said, I'm talking about what I said. Is there anything  
13 you want to tell the Judge about what I did?

14 THE DEFENDANT: No, Mr. Howes did a very, very good  
15 job. I'm very happy he's my attorney.

16 THE COURT: Hallelujah. I think he -- I agree with  
17 you, Mr. McKreith, I think he did do a very good job, and you  
18 should be happy that he's your attorney.

19 MR. HOWES: Judge, when do you want to handle the  
20 remaining two counts?

21 THE COURT: Tomorrow morning after we've excused the  
22 jury for their deliberations.

23 MR. STEFIN: Could we see what's left in terms of what  
24 hasn't been stipulated to, because I think -- if I understood  
25 the defense, there was a discussion about stipulating to the

1 fact that he's a prior convicted felon.

2 MR. HOWES: The Court can take judicial notice that in  
3 the court file, and I'll get you the case number --

4 THE COURT: No, I understand.

5 MR. HOWES: -- there is a case before Judge Gold on  
6 the probation violation, or the supervised release violation.  
7 The government has the documentation here showing that he is a  
8 convicted felon on supervised release out of Pennsylvania.

9 And the other thing you've got to prove is --

10 MR. STEFIN: That the guns --

11 MS. MITRANI: Interstate nexus.

12 MR. STEFIN: The guns were manufactured --

13 MR. HOWES: The guns were not manufactured in the  
14 State of Florida. There are two that are, these are not among  
15 the two that are. Everything else is from outside the State of  
16 Florida. The issue then --

17 MS. MITRANI: There's also one more element, that it's  
18 a gun, that it's designed to operate --

19 THE COURT: It's a firearm.

20 MS. MITRANI: It's a firearm.

21 MR. HOWES: Well, when I'm saying the guns, I'm saying  
22 the firearms.

23 THE COURT: The trier of fact can tell that. The  
24 look, I think.

25 MR. HOWES: All right. Well, but I'm just saying, so

1 that the only issue then I think, Judge, is the question of our  
2 argument to you at that point in time, because those issues are  
3 not going to be issues.

4 As a housekeeping matter, Judge, I think we were going  
5 to stay today and make sure we had all our evidence straight.

6 THE COURT: You can stay, I'm going to go.

7 MR. HOWES: Well, do you want -- where do you want the  
8 evidence for tomorrow morning?

9 THE COURT: Well, you well stay here this afternoon  
10 and go over this evidence with the clerk here, and I think  
11 everything is in, but be that as it may.

12 So the record may be clear, the Court will accept the  
13 stipulation of the parties with respect to, A, the fact that  
14 the firearms were not manufactured in the State of Florida; B,  
15 that the defendant indeed is a convicted felon; and C, that --

16 MR. STEFIN: That they are firearms.

17 THE COURT: -- they are firearms. And then I'll hear  
18 your argument.

19 MR. HOWES: All right. I'm just seeing if you want  
20 the evidence in the jury room for tomorrow morning or --

21 THE COURT: No, no. We'll deliver it to the jury room  
22 after they have retired to deliberate. I don't want them to be  
23 looking at it before they've heard what the law is.

24 Okay. We'll be in recess until 9 o'clock. Here's the  
25 identification instruction which I'm going to give, which is

1 just the pattern instruction. So you can have that for your  
2 files.

3 Court's in recess until 9:00 in the morning.

4 **[Trial adjourned]**