

1 For the People: Mr. Kindall
2 The Witness: Freddy Lander
3 The Court (female)
4 For the Defendant: Ms. Perry
5

6 **WARMUP**

7 THE COURT: And are there any issues we need to
8 address before we start the presentation of evidence?

9 MS. PERRY: Not for us.

10 MR. KINDALL: No. I have two witnesses today, /
11 and I have asked the second witness to step outside.

12 THE COURT: Then you may call your first witness,
13 Counsel.

14 MR. KINDALL: The People's first witness will be
15 Freddy / Lander.

16 And I am going to have one exhibit. I will be
17 using the television today. Is it in a good position for
18 the Court? /

19 THE COURT: More power to you, sir. Yeah, I will
20 be able to see it. Thanks.

21 MR. KINDALL: Step up to the clerk.

22 THE COURT: Actually, I am going to request //
23 that he step up onto the witness stand and be sworn.

24 MR. KINDALL: Thank you, Your Honor.

25 THE COURT: Go ahead.

1 **DIRECT EXAMINATION**

2 Q. BY MR. KINDALL: Good morning.

3 A. Good morning.

4 Q. What do you do / for a living?

5 A. I work as a sales associate.

6 Q. And where are you a salesperson?

7 A. At Circle K.

8 Q. What location is the Circle K? ///

9 A. 1031 Lee Avenue.

10 Q. Can you spell the name of the avenue?

11 A. L-e-e.

12 Q. Thank you.

13 Is that in San Diego?

14 A. Yes.

15 Q. How / long have you been working there?

16 A. I have been working there for eight months.

17 Q. Okay. Were you working there on December 14,
18 2018? /*(1)

19 A. Yes.

20 Q. What time did you start work that day?

21 A. I started at 11:00 p.m.

22 Q. Were you working in the evening?

23 A. Yeah.

24 Q. Do you recognize / anybody in court here that went
25 into the Circle K on December 14th during your shift?

1 A. Yes.

2 Q. Can you please describe that person by saying, /
3 first, where they are sitting and, second, describe what
4 they are wearing today.

5 A. He is sitting on the left side, and he is wearing
6 a / brown shirt.

7 MR. KINDALL: May the record reflect an in-court
8 ID of the defendant?

9 THE COURT: He pointed to the defendant in the
10 courtroom.

11 MS. PERRY: And we will // stipulate to the ID of
12 the defendant.

13 THE COURT: Please proceed.

14 Q. BY MR. KINDALL: And tell us what happened when
15 the defendant first came in the store.

16 A. And when / he first entered, he started arguing
17 with my coworker about the ATM.

18 Q. Were you there for that exchange?

19 A. I was stocking the delivery /// that we had got.

20 Q. That means you were able to hear the conversation;
21 is that correct?

22 A. Yes, sir.

23 Q. Is the Circle K equipped with security / cameras?

24 A. Yes, it is.

25 MR. KINDALL: I am going to have marked as

1 People's Exhibit 1 a disc with seven video files on it.

2 MS. PERRY: Excuse me, Your /*(2) Honor. What are
3 the files?

4 MR. KINDALL: I will describe it as video
5 surveillance from Circle K.

6 THE COURT: That will be marked as People's 1.

7 Q. BY MR. KINDALL: Mr. Lander, can / you see the
8 screen from where you are sitting?

9 A. Yes.

10 Q. This is surveillance video from 12/14/2018 at
11 about 9:26 / p.m.?

12 A. Okay.

13 Q. I am beginning at time stamp 9:26. I paused the
14 video at 9:26:04.

15 Who just entered / into the frame inside the
16 store?

17 A. The guy.

18 Q. And when you say "the guy," are you referring to
19 the defendant here in court today?

20 A. Yes. //

21 Q. Okay. So the time stamp is 9:26 p.m. Were you in
22 the store when this happened?

23 A. Yes.

24 Q. Okay. You previously said that / you started work
25 at about 11:00. Is it possible that your shift started

1 earlier that day?

2 A. Yes, sir.

3 Q. I will resume playing at /// 9:26:04 p.m.

4 Sir, will you describe for us what you saw the
5 defendant doing in the video just then.

6 MS. PERRY: Objection. Calls for / a narrative.

7 THE COURT: Overruled.

8 Please answer the question, sir.

9 THE WITNESS: He was at the ATM.

10 Q. BY MR. KINDALL: Is that located in the back of
11 the store?

12 A. Yes. /* (3)

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14 **END OF WARMUP - Pause**

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1 **EXAM**

2 Q. BY MR. KINDALL: Did you see the defendant then
3 approach the front counter?

4 A. Yes.

5 Q. And what did he do when he approached the front
6 counter?

7 A. He started arguing / with my coworker.

8 Q. Could you hear the conversation?

9 A. Yes.

10 Q. What did you hear the defendant say, if anything?

11 A. I heard why wasn't the receipt printing. /

12 Q. Did he ask you something about the receipt?

13 A. Yeah. Why it was not printing.

14 Q. What happened next?

15 A. Then that is when my coworker tried to / explain
16 to him that we have nothing to do with the ATM.

17 Q. Were you called over to join the conversation?

18 A. Yes.

19 Q. Did you // speak with the defendant?

20 A. Yes.

21 Q. Okay. What did you inform him?

22 A. I repeated that we have nothing to do with the
23 ATM.

24 Q. Is / the ATM operated by Circle K or by an outside
25 company?

1 A. An outside company.

2 Q. All right. What happened after you told him
3 that /// you did not have anything to do with the
4 receipt?

5 A. He just left.

6 Q. At some point later, did the defendant come back
7 into the store? /

8 A. Yes.

9 MS. PERRY: Excuse me, Your Honor. I did not hear
10 the answer.

11 THE COURT: The witness said, "Yes."

12 MS. PERRY: Please excuse the interruption.

13 THE COURT: Continue with the questions, Counsel.

14 Q. BY MR. KINDALL: And /*(1) please tell us what
15 happened when the defendant entered the store the second
16 time.

17 A. When he entered the second time, he asked me about
18 the / tacos.

19 Q. Does Circle K have tacos for sale?

20 A. Yes.

21 Q. What exactly did he ask you about the tacos?

22 A. How long they would take.

23 Q. What did / you respond?

24 A. I said I did not know because I had only gotten in
25 an hour ago.

1 Q. Okay. And what did he reply to you? /

2 A. He said that he worked at a Circle K previously

3 and that he knows every two hours we have to change the

4 tacos.

5 Q. And what // happened next?

6 A. Then he started saying that I was okay and began

7 to leave.

8 Q. What happened next?

9 A. Then he returned back and asked if I / was with a

10 gang.

11 Q. Do you remember exactly what he asked you?

12 A. I don't remember exactly.

13 Q. What do you remember him saying?

14 A. If I was /// gang-related.

15 Q. Did he say the words "gang-related"?

16 A. No. I do not remember exactly how he asked me.

17 Q. What happened next?

18 A. That is when / he exited.

19 Q. Did he leave the store a second time?

20 A. Yeah.

21 Q. Okay. After he left the store again, did you

22 observe him come back?

23 A. Yes. /* (2)

24 **END OF LEAD-IN - KEEP READING WITHOUT PAUSE**

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START TYPING

Q. BY MR. KINDALL: Currently up on the screen, I have put up the video. Do you recognize that?

A. Yes, I do.

MS. PERRY: Excuse me, Your Honor. What time is / he starting at?

THE COURT: Counsel, would you clarify, please.

MR. KINDALL: I am at 12:41:18 a.m.

MS. PERRY: Thank you, Your Honor.

THE COURT: Go ahead, please, Counsel. /

Q. BY MR. KINDALL: Now, on December 15, 2018, sir, at about this time, did the defendant come back again?

A. Yes, he did.

Q. All right. What happened / when he came back this time?

A. He started arguing with a customer.

Q. And were you able to see the argument?

A. Yeah.

Q. Were you able to // hear the argument?

A. Yes.

Q. What, if anything, did the defendant say?

A. I don't remember quite what he said.

Q. Do you recall generally what he said? /

A. No, I don't remember.

Q. What was his tone of voice?

1 A. Angry.

2 Q. How did you determine it was angry?

3 A. His face.

4 Q. What did his face appear /// like?

5 A. Pissed off.

6 Q. What about his face made him look pissed off?

7 A. I am uncertain, sir.

8 Q. Going back to the video, do you see yourself / in
9 the video here?

10 A. Yes.

11 Q. Where are you located?

12 A. I am the cashier.

13 Q. Are you on the bottom of the video?

14 A. Yes.

15 Q. Can you see /*(1) the customer that the defendant
16 was arguing with?

17 A. Yes, I can.

18 Q. Where is he?

19 A. In front of the door.

20 Q. Did the defendant come up and / approach you at
21 the counter?

22 MS. PERRY: Objection. Leading.

23 THE COURT: That is overruled.

24 You may answer the question, sir.

25 THE WITNESS: Yes, the guy came up to me.

1 Q. BY MR. KINDALL: And what / did he say?
2 A. He was telling me to come over the counter.
3 Q. Anything else?
4 A. Also, that he was going to beat me up.
5 Q. Do you / remember the exact words he used?
6 A. No, sir. Not really.
7 Q. Okay. How did it make you feel when he approached
8 you and told you to // come over so he could beat you up?
9 A. I was scared.
10 Q. What happened next?
11 A. Then he started arguing with my other coworker.
12 Q. Starting up the / video again, please describe for
13 us what just happened here.
14 A. He was telling us he would beat us up, both of us,
15 outside. That is /// what he was saying.
16 Q. Okay. Then what happened?
17 A. And then he started saying things to the customer,
18 and that is when he took out a / knife.
19 Q. When you say "he took out a knife," are you
20 talking about the customer or the defendant?
21 A. The defendant.
22 Q. When you saw the knife, /* (2) how did you react?
23 A. I immediately grabbed the little chair.
24 Q. Are you referencing the stool?
25 A. Yes.

1 Q. Why did you grab the stool?

2 A. To use for / protection.

3 Q. And you went over to the other side of the
4 counter?

5 A. Yes.

6 Q. What hand was the defendant holding the knife in?

7 A. His left hand. /

8 Q. Going back to the video now, can you see on the
9 screen where the knife is right now?

10 MS. PERRY: Objection. Improper question.

11 THE COURT: Overruled.

12 THE WITNESS: Right now, it / is in his hand.

13 Q. BY MR. KINDALL: Do you see the weapon in his
14 right hand?

15 A. Yes.

16 Q. During this time period when you went out around
17 the counter // with the chair, was the defendant saying
18 anything?

19 A. He said he was going to come back.

20 Q. Okay. Did he tell you when specifically?

21 A. No.

22 Q. Did / he say specifically what he was going to do
23 when he came back?

24 A. He was going to beat us up.

25 Q. When he was saying that, /// was he holding the

1 weapon in his hand?

2 A. Yes. The knife.

3 Q. Could you observe the knife?

4 A. Yes.

5 Q. Okay. How did the defendant holding the knife /

6 make you feel?

7 A. I was frightened.

8 Q. Okay. Did he ever say that he was going to use

9 the weapon?

10 A. No, he never said that exactly. />(*3)

11 Q. Did he ever say he was going to do anything other

12 than beat you up?

13 A. Only that he was going to bring back his boys. /

14 Q. Did you ever see the defendant again during your

15 shift?

16 A. No.

17 Q. And did you call the police?

18 A. Yes.

19 Q. When the defendant told you that he / would come

20 back with his boys, did he say what he intended to do?

21 A. I don't really remember.

22 MR. KINDALL: I have no further questions for

23 this / witness.

24 THE COURT: Do you have cross-examination,

25 Counsel?

1 MS. PERRY: Yes, please.

2 THE COURT: Go right ahead.

3 **CROSS-EXAMINATION**

4 Q. BY MS. PERRY: Good morning, Mr. Lander.

5 A. Hello.

6 Q. Sir, how long have you worked at Circle // K for?

7 A. Approximately eight months.

8 Q. Eight months?

9 A. Yeah.

10 Q. Back in December, you had worked there for how
11 long?

12 A. Maybe six or seven months.

13 Q. And before / the events we are discussing today,
14 had you seen the defendant before?

15 A. I had seen him once before when he came in as a
16 customer. ///

17 Q. Would you say you were familiar with his face?

18 A. Kind of.

19 Q. Have you seen people that were intoxicated before?

20 A. No.

21 Q. Okay. Do you know whether / or not, in your
22 opinion, you felt the defendant was drunk?

23 A. No, ma'am.

24 Q. And we saw in the video that you were holding a
25 stool /* (4) when you approached the defendant; is that

1 correct?

2 A. Yes.

3 Q. Is it possible that you were holding the stool
4 before you ever saw him with a / knife?

5 A. Yeah, it would be possible.

6 Q. Okay. You got the stool out. And after you got
7 the stool out, he took out a knife; correct? /

8 A. Yes.

9 Q. Is it your testimony it was before?

10 A. No.

11 Q. Okay. You did not actually see him with a
12 knife until you approached him with the / stool; is that
13 true?

14 A. Yes.

15 Q. And the defendant never pointed the knife at you;
16 is that right?

17 MR. KINDALL: Objection. Vague and ambiguous.

18 THE COURT: Do you understand the // question,
19 sir?

20 THE WITNESS: I think so, yes.

21 THE COURT: Objection overruled.

22 You may answer the question.

23 THE WITNESS: He pointed the knife at the customer
24 and my coworker.

25 Q. BY MS. PERRY: And he / never said he was going to

1 kill you; correct?

2 A. He stated he was going to come back.

3 Q. And beat you up; correct?

4 A. Yes.

5 Q. He never /// said he was going to stab you;

6 correct?

7 A. He kind of meant that.

8 Q. Did he ever actually say to you that he was going

9 to / stab you?

10 A. Yes.

11 Q. When you were asked five minutes ago, you said he

12 never actually said he was going to stab you; isn't that

13 correct? /* (5)

14 A. He said he was going to come back and beat us up;

15 correct.

16 Q. Okay. Were you assuming that he intended to stab

17 you?

18 A. Yes.

19 Q. But / did he ever actually use those exact words?

20 A. He said he was going to stab us.

21 Q. Are you now saying he did say he was / going to

22 stab you?

23 A. Well, he didn't say that exactly, but he kind of

24 meant that.

25 Q. Is it your testimony he never used that word? /

1 MR. KINDALL: Objection. Asked and answered.

2 THE COURT: That is sustained.

3 MS. PERRY: I will move on, Your Honor.

4 THE COURT: Thank you, Counsel.

5 Q. BY MS. PERRY: And when the defendant first came
6 to the Circle // K, he went to the ATM; correct?

7 A. Absolutely.

8 Q. When he approached you, did you testify that he
9 asked about why there was no / receipt?

10 A. Correct.

11 Q. Why was that concerning for you?

12 A. It appeared like he was on narcotics or something.

13 Q. Did you think he looked like he /// was on drugs?

14 A. Correct.

15 Q. Okay. Did he additionally look like he was drunk
16 to you?

17 A. He looked more like he had been using drugs than /
18 drinking.

19 Q. Have you observed people who are on drugs?

20 A. Yes, I have.

21 Q. What was it about the defendant that made you
22 believe he was on /* (6) drugs?

23 A. He just looked wired or something. I don't know
24 how to describe it.

25 Q. Okay. And did he talk to you or your coworker

1 regarding / the receipt?

2 A. He was talking to my coworker.

3 Q. And is your coworker your brother?

4 A. No. She's a girl.

5 Q. Okay. And she doesn't speak English; correct? /

6 A. Well, not very much.

7 Q. Was she speaking to him in Spanish?

8 A. No. She was trying her best to speak in English,

9 but he couldn't understand / her.

10 Q. Okay.

11 A. And that is why she called me over to help out.

12 Q. Were they having trouble communicating?

13 A. Yeah.

14 Q. Have you seen the defendant in // the store before

15 this incident?

16 A. Yes.

17 Q. Okay. But you never knew each other from outside

18 of the store?

19 A. No. I had never seen him anywhere / but the

20 store.

21 Q. Is it your testimony that you believed the

22 defendant may be on drugs?

23 A. He was on drugs.

24 Q. Why are you certain?

25 A. His /// eyes -- they were poking out.

1 Q. Okay. And do you also think he was intoxicated?

2 A. I think, yeah, he was.

3 Q. Isn't it true that you told / the police he was
4 drunk?

5 A. Yes.

6 MS. PERRY: Nothing further. Thank you.

7 THE COURT: Any redirect?

8 MR. KINDALL: Briefly, Your Honor.

9 THE COURT: You may continue, Counsel.

10 **REDIRECT EXAMINATION**

11 Q. BY. MR. KINDALL: You have been telling us
12 that /* (7) the defendant was intoxicated and on drugs; is
13 that correct?

14 A. Yes, sir.

15 Q. Will you tell us why you think that.

16 A. Well, you could just tell. /

17 Q. Let me see if I can help. Could you smell alcohol
18 on his person?

19 A. Yes. You could smell alcohol.

20 Q. Okay. How about his speech? Was / that affected
21 at all?

22 A. Yes, sir. He was slurring his words.

23 Q. Was there anything else that made you believe he
24 had been drinking?

25 A. Just the / way he was acting.

1 Q. And have we covered all of the reasons you believe
2 he was intoxicated?

3 A. Yes. You could just tell.

4 Q. Okay. I have // one last area I would like to
5 follow up with you.

6 A. Okay.

7 Q. You have testified that the defendant was going to
8 stab you; is that / correct?

9 A. Yes, sir.

10 Q. But you also told us that he never used those
11 exact words; true?

12 A. That's correct.

13 Q. If he didn't use those exact words, /// how did
14 you arrive at the conclusion he was intending to attack
15 you?

16 A. Well, he had the knife there, and he kept saying
17 he was / going to come back and get us.

18 Q. Was it because of the knife that you believed he
19 would attack you?

20 A. Correct.

21 Q. Is there any other /*(8) reason you believed he
22 was intending to attack you?

23 A. No, not really. Just how he was.

24 Q. Going back to the point in time when you / picked
25 up the stool, where was your coworker located?

1 A. She was standing next to the register.

2 Q. Okay. What is the reason that you picked up / the
3 stool?

4 A. Well, I was afraid because he had the weapon.

5 Q. But didn't you tell defense counsel you grabbed
6 the stool before you saw the / knife?

7 MS. PERRY: Objection. Asked and answered, Your
8 Honor.

9 MR. KINDALL: Well, I am just trying to clarify
10 the record at this point.

11 THE COURT: I will overrule the objection.

12 Please // answer the question.

13 THE WITNESS: Would you repeat the question. I
14 can't remember it now.

15 Q. BY MR. KINDALL: Did you grab the stool before or
16 after you saw the defendant / with the knife?

17 A. No. He had the knife out beforehand.

18 Q. Okay. Why did you then grab the stool?

19 A. Because I was afraid he would attack /// us. I
20 just wanted to defend myself.

21 Q. Did you also want to protect your coworker?

22 A. Yes, of course I did.

23 Q. How long had you worked / together?

24 A. Maybe about three hours.

25 Q. I'm sorry. That was not a great question.

1 How long had you two worked together at Circle K,
2 not just /*(9) that shift?

3 A. Oh, I get it. We had probably worked at that same
4 store for approximately two years.

5 Q. Did you consider her more of a / friend at this
6 point in time?

7 A. No, not really. We just work together once in a
8 while.

9 Q. Do you ever do anything with her outside / of the
10 workplace? Anything of a social nature?

11 A. No, I only see her at work.

12 Q. Why did you feel the need to protect her when /
13 you saw the defendant holding the knife?

14 A. I just grabbed the first thing I could think of to
15 protect us both.

16 Q. Okay. You are referring // to the stool; is that
17 correct, sir?

18 A. Yes, I am.

19 Q. Did you ever telephone the police?

20 A. Yes. But that was quite a bit later.

21 Q. Why / did you delay before calling for assistance?

22 A. At first, I thought he would leave.

23 Q. And what happened at that point?

24 A. Then I thought I needed /// to take action when I
25 saw the knife.

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MR. KINDALL: Nothing further of this witness,
Your Honor.

THE COURT: Recross, Ms. Perry?

MS. PERRY: No, Your Honor.

THE COURT: All right. May this / witness be
excused, Counsel?

MR. KINDALL: Yes.

MS. PERRY: That is okay with me.

THE COURT: Thank you very much, sir. You are
excused and free to leave.

THE WITNESS: Okay. Thank you. /*(10)

END OF EXAM

*****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE
SLIGHTLY DIFFERENT*****