

ORLANDO CAVAL - July 15, 2014
Voir Dire Examination by Mr. Halpert

1 MR. HALPERT: Yes, Your Honor. Proceed,
2 Your Honor?

3 THE COURT: Yes, please.

4 VOIR DIRE EXAMINATION

5 BY MR. HALPERT:

6 Q Sergeant Ashmore, let's talk about the procedure
7 of putting together and showing a photo spread. Okay?

8 A Yes, sir.

9 Q Now, the person conducting the photo spread
10 procedure is called the administrator, correct?

11 A Yes.

12 Q Tell the Judge what a blind administrator is?

13 A A blind administrator is where, let's say, I make
14 a photo spread, and then I will give it to another officer,
15 not telling him who my target or suspect is, and ask him to
16 go show it to a complainant or witness.

17 Q Well, the person who is showing -- the
18 administrator is the person showing the photo spread?

19 A Yes, sir.

20 Q And if they are blind, it means they don't know
21 which position a suspect is in in a photo spread?

22 A Correct.

23 Q Tell the Judge what a blind administrator is?

24 A A blind administrator is one who is
25 administrating the photo lineup, but has no idea of where

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1 the suspect is in the lineup.

2 Q Well, that blinded administrator knows that
3 there are suspects in the photo spreads, but he creates
4 more than one, correct?

5 A Correct.

6 Q Okay. And in an administrator who knows the
7 identity of a suspect in the photo spread, would you agree
8 with me that administrator could possibly give cause to
9 the individual looking at the photo spread?

10 A If it's done correctly, no, sir.

11 Q But one of the reasons why we have a blind
12 administrator is to remove that possibility of the
13 administrator being able to give subtle, conscious and
14 subconscious queues, correct?

15 A Yes sir. Yes, sir.

16 Q Now, Sheriff's Department has a policy, Policy
17 No. 611 that describes the requirements for doing an
18 eyewitness identification, correct?

19 A Yes, sir.

20 MR. HALPERT: And may I show the witness
21 Respondent's Exhibit 2 for the hearing, Your Honor?

22 THE COURT: Yes, you may.

23 Q (By Mr. Halpert) And let me show you this
24 document and see if you recognize this.

25 A Yes, sir.

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1 Q And that's the Sheriff's Department entire
2 identification policy on doing both photo spreads and
3 lineups; is that correct?

4 A Yes, sir.

5 Q And 26 pages long, correct?

6 A Yes, sir.

7 Q And you're familiar with the contents, aren't
8 you?

9 A Fairly. Yes, sir.

10 Q You would agree with me that deviations from
11 policy may result in a photo spread being unlawfully
12 reliable?

13 A Yes, sir.

14 Q Now, if there are any variations from policy
15 after doing a -- administering a photo spread or live
16 lineup, they must be preapproved by the investigative
17 supervisor, correct?

18 A Yes, sir.

19 Q And these variations, if they occur, must be
20 documented and supplemented, correct?

21 A Yes, sir.

22 Q And in this case, you prepared all of the photo
23 spreads?

24 A Yes, sir.

25 Q You could have chosen a designee to construct

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1 them, someone else?

2 A Yes, sir.

3 Q But you chose to do everything?

4 A Yes, sir.

5 Q Now, the first thing you do is you get a photo
6 of the suspect when putting together a photo spread,
7 correct?

8 A Yes, sir.

9 Q And this can come from a number of sources?

10 A Yes, sir.

11 Q Prior contact with the law?

12 A Yes, sir.

13 Q Use driver's license photo?

14 A Yes, sir.

15 Q School photo?

16 A Yes, sir.

17 Q Anywhere you need a photo, you can get one from?

18 A Yes, sir.

19 Q And if you have more than one photo of a
20 suspect, you are the one that gets to decide which photo
21 you're going to use, correct?

22 A Yes, sir.

23 Q And it's not a computer decision, this is a
24 human decision?

25 A Yes, sir.

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1 Q And you agree, several photos of the same
2 individual can look quite different from each other?

3 A Yes, sir.

4 Q Now, a software program does help you -- do you
5 download the picture of the suspect you have and it
6 chooses similar ones or do you type in characteristics and
7 the computer spits out fill-ins that have similar
8 characteristics?

9 A That's correct.

10 Q Which one?

11 A Last one.

12 Q So, it's not scanning a photo and looking for
13 closely matched people; doesn't do that right?

14 A No, sir.

15 Q You just type in, you know, Hispanic and age
16 range? What about features of the face, how do you denote
17 that?

18 A It has mustache, goatee, and facial hair.

19 Q Okay. And when you get all of these fill ins,
20 you, yourself, are the one that chooses which of the five
21 fill ins you're going to use for the photo spread,
22 correct?

23 A Yes, sir.

24 Q Now, the Department policy you have in front of
25 you states that you should know where all of the photos

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1 came from, correct?

2 A Yes, sir.

3 Q And if you get a photo from one source, the
4 policy says to use the same source for all of the other
5 photos?

6 A Yes, sir.

7 Q You're actually instructed by that policy not to
8 use photos that look too similar to the suspect, correct?

9 A Yes, sir.

10 Q Why is that?

11 A Well, you don't want to put somebody that looks
12 like their twin and confuse people. You've got to get it
13 close enough to where it's not obvious.

14 Q And the policy says the reason, you don't want
15 the person viewing the photo spread to find it too
16 difficult to distinguish the suspect from the fill-ins?

17 A Correct.

18 Q Now, when you're finished putting together your
19 photo spread, you must then inspect it, correct?

20 A Yes, sir.

21 Q And to make sure the suspect does not unduly
22 stand out?

23 A Correct.

24 Q And before showing the photo spread, what's the
25 first question, or any questions, you asked of the witness

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1 before they look at the photo spread?

2 A I don't ask them any questions. We have a form
3 that we have them read and fill out that they understand it
4 and sign it.

5 Q So, you've got your completed photo spreads in
6 your hands, and the next step is, you want to show it to
7 the suspect -- the witness. Your testimony is, the first
8 thing you do then is give them that admonishment form --
9 question form? So --

10 A Yes, sir.

11 Q There is -- is no other questions you ask them
12 then?

13 A No, sir.

14 Q And on the admonishment form, this is seven
15 instructions, right?

16 A Yes, sir.

17 Q One page?

18 A Yes, sir.

19 Q And the witness reads it and signs it?

20 A Yes, sir.

21 Q And that indicates to you that the witness
22 understands what they just read?

23 A Yes, sir.

24 Q Okay. Where do you position yourself while
25 someone is viewing a photo spread?

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1 A Depending on the setting, I try to sit behind
2 them or away from their -- where they can't see me.

3 Q The policy says you are supposed to position
4 yourself in a way that you can't see the photo spread
5 while the person is looking at it, correct?

6 A Yes, sir.

7 Q And the reason why that policy is there is
8 because if you do know the identity of the suspects, you
9 can't give any queues of any kind, correct?

10 A Correct.

11 Q And the witness finally begins viewing the photo
12 spread and if they identify someone, you have them put
13 their name and date next to the picture?

14 A Yes, sir.

15 Q All right. There is really nothing in the
16 policy that says for them to circle the picture, correct?

17 A Yes, sir.

18 Q That's just practice.

19 A Yes, sir.

20 Q And then you complete the bottom of the
21 admonishment form?

22 A Yes, sir.

23 Q Now, you are required, by policy, to ask the
24 person for the -- their level of confidence in selecting
25 that photo, correct?

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1 A Yes, sir.

2 Q And there is actually a line on the admonishment
3 form where you fill that in, correct?

4 A Yes, sir.

5 Q And then after filling that in, you're required
6 to ask that person for comments about the individual's
7 role, the one they just selected, in the crime?

8 A Yes, sir.

9 Q And there is a line for that to fill those
10 comments in, correct?

11 A Yes, sir.

12 Q And, now, we can agree that you are not to
13 provide any feedback, of any kind, to the witness
14 regarding the selection of the suspects?

15 A Yes, sir.

16 Q Why do you think that requirement is in the
17 policy?

18 A I don't know.

19 Q Can you venture a guess?

20 A So if somebody doesn't try to say that you helped
21 them along, I guess.

22 Q In your mind, wouldn't it corroborate that
23 somebody got the right person when you tell them that
24 person's name afterwards?

25 A Yes, sir.

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1 Q And after all of this, the administrator, you,
2 scans all of the files, photographs, and forms in color
3 into something you call the E-file section of your report
4 supplement?

5 A Yes, sir.

6 Q And the original stays with the lead
7 investigator, which was also you.

8 A Yes, sir.

9 Q And as the administrator, you also enter a
10 supplemental report detailing the lineup procedure?

11 A Yes, sir.

12 Q Did you bring any of the documents with you
13 today, sir?

14 A Yes, sir.

15 Q Do you have the supplement?

16 A I think I've got most of them, yes.

17 Q And in those supplements you're required to
18 include any statements or comments that the witness makes?

19 A No, sir.

20 Q Policy tells you if the witness makes any
21 comments, gestures, or asks questions, you're supposed to
22 supplement that?

23 A I don't know if that's in there or not. I don't
24 have the thing memorized. So, if you say it is, it is. I
25 don't have it memorized.

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1 Q And the Sheriff's Department, obviously, has the
2 option to video or audio these photo procedures, right?

3 A Yes, sir.

4 Q Well, let me ask you this: Is a notation in one
5 offense report, related to the case that you did, record
6 something related to one of the photo spreads being shown;
7 do you recall that --

8 A No, sir, I do not.

9 Q -- with Joseph Dubois and to showing the photo
10 spreads to Joseph Dubois?

11 A No, sir. I don't recall recording any of that.

12 Q Okay. And have you ever recorded or audio taped
13 or videotaped the photo spread procedure before?

14 A No, sir.

15 Q Now, the photo spread of Brenda Flores that you
16 showed Orlando Caval, talk about that, briefly, okay?
17 What room were you in with Mr. Caval when you showed that
18 photo spread?

19 A I think it was in one of the sergeant's offices
20 at the time.

21 Q Just you and he in the room?

22 A Yes, sir.

23 Q And where do you recall you were positioned in
24 relation to Mr. Caval when he reviewed the photo spread?

25 A I was probably standing behind him.

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1 Q So, you were not sitting at a desk and Mr. Caval
2 facing you at the other end of that desk?

3 A No, sir, I don't think so.

4 Q You would not do that, right?

5 A No, sir.

6 Q You are not supposed to be able to see the photo
7 spread, correct?

8 A Correct. Correct.

9 Q Now, when you created -- you created two photo
10 spreads with Brenda Flores in each one, right?

11 A Yes, sir.

12 Q One she was in Position No. 3 and one she was in
13 Position No. 6, correct?

14 A Correct.

15 Q And you created them so you put them -- were
16 they in a folder?

17 A Yes, sir. A -- a manila envelope.

18 Q And when the witness selects an envelope, is
19 this --

20 MR. HALPERT: Does he have -- is there one
21 of the photographs up there?

22 MS. LONGORIA: They should be.

23 Q (By Mr. Halpert) This has been admitted into
24 evidence as Petitioner's Exhibit 115. As a matter of
25 fact, here is a photo spread.

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1 MR. HALPERT: I'm sorry, Your Honor, may I
2 show the witness?

3 THE COURT: You may. Sure.

4 Q (By Mr. Halpert) Here is a photo spread of
5 Brenda Flores that Orlando Caval saw, correct?

6 A Yes, sir.

7 Q This piece of paper right here, is this exactly
8 what the witness sees?

9 A Yes, sir.

10 Q Have you seen those brackets that go on top of
11 this and have the holes cut out for just the photos?

12 A Yes, sir.

13 Q But you don't use those?

14 A Only if I make a homemade photo spread.

15 Q But in this case, the photo spreads that were
16 shown, this piece of paper that we're looking at here, is
17 exactly the same piece of paper that the witness saw?

18 A Yes, sir.

19 MR. HALPERT: And I will put this over
20 here.

21 Q (By Mr. Halpert) When you created this photo
22 spread -- you now have 21 -- with Brenda Flores in
23 Position 3 and one in 6, you're holding them in each hand,
24 right?

25 A Yes, sir.

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1 Q And -- okay. And the fill-ins in -- just, they
2 are also moved around. They were shuffled, correct?

3 A Yes, sir.

4 Q And it's the same five fill-ins in this one?
5 The same five fill-ins in this one?

6 A Yes, sir.

7 Q Just now, Brenda Flores now in two different
8 positions?

9 A Yes, sir.

10 Q Now, you know, because you constructed them,
11 that you've got her in Position 3 in this one and Position
12 6 in this one, correct?

13 A Yes, sir.

14 Q Of course. Because you had to inspect it and
15 make sure it was correct, and so when you offer these to
16 Mr. Caval he selects one, right?

17 A Yes, sir.

18 Q And if he takes the one in the right hand, you
19 know that he is taking the photo spread with Brenda Flores
20 in Position 6.

21 Let me back up. You don't do what we
22 call a three-card Monte and close your eyes and
23 shuffle around and throw it up in the air, do you?

24 A I will flip it around a little bit.

25 Q And so your testimony is you actually shuffle it

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1 around to actually fool yourself?

2 A Yes, sir.

3 Q How long did Mr. Caval look at Brenda Flores'
4 photo spread?

5 A A minute, maybe less.

6 Q Did he ask you any questions when he was looking
7 at it?

8 A Not that I recall.

9 Q Did you talk to him while he was studying it?

10 A No, sir.

11 Q After he and -- after he selected Brenda Flores,
12 he asked you what her name was, correct?

13 A He may have.

14 Q You told him Brenda Flores.

15 A Yes, sir.

16 Q You told him he had selected the right person?

17 A After the fact. Yes, sir.

18 Q You told him Brenda Flores was on felony
19 probation?

20 A I didn't tell him that.

21 Q You don't recall that?

22 A No, sir.

23 Q But you told him he selected the right person?

24 A Yes, sir.

25 Q Now, Sergeant Ashmore, can we agree that this is

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1 a violation of the Sheriff's office identification policy?

2 A It could be. Yes, sir.

3 Q Well, "could be" means that maybe. Is it or is
4 it not, based on that identification policy that you have
5 in front of you, a violation of the Sheriff's Department
6 identification policy?

7 A Yes, sir.

8 Q You knew it's a violation of the Sheriff's
9 Department policy?

10 A Yes, sir.

11 Q And yet you continue to tell witnesses the
12 names, whether they are right or not, of suspects they
13 have picked out of a photo spread?

14 MS. LONGORIA: Object to relevance as to
15 continue unless it's as far as --

16 THE COURT: Sustained. I get it.

17 Q (By Mr. Halpert) You do not, despite it being a
18 policy, that does not detour you from telling people the
19 names of the suspects.

20 MS. LONGORIA: Again, Your Honor, I object
21 to relevance unless it's in this particular case.

22 THE COURT: That's sustained.

23 Q (By Mr. Halpert) But you do agree with me that
24 you personally do not believe that by sharing that name it
25 in any way jeopardizes the identification process, do you?

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1 A No, sir.

2 Q Now, on the admonishment form for Mr. Caval on
3 Brenda Flores, you did not write down in the line provided
4 what his level of confidence in selecting her, did you?

5 A No, sir. I did not.

6 Q And you did not write down any comments, as
7 required by policy, in the line below that, did you?

8 A No, sir. My understanding of that policy is
9 that's for them to bring, not for us.

10 Q Well, he did not -- he was not provided the
11 opportunity to do that either, correct?

12 A Yes, he was.

13 Q Did he write any comments down or did he refuse
14 to write comments down?

15 A He did not want to write anything down.

16 Q Your testimony is: You gave him the opportunity
17 and he told you no?

18 A Yes, sir.

19 Q Now, let's turn our attention to the photo
20 spread you showed Mariano Sandoval. Were you in the same
21 room that you showed the photograph of Brenda Flores when
22 you showed him the photo spread of Mariano Sandoval?

23 A No, sir.

24 Q Was anybody else in that room?

25 A No, sir.

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1 Q Same deal. You made two photo spreads Mariano
2 No. 2 in one and No. 6 in the other, correct?

3 A Yes, sir.

4 Q Do you have, Sergeant Ashmore, the identities of
5 the individuals in spaces -- photos 3 and 5 in that photo
6 spread?

7 A No, sir.

8 MR. HALPERT: Let me -- may I approach the
9 witness?

10 THE COURT: Yes, you may.

11 MR. HALPERT: This is going to be
12 Respondent's, I believe, 3, I believe, for purposes of
13 this hearing.

14 Q (By Mr. Halpert) Let me show you Respondent's 3
15 photo spread -- this one is already admitted -- the one
16 containing Mariano Sandoval.

17 MS. LONGORIA: Is 116, Judge?

18 THE COURT: No, I only have 140 and 140 --
19 I haven't seen another one.

20 MS. LONGORIA: Here it is.

21 MR. HALPERT: I'm okay.

22 MS. LONGORIA: I don't care.

23 Q (By Mr. Halpert) I will also reference
24 Petitioner's Exhibit 116 which has been admitted into
25 evidence. Let me show you -- show you 116.

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1 MS. LONGORIA: Judge, I think, if I'm not
2 mistaken, 116 has not been admitted. I haven't offered
3 it.

4 MR. HALPERT: Okay. And I will show you
5 what has been marked Petitioner's 116. I don't think it
6 matters. It's okay if he looks at it?

7 MS. LONGORIA: Yeah.

8 Q (By Mr. Halpert) Do you have access to get us
9 the identities of the individuals in that photo spread?
10 How hard would that be for you to get that to us?

11 A I don't think that would be a problem.

12 Q Well, I submit to you that they look like the
13 same person.

14 A Maybe, I don't know. Doesn't look like it. It
15 could be.

16 Q Well, the top pictures, No. 3, has a bright
17 light kind of shining on the person's face, right?

18 A Yes, sir.

19 Q And No. 6 is just a darker version?

20 A Yes, sir.

21 Q They may be taken at different times, but would
22 you agree with me they are incredibly similar? Those two
23 individuals?

24 A Yes, sir.

25 Q Is it your testimony that, possibly, they are

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1 the same person?

2 A I don't know.

3 Q Well, you created the photo spread.

4 A Yes, sir.

5 Q Can you say with all reasonable certainty it's
6 not the same person?

7 A No, sir.

8 Q So, you're telling me and telling this Court
9 that it's possible you have the same individual as two of
10 the fill-ins?

11 A Possible.

12 Q Now, when you constructed this photo spread of
13 Mariano Sandoval, you certainly noticed that Mariano
14 Sandoval, in Petitioner's 2 or 6, is the only individual
15 that has a striped shirt on, correct?

16 A Yes, sir.

17 Q The other five fill-ins all have solid T-shirts
18 or shirts on?

19 A Yes, sir.

20 Q Was this done intentionally?

21 A No, sir.

22 Q Would it be considered negligently?

23 A No, sir.

24 Q Now, would you agree with me that -- that we
25 talked about, earlier, not having one photograph stand out

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1 amongst all of the others? And this clearly has a very
2 distinguishing feature of one person standing out that all
3 of the others don't have. Would you agree with me?

4 A Yes, sir.

5 Q And in your vast training as an officer, people
6 looking at photo spreads, that could be one of those
7 queues that we talked about when someone is spending a lot
8 of time looking at the photo spread?

9 A Possibly.

10 Q Now, how long did Orlando Caval view this photo
11 spread of Mariano Sandoval before he made identification?

12 A He made an additional identification fairly
13 quickly, but then I sat there and looked at it several more
14 minutes before he circled and everything.

15 Q So, it's your testimony that his identification
16 was immediate?

17 A Yes, sir.

18 Q And you were positive about that?

19 A Yes, sir.

20 Q And same thing with Mr. Caval. Do you remember
21 where you were positioned at when he was doing Mariano
22 Sandoval's photo spread?

23 A I was behind him.

24 Q You were behind him. You would not have been
25 positioned in front of him where you could have seen the

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1 photo spread?

2 A No, sir.

3 Q And, once again, after he picked out the
4 individual that he circled, he asked you the name of that
5 person?

6 A A little while later in the hallway, yes, he
7 asked me about him.

8 Q And you told him the name Mariano Sandoval?

9 A Yes, sir.

10 Q Told him he was a juvenile?

11 A Yes, sir.

12 Q And is there not any prohibition from law
13 enforcement disclosing a name of a juvenile to a member of
14 the public?

15 A Not that I'm aware of.

16 Q You know the District Attorney's Office can't
17 disclose names?

18 A Not that I'm aware of.

19 Q You had no problem telling Mr. Caval the name of
20 a juvenile, correct?

21 A No, sir.

22 Q If Caval had picked out a different -- the wrong
23 person, according to you, would you have told him that
24 fill-ins name?

25 A No, sir, because I don't know who the fill-in is.

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1 Q You would have just said, You picked out the
2 wrong person, if they asked?

3 A Yes, sir.

4 Q So you basically are deciding who is the right
5 suspect and who is the wrong suspect?

6 A No, sir.

7 Q Well, by telling someone the name afterwards
8 that corroborates that's the right person?

9 A After the fact and doesn't have any bearing on
10 his identification.

11 Q What about when this person sees that witness in
12 court? That witness sees that suspect in court? You
13 previously told him that's the right person. You don't
14 think that has any bearing when they come into a courtroom
15 now and see that photo and see the person sitting over
16 there and say, Ah, Detective, told me that is the right
17 guy?

18 You don't think that has any bearing
19 at all of in-court identification?

20 A No, sir.

21 Q And on the admonishment form you gave Caval,
22 again, you did not fill in a level of certainty that's
23 required by the policy, correct?

24 A Correct. Yes, sir.

25 Q And, again, did he also refuse to give a comment

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1 or did you forget to write one down?

2 A No, sir. Again, I gave him the opportunity, and
3 he did not want to write anything down.

4 Q Okay.

5 MR. HALPERT: I have nothing further of
6 this witness, Your Honor. I would like to ask for
7 argument though before we --

8 THE COURT: Thank you, Officer. I'm sure
9 you can go in the back again. All right. Argument? Can
10 you be very succinct because of our time frame?

11 MR. HALPERT: Yes, Judge. Judge, you
12 heard, certainly, the testimony of Mr. Caval and Sergeant
13 Ashmore. Apparently, I am not sure if they were together
14 that night at any point, but they did, certainly, did not
15 agree on a whole lot. It is quite obvious that Sergeant
16 Ashmore's testimony is completely unreliable and quite
17 obvious he violates the Sheriff's Department policy at
18 will and no qualms about it, that tainted the in-court
19 identification. And, in my opinion, actually taints the
20 photo spread identification policy by violating it. He
21 told you where he positioned himself and the witness told
22 you he was right across looking at the photo spread while
23 viewing it in Mariano Sandoval's photo spreads. I don't
24 think if you -- you found it incredulous.

25 THE COURT: I haven't seen --

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1 MR. HALPERT: I found it incredulous he
2 didn't actually know if he put the same person as a
3 fill-in. I'm trying to think. Other than a sign saying
4 guilty over my kid, I can't think of anything more blatant
5 as putting the same person as a fill-in, but we don't know
6 because he didn't have records and --

7 THE COURT: Who are you saying are the same
8 people?

9 MR. HALPERT: Top, bottom, on the right
10 side, 3 and 6.

11 THE COURT: Okay. Okay. All right. Any
12 more argument?

13 MR. HALPERT: No, Your Honor.

14 THE COURT: What says State?

15 MS. LONGORIA: Your Honor, Sergeant Ashmore
16 has testified that he pulled photographs from a pool,
17 entering characteristics that the photographs are similar.
18 Mr. Caval has also testified that the photographs were
19 similar in appearance. The State believes that the
20 photograph of lineup procedure was done correctly. And
21 Mr. Caval made an identification of the respondent from
22 that photo spread. They were all of young males of the
23 same race with the same facial hair.

24 THE COURT: What do you say to the
25 significance of two points? Sounds like what the

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1 respondent's attorney got out was that there may be a
2 question as to where somebody is standing or sitting and
3 whether or not that is significant; and, two, that there
4 is a chance that this detective told the individual
5 that -- the name of the people; what is the significance
6 of that?

7 MS. LONGORIA: Both Mr. Caval and Sergeant
8 Ashmore testified, they did not -- it wasn't suggested to
9 them or did not suggest which photograph to pick out
10 regardless of where they were standing. That may be an
11 argument for Mr. Halpert upon closing and an issue for the
12 jury to consider as to the weight of the testimony. But
13 as far as the admissibility of the testimony, the State's
14 position is that it met the threshold requirement to be
15 considered by the jury.

16 THE COURT: Okay. I am still going to deny
17 the motion to suppress. The record will cover it.

18 We have ten minutes before we are going to take
19 a break. Let's bring them back and do ten more minutes or
20 15 or whatever.

21 I wrote on the order that you had in the court
22 file, Steven. It's in the file.

23 MR. HALPERT: I have an order for purposes
24 of the hearing.

25 THE COURT: That was respondent's what?

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Voir Dire Examination by MR. HALPERT

1 MS. LONGORIA: 2, Judge. Sheriff's
2 Department Policy.

3 THE COURT: Number is what?

4 MS. LONGORIA: No. 2, Your Honor.

5 THE COURT: Exhibit No. 2?

6 MS. LONGORIA: Respondent's Exhibit 2.

7 MR. HALPERT: Okay. So, I am to 3.

8 THE COURT: I don't have a 1, but I have
9 Respondent's No. 2, unless I missed something. Do you
10 have a Respondent's 1?

11 MR. HALPERT: It would seem like a logical
12 place to start. That doesn't always mean that is what I
13 did.

14 THE COURT: Respondent's 2 is the --

15 MR. HALPERT: Policy.

16 THE COURT: The policy. I don't have a
17 Respondent's 1.

18 MR. HALPERT: Okay. So, 4 is next.

19 THE COURT: All rise for the jury.

20 (Jury enters at 11:50 a.m.)

21 THE COURT: Thank you. Be seated. That
22 took a little longer than I anticipated, but we're back.
23 All right, Steve.

24 MR. HALPERT: Thank you, Your Honor.
25

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CROSS-EXAMINATION

BY MR. HALPERT:

Q We can agree that this was a very traumatic experience for you, correct?

A Yes.

Q And I want to ask you a few preliminary questions and they may get a bit personal; is that okay?

A Yes.

Q Do you wear contact lenses?

A No.

Q And I don't see you with eyeglasses on today. Do you wear eyeglasses for any purpose?

A No.

Q Have you ever had an eye exam?

A No.

Q Have you ever had a serious head injury of any kind?

A No.

Q On that night, October 19th, 2013, were you taking any sort of prescription medication or anything?

A No.

Q And have you taken any today or last night?

A For the last few days, no.

Q On your Texas Driver's License, do you have any restrictions that are listed?

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Cross-Examination by *Mr. Halpert*

1 A No.

2 Q And let me ask you, do you consume any alcohol?

3 A On occasion.

4 Q How often would you say?

5 MS. LONGORIA: Object to relevance of that
6 unless it pertains to this particular --

7 MR. HALPERT: I will tie it to that.

8 THE COURT: Unless it's specific.

9 Q (By Mr. Halpert) Would you consider yourself to
10 be a social drinker?

11 A It depends what kind of social drinker you mean.
12 I do drink on birthdays and, you know.

13 Q Would you have a drink at dinner?

14 A No.

15 MS. LONGORIA: Objection, relevance.

16 THE COURT: Would you make it very specific
17 as to the night in question, please?

18 Q (By Mr. Halpert) I want to talk to you -- first,
19 let's go back over the day in question.

20 A Okay.

21 Q October 19th during the day, okay?

22 A Yes.

23 Q Do you remember what time you woke up that
24 morning? This was a Saturday.

25 A Probably around 8:30 to 9:00.

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Cross-Examination by *Mr. Halpert*

1 Q Do you remember, if you do, how many hours of
2 sleep you had the night before?

3 A Four or five or six, something like that.

4 Q Do you recall what you did during the day? Any
5 activities you did?

6 A Prior to the specific going to --

7 Q The Marshalls.

8 A Yes.

9 Q What did you do that day?

10 A Normal stuff like eating, talking to my, you
11 know, family.

12 Q And you said you had dinner that night before
13 you left for Marshalls?

14 A Yes.

15 Q What time do you recall having that?

16 MS. LONGORIA: Object to relevance, Your
17 Honor.

18 THE COURT: Let's get through it.

19 Q (By Mr. Halpert) Do you recall what time you had
20 dinner?

21 A Probably very early. About 7:00.

22 Q From the time you finished dinner until the time
23 you went to pick up your wife, do you remember what you
24 did?

25 A Not specifically. I always watch TV.

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1 Q Did you at all take a nap between the time you
2 woke up that morning until the time you went to pick up
3 your wife?

4 A No.

5 Q Now, let's talk about when you got to the
6 Marshalls location, okay? This is one of those very large
7 parking lots?

8 A Yes.

9 Q Flat?

10 A Yes.

11 Q Big chain stores?

12 A Yes.

13 Q And all of the stores close by 10:00 o'clock,
14 right?

15 A Most of them. But most of the employees are
16 inside cleaning up or sorting things out.

17 Q But as far as customers, there is no more
18 customers coming in after 10:00 o'clock?

19 A No more, yes.

20 Q And you arrived at approximately 10:20 p.m.?

21 A No, about 10:30 to 10:40 p.m.

22 Q And, now, you had talked earlier about your
23 routine but, in fact, you don't normally pick your wife
24 up, isn't that correct, your son does?

25 A Sometimes my son picks my wife up, but for that

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1 day, since my job was slow during the months, so I went up
2 there to pick up my wife.

3 Q And you pulled into a regular parking space?

4 A Yes.

5 Q And as you saw, it's the one directly to the
6 right of the handicap parking space?

7 A Uh-huh, yes.

8 Q Do you remember if you turned your car off?

9 A Yes.

10 Q Now, there was only one other car in that
11 parking lot anywhere near you; isn't that correct?

12 A Yes.

13 Q And there was a woman in that car?

14 A Yes.

15 Q You didn't know that at the time, you learned
16 that later?

17 A Yes, after the incident.

18 Q And she may have been waiting for someone else,
19 just like you?

20 A Yes.

21 Q Can we agree that it was very cold that night?

22 A Not very cold, but it was cold, yes.

23 Q If I told you it was 52 degrees, would you have
24 any reason to doubt that?

25 A Well, I'm not an expert about how cold it was.

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1 Q If it was 52 degrees, that would be cold,
2 wouldn't it?

3 A Yes.

4 Q Especially for Texas, right?

5 A Yes.

6 Q And can we also agree it was dark in that
7 parking lot?

8 A It wasn't real, real dark. All of the lights
9 were on.

10 Q Okay. And we talked about you saw all of those
11 pictures, the only lighting is the large poles that are
12 spaced out in the parking lot?

13 A Yes.

14 Q And in the row that you parked at, there is one
15 large post at the beginning of that by the handicap
16 spaces?

17 A Yes.

18 Q There is not another one down the road?

19 A Which direction you mean?

20 Q Where you were parked at --

21 A Uh-huh.

22 Q -- the poles to your left, correct?

23 A The poles are on my left side, yes.

24 Q Right. And all of the parking spaces to the
25 right of you, there are no poles there?

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1 A I can't really remember. All of the poles are
2 like --

3 Q Towards the front of the parking lot?

4 A Yeah. Yeah.

5 Q Closer to the stores?

6 A Yeah. Yes.

7 Q And we talked about, those are the only sources
8 of light that were there that night?

9 A Probably, yes.

10 Q The other car that was already there, that was
11 facing in the same direction as you, right?

12 A Can you be specific?

13 Q Sure. If you're -- if you're facing, you know,
14 this way (indicates), that car is also facing the same
15 way, it's ahead of you, but you're both looking at the
16 same -- out your windshield, the same direction, correct?

17 A Do you mean the other car that was parked?

18 Q I'm sorry. The car we said the woman that was
19 there also waiting for someone.

20 A Okay. Her car was parked facing -- facing to me,
21 but in that direction (indicates) by the driveway outside
22 of Marshalls.

23 Q So, her car was how far a distance?

24 A It wasn't really parked at the parking space. It
25 was parked right there by the driveway.

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1 Q And --

2 A Outside of Marshalls.

3 Q Okay.

4 A And it was facing to me.

5 Q How long a distance would you say that car was
6 from you?

7 A Probably from here (points), a little bit farther
8 to that corner, approximately.

9 Q Okay. Maybe, 50 feet?

10 A Maybe. I'm not good --

11 Q And do you recall -- and I don't remember if you
12 testified to that, did that car have its headlights on?

13 A I can't remember if her headlights were on or
14 not, but all I can remember was that her engine was running
15 and her windows were closed. I guess it was like you said,
16 cold.

17 Q It was cold. Do you recall describing the
18 light, the large lamppost that was nearest to your car?
19 Do you recall describing that as casting a shadow over
20 your car?

21 A It's not casting a shadow at all. It's directly
22 on the roof of my car.

23 Q So, you don't recall previously stating that
24 that cast a shadow over your car?

25 A What do you mean? The only one that cast a

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1 shadow is my car from the light to the ground.

2 Q Okay.

3 A Well, the light's not above.

4 Q Well, the light is not above your car as we saw
5 in the picture, correct?

6 A Yes.

7 Q But -- you agree with that?

8 A Yes, but -- yes.

9 Q Okay. Now while you were waiting there, were
10 your keys in the ignition?

11 A Yes.

12 Q You had said you turned your car off, correct?

13 A Yes, ma'am.

14 Q But your keys were in the ignition?

15 A Yes.

16 Q Did you turn the car on at any time while you
17 were waiting?

18 A No.

19 Q Do you recall if your radio was on?

20 A No.

21 Q The dashboard lights, do you know if they were
22 on?

23 A Probably, they were. Probably, it was on.

24 Q So, you would have then your key in the ignition
25 turned, at least, to the right a bit?

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1 A Yes.

2 Q Okay. And you obviously had your cell phone on?

3 A Uh-huh.

4 Q So, there was lighting then coming towards you
5 from inside your car from the dashboard and the light on
6 your cell phone, correct?

7 A Yes.

8 Q Were you talking to anybody on the phone or were
9 you just texting or e-mailing or playing on the phone?

10 A No. Actually, I didn't do anything before the
11 time on the phone because the phone's battery was not that
12 much so --

13 Q Just sat in the car and waited?

14 A Uh-huh.

15 Q Let me talk to you a bit about when this other
16 car pulled up next to yours, okay?

17 A Yes.

18 Q Was the other car, when it pulled up, as close
19 to you as two cars would be in a normal parking situation
20 in a parking lot?

21 A Yes.

22 Q Okay. And your vehicle -- you called a
23 crossover, is noticeably higher than that other car; is it
24 not?

25 A Yes.

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1 Q That was just a regular sedan. I think you
2 described it like a Toyota Corolla that --

3 A That night, yes, I did.

4 Q And although your car is higher, would it be
5 fair to say that both cars were matched up in the sense
6 that the hoods were at the same level, the windows at the
7 same level, you know across from each other?

8 A My side is a little bit higher.

9 Q Right. But what was -- if you looked out your
10 window, would you see that person's window?

11 A Of course.

12 Q So, the car wasn't farther than yours up or
13 farther than yours behind right up next to you?

14 A Right up next to my car.

15 Q And somehow the driver, possibly, got your
16 attention through, maybe, hand signals?

17 A No. She shouted at first.

18 Q And when you say you rolled down your window,
19 just to be clear, you had electronic windows?

20 A Yes, ma'am.

21 Q So you didn't reach over?

22 A No.

23 Q You did it from your driver's side?

24 A Yes.

25 Q Now the female that spoke to you, she was the

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1 driver, correct?

2 A Yes.

3 Q And she seemed friendly at first?

4 A Yes.

5 Q Like a regular conversation between two people?

6 A Yes.

7 Q Do you recall anything that this woman was
8 wearing?

9 A I can't because all I can see was her head and
10 then the window.

11 Q And to be fair, you had no reason to be
12 suspicious of this person?

13 A Yes.

14 Q You weren't having any reason to commit this
15 person's face to memory at this point, correct?

16 A Yes.

17 Q In your mind, once you finished this
18 conversation, whatever it was, the two of you probably
19 would never see each other again, right?

20 A Yes.

21 Q You weren't scared or nervous at this point?

22 A At this point, yes.

23 Q At this point you weren't scared or nervous once
24 she talked with you?

25 A Yes, I wasn't.

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1 Q Thank you. And you spoke back to her?

2 A Yes.

3 Q And would it be fair to say that conversation
4 only lasted a few seconds before you got on your phone?

5 A Yes.

6 Q You didn't talk about anything else?

7 A No. It was only the direction that she was
8 asking for.

9 Q And you stayed in your driver's seat that entire
10 time while you were looking on the phone, correct? Right?

11 A Yes.

12 Q And never leaned over to the passenger's side?

13 A No.

14 Q Never slid over into the other passenger's
15 seats?

16 A No.

17 Q Because the other car was lower than yours, you
18 would agree with me, from your driver's side you could not
19 see the entire person's face in the other car?

20 A I can see the entire face of that other person's
21 car, not the whole car.

22 Q Okay. And that driver, did that person at any
23 time, sort of stand up in the car or lean up in any way?

24 A No, she remained seated.

25 Q Just as you did?

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1 A Yes.

2 Q And when you started using your phone, would it
3 be fair to say that you held it down in your lap area like
4 most people hold their phone?

5 A Yes.

6 Q You testified -- or you said a few seconds later
7 you could feel or heard someone jiggling your car handle
8 door, right?

9 A Yes.

10 Q Prior to that, you were not looking out the
11 window, right?

12 A Yes.

13 Q Paying attention to the cell phone?

14 A Yes.

15 Q A something jarred you to look to your left?

16 A Yes.

17 Q And you saw an individual there, correct?

18 A Yes.

19 Q Male or female?

20 A Male.

21 Q We agreed your door was locked?

22 A Yes.

23 Q And your window was completely up?

24 A Yes.

25 Q You had no idea what this person wanted?

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1 A No.

2 Q But you still weren't afraid at this point?

3 A Not yet.

4 Q You may be a little suspicious?

5 A Kind of.

6 Q But not enough to -- you had no problem turning
7 back to your phone though, correct?

8 A Yeah. Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Mr. Caval, would it be fair to say that you used
12 some sort of hand motion, like this (demonstrates) with
13 both hands, you sort of, maybe at face or chest level,
14 hands up, international sign for hold off?

15 A Only one hand.

16 Q One hand. Hold off. That was your message,
17 right?

18 A Uh-huh. Yes.

19 Q And this individual that was standing at your
20 driver's door, would it be fair to say that once you did
21 that, you went right back to your phone?

22 A Yes.

23 Q Can we estimate that at the time you observed
24 that person to your left, before you went back to your
25 phone, was less than five seconds?

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1 A Fair enough.

2 Q Okay. Could be as little as two seconds?

3 A No.

4 Q Somewhere between two and five?

5 A Yes.

6 Q Can we agree on that?

7 A Yes. Yes.

8 Q And at that point, you could have driven off,
9 couldn't you have?

10 A Yes, but I have to start the car first.

11 Q But you didn't because you weren't in fear at
12 that point, right?

13 A That point, yes.

14 Q Do you recall what that person, standing at your
15 door for you, said between two and five seconds was
16 wearing?

17 A A hoodie.

18 Q Can you describe what a hoodie is?

19 A A gray sweatshirt with a hoodie.

20 Q And was the hoodie up?

21 A Yes.

22 MR. HALPERT: May I show the witness
23 Respondent's Exhibit 4, Your Honor?

24 THE COURT: Yes, sir.

25 Q (By Mr. Halpert) Mr. Caval, please look at

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1 Respondent's Exhibit 4. Although there is a lot of people
2 in that picture, do you see the individuals in the middle
3 with that gray -- what I believe you described as a
4 hoodie?

5 A Yes.

6 Q Would that be a fair description? Not the
7 wording on there, the collage on there; but would that be
8 a fair description of how a hoodie is worn?

9 A Yes.

10 Q And how that individual wore it that night?

11 A Yes.

12 MR. HALPERT: And, Your Honor, I tender
13 Respondent's Exhibit 4 to the State for any objections.

14 (Respondent's Exhibit No. 4 offered)

15 MS. LONGORIA: Your Honor, the State would
16 object to Respondent's Exhibit 4. It's not probative of
17 what a hoodie is and, also, prejudicial, more prejudicial
18 than probative of the issue of what a hoodie looks like.

19 MR. HALPERT: Offering strictly for the
20 hoodie, Your Honor.

21 MS. LONGORIA: If I may suggest the we cut
22 out the individual in the hoodie.

23 MR. HALPERT: No problem. All right. I
24 have no problem with that. Do you have a pair of --

25 THE COURT: I am going to recess for lunch

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1 now.

2 Ladies and gentlemen, my bailiff is going to
3 take you to lunch. Do not discuss this case amongst
4 yourselves nor with anybody else. Do not formulate any
5 opinions or anything about this case until it's formally
6 submitted to you. Enjoy your lunch. We will come back at
7 1:15, and the Court is in recess.

8 THE BAILIFF: All rise for the jury.

9 (Lunch recess at 12:20 p.m.)

10 THE BAILIFF: All rise for the jury.

11 (Jury returns at 1:22 p.m.)

12 THE COURT: Thank you. Be seated. Mr.
13 Halpert, you're up.

14 MR. HALPERT: Yes, Judge.

15 THE COURT: Seems like it gets colder in
16 here, doesn't it? It really does.

17 MR. HALPERT: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes, sir.

20 **CROSS-EXAMINATION (CONTINUED)**

21 **BY MR. HALPERT:**

22 Q I think where we ended up, we were talking about
23 this hoodie, Mr. Caval; is that correct?

24 A Yes.

25 Q And I showed you that picture in Exhibit No. 4.

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1 No. 4?

2 A Yes.

3 Q And that looks like the type of hoodie we're
4 talking about?

5 A Yes.

6 MR. HALPERT: And I will tender this to the
7 State for any objections, Your Honor.

8 (Respondent's Exhibit No. 4 offered)

9 MS. LONGORIA: I have no objection.

10 THE COURT: What's the number?

11 MS. LONGORIA: Respondent's 4, Judge.

12 THE COURT: Respondent's 4 is admitted
13 without objection.

14 (Respondent's Exhibit No. 4 admitted)

15 Q (By Mr. Halpert) And I would also like to show
16 what I have marked, for demonstrative purposes,
17 Respondent's Exhibit No. 5, which I submit to you is a
18 real-life hoodie, is that something that looks like what
19 we're talking about, the article of clothing?

20 A Yes.

21 MR. HALPERT: May I publish Respondent's
22 Exhibit 4 to the jury, Your Honor?

23 THE COURT: Yes, sir, you may.

24 Q (By Mr. Halpert) Mr. Caval, if you don't mind, I
25 would like to do a quick recap where we are.

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1 You're sitting in your driver's seat.

2 You're now on your cell phone. Something alerts you
3 to look to your left, correct?

4 A Yes.

5 Q You see a person there, a male, wearing what we
6 talked about, that gray hoodie, correct?

7 A Yes.

8 Q Your window is up?

9 A Yes, it was up.

10 Q And your dashboard lights were on illuminating
11 the inside of your car?

12 A Yes.

13 Q And your cell phone was on with whatever light
14 is coming from that as well?

15 A Yes.

16 MR. HALPERT: And may I approach the
17 witness, Your Honor?

18 THE COURT: Yes, sir.

19 Q (By Mr. Halpert) And we -- I believe we agreed
20 that the person who was at your door was standing there
21 somewhere between three, maybe five seconds.

22 A Yes.

23 Q But the moment that you noticed somebody was
24 standing there, you did your one-hand signal telling them
25 wait, basically?

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1 THE COURT: We heard all of this Steve.
2 New territory.

3 Q (By Mr. Halpert) And the light -- let me show
4 you Petitioner's Exhibit No. 135; do you remember
5 recognizing that picture?

6 A Yes.

7 Q Okay. And in this picture where your vehicle
8 was that night, would it be where that beige SUV is next
9 to that red pick-up truck?

10 A It's that red pick-up truck right there on the
11 disabled parking space.

12 Q It's hard to tell, but would it be, roughly, in
13 that area where the pick-up truck with the beige --

14 A Yes.

15 Q And you would agree with me then that the light,
16 the lamppost, the only one near your light -- your car, is
17 to your left?

18 A Yes.

19 Q So if the person is at your door, the light is
20 actually coming towards your eyes, correct?

21 A Not directly because it's from top.

22 Q It's not on top if you look at the picture, is
23 it?

24 A Well, if you're trying to visualize it. The
25 elevation of my car basing on my heighth where the lights

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1 of my vehicle are, it was not on my eye, it was on top of
2 it.

3 Q Right. But if you look out your window and look
4 up to your left, you could see the light?

5 A If I had to. I had to do this of course
6 (demonstrates).

7 Q In other words, the light is coming in the
8 direction -- I'm not saying it's in your eyes, it's coming
9 from the direction of where you're looking?

10 A Yes, but not directly on my eyes.

11 Q I understand. So if the light's coming now, if
12 I'm the person in the hoodie, and you're sitting right now
13 in the car, the light is shining now behind towards you,
14 correct?

15 A Yes.

16 Q Now, when that -- that person walked away, you
17 have no idea where they went next, correct?

18 A Yes.

19 Q You didn't see anything that person was doing,
20 did you?

21 A At the moment that --

22 Q After you gave the hand-signal and the person
23 then walked away, correct?

24 A Yes. But I didn't notice that because I was
25 occupied with my cell phone, not until the other person was

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1 at the other window.

2 Q After you gave your hand signal, you looked at
3 your phone?

4 A Yes.

5 Q And you didn't look up and see that person
6 there?

7 A Of course not.

8 Q Right. So, that person went somewhere, you
9 don't know where they went?

10 A Yes.

11 Q You don't know what they were doing?

12 A Yes.

13 Q You're still on your phone a few seconds later
14 when something pokes you --

15 A Yes.

16 Q -- from the passenger window?

17 A Yes.

18 Q Which was down the whole time?

19 A Yes.

20 Q That made you look up from your phone?

21 A Yes.

22 Q You knew at this point something was wrong?

23 A Of course.

24 Q Something unusual was pointed at you?

25 A It was very unusual, yes.

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1 Q And by the way, the person was holding it, you
2 figured out at that point this might be some sort of gun;
3 is that fair?

4 A It was a gun.

5 Q I understand that, but you're now realizing
6 this?

7 A Yes.

8 Q And you're shocked now?

9 A Yes.

10 Q You've never had a gun pointed at you before,
11 have you?

12 A Never.

13 Q So, you certainly were not calm or relaxed; is
14 that right or fair?

15 A Fair enough.

16 Q You could feel your heart rate starting to
17 increase?

18 A Of course.

19 Q You were -- some people describe, you're frozen
20 in place?

21 A I cannot really describe it, but yes.

22 Q Would it be fair to say you have not had any
23 formal training as a police officer, have you?

24 A No.

25 Q So, you have never had any training where you

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1 had a gun pointed at you, for training purposes?

2 A No.

3 Q Now, the person that was standing there with the
4 gun, I believe your testimony is it's the same person that
5 was at your door seconds earlier?

6 A Yes.

7 Q At your driver's side door, correct?

8 A Yes.

9 Q And what description of this person were you
10 able to give to the police?

11 A A young Hispanic guy.

12 Q And did you say young or just Hispanic male?

13 A Yes, I said young.

14 Q So young Hispanic male. Any other description
15 you were able to give the police?

16 A I think that was the only recollection that I
17 have that stands out of my path. That was the most
18 important explanation that I remember.

19 Q And a gray hoodie?

20 A Yes.

21 Q And at this point you could hear the female that
22 was in the car next to you, correct?

23 A Yes.

24 Q She was now giving demands for you to get out of
25 the car, right?

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1 A Yes.

2 Q Could you see her?

3 A At that point, no. He was -- I mean, she was
4 behind with the male.

5 Q She was the only person talking, right?

6 A Yes.

7 Q So part of you, in that time period of time, is
8 focused on hearing this female talk?

9 A Yes.

10 Q And part is focused on some -- a gun, what you
11 believe was a gun pointed at you?

12 A Yes.

13 Q The person holding the gun never said a word
14 through the entire encounter, correct?

15 A Yes.

16 Q You're saying they never said a word, right?

17 A Yes.

18 Q And the female told you to get out of your car?

19 A Yes.

20 Q You didn't need to hear that twice?

21 A I didn't have to because she kept repeating it
22 like, maybe, two or three times.

23 Q You didn't argue.

24 A No.

25 Q You didn't negotiate?

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1 A Nope.

2 Q So, gone, get out. Is it fair to say you were
3 out of that car within two to three seconds?

4 A Yes, but she demanded to left the wallet and cell
5 phone.

6 Q But you still got up and got out immediately.

7 A Yes. I managed to have my cell phone with me.

8 MR. HALPERT: May I show the witness
9 Respondent's Exhibit 6 and 7, Your Honor?

10 THE COURT: Yes, sir.

11 Q (By Mr. Halpert) Mr. Caval, you testified
12 earlier that you, yourself, took some measurements of your
13 car, correct?

14 A Yes.

15 Q Was that at the request of the prosecutors or
16 was that just your own investigation?

17 A Well, I figured out like that night, you know,
18 the height of my window and the height of the, you know,
19 the suspect. I was just like trying to establish something
20 to the height.

21 Q Would it be fair to say you did a little bit of
22 your own reenactment using your car?

23 A Not actually. I just measured the car.

24 Q Let me show you these two photographs. And
25 would this accurately depict the same measurement you got

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1 to the roof of your car, the top of the window, as you see
2 in that picture there?

3 A Not exactly. I measure my car from this point
4 right hear (indicates) on the tip, all the way to the
5 ground because this is the highest point of the window.

6 Q Okay. Okay. Now, do we have -- if I submit to
7 you that this is the exact year, make, and model of your
8 car, do you have any reason to doubt that? 2008, Mazda
9 XD7?

10 A CX7.

11 Q What's that?

12 A CX7.

13 Q Whatever. Whatever was the car, would it help
14 you to see your registration, a sticker of this car, see
15 if it was the exact same model, make, year, as your car?

16 A From this picture, yes, except different color.

17 Q Correct. And the tape measure from the ground
18 up to the top part of the window, top highest part of the
19 window, is 60 inches, which is five feet?

20 A Yes, approximately. Close enough.

21 MR. HALPERT: I would like to tender 6 and
22 7 to State for any objection.

23 (Respondent's Exhibit Nos. 6 and 7 offered)

24 MS. LONGORIA: I have seen them, Judge, no
25 objection.

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1 THE COURT: 6 and 7 are admitted without
2 objection.

3 (Respondent's Exhibit Nos. 6 and 7 admitted)

4 MR. HALPERT: Judge, do you want to see
5 these?

6 THE COURT: Yes, I would love to.

7 MR. HALPERT: Please, may they be
8 published, Your Honor?

9 THE COURT: Yes, sir.

10 Q (By Mr. Halpert) Mr. Caval, your testimony was
11 that the individual who held the gun and was at your
12 passenger door was 5'3", maybe 5'4".

13 A Close enough, yes.

14 Q And because of that individual -- your testimony
15 was that you were asked, did they have to duck their body
16 or head inside your car?

17 A No, they did not.

18 Q And your answer was, they only had to hunch down
19 a bit? Would that be fair?

20 A Yes.

21 Q Okay. I'm standing straight up. Would that be
22 hunching down a bit?

23 A Yes.

24 MR. HALPERT: Your Honor, for demonstrative
25 purposes, may I ask Mr. Sandoval to stand up?

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1 THE COURT: Yes.

2 MR. HALPERT: Let the record reflect, Your
3 Honor, that Mr. Sandoval's height is five foot eight and
4 a half inches, and I will let the State --

5 THE COURT: Yes. Is that with shoes or
6 without?

7 MS. LONGORIA: I have seen it, Judge.

8 THE COURT: Thank you. Any objections?

9 MS. LONGORIA: I'm not sure the jury saw
10 anything. I don't know what I would object to.

11 MR. HALPERT: Can I have him stand in front
12 of the jury, please?

13 THE COURT: Sure.

14 Q (By Mr. Halpert) Turn sideways.

15 A (Complies)

16 Q Five eight. 5' 8", do we see that? Which would
17 be sixty eight inches total, 5' 8".

18 Now, we discussed that the top of
19 that window that you step back on there was five
20 foot. Right there. Correct? Five feet tall?

21 A Yes.

22 Q So, if a person scrunched down a little, as we
23 talked about, most of their face would still be hidden by
24 the top of the car?

25 A Yes, but I was sitting low.

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1 Q I understand. But --

2 A You have to remember that I was sitting low. So
3 my elevation is kind of lower.

4 Q You would agree with me though that there is a
5 cut-off point on your window?

6 A Yes.

7 Q That's the roof of your car?

8 A Yes.

9 Q At the top right. You can't see -- is it a
10 sunroof?

11 A No.

12 Q So, it's a hard top?

13 A Yes.

14 Q Okay. So, if a person's face is at some level,
15 you can't see through the metal, can you?

16 A If he stands up like that, of course not.

17 Q Your explanation of the person with the gun
18 being 5-foot three or 5-foot four, which you are sure of,
19 would make more sense to see that person's face in a
20 five-foot high window, correct?

21 A Yes.

22 Q Now, when you got out of your car, we said
23 several seconds later, you walked towards the Marshalls?

24 A Yes.

25 Q You didn't look back?

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1 A I did not.

2 Q Not until your car was gone from the parking
3 lot?

4 A Yes.

5 Q Let's talk a little about that gun that was
6 pointed at you that night. Do you own any weapons, Mr.
7 Caval?

8 A Not at all. No.

9 Q Do you ever go to a range to shoot any guns?

10 A No.

11 Q You live, sounds like, a relatively gun-free
12 life?

13 A Yes.

14 Q And we agreed it was dark that night?

15 A Not dark enough that I cannot, you know, describe
16 anybody's face.

17 Q I understand. And we talked about the time you
18 had to view this gun was, maybe, two to three seconds
19 before you got out of your car?

20 A Fair enough, yes.

21 Q And part of you was listening to a female behind
22 that person yelling at you?

23 A Yes.

24 Q Now in preparing to testify, you were told by
25 the prosecutors that you were going to be shown a gun to

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1 identify, correct?

2 A Yes.

3 Q Were you shown the gun today or yesterday, prior
4 to testifying?

5 A Today.

6 Q Did you look at six guns in a lineup?

7 A No.

8 Q You saw the gun wrapped up in official
9 packaging?

10 A You know, cellophane or what you call that.

11 Q Evidence?

12 A Yeah.

13 Q Did they take it out for you?

14 A Yeah. Yes.

15 Q It looked official though like you -- like what
16 you see on CSI?

17 A I don't know. I don't watch CSI that much.

18 Q Did you ever describe what the gun looked like
19 that night to any deputy?

20 A The barrel was plain, it's long and big.

21 Q Let me ask you again. Did you ever tell any
22 deputy that night a description of the gun?

23 A I can't really recall, but I guess I have.

24 Q The next day at Clay Road, did you describe the
25 gun to Sergeant Ashmore?

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1 A I guess I have, yes.

2 Q So it should be, if you gave a description,
3 description to any deputy or Sergeant Ashmore, we will
4 likely see it recorded in a statement perhaps?

5 A Yes.

6 Q And that night, the next night when you were at
7 the station house twice, you were never shown a gun to
8 look at to identify, correct?

9 A No.

10 Q And since that night, you have never been asked
11 to come back to the police station to look at a gun to
12 identify?

13 A No.

14 Q They never even showed you a photograph of a gun
15 to look at to identify?

16 A No.

17 Q Let's talk about what happened right after the
18 robbery, okay? Your heart is still racing after you got
19 out of your car, correct?

20 A Yes.

21 Q And you're in, is it fair to say, in a very
22 excited state?

23 A Fair enough, yes.

24 Q And I apologize, I didn't hear this earlier.
25 Did you bang on the Marshalls' door first?

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1 A No, it wasn't me. It was the girl that was
2 park -- the other vehicle that was parked close to the
3 door, that was parked in the driveway. She was the one who
4 banged on the door of Marshalls to let my wife know inside
5 what was going on.

6 Q So did you call 911?

7 A Yes.

8 Q Before your wife came out?

9 A Yes.

10 Q Now, this other woman, and I believe she
11 actually ended up giving you some sort of blanket or
12 something to cover yourself because it was cold?

13 A Yes.

14 Q Was she -- did you later find out, or that
15 night, whether she was waiting for a loved one who was
16 also in Marshalls?

17 A Yes, because my wife told me that she knows
18 the -- that woman that was waiting outside, but I didn't
19 know her, I didn't know her name.

20 Q And as far as you know, that woman has never
21 been talked to by any police officers, has she? If you
22 know?

23 A Yes. I don't know if he asked her something like
24 that because she didn't know what was going on.

25 Q Even though you had testified that she was

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1 facing your car?

2 A Yes.

3 Q But she didn't see anything?

4 A Her car was facing mine, but not directly. It
5 was some kind of other, but not directly.

6 Q Now, Deputy Gaines was the first officer to
7 arrive at the Marshalls' parking lot?

8 A Yes.

9 Q And he asked you about what happened?

10 A Yes.

11 Q And you answered those questions?

12 A Yes.

13 Q And you told him, as you said, you thought the
14 person was Hispanic that had the gun?

15 A Yes.

16 Q You told Deputy Gaines he was wearing a hoodie?

17 A Yes.

18 Q And you told him he could be as short as five
19 foot three?

20 A I guess, yes.

21 Q And today you are solid on five foot three, five
22 foot four?

23 A I am not good with measuring heights in technical
24 terms, so that was an estimation.

25 Q How tall are you, sir?

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1 A Five foot four.

2 Q You didn't tell Deputy Gaines that the person
3 had a round or narrow face?

4 A No.

5 Q You didn't tell him whether the person's eyes
6 were close together or far apart?

7 A No.

8 Q You didn't tell him anything about whether the
9 person's nose was flat or pointy?

10 A At that time, no.

11 Q Anything about the person's lips?

12 A No. That night, I don't think so. It was so
13 fresh. I was in shock.

14 Q Nothing about the person's teeth?

15 A No.

16 Q No scars or tattoos?

17 A No.

18 Q Or piercings?

19 A No.

20 Q How about if the person had any facial hair like
21 I have?

22 A He didn't ask. I didn't say nothing about the
23 facial hair or something.

24 Q Right. In other words, you didn't tell Deputy
25 Gaines the person either had facial hair or didn't have

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1 facial hair?

2 A Well, I only -- I only answered what he asked me
3 about, but I cannot remember every day until that
4 conversation with what happened that night.

5 Q But, clearly, he asked you for a description?

6 A Yes.

7 Q And the female, he asked you for a description
8 of too?

9 A Yes.

10 Q Other than being Hispanic, were you able to give
11 him any other description of the female?

12 A I only said that she is Hispanic and they look
13 young. She look young and the male is young.

14 Q And the third person that was posing in the car
15 as well?

16 A Yes.

17 Q Now, that person never got out of the car,
18 right?

19 A I didn't have that much detail on him because my
20 attention was on the male and the female that was shoving
21 inside the car.

22 Q Did that other car that pulled up next to you,
23 did they ever turn the lights on beside you inside the
24 car?

25 A I can't remember.

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1 Q So, it would be fair to say, as best you can
2 remember, that car was dark. The inside of that car?

3 A Not that -- not that -- not that dark, as you
4 might have seen because the lights on top were all over the
5 place.

6 Q And you told Deputy Gaines that this other male
7 was also Hispanic?

8 A I can't recall what I said, but I might have.

9 Q So, two Hispanic males, one Hispanic female?

10 A Because that night I notice it was an Afro
11 sitting in the back, that's all I can say. But this kind
12 of question is trying to make me some kind of -- throw me
13 off or confuse me. So --

14 Q So, please, if I am asking you anything that
15 confuses you, then ask me to reask it. I don't want to
16 confuse you. Okay? The male in the back, you said you
17 were able to see him?

18 A Yes.

19 Q You said he had an afro?

20 A Yes.

21 Q Was he Hispanic or African American?

22 A I assume he was African American.

23 Q And is it my understanding that you were able to
24 see some sort of highlight in his hair or special coloring
25 in his hair?

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1 A Yes.

2 Q And what was that?

3 A Some kind of blond or orange or something like
4 that.

5 Q And --

6 A On the tip because, you know, it's kind of a
7 little bit dark.

8 Q And you would have seen this from your driver's
9 seat, correct?

10 A Yes. From my elevation.

11 Q Right. And you would have had to look, not only
12 to your right, but also to the back of that other car,
13 correct?

14 A The very back of the car. I didn't see it
15 anymore.

16 Q The back seats?

17 A The back seat of that car, yes.

18 Q And, okay. That's where you believe you were
19 able to see a blond streak in this person's afro?

20 A Yes.

21 Q Now, you testified you called the police early
22 in the morning after you got home because you discovered
23 your credit cards had been used?

24 A Yes.

25 Q What time was it that you called them?

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1 A Oh, I guess between 1:00 or 2:00.

2 Q You determined that they were used at a couple
3 of locations, right?

4 A Yes.

5 Q After that night, did the police ever ask you to
6 look at any video footage of people using your credit
7 cards at those locations?

8 A No.

9 Q You have never been shown any videos of any kind
10 about people using your credit cards, correct?

11 A No.

12 Q And that was the time you discovered was very
13 close in time after the robbery, correct?

14 A Can you repeat that, please?

15 Q Sure. Sure. The time that the credit cards
16 were being used was very close in time to after the actual
17 robbery?

18 A Close in time on --

19 Q Maybe an hour after the robbery those credit
20 cards were being used?

21 A More than that.

22 Q Well, what time did you say you called the
23 sheriff's deputy?

24 A Between 1:00 and 2:00.

25 Q Okay.

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1 A They came to my house to talk to me.

2 Q So, the credit cards had to be used before 1:00
3 a.m, correct?

4 A From -- from before the incident, no.

5 Q Right. They were used after the robbery?

6 A Yes.

7 Q Right. And, obviously, you called the police
8 because you saw they were being used on your computer,
9 right?

10 A Yes.

11 Q Is it fair to say then that the transactions on
12 your credit card were maybe within one to two hours after
13 the robbery?

14 A Fair enough, yes.

15 Q Let me ask you some questions, Mr. Caval, about
16 when you went down to the police station, okay?

17 A Yes.

18 Q Now, the first time Sergeant Ashmore of the
19 Sheriff's Department called you and asked you to come down
20 to Clay Road, right?

21 A Yes.

22 Q And you arrived around 2:45, 3:00 in the
23 afternoon, is that fair?

24 A Yes.

25 Q And from the time you finally settled in the

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1 night before with the changing of the locks and coming
2 down to the station the next afternoon, be fair to say you
3 got about five or six hours sleep?

4 A Like I said, yes.

5 Q You were tired, obviously, is this fair?

6 A A little.

7 Q Sergeant Ashmore wanted you to look at some
8 photos?

9 A Yes.

10 Q You were in a room with him in a police station?

11 A Yes.

12 Q Just you and Sergeant Ashmore?

13 A I know it's like maybe one, two coming out of,
14 you know, in and out of the door, but he wasn't really a
15 noise or something like that.

16 Q When you looked at the photos, was it just you
17 and Sergeant Ashmore in the room?

18 A Yes.

19 Q Could you hear noise from outside that room?

20 A Not much.

21 Q And before you looked at the photos, he gave you
22 a piece of paper which contained instructions, correct?

23 A Yes.

24 Q And you read those?

25 A Yes.

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1 Q Signed your name?

2 A Yes.

3 Q And then he asked you to pick an envelope, is
4 that correct?

5 A I can't remember. The only thing I can really
6 remember is, like, the pictures. He might have, yes.

7 Q And by pictures, we mean, six photos on one
8 pieces of paper -- one piece of paper? Sorry.

9 A Yes.

10 Q Do you recall Sergeant Ashmore having two pieces
11 of paper in his hands and saying, Mr. Caval, please pick
12 one?

13 A Yeah, I might have. Yeah, I might have remember.

14 Q And do you remember Sergeant Ashmore, sort of,
15 doing this (demonstrates) and shuffling them between
16 himself before he gave them to you?

17 A No.

18 Q He just had two and said, Pick one?

19 A I guess, yeah, but aside from that, yeah.

20 Q Now, you immediately saw there was six females
21 in those photos, correct?

22 A Yes.

23 Q And you only had contact with one female the
24 night before during that robbery, right?

25 A Yes.

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1 Q The driver of the car that pulled up next to
2 you. In your mind, Mr. Caval, when you looked at that
3 photo spread with six pictures, did you believe that the
4 person that was part of the robbery the night before was
5 going to be in one of those pictures?

6 A At first I really have to, you know, look at the
7 pictures, you know.

8 Q Before that. Before that. When you saw they
9 were six, he called you down there--

10 A Uh-huh. Yes.

11 Q -- specifically, to look at these photos. You
12 saw there were six women in there. There was only one
13 woman involved in the robbery the night before?

14 A Yes.

15 Q In your mind, the moment you saw that --

16 A The moment, okay.

17 Q -- did you believe that person is going to be on
18 this piece of paper?

19 A Yes.

20 Q How long did you study that piece of paper?

21 A Then again might be three, five or more.

22 Q Minutes?

23 A Yeah. I --

24 Q Now, while you were looking at the photo spread,
25 was it flat on a table like this?

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1 A Yes.

2 Q You're sitting in a chair like I am?

3 A Yes.

4 Q Were you at a desk?

5 A Yes, I was sitting opposite with Sergeant
6 Ashmore.

7 Q So you're at a desk, he is at one end of the
8 desk, you are at the other end of the desk?

9 A Yes.

10 Q Are you about as close as I am from this
11 gentleman to my left in the blue suit?

12 A Yes, it was -- it was, you know, the distance
13 like a regular desk, yes.

14 Q I don't know. Well, strike that. We -- if he
15 wanted to, in your opinion, be able to see the photo
16 spread as you were looking at it?

17 MS. LONGORIA: Object to speculation, Your
18 Honor.

19 THE COURT: That's sustained.

20 Q (By Mr. Halpert) Was there anything between you
21 and Sergeant Ashmore? Some sort of obstruction like this
22 laptop or a wall or anything between you and Sergeant
23 Ashmore?

24 A No.

25 Q There was nothing blocking his view of that

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1 photo spread you were looking at, correct?

2 A No.

3 Q And at some point, you said after three to five
4 minutes, you circled someone you believed to be involved
5 in that robbery, correct?

6 A Yes.

7 Q You put your initials next to the photo?

8 A Yes.

9 Q You dated it?

10 A Yes.

11 Q Did Sergeant Ashmore ask you about the strengths
12 of your identification? In other words, was it very
13 positive, sort of positive or tentative?

14 A I cannot remember. I cannot remember accurately,
15 but he asked me if I'm sure.

16 Q Did he ask you then to write down your level of
17 confidence on a piece of paper?

18 A I can't remember, maybe he did, maybe he did not.

19 Q After that, did he ask you to put in your words
20 to write on a piece of paper what the role that female had
21 in the robbery?

22 A I don't think so.

23 MR. HALPERT: May I approach?

24 A Write it or -- I cannot remember anymore.

25 MR. HALPERT: May I approach the witness,

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1 Your Honor?

2 THE COURT: Yes, sir.

3 Q (By Mr. Halpert) Let me show you, it might be
4 helpful to look at Petitioner's Exhibit 115, this was the
5 instruction sheet we talked about a little bit earlier --

6 A Yes.

7 Q -- correct? You signed it. That's your name
8 and everything on there, right?

9 A Yes.

10 Q After you identified the female, you said there
11 in No. 6, did he ask you down here where it says, level of
12 certainty, did he ask you to either write something in or
13 ask you what your level of certainty was?

14 A It was something verbal. I don't remember
15 writing something. I might have put -- I'm not sure he
16 asked me if I was really sure or not.

17 Q As far as the comment I was talking about, do
18 you remember if Sergeant Ashmore offered to write on this
19 line here about what that female's role was during the
20 robbery?

21 A I don't think so.

22 Q If he had, would you have refused?

23 A Maybe not. Maybe. Maybe I would cooperate.

24 Q All right. So, if he said, Mr. Caval, write
25 down your comments; you would have written them down then,

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1 right?

2 A Yes.

3 Q And we can agree that there is nothing written
4 for level of certainty or comments there?

5 A Yes, it was all verbal.

6 Q Okay. Now, after you had circled the female and
7 put your date and name, you asked Sergeant Ashmore what
8 the name of that female was; isn't that true?

9 A Yes, I did.

10 Q And he told you?

11 A Yes.

12 Q He told you the name was Brenda Flores?

13 A Yes.

14 Q And when he told you the name Brenda Flores, in
15 your mind, Mr. Caval, you believed you picked the right
16 person?

17 A Yes.

18 Q And he told you you were correct?

19 A I can't -- I can't remember. He might have.

20 Q After this, Sergeant Ashmore, he took out a tape
21 recorder and took a recorded statement from you?

22 A Yes.

23 Q He asked you questions?

24 A Yes.

25 Q You answered them?

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1 A Yes.

2 Q He asked you what all of the important details
3 about what happened the night before?

4 A Yes.

5 Q This was a fairly short conversation, wasn't it?

6 A Not short, not that long.

7 Q If I told you it lasted 3 minutes and 25
8 seconds, would you have any reason to doubt that?

9 A I'm not really sure because I am not good with,
10 you know, time. I wish --

11 THE REPORTER: Could you repeat that?

12 A I wish I could have looked at a watch while we're
13 talking about the details and everything.

14 Q (By Mr. Halpert) And you left Clay Road about
15 4:00 o'clock in the afternoon?

16 A Yeah, fair enough.

17 Q And let's talk about what happened a little
18 later that night; do you understand?

19 A Yes.

20 Q Sergeant Ashmore called you again?

21 A Yes.

22 Q To come down to the station?

23 A Yes.

24 Q You arrived about 8:00 p.m, correct?

25 A Somewhere around there, yes.

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1 Q Now, did you, during the four hours between
2 leaving there and coming back, you just did normal
3 activities at home?

4 A Can you please repeat the question?

5 Q Yeah. During that four-hour window between
6 leaving the first time from the station and coming back,
7 you just did some normal stuff at home?

8 A Yeah, yes.

9 Q Watch TV?

10 A Yes.

11 Q Did you take a nap at all that day?

12 A No, I did not.

13 Q He told you, when you came back in, he wanted
14 you to look at some more photographs?

15 A Yes.

16 Q Were you back in the same room?

17 A It was the other room across the hall.

18 Q Or was it just Sergeant Ashmore with you again?

19 A Yes.

20 Q And before showing you the photographs, did
21 Sergeant Ashmore ask you if the person you were about to
22 see in the photograph, the male, if you had seen that
23 person since the robbery? Did he ask you that?

24 A No.

25 Q Now, this was the first time you were seeing a

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1 photo spread, the six photos, of a male?

2 A Yes.

3 Q And you really took your time looking at that
4 photo spread, didn't you?

5 A Yes.

6 Q You studied it hard?

7 A Yes.

8 Q You certainly didn't recognize anyone
9 immediately?

10 A Immediately, of course not.

11 Q You spent at least, approximately, ten minutes
12 looking at that photo spread before you identified
13 anybody?

14 A Maybe less than that. Maybe less than that,
15 because they all look alike, at first.

16 Q We say ten minutes, more or less?

17 A Yes.

18 Q And this was, obviously, after you had already
19 looked at the female photos?

20 A Yes.

21 Q And Sergeant Ashmore had already confirmed for
22 you that you got it right the first time, right?

23 A He might have, yes.

24 Q And so, Mr. Caval, let me ask you. In your mind
25 now, when he has called you back down a second time

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1 specifically to look at a photo spread, did you believe,
2 in your heart, that -- and in your mind, that when you
3 looked at the males on there, that you believed one of the
4 males was going to be in that photo spread that was part
5 of the robbery?

6 A Yes.

7 Q And that's why you spent so much time looking at
8 the pictures?

9 A Of course. Yes.

10 Q Now, during this photo spread, were you also at
11 a desk or a flat surface like a desk?

12 A Yes, ma'am.

13 Q Was Sergeant Ashmore similar to where you were
14 before, across from you?

15 A Yes.

16 Q Was there any obstructions of any kind between
17 the two of you?

18 A No.

19 Q If he were looking at your photo spread, he
20 would be able to see it, correct?

21 A I wasn't paying attention to him. Yes, he would.

22 Q And after we talked about that time period, you
23 picked out one of the males --

24 A Yes.

25 Q -- right? Then you put your initials and date

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1 next to the photo?

2 A Yes.

3 Q Did Sergeant Ashmore ask you how positive you
4 were about that identification?

5 A Yes.

6 MR. HALPERT: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes, sir.

9 Q (By Mr. Halpert) Mr. Caval, this was previously
10 marked at Petitioner's Exhibit 116.

11 MR. HALPERT: I don't think this was
12 admitted into evidence.

13 THE COURT: 116? It was not.

14 MR. HALPERT: Was not.

15 Q (By Mr. Halpert) Mr. Caval, let me show you, do
16 you recognize the form and photographs in Petitioner's
17 116?

18 A Yes.

19 Q And like the other one I showed you, this is a
20 document that has instructions on it which you read before
21 you look at the photograph?

22 A Yes.

23 Q And then, this is the dock -- the photo spread
24 which you said was flat on the table which you were
25 looking at?

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1 A Yes.

2 Q Would you agree with me, Mr. Caval, that out of
3 those six pictures, the one that you picked out is the
4 only person wearing a striped shirt?

5 A Yes.

6 Q The other five people are all wearing either --
7 they are solid T-shirt or collared shirts?

8 A Yes.

9 Q And like I asked you before, under a level of
10 certainty, did you write down any comments about how
11 certain you were on this identification?

12 A Like I said, all of them were mostly verbal.

13 Q And if Sergeant Ashmore asked you now to write
14 down some comments, you would not have refused them,
15 right?

16 A Yes.

17 Q You wouldn't have?

18 A Of course I would.

19 Q Right. You would have been cooperative?

20 A Yes.

21 Q And after you circled the picture and dated it
22 and initialed it, you did the same thing with Sergeant
23 Ashmore as you did with Brenda Flores, you asked Sergeant
24 Ashmore what was the name of the individual, correct?

25 A Yes.

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1 Q He told you the male's name was Mariano
2 Sandoval?

3 A Yes.

4 Q He told you Mariano Sandoval was a juvenile?

5 A He might have.

6 Q You would agree with me, Mr. Caval, he basically
7 told you that you had been, now, correct twice?

8 A He might have. I can't really remember that
9 much.

10 Q Do you recall previously stating that you felt
11 you got lucky when you picked Mariano Sandoval's photo?

12 A Okay. I think when I said that, I might have
13 lied because he was the third person, because he was the
14 one farther from me, but not Mariano, the other one sitting
15 in the box, not Mariano.

16 Q We will get to that. You do not recall using
17 the word "lucky" or "got it right" when you picked out
18 Mariano?

19 A I may have; I may not have.

20 Q Now, after this photo spread, Sergeant Ashmore
21 showed you one more photo spread, correct?

22 A Yes.

23 Q And same room?

24 A Yeah, I guess. Yes.

25 Q Same setup. Sitting across from you?

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1 A Yes.

2 Q Now, this photo spread contained six African
3 American males on it?

4 A Yes.

5 Q And the night before when Deputy Gaines met you
6 at the Marshalls, do you recall telling him it was a
7 Hispanic male in the back seat?

8 A I might have, but it was an Afro sitting in the
9 back.

10 Q So now you're clearly looking at six African
11 American males?

12 A Yes, that night, yes.

13 Q Did you say, Wow, I thought it was a Hispanic
14 guy and now you're showing me six African Americans?

15 A No. I didn't have that reaction, Whoa, because
16 he was an Afro. Anybody can wear a wig at night or
17 whatever that's a fact, anybody, especially if they have a
18 purpose.

19 Q So --

20 A Anybody.

21 Q I understand. So, now you're looking at six
22 photographs of African American males?

23 A Yes.

24 Q How long did you look at the photo spread?

25 A That was the longest one because he was the

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1 hardest one for me. And he was the less involved of the
2 three.

3 Q And you got the least look at this person,
4 right, the night before?

5 A Yes.

6 Q And it's your testimony that you were able to
7 pick out that African one -- African American male out of
8 the six as being a part of that robbery?

9 A Yes.

10 Q You're positive about that?

11 A I was -- honestly I was positive, but not a
12 hundred percent. That was the only person that, you know,
13 as like I said, least involved and hardest for me.

14 Q And more importantly, you're positive that the
15 next night you actually picked out --

16 A Yes.

17 Q -- one of the males?

18 A What do you mean? Are we talking about --

19 Q One of the African American males.

20 A Yes.

21 Q And you circled it?

22 A Yes.

23 Q And you put your name, your initials?

24 A I think I might have just circled it. I don't
25 know about the initials, or whatever, because that was the

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1 only one that was really like, for me, the hardest one. So
2 of all the three, that was the hardest one to identify.

3 Q And you're as confident that you were able to
4 pick out that male that night as you are that you picked
5 out Mariano?

6 A Not as much as Mariano. Mariano, I was really
7 sure it was him. But since he was sitting in the back, all
8 I can see is the shape of his face and silhouette and a
9 little bit bigger in the face, and that was it.

10 And like Mariano, he was close enough to my
11 face the very first time and that's why I had both angle
12 of his face this much and that much (indicates) and the
13 elevation I sit, I was sitting low.

14 Q And before testifying today, prosecutors have
15 shown you the photo spread containing Mariano again?

16 A Yes, ma'am.

17 Q How many times did you look at it?

18 A One time.

19 Q And when did you see that?

20 A Yesterday. Yesterday.

21 Q And, also, yesterday you happened to walk into
22 the courtroom for a very short period at the end of the
23 afternoon, correct?

24 A Yes.

25 Q And you saw Mariano sitting in the courtroom

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1 right in front of you, correct?

2 A Actually, I wasn't -- I wasn't paying attention
3 and --

4 Q Mr. Caval, just a brief -- you talked about the
5 car you recovered and this oil you talked about or it was
6 messed up?

7 A It looks like it was like some kind of oil but it
8 was dried and round in both of the seats in the front of
9 the car.

10 Q Are you aware that when the police processed the
11 car that they did that swabbing for DNA?

12 A The whole car?

13 Q Yes.

14 A I am not sure they did that.

15 Q Okay. Mr. Caval, have you ever seen somebody in
16 public, maybe at a distance, thought it was someone you
17 knew, and then it turned out to be someone else; has that
18 ever happened to you?

19 A It happens to everybody.

20 MR. HALPERT: Pass the witness, Your Honor.

21 THE COURT: Thank you.

22 MS. LONGORIA: May it please the Court?

23 THE COURT: Yes, ma'am.

24 MS. LONGORIA: Thank you. May I approach
25 the witness, Your Honor?

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1 THE COURT: Yes, you may.

2 REDIRECT EXAMINATION

3 BY MS. LONGORIA:

4 Q Mr. Caval, I want to show you Respondent's
5 Exhibit 4, the hoodie that Mr. Halpert has here. Is this
6 a similar hoodie to the one Mr. Mariano was wearing?

7 A Similar, but close enough.

8 Q What did you tell me was different about this
9 hoodie that Mariano was wearing that night?

10 A Similar, but the opening a little more, but the
11 one -- this is closed up and the one he was wearing was,
12 you know, kind of open in the middle.

13 Q Do you know if it had a zipper or perhaps it was
14 one of those that comes down and opens halfway before the
15 fabric becomes solid?

16 A Something like that.

17 Q But in this case, in this hoodie that we're
18 seeing in here, in this exhibit, was the hoodie that
19 Mariano had on, this style, where the fabric comes all the
20 way to the chin?

21 A No. Like I said, it was, like, open, like, all
22 the way down, but I didn't describe it because do you to
23 the limitation of the elevation.

24 Q And the hoodie that he had on, was it drawn
25 around his face tightly?

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1 A No, it wasn't.

2 Q Mr. Caval, I know you said you have children,
3 correct?

4 A Yes.

5 Q And they're grown children at this point?

6 A Yes, 19 and 20.

7 Q And so both of your children have previously
8 been 14 and 15, correct?

9 A Yes.

10 Q Did your children go through phases which they
11 grew very quickly?

12 A Yeah, might have.

13 Q And we call those growth spirts, correct?

14 A Just like yesterday or something.

15 Q And would you agree that nine months is a long
16 time in an adolescent's life as far as one's height?

17 A Maybe not, maybe it is.

18 Q Okay. Depends on the individual, correct?

19 A Yes.

20 Q Okay. Do you have any idea how much Mariano
21 Sandoval has grown over the last nine months?

22 A I don't have any idea.

23 MS. LONGORIA: Your Honor, if I could, I
24 would like to have Mr. Sandoval step up again for a
25 demonstration?

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1 Steve, may I borrow the tape measure? If I'm
2 tall enough to do this. Okay.

3 Your Honor, could you ask the jury if you can
4 see the numbers on this?

5 THE JURORS: No. No.

6 MS. LONGORIA: Okay.

7 Q (By Ms. Longoria) Can you see the numbers on
8 this, Mr. Caval?

9 THE COURT: You can go over there and check
10 it out.

11 Q (By Ms. Longoria) Can you see the 6 indicating
12 the five foot eight inches?

13 A Yes.

14 MS. LONGORIA: Your Honor, if I can have
15 Mr. Sandoval bend until we reach 60 inches.

16 THE COURT: Yes, ma'am.

17 (Respondent complies)

18 MS. LONGORIA: Keep bending. Bending. And
19 stop.

20 Q (By Ms. Longoria) Okay. Would you agree that at
21 this height, Mr. Sandoval is now at the five foot level?

22 A Yes.

23 Q How far below that five foot level is Mr.
24 Sandoval's face? Can you see that from there?

25 A Far from the window?

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1 Q No. From this five-foot level. Can you see how
2 far below that his face is?

3 A About 59.

4 Q Okay. And let me come back to 60 inches.

5 Mr. Sandoval, if you can lean forward
6 again until you reach this height. Lean forward.

7 Lean, stop. And right here where this five-foot
8 mark is, the 60-inch mark --

9 A Yes, I can see that.

10 Q How far below that five foot mark is Mr.
11 Sandoval's face now?

12 A It's 52 inches at the bottom.

13 Q Okay. Have a seat. So, if an individual is
14 bending down, as Mr. Sandoval just demonstrated here in
15 the courtroom, it would bring his face down to 52 inches;
16 is that what you observed?

17 A Yes.

18 Q And, again, that's with the height that Mr.
19 Sandoval is today, of course?

20 A Yes. It was nine month.

21 Q And we decided today he is five foot eight
22 inches tall; is that accurate?

23 A Yes.

24 Q Do you know what kind of shoes he was wearing
25 that night?

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1 A He -- no.

2 MS. LONGORIA: May I approach the witness,
3 Your Honor?

4 THE COURT: Yes, ma'am, you may.

5 Q (By Ms. Longoria) I show you, again, what's
6 marked as State's Exhibit No. 53. Can you tell the jury
7 what is distinguishing about this exhibit?

8 A The barrel and the short stock.

9 Q And when I say "distinguishing," is that how you
10 recognized this gun from that night?

11 A Yes.

12 Q Is there anything about the sight on the gun
13 that you recognize?

14 A Yes. It's very plain.

15 Q And is this how you described the barrel of the
16 long gun that night?

17 A Yes.

18 Q Mr. Caval, you and I have had this discussion,
19 and I know I've explained to you why I am going to ask
20 this question, but can you tell the jury what your ethnic
21 descent is?

22 A I'm an Asian.

23 Q Asian?

24 A Yes.

25 Q With a Hispanic sounding name, is that correct?

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1 A That is because I am from the Philippines. It is
2 the only nation in Asia that we have Spanish family names.

3 Q So it would be completely accurate to
4 characterize you as Asian?

5 A A hundred percent, yes.

6 Q And I think Mr. Halpert asked you, when you were
7 reviewing the photo spreads of Brenda Flores, he was
8 talking about two papers that were held up and shuffled.

9 Can you explain to the jury what he
10 was talking about with the two papers?

11 A He was holding two papers. Actually, he never
12 give me any kind of clue or something. He told me, Here
13 are the pictures, please look at them closely if you
14 recognize the suspect.

15 Q So, I guess my question is, he wasn't holding
16 two photographs at that point, he was holding two separate
17 photo spreads or do you know?

18 A Two. Two, yeah, separate photo spreads.

19 Q Were all of those photo spreads of females?

20 A Yes.

21 Q And he had you pick one of the photo spreads in
22 his hand, correct?

23 A Yes, I guess. Yes.

24 Q And the exhibit that you've identified,
25 Petitioner's Exhibit 115, is ultimately the photo spread

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1 from which you made your identification?

2 A Yes.

3 Q Mr. Caval, why did you take so much time to
4 review those photo spreads?

5 A Well, it's kind of really hard to identify any
6 person that you're not acquainted with, you know. It's
7 only like a minute or seconds, but even though it's a short
8 period of time, you can always have some kind of
9 recollection, whatever it is. That's why you want to --
10 you really want to think hard to make sure.

11 Q Did you want to be sure?

12 A Yes, I want to be sure.

13 Q What did you understand Sergeant Ashmore to mean
14 when he said you got it right or giving you the names?
15 Was Sergeant Ashmore there with you that night when you
16 were robbed?

17 A No, he wasn't there.

18 Q He wasn't a witness, right?

19 A No, he wasn't.

20 Q Did you have any idea by what he meant by you
21 got it right?

22 A I don't have any idea.

23 MS. LONGORIA: Pass the witness, Your
24 Honor.

25 THE COURT: Mr. Halpert?