

BRENDA FLORES - January 16, 2014
Redirect Examination by MS. LONGORIA

1 the back.

2 MS. LONGORIA: Your Honor, can I also at
3 this time, I think I neglected to ask the record to
4 reflect that Ms. Flores identified Mr. Sandoval in the
5 black shirt.

6 THE COURT: Record will so reflect.
7 Sergeant, you have been previously sworn?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right.

10 MS. LONGORIA: May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. LONGORIA: Thank you.

13 **SCOTT ASHMORE,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. LONGORIA:**

17 Q Can you please state your full name for the
18 jury?

19 A I'm Sergeant Scott Allen Ashmore.

20 Q And you are how employed, sir?

21 A I'm a sergeant with the Harris County Sheriff's
22 Office.

23 Q How long have you held that employment?

24 A I have been with the sheriff's office now
25 seventeen years.

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1 Q Are you a certified peace officer in the State
2 of Texas?

3 A Yes, ma'am.

4 Q Can you tell the jury a little bit about your
5 career at the Harris County Sheriff's Department and the
6 different divisions in which you've worked?

7 A I have been a police officer for over 31 years.
8 The sheriff's office, I worked detentions, patrol, I was
9 promoted to detective. At the detective bureau, I worked
10 warrant division, violent offenders task force, burglary
11 and theft, robbery and homicide.

12 Q And what is your current assignment with the
13 Harris County Sheriff's Department?

14 A The robbery unit.

15 Q Have you received any specialized training or
16 advanced peace officer degrees?

17 A Yes, ma'am.

18 Q Can you tell the jury a little about that?

19 A Master peace officer license as well as an
20 instructor's license. I have over thirty five hundred
21 hours in --

22 COURT REPORTER: Can you slow down please.

23 THE COURT: Slow down. Slow down.

24 A And I am also an instructor to Harris County
25 Sheriff's Office Academy.

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1 Q (By Ms. Longoria) What topics do you instruct
2 with the Harris County Sheriff's Department?

3 A Criminal investigation.

4 Q I would like to direct your attention back to
5 October 19th, 2013, the late evening hours into the next
6 Sunday, October 20th of 2013. Do you recall that weekend?

7 A Yes, ma'am.

8 Q And were you the on-call robbery detective that
9 Sunday, October 20th, 2013?

10 A Yes, ma'am.

11 Q Can you tell the jury what an on-call robbery
12 detective does?

13 A There are six robbery detectives in our division
14 and every six weeks you're on call for a week. So
15 after-hours and on the weekends, if something comes up out
16 in the district, like an aggravated robbery that involves
17 bodily injury or something, real major crime scene, they
18 will call you and you make that decision. You either make
19 that scene or not and direct the deputies on how to
20 proceed.

21 Q And at approximately noon on Sunday, October
22 20th, 2013, did you come on duty?

23 A Yes, ma'am.

24 Q And were you called upon to investigate an
25 aggravated robbery that had occurred the evening before in

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1 a Marshalls' parking lot on Highway 6?

2 A Yes, ma'am.

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

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

6 Q (By Ms. Longoria) I show you what's previously
7 been admitted as Petitioner's Exhibit 140. Do you
8 recognize the location of 6565 North Highway 6 and the
9 photographs of the Marshalls' parking lot depicted in
10 those pictures?

11 A Yes, ma'am.

12 Q And is that the location of the robbery that you
13 were called to investigate?

14 A Yes, ma'am.

15 Q When you were called upon to investigate that
16 robbery, did you have any known suspects?

17 A No, ma'am.

18 Q What was the first thing you did with regard to
19 your investigation on Sunday the 20th of October?

20 A I was notified that the victim's car in this case
21 had been located, so I directed the deputies to have the
22 car towed to our Fisher Road lot to have it processed by
23 the crime scene unit at a later date.

24 Q And Sergeant Ashmore, I think I neglected to ask
25 you, that location of 6565 North Highway 6, is that a

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1 location in Harris County, Texas?

2 A Yes, ma'am.

3 MS. LONGORIA: May I approach the exhibits,
4 Your Honor?

5 THE COURT: Yes, ma'am.

6 Q (By Ms. Longoria) The vehicle that had been
7 recovered, is that the vehicle found in Petitioner's
8 Exhibits 126 and 127 that have been admitted into
9 evidence?

10 A Yes, ma'am.

11 Q And how long, prior to you receiving the call as
12 the on-call robbery detective, had this vehicle been
13 recovered?

14 A I think it was recovered about an hour before
15 they notified me.

16 Q And do you know where it was recovered?

17 A Yes, ma'am.

18 Q And where was that?

19 A On Groeschke Road out by West Houston Airport.

20 Q And is that Deputy Oliveira with Precinct 5's
21 Constable's Office that actually located that vehicle?

22 A Yes, ma'am.

23 Q What was the next thing you did after
24 investigating the recovery of the complainant's vehicle?

25 A I was notified by patrol Sergeant Wine that there

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1 was a possible witness who could give us some names of some
2 possible suspects in that particular carjacking.

3 Q And did you follow up with that individual?

4 A Yes, ma'am.

5 Q Did you obtain a name?

6 A Yes, ma'am.

7 Q And what name was that?

8 A Brenda Flores.

9 MS. LONGORIA: May I approach the exhibits,
10 Your Honor?

11 THE COURT: Yes, ma'am.

12 Q (By Ms. Longoria) Were you able to locate a
13 photograph of that individual by the name of Brenda
14 Flores?

15 A Yes, ma'am.

16 Q And is Brenda Flores depicted here in
17 Petitioner's Exhibit 120?

18 A Yes, ma'am.

19 Q What did you do with the information that Brenda
20 Flores might have been involved in this particular
21 carjacking?

22 A Once I determined that I believed she was the
23 female suspect in this carjacking, I constructed a photo
24 lineup.

25 Q And how do you construct a photo lineup?

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1 A We have a data base, several data bases, where we
2 can get, either through driver's licenses photos or mug
3 shots, and you can construct photo lineups using
4 photographs using one of those data bases.

5 Q Did you do so in this case?

6 A Yes, ma'am.

7 Q And how many photographs were placed in that
8 lineup with Brenda Flores?

9 A Six.

10 MS. LONGORIA: Can I approach the exhibits
11 again, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. LONGORIA: May I have permission to
14 place these at counsel table to save some time?

15 THE COURT: Sure.

16 Q (By Ms. Longoria) Detective Ashmore, I will show
17 you, if you can see it from this distance, Petitioner's
18 Exhibit 115. Are you able to see that lineup from there?

19 A Yes, ma'am.

20 Q Is this the lineup that you constructed
21 containing Brenda Flores?

22 A Yes, ma'am.

23 Q What did you do with this lineup?

24 A I called the victim and had him come down to the
25 Clay Road substation.

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1 Q And was that Orlando Caval?

2 A Yes, ma'am.

3 Q And did he arrive at the Clay Road substation?

4 A Yes, ma'am.

5 Q Was he able to make a positive identification of
6 Brenda Flores?

7 A Yes, ma'am.

8 Q What did you do next?

9 A At that time, I called the District Attorney's
10 Office and explained to them what I knew at this point and
11 they accepted charges of aggravated robbery on her and so I
12 went downtown to get a 2B warrant on her.

13 Q So we got a little language going on there. Did
14 you in fact go across the street to the adult criminal
15 courthouse to the District Attorney's Office?

16 A Yes, ma'am.

17 Q Did you draft some legal paperwork in order to
18 have an active arrest warrant for Brenda Flores?

19 A Yes, ma'am.

20 Q Approximately what time of day was that?

21 A I probably got down there about 4:00 o'clock, and
22 I was down there about an hour or so, and I left a little
23 bit after 5:00.

24 Q And when you went to obtain that warrant, did
25 you have the identity of the other two male individuals

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1 involved in the carjacking of Orlando Caval?

2 A No, ma'am.

3 Q What did you do next?

4 A I was leaving the District Attorney's office and
5 I was actually headed home. I was headed back home and I
6 overheard some radio traffic.

7 Q And were you called to a location at that point?
8 Or did you go to a location based on that radio traffic?

9 A Yes, ma'am.

10 Q What location did you go to?

11 A That was over at 6007 Plantation Crest Drive.

12 Q And is that residence here in Petitioner's
13 Exhibit 114?

14 A Yes, ma'am.

15 Q And is that a location within Harris County,
16 Texas?

17 A Yes, ma'am.

18 Q When you arrived at this location, describe the
19 scene for us. Who was on the scene?

20 A There were several deputies at the scene.

21 Q Did those include Deputy Milstead, Deputy Reyes,
22 Deputy Sobota?

23 A Yes, ma'am.

24 Q Did they have any individuals in custody at that
25 point?

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1 A Yes, ma'am.

2 Q Who did they have in custody?

3 A They had Brenda Flores, Neiman Gasper and Mariano
4 Sandoval.

5 Q And do you see Mariano Sandoval in the courtroom
6 today who was in custody at that residence at 6007
7 Plantation Crest Court the night of October 20th, 2013?

8 A Yes, ma'am.

9 Q Could you please point him out and describe
10 something he is wearing to the jury?

11 A The young man sitting right there between the two
12 young ladies at the table wearing the black shirt.

13 MS. LONGORIA: Your Honor, if the record
14 can reflect that this witness identified the defendant?

15 THE COURT: The record will so reflect.

16 Q (By Ms. Longoria) And what kind of condition was
17 he in when you arrived?

18 A To put it blunt, he was freaking drunk.

19 Q Was he transported from the scene?

20 A Yes, ma'am.

21 Q And were Brenda Flores and Neiman Gasper also
22 transported from the scene?

23 A Yes, ma'am.

24 Q What did you do next?

25 A They were taken to the Clay Road substation and

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1 Mr. Sandoval was placed in the juvenile holding tank. And
2 at this point, I started the interviews with the two
3 suspects.

4 Q And did you, in fact, obtain recorded statements
5 from both Brenda Flores and Neiman Gasper?

6 A Yes, ma'am.

7 Q I may have asked you this, does Neiman Gasper
8 appear in Petitioner's Exhibit 121?

9 A Yes, ma'am.

10 Q During those interviews, did Brenda Flores make
11 an identification of the individual who robbed Orlando
12 Caval at gunpoint?

13 A Yes, ma'am.

14 Q Who did she identify?

15 A Mariano Sandoval.

16 Q Is that the same Mariano Sandoval that is
17 currently seated in the courtroom that you previously
18 identified?

19 A Yes, ma'am.

20 Q When you took the recorded statements from
21 Neiman Gasper, did he make an identification of the
22 individual who robbed Orlando Caval at gunpoint?

23 A Yes, ma'am.

24 Q And who did he identify as having been the
25 gunman in the aggravated robbery of Orlando Caval?

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1 A Mariano Sandoval.

2 Q Is that the same Mariano Sandoval that is seated
3 in the courtroom today?

4 A Yes, ma'am.

5 MS. LONGORIA: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, ma'am.

8 Q (By Ms. Longoria) In fact, when you spoke to
9 Neiman Gasper, did you have a photograph with you?

10 A Yes, ma'am.

11 Q And can you identify the individual in
12 Petitioner's 149?

13 A Mariano Sandoval.

14 Q Is this the photograph that you had with you
15 that day when you spoke with Neiman Gasper?

16 A Yes, ma'am.

17 Q And did he make his identification based on this
18 photograph?

19 A Yes, ma'am.

20 MS. LONGORIA: Your Honor, State tenders
21 Petitioner's Exhibit 149 to defense counsel and offers
22 into evidence.

23 MR. HALPERT: No objection to 149, Your
24 Honor.

25 (Petitioner's Exhibit No. 149 offered)

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1 THE COURT: 149 is admitted without
2 objection.

3 (Petitioner's Exhibit No. 149 admitted)

4 Q (By Ms. Longoria) And Petitioner's Exhibit 149,
5 is this the photograph that you later placed in a photo
6 array for Mr. Caval to view?

7 A Yes, ma'am.

8 Q I want to stay at the address at 6007 Plantation
9 Crest Court for a moment. Did you have the occasion to
10 walk around that residence?

11 A Yes, ma'am.

12 MS. LONGORIA: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes, ma'am.

15 Q (By Ms. Longoria) Show you what's been marked as
16 Petitioner's Exhibit 111, 112 and 113. Do you recognize
17 these exhibits?

18 A Yes, ma'am.

19 Q And is Petitioner's Exhibit 111 one of the
20 vehicles that was in the garage at that location?

21 A Yes, ma'am.

22 Q And that is a gray Honda bearing the license
23 plate BZ2-P851; is that correct?

24 A Yes, ma'am.

25 Q And in Petitioner's Exhibit 113, is this the

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1 second vehicle that was in the garage at that residence?

2 A Yes, ma'am.

3 Q And who is this vehicle registered to that
4 appears in Petitioner's Exhibit 113?

5 A It was registered to, I believe it's Brenda
6 Flores' mother.

7 Q And did you have the occasion to run this
8 license and actually discuss that with Brenda Flores?

9 A Yes, ma'am.

10 Q Petitioner's Exhibit 112. What appears in this
11 photograph?

12 A A shotgun.

13 MS. LONGORIA: May I approach the witness,
14 Your Honor?

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

16 Q (By Ms. Longoria) And is that the same shotgun
17 present in Petitioner's Exhibit 53?

18 A Yes, ma'am.

19 Q Did you retrieve Petitioner's Exhibit 53 or did
20 you view Petitioner's Exhibit 53 at the scene that day?

21 A Yes, ma'am.

22 Q And was it in the back seat of the vehicle as
23 displayed in the picture?

24 A Yes, ma'am.

25 MS. LONGORIA: Your Honor, may I ask the

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1 deputy to check the weapon for safety.

2 THE COURT: Yes, ma'am. Deputy, would you
3 check the weapon for me.

4 THE BAILIFF: It's clear, Judge.

5 THE COURT: Okay. Thank you.

6 Q (Ms. Longoria) And Detective Ashmore, I will
7 hand the weapon to you to confirm that it's clear as well.

8 A Yes, it is.

9 Q And Petitioner's Exhibit 53, can you describe
10 what kind of a weapon that is to the jury?

11 A It's a .20 gauge shotgun.

12 Q And --

13 A Single barrel, break apart.

14 Q Did you confirm that that shotgun belonged to
15 Brenda Flores?

16 A Yes, ma'am.

17 Q And I would like to, if we can demonstrate for
18 the jury, if you were to use this shotgun, in other words
19 load a shotgun shell into it, where would you put the
20 shell?

21 A Right there in the breach.

22 Q And by all appearances, is this a shotgun that
23 was designed to expel a projectile through the barrel
24 using an explosive trigger?

25 A Yes, ma'am.

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1 Q Is there any reason to believe this is not a
2 fully functional firearm?

3 A No, ma'am.

4 Q In fact, if you look at Petitioner's Exhibit 53,
5 can you actually see the firing pin?

6 A Yes, ma'am.

7 Q And have you had a chance to open and close the
8 shotgun and observe that it does operate correctly?

9 A Yes, ma'am.

10 Q Sergeant Ashmore, if this shotgun were pointed
11 at the head of an individual through a car window, say
12 within twelve inches of that individual and it were fired,
13 would that cause certain death?

14 A Yes, ma'am.

15 Q Was Deputy Sobota charged that day with, at the
16 residence, with collecting and tagging the evidence?

17 A Yes, ma'am.

18 Q What did you do after you spoke to Brenda Flores
19 and Neiman Gasper that night of October 20th, 2013?

20 A I again contacted the District Attorney's Office.
21 I can't remember if it was the same DA or not, explained to
22 him the case, what we had at this point and more charges
23 were filed.

24 Q Did you again speak to Orlando Caval after that?

25 A Yes, ma'am.

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1 Q Approximately what time of night was that?

2 A It was about 9:00 o'clock.

3 Q And what did you call Orlando Caval to the
4 substation to speak about again? Or did you call him to
5 the substation?

6 A Yes.

7 Q And what was he there to speak about that time?

8 A I was going to show him another photo lineup.

9 Q And did you show him another photo lineup?

10 A Yes, ma'am.

11 Q And who was contained in that photographic
12 lineup?

13 A A picture of Mariano Sandoval and five other
14 individuals.

15 Q And is the photograph that you placed in that
16 lineup, the one that we see here in Petitioner's Exhibit
17 149?

18 A Yes, ma'am.

19 Q And is this the photograph that Neiman Gasper
20 had identified as being the gunman in the aggravated
21 robbery of Orlando Caval?

22 A Yes, ma'am.

23 MS. LONGORIA: May I have just a moment,
24 Your Honor?

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

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1 MS. LONGORIA: May I approach the witness?

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

3 Q (By Ms. Longoria) Sergeant Ashmore, I'll show
4 you what has been marked as Petitioner's 116. Is this the
5 photographic lineup that you prepared for Orlando Caval in
6 the evening hours of October 20th, 2013?

7 A Yes, ma'am.

8 Q And when you prepare a lineup, describe to the
9 jury how the process is done.

10 A If someone's picture is in our data base, there
11 is a program we can use to where we can take their picture,
12 put it on a page, and then you have -- okay. You want
13 similar individuals by sex, hair color, hair type, glasses,
14 no glasses, facial hair, whatnot. And then once you do
15 that, there is a button you can use to say, it says create
16 document and it starts putting pictures of different
17 individuals up there and you pick and chose those to put in
18 the photo lineup.

19 Q Is the goal of creating a photo lineup to create
20 an array of individuals that have certain similar
21 characteristics but not identical in appearance?

22 A Yes, ma'am.

23 Q And did you do that in this case in Petitioner's
24 Exhibit 116?

25 A Yes, ma'am.

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1 Q Who was placed in position two?

2 A Mariano Sandoval.

3 Q And as we look further at Petitioner's Exhibit
4 116, can you tell us about the fill-ins, numbers three and
5 six?

6 A Yes.

7 Q What do we observe about those individuals?

8 A They may be the same person.

9 Q They look rather similar, do they not?

10 A Yes, ma'am.

11 Q All the individuals in Petitioner's Exhibit 116
12 are of young Hispanic males; is that correct?

13 A Yes, ma'am.

14 Q And all of the pictures display individuals with
15 no facial hair, correct?

16 A Correct.

17 Q Are all the shirts different in 116?

18 A Yes, ma'am.

19 Q When you displayed Petitioner's Exhibit 116 to
20 Orlando Caval, did you actually display to him the
21 admonishment that appeared on the first page?

22 A Yes, ma'am.

23 Q Did Orlando Caval read and appear to understand
24 the admonishment?

25 A Yes, sir.

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1 Q Can you tell the jury if Orlando Caval was able
2 to make an identification from Petitioner's 116?

3 A Yes, ma'am.

4 Q Who did he identify?

5 A Mariano Sandoval.

6 MS. LONGORIA: Your Honor, at this time the
7 State tenders Petitioner's 116 to defense counsel and
8 offers it into evidence.

9 (Petitioner's Exhibit No. 116 offered)

10 MR. HALPERT: No objection to 116.

11 THE COURT: 116 admitted without objection.

12 (Petitioner's Exhibit No. 116 admitted)

13 Q (By Ms. Longoria) After Orlando Caval identified
14 Mariano Sandoval, did you then seek charges on Mariano
15 Sandoval for aggravated robbery?

16 A Yes, ma'am.

17 Q As it relates to Orlando Caval, did you do
18 anything else with this investigation?

19 A Since then, I have taken a buccal swab from him.

20 Q And the purpose of a buccal swab is potentially
21 if there is any DNA evidence available for comparison,
22 correct?

23 A Yes, ma'am.

24 Q In this case you had accomplices identifying
25 Mariano Sandoval, correct?

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1 A Yes, ma'am.

2 Q You had an eye witness identifying Mariano
3 Sandoval, correct?

4 A Yes, ma'am.

5 Q And by the way, tell us about Mr. Caval's
6 identification of Mariano Sandoval. Do you remember how
7 long he looked at the photo spread?

8 A He looked at it several minutes.

9 Q Did he take his time?

10 A Yes, ma'am.

11 Q Did he appear to be making a careful selection?

12 A Yes, ma'am.

13 Q And after he made the selection of Mariano
14 Sandoval, did you have a discussion with him?

15 A Yes, ma'am.

16 Q Can you tell the jury what the subject matter of
17 that discussion was?

18 A Mr. Sandoval was extremely worried that the
19 people --

20 Q Let me stop you there. Did you mean Mr.
21 Sandoval or Mr. Caval?

22 A Sorry. Mr. Caval was extremely --

23 MR. HALPERT: Your Honor, I object as
24 hearsay.

25 THE COURT: Say that again.

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1 MR. HALPERT: Object as to hearsay.

2 THE COURT: I haven't -- that's overruled.

3 MR. HALPERT: He is about to elicit what
4 another person said and he is not here to call that
5 person. That's hearsay.

6 THE COURT: Don't say what somebody else
7 says.

8 THE WITNESS: Okay.

9 Q (By Ms. Longoria) At some point, did you,
10 Officer Ashmore, tell Mr. Caval -- did you confirm his
11 identification in any way?

12 A Yes, ma'am.

13 Q And why did you do that? Without telling us
14 what someone else might have said.

15 A He was scared that the people that robbed him
16 were going to show up at his house because they had his
17 keys, his credit cards, ID, checkbook. And he was
18 frightened.

19 Q And so did you feel it important that he had
20 some peace of mind at that point?

21 A Yes, ma'am.

22 Q Is it the normal course of practice to confirm,
23 so to speak, an identification after a photo lineup?

24 A No, ma'am.

25 Q Did you, in fact, deviate from the sheriff's

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1 department policy in doing so?

2 A Yes, ma'am.

3 Q And why did you do that?

4 A I wanted him to go to bed and sleep knowing that
5 he wasn't going to be harmed any further. And if I
6 violated a rule, I knew it would probably come back to bite
7 me, so that's the way it is.

8 MS. LONGORIA: Pass the witness, Your
9 Honor.

10 THE COURT: Thank you. Cross?

11 MR. HALPERT: If I may just ask Ms.
12 Longoria a quick question right here.

13 THE COURT: Sure.

14 MR. HALPERT: May I proceed, Your Honor?

15 THE COURT: Yes, you may.

16 MR. HALPERT: Thank you.

17 **CROSS-EXAMINATION**

18 **BY MR. HALPERT:**

19 Q Sergeant Ashmore, I am going to ask you some
20 questions about when you first got assigned to this case,
21 okay?

22 A Yes, sir.

23 Q We discussed it was the day after this robbery
24 in question?

25 A Yes, sir.

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Cross-Examination by MR. HALPERT

1 Q You are now the lead investigator?

2 A Yes, sir.

3 Q That means you get to decide what direction this
4 case takes?

5 A Yes, sir.

6 Q Is it -- it's safe to assume the first thing you
7 do is review any offense reports of any deputies that have
8 done work on the case prior to you getting on, correct?

9 A In this case, I had not seen any offense reports.

10 Q You know Deputy Gaines was the first person to
11 contact Orlando Caval the night before, correct?

12 A Yes, sir.

13 Q And as you knew, he had prepared a supplement to
14 the police report that he later filed?

15 A Yes, sir.

16 Q You also learned early on that Mr. Caval's
17 credit cards were used at several stores shortly after the
18 robbery, correct?

19 A Yes, sir.

20 Q Are you aware of any deputies that went to check
21 on the location of the surveillance video at those stores?

22 A I believe one went to a McDonald's.

23 Q Okay. And what's your understanding of the
24 availability of the video surveillance at those locations?

25 A The McDonald's, I do not believe has video

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1 surveillance outside, only inside.

2 Q Is this from personal knowledge, Detective
3 Ashmore?

4 A Yes, sir.

5 Q So you're telling this jury, did you go yourself
6 to check out the McDonald's as to whether or not they have
7 surveillance video?

8 A No, sir. I have been to that McDonald's before.

9 THE COURT: Slow down. Slow down.

10 Q (By Mr. Halpert) Sorry. Did you note anywhere
11 in your police report that you prepared or you checked out
12 or by past experience, you just knew there was going to be
13 no video surveillance at that McDonald's location.

14 A Past experience.

15 Q Did you write that anywhere in your police
16 report?

17 A No, sir.

18 Q That is certainly helpful information, would it
19 not be, if there was video of apparent robbers two hours
20 later using the victim's credit cards?

21 A Yes, sir.

22 Q It's an important fact, right?

23 A Yes, sir.

24 Q Something a prosecutor may want to rely on?

25 COURT REPORTER: Slow down.

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1 MR. HALPERT: Sorry.

2 Q (By Mr. Halpert) Something a judge may want to
3 rely on?

4 A Yes, sir.

5 Q More importantly, something a jury may want to
6 rely on?

7 A Yes, sir.

8 Q So we have no evidence of any surveillance at
9 any locations shortly after the robbery where Mr. Caval's
10 credit cards were used, correct?

11 A No, sir.

12 Q As you testified, you learned that his car was
13 abandoned on the side of the road on, I think, Groeschke
14 Road?

15 A Yes, sir.

16 Q Do you know if any photographs or videos were
17 taken of his car as it was there on that road?

18 A No, sir.

19 Q You directed that the car and all of its
20 contents be processed for DNA and fingerprints, correct?

21 A Yes, sir.

22 Q Now several hours later, you called Orlando
23 Caval, come down to Clay Road substation?

24 A Yes, sir.

25 Q You wanted him to look at some photos of the

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1 female -- a photo spread of females, correct?

2 A Yes, sir.

3 Q And you wanted him to go give a recorded
4 statement?

5 A Yes, sir.

6 Q He had not at this point given a recorded
7 statement to any law enforcement agency yet, correct?

8 A No, sir.

9 Q And before he arrived, that's when you put
10 together the photo spread containing Brenda Flores?

11 A Yes, sir.

12 Q Now, when he got there at approximately 3:00
13 o'clock in the afternoon --

14 A Yes, sir.

15 Q This is about sixteen hours after the robbery
16 occurred, correct?

17 A Yes, sir.

18 Q And the first thing you had him do was look at
19 the photo spread containing Brenda Flores?

20 A Yes, sir.

21 Q Let's talk about the procedure for putting
22 together a photo spread, okay?

23 A Okay.

24 Q The person conducting the photo spread procedure
25 is called the administrator?

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1 A Right. Yes, sir.

2 Q And you know what a blind administrator is,
3 don't you?

4 A Yes, sir.

5 Q Tell the jury the definition of a blind
6 administrator.

7 A A blind administrator is where someone would give
8 me a photo spread, and I have no idea who the suspect is or
9 anything, and I would show that person the photo spread and
10 they would make or not make an identification.

11 Q And tell the jury what a blinded administrator
12 is?

13 A A blinded administrator is someone like myself
14 that would conduct a photo spread or multi photo spreads
15 and put it in an envelope where it can't be seen. And you
16 give the witness or the victim a choice of which ones they
17 want to look at and then choose from there and look.

18 Q Now, an administrator who knows the identity of
19 a suspect in a photo spread, would you agree with me that
20 that administrator can give subtle queues to a witness who
21 is viewing that photo spread?

22 A Yes, sir.

23 Q And, and those queues can even be subconsciously
24 done?

25 A Yes, sir.

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1 Q They can be so subtle, the administrator doesn't
2 realize he is doing it?

3 A Yes, sir.

4 Q But a blind administrator has no idea which of
5 the six people on a lineup are a suspect, correct?

6 A Yes, sir.

7 Q He can't then, by definition, give subconscious
8 or conscious queues to the person viewing the photo
9 spread, right?

10 A Yes, sir.

11 Q You would agree with me, it's common sense then,
12 that the blind administration would be the preferred
13 method?

14 A Yes, sir, it would be.

15 Q That wasn't done in this case?

16 A No, sir.

17 Q Now, sheriff's department has a policy
18 describing everything that you're required to do when
19 conducting identification, called a sheriff county --
20 Harris County Sheriff's Department Identification Policy?

21 A Yes, sir.

22 Q Number 611?

23 A Yes, sir.

24 Q It's 26 pages long?

25 A Yes, sir.

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1 Q You are very familiar with its contents, aren't
2 you?

3 A Yes, sir.

4 Q You would agree with me that deviations from
5 your department's written policy may cause a photo spread
6 identification to become unreliable?

7 A Yes, sir.

8 Q And any variations from that policy must be
9 preapproved by what's called the investigative supervisor;
10 isn't that correct?

11 A Yes, sir.

12 Q And any variations that have been preapproved
13 must then be documented separately in a supplement,
14 correct?

15 A Yes, sir.

16 Q Now, as we said in this case, you prepared all
17 of the photo spreads?

18 A Yes, sir.

19 Q Are you could have, if you wanted to, chosen a
20 subordinate to do it, correct?

21 A I didn't have that luxury.

22 Q Well, you had no choice but to do them yourself?

23 A Yes, sir.

24 Q Now, the first thing you do when you're
25 constructing your photo spread is you need to have a photo

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1 of the suspect?

2 A Yes, sir.

3 Q And there is numerous sources you can get a
4 photo of a suspect, correct?

5 A Yes, sir.

6 Q Either prior police contact, right?

7 A Yes, sir.

8 Q Driver's license?

9 A Yes, sir.

10 Q School photos?

11 A Yes, sir.

12 Q If you needed a photo of a suspect, you're going
13 to get that photo of the suspect, right?

14 A Yes, sir.

15 Q If you have more than one photo of a suspect,
16 you make the determination as to which one you're going to
17 put in your photo spread, correct?

18 A Yes, sir.

19 Q Even though you may not have seen a suspect, you
20 have not physically laid eyes on a suspect, you still are
21 determining which photos you are going to use of that
22 suspect?

23 A Yes, sir.

24 Q Now all -- as you discussed with Ms. Longoria,
25 all the software program does is help you find relatively

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1 similar, what we call fill-ins, for your photo spread?

2 A Yes, sir.

3 Q Still a human decision as to which fill-ins
4 you're going to use?

5 A Yes, sir.

6 Q Computer program doesn't tell you or create the
7 actual photo spread. You make the choices and put it
8 together.

9 A Yes, sir.

10 Q Now, department policy states that you should
11 know the source of every one of those fill-ins as well as
12 the suspect photo, correct?

13 A Yes, sir.

14 Q And the policy says they should be of a similar
15 source.

16 A Yes, sir.

17 Q Your policy actually instructs you not to use
18 photos that look too similar to the suspect?

19 A Yes, sir.

20 Q And your policy states the reason for that is
21 because you don't want to make it too difficult for a
22 witness to distinguish the suspect from the other five
23 fill-ins.

24 A Yes, sir.

25 Q Now, when you're finished putting together the

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1 photo spread, the first thing you do then is inspect it?

2 A Yes, sir.

3 Q You want to make sure that the suspect does not
4 unduly stand out in that photo spread?

5 A Yes, sir.

6 Q For example, you don't want to have five bald
7 people and one person with a head of hair?

8 A Correct.

9 Q Or any distinguishing feature that would
10 separate one person from the other five?

11 A Correct.

12 Q And before showing the witness the photo spread,
13 you're required to ask that witness whether they actually
14 saw the suspect since the time of the crime and before
15 viewing the photo spread.

16 A Yes, sir.

17 Q It's required for you to ask this.

18 A Yes, sir.

19 Q If they do, you have to document it.

20 A Yes, sir.

21 Q Now next, the witness is given this admonishment
22 form that Ms. Longoria discussed with you.

23 A Yes, sir.

24 Q And it's actually called instructions for
25 viewing the photographic array.

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1 A Yes, sir.

2 Q It's one page. Right?

3 A Yes, sir.

4 Q Seven questions or seven admonishments.

5 A Yes, sir.

6 Q The witness reads it and then signs at the
7 bottom.

8 A Yes, sir.

9 Q This indicates to you that they signed it and
10 that they understood the instructions.

11 A Yes, sir.

12 Q Now, you don't talk with them, you just have
13 them read those instructions, ask them if they understand
14 and then they sign it; is that fair?

15 A Yes, sir.

16 Q Now the administrator, being you, you position
17 yourself in such a way while the witness is viewing the
18 photo spread, so that you cannot see the photo spread,
19 correct?

20 A Yes, sir.

21 Q That's department policy.

22 A Yes, sir.

23 Q So you wouldn't sit across from a witness where
24 you're able to view it while they're looking at the photo
25 spread --

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1 A No, sir.

2 Q -- right? Now finally, we're ready for the
3 witness to sit down and view the photo spread, correct?

4 A Yes, sir.

5 Q If the witness identifies someone, you have them
6 circle the picture, put their initials, a date, there's
7 supposed to be a time also, correct?

8 A Yes, sir.

9 Q And then there is a part, a portion of the
10 bottom of the form where you complete as the administrator
11 that that person has completed the process, correct?

12 A Yes, sir.

13 Q You sign and date, right?

14 A Yes, sir.

15 Q Now, after that, you are required to ask the
16 witness their level of confidence in selecting the person
17 they selected?

18 A Yes, sir.

19 Q And there is a line on that form where you are
20 to write their level of confidence, correct?

21 A No, not us. It's the person showing the photo
22 spread to write on there.

23 Q Okay. You ask them a level and when they tell
24 you, you ask them to write it down on that line provided?

25 A Yes, sir.

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1 Q Says level of confidence?

2 A Yes, sir.

3 Q And next to that line, you are supposed to then
4 ask for comments from that witness as to what the role was
5 in the crime of the person they just picked out.

6 A Yes, sir.

7 Q And they're supposed to write that down as well?

8 A Yes, sir.

9 Q We can agree, Sergeant Ashmore, that you are not
10 to give any feed back whatsoever to a witness after they
11 have made an identification?

12 A Yes, sir.

13 Q Or if they were unable to make an
14 identification?

15 A Yes, sir.

16 Q No feed back whatsoever, correct?

17 A Correct.

18 Q Why do you think this requirement is in the
19 policy?

20 A I don't know.

21 Q Can you venture a guess?

22 A So someone can't come back and say that you
23 assisted them in making identification possibly.

24 Q Sure. If you tell someone that they have
25 identified what you deem to be the right person, that

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1 picture's now etched in that person's mind. Possibly.

2 A Yes, sir.

3 Q Later they may have to come into court and make
4 what's called an in-court identification of that person,
5 correct?

6 A Yes, sir.

7 Q You solidified, in their mind, a picture; and
8 now they see that individual in court, right?

9 A Yes, sir.

10 Q Sure makes it easier for them to make that
11 in-court identification if you've already told them they
12 got the right person.

13 A I wouldn't necessarily agree with that.

14 Q Okay. Now, after you finished the process, as
15 the administrator, you scan all of the documents in color
16 into what's called the e-file section of your report; is
17 that correct?

18 A Yes, sir.

19 Q The originals remain with the lead investigator,
20 in this case it's you?

21 A Yes, sir.

22 Q And then as the administrator, you also enter a
23 supplemental report in the e-file section and here you are
24 required to add if a witness makes any comments to you
25 during the identification process?

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1 A Yes, sir.

2 Q Any gestures they made during the identification
3 process?

4 A Yes, sir.

5 Q Any questions they ask you during the
6 identification process?

7 A Yes, sir.

8 Q This is done even when the witness can't
9 identify one of the six people, correct?

10 A Yes, sir.

11 Q And we know the sheriff's department also has --
12 they give you the option of whether you want a video tape
13 or audio record the identification procedure, correct?

14 A Yes, sir.

15 Q You have the capability to do that at the
16 sheriff's department.

17 A Yes, sir.

18 Q You chose not to do that in this case; is that
19 correct?

20 A Correct.

21 Q So would it be fair to say then, that our jury
22 will have to rely one hundred percent on your accuracy in
23 doing this photo spread identification?

24 A Yes, sir.

25 Q Now, let's talk about -- a little about the

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1 photo spread of Brenda Flores that you showed to Orlando
2 Caval. What room were you in with Mr. Caval when you
3 showed him the photo spread?

4 A I believe it was one of the sergeant's office.

5 Q Was it just you and Mr. Caval?

6 A Yes, sir.

7 Q Did anyone else come in or out of the room
8 during the process?

9 A No, sir.

10 Q When you created the photo spread of Brenda
11 Flores, in reality, you create two photo spreads?

12 A Yes, sir.

13 Q Each contains Brenda Flores in a different
14 position, right?

15 A Yes, sir.

16 Q And the other five fill-ins are still the same,
17 so we have the same six individuals in each photo spread,
18 right?

19 A Yes, sir.

20 Q We just have Brenda Flores in -- in one of them,
21 she was in position three; and in one of them, she was in
22 position six, correct?

23 A Yes, sir.

24 Q The purpose of this is so that as a blinded
25 administrator, if you've got the suspect in two different

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1 positions, and the witness then looks at them, the idea,
2 the theory, is that you don't know which of those two
3 photo spreads the person's looking at?

4 A Yes, sir.

5 Q But here, because you're the one constructing
6 them, you physically have photo spread number one with
7 Brenda Flores in position three and photo spread number
8 two with Brenda Flores in position six. You agree you
9 have to inspect them first to make sure they are both
10 correct?

11 A Yes, sir.

12 Q And then you ask Mr. Caval to pick one --

13 A Yes, sir.

14 Q -- right? Now, Sergeant Ashmore, you are not
15 going to tell this jury that you played some sort of three
16 card Monte and close your eyes and shuffle them around so
17 you don't know which one she's in three and which one six,
18 are you?

19 A No, sir.

20 Q So when you hand Mr. Caval, either the one in
21 your right hand or the one in your left hand, you know
22 exactly which position Brenda Flores is in in either photo
23 spread?

24 A Yes, sir.

25 Q That is not a true blinded administration, sir,

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1 correct?

2 A I disagree.

3 Q Okay. Had a subordinate prepared the two photo
4 spreads and you handed it to Brenda Flores, you would not
5 know which position in either photo spread, correct?

6 A Correct.

7 Q Do you know how long ago the photo you used of
8 Brenda Flores was taken prior to October 19, 2013?

9 A No, sir, I don't.

10 Q Since you hadn't actually laid eyes on Brenda
11 Flores yet, you yourself didn't even know what Brenda
12 Flores looked like, correct?

13 A No, sir.

14 Q Now, you gave Orlando Caval the admonishment
15 form?

16 A Yes, sir.

17 Q He appeared to read it?

18 A Yes, sir.

19 Q He appeared to understand it?

20 A Yes, sir.

21 Q How long, in your opinion, did it take Orlando
22 Caval to identify Brenda Flores?

23 A Fairly quickly. Within a minute or so total.

24 Q I believe you testified before it was a minute
25 or less.

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1 A Uh-huh.

2 Q Now, while he was viewing this photo spread,
3 where were you either sitting or standing in relation to
4 Mr. Caval?

5 A Behind him.

6 Q Standing or sitting?

7 A I believe I was sitting.

8 Q So your recollection is that you were sitting
9 directly behind Mr. Caval, correct?

10 A Yes, sir.

11 Q And you could not view the photo spread?

12 A Correct.

13 Q So you were definitely not across from him,
14 then, seated at a desk, correct?

15 A No, sir.

16 Q Eventually Mr. Caval circled the number six on
17 the photo spread you showed?

18 A Yes, sir.

19 Q He dated it. He initialed it. Correct?

20 A Yes, sir.

21 Q Then he asked you what the name of the person
22 was in the name of that photo?

23 A No, sir. I don't believe he asked me.

24 Q He did not ask you the name of the person he
25 circled in the Brenda Flores photo spread?

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1 A Not at that time, no, sir.

2 Q Did he ask you at any time after that?

3 A Yes, sir.

4 Q And you eventually told him the person he picked
5 out was Brenda Flores?

6 A Yes, sir.

7 Q Now, we can agree that you violated the
8 sheriff's department policy on giving any sort of feed
9 back on identifications, correct?

10 A Yes, sir.

11 Q You told Mr. Flores -- Mr. Caval that he picked
12 out the right person?

13 A Yes, sir.

14 Q And you weren't there when he was robbed, were
15 you?

16 A No, sir.

17 Q You told him he picked out someone who you
18 believed to be the right person, correct?

19 A Yes, sir.

20 Q And you personally, as you testified, believe
21 this does not jeopardize the identification process in any
22 way, do you?

23 A No, sir.

24 Q You spoke to Ms. Longoria about your concern for
25 Mr. Caval, that he have a good night rest and that's why

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1 you told him the name Brenda Flores and later Mariano
2 Sandoval, correct?

3 A Yes, sir.

4 Q Sergeant Ashmore, you have testified previously,
5 have you not, that this is your policy to tell any witness
6 who asks you whether they've picked the right person, you
7 tell them yes or no?

8 A Yes, sir. I may have said that.

9 Q So it's not about just being a good guy to Mr.
10 Caval so he can sleep good that night, is it?

11 A In this case, yes, it was.

12 Q But you routinely violate the sheriff's
13 department policy.

14 MS. LONGORIA: Objection to relevance, Your
15 Honor.

16 THE COURT: How is that relevant?

17 MR. HALPERT: Goes to his credibility, Your
18 Honor.

19 THE COURT: I agree. Sustained.

20 Q (By Mr. Halpert) On the admonishment form that
21 you gave Orlando Caval, did you ask him to fill in his
22 level of confidence in picking out Brenda Flores?

23 A Yes, sir, I did.

24 Q There is a blank spot there where that answer
25 should be, isn't there?

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1 A Yes, sir.

2 Q You said you offered this?

3 A Yes, sir.

4 Q Did Mr. Caval -- was he unable to give you his
5 level of confidence?

6 A Not that I know of.

7 Q Is there a reason why Mr. Caval did not fill
8 anything in on that line if you asked him to do so?

9 A I do not know.

10 Q Was he cooperative with you during the process?

11 A Yes, sir.

12 Q You're not telling us he refused to sign on that
13 line?

14 A No, he did not refuse to.

15 Q It's just, you didn't follow procedure by having
16 him fill out what's required on that form.

17 A That was his decision whether to write something
18 on there or not. I'm not going to force him to.

19 Q And right below that, I assume you gave him an
20 opportunity to write down the comments of the role of the
21 person he just identified, correct?

22 A Yes, sir.

23 Q And that's also blank?

24 A Yes, sir.

25 Q And again, can we assume that Mr. Caval just

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1 chose not to write that in there?

2 A Yes, sir.

3 Q And you did not create any supplement, did you,
4 that states the questions that you testified to what you
5 had with Mr. Caval, did you?

6 A No, sir.

7 Q Another policy requirement you did not follow.

8 A Yes, sir.

9 Q Now, let's talk about, for a moment, about the
10 recorded statement you took from Orlando Caval after the
11 photo spread. This was the first and only time that
12 someone from your agency had actually taken a recorded
13 statement from him.

14 A Yes, sir.

15 Q When you sit down, you set out to ask all of the
16 pertinent questions, correct?

17 A Yes, sir.

18 Q You hoped that Mr. Caval would give you all of
19 the important details of the robbery from the night
20 before?

21 A Yes, sir.

22 Q This is an important conversation between the
23 lead investigator and your victim, is it not?

24 A Yes, sir.

25 Q Again, when we're at trial, a prosecutor may

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1 rely on this, right?

2 A Yes, sir.

3 Q As well as our jury?

4 A Yes, sir.

5 Q Do you recall how long you took to get all of
6 those important details from Orlando Caval that night?

7 A Five minutes maybe.

8 Q Are you aware your entire conversation with him
9 lasted three minutes and 25 seconds?

10 A If you say so. Okay.

11 Q Now, several hours after this, you learned that
12 three people were arrested at that vacant house?

13 A Yes, sir.

14 Q You visited the house?

15 A Yes, sir.

16 Q This is the first time you were laying eyes on
17 Brenda Flores.

18 A Yes, sir.

19 Q And Neiman Gasper.

20 A Yes, sir.

21 Q And Mariano Sandoval.

22 A Yes, sir.

23 Q This is now approximately eighteen hours after
24 the robbery?

25 A Yes, sir.

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1 Q There was no gray hoodie found at that
2 residence, was there?

3 A Not that I know of.

4 Q And you would agree that when Mariano Sandoval
5 was arrested, he was not wearing a gray hoodie, correct?

6 A No, sir, I don't think he was.

7 Q And that would have been noted in your police
8 report if he had?

9 A Not necessarily.

10 Q Well, that was an identifying factor that was
11 given to you by your star witness, was it not?

12 A Yes, sir.

13 Q So certainly that would have been relevant, as a
14 39 year old police officer, to write down that the suspect
15 was wearing the same thing the victim saw him in a few
16 hours -- 18 hours earlier, correct?

17 A Yes, sir.

18 Q You interviewed Brenda Flores at that Clay Road
19 substation?

20 A Yes, sir.

21 Q And because she was now considered in custody,
22 you're required by law to give her what are called Miranda
23 warnings?

24 A Yes, sir.

25 Q She has to agree to talk to you.

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1 A Yes, sir.

2 Q She told you she was not responsible for this
3 aggravated robbery, didn't she?

4 A Yes, sir.

5 Q And after interviewing her, did you find her to
6 be a truthful person?

7 A Not entirely, no.

8 Q Now, next you interviewed Neiman Gasper, right?

9 A Yes, sir.

10 Q Same deal. He's in custody. He's an adult.
11 You have to give him his Miranda warnings first, right?

12 A Yes, sir.

13 Q And he agreed -- well, he was reluctant, but he
14 finally spoke with you, correct?

15 A Yes, sir.

16 Q He told you also he was not responsible for this
17 aggravated robbery.

18 A Yes, sir.

19 Q After interviewing him, do you believe Neiman
20 Gasper was a truthful person?

21 A Not entirely, no, sir.

22 Q You called him a liar, didn't you?

23 A Yes, sir.

24 Q And you never interviewed Mariano Sandoval that
25 night, did you?

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1 A No, sir.

2 Q You didn't direct any deputy to interview
3 Mariano Sandoval?

4 A No, sir.

5 Q We have no recorded statements of any kind from
6 Mariano Sandoval, do we?

7 A No, sir.

8 Q Now, interviewing a juvenile in the State of
9 Texas requires an additional step, doesn't it?

10 A Yes, sir.

11 Q You must take that juvenile first --

12 MS. LONGORIA: Object to relevance at this
13 point, Your Honor.

14 THE COURT: I will let him talk. Go ahead.

15 MR. HALPERT: Goes to --

16 THE COURT: Go ahead.

17 Q (By Mr. Halpert) It requires a juvenile go
18 before a magistrate first, correct?

19 A Yes, sir.

20 Q They have those magistrates at the Clay Road
21 substation, don't they?

22 A No, sir.

23 Q They bring them there to the Clay Road
24 substation, don't they?

25 A No, sir.

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1 Q It's your testimony that you've never seen or
2 heard of a magistrate coming to Clay Road to give Miranda
3 warnings to a juvenile?

4 A On Monday through Friday, 8:00 to 4:00.

5 Q And that's your testimony?

6 A Yes, sir.

7 Q You're not aware that they bring them 24 hours a
8 day, seven days a week to interview or to magistrate a
9 juvenile?

10 A I have never seen it done.

11 Q Did you inquire of anybody about having him
12 magistrated?

13 A No, sir.

14 Q But clearly, the decision not to interview
15 Mariano Sandoval was made by you?

16 A Yes, sir.

17 Q Now next, you constructed a photo spread for the
18 first time of Mariano Sandoval?

19 A Yes, sir.

20 Q And of course one of Neiman Gasper?

21 A Yes, sir.

22 Q And just like Brenda Flores, you made two of
23 Neiman Gasper's and two of Mariano Sandoval's?

24 A Yes, sir. Yes, sir.

25 Q You called Caval to come back to the station,

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1 this is now about 8:00 p.m. when he arrived, correct?

2 A Yes, sir.

3 Q This was his second and last trip for the day at
4 Clay Road?

5 A Yes, sir.

6 Q And I want to talk to you a bit about the photo
7 spread of Mariano Sandoval, okay? Were you in the same
8 room with Mr. Caval that you were with -- when he viewed
9 Brenda Flores' photo spread?

10 A No, sir.

11 Q Was the room nearby?

12 A It was across the hall.

13 Q Was it just you and he again?

14 A Yes, sir.

15 Q Did anybody else walk in or out during the
16 process?

17 A No, sir.

18 Q And again, since you were the one that
19 constructed the photo spread, this time you had one with
20 Mariano in position number six and one with Mariano in
21 position number two, correct?

22 A Yes, sir.

23 Q Same deal. You give him a choice, he picks one
24 and he sits down and reviews it, right?

25 A Yes, sir.

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1 Q Did you bring to court the names of the -- and
2 identifiers of the other five fill-ins in Mariano
3 Sandoval's photo spread?

4 A No, sir, I did not.

5 Q You certainly had an opportunity from yesterday,
6 when you were asked that question, to bring that
7 information before this jury today, did you not?

8 A Yes, sir.

9 Q And you have been unable to provide the fill-ins
10 for Mariano's photo spread, correct?

11 A Correct.

12 Q Even though you're required to preserve all of
13 that information by department policy.

14 A No, sir. I still have it.

15 Q You just decided not to bring it?

16 A No one told me to.

17 Q Well, I asked you if you could get it yesterday,
18 did I not?

19 A You asked if I could get, you didn't say bring
20 it.

21 Q Okay. You didn't know you were -- you didn't
22 feel it was necessary to bring it here in case I
23 questioned you about it?

24 A If you wanted it that bad, I figured you would
25 have asked me to bring it.

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1 Q Now, Ms. Longoria asked you about the people in
2 position three and six on Mariano's photo spread, correct?

3 A Yes, sir.

4 Q I told you yesterday, I believe they are the
5 same person, did I not?

6 A Yes, sir.

7 Q They look awfully similar?

8 A Yes, sir.

9 Q Just taken at different times.

10 A Yes, sir.

11 Q And when I asked you whether it's possible they
12 could be the same person, you said, could be, right?

13 A Yes, sir.

14 Q Would that not be a violation of your department
15 policy to put two pictures of the same person in a photo
16 spread, Sergeant Ashmore?

17 A If I did it knowingly, yes.

18 Q Well, you are the one that constructs the photo
19 spread, are you not?

20 A Yes, sir.

21 Q You are the one that knows the identity and the
22 name of the fill-ins, are you not?

23 A Yes, sir.

24 Q Clearly you would have seen the same name twice,
25 would you not?

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1 A Yes, sir.

2 Q And yet your testimony is you would still do it?

3 A No. I was probably in a hurry and didn't even
4 notice the names.

5 Q By putting the same person twice, you've now
6 alleviated one of the choices that a witness must make.
7 Instead of six photos, he's now looking at five.

8 A Yes, sir.

9 Q Now, you're trained to look for issues like
10 this, aren't you?

11 A Yes, sir.

12 Q And on the photo spread that's been admitted
13 into evidence, you also recognize that the photograph
14 containing Mariano Sandoval has him in a striped shirt,
15 correct?

16 A Yes, sir.

17 Q The other five fill-ins are all wearing
18 solid-color shirts?

19 A Yes, sir.

20 Q Again, you are trained not to put a
21 distinguishing feature that noticeable with one picture
22 versus the other five, are you not?

23 A Yes, sir.

24 Q Did you do this intentionally, Sergeant Ashmore?

25 A No, sir.

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1 Q Would it just then be considered negligent?

2 A No, sir.

3 Q Well, what is it?

4 A I wasn't paying attention to the shirts. I was
5 paying attention to the facial features.

6 Q You don't call that negligence?

7 A No, sir.

8 Q And in your vast experience in training as an
9 officer, you know that a distinguishing feature that bold
10 is the type of visual queue someone may latch onto when
11 they are looking at a photo spread, isn't it?

12 A Could be.

13 Q Especially if the witness is taking their time,
14 like Mr. Caval, and really studying this photo spread?

15 A Yes, sir.

16 Q And one other thing.

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

19 THE COURT: Yes, sir, you may.

20 Q (By Mr. Halpert) On that photo spread, and I
21 don't know if this is just some sort of file number,
22 what's that number on top there that says line up?

23 A That's the case number.

24 Q What's that case number?

25 A 13-145224.

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1 Q And what does it say after the four?

2 A Dash two.

3 Q Right. Did this need to be in here?

4 A Yes, sir.

5 Q The witness has to look at this?

6 A Yes, sir.

7 Q With your lineup number, right?

8 A Yes, sir.

9 Q And just coincidentally in this particular
10 lineup, you have a dash two after your lineup number?

11 A Yes, sir.

12 Q And what position is Mariano Sandoval in?

13 A Two.

14 Q Now next, you gave Orlando Caval the admonish --
15 excuse me -- you gave him the admonishment form?

16 A Yes, sir.

17 Q He appeared to read it, correct?

18 A Yes sir.

19 Q And understand it?

20 A Yes, sir.

21 Q Tell me, how long did Mr. Caval take before he
22 made an identification of Mariano Sandoval?

23 A Initially it was almost immediate but he did not
24 circle or make the final identification until he viewed the
25 photo spread for several minutes.

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1 Q Your testimony is that he identified the person
2 in number two immediately?

3 A Yes, sir.

4 Q Can we safely assume then, on a scale of one to
5 ten, ten being the strongest, that you would characterize
6 Mr. Caval's identification of Mariano as a ten?

7 A Yes, sir.

8 Q And you would dispute, would you not, that it
9 took Mr. Caval ten minutes, more or less, before he made
10 an identification of Mariano Sandoval?

11 A There were several minutes, five minutes, ten
12 minutes, I don't know.

13 Q But you said he made the identification
14 immediately?

15 A Correct.

16 Q So it was not ten minutes before he made the
17 identification of Mariano Sandoval, correct?

18 A Yes, sir.

19 Q Now on this one, tell the jury where you were
20 seated or standing during that whole process that Mr.
21 Caval was looking at the photo spread.

22 A I was standing behind him.

23 Q Standing behind him this time.

24 A Yes, sir.

25 Q You would not have been sitting across from him

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1 at the desk, would you?

2 A No, sir.

3 Q That would be a violation of department policy.

4 A Yes, sir.

5 Q That would also give you the ability to see the
6 photo spread and possibly give queues while the person is
7 looking at the photo spread, right?

8 A Yes, sir.

9 Q And that's why you wouldn't do that?

10 A Correct.

11 Q And as Orlando Caval did with Brenda Flores, he
12 put his initials and he dated the photo that he circled,
13 correct?

14 A Yes, sir.

15 Q And once again, at some point he asked you the
16 name of that individual and you told him Mariano Sandoval?

17 A Yes, sir.

18 Q You told him he was a juvenile?

19 A Yes, sir.

20 Q You told him he had picked the right person.

21 A Yes, sir.

22 Q If Orlando Caval had picked out someone else,
23 someone that you consider to be the wrong person, would
24 you have given him that person's name?

25 A No, sir.

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1 Q You would have just told him you picked the
2 wrong guy if he asked?

3 A Yes, sir.

4 Q You agree, Sergeant Ashmore, it is then you that
5 is deciding for the witness who is the right suspect and
6 who is the wrong suspect?

7 A No, sir.

8 Q Now, on the admonishment form that you gave Mr.
9 Caval, did you ask him to write in his level of confidence
10 in selecting Mariano Sandoval?

11 A I gave him the opportunity.

12 Q And once again, did he refuse?

13 A No, sir.

14 Q Well, if he didn't write it and you gave him the
15 opportunity, would that not be called a refusal?

16 A He didn't say no. He just chose not to write
17 anything.

18 Q Did you follow up and say, it's department
19 policy that I get you to write what your level of
20 confidence is?

21 A No, sir.

22 Q Did you ask him to write comments about the role
23 of the person he just identified?

24 A Yes, sir.

25 Q Once again, he just chose not to?

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1 A Yes, sir.

2 Q And you did not create a supplement that
3 contained any of these questions or comments or gestures
4 that Mr. Caval made during this photo spread, correct?

5 A No, sir.

6 Q Next, you showed Mr. Caval a photo spread with
7 six photos of African American males, did you not?

8 A Yes, sir.

9 Q One of them contained a photo of Neiman Gasper
10 right?

11 A Yes, sir.

12 Q When you saw him at Clay Road, he had an afro
13 with a blond streak in it, didn't he?

14 A Yes, sir.

15 Q In the photo that you picked though, was the
16 blond streak visible?

17 A No, sir.

18 Q Now in your report, you stated that Caval told
19 you the third male was actually Hispanic?

20 A Yes, sir.

21 Q Despite this though, you're now showing him a
22 photo spread with six African American males?

23 A Yes, sir.

24 Q So the witness has told you the ethnicity of the
25 third suspect and you're showing him a photo spread with

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1 six people of a different race.

2 A Yes, sir.

3 Q You followed the same procedures with Mr. Caval
4 as you did in Brenda Flores and Mariano Sandoval's photo
5 spread?

6 A Yes, sir.

7 Q Were you in the same room?

8 A Yes, sir.

9 Q Positioned the same way behind him?

10 A Yes, sir.

11 Q You wouldn't be sitting viewing it, would you?

12 A No, sir.

13 Q How long did Mr. Caval view the photo spread
14 with Neiman Gasper in it?

15 A A couple of minutes maybe.

16 Q Was Orlando Caval able to identify one of those
17 six African American males?

18 A No, sir.

19 Q Are you positive?

20 A Yes, sir.

21 Q You noted this in your police report, didn't
22 you?

23 A Yes, sir.

24 Q Did Mr. Caval tell you why he was unable to then
25 identify Neiman Gasper?

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1 A No, sir.

2 Q Now when a witness cannot make an
3 identification, there is also a space at the bottom of the
4 admonishment form where they are to put their initials
5 they were unable to identify, right?

6 A Yes, sir.

7 Q Did Orlando Caval put his initials where it says
8 unable to identify?

9 A I don't recall if he did or not.

10 Q And department policy requires that even if a
11 witness cannot identify a suspect, you are still required
12 to keep those photo spreads in your possession?

13 A Yes, sir.

14 Q Do you have, today, a photo spread that you
15 showed Mr. Caval containing the picture of Neiman Gasper?

16 A No, sir, I do not.

17 Q Where is that photo spread containing Neiman
18 Gasper?

19 A I don't know.

20 Q Did you tell anyone in this courtroom that you
21 shredded that document?

22 A No, sir, I didn't.

23 Q You just have no idea where that photo spread of
24 Neiman Gasper is?

25 A Once the adult case was closed, it was thrown

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1 away.

2 Q Let's talk a little bit about the gun that was
3 found, okay?

4 A Yes, sir.

5 Q Do you know if the gun was ever fingerprinted?

6 A No, sir.

7 Q You don't know.

8 A No, sir, I don't know.

9 Q You do know though that Mariano Sandoval's
10 fingerprints were not found on that gun; is that correct?

11 A Yes, sir.

12 Q Do you know if the gun was sent to the Harris
13 County regional firearms laboratory?

14 A Yes, sir, should have been.

15 Q Should have been. That would be department
16 policy any time a weapon is used in the commission of a
17 felony, correct?

18 A Yes, sir.

19 Q And when it goes to the firearms lab, they test
20 the weapon, correct?

21 A Yes, sir.

22 Q They do what's called a function statement?

23 A Yes, sir.

24 Q And that would be provided back to you as lead
25 investigator so you could supplement your police report

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1 with?

2 A Yes, sir.

3 Q Did you supplement your police report with a
4 report from the regional firearms lab?

5 A No, sir.

6 Q Have you ever seen a report from the regional
7 firearms lab?

8 A No, sir.

9 Q Now, in fairness, the law doesn't require that a
10 firearm work in order to still be a deadly weapon, right?

11 A Correct.

12 Q But it certainly would be information helpful to
13 a jury, whether or not a gun was even in working order,
14 would it not?

15 A Yes, sir.

16 Q And you never asked Orlando Caval to identify
17 that shotgun, did you?

18 A No, sir.

19 Q Even though he came back to Clay Road that night
20 and the shotgun was in your possession, he was not asked
21 to look at a weapon that was supposedly used against him
22 20 hours earlier, was he?

23 A No, sir.

24 Q And as far as you know, nine months later in
25 this courtroom is the first time that Mr. Caval is viewing

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1 that shotgun?

2 A Yes, sir.

3 Q And in your reports, Sergeant Ashmore, you did
4 not list nor elicit any description of that shotgun from
5 Mr. Caval, did you?

6 A No, sir.

7 Q Now, you're aware of a psychological phenomenon
8 known as weapon focus, aren't you?

9 A Yes, sir.

10 Q When a person has a weapon pointed at them in a
11 stressful situation, they tend to focus on the weapon,
12 correct?

13 A Yes, sir.

14 Q Because of that, they tend to exclude looking at
15 features other than that weapon, such as distinguishing
16 features of the person holding the weapon, correct?

17 A Yes, sir.

18 Q And you have special training as an officer not
19 to have that weapon focus if a weapon's ever pointed at
20 you, right?

21 A Yes, sir.

22 Q But regular people don't have that training,
23 don't have that ability not to focus on a deadly weapon
24 pointed at them, right?

25 A Yes, sir.

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1 Q Then this would help explain why Mr. Caval was
2 unable to give any specific descriptions of the three
3 people he claimed robbed him, right?

4 A Yes, sir.

5 Q I would like to talk to you about the DNA
6 evidence that you found all over Mr. Caval's car. You
7 testified that his car, when it was found on Groeschke
8 Road was towed to 310 Fisher Road in Humble where you have
9 a processing stall, correct?

10 A Yes, sir.

11 Q Crime scene unit did a full forensic evaluation
12 of the inside of the car and on the items on the inside of
13 the car, correct?

14 A Yes, sir.

15 Q They searched for fingerprints?

16 A Yes, sir.

17 Q They did DNA swabs on all those items inside the
18 car?

19 A Yes, sir.

20 Q They used something called all super glue
21 method, a fuming method was performed on certain items in
22 the car, correct?

23 A Yes, sir.

24 Q And you were notified when they finished
25 processing Mr. Caval's car, correct?

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1 A Yes, sir.

2 Q You had that in your police report?

3 A Yes, sir.

4 Q Now, after the crime scene unit finished with
5 all of their DNA and other evaluations, they send that to
6 what's known as the Harris County Institute of Forensic
7 Sciences?

8 A Yes, sir.

9 Q That's our formal medical examiners office?

10 A Yes, sir.

11 Q State of the art place?

12 A Yes, sir.

13 Q You've been there, haven't you?

14 A Yes, sir.

15 Q It's just like on CSI?

16 A No.

17 Q Certainly a modern facility?

18 A Yes.

19 Q Brand new, actually?

20 A Yes, sir.

21 Q And they are in charge of doing forensic
22 analysis on all evidence collected in Harris County now,
23 correct?

24 A Yes, sir.

25 Q And in this case, the Institute of Forensic

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1 Sciences did test all the DNA that was obtained by the
2 crime scene unit on Mr. Caval's car?

3 A Yes, sir.

4 Q In other words, they were able to find DNA that
5 could be compared later, they found DNA on many items
6 inside that car, didn't they?

7 A Yes, sir.

8 Q All they needed was the DNA of a live person to
9 compare it, right?

10 A Yes sir.

11 Q Now, you were notified again when the Institute
12 of Forensic Sciences finished their DNA analysis --

13 A Yes, sir.

14 Q -- right? You put a supplement in your report
15 about that.

16 A Yes, sir.

17 Q In June of this year.

18 A Yes, sir.

19 Q You noted it in your police report.

20 A Yes, sir.

21 Q You never forwarded this information to the
22 district attorney's office, did you?

23 A No, sir. That's not my responsibility, that's
24 their's.

25 Q You never requested that they get, or anyone

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1 get, a Court order to take what's called a buccal swab
2 from any of the suspects in this case, did you?

3 A Yes, sir, I did.

4 Q You requested it?

5 A Yes, sir.

6 Q Who did you request it of?

7 A Ms. Longoria and Mr. McLearen.

8 Q And to your knowledge, was a buccal swab ever
9 obtained of any of the suspects in this case?

10 A No, sir.

11 Q Because you would have noted that in your police
12 report, correct?

13 A Yes, sir.

14 Q This is like, they got DNA from a car that was
15 just taken in a robbery, correct?

16 A Yes, sir.

17 Q Few hours later, that car is found abandoned,
18 correct?

19 A Yes, sir.

20 Q We've got DNA all inside that car --

21 A Yes, sir.

22 Q -- that might link us to the actual robbers of
23 Mr. Caval?

24 A Yes, sir.

25 Q And nobody followed through on that, did they?

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1 A No, sir.

2 Q So the stuff we see on CSI, where we actually
3 have the forensic material, we didn't use that here, did
4 we?

5 A No, sir.

6 Q Lastly, I want to talk to you about you
7 mentioned, a deputy named Wine who was the one that helped
8 you with information for the first time about Brenda
9 Flores, correct?

10 A Yes, sir.

11 Q This is before Brenda Flores was arrested,
12 right?

13 A Yes, sir.

14 Q This was before you were able to construct a
15 photo spread of Brenda Flores in the afternoon?

16 A Yes, sir.

17 Q Deputy Wine gave you information you mentioned
18 from a witness that told him about Brenda Flores.

19 A Yes, sir.

20 Q That witness is named Caitlin Funk; is that
21 correct?

22 A Yes, sir.

23 Q Ms. Funk had an encounter with three
24 individuals --

25 MS. LONGORIA: Object to relevance, Your

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1 Honor.

2 MR. HALPERT: May we approach, Your Honor?

3 THE COURT: Yes, please.

4 (Sotto voce discussion off the record)

5 THE COURT: Where is my bailiff? We get
6 our morning break. Don't leave yet. Dean, take a ten
7 minute break.

8 THE BAILIFF: All rise for the jury.

9 (Jury leaves at 10:26 a.m.)

10 THE COURT: Okay, Mr. Halpert, now the jury
11 is out.

12 MR. HALPERT: On direct examination, Your
13 Honor, Ms. Longoria asked Sergeant Ashmore whether Deputy
14 Wine interviewed a witness who provided information about
15 Brenda Flores. That witness is Caitlin Funk. That opened
16 the door -- they can't have it both ways. They can't have
17 it, we're going to use Caitlin to help us get Brenda
18 Flores, but now she can't give the description of Mariano
19 Sandoval. Because when Deputy Wine met with Caitlin Funk,
20 that's what she did. She gave a description of Brenda
21 Flores. He showed her a photo, she identified it and she
22 gave the description of the other two individuals.

23 We discussed that in the certification hearing.
24 We're not talking about extraneous offense, this is an
25 encounter. There's no crime committed when she

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1 encountered them. They've opened the door, it's entirely
2 fair I get to elicit the description that Caitlin Funk
3 gave of the other two individuals.

4 MS. LONGORIA: Judge, I did not ask that
5 question. Sergeant Ashmore's response was simply that he
6 had a witness that provided the name of Brenda Flores. He
7 did not testify that that was Caitlin Funk. There was no
8 eliciting of that testimony that that was even that
9 circumstance. I did not ask that question.

10 THE COURT: Let's read it back.

11 MR. HALPERT: My point is, it doesn't
12 matter whether it's Caitlin Funk. Whether the witness
13 says it or the State says it, it opens the door.
14 Sergeants Ashmore, whoever said it, said a witness
15 provided the information.

16 THE COURT: Let's see what was said.

17 MR. HALPERT: It would be -- well, it would
18 be early on in direct because you were going through
19 the -- okay. It would be after the victim's talking,
20 about the whole part about the victim's car was located.
21 Pretty early on in direct.

22 THE COURT: Look again at it and see what
23 was said.

24 MR. HALPERT: Do you have the ability to
25 search by word?

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1 COURT REPORTER: I'm typing you right now.

2 MR. HALPERT: Oh, I thought you were
3 searching. I'm sorry.

4 THE COURT: She's taking down what you are
5 saying.

6 MR. HALPERT: I'll stop.

7 (Off the record)

8 THE COURT: Okay. Now, let's go on the
9 record, Steve.

10 (On the record)

11 MR. HALPERT: There's been testimony
12 elicited at trial that the next afternoon, Mariano, Neiman
13 Gasper and Brenda Flores are arrested in a house. The
14 jury has heard all of that information. The
15 implication -- not the implication -- the direct
16 testimony, is that the same people that did the robbery
17 twenty hours earlier are now caught together with the
18 spoils of the robbery and that's -- it's an open and shut
19 case.

20 THE COURT: I heard that. I heard all the
21 going ons in the house.

22 MR. HALPERT: Right. And that's certainly
23 going to be the most explosive argument that the State has
24 in closing. That's the evidence that they elicited. It's
25 got to be the same three because they're caught later.

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1 I've got someone close in time who encountered
2 three people, including Brenda Flores. It doesn't matter
3 who the other two are. That's a jury question. They can
4 decide whether the other two people are Neiman Gasper and
5 Mariano Sandoval or whether it's Joe Schmo and his brother
6 Pete. It doesn't matter.

7 But it's relevant that they use that information
8 to get a photo spread of Brenda Flores, so they used her
9 for that purpose, but now it's not relevant as to she
10 happened to be with two other people. That's a jury
11 question, Judge. That's my whole theory of the defense.
12 I'd be denied using relevant information like that for the
13 theory of my defense.

14 MS. LONGORIA: Judge, if I can backtrack
15 and put on the record what I had said. The question that
16 I asked and what happened next, I did not elicit that
17 testimony. The response was vague, in that, we do not
18 know who the witness is. The jury has not heard who the
19 witness is. The jury has not heard who this individual
20 identified or didn't identify or how this individual even
21 knew the name of Brenda Flores. For all we know, the
22 witness that we're discussing is someone who had talked to
23 Brenda Flores and knew.

24 The only thing that Sergeant Ashmore did with
25 Brenda Flores' name is put her photograph in a photo

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1 spread. Sergeant Ashmore did nothing with regard to the
2 respondent Mariano Sandoval or Neiman Gasper in relation
3 to what that witness told him.

4 Additionally, this intervening factor that
5 Brenda Flores may or may not have been with Mariano
6 Sandoval is not relevant. Because again, it's
7 approximately, if we're talking about Caitlin Funk, which
8 we're speculating that that is who this witness is, that's
9 three hours after the aggravated robbery and whether or
10 not she was with Mariano Sandoval is not relevant. If
11 we're going to get into that, then I am going to be
12 putting on the other extraneous, Specs burglary, and
13 things that we do have, that tie Brenda Flores and this
14 respondent together throughout the night. But at this
15 point --

16 THE COURT: Don't you believe, Steve, if
17 you elicit this testimony from this officer that this lady
18 was -- and I'm assuming she was -- the officer's going to
19 say there was some type of photo spread shown to Caitlin
20 Funk with Mariano Sandoval.

21 MR. HALPERT: No. No.

22 THE COURT: Was there Neiman Gasper?

23 MR. HALPERT: No. She was never shown a
24 photo spread of either Mariano Sandoval or Neiman Gasper.
25 She was only shown one picture --

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1 THE COURT: Don't you think you will be
2 opening the door for all of the other extraneous offenses
3 that, apparently, there are people that can testify to
4 those three were together subsequent to Caitlin Funk's
5 deal?

6 MR. HALPERT: Well, we've already got
7 testimony out they were together. They were arrested
8 together. That was all allowed in.

9 THE COURT: I understand. It should have
10 been allowed in.

11 MR. HALPERT: That's fine. But I'm not
12 discussing any extraneous offenses. Those other
13 extraneous offenses, we know --

14 THE COURT: But you will open the door for
15 her to make testimony that those people were all together
16 subsequent to that offense, subsequent to that meeting
17 with Caitlin Funk.

18 MR. HALPERT: Well --

19 THE COURT: Surely, surely you have to
20 agree with that.

21 MR. HALPERT: Well, I'm not agreeing with
22 that, Judge, but if that's going to be --

23 THE COURT: That's how I'm going to rule.

24 MR. HALPERT: Okay. Then I have to decide
25 if we let that in, that they will be able to get in

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1 evidence of extraneouses.

2 THE COURT: That's right.

3 MR. HALPERT: The only extraneous since
4 then would be -- that I have been given notice of -- is
5 the Specs liquor store, cause he's not identified in
6 Joseph Dubois. So, you can't say the three of them are
7 together because he is not identified. What other
8 extraneous?

9 MS. LONGORIA: We have circumstantial
10 evidence of the Dubois robbery. We have the Specs
11 burglary on video.

12 MR. HALPERT: Well, do we have the deputies
13 here to testify to that? Ready for that?

14 MS. LONGORIA: Sure.

15 MR. HALPERT: That's later. If I got to
16 eat it, I will eat it.

17 THE COURT: Okay. If you have to eat that,
18 you will eat that. I am taking that to mean that if you
19 elicit testimony from this sergeant concerning Caitlin
20 Funk, then the State of Texas is going to go into
21 extraneous offenses that do direct circumstances put those
22 three together?

23 MR. HALPERT: I'm not agreeing with your
24 ruling, Judge. I'm asking you to allow --

25 THE COURT: I'm telling you, that's going

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1 to be my ruling.

2 MR. HALPERT: Right. So you're denying my
3 right just to put the witness on --

4 THE COURT: I'm not denying anything. I am
5 saying, if you open the door, that's going to be my
6 ruling.

7 MR. HALPERT: And I want to reiterate that
8 I believe -- all I'm eliciting is that the witness he
9 referred to, no one's talked about Specs, no one's talked
10 any other extraneous. They've introduced a witness to
11 this case that did not need to be introduced.

12 THE COURT: You can't have it both ways.

13 MR. HALPERT: Well, Judge, they're having
14 it both ways.

15 THE COURT: No, they're not.

16 MR. HALPERT: Judge, of course they are
17 having it both ways.

18 THE COURT: I disagree with that.

19 MR. HALPERT: Well, they were allowed to
20 get part of the information they wanted to from this
21 witness and I'm not about to give the other half without
22 opening the door to other stuff. That's having it both
23 ways.

24 THE COURT: That's going to be my ruling.

25 MR. HALPERT: You know, Judge, this is

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1 exactly why we wanted Caitlin Funk down here. You denied
2 that, and so I'm now denied to get information. It's not
3 fair, Judge.

4 THE COURT: Okay. Well, I didn't tell
5 Caitlin Funk -- nobody from this Court told Caitlin Funk
6 not to show up.

7 MR. HALPERT: And no one from the defense
8 told her not to show up.

9 MS. LONGORIA: Judge, just to put it on the
10 record, Judge. We made it clear to the public defender's
11 office that we did not plan on calling her and told her
12 that she did not have to be here. And that conversation
13 was approximately two weeks before trial. I want to make
14 sure it's on the record.

15 THE COURT: The public defenders knew that?

16 MS. LONGORIA: Yes, sir.

17 MR. HALPERT: Right.

18 THE COURT: And you, as the public
19 defender, had the ability to communicate with her because
20 you told us early on in some hearing that you communicated
21 with her last weekend, at least through Sunday of last
22 weekend, and you could have told her to show up.

23 MR. HALPERT: We did. But after they
24 decided not to call her, they then produced Friday
25 evening, a police report that had all of the additional

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1 information.

2 THE COURT: I heard all of that.

3 MR. HALPERT: Well, that's why we wanted
4 her, and that's why we asked the Court to allow us time to
5 bring her in. But at that point, she had already made
6 plans not to be down here.

7 MR. McLEAREN: Judge, this is also for the
8 record. I was the one that talked to Caitlin Funk and
9 told her that the State did not plan on calling her as a
10 witness. I cannot speak for defense, so they might
11 contact you, but we did not plan on calling her as a
12 witness.

13 MR. HALPERT: And as you know, the defense
14 relies on any witnesses the State subpoenas.

15 THE COURT: Of course, but --

16 MR. HALPERT: We would have been fine had
17 we not gotten an offense report at the last minute, which
18 again, that's not their fault, that's when they were given
19 it.

20 THE COURT: I heard all of this. That's
21 how I am going to rule.

22 MS. LONGORIA: Has someone called Caitlin
23 Funk?

24 THE COURT: Well, I assure you, I haven't,
25 other than that one time in court when you all were

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1 standing here.

2 MR. HALPERT: You did. That's right.

3 MS. LONGORIA: I don't know if Mr. Halpert
4 made an attempt to call her in the last couple of days.

5 THE COURT: I don't know. Steve, have you
6 tried to contact her?

7 MR. HALPERT: After we left that day, I
8 sent e-mail, text, everything.

9 THE COURT: That was Monday?

10 MR. HALPERT: Yes.

11 THE COURT: Haven't done anything since?

12 MR. HALPERT: (Shaking head)

13 THE COURT: Well -- okay. That is how I am
14 going to rule.

15 MS. LONGORIA: Just so I'm clear, I'm not
16 sure what Mr. Halpert exactly is going to be asking.

17 MR. HALPERT: Can we have a moment, Judge?

18 THE COURT: Sure.

19 MR. HALPERT: Well, wait. Okay. I may
20 have my replacement here.

21 MS. LONGORIA: Judge, I think if Mr.
22 Halpert's going to be eliciting hearsay testimony from
23 Sergeant Ashmore, I mean, I'm probably going to be doing
24 the same. I just -- I am not sure how Mr. Halpert is
25 going to do this without eliciting hearsay.

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1 THE COURT: Well --

2 MR. HALPERT: Well, it's more a probable
3 cause issue, which is not offered for the truth of the
4 matter asserted. It's aid in your investigation just like
5 any information about Brenda Flores' photograph. He
6 didn't know whether the description is correct of the
7 other two people. But in normal police investigation,
8 this is what they do. Somebody provides information and
9 they try and find somebody who looks like that.

10 THE COURT: I understand your position a
11 thousand percent.

12 MR. HALPERT: Well, I was just answering
13 what Ms. Longoria said about that.

14 MS. LONGORIA: That answers it.

15 THE COURT: What?

16 MS. LONGORIA: That answers my question.

17 MR. HALPERT: I wouldn't be saying, you
18 know, you received the description of two other
19 individuals that were with, supposedly with, this person
20 at 1:00 a.m. in the morning and you describe them. That's
21 what we went over in the certification hearing.

22 THE COURT: Well, I still don't understand
23 why you believe that doesn't -- that testimony because
24 you're going to identity --

25 MR. HALPERT: Right.

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1 THE COURT: -- that's exactly what you're
2 eliciting. Why that identity does not open the door to
3 other identity extraneous offenses. That's a 404(B).
4 That's exactly what we are talking about. That's what the
5 exceptions are, motive, preparation, identity, you know,
6 all of those four or five or six things in 404(B).

7 MS. LONGORIA: I would also proffer that it
8 is eliciting the statement for the truth of the matter
9 asserted because his argument is going to be that it is
10 truthful that Brenda Flores was with a Hispanic male who
11 is 5-foot whatever.

12 THE COURT: I realize y'all are doing all
13 this for the record, but I understand what it is
14 eliciting.

15 MS. LONGORIA: Yes, sir.

16 THE COURT: I will give you a minute.

17 MR. HALPERT: Thank you, Judge. Judge,
18 while the jury is out, if I may just put a bill on with
19 Sergeant Ashmore on here --

20 THE COURT: Yes.

21 MR. HALPERT: -- as to questions I would
22 ask him?

23

24

25

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1 THE COURT: Yes, sir. While the jury is
2 out, do that.

3 **BILL OF REVIEW**

4 (Outside the presence of the jury)

5 **SCOTT ASHMORE,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. HALPERT:**

9 Q Sergeant Ashmore, you testified earlier that
10 Deputy Wine informed you about a witness that might have
11 information about robbery suspects?

12 A Yes, sir.

13 Q And you, yourself, met with that witness,
14 correct?

15 A Yes, sir.

16 Q And that witness is named Caitlin Taylor Funk,
17 correct?

18 A Yes, sir.

19 Q And Caitlin Taylor Funk told you that at
20 approximately 1:00 a.m. on October 20th, 2013, she
21 encountered three individuals at a house she was staying
22 at?

23 A Yes, sir.

24 Q And one of those individuals, she has learned
25 since, is Brenda Flores?

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1 A Yes, sir.

2 Q She learned from friends that was Brenda Flores?

3 A Yes, sir.

4 Q She told you she had contact with all three of
5 those individuals, correct?

6 A Yes, sir.

7 Q And you elicited descriptions of the other two
8 individuals, correct?

9 A Yes, sir.

10 Q One was a taller black male with a blond streak
11 in his hair?

12 A Yes, sir.

13 Q And the other, she described as a little bit
14 shorter than that individual and heavy set, correct?

15 A Yes, sir.

16 Q Did she say whether that person was Hispanic?

17 A I think she used the term mixed race.

18 Q Well, would that be for the taller one or for
19 the shorter one?

20 A I don't remember which one she was talking about.

21 Q Okay. But definitely, at least, we have
22 descriptions of a little bit shorter than the tall one and
23 heavy set?

24 A Yes, sir.

25 Q And how tall are you?

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1 A Five-ten.

2 Q Five-ten. And you've met Neiman Gasper,
3 correct?

4 A Yes, sir.

5 Q He's considerably taller than you, right?

6 A Yes, sir.

7 Q Like six feet?

8 A Yes, sir.

9 Q So a little bit shorter than Neiman Gasper,
10 might be five-eleven or even five-ten.

11 A Yes, sir.

12 Q Did she give any description of any clothing
13 that the individual was wearing?

14 A I want to say the word hoodies came up.

15 Q Do you know if you documented that in your
16 police report?

17 A No, sir, I do not.

18 Q Okay.

19 MR. HALPERT: That's the question I have
20 for the offer of proof, Your Honor.

21 THE COURT: Okay.

22 MS. LONGORIA: May I have just a second,
23 Judge, to find his offense report?

24 THE COURT: Yes, ma'am.

25 MS. LONGORIA: Do you have your offense

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1 report that pertains to Ms. Funk's interviews?

2 THE WITNESS: Yeah. Let me see.

3 THE COURT: Is that found in your
4 supplement?

5 THE WITNESS: Is that found in supplement
6 three?

7 THE COURT: Can I ask something off the
8 record?

9 MR. HALPERT: Yes, sir.

10 (Off the record)

11 THE COURT: Let's go back on, Jill. You
12 want to ask him some questions?

13 MS. LONGORIA: Yes, sir.

14 **CROSS-EXAMINATION**

15 **BY MS. LONGORIA:**

16 Q Sergeant Ashmore, the description of those
17 individuals is contained in Caitlin Funk's recorded
18 interview; is that correct?

19 A Yes, ma'am.

20 Q Would that, in fact, be the best evidence of
21 what Ms. Funk actually told you?

22 A Yes, ma'am.

23 MS. LONGORIA: I don't know if defense
24 counsel wants to put this on the record.

25 THE COURT: Let's hear what was said.

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1 MR. HALPERT: Sorry?

2 THE COURT: This is Caitlin Funk's
3 interview that was recorded. Can I hear that? Might be
4 persuasive or not, I don't know. If you have a verbatim.

5 MR. HALPERT: It's my handwriting, but I
6 don't know if you can read it.

7 MS. LONGORIA: Judge, I think it's very
8 brief.

9 THE COURT: Okay.

10 MR. HALPERT: I got it transcribed in my
11 handwriting.

12 THE COURT: How long did it take for you to
13 do that?

14 (CD played in open court)

15 MS. LONGORIA: Judge, subsequent to hearing
16 that, without asking -- well, let me ask Sergeant Ashmore.

17 Q (By Ms. Longoria) Sergeant Ashmore, is that the
18 totality of the interview with Caitlin Funk where she gave
19 you any potential descriptions of individuals that she had
20 seen this night of the 19th going into the 20th?

21 A Yes, ma'am.

22 Q Was her statement fully based on her observation
23 or was it also based on what other witnesses or Tim (sic)
24 had told her about who they saw?

25 A Both.

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1 Q And in that interview, is she actually unsure of
2 her identification of Brenda Flores in the end?

3 A Yes, ma'am.

4 Q And she certainly didn't know Neiman Gasper or
5 Mariano Sandoval?

6 A No, ma'am.

7 Q And she was never asked to view any photos of
8 those individuals by you on this recording or at any time
9 when you talked to her?

10 A Later on in the evening after all of this had
11 transpired, yes.

12 Q When was she called upon to view photos of --
13 was it Mariano Sandoval or Neiman Gasper?

14 A All three of them.

15 Q And what were the results of that?

16 A She said those are the three that showed up at my
17 house -- at the house last night.

18 THE COURT: She identified all three?

19 THE WITNESS: Yes, sir.

20 THE COURT: By spread?

21 THE WITNESS: No, sir, just photographs.

22 She came to claim her property we found.

23 Q (By Ms. Longoria) And I guess that brings me to
24 the next point. Her property that was found, was found in
25 the vacant house on Plantation Crest Court with this

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1 respondent and Neiman Gasper and Brenda Flores, correct?

2 A Yes, ma'am.

3 Q And that was subsequently returned to her?

4 A Yes, ma'am.

5 MS. LONGORIA: And that's all the questions
6 I have right now of Sergeant Ashmore. Just some
7 additional argument.

8 THE COURT: We are going to break for
9 lunch, but I'm inclined to let this testimony come in.

10 MR. HALPERT: With -- by itself?

11 THE COURT: By you eliciting -- you have
12 him under cross-examination.

13 MR. HALPERT: Right. But what about what
14 you said earlier? Will that open up the door to
15 extraneous?

16 THE COURT: I've heard that testimony now.

17 MR. HALPERT: Yes, sir.

18 THE COURT: And I don't see -- there's no
19 crime that's allegedly been committed.

20 MS. LONGORIA: Actually Judge, I think
21 that's not correct. Her vehicle was broken into.

22 THE COURT: Okay. Criminal mischief.

23 MS. LONGORIA: BMV. Burglary of a motor
24 vehicle.

25 THE COURT: BMV. Okay.

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1 MR. HALPERT: At the time that we're
2 getting into when she saw those people, there had not been
3 any damage. That was done sometime later on at some
4 point.

5 THE COURT: I understand.

6 MR. HALPERT: Okay. So, when she met with
7 them, there was no crime being committed at that point.
8 There wasn't. She was talking with them.

9 THE COURT: Yeah.

10 MR. HALPERT: Just an encounter.

11 THE COURT: I think the issue still though
12 is, and I don't know what the Specs is other than what we
13 talked about on the record and off the record. I don't --
14 I don't have an answer for that whether that's going to
15 open the door for extraneous. I'm -- you know, I have
16 mixed emotions about it. Because, obviously, you're
17 trying to elicit testimony about identity. And you know,
18 if there is an identity problem or if there is an identity
19 issue in an extraneous offense, that's 404(B), that has to
20 come in.

21 MR. HALPERT: May I respond?

22 THE COURT: Right?

23 MR. HALPERT: May I respond to that,
24 please?

25 THE COURT: Yeah, sure. We're talking.

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1 We're on the record. And I am aware of your 2007 case.

2 MR. HALPERT: Right. And so that's the
3 exact issue that that case envisions. Let's say -- I
4 mean, identification is already an issue in this case.
5 Let's say it hadn't been. And let's say by me questioning
6 Sergeant Ashmore, I am now placing identification as an
7 issue, okay? Which I am. The State stands up and says,
8 Well, Judge, we want to get in extraneous offenses. And
9 that case that I cited specifically says if identification
10 becomes an issue, the only way extraneous offenses come in
11 is if they are so closely related that they are almost
12 identical.

13 THE COURT: I think it says similar.

14 MR. HALPERT: No. It says much more than
15 similar, Judge. It says equates to a signature crime.
16 And that case was a guy that robbed three banks and they
17 will show, he always went to a female teller; he always
18 wore a mask; he always handed a note and always asked for
19 fifty dollar bills. That is what they said. That's a
20 signature crime.

21 You have no similarity between any of the
22 extraneous offenses here. None. Two carjackings, not
23 even the same MO in those two carjackings. Specs Liquor
24 Store, burglaries got nothing to do with that stuff.

25 So ,the case law does not allow in extraneous

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1 when I put in identification issue, and that's what I'm
2 trying to do.

3 THE COURT: Well, it also sounds like
4 the -- subsequent to the tape recording, Sergeant Ashmore
5 asked this lady to identify three and she does.

6 MR. HALPERT: I will -- I'm sorry.

7 THE COURT: By the photo.

8 MR. HALPERT: Well, Judge, if that comes
9 in, I will be -- I will handle that then. If you'll let
10 that come in, as a condition of me getting in the
11 description, then I will take that. Sergeant Ashmore
12 being able to say that he -- that Caitlin Funk identified
13 those three people.

14 MS. LONGORIA: I think I understand what
15 Mr. Halpert is saying as to the extraneous nature of the
16 offenses that night. I mean, frankly, I would be happy to
17 put that in as the witness testifying that these three
18 individuals were together. I don't know that we need the
19 criminal nature behind them because I do understand his
20 signature crime argument in that respect.

21 THE COURT: So, you're saying you would
22 like to elicit testimony that the three were identified in
23 another location together, et cetera, et cetera.

24 MS. LONGORIA: Correct.

25 THE COURT: Without going through the

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1 nature of that offense.

2 MS. LONGORIA: Sure.

3 THE COURT: And not even calling it a
4 crime.

5 MS. LONGORIA: Sure. I think my question,
6 perhaps to Sergeant Ashmore who's seen the video might be,
7 have you seen the video of these three together later that
8 night. And I just have to leave that to defense counsel.

9 MR. HALPERT: Well, I don't think -- seen a
10 video? I mean, we talked about certification, Sergeant
11 Ashmore said there were three males involved in that at
12 the certification hearing.

13 THE COURT: Okay.

14 MR. HALPERT: I don't know why --

15 THE COURT: You want to impeach him on
16 that?

17 MR. HALPERT: Well, it wouldn't be fair for
18 a witness that had nothing to do with the Specs Liquor
19 Store to then view a video and testify that he saw them
20 together later. How is that -- that would never be
21 allowed to be testified at any trial. I just watched the
22 video and saw the three of them together? That's not
23 allowed.

24 MS. LONGORIA: Obviously, there is an
25 additional predicate that needs to be laid for the video

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1 and for the video to be admissible.

2 THE COURT: If the predicate is laid.

3 MR. HALPERT: Well, it's not that simple.
4 You can't just bring in a witness to go, I reviewed this
5 video and that's the three of them. That's not up for the
6 detective to say that that's the three of them on the
7 video.

8 THE COURT: So, what you're saying is that
9 if you're allowed to go into the testimony concerning
10 Caitlin Funk, et cetera --

11 MR. HALPERT: I won't even name Caitlin
12 Funk.

13 THE COURT: Okay. Another witness. The
14 name is not significant, I understand that. That you
15 agree that the point about subsequent identification by
16 that same witness, whatever you call it, Santa Clause,
17 whatever, she identified three by photo?

18 MR. HALPERT: I don't agree with that
19 because it's nowhere supplemented in any police report, so
20 it didn't happen. But I'll cross on that if that's the
21 only way I'm gonna get in my testimony. I don't agree
22 with that part because I know it didn't happen. But if
23 that's the only way that my --

24 THE COURT: You know what didn't happen?

25 MR. HALPERT: That he showed Caitlin Funk

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1 pictures of those three people and she identified them.
2 She only saw one picture of Brenda Flores, was never asked
3 to identify Mariano Sandoval or Neiman Gasper. I know
4 that. Because I talked to Caitlin Funk originally, and of
5 course, she told me that. She was never asked to see any
6 pictures or photo spreads, because of course, I'd want to
7 know that.

8 THE COURT: Well, okay. I'm going to allow
9 the testimony.

10 MR. HALPERT: And, so, can we be clear,
11 while we're here to shape it, so we don't stray out of any
12 bounds, exactly what we're allowed to get into on both
13 sides?

14 THE COURT: Yeah.

15 MR. HALPERT: So, I will elicit, under
16 questioning, that this witness that he talked about that
17 helped him develop Brenda Flores, that he met with that
18 witness and that that witness saw three people, one of
19 them was Brenda Flores, the night before at 1:00 a.m. or
20 early that morning at 1:00 a.m.

21 THE COURT: Okay.

22 MR. HALPERT: And that that witness -- he
23 got a description from that witness and then the
24 description that you heard on there of those three people.
25 Brenda Flores, tall guy, mixed, afro, and then the person

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1 a little shorter, heavy set. Is that fair?

2 THE COURT: Uh-huh.

3 MR. HALPERT: Okay. And then that's it on
4 that part. Okay? For me.

5 THE COURT: Yeah. But she gets to go next.

6 MR. HALPERT: Right. And her question will
7 be: Did that witness later come down to the station? I
8 don't want to speak for the State. You want to proffer
9 it?

10 MS. LONGORIA: I don't want to proffer.

11 THE COURT: Given the fact that she made
12 identifications.

13 MR. HALPERT: Okay. And just what was
14 discussed with Sergeant Ashmore and she was shown photos
15 and all that stuff.

16 THE COURT: Yeah.

17 MR. HALPERT: Okay. Okay. Fair enough.

18 THE COURT: So, that's the ruling.

19 MS. LONGORIA: And then are we going to
20 jump to the vacant house where her stolen property was
21 recovered or not, talking about that her car was
22 burglarized?

23 MR. HALPERT: There is a police report
24 about her car being burglarized. The only person named in
25 the report is Brenda Flores. So, that's a case against

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1 Brenda Flores that was never charged with extraneous
2 offense report right here.

3 THE COURT: Okay.

4 MR. HALPERT: And I obviously, you know,
5 403, Judge, I mean has -- it's not -- probative values is,
6 again, obviously outweighed by the influence of prejudice
7 and stuff, coming in like that. She is not even listed as
8 a person in the police report.

9 MS. LONGORIA: Judge, if Mr. Halpert's
10 going to argue --

11 THE COURT: See, you're arguing that
12 they're not together and State wants to argue that they
13 are together.

14 MR. HALPERT: All I'm arguing, Judge, is
15 that this person that he used --

16 THE COURT: It's the same thing.

17 MR. HALPERT: Right.

18 THE COURT: Whether this person identified
19 the three together or not. We're all talking about the
20 same thing, Steve.

21 MR. HALPERT: Right.

22 THE COURT: So, why wouldn't the State be
23 allowed to elicit testimony that the three were together?

24 MR. HALPERT: Well, I thought you said that
25 they were going to be allowed --

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1 THE COURT: We were past -- we were past
2 the identification. Martina just got through saying,
3 okay, why can't I talk about her car being burglarized the
4 next night? Why can't I talk about the stolen property,
5 et cetera?

6 MR. HALPERT: Because, judge --

7 THE COURT: And I'm assuming we're talking
8 about the Plantation home?

9 MS. LONGORIA: Yes, sir. Recovered with
10 this respondent and the two others at the Plantation Crest
11 Court.

12 THE COURT: And the property that was
13 recovered was from --

14 MS. LONGORIA: The BMW that night.

15 THE COURT: From, Caitlin Funk's?

16 MS. LONGORIA: Yes, sir.

17 MR. HALPERT: Because that specifically
18 gets into extraneous offenses that are not allowed by case
19 law, Judge.

20 MS. LONGORIA: But it rebuts the argument
21 that they are not together. Which is exactly why he's
22 eliciting that testimony.

23 MR. HALPERT: Well, but hold on. That's
24 why that case was developed because the defense rebutted
25 the State's theory, Judge, on it, and it opened the door

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1 to identification. And it says, does the State then get
2 allowed a data dunk (sic) on extraneous? No. Unless they
3 are signature crimes. This is exactly what this case is
4 about.

5 THE COURT: That would be a great point for
6 you to go up on.

7 MR. HALPERT: Unfortunately, I'd rather
8 have the wisdom of one than the wisdom of three. I mean,
9 in reality, Judge, this case law could not be no more on
10 point on this issue. It's our situation here. I opened
11 the door to identification, admittedly, but they're not
12 allowed to get into extraneous, which is what they are
13 trying to do. Eliciting Caitlin Funk's description is
14 opening the door to identification. And the law says they
15 can't then --

16 THE COURT: Steve, I still don't understand
17 why it can't be worded -- a question can't be worded where
18 the testimony that the three were together, the three
19 were -- property was found. Why is that not relevant?

20 MR. HALPERT: Well, it's already been
21 elicited.

22 THE COURT: Huh?

23 MR. HALPERT: It's already been elicited.
24 The three of them were clearly shown to be together when
25 they were arrested at the vacant house. We know that it

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1 was forced entry, so we know another crime was committed.
2 We know that we have, whatever Sobota talked about,
3 tagging property and all of that stuff. We know the
4 shotgun was found there.

5 I mean Judge, how much more information on
6 extraneouses are they allowed to get into? You still want
7 to let them get in more?

8 THE COURT: Well, what you're asking is,
9 this lady whose car got burglarized, stuff is found at the
10 place where he's arrested at, and it puts them together.

11 MR. HALPERT: Judge, we have no idea --
12 there is no testimony as to --

13 THE COURT: You're fixing to go elicit that
14 testimony.

15 MR. HALPERT: Well, Judge, we have no idea
16 where that stuff was in the house. In other words, you
17 can't say or any witness or any deputy come in here and
18 go, I can show Mariano Sandoval being in the house was in
19 care, custody, and control of property belonging to
20 Caitlin Funk.

21 THE COURT: Circumstantially.

22 MR. HALPERT: It's mere presence. And
23 that's why that wouldn't be allowed. He wouldn't be
24 charged with that crime.

25 MS. LONGORIA: Judge, he was running up the

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1 stairs in a house that there was stolen property at.

2 MR. HALPERT: The DA's office wouldn't take
3 that charge. We go into a house, there's stolen property,
4 someone runs up the stairs. We have no idea whether he
5 just walked in the house two seconds earlier. As a matter
6 of fact, the deputies testified when they got there at the
7 doorway, the realtor doesn't know if it was three. He
8 could have just walked in that minute ago. And here's the
9 police report.

10 The sheriff's department chose to file the
11 property's found there, do they name him or Neiman Gasper?
12 No. Just Brenda Sandoval -- Brenda Flores. The only one
13 they believe is the suspect in the BMV.

14 I mean that's eliciting information that they
15 don't even deem to be worthy to put it in a police report.
16 But to say that he's guilty of a BMV or argue that is
17 ridiculous. Because he's in a house where there's tons of
18 stuff there? There's no knowledge he knew where that
19 stuff came from.

20 And you have to prove, in order to find someone
21 guilty of being in possession of stolen property, that
22 they knew the property was stolen. There's no -- no one
23 is going to get in here and go he knew that stuff was
24 Caitlin Funks' from a BMV. There's no way anybody can say
25 that.

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1 THE COURT: Okay. I hear your argument.

2 MR. HALPERT: Huh?

3 THE COURT: I hear your argument.

4 MR. HALPERT: Sorry to be so loud. I
5 appreciate your patience.

6 THE COURT: In fact, Jill got it all down.

7 MR. HALPERT: There's nothing like that in
8 the certification transcript.

9 THE COURT: It's 12:15. Take the jury to
10 lunch. We'll be back at 1:15.

11 MR. HALPERT: Did we lie again about
12 finishing by noon?

13 THE COURT: No. We will finish today.

14 MR. HALPERT: No, I know. I know.

15 THE COURT: Unless Caitlin Funk shows up.

16 MR. HALPERT: Yeah.

17 THE COURT: We're off the record.

18 (Lunch recess taken. Off the record.)

19 (Back on the record)

20 THE COURT: We're back on the record again
21 in 2013-02502J with Mariano Sandoval. We've had 45
22 minutes of discussion on the record, and a lot of
23 discussion off the record, concerning a couple of issues,
24 the issue being how far -- how far the respondent's
25 attorney can go concerning questioning Sergeant Ashmore

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1 about an identification or non-identification that
2 occurred some hours after the aggravated robbery of Mr.
3 Caval.

4 The Court is going to allow the respondent's
5 attorney to elicit testimony from Officer Ashmore
6 concerning if an individual made an identification of
7 three individuals, including but not limited to, Brenda
8 Flores.

9 MR. HALPERT: Yes, sir.

10 THE COURT: Brenda Flores. And two other
11 individuals that she may or may not be accurate about.
12 It's also -- Court's going to allow the State or the
13 respondent's attorney to go through -- ask Sergeant
14 Ashmore questions concerning photographs that he allegedly
15 shows this eye witness.

16 I am not going to allow testimony about the
17 actual crime itself, the burglary of a motor vehicle.
18 Court does not believe that that is sufficiently close
19 enough to the Burton case, 14th Court of Appeals case, to
20 allow that issue; although, obviously, identity is the
21 main issue that the respondent has been talking about for
22 two days or three days now. So, we're going to allow
23 that.

24 I don't believe that the -- there is going to be
25 any testimony about Specs from the State, and I don't

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1 think the respondent's going to the Specs burglary. So, I
2 don't think the respondent is going through that.
3 Anything else? Was that the issue that we were talking
4 about?

5 MS. LONGORIA: Nothing in particular,
6 Judge, if it goes as planned.

7 MR. HALPERT: We may be having another 45
8 minute conversation.

9 THE COURT: All right. Now, we're off.

10 (Off the record)

11 THE BAILIFF: All rise for the jury.

12 (Jury returns at 1:39 p.m.)

13 THE COURT: Well, the good thing is, it
14 tends to warm up in the afternoon. You all can be seated.
15 Mr. Halpert passes.

16 MR. HALPERT: I think I'm still up.

17 THE COURT: Okay.

18 MR. HALPERT: Thank you, Judge.

19 **CROSS-EXAMINATION (CONTINUED)**

20 **BY MR. HALPERT:**

21 Q Sergeant Ashmore, where we ended up, I was
22 asking you about a witness that you met with sometime
23 Sunday early afternoon.

24 A Yes, sir.

25 Q This would be the day after the -- Mr. Caval's

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1 robbery, correct?

2 A Yes, sir.

3 Q And this witness, you had testified, provided
4 you with or was able to identify Brenda Flores in a
5 photograph, right?

6 A Yes, sir.

7 Q And that's how you constructed -- you used that
8 photo to construct your photo spread of Brenda Flores that
9 was later shown to Mr. Caval, right?

10 A Yes, sir.

11 Q Now, when you later talked with that witness,
12 that witness told you that at 1:00 a.m. in the morning,
13 that morning, she encountered three individuals outside a
14 house, correct?

15 A Yes, sir.

16 Q And just so we're clear, 1:00 a.m. being the
17 same date October 20th, 2013?

18 A Yes, sir.

19 Q This would be approximately two hours and twenty
20 minutes after the robbery of Orlando Caval, correct?

21 A Yes, sir.

22 Q And she told you when she encountered these
23 three individuals, you asked for a description of the
24 three individuals, correct?

25 A Yes, sir.

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1 Q She told you the first one was a Hispanic female
2 who she knew to be Brenda -- who turned out to be Brenda
3 Flores?

4 A Yes, sir.

5 Q She told you the second individual was, she
6 believed, a mixed African American Hispanic male, correct?

7 A Yes, sir.

8 Q And that individual had, according to her,
9 distinguishing feature of an afro with a blond streak in
10 it, right?

11 A Yes, sir.

12 Q And the third individual, that was with the
13 other two that she described, was a little bit shorter
14 than the mixed race individual, correct?

15 A Yes, sir.

16 Q And she described him as heavy set --

17 A Yes, sir.

18 Q -- correct? Now, you have seen Mariano Sandoval
19 in the courtroom today and you've even identified him,
20 correct?

21 A Yes, sir.

22 Q And you saw him that night, October 20, 2013,
23 correct?

24 A Yes, sir.

25 MR. HALPERT: And can I have Mariano

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1 Sandoval stand up?

2 THE COURT: Yes, sir.

3 Q (By Mr. Halpert) Would you agree with me, that
4 his body type is the same today as it was on October 20th,
5 2013?

6 A Yes, sir.

7 Q And you, certainly, at least in your experience,
8 would not describe one with that frame as being heavy set,
9 correct?

10 A No, sir.

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

12 THE COURT: Thank you. Redirect?

13 **REDIRECT EXAMINATION**

14 **BY MS. LONGORIA:**

15 Q Sergeant Ashmore, staying on this topic for a
16 moment, did you actually show some photographs to that
17 witness?

18 A Yes, ma'am.

19 Q Was one of those photographs, the photograph of
20 the respondent Mariano Sandoval?

21 A Yes, ma'am.

22 Q Did that witness make an identification of
23 Mariano Sandoval as one of the three individuals that she
24 encountered at approximately 1:00 a.m. the early morning
25 hours of October 20th, 2013?

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1 A Yes, ma'am.

2 Q Backing up to talk about DNA in this case, you
3 and I -- and I think you and Mr. McLearn -- had a
4 discussion about a potential buccal swab and DNA analysis,
5 correct?

6 A Yes, ma'am.

7 Q And that was sometime late last week, Friday of
8 last week; is that accurate?

9 A Yes, ma'am.

10 Q And we had discussed doing that, potentially, if
11 this case got reset, correct?

12 A Yes, ma'am.

13 Q Could we have taken a buccal swab on Friday and
14 obtained results by Monday?

15 A No, ma'am.

16 Q That doesn't happen like it does in CSI here in
17 Harris County, does it?

18 A No, ma'am.

19 Q Backing up further, let's talk about the
20 evidence that you did have in this case when you requested
21 charges on the respondent Mariano Sandoval.

22 Who did you have identification from
23 pertaining to Mariano Sandoval and the aggravated
24 robbery involving Orlando Caval?

25 A Mr. Caval.

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1 Q And so he was the only witness to the crime
2 itself, correct?

3 A Yes, ma'am.

4 Q And you further had an identification from
5 Brenda Flores, correct?

6 A Yes, ma'am.

7 Q Who knew the respondent?

8 A Yes, ma'am.

9 Q And you further had a third identification from
10 Neiman Gasper, correct?

11 A Yes, ma'am.

12 Q Did he indicate to you that he knew the
13 respondent as well?

14 A Yes, ma'am.

15 Q Did you further have the physical recovery of
16 the shotgun used in the aggravated robbery?

17 A Yes, ma'am.

18 Q And that was found in the house with the
19 respondent, correct?

20 A Yes, ma'am.

21 Q In the vehicle that belonged to Brenda Flores?

22 A No, ma'am.

23 Q In the house where the -- where Brenda Flores'
24 vehicle was found; is that accurate?

25 A Yes, ma'am.

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1 Q Did you have the respondent and Brenda Flores
2 and Neiman Gasper together approximately fifteen hours
3 after this aggravated robbery?

4 A Yes, ma'am.

5 Q Were all of those things taken into
6 consideration when seeking charges against Mariano
7 Sandoval?

8 A Yes, ma'am.

9 Q When you took the statements from Brenda Flores
10 and Neiman Gasper, were they done together or separately?

11 A Separately.

12 Q Were Brenda Flores and Neiman Gasper in a
13 position to hear each other's statements?

14 A No, ma'am.

15 Q In fact, after Brenda Flores and Neiman Gasper
16 were transported from the scene at 2007 Plantation Crest
17 Court, they would not have been together; is that correct?

18 A Correct.

19 Q And that's because male and female inmates are
20 not housed together or kept together; is that accurate?

21 A Correct.

22 Q The reason you didn't take or request to take a
23 statement from the respondent is because, in your opinion,
24 he was intoxicated at that time?

25 A Yes, ma'am.

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1 Q Would it be proper or would it be reliable to
2 take a statement from an intoxicated person? Would that
3 be something that you would normally do?

4 A No, ma'am.

5 Q Did you have the occasion to observe both Brenda
6 Flores and Neiman Gasper for a period of time before you
7 took their statement?

8 A Yes, ma'am.

9 Q Did they appear to be intoxicated to you at that
10 time when you took their statements?

11 A No, ma'am.

12 Q In fact, were paramedics called out to 2007
13 Plantation Crest Court?

14 A Yes, ma'am.

15 Q Were the individuals evaluated by paramedics?

16 A Yes, ma'am.

17 Q The photograph of Mariano Sandoval that was
18 placed in Petitioner's Exhibit 116, of Mr. Sandoval with
19 the striped shirt that Mr. Halpert has talked about, was
20 that the most recent photograph of Mariano Sandoval that
21 you had at your disposal?

22 A Yes, ma'am.

23 Q Would it be normal practice to put the most
24 recent photograph you had of an individual in a
25 photographic lineup to display?

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1 A Yes, ma'am.

2 Q Why is that?

3 A You try to get an image of close to what they
4 look like now. You don't want one that is four or five
5 years old. You just try to use the most recent one.

6 Q Through the course of your investigation, did
7 you have cause to -- to look -- did you have cause to
8 investigate Roman Flores -- Roman Torres and his
9 relationship with anyone involved in this case?

10 A Yes, ma'am.

11 Q Did you find that Roman Torres was, in fact, a
12 friend of Brenda Flores?

13 A Yes, ma'am.

14 Q And did you find that Roman Torres is, in fact,
15 the older brother of the respondent Mariano Sandoval?

16 A Yes, ma'am.

17 Q And did you further find that Roman Torres was
18 in jail, in custody, in police custody at the time of the
19 commission of the aggravated robbery of Orlando Caval?

20 A Yes, ma'am.

21 Q And Mr. McLearn has brought to my attention
22 that I was saying 2007 Plantation Crest Court. The
23 residence that we were discussing where the shotgun was
24 found and where the respondent was found, was that, in
25 fact, 6007 Plantation Crest Court?

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1 A Yes, ma'am.

2 Q There is not a 2007 Plantation Crest Court
3 involved in this case; is that accurate?

4 A No, ma'am.

5 MS. LONGORIA: Pass the witness, Your
6 Honor.

7 THE COURT: Thank you.

8 MR. HALPERT: Yes, Your Honor.

9 **FURTHER RECROSS-EXAMINATION**

10 **BY MR. HALPERT:**

11 Q Sergeant Ashmore, you --

12 MR. HALPERT: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes, sir.

15 Q (By Mr. Halpert) Let me show you a document I
16 submit to you is from the Harris County Forensic Science
17 Lab reports. Would you take a look at that?

18 A Yes, sir.

19 Q Do you see the submission form on the back?

20 A Yes, sir.

21 Q What date were all of the items submitted to the
22 Harris County Forensic Institute for Forensic Science for
23 DNA analysis?

24 A Looks like November the 15th of 2013.

25 Q And what was the date that the Institute of

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1 Forensic Sciences completed their report of all of the DNA
2 analysis? On the first page.

3 A May 29th of 2014.

4 Q Okay. May 29th, 2014. Not last weekend that
5 they completed their analysis of the DNA; is that correct?

6 A Yes, sir.

7 Q You just testified that the reason that you did
8 not take a statement from Mariano was because he was too
9 intoxicated?

10 A Yes, sir. That's one of the reasons.

11 Q You have four or five deputies that submitted
12 supplements regarding the arrest of Mariano Sandoval as
13 part of your report; do you not?

14 A Yes, sir.

15 Q Did any of those deputies submit in their
16 reports their observations that Mariano was intoxicated?

17 A Not that I'm aware of.

18 Q You talked about Roman, the brother of Mariano,
19 and that you did this research and discovered about the
20 friendship with Brenda Flores, correct?

21 A Yes, sir.

22 Q Now Roman Torres, Roman was never mentioned in
23 the statement you took with Brenda Flores, correct?

24 A Correct.

25 Q She never mentioned the name Roman Torres?

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1 A No, sir.

2 Q Can you show me anywhere in your police report,
3 Sergeant Ashmore, where you documented that you did this
4 research and concluded that Roman Torres was in jail on
5 the day of the offense?

6 A No, sir.

7 Q You cannot. In other words, it's not in your
8 report. Is that fair to say?

9 A Yes, sir.

10 Q And you have in your report, you've listed the
11 identification of Brenda Flores by this witness we've been
12 discussing, correct?

13 A Yes, sir.

14 Q You noted that in your report?

15 A Yes, sir.

16 Q You noted in your report the identification by
17 Orlando Caval of Brenda Flores, right?

18 A Yes, sir.

19 Q The identification of Orlando Caval of Mariano
20 Sandoval?

21 A Yes, sir.

22 Q The identi- -- or the non-identification by Mr.
23 Caval of Neiman Gasper, right?

24 A Yes, sir.

25 Q You shredded the photo spread but you still

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1 noted in your report the identification or
2 non-identification of Neiman Gasper, correct?

3 A Yes, sir.

4 Q And yet, this witness comes down to the station
5 house and you show this witness photographs, as you say,
6 of Mariano Sandoval. Can you please show me in your
7 police report, sir, where you documented that
8 identification?

9 A It's not in there.

10 Q Why would it not be in there when you noted
11 every other identification?

12 A Hindsight being 20/20, maybe I should have but I
13 didn't show her a photo spread, wasn't an eye witness to
14 the crime. I just wanted to confirm what I already knew.

15 Q Careful when you want to be; is that right?

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

18 THE COURT: That's sustained.

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

20 MS. LONGORIA: Nothing further of this
21 witness, Your Honor.

22 THE COURT: Thank you. May he be excused?

23 MS. LONGORIA: Subject to recall, yes, sir.

24 THE COURT: Thank you. Call your next.

25 MS. LONGORIA: Petitioner calls Neiman

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1 Gasper, Your Honor.

2 THE COURT: Neiman Gasper, Dean.

3 Mr. Gasper, have a chair right here, please,
4 sir. Talk loud enough so the person in the furthest up
5 there in the jury can hear you, please, sir. Raise your
6 right hand.

7 (Witness sworn by the Court)

8 THE COURT: You have to answer out yes.
9 Talk into that microphone. Thank you, son.

10 MS. LONGORIA: Your Honor, may we approach?

11 THE COURT: Yes, ma'am.

12 (Sotto voce discussion of the record)

13 THE COURT: Okay. Mr. Gasper, today they
14 are going to ask you questions concerning one particular
15 offense, an aggravated robbery. I don't want you to talk
16 about any other offenses. I don't want you to talk about
17 any of the things that may have occurred anywhere at any
18 time. We're only talking about an aggravated robbery that
19 occurred on October the 19th with the complaining witness
20 of Mr. Caval. Do you understand what I'm saying, son?

21 THE WITNESS: Uh-huh.

22 THE COURT: You have to answer out yes or
23 no, please.

24 THE WITNESS: Yes.

25 THE COURT: Thank you. Yes, ma'am?

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1 MS. LONGORIA: May it please the Court?

2 THE COURT: Uh-huh.

3 MS. LONGORIA: Thank you.

4 **NEIMAN GASPER,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MS. LONGORIA:

8 Q Can you please state your full name for the jury
9 so we can all hear?

10 A Neiman Michael Gasper.

11 Q Can you sit up a little bit closer to the
12 microphone so we can hear you? And your name is Neiman
13 Gasper, correct?

14 A Yes.

15 Q And who is this sitting right here in the black
16 shirt?

17 A Mariano.

18 Q Mariano? Is that Mariano Sandoval?

19 A I know it's Mariano.

20 Q Don't know his last name?

21 MS. LONGORIA: Your Honor, if the record
22 could reflect that this witness has identified the
23 defendant?

24 THE COURT: Record will so reflect.

25 Q (By Ms. Longoria) And Mr. Gasper, is that the