

1 THE COURT: All right. What says  
2 defense?

3 MR. MAYR: At this time, Your Honor, we  
4 would call Investigator Michael Burrow to the stand.

5 THE COURT: All right. Officer Burrow.  
6 Good afternoon.

7 THE WITNESS: Good afternoon, Your  
8 Honor.

9 THE COURT: Raise your right hand.  
10 Have you been sworn already or no?

11 THE WITNESS: Yes, sir, I have.

12 THE COURT: You have been sworn?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Feel free to adjust  
15 the chair and microphone and answer as directly as  
16 you can. Of course, the Rule has been invoked.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. You may  
19 proceed.

20 **INVESTIGATOR MICHAEL BURROW,**  
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 BY MR. MAYR:

24 Q Investigator Burrow, would you please  
25 introduce yourself to the Court, please.

1           A       My name is Michael Burrow. I'm an  
2 investigator with the Houston Police Department  
3 homicide division.

4           Q       Okay. Investigator Burrow, did you have an  
5 opportunity to investigate or participate in the  
6 investigation of an alleged homicide that took place  
7 on May 19th, 2011, at 4206 Groton Avenue?

8           A       Yes, sir.

9           Q       On that date, did you -- were you one of the  
10 first officers arrive, or were you called out there  
11 after initial reports were made?

12          A       The patrol officers made the initial scene  
13 and called homicide division, myself and Investigator  
14 Condon and Investigator Hassig (phonetic) made the  
15 scene.

16          Q       Okay. When you arrived at the scene,  
17 typically what will happen is is one officer will be  
18 responsible for the scene and another officer will be  
19 responsible for talking with the witnesses and  
20 canvassing the area, which was -- which role was  
21 your's that evening?

22          A       That evening I took responsibility for  
23 interviewing the witnesses. Officer Hassig was on  
24 rotation with the homicide division, and he needed a  
25 task to do and I assigned him the canvas.

1 Q Okay. Let's talk about the witnesses that  
2 you came into contact with that evening. Did you  
3 have an opportunity to come into contact with a young  
4 boy by the name of Malik Brown?

5 A Yes, sir.

6 Q And you identified him as being the stepson  
7 of the complainant; is that right?

8 A That's actually incorrect. He's his son.

9 Q Actual son?

10 A Biological son.

11 Q Okay.

12 A Yes. That was my mistake.

13 Q And you had referred to that in the offense  
14 report, so I wanted to clear that up.

15 A That -- it was a mistake on my part.

16 Q You had an opportunity to speak with him,  
17 correct?

18 A Yes.

19 Q And tell us -- tell the Court, if you would,  
20 about the circumstances under which you came into  
21 contact with him?

22 A Okay. When I arrived at the scene, the  
23 witnesses had been separated. And Malik was seated  
24 by himself in the back of a marked unit. I took  
25 Malik out of the vehicle and put him in my city

1 vehicle, just the two of us in the front seats, and I  
2 took a statement from him on audio recording.

3 Q Did you ever talk with him outside of the  
4 vehicle, possibly on the hood of your vehicle?

5 A Not that I recall, no.

6 Q You're absolutely positive it was inside of  
7 your vehicle?

8 A The interview took place inside the vehicle,  
9 yes.

10 Q And you recorded that interview, correct?

11 A Yes.

12 Q Have you had an opportunity to review that  
13 recording prior to your testimony here today?

14 A I have.

15 Q And you also prepared an offense report  
16 that's documented the same, about what it was that he  
17 told you; is that right?

18 A That's correct.

19 Q Briefly, tell the Court what it was that  
20 Malik told you what he observed that night.

21 A Okay. He said that he was in the front  
22 bedroom of the house, a spare bedroom that was  
23 located at the northeast corner of the house,  
24 adjacent to the front door. He heard a loud knocking  
25 at the door -- a loud banging sound at the door. And

1 he went to the front window of the house and looked  
2 outside.

3           At that point, he saw a dark skinned  
4 black male, baldheaded, wearing a white tank top that  
5 was untucked and dark pants or jeans that were pulled  
6 down low, holding a small black gun, which I assumed  
7 to be a handgun, based on his statement.

8           Q       Okay. And when he said that he saw this  
9 man, did he say -- do you remember him telling you  
10 specifically where he saw him out in front of the  
11 house?

12          A       He said he saw him in the grass. I didn't  
13 clear up during that interview with him, exactly  
14 where the man was standing in the grass. I spoke  
15 with him at later dates, and he'd come to understand  
16 that he was standing very close, in fact, to the  
17 front window and had moved away from the door,  
18 probably after knocking at it.

19          Q       Well, let's talk about that, because that  
20 night, what he told you is that he was actually  
21 standing outside the front door. Isn't that what he  
22 told you?

23          A       Well, the grass is outside the front door,  
24 yes.

25          Q       Okay. So you consider that to be that

1 area -- that general area is what you're telling this  
2 Court?

3 A I think the first interview lacked  
4 specificity on that, and it was important to clear up  
5 later, and that's why I asked him.

6 Q But you understand the importance of getting  
7 out as much detail while the memories are still fresh  
8 in his mind, right?

9 A Sure.

10 Q And what your offense report says and what  
11 the recording reflects is that he says, he was  
12 standing outside the front door, correct?

13 A I believe that's correct. I can consult in  
14 my report. Is that okay?

15 Q Go ahead. Take your time.

16 A Yes. It said -- it said that he saw the  
17 dark skinned black male standing outside the front  
18 door.

19 Q But what you're telling this Court is after  
20 further interviews and discussions with him, he  
21 specified that really where it was was in front of  
22 the window -- in front of his window out in the  
23 grass; is that right?

24 A Yes. And actually if you listen to the  
25 recorded statement that he gave, he mentioned that

1 the man is standing in the grass. And, of course,  
2 the area outside the front door is paved.

3 Q Well, let's talk about who else was standing  
4 out in the grass. Because in your initial  
5 conversation with him that night, he also specified  
6 to you that there were two other males standing in  
7 the front yard; is that correct?

8 A That's correct. At a farther distance, yes.

9 Q And he was very specific about that?

10 A Yes. He said he saw two other people.

11 Q Okay. What did he tell you in terms of the  
12 age of the person that he saw holding the handgun?

13 A He said -- I initially asked him if he could  
14 tell me how old the man was, and he shook his head,  
15 no. And then I thought maybe that was too broad, so  
16 I -- for his age. And I asked him was he a grownup?

17 And Malik replied -- and Malik shook  
18 his head, yes, that he was.

19 And I said, "How do you know he was a  
20 grownup?"

21 And Malik said, "That he looked like my  
22 mother." He said, "Not like my mother, but in the  
23 age."

24 And I asked him how old his mother was,  
25 and he said his mother was 36.

1 Q Okay. Now, you know that Mr. Hankston, at  
2 the time you arrested him, was only 23 years old,  
3 right?

4 A Yes, sir, I do.

5 Q Okay. But he says that the person looked  
6 similar to his mother's age, and she's approximately  
7 36?

8 A Yes.

9 Q Now, what was his -- I mean, I've heard  
10 the vid -- I've heard the audio tape, but just so  
11 we're clear for the Court, what was his demeanor  
12 like, seeing that -- him there in person as you're  
13 talking with him?

14 A He is very soft spoken. His recollection of  
15 the event actually was very clear. He was very good  
16 at explaining his thought process on things. He  
17 didn't seem shaken up and frightened, but he did seem  
18 maybe a little dazed.

19 Q Okay.

20 A And it also was past his bedtime.

21 Q Sure.

22 THE COURT: Also what?

23 THE WITNESS: It was also past his  
24 bedtime when I interviewed him.

25 Q (BY MR. MAYR) But you didn't see him having

1 any difficulty expressing to you what it was that he  
2 observed that night, correct?

3 A No.

4 Q And one of the things that he was emphatic  
5 about, was that the person that he saw was bald; is  
6 that correct?

7 A Yes.

8 Q And as we can see here in the courtroom, you  
9 have your head shaved completely bald, right?

10 A Yes, I do.

11 Q And it was shaved completely bald like that  
12 at the time?

13 A My head?

14 Q Uh-huh.

15 A Actually, no. I was -- I wasn't using a  
16 straight razor back then. I was just buzzing it.

17 Q Okay. Well, at any point during your  
18 conversation he never says, "Well, he had a little  
19 bit of hair on his head," did he?

20 A No.

21 Q He was very emphatic he was bald, bald,  
22 bald?

23 A He said bald twice, yes.

24 Q Okay. Now, I want to talk about -- go ahead  
25 and fast forward to just briefly go through your

1 all's development of suspects.

2                   At some point immediately afterwards,  
3 you all had developed as a suspect an individual by  
4 the name of Howard Hambush; is that correct?

5           A       Yes.

6           Q       But ruled him out, and then eventually you  
7 all developed another suspect by the name of Chad  
8 Jones; is that right?

9           A       Yes.

10          Q       Now, your partner, Investigator Condon, he  
11 was the one who was responsible for putting that  
12 photo spread together; is that right?

13          A       That's correct, sir.

14          Q       Did you have anything to do with that?

15          A       No. I was involved in the presentation or  
16 the preparation.

17          Q       Okay. You knew Chad Jones was a suspect  
18 though, right?

19          A       Yes, I was aware of Chad Jones.

20          Q       Were you -- even though he was in charge of  
21 preparing and presenting that photo spread, were you  
22 present at any time during the presentation of that  
23 photo array to Malik Brown?

24          A       No, sir, I was not.

25          Q       Okay. The second one, that eventually you

1 all moved on to, a Timothy Hatter as a possible  
2 suspect?

3 A Correct.

4 Q And that eventually gave way to a  
5 Christopher Field, right?

6 A I wouldn't call Mr. Field as so much a  
7 suspect as a person of interest, but, yes.

8 Q Okay. All right. But nevertheless, you  
9 decided to locate a photograph of Christopher Field  
10 and prepare a photo spread on him; is that correct?

11 A I did, yes.

12 Q Okay. Tell us how you went about preparing  
13 that photo spread?

14 A I went to the HPD Data Works program, which  
15 is -- it contains our mugshots of prisoners who have  
16 been booked at the HPD jail. There was a photo of  
17 Christopher Field in there. I found five fillers of  
18 similar features, same age bracket, same race, same  
19 height, same weight. And then placed them all in a  
20 photo array which is randomized by the computer  
21 system.

22 Q Okay. Right about the time that you're  
23 going through this process, were you aware of -- were  
24 you aware of -- where you aware of the fact that in  
25 September, approximately September of 2011, a law had

1 gone into affect, requiring police departments to  
2 adopt a policy, in order to minimize the  
3 possibilities of misidentification.

4                   Were you aware of that at that time?

5       A       I actually was not.

6       Q       You were not, okay.

7                   So there -- was there -- would it be  
8 fair to say that there were no communications or any  
9 memorandums or anything from any of your superiors or  
10 other officers at the Houston Police Department,  
11 about how the procedures would have to possibly  
12 change in regards to conducting eyewitness  
13 identification through use of photo array?

14       A       Well, I don't recall if it preceded my  
15 showing of this photo array, but we were informed by  
16 the robbery division that a study was underway by the  
17 department, to make adjustment to the process of  
18 showing photo arrays.

19       Q       Okay. At that time, what sort of training  
20 had you gone through in -- at that position, at that  
21 point in time, that taught you how to go about going  
22 about a photo -- showing a photo spread?

23       A       Well, there was a policy in place at that  
24 time, as far as how to give admonishments to a  
25 witness, how a photo spread was to be prepared. And

1 I was trained by senior officers in the homicide  
2 division on how to prepare a photo spread and how to  
3 present it.

4 Q Okay. And the -- what you just testified to  
5 the Court, the manner in which you did it, was that  
6 how you were taught by HPD?

7 A Yes.

8 Q Okay. And that was to construct a six-photo  
9 -- a six-person photo array, correct?

10 A Yes. A simultaneous photo array.

11 Q Okay. Now, in any of your training, up  
12 until that point or in any of your experience as a  
13 homicide detective, have you learned or heard of  
14 using a sequential format as opposed to a  
15 simultaneous format?

16 A Not in my experience as a homicide  
17 investigator. But in my graduate school program, I  
18 had learned about the sequential as a possible  
19 alternative.

20 Q Okay. So you knew in your mind that you had  
21 some information that led you to believe what about  
22 sequential versus simultaneous showing of  
23 photographs?

24 A The research that I had previously been  
25 taught, was that sequential had a lower rate of

1 misidentification than simultaneous showing.

2 Q Okay. But knowing that, you're bound by the  
3 HPD policy to show them simultaneously, right?

4 A At that point in time, yes.

5 Q And that's how you prepared your photo  
6 array?

7 A Yes.

8 Q Were you also -- did you also, at that point  
9 in time, either based on your training or your  
10 experience, have any knowledge in terms of the  
11 administration of a photo array via a blind method  
12 or a double blind method?

13 A No, that was not part of the procedure at  
14 the time.

15 Q Did you know anything about blind  
16 administration in the showing of photo arrays?

17 A No.

18 Q Did not know about that?

19 A No.

20 Q Do you know here today what that means?

21 A Yes.

22 Q What does that mean?

23 A Blind or blinded?

24 Q Both.

25 A Okay. Blind means using an administrator

1 who does not know who the suspect is. Administrator  
2 being the person who shows the photo array. In other  
3 words, it's prepared and it's placed in a folder or  
4 given to someone who has no connection with the case.  
5 And they show the photo array.

6           Blinded, on the other hand, is where an  
7 investigator who does know who the suspect is in the  
8 photo array, but is not the one who prepared it and  
9 did not randomize it. And they don't know what  
10 position the suspect is in.

11       Q     And what's the purpose of using a blind or a  
12 blinded method of showing the photographs?

13       A     My understanding is that it's the prevention  
14 of contamination by the presenter.

15       Q     Okay. Where did you learn about that?

16       A     Predominantly from the training program that  
17 was instituted after the department made changes last  
18 year.

19       Q     Okay. So those changes were actually put  
20 into affect last year?

21       A     Sep -- August 27th of 2012, I believe it  
22 was.

23       Q     All right. Is Houston Police Department now  
24 using a blind or blinded method of showing photo  
25 spreads to suspects in their cases?

1 A They are.

2 Q Okay. But back then, you all weren't doing  
3 that?

4 A Correct.

5 Q In fact, you didn't even know about it?

6 A No.

7 Q Okay. So you prepared this photo array and  
8 you meet with Malik; is that correct?

9 A Yes.

10 Q Where did you meet with him at?

11 A At his grandmother's residence.

12 Q Okay. And do you recall who was there, who  
13 was present at the time that you showed that?

14 A His mother.

15 Q And yourself?

16 A Well, of course, yes.

17 Q Anyone else?

18 A No.

19 Q All right.

20 A There were other people in the house, but at  
21 my request, they all left the room.

22 Q Okay. Take us through the procedure that  
23 you went through, to your recollection, with Malik at  
24 that time.

25 A Okay. I read him what was at that time the

1 standard HPD admonishments, and made sure that he  
2 understood the admonishment. And even went a step  
3 further in kind of clarifying certain pieces of the  
4 admonishment for him.

5 I then handed him the photo array to  
6 look at. He looked it over for about a minute and  
7 said. "I don't see him."

8 Q Okay. Now, of course, there's no recording  
9 of this, correct?

10 A No, sir, there's not.

11 Q So the only recollection that we have of  
12 this is your testimony, based on what you put in your  
13 offense report, correct?

14 A Correct.

15 Q Now, State's Exhibit 6, that is the photo  
16 spread that you showed Malik; is that correct?

17 A Yes, sir.

18 Q Now, we notice that in this photo array,  
19 that all of the individuals who are depicted here all  
20 have hair on their heads; is that correct?

21 A They do, yes.

22 Q Now, it wasn't -- this wasn't a situation  
23 where someone else had talked to Malik. You talked  
24 with Malik himself that night when everything was  
25 still fresh in his mind, correct?

1 A Yes.

2 Q And he told you that the person that he saw  
3 was bald, correct?

4 A Correct.

5 Q And yet here you're -- just so we're clear,  
6 you are including individuals that are not bald?

7 A Yes.

8 Q They're not even remotely bald?

9 A No, not remotely.

10 Q So they don't match the description that  
11 Malik gave you the night that you interviewed him?

12 A In terms of their hairstyle, no.

13 Q Okay. You said it took about a minute  
14 before he told you that he couldn't recognize  
15 anyone?

16 A I would estimate about that, yes.

17 Q Do you recall in your offense report saying  
18 that it actually took several minutes?

19 A No.

20 Q You have your offense report there. Do you  
21 want to take a look at that and see if that refreshes  
22 your memory?

23 A Sure.

24 Yes, it does say for several minutes.

25 Q Okay. So --

1 THE COURT: It says several or seven?

2 THE WITNESS: Several.

3 Q (BY MR. MAYR) Okay. So, now that you see  
4 your offense report saying several minutes, is it  
5 possible it took more than one minute for him before  
6 he was able to --

7 A Sure, I'd say it's likely.

8 Q Okay. Now, after that took -- after he told  
9 you that, what -- what was said by you at that point?

10 A I simply said, "Okay," and took the photo  
11 spread back from him.

12 Q Okay.

13 A Placed it back in my file. And Malik's  
14 mother told him he could leave the room. And I think  
15 I had follow-up questions for Toni, as I recall.

16 Q Okay. But nothing else said to him in terms  
17 of what was going to happen next or anything else  
18 like that?

19 A Not after the showing of the photo array.  
20 But as far as the standard admonishment, he was told  
21 that regardless of whether or not he picked anybody,  
22 the investigation would continue.

23 Q Sure. But you didn't tell him that -- show  
24 that admonishment to him afterwards, did you?

25 A No.

1 Q Okay. Were the third photo spread, when my  
2 client, Mr. Hankston, is finally identified, did you  
3 have any role in either the preparation of the  
4 presentation of that photo spread?

5 A No, sir.

6 Q Were you present at the time -- were you  
7 present when any of that was taking place?

8 A I was actually out of town on vacation, so,  
9 no.

10 Q Okay. Okay. Thank you, Detective Burrow --  
11 Investigator Burrow.

12 MR. MAYR: I'll pass the witness, Your  
13 Honor.

14 THE COURT: All right. You may  
15 proceed.

16 **CROSS-EXAMINATION**

17 BY MS. COOPER:

18 Q Officer Burrow, you were out at the scene  
19 the night that this case happened, right? The  
20 shooting happened?

21 A Yes, ma'am.

22 Q When you were out there, was it dark?

23 A It was nighttime.

24 Q All right. What was the lighting like?

25 A There was a good deal of ambient lighting

1 from area houses and street lamps. When we arrived,  
2 I believe the front porch light was turned off at the  
3 time. But with the front porch light on, it offered  
4 ample lighting in the front yard.

5 Q Did you have an opportunity to look out the  
6 window that Malik said that he looked out of?

7 A I did.

8 Q Then how -- how was the visibility?

9 A Visibility was very good.

10 Q And were you able to see clearly?

11 A Yes.

12 Q Now, when you met with Malik, he gave you a  
13 very specific description of the person that he saw;  
14 is that right?

15 A Yes, ma'am.

16 Q Now, have you -- had you met with children  
17 before?

18 A Yes.

19 Q Do you use different types of tactics or  
20 interviewing skills when you're talking to children  
21 versus adults?

22 A Yes.

23 Q Explain that?

24 A Well, children can be more suggestible than  
25 adults. So, when I'm talking to a child, especially

1 a child under the age of say, 14, I do my best to not  
2 ask leading questions during the interview. I ask  
3 them yes and no type of questions, or just an open  
4 ended question; such as, my first question in the  
5 interview with Malik was, "What happened at your  
6 house tonight?" And then from there, I asked him  
7 about specific points.

8 Q Did you make sure that you did that --  
9 questioned him that way throughout the interview  
10 process?

11 A Yes. I also made sure when there wasn't  
12 something that I understood from him, to try and  
13 have him elaborate in his own words what he means by  
14 that.

15 Q Was he able to, in his own words, give you a  
16 good description of the suspect?

17 A An excellent description.

18 Q Was he confident in what he had seen?

19 A Yes.

20 Q Now, whenever you -- why was it that you  
21 sent him -- or you guys made an appointment for him  
22 to go meet with Lois Gibson?

23 A Because we believed that his viewing of the  
24 suspect was good enough to come up with a composite  
25 sketch with our sketch artist.

1 Q And was that based on the description he had  
2 given you?

3 A Yes.

4 Q Whenever -- did you tell him -- have any  
5 conversation with him before he went to meet with  
6 Lois Gibson about, you know, what he was supposed to  
7 do or anything like that?

8 A I did not. I believe Officer Condon told  
9 him something along the lines of, "We have a person  
10 who draws people who are involved in crimes, based on  
11 what you can remember." But that would be a better  
12 question for Officer Condon.

13 Q All right. Now I want to talk to you  
14 about --

15 MS. COOPER: May I approach the  
16 witness, Judge?

17 THE COURT: You may.

18 Q (BY MS. COOPER) I want to show you State's  
19 Exhibits No. 8 and 9.

20 What are these -- what are we looking  
21 at here?

22 A This is a mugshot photograph, a booking  
23 photograph of the defendant.

24 Q All right. And when was that taken?

25 A It was taken on April 23rd, 2011.

1 Q When is that -- April 23rd of 2011, is that  
2 a few weeks before the murder happened?

3 A Yes, it is.

4 Q Is that dated?

5 A Yes, it is.

6 Q And how was it that you were able to get  
7 that photograph? And just explain where it came  
8 from.

9 A Well, like the photograph of Christopher  
10 Field described earlier, it's stored in a mugshot  
11 database of booked prisoners, called HPD Data Works.

12 Q Okay. And does it have -- show the front of  
13 his face and also the side?

14 A Yes, it does.

15 Q And does it fairly and accurately depict the  
16 haircut -- his haircut that he had?

17 A Yes, it does.

18 Q Can you see it very clearly in State's  
19 Exhibit No. 8?

20 A Yes.

21 Q And was this printed off by you?

22 A Yes.

23 Q And whose initial is that down at the  
24 bottom?

25 A M. Burrow. That's me.

1 Q And then I want to show you State's Exhibit  
2 No. 9. What is this?

3 A This is the department policy for showing of  
4 photo spreads, that was in place as of October 2009,  
5 and was in place at the time of the offense and the  
6 showing of all the photo arrays in this case.

7 Q Okay. So, these are the actual photo spread  
8 policies that were used by you and Officer Condon  
9 with the photo spread in this case?

10 A Yes.

11 Q Okay. And even though it says October 21st  
12 of 2009, it wasn't changed again until -- you said  
13 August of 2012?

14 A I believe August 27th, yes, 2012.

15 MS. COOPER: Your Honor, at this time  
16 I'm tendering to opposing counsel, State's 8 and 9,  
17 and ask that they be admitted for purposes of this  
18 hearing?

19 THE COURT: All right.

20 MR. MAYR: No objection, Your Honor.

21 THE COURT: All right. State's 8 and 9  
22 are admitted for purposes of this hearing.

23 (State's Exhibits 8 and 9 were  
24 admitted.)

25 Q (BY MS. COOPER) All right. I want to talk

1 to you about your photo spread policy that was in  
2 effect back in October or -- I'm sorry, back in 2011.  
3 What -- do you remember the date that you did the  
4 first spread that was done by you?

5 A I believe it was November 10th, 2011. I  
6 have the date marked in my offense report though.

7 Q I'm talking about the photo spread that you  
8 showed Malik with Christopher Field.

9 A I'm sorry, I meant October. Hang on one  
10 second. I apologize, ma'am. I thought I had it  
11 marked, but apparently I had some other things  
12 marked.

13 Oh, no, here we go. October 11th,  
14 2011.

15 Q All right. And the murder took place on May  
16 19th, 2011?

17 A Yes.

18 Q Okay. And this is the second photo spread  
19 that he's shown?

20 A The second one he was shown, yes.

21 Q Okay. And that was State's Exhibit?

22 MS. COOPER: You have the photo spread?

23 MR. MAYR: No, they're going to be in  
24 there (indicating).

25 Q (BY MS. COOPER) State's Exhibit No. 6, here,

1 can you talk to the Judge about how the fillers are  
2 done?

3 A As I said earlier, the fillers are selected  
4 on the basis of similarity between the target of the  
5 array. Similarities in terms of race, age, height  
6 weight, hairstyle, facial hair, tattoos, things of  
7 that nature. So that the target of the photo array  
8 does not stand out from all the others.

9 Q And was this photo spread created based on  
10 the policy that was implemented by HPD at the time?

11 A Yes.

12 Q Had you deviated off from that?

13 A No, ma'am.

14 Q All right. I want to show you State's  
15 Exhibit No. 9, which is the Houston Police Department  
16 policy on conducting photo spreads. Are there -- if  
17 you look at the bottom of page number 1, there are --  
18 where it first starts with the admonishments.

19 Was the policy in place at that time,  
20 did it give you certain admonishments that you have  
21 to give each person before showing them a photo  
22 spread?

23 A Yes, it did.

24 Q Were those admonishments done the same way  
25 every time a photo spread was presented to someone?

1 A Yes, they were.

2 Q And did you follow the admonishments like  
3 you're supposed to, when you showed the photo spread  
4 to Malik?

5 A Yes, ma'am.

6 Q I want to show you page 2.

7 Are the admonishments A through E shown  
8 here on page 2?

9 A Yes.

10 Q All right. The first one, did you tell  
11 Malik that the person who committed the offense may  
12 or may not be present?

13 A Yes.

14 Q And then the second one, did you tell him  
15 that he's not obligated to select any individual,  
16 that's equally important to clear persons not  
17 involved in the crime from suspicion, as it is to  
18 identify the person believed to be responsible for  
19 the crime?

20 A Yes.

21 Q Did you tell him the investigation will  
22 continue whether or not an individual is identified?

23 A Yes.

24 Q Did you tell him the witness shall not  
25 discuss the identification procedure with other

1 witnesses?

2 A Yes.

3 Q And did you also tell him that individuals  
4 present in the photo -- in the photos, may not appear  
5 exactly as they did on the date of the incident,  
6 because features such as head hair and facial hair  
7 are subject to change?

8 A Yes.

9 Q When you gave those admonishments to Malik,  
10 did he understand them?

11 A Yes, ma'am.

12 Q Now, why is it that in State's Exhibit  
13 No. 6, knowing that he told you the suspect was bald,  
14 why did you show him a photo spread with six people  
15 that had hair?

16 A Because hairstyles can change. And it had  
17 been several months since the incident occurred.

18 Q Okay. And you told him, as said in the  
19 admonishment, that the hairstyle may not be the same  
20 here?

21 A Yes.

22 Q Right. Now, I want to show you State's  
23 Exhibit No. 8. If we look at this, this was taken  
24 from the Houston Police Department mugshot database;  
25 is that right?

1 A Yes.

2 Q And over to the left, we have the date of  
3 April the 23rd of 2011?

4 A Correct.

5 Q And what is that -- what does that mean?

6 A That is the booking date. That means that's  
7 the date that the photo was taken.

8 Q Okay. And so that was the day -- when you  
9 booked him, you actually get a picture taken; is that  
10 right?

11 A Yes, ma'am.

12 Q And if you look over at the front photo, can  
13 you see what the defendant looked like and what his  
14 hairstyle looked like on April the 27th, or I'm sorry  
15 April 23rd of 2011?

16 A Yes.

17 Q And it's much shorter than it is here in the  
18 courtroom today?

19 A Yes.

20 Q He has a -- like a little patch of hair on  
21 the top?

22 A Yes.

23 Q But if you look down underneath, we can see  
24 the sides or the side?

25 A Yes.

1 Q And how would you classify that hairstyle  
2 that we see on the side?

3 A On the side? Bald.

4 Q Okay. And that's much different than the  
5 defendant's hair here -- here today in the courtroom?

6 A Yes.

7 Q Malik told you about, that he had seen two  
8 other males -- that he had seen two other males in  
9 the front yard; is that right?

10 A That's what he said, yes.

11 Q But he was not able to give you a  
12 descriptions of those males, was he?

13 A Beyond the fact that they were black males,  
14 no.

15 Q As far as anything else that they looked  
16 like, he wasn't able to tell you that?

17 A No.

18 Q In fact, he told you that he was -- wasn't  
19 focused on them, right?

20 A He was focused on the man in the white tank  
21 top.

22 Q Right. He was focused on the man with the  
23 gun.

24 He also told you that the man behind  
25 the window had a gun; is that right?

1 A Yes, he did.

2 Q But other than it being small and black, he  
3 wasn't able to describe anything else about the gun?

4 A No, ma'am.

5 Q Whether it was a revolver or semiautomatic,  
6 nothing like that?

7 A No, ma'am.

8 Q Only that he had a gun?

9 A Yes.

10 Q And did he tell you that he saw his face?

11 A Yes.

12 Q Do you remember Malik telling you that the  
13 defendant -- or that he looked at me?

14 A Yes. He said -- I asked Malik, "How did he  
15 see the man?" And he said, "He saw me. I looked out  
16 the window and he saw me."

17 Q And through your investigation did you  
18 determine that a vehicle -- a certain type of vehicle  
19 was involved in this case?

20 A Yes.

21 Q But Malik wasn't able to tell you whether or  
22 not he had seen a vehicle, was he?

23 A No.

24 Q And that's because he was focused on the --

25 A The people.

1 Q Okay.

2 A Yes.

3 MR. MAYR: I pass the witness.

4 **REDIRECT EXAMINATION**

5 BY MR. MAYR:

6 Q State's Exhibit No. 8 is a photo purporting  
7 to show what the defendant looked like on April 23rd,  
8 2011; is that right?

9 A Yes.

10 Q We don't know what he looked like on  
11 May 19th, 2011, do we?

12 A No.

13 Q You know that he was present at a scene  
14 prior to the shooting, where his girlfriend had  
15 called 9-1-1 to report that the complainant, Keith  
16 Brown, was stalking her, correct?

17 A Yes.

18 Q And officers were called out to take a  
19 report, right?

20 A Yes, sir.

21 Q Did you have an opportunity to talk with  
22 those officers in the course of your investigation?

23 A I spoke with one of the officers. Officer  
24 Condon spoke with one of the other ones.

25 Q Okay. Did you ask them what the person --

1 what your sub -- this other individual that was  
2 present, the defendant, what his hairstyle was like?

3 A I'm sure I did, but I don't recall right  
4 now.

5 Q And you would have documented that in your  
6 offense report, right?

7 A Most likely it's probably in there.

8 Q Yeah. Now, looking at State's Exhibit  
9 No. 8, we can see from this front view, that even  
10 though his hair has been recently clipped, you're  
11 still able to see hair on the top of his head; is  
12 that correct?

13 A Yes.

14 Q And again, from the side view, even though  
15 it's cut very close on State's -- on the side view,  
16 you're still able to identify hair on the top of his  
17 head?

18 A Yes.

19 Q The photo speaks for itself. But just for  
20 purposes of the record, the color of the hair creates  
21 enough of a contrast between the rest of his scalp,  
22 so that you can see that there is, in fact, some  
23 hair?

24 A Yes, from this vantage point, that's  
25 correct.

1 Q And you didn't have any contact. You  
2 weren't responsible for arresting the defendant on  
3 April 23rd, 2011?

4 A No, sir.

5 Q So you didn't have face-to-face, eye-to-eye  
6 contact with him, right?

7 A No.

8 Q And you know that sometimes photos don't  
9 actually capture every single little detail that the  
10 human eye can capture, right?

11 A Not always.

12 Q And even though it looked like his head is  
13 shaved bald here, it's possible that he still has a  
14 little bit of stubble from using a very close razor?

15 A Being a bald man myself, that photograph has  
16 shine on the side of his head. Very clearly  
17 reflected light. In my experience, when I have a  
18 little bit of stubble on my head, my head doesn't  
19 shine like that.

20 Q Okay. I keep my head shaved like this. If  
21 you look at that driver's license photo, I look  
22 completely bald.

23 Would you agree with me that photos  
24 sometimes don't accurately reflect exactly what is  
25 shown here?

1 A Yes.

2 Q Okay. And when you met with Malik, and he  
3 was telling you what he saw, he never indicated,  
4 "Yeah, there might have been a little bit of hair on  
5 the top of his head."

6 He never said anything like that?

7 A No.

8 Q Going to State's Exhibit No. 9, the policy.  
9 Under, quote, "The procedure for photo spread  
10 viewing."

11 A Yes.

12 Q I'd like you to read this, starting right  
13 here, I'd like you to read that sentence.

14 A Starting in the middle there?

15 Q Yeah, where it says, "The witnesses," right  
16 there where I'm pointing.

17 A (Reading) The witnesses shall be asked about  
18 their observations individually and outside the  
19 presence of the other witnesses. Officers shall  
20 ensure that witnesses do not speak to each other.

21 Q I want to focus on that separate sentence.  
22 "The witnesses shall be asked about their  
23 observations individually and outside the presence of  
24 other witnesses." When you met with Malik, it wasn't  
25 just you and him, correct?

1 A No, sir, it was not.

2 Q His mother was present, right?

3 A Yes, she was.

4 Q And even though she had not seen the shooter  
5 that night, she still witnessed a lot of things that  
6 took place that night; is that right?

7 A She witnessed lot of the events, but she was  
8 not an eyewitness to the person who was involved.

9 Q And I think I know where you're going with  
10 this. In your mind, because she's not an eyewitness,  
11 in your mind, you think that she doesn't come under  
12 this admonition that you're not supposed to have any  
13 other witnesses present at the time. Is that your  
14 thinking?

15 A That's my thinking on the subject, yes.

16 Q Fair enough.

17 MR. MAYR: Okay. I'll pass the  
18 witness, Your Honor.

19 THE COURT: All right.

20 MS. COOPER: I have a couple more  
21 questions.

22 **RE-CROSS-EXAMINATION**

23 BY MS. COOPER:

24 Q On State's Exhibit No. 8, the bottom photo  
25 from this vantage point, the defendant looks bald; is

1 that right?

2 A Yes. I mean, he has a patch of hair on top  
3 of his head, but the majority of his hair is bald,  
4 yes.

5 Q Right. And you can see from the vantage  
6 point that we're looking at here, even with the  
7 defendant, you can see the patch of hair on the very  
8 tip top of his head?

9 A Yes.

10 Q But someone who is much smaller than him  
11 looking up --

12 A Yes.

13 Q -- wouldn't be able to see the -- that patch  
14 of hair on the top?

15 MR. MAYR: I'm going to object. That  
16 calls for speculation.

17 THE COURT: Sustained.

18 Q (BY MS. COOPER) What was the height  
19 difference, if you know, between the defendant and  
20 Malik?

21 A I don't know exactly how tall Malik was. He  
22 was very short. I would estimate that he's at least  
23 2 feet tall -- at that time, he was at least 2 feet  
24 taller than the defendant -- I mean, shorter than the  
25 defendant.

1 Q Okay. And you saw him in court today; is  
2 that right?

3 A Yes, ma'am.

4 Q Two years ago, he was even smaller than he  
5 is today?

6 A Yes.

7 Q And the defendant is much taller than Malik  
8 Brown?

9 A Yes.

10 Q Why was it that Toni Brown, his mother, why  
11 was she able to sit in? Why did y'all have her sit  
12 in during the photo spreads?

13 A Because Malik is a juvenile. And I don't  
14 like to interview juveniles or show them photo  
15 spreads without a parent present. The parent feels  
16 better with being able to be in the room. If she had  
17 been a direct eyewitness to the shooter, I would have  
18 asked her to step out and perhaps another adult to  
19 step in. But she was not an eyewitness to the actual  
20 shooter.

21 MS. COOPER: I pass the witness.

22 **FURTHER REDIRECT EXAMINATION**

23 BY MR. MAYR:

24 Q You would agree that if Malik -- if the  
25 shooter was standing directly in front of Malik, he

1 would have had a difficult time seeing a shooter much  
2 taller, correct?

3 A Sure.

4 Q But at a much greater distance, say from  
5 maybe where you're at to where I'm at, you'd agree  
6 that you got a little bit better --

7 A Sure, you've got a better vantage point.

8 Q Okay.

9 MR. MAYR: No further questions, Your  
10 Honor?

11 THE COURT: All right. Anything else?

12 MS. COOPER: No, Your Honor.

13 THE COURT: May this witness be  
14 excused?

15 MR. MAYR: He may, Your Honor.

16 MS. COOPER: Can he leave?

17 MR. MAYR: Yeah, go ahead.

18 THE COURT: Investigator Burrow, thank  
19 you.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: You're free to go.

22 Remember the Rule has been invoked.

23 THE WITNESS: Yes -- yes, sir.

24 THE COURT: All right. What says  
25 defense?

1 MR. MAYR: Judge, at this time we call  
2 Investigator Condon to the stand.

3 THE COURT: All right.

4 MR. MAYR: Judge, may I step out of the  
5 courtroom for just one moment -- for a brief moment?

6 (Brief pause in the proceedings.)

7 THE BAILIFF: He was sworn earlier,  
8 Judge.

9 THE COURT: All right. Good afternoon  
10 Investigator Condon.

11 THE WITNESS: Hello.

12 THE COURT: Feel free to adjust the  
13 chair and microphone.

14 THE WITNESS: Okay.

15 THE COURT: And just answer directly as  
16 you can.

17 (Discussion off the record.)

18 THE COURT: All right. You may  
19 proceed.

20 MR. MAYR: Thank you.

21 **INVESTIGATOR MARK CONDON,**  
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MR. MAYR:

25 Q Would you please state your name for the