

1 THE COURT: All right. If you would,
2 just feel free to adjust the chair and microphone,
3 make yourself comfortable, and answer as directly as
4 you can.

5 THE WITNESS: Yes, sir.

6 THE COURT: You may proceed.

7 OFFICER M. CONDON,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. COOPER:

11 Q Can you introduce yourself to the members of
12 the jury, please.

13 A I'm Officer Condon with the Houston
14 homicide.

15 Q Can you tell the members of the jury a
16 little bit about your background?

17 A I've been a police officer for 17 years.
18 I've been in homicide for -- right at three years.
19 Before that, I was in a division called IFR,
20 Investigator First Responder, which is basically,
21 you're detectives in uniform. I was there for about
22 two years. And then before that, patrol for 12
23 years.

24 Q What about before the police department,
25 what did you do?

1 A Right before the department I worked for a
2 bank doing computer work. And then before that I was
3 in the Navy for four years.

4 Q When you became a police officer, did you go
5 through the police academy?

6 A Yes.

7 Q Outside of just the basic police training,
8 do you have additional training and experience above
9 and beyond that?

10 A Yes. There's a significant amount of
11 training. Once you get to homicide, they put you
12 through death classes and officer involved shooting
13 classes, all kinds of basic investigator class. All
14 kind of classes.

15 Q And as -- what is a IFR?

16 A Investigative First Responder.

17 Q So, can you tell the members of the jury
18 about that?

19 A It's a new division that the department
20 created about five years ago. And you're basically a
21 detective in uniform. You follow up on cases, but
22 you're in a patrol car and you're in uniform.

23 Q And how long did you do that?

24 A Two years.

25 Q Was the IFR division kind of -- a little bit

1 similar to homicide?

2 A Yes.

3 Q In what way?

4 A Because you're not responding to crimes in
5 progress. You're taking over the case once the
6 initial report has been done, and you're actually
7 doing the investigation. Some of the investigations
8 can be very lengthy, just like a homicide. But
9 you're following up with a case.

10 Q I want to talk to you specifically about a
11 case that occurred at 4206 Groton Drive, on May 19,
12 2011.

13 Were you involved in that case?

14 A Yes.

15 Q Was -- did you respond to the scene?

16 A Yes, ma'am.

17 Q Was that scene located in Harris County,
18 Texas?

19 A Yes.

20 Q What area of town, or what part of Houston
21 is 4206 Groton?

22 A Pearl Homes area.

23 Q Was it like -- what direction? Is it like
24 Southeast side, North side?

25 A South Southeast side.

1 Q All right. I want to show you State's
2 Exhibit No. 1.

3 Did you -- is this the location --
4 obviously this is a daytime picture, but is the same
5 house that you responded to on the evening of May 9th
6 of 2011?

7 A Yes.

8 Q Can you describe for the jury -- and when
9 you arrived the -- well, was it nighttime?

10 A Yes, ma'am.

11 Q Was it dark outside?

12 A Yes.

13 Q Can you describe -- or what was the weather
14 like?

15 A Muggy. It wasn't raining.

16 Q Muggy as in what? What do you mean by that?

17 A Just typical Houston muggy weather.

18 Q Hot?

19 A Sure.

20 Q All right. No rain or anything like that?

21 A No, ma'am.

22 Q Was it clear outside?

23 A Yes.

24 Q Any fog?

25 A No.

1 Q What about the lighting?

2 A There was a street light in the street in
3 front of the house.

4 Q Was it on?

5 A Yes.

6 Q Can you describe that and did it provide
7 artificial lighting for the street?

8 A There was artificial provided by that, and
9 artificial lighting that we brought to the scene in
10 the form of flashlights.

11 Q Okay. And then what about -- I want to show
12 you -- well, you said you brought flashlights. Could
13 you see without flashlights?

14 A Yes.

15 Q All right. Did you have to have a
16 flashlight to get around and to observe, you know,
17 the location?

18 A No. But if you wanted to see, you know, any
19 kind of evidence or details that you wanted to see
20 more clearly, you would need a flashlight. But it
21 wasn't like it was pitch black. It was -- it was
22 lit.

23 Q All right. Do you know -- do you recall
24 whether or not, when you got there, the porch light
25 was on or off, as shown here in State's Exhibit No.

1 2?

2 A It was off.

3 Q Was there some -- a determination -- you
4 can't go into what anybody else said, but was there a
5 determination of -- or throughout the investigation
6 were you able to determine when that porch light got
7 turned off?

8 A Yes, ma'am.

9 Q All right. And through your investigation,
10 did you determine that that occurred during the
11 shooting?

12 A Yes.

13 Q Okay. When you get to a homicide scene --
14 do you go with Officer Burrow?

15 A Yes, ma'am.

16 Q What do you do when you get there? What was
17 your role and responsibilities that night?

18 A Well, once the scene comes into homicide,
19 you and your partner talk about what each is going to
20 do. And generally the way it works is a detective --
21 one detective takes the scene side and one detective
22 takes the witness side.

23 And you generally discuss that on the
24 way to the scene between yourself. You just, okay,
25 what side do you want tonight? What side do you --

1 you know, you just decide. And that night I had
2 scene side. We decided that I was going to work the
3 scene and he would work the witnesses.

4 Q And what do you do when you work the scene?
5 What's your responsibilities?

6 A Anything having to do with the scene,
7 evidence collection, you work closely with the crime
8 scene unit to make sure that everything gets
9 collected that you want collected. You walk the
10 scene with the crime scene unit, and you go through
11 the scene with the crime scene unit.

12 Because generally when they get there,
13 they come to you and they ask you, okay, well, what
14 happened here? So they'll know the strategy for what
15 they're going to do at the scene.

16 Q I want to show you State's Exhibit No. 16.

17 Did you walk through the living room
18 area with the CSU officer?

19 A Yes, ma'am.

20 Q And you can see there's some little placards
21 on the floor here in State's Exhibit No. 16.

22 Did you -- or what are those?

23 A They're evidence markers.

24 Q Are these evidence markers that you
25 discussed with the crime scene unit?

1 A Yes.

2 Q Were there pieces of evidence that were
3 collected out at the scene?

4 A Yes.

5 Q What was that?

6 A Is it okay if I refer to my --

7 Q Sure.

8 A Police report.

9 A through F were six bullet entries
10 into the front door; A1, B1 through F1 were exits of
11 the bullets; A2 was an entry into the kitchen wall;
12 A3 is an exit of the kitchen wall; B2 is a bullet
13 strike in front of the computer desk; B3 was an entry
14 into the dash -- into the baseboard; D2, an entry
15 into the couch, south of the front door; E2 was a
16 bullet strike -- bullet strike in front of the couch,
17 south of the front door.

18 The ones that were -- the evidence that
19 was actually recovered was fired bullets, a swab of
20 blood, bullet fragments.

21 Q All right. So did you actually look at the
22 bullet holes in the door?

23 A Yes.

24 Q Did you walk through with Officer Aguilera,
25 as he tracked the trajectory of the bullets?

1 A Yes.

2 Q And you said there was a swab of blood on
3 the floor, or a swab of blood that was taken?

4 A Right.

5 Q Where was that taken from?

6 A From the living room area (indicating).

7 Q Is that the blood that's at placard number
8 3?

9 A Yes.

10 Q What's the purpose of doing that, of
11 swabbing the blood?

12 A Just to make sure that it was the
13 complainant's blood that was on the floor, and not
14 some other foreign person's blood.

15 Q Okay. I want to talk to you specifically
16 about the front door.

17 While you're conducting the scene
18 investigation, are you in contact with Officer
19 Condon -- I mean, I'm sorry, Officer Burrow?

20 A Yes.

21 Q And he's doing what? What's he doing?

22 A He's outside interviewing the witnesses.

23 Q And so are you made aware of what the
24 witnesses are telling him and what he's discovering
25 in his portion of the investigation?

1 A Yes.

2 Q Do you guys remain in contact throughout the
3 night?

4 A Yes.

5 Q I want to show you State's Exhibit No. 71,
6 which is a photo of the front door.

7 Were you made aware through Officer
8 Burrow, that there was some kind of -- or that the
9 suspect may have possibly been in contact with this
10 door?

11 A Not specifically that night. It was -- it
12 was brought to our attention that there could have
13 been a struggle over the door during the shooting,
14 yes.

15 But it wasn't -- the idea wasn't
16 floated that night that DNA should be taken off the
17 door, until days later, while Officer Burrow and I
18 were discussing the scene, the what ifs. What do you
19 think happened here? What if this happened?

20 And then while we were discussing it,
21 Officer Burrow mentioned that we probably should have
22 taken DNA from the door.

23 Q Okay. So -- but that night, were you made
24 aware that there was possibly a struggle at the door?

25 A Yes.

1 Q Okay. And obviously DNA wasn't taken?

2 A Not that night.

3 Q Why didn't -- why wasn't it done that night?

4 A Well, like I tried to just explain, it
5 wasn't really a running theory that night, that -- I
6 mean, yes, they told us -- or we were told that there
7 was -- could have been a struggle over the door. But
8 it didn't come up between the three of us, myself,
9 Officer Burrow and the crime scene unit, that
10 possibly there could be DNA on the door that night.

11 Q All right.

12 A It just wasn't something that we'd thought
13 about.

14 Q Did you eventually, a few days later, was
15 that something that was discussed?

16 A Yes.

17 Q And what did you do as a result of that?

18 A We went back out there with a different
19 crime scene unit, and she took swabs and fingerprint
20 impressions off the door.

21 Q Okay. Was -- in hindsight looking back, do
22 you wish you would have done it that night?

23 A Yes.

24 Q Why?

25 A Well, you want to take -- you want to try

1 and take all your evidence obviously, the night of
2 the crime and not days later.

3 Q But as soon as it -- it was discussed, did
4 you guys go back out there and do it -- do that?

5 A It was either that day or the next day.

6 Q I want to talk to you -- out there at the
7 scene, as you're walking through looking at the
8 evidence, is there anything else that you're --
9 you're doing as far as the scene investigation?

10 I mean, you're not talking to any of
11 the witnesses that night?

12 A No.

13 Q Do you participate in the canvas?

14 A We didn't do a canvas that night. I mean, a
15 real canvas, we didn't do a canvas that night.

16 Q Okay. You guys didn't. Were you aware that
17 there was a canvas that was done by someone else,
18 another officer?

19 A Yes.

20 Q Okay. But as far as you and Officer Burrow,
21 you did not a canvas that night?

22 A Not a true canvas, no.

23 Q What do you mean by that, "a true canvas"?

24 A When a -- when a serious crime like this
25 happens in a neighborhood, people are very reluctant

1 to come out that night, because in their mind,
2 everyone has seen them come out and talk to the
3 police.

4 And in our experience, they're
5 reluctant to talk the night of the crime. You want
6 to go back later when things have calmed down, and
7 then you can do a proper canvas.

8 Q So to your knowledge, a proper canvas, is
9 that done sometime later?

10 A Yes.

11 Q But are there other officers out at the
12 scene that are maybe not doing a true canvas, but
13 kind of going around talking to nearby neighbors?

14 A Yes.

15 Q Okay. After the scene investigation, are
16 you -- what is the working relationship between you
17 and Officer Burrow during this investigation?

18 A At the scene or afterwards?

19 Q Throughout the investigation.

20 A We worked very closely. At the time, we
21 were on evening shift together. We did have
22 different days off and different partners. The night
23 of this incident, his partner was off and I
24 volunteered to go with him. But we worked very
25 closely together. We'd come in on our days off and

1 we worked pretty hard -- very hard on the case.

2 Q And as far as all the different leads that
3 were -- that were chased down by you guys, did you
4 participate in going after all the leads and all the
5 persons of interest?

6 A Well, as much as I could. I chased down
7 some, he would chase down some. We would do some
8 together. We weren't always together because of our
9 days off, but...

10 Q Did the two of you -- even if you weren't
11 together when certain things were being done, were
12 you communicating constantly?

13 A Yes.

14 Q All right. In November of 2011, is the
15 defendant -- does -- did the defendant become a
16 suspect?

17 A Yes.

18 Q Were you involved in the -- when the
19 defendant's actually arrested and brought down, are
20 you there when the defendant's interviewed?

21 A Yes.

22 Q Without going into what he said -- well,
23 after the interview process -- or before the
24 interview process, was the defendant arrested and
25 charged with murder?

1 A Yes.

2 Q All right. Around what time of the evening
3 or morning is this?

4 A It's pretty late. I'd have to go into my
5 notes, but I'm pretty sure it was like 12:30,
6 1:00 o'clock in the morning.

7 Q All right. Is he informed, before he talks
8 to you guys, that he's under arrest and charged with
9 murder?

10 A Yes.

11 Q Was there -- can you describe during the
12 interview or during the speaking with him, without
13 going into what he said, can you describe his
14 demeanor?

15 A His demeanor was not what I expected out of
16 someone who claimed to be innocent of a murder
17 charge. It was -- he didn't get agitated, he didn't
18 get upset, he didn't have a lot of questions for us.
19 It was not the demeanor of someone that was falsely
20 charged with murder.

21 Q In your training and experience as -- well,
22 are you actually the person that presented the photo
23 spread of the defendant in this case to Malik Brown?

24 A Yes.

25 Q I want to show you State's Exhibit No. 7.

1 Did you put this photo spread together?

2 A Yes.

3 Q Are there policies and procedures with
4 regards to putting photo spreads together?

5 A Yes.

6 Q And what is it -- is it -- are certain
7 things important when creating a photo spread?

8 A Yes.

9 Q Can you tell the members of the jury how a
10 photo spread is created and put together?

11 A Once you have a suspect's name or his HPD
12 number, which is just an ID number, you go in to the
13 database called DataWorks, and you find the most
14 recent picture of them. And you add that to a new
15 photo spread.

16 And then you select a button for
17 similar photos. And you're given a choice of six
18 pictures at a time that you can scroll through, and
19 you can pick pictures as you scroll through it.

20 Q Did you put this photo spread together in
21 conformity with the procedures provided by the
22 Houston Police Department?

23 A Yes.

24 Q And as well as State's Exhibit No. 5, the
25 photo spread containing Chad Jones, did you put that

1 photo spread together as well?

2 A Yes.

3 Q And did you do it in the exact same manner?

4 A Yes.

5 Q Now, I want to talk to you about photo
6 spreads in general.

7 How many approximately photo spreads do
8 you think you've shown over the course of your
9 career?

10 A Shown -- there's going to be a smaller
11 number than I've created. But shown, 40, 50, 60,
12 something like that. It's a guess though.

13 Q How many do you think you've created over
14 the course of your career?

15 A Eighty, 90, 100.

16 Q Is it important, when you're showing a photo
17 spread to someone, is your demeanor important? Is
18 that something that you take into consideration while
19 the photo spread's being shown?

20 A Yes.

21 Q Why?

22 A Well, you don't want to give any clues to a
23 witness. You don't want to show any emotion to them.
24 You just want to be as unbiased as possible when
25 you're showing the array.

1 Q And why is that important?

2 A You don't want to lead the witness to
3 picking anybody, basically.

4 Q When you showed Malik Brown the photo
5 spread, here in State's Exhibit No. 5, did you pay
6 attention to your demeanor?

7 A Yes.

8 Q In this photo spread in State's Exhibit No.
9 5, at the time it was shown, was there a target?

10 A Yes.

11 Q Was there a suspect in mind?

12 A Yes.

13 Q And who was that?

14 A Chad Jones.

15 Q Okay. And is that the person in position
16 number 5?

17 A Yes.

18 Q And even though you knew who the target
19 was -- well, did you do anything at all to suggest to
20 Malik who to pick?

21 A No.

22 Q Okay. When you showed him the photo spread
23 in State's Exhibit No. 5, who all was present?

24 A Myself, Malik and his mother, Tonie.

25 Q All right. Why was his mom -- why did you

1 have his mom present?

2 A She was not a direct witness to the person
3 that shot through the door. We were never going to
4 show her a photo array, because she never saw any
5 suspects. And I felt more comfortable with her in
6 the room, due to Malik's age.

7 Q Why -- what about his age made you feel more
8 comfortable with his mom there?

9 A Well, he was a child. I just -- I have kids
10 of my own, and that kind of a stressful situation, I
11 felt that Malik would be more comfortable with his
12 mother in the room.

13 Q All right. At that point, when you showed
14 Malik the photo spread, had you shown -- had you ever
15 shown a photo spread to a child before?

16 A No.

17 Q And because of that, were you -- did you
18 take anything -- take any precautions or have
19 anything in your mind?

20 A I tried to talk to Malik. I tried -- the
21 admonishments that you give a witness are kind of
22 cold and they're very black and white. And I felt
23 that Malik needed a little bit extra talking to.

24 So I said some things to him before
25 showing him the array, just so I thought he would

1 understand better what he was about to do.

2 Q Well, I first want to talk to you about the
3 admonishments.

4 (Attorneys confer.)

5 Q (BY MS. COOPER) I want to show you State's
6 Exhibit No. 9, page 2.

7 Are there certain admonishments that
8 are to be read to everybody that views a photo
9 spread?

10 A Yes.

11 Q Regardless if they're an adult or a child?

12 A Correct.

13 Q Are -- were those admonishments -- or when
14 you go to show a photo spread, do you have a form
15 that you actually read?

16 A Yes.

17 Q Were the admonishments read to Malik?

18 A Yes.

19 Q Can you tell the members of the jury the
20 admonishments that were read to Malik?

21 A From the general order?

22 Q Yes.

23 A The person who committed the offense may or
24 may not be present. The witness is not obligated to
25 select any individual, and that it is equally

1 important to clear a person who's not involved in a
2 crime from suspicion, as to identify the person
3 believed to be responsible for the crime.

4 The investigation will continue whether
5 or not an individual is identified. The witness
6 shall not discuss the identification procedure with
7 other witnesses. Individuals present in the photos
8 may not appear exactly as they did on the day of the
9 incident, because features such as head hair and
10 facial hair are subject to change.

11 Q Now, are those admonishments a little
12 complicated for a child?

13 A I thought they were.

14 Q All right. And what do you mean by that?

15 A Well, like I explained, I just thought they
16 were kind of black and white, kind of cold. And so
17 once I read them, I wanted to tell him extra stuff,
18 just so -- to put him more at ease, and to let him
19 understand better why he was there and what he was
20 about to do.

21 Q So the required admonishments are read. And
22 then what -- what extra stuff to do you tell him on
23 the first photo spread, State's Exhibit No. 5,
24 including Chad Jones?

25 A I told him that one of the pictures might be

1 a photo of the person he saw with a gun the night of
2 the incident. I told him he was not required to pick
3 anyone out, and to only pick someone if he was sure
4 if it was the same person. I told him that again,
5 also as he was looking at it.

6 Q So what was your purpose in -- well,
7 whenever you gave him the additional clarification,
8 did he appear to understand it -- understand the
9 instructions better?

10 A Yes.

11 Q Okay. When he looked at State's Exhibit
12 No. 5, did you allow him an opportunity to look
13 through each picture?

14 A Yes.

15 Q How long did it take, approximately?

16 A He immediately said 2, 3 and 6 were not the
17 person he saw with a gun. He then studied the
18 remaining positions for about five minutes, but was
19 unable to pick anybody.

20 Q Okay. So a total of about how many, like
21 five?

22 A About five minutes.

23 Q Five minutes. And ultimately did -- was he
24 -- did he identify anyone in State's Exhibit No. 5?

25 A No.

1 Q Were you involved at all in the photo spread
2 in -- containing Christopher Theall?

3 A No.

4 Q All right. And so the next photo spread is
5 -- that you show him is in November of 2011; is that
6 right?

7 A Correct.

8 Q That State's Exhibit No. 7, the photo spread
9 containing the defendant, Gareic Hankston.

10 Did you create the photo spread the
11 same way as policy requires, or as HPD policy
12 requires.

13 A Yes, ma'am.

14 Q Whenever you -- do you remember where this
15 photo spread was conducted at?

16 A At his residence.

17 Q And who all was there?

18 A Myself, Malik, Tonie Brown, his mother
19 again, and Officer Cheney.

20 Q Now, where at in the residence was this
21 done?

22 A In the living room.

23 Q Why did you have Officer Cheney do it with
24 you?

25 A Officer Burrow was on vacation that day.

1 Q So can you kind of set the scene for the
2 jury and, you know, where -- what are you guys doing
3 in the living room? Do you remember how you guys
4 were situated?

5 A Yes. There was a chair by the door, Cheney
6 was in that chair. Me and Malik were on the couch,
7 and Tonie was on -- in another chair.

8 Q Is Tonie sitting up there in the middle of
9 all this?

10 A No. It's, you know, it's -- there's a couch
11 and then a few feet away a chair.

12 Q And why do you have Tonie in there this
13 time?

14 A The same reason, because of his age.

15 Q Do you -- the same admonishments get read to
16 Malik when you're showing him State's Exhibit No. 7?

17 A Yes.

18 Q The exact admonishments -- the admonishments
19 that you read here for the jury?

20 A Yes.

21 Q And again, are there additional things that
22 you tell him, to make sure that he is clear on the
23 instructions?

24 A Yes.

25 Q And what are those things?

1 A I explained to Malik I was going to show him
2 a set of photographs. And that if he sees the person
3 he saw with a gun at his front door, that he should
4 point to him.

5 I also told him he was not required to
6 pick anyone, and that this was not like a test, where
7 he had to pick something. He told me he understood.

8 Q And why did you use the words, "this isn't
9 like a test, where you have to pick something." Why
10 did you explain it to him that way?

11 A It was just something I thought of when I
12 was talking to him.

13 Q After you explained it to him that way, did
14 he appear to understand all the instructions?

15 A Yes.

16 Q Were you -- did you make it clear to him --
17 did he seem to understand that he doesn't have to
18 pick anyone?

19 A Yes.

20 Q What are you doing -- what is your demeanor
21 like or -- as Malik is looking at State's Exhibit No.
22 7?

23 A I'm just sitting next to him watching him
24 look at the photographs.

25 Q Are you making a conscious effort to make

1 sure you don't give him any kind of nonverbal cues?

2 A Yes.

3 Q Why -- in what way? I mean, why are you
4 doing that?

5 A Well, again, you don't want to lead a
6 witness into picking something.

7 Q All right. How long did Malik look at
8 State's Exhibit No. 7, before he makes an
9 identification?

10 A He took the photo array in his hand, looked
11 at it for about three or four minutes. I told him to
12 study each picture and to be sure he was picking the
13 right person before he picked anyone.

14 I could tell he was apprehensive and
15 nervous while he looked at it. After about another
16 minute, he used one finger and he pointed to position
17 one. And I asked him if he was sure that was the
18 person he saw at his front door with a gun the night
19 his father was killed? He said, I'm pretty sure.

20 Q So about how long does it take -- I mean, do
21 you have a watch on, or are you timing how long the
22 identification is taking -- how long he's been
23 looking at the photo spread?

24 A No, I'm just estimating.

25 Q Okay. So how long did it take from the time

1 that he's looking, until he actually points to
2 someone?

3 A Three or four minutes.

4 Q Three or four minutes. All right.

5 And when he indicates that he's made an
6 identification, you said -- what -- does he say
7 anything verbally or he's only pointing?

8 A Just pointing.

9 Q And he points at which position?

10 A Number 1.

11 MR. MAYR: Your Honor, I'm going to
12 reurge my objection, my pretrial objection at this
13 time.

14 THE COURT: All right.

15 MR. MAYR: And ask for a running
16 objection at this point, again.

17 THE COURT: Okay. It's the same
18 ruling. Running objection is -- is -- is okay. It's
19 allowed.

20 Q (BY MS. COOPER) At the time that Malik is
21 makes -- points at the defendant in this case, of all
22 the different photos that he's looked at up until
23 that point, has he ever pointed at anyone?

24 A No.

25 Q Whenever he points, does he say anything?

1 A No.

2 Q At -- right when he points?

3 A No.

4 Q So, then what do you do?

5 A I asked him if he was sure that was the
6 person he saw at the front door with a gun on the
7 night his father was killed. And he responded with,
8 I'm pretty sure.

9 Q Okay. And when he says, "I'm pretty sure,"
10 what was his demeanor like when he says, "I'm pretty
11 sure"?

12 A You can tell also again, he was still pretty
13 nervous and apprehensive, scared.

14 Q "I'm pretty sure," how did you interpret
15 that? His response. I mean, that could be
16 interpreted different ways, based on tone of voice.
17 Like I'm pretty sure versus I'm pretty sure.

18 I mean, how -- you were there, so can
19 you describe to the jury his demeanor and his tone of
20 voice when he makes that comment to you?

21 A His demeanor was apprehensive and scared,
22 nervous. His "I'm pretty sure," told me that he had
23 picked the right person. He had already looked at
24 two other photo arrays and hadn't picked anybody.

25 Q Okay. So were you -- whenever he gave you

1 that response, were you confident in his
2 identification?

3 A Yes.

4 Q At that point.

5 All right. Any -- while he's looking
6 at the photo spread, are you doing anything at all.
7 Are you making any gestures with your face or
8 anything at all?

9 A No.

10 Q Do you suggest in any way to him who to pick
11 in State's Exhibit No. 7?

12 A No.

13 Q Like Officer Burrow, did you -- were you
14 involved in the continued investigation in this case?

15 A Yes.

16 Q Did you continue to investigate this case,
17 even after the defendant was charged?

18 A Yes.

19 Q Were you the one that actually interviewed
20 Crystal Jordan on the night of the murder? Or not on
21 the night. I'm sorry.

22 Were you one that actually interviewed
23 -- you interviewed Crystal Jordan?

24 A Yes.

25 Q Officer Burrow was not present during that

1 interview?

2 A Right.

3 Q Did you also interview a person by the
4 street name of Fat B?

5 A Yes.

6 Q When was that done?

7 A Couple weeks ago.

8 Q Okay. And is that a person by the name of
9 Derrick Todd?

10 A Yes.

11 Q Where was that interview conducted at?

12 A In a penitentiary in Beeville -- Beeville,
13 Texas.

14 Q Was that an individual, based on your
15 investigation, that you determined was a friend of
16 the defendant?

17 A Yes.

18 Q Based on the information -- the interview
19 that you had with him, was it -- the information that
20 he gave you, assist in the homicide investigation in
21 this case?

22 A Yes.

23 MS. COOPER: I pass the witness.

24 THE COURT: Any questions?

25 MR. MAYR: Yes.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. MAYR:

4 Q Good afternoon Officer -- Investigator
5 Condon.

6 A Hi.

7 Q Going back to the night of the shooting in
8 you're working the scene, the idea -- you said the
9 idea wasn't floated that night to check the door for
10 prints and for DNA; is that right?

11 A Correct.

12 Q Later on, your partner, Investigator Burrow,
13 said, we probably should have done it?

14 A I don't know if those words were used,
15 but --

16 Q Something to that affect?

17 A We were discussing the case and he floated
18 the idea. And those were my words, that we probably
19 should have done it.

20 Q Okay. And eventually you did do it?

21 A Yes.

22 Q But it was on the 24th, if I'm not mistaken;
23 is that right?

24 A Right.

25 Q You went our there -- you were there with

1 CSU Pemberton, as she dusted and checked for prints,
2 right?

3 A Yes.

4 Q And you remember seeing that when she put
5 the print dust on there, that it was pretty obvious
6 where someone had been pushing on the door, right?

7 Do you remember seeing that?

8 A Yes.

9 Q All right. And just if you know, you're --
10 as the investigator, you're responsible for the --
11 all the evidence that's gathered in this case, where
12 you have some connection to it one way or the other,
13 right?

14 A Yes, sir.

15 Q All right. Those -- those swabs, you know
16 that those swabs that were taken, they were tested by
17 the crime lab?

18 A Yes, sir.

19 Q But those swabs, they still do exist, right?

20 A Yes.

21 Q Okay. And the material that any material
22 contained on them are still within the possession of
23 the crime lab, so that they can be tested at a future
24 date; is that right?

25 A Yes.

1 Q If the need arose?

2 A Yes. But they've been tested.

3 Q Okay. All right. Let's -- let's just jump
4 right to the -- the photo spreads that you talked
5 about with Ms. Cooper.

6 As you mentioned, you had never shown a
7 photo spread to a child witness before?

8 A No, sir.

9 Q Had you received any special instructions
10 from the Houston Police Department on how to prepare
11 a photo spread for a child witness?

12 A No, sir.

13 Q Had you received any instructions or
14 procedures on how to go about showing a child a photo
15 spread?

16 A No, sir.

17 Q Had you received any sort of training
18 through the academy, as a police detective, anything
19 like that, in certain safeguards that you have to go
20 through in showing a child a photo spread?

21 A No, sir.

22 Q Is it fair to say that you were winging it
23 with your own personal experience, and just trying to
24 do the best that you could do?

25 A Yes, sir.

1 Q All right. You're not aware of any studies
2 that talk about some of the problems with children
3 being able to make accurate identifications?

4 A No, sir.

5 Q The policy and procedure that you've been
6 reading and referring to, it was same thing that you
7 used that night -- or you used on both times you
8 showed him the photo spread?

9 A Yes, sir.

10 Q And those policies have changed, right?

11 A Yes, sir.

12 Q They've changed to reduce the likelihood of
13 misidentification?

14 A Yes, sir.

15 Q And those changes include, giving you, the
16 person who's preparing the photo spread, the --
17 instructing you to -- once you prepare it, to give it
18 to someone else, so that it can be shown in a blind
19 fashion, right?

20 A Yes, sir.

21 Q Because you know, based on your training and
22 your experience, that no matter how hard you try to
23 control yourself, that you -- a person can tell -- a
24 person can still sometimes give off subconscious
25 subtle cues that they're not even aware of. You're

1 aware of that?

2 A I disagree with that, but, okay.

3 Q All right. You know that there's hundreds,
4 if not thousands of studies out there that show that
5 that can happen, if you're not doing it blind?

6 A I'm sure there are. I'm not aware of them.
7 I don't follow the studies.

8 Q Okay. And likewise, you're now given an
9 option to show them sequentially -- one at a time, as
10 opposed to all together?

11 A Yes, sir.

12 Q And that's also important, because there's
13 studies to suggest that showing them sequentially can
14 reduce the possibility -- there's studies that show
15 that there's -- showing them sequentially can reduce
16 the possibility of misidentification; is that right?

17 A Yes, sir.

18 Q All right. Now, State's Exhibit No. 5, the
19 photo spread with Chad Jones. We kind of see the
20 problem with showing them simultaneously -- all at
21 the same time, versus sequentially. Because in this
22 particular case, what actually happens is, is Malik
23 looks at them and then immediately does -- starts
24 eliminating -- or starts eliminating, saying it's not
25 this guy, it's not this guy and it's not this guy,

1 right?

2 A He did in that case, yes.

3 Q And obviously, if you're showing them one at
4 a time, you can't do something like that?

5 A You can. You can still verbally do it.

6 But --

7 Q Sure. But looking at -- okay.

8 You wouldn't be able to compare one
9 versus the other, if you're showing them?

10 A Not at the same time, no.

11 Q This one. Now, look at this one and so on
12 and so forth. And he does that. He says, which
13 ones, he says it's not 2, 3 and 6, right?

14 A Right.

15 Q But he spent some time looking at these
16 other individuals?

17 A Yes.

18 Q Now, the picture that you had of Chad Jones,
19 this particular photo that you had, he had earrings
20 in it, right?

21 A Correct.

22 Q And so not to suggest that he is your
23 target, with these other individuals, you have
24 someone put the earrings on these other individuals,
25 right?

1 A The photo lab does that.

2 Q Right. They have the ability to manipulate
3 those photographs?

4 A Right.

5 Q All right. So you're aware of that and you
6 know that they can -- what they're capable of?

7 A Yes.

8 Q And this isn't an uncommon thing. Sometimes
9 you'll have -- you'll manipulate the photo, either
10 maybe just to show the eyes or do different things;
11 is that right?

12 A Yeah. You can manipulate photos or the
13 photo lab can, and add tattoos, take tattoos away,
14 add jewelry, take it away. Different stuff like
15 that.

16 Q All right. And when you show this photo
17 spread to Malik, his mom is present?

18 A Yes.

19 Q It's just you -- this first one, it's just
20 you, him and his mom, right?

21 A Correct.

22 Q In regards to the procedures for photo
23 spreading -- for photo spread viewing, it says, the
24 witnesses shall be asked about their observations
25 individually and outside the presence of other

1 witnesses, right?

2 A Correct.

3 Q And yet Malik's mother is still there,
4 right?

5 A Correct.

6 Q And so it's debatable whether you're
7 following the procedure or not, but you're making a
8 conscious decision to let her be there, right?

9 A She was never going to be a witness that we
10 would ever show a photo array to, because she never
11 saw any suspects that night. So we didn't consider
12 her an actual witness to the crime.

13 Q And so that rule doesn't apply to her, at
14 least in your mind; is that right?

15 A Right.

16 Q But she still is present as this is taking
17 place. And Malik looks and he looks and he looks and
18 he looks, and he's not able to identify anyone?

19 A Right.

20 Q Do you recall -- did you know that Malik was
21 going down there, actually expecting to see a live
22 lineup? Did you know that?

23 A No, I did not.

24 Q Okay. Nine-year-old Malik looks at this, he
25 doesn't identify anyone. He's a little bit

1 disappointed, would you agree?

2 A I didn't get that impression out of him.

3 Q Were you disappointed?

4 A I'm always disappointed when I don't get a
5 positive identification.

6 Q Is his mom disappointed?

7 MS. COOPER: I'm going to object to
8 speculation, Judge.

9 Q (BY MR. MAYR) Did it appear as though his --

10 MR. MAYR: I'll rephrase the question.

11 THE COURT: All right.

12 Q (BY MR. MAYR) Did it appear as though his
13 mom --

14 MS. COOPER: That's still speculation.

15 THE COURT: That's overruled.

16 THE WITNESS: I didn't -- I didn't get
17 that impression.

18 Q (BY MR. MAYR) Okay. That's a possibility?

19 A It is possible. I just don't -- I don't
20 remember getting that impression though.

21 Q And then, although you're not responsible
22 for it, he's shown State's Exhibit No. 6, correct?

23 A Yes.

24 Q And you didn't have any part in putting this
25 together. You weren't -- you talked with Ms. Cooper

1 about how you were going with Investigator Burrow.

2 But did you have anything to do with
3 the preparing and presenting of this photo spread to
4 Malik?

5 A No.

6 Q So you didn't know at the time that he was
7 showing him a photo now of someone who had hair on
8 his head?

9 A Rephrase that for me.

10 Q When this gets shown to Malik in October by
11 Investigator Burrow, you didn't know at that time
12 that Malik was now looking at a photograph of an
13 individual with hair?

14 A I don't recall discussing that with Officer
15 Burrow, no. It's possible we did, but I don't
16 remember it.

17 Q Prior to putting together State's Exhibit
18 No. 7, had you had an opportunity to review this
19 photo spread, State's Exhibit No. 6?

20 A Probably, yes. I don't remember.

21 Q You don't remember?

22 A No.

23 Q Okay. And possibly -- you might have
24 possibly?

25 A Probably did. I -- almost certainly I

1 looked at it, yes.

2 Q Did you notice that these individuals had
3 hair on their head?

4 A I'm sure I did.

5 Q And so we fast forward to 169 days later,
6 when you're putting this together, okay.

7 Are you concerned about the amount of
8 time that has passed at this point?

9 A Sure.

10 Q Are you concerned about the fact that you
11 are now putting together a photo -- showing photos
12 with individuals with hair, when Malik had given a
13 description of an individual that was completely
14 bald? Were you concerned about that?

15 A Probably. It doesn't come to mind that it
16 was something I was overly concerned about.

17 Q You had the ability to manipulate the photos
18 or the photo lab can. And they can remove the hair
19 off the top of the head completely, and then you can
20 put it with other bald individuals, right?

21 A I've never had them do that. I'm sure that
22 they can, or it's probable that they can. I've never
23 had them do it.

24 Q But you didn't do that?

25 A No.

1 Q And you take this photo spread, which --
2 State's Exhibit 5, he doesn't pick anyone out.

3 State's Exhibit No. 6, a month passed,
4 he's still not able to pick someone out.

5 And then finally, he's shown State's
6 Exhibit No. 7. And this is done at his grandmother's
7 apartment or at their apartment?

8 A I thought it was -- oh, you're right. It
9 might be at the grandmother's. Because I think they
10 were between houses at that point.

11 Q You were there, I'm just the lawyer. So...

12 A Yeah. It might have been at the
13 grandmother's house.

14 Q That's fine. What -- tell us what you
15 remember about what was taking place there?

16 A It was a little chaotic inside the living
17 room. I had them -- I had her clear out the other
18 kids, so it was quiet in there.

19 Q All right. And who all was there?

20 A The other kids, I don't know. But it was
21 me, Officer Cheney, Malik and Tonie.

22 Q Officer Cheney, who's that?

23 A He -- at the time he was an investigator on
24 the evening shift with us.

25 Q All right. And again, and I think this is

1 almost rhetorical by this point, but you're not
2 recording what is actually taking place?

3 A No.

4 Q Audio or visually?

5 A No. And we still don't do that.

6 Q Right. And because of that, the only -- the
7 only thing that we have to go off as to what exactly
8 was said or exactly what was done, is what you put in
9 your offense report and what you can remember?

10 A Sure, yes.

11 Q And -- I want to figure out where everyone
12 is seated. Are you all seated in the living room,
13 dining room, where are you at?

14 A Living room.

15 Q Living room and --

16 A The first room you come to when you go in
17 the front door.

18 Q And where is everyone seated as you're
19 beginning to start showing him this photo spread?

20 A Officer Cheney is in a chair by the front
21 door, then there's a couch next to that. Malik and
22 myself are on the couch, and then Tonie is sitting in
23 another chair on the other side of the couch.

24 Q Everyone's there also and altogether, right?

25 A It was a fairly large living room. I mean,

1 we weren't bunched.

2 Q You were huddled. But just your standard
3 sized living room, and everyone's sitting there,
4 right?

5 A Uh-huh.

6 Q And Malik can see his mom?

7 A Yes.

8 Q His mom can see Malik, right?

9 A Yes.

10 Q And you said that you give him the standard
11 admonishments and then try to explain a few other
12 things to him. And then you proceed to show him
13 this; is that right?

14 A Yes, sir.

15 Q And he doesn't immediately -- let me back up
16 real quick. Before we get to -- the actually showing
17 of it. When you put it together, we see that the
18 defendant's picture is in position number one, right?

19 A Yes.

20 Q The reason it ends up there -- explain to
21 the jury how it ends up in position number one?

22 A Inside the DataWorks program is a random
23 insertion feature. It's a random button -- it's a
24 button you push and it just -- it throws the picture
25 down into a spot, and that's where it goes. The

1 computer picks what position it goes into.

2 Q But you have the ability to -- once it's
3 insert -- so that the computer randomly inserts it in
4 the one. But you have the ability to move it into
5 one of those other positions, right?

6 A Yes.

7 Q You choose not to do that?

8 A Right.

9 Q Are you aware that both the Department Of
10 Justice, as well as the Texas -- the Texas -- what's
11 required by Texas law, recommends that the suspect
12 not be put in the first position?

13 A No.

14 Q You're not aware of that?

15 A No.

16 Q Would you agree that putting your target in
17 the first position has an inclination to suggest that
18 he's the person that you want the individual to pick?

19 A No.

20 Q In your opinion?

21 A No. Right, in my opinion.

22 Q All right. And so you don't make any
23 changes, you just add your feathers and then go out
24 to see Malik?

25 A I did make changes. All the pictures --

1 they're all -- when they're taken, some people are
2 close to the camera and some are far away. And they
3 need to be all pretty much centered. So you have to
4 crop them. That's all I did in this case, was crop
5 them.

6 Q Now, the photo that you used of Mr. Hankston
7 in this case, that's in position number one, that was
8 a booking photo from maybe a little less than a month
9 before the shooting, on April 23rd, right?

10 A Yes, sir.

11 Q And that booking photo, was that the only
12 booking photo that you were able to locate?

13 Well, let me take that back. That was
14 the only booking photo that you were able to locate
15 of my client?

16 A I don't remember if there were other
17 pictures of him or not, but that's the picture I
18 ended up using.

19 Q Okay. And it's possible because there were
20 no other photos?

21 A Probably.

22 MS. COOPER: I'm going to object to
23 that, Your Honor. It's not relevant.

24 THE COURT: It's overruled.

25 Q (BY MR. MAYR) All right. Now, let's go back

1 into that living room. And we've got you sitting on
2 the couch with Malik. Is he sitting to your right,
3 next his mom? Or is he sitting over here on your
4 left-hand side.

5 A He's on my left.

6 Q He's on your left. Mom's over here; is that
7 right?

8 A Yes.

9 Q And Officer Cheney's right there?

10 A Correct.

11 Q And you show the photo spread. He
12 immediately points to number one?

13 A No.

14 Q He doesn't?

15 A No.

16 Q He spends -- I want to make sure we're clear
17 on this. He spent, according to your recollection,
18 because you're not keeping time, according to you
19 recollection, three to four minutes of looking at the
20 photographs?

21 A Yes.

22 Q And then at some point -- I'll let you get
23 to your notes.

24 A Sorry.

25 Q No, it's okay. Take your time.

1 A You can go ahead and ask it. I'm sure I'll
2 find it in here.

3 Q Well, I want to -- this is important, so I
4 want to make sure you got what you need.

5 A I just had it.

6 Q Try page 66. You got it?

7 A Oh, yes. Thank you.

8 Q Malik took the photo array in his hand and
9 looked at it for about three to four minutes, right?

10 A Yes.

11 Q And he's not saying anything?

12 A No.

13 Q He's not doing anything?

14 A No.

15 Q And you decide at that point, while he was
16 looking at it, at that point, you tell him to study
17 each picture and be sure he was picking the right
18 person before he pointed to anyone, right?

19 A Yes.

20 Q Malik's sitting there. Nothing's happening.
21 You jump in and you say those things to him, right?

22 A Yes.

23 Q His mom is sitting over here?

24 A Yes.

25 Q He's already looked at two photo spreads,

1 where he hasn't been able to pick anyone out?

2 A Right.

3 Q And after about another minute, he finally
4 points to number one?

5 A Correct.

6 Q And when you ask him, how sure are you of
7 this? He says, I'm pretty sure?

8 A Yes.

9 Q Do you then have him -- what did you have
10 him do after that?

11 A I had him circle his choice, initial and
12 date the array.

13 Q That's his circle?

14 A Yes.

15 Q That's his initials?

16 A Yes.

17 Q And that's the date that he wrote in?

18 A Right.

19 Q Did you tell him to write in the date?

20 A I told him what day it was.

21 Q Okay. Did you tell him anything else
22 afterwards?

23 A I thanked him and asked him to leave the
24 room.

25 Q And eventually, you tell Tonie Brown that

1 based on that, you'll get a warrant for my client's
2 arrest?

3 A Yes. Well, no, that's not correct. I can't
4 just go get a warrant. I have to call the DA.

5 Q You're going to start the process to get an
6 arrest warrant?

7 A Yes.

8 Q And just so we're clear -- so -- and just so
9 we're clear, that wasn't the last time that you met
10 with Malik, right?

11 A No. That was the last time for a long time.

12 Q Right. And the long time meaning, you met
13 with Malik two, three weeks ago. Prior to the
14 pretrial hearing, you met with him along with
15 Ms. Cooper, another prosecutor and was Investigator
16 Burrow there also?

17 A Yes, sir.

18 Q And you all showed him those photos, again,
19 right?

20 A Yes.

21 Q And you let him see that circle that he put
22 around my client, right?

23 A Yes.

24 Q And you told him exactly that good job, you
25 did right thing. We're here to -- to have you come

1 in and testify. The whole purpose of meeting with
2 him was to prepare him to testify; is that right?

3 A Yes.

4 Q Have you met with him anymore prior to
5 testifying this week?

6 A I don't think so. No. I've seen him but I
7 haven't met with him.

8 Q And again, when you show the photo spread
9 containing Mr. Hankston to Malik, you're the one who
10 prepared it?

11 A Yes, sir.

12 Q You're the one who shows it to him?

13 A Yes, sir.

14 Q That it's not a blinded administration?

15 A No, sir.

16 Q And HPD has now changed the policy to
17 require that to be done?

18 A Yes, sir.

19 MR. MAYR: No further questions, Your
20 Honor.

21 THE COURT: All right. We're going to
22 pass -- we're going to break, 15 minutes, resume at
23 3:30.

24 Remember the instructions, members of
25 the jury, don't discuss the case or conduct any kind

1 of independent investigation or research of your own.
2 Fifteen minutes.

3 THE BAILIFF: All rise.

4 (Jury exits the courtroom.)

5 (Recess taken.)

6 THE COURT: Both sides ready for the
7 jury?

8 MR. MAYR: We're ready, Judge.

9 THE COURT: All right. Bring them in,
10 please.

11 THE BAILIFF: All rise.

12 (Jury Panel enters courtroom.)

13 (Open court; defendant and jury panel
14 present.)

15 THE COURT: Be seated, please.

16 Ms. Cooper, you may proceed.

17 **REDIRECT EXAMINATION**

18 BY MS. COOPER:

19 Q Officer Burrow (sic), why don't you
20 record -- or is it HPD policy not to record photo
21 spreads.

22 Or why aren't photo spreads recorded?

23 A If you -- if you recorded a -- someone
24 making an identification of a criminal, you would get
25 much less cooperation from witnesses. They're very

1 reluctant to cooperate in the first place. And if
2 they are being recorded while they're picking out a
3 suspect, you're going to get far less cooperation.

4 And they're nervous about people
5 finding out that they're cooperating from the police
6 already. So it would make it ten times worse if you
7 stuck a video camera or audio camera in their face
8 while they're picking out the suspect.

9 Q And then these photo spreads, State's
10 Exhibits 5, 6, and 7, Mr. Mayr talked to you about
11 the hair style. Does one of the admonishments or
12 instructions that are given, deal directory with hair
13 styles and facial hair?

14 A Yes.

15 Q What is that admonishment?

16 A That it can change.

17 Q Okay. And is the -- was Malik told that
18 in -- each time a photo spread was shown to him?

19 A Yes.

20 Q Had Malik ever, to your knowledge, ever
21 changed -- changed that claim, that the suspect was
22 bald?

23 A No.

24 Q He's never said -- gone back and said, oh,
25 he had hair?

1 A No.

2 Q Okay. On -- while Malik is looking at the
3 photo spread that contains the defendant in this
4 case, why did you say anything to him at all during
5 that process, during that three to four minute
6 period?

7 A As soon as I gave him the photo array, I
8 could tell, just my his demeanor and the feeling that
9 I got from him, that he was extremely nervous and
10 apprehensive. Looking at that array versus the other
11 array that I had shown him. I was just trying to
12 make him feel more at ease. That was my only
13 intention in that.

14 Q What do you mean by that? He's feeling
15 nervous in that array -- more nervous in that array
16 versus the others?

17 A I got -- I got the feeling from him, when I
18 -- as soon as I showed it to him, that he had -- was
19 looking at the person that killed his father.

20 Q What gave you that feeling?

21 A I can't really explain it. I just kind of
22 got that feeling in looking at him look at the array.
23 I guess maybe it's because I have kids and I could
24 just kind of tell in his demeanor that he was very
25 scared.

1 Q Had you gotten -- did you get that feeling
2 from him the first time you showed him a photo array?

3 A No.

4 Q Did you -- even knowing that or having that
5 feeling, did you say anything to tell him who to
6 pick?

7 A No.

8 Q Or do anything?

9 A No.

10 Q And I want to take to you about at pretrial
11 meetings. Does that -- and you've testified before.
12 This isn't the first time you've testified, is it?

13 A No, ma'am.

14 Q Okay. And in pretrial meetings, is that
15 something that's common?

16 A Yes, ma'am.

17 Q Would you expect to go into a trial without
18 having ever met with the prosecutor?

19 A No.

20 Q Would you expect a prosecutor to go into a
21 trial without having met with the witnesses?

22 A No.

23 Q Is it common to meet before trial on
24 multiple occasions?

25 A Yes.

1 Q With several witnesses together?

2 A Yes.

3 Q Anything unusual about the -- about the
4 pretrial meeting?

5 A No.

6 Q All right.

7 MS. COOPER: I pass the witness.

8 THE COURT: All right.

9 **RE-CROSS-EXAMINATION**

10 BY MR. MAYR:

11 Q Is it common to show the eyewitness the
12 photo spread that they made the identification off
13 of?

14 A I've only testified, this is four for me.
15 This is first time that has been done. But I can't
16 recall any other ID case I had, offhand. This was
17 first time I had been present when it was done, yes.

18 Q Right. Because if you show the witness -- a
19 prosecutor typically will meet with the witness. But
20 if they show the witness, that's just going to
21 encourage them -- that just even more suggestive and
22 more -- is going to lead to more of a possibility of
23 them --

24 MS. COOPER: I'm going to object to
25 speculation. So I'm waiting for him to finish the

1 question.

2 THE COURT: I haven't heard the
3 question. Go ahead and finish the question.

4 Q (BY MR. MAYR) A prosecutor's not going to
5 show a witness the photograph, for the same reason
6 that you're not going to show an eyewitness a
7 photograph of your suspect before you show him the
8 photo spread, right?

9 A Right.

10 Q Because if you show them a photograph before
11 they go in and say, that's the person, then that
12 identification is suggestive, right?

13 A Right. He was only shown the photo array.
14 He wasn't shown an individual photo, he was shown the
15 photo array he had already looked at.

16 Q Right. And it's got the same person's
17 picture in it, then he's going to come into court a
18 couple of days later and say, yeah, that's the person
19 that I saw out there that night, right?

20 A Well, I personally don't see anything wrong
21 with that. He already looked at it prior and already
22 picked him out.

23 Q Uh-huh.

24 A So I don't -- I don't see anything wrong
25 with that.

1 Q Now, the reason that you said that you don't
2 record it, is because -- or you all don't record is
3 because you'll find that the witnesses will be less
4 than -- that they won't be as cooperative; is that
5 right?

6 A Right.

7 Q But the witness in this case is Malik?

8 A Right.

9 Q He's the complainant's son?

10 A Yes.

11 Q You have no reason to think that he's going
12 to be uncooperative, right?

13 A No.

14 Q And if you're worried about any effects
15 that -- any sort of intimidation that the camera or
16 the recording device is going to make, you can
17 surreptitiously record them. In other words, you
18 don't have to tell them, you can just put a recorder
19 in your pocket, so that we can hear everything that's
20 being said, can't you?

21 A Yes.

22 Q You didn't do that in this case?

23 A No. I've never done that in any case.

24 Q It's because you don't want this jury to
25 know exactly what took place when you showed him this

1 photo spread?

2 A That's not true.

3 MR. MAYR: No further questions, Your
4 Honor.

5 **FURTHER DIRECT EXAMINATION**

6 BY MS. COOPER:

7 Q Malik wasn't just -- well, Malik was shown
8 all three of the photo spreads in that case at the
9 pretrial meeting; is that right?

10 A Yes.

11 Q He was also shown the sketch?

12 A Yes.

13 Q He was also shown the scene photos?

14 A Yes.

15 Q He was also -- got to listen to his recorded
16 statement?

17 A Right.

18 Q So he was shown everything, which is a
19 normal thing in a pretrial meeting; is that right?

20 A Correct.

21 MS. COOPER: All right. I pass the
22 witness.

23 MR. MAYR: No further questions, Your
24 Honor.

25 THE COURT: Thank you, Officer Condon.

1 THE WITNESS: Thank you.

2 THE COURT: The Rule has still been
3 invoked, so -- they may or may not call you back.

4 What says the State?

5 MS. COOPER: State calls Chad Jones.

6 THE COURT: Chad Jones.

7 THE BAILIFF: He's not been sworn,
8 Judge.

9 THE COURT: All right. Good afternoon,
10 Mr. Jones.

11 THE WITNESS: How are doing, sir?

12 THE COURT: Good afternoon. How are
13 you?

14 Raise your right hand, please.

15 (Witness sworn.)

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Feel free to
18 adjust the chair and microphone.

19 THE WITNESS: Yes, sir.

20 THE COURT: And answer as directly as
21 you can. Just listen to the question and if you
22 can't hear or don't understand it, say so. They'll
23 talk louder or more clearly.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. You may

1 proceed.

2 **CHAD JONES,**

3 having been first duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 BY MS. COOPER:

6 Q Good afternoon.

7 A How you doing?

8 Q Good. Can you introduce yourself to the
9 members of the jury, please.

10 A Hello everyone, my name is Chad Jones.

11 Q Are you married?

12 A Yes, I am married 16 years.

13 Q Do you have children?

14 A I have two. I have a son 13 and a daughter
15 who's 20.

16 Q Do you work?

17 A Yes, ma'am. I work at Morek (phonetic) as a
18 cabinet maker, on 225 and Allen Genoa, chemical
19 plant.

20 Q All right. I'm sorry. What was the name of
21 the chemical plant? I didn't hear you.

22 A Morek (phonetic).

23 Q Morek?

24 A Yes, ma'am.

25 Q How long have you been working there?