

1 THE COURT: I told him to. I said she's about
2 to call you.

3 Do me a favor. Please state and spell your
4 name for my court reporter.

5 THE WITNESS: My name is Joseph Nguyen, first
6 name J-O-S-E-P-H, last name N-G-U-Y-E-N.

7 THE COURT: You may proceed.

8 **JOSEPH NGUYEN,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 Q. (BY MS. DAVIS) Officer, how long have you been
12 working for the Houston Police Department?

13 A. 19 years.

14 Q. And is the Houston Police Department the only
15 police agency you've worked for?

16 A. Yes, ma'am.

17 Q. And what is your current role and responsibilities
18 with the police department?

19 A. I am working as a police investigator for the, what
20 we call IFR division.

21 Q. What does that stand for?

22 A. Investigative first responder.

23 Q. Okay. And what is the role of that division?

24 A. We offer help to patrol officers immediately and
25 also after, meaning that if there's a call being dispatched

1 to patrol and they needed our investigative expertise, then
2 we go directly to the scene and take over the whole scene or
3 we could get assigned to a case that had already taken place
4 and we do reactive investigation.

5 Q. And do you have to go through some sort of training
6 or classes in order to become part of that unit?

7 A. Yes, ma'am.

8 Q. Okay. Would you describe for the jury what kind of
9 training you've gone through to become part of that unit?

10 A. Of course you have to go through the interview to
11 get accepted into the division and then after you have been
12 accepted to the division, they send you to what is called
13 the investigators -- investigative school, basic
14 investigator school and then after that you have to go
15 through the advanced interrogation to learn techniques to
16 talk to both complainants and what we call suspects.

17 Q. Okay. Any other sort of training besides the basic
18 police academy other than that investigative school?

19 A. I would say that would sum it up.

20 Q. Okay. About how many hours total would you say of
21 training you've had in order to become part of this IFR
22 unit?

23 A. I'd say about 60 hours.

24 Q. Okay. And in your 19 years in the Houston Police
25 Department have you investigated few or many cases?

1 A. Yes, ma'am.

2 Q. Okay. And have you investigated many burglary
3 cases?

4 A. Yes.

5 Q. Okay. And were you assigned to investigate a
6 burglary of a habitation case on July 25th, 2011?

7 A. Yes.

8 Q. Okay. And how were you assigned to that case?

9 A. Like I stated, we extend our assistance to patrol
10 directly and when the police officer received the call and
11 he came out and do a preliminary investigation of the scene
12 and if there would be a lengthy investigation needed in
13 order to secure the arrest of so-called suspects, then they
14 would contact our office or they would get on the radio and
15 ask dispatcher to send one of us out.

16 Q. So, what are your current hours or do you just work
17 kind of around the clock?

18 A. From 6:00 to 2:00, 6:00 in the morning to 2:00.

19 Q. Were you on duty on July 25th, 2011?

20 A. Yes, ma'am.

21 Q. Were you called out to a scene on Spence road?

22 A. Yes.

23 Q. What happened when you got on the scene?

24 A. I came down -- I met with the primary officer,
25 Richard and also observed two -- a male and a female already

1 in custody being placed in the backseat of the patrol car.

2 Q. Okay. And what was the first thing that you did
3 once you got on the scene?

4 A. Tried to see if there were complainants available
5 at the time. The complainants weren't there and so I asked
6 if there were any witnesses at the scene and Officer
7 Richard -- I was told by Officer Richard that there were
8 possible witnesses who might have seen and so I went across
9 the street from the 2610 Spence residence and was able to
10 speak to a couple, elderly couple.

11 Q. About what time did you arrive on the scene at 2610
12 Spence?

13 A. I am not sure but I would say past -- after 10:00.

14 Q. Okay. And is that a busy street, Spence Street?

15 A. No, ma'am.

16 Q. Okay. Are there -- was there a lot of crowds
17 there, a lot of people there at that time?

18 A. No.

19 Q. Okay. So, was there a concern about a lot of
20 people invading the crime scene at that time?

21 A. No, ma'am.

22 Q. Okay. How many other police units were on the
23 scene with you and Officer Richard?

24 A. There was another patrol unit that was over there
25 and my partner and I arrived at the scene.

1 Q. And so when you went to go talk to the witnesses,
2 who did you talk to first?

3 A. I spoke -- I recall talking to Ms. -- to the lady
4 first, Ms. Pinkard, Patricia.

5 Q. Okay. All right. So, you were able to get
6 information out of her first?

7 A. Yes, yes.

8 Q. Okay. And what sort of -- when you first talked
9 to -- in your experience when you first talk to a witness in
10 a case, if they're giving you identifying information, what
11 sort of questions do you typically ask?

12 A. I get a general idea of the -- the physical traits
13 of the person and how and if the witness had known the
14 person ahead of time or before and if so, how long or how
15 often do they see the person.

16 Q. Okay. If it's somebody that the witness may have
17 known for a long period of time, how does that change your
18 investigation?

19 A. It would be a lot simpler, where, you know, the
20 defendants or the suspects are still present, it's -- the
21 offense had just taken place, the witness were present, all
22 we have to do is match the two up and let them look at each
23 other. If the witness would be nervous about looking at the
24 defendants directly, then we'll let the defendants come out
25 of the car and then the witness would be looking from a

1 distance.

2 Q. Okay. What about if the witness has no idea who
3 the person is and the person is no longer on the scene? How
4 is that different than someone who has seen that person
5 before?

6 A. Then what we do, we have to go back to the office,
7 search through our HPD database for previous photos of
8 defendants or suspects that had been incarcerated and do a
9 photo array to include or not to include the -- one of the
10 photos of the person of interest along with five others.

11 Q. So, in that case would you elicit maybe specific
12 characteristics from the witness of what that person may
13 look like?

14 A. I'm sorry.

15 Q. In that case would you elicit specific
16 characteristics of what that suspect may look like?

17 A. Yes, yes.

18 Q. Okay. But in the case where the witness knows
19 exactly who the suspect is, you may not get those
20 identifying characteristics?

21 A. We don't have to.

22 Q. Okay. And in this case, did Ms. Pinkard know who
23 some of the suspects were?

24 A. Yes.

25 Q. Okay. And how many suspects total were there in

1 this case?

2 A. She told me there were about five individuals at
3 the time.

4 Q. Okay. And how many did she know?

5 A. She said she's seen all of them on a daily basis,
6 just walking up and down the Spence roadway.

7 Q. Okay. And did she know any of them by name? Do
8 you remember?

9 A. She didn't know anybody by name other than the
10 person that lives directly across the street from her and
11 she said, I only know him by Clyde.

12 Q. Of the two detained, was she able to identify them?

13 A. By sight, yes.

14 Q. So, in that situation, is it necessary to do a
15 photo lineup anymore?

16 A. No, ma'am.

17 Q. Okay. And that is following the standard procedure
18 of identification?

19 A. Yes.

20 Q. Okay. What did you do after you talked with
21 Ms. Pinkard?

22 A. Well, I spoke with her husband, Mr. -- Dwayne
23 Pinkard.

24 Q. Okay. And anything different from his testimony?

25 A. No, he stated, as a matter of factly (sic), in

1 fact, to confirm what she said, Yeah, I see him every day, I
2 see them every day just walking up the street -- down the
3 street. Nothing different than what his wife had stated to
4 me.

5 Q. Okay. And after you got their statements, what did
6 you do next?

7 A. I asked them to reID the person and to make certain
8 that there's no mistake and I even explained it to them
9 that, you know, You don't know them, just say you don't know
10 them because we don't want to get the wrong person and
11 they -- it's, like, We've seen them all the time; it's them.
12 And they were able to even tell me the positions of where
13 each individual was at the time of the incident.

14 Q. Okay. And do you recall today which -- what
15 position those individuals were in?

16 A. There was a female and a male, we call suspects at
17 the time, and Ms. Pinkard was able to tell me that the
18 female was the one immediately outside of the open window
19 receiving things, merchandise, from inside the house passed
20 out by somebody that she did not know and then that female
21 in turn passed the merchandise to the male. I believe
22 his -- Harry Malone and then Clyde Baines as well.

23 Q. Okay. What happened after you spoke to these
24 witnesses and did the identifications?

25 A. I went to -- over to the residence just east --

1 just next door to the complainants, the victim's residence
2 and observed the lady sitting out there with a child.

3 Q. Okay. And what did you do there?

4 A. I asked her for her name and I asked her if it
5 was -- it would be okay -- if she lived there and she said
6 yes, and if it would be okay for us to come in and try to
7 see if we could locate or recover any of the victim's
8 missing property and she said, Sure. So, we walked in
9 there, we looked around, we didn't see anything. We were
10 not able to discover -- recover anything.

11 Q. Okay. That's in the white house at 2614 Spence
12 Street?

13 A. 2614 Spence, yes.

14 Q. Okay. Do you remember that woman's name?

15 A. I had it written down but I --

16 Q. Okay. What did you do after that, at that point?

17 A. I contacted the DA's Office to get charges filed on
18 the two that we have at the time.

19 Q. Okay.

20 A. And charges were accepted.

21 Q. Okay. So, is the investigation still open for the
22 other three that were, to use -- no better term, but at
23 large at that point?

24 A. Yes, yes, ma'am.

25 Q. Okay. Were you able to walk through the

1 complainant's home?

2 A. Yes, when she got there, we were able to go
3 through, yes.

4 Q. Okay. And what did you notice about her home?

5 A. Totally ransacked. Everything was turned
6 upside-down. There were holes through the window, which
7 they told me later was supposed to be AC units to cool the
8 house down.

9 Q. Okay. And they were able to tell you what items
10 were missing?

11 A. Yes.

12 Q. Okay. From your investigation and training in
13 investigating burglary of a habitation, did their home look
14 like a home that had been burglarized?

15 A. Definitely, yes.

16 Q. And did you do fingerprints or take saliva swabs in
17 this home?

18 A. No, ma'am.

19 Q. Is that something that you typically do in
20 burglarized homes?

21 A. We usually take fingerprints if we believe that
22 there were -- that there were prints to be lifted. I did
23 visually go through the windows and glass area but I was not
24 able to see anything visually at the time.

25 Q. So, in this case, no fingerprints were really

1 visibly seen?

2 A. No, ma'am.

3 Q. So, a crime scene unit wasn't called out to take
4 any fingerprints?

5 A. No, ma'am.

6 Q. Was it also true that since there was suspects
7 named in this case, was it kind of less necessary to call a
8 crime scene unit out?

9 A. That's correct. It was -- the witness that shows
10 so much certainty on those people that they saw, they saw
11 it, and when I said, Were you not afraid that they would see
12 you looking at them? And they were, like, No. So, I had no
13 reason to doubt their certainty at the time.

14 Q. Okay. After you walked through the complainant's
15 home with her, what did you do next?

16 A. I asked patrol to transport the male and the female
17 in their cars downtown to get booked and I spoke with Mr. --
18 Clyde's mother, who was maybe a house over, to get a name
19 for Clyde and she was the one who told me it was Baines and
20 when I got that, I went back to the station, went through
21 our system and found out that he had a previous record
22 and --

23 Q. Okay.

24 MS. DAVIS: Your Honor, may I take a moment,
25 talk to the witness.

1 THE COURT: Just ask your next question.

2 MS. DAVIS: Okay.

3 THE COURT: Just listen very carefully to her
4 question, okay?

5 THE WITNESS: Yes, ma'am.

6 Q. (BY MS. DAVIS) After you were able to get a
7 location on Mr. Baines, did you go out and look for him?

8 A. Yes.

9 Q. Okay. And who did you -- did you go out with
10 another officer?

11 A. We went out with an officer and a supervisor.

12 Q. Okay.

13 A. Officer Willis Huff and Sergeant Fabian Hernandez.

14 Q. And besides Clyde Baines, who are the other
15 suspects you were looking for at this point?

16 A. A female, particularly a Hispanic female.

17 Q. Okay. And was there another black male that you
18 were looking for?

19 A. Yes.

20 Q. Okay. And when you got to the location where you
21 suspected Clyde to be, was he there?

22 A. No, no, ma'am.

23 Q. What did you do next?

24 A. We spoke to the two men that were just outside and
25 they immediately pointed us down the street, same street,

1 just north of where we were and they said it's -- that
2 you're going to see a blue truck on the left side and you're
3 going to see the house that he stayed in on the right -- on
4 the right side of the street with a big tire in front of the
5 house. You can't miss it. That's what they told us.

6 Q. Okay. So, were you able to locate him there?

7 A. Yes.

8 Q. Okay. And was he with a Hispanic woman?

9 A. He was.

10 Q. Okay. At that time were you able to bring Clyde
11 Baines and the Hispanic woman down to the station?

12 A. Yes, ma'am.

13 Q. Okay. And did you get an identification on that
14 Hispanic woman?

15 A. Yes.

16 Q. Okay. Do you remember her name?

17 A. Her last name just slipped out of my mind but it's
18 Raquel.

19 Q. Garcia?

20 A. Garcia, yes.

21 Q. Okay. And at that point were you able to interview
22 both suspects?

23 A. Yes.

24 Q. And --

25 MS. GUINEY: Excuse me.

1 *THE JURORS:* Bless you.

2 *THE COURT:* Bless you.

3 *MS. GUINEY:* Thank you.

4 *Q.* (*BY MS. DAVIS*) Now that you had an identification
5 on the Hispanic female that you suspected may have been
6 involved in the case, were you able to generate a photo
7 spread?

8 *A.* Yes, I did.

9 *Q.* For the suspect?

10 *A.* Yes, I did.

11 *Q.* For the witnesses?

12 *A.* Yes, I did.

13 *Q.* Okay. And did you take that back to the Pinkards?

14 *A.* Yes, I drove back to their residence and showed it
15 to them.

16 *Q.* Okay. And what day did you do that?

17 *A.* The same date, which is the 26th.

18 *Q.* Okay. So, that's the very next day?

19 *A.* The very next day.

20 *Q.* And was Mr. Pinkard able to make a positive
21 identification?

22 *A.* Yes, ma'am.

23 *Q.* Officer Nguyen, were you able to get any sort of
24 identification on the fifth suspect, which people may have
25 identified as Q or anything like that?

1 A. No name, just covered with tattoos.

2 Q. Okay. So, at this point you'd only identified the
3 other four?

4 A. Yes, ma'am.

5 Q. And do you see -- do you recognize Mr. Baines in
6 the courtroom today?

7 A. Yes.

8 Q. Would you please point to him and identify him by
9 an article of clothing?

10 A. The gentleman in the bright colored shirt.

11 Q. Clyde Baines or Mr. Malone?

12 A. That would be Mr. -- I want to say Mr. Baines.

13 Q. Mr. Baines is which defendant?

14 A. I'm sorry?

15 Q. Mr. Baines is which defendant?

16 A. Oh, my goodness.

17 Q. Have you seen either defendant since July 25th or
18 July 26th, 2011?

19 A. I saw briefly Mr. Baines through -- Mr. Baines --

20 Q. Okay.

21 A. -- when we brought him out at the house --

22 Q. Wait, wait, wait.

23 MS. DAVIS: I'll pass the witness, Judge.

24 THE COURT: Ms. Guiney, you're first?

25 MS. GUINEY: Yes.

CROSS-EXAMINATION

1
2 Q. (BY MS. GUINEY) Officer Nguyen, good afternoon.
3 My name's Kristin Guiney.

4 A. Good afternoon.

5 Q. I have a lot to cover with you but I want to cover
6 one area before we break for the day. You would agree with
7 me that this case -- you have to rely on the word of
8 Patricia Pinkard, right?

9 A. Yes.

10 Q. She's the eyewitness?

11 A. Yes.

12 Q. And if she's wrong, even earnestly wrong, I'm
13 certainly not suggesting that she's lying but if she's wrong
14 about her identification from 125 feet away, the case falls
15 apart, right?

16 A. (No response.)

17 Q. I mean, you don't have any forensic evidence. You
18 don't have a confession. You don't have any fingerprints.
19 It's the eyewitness testimony of the Pinkards, right?

20 A. Not necessarily, ma'am, because I do have a
21 confession from Ms. Raquel Garcia.

22 Q. Right. You have a codefendant's confession. You
23 don't have anything from Mr. Malone, do you? And this, by
24 the way, is Mr. Malone.

25 A. Okay.

1 Q. Did you bring him down to the station the day you
2 arrested him on the 25th?

3 A. (No response.)

4 Q. Did you book a prisoner in after investigating the
5 burglary on the 25th?

6 A. Mr. Baines, I did. But not Mr. Malone, Harry
7 Malone, I don't --

8 Q. Did you look at your offense report?

9 A. Yes, I did.

10 Q. You know that you arrested Mr. Baines on the 26th,
11 right? Not the 25th.

12 A. Yes.

13 Q. Right?

14 A. Yes.

15 Q. So, my question was: Did you take a prisoner
16 downtown on the 25th, the day of the burglary?

17 A. No, I did not. My patrol officers did.

18 Q. Okay. Back to my original question. You've got to
19 believe this -- the eyewitness, the credibility and
20 reliability of the Pinkards in terms of the weight of the
21 case, right?

22 A. I would say so, yes.

23 Q. Okay. So, let's talk about some of the things that
24 Patricia Pinkard, if -- I want to ask if this goes with your
25 recollection. If Ms. Patricia Pinkard said she watched the

1 people burglarizing the home deposit property in the white
2 frame house at 2614, that would be wrong, right? Didn't you
3 do a walk-through at 2614 and didn't find any of the stolen
4 property?

5 A. That's correct.

6 Q. Okay. So, that's one. If she testified that Harry
7 Malone, my client, was wearing khakis, that would be wrong,
8 correct? Because you arrested him wearing black pants,
9 right?

10 A. (No response.)

11 Q. Would you like to refresh your memory with your
12 offense report?

13 A. If I may, yes.

14 Q. Pardon my notes. I mean, you can tell this is your
15 offense report but I'm going to show you your suspect page
16 2.004. This is Malone, he's wearing black -- I'm sorry.
17 Black jeans, right, and no shirt?

18 A. Okay.

19 Q. Okay. So, if she testified he's wearing khakis,
20 that would be wrong, right?

21 A. If she said otherwise, I suppose she would be
22 wrong.

23 Q. Okay. If she testified that she personally,
24 Patricia Pinkard, reviewed two photo arrays, one with
25 Hispanic females and one with black females, that would be

1 incorrect, right?

2 A. Could you repeat, please?

3 Q. How many photo arrays did you prepare?

4 A. I prepared two, one for each of the Pinkards.

5 MS. GUINEY: Can I approach the witness again,
6 Judge?

7 THE COURT: You may.

8 Q. (BY MS. GUINEY) Did you show them both to Patricia
9 Pinkard?

10 A. No, ma'am.

11 Q. If Ms. Patricia Pinkard said you, Officer Nguyen,
12 showed her two photo spreads, one with black females, one
13 with Hispanic females, that would be incorrect?

14 A. That would be incorrect.

15 Q. Okay. Now, I'm going to turn your attention to
16 2.017, July 26th, I prepared a photo array of --

17 MS. DAVIS: Objection, Your Honor, counsel's
18 reading from a document that's not in evidence.

19 Q. (BY MS. GUINEY) Okay. I'm going to ask you to
20 refresh your memory with the fourth paragraph on page 2.017
21 and ask you again how many photo arrays you prepared in
22 investigating this case.

23 Let me cut to the chase, Officer Nguyen. You
24 arrested Elonia Durant on July 25th, right?

25 A. I arrested who? I'm sorry.

1 Q. You tell me who you arrested on July 25th.

2 A. I had the -- I had the -- may I?

3 Q. Uh-huh.

4 A. Okay. I had Elonia, Elonia Durant and Harry Malone
5 arrested on the 25th and Clyde Baines on the 26th.

6 Q. So, you really wouldn't need to do a photo array of
7 black females on the 26th with the Pinkards if you had
8 already arrested Elonia Durant, right?

9 A. I would not need to do --

10 Q. Right. So, my original question was how many photo
11 arrays did you prepare in investigating this case?

12 A. I did two.

13 Q. Okay. One had Raquel Garcia's picture, right?

14 A. Both of them have Raquel Garcia pictures.

15 Q. Okay. Perhaps I wasn't being clear and that's
16 where the -- you prepared two photo arrays but they were the
17 same photo arrays, correct?

18 A. With different order, yes.

19 Q. Okay. Same six pictures, mixed up, right?

20 A. Right.

21 Q. My question, going back to the things that
22 Ms. Patricia Pinkard might have gotten incorrect, was: Did
23 you prepare a photo array of black females?

24 A. I don't recall making -- I don't recall making one,
25 ma'am.

1 Q. Okay. You did prepare a photo array of Hispanic
2 females, correct?

3 A. Yes.

4 Q. And in that photo array, while you had two
5 versions, the suspect was Raquel Garcia, correct?

6 A. Two versions, different orders.

7 Q. Right.

8 A. Yes.

9 Q. But not two different -- you did not prepare a
10 photo array consisting of six females who were
11 African-American.

12 A. No, ma'am.

13 Q. So, Ms. Patricia Pinkard would be wrong if she said
14 that she viewed a photo array containing pictures of
15 African-American females?

16 A. She would be on my account.

17 Q. She would also be wrong if she said she viewed a
18 photo array of six Hispanic females, correct? Because
19 judging from the offense report, if you would take a moment
20 to refresh your recollection, your Hispanic photo array was
21 not shown to Patricia Pinkard, was it?

22 A. I only had two at the time. I'm not sure what
23 you're asking me. Because I only had two at the time of the
24 same pictures, just different order.

25 Q. Right. Who did you show them to?

1 A. Showed to the couple.

2 Q. Okay. You did show a Hispanic -- have you listened
3 to the audio statements, the seven minutes that you taped
4 Mr. Pinkard when you showed him the witness ID?

5 A. At the time, yes.

6 Q. Have you listened to it recently?

7 A. Not today, ma'am.

8 Q. Okay. Might I suggest that since you'll be here
9 tomorrow, you might listen to it to refresh your
10 recollection as to who you looked at that photo array with
11 and whether or not Ms. Pinkard was able to make an
12 identification as to Raquel Garcia? Can we do that and
13 we'll cover this issue again tomorrow? Fair enough?

14 A. Sure.

15 Q. Okay. So, you know hands-down Patricia Pinkard
16 didn't see a photo spread of six African-American females
17 because you didn't prepare that, right?

18 A. Right.

19 Q. Okay. So, she would be wrong if she told the jury
20 today she looked at some pictures of some black females,
21 right?

22 A. I would say so.

23 Q. Okay. She would also be wrong, Ms. Pinkard, if she
24 testified that Clyde Baines was arrested the same day as the
25 burglary.

1 A. She would be, yes.

2 Q. Okay. Because, in fact, you know he was arrested
3 the next day.

4 A. Right.

5 Q. Right? She would be wrong if she testified that
6 she saw from her vantage point of 120 feet across the street
7 people committing the burglary removing loads of clothing
8 from the house at 2610, correct? In your itemized inventory
9 of the things taken from the burglary, the Ewings did not
10 report to you that they had clothing items missing; is that
11 fair?

12 A. That's fair.

13 Q. Okay.

14 A. Yes.

15 Q. And obviously they would have told you because they
16 did a walk-through of their own home.

17 A. Yes.

18 Q. So, if clothing wasn't taken, Ms. Pinkard would be
19 wrong in saying that she saw loads of clothing being removed
20 from the house, right?

21 A. She would be.

22 Q. Okay. And we're roughly at one, two, three, four,
23 five things that she would be incorrect on in this point,
24 give or take, okay?

25 She would also be incorrect -- you know when

1 you received the dispatch call that she reported the address
2 of the offense as 2702; is that right?

3 A. That's correct.

4 Q. And that would be incorrect because the address of
5 the offense is 2610, right?

6 A. 2610 is the complainant's, yes.

7 Q. Okay. Now, talking about identifications. Nobody
8 anywhere ever looked at this man -- and since you might have
9 been a little confused earlier, this is Clyde Baines.

10 A. Clyde Baines.

11 Q. All right? And I know it's been a year. Nobody
12 ever looked at him and said, This is the Clyde Baines I'm
13 talking about, all right? Nobody ever did that before you
14 swore out an arrest warrant for him, right?

15 A. Nobody said what? I'm sorry.

16 Q. Nobody ever looked at him and pointed at him, laid
17 eyes on him and said, Yep, that's the Clyde Baines I saw
18 breaking into the house?

19 A. That's correct.

20 Q. You swore out an arrest affidavit or somebody from
21 HPD swore out an arrest affidavit for just a black guy named
22 Clyde Baines, which isn't all that unusual of a name, right?

23 A. I wouldn't know, ma'am.

24 Q. Okay. I mean, but nobody ever said -- there was no
25 verification process that that's the guy your witnesses were

1 talking about, right?

2 A. Verification was through his address and ID, Texas
3 ID.

4 Q. Well, but what's on his ID? What's the address
5 listed on his ID?

6 A. I can't recall exactly at this time but it was --
7 it was conforming to what he said. He said his mom lives
8 over there, he stays over there. He's with Raquel.

9 Q. Okay. Let me just ask this. I mean, I've seen a
10 lot of cases and so I know that it's not unusual, even in,
11 like, domestic abuse cases, where if my husband hits me, HPD
12 still has me pick out my husband in a photo array, right?
13 You've seen that, right?

14 A. Sure.

15 Q. Okay.

16 A. Sure.

17 Q. And yet that's a domestic situation where I live
18 with the man and yet in this case, there wasn't a photo
19 array for three of the four suspects that nobody knows by
20 name?

21 A. If I may say it differently, it's not the photo
22 array of six people that I would show to domestic violence
23 cases. It would be confirming, is this him, one picture,
24 and the victim would say yes or no.

25 Q. All right. Fair enough. But you never did that

1 with Clyde Baines, did you? You never said, Hey,
2 Ms. Pinkard, this man here, Clyde Baines, is this the right
3 one? Have I gotten the right one? You didn't do that with
4 him, did you?

5 A. I didn't think it was necessary, ma'am.

6 Q. And you know that she didn't -- the Pinkards didn't
7 know my client by name, right?

8 A. Mr. -- you're talking about Mr. Harry Malone?

9 Q. Yes.

10 A. That's correct.

11 Q. And so, if you could look at the offense report and
12 kind of give me an idea, other than he's a black guy, what
13 kind of descriptors were they able to give you that you
14 said, Oh, okay, yeah, must be the one in the cop car?

15 A. If I looked at you now and I go downstairs and see
16 you again, I would say, yeah, I saw that lady upstairs.

17 Q. That's fair enough. How old are you?

18 A. I'm 45.

19 Q. Okay. And how far are we sitting across from each
20 other?

21 A. Roughly 30 feet.

22 Q. Okay. Add 30 years and 70 feet to that. In your
23 mind is it a little different now?

24 A. I can't tell you that.

25 Q. Well, I mean, you make a big deal in your offense

1 report of calling the Pinkards elderly on at least three
2 occasions, right? You make a big deal of saying that she
3 testified or told you that there were about five folks at
4 the burglary; am I right? I'm not meaning to put words in
5 your mouth. If you think that I'm not accurately reflecting
6 the words that you use in the offense report, please correct
7 me.

8 A. Yeah, you're projecting the tone, the wrong tone of
9 voice, in my report.

10 Q. That's because I'm loud. I'm not arguing with you.
11 I'm asking you about your words. Do you call the Pinkards
12 elderly?

13 A. Out of respect for them, yes.

14 Q. I mean, they're 73. I'm not quibbling with you.
15 They're older. Older.

16 A. No, but that's a way of showing respect to them.
17 That's all.

18 Q. Absolutely. Would you agree with me that as a
19 general prospect, as we age, as human beings, our eyesight
20 gets worse?

21 A. I don't know. I'm not an expert of that. My eyes
22 are getting worse because I had LASIK lately and I'm not
23 getting old.

24 Q. Okay. Would you agree with me that a distance of
25 30 feet, you're going to have a better idea and be more

1 reliable with your observations than, say, 150 feet?

2 A. I would agree with you on that, if I didn't see the
3 person every day.

4 Q. Let's talk about best practices of identification.
5 What is HPD's standard --

6 *THE COURT:* Ms. Guiney, let me stop you there.

7 *MS. GUINEY:* Very well.

8 *THE COURT:* Since you're going on some --

9 *MS. GUINEY:* I'm wordy.

10 *THE COURT:* What?

11 Ladies and gentlemen, we're going to recess
12 for the day. We're going to start in the morning at 10:00
13 o'clock. Please be in the jury room at 10:00 so we can get
14 started and remember the Court's admonishments. I'll see
15 everybody in the morning at 10:00 o'clock.

16 *(Jury not present.)*

17 *(Court in recess for the day.)*

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