

1 (Open court, defendants and jury present.)

2 THE COURT: Ms. Guiney, you have this witness
3 on cross?

4 MS. GUINEY: Yes, Your Honor, thank you.

5 JOSEPH NGUYEN,

6 CROSS-EXAMINATION (CONTINUED)

7 Q. (BY MS. GUINEY) Good morning, Officer Nguyen.

8 A. Good morning, ma'am.

9 Q. Yesterday when we concluded, when we talked about
10 the photo spreads that you prepared, how many photo spreads
11 did you prepare?

12 A. Two.

13 Q. Did those photo spreads contain the same pictures,
14 just in a different order?

15 A. Yes.

16 Q. Okay. So, when I -- can we just agree that that's
17 one photo spread, generally, with two different versions?

18 A. I suppose.

19 Q. We're going to call that the Hispanic female photo
20 spread. Can we agree to that?

21 A. Sure.

22 Q. Okay. You prepared a Hispanic female photo spread
23 containing the pictures of Raquel Garcia, correct?

24 A. Yes, ma'am.

25 Q. You did not prepare a African-American female photo

1 spread?

2 A. No, ma'am.

3 Q. Ms. Patricia Pinkard would have been incorrect when
4 she said she viewed a photo spread containing black females.

5 A. If that's what she stated, she would be mistaken.

6 Q. Incorrect. Right?

7 A. She would be, yes.

8 Q. Right. In fact, have you had an opportunity to
9 review the audio statement from the -- that you recorded on
10 July 26th when you went to interview Patricia Pinkard and
11 her ex-husband, Dwayne Pinkard?

12 A. The couple, yes, ma'am.

13 Q. Yes. And after reviewing that statement, you
14 recall that you actually didn't even show her a picture of
15 the Hispanic female photo array?

16 A. That's correct.

17 Q. So, again she would have been wrong when she
18 testified she recalls reviewing a Hispanic female photo
19 spread?

20 MS. DAVIS: Objection, speculation, he doesn't
21 know what Ms. Pinkard testified to.

22 THE COURT: Sustained.

23 Q. (BY MS. GUINEY) You did not show Patricia Pinkard
24 a Hispanic female photo spread, correct?

25 A. I did not.

1 Q. You did show a Hispanic female photo spread to
2 Dwayne Pinkard, correct?

3 A. Yes, ma'am.

4 Q. I believe that we left off yesterday, in the things
5 that Ms. Pinkard was incorrect about, you know that she was
6 incorrect about the statement that the offense occurred at
7 2702 Spence?

8 MS. DAVIS: Objection, speculation.

9 THE COURT: Sustained.

10 Q. (BY MS. GUINEY) Did the offense occur at 2702
11 Spence?

12 A. The incident did not occur at 2702 Spence.

13 Q. In fact, what address did the incident occur at?

14 A. 2610.

15 Q. Were there loads of clothing or bed sheets or any
16 sort of material reported stolen to you by the Ewings?

17 A. No, ma'am.

18 Q. Was Clyde Baines arrested on July 25th?

19 A. No, ma'am.

20 Q. Was Clyde Baines at the scene at any point in your
21 investigation?

22 A. At the scene of the incident?

23 Q. At the scene of the incident while you or Officer
24 Richard was there?

25 A. No, ma'am.

1 Q. Were there ever two black men in the back of patrol
2 cars at the same time on the July 25th day during your
3 investigation?

4 A. Not two black men.

5 Q. Not two black men. There were two people, a black
6 female and a black male, correct?

7 A. That's correct.

8 Q. But never two black men simultaneously on
9 July 25th.

10 MS. DAVIS: Objection, asked and answered.

11 THE COURT: Sustained.

12 Q. (BY MS. GUINEY) In fact, my client -- and you now
13 know that this is Harry Malone -- was the only black man
14 ever in the back of a cop car on July 25th, right?

15 A. Yes, ma'am.

16 Q. And he was the only man ever asked, Is this the guy
17 that did it, right? There weren't other folks for
18 Ms. Patricia Pinkard to choose from when making her
19 identification.

20 A. They were not asked to choose.

21 Q. All right.

22 A. They were asked to identify.

23 Q. Neither one of the Pinkards knew Mr. Malone's name
24 at the time, correct?

25 A. Not by name, correct.

1 Q. When we talk about identification procedures, can
2 you tell me what HPD's standard operating procedure for
3 identification is?

4 A. Sure. If the offense is occurring immediate and
5 the so-called suspects are in custody or detained at the
6 time, if the witness are present at the time, there were no
7 time lapse as if two, three hours or a day after, we are not
8 required to prepare a photo spread, a photo array to show to
9 the witnesses.

10 Q. And while you're not required, would you, as a law
11 enforcement officer, with your training, particularly in
12 investigation, agree with me that it is a good practice to
13 prepare a photo array or have a live lineup with more than
14 just the suspect for the person to choose from?

15 A. I would say any practice in addition to what we are
16 allowed or dictated to do would be better but at the same
17 time -- at the same time, it had been determined that it's
18 not necessary, especially when they seen these individuals
19 on a daily basis, not just once a day, repeatedly on a daily
20 basis.

21 Q. Well, isn't it true that the Pinkards told you that
22 they were familiar with Raquel Garcia, the -- they had seen
23 her out and about in that neighborhood, right?

24 A. Yes, ma'am.

25 Q. And yet, knowing everything you know from your

1 investigation, education, you didn't just take a picture,
2 one picture of Raquel Garcia out to the scene to be
3 identified, did you?

4 A. She -- like you indicated, she wasn't there at the
5 time of the two individuals' detention.

6 Q. Right, but couldn't you have just gotten one
7 picture of Raquel Garcia and when you went out there the
8 next day, say, Hey, is this the Hispanic female that you
9 saw?

10 A. Technically I could, but like you said, additional
11 practice would be better and that's why I didn't.

12 Q. When we talk about identification, can you tell the
13 jury what the term "suggestive" means?

14 A. In terms of what? I'm sorry.

15 Q. In terms of identification. Have you heard the
16 term "suggestive" used?

17 A. I've heard of it but I --

18 Q. Would you agree with me that in terms of
19 identification procedures, as law enforcement, you want to
20 stay away from suggestive identifications where you, as law
21 enforcement, are saying, Hey, is this the person you saw?
22 Right?

23 A. That's correct.

24 Q. And I'm not suggesting anything untoward. I'm just
25 suggesting as a law enforcement procedure, you want to stay

1 away from suggestive lineups. It's the same reason that you
2 don't put one black male in a photo array with six other
3 white males, right, because that would be suggestive if the
4 complainant had told you they were looking for a black man.

5 A. That's -- that would be correct.

6 Q. Okay. And understanding that show-ups, that type
7 of identification procedure where you just say, This person
8 on the scene, is this the one --

9 MS. DAVIS: Objection, counsel testifying.

10 THE COURT: Please ask a question. Ask him a
11 question.

12 Q. (BY MS. GUINEY) You conducted a show-up, right? A
13 show-up --

14 A. Of the photo array, yes, ma'am.

15 Q. No -- when I say "show-up," I want to make sure
16 that we're speaking the same language. I'm using it as the
17 type of identification that the department of justice uses
18 when they say is this the person you saw, the one person on
19 the scene. That's what I mean when I say "show-up
20 identification." Do you mean something else?

21 A. Like I indicated, ma'am, it had to do with time
22 lapse. If you were to say a show-up a day or two or a week
23 after, then I guess we would have a different understanding
24 of a show-up because it would be a photo array. Or in other
25 cases we would do -- try to do a lineup, a live lineup of

1 individuals to be picked from.

2 Q. What do you call it when you have somebody
3 identified at the scene?

4 A. An identification --

5 Q. Okay?

6 A. -- process.

7 Q. And are you familiar with the department of justice
8 standard procedures for the best practices to conduct that
9 on-scene type of identification?

10 A. I am not sure.

11 Q. Okay. Would you agree with me that in conducting
12 an on-scene identification, it would be a good practice to
13 get a description of the person being -- attempting to be
14 identified before that identification is made?

15 A. Yes.

16 Q. What types of details did Ms. Pinkard give you
17 about the clothing, the height, the weight, the physical
18 descriptors about the person she sought to identify?

19 A. In this case, since she had already indicated
20 repeatedly and was very certain that those are the
21 individuals in the patrol car at the time were the
22 individuals that she had seen on a daily basis, I went for
23 the clothing description and she did tell me it was the
24 black pants. She did give me the correct description of the
25 individuals in the backseat of the car without going to the

1 car and looking into the car to see the actual clothing
2 description. And that's what I received from Ms. Pinkard at
3 the time.

4 Q. And if she was adamant about -- just as adamant
5 about things that later proved to be incorrect, would that
6 affect your determination of her reliability of that
7 identification?

8 A. How much later, ma'am? Like, now or, like, a year
9 later?

10 Q. Testifying under oath, at the scene, when she
11 called 911 and gave them the wrong address?

12 A. Okay.

13 Q. Pick your time frame.

14 A. Well, at the time it was immediate. It was, like
15 she indicated, 20 minutes, she observed the ongoing incident
16 for 20 minutes before she started contacting the police and
17 when I talked to her, it was a continuous situation, in my
18 belief, and at that time, I would say that that would be a
19 good indicator. If it were today that she had to testify,
20 like you indicated yesterday, they are elderly and clothing
21 description could be mistaken. And like I admitted to my
22 lack of that ability as well, I could look at a person right
23 now and would be able to say, yes, I've seen her or seen him
24 upstairs and, you know, when I see him or her downstairs but
25 if you ask me about the clothing description, it may not be

1 correct and I could only speak for myself.

2 Q. In fact, on July 25th, she told you that the man
3 didn't have a shirt on, according to the offense report.
4 Remember looking at that yesterday?

5 A. The man, yes.

6 Q. And that man is the one she identified as Harry
7 Malone?

8 A. Mr. Harry, yes.

9 Q. And with regard to Mr. Pinkard, did he tell you
10 that the man was wearing khaki pants?

11 A. No, he said it was black pants that he was wearing.

12 Q. You actually physically arrested Clyde Baines the
13 next day. Do you recall that?

14 A. Yes, I recall it. My partner and I did, along with
15 our supervisor.

16 Q. How much time did you spend with Clyde Baines?
17 Give the jury an idea as to how long generally the whole
18 booking process, the transportation, the interview --
19 because you also attempted an interview with Clyde Baines --
20 how long that takes.

21 A. I say we spent about 15 at the -- 15 to 20 minutes
22 at the residence of the -- I believe his name is Leo --

23 Q. Where he was arrested?

24 A. Cleo. Where he was arrested, yes. We did ask for
25 permission to look for items and it took a little bit

1 longer. I suppose it was about 20 minutes or so, spending
2 time there. Takes about ten minutes to -- or 15 minutes to
3 get him back to the station and we kept him probably about
4 30 to 45 minutes, about 45 minutes at the station for the
5 interview before Officer Huff contacted the DA's Office and
6 to reaffirm their authorization for charges on the charge,
7 on the burglary. And from there we transported him to
8 downtown.

9 Q. So, roughly two hours-ish?

10 A. About an hour and a half or two hours, yes.

11 Q. You're obviously in close proximity the whole time,
12 right?

13 A. In proximity to?

14 Q. I mean, you're physically close to him? I mean,
15 you've arrested him, he's in your cop car, you're
16 interviewing him. These are all things you're doing in the
17 same room?

18 A. I would say so, yes.

19 Q. After his arrest, you got some additional
20 information, correct, with regard to the case, and you
21 identified and interviewed additional witnesses, correct?

22 A. With Mr. Baines?

23 Q. Just in general. I'm not talking about
24 interviewing Mr. Baines. I'm talking about you met with
25 additional witnesses who had information on the case.

1 A. The witnesses -- the witness -- if you meant
2 Ms. Raquel, yes.

3 Q. No, I actually meant Burt Gilmore. Did you
4 interview Burt Gilmore?

5 A. Later after his arrest.

6 Q. Right.

7 A. Yes.

8 Q. In terms of the investigation. And Burt Gilmore,
9 you know, had -- was in possession of the property that had
10 been taken from the Ewings' home, correct?

11 A. You said I knew that he had in his possession? Is
12 that what you're asking me? I'm sorry.

13 Q. Aren't you aware he sold back the stolen property
14 to the complainants in the case?

15 A. Yes, I was aware of that but at the time if you
16 asked me if I was aware at the time that he actually had
17 possession, he was in -- he was actually in possession of
18 those property, then I didn't know at the time.

19 Q. I apologize. I'm just asking in general during the
20 course of your investigation, you came to know --

21 A. Burt Gilmore.

22 Q. -- Burt Gilmore at one point had been in possession
23 of the property stolen from the Ewings' home?

24 A. Yes, at that point he told me he sold it --

25 MS. GUINEY: Objection, hearsay.

1 THE COURT: Okay. Just answer the question.
2 Maybe you can ask your question more directly.

3 MS. GUINEY: Yes, Judge.

4 Q. (BY MS. GUINEY) Burt Gilmore was originally -- or
5 eventually, pardon me -- filed on for felony theft, correct?

6 A. By "original," what do you mean "original"?

7 Q. At some point during the investigation, you had
8 charges or somebody from HPD had charges filed on Burt
9 Gilmore for felony theft.

10 A. Yes.

11 Q. And those charges were ultimately dismissed?

12 A. I don't know.

13 Q. During your investigation you got information that
14 there might also be a person, a black male by the name Q
15 involved in the burglary, correct?

16 A. Yes, ma'am.

17 Q. Did you run the nickname Q in the HPD database to
18 see if you could develop a suspect any further?

19 A. We attempted, yes.

20 Q. And were you able to come up with a name, Quavon
21 James?

22 A. I couldn't recall that.

23 Q. Or James Quavon?

24 A. I'm not sure.

25 Q. Did you come up with any names?

1 A. Nothing that I could even attempt at anything
2 further than that.

3 Q. Were you given any kind of identifying information
4 other than he was a black male from the Pinkards?

5 A. Yes, the type of car that he was in. That was it.
6 Without a license plate number.

7 Q. You did not find any stolen property in the home,
8 2614, where Mr. Malone had been found after the burglary?

9 MS. DAVIS: Objection, asked and answered.

10 THE COURT: Sustained.

11 Q. (BY MS. GUINEY) Other than the property taken and
12 given -- let me start over.

13 Other than the property sold back to the
14 complainants by Burt Gilmore, were you ever able to find any
15 additional property?

16 A. No, ma'am.

17 MS. GUINEY: Nothing further on behalf of
18 Mr. Malone.

19 THE COURT: Thank you.

20 Mr. Kisluk.

21 MR. KISLUK: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 Q. (BY MR. KISLUK) Officer, just a couple questions.
24 When we talked about better practices on photo arrays, let's
25 kind of push it over to a complete investigation. Is it a

1 better practice to take or call a crime scene investigator
2 to see if there's any fingerprints or DNA left by any of the
3 suspects? Wouldn't that be a really good practice to do?

4 A. It's a possibility. It would be a good practice.
5 I could not visibly see any fingerprint to be lifted at the
6 time. And I --

7 Q. You'd agree -- I'm sorry. Go ahead.

8 A. I'm sorry. I did have a kit with me but there
9 was -- I did bring it in but there was nothing to be lifted.
10 And I had also indicated to Ms. Cynthia that it would make
11 things more messy for -- on her belongings, if she did not
12 mind, and we spoke about it. We ended up not attempting to
13 lift any prints.

14 Q. Well, but the decision on what to do in an
15 investigation really falls on your responsibility, not the
16 victims of a crime, doesn't it?

17 A. That's correct.

18 Q. Okay. So, you'd agree with me that DNA and
19 fingerprints aren't always apparent to the naked eye, right?

20 A. Fingerprints? Sometimes they are.

21 Q. But sometimes they're not, right?

22 A. Yes.

23 Q. And so, is it going to take that much longer to see
24 if there's any fingerprints left at a scene, that maybe that
25 will kind of clinch the whole thing as to who was involved?

1 That makes sense, doesn't it?

2 A. Like I said, a lot of things would make sense. A
3 lot of things, it's a possibility, but sometimes they're not
4 necessary. And almost -- in this case there are a lot of
5 smears, especially on counters, there were smears and from
6 my experience, no prints would have been lifted from those
7 areas.

8 Q. But it wouldn't take but about five or ten minutes
9 to determine that, right? I mean, see if there's any usable
10 prints, right?

11 A. I suppose.

12 Q. So, five or ten minutes to make sure that the case
13 is solid doesn't make sense to you? Or does it?

14 A. Like I said, a lot of things would make more sense
15 but things are not as perfect and in my case -- in this case
16 I have two courageous witnesses who didn't have to be there,
17 who didn't have to testify to anything, who did not have to
18 give any statement. They were out there, didn't mind to be
19 seen by the detained individuals and said something had to
20 be done, something had to be done.

21 Q. But you also know that identification sometimes can
22 be skewed; wouldn't you agree?

23 A. That's a possibility.

24 Q. And so, DNA or fingerprints would be kind of the
25 clincher, right?

1 A. That's a possibility, although DNA, I didn't see
2 any blood drops or anything so DNA might not be even
3 relevant in this case.

4 Q. But you didn't look thoroughly. I mean, blood
5 drops can be so minute --

6 A. We did look.

7 Q. They could be picked up later, right?

8 A. I'm sorry. We did look.

9 Q. And sometimes you can miss things, right?
10 Sometimes you go over a crime scene more than once, right?

11 A. I suppose.

12 Q. And so, five or ten minutes more to thoroughly
13 investigate before someone's freedom may be taken away
14 didn't make sense to you that day?

15 MS. DAVIS: Objection, Your Honor,
16 argumentative.

17 THE COURT: Can you rephrase your question,
18 please?

19 MR. KISLUK: I'll try, Judge.

20 Q. (BY MR. KISLUK) It's a better practice when
21 somebody's liberty's at stake to do a thorough
22 investigation, even if it takes five or ten more minutes,
23 right?

24 MS. DAVIS: Same objection, Your Honor,
25 argumentative.

1 *THE COURT:* Please rephrase your question.

2 *Q.* (*BY MR. KISLUK*) Would you agree with me that five
3 or ten minutes further for this investigation is the best
4 practice?

5 *A.* I want to say I disagree because we'd been there
6 for hours and spending ten more minutes would not have
7 been -- I would not have been able to obtain anything, 10,
8 20 minutes more.

9 *Q.* But you don't know that for a fact, do you?

10 *A.* Like I indicated, possibilities are always there,
11 although a lot of it is -- would be unlikely to imperfect
12 people like us.

13 *Q.* But in a burglary investigation, you want to be as
14 thorough as possible, don't you, go the tenth, ninth yard,
15 whatever you have to do to make sure you got everything
16 covered, even though it may not be apparent to the naked
17 eye.

18 *MS. DAVIS:* Objection, asked and answered.

19 *THE COURT:* I'll let him answer it one more
20 time and let's move on. Go ahead.

21 *A.* Could you repeat that, please?

22 *Q.* (*BY MR. KISLUK*) That's the only time she'll let me
23 ask that; so, I can't ask you that again.

24 When you received -- did you pay -- I'm sorry.
25 Did you play any part or see the property that was given

1 back to the Ewings?

2 A. (No response.)

3 Q. Let me try it this way. I'm sorry. Did you help
4 get the property back from Mr. Gilmore to the Ewings?

5 A. Did I what? I'm sorry.

6 Q. Did you help Mr. Gilmore get the property back to
7 Ms. Ewing?

8 A. No, sir.

9 Q. Did you ever see the property that was given back
10 to Ms. Ewing?

11 A. After, yes.

12 Q. And it's possible to get fingerprints from there as
13 to who's touched that property, isn't it?

14 A. It would be a possibility, although Mr. Burt
15 Gilmore's hand would be all over it, the complainant's hands
16 would also be all over it.

17 Q. But those are known people. Wouldn't you also, if
18 there are other fingerprints on there, be able to tell
19 whether or not somebody easily had touched that property as
20 well?

21 A. Like I said, it's a possibility, although Mr. Burt
22 Gilmore already told me that -- I'm not going to give you --

23 MR. KISLUK: I'm going to object to hearsay as
24 to what Mr. Gilmore told you.

25 THE COURT: Sustained. He stopped.

1 Q. (BY MR. KISLUK) But you could do that and you
2 could get fingerprints off of there, at least attempt to,
3 couldn't you?

4 A. I suppose so, sir.

5 Q. But you didn't do that?

6 A. I did not.

7 Q. Did you have a chance to listen back on that audio
8 recording of Ms. Pinkard on her interview with you?

9 A. Yes, sir.

10 Q. Do you recall on there hearing her state at one
11 point that she's not sure exactly what she saw?

12 A. I can't say that I could recall that.

13 Q. But you listened to it, what? Yesterday or today?

14 A. Yesterday and this morning.

15 Q. So, you listened to it twice?

16 A. Yes.

17 Q. And you don't recall that part of it?

18 A. I didn't recall having heard that part.

19 Q. When the call's coming in, the 911 call comes in to
20 dispatch, doesn't dispatch ask the person, Do you know who's
21 doing this activity, do you know the location? Don't they
22 ask them those questions?

23 A. Ask who's doing --

24 Q. For example, if I called 911, you're dispatch and
25 I'm saying, There's a problem here -- first thing they said

1 is, What's your emergency, don't they, or words to that
2 effect?

3 A. I cannot answer that for sure because I never
4 worked as a dispatch before.

5 Q. So, you have no training through what the workings
6 are of dispatch?

7 A. Not with dispatch, no, sir.

8 Q. When you arrived at a location where a 911 call was
9 made, do you introduce yourself to the people that you're
10 talking to right away?

11 A. Yes.

12 Q. You tell them, I'm Officer or Corporal Nguyen,
13 right? Do you say, I'm Corporal Nguyen with HPD?

14 A. No, I simply said, My name's Officer Nguyen.

15 Q. Officer Nguyen. You can see the uniform.

16 A. Yes.

17 Q. Do you ask that person you're speaking to right
18 away, What's your name?

19 A. Yes, if I didn't already know, sure.

20 Q. And the only way you would know is if dispatch gave
21 you the name of the caller, right?

22 A. I missed the first part. I'm sorry.

23 Q. Sure. The only way you would know their first name
24 or their name is the dispatch, when they sent you the
25 communication, they told you who the person was?

1 A. No, sir.

2 Q. Okay. So, if I got a 911 call to my house and
3 you're coming, you would know who I was or you wouldn't?

4 A. No, I would not know.

5 Q. So, you would introduce yourself and ask them their
6 name?

7 A. Yes, may I know who you are, yes.

8 Q. Do you ever ask them for identification at all?

9 A. If they look suspicious, yes, I would ask for some
10 type of ID, sure.

11 Q. But if they didn't, you'd say, I take your word
12 that you are who you say you are?

13 A. For the most part, yes, sir.

14 Q. Now, a minute ago you -- when asked about doing a
15 photo array, you say it's a better practice if somebody's --
16 if a suspect is picked up the next day, it's a better
17 practice to do a photo array, correct? Not that you're
18 required to, but it's a better practice to do a photo array?

19 A. Yes, and it depends on the situation as well.

20 Q. And you thought it was a good enough practice you
21 did this with Ms. Garcia, right, with Raquel Garcia?

22 A. Sure.

23 Q. Even though the Pinkards told you they knew -- I
24 know this lady, I see her around here all the time?

25 A. Only by sight, yes.

1 MR. KISLUK: That's all I have, Judge. Pass
2 the witness.

3 THE COURT: Ms. Davis?

4 MS. DAVIS: Yes, Judge, thank you.

5 **REDIRECT EXAMINATION**

6 Q. (BY MS. DAVIS) How long were you on the crime
7 scene at 2610 Spence Street?

8 A. I would say at least two hours, two hours and a
9 half.

10 Q. Did you run through it in five minutes?

11 A. No, ma'am.

12 Q. Okay. You were asked a lot of questions by
13 Ms. Guiney about the two photo arrays yesterday. Can you
14 explain your confusion to the jury?

15 A. Sure. In that, I would like to, if I may,
16 apologize to the Court and also to the members of the jury,
17 I just felt offended when I was used -- I was being used to
18 discredit the witnesses whom I thought to be very courageous
19 and --

20 MR. KISLUK: Judge, I object as improper
21 testimony and speculation and as well as mischaracterization
22 of the testimony that was given yesterday.

23 THE COURT: Listen to the question that she
24 asked and just answer the question she's asking. That will
25 solve that problem.

1 THE WITNESS: Yes, ma'am.

2 Q. (BY MS. DAVIS) Just explain your confusion on the
3 two-photo-array answer you were trying to give.

4 A. I was mistaken by saying that I showed it to both
5 witnesses at the time, although I did make -- but at the
6 time I arrived at their residence, spoke to them briefly, to
7 both of them briefly and learned at the time that only
8 Mr. Dwayne Pinkard was the one who was able to see any
9 involvement regarding Ms. Raquel Garcia. He was the only
10 one who could say, Yeah, I saw her did this -- do that,
11 while Ms. Patricia Pinkard said that I didn't see or she
12 just did not have any knowledge of Raquel Garcia. I only
13 used one photo array instead of two and show it to
14 Mr. Pinkard instead.

15 Q. In your 19 years on the police force, have you
16 dealt with situations of multiple parties involved in
17 burglaries before?

18 A. Yes.

19 Q. Okay. And in that situation is there sometimes
20 people who are inside the house and sometimes people that
21 are the getaway drivers who are outside the house?

22 A. Yes.

23 Q. And so, could there be a situation where there may
24 be fingerprints of one defendant inside the house and no
25 fingerprints outside?

1 A. That's a possibility.

2 Q. Okay. And also in your experience and expertise as
3 a investigator with the Houston Police Department, is it
4 sometimes a possibility for people to use blankets and
5 comforters to take items outside the home?

6 A. Sure, that's a good possibility.

7 Q. The defense attorneys also asked you lots of
8 questions about identification. In situations where a
9 defendant or a suspect is still on the scene, what is the
10 practice that you use most as far as allowing the witness to
11 identify the suspect?

12 A. We simply have the witness, if they're -- they want
13 to, they could come to the patrol car and do that or they
14 could stay behind glass, behind the windows and look out as
15 we bring the individual, the detained individuals out of the
16 patrol car and just have them stand in -- on the roadway and
17 they would say -- they would do their identification part.

18 Q. And Ms. Guiney brought up to you yesterday about a
19 case of -- a possibility of -- a domestic violence case
20 where a husband and wife -- have you dealt with any cases
21 like that before?

22 A. Mostly those cases, yes.

23 Q. Okay. And have you -- do you use lineups in those
24 type of cases?

25 MR. KISLUK: Judge, I object as to relevance.

1 It's not a domestic assault case.

2 *THE COURT:* Overruled.

3 A. I've never used any lineups in cases of family
4 domestic violence.

5 Q. (*BY MS. DAVIS*) And is that because they know them
6 by name and sight?

7 A. Yes, ma'am.

8 Q. Who gave Burt the items stolen out of 2610 Spence
9 Street?

10 *MR. KISLUK:* Judge, I would object. Calls for
11 hearsay.

12 *THE COURT:* If you can answer that based on
13 your personal knowledge, not something that somebody told
14 you.

15 A. I don't have any knowledge.

16 *MS. DAVIS:* Nothing further, Judge.

17 *THE COURT:* Ms. Guiney.

18 *MR. KISLUK:* Just a follow-up question, Judge.

19 *MS. GUINEY:* I don't have anything.

20 *MR. KISLUK:* Just a follow-up question, Judge.

21 *THE COURT:* Okay.

22 **REXCROSS-EXAMINATION**

23 Q. (*BY MR. KISLUK*) I want to make sure I'm clear.

24 You don't do show-ups and lineups or photo arrays in
25 domestic assault cases because the victim tells you who the

1 person is that assaulted them, right?

2 A. Yes.

3 Q. They name them by name when they call 911.

4 A. Sometimes.

5 Q. Not all the time?

6 A. Most of the time, no.

7 Q. So, your testimony is that on those kind of cases
8 when they know the person, they just say, I'm being
9 assaulted; that's it?

10 MS. DAVIS: Objection, speculation at this
11 point.

12 THE COURT: Overruled.

13 MR. KISLUK: Judge, he's --

14 THE COURT: Overruled.

15 Q. (BY MR. KISLUK) Okay.

16 A. What we get from dispatch --

17 Q. My question, and I'll rephrase it: Most of the
18 time then, they just call and say, I'm being assaulted, and
19 then you just go up and show up and grab somebody?

20 A. No.

21 MS. DAVIS: Objection, speculation. He
22 doesn't know what they say in 911 calls.

23 THE COURT: Sustained. You need to rephrase
24 that.

25 Q. (BY MR. KISLUK) When you get information from

1 dispatch and you get to the crime scene and talk to the
2 victim, they tell you who assaulted them right then and
3 there, don't they?

4 A. Yes, sir.

5 Q. And a lot of times when you get that information
6 from dispatch, they'll say we have a female named so-and-so
7 at this address who was assaulted by her husband so-and-so,
8 right?

9 A. Not necessarily, sir.

10 Q. Most of the time, though, right?

11 A. No, sir. We don't get a name.

12 Q. But you get the right address, don't you?

13 A. Not always.

14 Q. So, when somebody calls -- if I called and said my
15 wife is beating me or threatening me with a gun, here's my
16 address, that's not passed on to you as the officer
17 responding?

18 A. Yes.

19 Q. Okay. So, do you have the address?

20 A. Are you asking me if I get the correct address all
21 the times? I said not all the times.

22 Q. 95 percent of the time?

23 A. That --

24 MS. DAVIS: Objection, speculation.

25 Q. (BY MR. KISLUK) If you know.

1 THE COURT: Sustained.

2 Q. (BY MR. KISLUK) Do you know what percentage of
3 time you actually get the right address or the correct
4 address?

5 A. I would say most of the time.

6 Q. Can you give me a percentage, if you know?

7 A. I say most of the time.

8 Q. 50 percent of the time?

9 A. I don't get all the calls, so, I --

10 Q. But of the ones that you respond to, if you know.

11 A. I would say in the 90 percent.

12 Q. When you made the scene originally on the 25th of
13 July, 2011, how did you know where to go?

14 MS. DAVIS: Objection, asked and answered.

15 THE COURT: Sustained.

16 Q. (BY MR. KISLUK) Were you provided the address of
17 2702 Spence Street?

18 MS. DAVIS: Objection, asked and answered.

19 THE COURT: Sustained.

20 Q. (BY MR. KISLUK) Were you provided 2610 Spence
21 Street?

22 MS. DAVIS: Objection, asked and answered.

23 THE COURT: Sustained.

24 Q. (BY MR. KISLUK) Were you given the address of 2614
25 Spence Street?

1 MS. DAVIS: Objection, asked and answered.

2 THE COURT: Sustained.

3 MR. KISLUK: That's all the questions I have,
4 Judge.

5 THE COURT: Anything further?

6 MS. GUINEY: No, Judge.

7 THE COURT: Sorry. I thought you deferred,
8 Ms. Guiney. I apologize.

9 MS. GUINEY: I did. It's okay.

10 MS. DAVIS: Nothing further from the State,
11 Judge.

12 THE COURT: All right. May this witness be
13 excused on call?

14 MR. KISLUK: Yes, Judge.

15 MS. GUINEY: Yes, Your Honor.

16 THE COURT: Thank you, Officer. You're free
17 to go. Please do not discuss your testimony with any of the
18 other witnesses.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Thank you so much.

21 MS. DAVIS: At this time, Your Honor, the
22 State rests.

23 MS. GUINEY: Mr. Malone rests.

24 THE COURT: Hang on. I don't think Mr. Kisluk
25 heard anything that happened. I wanted to catch him up to