

CONCEPCION - April 26, 2013
Cross-Examination by Mr. Greenlee

1 THE COURT: Please have a seat in the
2 witness stand.

3 You may proceed, Counsel.

4 MR. PHANCO: Thank you, Your Honor.

5 **JUAN OLIVAREZ,**
6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MR. PHANCO:

9 Q. All right. Officer Olivarez, can you just tell
10 us your full first and last name for the jury?

11 A. Juan Olivarez.

12 Q. All right. And where do you work?

13 A. I work for the Houston Police Department.

14 Q. Do you have a current assignment?

15 A. Yes. I'm assigned to the Robbery Investigation
16 Liaison Unit.

17 Q. How long have you been with HPD?

18 A. Thirteen years.

19 Q. How long have you been in the Robbery Liaison
20 Division?

21 A. Going on three years now.

22 Q. All right. So tell the jury and myself kind
23 of, you know, the daily life of Officer Olivarez. What
24 kind of things do you do?

25 A. We're assigned robbery cases, which we do

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1 follow-ups on. We do photo arrays, interviews, live
2 lineups and file charges.

3 Q. Pull your microphone a little bit closer so
4 that we can hear you. There you go. All right. So you
5 don't actually take, like, dispatch calls, 911 calls?

6 A. Correct. I don't take calls.

7 Q. How do you get assigned a particular case, just
8 in general?

9 A. We either get assigned from the Robbery
10 Division or we'll volunteer for calls -- or not calls --
11 but if we see a case in our area, we'll take it,
12 volunteer for it sometimes.

13 Q. So is it safe to say that if, you know, like a
14 patrol officer gets dispatched out to a robbery and does
15 an investigation without an arrest, it gets transferred
16 to you for follow-up? Is that kind of how it works?

17 A. Correct.

18 Q. So you do follow-up robbery investigations?

19 A. That's correct.

20 Q. All right. Do you recall an investigation
21 involving the robbery of Jose Valdez on October 5th of
22 2011?

23 A. Yes.

24 Q. Okay. I want to talk to you about that
25 particular investigation.

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1 A. Okay.

2 Q. Tell me how you got that case. And let's start
3 with that, kind of how did you get that case assigned to
4 you?

5 A. We got a phone call from Officer Breeden asking
6 us to assist him in investigating that case.

7 Q. Did you say yes?

8 A. Yes.

9 Q. I guess that's why you're here?

10 A. Yes.

11 Q. So tell me what happened next. What's the next
12 thing that you do? Now you say "we." Do you have a
13 partner?

14 A. Yes, Officer Bobby Jennings.

15 Q. He's available to testify in this case?

16 A. Yes.

17 Q. And so, tell me what happened. You and
18 Jennings are partners and you get assigned this case.
19 What's the first thing you do?

20 A. The first thing we do is read the original
21 offense report.

22 Q. Okay. And in the case involving Jose Valdez,
23 was there an offense report?

24 A. Yes, sir, there was.

25 Q. Did you get a chance to review it?

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1 A. Yes, I did.

2 Q. All right. What did you do next?

3 A. After we read the report, we went out to the
4 location where the robbery occurred. We went out to the
5 location where the robbery occurred, and we started
6 talking to people that live in the area asking if they
7 know anything about the incident.

8 Q. When you say you reviewed an offense report,
9 what is an offense report? Can you explain to the jury
10 what an offense report is?

11 A. An offense report are just details of the
12 incident when a crime occurs.

13 Q. And can an offense report be admitted into
14 evidence for the jury to ever see? Do you know?

15 A. I don't know.

16 Q. But needless to say, it's really to refresh
17 your memory when you come later down the line to
18 testify?

19 A. Correct.

20 Q. Now you started speaking to people in the area
21 to get leads on the Jose Valdez robbery, right?

22 A. Correct.

23 Q. Okay. At the end of talking to people in the
24 area, did you have -- well, let me ask you this: What
25 did you do next?

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1 A. Well, we obtained leads that led me to a
2 certain apartment complex --

3 Q. Okay.

4 A. -- where the suspect might live.

5 Q. Who were you looking for at the apartment
6 complex?

7 MR. GREENLEE: Objection. It's going to
8 be based on hearsay.

9 MR. PHANCO: If --

10 THE COURT: Who was he looking for?

11 MR. GREENLEE: Well, if he speaks --
12 withdraw the objection.

13 Q. (By Mr. Phanco) Who were you looking for?

14 A. A potential suspect.

15 Q. Okay. Did you have a name or anything for this
16 particular --

17 A. I was given a nickname.

18 Q. What's the nickname you were looking for?

19 A. PP.

20 Q. PP. All right. We're talking just the letters
21 P and P?

22 A. I don't know if it's the letters P and P or
23 P-E-E P-E-E. I'm not sure.

24 Q. So they didn't clarify it to you?

25 A. No.

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1 Q. All right. So you go to the apartment complex.
2 Do you speak to anybody at the apartment complex?

3 A. Yes, I spoke to employees that work in the
4 office.

5 Q. All right. Now you can't tell us specifically
6 what they said; but when you were done speaking to the
7 employees in the office, what did you do next?

8 A. I -- I obtained a person's name that it's
9 possible it might have been.

10 Q. That might be living in this area?

11 A. Correct.

12 Q. That matched what you were looking for in a
13 suspect?

14 A. Which goes by the name of PP.

15 Q. That goes by the name of PP?

16 A. Correct.

17 Q. So after you obtained that information, what
18 did you do? How did you go about -- if you got
19 information pertaining to PP, what did you do with that
20 information?

21 A. I obtained his identifying information.

22 Q. Okay. And what identifying information did you
23 obtain?

24 MR. GREENLEE: May we approach, Your
25 Honor?

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1 THE COURT: You may.

2 (At the bench)

3 MR. GREENLEE: At this point in time I
4 would make an oral motion in limine that excludes this
5 officer from testifying that this identifying
6 information could have been booking photos, prior mug
7 shots, prior convictions, arrest records, any of those
8 sort of things. I think he can testify he got the
9 information and put together a photospread, which I
10 assume is where we're going with this.

11 THE COURT: Sustained.

12 MR. PHANCO: We've already told him that
13 ahead of time.

14 THE COURT: Okay.

15 (Continuing in jury's hearing)

16 Q. (By Mr. Phanco) All right. So what is it that
17 you obtained? What information?

18 A. A name and date of birth.

19 Q. What was the name?

20 A. Alexi Hemphill.

21 Q. Okay. And were you able to find pictures of
22 Alexi Hemphill?

23 A. Yes.

24 Q. Okay. Now once you have obtained a picture of
25 a suspect, such as Alexi Hemphill in this case, what do

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1 you do with that picture?

2 A. We compile a photo array.

3 Q. Okay. Tell the jury what a photo array is.

4 A. A photo array is a -- basically, there's six
5 different photos on one page. And on the photo array we
6 try to get similar descriptors on the person who's being
7 a target, such as, you know, similar features, like the
8 tone of their skin, hair and mustache or beard, if they
9 have them.

10 Q. Okay. Why do you do a photo lineup of your
11 possible suspect along with people who look the same?

12 A. To give them a fair photo array. Whoever is
13 the target, we try to give them -- we're biased. We try
14 to be biased and give them a fair photo array.

15 Q. Now you try to be biased or you try to be
16 unbiased?

17 A. Unbiased. I'm sorry.

18 Q. No problem. So you try and get people who look
19 like your target?

20 A. Correct.

21 Q. So that nobody can just automatically pick out
22 the target; is that right?

23 A. Correct.

24 Q. So if -- for instance, in this case, you were
25 investigating an African/American male, correct?

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1 A. Yes.

2 MR. GREENLEE: This is leading, Your
3 Honor. Let the witness testify.

4 THE COURT: Sustained. Rephrase.

5 Q. (By Mr. Phanco) Were you or were you not
6 investigating a potential African/American male?

7 MR. GREENLEE: It's leading. The question
8 is: What kind of people were you investigating?

9 MR. PHANCO: Were you or were you not
10 calls for a response one way or the other. It's not
11 leading.

12 MR. GREENLEE: Excuse me, Your Honor.
13 Excuse me. That is leading. The question is: What
14 kind of people were you investigating?

15 THE COURT: Rephrase.

16 Q. (By Mr. Phanco) Okay. Kind of -- could you
17 give the ethnicity of the man you were looking for in
18 this particular case?

19 A. A black male.

20 Q. Okay. So it would be fair to say, Officer,
21 that if you did, let's say, a lineup of one black male
22 and five white males, that would be unfair to your
23 target?

24 A. That is correct.

25 Q. And so, that's why you try and put people who

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1 look similar in a lineup?

2 A. Yes.

3 Q. Okay. To be fair to the defendant or to the
4 potential target?

5 A. Correct.

6 Q. All right. Now when you spoke to Jose Valdez,
7 did you show him a photo lineup?

8 A. Yes, I did.

9 Q. Okay.

10 MR. PHANCO: May I approach?

11 THE COURT: You may.

12 Q. (By Mr. Phanco) Showing you what's been marked
13 as State's Exhibit No. 7. What is State's Exhibit
14 No. 7?

15 A. This is a photo array that me and my partner
16 showed Jose.

17 Q. Okay. And how do you know that's the photo
18 array that you showed Jose Valdez?

19 A. Because it has his signature at the bottom.

20 Q. All right. Does it have a date?

21 A. Yes, it does.

22 Q. Okay. And let me ask you this: Do you speak
23 Spanish?

24 A. Yes, I do.

25 Q. So when you were showing Mr. Valdez this

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1 particular lineup, were you able to communicate in
2 Spanish with him?

3 A. That's correct.

4 Q. Now when you show him -- or when you showed
5 Mr. Valdez a -- that particular lineup, did you give him
6 any admonishments? Do you tell him anything about the
7 lineup before he looks at it?

8 A. Yes, I do.

9 Q. What do you tell him?

10 A. I tell him -- I instruct him that the person
11 that committed the crime may or may not be present in
12 the photo array. I tell him that he's not required to
13 make any selection and that items such as head hair,
14 facial hair are subject to change.

15 Q. And so you tell him that he has the option to
16 pick nobody?

17 A. Correct.

18 Q. And you tell him that the person who committed
19 the crime may not even be in the photospread?

20 A. May or may not be in there, correct.

21 Q. And did you give Mr. Valdez all of those
22 admonishments when you showed him this photo array?

23 A. Yes, I did.

24 Q. Did you ever tell him who to pick out?

25 A. No.

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1 Q. Did you ever give him any clues as to who to
2 pick out?

3 A. No, I didn't.

4 Q. Okay. And is that the photo -- well, I guess
5 you already said it, but you can identify it via the
6 date and signature of Mr. Valdez as the photo lineup
7 that you showed him on this date?

8 A. Yes.

9 Q. And what was the date?

10 A. November the 10th, 2011.

11 Q. 2011?

12 A. Yes.

13 MR. PHANCO: I'm tendering State's Exhibit
14 7 to opposing counsel for inspection.

15 MR. GREENLEE: May I have just a moment,
16 Judge?

17 THE COURT: Yes. State's 7?

18 MR. PHANCO: Yes, Your Honor.

19 MR. GREENLEE: May I approach the witness?

20 THE COURT: You may.

21 **VOIR DIRE EXAMINATION**

22 BY MR. GREENLEE:

23 Q. Officer Olivarez?

24 A. Yes, sir.

25 Q. Can you tell, what is that right there on the

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1 side of that face? Can you at all tell?

2 A. I know it's a tattoo, because he has one.

3 Q. Well, there was a tattoo on this picture. Is
4 there a tattoo on this face on that day?

5 A. Yes.

6 Q. Okay. And if you look at the other pictures,
7 are any tattoos on any other people depicted in here?

8 A. No, sir.

9 Q. So this is the only one that has a tattoo; is
10 that correct?

11 A. Correct.

12 Q. So by virtue of the fact this is the only
13 picture that has a tattoo and the others do not, that
14 makes his picture stand out?

15 MR. PHANCO: We would object to improper
16 voir dire.

17 MR. GREENLEE: I'm asking him a question.

18 MR. PHANCO: This is subject for
19 cross-examination. If he wants to voir dire the
20 witness, he can do so; but he has to do so properly
21 or --

22 MR. GREENLEE: First of all, Your Honor,
23 it goes to whether or not I can make an objection. I
24 think I can voir dire this person for purposes of making
25 an objection.

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1 because there wasn't a proper predicate, we actually
2 laid the proper predicate. It comes in for that reason.

3 Not only that, as you can see from the
4 photo, he purposely made sure that it was a photo that
5 you can't see the tattoo so that it wasn't overly
6 suggestive. Because trying to find six other males with
7 that same tattoo in the same place would actually be
8 overly suggestive, because then they would actually be
9 able to look at the tattoo. So he actually took the
10 tattoo out, as he could, so that he would look like the
11 other males.

12 THE COURT: Okay. What's the defense's
13 response?

14 MR. GREENLEE: My only response with
15 regard to that, I'm unaware that you have to file a
16 motion to suppress before a trial. I mean, clearly we
17 have motions to suppress all the time during the trial.
18 So the mere fact I raised a potential motion to suppress
19 issue at this point in trial does not dictate whether
20 it's --

21 MR. PHANCO: In front of the jury.

22 THE COURT: Okay. I'm going to just
23 admonish the attorneys, don't address each other.
24 Address me.

25 And are you finished?

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1 MR. GREENLEE: I am, Your Honor.

2 THE COURT: Okay. The Court's ready to
3 rule. In reviewing the photos, these are
4 similar-looking men, black men, and doesn't appear to be
5 overly suggestive. But this is going to go to the
6 weight and not to the admissibility, so State's 7 will
7 be admitted.

8 MR. PHANCO: Thank you, Your Honor.

9 (Jury enters courtroom)

10 THE COURT: All right. Please be seated.
11 State, you may proceed.

12 MR. PHANCO: Thank you.

13 **DIRECT EXAMINATION (CONTINUED)**

14 Q. (By Mr. Phanco) All right. Officer, I think
15 where we left off is with State's Exhibit 7, which is
16 the photo lineup you showed Jose Valdez.

17 A. Yes.

18 Q. All right. Now that photo lineup has now been
19 admitted into evidence. And I want to ask you, in
20 response to what the defense attorney had mentioned,
21 there is a tattoo on this particular defendant, how did
22 you deal with that in coming up with a lineup?

23 A. I found a photo that has a dark shadow on that
24 side of the face, which obscures --

25 Q. Which obscures the tattoo?

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1 A. Correct.

2 Q. So that you can't see it?

3 A. Correct.

4 Q. And then he looks like the other males?

5 A. Correct.

6 Q. Now when you showed this particular lineup to
7 Mr. Valdez, who did he identify as the man that robbed
8 him?

9 A. The person in Position 6, which is Alexi
10 Hemphill.

11 Q. Is the person in Position 6, Alexi Hemphill, in
12 the courtroom today?

13 A. Yes, he is.

14 Q. All right. Could you point him out and
15 identify him, using an article of clothing that he's
16 wearing?

17 A. He's wearing a dark suit with a light blue
18 shirt and yellow tie.

19 MR. PHANCO: And for the record, the
20 officer has identified Alexi Hemphill, the defendant.

21 THE COURT: The record will reflect.

22 MR. PHANCO: And may I approach?

23 THE COURT: You may.

24 MR. PHANCO: And may I publish to the jury
25 State's Exhibit 7?

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1 THE COURT: You may publish.

2 Q. (By Mr. Phanco) All right. So the man that is
3 circled you said was Alexi Hemphill, the man who robbed
4 Jose Valdez, can you point -- you have a monitor to your
5 right. Kind of circle Mr. Valdez's signature, okay, and
6 the date that you showed him the lineup.

7 Okay. Okay. All right. Now tell the
8 jury about the three different types of identification a
9 witness can give on a photo lineup.

10 A. The three different types of identification is
11 positive I.D., tentative and negative.

12 Q. Okay. So if someone gives a negative I.D.,
13 what happens?

14 A. A negative I.D. means there was no -- no one
15 was chosen from the lineup.

16 Q. So nobody would be circled, and nobody would
17 have -- there would be no circling of any of the
18 defendants if it was a negative I.D.?

19 A. Correct.

20 Q. If it was a -- what did you say the second one
21 was?

22 A. Tentative.

23 Q. Okay. If it were a tentative I.D., what would
24 happen?

25 A. He would circle the position. Whatever

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1 position they chose, they would sign it and date it.

2 Q. Okay.

3 A. And then I would ask them whether it's a
4 positive or tentative.

5 Q. Did you ask Mr. Valdez in this case whether
6 this was a positive or tentative identification?

7 A. I did.

8 Q. And what did he respond?

9 A. He said he was positive.

10 Q. So he gave a position identification that the
11 man he circled was the man who robbed him, Alexi
12 Hemphill?

13 A. Correct.

14 Q. All right. That's Jose Valdez. Were you also
15 assigned a case pertaining to a victim, Mr. Concepcion?

16 A. Yes.

17 Q. Okay. And just for your purposes, we're not
18 using his particular last name, all right; so with his
19 first name, Concepcion, are you familiar with the
20 defendant that I'm talking about?

21 A. Yes.

22 Q. Or the victim that I'm speaking about?

23 A. Yes.

24 Q. And do you recall the -- let me ask you a
25 question. How did you get assigned that particular

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1 case?

2 A. The same way.

3 Q. So the same time you were assigned Mr. Valdez's
4 case, you were assigned Mr. Concepcion's case?

5 A. Correct.

6 Q. So you were assigned both at the same time?

7 A. Yes.

8 Q. And did you do the same investigation? I mean,
9 was the investigation you were doing with Mr. Valdez's
10 case the same investigation you were doing on
11 Mr. Concepcion's case?

12 A. Yes.

13 Q. Did you meet with Mr. Concepcion?

14 A. Yes, I did.

15 Q. Were you able to show him a photo lineup, as
16 well?

17 A. Yes, I was. I did.

18 MR. PHANCO: May I approach?

19 THE COURT: You may.

20 Q. (By Mr. Phanco) Showing you what's been marked
21 as State's Exhibit No. 8. And what is State's Exhibit
22 No. 8?

23 A. It's the photo array I showed Concepcion.

24 Q. Okay. Now what -- let me ask you this: How do
25 you know that's the photo array you showed Mr.

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1 Concepcion?

2 A. Has his signature on it.

3 Q. Okay. What about the date?

4 A. The date, also, November the 10th, 2011.

5 Q. Is that the same date you showed Mr. Valdez?

6 A. Yes.

7 Q. Now let me ask you this: Did you show them
8 both at the same time?

9 A. No.

10 Q. Did you meet with them separately?

11 A. Separately, in two different locations.

12 Q. Separately, in two different locations. Has
13 Mr. Valdez or Mr. Concepcion ever met, to your
14 knowledge?

15 A. To my knowledge, no.

16 Q. Okay. Now that's the photo lineup that you
17 showed him; and it's the same photo lineup, right?

18 A. Yes.

19 Q. Okay.

20 MR. PHANCO: And I'm going to tender
21 State's Exhibit No. 8 to opposing counsel for
22 inspection.

23 MR. GREENLEE: Just the same objection as
24 previously stated.

25 THE COURT: Okay. Objection is noted for

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1 the record. State's -- what is that?

2 MR. PHANCO: Exhibit No. 8, Your Honor.

3 THE COURT: State's 8 is admitted.

4 MR. PHANCO: And I'd ask to publish to --
5 well --

6 THE COURT: You may publish.

7 Q. (By Mr. Phanco) All right. Now was Mr.
8 Concepcion able to identify someone in this particular
9 lineup?

10 A. Yes.

11 Q. Who did Mr. Concepcion identify as the man who
12 robbed him on September 24th of 2011?

13 A. He chose the person in Position No. 6, which
14 was Alexi Hemphill.

15 Q. All right. Is Alexi Hemphill, the man who
16 robbed Mr. Concepcion on September 24th of 2011, in the
17 courtroom today?

18 A. Yes.

19 Q. Could you identify him, using an article --
20 pointing him out and using an article of clothing that
21 he's wearing?

22 A. The gentleman in the dark suit, light blue
23 shirt and yellow tie.

24 Q. All right.

25 MR. PHANCO: And for the record, Your

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1 Honor, he has identified the defendant, Mr. Hemphill.

2 *THE COURT:* The record will reflect.

3 *MR. PHANCO:* Thank you.

4 *Q. (By Mr. Phanco)* Now, did ask you Mr.

5 Concepcion whether this was a positive or a tentative
6 identification?

7 *A.* Yes, I did.

8 *Q.* Okay. And what did he tell you?

9 *A.* He said it was a positive I.D.

10 *Q.* And he positively identified Mr. Hemphill as
11 the man who robbed him on September 29th, 2011?

12 *A.* Yes.

13 *MR. PHANCO:* Pass the witness, Your Honor.

14 *THE COURT:* Okay.

15 Your cross, Mr. Greenlee.

16 **CROSS-EXAMINATION**

17 *BY MR. GREENLEE:*

18 *Q.* You indicated that before you speak with
19 someone about doing a photo array, you give them certain
20 admonishments or instructions; is that correct?

21 *A.* Yes.

22 *Q.* And do you give those instructions in writing
23 where somebody can sign and say they understand those
24 instructions?

25 *A.* We do now.

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1 Q. Well, did you then?

2 A. I don't think we did.

3 Q. Well, do you have anything that shows that you
4 in any way memorialized whether either Mr. Valdez or Mr.
5 Concepcion understood what you were saying to them?

6 A. Not in writing.

7 Q. Just what you have said today, right?

8 A. Correct.

9 Q. And now the department does memorialize that?

10 A. We do have a form.

11 Q. Why is that?

12 A. Why is what?

13 Q. Why do you memorialize it now and you did not
14 then?

15 A. They just passed, I guess, a bill or a law
16 recently.

17 Q. It's done to ensure that there is backup to
18 your testimony; isn't that correct, to make certain that
19 if you say you did X, here's proof of X?

20 A. Yes.

21 Q. And in this case, we don't have proof of what
22 you say except for your testimony; is that correct?

23 A. Correct.

24 Q. When you spoke with either -- in particular,
25 Mr. Valdez, did you have any difficulty in communicating

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1 with him --

2 A. No.

3 Q. -- as you recall?

4 A. Not that I can recall.

5 Q. Again, I assume that you do not tape anything
6 or in any way, again, memorialize your conversations
7 with any witness at the police station. Is that where
8 you spoke with him, at the police station?

9 A. No.

10 Q. Where did you speak with him?

11 A. At his residence.

12 Q. Did you take a tape-recording device with you
13 to record the conversation you had with him?

14 A. No, I didn't.

15 Q. Okay. When you talk about the types of
16 identification, that being a positive, tentative and
17 negative, would you agree with me, Officer Olivarez,
18 that if someone makes -- let me phrase it this way: If
19 someone makes a negative identification, do you then
20 recommend termination of an investigation in a case?

21 A. Do I terminate the investigation?

22 Q. Yes, sir.

23 A. No, I don't.

24 Q. So, in other words, someone can make a negative
25 identification on a photo array, and that case will

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1 still be investigated; is that correct?

2 A. Correct.

3 Q. Because there may be other forms of
4 identification other than a photo array; is that
5 correct?

6 A. Correct.

7 Q. So then the photo array is certainly not what
8 we call, necessarily, proof positive, is it?

9 A. It's a positive I.D.

10 Q. It's not necessarily proof positive. Someone
11 could say, for instance, I do not recognize a potential
12 suspect in this photo array. Your department is not --
13 or you're not then going to say, as the investigator,
14 okay, it was a negative identification; therefore, we
15 need to terminate the investigation, and that's it. You
16 do not say that, do you?

17 A. No, we don't terminate the investigation.

18 Q. So, therefore, there are other things that
19 supplement or we use in conjunction with the photo
20 array; isn't that correct?

21 A. Yes.

22 Q. Because things like lighting and other aspects
23 of a photo array could be deceiving. For example, you
24 said on direct testimony, recognizing hair can change
25 and those kind of things. So you sort of build in the

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1 notion that a photo array is not necessarily a proof
2 positive. Would you agree with that?

3 A. Can you repeat the question? I'm sorry.

4 Q. I'm sorry?

5 A. Can you repeat the question?

6 Q. Well, the mere fact that you admonish people,
7 as you said, that there can be changes, hairstyle, those
8 sorts of things, facial markings and the like, suggests
9 a photo array may not necessarily be proof positive; is
10 that correct?

11 MR. PHANCO: Your Honor, I'd object that
12 that invades the province of the jury to weigh whether
13 the weight of the testimony in this particular case and
14 the evidence.

15 MR. GREENLEE: Well, again, he is
16 testifying that he gives certain admonishments. There
17 is a reason he gives those admonishments. I'm just
18 trying to ferret out what is the purpose behind it. And
19 I've asked him, if you have a negative identification,
20 do you terminate your investigation? No. Which
21 suggests that the photospread is simply one of other
22 means used to possibly identify a perpetrator of an
23 offense.

24 THE COURT: Overruled. The witness can
25 answer.

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1 MR. GREENLEE: And I'll move on, Your
2 Honor.

3 Q. (By Mr. Greenlee) It would be true to say,
4 Officer Olivarez, you're not saying that Mr. Hemphill
5 robbed either Mr. Valdez or Mr. Concepcion, are you,
6 sir? You're saying that's what you were told; isn't
7 that correct? You're not a witness?

8 A. That's what I was told, yes.

9 Q. You're not a witness to either of these
10 instances?

11 A. Correct.

12 Q. You're simply relaying what you observed
13 somebody said; is that correct?

14 A. That is correct, yes, sir.

15 Q. After you showed the two individuals the
16 photospread, what was your involvement in this
17 particular case involving Mr. Valdez?

18 A. What was my involvement after?

19 Q. After you showed them the photo array on, I
20 think you said, November the 10th of 2011.

21 A. Okay.

22 Q. And with regards to Mr. Valdez, that was a
23 little more than a month after the incident; is that
24 correct?

25 A. Okay.

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1 Q. And with regard to Mr. Concepcion, that was
2 about almost two months after the incident. Would that
3 be accurate?

4 A. Okay.

5 Q. Are you familiar with the dates of these
6 incidents?

7 A. Yes, sir.

8 Q. Would you agree with those dates?

9 A. Yes, sir.

10 Q. Okay. After you did that, did you have any
11 further involvement in the case involving Mr. Valdez?

12 A. No.

13 Q. Okay. Did you contact the Harris County
14 District Attorney's Office? Was that your job, or was
15 it someone else's?

16 A. I contacted them.

17 Q. So you did have additional involvement. You
18 contacted the D.A.'s Office?

19 A. Not with the complainant.

20 Q. No. And perhaps I confused you. After you met
21 with Mr. Valdez, showed him the photo array, what did
22 you do next?

23 A. I contacted the District Attorney's Office to
24 see if they would accept charges or not.

25 Q. And after charges were filed, at that point in

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1 time, did you have any additional involvement in this
2 case?

3 A. Yes. We filed a warrant.

4 Q. After you filed the warrant, were you involved
5 in an arrest or anything like that?

6 A. Yes.

7 Q. And did you subsequently arrest the defendant?

8 A. I'm sorry?

9 Q. Did you arrest Mr. Hemphill?

10 A. We had --

11 Q. Did you arrest Mr. Hemphill?

12 A. Patrol units did. I didn't.

13 Q. So you did not arrest him?

14 A. But I was at the scene.

15 Q. At the point of the arrest?

16 A. Yes, sir.

17 MR. GREENLEE: I have no further
18 questions, Your Honor.

19 THE COURT: Okay.

20 MR. PHANCO: Can I have just one minute?

21 THE COURT: Yes.

22 MR. PHANCO: Just be a brief question,
23 Judge.

24 THE COURT: Okay.

25

1 **REDIRECT EXAMINATION**

2 BY MR. PHANCO:

3 Q. Opposing counsel asked you a little bit about
4 whether people who are shown lineups understand. How
5 can we know they understood? Both of the victims in
6 this case spoke primarily Spanish.

7 MR. GREENLEE: Objection, Your Honor.
8 That violates the Rule about what other witnesses said.

9 THE COURT: Sustained.

10 Q. (By Mr. Phanco) Well, what is the primary
11 language of the two victims in this case?

12 A. Spanish.

13 Q. Okay. Do you speak Spanish?

14 A. Yes, I do.

15 Q. And when speaking Spanish and telling them the
16 admonishments of a photo lineup, did you feel they
17 understood what you were saying?

18 A. Yes, I did.

19 MR. PHANCO: I pass the witness.

20 **RECROSS-EXAMINATION**

21 BY MR. GREENLEE:

22 Q. Well, it would be true, would it not,
23 Officer -- you now say that you have written
24 admonishments; is that correct, in your department?

25 A. Yes, we do.

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1 Q. Are those admonishments both in English and in
2 Spanish?

3 A. Yes, sir.

4 MR. GREENLEE: No further questions, Your
5 Honor.

6 MR. PHANCO: Nothing further of this
7 witness.

8 THE COURT: All right. You are excused.
9 Would the State like to call its next
10 witness?

11 MR. PHANCO: State will rest, Judge, at
12 this point.

13 MR. GREENLEE: May we approach, Your
14 Honor?

15 THE COURT: You may.

16 (At the bench)

17 MR. GREENLEE: The one, possibly two, more
18 than likely -- one witness I told to be here on Monday,
19 because she has children.

20 THE COURT: Okay.

21 (Off-the-record discussion)

22 THE COURT: Okay. All right. Ladies and
23 gentlemen of the jury, you get a treat. We're going to
24 recess for the day. And please remember your
25 admonitions from the Court. Do not discuss this case