

1 THE BAILIFF: The witness has already been
2 sworn, Judge.

3 THE COURT: All right. Go ahead.

4 MR. ALLARD: Thank you, Your Honor.

5 **VINCENT OLIVAREZ,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. ALLARD:**

9 Q. For the record, would you state and spell your
10 name, please?

11 A. Vincent Olivarez. O-l-i-v as in Victor,
12 a-r-e-z.

13 Q. And who is it that you work for?

14 A. The Houston Police Department, sir.

15 Q. How long have you been working for --

16 A. The police department, 13 years.

17 Q. How long have you lived in Houston?

18 A. All my life.

19 Q. And why did you become a police officer?

20 A. I wanted to help people, people that get
21 victimized. I want them to feel safe.

22 Q. When you became a police officer, what kind of
23 training and experience did you go through to become --
24 to have your current job?

25 A. The Houston Police Academy, which is six months

1 long. And then additional training, which is on the
2 streets. We have to learn -- in the academy, we learn
3 our -- the state laws, city ordinances, and then when we
4 go to the streets, we put those into play.

5 Q. And do you have any specialized training?

6 A. Investigative training, yes, sir.

7 Q. And in 2010, what was your job with HPD?

8 A. I was an investigator for the Investigative
9 First Responder Division.

10 Q. What is that?

11 A. We work cases. We investigate cases such as
12 robberies, assaults, burglaries, that type of crimes.

13 Q. And do you have to have any kind of extra
14 training or extra experience in order to have that job?

15 A. Yes. We have to go to basic investigative
16 school, as well as the advanced investigator school.

17 Q. What are some of the things they teach you
18 while you're going through investigator school?

19 A. Photo arrays, how to interview people, how to
20 talk to individuals, to make them feel comfortable and
21 to respect them so that they respect you during the
22 interview.

23 Q. And you completed all that training
24 successfully, I take it?

25 A. Yes.

1 Q. How long had you been in IFR in 2010?

2 A. In 2010, it was roughly about a year-and-a-half
3 or so.

4 Q. So, fairly new at it?

5 A. Yes, sir.

6 Q. Were you handed a case that happened on
7 June 23rd, 2010?

8 A. Yes.

9 Q. And specifically the Family Dollar case?

10 A. Yes.

11 Q. When you were assigned this case, tell me how
12 that works.

13 A. We learn any type of evidence that may have
14 been present, such as if there's any videos, if there's
15 any type of fingerprints that were left at the scene,
16 anything of that nature, we collect that. We talk to
17 complainants, witnesses, get information that would help
18 us in the investigation.

19 Q. And in this case, what were some of the things
20 that you did?

21 A. Some of the things that I did that day or
22 throughout the investigation?

23 Q. To start the investigation.

24 A. The investigation? Spoke with the -- there was
25 two complainants that were robbed or that were present

1 at the time of the robbery. Spoke with them, got their
2 information, and then gathered as much evidence and
3 information about what occurred during the robbery.

4 Q. And what were the names of the people that you
5 interviewed?

6 A. One was -- it was Hurtado and Oten, I believe.
7 Yes, Chantell Oten and Guadalupe Hurtado.

8 Q. And were you able to collect any fingerprints
9 from the scene?

10 A. No, sir.

11 Q. What about shell casings?

12 A. No, sir.

13 Q. DNA?

14 A. No, sir.

15 Q. Were there any other witnesses besides the two
16 that you interviewed?

17 A. No, sir.

18 Q. And a store video?

19 A. Yes, sir.

20 Q. Was there anything else that you tried to
21 collect, that you wanted to collect that you weren't
22 able to?

23 A. No, sir.

24 Q. Were you given any information from the witness
25 Guadalupe Hurtado about the possible suspects?

1 A. Build and a license plate of a vehicle that was
2 driven off by the two suspects.

3 Q. And did you do any investigative work with the
4 license plate information you were given?

5 A. Yes.

6 Q. And did you develop a suspect off of that
7 information?

8 A. We did.

9 Q. And do you remember the suspect's name?

10 A. The first suspect was a Marcus Whitaker, if I'm
11 not mistaken.

12 Q. And when you developed that suspect, what did
13 you do with that information?

14 A. I got ahold of him, I put a photo array
15 together -- excuse me. I got a photo array together and
16 presented that to both of the witnesses. After getting
17 a tentative I.D., which --

18 Q. So, you did a photo array?

19 A. Yes, sir.

20 Q. Okay. Does your agency have a written protocol
21 on how to do a photo array?

22 A. Yes, sir, we do.

23 Q. And did you follow the protocol?

24 A. I did.

25 Q. Explain to me what the protocol is or was in

1 2010?

2 A. In 2010, what we have to do is get descriptors
3 that are common to the defendant, whether it be hair
4 color, facial hair, race, build, all that. We put that
5 into a database and that database will generate numerous
6 pictures of the individual that we put in. And at that
7 point, we pick the best five, including the defendant,
8 and put it in a photo array. And from there, we keep
9 that photo array from the complainant until we present
10 them with a witness admonishment.

11 Q. So, that's how you create your photo array?

12 A. Yes, sir.

13 Q. And you created a photo array for the first
14 suspect?

15 A. That's correct.

16 MR. ALLARD: May I approach the witness?

17 THE COURT: Yes.

18 Q. (By Mr. Allard) I'm showing you what's been
19 admitted into evidence as State's Exhibit No. 13. Do
20 you recognize that (indicating)?

21 A. Yes, sir.

22 Q. And is that the photo array that you were
23 referring to as far as the first suspect?

24 A. Yes, sir, that's correct.

25 Q. When you showed that to Guadalupe Hurtado, what

1 type of identification did you get from her?

2 A. I got a tentative identification.

3 Q. Explain to me what a tentative identification
4 is.

5 A. A tentative identification is they're not
6 certain that that is the individual. It's possible that
7 that is the person.

8 Q. And once you have that information, what did
9 you do?

10 A. I followed up on that. I got ahold of that
11 individual and I ended up actually getting a pocket
12 warrant. A pocket warrant is -- for the jury, is a
13 warrant that that individual, once it's served, they do
14 not have the right to say "no," it is actually a warrant
15 from a magistrate. It's just not in the system.

16 Q. Did you use that pocket warrant on this
17 suspect?

18 A. I did -- well, no. I'm sorry. I contacted
19 him. He told me he had a lawyer. I gave him the
20 opportunity to speak with his lawyer and meet me at the
21 district attorney's office, actually up here on the
22 fourth or fifth floor -- third floor -- I'm sorry -- and
23 the three of us met.

24 Q. So, he came voluntarily?

25 A. Yes.

1 Q. And were you able to rule him out as a
2 suspect --

3 A. Yes.

4 Q. -- in the Family Dollar robbery?

5 A. I'm sorry. Yes.

6 Q. What did you do next?

7 A. At that point, I then inactivated the case
8 until we got further leads.

9 Q. And did you get an additional suspect?

10 A. I did.

11 MR. ALLARD: May we approach, Your Honor?

12 THE COURT: Yes.

13 (At the Bench, on the record)

14 MR. ALLARD: On the motion in limine, she
15 said any anonymous tips. They had a Crime Stoppers'
16 tip. It wasn't anonymous. It was confidential. I was
17 just going to approach before we addressed it.

18 MS. BIGGAR: Your Honor, we don't have the
19 person from the Crime Stoppers. We would object at this
20 time. We don't have any way to cross-examine and find
21 out what their motive, find out what their purpose was,
22 anything. You know, at this point they developed a tip
23 and they did a photospread, but we don't have that
24 person here and we've never been given a name to
25 investigate or to find any information on.

1 MR. ALLARD: I wasn't planning on
2 mentioning the Crime Stoppers' tip. Just that we have
3 another suspect and move forward.

4 THE COURT: Yeah. I don't think there's
5 any way to do it. I mean, there's no way to confront
6 the information. So, yeah, I agree. Keep that out.

7 MS. BIGGAR: Thank you, Judge.

8 MR. ALLARD: Okay.

9 (Open court, defendant and jury present)

10 Q. (By Mr. Allard) Did you show Guadalupe Hurtado
11 a second set of photos?

12 A. A second set of photos? Yes, sir.

13 MR. ALLARD: May I approach the witness?

14 THE COURT: Yes.

15 Q. (By Mr. Allard) I'm showing you State's Exhibit
16 No. 14. Admitted into evidence. Do you recognize this
17 (indicating)?

18 A. Yes.

19 Q. Okay. And what is State's Exhibit No. 14?

20 A. This is a second photo array, which included
21 the defendant in this case.

22 Q. And when you showed this to Guadalupe Hurtado,
23 did you follow protocols and admonish her properly?

24 A. Once again, yes, sir, I did.

25 Q. And what was the admonishment that you gave

1 her?

2 A. It's the witness admonishment. Can I show the
3 jury what it looks like?

4 Q. Would you mind reading the admonishment --

5 A. No, not at all. The admonishment shows that in
6 a moment you will be shown a group of photographs --

7 MS. BIGGAR: Your Honor, at this time, I
8 would object as cumulative. It's offered into evidence.
9 If the jury wants to read it, they can do so in the
10 back.

11 THE COURT: Overruled. You can read it,
12 but you do need to slow down.

13 THE WITNESS: Sure.

14 A. In a moment, you will be shown a group of
15 photographs. This group of photographs may or may not
16 contain a picture of the person or persons involved in
17 the crime now being investigated. Keep in mind that
18 hairstyles and facial hair may be easily changed. Also,
19 photographs may not always depict the true complexion of
20 the person. It may be lighter or darker than shown in
21 the photograph. Pay no attention to any markings or
22 numbers that may appear on the photographs or any other
23 differences in the types of style of the photographs.
24 You are not under any obligation to pick anyone from the
25 presentation. When you have looked at all the

1 photographs, tell me whether or not you see the person
2 or persons who committed the crime. Do not tell other
3 witnesses that you have or have not identified anyone.

4 Q. (By Mr. Allard) And after you read that
5 admonishment to her, did she sign that document?

6 A. She did, yes, sir.

7 Q. And did you give her plenty of time to review
8 the photos?

9 A. Yes, sir.

10 Q. And what type of identification did she give on
11 State's Exhibit No. 14?

12 A. This was a positive I.D.

13 Q. And explain to me what a positive I.D. is.

14 A. A positive I.D. is -- when we're given a
15 positive I.D. from a witness or a complainant, that is
16 they are certain that that is the person that committed
17 the crime.

18 Q. With this investigation, what was the next work
19 you did with this robbery?

20 A. At that point we -- or excuse me -- I went to
21 the D.A.'s -- contacted the district attorney's office,
22 told them all the evidence that we had, and it was
23 strong enough to get the warrant put out on the
24 defendant.

25 Q. And later did you have an opportunity to

1 interview the defendant?

2 A. I did.

3 Q. When you spoke to the defendant -- before you
4 spoke to the defendant, was the defendant read his
5 Miranda rights?

6 A. Yes.

7 Q. And what is the procedure for reading or
8 informing the defendant of his Miranda rights?

9 A. To ensure that he understands if he waives his
10 rights to speak to an officer about the case.

11 Q. Okay. That's the purpose. What's the
12 procedure? How do you do it?

13 A. Well, we read -- pull a card that I use. This
14 here is a card that's given to us by the district
15 attorney's office (indicating). And it has all the
16 rights, informing them that they have the right --

17 MR. ALLARD: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes.

20 MR. ALLARD: I'm going to mark the blue
21 card that Officer Olivarez has in his hands as State's
22 Exhibit No. 16.

23 A. This states that -- and it also states at the
24 top: Warning to be given before questioning an adult in
25 custody. At the time, the defendant was an adult.

1 It state's: No. 1, you have the right to
2 remain silent and not make any statement at all, and any
3 statement you make may be used against you at your
4 trial. No. 2 states: Any statements you make may be
5 used as evidence against you in court. No. 3: You have
6 the right to have a lawyer present to advise you prior
7 to and during any questioning. No. 4, if you are unable
8 to employ a lawyer, you have the right to have a lawyer
9 appointed to advise you prior to and during any
10 questioning. And last: You have the right to terminate
11 this interview at any time.

12 This is read to the defendant and assured
13 that they understand one-by-one. When I read the first
14 one, I ask them to tell me "yes" or "no" if they
15 understand, all the way through to No. 5.

16 MR. ALLARD: State would offer into
17 evidence State's Exhibit No. 16, the blue card held by
18 Officer Olivarez.

19 **(State's Exhibit No. 16 Offered)**

20 MS. BIGGAR: Your Honor, may I see the blue
21 card?

22 THE COURT: Sure.

23 MS. BIGGAR: I have no objection, Your
24 Honor.

25 THE COURT: State's 16 is admitted.

1 Q. Was the defendant under any influence of either
2 a narcotic drug or alcohol at the time of the interview?

3 A. No, sir.

4 MR. ALLARD: May I approach the witness?

5 THE COURT: Yes.

6 Q. (By Mr. Allard) I'm handing the witness what's
7 been premarked as State's Exhibit No. 12. Do you
8 recognize that (indicating)?

9 A. Yes, sir.

10 Q. And how is it that you recognize it?

11 A. This is the copy of the CD that I viewed --
12 excuse me. A copy of the video that I viewed.

13 Q. And does this -- can you recognize all of the
14 voices that are on the disk?

15 A. Yes, sir.

16 Q. Okay. And what are the voices on the disk?

17 A. My voice, as well as the defendant's.

18 Q. And when you say "the defendant," would you
19 please point to and describe the article of clothing
20 that the defendant is wearing?

21 A. The defendant right there in the vest with the
22 light blue shirt, and same color tie as his vest, with
23 the glasses (indicating).

24 MR. ALLARD: May the record reflect he has
25 identified Darryle Robertson as the defendant?

1 THE COURT: Yes.

2 Q. (By Mr. Allard) And does this video recording,
3 does it fairly and accurately represent the interview
4 with which you had with the defendant?

5 A. Yes, sir.

6 MR. ALLARD: Showing defense counsel what's
7 premarked as State's Exhibit No. 12, offer it into
8 evidence.

9 (State's Exhibit No. 12 Offered)

10 (At the Bench, on the record)

11 MS. BIGGAR: Judge, this is the statement
12 without the Miranda, so it's not a complete statement.
13 The other officer -- one officer did Miranda and one
14 officer did the statement.

15 MR. ALLARD: He testified --

16 MS. BIGGAR: But the other officer is not
17 here, so -- and I need that officer here to talk to him
18 about the Miranda. I would object at this point that
19 it's incomplete.

20 THE COURT: You can't offer it if it
21 doesn't have the warnings on it.

22 MS. BIGGAR: It doesn't have the warnings
23 on it, Judge.

24 THE COURT: Yeah, I agree.

25 MR. ALLARD: Costin had -- they do two

1 interviews and --

2 THE REPORTER: I can't hear you.

3 MR. ALLARD: One officer does the Miranda
4 and a second agg robbery, so this had to be split
5 because I can't show that other agg robbery before this
6 one, but the entries all happen right in line. He
7 actually on views, he's right there present during the
8 Miranda reading. He's testified that he was given all
9 five, voluntarily waived it, and --

10 THE COURT: I understand that, but to admit
11 the statement into evidence it has to have the Miranda
12 on it. So, I'm sustaining her objection.

13 MR. ALLARD: Okay.

14 (Open court, defendant and jury present)

15 THE COURT: The objection is sustained.

16 MR. ALLARD: May I approach the witness?

17 THE COURT: Yes.

18 Q. (By Mr. Allard) I'm showing the witness what's
19 been marked as State's Exhibit No. 8. Do you recognize
20 that (indicating)?

21 A. Yes, sir.

22 Q. And how is it that you recognize it?

23 A. This is the actual -- the photo that I used in
24 the photo array. Not this exact photo, but a copy of
25 the photo that I used in the photo array.

1 Q. Okay. Do you recognize who's on here?

2 A. Yes.

3 Q. Okay. Is this a fair and accurate
4 representation of that person?

5 A. Yes.

6 MR. ALLARD: State would offer into
7 evidence and tender to defense counsel State's Exhibit
8 No. 8.

9 (State's Exhibit No. 8 Offered)

10 MS. BIGGAR: No objection, Your Honor.

11 THE COURT: State's 8 is admitted.

12 (State's Exhibit No. 8 Admitted)

13 MR. ALLARD: Request permission to publish?

14 THE COURT: Okay.

15 Q. (By Mr. Allard) I'm showing you what's been
16 admitted into evidence as State's Exhibit No. 8. What
17 are we looking at here (indicating)?

18 A. This is the photo of the defendant, the photo
19 array that was used to show -- the photo array of the
20 six individuals shown to the witness.

21 MR. ALLARD: Pass the witness.

22 THE COURT: Ms. Biggar.

23 MS. BIGGAR: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. BIGGAR:

1 Q. Officer Olivarez, my name is Staci Biggar.
2 Have you and I ever met?

3 A. No, ma'am.

4 Q. And we've never discussed the case, we've never
5 talked about it or anything; is that correct?

6 A. That's correct.

7 Q. Now, Officer Olivarez, you've been with the --
8 in 2010 you had been with the police department for
9 eight years?

10 A. I joined the police department in 2001. So,
11 2010 would have been nine.

12 Q. Nine years?

13 A. Nine years, yes, ma'am.

14 Q. And were you -- did you -- you interviewed --
15 you interviewed Ms. Hurtado and you interviewed
16 Ms. Chantell Oten?

17 A. Yes, ma'am, that's correct.

18 Q. Okay. And can you tell me, what was the
19 description that Ms. Hurtado gave of the defendant -- or
20 I'm sorry, not the defendant necessarily -- of the
21 person that she said robbed her at the Family Dollar?

22 A. It was a tall individual, black male. At the
23 time he was wearing a do-rag on his head and he had a
24 gun, and he demanded money from her.

25 Q. Okay. So, her description was a tall black man

1 with a do-rag. Is that correct?

2 A. Yes, ma'am.

3 Q. And did she give you any specifics in height,
4 weight, facial hair, hairstyle, tattoos, any -- any
5 individual descriptions?

6 A. No tattoos, no, ma'am. No mark, no scars, or
7 anything like that, no, ma'am.

8 Q. Okay. So, no tattoos? She said that
9 specifically?

10 MR. ALLARD: Objection. Hearsay.

11 THE COURT: Overruled.

12 You may answer the question.

13 A. Can I refer to the --

14 Q. (By Ms. Biggar) Yes, sir, you may.

15 MS. BIGGAR: And, actually, Judge, if I
16 could have a copy of the -- my version is the redacted
17 version.

18 THE COURT: Okay.

19 MS. BIGGAR: Can I just make sure that we
20 have the same thing?

21 THE COURT: Yes.

22 Q. (By Ms. Biggar) Are these your notes from --

23 A. These are the notes from when I viewed the
24 video.

25 MS. BIGGAR: Judge, may I also have the

1 opportunity -- I'm sorry.

2 Q. (By Ms. Biggar) Officer Olivarez -- is it
3 Officer? Am I calling you the right title?

4 A. Yes, ma'am.

5 Q. Okay. Officer Olivarez, did you refresh your
6 memory with anything, any notes, anything that you
7 brought to court regarding this case?

8 A. Just this here for the video, but --

9 MS. BIGGAR: May I view that, also, Judge?

10 THE COURT: Sure.

11 MS. BIGGAR: Thanks.

12 THE WITNESS: You're welcome.

13 MS. BIGGAR: I'll give it back to you.

14 Q. (By Ms. Biggar) Okay. So, my question had
15 been, Officer Olivarez, did she give any -- did she say
16 how tall he was, the person that robbed her?

17 A. I'm going to try to refresh my memory here,
18 ma'am, by looking at the case file.

19 (Pause)

20 A. At the time it was an unknown black male around
21 20 years old.

22 Q. (By Ms. Biggar) So, it was an unknown black
23 male around 20 years old?

24 A. Yes, ma'am.

25 Q. There was no weight given?

1 A. No, ma'am.

2 Q. No height given?

3 A. No, ma'am.

4 Q. Didn't say facial hair, beard, goatee,
5 mustache, anything like that?

6 A. I don't believe so, no.

7 Q. What type of hairstyle that person had?

8 A. I'm sorry?

9 Q. Hairstyle?

10 A. No, ma'am.

11 Q. How --

12 A. Had a do-rag on. Couldn't see --

13 THE REPORTER: I'm sorry. Could you repeat
14 your answer?

15 A. They did not give a description of the
16 hairstyle due to him wearing a hair rag, a do-rag.

17 Q. (By Ms. Biggar) Dark, light-skinned, any
18 mention of coloring?

19 A. No, ma'am.

20 Q. Was a description given of the second suspect?

21 A. It was the same, ma'am.

22 Q. Just black male?

23 A. Twenty years old, yes, ma'am.

24 Q. And so, they gave you -- when you-all went to
25 the scene, did you-all try to look for any fingerprints?

1 A. Yes, ma'am.

2 Q. And where did you try to look for fingerprints?

3 A. On the counter, around the door area.

4 Q. Did you find any?

5 A. No, ma'am.

6 Q. No prints at all --

7 A. No, ma'am.

8 Q. -- on the counter or the door of the Family
9 Dollar?

10 A. No, ma'am.

11 Q. Not just one that might have been the suspects,
12 but any prints, like none?

13 A. No, ma'am. The surface of the counter is very,
14 very hard to extract any fingerprints.

15 Q. The door, also?

16 A. I'm sorry, ma'am?

17 Q. The glass on the door, also, you couldn't get
18 any, like none, zero?

19 A. No, ma'am.

20 Q. And who tried to look for those prints?

21 A. The officers that were originally on scene.

22 Q. Do you know who that was?

23 A. Officer Erickson and Officer Von Quentes
24 (phonetic).

25 Q. So, which one of those was the one that tried

1 to get the prints?

2 A. Officer Von Quentes.

3 Q. And is he a crime scene investigator?

4 A. No, ma'am.

5 Q. Do you know if he knows how to get

6 fingerprints?

7 A. We're all trained the same to get fingerprints,
8 ma'am. We don't have any special training, any extra
9 training to get fingerprints.

10 Q. Do you know how long he's been an officer?

11 A. Officer Von Quentes has been an officer for
12 over 20 years.

13 Q. Now, at the scene did you-all -- were you-all
14 able to see if there were any other witnesses, maybe
15 people who were in the store, shoppers, anything like
16 that?

17 A. There was no one there at the store.

18 Q. So, she said that she had given you-all a
19 license plate?

20 A. Yes, ma'am.

21 Q. And that license plate, you started
22 investigating the car, correct?

23 A. Correct.

24 Q. And the car that came back to that license
25 plate was a Chevy?

1 A. That's -- Chevy Cavalier, yes, ma'am.

2 Q. It wasn't a Ford?

3 A. No, ma'am.

4 Q. And the license plate -- with that license
5 plate, you developed a suspect from the information you
6 got about that car?

7 A. Yes, ma'am.

8 Q. And that suspect that you got the information
9 from the car was in actuality a 33-year-old black man?

10 A. Correct.

11 Q. And she was shown -- did you show her the
12 photospread?

13 A. No, ma'am. Officer Phelps, which is written on
14 the witness admonishment, showed her that photo array.

15 Q. Okay. So, you don't know what instructions
16 Officer Phelps gave her on that day regarding the
17 photospread?

18 A. I was not present.

19 Q. So, no, you don't know?

20 A. No, ma'am.

21 Q. So, did Officer Phelps create this photospread?

22 A. No, ma'am.

23 Q. Who created it?

24 A. I created the photo array.

25 Q. And then he administered it?

1 A. Yes, ma'am.

2 Q. Okay. So --

3 MS. BIGGAR: May I approach the witness,
4 Your Honor?

5 THE COURT: Yes.

6 Q. (By Ms. Biggar) On State's Exhibit No. 13, did
7 she write anywhere on here that it was a tentative I.D.?

8 A. This right here (indicating).

9 Q. So, he checks "tentative I.D." --

10 A. Yes, ma'am.

11 Q. -- and then has her circle and sign?

12 A. Yes, ma'am.

13 Q. Okay. And based off of this identification,
14 this is when you-all decided to file a warrant for his
15 arrest?

16 A. A pocket warrant, yes, ma'am.

17 Q. Okay. A pocket warrant or a regular warrant,
18 he got arrested, correct?

19 A. No, ma'am.

20 Q. So, you-all filed a warrant for his arrest,
21 though?

22 A. Again, it was a pocket warrant, which means it
23 never went into the system, which is different from a
24 warrant that goes into the system and is generated to
25 all the police departments, to our local police

1 departments.

2 Q. But you arrest people on pocket warrants?

3 A. We arrest people on pocket warrants, yes.

4 Q. And your intention on this was to arrest him on
5 the pocket warrant?

6 A. Yes, it was.

7 Q. For an aggravated robbery of the Family Dollar
8 store?

9 A. To continue an investigation, yes, ma'am.

10 Q. And you were going to file charges on that,
11 correct?

12 A. If it came out to be that he was the defendant,
13 yes, ma'am.

14 Q. Okay. So, he had been at work that day,
15 correct?

16 A. Yes, ma'am.

17 Q. So, this man that was identified as the robber
18 in the Family Dollar store actually had printouts from
19 his work?

20 A. The individual who was tentatively identified,
21 yes, ma'am.

22 Q. Okay. That you filed a warrant on?

23 A. A pocket warrant, yes, ma'am.

24 Q. And that man, if he had just been sitting at
25 home watching TV on that day, would have been arrested?

1 A. Yes, ma'am.

2 Q. But fortunately for that particular man, he was
3 able to provide printouts of his work?

4 A. Yes, ma'am. And there is a difference between
5 being arrested and being charged. He was not charged.
6 He was going to be arrested to continue the
7 investigation. After the investigation, we would have
8 determined whether he was going to be charged or not.
9 After that investigation portion, once he provided and
10 his attorney provided the evidence --

11 MS. BIGGAR: Your Honor, I'd object as
12 nonresponsive.

13 THE COURT: Overruled. You may -- next
14 question.

15 Q. (By Ms. Biggar) So, you would -- if he was
16 arrested, he would have gone to jail?

17 A. No, ma'am. Again, we would have gone to the
18 interview room -- this is how the process works. We
19 would have gone to the interview room, I would have
20 interviewed him by following the protocol, Mirandizing
21 him, interviewing him. At that point, what was
22 determined -- I would have called the district
23 attorney's office and let them know what we had. If it
24 was enough evidence, we would have arrested him, I would
25 have arrested him. If it was not enough evidence, he

1 would have been free to go.

2 Q. So, he would have been arrested and charged for
3 aggravated robbery?

4 A. No, ma'am.

5 Q. You don't call the D.A.'s office for charges?

6 A. Yes. But if they're not accepted, we do not
7 charge him.

8 Q. Right. So, at that point, then, the
9 determination was to be arrested and charged?

10 A. Excuse me?

11 Q. At that point, the determination would be
12 whether or not to be arrested or charged?

13 A. Arrested or charged, yes, ma'am.

14 Q. So, because he was fortunate to actually have
15 physical records, he was not charged?

16 A. That's correct.

17 Q. Now, down the road you developed another
18 suspect?

19 A. That's correct.

20 Q. And on September 1st, which would be almost, I
21 guess, nine weeks after the time of the robbery?

22 A. Yes, ma'am.

23 Q. So, nine weeks later, you showed a second
24 photospread to Ms. Hurtado?

25 A. That's correct.

1 Q. And on that second photospread, did you put the
2 photospread together or did Officer Phelps?

3 A. I put the photospread together.

4 Q. Did you earlier testify that State's Exhibit
5 No. 8, that that was a photo that you used in the
6 photospread?

7 A. Yes.

8 MS. BIGGAR: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes.

11 Q. (By Ms. Biggar) I'm showing you State's Exhibit
12 No. 14 and State's Exhibit No. 8. Is State's Exhibit
13 No. 8 actually the photo that was used in the
14 photospread (indicating)?

15 A. No.

16 Q. So, that was incorrect?

17 A. That was incorrect.

18 Q. Now, State's Exhibit No. 8 actually has a
19 darker background that would match the other photos; is
20 that correct?

21 A. Yes.

22 Q. And the photo that you chose to use had a white
23 background?

24 A. That was the only photo that I had.

25 Q. Okay. But you also had State's Exhibit No. 8?

1 A. I believe that was going to be afterwards, yes.

2 Q. Okay. So, you chose to use this photo, photo

3 No. 3 (indicating)?

4 A. Yes, ma'am.

5 Q. And did you show this photospread to

6 Ms. Hurtado?

7 A. Yes, ma'am.

8 Q. And you had had her circle and sign?

9 A. That is the one that she circled and signed,
10 yes, ma'am.

11 Q. And where is the original photospread?

12 A. That cannot be located.

13 Q. So, we no longer have the actual one that she
14 signed and circled, correct?

15 A. No, ma'am.

16 Q. And where is that photospread?

17 A. I do not know. If I knew, I would have had it
18 here in court, ma'am.

19 Q. Is that the only thing that's been lost in this
20 case?

21 A. Yes, ma'am.

22 Q. And why did that not get put with the file?

23 A. Everything was with the file. I do not know
24 where it went from our file. When we blue-back our
25 files, we send them to our division. And then once they

1 go to our division, they're out of our hands.

2 Q. So, this piece of evidence is missing?

3 A. Yes, ma'am.

4 Q. And we don't know if there's other pieces of
5 evidence missing?

6 A. We do know that, ma'am.

7 Q. So, you said that you put this photo array
8 together with the -- with the procedures of 2010?

9 A. Yes, ma'am.

10 Q. Are there different procedures now for 2015?

11 A. Yes, ma'am.

12 MR. ALLARD: Objection. Relevance.

13 THE COURT: Overruled. You may answer.

14 Q. (By Ms. Biggar) What are the changes in those
15 procedures now?

16 A. The changes in the procedures now is that we --
17 if I, as the investigating officer, puts the photo array
18 together, I would have to get another officer who knows
19 nothing about the case to randomize those photographs.
20 And at that point, I can show the photo array. Or if
21 they're not randomized, reshuffled basically, then I can
22 get another officer who does not know about the case to
23 show the photo array.

24 Q. Okay. So, in this particular case in 2015 you
25 wouldn't be able to do the same thing that you did in

1 2010?

2 A. That's correct.

3 Q. And in this particular photospread, you knew
4 that the suspect was number three?

5 A. Yes, ma'am.

6 Q. And you put the photospread together and
7 decided how you were going to put this photospread
8 together knowing that this was the suspect?

9 A. No, ma'am. Again, as I stated earlier, when we
10 put them into the database, it randomizes where they go.
11 I don't pick where they go.

12 Q. But you chose the light-colored background?

13 A. That's the only picture I had at the time.

14 Q. And when you went back -- after she had already
15 made an identification for one person who could have
16 possibly been the person that robbed the Family Dollar
17 store and had been wrong, you went back a second time
18 and had her identify somebody that you thought was a
19 possible suspect for the Family Dollar store?

20 A. That's the person she chose. I didn't have her
21 identify anyone, ma'am.

22 Q. Okay. But you're the one that executed this
23 photo array?

24 A. Yes, ma'am.

25 Q. And I guess they changed that policy because of

1 suggestion?

2 MR. ALLARD: Objection. Speculation.

3 THE COURT: Sustained.

4 Q. (By Ms. Biggar) This blue card, State's Exhibit
5 No. 16, you didn't read the entire thing to the jury,
6 correct?

7 A. Yes, ma'am.

8 Q. You just read the rights to the jury; you
9 didn't read the second portion, right?

10 A. That's the only portion we read to individuals
11 that are being -- excuse me -- individuals that are
12 being interviewed, ma'am.

13 Q. But they also work both the second portion so
14 that police officers would know suggestions concerning
15 the warnings, right, and how to properly take a
16 statement?

17 A. Yes, ma'am.

18 Q. And this -- this portion would give the
19 information as to how to make sure or verify when you
20 are doing a statement, how that person would have
21 knowingly, intelligently, or voluntarily been waiving
22 their rights; is that correct? Is that what the second
23 portion talks about?

24 A. Yes, ma'am.

25 Q. And what procedurally you're supposed to do

1 about that?

2 A. The only procedure that we follow are the first
3 five. And we explain to them during the interview that
4 if they understand the rights, state "yes;" if they do
5 not, state "no." And we will explain to them what their
6 rights are so that they can or cannot waive their
7 rights.

8 Q. Okay. So, the second portion of the card, the
9 next six then, you-all don't pay attention to that?

10 A. We do not read to the individuals that we
11 interview that, ma'am.

12 Q. Okay. So, that's not important, correct?

13 A. We do not read them that, ma'am.

14 Q. But it's on there for their knowledge?

15 A. It's only for our knowledge, yes, ma'am.

16 MS. BIGGAR: Your Honor, at this time, I
17 pass the witness.

18 THE COURT: All right. Mr. Allard.

19 MR. ALLARD: May we approach, Your Honor?

20 THE COURT: Okay.

21 (At the Bench, on the record)

22 MR. ALLARD: With the Miranda and the
23 video, they were separated and supplied to defense
24 attorney in advance and she knew that they had been
25 separated because there's two different witnesses that

1 have to sponsor the videos. Costin has to sponsor the
2 Miranda, Olivarez sponsors the interview. In between
3 those two, Costin conducted another interview --

4 THE REPORTER: I'm sorry. Can you slow
5 down?

6 MR. ALLARD: Costin conducted another
7 interview about one of the extraneous robberies. Those
8 were separated so that no possibility of a mistrial by
9 playing it into -- the other act would happen. Defense
10 counsel was aware they had been separated. I intend on
11 calling on both witnesses to sponsor both sections of
12 the video. They will be in two different pieces,
13 State's Exhibits 11 and 12. Do they need to be on the
14 same disk?

15 THE COURT: The Code is clear. You can't
16 change it. I'm not going to change it. It's not
17 admissible in the current form that it's in.

18 MR. ALLARD: Okay. So, they both need to
19 be on the same disk, Your Honor; is that correct?

20 THE COURT: Yes.

21 MR. ALLARD: Okay.

22 THE COURT: You can redact it.

23 MS. COLLINS: Judge, we'll make sure we get
24 that done during the lunch break, obviously. I would
25 ask at this point to pass this witness. Our officer

1 still has not shown up. He's saying he's on his way,
2 but is not here yet. And we'd ask that we be able to
3 take a break after this witness to be able to redo the
4 video as well.

5 THE COURT: The only problem is they
6 ordered in and their food is not going to be here till
7 12:15. So, we're just -- they're just doing nothing at
8 this point. We have to wait until they get their food,
9 then we start lunch. So, they could be sitting back
10 there for an hour-and-a-half, basically. So -- and
11 people should have figured this out before right now.
12 Okay?

13 (Open court, defendant and jury present)

14 THE COURT: Please retire to the jury room.

15 (Discussion off the record)

16 (Lunch recess)

17 (Open court, defendant and jury present)

18 THE COURT: All right. Be seated.

19 I guess I forgot to explain that when you
20 come in the room, other people are standing up for you
21 and for me. I'm the judge of the law and you're the
22 judge of the facts. So, they stand up for you. So, you
23 don't have to stand up.

24 Also, this is not kindergarten. You don't
25 have to sit in the same place, unless you want to. I

1 mean, you can sit in the same place, that's fine, but
2 there's no particular order. You can sit anywhere you
3 want to. Okay?

4 All right. State, call your next witness.

5 MR. ALLARD: No further questions for
6 Officer Olivarez, who was on the stand.

7 THE COURT: Okay. That's fine.

8 MR. ALLARD: State would call Daniel
9 Costin.

10 THE BAILIFF: He needs to be sworn, Judge.

11 THE COURT: Okay.

12 (Witness sworn)

13 THE COURT: All right. Sit down.
14 Go ahead.

15 MR. ALLARD: Thank you, Your Honor.

16 **DANIEL COSTIN,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. ALLARD:**

20 Q. For the record, would you state and spell your
21 name, please?

22 A. Daniel Costin. C-o-s-t-i-n.

23 Q. And who do you work for?

24 A. Houston Police Department.

25 Q. How long have you lived in Houston?