

1 sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 **BY MR. BURDETTE:**

4 Q. Good morning, Officer Garza.

5 A. Good morning.

6 Q. How are you?

7 A. Good. Thank you.

8 Q. Do me a favor and introduce yourself to the
9 members of the jury.

10 A. Good morning. My name is Officer Carlos Garza.

11 Q. How are you employed?

12 A. I'm employed with the Houston Police
13 Department.

14 Q. You're a certified peace officer?

15 A. Correct.

16 Q. Where are you from?

17 A. Houston, Texas.

18 Q. All right. Born and raised?

19 A. Yes, sir.

20 Q. When did you become a Houston police officer?

21 A. Started the academy in 2006.

22 Q. And how long is the academy?

23 A. Six months.

24 Q. After you complete the academy, what do you do
25 next?

1 A. After the academy, went through a training
2 phase, and then we get evaluated and...

3 Q. And after you're evaluated, then what?

4 A. Then we get assigned to whatever station,
5 patrol or whatever division.

6 Q. Okay. When you graduated from the academy,
7 what station or what division were you assigned to?

8 A. I was assigned to the Patrol Division at the
9 Southeast Mykawa Station.

10 Q. Is that where you're still assigned?

11 A. Yes, sir.

12 Q. Just tell us a little bit about the day-to-day
13 duties as a patrol officer such as yourself.

14 A. Patrol officer duties, we get dispatched to
15 emergencies, nonemergency calls. We also patrol, give
16 traffic tickets, do accidents. But the main duty of a
17 patrol officer is responding to calls, 911 calls when we
18 get dispatched. It could be from a lost child, death,
19 robbery, sexual assault, homicide. We're the first ones
20 to respond. We're the first ones on scene.

21 Q. Typically, when we're driving around the
22 community and we see someone in a marked unit, that's a
23 patrol officer?

24 A. Correct.

25 Q. And you've been doing patrol since when?

1 A. 2007.

2 Q. So, about six years up to this point?

3 A. Yes, going on seven years.

4 Q. Okay. And about five or six when you responded
5 to this case?

6 A. Yes.

7 Q. Have you responded to all those types of calls
8 that you just described, homicide, sexual assaults,
9 thefts?

10 A. Yes, sir.

11 Q. In this particular case, what part of town are
12 we talking about?

13 A. This is the southeast part of town, Houston,
14 Texas. It's closer to the Hobby Airport area.

15 Q. So 45 South?

16 A. 45 South.

17 Q. And the area we're talking about, what street
18 are we talking about specifically?

19 A. It's on Broadway.

20 Q. 8400-block?

21 A. 8400 Broadway.

22 Q. Is that in Harris County, Texas?

23 A. Yes, sir.

24 Q. Let's talk a little bit about this date in
25 particular, April 1st, 2012. At some point, were you

1 dispatched to 8400 Broadway?

2 A. Yes, sir, I was dispatched by the HPD
3 dispatcher.

4 Q. When you're dispatched, are you told about the
5 kind of call you're being dispatched to?

6 A. Correct.

7 Q. And what was this call?

8 A. It -- I got dispatched as a burglary that had
9 just occurred. And on my way to the scene, it got
10 upgraded to a sexual assault.

11 Q. So when you get that type of dispatch, what's
12 the priority level that gets assigned to that call?

13 A. That's going to be Priority 1, and we run it
14 with lights and siren.

15 Q. Is there a higher priority than Priority 1?

16 A. No, sir.

17 Q. So fair to say you get there pretty quick?

18 A. Yes.

19 Q. Any idea how long it took you from the time you
20 were dispatched until the time you got there?

21 A. Approximately three minutes.

22 Q. When you get there, describe the scene for the
23 jury. What do you see? What's going on?

24 A. Well, I pull up into the north parking lot. I
25 pull up, and as soon as I get out of my patrol vehicle,

1 I hear screaming and yelling: "Officer, help me." And
2 it's the complainant, Ms. Hernandez.

3 Q. Okay.

4 MR. BURDETTE: Judge, may I approach the
5 witness?

6 THE COURT: You may.

7 Q. (By Mr. Burdette) Officer Garza, I'm showing
8 you what's been marked as State's Exhibit 2 and State's
9 Exhibit 4. Please take a look at them and tell me if
10 you recognize them (indicating).

11 A. Yes. This is Ms. Hernandez, and this is the
12 complex where she lives in.

13 Q. Okay. Are they both fair and accurate?

14 A. Yes, ma'am.

15 MR. BURDETTE: Judge, at this time, State
16 offers State's Exhibit 2 and State's Exhibit 4 into
17 evidence. I'll tender them to opposing counsel for
18 inspection.

19 **(State's Exhibit Nos. 2 and 4 Offered)**

20 MR. RUSHING: No objections, Judge.

21 THE COURT: State's Exhibits 2 and 4 are
22 admitted.

23 **(State's Exhibit Nos. 2 and 4 Admitted)**

24 MR. BURDETTE: May I have permission to
25 publish these throughout the course of the testimony?

1 THE COURT: You may.

2 Q. (By Mr. Burdette) All right. Officer Garza,
3 let me zoom in here. We're looking at State's
4 Exhibit 2. You can see here Broadway Street; is that
5 right (indicating)?

6 A. That's correct.

7 Q. Okay. And would this direction up here be
8 north (indicating)?

9 A. That would be south.

10 Q. I had it turned upside-down?

11 A. No, that's correct.

12 Q. Okay.

13 A. Where you pointed is south.

14 Q. This would be north, and this is south
15 (indicating)?

16 A. No, sir. The other way around.

17 Q. I need to turn it around. Like this
18 (indicating)?

19 A. Correct.

20 Q. Okay. And so, what side of the street is the
21 apartment complex where you responded to on?

22 A. That's on the west side of the street.

23 Q. Can you draw a line on the screen there? You
24 can actually touch it and draw on it and show us where
25 the apartment complex is you responded to.

1 A. The complex, you want me to circle it?

2 Q. Yeah.

3 A. It's going to be this entire complex there,
4 8400 Broadway (indicating).

5 Q. Okay. That's where you responded to?

6 A. Correct.

7 Q. Show us where you pulled up to in your vehicle
8 when you responded to that call. Just the approximate
9 area.

10 A. It's going to be around here. The front
11 entrance there. I'm sorry. The north gate entrance
12 (indicating).

13 Q. And you said when you pulled up, you heard a
14 woman screaming?

15 A. Yes, correct.

16 Q. Where was she coming from?

17 A. She came from behind my car. She was back here
18 (indicating).

19 Q. All right. Did she come from anywhere in
20 particular? I mean, did you see --

21 A. Whenever I pulled up, there was a -- like a big
22 box truck and -- they honked behind -- and that box
23 truck parked behind me. So when I got out, I looked
24 back and I see her coming from the passenger side of the
25 vehicle.

1 Q. Okay. Now, you were in here when we played the
2 911 call, right?

3 A. Correct.

4 Q. Towards the end of Ms. Hernandez's statement,
5 you could hear her say, "Beep your horn," and you hear a
6 horn beep. Is that the horn beep you just described?

7 A. Yes, sir.

8 Q. All right. So when she gets out of the
9 vehicle, describe her emotional state.

10 A. She's yelling, screaming. She looks scared,
11 terrified.

12 Q. You heard the 911 call she made, right?

13 A. Yes.

14 Q. Was her emotional condition similar to what we
15 heard on the 911 call?

16 A. Yes, sir. She was speaking very fast and
17 telling me this and that. And at first, she was
18 hyperventilating, and I tried to calm her down to get
19 information.

20 Q. Okay. Were you able to obtain information from
21 her?

22 A. Yes.

23 Q. I want to go through that information
24 specifically real quick. We're looking at State's
25 Exhibit 4 here. Is this Andreeanne Hernandez

1 (indicating)?

2 A. Yes, sir, it is.

3 Q. When she came up to you, what did she tell you
4 happened?

5 MR. RUSHING: Objection. Hearsay.

6 THE COURT: Overruled.

7 A. She was telling me -- she went up to me crying,
8 screaming, saying that she was just raped, that a -- she
9 said a black male broke in her apartment and raped her.

10 Q. (By Mr. Burdette) Did she give you more
11 details? Did she give you a suspect description?

12 A. Yes, sir.

13 Q. What was that description, if you recall?

14 MR. RUSHING: Objection. Hearsay. And I'd
15 ask for a running objection.

16 THE COURT: You may have a running
17 objection. And your objection is overruled at this
18 time.

19 MR. RUSHING: Thank you.

20 Q. (By Mr. Burdette) What was the description that
21 she gave at that time?

22 A. She said it was a black male.

23 Q. Did she tell you what color shirt he was
24 wearing?

25 A. White shirt, jeans. And she said that he was

1 pushing a shopping cart.

2 Q. Was there anything unique about his shirt that
3 she told --

4 A. She said --

5 THE REPORTER: Wait. Can you let him
6 finish his question, please?

7 Can you ask it again?

8 MR. BURDETTE: Yes.

9 Q. (By Mr. Burdette) Was there any -- did she tell
10 you at that time that there was anything unique about
11 the shirt that he was wearing?

12 A. Yes, sir. She said he had her blood on his
13 shirt.

14 Q. Did she indicate why that was?

15 A. Because she was on her menstrual period.

16 Q. Besides giving a suspect description, what
17 other specific details did she give you at that time
18 about what had occurred?

19 A. She said she was awakened by a loud noise and
20 she ran out to the living room where she saw her husband
21 holding the door because he was being kicked in or
22 forced in. And she said she went over to go help him
23 hold the door, but they were overpowered by the male
24 that was kicking the door and he forced his way inside.

25 Q. Did she indicate to you at that time whether or

1 not he was armed?

2 A. She said he was possibly armed. She thought he
3 was armed.

4 Q. Did she tell you eventually that she saw a
5 weapon on him?

6 A. A knife, yes.

7 Q. Okay. What other specific details did she tell
8 you at that time about what happened once the suspect
9 made entry into the home?

10 A. He went inside and it was kind of ransacking
11 the apartment looking for -- she said he kept asking for
12 drugs, money, jewelry. And whenever they told him that
13 they didn't have any, he got more upset than what he was
14 and grabbed her husband by the throat and started asking
15 him again, "Where is your jewelry, money, and guns."
16 And at that point, she said he grabbed knives that were
17 in the kitchen.

18 Q. Did she indicate that he threatened them with
19 those knives?

20 A. Yes.

21 Q. Did she go on to describe what happened after
22 he picked up the knives?

23 A. Yes.

24 Q. And this is still at that time when she first
25 made contact with you?

1 A. Yes, sir. While we were -- I'm still getting
2 information, and at the same time, we're walking towards
3 her apartment because it was on the opposite side of the
4 complex.

5 Q. Okay. So just kind of indicate on the screen
6 there which direction you were walking.

7 A. We were here, and we were walking south along
8 this parking towards her apartment, where she indicated
9 her apartment was at (indicating).

10 Q. Okay. So for the record, you're walking from
11 north to south in the apartment complex?

12 A. Yes, sir.

13 Q. Did you have a suspect in custody at that
14 point?

15 A. No, I did not.

16 Q. Was her emotional condition similar to what it
17 was on the tape?

18 A. Yes.

19 Q. Did she tell you what happened after he grabbed
20 the knives inside the apartment?

21 A. Yes, sir. She said he was still choking the
22 husband. And at that point, one of her babies came out
23 crying and that kind of -- he kind of let go of the
24 husband and she asked him, "Can I put my babies up?"
25 And they went and put the babies in the bedroom. And at

1 that time, the defendant -- she said the male, black
2 male, walked back there with them and forced the husband
3 and two kids inside the closet while holding knives.

4 Q. And then once they were in the closet, did she
5 tell you more about what he did?

6 A. Yes.

7 Q. Okay. What is that?

8 A. He came back out to the living room where she
9 was at and made her get undressed and lay on the floor,
10 and there he sexually assaulted her.

11 Q. Did she tell you specifically what part of her
12 body he sexually assaulted her in, whether --

13 A. Yes. She said the male's penis penetrated her
14 vagina.

15 Q. Did she ever indicate to you that there was any
16 oral sex?

17 A. After -- after he penetrated her, then he made
18 her lay on the bed -- or sit on the bed and he made her
19 give oral sex.

20 Q. Okay. Did she indicate that he was armed at
21 that time?

22 A. Yes, with a knife.

23 Q. Okay. And so you get all this information
24 while you're walking with her?

25 A. Yes.

1 Q. Are you treating this as an ongoing emergency?
2 Did you feel like the suspect may still be around?

3 A. Yes, sir. And also she kept mentioning, "My
4 kids, I can't find my kids, I can't find husband." So
5 I'm also worried about the kids -- well, she's very
6 worried about the kids and the husband, and I'm also
7 wanting to make sure they're okay as well.

8 Q. Besides her emotional condition which you've
9 described, can you describe her physical condition?
10 What was she wearing at the time?

11 A. She had a longer dark shirt and boxers, like
12 men boxers.

13 Q. Okay. No pants?

14 A. No pants.

15 Q. Did she have shoes on?

16 A. No shoes.

17 Q. And so armed with that information as you're
18 walking down with her, what's going through your mind
19 about how you're going to proceed?

20 A. Well, I want to make sure that the suspect's
21 still not in the apartment, especially with the kids and
22 the husband. And at the same time -- I'm looking
23 around, but at the same time, I'm trying to grab her
24 information, as much information as I can, before
25 reaching the apartment.

1 Q. So you're worried about a suspect and people's
2 safety?

3 A. Correct.

4 Q. As you walk towards her apartment, is she
5 leading you, showing you where to go?

6 A. Yes, she is.

7 Q. At some point, do you see somebody?

8 A. We're walking down the street getting closer
9 towards her apartment, I look up and I see a black male
10 matching the description. And at that same time, she
11 points him out and says, "That's the guy that broke in
12 my house, that's him."

13 Q. And did he fit the description?

14 A. Yes, sir, he did.

15 Q. All right. So now, in your mind, you have a
16 suspect?

17 A. Correct.

18 Q. Okay. So what do you do?

19 A. I -- well, the suspect is walking towards us.
20 And at that time, he puts his hands in his waistband.
21 He had a longer shirt. Puts his hands in the waistband
22 and --

23 Q. Let me stop you right there. With that
24 information, are you concerned for your safety?

25 A. I am. My safety and Ms. Hernandez's safety.

1 Q. Okay. Describe the suspect's demeanor as he
2 comes walking towards you.

3 A. The suspect appears angry, under the influence
4 of some kind of narcotics, and he just basically runs
5 towards us.

6 Q. Knowing what she has just told you, did you
7 fear that he was violent?

8 A. Yes, especially -- you know, she said he was
9 armed and that he had just sexually assaulted her and
10 assaulted the husband by choking him and having them at
11 knifepoint. I was in fear for our safety.

12 Q. So when he comes towards you, what do you do?

13 A. I asked him several times, "Let me see your
14 hands, get your hands out of your shirt, your pocket."
15 He refuses. And at that time, I put out my sidearm.

16 Q. What's a sidearm?

17 A. I'm sorry. My gun.

18 In that split-second decision, I pulled out
19 my taser and tased him.

20 Q. When you tased him, what happened to him?

21 A. He fell to the ground. Once he was on the
22 ground, I tried to grab his hands. He had them tucked
23 underneath, so I'm not sure if he was reaching for any
24 weapons, what he was doing. I struggled with him for a
25 few minutes trying to get his hands and I couldn't get

1 his hands.

2 Then I deployed the taser again, gave him
3 one more round. They're about five seconds. And
4 finally, I was able to grab his arms and put cuffs on
5 him.

6 Q. Now, you talk about it today, two years later
7 pretty calm. What was it like that day in that moment?

8 A. Oh, it was maybe a minute or so that I was
9 trying to grab him, put his hands down his back, but it
10 seemed like an hour. I mean, I was out of breath, still
11 concerned that I couldn't get his arms out and make sure
12 that he couldn't get any kind of weapon out.

13 Q. Was your adrenaline pumping?

14 A. Yes.

15 Q. Is that kind of one of those life-or-death
16 situations?

17 A. Yes, sir.

18 Q. You were able to ultimately detain him, right?

19 A. Correct.

20 Q. While you're struggling with him, are other
21 officers arriving?

22 A. Yes, sir.

23 Q. What other officers?

24 A. Officer Newberry.

25 Q. And why are they arriving?

1 A. When it's a priority call, they dispatch other
2 officers for backup.

3 Q. And so they arrived as backup. And when
4 Officer Newberry gets there, what happens?

5 A. Officer Newberry gets there. I'm out of
6 breath. I'm -- I'm out of breath from the struggle, and
7 so Officer Newberry takes over. He searches the male,
8 the defendant. Also, he pulls out the taser darts, and
9 he finds weapons -- a knife in his pocket and two -- I'm
10 sorry.

11 Q. So you turned the suspect over to Officer
12 Newberry?

13 A. Correct.

14 Q. And then you're out of breath, but do you
15 continue with part of the investigation there?

16 A. Yes.

17 Q. Okay. What do you do?

18 A. I get more information from the complainant.

19 Q. Okay. Once you have the suspect into custody,
20 was she calmed down a little?

21 A. She was a little more calm. Her husband had
22 showed up, and he had told her the kids are fine,
23 they're at a neighbor's house, apartment. I'm sorry.

24 Q. And at that point, did she calm down a little
25 bit more?

1 A. Just a little bit, yes.

2 Q. Did she take you back to the scene of the
3 crime --

4 A. Yes, she did.

5 Q. -- their apartment?

6 A. Yes, sir.

7 Q. Okay. And without getting into the specifics
8 of what she said, did she kind of walk you through and
9 tell you what happened where?

10 A. Yes.

11 Q. Did you find that the scene corroborated what
12 she was telling you?

13 A. Yes, I did.

14 Q. You're not an investigator, though, right?

15 A. No, sir.

16 Q. Okay. So, after she gives you that
17 walk-through, what do you do?

18 A. I go ahead and call my sergeants. I then call
19 the Robbery Division and let them know what I have. I
20 told them I have a suspect in custody. And, basically,
21 they said go ahead and hold the scene until they arrive.

22 Q. All right. And "hold the scene" means secure
23 it?

24 A. Secure it, yes.

25 Q. Why is it important to secure a scene?

1 A. It's important -- that way, evidence doesn't
2 get lost or somebody comes in there and messes with
3 evidence or tampers with anything.

4 Q. All right. So, now at this point, you kind of
5 have two scenes. You've got the apartment, right, the
6 Hernandez' apartment, and then you have where the
7 suspect was taken into custody; is that right?

8 A. Yes, sir.

9 MR. RUSHING: I object to the leading.

10 THE COURT: Sustained.

11 Q. (By Mr. Burdette) Describe what happens with
12 the suspect after he's taken into custody.

13 A. He's taken into custody. Newberry puts him in
14 the backseat of his patrol car.

15 Q. Later was he searched by another officer?

16 A. Yes, sir. After the dayshift officer arrived
17 on the scene, Newberry took the suspect out of his car
18 and handed him over to the dayshift officer.

19 Q. Okay. Who was that?

20 A. Officer Martinez.

21 Q. All right. And did he search the suspect?

22 A. He did.

23 Q. Did he find evidence that he turned over to
24 you?

25 A. Yes, sir.

1 Q. Okay. What was that?

2 A. He found the complainant's -- Mr. Trevino's
3 credit card in his wallet, in the suspect's wallet.

4 Q. Was a photograph of that credit card taken?

5 A. Yes, sir.

6 MR. BURDETTE: Judge, may I approach the
7 witness?

8 THE COURT: You may.

9 Q. (By Mr. Burdette) Officer Garza, I'm showing
10 you what's been marked as State's Exhibit 5. Do you
11 recognize it (indicating)?

12 A. Yes, sir.

13 Q. Okay. Is this fair and accurate?

14 A. Yes.

15 Q. This was turned over to you by Officer
16 Martinez?

17 A. Correct.

18 MR. BURDETTE: Judge, at this time, State
19 offers into evidence State's Exhibit 5. I'll tender it
20 to opposing counsel for inspection.

21 **(State's Exhibit No. 5 Offered)**

22 MR. RUSHING: No objections, Judge.

23 THE COURT: State's Exhibit 5 is admitted.

24 **(State's Exhibit No. 5 Admitted)**

25 MR. BURDETTE: May I publish this, Your

1 Honor?

2 THE COURT: You may.

3 Q. (By Mr. Burdette) Officer Garza, what do we see
4 here (indicating)?

5 A. This is the credit card that was found in the
6 defendant's wallet that Officer Martinez found.

7 Q. The name here (indicating)?

8 A. Arrest man TREF. That's the complainant.

9 Q. Okay. At some point when you're back at the
10 house, did you make contact with the other complainant,
11 arrest man TREF?

12 A. Yes, sir, I did.

13 Q. Can you describe his emotional state?

14 A. He appeared to be angry, upset, like in shock.

15 Q. Did you have a conversation with him?

16 A. I asked him -- yes, sir -- about the details.

17 Q. Okay. Did you ask him what happened separate
18 and apart from --

19 A. Yes, sir.

20 Q. -- Ms. Hernandez?

21 A. Yes, sir.

22 Q. Why do you do that? Why do you separate them?

23 A. I don't want both -- for both complainants --
24 or it could be -- either be suspects. We always put
25 them to the side in different rooms. That way, they

1 don't listen to what the other person is saying. That
2 way, they don't give the same story.

3 Q. So there's no influence?

4 A. Correct.

5 Q. Did Mr. Trevino walk you through and tell you
6 what happened?

7 A. Yes, sir, he did.

8 Q. And without getting into what he said, did you
9 find it was consistent with what you observed at the
10 scene?

11 A. Yes, sir.

12 Q. Now, are you responsible for the crime scene,
13 for documenting and preserving the evidence?

14 A. At the time, yes, when I arrived. I'm the
15 first unit.

16 Q. Do you turn that responsibility over to someone
17 else after?

18 A. Yes, sir.

19 Q. Who is that?

20 A. It's going to be the investigators, which would
21 be Robbery and Crime Scene.

22 Q. And the Crime Scene Unit?

23 A. Yes, sir.

24 MR. BURDETTE: May I have a moment?

25 THE COURT: You may.

1 (Pause.)

2 Q. (By Mr. Burdette) Did you find a shopping cart
3 or a sheet or any other items --

4 A. I did not.

5 Q. -- with the suspect?

6 A. No, sir.

7 Q. Okay. Were there other officers who were
8 canvassing the scene looking for those items?

9 A. Officer Newberry was before he arrived on the
10 scene with me.

11 Q. And then do you have any idea what Crime Scene
12 Unit did, whether or not they did that?

13 A. I'm not sure. I believe the Crime Scene Unit
14 did.

15 MR. RUSHING: Objection. Speculation.

16 THE COURT: Overruled.

17 MR. BURDETTE: I'll pass the witness at
18 this time.

19 THE COURT: Mr. Rushing?

20 MR. RUSHING: Thank you, Judge.

21 **CROSS-EXAMINATION**

22 **BY MR. RUSHING:**

23 Q. Officer, how long did you say you've been a
24 patrol officer?

25 A. Six years.