

1 THE COURT: You are excused. Thank you.

2 THE BAILIFF: The witness needs to be sworn  
3 in, Judge.

4 THE COURT: All right. Come forward.  
5 Please raise your right hand.

6 (Whereupon the witness is sworn by the  
7 Court.)

8 **DEPUTY LARRY GRAVES,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 BY MS. WATERS:

12 Q. Deputy, would you state your name for the jury,  
13 please?

14 A. My name is Larry Graves.

15 Q. Where are you employed?

16 A. The Harris County Sheriff's Office.

17 Q. How long have you worked for the Sheriff's  
18 Office?

19 A. Nineteen years.

20 Q. What do you do for them?

21 A. I'm in the Canine Division.

22 Q. And what does that mean?

23 A. I'm a canine handler. I utilize canines to do  
24 certain things like find narcotics, suspects, lost  
25 children, and elderly persons.

1 Q. How long have you been a canine handler?

2 A. Seven years, ma'am.

3 Q. What kind of training do you have to be a  
4 canine handler?

5 A. We do a basic training course of 15 weeks with  
6 the dog, and then after that, we do 16 hours a month at  
7 different areas of canine training.

8 Q. What's the purpose of doing 16 hours a month?

9 A. It's just to keep our dogs sufficient and up to  
10 speed on the new training things that are out and that are  
11 coming out.

12 Q. And what kind of scenes are requested for a  
13 canine unit to come out to?

14 A. We go to various scenes; namely, things that, I  
15 would say, demand a dog to be at as far as like suspects  
16 on the ground, narcotics, lost children, lost elderly  
17 person, things like that.

18 Q. And were you called to come out to a location  
19 on September 2<sup>nd</sup> of 2011, in the area off of 1960 and  
20 Humble-Westfield?

21 A. Yes, ma'am.

22 Q. And what time did you get that call?

23 A. I'm not sure of the approximate time.

24 Q. And did you go out there by yourself?

25 A. I responded as a single unit man, but other

1 units responded also.

2 Q. I'm sorry, who?

3 A. Other units responded also.

4 Q. I mean, when you say by yourself, did you have  
5 a companion?

6 A. Yes, ma'am.

7 Q. Who was your companion?

8 A. My canine partner Kanau.

9 Q. Kanau?

10 A. Yes, ma'am.

11 Q. How do you spell that?

12 A. It's K-a-n-a-u.

13 Q. And how long has Kanau been your canine  
14 partner?

15 A. He was my partner for a little over five years  
16 and retired back in February of 2012.

17 Q. Right after -- about five months after this  
18 happened, after this event?

19 A. Yes, ma'am.

20 Q. And how do you determine when a dog needs to  
21 retire?

22 A. It just depends on the health reasons. Mine  
23 was health reasons.

24 Q. How old -- was it a he or a she?

25 A. It was a he, ma'am.

1 Q. How old was he?

2 A. He's approximately nine years old.

3 Q. What kind of a dog was he?

4 A. A Belgian Malinois. It's looks like a German  
5 Shepherd, a little bit thinner.

6 Q. And when you went out to that scene with your  
7 partner, what did you do?

8 A. When we arrived on the scene, we assessed the  
9 situation, the vehicle, where the suspects were last seen  
10 going into a neighborhood. We canvassed the area. I  
11 located the vehicle parked in a driveway of a residence.

12 Q. We're talking about the white Cadillac?

13 A. Yes, ma'am.

14 MS. WATERS: May I approach?

15 THE COURT: Yes.

16 Q. (By Ms. Waters) Deputy, I'm going to show  
17 what's been marked as State's Exhibit No. 4. Is this the  
18 vehicle that you located?

19 A. Yes, ma'am.

20 Q. Is that a location on Cobble Creek?

21 A. I believe so, ma'am.

22 Q. Did your -- did you need help with your canine  
23 to find the white Cadillac, or did you just see the white  
24 Cadillac?

25 A. I just observed it, ma'am.

1 Q. Are you driving through the neighborhood or  
2 walking through?

3 A. Driving through the neighborhood, ma'am.

4 Q. After you saw the Cadillac, what did you do?

5 A. I advised dispatch of the Cadillac and where it  
6 was parked at. At that time, units responded to the area  
7 and we set up a perimeter.

8 Q. On that residence?

9 A. On the residence and also the adjoining blocks.

10 Q. In that neighborhood?

11 A. Yes, ma'am.

12 Q. When you say "a perimeter," what do you mean?

13 A. Where we situate units in different locations  
14 throughout the neighborhood, so that we can cut off an  
15 escape route of anybody that's on the ground.

16 Q. And did you stay at the location or did you  
17 continue moving to see if there was anybody on the ground?

18 A. I stayed at that location for a little while,  
19 and then once we established a perimeter, I coordinated  
20 with other canine units on the scene, and we began to  
21 search the residential area, the yards and things  
22 accordingly.

23 MS. WATERS: I won't ask. I'm going to  
24 approach without asking.

25 THE COURT: It's a good habit to have. So,

1 don't worry about it.

2 Q. (By Ms. Waters) Deputy, I'm going to show you  
3 this aerial map, and I'm going to ask you to step down,  
4 but I'm also going to ask you to keep your voice really  
5 loud. Can you do that?

6 A. Yes, ma'am.

7 Q. Do you recognize this area? You can step down.

8 A. (Witness complies).

9 Q. Do you recognize this area?

10 A. Yes, ma'am.

11 Q. Is this the area where you found the white  
12 Cadillac?

13 A. Yes, ma'am.

14 Q. Could you point to the jury as best you can  
15 where the approximate location of the white Cadillac was?

16 A. (Witness complies).

17 Q. And after you spotted that car, where did you  
18 go from there with your canine unit to find anyone on the  
19 ground? How did you go about deciding where you were  
20 going to go?

21 A. Well, we got together and we decided that where  
22 the Cadillac was, we kind of cornered off an area that was  
23 large enough where we figured if we get to time the  
24 suspects, if they were on the ground, we would have an  
25 area large enough we can contain them.

1 I began searching residences along Cobble Creek. I  
2 don't think we had much of a wind that night. We went  
3 into the yards and we searched each yard methodically. I  
4 think there were two or three canines on it.

5 Q. So, you just go from yard, to yard, to yard?

6 A. Yes, ma'am.

7 Q. After you searched the yards on Cobble Creek,  
8 did you move up to Silver Birch?

9 A. Yes, ma'am.

10 Q. And it's just you and your canine walking?

11 A. Yes, ma'am.

12 Q. How is your -- I'm going to -- you see Silver  
13 Birch here?

14 A. Yes, ma'am.

15 Q. That's this kind of cross street perpendicular  
16 to Cobble Creek; is that right?

17 A. Yes, ma'am.

18 Q. And it's below the purple arrow that's pointing  
19 to an address on Cobble Creek?

20 A. Yes, ma'am.

21 Q. I'm going to let you sit back down.

22 A. (Witness complies).

23 Q. I'll keep that up there. Now, as you're going  
24 through that neighborhood, is your dog trained to do  
25 something? I mean, how does the dog know what he's

1 looking for?

2 A. We train with the dog on several things like  
3 tracking, scouting. That's part of our training.

4 Q. So, what he's looking for?

5 A. Actually, we're picking up odor, not  
6 necessarily looking for anything. He's not like seeing  
7 it. He's going to pick up an odor. The longer the person  
8 stays at a location, the bigger the scent cone. We call  
9 it the scent cone. The bigger the scent cone gets. So,  
10 the longer a person sits in one area, the bigger the scent  
11 cone gets, which is beneficial for the dog.

12 Q. So, as your dog is going along, what's going to  
13 happen if he smells an odor?

14 A. He exhibits a behavior change, which during the  
15 school and stuff we learned to notice. I observed my  
16 canine at the time exhibiting a behavior change. He was  
17 high-heading. We call it high-heading where he had his  
18 head in the air, was sniffing up, which usually in that  
19 instance odor is dropping. Once I observed that, I told  
20 the cover men, the people to go with us to be our eyes and  
21 ears, I told him them to start looking up.

22 Q. And that's all on dispatch because it's all  
23 being documented at the time it's happening?

24 A. I'm not on the radio saying that; I'm telling  
25 the people that are with me. A lot of times we don't have



1 time to get on the radio and explain everything that's  
2 going on as we move through the -- so, I explained to the  
3 cover men, which were with me, that they need to start  
4 looking up high on the roofs, maybe in a tree, somewheres  
5 along the fence, because whoever the dog is indicating on  
6 was up high.

7 Q. Now, if your report indicated that you got  
8 there about 2:30, would that be accurate?

9 A. Yes, ma'am.

10 Q. Now, as you're going through this neighborhood,  
11 are you going into backyards without knocking on doors?

12 A. Yes, ma'am.

13 Q. And you're doing like -- doing a perimeter of  
14 each yard?

15 A. Yes, ma'am.

16 Q. And how are you making entrance into the yards?

17 A. Through the gates, through open gates. Now, if  
18 we come across a locked gate, we would go to the door,  
19 knock on the door, ask them to unlock the gate, or to let  
20 us through the house. That's pretty typical of what we  
21 do.

22 Q. But if the gate is unlocked, you're going in?

23 A. Yes, ma'am.

24 Q. And as you -- you said at some point in time  
25 your dog started high-heading?

1 A. Yes, ma'am.

2 Q. And where was it at?

3 A. That was at a residence on -- I can't remember  
4 what the street name is. I will have to --

5 Q. Look at your report. Do you have your report?

6 A. No, ma'am, I do not.

7 Q. I'm going to hand you supplement No. 2. Is  
8 that a copy of your report?

9 A. Yes, ma'am, it is. The residence that we  
10 entered into the backyard was 21411 Silver Birch. That's  
11 when I began to get an indication from my canine partner  
12 that there was somebody close by.

13 Q. And on this diagram right here, where on Silver  
14 Birch are we talking about?

15 A. May I get up?

16 Q. You can get up or you can trust me to try to  
17 find it.

18 A. It's just below where the Cadillac was found  
19 and to the right.

20 Q. So, it's down here on Cobble Creek?

21 A. Go down Cobble Creek and take a right on Silver  
22 Birch, it's about midway.

23 Q. Okay, come on down.

24 A. (Witness complies).

25 Q. This is Silver Birch?

1 A. About right there.

2 Q. So, this location -- you can sit back down.

3 A. (Witness complies).

4 Q. -- is where your dog started showing an  
5 indication of smelling something?

6 A. Yes, ma'am.

7 Q. And did you go into that backyard?

8 A. Yes, ma'am.

9 Q. Did he start high-heading before you got to the  
10 backyard or were you already in the backyard?

11 A. As we were entering the backyard.

12 Q. And what's that address again?

13 A. It's going to be 21411 Silver Birch.

14 Q. Was that gate locked?

15 A. No, ma'am.

16 Q. So, you went into the backyard, and then what  
17 happened?

18 A. He began to high head. That's when I told my  
19 cover men that were with me that they needed to start  
20 looking up due to the behavior change of my partner.

21 Q. And what did you do?

22 A. At that time, I began looking up also and  
23 noticed a person laying on a branch of a tree above the  
24 house.

25 Q. Do you have spotlights with you or just

1 flashlights?

2 A. Just flashlights, ma'am.

3 Q. Were you able to see the person hanging on the  
4 tree?

5 A. Yes, ma'am.

6 Q. And what did you do at that time?

7 A. At that point, I couldn't see his hands, but I  
8 ordered him to show his hands. He showed his hands. I  
9 ordered him down off the branch, at which time he scooted  
10 over to the other roof, hung down, got on top of the roof,  
11 and then jumped down into the backyard where he was taken  
12 into custody.

13 Q. All right. And do you see that person that you  
14 took into custody on September 2<sup>nd</sup> of 2011, in the  
15 courtroom?

16 A. Yes, ma'am.

17 Q. Could you identify something that he's wearing?

18 A. He's wearing an orange shirt.

19 THE COURT: He's identified the defendant.

20 MS. WATERS: Thank you, Your Honor.

21 Q. (By Ms. Waters) Now, Deputy, I want to show you  
22 what's been marked as State's Exhibits 148 through 156.  
23 Do you recognize these photographs?

24 A. Yes, ma'am.

25 Q. And are these photographs of the area on Silver

1 Birch and the cross street where you found Mr. Davis in  
2 the tree?

3 A. Yes, ma'am.

4 Q. And these pictures fairly and accurately  
5 represent the way that scene appeared to you at the time,  
6 or that tree?

7 A. Yes, ma'am.

8 Q. Is that how it looked?

9 A. Yes, ma'am.

10 MS. WATERS: At this time, I would offer  
11 into evidence 148 through 156. For the record, the  
12 red flag on the top half of the photo is showing the  
13 location on Silver Birch on State's Exhibit No. 1  
14 that the officer referred to.

15 THE COURT: Okay. The record is clear.  
16 I'll remind you at some point that we have to make a  
17 photograph.

18 MS. WATERS: Yes, sir.

19 MR. DUARTE: There's no objection, Judge,  
20 to 148 through 156.

21 THE COURT: Thank you. They are admitted.

22 (Whereupon State's Exhibit Nos.  
23 148-156 are admitted into evidence.)

24 Q. (By Ms. Waters) Deputy, I'm going to show you  
25 State's Exhibit 152. Do you recognize what this is a

1 photograph of?

2 A. Yes, ma'am. It's the residence located at  
3 21411 Silver Birch.

4 Q. This is the front picture of the residence?

5 A. Yes, ma'am.

6 Q. That you went into the backyard of?

7 A. Yes, ma'am.

8 Q. I'm going to show you State's Exhibit No. 153.  
9 What's this a photograph of?

10 A. That's going to be the gate leading into the  
11 backyard of that residence.

12 Q. And that's the gate you would have gone through  
13 with your dog?

14 A. Yes, ma'am.

15 Q. Now, is this house on the corner?

16 A. No, ma'am.

17 Q. Is it close to the corner?

18 A. I believe it's a couple of houses from the  
19 corner.

20 Q. And are each of the yards fenced in?

21 A. Yes, ma'am.

22 Q. How would people get into these yards? There  
23 are multiple ways to get into the yard; through climbing  
24 through the fence or going through the gate?

25 A. Yes, ma'am.

1 Q. From each side?

2 A. Yes, ma'am.

3 Q. And are these like 6-foot wooden fences around  
4 these houses?

5 A. Yes, ma'am, I believe so.

6 Q. Six or seven. Now, I'm going to show you  
7 State's Exhibit No. 154. Is this -- what's this a  
8 photograph of?

9 A. That's the photograph of the back of the  
10 residence.

11 Q. And did it have, like, this thing right here?

12 A. Yes, ma'am.

13 Q. Is that like a patio type --

14 A. Like a sun shade.

15 Q. Sun shade thing in the back of the house?

16 A. Yes, ma'am.

17 Q. Would it be something that someone could climb  
18 onto if they needed to climb up?

19 A. Possibly.

20 Q. And as you're walking in, where is your dog  
21 when he starts kind of sniffing up in the air?

22 A. Right as we enter the gate that you showed the  
23 last photo of, that's when I started to get an indication  
24 from my dog there was somebody in the backyard, or in the  
25 area.

1 Q. Does he indicate -- does it help you to go  
2 right or straight, can you tell, the way he's acting?

3 A. When we went in -- we usually search right to  
4 left; it just depends on what's in the yard also. But we  
5 went in there at that point and we went underneath that  
6 shade -- shade arbor.

7 Q. This arbor that we talked about?

8 A. Yes, ma'am.

9 Q. And when you got under the arbor --

10 A. He began to high head right as we went into the  
11 gate. We turned to the right, went along the back of the  
12 house. That's when I told my cover men to start looking  
13 up.

14 Q. And where are you when you first spot him in  
15 the tree?

16 A. I'm approximately where that window is at.

17 Q. You can touch the window on the screen to show  
18 the jury where.

19 A. (Witness complies).

20 Q. So, you were standing outside that when you saw  
21 the defendant up in the tree?

22 A. Yes, ma'am, off to the side.

23 Q. Is that tree that you see in the left-hand of  
24 that photo, is that the tree that you saw him in?

25 A. Yes, ma'am.



1 Q. Where in the tree did you see him? You can  
2 touch it. You can make a circle of where he was.

3 A. (Witness complies).

4 Q. What position was he on the tree?

5 A. He was laying facedown, facing away from the  
6 house.

7 Q. So, his head was facing you?

8 A. His head was facing that way.

9 Q. And then his feet -- okay. So, when you say  
10 facedown, how were his arms?

11 A. He was wrapped around the tree, but I really  
12 couldn't see his hands.

13 Q. Where were his legs?

14 A. They were right on top of the branch.

15 Q. They were wrapped around the tree?

16 A. No, they were actually stretched out across the  
17 top of the branch.

18 Q. His whole body is stretched out?

19 A. Yes, ma'am.

20 Q. And his arms are holding him?

21 A. Yes, ma'am.

22 Q. When you saw him, did he do anything?

23 A. No, ma'am. He just laid there.

24 Q. And what happened next?

25 A. At that point, we ordered him to show his

1 hands, at which time he raised his hands up still laying  
2 on the tree; ordered him down from the branch. He scooted  
3 over towards the roof, hung down on it, and he jumped down  
4 onto the roof, and then jumped down to the backyard where  
5 we took him into custody.

6 Q. I'm going to show you another photograph,  
7 Deputy, State's Exhibit 155. You're going to have to  
8 touch your screen on the left-hand corner, or the  
9 right-hand corner to make those marks erase.

10 A. (Witness complies).

11 Q. Okay. Now, could you show the jury on this  
12 photograph where you were standing when you first spotted  
13 him in the tree?

14 A. Right down here.

15 Q. So, right by those bushes and by that window?

16 A. Yes, ma'am.

17 Q. And you looked up and you could see him?

18 A. Yes, ma'am.

19 Q. And when you saw him on the tree, could you  
20 mark it on that diagram how he was laying down on the  
21 tree, the limb that he was on?

22 A. (Witness complies).

23 Q. And then when he got down, how did he go about  
24 getting down? If you can, show the jury using where he  
25 hit the roof as he jumped down.

1           A.       He jumped down right around there, underneath  
2 the branch, and then at one point he jumped down to the  
3 ground right here.

4           Q.       So, he scooted back kind of toward the house to  
5 get to a point where he could put his feet on the roof?

6           A.       Yes, ma'am. He hung down from the branch and  
7 then dropped down to the roof.

8           Q.       And then what did he do?

9           A.       At that point, he scooted to the edge of the  
10 roof and then jumped down onto the ground.

11          Q.       And did you take him into custody at that time?

12          A.       My cover men did, yes, ma'am.

13          Q.       I'm going to show you State's Exhibit No. --  
14 could you erase those marks?

15          A.       (Witness complies).

16          Q.       156, is this a close-up of the branch that  
17 we've been talking about?

18          A.       Yes, ma'am.

19          Q.       From an angle away from the house looking  
20 toward the house?

21          A.       Yes, ma'am.

22          Q.       And is this yard surrounded by a wooden fence?

23          A.       Yes, ma'am.

24          Q.       After you detained him, what did you do?

25          A.       After I detained him, or after he was detained,

1 I continued the search of the other residential yards for  
2 the other suspects.

3 Q. Now, how many other canine officers are out  
4 there with you?

5 A. I want to say two other canine officers.

6 Q. When you saw him on the roof, did you have your  
7 gun drawn when you told him to get off the roof?

8 A. No, ma'am.

9 Q. Why not?

10 A. I'm focusing more on the dog; that's why I have  
11 the cover men. But they had guns.

12 Q. Somebody did?

13 A. Yes, ma'am.

14 Q. Just not you?

15 A. Yes, ma'am.

16 Q. And I think your report indicates that you  
17 found the Cadillac at 2:48. Does sound right? Or if the  
18 dispatch indicated that you found it at 2:48, would that  
19 --

20 A. The dispatch might have indicated that.

21 Q. You found the Cadillac at 2:48. Do you  
22 remember what time you found the defendant hiding in the  
23 tree?

24 A. No, ma'am.

25 Q. And were there any helicopters in the area?

1 A. Yes, ma'am.

2 Q. And if the dispatch indicated that you found  
3 the defendant in the tree at 4:46, would that seem  
4 accurate?

5 A. Yes, ma'am.

6 Q. So, you would have been out there about two  
7 hours?

8 A. Yes, ma'am.

9 Q. Searching the yards and looking for people on  
10 the ground?

11 A. Yes, ma'am.

12 MS. WATERS: Your Honor, at this time, I  
13 would like to play State's Exhibit 3.

14 THE COURT: Okay.

15 MS. WATERS: Play the part for the deputy  
16 that we've been talking about.

17 THE COURT: Okay. Go ahead.

18 (Whereupon State's Exhibit 3 is played  
19 at this time.)

20 Q. (By Ms. Waters) Deputy, is that the time you  
21 find the person in the backyard -- the defendant in the  
22 backyard.

23 A. No, ma'am.

24 (State's Exhibit No. 3 is continued at  
25 this time.)

1 Q. (By Ms. Waters) Is that the time that you found  
2 him?

3 A. Yes, ma'am.

4 MS. WATERS: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q. (By Ms. Waters) Deputy, I'm going to show you  
7 dispatch logs, and does that reflect the time that you  
8 would have found the vehicle on Cobble Creek at 2:48 and  
9 15 seconds?

10 A. Yes, ma'am.

11 Q. Is that military time? 2:48:15 is the time the  
12 vehicle was found?

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

14 Q. And on the dispatch log does it also reflect  
15 that the time you found the defendant on the roof is at  
16 4:46:46 -- 46:46:00 a.m. and 46 seconds?

17 A. Yes, ma'am.

18 MS. WATERS: Pass the witness.

19 THE COURT: Cross?

20 MR. DUARTE: Yes, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. DUARTE:

23 Q. Good afternoon, Deputy Graves. When you  
24 entered into 21411 Silver Birch, and your canine partner  
25 gave a high head alert, and you spotted a heat source up

1 in the trees, you gave that -- you had a hunch that your  
2 suspect was hiding in the trees, correct?

3 A. That's correct, sir.

4 Q. And you ordered him to come on down off the  
5 trees. And you had other people that were armed around  
6 you that were your -- what's the word you used?

7 A. Cover men.

8 Q. Cover men --

9 A. Yes, sir.

10 Q. That were around you. So, you ordered him, he  
11 jumped off the tree limb onto the top of that roof, and  
12 now off onto the ground, correct?

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

14 Q. And you labeled that he was taken into custody  
15 without incident; is that right?

16 A. That's true, sir.

17 Q. He didn't resist or anything at that point?

18 A. No, sir.

19 Q. He didn't do anything to your canine at that  
20 point?

21 A. No, sir.

22 Q. So, he was handcuffed. Did y'all bag his hand  
23 at that point; do you remember?

24 A. Sir, I don't know what happened after he was  
25 detained.

1 Q. Because you went off still with the canine  
2 still looking for maybe other suspects?

3 A. Yes, sir.

4 MR. DUARTE: I pass this witness, Judge.

5 MS. WATERS: Pass the witness.

6 THE COURT: Thank you, sir. You may step  
7 down. Let's see if we can squeeze in one more.

8 MS. FLADER: Call Robert Baldwin.

9 THE BAILIFF: The witness needs to be sworn  
10 in, Judge.

11 THE COURT: All right. Raise your right  
12 hand.

13 (Whereupon the witness is sworn by the  
14 Court.)

15 **ROBERT BALDWIN,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MS. FLADER:

19 Q. Would you introduce yourself to the jury?

20 A. Good afternoon, ladies and gentlemen. My name  
21 is Robert Baldwin.

22 Q. Where are you employed?

23 A. I'm employed by the Harris County Institute of  
24 Forensic Sciences where I am the manager of the firearms  
25 section.