

1 Graves.

2 THE BAILIFF: The witness has not been
3 sworn.

4 (Witness sworn)

5 THE COURT: Ms. Devine.

6 MS. DEVINE: Thank you, Your Honor.

7 **LARRY GRAVES,**

8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MS. DEVINE:**

11 Q. Good afternoon, Deputy Graves.

12 A. Good afternoon.

13 Q. Would you please introduce yourself to the
14 ladies and gentlemen of the jury?

15 A. My name is Larry Graves. I'm a deputy with the
16 sheriff's department. I've been with the sheriff's
17 department 18 years. I'm currently assigned to K-9.

18 Q. Are you a certified peace officer in the state
19 of Texas?

20 A. Yes, ma'am.

21 Q. Have you been so for your full 18 years with
22 the sheriff's department?

23 A. Yes, ma'am.

24 Q. Have you worked your entire law enforcement
25 career with the sheriff's department?

1 A. Yes, ma'am.

2 Q. Now, you said that you're a K-9 Unit. Can you
3 tell the jury what that means?

4 A. I'm assigned to a K-9 where I have a K-9
5 partner. My K-9 partner and myself, we patrol all over
6 Harris County. Dual-purpose dog; narcotics and also
7 find persons, lost children, apprehending criminals.

8 Q. How long have you been with the K-9 Unit?

9 A. Six years.

10 Q. Since 2007?

11 A. Yes, ma'am.

12 Q. Okay. How many units were there then when you
13 started with K-9?

14 A. Approximately 10.

15 Q. About how many are there now?

16 A. A little over 20.

17 Q. Did you start your K-9 Unit with a particular
18 partner?

19 A. Yes, ma'am.

20 Q. And is that what you call them?

21 A. Yes, ma'am.

22 Q. What was your partner's name?

23 A. His name is Kanau.

24 Q. Can you spell that for the court reporter?

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

1 Q. And did you start your tenure with the K-9 Unit
2 with Kanau?

3 A. Yes, ma'am.

4 Q. Is Kanau still your partner?

5 A. No, ma'am.

6 Q. Why not?

7 A. He's retired.

8 Q. Why did he retire?

9 A. He was just a little bit old, a little bit
10 slow.

11 MS. DEVINE: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 Q. (By Ms. Devine) Deputy Graves, I want to show
15 you what's been marked as State's Exhibit No. 77. Do
16 you recognize the folks in that picture (indicating)?

17 A. Yes, ma'am.

18 Q. And does that fairly and accurately depict you
19 and Kanau at the time of his retirement?

20 A. Yes, ma'am.

21 MS. DEVINE: Your Honor, after tendering to
22 defense counsel for objection, I'll offer State's
23 Exhibit 77 into evidence.

24 (State's Exhibit No. 77 Offered)

25 MR. GRABER: No objection, Judge.

1 THE COURT: State's 77 is admitted.

2 (State's Exhibit No. 77 Admitted)

3 Q. (By Ms. Devine) What do we see in State's 77
4 (indicating)?

5 A. That's myself and my former partner, Kanau.

6 Q. Is that his little retirement ceremony?

7 A. Yes, ma'am.

8 THE COURT: Did he get a golden watch?

9 THE WITNESS: No, sir.

10 THE COURT: Just curious.

11 Q. (By Ms. Devine) We'll come back to Kanau and
12 the K-9.

13 Prior to being assigned to K-9, what
14 division did you work with within the sheriff's
15 department?

16 A. I worked in the Patrol Division, northwest
17 side, ma'am.

18 Q. And what were your duties and responsibilities
19 as a patrol unit?

20 A. It was to do various things, accidents, take
21 reports, suppress crime in certain areas. Yes, ma'am.

22 Q. And how long did you do that?

23 A. Approximately six years.

24 Q. And prior to that, where did you work within
25 the department?

1 A. I worked downtown detention.

2 Q. And that would be in the jail, right?

3 A. Yes, ma'am.

4 Q. Now, let's go back to your K-9 assignment.

5 You've talked about Kanau being a dual-purpose dog. Is
6 every dog in the K-9 Unit a dual-purpose dog?

7 A. Most every dog. I think we only have two that
8 are single-purpose narcotics.

9 Q. And dual-purpose means what?

10 A. Dual-purpose means they're specialized in two
11 different areas. We have two bomb dogs that are
12 explosive bombs. And we have -- also they're
13 patrol-certified, which is locating and apprehending
14 either criminals or lost -- finding lost children,
15 elderly, things like that.

16 Q. What breed of dog was -- is Kanau?

17 A. He's a Belgium Malinois.

18 Q. Is that a common breed for a K-9 Unit to have?

19 A. Yes, ma'am.

20 Q. And why is that?

21 A. It's -- they're good working dogs. They've
22 been bred and found that they're good in those areas,
23 along with German Shepherd, Rottweilers, things like
24 that.

25 Q. In order to be an active K-9 Unit, does your

1 dog and was Kanau certified by any agency?

2 A. Yes, ma'am.

3 Q. And what agency is that?

4 A. It was certified through our agency.

5 Q. Okay. Is there a -- another group, or
6 whatever, that trains them and certifies them to do what
7 they're supposed to do?

8 A. The narcotics portion of ours is certified
9 through the NNDDA, National Narcotics Detention Dog
10 Association. And we certify with them every year. Our
11 group for patrol, we're certified every year through a
12 40-hour class to do certain things in patrol. So, that
13 way we can pass and be certified for the streets.

14 Q. So, just like you as a peace officer have to
15 keep your training current, Kanau's training has to be
16 current as well?

17 A. Yes, ma'am, 16 hours a month.

18 Q. Now, is patrol training different from
19 narcotics detection?

20 A. Yes, ma'am.

21 Q. Can you tell the jury a little bit about what
22 patrol training is?

23 A. Patrol training, we do things -- various
24 things, building searches. We do tracking, scouting.
25 The difference between tracking and scouting is when we

1 scout somebody, we scout into the wind to -- so we don't
2 have a track. We pick up maybe their odor and we get to
3 them faster than a track, a true track. We do things,
4 like I said, find lost children, elderly, things like
5 that.

6 Q. Are there main areas of patrol work that Kanau
7 has to be successful in in order to be an active K-9?

8 A. Yes, ma'am.

9 Q. What are those three main areas?

10 A. Building searches, the tracking, and the
11 scouting.

12 Q. Building searches, that's pretty obvious,
13 right?

14 A. Right. Yes, ma'am.

15 Q. And does that include both people and narcotics
16 in a building?

17 A. We can -- we've done -- we do building
18 narcotics and buildings also. They're two separate
19 trainings. When we do training, we do things -- those
20 separate, narcotics separate from patrol work.

21 Q. Patrol training is -- deals with finding
22 people?

23 A. Yes, ma'am.

24 Q. Now, tracking, what exactly is tracking?

25 A. Tracking is when you're going with the wind to

1 your back and you're -- you're trying to find a certain
2 odor on the ground or -- and so the dog is keeping his
3 nose down for the most part and you're tracking -- it's
4 a true path towards -- the dog is taking you to where
5 the person may have gone at that time.

6 A scout is when -- when the wind is coming
7 towards you and you're trying to pick the person's odor
8 up. It may not be the exact way the person went, but by
9 them sitting in a certain area for a certain time, their
10 scent -- their odor grows bigger, which gives the dog an
11 advantage on finding the person.

12 Q. Would it be fair to say that the difference
13 between tracking and scouting is a stationary versus
14 potentially a non-stationary target?

15 A. Yes, ma'am.

16 Q. Did Kanau engage in these main areas of patrol
17 work on few or many occasions?

18 A. Many occasions, ma'am.

19 Q. And was he successful on many occasions?

20 A. Yes, ma'am.

21 Q. Do you have to keep some sort of documentation
22 documenting his successes and failures at these
23 different areas?

24 A. Yes, ma'am.

25 Q. And did you do that?

1 A. Yes, ma'am.

2 Q. And was he current and certified as of December
3 3rd, 2009?

4 A. Yes, ma'am.

5 Q. In both narcotics and patrol?

6 A. Yes, ma'am.

7 Q. Now, I'd like to direct your attention to
8 December 3rd, 2009. Were you on duty that day?

9 A. Yes, ma'am.

10 Q. And what shift did you work?

11 A. Night shift.

12 Q. Which was -- is what hours?

13 A. 8:00 o'clock at night until 6:00 o'clock in the
14 morning.

15 Q. And you testified before that you patrol the
16 entire county. You're not limited -- as a K-9 Unit,
17 you're not limited to one particular part of the county?

18 A. Yes, ma'am.

19 Q. Does that differ from a regular patrol unit?

20 A. Yes, ma'am.

21 Q. Are patrol units assigned to a particular area?

22 A. Yes, ma'am.

23 Q. Now, as you're sitting in your car, are you
24 hearing things go out over the radio?

25 A. Yes, ma'am.

1 Q. How many radios do you keep in your car?

2 A. I have two.

3 Q. What are they -- first of all, what radios --
4 what are you monitoring?

5 A. I have a radio that's assigned to me from the
6 county that I monitor whatever area that I'm in at the
7 time. I also have a Houston Police Department radio in
8 my vehicle that I also monitor mainly areas of the
9 northwest, if that's where I'm at. That's primarily
10 where I stay. I'm not assigned there, but that's the
11 area that I stay in.

12 Q. Is that because that's the area you're familiar
13 with having been a patrol unit in that area?

14 A. That's correct, ma'am.

15 Q. Have you been called out as a K-9 Unit to
16 assist HPD during the time that you've been with K-9?

17 A. Yes, ma'am.

18 Q. And is that pretty common?

19 A. Yes, ma'am.

20 Q. And vice versa?

21 A. Yes, ma'am.

22 Q. Do you hear a call go out on the sheriff's
23 department frequencies regarding a shooting in progress?

24 A. Yes, ma'am.

25 Q. Okay. And what part of town are we talking

1 about where that takes place?

2 A. Northwest Houston.

3 Q. Okay. I'd like to direct your attention --

4 MS. DEVINE: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. (By Ms. Devine) -- to State's Exhibit No. 67

7 behind you. Do you recognize this part of town

8 (indicating)?

9 A. Yes, ma'am.

10 Q. Okay. And do you see the area where the

11 shooting in progress call went out from?

12 A. Yes, ma'am.

13 Q. And where is that located on this map?

14 A. It's going to be up there at the top part of
15 the map in the center (indicating).

16 Q. Okay. Where -- on the map there are two boxes,
17 2519 Cadiz Circle and 2522 Cadiz Circle (indicating).

18 A. Yes, ma'am.

19 Q. At the same time or around about the same time
20 do you hear a call going out over the HPD frequency?

21 A. Yes, ma'am.

22 Q. And what's the nature of that call?

23 A. It's going to be several people on the ground.
24 It's like -- it sounded to me like a small pursuit, like
25 a vehicle pursuit that ended up with several people

1 bailing out on the ground.

2 Q. And what part of town was that going out from?

3 A. Still the northwest, but it's mainly down there
4 past West Montgomery.

5 Q. So, do you see that on State's Exhibit 67
6 (indicating)?

7 A. Yes, ma'am.

8 Q. What part of the map are we talking about?

9 A. It's going to be the lower middle part right
10 here, ma'am (indicating).

11 Q. Where there are boxes 2626 Homer, the
12 intersection of Carver and DeSoto, and 2458 Garapan
13 Street, Yorkdale Missionary Baptist Church (indicating)?

14 A. Yes, ma'am.

15 Q. And are you familiar with this part of town?

16 A. Yes, ma'am.

17 Q. Do you hear things -- without going into detail
18 about what specifically you heard with respect to the
19 calls. Are there details that go out on these calls
20 that lead you to believe that there's some kind of
21 relationship between these two calls?

22 A. Yes, ma'am.

23 Q. Based on what you heard, where do you go?

24 A. I go to where the Houston Police Department has
25 a vehicle in the driveway with actors on the ground.

1 Q. Would that be around the 6200 block of Rollins?

2 A. Yes, ma'am.

3 Q. And that's shown on that map, right?

4 A. Yes, ma'am.

5 Q. When you get there, what units -- what agency's
6 units do you see?

7 A. There's a few sheriff's department units and
8 there's also several Houston Police Department units.

9 Q. Has HPD done anything with respect to that
10 location? Have they taken any active action?

11 A. They've started setting up the perimeter.

12 Q. Can you describe what that is for the jury?

13 A. A perimeter, whenever you feel that you have
14 somebody that's actively evading on the ground, you
15 start setting up an area that you feel that is most
16 potentially needed to be searched. So, you set vehicles
17 up in certain locations with officers watching. That
18 way, whenever we do get there, the K-9 Unit would
19 respond, we can start searching that area and know that
20 it's -- that it's pretty much contained, you know, we've
21 got that contained and we can walk around and check the
22 areas that we need to. And if we want to, we can expand
23 the perimeter or we can make it smaller, if we want to.

24 Q. Were there any other K-9 units on the scene?

25 A. No, ma'am. There's HPD K-9 units. There

1 wasn't any of our K-9 units.

2 Q. Do you remember off the top of your head who it
3 was?

4 A. No, ma'am.

5 Q. You just know there was another unit out there
6 with a dog?

7 A. Yes, ma'am.

8 MS. DEVINE: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 Q. (By Ms. Devine) Deputy Graves, I'm showing you
12 what's been marked -- and you've seen these prior to
13 your testimony, correct (indicating)?

14 A. Yes, ma'am.

15 Q. -- as State's Exhibits 78 through 88, State's
16 Exhibit 90, and State's Exhibits 253 and 254
17 (indicating).

18 A. Yes, ma'am.

19 Q. Do you recognize what's depicted in all of
20 those photographs?

21 A. Yes, ma'am.

22 Q. Do they fairly and accurately depict the scene,
23 with the exception of some of them being taken in the
24 daylight, but the location of the various buildings and
25 everything on the early morning hours of December 3rd,

1 2009?

2 A. Yes, ma'am.

3 MS. DEVINE: Your Honor, after tendering to
4 defense counsel, I'll offer State's Exhibits 78 through
5 88, 90 and 253 and 254 to defense counsel for inspection
6 and objection.

7 **(State's Exhibit No. 78 through 88, 90, 253**
8 **and 254 Offered)**

9 MR. GRABER: No objections, Your Honor.

10 THE COURT: State's 78 through 88, 90, 253
11 and 254 are admitted.

12 **(State's Exhibit No. 78 through 88, 90, 253**
13 **and 254 Admitted)**

14 Q. (By Ms. Devine) Once you get out there, do you
15 get with the officers that are on scene to find out what
16 the status of things are?

17 A. Yes, ma'am.

18 Q. At that point, what do you do?

19 A. We have the perimeter set up. I spoke to HPD
20 K-9. And we also had the helicopter Fox above us.

21 Q. Whose helicopter is that?

22 A. It's the Houston Police Department's. I got
23 with HPD, their K-9 Unit. They decided that they were
24 going to start --

25 MR. GRABER: I'm going to object to

1 hearsay, Judge.

2 THE COURT: Sustained.

3 Q. (By Ms. Devine) Where -- where did you guys
4 decide -- well, first of all, are there certain factors
5 that you-all take into consideration when you're
6 deciding where and how and what you're going to do as
7 far as deploying your dogs?

8 A. Yes, ma'am.

9 Q. And what is that?

10 A. The severity of the crime, maybe if they're
11 armed, whoever is on the ground, the amount of persons
12 that are on the ground.

13 Q. Did you have information that the suspect or
14 suspects were armed?

15 A. We believed that they may have been armed, yes,
16 ma'am.

17 Q. And is that based on your -- the information
18 you got from the HPD officers already on scene?

19 A. That's the -- the HPD officers on scene and
20 also the call up north -- I can't remember -- Cadiz
21 Circle.

22 Q. The shooting in progress call?

23 A. Yes, ma'am.

24 Q. Okay. Now, where do you and the HPD unit go to
25 start -- well, first of all, what kind of patrol are you

1 going to do with your dogs?

2 A. I was going to begin a scout.

3 Q. And where do you and the HPD K-9 go to begin
4 your scout?

5 A. Over off Garapan.

6 Q. I'm showing you what's been marked as State's
7 Exhibit No. 68. There we see Rollins -- the
8 intersection of Rollins and Homer. Is that about where
9 you went when you first arrived on scene (indicating)?

10 A. It's going to be the street east of Garapan at
11 the intersection right there, right -- yes, ma'am,
12 Carver --

13 Q. Carver and Garapan?

14 A. -- and Garapan.

15 Q. But when you first arrived, you were over on
16 Rollins?

17 A. Yes, ma'am.

18 Q. Okay. Now, when you go to start your scout,
19 you go to the intersection of Carver and Garapan?

20 A. Yes, ma'am.

21 Q. And is that what we see here in State's Exhibit
22 No. 78 (indicating)?

23 A. Yes, ma'am.

24 Q. In fact, you can see the street sign there on
25 the left side of the photograph, correct (indicating)?

1 A. Yes, ma'am.

2 Q. So, the right side of the street is which
3 direction?

4 A. North.

5 Q. And the left side of the street?

6 A. South.

7 Q. Okay. Which side do you take?

8 A. I take the south side, ma'am.

9 Q. And the HPD K-9?

10 A. They take the north side.

11 Q. Okay. Which direction do you travel down
12 Garapan?

13 A. From the east to west.

14 Q. So, that's the direction we're looking in this
15 photograph, correct (indicating)?

16 A. Yes, ma'am.

17 Q. Does Kanau alert on anything as you go down the
18 south side of Garapan?

19 A. No, ma'am.

20 Q. When you get to the next cross street, which on
21 State's Exhibit No. 68 it appears to be Nubin Street
22 here on the -- about a third of the way on the left of
23 the map --

24 A. Yes, ma'am.

25 Q. -- what do you do?

1 A. I stop my search on the south side. I cross
2 over on the north side, because my vehicle is back there
3 at Carver, and I decided to go ahead and scout the north
4 side of the roadway on the way back.

5 Q. Did you see where the HPD K-9 Unit had gone at
6 this point?

7 A. No, ma'am.

8 Q. Okay. Why did you decide to search the north
9 side of the street?

10 A. I figured I was on my way back to my vehicle so
11 it wouldn't hurt to search the north side.

12 Q. And the north side of Garapan, is that what we
13 see --

14 A. Yes, ma'am.

15 Q. -- in State's Exhibit No. 79 (indicating)?

16 A. Yes, ma'am.

17 Q. Okay. Are there residences on this street?

18 A. Yes, ma'am.

19 Q. And this building that we see here in State's
20 Exhibit No. 79, what is that (indicating)?

21 A. It's a church, ma'am.

22 Q. And, in fact, is it the Yorkdale Missionary
23 Baptist Church --

24 A. Yes, ma'am.

25 Q. -- as we see in State's Exhibit 82

1 (indicating)?

2 A. Yes, ma'am.

3 Q. Is that sign located out in front of the church
4 on Garapan?

5 A. Yes, ma'am.

6 Q. When you're scouting and you're doing this
7 patrol work, where exactly are you going with Kanau or
8 do you just go where he leads you?

9 A. I try to work him into the areas that I think
10 are going to be productive.

11 Q. And what types of areas are you looking at as
12 potentially productive?

13 A. Open areas, places that I can get a good kick
14 of odor coming out from the wind.

15 Q. State's Exhibit No. 81, is this direction --
16 the direction from which you're coming --

17 A. Yes, ma'am.

18 Q. -- with Kanau on your track back to your car
19 (indicating)?

20 A. Yes, ma'am.

21 Q. Do we see residences on the left-hand side of
22 that photograph (indicating)?

23 A. Yes, ma'am.

24 Q. Are all those residences surrounded by fences?

25 A. Some of them are -- that have fences, some of

1 them are down, but most of them have fences around them.

2 Q. So, where would you go with respect to the
3 residences and the fencing around those residences as
4 you're tracking back Garapan?

5 A. Depending on if I can get inside the
6 residences, I usually would stay on the outside of the
7 fences for a scout.

8 Q. Leading up to this point, had Kanau alerted on
9 anything or anyone?

10 A. No, ma'am.

11 Q. As you get to this clearing here -- this is on
12 the east side of the church, correct (indicating)?

13 A. Yes, ma'am.

14 Q. As we get to the clearing here, where do you go
15 with Kanau or where does he take you?

16 A. We actually go across the ditch into that
17 field. And once I entered that field, about halfway
18 through I observed a behavior change.

19 Q. Now, you can push on your screen there. If you
20 could draw the track that you took with Kanau through
21 that --

22 A. I came across here. And right about in here, I
23 started to observe a behavior change in Kanau
24 (indicating).

25 Q. So, we're on the other side of that retention

1 ditch, right?

2 A. Yes, ma'am.

3 Q. Not quite in the middle of that clearing?

4 A. Yes, ma'am.

5 Q. When you say you noticed a behavior change,
6 what do you mean?

7 A. I noticed that his head came up, normally
8 indicative of a scout. His head came up. Like I knew
9 that it was an odor just from previous calls and being
10 with my dog for such a long time. I knew that somebody
11 was close.

12 Q. Before that, where was his head?

13 A. He had his head down. He was checking the
14 ground.

15 Q. State's Exhibit 80. Is this pretty much the
16 area where you see the behavior change (indicating)?

17 A. Approximately probably right there in the
18 middle of the field (indicating).

19 Q. And to the right-hand side of the photograph we
20 see the side -- the east side of the church, right?

21 A. Yes, ma'am.

22 Q. Okay. Now, once that -- you noticed that
23 behavior change, what happens next?

24 A. I started -- I told the officer that was with
25 me that we're probably close, you know, to somebody.

1 Q. Who -- was it a sheriff's department officer or
2 an HPD officer?

3 A. It was a Houston Police Department officer.

4 Q. And what do you do?

5 A. At which time, you know, I told him, you know,
6 just to be more cautious. And so, at that time Kanau
7 pulled me over to about approximately where that --
8 there's like an area that comes out of the church. I
9 don't know what they would call that.

10 Q. Now, you said that you advised the HPD officer
11 that you think you're close, to be more cautious. Why?

12 A. Well, because of the severity of the crime and
13 who we were looking for. We didn't know if they were
14 armed or not. You know, we always want to be cautious
15 on anything that we go out on.

16 Q. Now, these last couple of photographs are taken
17 in the daylight, correct?

18 A. Yes, ma'am.

19 Q. Now, State's Exhibit No. 83, does this
20 accurately reflect, with the exception of the flash from
21 the camera taking the picture, how dark it was out there
22 that night (indicating)?

23 A. Yes, ma'am.

24 Q. Was there -- how was the lighting there on
25 Garapan?

1 A. It was poor.

2 Q. Not too many streetlights?

3 A. Not too many, ma'am. It was pretty dark.

4 Q. Or at least the ones that worked?

5 A. Yes, ma'am.

6 Q. Now, where -- do you see on this picture the
7 general area that Kanau led you when he -- after that
8 behavior change?

9 A. Yes, ma'am. He led me to this side of the
10 structure that comes out (indicating).

11 Q. Like a bayed part of the building?

12 A. Yes, ma'am.

13 Q. Do we get a closer up view of that in State's
14 84 (indicating)?

15 A. Yes, ma'am. Over to that portion right there
16 (indicating).

17 Q. State's Exhibit No. 85, do you see in this
18 photograph more clearly where Kanau led you on his scout
19 (indicating)?

20 A. Yes, ma'am. He led me over to here and then we
21 went right around the edge of the building right there
22 (indicating).

23 Q. So, the middle part of that bayed out section
24 around the corner to the wall of the building?

25 A. Yes, ma'am.

1 Q. Once you get to the corner around the building,
2 what does Kanau do?

3 A. Kanau lunges forward. It was more of a -- like
4 a real hard pull. And when he moved around the side, I
5 seen that my K-9 partner had engaged a person laying on
6 the ground.

7 Q. Okay. Up until the time you came around that
8 corner, had you seen that person laying on the ground?

9 A. No, ma'am.

10 Q. Okay. What do you notice about that person as
11 they're laying there?

12 A. They're dressed in dark clothing, laying face
13 down. I can't see their hands. And they're halfway
14 underneath the church, maybe just the legs.

15 Q. About where on the -- up to where on the legs?

16 A. Maybe to the bottom of the buttocks.

17 Q. Underneath the church?

18 A. Underneath the church, yes, ma'am.

19 Q. Laying face down?

20 A. Yes, ma'am.

21 Q. What color clothing was this person wearing?

22 A. Dark-colored clothing, black.

23 Q. When Kanau engaged, do they engage the person
24 or the clothing that they're wearing?

25 A. They engage the person, but just was -- just

1 got ahold of the clothing.

2 Q. So, only made contact with clothing not --

3 A. Yes, ma'am.

4 Q. What do you do when you see this?

5 A. At first when we seen it, of course, we go off
6 caution. We got a place of cover and challenged him,
7 the person. Told him: Let me see your hands, let me
8 see your hands, at which time he showed his hands. And,
9 you know, was taken into custody without further
10 incident.

11 Q. State's 254, does that show better where you
12 found this person laying half under the church
13 (indicating)?

14 A. Yes, ma'am.

15 Q. And can you point on the photograph where we're
16 talking about?

17 A. It would be right here, ma'am (indicating).

18 Q. So, it would be right up against that bayed
19 section?

20 A. Yes, ma'am.

21 Q. Does the person comply with your commands?

22 A. Yes, ma'am.

23 Q. And does the HPD officer get this person out
24 from underneath the church?

25 A. Yes, ma'am. Well, there was several HPD

1 officers that came over there. I mean, he was placed
2 into custody.

3 Q. Do you see the person in the courtroom that
4 Kanau engaged that was laying half under the church?

5 A. Yes, ma'am.

6 Q. Can you point to that person and identify an
7 article of clothing that they're wearing?

8 A. He's sitting right over there and he's wearing
9 a white shirt.

10 MS. DEVINE: Your Honor, may the record
11 reflect the witness has identified the defendant?

12 THE COURT: Yes.

13 Q. (By Ms. Devine) Once he gets out from under the
14 church, what do you notice that the defendant is
15 wearing?

16 A. Wearing a dark-colored hoodie and -- just
17 dark-colored clothing. I can't describe exactly,
18 probably, his pants or anything but --

19 Q. Showing you what's been marked as State's
20 Exhibit No. 88. Does this fairly and accurately depict
21 what the defendant looked like minus the hoodie when you
22 pulled him out from under the church that night
23 (indicating)?

24 A. Yes, ma'am.

25 Q. And was this photo, in fact, taken that night

1 by Crime Scene?

2 A. Yes, ma'am.

3 MS. DEVINE: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 Q. (By Ms. Devine) Deputy Graves, I'm showing you
7 what's been marked as State's Exhibit No. 89
8 (indicating).

9 A. Yes, ma'am.

10 Q. Do you recognize this article of clothing?

11 A. Yes, ma'am.

12 Q. And what does it appear to be?

13 A. The hoodie that the -- he was wearing, the
14 suspect.

15 Q. The defendant?

16 A. The defendant.

17 Q. And do you see some markings on here that you
18 recognize?

19 A. Yes, ma'am.

20 Q. What do you see?

21 A. Tear marks, looks like from a bite, from a
22 dog's bite.

23 Q. Is that where Kanau engaged him as he's laying
24 half hidden underneath the church?

25 A. Yes, ma'am.

1 Q. What else do you notice about the hoodie?

2 A. It's dirty.

3 Q. Leaves and dirt and grass?

4 A. Yes, ma'am.

5 MS. DEVINE: Your Honor, after tendering to
6 defense counsel, offer State's Exhibit 89 into evidence.

7 **(State's Exhibit No. 89 Offered)**

8 MR. GRABER: No objection.

9 THE COURT: State's 89 is admitted.

10 **(State's Exhibit No. 89 Admitted)**

11 Q. (By Ms. Devine) Officer, just for
12 clarification, Deputy, what size hoodie is this?

13 A. A 4-XL.

14 Q. Thank you.

15 The mud and everything that is on that, is
16 that pretty consistent with what it was like out there
17 in that area that night?

18 A. Yes, ma'am.

19 Q. Muddy, wet, grassy?

20 A. Yes, ma'am.

21 Q. After the defendant is taken into custody by
22 HPD units, what do you do?

23 A. I continue to go ahead and scout the area.

24 Q. Why?

25 A. For remaining persons on the ground.

1 Q. Did you have any information regarding the
2 number of possible suspects that might be on the ground?

3 A. No, ma'am.

4 Q. Okay. So, you don't know if it was one or
5 more?

6 A. I -- I figured there would be several. I
7 didn't speak to anybody other than that that knew that
8 there was more than one.

9 Q. So, where do you go as you continue scouting?

10 A. I continued to go towards the north side of the
11 church.

12 Q. And that would be the back side of the church,
13 correct?

14 A. That's correct, ma'am.

15 Q. And is that what we see here in State's Exhibit
16 No. 90 (indicating)?

17 A. Yes, ma'am.

18 Q. And does anything significant happen or does
19 Kanau alert to anything on the back side of that church?

20 A. Yes, ma'am. Probably around this area right
21 here, I noticed Kanau wanted to get underneath the
22 church. A distinct behavior change. He took me around
23 the back side of the church, and, again, tried to get up
24 underneath the church right there (indicating).

25 Q. So, what do you do when he does that?

1 A. I tried to maintain cover. There's nothing
2 back there to actually get behind or anything. And I
3 was shining my light to see if there was another person
4 underneath the church. And at that time, I seen a gun
5 and three cell phones.

6 Q. About how far back from the edge of the wall of
7 that church did you observe these items?

8 A. Probably 2 to 3 feet.

9 Q. And what did you do when you saw those?

10 A. I notified the police officers, the HPD
11 officers that were with me that there was a gun and some
12 stuff underneath the church.

13 MS. DEVINE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 Q. (By Ms. Devine) Deputy, I'm showing you what's
17 been marked as State's Exhibits 91, 92, and 93. Do you
18 recognize these items (indicating)?

19 A. Yes, ma'am.

20 Q. And are these the cell phones that you observed
21 and recovered from underneath the church --

22 A. Yes, ma'am.

23 Q. -- or ordered to be recovered?

24 A. Yes, ma'am.

25 Q. I'm showing you what's been marked as State's

1 Exhibit 195. Do you recognize this (indicating)?

2 A. Yes, ma'am.

3 Q. Does it appear to be the same weapon that you
4 found underneath the back side of the church over there
5 on Garapan?

6 A. Yes, ma'am.

7 Q. And State's Exhibit No. 196, what is this
8 (indicating)?

9 A. It's a magazine for the gun.

10 Q. And was that in the gun at the time that you
11 found it?

12 A. Yes, ma'am.

13 Q. Did you know at that time if it was loaded?

14 A. No, ma'am.

15 Q. Or if it had been fired?

16 A. No, ma'am.

17 Q. Did you order that those items be recovered
18 from under the church?

19 A. Yes, ma'am.

20 Q. Why did you yourself not recover them?

21 A. Because I was still continuing searching for
22 the persons.

23 Q. Where did you go from there?

24 A. I continued to check back west from the church.

25 Q. And would that be around to the other side of

1 the church?

2 A. Yes, ma'am.

3 Q. Just for clarification, Deputy Graves, where
4 exactly did you recover those items?

5 A. They were going to be right up underneath here,
6 ma'am (indicating).

7 Q. So, maybe about a third of the way across the
8 back side of that church?

9 A. Yes, ma'am.

10 Q. And the defendant was around the corner and
11 down the wall?

12 A. Yes, ma'am.

13 Q. About how far apart would you say they were,
14 the defendant from the items?

15 A. Maybe 50 feet.

16 Q. Walking distance?

17 A. Yes, ma'am.

18 Q. State's Exhibit 79, looking eastbound, correct
19 (indicating)?

20 A. Uh --

21 Q. I mean -- yeah --

22 A. Yes, ma'am, looking east.

23 Q. And did you continue to the other side of the
24 church?

25 A. Yes, ma'am.

1 Q. And in that clearing on the other side of the
2 church?

3 A. Yes, ma'am.

4 Q. There are empty fields on both sides, right?

5 A. Yes, ma'am.

6 Q. And did you -- did Kanau alert to anything or
7 behavior change at any point?

8 A. No, ma'am.

9 Q. And then where did you go?

10 A. I continued back over to my vehicle.

11 Q. And that's at the intersection of Carver and
12 Garapan, right?

13 A. Yes, ma'am.

14 Q. Any alerts or behavior changes between that
15 point and your vehicle?

16 A. No, ma'am.

17 Q. Did you continue searching at that point?

18 A. No, ma'am.

19 Q. Why not?

20 A. We called the -- the perimeter shrunk and we
21 didn't have the -- the coverage that we needed.

22 Q. After you finished with your scout with Kanau,
23 what did you do?

24 A. I went and placed him back in my vehicle, came
25 back over to the church and notified my supervisor.

1 Q. Of what?

2 A. That I caught a guy possibly involved in the
3 crime that we were investigating and that I had made
4 contact with him with my dog.

5 Q. Is that protocol?

6 A. Yes, ma'am.

7 Q. Any time that there is any kind of engagement
8 with a suspect or a person --

9 A. Yes, ma'am.

10 Q. -- are you required to report it and document
11 it?

12 A. Yes, ma'am.

13 Q. Did you complete a report regarding your role
14 in this investigation?

15 A. Yes, ma'am.

16 Q. And was that the extent of your participation
17 in this investigation?

18 A. Yes, it was, ma'am.

19 MS. DEVINE: Your Honor, I'll pass the
20 witness. And for purposes of the record, the defense
21 counsel has had a copy of the complete offense report in
22 this case.

23 THE COURT: Mr. Graber.

24 MR. GRABER: Thank you, Judge.

25 **CROSS-EXAMINATION**

1 **BY MR. GRABER:**

2 Q. Deputy Graves, I have some questions about your
3 testimony, not too much. You spoke a little bit about
4 after your involvement in the case, like most officers
5 when you're involved in an investigation or something
6 happens on patrol, you go back and you write a
7 supplement to the main police report about what your
8 knowledge in that case is, correct?

9 A. That's correct, sir.

10 Q. And you did that in this case?

11 A. Yes, sir.

12 Q. And would you agree with me that your
13 supplement to the police report is one-and-a-half pages
14 long, correct?

15 A. Yes, sir.

16 Q. Okay. And you've had a chance to refresh your
17 memory about this case by reading your supplement to the
18 police report before you testified today, correct?

19 A. That's correct, sir.

20 Q. And that's one of the reasons why you write the
21 report, is so later on if you have to refresh your
22 memory about what happened, you can be accurate about
23 what you tell people because you write your report
24 shortly after the incident happens, correct?

25 A. Yes, sir.

1 Q. And you did that in this case?

2 A. Yes, sir.

3 Q. Do you recall -- and if you have to refresh
4 your memory from the police report, you can do that. Do
5 you recall that you were given some information by the
6 Houston Police Department regarding some suspects that
7 had fled from them in that area?

8 A. That's correct, sir.

9 Q. And do you recall that they either told you or
10 that information was relayed to you through another
11 source that there were three black males that were
12 evading on foot?

13 A. I've seen several, sir.

14 Q. Say that one more time.

15 A. Several.

16 Q. Okay.

17 MR. GRABER: May I approach the witness,
18 Judge?

19 A. I can't remember exactly how many.

20 MR. GRABER: Okay. May I approach the
21 witness, Judge?

22 THE COURT: Sure.

23 Q. (By Mr. Graber) Let me show you what is a copy
24 of your police report supplement No. 16. First, I'll
25 ask you: Is that your supplement to the police report

1 (indicating)?

2 A. Yes, sir.

3 Q. Is all the information included on those two
4 pages information that you personally typed in some
5 computer?

6 A. Yes, sir.

7 Q. Okay. I'd like for you to refresh your memory.
8 I think it's the first paragraph, maybe the third line.
9 See if that refreshes your recollection about the
10 information that you were given by another peace officer
11 regarding how many males had fled from those officers.

12 A. Yes, sir.

13 Q. And did you write that information in your
14 police report?

15 A. Yes, sir.

16 Q. And does that refresh your recollection?

17 A. Yes, sir.

18 Q. And what was it?

19 A. Three black males.

20 Q. Okay. And so, you got to the scene and you
21 knew at that time that you were there assisting, looking
22 for these three black males, correct?

23 A. Yes, sir.

24 Q. And you knew from the other information given
25 to you that those three black males had fled on foot?

1 A. Yes, sir.

2 Q. Regarding State's Exhibit No. 85, I believe it
3 is, I think you were speaking of how you and Kanau were
4 approaching the side of that church, correct? I'll show
5 it to you before you answer that (indicating).

6 You remember talking with Ms. Devine about
7 approaching that church, correct?

8 A. Yes, sir.

9 Q. And were you approaching with the dog from this
10 location, approaching like that (indicating)?

11 A. Actually from -- at an angle like this
12 (indicating).

13 Q. Okay. So, an angle a little bit to the right
14 of where my finger was (indicating)?

15 A. Yes, sir.

16 Q. Okay. And if you're looking at that
17 photograph, you're looking at that church, walking
18 towards that side of the church --

19 A. Yes, sir.

20 Q. -- is the front of the church to your right?

21 A. Yes, sir.

22 Q. And the back of the church is to your left?

23 A. Yes, sir.

24 Q. Obviously.

25 And so, what side of the church would you

1 and your K-9 be approaching?

2 A. This side of the church, would be the west side
3 of the church (indicating).

4 Q. Okay. And as you've indicated, that is the
5 side that when you were approaching, Kanau alerted,
6 where you found the defendant in that location, correct?

7 A. That's correct, sir.

8 Q. And how far under the church did you find him?
9 Was his whole body under the church or just partially?

10 A. Just partially, sir.

11 Q. Was it just where that opening begins? If you
12 will indicate where you found --

13 A. Right here, sir (indicating).

14 Q. Okay. Just where that opening begins as you're
15 coming from the area where you and your dog were coming
16 from, right?

17 A. Yes, sir.

18 Q. And that is the west side of the church,
19 correct, as you've indicated?

20 A. Yes, sir.

21 Q. And as you indicated, when he was found, I
22 think, the dog -- I was going to say attacked, I don't
23 want to use that word -- approached him -- whatever word
24 we want to use -- and you approached Mr. Lee, correct?

25 A. That's correct, sir.

1 Q. You told him before you approached him to put
2 his hands out, correct?

3 A. This is after my K-9 had engaged him.

4 Q. Okay. Engaged. There's the word. Your dog
5 engaged Mr. Lee, correct?

6 A. Yes, sir.

7 Q. And you told him that you were a police officer
8 at that point, I assume. Correct?

9 A. Yes, sir.

10 Q. And you asked him to show you his hands?

11 A. Yes, sir.

12 Q. And that's for safety purposes for you,
13 obviously. Correct?

14 A. Yes, sir.

15 Q. And he complied with you?

16 A. Yes, sir.

17 Q. And he did that?

18 A. Yes, sir.

19 Q. And during the whole time that you were in the
20 presents -- presence -- excuse me -- of Mr. Lee, he
21 complied with your orders?

22 A. Yes, sir.

23 Q. And he showed proper respect for your authority
24 as a peace officer; would you agree with that?

25 A. Yes, sir.

1 Q. And when he was taken out from underneath the
2 church or he got up, you indicated he was dirty on his
3 front side, correct?

4 A. Yes, sir.

5 Q. As if he had been laying on his stomach,
6 correct?

7 A. Yes, sir.

8 Q. Then as you indicated, I believe, your search
9 continued to the back side of the church from that
10 location where Mr. Lee was; is that correct?

11 A. Yes, sir.

12 Q. You went along the side of the church, I guess
13 you would have gone to the right, taken a right to go to
14 the back side, which is now the north side of the
15 church; is that correct?

16 A. From the location where I indicated right here
17 (indicating) --

18 Q. Yes, sir.

19 A. -- I would have taken a left.

20 Q. I'm sorry. Gone along that west wall. When I
21 say a right, when you get to the back, you would have
22 taken a right along the north side of the church,
23 correct?

24 A. Yes, sir.

25 Q. That's what I meant by that.

1 And I believe your testimony was that on
2 the back side of the church that you had noticed that
3 there was, within a couple of feet of the edge of the
4 church -- I think your testimony was within 3 feet --
5 that you located or you noticed that rifle and the three
6 cell phones; is that correct?

7 A. That's correct, sir.

8 Q. And because of what you testified about before,
9 because you were still continuing, you didn't personally
10 go in and pick those items up?

11 A. No, sir.

12 Q. You had another officer do that?

13 A. Yes, sir.

14 Q. Crime Scene Unit?

15 A. No, sir. I don't know who picked them up.

16 Q. Somebody did?

17 A. Yes, sir.

18 Q. You indicated that the position that Mr. Lee
19 was found by you and Kanau was 50 feet from the location
20 on the other side of the church, from west to north at
21 least, was 50 feet from each other from where Mr. Lee
22 was found to where the rifle and the three cell phones
23 were found, correct?

24 A. Yes, sir.

25 Q. Did it -- how -- what was the distance among

1 those four items, the rifle and the three cell phones?

2 A. They were right there in the same area. I
3 mean, they weren't spread out. They were right there
4 together.

5 Q. Did it appear to you, when you saw those items,
6 that whoever put those items there put all four of those
7 items there?

8 A. Yes, sir.

9 Q. Like they were together, they were placed there
10 at the same time? That's my question.

11 A. Yes, sir.

12 Q. And it was 50 feet from where you found -- you
13 and your dog found Mr. Lee to where the rifle and the
14 cell phones were found, correct?

15 A. Approximately. I don't know -- I can't -- I
16 don't judge distances -- I mean, I don't know exactly
17 how far it is, but approximately 50 feet, I would --

18 Q. Clearly it was a good distance?

19 A. Yes, sir.

20 Q. Okay. Would you agree with me because of the
21 rise from the ground to the bottom of that church,
22 meaning the lift -- okay -- that it would be impossible
23 for somebody where Mr. Lee was located by you and your
24 dog to crawl over to the area where the gun and the cell
25 phones were found to put those items there; would you

1 agree with that?

2 A. Yes, sir.

3 Q. Especially, since Mr. Lee is a big dude,
4 correct?

5 A. Yes, sir.

6 Q. Did it appear to you from where the rifle and
7 the three cell phones were that somebody who fled by the
8 church could have tossed those items under the church
9 and continued to flee?

10 A. That could have happened. I don't know that to
11 be true that it happened.

12 Q. No. I understand. I understand. Because you
13 didn't see those items placed there?

14 A. Correct. Yes, sir.

15 Q. And my point there is from the outer north wall
16 of that church to where the rifle and the three cell
17 phones were found, to you it didn't appear that the
18 person who put those items there would have had to crawl
19 under the church to put them there and crawl back out?

20 A. No, sir.

21 Q. That you could have either bent down or just as
22 you're walking by just toss them under there and they
23 could have landed those couple of feet inside the outer
24 wall of the church. Would you agree with that?

25 A. Yes, sir.

1 MR. GRABER: I'll pass the witness, Judge.

2 THE COURT: Ms. Devine.

3 **REDIRECT EXAMINATION**

4 **BY MS. DEVINE:**

5 Q. At the time that Kanau engaged the defendant,
6 did the other officers that were with you draw their
7 weapons?

8 A. I believe the HPD officer that was with me had
9 a long gun. So, he already had a rifle or a shotgun
10 with him.

11 Q. Trained on the defendant at the time he was
12 detained?

13 A. Yes, ma'am.

14 Q. Okay. So, does it surprise you that he
15 complied once he saw he was being held at gunpoint?

16 A. No, ma'am.

17 Q. Was he armed at the time that he was detained?

18 A. No, ma'am.

19 Q. Did you find any other suspects in the
20 surrounding -- area surrounding where the defendant was
21 found or where the gun and the cell phones were found?

22 A. No, ma'am.

23 Q. Were there any other alerts or behavior changes
24 from the time you found the gun and cell phones?

25 A. No, ma'am.

1 Q. If Kanau had picked up on another scent, in
2 your experience with him and his training, would you
3 have seen a behavior change following locating the gun
4 and cell phones underneath the church?

5 A. Yes, ma'am.

6 MR. GRABER: I'm going to object to that as
7 speculation, Judge.

8 THE COURT: Sustained.

9 Q. (By Ms. Devine) You didn't see any other
10 behavior changes --

11 A. No, ma'am.

12 Q. -- that would have indicated to you that he
13 picked up a scent?

14 A. No, ma'am.

15 Q. Is it possible for you to know when Kanau
16 alerts or when you see these behavior changes or he
17 alerts whether or not it's the same scent or a different
18 scent?

19 A. No, ma'am.

20 Q. The behavior change will still be the same --

21 A. Yes, ma'am.

22 Q. -- as you see it?

23 A. Yes, ma'am.

24 Q. Is it possible that this defendant placed those
25 items in the back side of the church, then returned to

1 that corner and tried to put himself as far under the
2 church as was physically possible after hiding those
3 items back there?

4 A. Yes, ma'am.

5 MR. GRABER: I object to speculation.

6 THE COURT: Overruled.

7 Q. (By Ms. Devine) You may answer the question.

8 A. Yes, ma'am.

9 Q. Deputy Graves, do you have an estimation of how
10 far -- how much that church is lifted off the ground at
11 that location?

12 A. It could be -- it wasn't that high. Maybe 6 --
13 probably 6 inches to a foot. I don't -- maybe a foot.
14 I don't know.

15 Q. Was there any possibility that this defendant
16 was getting his whole self under that church?

17 A. No, ma'am.

18 Q. Was where he was up to, was that about the
19 farthest he could have gone?

20 A. Yes, ma'am.

21 MS. DEVINE: Your Honor, I'll pass the
22 witness.

23 THE COURT: Mr. Graber.

24 MR. GRABER: No further questions.

25 THE COURT: You may step down, sir.