

1 THE COURT: You may be seated.

2 Ms. Bennett, you may proceed.

3 MS. BENNETT: Thank you, Judge.

4 **DAVID ROSE,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MS. BENNETT:

8 Q. Officer, if you would please introduce yourself
9 to the members of the jury by telling them your name and
10 where you work?

11 A. My name is Officer David Rose. I am a Houston
12 police officer. And I work up in Greenspoint.

13 THE COURT: Actually, Officer, if you could
14 turn that microphone sideways, it actually works from
15 the sides.

16 THE WITNESS: Okay.

17 THE COURT: All right.

18 Q. (BY MS. BENNETT) How long have you been an
19 officer with the Houston Police Department?

20 A. I've been a police officer for five years.

21 Q. And in order to serve in that capacity, do you
22 have to be a certified peace officer in the State of
23 Texas?

24 A. Yes, ma'am.

25 Q. And what is your current assignment with HPD?

1 A. I'm a patrol officer assigned to Greenspoint.

2 Q. How long have you served on patrol?

3 A. My whole career, five years.

4 Q. Tell the jurors what exactly you do as a patrol
5 officer?

6 A. People call the police in general, and we
7 respond to calls for 911 or nonemergency calls. We
8 function as the preliminary investigators for a lot of
9 crime. We initially write the reports when a crime has
10 occurred and send it off to an investigative division if
11 it can't be solved immediately. We are also tasked with
12 making arrests and coming up with probable cause to make
13 arrests, if an arrest is, I guess, possible at the time.
14 And if there's no calls for service holding, we're
15 tasked with going out and trying to conduct
16 investigations on our own, proactively trying to find
17 people breaking the law.

18 Q. So, basically, if a citizen needs help, you're
19 the first officer they're going to see?

20 A. Yes, ma'am.

21 Q. You or someone who does what you do?

22 A. Yes, ma'am.

23 Q. Prior to your service with the Houston Police
24 Department, where did you work?

25 A. I actually worked for the City of Houston as a

1 temporary jailer.

2 Q. How long did you serve in that capacity?

3 A. Three months.

4 Q. I want to turn your attention to August the
5 17th of 2011, were you working on that particular day?

6 A. Yes, ma'am.

7 Q. Where is it that your station is that you work
8 out of?

9 A. It's in the Greenspoint Mall.

10 Q. Just for the jurors who may not know, when you
11 say Greenspoint, what part of town are you referring to?

12 A. It's the northern part of town near the Beltway
13 and 45. It's about, spans from Ella on the west to the
14 Hardy Toll Road on the east.

15 Q. Were you called to an apartment location at
16 Canfield Lakes Apartments?

17 A. Yes, ma'am.

18 Q. And do you recall approximately what time you
19 arrived at Canfield Lakes?

20 A. I arrived at 6:17 in the afternoon.

21 Q. What was the reason that you were dispatched to
22 that location?

23 A. It was an aggravated robbery and burglary just
24 occurred, excuse me. And typically calls like that it's
25 a Code 2 call. We have different priorities. Priority

1 1 being the highest, Priority 2, 3, 4. So, Priority 1
2 and 2 calls they try to dispatch two officers. So,
3 there was another officer primarily assigned to it; and
4 I checked by with her to assist her in her
5 investigation.

6 Q. And did you arrive at or near the same time as
7 that other officer?

8 A. I arrived shortly after.

9 Q. What is the address for Canfield Lakes?

10 A. 13355 Northborough Drive.

11 Q. And is that located in Harris County, Texas?

12 A. Yes, ma'am.

13 Q. And I assume also it's within the City of
14 Houston?

15 A. Yes, ma'am.

16 Q. When you got to the scene, were you able to
17 confirm whether or not it was, in fact, a burglary?

18 A. Well, it was an aggravated robbery, ma'am. A
19 burglary usually happens when the Complainants aren't at
20 home.

21 Q. When the building is empty?

22 A. Yes, ma'am.

23 Q. Once you got to the scene, did you come into
24 contact with the Complainant or the victim of that
25 aggravated robbery?

1 A. Yes, ma'am.

2 Q. Do you recall what her name was?

3 A. Ms. Alexandra Aguilar.

4 Q. What was her demeanor when you came into
5 contact with her?

6 A. She was frightened. She had been crying, and
7 she was with her children in the back room talking to
8 the other officer, and it was -- we tried to get her to
9 come outside and talk to us away from her children; she
10 wouldn't. She was in a state of shock I would say.

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

13 THE COURT: Yes.

14 Q. (BY MS. BENNETT) Officer Rose, I'd like to
15 show you a map and a few photographs. Starting first
16 with what I've marked for identification as State's
17 Exhibit No. 1. Just generally, do you recognize what
18 that item is?

19 A. Yes, ma'am.

20 Q. And what is that?

21 A. This is the Canfield Lakes Apartment complex.
22 It's just the map of the City of Houston.

23 Q. And looking at State's Exhibit 1, does that
24 accurately reflect the location of the Canfield Lakes
25 Apartments within Harris County and Houston, Texas?

1 A. Yes, ma'am.

2 Q. Okay. Now, I'd like to show you what's been
3 marked for identification as State's Exhibits 2 through
4 7. If you would please take a moment to review those?

5 A. Okay.

6 Q. And just generally, what is depicted in State's
7 Exhibits 2 through 7?

8 A. This is the apartment complex where the
9 incident occurred, and this is the pictures of the
10 exterior of the apartment where the incident occurred.

11 Q. And were you actually there when those
12 photographs were taken?

13 A. Yes, I was.

14 Q. Do they fairly and accurately depict the way
15 the apartment looked back in August 2011?

16 A. Yes, ma'am.

17 Q. If I could borrow those back from you.

18 MS. BENNETT: Your Honor, at this time the
19 State wishes to introduce State's Exhibits 1 through 7
20 and tenders those to Defense counsel.

21 (State's Exhibit Nos. 1 through 7 offered.)

22 MR. DUARTE: There's no objection, Your
23 Honor.

24 THE COURT: All right. State's Exhibits 1
25 through 7 are admitted without objection.

1 (State's Exhibit Nos. 1 through 7
2 admitted.)

3 MS. BENNETT: May I publish these as
4 needed, Your Honor?

5 THE COURT: Yes.

6 Q. (BY MS. BENNETT) Officer Rose, I'd like to
7 show you now what's been admitted as State's Exhibit 1.
8 Showing you there State's Exhibit 1, does that depict,
9 just generally, where the location is of the Canfield
10 Lakes Apartment within Harris County?

11 A. Yes, ma'am.

12 Q. And showing you State's Exhibit No. 2, could
13 you tell the jurors what you're looking at there?

14 A. This is the outside of the Canfield Lakes
15 Apartment complex on the west side of Northborough
16 Drive.

17 Q. And I apologize if you stated this earlier, but
18 what was the apartment number for Ms. Aguilar's
19 apartment?

20 A. Apartment 1719.

21 Q. Showing you State's Exhibit 3, is that a photo
22 of her door?

23 A. Yes, ma'am.

24 Q. And now State's Exhibit 4, could you tell the
25 ladies and gentlemen of the jury what they're looking at

1 in State's Exhibit 4?

2 A. This is sort of the interior of the complex
3 looking towards the parking lot on the northwest corner
4 of the apartment complex. This first door on the left
5 is Apartment 1719.

6 Q. And just to make sure we're clear, when you say
7 "the first door on the left," are you talking right here
8 where that middle light is on the left side of the
9 photo?

10 A. Yes, ma'am.

11 Q. Is that the same door that we saw in the
12 previous exhibit?

13 A. Yes, ma'am.

14 Q. Showing you State's Exhibit 5, is that that
15 same area?

16 A. Yes, ma'am, and it's the first door on the left
17 as well.

18 Q. And State's Exhibit 6, what is depicted there?

19 A. This is the eastern wall of Apartment 1719.
20 That back patio belongs to 1719 as well as this window.

21 Q. And showing you State's Exhibit 7, is that a
22 close-up photograph of that same back patio?

23 A. Yes, ma'am.

24 Q. And would that be Ms. Aguilar's patio?

25 A. Yes, ma'am.

1 Q. As part of the investigation that was made by
2 you and the other officer, were y'all able to determine
3 if there were any working surveillance cameras at this
4 location?

5 A. I'm not sure about that, ma'am. Let me refer
6 back to this.

7 Q. When I say -- let me clarify, when I say
8 "surveillance," I mean actually video recording devices?

9 A. I do not believe so, ma'am.

10 Q. At the time that you're beginning your
11 investigation, do you have any leads at all on any type
12 of vehicles or description of who you might be looking
13 for?

14 A. When I got the call you're asking, ma'am?

15 Q. No, at the completion of your investigation.

16 A. Yes, ma'am. After talking to a few of the
17 people outside of the residence when I initially
18 arrived, we determined that these people saw a red Grand
19 Am circling in the parking lot, and that there was a
20 black female with very light brown skin driving it, and
21 there were two black male suspects that ran from the
22 apartment into the vehicle after they had confronted the
23 Complainant and her children.

24 Q. At the time that you finished your
25 investigation at the scene, is that all the information

1 that you had as to who you might be looking for?

2 A. Yes, ma'am.

3 Q. Did you do any type of scene investigation
4 while you were there, try to lift any fingerprints?

5 A. Yes, ma'am, I did.

6 Q. And what was it -- let me back up. What
7 experience do you have and training in how to lift
8 fingerprints?

9 A. Ma'am, we have several courses that we take
10 when we're in the police academy as far as dusting
11 fingerprints, and we are equipped with print kits where
12 we are taught how to dust prints, how to keep from
13 contaminating the evidence on our own, how to put the
14 tape down and lift it and put it on a card and submit it
15 to a lab for processing.

16 Q. And when you're going to print a location such
17 as this one, do you just print any and all surfaces you
18 can find; or do you try to focus in on certain areas?

19 A. We try to focus in on areas where we would be
20 able to see clear ridges, usually a clear surface that's
21 not very porous. Something like this, you know, shiny
22 wood, things of that nature.

23 Q. When you say "ridges," tell the jurors what you
24 mean by that?

25 A. When you put your finger down on something, it

1 leaves behind grease prints from your fingerprints, and
2 when you put the dust down and dust over it, the grease
3 traps that powder, it's designed to trap it. So,
4 basically, we're looking for sort of like a print
5 indentation from that grease. A smudge would be an
6 example of you just get the grease and there's no clear
7 ridges on it, it looks like a black mark. You submit
8 that to the lab, they're not going to be able to
9 differentiate that from one person's finger to the
10 other.

11 Q. Is it common, it seems, to find mostly smudges
12 or usable prints?

13 A. It's a mixture. It depends on the surface, and
14 it depends on what the person that left the print was
15 doing. A lot of times if you have some sort of
16 electronic device and someone just picked it up, you
17 might get a little smudge from where their finger
18 initially touched the surface underneath the electronic
19 device. But for the most part if they grab it or touch
20 it with their fingers in a way that their fingerprint
21 would touch it and bring it off, usually that would
22 leave behind a ridge that I could lift.

23 Q. And when you were at Ms. Aguilar's apartment,
24 did you attempt to lift fingerprints on any of the
25 surfaces there?

1 A. Yes, ma'am.

2 Q. What did you attempt to print in Ms. Aguilar's
3 apartment?

4 A. I attempted to lift prints from the electronics
5 left behind and where the television used to be on her
6 entertainment center and in those areas in the living
7 room. The apartment was a mess, and so I just tried to
8 see and look at different sorts of surfaces that might
9 have prints, I printed those. And then the other
10 officer and Ms. Aguilar directed my attention to her ID
11 that was on the counter of the kitchen.

12 Q. Were you led to believe that one of the
13 individuals who had committed the robbery had perhaps
14 touched that ID?

15 A. Yes, ma'am, that's what they told me.

16 Q. Did you attempt to lift any prints from the ID?

17 A. Yes, ma'am.

18 MS. BENNETT: May I approach the witness,
19 Judge?

20 THE COURT: Yes.

21 Q. (BY MS. BENNETT) Officer Rose, I want to show
22 you what I've marked for identification as State's
23 Exhibit No. 9. Does that appear to be the ID from which
24 you attempted to lift fingerprints in this case?

25 A. Yes, ma'am.

1 Q. And whose ID is that that you're looking at
2 there?

3 A. This is the ID of Ms. Alexandra Aguilar.

4 Q. And were you able to lift any usable prints
5 from that ID card marked as State's Exhibit 9?

6 A. Yes, ma'am. I was able to lift two, one from
7 each side.

8 Q. So, is it fair to say you can tell almost
9 immediately if you might have a print that the print lab
10 could make a match from?

11 A. Yes, ma'am.

12 Q. And you said in this case there were two?

13 A. Uh-huh.

14 Q. I want to show you now what's been marked as
15 State's Exhibits 8 and 8A, as in apple, that I have
16 removed from this envelope. If you would, please, take
17 a look at those?

18 A. All right.

19 Q. Do you recognize those two cards, 8 and 8A?

20 A. Yes, ma'am.

21 Q. What are they?

22 A. These are the print cards that I submitted with
23 the prints on the back, and I filled out the front of
24 them.

25 Q. And when you say you "filled out the front,"

1 what type of information did you put on the front of the
2 card?

3 A. Case number, location, Complainant's name, date
4 of the offense, the day I lifted the print, my name, and
5 where I lifted it from, which is Alexandra's ID card.

6 Q. When you say "case number," is there a unique
7 identifying number for this case with the Houston Police
8 Department?

9 A. Yes, ma'am.

10 Q. And is that there on 8 and 8A?

11 A. Yes, ma'am.

12 Q. Do you see any other markings on those cards
13 that you do not recognize or that you did not make, I
14 should say?

15 A. I do see marks from this RS&A. I believe
16 that's the lab making those marks on the back of the
17 cards, but that's it.

18 Q. So, other than the marks that were made by that
19 RS&A, does everything else appear to be in the same
20 condition as it was back on August the 17th of 2011?

21 A. Uh-huh.

22 Q. And do they appear to have been tampered with
23 in any way other than the markings made by the print
24 lab?

25 A. No, ma'am.

1 Q. I wanted to also ask one question about those.
2 There are circles around certain spots on the tape that
3 appeared to have been made in blue ink. Was that
4 something that you did or a later person did?

5 A. That's something that a later person did. That
6 must have been the lab as well.

7 Q. Okay. And could you, well --

8 MS. BENNETT: Your Honor, at this time the
9 State moves to introduce what's been marked as State's
10 Exhibit 8 only and tenders to Defense counsel.

11 (State's Exhibit No. 8 offered.)

12 MR. DUARTE: There's no objection to
13 State's 8, Your Honor.

14 THE COURT: All right. State's Exhibit
15 No. 8 is admitted without objection.

16 (State's Exhibit No. 8 admitted.)

17 Q. (BY MS. BENNETT) Officer Rose, if you could
18 please looking at State's Exhibit 8, hold this up and
19 just explain to the jurors a little bit about what you
20 did to make this card that's been admitted as State's
21 Exhibit 8?

22 A. Okay. So, in my training what we do is we take
23 whatever we're trying to print; and we put it on a flat
24 surface. I wear gloves. You take a print brush and put
25 it in the dust, and then you lightly dust over the area

1 that you're trying to lift prints from. These little
2 black surfaces usually will be apparent. You take a
3 piece of tape, you put it down over it, you press it
4 down to get the air bubbles out, then you take your
5 gloves off, put another pair of gloves on, you lift that
6 piece up and you place it onto an index card. Then I
7 will fill out the information on the back of the index
8 card, and I put it in that envelope and seal it, that's
9 what I did with this one.

10 Q. And the lift that you've just shown to the
11 jurors in State's Exhibit 8, was that taken from the ID
12 card of Alexandra Aguilar?

13 A. Yes, ma'am.

14 Q. Thank you, Officer.

15 MS. BENNETT: State will pass the witness.

16 THE COURT: Thank you. Mr. Duarte.

17 MR. DUARTE: Yes, ma'am. Thank you.

18 **CROSS-EXAMINATION**

19 BY MR. DUARTE:

20 Q. Good afternoon, Officer Rose. My name is Rudy
21 Duarte. I haven't talked to you before about this case,
22 have I?

23 A. No.

24 Q. Just a little bit saying hello this morning?

25 A. Yes, sir.

1 Q. Just a couple of questions, you said that
2 you've been with HPD for about five years; is that
3 correct?

4 A. Yes, sir.

5 Q. In those five years, how many classes have you
6 taken regarding the dusting for fingerprint?

7 A. Well, I've taken the classes at the academy. I
8 don't know how many classes you classify that as, but it
9 was several days. And on my own, my own personal time,
10 I've gone on searches, websites and tried to refine my
11 training.

12 Q. So, there's been one, I guess, one formal class
13 that you would have at the academy regarding dusting for
14 fingerprints, correct?

15 A. Yes, sir.

16 Q. That was required, I guess, as part of your
17 training with HPD at the academy, correct?

18 A. And to abide by the State's rules, yes.

19 Q. So does every patrol area out in that
20 Greenspoint substation, do they all have dust kits?

21 A. Yes, sir.

22 Q. So, you have your dust kit. Does Greenspoint
23 substation, how big of an area does that cover?

24 A. It's difficult for me to give you like a square
25 miles, sir.

1 Q. That's fair.

2 A. Because it's cut in with the county.

3 Q. Can you give the jury some boundaries maybe
4 that you're familiar with that you've run?

5 A. Yes, sir. You have Ella Boulevard on the
6 western side. You have West Hardy Road on the eastern
7 side. We have Demontrond Street on the northern side,
8 which is just north of Rankin Road. And on the southern
9 side it goes all the way down to West Road and some of
10 the streets below that, too.

11 Q. Do you know where Imperial Drive would be
12 located? Is that within that beat?

13 A. You mean Imperial Valley Drive, sir?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. That's included in your beat. Now, when you
17 arrived there at this scene at the Canfield Apartments,
18 you said that Ms. Aguilar was kind of distraught with
19 the children, correct?

20 A. Yes, sir.

21 Q. And you also mentioned for this jury that the,
22 that the apartment was kind of in a mess?

23 A. Yes, sir.

24 Q. And did you-all document the state of the, or
25 the condition of the apartment?

1 A. I have to check, sir. Myself, I did not; but
2 let me see.

3 Q. You or Officer Buchanan because y'all arrived
4 almost simultaneously; is that correct?

5 A. I arrived shortly after her, yes.

6 Q. About a minute apart; is that right?

7 A. Yes.

8 Q. What page are you referring to?

9 A. I'm looking at page 2, dot, 005.

10 Q. 2.005. And what was the overall condition of
11 the apartment?

12 A. I don't see it in this thing, sir. I don't
13 believe she documented it.

14 Q. So, there's nothing that shows it was
15 documented the condition of the apartment, correct?

16 A. No, sir.

17 Q. What is the CSU unit, do you know?

18 A. The crime scene unit, sir?

19 Q. Yes, sir, the crime scene unit.

20 A. Yes.

21 Q. And was the crime scene unit, were they called
22 out to this location on this event?

23 A. No, sir.

24 Q. And can you briefly just kind of tell the jury
25 what the crime scene unit does when they're called out?

1 A. Okay. On typically violent crimes or a crime
2 where homicide feels it's proper to document a large
3 scene or a scene with special types of evidence, they
4 usually send out the crime scene unit. It's a unit that
5 only lifts prints, takes pictures and documents evidence
6 when they go out to a scene. A lot of times they're
7 employed with murder scenes or suicide scenes.

8 Q. And have you ever been involved in the
9 investigation of an aggravated robbery where the CSU
10 unit comes out to the scene?

11 A. No, sir.

12 Q. You never have, that's fair. Let me ask you,
13 when you were able to lift that print or dusted that
14 print off the ID of Ms. Aguilar, was that print on the
15 front or the back of the ID, you remember?

16 A. I just printed both sides of it, sir, and put
17 them both in that envelope. I do not remember which one
18 is which.

19 Q. Isn't it true that you had a little bit of
20 reservation about maybe, the ability to locate a print
21 on that ID because maybe your partner or the other
22 officer that arrived had already touched the card,
23 correct?

24 A. Yes, sir. I said that, let me see, Officer
25 Buchanan and the Complainant both touched that ID.

1 Q. And you told this jury that, you know, as soon
2 as you picked up the ID, you could tell that you were
3 going to be able to get a fingerprint identification off
4 that?

5 A. No, I have to dust it first before I can tell
6 that.

7 Q. And it wasn't until after you dusted it then
8 you felt that you could get the print lab to make an
9 identification, correct?

10 A. Yes, sir.

11 Q. But it wasn't like you picked up the ID and say
12 I know I'll get a print off of this?

13 A. No.

14 Q. And even after you dusted it and you still --
15 you're not sure that you can get a positive ID off of
16 that print until the lab looks at it?

17 A. Yes, that's true.

18 Q. That's fair. Okay. So, there weren't any
19 photographs that would have indicated as far as the door
20 being forced open or any forced entry, signs of forced
21 entry like a broken doorjamb or anything like that or a
22 broken door knob, anything like that?

23 A. No, sir, we didn't take pictures.

24 Q. Or any pictures of the house or the apartment
25 being in disarray like someone had ransacked it?

1 A. No, sir.

2 Q. It was pretty much basically all information
3 that y'all had was what y'all got from Ms. Aguilar and
4 maybe witnesses around her, correct?

5 A. Yes.

6 Q. And then the print that you were able to find
7 on the ID, is that it?

8 A. Yes, sir. We didn't have any photographs like
9 that, no.

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

11 THE COURT: All right. Is there anything
12 further?

13 MS. BENNETT: No, Your Honor.

14 THE COURT: May Officer Rose be excused?

15 MS. BENNETT: Yes, Your Honor.

16 THE COURT: And he is released; is that
17 correct?

18 MR. DUARTE: Yes, ma'am.

19 THE COURT: Thank you, Officer. You may
20 step down.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Will the attorneys approach the
23 bench, please?

24 (Bench conference.)

25 THE COURT: Is your witness going out of