

1                   **THE COURT:** Okay. Okay. Thank  
2 you-all.

3                   **(End of Bench Discussion)**

4                   **THE COURT:** Thank you. We appreciate  
5 your persevering with the weather, and sorry we're  
6 late starting. I just couldn't get everything  
7 wrapped up, so thank you for your patience.

8                   And you may continue with Officer Do.

9                   **MS. JOHNSON:** Thank you, Your Honor.

10                   **DANNY DO,**

11 having been previously duly sworn, testified as follows:

12                   **DIRECT EXAMINATION (CONTINUED)**

13                   **Q.**       **(BY MS. JOHNSON)** Officer Do, when we left  
14 off yesterday, we had just finished listening to the  
15 recorded conversation between you and the defendant,  
16 Mark Castellano; is that correct?

17                   **A.**       Yes, ma'am.

18                   **Q.**       And so, let's talk a little bit about that  
19 conversation with the defendant. When did that  
20 conversation actually occur?

21                   **A.**       The conversation with Mark occurred on the  
22 27<sup>th</sup>, 9/27.

23                   **Q.**       Was that a Thursday?

24                   **A.**       That was a Thursday.

25                   **Q.**       Now, during that conversation with the

1 defendant, how would you describe his demeanor on the  
2 phone with you?

3 **A.** Very calm, very nonchalant. He just spoke  
4 in a regular manner.

5 **Q.** Did he appear as if anything was really  
6 wrong, or did he appear to be concerned?

7 **A.** Did not. He mentioned it a couple of  
8 times, but it didn't come out on the conversation.

9 **Q.** Now, before the conversation that you had  
10 with the defendant, did you also speak to another  
11 friend of Michelle Warner's?

12 **A.** Yes, I did.

13 **Q.** Who was that?

14 **A.** That was Scott, I guess her current or  
15 ex-boyfriend.

16 **Q.** Scott Russell?

17 **A.** Yes, Scott Russell.

18 **Q.** And was that Wednesday, September 26th?

19 **A.** Yes. That was the day before, yes.

20 **Q.** When you spoke with Scott Russell, without  
21 going into any of the things he told you, how would  
22 you describe his demeanor on the phone with you?

23 **A.** He was concerned in regards to her  
24 whereabouts, not knowing, because she usually calls  
25 him all the time.

1 Q. And did he seem concerned on the phone?

2 A. He seemed concerned, yes. Very concerned.

3 Q. Was there a difference, in your opinion,  
4 between -- was there a difference, in your opinion,  
5 between the defendant's tone and demeanor and Scott  
6 Russell's tone and demeanor?

7 MR. DAVIS: Objection, Your Honor,  
8 improper opinion.

9 THE COURT: Overruled.

10 Q. (BY MS. JOHNSON) Was there a difference  
11 between the defendant's tone and demeanor on the  
12 phone versus Scott Russell's tone and demeanor?

13 A. Yes.

14 MR. DAVIS: Again, Your Honor,  
15 objection. That calls for improper opinion as well  
16 as calls for speculation.

17 THE COURT: Overruled.

18 A. Yes.

19 Q. (BY MS. JOHNSON) You can answer.

20 A. Yes.

21 Q. And what was the difference?

22 A. Scott was very concerned in regards to  
23 Michelle's whereabouts and wanted to -- to be able to  
24 know where she was at, and he was helping in regards  
25 to giving information and I guess be forthright on

1 what he knew.

2 **MR. DAVIS:** Your Honor, I object to  
3 the narrative.

4 **THE COURT:** Sustained.

5 **Q. (BY MS. JOHNSON)** When you spoke to the  
6 defendant, did he appear to you to be panicked at  
7 all?

8 **MR. DAVIS:** Objection, calls for  
9 improper opinion.

10 **THE COURT:** Can you rephrase, please?

11 **Q. (BY MS. JOHNSON)** Based on your opinion,  
12 would you describe the defendant to be panicked on  
13 the phone with you?

14 **A.** No, he was not.

15 **MR. DAVIS:** Objection, calls for  
16 improper opinion.

17 **THE COURT:** Thank you. Once I rule on  
18 an objection, please don't object to the same  
19 question again. Thank you.

20 **Q. (BY MS. JOHNSON)** You can answer.

21 **A.** No. He was very calm.

22 **Q.** During your investigation, did you obtain  
23 information from Michelle Warner's father?

24 **A.** Yes, I did.

25 **Q.** Did you get names of friends that you

1 could -- and information to contact to determine  
2 where she was at the time?

3 **A.** Yes.

4 **Q.** And how many names did he give you?

5 **A.** He gave me --

6 **MR. DAVIS:** Objection to hearsay.

7 **THE COURT:** And this is information  
8 from Scott?

9 **MS. JOHNSON:** No. From the  
10 complainant's father.

11 **THE COURT:** Sustained.

12 **Q.** (**BY MS. JOHNSON**) Based on that information,  
13 did you contact some of the complainant's friends?

14 **A.** Yes.

15 **Q.** Who were those people?

16 **A.** I attempted to contact some of the friends,  
17 and Scott was one of them.

18 **Q.** Who else did you contact?

19 **A.** I also spoke with the mother.

20 **Q.** What was the mother's name?

21 **A.** The mother, Donna Malone.

22 **Q.** So, back to the investigation, did other  
23 missing -- Missing Persons Unit officers go back to  
24 the apartment complex?

25 **A.** Yes, they did.

1 Q. What did they do at that apartment complex?

2 MR. DAVIS: Objection, Your Honor,  
3 calls for speculation.

4 Q. (BY MS. JOHNSON) If you know.

5 THE COURT: Can you establish if he  
6 observed that or if he knows through some other  
7 method?

8 Q. (BY MS. JOHNSON) Do you know what other  
9 officers did in the investigation?

10 A. We had a group meeting. Certain members of  
11 our squad went to do certain -- certain things, and  
12 some of the members went to the apartment complex to  
13 pass out fliers and to find out --

14 MR. DAVIS: I object to the narrative  
15 as well as hearsay.

16 THE COURT: Sustained.

17 Q. (BY MS. JOHNSON) Did other officers pass  
18 out fliers in the apartment complex?

19 MR. DAVIS: Objection. Same  
20 objection, Your Honor, hearsay, calls for  
21 speculation.

22 THE COURT: You need to establish  
23 whether or not he observed that. If he didn't  
24 observe it, sustained.

25 Q. (BY MS. JOHNSON) What -- what did you ask

1 other officers to do to help assist in the  
2 investigation?

3 **A.** I asked them to go out to pass out fliers  
4 and to gather information in regards to the complex  
5 and the surrounding areas to find the whereabouts of  
6 Michelle.

7 **Q.** And did anything come of those things? Did  
8 anything significant come out of it?

9 **MR. DAVIS:** Objection to hearsay.

10 **THE COURT:** Sustained.

11 **Q.** (**BY MS. JOHNSON**) Did you also speak to a  
12 Charles Swihart?

13 **A.** Yes, I did.

14 **Q.** When did you do that?

15 **A.** I spoke with Charles, I believe, on that  
16 Friday.

17 **Q.** September 28th?

18 **A.** September 28th.

19 **Q.** Did Charles Swihart send you an e-mail with  
20 information concerning the defendant?

21 **A.** Yes, he did.

22 **Q.** I will show you what's been marked as  
23 State's Exhibit No. 221. And do you recognize this?

24 **A.** Yes, I do.

25 **Q.** And what was your e-mail address back in

1 September 2012?

2 **A.** DannyDo, D-O, @CityofHouston.net.

3 **Q.** And was that the e-mail address that you  
4 used to get an e-mail from Charles Swihart?

5 **A.** Yes, ma'am.

6 **Q.** Now, I think earlier you testified that you  
7 spoke to the defendant about coming back to Houston  
8 to speak face to face with y'all?

9 **A.** Yes, ma'am.

10 **Q.** Why did you want to speak face to face with  
11 him?

12 **A.** We like to see him face to face to get a  
13 reaction in regards to the questions that we give  
14 him.

15 **Q.** Why wasn't the phone call with him enough?

16 **A.** The phone call doesn't give us the reaction  
17 or his demeanor. It doesn't give us a lot of, I  
18 guess, body language; and that's one of the ways that  
19 we can tell if you're being truthful or not.

20 **Q.** When -- on September 30, 2012, did you view  
21 the interview of the defendant and Investigator  
22 Waters?

23 **A.** Yes, I did.

24 **Q.** The whole thing?

25 **A.** Yes.



1           **Q.**     Now, based on your investigation in this  
2 case and after Michelle Warner was located, what did  
3 you -- how do you end your investigation?

4           **A.**     In a missing person's case, if the body is  
5 found and it is a homicide case, the Homicide  
6 officers take over the case; and we no longer have  
7 the case. So, all the case files and everything goes  
8 to Homicide.

9           **Q.**     Do you remove the information of the  
10 missing person from the --

11          **A.**     National Crime Information Center. Yes, we  
12 do.

13          **Q.**     And has that --

14          **A.**     National Crime Information Center is a  
15 database for missing persons where we put CODIS, DNA,  
16 and just a person that's missing. So, if you're  
17 flying out and about or if an officer runs you, then  
18 he will know that they are a missing person. They  
19 will give us contact in regards to it.

20          **Q.**     Did you remove Michelle Warner's  
21 information from that database?

22          **A.**     After we found out the body was recovered,  
23 yes.

24                   **MS. JOHNSON:** I pass the witness.

25                   **THE COURT:** Thank you.

1 Cross-examination.

2 **CROSS-EXAMINATION**

3 **Q.** (**BY MR. DAVIS**) Detective Do, you have been  
4 working in Missing Persons for about 16 years?

5 **A.** Yes, sir.

6 **Q.** And is that what you do currently, sir?

7 **A.** Yes, sir.

8 **Q.** And that is your primary focus?

9 **A.** Yes, sir.

10 **Q.** So, you don't work under other types of  
11 cases or anything of that nature?

12 **A.** We do missing persons, and we also do  
13 custody cases.

14 **Q.** All right. So, in terms of your work and  
15 investigation with missing persons, do you often talk  
16 to suspects or people who are people of interest?

17 **A.** Yes. We do speak to all sorts of people.

18 **Q.** Something you regularly do, right?

19 **A.** Yes.

20 **Q.** Right?

21 **A.** Yes, sir.

22 **Q.** Sometimes people don't talk to you,  
23 correct?

24 **A.** In regards to missing persons?

25 **Q.** Yes, sir.

1           **A.**     Our cases are a little bit different from  
2 homicide cases and such. Our cases are family  
3 members that make the missing persons reports.

4           **Q.**     Right. But when you're talking to people  
5 who might be people of interest, sometimes those  
6 people refuse to talk to you; is that right?

7           **A.**     I would say sometimes, but most likely not.  
8 They usually do talk to us.

9           **Q.**     And in this case, Mr. Castellano talked to  
10 you?

11          **A.**     He did.

12          **Q.**     He agreed to talk to you when you called  
13 him, right?

14          **A.**     After several phone calls, yes.

15          **Q.**     You were playing phone tag with him. Would  
16 that be a fair assessment?

17          **A.**     I did not get a -- I guess a callback from  
18 him; but when he did call, then, yes, it was -- it --

19          **Q.**     Right?

20          **A.**     It was another officer that actually called  
21 him several days or a day or two before.

22          **Q.**     Right. And he called back and you talked  
23 to him?

24          **A.**     He did call back, yes.

25          **Q.**     And when you talked to him, he gave you a

1 lengthy statement over the phone?

2 **A.** We spoke over the phone.

3 **Q.** Yes, sir.

4 **A.** There was no further statement.

5 **Q.** Right. Well, when you're talking to him,  
6 you're recording what he is saying?

7 **A.** Yes.

8 **Q.** And you're asking him questions, right?

9 **A.** Yes.

10 **Q.** And he's agreeing to answer your questions?

11 **A.** Yes.

12 **Q.** He doesn't terminate the phone call or  
13 anything?

14 **A.** No.

15 **Q.** He continues to talk to you?

16 **A.** He did.

17 **Q.** And after you talked to him for a little  
18 while, you start asking him detailed questions about  
19 what occurred or what happened with Michelle; is that  
20 accurate?

21 **A.** Yes.

22 **Q.** And that was with the recording that we  
23 heard?

24 **A.** Yes.

25 **Q.** Now, prior to that recording, you hadn't

1 talked to him before?

2 A. No.

3 Q. So, you don't know what his voice normally  
4 sounds like?

5 A. No.

6 Q. You don't know what he is like when he is  
7 agitated or anything of that nature; is that  
8 accurate?

9 A. That's accurate.

10 Q. And so when you hear him talk, this is your  
11 first contact, first indication of Mr. Castellano?

12 A. Yes.

13 Q. And you just said that you liked to  
14 sometimes do face to face -- or have a face to face  
15 so you can gage people's body language, right?

16 A. Yes.

17 Q. And you're not able to gage his body  
18 language when you're talking over the phone?

19 A. No.

20 Q. And you're not really able to look at the  
21 inflection of how he moves and everything else that  
22 gives you clues as to whether or not he is being  
23 deceptive, right?

24 A. The tone of voice.

25 Q. Yes. That is the only thing you have is

1 tone of voice, true?

2 A. True.

3 Q. Never heard his tone in any other  
4 circumstances?

5 A. No.

6 Q. All right. And while he is talking to you,  
7 he is telling you some information; and usually  
8 during the course of your investigation, when you get  
9 information, you take steps to verify or discredit  
10 the information; is that accurate?

11 A. At times, yes.

12 Q. If a suspect comes in and tells you A, B,  
13 and C, you do investigations to determine whether or  
14 not A, B, and C was true or false?

15 A. True.

16 Q. Right. And, obviously, some of the stuff  
17 you know now that Mr. Castellano was telling you was  
18 false --

19 A. Yes.

20 Q. -- right?

21 When he said that they got in an  
22 argument and she left the apartment, that was what  
23 you determined to be false, right?

24 A. Yes.

25 Q. And you determined that being false by

1 watching his statement; is that accurate?

2 A. I didn't understand that. Watching his  
3 statement?

4 Q. Yes, sir. You said that later on, when you  
5 had him come in -- now, you had him come in and do a  
6 face to face, right?

7 A. I didn't do the interview. It was actually  
8 a Homicide officer that did the interview.

9 Q. Yes, sir. But you testified earlier that  
10 you watched that --

11 A. I did.

12 Q. -- right?

13 A. Yes.

14 Q. You watched that interview?

15 A. Yes.

16 Q. And he gave a recorded statement?

17 A. Yes.

18 Q. All right. And you observed that  
19 interview?

20 A. Yes.

21 Q. And from watching that interview, you could  
22 determine that some of the things that he told you  
23 later weren't true --

24 A. Yes.

25 Q. -- right?

1                   Some of the stuff he told you earlier  
2 wasn't true, right?

3           **A.**     Correct.

4           **Q.**     Besides watching that statement, the stuff  
5 he said about Michelle, you weren't able to verify  
6 that those things weren't true; isn't that right?

7           **A.**     Which part?

8           **Q.**     When he told you about Michelle abusing  
9 drugs. You were able to verify that as being true?

10          **A.**     We spoke to some witnesses that said that  
11 she had.

12          **Q.**     Him telling you about the stuff about her  
13 being engaged in violent conduct, you were able to  
14 verify that as being true?

15          **A.**     According to her -- his boss, he had seen  
16 that, and I believed that to be true.

17          **Q.**     Right. He saw injuries and stuff on  
18 Mr. Castellano?

19          **A.**     That's what he said.

20          **Q.**     Yes, sir. His --

21          **A.**     His boss. We did not verify that.

22                   **THE COURT:** Excuse me. It's your  
23 responsibility, Mr. Davis, to control the pacing; and  
24 you-all are talking over each other.

25                   **THE WITNESS:** Sorry.



1                   **THE COURT:** Okay.

2                   **MR. DAVIS:** I will slow it down,  
3 Judge. No problem.

4                   **THE COURT:** Thank you. All right.  
5 After the lawyer asks the question, kind of give a  
6 split-second pause before you begin your answer  
7 because the poor court reporter is just working  
8 herself to death down there.

9                   **THE WITNESS:** Yes, ma'am.

10                  **THE COURT:** Thank you so much.

11                  **THE WITNESS:** Sorry.

12                  **Q.**        **(BY MR. DAVIS)** That's what his boss said,  
13 right?

14                  **A.**        That's what he told me, yes.

15                  **Q.**        His boss told you about him coming to work  
16 with injuries?

17                  **MS. JOHNSON:** Objection to hearsay.

18                  **THE COURT:** Sustained.

19                  **Q.**        **(BY MR. DAVIS)** You were able to verify some  
20 of the stuff Mr. Castellano was telling --

21                  **MS. JOHNSON:** Objection to hearsay.

22                  **THE COURT:** Sustained.

23                  **Q.**        **(BY MR. DAVIS)** Now, you conducted an  
24 investigation after hearing the stuff Mr. Castellano  
25 was telling you, true?

1           **A.**       Yes.

2           **Q.**       And without telling me what someone said,  
3 you were able to verify that he was telling you  
4 things that were true?

5                   **MS. JOHNSON:**   Objection to hearsay.

6                   **THE COURT:**   Sustained.

7                   **MR. DAVIS:**   And I think I'd like to do  
8 a proffer on that issue, Judge.

9                   **THE COURT:**   All right. Thank you. I  
10 will ask the jury to step out briefly. Thank you.

11                   All rise, please, for the jury.

12                   **(Jury released)**

13                   **THE COURT:**   Thank you. Please have a  
14 seat. I take it that by proffer you mean a Bill of  
15 Review?

16                   **MR. DAVIS:**   Yes, ma'am.

17                   **THE COURT:**   Okay. You may proceed.

18                                   **CROSS-EXAMINATION**

19           **Q.**       **(BY MR. DAVIS)** Now, Officer Do, you were  
20 able to verify some of the things that Mr. Castellano  
21 was telling you as being true; is that right?

22           **A.**       From other people not verifying as true  
23 facts.

24           **Q.**       You were able to find out from his employer  
25 that he actually had some bruises on him?

1           **A.**     From what he told me, yes.

2           **Q.**     Right. His employer told you that  
3 Mr. Castellano presented with bruises on his body?

4           **A.**     He did say that.

5           **Q.**     And those bruises were purportedly coming  
6 from Michelle Warner?

7           **A.**     He thought that.

8           **Q.**     Right. He thought that, right?

9           **A.**     Yes.

10          **Q.**     And he told you that, and that was  
11 something that supported what Mr. Castellano was  
12 telling you; is that right?

13          **A.**     Supported which part?

14          **Q.**     When he said that Michelle Warner had been  
15 violent towards him?

16          **A.**     Yes.

17          **Q.**     And so, you found information that  
18 supported him telling you about her being violent  
19 during the course of your investigation?

20          **A.**     From what other people said, yes.

21                   **MR. DAVIS:** And that's the question --  
22 the cross-examination I'd like to do in front of the  
23 jury, Your Honor, ask him those questions about him  
24 verifying information that Michelle Warner had been  
25 violent through his investigation. I'm not offering

1 it for the truth of the matter asserted. I'm  
2 offering it for purposes of his investigation. He  
3 has just testified that he found Mr. Castellano to  
4 not really be credible based on his demeanor, et  
5 cetera; but here he is at a point where he has done  
6 some investigation to be able to verify some of the  
7 things that Mr. Castellano has said, which would  
8 refute his testimony or call into question his  
9 opinion.

10 The defendant does have a Sixth  
11 Amendment right to challenge the evidence against  
12 him, and some of the evidence that has been offered  
13 has been a question about Mr. Castellano's  
14 truthfulness.

15 **THE COURT:** Thank you. Sounds like  
16 textbook hearsay to me. The ruling remains the same.  
17 Thank you. We're ready for the jury.

18 **(Jury enters the courtroom)**

19 **THE COURT:** Thank you. Please be  
20 seated. Mr. Davis, you may continue on cross.

21 **MR. DAVIS:** Thank you, Judge.

22 **CROSS-EXAMINATION**

23 **Q. (BY MR. DAVIS)** During the course of your  
24 conversation with Mr. Castellano, he told you about  
25 Michelle Warren being violent towards him; isn't that

1 right?

2 A. He did say that.

3 Q. And you had the opportunity to investigate  
4 that statement?

5 A. I spoke to some people in regards to her, I  
6 guess, hitting him.

7 Q. All right. Now, he also told you  
8 information about her drug use?

9 A. He did.

10 Q. And you were able to do an investigation on  
11 that, as well?

12 A. According to the other people, yes.

13 Q. And you were able to look at her arrest  
14 record, as well?

15 A. Yes, I was.

16 Q. And you were aware that she had been  
17 convicted of some felonies?

18 A. She was convicted of a couple of things.  
19 I'm not sure if this was felonies. I have to check  
20 that. You need me to check back?

21 Q. I think the jury may have already heard  
22 that.

23 A. Okay.

24 Q. But you're aware of it being drug  
25 possession?

1           **A.**     She had some, yes.

2           **Q.**     And credit card abuse?

3           **A.**     Yes.

4           **Q.**     And in addition to those things, you were  
5     able to look up and find that out during the course  
6     of your investigation?

7           **A.**     Yes, sir.

8           **Q.**     When you sat down with Mr. Castellano --  
9     sorry. When you talked to him over the telephone and  
10    you asked him to come back, he was actually in  
11    Odessa?

12          **A.**     According to him, yes, sir.

13          **Q.**     Were you able to verify whether or not he  
14    was actually indeed in Odessa?

15          **A.**     Not at that time, I was not.

16          **Q.**     All right. But he told you he was in  
17    Odessa?

18          **A.**     He did.

19          **Q.**     He didn't tell you he was someplace else?

20          **A.**     No.

21          **Q.**     And when you asked him to come back, he  
22    took a flight back to Odessa?

23          **A.**     He did.

24          **Q.**     Sorry. To Houston?

25          **A.**     To Houston, yes.

1 Q. So, he flew back from Odessa to Houston on  
2 his own dime?

3 A. I believe so.

4 Q. And he came with his brother, right?

5 A. Yes, he did.

6 Q. And he came to sit down, and he talked to  
7 some detectives?

8 A. Yes, he did.

9 Q. Now, those detectives hadn't had any  
10 dealings re -- are you aware whether or not those  
11 detectives had any dealing with Mr. Castellano prior  
12 to that day?

13 A. I believe Fil did speak with  
14 Mr. Castellano.

15 Q. Did he talk to him over the phone?

16 A. I believe so.

17 Q. Now, you transferred the case to Fil and to  
18 Brian, right?

19 A. Yes.

20 Q. Fil's last name is?

21 A. Waters.

22 Q. Fil Waters. And Brian's Brian Harris?

23 A. Yes, sir.

24 Q. And they're partners in Homicide?

25 A. Yes, sir.

1 Q. Have they been in Homicide a long time?

2 A. Yes.

3 Q. And so, you transferred the case to them;  
4 and at that point you ended your involvement?

5 A. Yes, sir.

6 Q. And you just kind of was a passive -- you  
7 were a passive observer?

8 A. That was --

9 MS. JOHNSON: Objection,  
10 argumentative.

11 THE COURT: I'm sorry?

12 MS. JOHNSON: Objection,  
13 argumentative.

14 THE COURT: Overruled as to  
15 argumentative.

16 Q. (BY MR. DAVIS) You can answer that  
17 question, sir.

18 A. That was still my case. At the time we did  
19 not know --

20 Q. That it would be a homicide?

21 A. Correct.

22 Q. At that point in time, you hadn't had any  
23 information that she was, in fact, deceased?

24 A. Not -- yes.

25 Q. All right. There wasn't any confirmed



1 information that she was deceased?

2 **A.** Not any confirmed information, yes.

3 **Q.** Now, as a Missing Persons detective, were  
4 you given the first missing person's report, as well?

5 **A.** You're talking about the two reports that  
6 was made by one of the co-workers?

7 **Q.** Yes, sir.

8 **A.** No. I was -- actually, neither one were my  
9 case.

10 **Q.** Right. But when you became the detective,  
11 did you start looking at the information from both of  
12 those?

13 **A.** Yes.

14 **Q.** Did you ever make the scene in terms of the  
15 apartment?

16 **A.** I did not.

17 **Q.** So, did you ever have a Crime Scene Unit go  
18 to the scene?

19 **A.** Crime Scene Unit did go to the scene.

20 **Q.** Did you have any access to the crime scene  
21 reports?

22 **A.** Yes. It's in there.

23 **Q.** So, were you able to review those things?

24 **A.** Not yet, as the case went pretty quickly  
25 when I got it.

1           **Q.**     Yes, sir.  So, as far as you were  
2 concerned, you didn't review what was processed by  
3 the Crime Scene Unit?

4           **A.**     I did not.

5           **Q.**     If there had been something filed with the  
6 Crime Scene Unit, would that be brought to your  
7 attention?

8                   **MS. JOHNSON:**  Objection to  
9 speculation.

10                   **THE COURT:**  Sustained.

11           **Q.**     **(BY MR. DAVIS)** In the normal course of your  
12 business, when you usually go out and you do your  
13 policies and -- when you go and do your procedures of  
14 taking over a case, generally all of the reports  
15 associated with a case are forwarded to you, right?

16           **A.**     It's supplemented into the report, yes.

17           **Q.**     And you generally review those things as  
18 part of your investigation, true?

19           **A.**     True.

20           **Q.**     And you look for red flags, things that  
21 might signal you to do additional work; isn't that  
22 right?

23           **A.**     We do follow up on leads.

24           **Q.**     So, if you had a lead from -- in this case,  
25 if you had a lead from the CSU unit, it would be your

1 normal protocol to follow up on those leads; isn't  
2 that right?

3 **A.** It would be, but I did not take a look at  
4 it.

5 **Q.** Right. Well, if you had been given -- if  
6 there was a lead from the CSU unit, that would have  
7 been highlighted for you; is that accurate?

8 **MS. JOHNSON:** Objection, calls for  
9 speculation.

10 **THE COURT:** Sustained. You will have  
11 to rephrase.

12 **Q.** (**BY MR. DAVIS**) In the normal course of your  
13 investigation, you didn't receive any lead from the  
14 CSU unit that was highlighted for you?

15 **A.** I did not even take a look at it because it  
16 went through pretty quickly.

17 **Q.** Pretty quickly.

18 **THE COURT:** Excuse me. Don't talk on  
19 top of each other, please.

20 **Q.** (**BY MR. DAVIS**) Because it went pretty  
21 quickly, you didn't look at it?

22 **A.** Correct.

23 **Q.** All right. And in this particular  
24 situation, there was no lead from the CSU unit that  
25 was highlighted for you?

1                   **MS. JOHNSON:** Objection, asked and  
2 answered.

3                   **MR. DAVIS:** Different question, Judge.  
4 Different question, Your Honor.

5                   **THE COURT:** You may ask this, and then  
6 let's move on to something else.

7                   **MR. DAVIS:** Yes, Your Honor.

8                   **THE COURT:** You may answer, sir.

9           **A.**       I did not see it. So, I don't know. I did  
10 not review it.

11                   **THE COURT:** Excuse me. Could you ask  
12 for a little more order in the back? Thank you.

13                   **MR. DAVIS:** May I have one moment,  
14 Judge?

15                   **THE COURT:** You may. Thank you.

16                   **(Brief pause)**

17           **Q.**       **(BY MR. DAVIS)** Detective Do, do you know  
18 whether or not Michelle Warner had drugs in her  
19 system at the time of her death?

20           **A.**       I do not know that.

21                   **MR. DAVIS:** Pass the witness, Your  
22 Honor.

23                   **THE COURT:** Thank you.

24                   Any redirect?

25                   **MS. JOHNSON:** Yes, Your Honor.

**REDIRECT EXAMINATION**

1  
2           **Q.**       (**BY MS. JOHNSON**) Officer Do, when you spoke  
3 to the defendant's employer or boss, who was that?

4           **A.**       That was Charles Swihart.

5           **Q.**       And if I could have you refresh your memory  
6 and look at your offense report, documenting your  
7 conversation with him; and if you could read that for  
8 me quietly to yourself.

9           **A.**       (Witness complies.) Yes, ma'am.

10          **Q.**       Okay. So, when the Defense counsel was  
11 asking you about verifying with the defendant's boss  
12 that he had bruises from Michelle, did you actually  
13 talk to his boss about that, Charles Swihart?

14          **A.**       There were fights is what I --

15                   **MR. DAVIS:** Your Honor, I object to  
16 hearsay.

17                   **THE COURT:** Sustained.

18                   Sir, that was a "yes" or "no"  
19 question. Listen carefully to the question asked,  
20 and answer just that question.

21                   **THE WITNESS:** Yes, ma'am.

22          **Q.**       (**BY MS. JOHNSON**) Look at your supplement  
23 and what you documented in your supplement. Was that  
24 information documented in your supplement?

25          **A.**       No, ma'am.

1           **Q.**     Did you actually talk to his boss about  
2 Charles Swihart, about the defendant and bruises?

3                   **MR. DAVIS:**  Objection, hearsay.

4                   **MS. JOHNSON:**  It's "yes" or "no."

5                   **THE COURT:**  That's -- sustained.

6           **Q.**     **(BY MS. JOHNSON)** Did you receive any  
7 information from him about that?

8                   **MR. DAVIS:**  Objection, hearsay.

9                   **THE COURT:**  You may answer "yes" or  
10 "no" only.

11           **A.**     No.

12                   **THE COURT:**  Overruled.

13           **A.**     No.

14           **Q.**     **(BY MS. JOHNSON)** Now, when you are looking  
15 for a missing person, I think you mentioned earlier  
16 that you do run their criminal history?

17           **A.**     Yes, ma'am.

18           **Q.**     Did you find anything in Michelle Warner's  
19 criminal history of violent offenses?

20           **A.**     I do not -- I do not believe so.

21           **Q.**     Do you need to review it real quick to make  
22 sure?

23           **A.**     Please.

24                   No, I do not see any.

25           **Q.**     So, nothing of assault, aggravated assault,

1 terroristic threat?

2 **MR. DAVIS:** Objection, asked and  
3 answered.

4 **THE COURT:** Overruled.

5 **Q.** (**BY MS. JOHNSON**) Anything of assault,  
6 aggravated assault, terroristic threat, anything  
7 assaultive or violent?

8 **A.** No, ma'am.

9 **MS. JOHNSON:** I pass the witness.

10 **THE COURT:** Thank you.

11 Any recross?

12 **RECROSS-EXAMINATION**

13 **Q.** (**BY MR. DAVIS**) Now, you just testified that  
14 on criminal history you didn't see any violent  
15 offense; is that right?

16 **A.** Yes, sir.

17 **Q.** But are you aware that she was listed in  
18 other offense reports for committing violent  
19 offenses?

20 **MS. JOHNSON:** Objection, hearsay and  
21 relevance.

22 **THE COURT:** Sustained.

23 **MR. DAVIS:** I think she opened the  
24 door to that, Judge.

25 **THE COURT:** Still hearsay.

1           **Q.**       **(BY MR. DAVIS)** During the course of your  
2 investigation, did you look at other offense reports?

3           **MS. JOHNSON:** Objection, relevance,  
4 hearsay.

5           **MR. DAVIS:** I'm asking if he looked at  
6 other offense reports that --

7           **THE COURT:** Overruled.

8           **A.**       I don't believe so.

9           **Q.**       **(BY MR. DAVIS)** So, you could have run her  
10 name to see if there were any offense reports or  
11 police reports that came up with her name listing her  
12 as a suspect in a violent offense?

13           **MS. JOHNSON:** Objection, calls for  
14 speculation.

15           **THE COURT:** Sustained.

16           **Q.**       **(BY MR. DAVIS)** During the course of your  
17 investigation, you did not run her name to find out  
18 whether or not her name came up in other police  
19 reports listing violent offenses; is that true?

20           **A.**       When you do an F6, it does come up on all  
21 that; but I don't recall seeing any reports in that  
22 manner.

23           **Q.**       Do you have the F6, sir?

24           **A.**       I'm sorry?

25           **Q.**       You said when you run an F6, all of those



1 reports come up. Do you have that information? Do  
2 you have it with you here in court?

3 A. I don't believe so. It -- if it was, it  
4 would have been in the report -- or should have been  
5 in the report.

6 Q. Your report doesn't contain it?

7 A. It may not have.

8 Q. You can look at it. You have it in front  
9 of you, right?

10 A. Yes, sir.

11 Q. Can you take a moment to look at it and  
12 see?

13 A. (Witness complies.) It shows two missing  
14 person's reports.

15 Q. So, your report doesn't contain other  
16 offense reports that are listed with Michelle Warner  
17 being involved?

18 A. It does not.

19 Q. And would your report only show agencies --  
20 or only show the Houston Police Department?

21 A. For the particular report, yes.

22 Q. So, it doesn't show the Webster Police  
23 Department?

24 A. It would not.

25 Q. You're aware that Michelle Warner --

1                   **MS. JOHNSON:** Objection. May we  
2 approach?

3                   **THE COURT:** Sounds like it's hearsay,  
4 isn't it?

5                   **MR. DAVIS:** I haven't gone into the  
6 details.

7                   **THE COURT:** All right. Come on up.  
8                   **(At the Bench)**

9                   **THE COURT:** Can you give me an idea  
10 where you're going? Are you aware of what is this?

11                   **MR. DAVIS:** There is another --

12                   **THE COURT:** Not so loud. Can you  
13 whisper?

14                   **MR. DAVIS:** There is another report  
15 out of Webster Police Department.

16                   **THE COURT:** Mr. Davis, a little lower.

17                   **MR. DAVIS:** There is another report  
18 out of --

19                   **MS. JOHNSON:** Stop talking so loud.

20                   **THE COURT:** Whisper.

21                   **MR. DAVIS:** I'm talking too loud or  
22 too fast. Let me say this: There is another report  
23 --

24                   **THE COURT:** The jury can hear what  
25 you're saying. So, you need to whisper.

1                   **MR. DAVIS:** I'm whispering.

2                   **THE COURT:** Excuse me. But you are a  
3 very experienced lawyer; and so, I don't think  
4 you're -- you're implying that I'm picking on you,  
5 and I'm not. It's my responsibility to make sure  
6 there is a clear record. I can't do that if you talk  
7 too fast. So, go ahead. Whisper, will you?

8                   What do you want to tell me?

9                   **MR. DAVIS:** There is a Webster Police  
10 Department report that is in the system that shows  
11 Michelle Warner has an aggression.

12                   **THE COURT:** What?

13                   **MR. DAVIS:** Lists her in a violent  
14 offense and contains --

15                   **THE COURT:** Sorry.

16                   **(End of Bench Discussion)**

17                   **THE COURT:** I'm sorry. I will have to  
18 retire the jury.

19                   All rise, please, for the jury.

20                   **(Jury released)**

21                   **THE COURT:** Thank you. You may have a  
22 seat.

23                   Since I'm having trouble hearing you,  
24 we will just send the jury out.

25                   Yes, sir, you may proceed.

1                   **MR. DAVIS:** And, Judge, for the  
2 record, that was me whispering to the Court as I was  
3 asked to do by the Court. I'm sorry if I was  
4 whispering too low. But when I whispered before, I  
5 think it was too loud, so I adjusted my volume  
6 accordingly.

7                   **THE COURT:** It didn't work, so let's  
8 just hear it outside the presence of the jury.

9                   **MR. DAVIS:** There is a witness who is  
10 still here, too, Your Honor; and I don't want him to  
11 hear what I am saying.

12                   **THE COURT:** Would you mind stepping  
13 out to the hallway, sir.

14                   **THE WITNESS:** Yes, ma'am.

15                   **THE COURT:** Thank you.

16                   **(Witness released)**

17                   **MR. DAVIS:** There is a Webster P.D.  
18 report that has Michelle Warner in it, Judge; and I'm  
19 asking him about any other agencies. Did he look at  
20 any other agencies or any other place in terms of  
21 pulling reports. If his information is only as to  
22 Houston, HPD reports, it wouldn't show any reports  
23 any other places, any other counties, any other  
24 jurisdictions. And I'm merely asking him that  
25 question.

1                   **THE COURT:** What is your question?

2                   **MR. DAVIS:** Your report -- I think the  
3 question I asked --

4                   **THE COURT:** Start it out with "Are you  
5 aware," and --

6                   **MR. DAVIS:** That was objected to  
7 because you said that would be hearsay.

8                   **THE COURT:** Well, also, almost any  
9 question that starts out with "are you aware" may  
10 assume a fact that's not in evidence. So, those are  
11 always problematic questions. So, let me hear the  
12 rest of it. Are you aware?

13                   **MR. DAVIS:** Well, Judge, sometimes  
14 when you ask "are you aware," you are asking whether  
15 or not a person has knowledge of an event before they  
16 testify; and sometimes I'm asking that -- not  
17 everybody -- but sometimes I'm asking that for that  
18 reason.

19                   **THE COURT:** I just want to hear the  
20 question, sir.

21                   **MR. DAVIS:** The question I'm asking  
22 here is: Now, in terms of HPD's reports, the report  
23 he has when he runs that type of report, he only  
24 pulls --

25                   **THE COURT:** Sir -- sir, I just want to

1 hear the question.

2 **MR. DAVIS:** Does your report only pull  
3 up Houston Police Department reports?

4 **MS. JOHNSON:** He did ask that  
5 question.

6 **THE COURT:** That's not the question  
7 that says are you aware.

8 **MR. DAVIS:** Are you aware of what  
9 happens in any other counties from those HPD reports?

10 **THE COURT:** What does that mean?

11 **MR. DAVIS:** Are you aware of any other  
12 reports that may occur in other counties from what  
13 you're pulling up?

14 **THE COURT:** I think he's entitled to  
15 ask that.

16 **MS. JOHNSON:** Yes. That's not where  
17 he was going. So, in my response, he was asking  
18 about Webster P.D. police report, where we have  
19 already discussed this. And I will put forth a  
20 Motion in Limine now that where the complainant is  
21 listed as a victim of an assault with Scott Russell.  
22 So, that has nothing to do with the defendant. There  
23 are no reports of him -- he is insinuating there are  
24 reports out there of Michelle Warner being violent  
25 with the defendant and there are none.

1                   **MR. DAVIS:** That's not what I am  
2 saying.

3                   **THE COURT:** Excuse me. Let her  
4 finish, sir.

5                   **MR. DAVIS:** Yes, Your Honor.

6                   **MS. JOHNSON:** He is bringing up this  
7 Webster P.D. to insinuate to the jury that she's  
8 listed as a violent suspect in an assaultive offense  
9 in another district and it's not that way, and that's  
10 misleading to the jury. It's based on hearsay and  
11 it's not relevant at this time.

12                   **THE COURT:** All right. Your response?

13                   **MR. DAVIS:** I'm not insinuating any of  
14 that, Judge.

15                   **THE COURT:** Okay. So, let me hear the  
16 question you're going to ask. Give me the exact  
17 wording.

18                   **MR. DAVIS:** May I ask more than one,  
19 though? But I will tell you the question I'm going  
20 to ask will be an appropriate question, a proper  
21 question, Judge.

22                   **THE COURT:** Is it going to start with  
23 "are you aware"?

24                   **MR. DAVIS:** It won't start with "are  
25 you aware."

1                   **THE COURT:** What are you going to --

2                   **MR. DAVIS:** I'm going to ask him --  
3 the substance of the question will be asking him  
4 about his absence of knowledge of any other areas  
5 like Webster P.D. The question I actually asked is:  
6 Are you aware of any reports that have been filed  
7 with Webster Police Department? That was the  
8 question I asked him.

9                   **THE COURT:** Any reports about what?

10                  **MR. DAVIS:** Any reports involving any  
11 violent acts with Michelle Warner. The Webster  
12 Police Department report lists Michelle Warner as  
13 engaging in violent acts not towards Mr. Castellano,  
14 not towards Mr. Castellano, but towards someone else.  
15 Which according to *State vs. Torres* and several other  
16 Court of Criminal Appeals Court, I think the Court is  
17 fully aware what the law is. But the law allows the  
18 defendant, if there is an assertion that he has been  
19 aggressive, to present evidence of a complaining  
20 witness' previous violent acts towards any other  
21 person.

22                  **MS. JOHNSON:** First of all, there is  
23 no assertion of any of that. So, we haven't gotten  
24 there. It's not relevant. So, I ask that a Motion  
25 in Limine be granted that he not be able to go into



1 the Webster Police Department report at all if and  
2 when it becomes relevant.

3 **MR. DAVIS:** Several witnesses --

4 **THE COURT:** Sir, you may ask: Did you  
5 review any police reports from Webster, Webster P.D.?  
6 You may certainly ask that. But I don't know who the  
7 report shows as the aggressor. And I agree with you,  
8 that should the decedent have been the aggressor in  
9 some case, that you may be able to prove that; but  
10 you got to bring in witnesses to prove it. You can't  
11 prove it through hearsay.

12 **MR. DAVIS:** That's not a problem,  
13 Judge.

14 **THE COURT:** Okay. Thank you. All  
15 right. Same thing with the employer. I'm not saying  
16 that that's not admissible; but it's not admissible  
17 through this witness, of course.

18 **MR. DAVIS:** It's part of his  
19 investigation. I offer it for the truth of the  
20 matter asserted to give instruction as to what he did  
21 for his further investigation. That would be  
22 admissible under that theory, Judge.

23 **THE COURT:** If it's not for the truth  
24 of the matter asserted, then it's probably not  
25 relevant. That -- your -- that reasoning isn't

1 working with me and I think it's hearsay.

2 **MR. DAVIS:** Judge, further, in  
3 addition -- I know we have already done a Bill of  
4 Proffer. It's already there. But further,  
5 additional, it also goes to refute the suggestion  
6 made by the prosecution that he had no information  
7 about Michelle Warner being aggressive or violent  
8 towards Mr. Castellano.

9 **MS. JOHNSON:** He did not.

10 **THE COURT:** Excuse me. Sorry.

11 **MS. JOHNSON:** Go ahead.

12 **THE COURT:** I still have to follow the  
13 Rules Of evidence. I mean, there is a good reason  
14 for those rules. They result in a fair trial to both  
15 parties. That's why I try to follow them.

16 **MR. DAVIS:** Yes, ma'am.

17 **THE COURT:** Okay. We're ready for the  
18 jury. Thank you.

19 **MS. JOHNSON:** One more issue real  
20 quick, Judge. Sorry.

21 **THE COURT:** Okay.

22 **MS. JOHNSON:** During testimony, the  
23 defendant is making a lot of gestures with his head.

24 **THE COURT:** Excuse me. Something has  
25 come up. I have to ask you to step out just a

1 moment. Okay.

2 **MS. JOHNSON:** The defendant is making  
3 gestures with his head shaking yes and no to the  
4 witnesses' answers and making actions. So, I just  
5 ask that he be admonished about that.

6 **THE COURT:** Well, of course, don't do  
7 that, Mr. Castellano.

8 **THE DEFENDANT:** Okay.

9 **THE COURT:** And I will try and keep an  
10 eye out for it.

11 All right. Now we're ready for the  
12 jury. Ready. All rise, please.

13 *(Witness enters courtroom)*

14 **THE BAILIFF:** All rise for the jury.

15 *(Jury enters the courtroom)*

16 **THE COURT:** Thank you. Please have a  
17 seat.

18 You may continue, Mr. Davis.

19 **Q. (BY MR. DAVIS)** Sir, are you aware of any  
20 Webster --

21 **MS. JOHNSON:** Objection. We just went  
22 over this.

23 **MR. DAVIS:** I will rephrase that  
24 question.

25 **THE COURT:** Thank you.

1           **Q.**     **(BY MR. DAVIS)** Sir, so, did you review any  
2 Webster Police Department reports?

3           **A.**     No, sir.

4                   **MR. DAVIS:** Can I have a minute,  
5 Judge?

6                   **THE COURT:** You may.

7                   **(Brief pause)**

8                   **MR. DAVIS:** I don't have anything  
9 further.

10                   **THE COURT:** Anything further from the  
11 State?

12                   **MS. JOHNSON:** No, Your Honor.

13                   **THE COURT:** Is Officer Do excused or  
14 on call?

15                   **MS. JOHNSON:** Yes, Your Honor.  
16 Excused.

17                   **THE COURT:** Is that all right with the  
18 Defense?

19                   **MR. DAVIS:** Yes, Judge.

20                   **THE COURT:** You're released as a  
21 witness in this case. Thank you so much.

22                   **(Witness released)**

23                   **THE COURT:** Who will be your next  
24 witness?

25                   **MS. REYNA:** State calls Charles

1 Swihart.

2 **THE COURT:** Thank you.

3 **THE BAILIFF:** Your Honor, the witness  
4 is indisposed at this moment. He will be right with  
5 you.

6 **THE COURT:** All right. Thank you.

7 **(Brief pause)**

8 **MS. JOHNSON:** Your Honor, he is in the  
9 restroom. He will be right here.

10 **THE COURT:** Okay.

11 **(Brief pause)**

12 **THE BAILIFF:** Your Honor, this witness  
13 will need to be sworn in.

14 **THE COURT:** Thank you.

15 Come on up, please, sir. Good  
16 morning.

17 **THE WITNESS:** Morning.

18 **THE COURT:** And come around this way,  
19 on that side of the court reporter. And if you don't  
20 mind, would you turn and face the jury and raise your  
21 right hand; and I will give you the oath.

22 **(Witness Duly Sworn)**

23 **THE COURT:** Thank you, sir. Please  
24 have a seat there.

25

1                                   **CHARLES SWIHART,**  
2   having been first duly sworn, testified as follows:

3                                   **DIRECT EXAMINATION**

4           **Q.**     **(BY MS. REYNA)** Good morning. Please  
5   introduce yourself to the jury.

6           **A.**     My name is Charles Swihart.

7           **Q.**     And where are you from, Charles?

8           **A.**     Sugar Land.

9           **Q.**     Born and raised?

10          **A.**     No. Born in Louisiana, grew up in  
11   southeast Houston.

12          **Q.**     And what do you do for a living?

13          **A.**     Own a small IT company.

14          **Q.**     And what's that IT company called?

15          **A.**     SugarLandPC.

16          **Q.**     And where is that located?

17          **A.**     11531 Southwest Freeway, by the Home Depot  
18   at Williams Trace.

19          **Q.**     Okay.

20          **A.**     In Sugar Land.

21          **Q.**     Okay. And are you the owner of that  
22   company?

23          **A.**     Yes.

24          **Q.**     What kind of work goes on at SugarLandPC?

25          **A.**     We have a retail store where people bring

1 in computers to have them fixed. We also go out to  
2 people's homes and to a lot of small businesses.

3 Q. And how many employees do you employ?

4 A. At the moment, seven.

5 Q. And how long have you owned that company?

6 A. Eleven and a half years.

7 Q. And how do you know Mark Castellano?

8 A. I hired him to be a computer technician for  
9 us.

10 Q. And do you remember when you hired him?

11 A. April 11th of 2011.

12 Q. So, back in April 2011?

13 A. Uh-huh (affirmative.)

14 Q. And before you hired him, did you know him  
15 personally?

16 A. No.

17 Q. Okay. So, you didn't get to know him until  
18 he started to work with you?

19 A. Correct.

20 Q. And do you know how he came to be your  
21 employee?

22 A. He probably found an ad online that we had  
23 placed, came in and interviewed. I hired him, and he  
24 had good -- relatively good experience and knew the  
25 technical things he needed to know.

1           **Q.**     Okay.  And about how long did Mark work for  
2     you?

3           **A.**     About a year and a half.

4           **Q.**     Okay.  What would have been his last day?

5           **A.**     September 22, 2012.

6           **Q.**     Okay.  I want to talk about your  
7     relationship with Mark.  Did you get to know Mark in  
8     that approximately year and a half you got to know  
9     him or he worked for you?  Sorry.

10          **A.**     As much as you would know an employee.  We  
11     didn't really do anything personally together outside  
12     of perhaps a group outing after work or something.

13          **Q.**     Did you ever spend any time with him one on  
14     one outside of work?

15          **A.**     No.

16          **Q.**     And did you have conversations with Mark?

17          **A.**     Yes.

18          **Q.**     And what was his position at the company?

19          **A.**     He was a field technician.

20          **Q.**     Okay.  What does that mean?

21          **A.**     That means he would usually start his day  
22     at 8:00, work 8:00 to 6:00 four days a week with a  
23     day off during the week.  I don't recall which day he  
24     was off.  He drove a company car, and he would go to  
25     people's homes and businesses and just fix things



1 that come up. They call in -- you know, kind of like  
2 a geek squad or other computer service, they call in  
3 their viruses or their network is down or server is  
4 down, and we send somebody out to fix it.

5 Q. Okay. Did you ever talk to Mark about his  
6 personal life?

7 A. I don't recall any specific conversations.  
8 I know there was talk often of the relationship with  
9 Michelle and --

10 Q. Okay. Let me --

11 A. It seemed to be --

12 **THE COURT:** Excuse me, sir. The rules  
13 require that you just answer the question asked.

14 **THE WITNESS:** Okay.

15 **THE COURT:** And you have to give a  
16 fairly short answer.

17 **THE WITNESS:** Okay.

18 **THE COURT:** Just a minute. It's  
19 important you not talk at the same time. You see how  
20 you said "okay" in the middle of my sentence?

21 **THE WITNESS:** Yes, ma'am.

22 **THE COURT:** Very good. See, you  
23 waited until I paused. You got it. Because the  
24 court reporter is writing down what everyone says,  
25 that's why we have to proceed in an orderly fashion.

1 So, you can answer in a sentence or two; but then you  
2 have to wait for the next question. Thank you.

3 **THE WITNESS:** Okay.

4 **Q.** (BY MS. REYNA) So, did you know he was  
5 dating someone?

6 **A.** Yes.

7 **Q.** And who was he dating?

8 **A.** Michelle.

9 **Q.** And did he talk about Michelle?

10 **A.** Yes.

11 **Q.** And what kind of things would he say about  
12 Michelle?

13 **A.** That they had broken up again or that they  
14 had gotten back together again.

15 **Q.** Okay. Was that a common theme of your  
16 conversations with him about Michelle?

17 **A.** Yes.

18 **Q.** Did he ever talk to you about Michelle  
19 being aggressive with him?

20 **A.** I don't specifically remember anything like  
21 that.

22 **Q.** Do you remember him ever telling you that  
23 he was -- he had been beaten up and showing you any  
24 injuries caused by Michelle?

25 **A.** No.

1 Q. Did you ever meet Michelle?

2 A. I think I met her in the parking lot in  
3 front of my office one time. I know I saw her there  
4 picking him up or meeting him at lunch times and  
5 things.

6 Q. Okay. And so, did you ever really get to  
7 know her?

8 A. No.

9 Q. I want to talk about Mark's last day  
10 working with SugarLandPC. When was that?

11 A. What I have recorded is that his last day  
12 was September 22nd.

13 Q. And was that on a Saturday?

14 A. I know that was a Saturday.

15 Q. Okay. And did -- tell me what happened on  
16 Mark's last day.

17 A. I don't remember specifics of what happened  
18 that day. I don't know if I even went to the office  
19 that day.

20 Q. Okay. So, you may not have worked with him  
21 that day?

22 A. Right. Typically I'm not there on  
23 Saturdays.

24 Q. So, how did you come to find out it was his  
25 last day?

1           **A.**     I think -- I don't remember specifics. I  
2 remember him -- he had resigned a couple of weeks  
3 before. Then he had come back --

4           **Q.**     Let me stop you there.

5           **A.**     Okay.

6           **Q.**     What do you mean he resigned a couple of  
7 weeks before?

8           **A.**     A few weeks before, he said: I need to  
9 quit. I need to get away from Michelle. I'm going  
10 to go back and live with my parents in Odessa, or  
11 wherever they are.

12                                 And then a few days later, he called  
13 and said he had worked out something. My  
14 recollection is it was -- a relative was somehow  
15 going to help him maybe get a place to stay. So, he  
16 would be able to stay, could go ahead and continue  
17 employment with us. And he had been a fine employee.  
18 So, that was fine.

19           **Q.**     Okay. So, did he actually quit in that  
20 time period?

21           **A.**     He had turned in his resignation, said:  
22 Hey, I'm gone in two weeks. But before the two weeks  
23 was up, he kind of recanted that.

24           **Q.**     Okay. So, moving back forwarded to  
25 September 22nd, did you have any conversations with

1 him about him quitting at that time?

2 **A.** Not that I recall.

3 **Q.** Okay. Did you review any surveillance  
4 footage of your business and Mark at that time?

5 **A.** After -- sometime after the 22<sup>nd</sup>, when I  
6 was in conversations with HPD, and I believe it was  
7 at a time when Michelle was still missing, I decided  
8 it would be a good idea to go ahead and look through  
9 the video footage for comings and goings.

10 **Q.** Let me stop you.

11 **A.** Right.

12 **Q.** What kind of surveillance system does your  
13 business have?

14 **A.** It's just a pretty simple closed circuit,  
15 eight channel, meaning there is eight cameras that  
16 record to a DVR.

17 **Q.** Okay. Why did you feel it was necessary to  
18 look through your surveillance system?

19 **A.** I actually was looking because I was  
20 curious whether he had taken the company car that  
21 weekend.

22 **Q.** And why were you concerned he had taken it?

23 **A.** I was concerned he had taken it to West  
24 Texas.

25 **Q.** Okay. And what car -- does every employee

1 have a company car at your business?

2 **A.** No. We only have the truck that I drive  
3 and a Chevy HHR, which at the time Mark drove.

4 **Q.** And was he allowed to take that vehicle  
5 home and commute from work to home, or how did  
6 that --

7 **A.** No. He typically drove to work in his old  
8 Dodge pickup, and he would take the HHR from there.

9 **Q.** Okay. Did you ever see him operate any  
10 other vehicles?

11 **A.** I did not until video footage showed him  
12 pulling up in a different car that weekend.

13 **Q.** Okay.

14 **A.** Or at some point Saturday, Sunday, Monday.  
15 It's in my notes from the surveillance footage.

16 **Q.** Okay. And do you remember about when you  
17 would have reviewed that surveillance footage?

18 **A.** I e-mailed it to HPD, and it would have  
19 been that day or the day before. Probably that day,  
20 I'm thinking, in the week after the 22<sup>nd</sup>. But it  
21 has been a year and a half.

22 **Q.** And did you take notes while you were  
23 reviewing that footage?

24 **A.** I did.

25 **Q.** Charles, I'm going to show you what's been

1 marked as State's Exhibit No. 221 and ask you if you  
2 recognize that?

3 **A.** I do.

4 **Q.** And is that your e-mail address that's  
5 listed on the e-mail?

6 **A.** Where? Well, that's what the exchange  
7 server converts it to; but this is the e-mail I sent.

8 **Q.** And who did you send it to?

9 **A.** To DannyDo@HPD.

10 **Q.** Okay. And what date did you send it?

11 **A.** Friday, the 28th.

12 **Q.** Okay. And so, when would you have reviewed  
13 the surveillance system?

14 **A.** This is 5:00 p.m. It would have been that  
15 day.

16 **Q.** Okay. And what time did you send the  
17 e-mail?

18 **A.** 5:02 p.m.

19 **Q.** And have you gotten a chance to review this  
20 e-mail?

21 **A.** I did review it earlier.

22 **Q.** And is it a copy of the e-mail that you  
23 sent to Officer Do?

24 **A.** It is. I printed mine this morning and  
25 compared the two.

1           **Q.**     And has it been altered in any way?

2           **A.**     No.

3                   **MS. REYNA:**   Your Honor, at this time,  
4     the State would offer State's Exhibit 221, after  
5     tendering to Defense counsel.

6                   **MR. DAVIS:**   May we approach, Your  
7     Honor?

8                   **THE COURT:**   You may.

9                   **(At the Bench)**

10                  **MR. DAVIS:**   And, Judge, we object to  
11     the exhibit as containing hearsay.

12                  **THE COURT:**   Sustained.

13                  **MS. JOHNSON:**   Wait.   Can we -- may we  
14     respond?

15                  **MR. DAVIS:**   I'm sorry, Judge.

16                  **MS. JOHNSON:**   Can we respond?

17                  **MS. REYNA:**   Judge, it's his personal  
18     observation and his own notes.

19                  **THE COURT:**   It's an out-of-court  
20     statement offered for the truth of the matter  
21     asserted.   It's still hearsay.   What exception to the  
22     hearsay rule are you relying on?

23                  **MS. JOHNSON:**   Present sense impression  
24     of him watching that video and taking notes on what  
25     he saw on that video.   That would be an exception to



1 the hearsay.

2 **THE COURT:** Let me see it. Do you  
3 have a response on present sense impression?

4 **MR. DAVIS:** It's two reasons, not a --

5 **THE COURT:** Sorry.

6 **MR. DAVIS:** It is not a present sense  
7 impression. And, second, the last paragraph of it  
8 contains a statement of somebody other than him. So,  
9 it is hearsay within hearsay, as well. If you read  
10 that, it contains a statement from Eric Moore, as  
11 well. It was not this witness.

12 **MS. JOHNSON:** I will redact that part;  
13 but the part that we're talking about is the time  
14 line of the defendant in the surveillance video that  
15 he viewed, which would be his present sense  
16 impression.

17 **THE COURT:** Let me read it.

18 *(Brief pause)*

19 **THE COURT:** So, the company car has no  
20 significant miles since the oil change on Saturday.

21 **MS. JOHNSON:** That's what he saw.

22 **MS. REYNA:** He observed it.

23 **THE COURT:** That's what he saw on  
24 video?

25 **MS. JOHNSON:** No. What he saw with