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FRED LERMA,

2

having been first duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

Q. (BY MS. BYRNE) Deputy, would you introduce yourself to the jury?

5

6

A. I'm Deputy Lerma with the Harris County Sheriff's Department.

7

8

Q. How long have you been with the Harris County Sheriff's Department?

9

10

A. Sixteen years.

11

Q. What area are you assigned to?

12

A. I'm assigned to the north district, north district patrol.

13

14

Q. Does that cover Spring/Klein area?

15

A. Yes, it does.

16

Q. Okay. And are you a patrol officer?

17

A. Yes, I am.

18

Q. What are your basic duties as a patrol officer?

19

20

A. My basic duties, we get calls for service, various calls; and we go to the call and answer that and see what's going on there.

21

22

23

Q. You're a certified peace officer in the state of Texas?

24

25

A. Yes, I am.

1 Q. So, you obviously have gone through the
2 academy and training and various things like that?

3 A. Yes, I have.

4 Q. Would it be fair to describe you as a first
5 responder?

6 A. Yes.

7 Q. When 9-1-1 -- when somebody calls 9-1-1,
8 are you the initial person dispatched out?

9 A. Yes.

10 Q. Okay. Are you an investigator?

11 A. No, I'm not.

12 Q. Do you -- do you know -- or are you trained
13 to do specialized investigations into child abuse or
14 homicide, sexual assaults, things like that?

15 A. No, I'm not.

16 Q. Okay. Is it fair to say your basic --
17 you're kind of -- you're there to just be the initial
18 person there, gather info?

19 A. Pass it on.

20 Q. Pass it on. Okay.

21 I want to talk to you about
22 February 8, 2013?

23 A. Uh-huh (affirmative.)

24 Q. Now, were you working that day?

25 A. Yes, I was.

1 Q. What shift were you working?

2 A. Day shift, 6:00 to 2:00. 6:00 a.m. to
3 2:00 p.m.

4 Q. 6:00 a.m. to 2:00 p.m. Now, at some point
5 did you receive a call; and were you dispatched to
6 Ehrhardt Elementary?

7 A. I was dispatched.

8 Q. Do you recall what time?

9 A. Right around noontime, 11:00.

10 **MS. BYRNE:** May I approach the
11 witness?

12 **THE COURT:** Granted.

13 Q. (**BY MS. BYRNE**) Deputy Lerma, I'd like to
14 show you -- do you -- take a look at your call slip
15 and see if it refreshes your memory as to when the
16 call was originated?

17 A. Yes.

18 Q. Okay. What time did the initial call come
19 in to Ehrhardt Elementary School?

20 A. The initial call came in at 10:27 a.m. that
21 morning.

22 Q. Okay. Now, what was the general nature of
23 the call?

24 A. It was a welfare check in the sense that
25 the school had wanted to report one of the students

1 there that they had that they felt that --

2 Q. Well, let me -- without going into all the
3 details, what was the welfare that you were being
4 asked to check on?

5 A. Originally it was a call for a man walking
6 down the street pushing a stroller with a baby in it;
7 and everybody thought he might be intoxicated.

8 Q. Now, did -- there was no specification as
9 to what type of intoxication?

10 A. None.

11 Q. Okay. How long did it take you to respond
12 to the school?

13 A. Respond to the calls?

14 Q. Yes, to actually get to the school.

15 A. I was dispatched to the call at 11:37, and
16 I got there at 12:01.

17 Q. On your way to the school, did you see or
18 were you looking for the supposed man with the
19 stroller?

20 A. That's initially what I did because that's
21 what it dropped. He was walking down Five Forks; and
22 I think the other street was Rose, Rosebrook. And
23 so, that's what I did first. I was looking for him
24 first, and I didn't see him. And then that is when I
25 went to the school after that, when I didn't find

1 him.

2 Q. Okay. Was it one call or a couple of
3 calls?

4 A. It was a couple of calls --

5 Q. Okay.

6 A. -- that had dropped.

7 Q. And they all mentioned a man with a
8 stroller?

9 A. Yes.

10 Q. Okay. When you say Five Forks, that is a
11 street kind of in that area near the school?

12 A. Yes, ma'am.

13 Q. Okay. And all the residences along Five
14 Forks road, are those in Harris County, Texas?

15 A. Yes, ma'am.

16 Q. Now, when you got to the school, was the
17 father and the baby that you were supposed to be
18 going out for, were they present?

19 A. No, they were not.

20 Q. Okay. Did you gather information from
21 employees of the school?

22 A. Yes, I did.

23 Q. And were -- without going into what
24 everybody said, were concerns expressed to you about
25 the health of the baby and the state of the father?

1 A. Yes.

2 Q. Based on that, what did you decide you
3 needed to do?

4 A. Based on that, once -- once they expressed
5 a concern about the father and the baby, that's what
6 I went -- by that time I had gotten what we thought
7 was probably the address.

8 Q. Who provided the address?

9 A. Ms. Hansen, secretary or counselor, I think
10 is who she was. She had given me that. And what I
11 did then was I went and searched again. Maybe I
12 would see him at a store or something. And then I
13 went up to the -- I saw on the fence, on a gate, I
14 saw the address. And I just parked at the gate, and
15 it was right where it was a big track of land.

16 Q. Okay.

17 A. I just waited.

18 Q. What was the address? I guess, did the
19 school provide the address to you?

20 A. Yes, they did.

21 Q. Okay. And what was the address that you
22 responded to?

23 A. It was -- it was a Five Forks address. I
24 believe it was -- let me see. 7310 Five Forks.

25 Q. 7310 Five Forks?

1 A. Yes, ma'am.

2 Q. And that's in Harris County, Texas?

3 A. Yes, ma'am.

4 Q. Okay. Now, about what time was it when you
5 finally made your way over to the Five Forks address?

6 A. It was about 12:30.

7 Q. Okay. So, it's fair to say it was a little
8 over two hours?

9 A. No. 12:34.

10 Q. 12:34. So, about two hours and maybe close
11 to 10 minutes after the initial call had come in that
12 you actually made it to the residence?

13 A. Yes, ma'am.

14 Q. Okay. Now, when you got to the residence,
15 were you able to get in?

16 A. Yes.

17 Q. Okay. And who did you come into contact
18 with?

19 A. There was an older gentleman and a female
20 in a truck that met me at the gate, and they let me
21 in. That was who I met first.

22 Q. Okay. And do you know who those people
23 were?

24 A. At the time I didn't.

25 Q. Okay.

1 A. I didn't know who they were.

2 Q. Were they the owner of the property where a
3 lot of these residences were located?

4 A. Yes, ma'am.

5 Q. Okay. Now, did you have a name of who you
6 were trying to come into contact with?

7 A. Yes, I did.

8 Q. Okay. And who was that?

9 A. Timothy Fisher.

10 Q. Okay. Were you able to find Timothy Fisher
11 at the address?

12 A. When I followed them in, we got to where
13 those trailers were at; and I saw him walking out,
14 walking out one of the trailers. When I saw him, I
15 followed them in.

16 Q. Who did you follow in?

17 A. Older gentleman and the female that was
18 with him. They came in a truck and I followed
19 them --

20 Q. Okay.

21 A. -- deeper into the property.

22 Q. So, they had -- they were coming into the
23 property at the same time you were trying to come in?

24 A. No. They came from the inside and met me
25 at the gate. I was on the outside. They were on the

1 inside.

2 Q. Okay. But they weren't with -- they
3 weren't with Timothy Fisher. They was by themselves?

4 A. They were by themselves, yes, ma'am.

5 Q. Okay. So, when he let you into the
6 property, did they point you in the right direction;
7 or did you know which unit you were going to?

8 A. No. As soon as we pulled in, I park. They
9 kind of pulled over off to the side, and I found a
10 clearing that I pulled into. And while I was still
11 in my patrol car, that's when Timothy stepped out of
12 the trailer.

13 Q. Okay. Now, when you say Timothy, do you
14 mean Timothy Fisher?

15 A. Yes, ma'am.

16 Q. Okay. And do you see Timothy Fisher in the
17 courtroom today?

18 A. Yes.

19 Q. Can you point to him and identify him by an
20 article of clothing?

21 A. He has got a blue shirt on, blue tie
22 (indicating.)

23 **MS. BYRNE:** May the record reflect the
24 witness has identified the defendant?

25 **THE COURT:** Yes, ma'am.

1 Q. (BY MS. BYRNE) So, you didn't have to go to
2 the door?

3 A. No, ma'am.

4 Q. Okay. Who came out of the residence when
5 you pulled up?

6 A. At first I didn't know it was Timothy
7 Fisher, but he came out of the residence and he had a
8 baby with him when he came out. He was carrying a
9 baby.

10 Q. Was there anybody else present with him?

11 A. No. I didn't see anybody else.

12 Q. Okay. And so, where did you actually come
13 into contact with him?

14 A. Out in the yard.

15 Q. All right.

16 A. By my patrol car. He walked up to my
17 patrol car.

18 Q. So, he walked up to you?

19 A. Yes.

20 Q. Okay. And you mentioned he was holding a
21 baby?

22 A. Yes, ma'am.

23 Q. Okay. How was he holding the baby?

24 A. He had -- on the porch. He had the baby on
25 his -- on this side (indicating), and then he -- when

1 he came up to me, he moved the baby over to the other
2 side. So, when he made contact, he had already moved
3 the baby over. And that is from one side to the
4 other.

5 Q. Was the baby clothed?

6 A. Yes, it was.

7 Q. Okay. Do you remember whether or not there
8 was a blanket or anything on the baby, if you
9 remember?

10 A. No. I don't -- I don't recall that.

11 Q. Now, what was your purpose in going over
12 there?

13 A. From what I had heard at the school, what I
14 was told at the school, my -- I was going to check on
15 the baby to see if there was -- you know, what they
16 were saying about it, if I could see that on the
17 child and then check on him, too. If he was going to
18 be by himself, if he was intoxicated or anything, I
19 was going to see what we could do from this point if
20 he was by himself.

21 Q. Now, you mentioned by the time you actually
22 came into contact with him, it was a little over two
23 hours after the initial call?

24 A. Yes, ma'am.

25 Q. Okay. When you came into contact with the

1 defendant, did he appear to be intoxicated?

2 A. No, he didn't.

3 Q. And without going into everything that was
4 said, were you able to have a conversation with him?

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

6 Q. Did you explain to him why you were there?

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

8 Q. I want to talk to you about the baby.

9 A. Uh-huh (affirmative.)

10 Q. What did you observe about the baby?

11 A. When -- when he came out of the house with
12 the baby, I noticed that the baby was -- had looked
13 like it had clean clothes on, and the legs were
14 moving. Arms were moving. I could see the baby
15 looked like it was trying to crawl up him. The
16 baby's head kept turning towards his body, putting
17 its face into his shirt. And it was when he got kind
18 of close to me, I could hear it whimpering a little
19 bit. So, I looked at the baby and I didn't say
20 anything because the legs were exposed, arms were
21 exposed, and one side of the head was and the face.

22 Q. When you say "the arms," I mean, he had
23 clothing on his shoulders?

24 A. Yes, ma'am.

25 Q. And back and stomach?

1 A. Yes. Yes.

2 Q. Torso?

3 A. All of the torso area was covered up.

4 Q. Now, when you say the baby was moving, at
5 that point in time, did you observe it to be just
6 what you thought would be normal or jerking
7 movements, something that would stand out now?

8 A. Normal for a baby that young. It just --

9 Q. Okay.

10 A. It was little movements, not nothing, you
11 know.

12 Q. Now, you mentioned the baby had its head
13 against -- I guess where was the baby's head?

14 A. It was leaning up against -- against like
15 his chest.

16 Q. Could you see the baby's entire head as you
17 were -- as you were checking out the baby?

18 A. No, ma'am.

19 Q. What part of the baby did you see?

20 A. The front and the side, where I was told it
21 was scratched. That's what I was looking for now.
22 And the baby had his hands on his face and was
23 scratching at his face; and where the scratches were
24 at, that's where his hands were connecting and going
25 down. Scratches were consistent with his hands going

1 down his face.

2 Q. On the side of the face that you saw --

3 A. Uh-huh (affirmative.)

4 Q. -- did you observe a bruise?

5 A. No, I did not. No, I did not.

6 Q. Now, that is one of the things that had
7 been indicated to you from the school, correct?

8 A. Yes, ma'am.

9 Q. Why did you not ask to hold the baby or to
10 look at the baby yourself?

11 A. The baby looked fine. He answered every
12 question I asked and clearly and concisely. The baby
13 looked good from what I saw, you know, on the arms,
14 legs, and the part of the body that I saw. I
15 didn't -- at that moment, at that time, I didn't see
16 anything that warranted me going any further with
17 looking at the child, you know, looking any deeper
18 into it.

19 Q. Now, but you were only looking at one side
20 of the face, right?

21 A. Yes. Yes. Uh-huh (affirmative.)

22 Q. And it had been reported that the baby had
23 a bruise somewhere on its head?

24 A. Yeah.

25 Q. And, I mean, don't you think it would have

1 been a good idea to get a look at the baby's whole
2 head; or do you think that's something -- knowing
3 what you know now, that you should have done?

4 A. Well, you know, like I said, you know, the
5 baby -- everywhere else on the body, it looked good.
6 And as I saw the one side of the head and front,
7 hindsight, I probably should have taken the baby and
8 looked all over the baby.

9 Q. Okay. So, you never took the baby's
10 clothing off. You never -- did you ever look at the
11 baby's trunk area or anything like that?

12 A. I pulled the shirt out and I looked at the
13 back of the child and I felt the diaper, see if it
14 was a clean diaper and see if I saw anything on the
15 body and I didn't see anything else.

16 Q. When you say you pulled the shirt out, did
17 you look at the entire back and shoulders or just
18 kind of looked a little bit?

19 A. I looked down the back, down the torso
20 area, in that area.

21 Q. So, you didn't --

22 A. Like the back, you know, around the ribs
23 and such.

24 Q. Would it be fair to say that you did not
25 thoroughly inspect this baby?

1 A. No -- oh, yes, that I did not thoroughly
2 inspect.

3 Q. You did not?

4 A. Yes.

5 Q. You did not thoroughly inspect the baby?

6 A. Yes.

7 Q. Okay. In fact, you didn't even look at the
8 other side of the baby's head?

9 A. No. No.

10 Q. Okay. Because at that time the defendant
11 didn't appear intoxicated to you --

12 A. Uh-huh (affirmative.)

13 Q. -- is that right?

14 A. That's correct.

15 Q. And so, you thought things were okay?

16 A. Yes.

17 Q. What did you do after that?

18 A. I explained to him -- I said: Well -- he
19 appeared okay. He answered everything that I needed
20 to know and I told him that I was doing a report and
21 it was because of the school making a complaint
22 against him -- or allegations. So, I was going to do
23 a report and I was going to refer it to CPS and then
24 I just left.

25 **MS. BYRNE:** Pass the witness.

1 **THE COURT:** Thank you.

2 **MS. WILLIAMS:** Yes, ma'am.

3 **CROSS-EXAMINATION**

4 **Q.** **(BY MS. WILLIAMS)** Good morning, Deputy
5 Lerma.

6 **A.** Good morning.

7 **Q.** My name is Clyde Williams, and I represent
8 Mr. Fisher.

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

10 **Q.** When you went out there to see Mr. Fisher,
11 he told you about the baby getting the scratches
12 after he picked it up the night before from the
13 grandfather and his wife?

14 **MS. BYRNE:** Your Honor, I object.

15 **MS. WILLIAMS:** Grandfather --

16 **MS. BYRNE:** That question calls for
17 hearsay.

18 **THE COURT:** Sustained.

19 **MS. WILLIAMS:** It's --

20 **Q.** **(BY MS. WILLIAMS)** The baby's eyes, when you
21 saw the baby, its eyes weren't rolling back in his
22 head; is that true?

23 **A.** It was a sunny day, really bright and sunny
24 day. So, the baby's eyes were squinting.

25 **Q.** Squinting?