

1

CHARLES SWIHART,

2

having been first duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

Q. (BY MS. REYNA) Good morning. Please
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
southeast Houston.

11

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
at Williams Trace.

18

19

Q. Okay.

20

A. In Sugar Land.

21

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

22

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 22nd, 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 22nd. 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

1 the car.

2 **THE COURT:** I don't understand why you
3 don't just ask him these questions.

4 **MS. JOHNSON:** Well, the time line he
5 doesn't have memorized off the top of his head.

6 **THE COURT:** Sorry?

7 **MS. JOHNSON:** The time line he does
8 not have memorized from a year and a half ago. So,
9 he documented his impressions.

10 **THE COURT:** Sorry. I'm not able to
11 hear you. Let me read it. Sorry.

12 **MR. DAVIS:** Judge, he can use that to
13 refresh his recollection. We have no problem with
14 that.

15 **THE COURT:** I'm having a hard time
16 understanding why it's present sense impression. Let
17 me send the jury to lunch.

18 **(End of Bench Discussion)**

19 **THE COURT:** This is going to take a
20 little bit. So, members of the jury, you might as
21 well step back and begin your lunch. Court stands in
22 recess until 1:10. And I will take up this matter
23 with the lawyers.

24 All rise, please.

25 **(Jury released)**

1 **THE COURT:** Please be seated. Give me
2 just a moment to read it.

3 **(Brief pause)**

4 **THE COURT:** I think if you're going to
5 offer this as a present sense impression, I think
6 you're going to need to lay a predicate with this
7 witness. So, give me just one more moment.

8 **(Brief pause)**

9 **THE COURT:** It may be that the parts
10 labeled Friday, Saturday, Sunday, and Monday are
11 present sense impression; but the company car has no
12 significant miles since the oil change on Saturday.
13 That means he went out, looked at this car and the
14 mileage, and came back; is that right?

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

16 **THE COURT:** Okay. Well, he obviously
17 wasn't saying this while he was looking at the
18 mileage. He must have had notes or something. So,
19 if you're going to try and get this in as a present
20 sense impression, you may try and lay a predicate
21 with the witness.

22 **MS. JOHNSON:** And also under recorded
23 recollection, under 802, the hearsay rule exceptions.

24 **THE COURT:** Okay. Let me look at
25 that.

1 **MS. JOHNSON:** And it basically says
2 that if a witness has no independent memory and they
3 recorded something when their memory was fresh --

4 **MR. DAVIS:** Your Honor, object to
5 having this discussion in front of the witness.

6 **THE COURT:** It is just an evidentiary
7 issue. So, I don't really think it's going to affect
8 his testimony. If something comes up that might, I
9 will ask him to step out.

10 **MS. JOHNSON:** That if the witness now
11 has insufficient recollection to enable the witness
12 to testify fully and accurately, shown to have been
13 made or adopted by the witness when the matter was
14 fresh in the witness' memory and to reflect the
15 knowledge correctly, they're able to read that into
16 evidence.

17 **THE COURT:** You didn't lay that
18 predicate.

19 **MS. JOHNSON:** We can lay the
20 predicate, Judge. We will go back and do it.

21 **THE COURT:** Okay. I will give you
22 another opportunity to do that.

23 And then there was something at the
24 end you were concerned about, Mr. Davis. What was
25 that?

1 **MR. DAVIS:** You can.

2 **MS. CARPENTER:** Your Honor, if I may.

3 **THE COURT:** Sorry. Sorry. We are
4 switching lawyers on this one?

5 **MR. DAVIS:** I don't mind.

6 **THE COURT:** Okay.

7 **MS. CARPENTER:** At the end is a
8 statement of Eric Moore, which is hearsay within
9 hearsay. So, double hearsay without an exception.
10 So, that part --

11 **THE COURT:** Mark leaves after speaking
12 with Eric Moore, said he was headed to Midland. The
13 video doesn't have sound, does it?

14 **THE WITNESS:** Does not.

15 **THE COURT:** Okay. So, I don't see how
16 that could be a present sense impression. That must
17 have been some research he did.

18 **MS. JOHNSON:** I can redact that part
19 out, Judge.

20 **THE COURT:** Okay.

21 **MS. JOHNSON:** Or have him not read
22 that part.

23 **THE COURT:** I thought you were
24 offering the whole document into evidence.

25 **MS. JOHNSON:** Well, I guess it depends

1 on once we lay all the predicates, what you
2 ultimately decide.

3 **THE COURT:** Okay. May I cross this
4 out as we go since by agreement you're going to
5 redact that? You do have other copies, I take it?

6 **MS. JOHNSON:** Yes, ma'am.

7 **THE COURT:** Okay. So, that is
8 redacted by agreement. Okay. I will get you to lay
9 the predicate in front of the jury when the jury
10 returns. So, the Defense objection to the last
11 sentence is sustained. That's been redacted. Okay.

12 **MR. DAVIS:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 Court stands in recess until 1:10.

15 Thank you.

16 **(Recess taken)**

17 **(AFTERNOON SESSION)**

18 **THE COURT:** Please have a seat. Thank
19 you-all so much.

20 All right. We're ready for the jury.

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

22 **(Jury enters the courtroom)**

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

25 You may continue with the witness.

1 **MS. REYNA:** Thank you, Judge.

2 **Q.** **(BY MS. REYNA)** Mr. Swihart, as far as
3 State's Exhibit 241 (sic), when did you make these
4 notes that you included in the time line?

5 **A.** That day before I sent that e-mail.

6 **Q.** And in comparison to when you were watching
7 the video, when would that be?

8 **A.** I would have made the notes as I did it.

9 **Q.** Okay. So, you made this time line as you
10 watched the video?

11 **A.** Right.

12 **Q.** And what was the purpose of making the time
13 line?

14 **A.** I don't remember what conversations I had
15 had with Officer Do at that time, but I know he and I
16 had been talking.

17 **Q.** Okay. Let me stop you there. And do you
18 have this time line committed to memory?

19 **A.** I do not. I have it in my sent items
20 folder.

21 **Q.** Sent items folder to your e-mail?

22 **A.** Outlook, uh-huh (affirmative.)

23 **MS. REYNA:** At this time the State
24 would offer State's Exhibit 221 as redacted, after
25 tendering to Defense counsel.

1 **MR. DAVIS:** And I object as to
2 hearsay, Your Honor.

3 **THE COURT:** Thank you. Let me see
4 what's been redacted.

5 May I see counsel at the bench,
6 please?

7 **(At the Bench)**

8 **THE COURT:** I was just going to inform
9 the jury that some portions of the exhibit have been
10 redacted, blacked out, because that information was
11 not admissible. So they don't think it's been
12 tampered with. Is that all right with the State?

13 **MS. REYNA:** It is.

14 **MR. DAVIS:** Fine with the Defense,
15 Your Honor. But still maintain my objection to it.

16 **THE COURT:** Your objection is
17 overruled.

18 **(End of Bench Discussion)**

19 **THE COURT:** Thank you. Exhibit 221 is
20 admitted. Some portions of the exhibit have been
21 blackened out or redacted, and that's because those
22 portions were not admissible under the Rules of
23 Evidence. Thank you.

24 **Q. (BY MS. REYNA)** Charles, I'll show you
25 State's Exhibit 221 up on the screen there. Can you

1 tell the jury what this is?

2 **A.** Those are notes I took as I perused through
3 our video footage from the security cameras of Mark's
4 comings and goings that weekend.

5 **Q.** Okay. Let's talk about Friday,
6 September 21, 2012. Are the dates here noted in
7 military time, or is that civilian time?

8 **A.** That's military time.

9 **Q.** Times. Sorry. Not the dates, the times.
10 I'm sorry. It's --

11 **A.** So, 1927 is 7:27 p.m.

12 **Q.** Okay. So, it would be military time.

13 So, you were able to mark Mark's
14 comings and goings on Friday, September 21st,
15 correct?

16 **A.** Correct.

17 **Q.** Let's look at Saturday, September 22nd.
18 Was that Mark's last day at the office?

19 **A.** It was his last day he was employed. He
20 came back on Monday morning.

21 **Q.** Okay. So, let's talk about what time he
22 gets to work that morning.

23 **A.** At 6:28 a.m. And then he turned around and
24 left almost an hour later and then came right back
25 in.

1 Q. Okay. I'm sorry. Saturday,
2 September 22nd.

3 A. Oh, I'm sorry. I'm looking at Monday, on
4 the 22nd. What was your question about it?

5 Q. He comes in on Saturday, September 22nd,
6 right?

7 A. 10:23 a.m.

8 Q. Okay. And who does he have with him?

9 A. He has Cayden.

10 Q. Okay. You can see this on the video?

11 A. Yes.

12 Q. Okay. And then at what would be 1453, or
13 2:53, Mark and Cayden leave, correct?

14 A. Correct.

15 Q. And you have a notation about the oil
16 change. Tell me about the oil change.

17 A. He turned in a receipt -- I don't know if
18 it was that day or Monday when he came back with the
19 key -- for an oil change. He had a company credit
20 card that he could use to do maintenance on the car.

21 Q. And did you think that was odd that he
22 would be doing an oil change at this point?

23 A. It was odd that he was leaving the company
24 and at the same time going to get an oil change.

25 Q. Okay. So, then Mark arrives back at work,

1 looks like, 6:00 -- 12:00 p.m.; is that correct?

2 A. Yes.

3 Q. And does he have Cayden with him at that
4 point?

5 A. I didn't make note of it. No. It says
6 "Mark arrives alone."

7 Q. Okay.

8 A. Yes.

9 Q. And Mark leaves again at 1833, which would
10 be 6:33 p.m., correct?

11 A. Yes.

12 Q. Okay. And you noted that Sunday nothing
13 occurred on the surveillance video?

14 A. No appearance on Sunday.

15 Q. Okay. Let's move to Monday,
16 September 24th. What time did Mark arrive at the
17 office?

18 A. 6:28 a.m.

19 Q. Okay. And he wasn't alone, correct?

20 A. Right.

21 Q. Mark then leaves at 7:22 a.m.?

22 A. Correct.

23 Q. And surveillance cameras, are any focused
24 inside of the office?

25 A. They are all pretty much focused inside the

1 office where I can see him coming and going. There
2 are two pointed down at the front counter, but they
3 catch a little bit -- the lower portion of out the
4 front door. So, if a car pulls up and someone steps
5 out of it, you would not see their hood; but you
6 would see the bumper.

7 Q. Okay. Able to see what Mark is doing in
8 the office at this time?

9 A. You could see -- you could see what --
10 throughout the shop what they would be doing. There
11 are some dead spots. I don't recall what he was
12 doing.

13 Q. Okay. Because you didn't note that on your
14 time line, correct?

15 A. Correct.

16 Q. It looks like Mark leaves three minutes
17 later at 7:25 -- sorry. He arrives --

18 A. All I know is he locked the door.

19 **THE COURT:** Okay. We have got to make
20 sure we talk one at a time. So, let her finish
21 asking the question; and then go ahead and answer.

22 And could you repeat that last
23 statement?

24 A. So, he locked up and left at 7:22. And
25 then at 7:23, he pulled up to the front of the shop

1 in what I believed was Michelle's car and came back
2 in.

3 Q. (BY MS. REYNA) Okay. And then he leaves
4 three minutes later, correct?

5 A. Right. He came in -- I don't know what
6 time Eric Moore came in, but -- I didn't note that,
7 but he spoke with Eric Moore and then left. It was
8 just the two of them there at that time.

9 Q. And it appears to be in Michelle's car,
10 correct?

11 A. Yes.

12 Q. And this says all -- this is all in the
13 a.m. correct? In the morning?

14 A. Yes.

15 Q. Charles, did you make any other notations
16 about the company vehicle as far as miles or tank of
17 gas, that sort of thing?

18 A. Yeah. He --

19 MR. DAVIS: Objection, Your Honor,
20 nonresponsive and volunteered.

21 THE COURT: Excuse me. That should be
22 a "yes" or "no."

23 A. Okay.

24 Q. (BY MS. REYNA) Did you make any other
25 notations as far as the amount of gas in the vehicle

1 or mileage of the vehicle?

2 **A.** Yes.

3 **Q.** And what were those?

4 **A.** That there was no significant mileage put
5 on the vehicle that we could --

6 **Q.** And why were you concerned about the
7 mileage that may have been on the vehicle that
8 weekend?

9 **A.** With all the events that were supposed to
10 have occurred, I thought that perhaps my company car
11 might have been used for something.

12 **Q.** Okay. And based on your inspection of the
13 mileage used, do you believe your car was used?

14 **A.** No.

15 **Q.** Okay. And what about as far as gas in the
16 tank of the vehicle?

17 **A.** I remember making a note that he had used a
18 half a tank of gas in a very short period of time,
19 which was unusual. And my guess at the time was that
20 he had done --

21 **MR. DAVIS:** Objection, Your Honor, to
22 narrative as well as to speculation.

23 **THE COURT:** Sustained.

24 **Q.** **(BY MS. REYNA)** I will stop you there.
25 After you sent this e-mail to Dan Do, did you have

1 any other contact with the Houston Police Department?

2 **A.** I e-mailed Danny a few months later to ask
3 what was going on in the case, was there a trial
4 date; but then nothing after that.

5 **Q.** Okay. And did you have any contact with
6 Mark Castellano at any point after that Monday,
7 September 24th?

8 **A.** Yes.

9 **Q.** When did you have contact with him?

10 **A.** Sometime during that week. I want to say
11 it was Wednesday or Thursday. I can't be for sure,
12 but I could certainly look it up. Because --

13 **Q.** Let me stop you there. Who contacted whom?

14 **A.** Mark called me.

15 **Q.** Okay. And do you remember what the
16 conversation was about?

17 **A.** It was about Michelle's disappearance.

18 **Q.** Okay. Did you have questions for him?

19 **A.** I don't recall if I asked him any questions
20 about it.

21 **Q.** Okay. What did he tell you during that
22 conversation?

23 **A.** That she was probably high somewhere, that
24 she had run off.

25 **Q.** Did he seem particularly concerned about

1 her during that conversation?

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

4 **THE COURT:** You need to rephrase,
5 please. Sustained.

6 **Q.** (**BY MS. REYNA**) From your knowledge of the
7 defendant having worked for you for close to a year
8 and a half, did he appear to have any sort of concern
9 in his voice?

10 **A.** A little.

11 **Q.** A little bit? Did he seem panicked in any
12 way?

13 **A.** No.

14 **MS. REYNA:** Pass the witness, Judge.

15 **THE COURT:** Thank you.

16 **MR. DAVIS:** May I proceed, Judge?

17 **THE COURT:** You may.

18 **CROSS-EXAMINATION**

19 **Q.** (**BY MR. DAVIS**) The video surveillance isn't
20 available at this time, sir?

21 **A.** It is not. It's been recorded over.

22 **Q.** But you reviewed that?

23 **A.** I did.

24 **Q.** And you recall some of it from using those
25 to refresh your recollection of what you saw?

1 **A.** Yes, sir.

2 **Q.** And Mark Castellano was on the video with
3 Cayden at work?

4 **A.** At one point, yes.

5 **Q.** And Cayden was there for a couple of hours
6 at work with Mark Castellano?

7 **A.** Yes, sir.

8 **Q.** And in the video you were able to observe
9 Mark interacting with Cayden while at work?

10 **A.** Yes.

11 **Q.** Do you recall what his interaction was like
12 with Cayden?

13 **A.** Playful.

14 **Q.** So, he is playful with his 3-year-old son?

15 **A.** Yes. He liked to spin in the chairs.

16 **Q.** I see. And you saw obviously Mark leaving
17 with Cayden, right?

18 **A.** Yes.

19 **Q.** Part of Mark's job is in the field; is that
20 correct?

21 **A.** Correct.

22 **Q.** Is that correct?

23 **A.** Yes, sir.

24 **Q.** All right. So, by being in the field means
25 he goes out to different people's houses and does

1 service calls?

2 **A.** Yes.

3 **Q.** So, before he comes to work, oftentimes
4 technicians will go to do service calls, of course;
5 is that right?

6 **A.** Sometimes it will begin the day.

7 **Q.** With a service call?

8 **A.** With a service call.

9 **Q.** Do you know whether or not Mr. Castellano
10 began that day with a service call?

11 **A.** Are we speaking of Friday or Saturday?

12 **Q.** I'm speaking of Friday, the date that he is
13 clocked in at 10:00, according to your surveillance.

14 **A.** I don't know.

15 **Q.** What about the day after that, that
16 Saturday -- sorry. The day after that, that
17 Saturday, do you know whether or not he began that
18 day with a service call?

19 **A.** He would not have. We don't do service
20 calls on Saturday.

21 **Q.** So, Saturday would have been all in the
22 office?

23 **A.** Correct.

24 **Q.** All right. So, on that Friday is the date
25 that you see him on -- is it Friday you show him with

1 Cayden or is it Saturday?

2 **A.** I don't recall. I would have to look at my
3 notes. They are not up any longer. It's been a year
4 and a half.

5 **Q.** I understand. To help your recollection,
6 I'm going to show you what's State's Exhibit 221.

7 **A.** And what is your question?

8 **Q.** In terms of the service call, I think, on
9 Friday, the day started with Cayden, right?

10 **A.** Someone dropped Cayden off to him Friday
11 evening.

12 **Q.** Oh.

13 **A.** And Friday time line is all after hours.
14 We close at 6:00.

15 **Q.** So, the information you have in terms of
16 Friday is all after hours?

17 **A.** Yes, sir.

18 **Q.** So, when you documented it on that list, is
19 that something that occurred later in the evening
20 after you closed?

21 **A.** Yeah. This is 7:27 p.m. He had a key to
22 the shop.

23 **Q.** So, he is there at the shop after hours on
24 Friday?

25 **A.** Yes, sir.

1 **Q.** So, when Cayden comes, it is evening time
2 on that Friday, right?

3 **A.** Yes.

4 **Q.** But Cayden is also there on Saturday, as
5 well?

6 **A.** Correct.

7 **Q.** So, on Friday, Cayden is present at the
8 shop with Mr. Castellano, playing. You had that on
9 surveillance, right?

10 **A.** Yes, sir.

11 **Q.** And then in the morning, Cayden's also back
12 in the shop, the next day on Saturday morning?

13 **A.** Yes, sir.

14 **Q.** And he is with Mr. Castellano playing, and
15 he is there for about four hours or so?

16 **A.** He came in at 10:23. Yeah, about four,
17 maybe four and a half.

18 **Q.** All right. He is at work with Cayden for
19 four, four and a half hours?

20 **A.** Yes, sir.

21 **Q.** And then someone picks Cayden up?

22 **A.** Mark and Cayden left.

23 **Q.** I see.

24 **A.** At 2:53 p.m.

25 **Q.** So, Mark leaves the shop with Cayden and

1 then comes back to the shop later in the evening by
2 himself?

3 **A.** Yes, sir.

4 **Q.** And Cayden isn't with him?

5 **A.** Correct.

6 **Q.** Do you -- did you ever ask Mark about
7 bringing Cayden to work with him?

8 **A.** No. Except for there were a couple of
9 times I found out later that he had actually taken
10 Cayden on service calls with him.

11 **Q.** So, he took Cayden with him when he was
12 working?

13 **A.** Right. At least two times that I know of.

14 **Q.** But in terms of bringing Cayden to work, it
15 was something he did frequently?

16 **A.** Not when he was first employed; but much
17 later, yes.

18 **Q.** Well, he has been working with you for
19 about a year and a half, right?

20 **A.** Correct.

21 **Q.** During this period of time, before
22 September of 2012, for those months prior to that
23 time, he had been bringing Cayden to work quite
24 frequently?

25 **A.** Not that I'm aware of, but I didn't -- I

1 would say in the last months or two, yes.

2 Q. You didn't really document it?

3 A. Right.

4 Q. All right. It had become a subject -- the
5 manager was Eric Moore, right?

6 A. Eric Johnson.

7 Q. I'm sorry, Eric Johnson.

8 A. We have two Erics.

9 Q. Was Eric Moore just a coworker?

10 A. Eric Moore is sort of the inside shop
11 manager.

12 Q. I see. If Mark were working in the shop,
13 technically he would report to Eric Moore?

14 A. That's correct, but most of the time he was
15 in the field.

16 Q. Eric Moore is inside manager, and Eric
17 Johnson is field manager?

18 A. Correct.

19 Q. Eric Johnson manages what goes on outside?

20 A. Correct.

21 Q. Are you aware of whether or not they had
22 conversations with Mr. Castellano about why he was
23 bringing Cayden to work?

24 A. I'm not aware of their conversations.

25 Q. Did you have conversations with

1 Mr. Castellano about why he was bringing Cayden to
2 work?

3 A. Yes.

4 Q. And you talked to him about that, right?

5 A. Yes.

6 Q. And he raised certain concerns at home in
7 terms of the care of Cayden?

8 A. Yes.

9 Q. Would that be accurate?

10 A. Yes.

11 Q. And some of those concerns involved
12 Michelle Warner?

13 A. Correct.

14 Q. He talked to you about his relationship
15 with Michelle Warner, true?

16 A. At times, yes.

17 Q. Mr. Castellano told you about the
18 volatileness of his relationship with Ms. Warren.
19 Would you agree?

20 A. That it was volatile, yes.

21 Q. He told you that it was often times
22 violent, as well?

23 A. I don't remember a discussion of violence.

24 Q. Do you remember talking to Detective Do?

25 A. Year and a half ago, yes.

1 Q. It's been a while?

2 A. Right. It's been a while.

3 Q. You didn't take notes of your conversation
4 with Detective Do?

5 A. Did not.

6 Q. Do you remember talking to Detective Do
7 about Mr. Castellano mentioning fights with Michelle
8 Warner that they were having?

9 A. They would have -- I don't remember the
10 conversations with Do.

11 Q. You remember --

12 A. I'm not denying that --

13 **THE COURT:** Excuse me. Excuse me. It
14 has to be one at a time. Wait for the next question,
15 sir.

16 **THE WITNESS:** Okay.

17 Q. **(BY MR. DAVIS)** You are not denying that
18 that happened?

19 A. Right.

20 Q. You just don't remember it?

21 A. Correct.

22 Q. Do you remember Mark Castellano coming to
23 work with bruises?

24 A. No.

25 Q. Do you remember him talking about Cayden --

1 him having Cayden at work and discussing the
2 volatileness of his relationship with Michelle Warner
3 and having some physical signs that you could see
4 that he had had some -- some altercation with
5 Michelle Warner?

6 **A.** I don't remember physical signs.

7 **Q.** Are you -- are you saying that it didn't
8 happen, or you don't recall?

9 **A.** I just don't remember.

10 **Q.** Isn't it true that you and other employees
11 tried to talk Mr. Castellano into leaving Michelle
12 Warner?

13 **A.** I know that other employees did. I don't
14 know if I got into that with him or not. I don't
15 remember.

16 **Q.** But you were present during these
17 conversations?

18 **A.** I'm sure I was with some that might have
19 occurred in the shop.

20 **Q.** Do you recall Mr. Castellano kind of saying
21 that he was trying to work through the issues with
22 his relationship?

23 **A.** That depends on the week.

24 **Q.** I understand.

25 **MR. DAVIS:** May I have one moment,

1 Judge?

2 **THE COURT:** You may.

3 **(Brief pause)**

4 **Q.** **(BY MR. DAVIS)** Were there instances where
5 Michelle Warner actually came to Mr. Castellano's
6 job?

7 **A.** Yes.

8 **Q.** Were you present during those times when
9 they came to his job?

10 **A.** I was present a few times.

11 **Q.** When she came to his work, were there ever
12 any issues that you were able to observe that you
13 thought were kind of unusual?

14 **A.** No.

15 **Q.** Now, in terms of the times she came to his
16 employment, was it close to his last day,
17 September 22nd; or was it a longer time ago?

18 **A.** I don't know how close it would have been.
19 I know she would come and pick him up for lunch or
20 maybe drop things to him, that sort of thing.

21 **Q.** In terms of Mr. Castellano, you mentioned
22 that one time he talked to you about possibly
23 quitting, right?

24 **A.** Yes.

25 **Q.** And he said that he wanted to quit and

1 maybe move to Midland or Odessa with his son --

2 **A.** Right.

3 **Q.** -- right?

4 That was long before his actual last
5 day; is that right?

6 **A.** I think it was about a month before.

7 **Q.** He talked about getting away from Michelle?

8 **A.** Yes.

9 **Q.** And said he thought about quitting and
10 taking Cayden to Odessa?

11 **A.** He actually verbally gave a two-week
12 notice.

13 **Q.** He rescinded that notice, though?

14 **A.** He did.

15 **Q.** Right. He rescinded the notice and said he
16 was going to continue working.

17 **A.** Right. Of course, we said that was okay.

18 **Q.** And, obviously, there was never any other
19 notice given up to the date he actually -- that was
20 his actual last day?

21 **A.** No.

22 **Q.** So, he worked all the way through
23 September 22nd, right?

24 **A.** Right.

25 **Q.** And on that day he came in and told you

1 that he wasn't going to work anymore?

2 **A.** I don't remember the circumstances about
3 his resignation that day. I wouldn't have been there
4 on a Saturday. And I don't remember if he sent me an
5 e-mail or called me or what. I just know that was
6 his last day.

7 **Q.** All right. But his termination or
8 resignation was abrupt?

9 **A.** Yes.

10 **Q.** It wasn't something that had been planned
11 for a while --

12 **A.** No.

13 **Q.** -- from what you could gather?

14 It was something that happened and
15 occurred on that day, September 22nd?

16 **A.** Yes.

17 **MR. DAVIS:** I don't have any other
18 questions, Judge.

19 **THE COURT:** Thank you.

20 **MS. REYNA:** Nothing further from the
21 State, Judge.

22 **THE COURT:** Is this witness excused
23 for all purposes?

24 **MS. REYNA:** Yes, Judge.

25 **MR. DAVIS:** Subject to recall, Your

1 Honor. We'd like him to remain subject to recall.

2 **THE COURT:** Okay. Then means you're
3 still on call. But you can be called back.

4 **THE WITNESS:** Today?

5 **THE COURT:** No.

6 **THE WITNESS:** Hang around?

7 **THE COURT:** Sorry. You're free to go
8 today, but you just need to be available in case you
9 have to testify again.

10 **THE WITNESS:** Okay.

11 **THE COURT:** Thank you, sir.

12 *(Witness released)*

13 **MS. JOHNSON:** At this time the State
14 will call Investigator Fil Waters.

15 **THE COURT:** Thank you.

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

18 **THE COURT:** Hello, sir. Do you mind
19 looking at the jury while I give you the oath?

20 **THE WITNESS:** Absolutely.

21 *(Witness Duly Sworn)*

22 **THE COURT:** Thank you. You may have a
23 seat on the witness stand.

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FIL WATERS,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (BY MS. JOHNSON) Good afternoon.

A. Good afternoon.

Q. Would you please introduce yourself to the jury?

A. My name is Millard F. Waters, II. I'm a homicide detective with the Houston Police Department.

Q. How do you spell your first and last name?

A. First name is spelled M-I-L-L-A-R-D, and my last name is W-A-T-E-R-S.

Q. And you go by Fil, right?

A. Yes, F-I-L.

Q. So, Houston Homicide. How long have you been a homicide officer?

A. I have been a homicide officer for almost 20 years.

Q. What did you do before homicide?

A. I was a patrol officer, worked in a previous agency. I was a narcotics detective. I worked in the jail. I have overall 30 years of experience in law enforcement.

Q. All at Houston P.D.?