

1 **(In Open Court, Defendant Present)**

2 **THE COURT:** We're ready. Is Mr. Davis
3 here?

4 **MS. CARPENTER:** Your Honor, we will
5 start without him. He is in another court.

6 **THE BAILIFF:** Ready, Judge?

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

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

9 **(Jury enters the courtroom)**

10 **THE COURT:** Thank you. Please be
11 seated.

12 Jurors, good morning. Welcome back on
13 this beautiful day. Just on a housekeeping matter,
14 and I'm sorry I didn't get to chat with the lawyers
15 before we started, there is a fire drill Friday
16 afternoon. I forget. It's 3:00 or 3:30. But
17 probably that's not a good use of your time. So, we
18 will probably recess early on Friday. The fire drill
19 goes on for quite awhile, a lot of noise and
20 announcements. So, I will let you know the exact
21 time.

22 Are you ready to resume?

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

24 **THE COURT:** Thank you. You may
25 proceed.

1 **MS. JOHNSON:** The State will continue
2 playing State's Exhibit No. 7.

3 **THE COURT:** Thank you.

4 **(Exhibit Published)**

5 **MS. JOHNSON:** There is more, Judge.
6 So, I don't know if you want to keep playing.

7 **THE COURT:** Well, we still have a few
8 minutes until lunch time. Do you want to go ahead?

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

10 **THE COURT:** Is this is a good place to
11 go ahead and send the jury to lunch?

12 **THE WITNESS:** It's only about eight
13 minutes left.

14 **THE COURT:** Eight minutes left? I
15 think we have time for that.

16 **(Exhibit Published)**

17 **THE WITNESS:** That's the second one.

18 **(Brief pause)**

19 **(Exhibit Published)**

20 **MS. JOHNSON:** There is more, Judge.
21 And I don't know if you want to go ahead and break.
22 This is a good time to stop.

23 **THE COURT:** Thank you so much. We
24 will take the lunch recess, and the bailiff will take
25 you out to lunch. Have a good lunch. Thank you.

1 Court stands in recess until the jury returns. Thank
2 you.

3 I presume it's going to be probably at
4 least 1:15, 1:20.

5 **THE BAILIFF:** At least.

6 **THE COURT:** Okay. Thank you.

7 **(Jury released)**

8 **(AFTERNOON SESSION)**

9 **(Jury enters courtroom)**

10 **THE COURT:** Thank you. Please have a
11 seat.

12 So, how did you-all like Treebeard's?

13 **A JUROR:** Good.

14 **GROUP RESPONSE:** Great.

15 **THE COURT:** I thought about you while
16 I was eating my Lean Cuisine. I have bad news. You
17 do not get off early tomorrow after all. The fire
18 drill has been rescheduled to Friday, June 6th. Of
19 course, it might be rescheduled again. So, I
20 wouldn't make any plans necessarily for June 6th
21 either. Thank you.

22 The State may continue.

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

24 We will continue playing State's Exhibit 7.

25 **(Exhibit Published)**

1 **THE BAILIFF:** Judge?

2 **THE COURT:** You're missing two
3 screens. Okay.

4 **(Brief pause)**

5 **THE COURT:** Thank you.

6 **(Exhibit Published)**

7 **MS. JOHNSON:** That's the end, Judge,
8 of that.

9 **THE COURT:** Thank you.

10 **MS. JOHNSON:** I need to play another
11 audio. Excuse me. I am going to play another audio.
12 I was going to ask some questions to set it up first.

13 **THE COURT:** Thank you.

14 **FIL WATERS,**
15 having been previously duly sworn, testified as follows:

16 **DIRECT EXAMINATION (CONTINUED)**

17 **Q.** **(BY MS. JOHNSON)** So, Detective Waters,
18 going back to the end of the first video where the
19 defendant is on the phone presumably talking to his
20 parents, the tape stops; is that correct?

21 **A.** Yes.

22 **Q.** And is there an actual just audio only that
23 continues to pick up from where that phone call left
24 off and stopped?

25 **A.** That's correct.

1 **Q.** So, I will play that. That's also on
2 State's Exhibit 7.

3 **(Exhibit Published)**

4 **Q.** **(BY MS. JOHNSON)** So, does the next video
5 pick up after that audio recording ends?

6 **A.** That's correct.

7 **Q.** Do you see Mark Castellano here in the
8 courtroom today?

9 **A.** I do.

10 **Q.** Could you point to him and describe what he
11 is wearing?

12 **A.** Sitting to my left with a blue shirt and a
13 gold-colored tie (indicating.)

14 **MS. JOHNSON:** May the record reflect
15 the witness has identified the defendant?

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

17 **(Defendant Identified)**

18 **Q.** **(BY MS. JOHNSON)** Now, going back to your
19 interview with the defendant, at the -- towards the
20 end, before he starts talking about what he did to
21 Michelle, you keep talking to the defendant about
22 protecting Cayden. Why do you do that?

23 **A.** That was part of the strategy in the
24 interview. I had to listen to the first two hours of
25 his narrative to determine where I was going to go,

1 to find out what was important to the defendant. And
2 so, at that point in time, once I determined that the
3 focus of his attention was on Cayden, that was at
4 that point that I had to offer him a way out.

5 **Q.** And how do you offer him that way out?

6 **A.** By asking him the negative alternative
7 question, giving him the bad thing and not so bad
8 thing.

9 **Q.** And at the end you start to -- after he
10 tells you about him killing Michelle and what he did
11 with her body, you praise him and give him kind of
12 congratulations or praise for it. Why do you do
13 that?

14 **A.** Again, that's to show some proper empathy,
15 to encourage him that what he has -- at that point,
16 has offered in the explanation of what happened to
17 Michelle, that this is the right thing to have done
18 and that we are going to go further and find
19 Michelle's body.

20 **Q.** When Sergeant Harris offers the defendant
21 food, is there a strategy behind the food offer?

22 **A.** There is.

23 **Q.** And what is that?

24 **A.** Usually, again, this happens at the front
25 end of an interview; but we use food to gauge the

1 attitude of the person that we are interviewing. And
2 what we have come to find out over our experience is
3 that if we offer food, they accept it; and they
4 immediately start to eat it. Now, remember, this is
5 usually done at the front end, that we know we're
6 going to be in an interview room for a long time.

7 If they do not, if the food is there
8 available to them and they pick at it or they don't
9 go to eating it, then we know we have got a pretty
10 good chance that we're going to not be in there for a
11 prolonged period of time, that there is a lot of
12 inner turmoil going on.

13 **Q.** Why did you offer it to the defendant at
14 the end instead of at the beginning?

15 **A.** For the same reasons. We wanted to gauge
16 what his attitude was about what we had just talked
17 about, what he had just confessed to having done to
18 Michelle.

19 **Q.** And he ate the food, as you can see on the
20 video?

21 **A.** Yes.

22 **Q.** During your interview, you had the
23 defendant draw a diagram of the apartment of where
24 the bedroom was. Showing you State's Exhibit No. 9,
25 is that the diagram that he drew?

1 **A.** Yes.

2 **Q.** And is this the same diagram from
3 September 30, 2012?

4 **A.** It is.

5 **Q.** Has it been changed or altered in any way?

6 **A.** No.

7 **Q.** As a matter of fact, what's up there at the
8 top?

9 **A.** That would be the date and the time and
10 then the defendant's signature.

11 **MS. JOHNSON:** At this time I offer
12 State's Exhibit No. 9 into evidence, tender to
13 opposing counsel.

14 **MS. CARPENTER:** No objection, Your
15 Honor.

16 **THE COURT:** Admitted.

17 **Q.** **(BY MS. JOHNSON)** What did the defendant
18 draw here in State's 9, if you can explain to the
19 jury?

20 **A.** This is a drawing of the bedroom and his
21 drawing of where Michelle was, where he was, and
22 eventually where they ended up.

23 **Q.** And you had him draw that to better explain
24 what happened?

25 **A.** Yes.

1 **Q.** Now, at a point in the video, we see
2 another person walk in, red shirt. Who was that?

3 **A.** That was my partner.

4 **Q.** The red shirt?

5 **A.** Oh, red shirt. That was -- I'm sorry.
6 That was Jason Castellano. That was the defendant's
7 brother.

8 **Q.** And did you tell Jason Castellano what Mark
9 had just confessed to?

10 **A.** My partner had.

11 **Q.** And what was his reaction?

12 **A.** I think it was pretty clear on the video.
13 He was not happy.

14 **Q.** Now, after you talked to the defendant and
15 he has confessed and told you about dumping
16 Michelle's body in the oil field, you let him keep
17 his cell phone and make phone calls. Why do you do
18 that?

19 **A.** For the exact purpose of what we have seen
20 on the video, is that he is not in custody. He had
21 made a request, and he had made a reasonable request
22 of something that we could do. He had asked to call
23 his father and tell him what he had done, and I
24 allowed him that opportunity. I left the cell phone
25 with him and then we left and we, of course,

1 videotaped what happened thereafter and wanted to
2 make sure that we had that all memorialized and
3 documented on the video.

4 Q. Later do you do something with the
5 defendant's cell phone?

6 A. Yes.

7 Q. What is that?

8 A. The cell phone is downloaded and we get all
9 the information off of it, including calls, text
10 messages, and so forth.

11 Q. Did the defendant -- did he give his
12 consent for you to basically search and download his
13 cell phone?

14 A. Yes, he did.

15 Q. And was that done by the digital forensics
16 unit?

17 A. It was.

18 Q. Now, at the time that the defendant has
19 confessed, was he charged with any actual crime at
20 that time?

21 A. He was not.

22 Q. Now, after he gives you this confession,
23 what do you do? Who do you go talk to?

24 A. I'm talking with the district attorney's
25 office. I'm making contact with Odessa P.D. and

1 trying to coordinate the air travel with D.P.S. air.

2 Q. What do you want to do after you got that
3 confession from the defendant?

4 A. I'm sorry?

5 Q. What did you want to do or find after you
6 got the confession from the defendant?

7 A. Michelle.

8 Q. And so, what did that entail in order to
9 find her body?

10 A. It was going to take the defendant's
11 cooperation to do what he said he would do, which was
12 lead us to where he had put Michelle.

13 Q. Now, to be clear, did the defendant
14 actually get on a plane with y'all and go anywhere to
15 locate her body?

16 A. He did not.

17 Q. The interview ends at about 1:40 or so.
18 What time did you actually charge and arrest the
19 defendant for murder?

20 A. 6:00 p.m. that evening.

21 Q. And what took so long through that process?

22 A. He was still not in custody, and we were
23 still in a very fluid conversation. I had talked to
24 the D.A.; and we had made a decision that we were not
25 going to make any charges, we were not going to make

1 any arrests until we had found Michelle.

2 Q. And was that a long process to find her?

3 A. It was. It was several hours.

4 Q. Did you make contact with Odessa Police
5 Department?

6 A. I did.

7 Q. And why did you do that?

8 A. They were the -- that's where the
9 defendant's parents lived. That's where Michelle's
10 car was. And we didn't know if there was any other
11 evidence that might be there at Houston. So, we
12 asked for their assistance in serving any kind of
13 consent to search for search warrants.

14 Q. Did you work with a -- did you work with a
15 Detective Patrick Chadwick from Odessa Police
16 Department?

17 A. I did.

18 Q. Did they eventually -- or did Odessa police
19 eventually recover a lot of Michelle's personal
20 belongings from the defendant's house?

21 **MS. CARPENTER:** Objection, Your Honor,
22 hearsay.

23 **THE COURT:** Sustained.

24 Q. **(BY MS. JOHNSON)** Were you given evidence
25 that they recovered that belonged to the complainant?

1 **A.** I was.

2 **MS. CARPENTER:** Objection, Your Honor,
3 hearsay.

4 **THE COURT:** Sustained.

5 **Q.** **(BY MS. JOHNSON)** Now, Sergeant Harris, what
6 part did he kind of take over in this investigation?

7 **A.** Sergeant Harris was coordinating with the
8 Midland County Sheriff's Department.

9 **MS. CARPENTER:** Objection, Your Honor,
10 hearsay.

11 **THE COURT:** Overruled.

12 **Q.** **(BY MS. JOHNSON)** You can go ahead and
13 answer.

14 **A.** He was coordinating with the Midland County
15 Sheriff's Office and the FBI evidence recovery team
16 in the hope that we were going to recover Michelle.

17 **Q.** And what did you coordinate at that time?

18 **A.** I was -- and, again, I was in contact with
19 the D.A.'s office and putting together what we were
20 going to execute as a search warrant in Odessa
21 regarding the car.

22 **Q.** And did you have to figure out some way to
23 get there?

24 **A.** I did.

25 **Q.** How did y'all get there?

1 **A.** Called D.P.S. air, who have always been
2 very available to us, and coordinated with one of
3 their pilots to fly us to Midland/Odessa.

4 **Q.** And when you got to Midland, what did you
5 and Sergeant Harris do?

6 **A.** We met with Detective Chadwick and members
7 of the FBI evidence recovery team.

8 **Q.** And did you get a search warrant signed by
9 a judge in Ector County?

10 **A.** I did.

11 **Q.** Which is Odessa?

12 **A.** Yes.

13 **Q.** So, at some point was Michelle's body
14 discovered and recovered from the scene?

15 **A.** It was.

16 **Q.** After her body was found and recovered, who
17 did you call and let them know this information?

18 **A.** I called the -- David Chaffin. I called
19 the brother, Michelle's brother.

20 **Q.** Why did you do that?

21 **A.** I told him I would.

22 **Q.** Now, at any time during -- let me back up.

23 Yesterday you testified how this
24 investigation had to kind of be worked backwards,
25 right? At any time after this and the recovering of

1 Michelle's body, were there any other DNA,
2 fingerprint testing, any kind of scientific testing
3 done on any of the items you received?

4 **A.** I do not recall making any kind of request.

5 **Q.** Why not?

6 **A.** There was really no probative value to
7 having those tests conducted. We knew that
8 whatever -- any DNA or fingerprint or trace evidence
9 that we might have is going to come back to the
10 defendant.

11 **Q.** Yesterday you discussed going to recover
12 surveillance video from the business behind the
13 apartment complex. Showing you State's Exhibit 149.
14 Do you recognize this?

15 **A.** Yes.

16 **Q.** And is this the surveillance video that you
17 recovered showing the back of the apartment complex?

18 **A.** Yes, it is.

19 **Q.** Have you watched this video?

20 **A.** Have I watched it?

21 **Q.** Yes.

22 **A.** Oh, yes, several times.

23 **Q.** And has it been changed or altered in any
24 way?

25 **A.** No.

1 **Q.** And what dates specifically does this video
2 cover?

3 **A.** This video covers 9/22/2012, from about
4 6:45 p.m. to about 9:30 p.m. And then it covers
5 September 24, 2012, from about midnight to about 6:15
6 in the morning.

7 **MS. JOHNSON:** At this time I offer
8 State's Exhibit 149 into evidence, tender to opposing
9 counsel.

10 **MS. CARPENTER:** We have no objection,
11 Your Honor.

12 **THE COURT:** Thank you. Admitted.

13 **Q.** **(BY MS. JOHNSON)** So, first, we will go to
14 September 22, 2012. And since it covers such an
15 expanded time frame, we will move it to the relevant
16 parts.

17 So, what do we see here that's shown
18 in State's Exhibit 149?

19 **A.** This is going to be a view from the office
20 building on Regency Park to the back of the apartment
21 complex.

22 **Q.** So, if I --

23 **MS. JOHNSON:** Can I have the witness
24 step down, Your Honor?

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

1 **Q.** **(BY MS. JOHNSON)** If you could step down,
2 Detective Waters, and kind of point the relevant
3 areas that we should be looking at on this video.

4 **A.** What we see here is two apartments. The
5 one on the right here is going to be the one that is
6 on the other side of the landing. The one to the
7 left will be Michelle's apartment. Down the
8 staircase here is the parking area and the -- of
9 course, the fence dividing the parking area, some of
10 it is covered and some of it is not.

11 **Q.** So, moving to 18:48:07, what will we see at
12 this point?

13 **A.** I believe at this point we're going to see
14 the defendant pull up in his truck, and then you will
15 see him back it into a parking place against the
16 fence.

17 **Q.** Is that the same truck that you towed from
18 the apartment scene and processed?

19 **A.** It is.

20 **Q.** So, moving to 18:57, does the defendant
21 eventually walk into the apartment?

22 **A.** Yes.

23 **Q.** If you could point out. Kind of hard to
24 see the figure walking.

25 **A.** Right here (indicating.)

1 **Q.** Now, moving to 20:43, starting to get dark
2 outside. If you could point out when the light comes
3 on illuminating the apartment that the defendant and
4 Michelle lived in?

5 **A.** The defendant is opening the door here.

6 **Q.** And that's at about 8:44 on
7 September 22nd?

8 **A.** That's correct.

9 **Q.** And based on his confession to you, is
10 that -- do you believe that to be after Michelle was
11 killed?

12 **A.** Yes.

13 **Q.** So, moving to 20 -- if you can point out.
14 You can see the figure moving towards the car.

15 **A.** Right here (indicating).

16 **Q.** Does that look like possibly Cayden walking
17 to the car?

18 **A.** Yes. Looks like he has someone with him.

19 **Q.** So, moving to 20:49:52, at this point do we
20 see something -- the defendant do something with a
21 car?

22 **A.** With a car?

23 **Q.** Yes.

24 **A.** Yes. The headlights now are on, and this
25 is where -- this is where Michelle's car was parked.

1 **Q.** And what is he doing with the car?

2 **A.** He is going to back the car in underneath
3 the carport.

4 **Q.** Now, at this point, does the defendant make
5 several trips back and forth to the car and the
6 apartment?

7 **A.** He does.

8 **Q.** So, moving to 21:27:10, on State's
9 Exhibit 149, on 9/22/12, does the defendant make kind
10 of his last trip back up to the apartment and back
11 down to the car?

12 **A.** Yes, he does.

13 **Q.** Can you point to where the figure came out
14 of the apartment and is walking down the stairs?

15 **A.** You can see the figure is moving now.

16 **Q.** Then at 21:28:30, does the defendant
17 finally leave the apartment complex?

18 **A.** Pull away in Michelle's car.

19 **Q.** And what time is that in regular time?

20 **A.** In regular time?

21 **Q.** Yeah.

22 **A.** It would be about 9:30, 9:28 p.m.

23 **Q.** And based on his statement, is that when
24 you believe he drives off on his first trip to Odessa
25 with Cayden?

1 **A.** That's correct, yes.

2 **Q.** And approximately what time would that put
3 him in Odessa at his parent's house?

4 **MS. CARPENTER:** Objection, Your Honor
5 speculation.

6 **THE COURT:** Sustained. You need to
7 rephrase, please.

8 **Q.** **(BY MS. JOHNSON)** How long does it take to
9 get to Odessa from Houston?

10 **A.** About an eight-hour drive.

11 **Q.** Based on that information, approximately
12 how long would that take?

13 **MS. CARPENTER:** Objection, Your Honor,
14 speculation.

15 **THE COURT:** Overruled.

16 **A.** Around 5:30 in the morning on the 23rd.

17 **Q.** **(BY MS. JOHNSON)** Now, moving to the second
18 part of the surveillance video of September 24, 2012.
19 Based on the defendant's statement to you, is this
20 him arriving back at the apartment complex to pick up
21 Michelle's body?

22 **A.** It is. Right here backing in underneath
23 the carport.

24 **Q.** So, moving to 3:21:45, we see a figure
25 moving here by the carport. Is that believed to be

1 the defendant, Mark Castellano?

2 **A.** Right here walking slowly, yes.

3 **Q.** And the -- based on his confession to you,
4 is that when he is trying to get the body into the
5 car?

6 **A.** That's correct.

7 **Q.** You see the figure moving up the stairs?

8 **A.** He is now at the top of the stairs moving
9 towards the door of the apartment.

10 **Q.** And does it appear that he is dragging
11 something down the stairs?

12 **A.** Right here, you can see a container that he
13 is dragging in this manner (indicating.)

14 **Q.** And based on his statement, he stated --
15 did he state that Michelle had gained weight so it
16 was heavy?

17 **A.** He did make that comment twice, yes.

18 **Q.** Did he make that -- can you tell that he
19 seems to be struggling with something on the stairs
20 there?

21 **A.** He is. And at some point in time, he will
22 stop. Looks like he is resting so he can finish the
23 rest of the movement into the car. Now, he started
24 down the stairwell with the container walking
25 backwards and pulling it with him down each step.

1 **Q.** At 3:23:26?

2 **A.** Right.

3 **Q.** Does it appear to take him a while to do
4 this?

5 **A.** It does.

6 **Q.** You eventually will see him continue to
7 drag the container to the car?

8 **A.** Yes.

9 **Q.** And where is the car again, if you could
10 point it out?

11 **A.** The car is parked here (indicating), backed
12 in.

13 **Q.** It takes a while, but does it appear that
14 the defendant is possibly resting at that point?

15 **A.** Yes. This exercise takes several minutes
16 to get her into the car.

17 **Q.** And if you could point out the figure
18 moving again?

19 **A.** Now he is at the base of the stairs. He is
20 pulling the container here to the right rear of the
21 car.

22 **Q.** So, the car lights have now just been
23 turned on?

24 **A.** I'm sorry?

25 **Q.** Have the car lights now just been turned

1 on?

2 **A.** They have. Locks -- unlocking the car.

3 **Q.** And you can see a figure moving behind the
4 car?

5 **A.** Yes.

6 **Q.** Does it appear as if he is dragging
7 something?

8 **A.** Yes. Right here.

9 **Q.** So, moving to 5:41:20, does the defendant
10 during this time make multiple trips back and forth
11 to the car?

12 **A.** He does.

13 **Q.** So, at 5:41:20, the defendant comes back to
14 the car, makes a couple of more trips; and eventually
15 does he leave around 6:00 a.m-ish?

16 **A.** He does.

17 **Q.** And based on his statement, is that him
18 with the body going back to the Midland/Odessa area?

19 **A.** It is.

20 **Q.** First going to work and then back to
21 Midland/Odessa?

22 **A.** I'm sorry?

23 **Q.** Did he first go back to his job and then to
24 Midland/Odessa?

25 **A.** He went and resigned -- told me he had went

1 and resigned from his job for Monday morning.

2 Q. With Michelle's body in the car?

3 A. In the car, yes.

4 Q. We will stop it right there.

5 **THE COURT:** Jurors, do you need a
6 break? So, can you go another 15 minutes? Go
7 another 15 minutes?

8 **A JUROR:** Yes.

9 Q. (**BY MS. JOHNSON**) So, after the defendant
10 was charged and arrested, was he transported to the
11 jail?

12 A. Yes.

13 Q. And at any time did he ask if he could
14 leave that whole day? That Sunday, did he ask if he
15 could leave? Did he want to leave?

16 A. He did not.

17 Q. Did he ask for a lawyer?

18 A. He did not.

19 Q. Now, you knew from the defendant that he
20 was going to be on the Dr. Phil show; is that right?

21 A. Yes.

22 Q. Did you actually watch the Dr. Phil show?

23 A. I did.

24 Q. And what did you -- what did the defendant
25 say to Dr. Phil on the show? The defendant.

1 **A.** It was consistent with the story that he
2 had put together and to the family, to co-workers,
3 and to her friends.

4 **Q.** And at some point during that episode -- or
5 let me ask you this: When did that episode air?

6 **A.** I want to say it was the Thursday, the next
7 Thursday after the Sunday where we had talked to the
8 defendant.

9 **Q.** So, Sunday the 30th. So, sometime
10 beginning of October that show aired?

11 **A.** I believe so.

12 **Q.** And when you watched that show, did you
13 watch the part where the defendant actually confessed
14 to the Dr. Phil show producer?

15 **MS. CARPENTER:** Objection, Your Honor,
16 hearsay.

17 **THE COURT:** Overruled.

18 **Q.** **(BY MS. JOHNSON)** You can answer. Did you
19 watch the defendant confess to the Dr. Phil show
20 producer?

21 **A.** Yes. There was a portion of that, yes.

22 **Q.** And the statements that he made to the
23 Dr. Phil show producer, was that consistent or not
24 consistent with the statement he had given you on
25 September 30th?

1 **MS. CARPENTER:** Objection, Your Honor,
2 improper opinion.

3 **THE COURT:** Overruled.

4 **A.** The statements that he made to the producer
5 were consistent with the statements that he had made
6 to me in the interview.

7 **Q.** **(BY MS. JOHNSON)** And when do you believe
8 those statements to the producer were made before or
9 after your interview?

10 **MS. CARPENTER:** Objection,
11 speculation.

12 **THE COURT:** You may answer if you
13 know. Don't speculate.

14 **A.** They were made after he had already
15 confessed to me.

16 **Q.** Yesterday you talked about trying to talk
17 to the Dr. Phil show producers and obtain raw footage
18 of the defendant. Did you ever -- were you ever able
19 to get that raw footage from them?

20 **A.** We were not.

21 **Q.** Did you get anything from the Dr. Phil
22 show?

23 **A.** Just a hard time.

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

25 **THE COURT:** Thank you.

1 Cross-examination?

2 **CROSS-EXAMINATION**

3 **Q.** **(BY MS. CARPENTER)** Investigator Waters, at
4 the time that you initially started investigating
5 this case, it was still a missing persons, correct?

6 **A.** I'm sorry. I can't hear you.

7 **Q.** At the time that you initially started
8 investigating this case, it was still a missing
9 persons, correct?

10 **A.** It was a missing person case, yes.

11 **Q.** And if I recall correctly, you said you had
12 no scene, no body, no witnesses, and no evidence,
13 right?

14 **A.** That's correct.

15 **Q.** Even at some point after you went to the
16 apartment and processed the truck and the carpet, you
17 still had no evidence, right?

18 **A.** We didn't have any scene. We were
19 collecting evidence.

20 **Q.** All right. But when you went to the
21 apartment, you ended up processing Mr. Castellano's
22 truck, right?

23 **A.** Yes, we did process the truck.

24 **Q.** And you ended up taking parts of the
25 bleached out carpet?

1 **A.** Sorry. You're very soft spoken. Can
2 you --

3 **Q.** I'm sorry. You also ended up taking parts
4 of the bleached out carpet stains, right?

5 **A.** Yes, we did.

6 **Q.** And those didn't help you gain any
7 evidentiary value, right?

8 **A.** Later on -- there was no probative
9 evidentiary value, no.

10 **Q.** So, basically, you didn't end up with a
11 case until you spoke with Mr. Castellano, right?

12 **A.** That is correct.

13 **Q.** And you spoke with Mr. Castellano in a --
14 on the telephone prior to the recording we just
15 watched, right?

16 **A.** I did on that Thursday night.

17 **Q.** All right. Now, you didn't record in your
18 offense report that you had spoken to him what you
19 had spoken to him about, did you?

20 **A.** I would have to look at my supplement; but
21 I did not put any details of the conversation in
22 there, no.

23 **Q.** Okay. And if you need to check your
24 supplement at any time, you can.

25 **A.** Okay.

1 **Q.** But you didn't put any dates about that
2 recorded conversation, did you?

3 **A.** Not that I recall, to any degree.

4 **Q.** I'm sorry. The conversation wasn't
5 recorded?

6 **A.** No, it was not.

7 **Q.** Part of the reason why you keep -- why you
8 write an offense report in the first place is to make
9 sure that you can remember what was said, correct?

10 **A.** Yes.

11 **Q.** So, the offense report basically
12 memorializes what's happening at that time, correct?

13 **A.** Yes.

14 **Q.** And I do realize you were at home at the
15 time, right?

16 **A.** Yes, I was.

17 **Q.** But you're the one that made the phone
18 call, correct?

19 **A.** I am.

20 **Q.** Did you make any notes or anything like
21 that while you were talking to Mr. Castellano?

22 **A.** No.

23 **Q.** In regards to Mr. Castellano coming back to
24 Houston, he made his own flight arrangements,
25 correct?

1 **A.** He did.

2 **Q.** And he paid for it, right?

3 **A.** He did.

4 **Q.** He voluntarily came, didn't he?

5 **A.** He did.

6 **Q.** When you -- when you initially went to the
7 apartment, you said it was not a scene at that time,
8 right?

9 **A.** The first time we went?

10 **Q.** The first time you went.

11 **A.** We didn't have a scene. We had a place
12 that a missing person was living.

13 **Q.** And at that point, you took a CSU person
14 with you, correct?

15 **A.** We did, yes.

16 **Q.** Now, in terms of the apartment, are you
17 aware if anyone else had been there with the police
18 department prior to you?

19 **A.** Yes, I was aware of that.

20 **Q.** All right. And there is a difference
21 between patrol officers and investigators, correct?

22 **A.** Yes.

23 **Q.** And, generally, patrol officers are the
24 first to get to a scene, right?

25 **A.** They are the call responders, yes.

1 **Q.** One of their jobs would be to rope off
2 anything that appears to be a scene and preserve it,
3 correct?

4 **A.** That would be a function that they would
5 have, yes.

6 **Q.** This apartment was not preserved, was it?

7 **A.** I wasn't there when the patrol officers
8 responded. So, I don't know.

9 **Q.** If someone else had been to the scene, had
10 been to the apartment, and changed something about
11 the apartment, you would be unaware of that, right?

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

14 **THE COURT:** Overruled. You may
15 answer.

16 **Q.** **(BY MS. CARPENTER)** If someone else had
17 moved or done something to the scene, you would be
18 unaware of that, correct?

19 **A.** Correct.

20 **Q.** Now, you do work in the homicide division,
21 right?

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

23 **Q.** And normal protocol -- and I understand you
24 said you worked this case in reverse; but normal
25 protocol, you would have a body and you would respond

1 to where that body is, right?

2 **A.** That's correct.

3 **Q.** And then that particular area would be
4 roped off or preserved, right?

5 **A.** Yes.

6 **Q.** The patrol officers don't actually
7 investigate, do they?

8 **A.** I wouldn't say that's accurate.

9 **Q.** Okay. More of the in-depth investigation
10 is left up to an investigator, correct?

11 **A.** They perform more of what we call a field
12 investigation.

13 **Q.** When you visited this apartment --

14 **MS. CARPENTER:** Your Honor -- I'm
15 sorry. May I see the pictures from yesterday?

16 **Q.** **(BY MS. JOHNSON)** When you visited this
17 apartment, is it fair to say that it was relatively
18 cluttered? I want to show you State's Exhibit 24.

19 **A.** I'm sorry. What was your question?

20 **Q.** When you visited this apartment, is it fair
21 to say that it was relatively cluttered?

22 **A.** I guess people would have a different
23 definition of what they consider cluttered. I would
24 not call this picture cluttered.

25 **Q.** Okay. And do you see this red stain right

1 here on the carpet?

2 **A.** There is a darker area there, looks like,
3 yes.

4 **Q.** All right. Was there a lot of stuff in
5 this apartment? Showing you State's Exhibit 23.

6 **A.** A lot of stuff?

7 **Q.** Yes, a lot of stuff.

8 **A.** There was a lot of stuff, yes.

9 **Q.** And when we look at State's Exhibit 17, we
10 can see the foot of the bed, right?

11 **A.** Yes.

12 **Q.** We don't see -- is the door this way going
13 to the left, off the picture?

14 **A.** Which door are you referring to?

15 **Q.** The door leading out to the hallway.

16 **A.** It would be on this side. The --

17 **Q.** So --

18 **A.** If we're going to call -- the bottom of the
19 picture.

20 **Q.** Okay. So, it's going down towards here,
21 somewhere out this way. It's going to be this
22 direction (indicating)?

23 **A.** Right.

24 **Q.** And about how much space is in between the
25 foot of the bed and whatever is behind it? Is there

1 a wall behind it at the end?

2 **A.** I'm sorry?

3 **Q.** What is on the other side of this bed?

4 **A.** Are you talking about the head of the bed?

5 **Q.** From the foot of the bed.

6 **A.** It's on this side of the bed.

7 **Q.** Yeah. The foot of the bed going out this
8 way (indicating)?

9 **A.** Okay. Well, that's going to be a wall; and
10 then there was -- my recollection, there was a
11 dresser there; and there may have been another
12 small -- like a little rack there (indicating.)

13 **Q.** All right. So, the dresser was on -- up
14 against the wall?

15 **A.** I believe so. That's my recollection. If
16 you have got a picture of that, obviously, I will
17 look at it and verify that.

18 **Q.** Where would the door to the outside be?

19 **A.** It's still this way (indicating.)

20 **Q.** And the door to the hallway is where?

21 **A.** That way (indicating.)

22 **Q.** So, they were opposite each other?

23 **A.** Yes.

24 **Q.** So, if you were to walk into that back door
25 that we see on the outside in State's Exhibit 144,

1 you could walk through this door (indicating), right?

2 **A.** Well, you wouldn't be in Michelle's
3 apartment if you walked through that door.

4 **Q.** I'm sorry. This door (indicating.)

5 **A.** Yes.

6 **Q.** All right. So, you would walk through this
7 door, correct?

8 **A.** Correct.

9 **Q.** And you would walk straight and hit another
10 door that would lead to the hallway?

11 **A.** There is another door directly across from
12 it, yes.

13 **Q.** Do you know what size this apartment was?

14 **A.** Do I know what?

15 **Q.** What size this apartment was?

16 **A.** My recollection is it was a two-bedroom,
17 one-bath apartment.

18 **Q.** There were at least three of you that went
19 to the apartment, correct?

20 **A.** Well, three of who?

21 **Q.** When you went to the apartment, you went
22 with the CSU person, right?

23 **A.** Yes.

24 **Q.** Did you go with anyone else?

25 **A.** Yes.

1 **Q.** All right. And it was your partner,
2 Sergeant Harris, right?

3 **A.** Yes, it was.

4 **Q.** When the three of you were in the
5 apartment, if y'all were in the same room, would it
6 be pretty congested?

7 **A.** It would depend on which room we were
8 standing in.

9 **Q.** When Mr. Castellano came for -- came from
10 Odessa to Houston, he came specifically to meet with
11 you, right?

12 **A.** I'm sorry?

13 **Q.** When Mr. Castellano came from Odessa to
14 Houston, he came specifically to meet with you,
15 right?

16 **A.** Yes, he did.

17 **Q.** Matter of fact, that's why you picked him
18 up at the airport, correct?

19 **A.** That is correct.

20 **Q.** It's important from a police perspective to
21 get any statements that you can, right?

22 **A.** Absolutely.

23 **Q.** In this instance, when you spoke with
24 Mr. Castellano, you used a specific strategy, right?

25 **A.** I developed a strategy, yes, for the

1 interview.

2 Q. Is this your standard strategy?

3 A. What strategy are you asking me about?

4 Q. All right. You said that we all want to be
5 loved, respected, and take care of those who love and
6 respect us, right?

7 A. We all do, yes.

8 Q. And you hit on those three desires in order
9 to get people to talk, right?

10 A. Yes. But what I'm describing there is more
11 of an approach rather than a strategy. So, when I
12 make an approach to anybody in an interview, I'm
13 going to approach them with that type of a
14 philosophy; and then I'm going make sure that I treat
15 anybody, regardless of who it is, with dignity and
16 respect.

17 Q. Your approach is designed to get the truth,
18 right?

19 A. Absolutely.

20 Q. And part of your approach means that you
21 listen to the other person and figure out what's
22 important to them, right?

23 A. Correct.

24 Q. In this instance you spent more than two
25 hours listening to Mr. Castellano, right?

1 **A.** Yes, I did.

2 **Q.** And you were able to develop from that
3 conversation that Cayden was the most important thing
4 in his life, right?

5 **A.** Yes.

6 **Q.** And Cayden was the focus of everything that
7 was going on, right?

8 **A.** I'm not real sure. In what sense?

9 **Q.** After the two hours that he had been
10 speaking with you, your whole entire approach at that
11 point became Cayden, right?

12 **A.** Not -- not really, no.

13 **Q.** Okay. So, you didn't connect with him as a
14 father?

15 **A.** I did, but I think we're probably just
16 having a disagreement in definition of terminology.
17 My purpose in the room was to find Michelle. What
18 Cayden was, was the most important thing in the
19 defendant's life. And that was the approach that I
20 was going to have to take, strategy that I was going
21 to have to have to develop, of course, to get to the
22 point where I have to show some proper empathy and
23 make sure that he understands that the two choices
24 that we have here are he was not trying to hurt
25 Michelle, he was trying to protect Cayden. So, that

1 was the negative alternative that was offered to the
2 defendant.

3 Q. You spent a lot of time speaking about
4 Cayden at that point, though, didn't you?

5 A. Yes.

6 Q. And you spoke -- you began to connect with
7 him about how you could relate to him as a father
8 when he said something about Cayden reaching out and
9 touching his hands, right?

10 A. Yes.

11 Q. Your purpose was still to find Michelle, of
12 course, right?

13 A. That's correct.

14 Q. But, in order to do that, you had to focus
15 on what was important to Mr. Castellano, right?

16 A. Yes.

17 Q. Your approach as a whole is designed to --
18 to get the truth, right?

19 A. Elicit the truth, yes.

20 Q. And as a matter of fact, it worked, didn't
21 it?

22 A. We found Michelle, yes.

23 Q. Mr. Castellano told you things that were
24 not -- that -- Mr. Castellano told you things that
25 casted Mr. Castellano in a bad or negative light,

1 didn't he?

2 **A.** I'm sorry. Can you repeat that?

3 **Q.** Mr. Castellano told you things that casted
4 himself in a negative light, right?

5 **A.** He gave us certain information, yes.

6 **Q.** Even to the extent where he talked about
7 tossing a cat, right?

8 **A.** Yes.

9 **Q.** And he admitted that he called her names
10 that were not very pleasant, didn't he?

11 **A.** Yes.

12 **Q.** In the midst of all of this, he also said
13 some negative things about Michelle Warner, as well,
14 right?

15 **A.** Yes.

16 **Q.** So, he didn't try to paint either one of
17 them as angels, did he?

18 **A.** No.

19 **Q.** Did you ever do any follow-up investigation
20 to verify, other than finding the body, any of
21 Mr. Castellano's claims? Like when she was using pay
22 stubs to print checks for a job she didn't work at?

23 **A.** No, I did not.

24 **Q.** Did you ever try to verify the 3,000-dollar
25 loan from his family?

1 **A.** No, I did not.

2 **Q.** When Mr. Castellano first conveyed to you
3 what happened, he did indicate that we fell
4 backwards, right? Those were his words?

5 **A.** I'd have to go and listen to it again, but
6 there is mention of him moving backwards with
7 Michelle.

8 **Q.** Okay. Do you remember him saying that he
9 twisted during that fall and then heard a pop?

10 **A.** I'm sorry?

11 **Q.** Do you remember him saying that he twisted
12 during that fall and then heard a pop?

13 **A.** He did hear the pop, yes.

14 **Q.** And even as he was speaking with you, his
15 times were a little bit off, weren't they?

16 **A.** Regarding?

17 **Q.** Well, he thought that he had left around
18 11:00, right?

19 **A.** Yes.

20 **Q.** But your videotape shows that he left
21 earlier than that. Around 9:30, right?

22 **A.** Videotape from the building indicates
23 around 9:30, yes.

24 **Q.** And you also checked his cell phone, as
25 well, correct?

1 **A.** His cell phone was downloaded, yes.

2 **Q.** And his cell phone had -- was pinning off
3 towers at 9:00-something, as well, correct?

4 **A.** I believe so. That's my recollection of
5 the phone evidence.

6 **Q.** So, even when he was attempting to be
7 honest with you, he still was off about what time
8 everything happened, right?

9 **A.** I -- yes.

10 **Q.** You don't believe 11:00 is what time he
11 left, do you?

12 **A.** I don't believe that, no.

13 **Q.** And you even confronted him with that,
14 didn't you?

15 **A.** Yes, I asked him about that.

16 **Q.** And he -- during your interview with him,
17 he said, well, maybe my times are off, right?

18 **A.** I believe that's what he said.

19 **Q.** Now, you never asked him if he
20 intentionally tried to choke her or break her neck or
21 anything like that, did you?

22 **A.** Not in those words, no.

23 **Q.** Once he told you what had actually happened
24 with Michelle, he was willing to get on a plane,
25 wasn't he?

1 **A.** Not sure I understand that question.

2 **Q.** All right. Your objective was to find
3 Michelle's body, right?

4 **A.** Right.

5 **Q.** And even after he had already given his
6 statement, you still waited to press charges, right?

7 **A.** Yes.

8 **Q.** All of that because you were trying to find
9 the body, right?

10 **A.** Correct.

11 **Q.** You needed Mr. Castellano's help to do
12 that, right?

13 **A.** We did.

14 **Q.** And you still wanted him to participate,
15 correct?

16 **A.** Yes.

17 **Q.** Which is why you didn't formally arrest
18 him, right?

19 **A.** Correct.

20 **Q.** And it's why you held off on pressing
21 charges, correct?

22 **A.** Yes.

23 **Q.** When it came to it, Mr. Castellano was
24 willing to get on a plane and direct you physically
25 in his own presence to where the body was, right?

1 **A.** Yes, he was.

2 **Q.** So, he was cooperative even at that point?

3 **A.** Yes, he was.

4 **THE COURT:** Excuse me. Let's recess.

5 Members of the jury, you may walk
6 around the courthouse if you wish. If you would
7 start heading back up around 10 till, we will get
8 started shortly after that.

9 All rise, please, for the jury.

10 **(Jury released)**

11 **(Recess taken)**

12 **THE COURT:** We're ready for the jury.

13 **(Jury enters the courtroom)**

14 **THE COURT:** Thank you. Please be
15 seated.

16 Ms. Carpenter, on cross.

17 **MS. CARPENTER:** Thank you, Your Honor.

18 **Q.** **(BY MS. CARPENTER)** So, Investigator Waters,
19 before we left we were talking about your desire to
20 find Michelle's body, right?

21 **A.** Yes.

22 **Q.** And you needed Mr. Castellano's help to do
23 that, correct?

24 **A.** Yes.

25 **Q.** Initially, you had discussed him going with

1 you to Midland in order to help you recover the body,
2 right?

3 **A.** I had to stress? Is that what you said?

4 **Q.** No. Initially, you were planning with him
5 on him --

6 **A.** Yes.

7 **Q.** -- him going with you to Midland?

8 **A.** Yes.

9 **Q.** And he was willing to do that, correct?

10 **A.** Yes.

11 **Q.** Now, at some point y'all -- there was a
12 decision made by somebody that maybe y'all could just
13 get him to give you directions, right?

14 **A.** Yes.

15 **Q.** And he was willing to do that, as well,
16 correct?

17 **A.** Yes.

18 **Q.** As a matter of fact, is that how you ended
19 up recovering Michelle's body?

20 **A.** Yes.

21 **Q.** He drew as accurate a diagram as he could,
22 correct?

23 **A.** For Sergeant Harris, yes.

24 **Q.** And is that what you followed when you went
25 to Midland? Did you go to Midland?

1 **A.** I did.

2 **Q.** All right. And did you look at the diagram
3 that he draw?

4 **A.** I looked at the diagram, yes.

5 **Q.** Ultimately, that diagram was able to lead
6 you to the recovery of Michelle's body, correct?

7 **A.** Well, you -- yes, but that question would
8 be better answered by Sergeant Harris. I really
9 wasn't present when that was going on.

10 **Q.** Okay. We watched State's Exhibit 149, the
11 surveillance video that you got. Do you remember
12 that?

13 **A.** Yes.

14 **Q.** In that surveillance video footage, would
15 you agree with me that it is very difficult to make
16 out a particular face?

17 **A.** Face? Yes.

18 **Q.** So, what you really see is movement, right?

19 **A.** Yes.

20 **Q.** And you narrated the jury through that
21 surveillance video, right?

22 **A.** Yes.

23 **Q.** Your narration was based on
24 Mr. Castellano's statement that he gave to you,
25 wasn't it?

1 **A.** Yes.

2 **Q.** So, it's because Mr. Castellano told you
3 that he had put her body in a container that you knew
4 that that must be what that was, right?

5 **A.** Yes.

6 **Q.** So, a lot of context and supporting details
7 in order to get through that video and give it some
8 relevance came from your discussions with
9 Mr. Castellano, right?

10 **A.** Absolutely.

11 **MS. CARPENTER:** I pass the witness,
12 Your Honor.

13 **THE COURT:** Thank you.
14 Redirect?

15 **MS. JOHNSON:** No further questions,
16 Your Honor.

17 **THE COURT:** Thank you.
18 Is this witness excused or on call?

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

20 **MS. CARPENTER:** Subject to recall,
21 Your Honor.

22 **THE COURT:** Okay. So, you're free to
23 go today, subject to recall.

24 **THE WITNESS:** Thank you.

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

1 **(Witness released)**

2 **MS. REYNA:** The State calls Sergeant
3 Brian Harris.

4 **THE COURT:** Thank you.

5 **THE BAILIFF:** Judge, this witness has
6 not been sworn.

7 **THE COURT:** Thank you.

8 Hello, Sergeant.

9 **THE WITNESS:** Hello.

10 **THE COURT:** I'm the only Judge who
11 does this, but I kind of like the witness to look at
12 the jurors because they are the finders of the fact.

13 **THE WITNESS:** Sure.

14 **THE COURT:** Raise your right hand,
15 sir.

16 **(Witness Duly Sworn)**

17 **THE COURT:** Thank you very much.

18 **BRIAN HARRIS,**
19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **Q.** **(BY MS. REYNA)** Good afternoon, sergeant.

22 Would you introduce yourself to the jury?

23 **A.** My name is Brian Harris. I'm a sergeant
24 with the Houston Police Department.

25 **Q.** How long have you been with the Houston