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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.?

1 **A.** No. Twenty-one at HPD.

2 **Q.** If you could just tell the jury a little
3 bit about your background and your experience as a
4 homicide investigator.

5 **A.** Well, started out with a lot of education,
6 lot of schools. I have been to a basic investigator
7 school and to homicide investigator schools and to
8 advanced homicide investigation schools, DNA schools,
9 autopsies, and several interview schools.

10 **Q.** Do you also teach and train other officers?

11 **A.** I do.

12 **Q.** Do you teach officers in outside agencies
13 and other agencies?

14 **A.** Yes, I do.

15 **Q.** Do you work with a partner?

16 **A.** I do.

17 **Q.** Who is your partner right now?

18 **A.** Sergeant Brian Harris.

19 **Q.** And is he also a very experienced homicide
20 investigator?

21 **A.** He is.

22 **Q.** Explain to the jury how cases are usually
23 assigned to you as a homicide officer.

24 **A.** In the Homicide division we have three
25 shifts; day shift, evening shift, and night shift.

1 There are 20 detectives that are assigned on those
2 variety of shifts. A call comes into our intake
3 desk, and we are -- depending on the call-out, we are
4 assigned a scene; and then we will make that scene.

5 Q. And when you make that scene, is it usually
6 a dead body at the scene?

7 A. There usually is.

8 Q. The word "homicide" come in?

9 A. Correct.

10 Q. When -- or let me start like this: When
11 you are an investigator with Homicide, do you also
12 assist other agencies -- other divisions within HPD
13 with their investigations, if needed?

14 A. We do.

15 Q. And would you also assist the Missing
16 Persons investigation?

17 A. Yes.

18 Q. How does it happen that Missing Persons may
19 get the help of a Homicide investigator?

20 A. When they have an investigation that begins
21 as a missing person, when they start to gather their
22 evidence and their investigation, if there appears to
23 be a body involved, if there appears to be that
24 they're leading towards a homicide, then they will
25 defer to us. They will call us, and then we will

1 take part in the investigation.

2 Q. Let me take you back to September of 2012.
3 Specifically, September 27, 2012. Were you and
4 Sergeant Harris asked to assist Missing Persons and
5 Officer Do with an investigation?

6 A. We were.

7 Q. And how did that come about?

8 A. Detective Do had received a missing person
9 report that had already been in the media, and he was
10 conducting his investigation based on that report.
11 There came a point in time where the person that
12 was --

13 **MS. CARPENTER:** Your Honor, I object
14 to the narrative.

15 **THE COURT:** Sustained.

16 Q. **(BY MS. JOHNSON)** So, Detective Do has
17 already started his investigation. Was that on the
18 missing person by the name of Michelle Warner?

19 A. Yes.

20 Q. How did Homicide get involved in assisting
21 with his investigation?

22 A. Detective Do requested our assistance in
23 that investigation.

24 Q. And so, when you start with a missing
25 person's investigation, at the time there is no body,

1 right?

2 **A.** There is no body.

3 **Q.** So, what do you and Sergeant Harris start
4 to do in your own investigation?

5 **A.** We work backward. So, because we have no
6 scene, we have no body, we have no witness, we have
7 no evidence, we had to begin to work it as though we
8 were going to have those things at some point in
9 time. So, we start to take the steps in our
10 investigation as to what we normally do if we had the
11 scene, the body, the witnesses, and the evidence.

12 **Q.** Did the extensive media coverage contribute
13 to more officers being involved in this missing
14 person's investigation?

15 **A.** Yes.

16 **Q.** So, let me take you to the beginning.

17 At the time that y'all start your
18 investigation, are you doing this with Detective Do
19 or on your own?

20 **A.** We are running a parallel investigation.
21 We are obviously in contact with Detective Do on a
22 regular basis. He is providing us information that
23 he is accumulating. And then we are doing our own
24 research and running a parallel investigation to his.

25 **Q.** So, one of the first things to do is see

1 what he has done already?

2 **A.** Yes.

3 **Q.** What was one -- what was the first thing
4 that you did as far as reviewing Officer Do's
5 investigation?

6 **A.** We wanted to sustain a time line, if we
7 could do that, on the missing person and at the point
8 that she was reported -- the time that is reported to
9 the media and the circumstances under which she went
10 missing.

11 **Q.** Did you develop a time line based on that
12 information?

13 **A.** Yes, we did.

14 **Q.** Did you also listen to a recorded
15 conversation between Officer Do and a person by the
16 name of Mark Castellano?

17 **A.** Yes, we did.

18 **Q.** And why did you listen to that
19 conversation?

20 **A.** That was important for us, number one. We
21 wanted to have an understanding about the person that
22 was involved in the missing person investigation.
23 And Detective Do had conducted an interview over the
24 telephone with him, and we listened to that
25 interview.

1 **Q.** So, back to this time line, at the time
2 this -- is there any thought at the time that you
3 start this investigation that a homicide has
4 occurred?

5 **A.** No.

6 **Q.** So, at this point it's still a missing
7 person's case?

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

9 **Q.** Now, the time line that you developed, what
10 was that based on? What information did you use to
11 develop this time line?

12 **A.** It was based on the information
13 Detective Do had given us in his investigation based
14 on phone records, it was based on the family, the
15 statements that they had made in the media, and our
16 independent research and where it occurred and the
17 circumstances under which the missing person, at that
18 point, had gone missing.

19 **Q.** So, on September 27, 2012, did you and
20 Sergeant Harris go to 7222 Bellerive?

21 **A.** Yes, we did.

22 **Q.** At Apartment 1602?

23 **A.** That's correct.

24 **Q.** Is that location in Harris County, Texas?

25 **A.** It is.

1 **Q.** So, why did you and Sergeant Harris decide
2 to go to that apartment?

3 **A.** Again, this was the location that the
4 missing person was missing from. And because we were
5 not presuming anything, we wanted to make sure that
6 if we were going to become involved as the lead in a
7 homicide investigation, we wanted to make sure that
8 we were doing all the things necessary, that we had a
9 foot forward if we were to be brought into a homicide
10 investigation.

11 **Q.** Did you take a Crime Scene Unit officer
12 with you?

13 **A.** We did.

14 **Q.** Was that Officer Perez?

15 **A.** It was.

16 **Q.** And why did you take a Crime Scene Unit
17 officer with you?

18 **A.** Again, this is normal protocol. We wanted
19 to have a Crime Scene Unit there to process the area
20 in which the missing person had been missing from.

21 **Q.** At the time were you aware that the
22 defendant, Mark Castellano, also lived at that
23 apartment?

24 **A.** Yes.

25 **Q.** Did the Crime Scene Unit officer take

1 pictures of the apartment?

2 **A.** He did.

3 **Q.** Were you and Sergeant Harris present when
4 these pictures were taken?

5 **A.** We were.

6 **Q.** Did you go inside the apartment?

7 **A.** Yes, we did.

8 **Q.** And did you look throughout the whole
9 apartment while the pictures were being taken?

10 **A.** Yes, we did.

11 **Q.** Showing you what's been marked as State's
12 Exhibits 10, 11, 12, 14, 17, 18, 19 through No. 50.
13 So 19, 20 through 50. We skip 13 and 15 and 16. So,
14 will you take a look at these, please?

15 **A.** (Witness complies.)

16 **THE COURT:** So, that's basically 10
17 through 50 with the exception of 18?

18 **MS. JOHNSON:** No, 10 through 50 with
19 the exception of the ones that were entered earlier,
20 which were 13, 15, 16.

21 **THE COURT:** I see. Thank you.

22 **(Brief pause)**

23 **Q.** **(BY MS. JOHNSON)** So, after looking at those
24 State's exhibits, do those fairly and accurately
25 depict the way 7222 Bellerive, Apartment 1602

1 appeared on September 27, 2012?

2 **A.** Yes, they do.

3 **Q.** And at this time that you and Sergeant
4 Harris and Officer Perez went into this apartment,
5 Missing Persons had already been conducting their
6 investigation?

7 **A.** That's correct.

8 **Q.** Had they already been at this apartment
9 complex?

10 **A.** Yes.

11 **Q.** And are you familiar -- familiar with the
12 critical reach fliers that Missing Persons uses in a
13 case like this?

14 **A.** Yes.

15 **Q.** And in -- at this time, had those fliers
16 already been posted around the apartment complex?

17 **A.** Yes.

18 **MS. JOHNSON:** At this time I offer
19 State's Exhibits 10 through 50, minus the ones that
20 were already introduced, which were 13, 15, and 16,
21 and tender to opposing counsel.

22 **THE COURT:** Thank you.

23 **MS. CARPENTER:** Your Honor, the
24 Defense has no objections to State's Exhibits 10, 11,
25 12, 14; and for the sake of efficiency, we have no

1 objection to 17 through 50 either.

2 **THE COURT:** Except there is no 18,
3 right?

4 **MS. CARPENTER:** Oh.

5 **MS. JOHNSON:** There is an 18. It is
6 just already in evidence.

7 **THE COURT:** Right. But not in this
8 batch?

9 **MS. JOHNSON:** Yes.

10 **THE COURT:** There is an 18 listed in
11 here.

12 **MS. JOHNSON:** Sorry. There is an 18.
13 The only ones that are in are 13, 15, 16.

14 **THE COURT:** Okay. Thank you.
15 Basically, you don't have any objections to anything
16 offered at this time?

17 **MS. CARPENTER:** Exactly, Your Honor.

18 **THE COURT:** Admitted.

19 **Q. (BY MS. JOHNSON)** Now, when you arrived at
20 these apartments, had you, yourself, had any
21 conversations with Mark Castellano at that time?

22 **A.** No.

23 **Q.** And showing you a few pictures of the
24 apartment. Showing you State's Exhibit No. 14. What
25 door and stairway is that that we see in State's

1 Exhibit 14?

2 **A.** There to the left would be Michelle
3 Warner's apartment.

4 **Q.** And that door that is up those stairs, what
5 door did that open up into? What room did that open
6 up into?

7 **A.** That opens directly into the bedroom. Into
8 the main bedroom.

9 **Q.** Was there another door?

10 **A.** There was a front door to the apartment.

11 **Q.** And what room did that open up into?

12 **A.** That opened up into a living room on one
13 side, a kitchen on the other.

14 **Q.** So, was this kind of strange that there was
15 a door that opened up right directly into the master
16 bedroom?

17 **A.** Was it strange?

18 **Q.** Yes. Had you seen that before?

19 **A.** That's the way they built the apartments.

20 I don't --

21 **Q.** Looking down in the corner of 14, what do
22 we see right there on the fence -- posted on the
23 fence? Can you tell?

24 **A.** This would be -- this would be one of the
25 missing person's fliers that Detective Do had posted

1 around the apartment complex.

2 Q. So, you walk into that backdoor. Is this
3 the bedroom that you walk into?

4 A. Yes.

5 Q. That is the master bedroom?

6 A. That is the larger of the two bedrooms.

7 Q. Looking at State's Exhibit 21, is that the
8 backdoor that opens into that bedroom?

9 A. Yes, that would be a closed door.

10 Q. And based on the items that you saw in that
11 bedroom, whose bedroom did it appear to be?

12 A. Michelle Warren's.

13 Q. Was there a lot of female clothing and
14 items inside that bedroom?

15 A. Yes, there were.

16 Q. So, when you're going into this apartment
17 that you don't know if it is a scene or not, at that
18 time what are you looking for?

19 A. Anything that may indicate that it might be
20 a scene.

21 Q. And did you find anything that would
22 indicate that it might be a scene?

23 A. No.

24 Q. Did you look in all the bedrooms and
25 bathroom and kitchen and living room?

1 **A.** Yes.

2 **Q.** Showing you State's Exhibit No. 29, based
3 on the items in that bedroom, whose bedroom did it
4 appear to be?

5 **A.** It is Cayden's bedroom.

6 **Q.** And showing you State's Exhibit 31, what do
7 we see here in 31?

8 **A.** Empty drawers.

9 **Q.** Now, in the bedroom that appeared to be
10 Michelle Warner's, were there things missing or
11 clothes taken or anything like that?

12 **A.** There did not appear to be, but we didn't
13 know what was there prior to our arrival.

14 **Q.** Showing you State's Exhibit 25, this
15 bedroom closet, did that appear to be the closet of
16 Michelle Warner?

17 **A.** Yes.

18 **Q.** Showing State's Exhibit No. 31, what do we
19 see in State's Exhibit 31?

20 **A.** A relatively empty closet.

21 **Q.** What bedroom was that in?

22 **A.** I believe that was going to be in the --
23 I'm not sure that was in the bedroom. That may have
24 been in Cayden's bedroom, that closet.

25 **Q.** And showing you State's Exhibit 36. Is

1 that the same closet?

2 **A.** Yes.

3 **Q.** Now, were there lots of pictures of
4 Michelle and her kids all over the apartment?

5 **A.** Yes.

6 **Q.** Showing you State's Exhibit 39. What do we
7 see here in State's Exhibit 39? Is that the hallway
8 of the apartment?

9 **A.** It is.

10 **Q.** And were all those pictures up in the
11 hallway of the apartment?

12 **A.** They were.

13 **Q.** Is it fair to say there was a lot of photos
14 inside the apartment?

15 **A.** Quite a few.

16 **Q.** Now, showing you State's Exhibit No. 42.
17 What are we looking at in 42?

18 **A.** We're looking towards the front door of the
19 apartment.

20 **Q.** In the living room?

21 **A.** In the living room.

22 **Q.** And State's Exhibit 43, what is that?

23 **A.** That would be the living room.

24 **Q.** And what do we see here at the corner down
25 here, State's Exhibit 43?

1 **A.** It's a disassembled CPU tower for a
2 computer.

3 **Q.** Is that the same thing you see in a
4 different view in State's Exhibit 45?

5 **A.** It is.

6 **Q.** Did that mean anything to you in your
7 investigation?

8 **A.** It indicated that the -- what appeared to
9 be that the hard drive had been removed from the
10 computer.

11 **Q.** Based on your investigation and speaking
12 with Officer Do and Michelle's family, was there
13 information about bleach stains on the carpet or
14 bleach being used in the apartment?

15 **A.** There was mention of bleach.

16 **Q.** And did you see bleach stains on the carpet
17 in the apartment?

18 **A.** We did.

19 **Q.** Showing you State's Exhibit 47. What do we
20 see here?

21 **A.** They're kind of hard to see, but you will
22 see some off-colored -- kind of an off-white color
23 here that's strewn in front of the table.

24 **Q.** Right here (indicating)?

25 **A.** Right there, yes. And those appeared to be

1 bleach that had been put on the carpet and, of
2 course, took the color off the apartment.

3 Q. Did you smell any bleach smell in the
4 apartment?

5 A. No, we did not.

6 Q. Did you have Officer Perez, the Crime Scene
7 Unit, take a section of this carpet?

8 A. We did.

9 Q. Why did you do that?

10 A. Again, in the event that it was going to
11 turn into a homicide investigation, we would rather
12 have a piece of potential evidence that we didn't
13 need, rather than need something that we didn't have.

14 Q. And at that time -- and to kind of go
15 ahead, did anything significant come from that carpet
16 after taking it?

17 A. No.

18 Q. Was there any kind of evidence --
19 significant evidence or evidentiary importance from
20 that carpet?

21 A. It turned out to have absolutely no
22 evidentiary value.

23 Q. That's the word I was looking for.

24 Showing you State's Exhibit 49. What
25 do we see in State's 49?

1 **A.** That would be the kitchen.

2 **Q.** Anything found of significance in the
3 kitchen?

4 **A.** No.

5 **Q.** Now, at some point during your walk-through
6 of this apartment, did you find a note on a mirror?

7 **A.** We did.

8 **Q.** Showing you State's Exhibit No. 26.
9 Where -- what do we see in State's 26?

10 **A.** That is the note attached with scotch tape
11 to a mirror in the hallway.

12 **Q.** And who was it addressed to?

13 **A.** Michelle.

14 **Q.** State's Exhibit 28, is that just a close-up
15 of that note?

16 **A.** Yes.

17 **Q.** Did you take that note?

18 **A.** We did.

19 **Q.** And what did you do with it?

20 **A.** We tagged it, put it in our property room
21 for evidence later.

22 **Q.** And why did you do that?

23 **A.** Again, if we're going to have a homicide,
24 we want the evidence.

25 **Q.** Showing you State's Exhibit No. 220. Is

1 that the note that you tagged -- took off the mirror
2 and tagged into evidence?

3 **A.** It is.

4 **Q.** Now, when you went to this apartment,
5 did -- did y'all get to this apartment or get inside
6 the apartment? Was it locked?

7 **A.** It was locked. We ended up getting the
8 keys from the apartment management. There had been a
9 consent to search already given for the apartment.

10 **Q.** Do you know who that consent to search was
11 given to?

12 **A.** Dan Do.

13 **Q.** From who?

14 **A.** Mark Castellano.

15 **Q.** And so --

16 **A.** The defendant.

17 **Q.** I'm sorry. This note, you tagged this as
18 evidence?

19 **A.** Yes.

20 **Q.** And if I could have you read -- actually,
21 let me stop there.

22 **MS. JOHNSON:** At this time I offer
23 State's Exhibit No. 220 into evidence, tender to
24 opposing counsel.

25 **MS. CARPENTER:** We have no objection,

1 Your Honor.

2 **THE COURT:** Admitted.

3 **Q.** (**BY MS. JOHNSON**) I'm going to have you hold
4 this and read this, but hold on. I'm going to put a
5 copy of the note on the screen. So, if you could
6 read what that note says out loud.

7 **A.** "Michelle, Cayden and I are gone. You can
8 have the apartment all to yourself. I am taking the
9 car since you can't pay it, and I now owe my dad 3K,"
10 \$3000, "because of you. Get it refinanced through
11 your rich daddy and get my name off of it. You are
12 welcome to see Cayden; but since you are on a
13 drug-filled" -- I'm not really sure what that word
14 is.

15 **Q.** Weekend.

16 **A.** -- "weekend" -- there you go -- "I guess
17 you can't -- guess you weren't" -- I'm not sure what
18 that is -- "I guess you weren't" -- I can't tell what
19 the word is -- "since grandma called and said you
20 turned your phone off, guess you weren't -- you
21 couldn't call. I will get you drug tested this time,
22 bitch." And it's signed "the asshole."

23 **Q.** And who did that letter appear to be from?

24 **MS. CARPENTER:** Objection, Your Honor,
25 speculation.

1 **THE COURT:** Sustained.

2 **Q.** **(BY MS. JOHNSON)** Based on your
3 investigation and your opinion and experience, who
4 did that letter appear to be from?

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

7 **THE COURT:** Sustained. You will need
8 to rephrase.

9 **Q.** **(BY MS. JOHNSON)** Did you later find out who
10 the letter was from?

11 **A.** Yes, we did.

12 **Q.** And who was it from?

13 **A.** The defendant.

14 **Q.** A note -- did you later find out when he
15 left that note?

16 **A.** Yes.

17 **Q.** When was that?

18 **A.** On the Sunday on his return trip to Odessa.

19 **Q.** And this is after Michelle Warner had gone
20 missing?

21 **A.** That's correct.

22 **Q.** Now, at this apartment complex, is there a
23 business that's behind the complex?

24 **A.** There is.

25 **Q.** And what is the significance of that

1 business being behind the complex?

2 **A.** Well, while we were at the apartment, we
3 noticed -- it's an office building. We noticed that
4 there were cameras on the building.

5 **Q.** And why is that important?

6 **A.** Because some of the cameras appeared to be
7 pointing in the direction of Michelle Warner's
8 apartment.

9 **Q.** And which side of the apartment would you
10 see, the front or the back?

11 **A.** You would see the back, the backdoor going
12 into the bedroom.

13 **Q.** On those stairs coming from the backdoor?

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

15 **Q.** And the parking lot, also?

16 **A.** Yes.

17 **Q.** Did you attempt to get -- check with that
18 business to see if they had any surveillance video?

19 **A.** We did.

20 **Q.** And what happened with that?

21 **A.** Well, we first checked with Hoby Harding.
22 He was an engineer there at the building. We went
23 over and looked at the DVR, and the DVR was not
24 operating properly.

25 **Q.** Did you continue to pursue to get that

1 surveillance footage?

2 **A.** Yes, we did.

3 **Q.** At the time that you were at this apartment
4 complex, were there media present?

5 **A.** Yes. On the first day, yes.

6 **Q.** Did you do any interviews with the media?

7 **A.** We did a couple of sound bites at the time.

8 **Q.** And what was the purpose of that?

9 **A.** That was to further give exposure to the
10 fact that Michelle was missing and that there was
11 a -- at this point in time, it had been almost a week
12 and there was a sense of urgency and we wanted to
13 communicate that to the public.

14 **Q.** Now, after looking at the scene at the
15 apartment, was there also a truck there at the
16 apartment?

17 **A.** There was.

18 **Q.** What type of truck was it?

19 **A.** I believe it was a Dodge pickup truck.

20 **Q.** And did you later find out information as
21 to who that truck belonged to?

22 **A.** Yes.

23 **Q.** And who did it belong to?

24 **A.** The defendant.

25 **Q.** And what did you and Sergeant Harris decide

1 to do with that truck?

2 **A.** We had the truck towed to our print stall
3 and had it processed.

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

5 **A.** Again, if we thought we were going to enter
6 into a homicide investigation, we were going to make
7 a preemptive strike to make sure we did everything we
8 could do to make sure if we had anything of
9 evidentiary value that we, in fact, collected it.

10 **Q.** And what does it mean to process it?

11 **A.** The -- we have Crime Scene Units that work
12 the print stall, and they go through the -- we talk
13 to them about how we want to process, whether for
14 fingerprints or DNA, for blood, anything that may be
15 found inside the vehicle that may give us some idea
16 that there is some evidence left behind, whether
17 that's trace evidence, hair, particles of clothing, a
18 variety of different evidentiary parts of the
19 investigation.

20 **Q.** And did anything of evidentiary value come
21 from that process of that truck?

22 **A.** No.

23 **Q.** And showing you State's Exhibit 52, is that
24 a fair and accurate picture of the truck that you had
25 towed from the scene that day?

1 **A.** Yes, sitting in the print stall.

2 **MS. JOHNSON:** I offer State's
3 Exhibit 52 into evidence and tender to opposing
4 counsel.

5 **MS. CARPENTER:** We have no objection,
6 Your Honor.

7 **THE COURT:** Admitted.

8 **Q.** **(BY MS. JOHNSON)** And is this the truck that
9 belonged to the defendant in State's Exhibit 52?

10 **A.** It is.

11 **Q.** Now, at some point did you want to contact
12 Mark Castellano and talk to him?

13 **A.** Yes. That did develop.

14 **Q.** And why -- how did that develop? Why did
15 you want to call him?

16 **A.** I learned of some circumstances that had
17 occurred that caused me to make a decision to go
18 ahead and contact the defendant.

19 **Q.** And did you contact him?

20 **A.** I did.

21 **Q.** Did you reach him?

22 **A.** I did.

23 **Q.** And did y'all talk?

24 **A.** We did.

25 **Q.** About how long of a conversation did you

1 have with the defendant?

2 **A.** About a 40-minute conversation.

3 **Q.** And when was this?

4 **A.** This was on Thursday night.

5 **Q.** So, September?

6 **A.** The 27th.

7 **Q.** So, tell the jury about that conversation
8 with the defendant.

9 **A.** That was a conversation to verify that the
10 defendant was going to return to Houston for an
11 interview. Now, he was going to return to an
12 interview with Detective Do; but I made a decision to
13 contact him and offered to conduct the interview
14 myself. And we had that conversation. He indicated
15 that he would return.

16 **Q.** And what did he say about how he would
17 return and when he would return?

18 **A.** He advised me that he was going to drive
19 back to Houston probably on Saturday, and he asked my
20 permission to bring his brother with him. I said
21 that was fine. And we left it at that, that he would
22 drive back.

23 **Q.** Was this conversation recorded?

24 **A.** It was not.

25 **Q.** Why not?

1 **A.** Why not?

2 **Q.** Yes, sir.

3 **A.** I was at the house. It was a
4 spur-of-the-moment phone call, and it just didn't get
5 recorded.

6 **Q.** Did you also ask him about what happened
7 with Michelle on the last day that he saw her alive?

8 **A.** I did ask him that, yes.

9 **Q.** And what did he say about that?

10 **A.** He gave a -- the story was along the same
11 lines that he had repeated to -- that he had given to
12 Detective Do. There was really no change in the set
13 of circumstances that he was describing.

14 **Q.** What else did y'all discuss in that phone
15 conversation?

16 **A.** Well, knowing that I was going to conduct
17 the interview, I wanted to take this opportunity to
18 start establishing a rapport with him, to start
19 establishing a relationship. And in the course of
20 that, I had been given information and learned that
21 he had at one point in time threatened to kill
22 Michelle.

23 **MS. CARPENTER:** Objection, Your Honor,
24 hearsay.

25 **Q.** **(BY MS. JOHNSON)** Did you ask him about --

1 **THE COURT:** Excuse me. Excuse me.

2 That would be from the defendant; is that correct?

3 **MS. JOHNSON:** No, Your Honor. I will
4 rephrase the question.

5 **THE COURT:** Sustained.

6 **MS. CARPENTER:** Your Honor, may the
7 jury have an instruction to disregard?

8 **THE COURT:** The jury should disregard
9 the last comment and consider it for no purpose.

10 **MS. CARPENTER:** And, Your Honor, we
11 move for a mistrial.

12 **THE COURT:** That's denied.

13 **Q.** **(BY MS. JOHNSON)** Did you ask the defendant
14 about information about him threatening Michelle
15 prior to this?

16 **A.** I did.

17 **Q.** And what was his response?

18 **A.** That he tried to play it off as a joke,
19 that he was mad at her, and it was just something
20 that he had said.

21 **Q.** So, he didn't deny it?

22 **A.** He did not deny it.

23 **Q.** And what else did you discuss in this
24 conversation?

25 **A.** We just talked a little bit about some

1 general topics regarding his relationship with
2 Michelle. Again, I did not want to get into
3 substantive discussions with him over the telephone.
4 I was more trying to establish that rapport with him
5 so that we would be able to sit down and kind of have
6 a foot in the door about our discussion.

7 Q. And did the defendant bring up something
8 later in the conversation right before you were about
9 to end it?

10 A. He did.

11 Q. What did he talk about?

12 A. He asked me if he could ask me a question.
13 He wanted some advice.

14 Q. And what was that question? What did you
15 tell him?

16 A. I said "sure."

17 Q. What was the question?

18 A. "Do you think I ought to be interviewed by
19 Dr. Phil?"

20 Q. And what did you think about what he said?

21 **MS. CARPENTER:** Objection, improper
22 opinion.

23 **THE COURT:** Sustained. You need to
24 rephrase.

25 Q. **(BY MS. JOHNSON)** What was your response to

1 him?

2 **A.** I said: "Dr. Phil? Dr. Phil, the
3 baldheaded guy with the big mustache on television?"

4 **Q.** And what did he say?

5 **A.** He said: "Yes."

6 **Q.** What did you say?

7 **A.** I said: "Absolutely."

8 **Q.** And why did you tell him that?

9 **A.** At that point in time, I thought that if we
10 were able to -- if this interview did, in fact, occur
11 and we were able to get access to the raw footage,
12 that it would give me some information, some
13 background information on the defendant based on that
14 interview and it would give me a strategy by which to
15 enter into the interview that I was going to conduct
16 with him.

17 **Q.** So, was that the end of your conversation
18 with the defendant on that Thursday?

19 **A.** Yes, it was.

20 **Q.** That next day, did you have another
21 conversation with the defendant?

22 **A.** Yes.

23 **Q.** How did that happen?

24 **A.** Phone call.

25 **Q.** Who called who?

1 **A.** The defendant called me.

2 **Q.** And what was that conversation about?

3 **A.** He was wanting to take another mode of
4 travel to come to the -- to come to Houston for the
5 interview.

6 **Q.** And what did he want to do?

7 **A.** He wanted to fly in on Sunday.

8 **Q.** And did you get flight information from
9 him?

10 **A.** He did call me back with that information,
11 yes.

12 **Q.** And what was your plan with Sergeant Harris
13 when he came in on that Sunday, the 30th?

14 **A.** We would pick him up at Hobby Airport.

15 **Q.** So, he voluntarily flew back to Houston to
16 talk to y'all?

17 **A.** He did.

18 **Q.** Now, before the defendant arrived back in
19 Houston that Sunday, did you and Sergeant Harris also
20 talk to some of Michelle's friends?

21 **A.** Yes. Sergeant Harris did, yes.

22 **Q.** So, how kind of was the investigation split
23 up between you and Sergeant Harris?

24 **A.** Well, we kind of had -- this was -- this
25 was unique in the sense that when we make a normal

1 homicide scene, we usually split it into a scene side
2 and a witness side. In this particular case, it was
3 kind of a coequal effort because we didn't have a
4 scene. So, we were splitting up responsibilities on
5 who was going to contact certain witnesses.

6 **Q.** And did Sergeant Harris kind of take over
7 contacting some of the friends of Michelle Warner?

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

9 **Q.** Did Sergeant Harris take over contacting
10 some of Michelle Warner's friends?

11 **A.** Yes, he did.

12 **Q.** Now, let me take you to that Saturday,
13 September 29, 2012. Did you and Sergeant Harris go
14 back to the apartment at Bellerive?

15 **A.** Yes, we did.

16 **Q.** And why did you do that?

17 **A.** This was an opportunity to go back and
18 actually have a second look at what may potentially
19 be a scene. There is always -- always a good idea to
20 take a second glance because you're going to find
21 things or see things that perhaps you didn't the
22 first time.

23 **MS. CARPENTER:** Objection to the
24 narrative, Your Honor.

25 **THE COURT:** Overruled.

1 **MS. JOHNSON:** You can go ahead and
2 finish. Sorry.

3 **THE COURT:** No. If he is going to
4 keep going on, it will be sustained.

5 **Q.** **(BY MS. JOHNSON)** I'm just afraid that the
6 last statement got interrupted by the objection. So,
7 if you could just finish that last statement that you
8 were saying.

9 **A.** I don't remember, but we were going back to
10 just take a second look.

11 **Q.** Did you find anything of significance on
12 that second look?

13 **A.** Not in terms of anything physical, physical
14 evidence.

15 **Q.** Did the apartment still look the same as
16 when you first saw it?

17 **A.** It looked the same, but we looked at it a
18 little differently.

19 **Q.** What do you mean by that?

20 **A.** We noticed this time that there was
21 virtually no indication that the defendant had ever
22 lived there, that the areas that you would have
23 presumed that clothing and those types of things
24 would have been in, were empty, and that many of the
25 toys and clothing and so forth for Cayden were also

1 gone.

2 **Q.** Did you find any male clothes or shoes or
3 underwear or hygiene products inside the apartment?

4 **A.** No.

5 **Q.** Now, at some point did you or Detective Do
6 review phone call records of Michelle Warner?

7 **A.** Yes, we did.

8 **Q.** When did you show her last phone call to be
9 on September 22nd?

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

12 **THE COURT:** Sustained.

13 **Q.** *(BY MS. JOHNSON)* Did you yourself review
14 those records?

15 **A.** Yes.

16 **Q.** And what did you note down as from your
17 recollection of her last phone call?

18 **MS. CARPENTER:** Objection, hearsay.

19 **THE COURT:** Sustained.

20 **MS. JOHNSON:** Exception to the hearsay
21 rule, present sense impression from looking at the
22 records and wrote down what he saw.

23 **THE COURT:** Overruled. Her objection
24 is sustained, your response is overruled.

25 **Q.** *(BY MS. JOHNSON)* Now, taking you to that

1 Sunday, September 30th, I kind of want to give the
2 jury a rundown from the time the defendant came into
3 town and how that happened.

4 What time did he get to the airport in
5 Houston?

6 **A.** Sorry?

7 **Q.** What time did the defendant get to the
8 airport in Houston?

9 **A.** We picked him up about 9:30 a.m.

10 **Q.** And who is "we"?

11 **A.** My partner Sergeant Harris and I.

12 **Q.** And where did y'all go?

13 **A.** We went to the Homicide office at 1200
14 Travis, 6th floor.

15 **Q.** And who was with the defendant when he
16 arrived?

17 **A.** His brother Jason.

18 **Q.** Castellano?

19 **A.** Yes.

20 **Q.** And when the defendant arrived, did you
21 tell him he was going to be taken to HPD Homicide
22 offices?

23 **A.** Yes.

24 **Q.** And he was willing to go?

25 **A.** Yes.

1 **Q.** At any time during the drive over to 1200
2 Travis, did he say: I don't want to go. I want to
3 go home, anything like that?

4 **A.** No.

5 **Q.** Was he cooperative?

6 **A.** He was.

7 **Q.** So, you arrive at 1200 -- 1200 Travis, and
8 then what happens?

9 **A.** He was placed in -- well, we walk into the
10 building. We logged he and Jason into the building.
11 They received visitor tags. We took them up to the
12 6th floor, placed Jason in what we call the crime
13 room, which is just a room for family members and so
14 forth. And I put the defendant in interview room
15 No. 5.

16 **Q.** And that interview room, does it have video
17 recording capabilities?

18 **A.** It does.

19 **Q.** And do you use that room to record suspects
20 or witnesses or things like that who are giving
21 statements to you?

22 **A.** We do.

23 **Q.** If you could, just describe briefly the
24 room to the jury.

25 **A.** I'm sorry. I --

1 **Q.** If you could, describe briefly what the
2 room looks like to the jury.

3 **A.** The room is -- general speaking, have a
4 table in them, a chair with no wheels on it, had a
5 chair with wheels on it, and then it has a -- kind of
6 an off -- very light gray sound board that surrounds
7 each wall of the room.

8 **Q.** And at the time the defendant was in the
9 room, was he in custody?

10 **A.** He was not.

11 **Q.** And did he agree to sit in there and talk
12 to you?

13 **A.** Yes.

14 **Q.** Now, did the defendant give a statement to
15 you?

16 **A.** He did.

17 **Q.** And when he gave that statement, did you
18 read him his rights?

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

20 **Q.** Why not?

21 **A.** He was not under arrest, he was not in
22 custody, and he was free to leave.

23 **Q.** And was he told this?

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

25 **Q.** Was he told all these things?

1 **A.** He was.

2 **Q.** Did you record this interview?

3 **A.** I did.

4 **Q.** I'm showing you what's been marked as
5 State's Exhibit No. 7. Do you recognize this?

6 **A.** I do.

7 **Q.** Have you seen this before?

8 **A.** I have.

9 **Q.** And the contents on State's Exhibit No. 7,
10 the interview with the defendant, was this made on a
11 device capable of making an accurate recording?

12 **A.** It was.

13 **Q.** Have you watched this in its entirety?

14 **A.** Yes.

15 **Q.** And has it been changed or altered in any
16 way?

17 **A.** It has not.

18 **Q.** And who are the voices or people talking on
19 this State's Exhibit 7?

20 **A.** Be myself and the defendant.

21 **Q.** Now, just a little bit about State's 7.

22 When you recorded this video, did you also do a
23 backup recording?

24 **A.** I did.

25 **Q.** And what was that process?

1 **A.** Used a digital Olympus digital/audio
2 recorder. We always do this when we go into the
3 interview room; and in case there is a malfunction
4 with the video recording, we want to have a backup
5 and be able to memorialize and document the
6 conversation took place; and we do that by using an
7 audio recorder.

8 **Q.** Now, did you do a backup audio recording of
9 your interview with the defendant?

10 **A.** I did.

11 **Q.** And did he -- or did the -- is the audio
12 recording also on State's Exhibit No. 7?

13 **A.** Yes.

14 **Q.** Now, how long did you talk to the defendant
15 for the first time, so to speak?

16 **A.** Approximately two hours and 40 minutes.

17 **Q.** And there is also a second interview with
18 the defendant involving you and Sergeant Harris; is
19 that correct?

20 **A.** That's correct.

21 **Q.** And how long -- about how long is that
22 second part?

23 **A.** I think the second part is maybe only a
24 half hour, not very long.

25 **Q.** And was there also an audio backup of the

1 second part?

2 **A.** Yes.

3 **Q.** And then was there also a recording of the
4 defendant alone in the interview room himself -- by
5 himself?

6 **A.** Yes.

7 **Q.** And is that also on here?

8 **A.** It is.

9 **Q.** So, do we have a total of four, I guess,
10 different -- not different, but two video recordings
11 and two audio recordings on here?

12 **A.** That's correct.

13 **MS. JOHNSON:** At this time I offer
14 State's Exhibit No. 7 into evidence. Counsel has
15 been provided a copy before.

16 **MS. CARPENTER:** Your Honor, we don't
17 have any objections to it.

18 **THE COURT:** Thank you. That's
19 admitted.

20 **Q.** *(BY MS. JOHNSON)* Now, before I play the
21 interview, I just want to set up a little bit for the
22 jury of how this happened.

23 In the beginning of the interview, are
24 there some things that you're wanting to get from the
25 defendant before you actually start talking?

1 **A.** Yes.

2 **Q.** And what are those?

3 **A.** I wanted to get a buccal swab from him.

4 **Q.** Why?

5 **A.** Again, we wanted to make sure that if we
6 were going to work a homicide, we wanted to have all
7 of our bases covered in accumulating the evidence
8 that we could at the time.

9 **Q.** Did you also want him to sign some consent
10 to search?

11 **A.** Yes.

12 **Q.** And what did you want to consent for?

13 **A.** A consent to search on Michelle's car,
14 which the defendant had in his possession, and then a
15 consent to take the buccal swab.

16 **Q.** Now, did he cooperate with that stuff?

17 **A.** Oh, yes.

18 **Q.** Now, the first part of the interview -- or
19 let me back up. Let me ask you to explain to the
20 jury, as a homicide investigator, you have
21 interviewed suspects on few or many occasions?

22 **A.** Many.

23 **Q.** Is it like TV?

24 **A.** It ain't The Closure, that's all I can tell
25 you.

1 **Q.** Okay. So, as an investigator in this
2 situation, interviewing many suspects, what are some
3 of the tactics and strategy that you're trying to
4 use? Kind of explain to the jury what you're trying
5 to do here.

6 **A.** Anytime we enter into an interview, we
7 always have a strategy about the -- regarding the
8 person that we're going to be talking to.

9 **Q.** So, in this situation where you have no
10 body and no scene at that time -- right?

11 **A.** Right.

12 **Q.** -- what is your strategy with this
13 defendant in his interview?

14 **A.** As with all people and the approach that we
15 take, in this particular case, we're going to take
16 the approach that we're going to appeal out on an
17 emotional level. This is a person that is missing.
18 Presumably the person I'm about to interview has a
19 relationship with that person, and we want to appeal
20 to that sensibility in order to get to the truth
21 about what may have happened to Michelle.

22 **Q.** So, what do you mean by appeal to his
23 emotion? What are you saying to him? What are you
24 going to do?

25 **A.** Well, we're going to talk about -- I'm

1 going to allow him the opportunity to share with me
2 his relationship with Michelle, how they met, where
3 they went from there, and how do we get to where we
4 are now. And I'm just going to let him set up the
5 narrative so that I have an understanding about what
6 his view of the relationship was. And then I can
7 frame my questions regarding what I understand his
8 view of the relationship to be.

9 And, again, part of the process is to
10 make sure that I am saying things to him that are
11 going to build him up, that are going to make him
12 have a better view of himself than what he may have
13 at the time of the interview.

14 **Q.** Let me stop you right there. So, what
15 types of things are you saying to him during this
16 interview to build himself up or make him feel okay
17 about himself?

18 **A.** It's part of an interview technique. I
19 will share a little bit of myself with him. Again,
20 remember, I'm not in there to make -- it sounds a
21 little strange, but I'm not in there for purposes of
22 getting a confession. I'm in there for purposes of
23 getting as close to the truth about what has happened
24 to Michelle and to find her. So, that is the kind of
25 spirit with which I enter these interviews in.

1 And so, in the course of that
2 conversation, I'm going to say things to him that are
3 going to encourage him that I understand what he may
4 be feeling and the type of emotion that may be going
5 on within him.

6 **Q.** So, are you trying to relate to him and let
7 him know that you're on his side?

8 **A.** Absolutely.

9 **MS. CARPENTER:** Objection, Your Honor,
10 to leading.

11 **THE COURT:** Sustained.

12 **Q.** **(BY MS. JOHNSON)** What are you trying to do
13 in order to relate to him?

14 **A.** Again, I want to establish that rapport
15 because this is really all about establishing a
16 relationship. And I want him to trust me. I want
17 him to be able to open up, if he chooses to do so,
18 and to tell me what may have happened to Michelle and
19 get as close to the truth as we possibly can.

20 **Q.** How do you make it seem like that you're on
21 his side?

22 **A.** Say a variety of things. And you will see
23 it on the video. But the -- the -- the beginning,
24 the way that I approach an interview -- the way that
25 we approach an interview is having an understanding

1 that all of us, all of us, regardless of race, creed,
2 color, religious orientation, we all have three
3 things in common. And the first one is that we all
4 want to be loved.

5 **MS. CARPENTER:** Objection to
6 relevance, Your Honor, as well as narrative.

7 **THE COURT:** Overruled as to relevance.
8 Sustained as to narrative.

9 **Q. (BY MS. JOHNSON)** First thing is what?

10 **A.** The first thing that we all have in common
11 is that we all want to be loved, we all want to be
12 respected, and we all want to take care of those who
13 love and respect us.

14 **Q.** What is the second thing?

15 **A.** The second is we all want to be respected.
16 The third is that we all want to take care of those
17 who love and respect us, but we all do that in a
18 different way. So, I'm going to communicate to the
19 defendant that I understand those three things that
20 we share in common. And I'm trying to appeal to his
21 sensibilities to have him explain to me how he went
22 about accomplishing those three things.

23 **Q.** And just to be clear, are you really
24 personally feeling those things with the defendant
25 or --

1 **MS. CARPENTER:** Object -- I mean --
2 sorry. I wasn't trying to cut off the question.

3 **Q.** **(BY MS. JOHNSON)** What are your actual
4 personal feelings as far as do you truly believe all
5 of this stuff?

6 **MS. CARPENTER:** Objection, improper
7 opinion and relevance.

8 **THE COURT:** Overruled.

9 **A.** Could you ask that again?

10 **Q.** **(BY MS. JOHNSON)** In other words, if you're
11 trying to relate to him and act like you're being on
12 his side, do you really believe that and are you
13 really trying to do that personally? So, this is
14 part of the tactic or strategy?

15 **MS. CARPENTER:** Renew my objection,
16 Your Honor.

17 **THE COURT:** I'm sorry?

18 **MS. CARPENTER:** Renew my objection to
19 that question.

20 **THE COURT:** Overruled.

21 **A.** I'm making tactical decisions within a
22 strategy of phrasing questions or using certain
23 words, again, that are going to strengthen our
24 relationship in the interview room and appeal to
25 those things that I think, based on his answers to my

1 questions and things that he has told me, that are
2 going to get us closer to finding out what, in fact,
3 happened to Michelle.

4 I really don't have any personal
5 feelings, I think the question was, regarding the
6 things that I'm saying. In other words, I may be
7 saying things to him that are calculated. They are
8 not necessarily things that I truly believe on a
9 personal level.

10 **Q.** And about how long would you say in the
11 interview does it take for him to talk about his
12 relationship with Michelle and everything that went
13 on between them?

14 **A.** Up until the point that we get to the
15 critical question, he was very open about his
16 relationship with Michelle, how it began, where it
17 went, and how it ended up.

18 **Q.** About how long would you say you spent
19 talking to him about that?

20 **A.** That was probably about two hours of
21 establishing his narrative; and then at that point,
22 when he had finished his monologue, finished his
23 narrative, that's when I proposed to him a negative
24 alternative question that we have this bad thing that
25 you may have been involved in; but, you know what, we

1 have got this not so bad thing that may have been the
2 real reason. And so, it's giving him a choice to
3 make a decision about which side of this coin do you
4 want to be on.

5 **Q.** And is that also part of your strategy?

6 **A.** It is.

7 **MS. JOHNSON:** At this time I publish
8 State's Exhibit No. 7 -- or start to publish.

9 **MS. CARPENTER:** Your Honor, may we
10 approach the bench?

11 **THE COURT:** Yes. May we have an
12 agreement that the court reporter need not write down
13 what's on the exhibit?

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

15 **MR. DAVIS:** That's agreed.

16 **THE COURT:** Thank you. Come on up.

17 *(At the Bench)*

18 **MS. CARPENTER:** It doesn't need to be
19 on the record. The statement is two hours and 45
20 minutes long. I do have a baby pressing on my
21 bladder. Can we take a five-minute recess?

22 **MR. DAVIS:** Sorry. What?

23 **THE COURT:** You read my mind.

24 **MS. CARPENTER:** Oh, thank you.

25 *(End of Bench Discussion)*

1 that --

2 **THE COURT:** One at a time.

3 **MS. JOHNSON:** I'm just making sure
4 before we send the court reporter out during the
5 entirety of the statement that I put on the record
6 that we didn't redact anything and we don't expect
7 any issues to come up. So, I'm playing it in its
8 entirety.

9 **THE COURT:** Anything else?

10 **MR. DAVIS:** It's in evidence, Judge;
11 and we don't have any objections to Ms. Cynthia going
12 in the back and working on something else, Judge.

13 **THE COURT:** Okay. Did you have
14 anything else you wanted to say?

15 **MS. CARPENTER:** No.

16 **THE COURT:** Okay.

17 **MS. CARPENTER:** Thank you.

18 **THE COURT:** Thank you.

19 **MS. CARPENTER:** Thank you.

20 *(Recess taken)*

21 **THE COURT:** Thank you. I believe
22 we're ready for the jury.

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

24 *(Jury enters the courtroom)*

25 **THE COURT:** Thank you. You may be

1 seated.

2 Ms. Johnson, you may continue.

3 **MS. JOHNSON:** At this time I will
4 start State's Exhibit No. 7.

5 **THE COURT:** Thank you.

6 **(Exhibit Published)**

7 **THE COURT:** Excuse me. Let's go ahead
8 and recess for the evening.

9 Members of the jury, do you feel like
10 10:00 is okay with everybody to start tomorrow? If
11 it's raining, we will move it back up to the
12 10:00 time.

13 Please remember all of the
14 instructions I have given you before. Don't
15 communicate in any way about the case; and, of
16 course, don't read any news or watch or listen to any
17 news. We will see you in the morning at 10:00.
18 Thank you so much.

19 All rise, please, for the jury.

20 **(Jury released)**

21 **THE COURT:** Please have a seat.

22 Yes, ma'am?

23 **MS. CARPENTER:** Yesterday afternoon we
24 discussed maybe giving an admonishment to the people
25 who are in the audience.

1 **THE COURT:** Well, I think the bailiff
2 is going to escort the jurors out. Do you mind
3 staying in here until the jurors leave? That way it
4 won't be an issue in the trial that the jurors heard
5 you say something or something like that. Is that
6 all right with Michelle's family?

7 Okay. I see you're shaking your heads
8 yes.

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

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

11 **(END OF TODAY'S PROCEEDINGS)**

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