

1

REPORTER'S RECORD  
VOLUME 1 of 5 VOLUMES  
TRIAL COURT CAUSE NO. 5612

THE STATE OF TEXAS ) IN THE DISTRICT COURT

VS. ) ANDREWS COUNTY, TEXAS

ANNE MARIE MITCHELL ) 109TH JUDICIAL DISTRICT

\*\*\*\*\*

PARTIAL TRANSCRIPT OF PROCEEDINGS

\*\*\*\*\*

On the 8th day of February, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable James L. Rex, Judge Presiding, held in Andrews, Andrews County, Texas:

Proceedings reported by computerized stenotype machine.

3

Opening Statement by Counsel for the Defendant -- 16

Voir

STATE'S WITNESSES      Direct Cross Dire Volume

James Swanson	24	36	1
	55	62	1
Charlene Beauchamp	65	68	1
Robert L. Roberts	77	79	1

Court Adjourned ----- 83

Reporter's Certificate ----- 84

ALPHABETICAL WITNESS INDEX

Voir

WITNESSES      Direct Cross Dire Volume

Charlene Beauchamp	65	68	1
Robert L. Roberts	77	79	1
James Swanson	24	36	1
	55	62	1

2

A P P E A R A N C E S :

FOR THE STATE:

MR. SCOTT TIDWELL  
Winkler County Attorney  
SBOT NO. 20020730  
P.O. Box 1040  
Kermit, Texas 79745  
Phone: (432) 586-6036

FOR THE DEFENDANT:

MR. JOHN H. COOK  
Cook & Cantacuzene  
SBOT NO. 04735700  
203 W. Wall Street, Suite 603  
Midland, Texas 79701  
Phone: (432) 640-0464

MR. BRIAN CARNEY  
Attorney at Law  
SBOT NO. 03832275  
1202 W. Texas Avenue  
Midland, Texas 79701  
Phone: (432) 686-8300

CHRONOLOGICAL INDEX

VOLUME 1 - PROCEEDINGS OF FEBRUARY 8, 2010

Instructions by the Court ----- 5

Opening Statement by Counsel for the State ----- 13

4

EXHIBIT INDEX

		PAGE	PAGE	
STATE'S				
<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>RECD.</u>	<u>VOL.</u>
1	CD; Data Card	34	34	1
2	Documents	34	34	1

DEFENDANT'S

	PAGE	PAGE	
<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>RECD.</u> <u>VOL.</u>
(None marked)			

February 8, 2010

1:57 p.m.

(Roll called; panel sworn, qualified,  
examined; jury seated, sworn)

01:57PM

THE COURT: You are now a duly selected  
and sworn part of the criminal justice system, and as  
such there are certain rules that you have to follow.

01:57PM

You're to hold yourselves apart from the  
lawyers, the parties, the witnesses, anyone that's  
involved in the case. And you'll understand that  
they're under the same instruction. So if you have a  
friend or an acquaintance that's involved in the case  
and they don't say hello to you, or kind of ignore you,  
you'll understand that.

01:57PM

That's not necessarily because anybody  
would do anything improper, but it's also to avoid even  
the appearance of any kind of impropriety. In other  
words, it makes the other side a little nervous if  
you're down the hall talking to the lawyer on the other  
side even if it's about a fishing trip or grandchildren  
or whatever. So just keep that in mind during the  
course of the proceedings.

01:58PM

Do not accept, no matter how slight, any  
favors or gifts of any kind from anybody involved in the  
case, whether it be a cup of coffee or a ride home or

01:58PM

whatever. And you'll understand that they can't offer  
those things.

01:58PM

So if you're on your way home here at  
lunch and you have a flat and one of the lawyers passes  
you by, doesn't stop and help you, you'll understand  
they're not supposed to do that.

01:58PM

And for the same reasons; I don't think  
anybody would do anything improper, but it just doesn't  
look right. We want to avoid even the appearance of any  
kind of impropriety.

01:58PM

Don't discuss the case with anyone here,  
at home, anywhere. As a matter of fact, don't even  
discuss it among yourselves during breaks until you've  
heard all of the evidence and the law that I'll give you  
in the form of what's called the court's charge. And  
that's so your decisions and your discussions will be  
based on all the facts and the law and not just partial  
facts.

01:59PM

I don't think you will have any trouble  
finding something else to talk to during the break -- or  
talk about during the breaks, but just don't do that,  
just wait until you've heard all of the law and all of  
the evidence and you've retired to consider your  
verdict.

01:59PM

Don't investigate anything on your own.

Don't go out and look for facts and information. Don't  
look anything up in any reference books.

01:59PM

Sometimes you see that on TV and in the  
movies, one of the jurors will crack the case during the  
evening break. And that just doesn't happen in real  
life. And if it happens, then we have to do the case  
all over again.

01:59PM

So keep that in mind. The Internet has  
kind of made that even more of a danger now. So judge  
the case based on the facts that you hear from this  
witness stand and any exhibits that may be introduced.

02:00PM

In that same vein, don't look up any law,  
don't use any legal reference materials or online  
materials or anything else. I will give you all the law  
that you'll need to decide the case in the form of my  
rulings and in the form of what's called the court's  
charge, which you'll hear at the end of all the  
evidence. So don't look up anything; use the law that I  
give you.

02:00PM

The facts you'll hear here in the  
courtroom; the law you'll hear from me.

02:00PM

And also, in that regard, the lawyers will  
talk about the facts during the course of their  
arguments and during the course of the trial, and  
they'll talk about the law in the same manner. And I

don't think any of the lawyers in this case would try to  
intentionally mislead you, but they may have different  
views about what the law is and they may have different  
views about what the facts show.

02:00PM

So you should judge the case based on the  
facts that you hear from this witness stand and any  
exhibits that may be introduced and the law as received  
from me, from the court.

02:00PM

We try to go about from 9:00 in the  
morning until about 5:00, when we get a good stopping  
place around 5:00. You know, that might be 4:30, it  
might be 5:45. If we're going to be late, we try to  
give you an opportunity to call and advise folks that  
you're going to be running late. But that's the general  
schedule that we'll be following for the next few days.

02:01PM

If you need to take a break and I'm not  
taking a break, try to get my attention or the bailiffs  
attention and we'll take a break and let you get up and  
stretch your legs or take care of whatever you need to  
take care of. We try to operate at your convenience. I  
try to take a break every hour, hour and a half or so  
and -- but if I'm not doing that, feel free to  
interrupt.

02:01PM

I'll try to keep you as comfortable as  
possible. If you're hot or cold, we'll try to adjust to

02:01PM

1 please everybody. Sometimes we can't do that. So if  
2 you're cold natured, you might wear a jacket or whatever  
3 else you need to do as far as your own personal comfort.

02:01PM

4 That's about all I have for you today, or  
5 this morning, this afternoon. What I'm going to do is  
6 ask you to leave outside through the jury room, and then  
7 I'm going to ask you to come back at 3:30 and we're  
8 going to get some of the evidence started this afternoon  
9 so we can get the case taken care of as quickly as  
10 possible.

02:02PM

11 And although we want to get the case taken  
12 care of as quickly as possible, the most important thing  
13 is that we do it right. And if fast has to give way to  
14 right, then I'll choose the right.

02:02PM

15 I'm sure that during the course of the  
16 trial there are going to be delays. There are going to  
17 be times we're going to send you into that jury room and  
18 you're going to be sitting in there wondering what in  
19 the world are they doing. And sometimes that's  
20 necessary. Don't concern yourselves about that. There  
21 are legal issues that we have to take up outside your  
22 presence.

02:02PM

23 And when those delays occur, I apologize  
24 for those. It's usually not anybody's fault. But if  
25 you have to be mad at somebody, you can be mad at me

02:02PM

1 about it. It's just kind of the nature of the beast.

2 Anything else?

3 MR. COOK: Nothing, Your Honor.

4 THE COURT: With that I'll -- I'm going to  
5 ask the bailiff to kind of take you out so you'll know  
6 where to go when you come back at 3:30. We'll see you  
7 at that time. Please keep in mind the instructions that  
8 I've just given you.

02:02PM

9 (A recess was taken from 2:03 to 3:30.)

02:03PM

10 (JURY NOT PRESENT)

11 MR. CARNEY: Judge, we would object, file  
12 an objection, as we had in our previous -- I think at  
13 least one of our pretrial hearings, and another pretrial  
14 hearing potentially, and as we discussed in our  
15 objection this morning before the court, even though we  
16 weren't on the record, we'd object to Mr. Tidwell, his  
17 authority to act on behalf of the State with regard to  
18 this in that he's never taken the oath of office as an  
19 assistant district attorney.

03:30PM

20 And it's my understanding that Mr. Tidwell  
21 was asked by Mr. Fostel, according to the Code of  
22 Criminal Procedure and Article V of the Constitution, to  
23 assist Mr. Fostel in the prosecution of this.

03:30PM

24 Is that right?

25 MR. TIDWELL: Yes.

03:31PM

1 MR. CARNEY: And as such, as an assistant  
2 D.A., I think he's required to take an oath of office,  
3 Your Honor, and we -- I don't believe he has. I think  
4 that it's -- because of that I don't think that he's  
5 actually empowered to act.

03:31PM

6 And I'd be happy to give the court a case  
7 about that if you'd like.

8 THE COURT: Okay. Do y'all want to  
9 approach.

03:32PM

10 (AT BENCH, OFF THE RECORD)

11 THE COURT: Overruled.

12 Anything else?

13 MR. TIDWELL: No, sir.

14 THE COURT: Anything from the Defense?

03:32PM

15 MR. COOK: No, Your Honor.

16 THE COURT: Bring them in.

17 (JURY PRESENT)

18 THE COURT: Welcome back, ladies and  
19 gentlemen.

03:33PM

20 At this time the court calls for trial

21 Cause Number 5612, State versus Mitchell.

22 Is the State ready to proceed?

23 MR. TIDWELL: The State is ready.

24 THE COURT: Is the Defense ready?

03:34PM

25 MR. COOK: We are, Your Honor.

1 THE COURT: Would the prosecuting attorney  
2 read the indictment please.

3 MR. TIDWELL: In the name and by the

4 authority of the State of Texas: The grand jury, for  
5 the County of Winkler, State of Texas, duly elected,  
6 impaneled, sworn, charged, and organized as such at the  
7 March term, A.D., 2009, of the 109th Judicial District  
8 Court for said court, upon their oaths present in and to  
9 said court at said term, that, Anne Marie Mitchell,

03:34PM

10 hereinafter styled Defendant, on or about April 13,  
11 2009, and before the presentment of this indictment, in  
12 the County and State aforesaid, did then and there, as a  
13 public servant, namely, compliance officer for the  
14 Winkler County Hospital, and with intent to harm  
15 Dr. Rolando Arafiles, use for a nongovernmental purpose  
16 information to which the Defendant had access because of  
17 the Defendant's employment, and which information had  
18 not been made public, and forwarding such information to  
19 another, against the peace and dignity of the State,  
20 signed by the foreperson of the grand jury.

03:34PM

21 THE COURT: Ms. Mitchell, to the charges  
22 in the indictment how do you plead?

23 THE DEFENDANT: Ladies and gentlemen, I  
24 plead not guilty.

03:35PM

25 THE COURT: Mr. Tidwell, will you make an

1 opening statement?

2 MR. TIDWELL: Very brief, Your Honor.

3 THE COURT: Go ahead.

4 MR. TIDWELL: Thank you.

03:35PM 5 Good afternoon. Y'all are the 12 that are

6 back to help us decide this case. Your function is

7 going to be, as we've discussed earlier, to listen to

8 the evidence, carefully consider the evidence, and then

9 arrive at a verdict. That's what we ask jurors to do in

03:35PM 10 our system. Without you here to do this, our system

11 doesn't function, and we depend on you to be here to

12 help us resolve this dispute.

13 Obviously there is a dispute. If there

14 weren't a dispute, none of us would be here and we would

03:36PM 15 not be using your time this way.

16 I told you in voir dire that the State has

17 the burden of proof to prove the elements of the crime.

18 These are the elements, and I broke them

19 down basically into five, that Anne Mitchell as a public

03:36PM 20 servant--I don't think there will be much disagreement

21 about that; with intent to harm another--Dr. Arafiles;

22 disclosed or used information for a nongovernmental

23 purpose; that Anne Mitchell had access to because of her

24 office; and the information had not been made public.

03:36PM 25 Now, as with most crimes, there will be

1 part of this that I think is really not disputed, part

2 of it will be heavily disputed.

3 Let me tell you that I don't believe, and

4 of course Mr. Cook or Carney will correct me if I'm in

03:36PM 5 error, I don't believe there will be much dispute that

6 Ms. Mitchell was a public servant. Basically everyone

7 employed by the government fits that category.

8 I don't think there will be much

9 disagreement that she had access to this information

03:37PM 10 because of her office, and I don't think there will be

11 much disagreement that the information had not been made

12 public.

13 I think the real crux of this case I

14 suspect is going to come with number 2 and number 3,

03:37PM 15 whether or not this information was used with the intent

16 to harm Dr. Arafiles and it was disclosed for a

17 nongovernmental purpose.

18 This is not the time when I'm going to

19 tell you every bit of what the evidence is going to be.

03:37PM 20 This is my time to simply give you what I think is a

21 road map to sort of where this case is going.

22 You're going to hear from a number of

23 witnesses in the case. You're going to hear from the

24 doctor who started this by making a complaint to a law

03:37PM 25 enforcement officer. You will hear, I believe, from the

1 law enforcement officers about what they did in the

2 investigation of this case. You will hear, I think,

3 from some of Ms. Mitchell's coemployees.

4 I suspect the evidence is going to show, I

03:38PM 5 believe you will hear witnesses that will tell you, why

6 they believe this evidence was used, why this stuff was

7 sent to the Texas Medical Board.

8 I believe you will hear evidence from

9 witnesses that what this was was an intent by

03:38PM 10 Ms. Mitchell to get Dr. Arafiles taken out as a doctor,

11 not to report suspicious medical care, but to completely

12 wipe him out as a doctor.

13 I think you will hear evidence that she

14 made statements to certain of her coemployees saying

03:38PM 15 things like I'm going to get him, or things like that.

16 I believe that's what you will hear. That is the case

17 we will attempt to present.

18 All I can ask you to do, and all that I do

19 ask you to do, is pay attention to the evidence, listen

03:39PM 20 carefully to the witnesses, think about who has

21 something to gain, who has something to lose. You will

22 have the opportunity to judge the credibility of each

23 witness in the case.

24 And then at the end I will ask you to

03:39PM 25 arrive at what you think is a just and fair verdict.

1 That's all I can ask from you. That's all any of us can

2 ask from you.

3 One thing that I'll -- that I'll tell you

4 that I will tell you in the closing statement is I think

03:39PM 5 toward the end of this there will be a number that's

6 very important. But I'll talk more to you about that in

7 the closing statement.

8 Thank you very much.

9 Thank you, Your Honor.

03:39PM 10 THE COURT: Mr. Cook, will you make an

11 opening statement now or reserve that until later?

12 MR. COOK: I prefer to do it now, Your

13 Honor.

14 THE COURT: Go ahead.

03:39PM 15 MR. COOK: Thank you.

16 With the court's permission --

17 THE COURT: Yes.

18 MR. COOK: -- counsel for the State,

19 Ms. Mitchell.

03:40PM 20 Ladies and gentlemen of the jury, thank

21 you. I will say thank you now. I'm thanking you in

22 advance because I know you're going to pay very close

23 attention to this case.

24 This case is extremely important to Anne

03:40PM 25 Mitchell, and it's extremely important to everybody who

1 practices in the medical field, and I need to tell you  
2 why.

3 The first thing I want to talk to you is  
4 about the elements, okay?

03:40PM 5 As Mr. Tidwell has shown you, and as he  
6 guessed correctly, whether or not Anne is a public  
7 servant, I'll tell you right now, yes, she is. Don't  
8 even worry about that.

03:40PM 9 Did she have access to confidential  
10 information in her role as compliance officer for the  
11 Kermit hospital? Absolutely, absolutely. No doubt  
12 about that.

13 Okay. The problem we have is this. You  
14 will hear that what she did is notify the Texas Medical  
03:40PM 15 Board of five file numbers, that she did not disclose  
16 any patient names, she did not disclose any patient  
17 information, she didn't even say these are all horrible.  
18 What you will hear is her request to have oversight over  
19 what this doctor was doing.

03:41PM 20 And in those files you will see such  
21 things as a 10-year-old boy with appendicitis whose  
22 parents tried to get him healthy during the day and then  
23 they realized this is getting bad, this hurts, he  
24 started throwing up.

03:41PM 25 And you will hear how Dr. Arafiles saw him

1 in the emergency room, ordered a CAT scan, and then gave  
2 him three enemas and sent him home, even though  
3 30 minutes before he sent him out of the hospital the  
4 CAT scan came back and said this young man has  
03:41PM 5 appendicitis, even though practitioners from the  
6 beginning of time have diagnosed appendicitis without,  
7 without, CAT scans.

8 We -- or the evidence will show that falls  
9 below a minimum standard of care and could have resulted  
03:42PM 10 in that child's death.

11 You will hear about a  
12 70-something-year-old man who scraped his hand, and  
13 you'll hear about how Dr. Arafiles -- and he's a  
14 diabetic, and keep that in mind. For any of you who  
03:42PM 15 have diabetes, you know how hard wounds are to heal.

16 And you'll hear how Dr. Arafiles, who does  
17 not have surgical privileges, performed a surgery on  
18 this man in the emergency room and cut off part of his  
19 skin from his abdomen and attempted to put it on his  
03:42PM 20 hand and then said, hey, smear olive oil on it for a  
21 week and come back. The evidence will show that man  
22 left that emergency room with more wounds than he came  
23 in.

24 You're going to hear about the young  
03:42PM 25 man -- or another patient who crushed his finger. And

1 you're going to hear about how Dr. Arafiles took rubber  
2 off the outside of a -- oh, of a container and sewed it  
3 onto his finger for stabilization.

4 You're going to hear about a lady who  
03:43PM 5 dropped -- in fact, I believe the prosecution is even  
6 planning on bringing her, who dropped a frozen turkey on  
7 her toe, and she broke it. And you're going to hear  
8 about how Dr. Arafiles jammed a needle into the bone to  
9 try to stabilize it.

03:43PM 10 And you'll hear that he has no privileges  
11 to be able to do that type of procedure, that it must --  
12 that is another surgical procedure he's not qualified to  
13 do, that he didn't refer this person to an orthopedic.

14 So you're going to hear about what a  
03:43PM 15 compliance officer does in a hospital. Nurses,  
16 patients, other employees come to her with concerns.

17 You're going to hear about the compassion  
18 that Anne Mitchell has for patient safety and how it  
19 wasn't good enough just to hand this information off to  
03:44PM 20 the administration.

21 You're going to hear about the attempts  
22 that she made. And you're going to hear about another  
23 nurse who has filed complaints and filed complaints at  
24 the same time as Anne Mitchell.

03:44PM 25 In fact, you will hear from the evidence

1 that Sheriff Roberts in August, remember he put her in  
2 jail in July, in August did not even know there was  
3 multiple complaints even though he had them in his file.

4 You're going to hear that whether or not  
03:44PM 5 any of this information is true didn't matter to the  
6 sheriff or the prosecutor.

7 You are going to hear why Dr. Arafiles did  
8 not want this information known. Dr. Arafiles did not  
9 go to the sheriff and say and I'm being falsely accused  
03:45PM 10 of something, sheriff. Dr. Arafiles went to the  
11 sheriff's office and said if anybody finds out about  
12 this I'm going to lose my license because guess what,  
13 I've already been in trouble before.

14 The evidence is going to show that the  
03:45PM 15 State of New York has banned him for life from ever  
16 seeking readmission to -- for medical practices. The  
17 evidence is going to show that he was in trouble in  
18 Victoria, Texas, and made an agreement to enter an  
19 agreed judgment to restrict his license where he is not  
03:45PM 20 even permitted to supervise certain other medical  
21 professionals.

22 The evidence is going to show that the  
23 hospital violated their own bylaws by hiring him, number  
24 one, because he had a restricted license, and, number  
03:45PM 25 two, by granting him staff privileges over the

1 objections of other members of that medical staff in the  
2 hospital.

3 And you're going to hear about how  
4 Ms. Mitchell's role in the hospital is to insure that  
03:46PM 5 physicians who are credentialed meet all the  
6 requirements under their bylaws and under the law, and,  
7 yes, she upset the administrator when she said I will  
8 not sign off on this man, he does not meet the minimum  
9 criteria.

03:46PM 10 You're going to hear I expect from the  
11 hospital administrator that hospitals are like shopping  
12 centers, medical shopping centers, except there is one  
13 big difference, we, you and I, are not allowed to go in  
14 and say, hey, I want a CAT scan, hey, I want a CBC on my  
03:46PM 15 blood, hey, I kind of feel like wearing a cast today,  
16 okay?

17 Only doctors generate revenue; nurses do  
18 not. Only doctors order the tests that they get paid  
19 for. Only doctors admit patients.

03:46PM 20 And you're going to hear how Kermit has  
21 three doctors and one of them is an all-star biller, and  
22 I bet you can guess who it is.

23 You're -- we're going to talk about  
24 standard of care, we're -- because that belongs to you,  
03:47PM 25 ladies and gentlemen. We're going to talk about what we

1 expect a doctor to do, okay?

2 And if at the end of the -- and here is  
3 the rub of this case. You're going to hear, in my  
4 opinion, a man who has lost his honor that's not upset  
03:47PM 5 that he's being reviewed by other physicians, doesn't  
6 care about that.

7 You're going to hear a man who knows he's  
8 done wrong and instead of facing up to what he did and  
9 try to get better at it he went running to his friend,  
03:47PM 10 his business associate, the man he -- the man who had a  
11 heart attack and he served and said stop these people,  
12 if this goes forward I'm not going to be your friend  
13 anymore because I'm not going to have a job.

14 And then you know what is the thing that  
03:48PM 15 really I think strikes at the heart of everybody  
16 involved in this case? You're going to hear how this  
17 man is continuing to practice medicine and he's  
18 continuing to injure the people and nobody has the guts  
19 to stand up in Kermit, Texas, anymore because they know  
03:48PM 20 what will happen if they do.

21 Thank you.

22 THE COURT: Call your first witness.

23 MR. TIDWELL: James Swanson, Your Honor.

24 THE COURT: Is anybody invoking the rule?

03:48PM 25 MR. TIDWELL: We do need to, Your Honor.

1 THE COURT: Okay. Would you bring  
2 everybody -- bring all the witnesses in.

3 MR. COOK: Your Honor, we do have one  
4 expert witness that we'd like be asked to remain in the  
03:48PM 5 courtroom. Part of her opinion is going to depend on  
6 what the State's theory of those cases --

7 THE COURT: Yeah, that's fine. She will  
8 need to be sworn with everyone else, but she can remain  
9 in the courtroom.

03:49PM 10 Will y'all raise your right hand and take  
11 your oath as witnesses.

12 (WITNESSES SWORN)

13 THE COURT: The rule of witnesses has been  
14 invoked. That means that you cannot listen to the  
03:49PM 15 testimony of the other witnesses. You have to -- you  
16 can't talk to anybody about your testimony except the  
17 lawyers in the case, and you have to talk to them  
18 outside the presence of any other witnesses. That's so  
19 your testimony will be your own and won't be influenced  
03:49PM 20 by what somebody else says.

21 So, Mr. Swanson, you're the first witness.  
22 Everybody else can have a seat out in the hall. We'll  
23 call you when we need you.

24 MR. COOK: And, judge, with the court's  
03:50PM 25 permission, Ms. Lockhart can remain?

1 THE COURT: Yes. She's the expert  
2 witness?

3 MR. COOK: Dr. Lockhart.

4 THE COURT: Yes, ma'am, you can remain.

03:50PM 5  
6 JAMES SWANSON.  
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TIDWELL:

03:50PM 10 Q. Would you tell the ladies and gentlemen of the  
11 jury your name please, sir.

12 A. My name is James Swanson.

13 Q. And, Mr. Swanson, how are you employed?

14 A. I'm currently the police chief for the Wink  
03:50PM 15 police department.

16 Q. Okay. That's a new position for you?

17 A. Yes, sir.

18 Q. Okay. And you started that the first of  
19 February; is that right?

03:50PM 20 A. Yes, sir.

21 Q. Okay. Prior to that how were you employed?

22 A. I was the chief investigator for the Winkler  
23 County sheriff's office.

24 Q. As chief investigator of the Winkler County  
03:51PM 25 sheriff's office, did you become involved in the

1 complaint that Dr. Arafiles filed for -- under the  
2 misuse of official information statute?

3 **A. Yes, sir.**

4 **Q.** --And what -- basically what was your involvement  
5 with the investigation?

6 **A. On the 19th of May, on that Tuesday,**  
7 **Sheriff Roberts had contacted me and asked me to come in**  
8 **the office and assist him with interviews at the**  
9 **hospital of hospital employees at the hospital.**

10 **Q.** Okay. And did you and Sheriff Roberts  
11 interview some people?

12 **A. Yes, sir.**

13 **Q.** Okay. Did -- were you present and did you  
14 participate in an interview of Ms. Mitchell?

15 **A. Yes, sir.**

16 **Q.** Did -- was the subject of this interview to  
17 determine whether or not there were procedures at the  
18 hospital for reporting issues with other healthcare  
19 providers?

20 **A. Yes, sir.**

21 **Q.** Did Ms. Mitchell indicate that she understood  
22 what the reporting procedures of the hospital were?

23 **A. Not -- she said she understood them but they**  
24 **depended on the circumstances.**

25 **Q.** Okay. Was she able to say you're supposed to

1 go through this step and this step and this step up the  
2 chain of command?

3 **A. No, sir.**

4 **Q.** Was she able to identify who her superior  
5 was --

6 **A. No, sir.**

7 **Q.** -- in the chain of command?

8 **A. No, sir.**

9 **Q.** Okay. Did Ms. Mitchell make any statement  
10 about these rules and the applicability?

11 **A. She just said that depending on the situation**  
12 **she had to do things certain ways based on the situation**  
13 **that she deemed necessary for patient safety.**

14 **Q.** Okay. Did -- at anytime did she indicate that  
15 the hospital's rules applied to some people and didn't  
16 apply to others?

17 **MR. CARNEY:** Your Honor, I'm going to  
18 object as to leading the witness.

19 **THE COURT:** Rephrase it. Go ahead.

20 **Q.** (By Mr. Tidwell) During the interview, was  
21 Ms. Mitchell questioned about whether certain of the  
22 policies pertained to certain employees or whether the  
23 rules pertained to all the employees?

24 **A. That was a question that was brought up to her.**

25 **Q.** And how did she respond?

1 **A. Again, she said it depending on the**  
2 **circumstances.**

3 **Q.** Did she ever make a statement about whether any  
4 of the applicable reporting rules applied to her in her  
5 capacity as the compliance officer?

6 **A. Again, the -- and this was my interpretation of**  
7 **her answers, was that it depended -- she continually**  
8 **told us it depended on the circumstances of the specific**  
9 **case because she was -- my impression of her job,  
10 **because she had several titles, that depending on what**  
11 **the complaint was she had to go through certain chains**  
12 **or do it at certain different ways.****

13 **It was never -- she never could say this**  
14 **was her supervisor, this is who I reported to, she never**  
15 **could tell us that. But she was always saying it**  
16 **depended on the circumstances who she would talk to.**

17 **Q.** Okay. At some point were you involved with  
18 procuring physical evidence in the case?

19 **A. Yes, sir.**

20 **Q.** What did you do in that regard?

21 **A. I obtained a search -- evidentiary search**  
22 **warrant for the computers at the Homeland Security**  
23 **office, which is Anne Mitchell's office at the community**  
24 **center, downtown Kermit.**

25 **I also obtained evidentiary search**

1 **warrants for the Dell computer in her office along with**  
2 **Vickilyn Galle's computer in the hospital office.**

3 **Q.** Were you involved in the analysis of the  
4 computer to see what was on there or anything like that?

5 **A. The next morning -- I secured those computers**  
6 **that night in my office. The following morning Charlene**  
7 **Beauchamp, our I.T. tech, came to the sheriff's office**  
8 **and she retrieved evidence off of Anne Mitchell's**  
9 **computer that was at the community center in downtown**  
10 **Kermit.**

11 **Q.** Okay. So no evidence pertinent to this, no  
12 physical evidence, was obtained off either of the two  
13 computers that came from the hospital?

14 **A. No, sir.**

15 **Q.** There was, in your -- I guess in your opinion,  
16 pertinent evidence that was contained on the Homeland  
17 Security computer?

18 **A. Yes, sir.**

19 **Q.** Okay. Well, tell me why would Ms. Mitchell  
20 have anything to do with a Homeland Security computer.

21 **A. She's the -- she's our Homeland Security person**  
22 **for the county.**

23 **Q.** Are her duties sort of split between that and  
24 doing things at the hospital?

25 **A. Yes, sir.**

1 Q. At least that's your understanding?  
 2 A. Yes, sir.  
 3 Q. Okay. And did the search warrant produce  
 4 documents that you took possession of?  
 03:55PM 5 A. Yes, sir.  
 6 Q. And do you have those documents with you today?  
 7 A. Yes, sir.  
 8 Q. Are the documents that you're producing  
 9 documents that have been in your possession, custody,  
 03:55PM 10 and control as the evidence custodian of these records  
 11 since their retrieval from the computer?  
 12 A. When I retrieved them, the day we retrieved  
 13 them off the computer, I placed them in this bag, and  
 14 they were placed into the evidence locker at the  
 03:56PM 15 sheriff's office.  
 16 When our court was set up for now, I  
 17 signed them back over to me, and they've been in my  
 18 custody since that time.  
 19 Q. Okay. And can you retrieve those items out of  
 03:56PM 20 the folder.  
 21 A. Yes, sir.  
 22 Q. Out of the bag.  
 23 A. That's a CD and a USB drive that was -- the  
 24 evidence is stored, and there was also a letter that was  
 03:56PM 25 sent to the medical advisory board.

1 MR. COOK: And, judge, at this time we're  
 2 going to object. We're going to object to the admission  
 3 of this evidence for a number of reasons. Chief amongst  
 4 them is it was an illegal search, as we've raised before  
 03:56PM 5 in that there was no grounds, no probable cause stated  
 6 of a crime in the search warrant.  
 7 Second of all, the Texas law, specifically  
 8 the Occupation Code, 164.007, says that a complaint to  
 9 the medical board is privileged, it is not subject to  
 03:57PM 10 discovery, and it is definitely not subject to  
 11 admissibility. So we object to this as privileged  
 12 information under law without a proper -- without  
 13 anything, it shouldn't come in.  
 14 Our third objection, judge, is that this  
 03:57PM 15 is a 38.23 Code of Criminal Procedure, that this  
 16 evidence was obtained illegally because it is against  
 17 the law to violate HIPAA searching for evidence you  
 18 don't have a right to see anyways.  
 19 And it is our position that the sheriff  
 03:57PM 20 and this man right here violated HIPAA by going to the  
 21 individual patients and requesting -- demanding to know  
 22 whether they filed the complaint, and it was illegal to  
 23 go to the hospital and ask for confidential patient  
 24 information based on those file numbers.  
 03:58PM 25 And, judge, we also object to this under

1 the Fourth Amendment, right of search and seizure. And  
 2 that goes back to the due process concerns we have about  
 3 the search warrant.  
 4 We object to it under Article 1, Section  
 03:58PM 5 9, of the Texas Constitution, under the due course of  
 6 law.  
 7 And we object to it --  
 8 What else?  
 9 Judge, I think that's it, but we object.  
 03:58PM 10 THE COURT: Has anything been offered?  
 11 MR. TIDWELL: Not yet, Your Honor.  
 12 MR. COOK: Judge, I think he was trying to  
 13 get him to talk about -- testimony is evidence also. We  
 14 object to the testimony.  
 03:58PM 15 THE COURT: Okay. If he's going to  
 16 testify from the document, an exhibit that's not  
 17 offered, that objection is sustained.  
 18 The other ones are premature at this time.  
 19 So the objection is sustained.  
 03:58PM 20 Q. (By Mr. Tidwell) And, Officer Swanson, you  
 21 said you had a CD; is that -- did you say a CD?  
 22 A. Yes, sir.  
 23 Q. What is contained on -- what's your  
 24 understanding of what's contained on the CD?  
 03:59PM 25 A. It's the copies from the computer.

1 Q. Okay. And did you say a USB drive?  
 2 A. Yes, sir, that little square thing, I believe  
 3 that's what it is called.  
 4 Q. Okay. And what -- is there something different  
 03:59PM 5 on there than what's on the CD?  
 6 A. I -- as far as I know, it's pertaining to  
 7 the -- the printed-up paperwork I got, these are just  
 8 backup of what this is right here, the documents.  
 9 Q. Okay. And these are -- and the printed  
 03:59PM 10 paperwork that you just had in your right hand, are  
 11 these the documents that Ms. Beauchamp, as the  
 12 information technology person, assisted you in  
 13 retrieving off the computer from the Homeland Security  
 14 office?  
 03:59PM 15 A. Yes, sir.  
 16 Q. These are not documents that came off a  
 17 computer from the hospital?  
 18 A. No, sir.  
 19 Q. These are documents that were contained on a  
 03:59PM 20 county-owned computer in the office of Homeland Security  
 21 at the community center?  
 22 A. That is correct.  
 23 Q. Which is Ms. Mitchell's other office?  
 24 A. Yes, sir.  
 03:59PM 25 Q. Okay.



1 MR. TIDWELL: With that, Your Honor, we'll  
 2 offer the CD, the flash drive, and the printed  
 3 documents.  
 4 MR. COOK: Judge, do you want me to  
 04:00PM 5 restate all that or --  
 6 THE COURT: No. I'm going to say this,  
 7 and if that's not -- if this is not correct, correct me.  
 8 MR. COOK: Yes, sir.  
 9 THE COURT: It's my understanding your  
 04:00PM 10 objection is based on the grounds that you recited into  
 11 the record a few moments ago.  
 12 MR. COOK: Yes, Your Honor.  
 13 And I think the court also has the benefit  
 14 of briefs and motions that we filed pretrial. We would  
 04:00PM 15 renew each and every one of those objections to its  
 16 admission.  
 17 THE COURT: The objections are overruled.  
 18 Go ahead.  
 19 Q. (By Mr. Tidwell) Will you hand those items  
 04:00PM 20 please --  
 21 MR. COOK: Your Honor, just to save time,  
 22 and I'm sorry, Mr. Tidwell, may I have a continuing,  
 23 running objection to this so I don't have to object to  
 24 every question?  
 04:00PM 25 THE COURT: Absolutely. In as much as I'm

1 able to grant that, I grant that.  
 2 MR. COOK: Thank you, Your Honor.  
 3 Q. (By Mr. Tidwell) Officer Swanson, would you  
 4 hand those items kindly please, sir, to the court  
 04:00PM 5 reporter so she can mark them.  
 6 A. Yes, sir.  
 7 MR. TIDWELL: Your Honor, I believe what  
 8 we have, I believe Kelly marked the CD first, so we'll  
 9 offer that as State's Exhibit 1, subject to Mr. Cook's  
 04:01PM 10 continuing objection, and then the documents were  
 11 stapled together, offer that as State's Exhibit 2.  
 12 (State's Exhibit Nos. 1 and 2 offered)  
 13 THE COURT: Okay. Those have already been  
 14 offered and objected to and --  
 04:01PM 15 MR. TIDWELL: Yes, sir.  
 16 THE COURT: -- overruled, so they're  
 17 admitted.  
 18 (State's Exhibit Nos. 1 and 2 received)  
 19 Q. (By Mr. Tidwell) And, Officer Swanson, do you  
 04:01PM 20 have -- is that all of the evidence that was contained  
 21 in your evidence bag?  
 22 A. Yes, sir.  
 23 Q. Would you please have -- hand the evidence bag  
 24 to Ms. Allen so she can mark it as State's 3.  
 04:02PM 25 And, Officer Swanson, in the paper

1 exhibits that you had in your hand, is there an April I  
 2 believe 7, 2009, document addressed to the Texas Medical  
 3 Board?  
 4 MR. COOK: To which, judge, I think just  
 04:02PM 5 for paranoia of the record, we'd like to renew the  
 6 objections because this is the specific communication to  
 7 the board that we're concerned about.  
 8 THE COURT: Overruled.  
 9 A. April 7, 2009?  
 04:02PM 10 Q. Yes, sir.  
 11 A. Yes, sir.  
 12 Q. And in fact, are there multiple copies of that  
 13 same document that have some -- the best way I know to  
 14 describe it is like some of the paragraphs have been  
 04:02PM 15 elongated in some kind of weird print that kind of  
 16 scribbles across the page?  
 17 A. Yes, sir.  
 18 Q. But there is one good, non-scribbling looking  
 19 copy of the April 7th letter; is that correct?  
 04:03PM 20 A. Yes, sir.  
 21 Q. And then would it be fair to characterize that  
 22 there are some printouts off the computer that just show  
 23 little pictographic icons of screens off the computer?  
 24 A. Yes, sir.  
 04:03PM 25 Q. Other than participating in that interview and

1 then obtaining this physical evidence, did you have any  
 2 other involvement with this case?  
 3 A. No, sir.  
 4 Q. Thank you.  
 04:03PM 5 MR. TIDWELL: Pass the witness, Your  
 6 Honor.  
 7 MR. COOK: Thank you, Your Honor.  
 8 THE COURT: Mr. Cook.  
 9  
 04:03PM 10 CROSS-EXAMINATION  
 11 BY MR. COOK:  
 12 Q. I guess it's chief now.  
 13 A. Yes, sir.  
 14 Q. Congratulations.  
 04:03PM 15 A. Thank you.  
 16 Q. You're the chief -- you at the time were the  
 17 lead investigator for the Winkler County sheriff's  
 18 department?  
 19 A. That is correct.  
 04:03PM 20 Q. But you -- is this your investigation?  
 21 A. No, sir. It's the sheriff's.  
 22 Q. It's the sheriff's?  
 23 A. Yes, sir.  
 24 Q. Okay. Mr. Swanson, did you and anybody ever  
 04:03PM 25 discuss the fact that nurses have a right and sometimes

1 a legal obligation and duty to report substandard care?  
 2 A. Yes, sir.  
 3 Q. Okay. Who did you discuss that with?  
 4 A. I've talked to the sheriff about it, and our  
 04:04PM 5 prosecutor.  
 6 Q. Okay. Before you -- before all this started  
 7 up?  
 8 A. No, sir.  
 9 Q. This has been since then?  
 04:04PM 10 A. Yes, sir.  
 11 Q. Okay. And I know your role was limited, wasn't  
 12 it?  
 13 A. Yes, sir.  
 14 Q. And actually if we look back on this whole  
 04:04PM 15 thing, you went and got the computers?  
 16 A. Yes, sir.  
 17 Q. Okay. Did you do -- were you with the sheriff  
 18 when he obtained the confidential identifying  
 19 information from the hospital about who patients were?  
 04:04PM 20 A. I don't know what you're talking about.  
 21 Q. The -- well, you are aware that Sheriff Roberts  
 22 went to the house of each and every patient listed in  
 23 the complaint that the doctor received and demanded to  
 24 know whether or not they filed a complaint, aren't you?  
 04:04PM 25 A. I know he talked to patients. I don't know if

1 he demanded anything.  
 2 Q. Okay. Were you with him when he went to the  
 3 hospital to retrieve that information?  
 4 A. No, sir.  
 04:05PM 5 Q. Okay. Were you present when Dr. Arafiles made  
 6 his report?  
 7 A. No, sir.  
 8 Q. Let me ask you this question. To you, was it  
 9 important whether or not the information contained in  
 04:05PM 10 that complaint was truthful?  
 11 A. For the criminal complaint?  
 12 Q. No, the complaint to the Texas Medical Board,  
 13 the one you retrieved.  
 14 A. Well, I believe if you make a complaint against  
 04:05PM 15 somebody it should be the truth.  
 16 Q. Okay. Did you go to the sheriff with  
 17 Mr. Tidwell's office?  
 18 A. After our investigation or the interviews that  
 19 day at the hospital?  
 04:05PM 20 Q. Uh-huh.  
 21 A. Yes, sir.  
 22 Q. Okay. And you wrote a report about those  
 23 interviews at the hospital, didn't you?  
 24 A. I wrote a report, yes, sir.  
 04:05PM 25 Q. Is any of the information you just told the

1 jury contained in your written reports?  
 2 A. Yes, sir.  
 3 Q. May I see those please.  
 4 A. Yes, sir.  
 04:06PM 5 MR. COOK: May I approach, Your Honor?  
 6 THE COURT: Yes.  
 7 MR. COOK: Thank you.  
 8 THE COURT: The attorneys have permanent  
 9 permission to approach the witnesses.  
 04:06PM 10 MR. COOK: Thank you, Your Honor.  
 11 A. There you go.  
 12 Q. Okay. In your report you just mention that  
 13 they were asked questions about the rules and  
 14 regulations. You didn't put any of their responses, did  
 04:06PM 15 you?  
 16 A. No, sir.  
 17 Q. And then you all read them their Miranda  
 18 rights, didn't you?  
 19 A. Yes, sir.  
 04:06PM 20 Q. When do you read people Miranda rights?  
 21 A. When they're in custody and they're being  
 22 accused of a criminal offense.  
 23 Q. But these ladies weren't in custody, were they?  
 24 A. No, sir.  
 04:06PM 25 Q. But they sure knew you guys were looking to put

1 them in custody, didn't they?  
 2 A. The sheriff believed that he should Mirandize  
 3 them, and he did so.  
 4 Q. Who else was interviewed at the hospital?  
 04:07PM 5 A. Besides Ms. Mitchell and Vickiann Galle, there  
 6 was staff at the hospital that we spoke to.  
 7 Q. Okay. And y'all still didn't know who filed  
 8 the letter, did you?  
 9 A. No, sir.  
 04:07PM 10 Q. Okay. In fact, I guess you could say by this  
 11 time the sheriff had cleared the patients and now it  
 12 looked like it was somebody from inside the facility,  
 13 correct?  
 14 A. Well, based on the information he had got  
 04:07PM 15 during the investigation he had done so far, from the  
 16 letter that was received and the age -- the description  
 17 of the person who wrote the letter, it could only have  
 18 been two people that was left on the -- the 20 so people  
 19 had access to the documents in question.  
 04:07PM 20 Q. And that's right, the sheriff wrote off to the  
 21 Texas Medical Board, said he was doing an investigation,  
 22 and got a copy of the complaint anyways, didn't he?  
 23 A. That's my understanding.  
 24 Q. Did you ever read the complaint?  
 04:08PM 25 A. No, sir.

1 Q. Do you know whether anything in that complaint  
2 that was written is not factual?

3 A. **As I said, I haven't read the complaint, so I**  
4 **couldn't tell you one way or the other.**

04:08PM 5 Q. Okay. Well, let me ask you a hypothetical,  
6 sir. I believe I've been the victim of a crime -- no,  
7 actually, strike that. I committed a crime, okay?  
8 And -- or I did an illegal act, that's a better way of  
9 putting it. And then I found out somebody had filed the  
10 charge against me.

11 How much sympathy would you have for me if  
12 I came to you and said, hey, I did this, if this  
13 complaint goes any farther, I'm in trouble, will you  
14 please make this guy be quiet? Would you do that, sir?

04:08PM 15 A. No.

16 Q. Do you understand that substandard care is  
17 illegal under the laws of the State of Texas?

18 A. Yes, sir.

04:09PM 19 Q. Do you understand that -- well, you have that  
20 letter, don't you?

21 First of all, can you tell me what is  
22 confidential, if any of the information in that letter  
23 is confidential?

24 A. I'm not sure what you're asking me to --

04:09PM 25 Q. Well, then I'll strike that.

1 You don't -- you do know that that letter  
2 was supposed to be confidential; isn't that correct?

3 A. **I wasn't aware of that.**

04:09PM 4 Q. You're not aware that any complaints made to  
5 licensing authorities are confidential?

6 A. **Well, I know patient -- doctor-client --**  
7 **patient privilege is just as attorney-client privilege**  
8 **is confidential.**

04:09PM 9 Q. Were you aware that the Texas Medical Act or  
10 the Medical -- the MDA -- the law, the code in that,  
11 says that any complaint to the Texas Medical Board is  
12 confidential, and is not subject to discovery or use?  
13 Were you aware of that when you were doing this?

14 A. No, sir.

04:10PM 15 Q. Okay. You said earlier that you talked about  
16 a -- the duties of a nurse to report; is that correct?

17 A. Yes, sir.

18 Q. Who did you talk to that with?

04:10PM 19 A. **As I said, it was discussed after I got**  
20 **involved in the investigation and with the nurses at the**  
21 **hospital. That was one of the questions we --**

22 Q. Did you discuss it with a lawyer?

23 A. No.

04:10PM 24 Q. Okay. Did you understand that anybody in this  
25 state has a right under code, under law, to make a

1 complaint about questionable practices with the Texas  
2 Medical Board?

3 A. Yes, sir.

04:11PM 4 MR. TIDWELL: And I'm going to object,  
5 Your Honor. That's an improper statement what the law  
6 is. The law requires a report to be made in good faith,  
7 not what Mr. Cook is suggesting.

8 MR. COOK: Judge, I'll rephrase. I  
9 actually think he's right on that.

04:11PM 10 Q. (By Mr. Cook) Did you know that the law of the  
11 State of Texas allows anybody, not just nurses, doctors,  
12 but any of us here, to file a complaint in good faith?

13 A. Yes, sir.

04:11PM 14 Q. If they had concerns about questionable  
15 practices?

16 A. Yes, sir.

17 Q. And just to be clear, did you, the sheriff, and  
18 a lawyer ever discuss those rights and those duties of  
19 individuals and more specifically nurses?

04:11PM 20 A. No.

21 Q. Okay. You went to the district attorney's  
22 office on 5-19-2008; isn't that correct --

23 A. Yes, sir.

04:12PM 24 Q. -- to update the district attorney on the  
25 progress of your case?

1 A. Yes, sir.

2 Q. Was that Mr. Foster's, the district attorney's  
3 office, or Mr. Tidwell, the county attorney's office?

04:12PM 4 A. Mr. Tidwell.

5 Q. What did the sheriff tell Mr. Tidwell about the  
6 results of the investigation at that time?

7 MR. TIDWELL: I'm going to object to  
8 statements between the investigators and the prosecutor,  
9 Your Honor. That's privileged information.

04:12PM 10 THE COURT: Approach.

11 (AT BENCH, OFF THE RECORD)

12 MR. TIDWELL: I've lodged an objection,  
13 Your Honor. Can I have a ruling?

14 THE COURT: I'm sorry?

04:15PM 15 MR. TIDWELL: I objected to this question  
16 on --

17 THE COURT: Overruled.

18 Q. (By Mr. Cook) The purpose of that meeting was  
19 to discuss the results of the investigation so far; is  
20 that correct?

21 A. Yes, sir.

22 Q. And what facts did you have -- what was  
23 discussed? What were the results of the investigation  
24 thus far?

04:15PM 25 A. **Well, as I said earlier, that Sheriff Roberts**

1 when he initially started it was under -- he had  
 2 received information that there was 21 people that had  
 3 access to the documents in question that could have sent  
 4 the letter and had access to the patients' records.  
 04:15PM 5 And after going through the interviews  
 6 and -- of the people involved there was only two people  
 7 left that fit from the letter white female and the age,  
 8 which would have been Ms. Mitchell and Ms. Galle.  
 9 Q. Look, let me back up a little bit. How many  
 04:16PM 10 complaints had Dr. Arafiles filed prior to this one  
 11 against any staff member?  
 12 A. I have no knowledge of any complaints he filed.  
 13 Q. Okay. And you were doing an investigation to  
 14 find out who sent the letter because at that time y'all  
 04:16PM 15 didn't know --  
 16 A. No, sir.  
 17 Q. -- correct?  
 18 The doctor didn't know, correct?  
 19 A. Yes, sir.  
 04:16PM 20 Q. And quite frankly, the doctor didn't care.  
 21 Whoever it was he wanted to prosecute, right?  
 22 A. He believed a crime had been committed against  
 23 him, so he wanted something done.  
 24 Q. You're in Wink now, right, so do you still have  
 04:16PM 25 TCLEOSE membership?

1 A. Yes, sir.  
 2 Q. Okay. If I filed a complaint against you with  
 3 TCLEOSE and it had no truth to it, would that bother  
 4 you?  
 04:17PM 5 A. Yeah.  
 6 Q. I mean, would you really worry that that would  
 7 harm you?  
 8 A. Well, it'd upset me, but I would just go about  
 9 my business because I know I do my job, so --  
 04:17PM 10 Q. Okay. If you really wronged me and I filed a  
 11 complaint with them, would that bother you more?  
 12 A. No, because I hadn't done nothing wrong.  
 13 Q. No, if you had in fact done something wrong?  
 14 A. But I wouldn't.  
 04:17PM 15 Q. But you wouldn't what?  
 16 A. Wouldn't do something wrong.  
 17 Q. And if you did do something wrong would you be  
 18 man enough to admit it?  
 19 A. Then I should be punished if I did something  
 04:17PM 20 wrong.  
 21 Q. Thank you.  
 22 The conversation with Mr. Tidwell was  
 23 before you got the search warrant, right?  
 24 A. Yes, sir.  
 04:18PM 25 Q. Okay. Can you tell the jury what the facts

1 were that led you to go and get a search warrant at that  
 2 time?  
 3 A. Sheriff Roberts had briefed him on the case.  
 4 And based on the list of people who had access to the  
 04:18PM 5 records, it was his belief from all the interviews that  
 6 he had done so far that there was only two people that  
 7 could have had access to the records and wrote the  
 8 letter was Ms. Mitchell and Ms. Galle.  
 9 Q. Okay. And did you draft the affidavit for the  
 04:18PM 10 search warrant?  
 11 A. Yes, sir.  
 12 Q. Did -- do you believe that the search warrant  
 13 contains facts that show probable cause a crime has been  
 14 committed?  
 04:18PM 15 A. Yes, sir.  
 16 Q. And what are those facts?  
 17 A. I'd have to look at my search warrant again.  
 18 If you had a copy, I could look at it for you.  
 19 Q. Here you go, sir.  
 04:19PM 20 A. Thank you.  
 21 Q. Actually that's your report.  
 22 A. Oh, yeah.  
 23 Q. Maybe this will help you, sir.  
 24 A. Thank you.  
 04:19PM 25 Could you repeat your question so I could

1 answer it for you?  
 2 Q. Yes, sir.  
 3 What are the facts that you feel are --  
 4 establish probable cause that a crime has been committed  
 04:20PM 5 in that?  
 6 A. It is the belief of affiant and he hereby  
 7 charges and accuses that Anne M. Mitchell or Vickilyn  
 8 Galle, on or about April of 2009, intentionally and  
 9 knowingly sent the anonymous letter to the Texas State  
 04:20PM 10 Medical Board listing complaints against Dr. Rolando  
 11 Arafiles with the intent to harm or defraud Dr. Rolando  
 12 Arafiles and with the intent to harass, annoy, alarm,  
 13 abuse, torment, or embarrass Dr. Rolando Arafiles.  
 14 Q. But those aren't facts though. Those are  
 04:20PM 15 conclusions. Those are speculation.  
 16 What are the facts? How did they harm  
 17 him? Why do you believe they -- that sending a letter  
 18 in harmed him?  
 19 A. The 39 -- the Penal Code states on that charge  
 04:20PM 20 official misuse of information.  
 21 Q. No, you didn't listen to my question. Tell me  
 22 the facts of how notifying a licensing board of certain  
 23 actions harms him.  
 24 A. If it's done improperly, then it can be harming  
 04:21PM 25 him.

1 Q. What facts are in there to say it's done  
2 improperly?

3 A. Because the result of Sheriff Roberts'  
4 investigation, he believed that this was done to -- as I  
04:21PM 5 spoke just then, and I was instructed to obtain a search  
6 warrant to look at those computers.

7 Q. You were following orders?

8 A. Yes, sir.

9 Q. Do you share that belief?

04:21PM 10 A. Yes, sir.

11 I do not believe my sheriff would  
12 intentionally have me do something illegal.

13 Q. Okay. Well, other than sending in -- well,  
14 first of all, the Texas Medical Board gets complaints  
04:21PM 15 every day, don't they?

16 A. As far as I know, yes, sir.

17 Q. Okay. What jurisdiction does your -- did you  
18 have to investigate standard of care issues?

19 A. I don't believe I was doing that.

04:21PM 20 Q. Well, how could you make a conclusion that  
21 there was harassment if you didn't know whether or not  
22 there was any validity to the complaint?

23 A. Because I believe that this letter was sent to,  
24 as I stated, to harm, annoy, abuse, which is a crime. I  
04:22PM 25 don't think that the letter was sent properly.

1 Q. Okay. Tell me some facts. What was improper  
2 with that letter?

3 A. I don't -- the facts --

4 Q. You said you -- that it's not sent properly, so  
04:22PM 5 what's improper about it?

6 A. It's anonymous.

7 Q. Were you aware that Ms. Mitchell was  
8 cooperating with a peace officer who was investigating  
9 this case from the Texas Medical Board who informed her  
04:22PM 10 not to sign her name?

11 A. No, sir.

12 Q. Okay. Have you ever interfered and obstructed  
13 an investigation in another case?

14 A. No, sir.

04:22PM 15 Q. So what facts, what is wrong? How -- strike  
16 that.

17 What facts, what facts, other than the  
18 simple fact that she made a complaint, what facts?

19 A. I think I've already stated those, that this  
04:23PM 20 letter was sent to do just that, to harass and annoy the  
21 doctor.

22 Q. And what are the facts that make you believe  
23 that, sir?

24 The sheriff --

04:23PM 25 A. The letter -- well, the sheriff's

1 investigation, as I said, I was not involved in it other  
2 than that day for those interviews and then I conducted  
3 the search warrant.

4 Q. And, chief, I know you're kind of on the hot  
04:23PM 5 seat here and --

6 A. Well, it's all right, you're just doing your  
7 job.

8 Q. Let me ask you this. You know that the sheriff  
9 and the doctor are pretty good friends?

04:23PM 10 A. Yes, sir.

11 Q. Okay. They have lunch together and they golf  
12 together, they're -- they pal around together, don't  
13 they?

14 A. With several people, it's a small community,  
04:23PM 15 but, yes, sir.

16 Q. A small community, but they're pretty good  
17 friends.

18 You know that the sheriff was -- or the  
19 sheriff's wife was involved in the Z-R-I-I, that herbal  
04:23PM 20 supplement sales, don't you?

21 A. No.

22 Q. You were never solicited to buy any --

23 A. No.

24 Q. -- you never went to the Pizza Hut to --

04:24PM 25 A. I go to GNC.

1 Q. Okay. Fair enough.

2 Did you ever have a conversation with  
3 Dr. Arafles?

4 A. No, sir.

04:24PM 5 Q. Did you ever have a conversation with  
6 Mr. Wiley --

7 A. No, sir.

8 Q. -- about this?

9 Did you ever have a conversation with  
04:24PM 10 anybody who has expertise in medical issues about this?

11 A. No, sir.

12 Q. Is it true that -- is it true that the -- that  
13 you believe that this is harassment simply because they  
14 sent a letter to the Texas Medical Board?

04:25PM 15 A. Under these circumstances I do believe that,  
16 yes.

17 Q. What circumstances? How is this different  
18 from -- well, okay, what, what circumstances, facts, not  
19 supposition, what circumstances?

04:25PM 20 A. It's the letter. I believe that letter was  
21 sent for the specific purpose to cause him -- if I'm  
22 going to file a complaint I put my name on a complaint.  
23 You're asking my opinion, correct?

24 Q. Yes, sir.

04:25PM 25 A. If I'm going to make a complaint, I'm going to

1 put my name on it, just like when I file charges on  
2 somebody, I put my name on it.  
3 This was sent anonymously. My  
4 understanding was --

04:25PM

5 Q. What --

6 A. Now my understanding was that these specific  
7 charges against this doctor had already been handled.

8 Q. Where is that in the search warrant?

9 A. It's not.

04:26PM

10 Q. Okay. And when you say already been handled,  
11 do you mean internally by the hospital?

12 A. Yes, sir.

13 Q. Okay. And what is that based on, how do you  
14 know that?

04:26PM

15 A. From talking with the sheriff.

16 Q. Were you aware that it is illegal for a  
17 hospital to prevent licensed members from filing  
18 complaints with licensing authorities?

19 A. No.

04:26PM

20 Q. Were you aware that even if you utilize  
21 internal review processes you still have the right to  
22 file a complaint with a licensing authority?

23 MR. TIDWELL: I object, Your Honor.

24 Again, that's a misstatement of the law. Your complaint

04:26PM

25 must again be made in good faith.

1 MR. COOK: No, in good if you file --

2 THE COURT: Rephrase. Go ahead.

3 Q. (By Mr. Cook) With his addition, if you file  
4 it in good faith, it doesn't matter if there is internal  
5 controls in the hospital, you still have the right to do  
6 that?

04:26PM

7 A. Good faith, yes, sir.

8 Q. Huh?

9 A. If that's the law.

04:26PM

10 Q. Well, did you know that last year?

11 A. No.

12 Q. Let me -- had they signed their name to it, do  
13 you think it'd still be harassment?

04:27PM

14 A. If -- my understanding is if you have a  
15 complaint there is a chain of command you go through.  
16 If it's done properly, I don't see why you shouldn't be  
17 able to file a complaint and you should file a  
18 complaint, as long as the chain of command is followed.

04:28PM

19 MR. COOK: Judge, I'm going to object for  
20 nonresponsiveness.

21 Q. (By Mr. Cook) And, chief, listen to my  
22 question please.

23 A. Okay.

24 Q. Had they signed their name, do you still  
25 believe it would have been harassment?

04:28PM

1 A. No.

2 Q. Okay. If I report somebody for committing a  
3 crime, am I harassing that person?

4 A. Did they do the crime?

04:28PM

5 Q. Yes.

6 A. Then no.

7 Q. If I -- even if I honestly believed they did  
8 the crime but was mistaken, am I harassing them?

9 A. Well, that'd be my job to prove that one way or  
10 the other.

04:28PM

11 Q. Some people report illegal activity  
12 anonymously, don't they?

13 A. Yes, sir.

14 Q. In law enforcement you want people to feel free  
15 to report suspicions about criminal activity without  
16 fear of retaliation, don't you?

04:29PM

17 A. Yes, sir.

18 Q. Is it very important for law enforcement --

19 A. Yes, sir.

04:29PM

20 Q. -- that people feel comfortable coming forward?

21 A. Yes, sir.

22 MR. COOK: Pass the witness.

23

24 REDIRECT EXAMINATION

04:29PM

25 BY MR. TIDWELL:

1 Q. Chief, doing a criminal investigation, is it  
2 like assembling a puzzle?

3 A. Yes, sir.

4 Q. When you get a complaint that criminal activity  
5 has occurred, the minute you receive the complaint do  
6 you have all the pieces of the puzzle assembled?

04:29PM

7 A. No, sir.

8 Q. Do you start putting pieces together and find  
9 where other pieces go and go look for other pieces that  
10 fit and assemble it just like a puzzle?

04:29PM

11 A. Yes, sir.

12 Q. So on the day you applied for the search  
13 warrant, were you completely through with your  
14 investigation?

04:30PM

15 A. No, sir.

16 Q. Was the puzzle complete?

17 A. No, sir.

18 Q. It still had holes in it, didn't it?

19 A. Yes, sir.

04:30PM

20 Q. By that time the -- you and the sheriff had  
21 interviewed people and had narrowed down the potential  
22 list of who -- well, let me back up.

23 At one point was one of the items that  
24 y'all were investigating whether or not an employee at  
25 the hospital improperly accessed the medical records

04:30PM

1 data?  
 2 **A. Yes, sir.**  
 3 **Q.** And in fact, the list of people that initially  
 4 were -- was obtained was the list of 20 so people that  
 04:30PM 5 would have had access to the medical records data?  
 6 **A. That is correct.**  
 7 **Q.** And in doing your investigation, at some point  
 8 did the Texas Medical Board send a copy of this  
 9 complaint letter to the sheriff?  
 04:30PM 10 **A. Yes, sir.**  
 11 **Q.** And in that letter, just from the language of  
 12 the letter, does it identify the person that sent the  
 13 letter in?  
 14 **A. No, sir.**  
 04:31PM 15 **Q.** Does it say I'm over 50 and a female?  
 16 **A. Yes, sir.**  
 17 **Q.** And putting the pieces of your puzzle together,  
 18 did that enable the sheriff's department to sort of pin  
 19 down potentially who left on the list could have sent  
 04:31PM 20 the complaint in?  
 21 **A. Yes, sir.**  
 22 **Q.** And that narrowed it down to two, didn't it?  
 23 **A. Yes, sir.**  
 24 **Q.** And was it at that time that you decided to --  
 04:31PM 25 you had -- the Texas Medical Board had already sent a

1 copy of the complaint that they had received, correct?  
 2 **A. Yes, sir.**  
 3 **Q.** And y'all had a copy of the complaint that  
 4 Dr. Arafles got that had the patients' names on it,  
 04:31PM 5 correct?  
 6 **A. Yes, sir.**  
 7 **Q.** Do you know whether the sheriff ever went to  
 8 the hospital and obtained the patients' charts?  
 9 **A. No, sir.**  
 04:31PM 10 **Q.** He never did that, did he?  
 11 **A. I don't believe he did, no, sir.**  
 12 **Q.** The -- when Dr. Arafles came in to make the  
 13 complaint, the Texas Medical Board told him these are  
 14 the 10 people that are in issue?  
 04:32PM 15 **A. That is my understanding.**  
 16 **Q.** Okay. And when y'all had it narrowed down to  
 17 two people and you had a copy from the Texas Medical  
 18 Board of the complaint that they had received, the  
 19 anonymous complaint, did you decide it might be helpful  
 04:32PM 20 to go see if you could match that to physical evidence  
 21 in one of those two people's possession?  
 22 **A. Yes, sir.**  
 23 **Q.** Well, why would that be important?  
 24 **A. It's another piece to the puzzle.**  
 04:32PM 25 **Q.** Okay. And in fact did you match that actual

1 letter to a piece of physical evidence that was in  
 2 Ms. Mitchell's office at the community center?  
 3 **A. Yes, sir.**  
 4 **Q.** Puzzles just kept fitting together, didn't it?  
 04:32PM 5 **A. Yes, sir.**  
 6 **Q.** Mr. Cook asked you if he makes a complaint  
 7 against you with TCLEOSE, that's the law enforcement  
 8 standards people --  
 9 **A. Right.**  
 04:33PM 10 **Q.** -- they're the ones if you're going to get in  
 11 trouble, they can get you in trouble, right?  
 12 **A. Yes, sir.**  
 13 **Q.** Okay. If he makes a complaint against you  
 14 would that bother you, and you said --  
 04:33PM 15 **A. Yes.**  
 16 **Q.** -- it would.  
 17 Would it bother you if he over the course  
 18 of several months made complaint after complaint after  
 19 complaint after complaint?  
 04:33PM 20 **A. Yes, sir.**  
 21 **Q.** Would eventually you get tired of that?  
 22 **A. Yes, sir.**  
 23 **Q.** And if Mr. Cook finally sent in a complaint  
 24 that had erroneous information in it, do you think that  
 04:33PM 25 would bother you?

1 **A. Yes, sir.**  
 2 **Q.** If Mr. Cook had gone around town telling people  
 3 I'm going to get you, Swanson, I'm going to --  
 4 MR. COOK: Objection --  
 04:33PM 5 MR. CARNEY: Objection, Your Honor.  
 6 MR. COOK: We -- I've given him as much  
 7 latitude -- we're leading --  
 8 THE COURT: You guys approach.  
 9 (AT BENCH, OFF THE RECORD)  
 04:33PM 10 THE COURT: Sustained. Leading,  
 11 sustained. Rephrase.  
 12 MR. CARNEY: While we're up here --  
 13 (AT BENCH, OFF THE RECORD)  
 14 THE COURT: That objection is overruled.  
 04:35PM 15 **Q.** (By Mr. Tidwell) Chief, if, going back to  
 16 Mr. Cook's hypothetical, if he had told people that he  
 17 was going to get you and then started making this  
 18 complaint after complaint after complaint, at some point  
 19 does it -- do you think it becomes harassment?  
 04:35PM 20 **A. Yes, sir.**  
 21 **Q.** Does it appear that we've gone beyond good  
 22 faith?  
 23 MR. COOK: Objection, Your Honor. That's  
 24 a legal conclusion.  
 04:35PM 25 THE COURT: Sustained.

1 Q. (By Mr. Tidwell) Do you have an understanding  
2 in your mind what good faith means?  
3 A. Yes, sir.  
4 Q. What does it mean to you?  
04:36PM 5 MR. COOK: Judge, now I'm going to object  
6 because in this case good faith is defined --  
7 THE COURT: Sustained.  
8 Go ahead.  
9 Q. (By Mr. Tidwell) Was getting the data off the  
04:36PM 10 computer toward the end of assembling the piece of the  
11 puzzle?  
12 A. Yes, sir.  
13 Q. And at some point y'all interviewed  
14 Ms. Mitchell?  
04:36PM 15 A. Yes.  
16 Q. And Mr. Cook asked you were her Miranda rights  
17 read to her?  
18 A. Yes.  
19 Q. Now she wasn't in custody at the time, was she?  
04:36PM 20 A. No, sir.  
21 Q. Technically do you have to Mirandize somebody  
22 if they're not in custody?  
23 A. No, sir.  
24 Q. But did y'all just to be safe?  
04:36PM 25 A. Yes, sir.

1 window is broken.  
2 Q. No, you're not coming at all, you're not doing  
3 anything.  
4 A. Well, that wouldn't be me.  
04:37PM 5 I would understand what you're saying,  
6 yes.  
7 Q. Did you investigate any of the actions of  
8 Dr. Arafiles in this matter?  
9 A. No, sir.  
04:38PM 10 Q. Did you -- are you aware of the sheriff  
11 investigating any of the actions of Dr. Arafiles in this  
12 matter?  
13 A. No, sir.  
14 Q. It is not uncommon in law enforcement for  
04:38PM 15 somebody to try to report somebody else first because  
16 they know that person is going to report them, right?  
17 A. That's happened in the past, correct.  
18 Q. Do you think it's important if you are really  
19 doing an investigation to keep an open mind?  
04:38PM 20 A. Yes, sir.  
21 Q. Did it matter to you whether or not  
22 Dr. Arafiles really had done anything wrong?  
23 A. Well, it would, yes, if he did something wrong,  
24 yes.  
04:38PM 25 Q. At anytime did the sheriff say that, you know,

1 Q. Okay.  
2 MR. TIDWELL: Pass the witness, Your  
3 Honor.  
4  
04:36PM 5 RECROSS-EXAMINATION  
6 BY MR. COOK:  
7 Q. When you do a criminal investigation do you  
8 form the conclusion first and then go out and look for  
9 facts to fulfill your conclusion?  
04:37PM 10 A. No, sir.  
11 Q. Aren't you supposed to keep an open mind?  
12 A. I believe my job is to prove people innocent or  
13 guilty.  
14 Q. Well, no, your job is not. Your job is in fact  
04:37PM 15 to investigate cases --  
16 A. Well, that's what my conclusion, when I  
17 investigate a case, upon the completion of my  
18 investigation, I prove somebody innocent or guilty.  
19 Q. Okay. Well, if there was a kid who threw a  
04:37PM 20 window -- a rock through my window every day and I  
21 called and complained about it and nothing was done,  
22 okay, after a while if I kept complaining are you going  
23 to arrest me for harassment of that child, of that kid  
24 who is throwing that rock through my window?  
04:37PM 25 A. No, if I keep coming to your house and your

1 let's figure this out, let's investigate the whole  
2 thing, including Dr. Arafiles and what he did?  
3 A. No, sir.  
4 Q. And I never said that the sheriff got the  
04:39PM 5 patients' charts, but I did say that the sheriff went to  
6 the hospital and got HIPAA protected identifying  
7 information as being their phone numbers and their  
8 addresses and confirming that they actually were  
9 patients of the hospital.  
04:39PM 10 Do you remember those printouts --  
11 A. I've never seen them.  
12 Q. -- from the hospital with all the patients'  
13 names and addresses on them?  
14 A. I haven't seen those.  
04:39PM 15 Q. That was all -- that all predated your  
16 involvement in the case, correct?  
17 A. Yes, sir.  
18 MR. COOK: Pass the witness.  
19 MR. TIDWELL: No further questions, Your  
04:39PM 20 Honor.  
21 THE COURT: You can step down.  
22 Approach.  
23 (AT BENCH, OFF THE RECORD)  
24 THE COURT: Call your next witness.  
04:40PM 25 MR. TIDWELL: Charlene Beauchamp.



1 (AT BENCH, OFF THE RECORD)  
 2 THE COURT: We're at that good stopping  
 3 place around 5:00. We will be in recess until 9:00 in  
 4 the morning. Please keep in mind the instructions I  
 04:42PM 5 gave you earlier.  
 6 When you get here, kind of gather in the  
 7 jury room, and there should be some coffee or -- out  
 8 here and maybe some drinks in there. So please partake  
 9 of those if you see fit to do so.  
 04:43PM 10 9:00 in the morning. Keep in mind my  
 11 instructions.  
 12 (JURY NOT PRESENT)  
 13 THE COURT: Okay. Do we need to have a  
 14 hearing outside the presence of the jury on some issue?  
 04:44PM 15 MR. CARNEY: Yes.  
 16 THE COURT: Okay. Let's go.  
 17 MR. TIDWELL: I guess let me put  
 18 Ms. Beauchamp on, Your Honor, and I could ask her what  
 19 the statement is and then tell them --  
 04:44PM 20 THE COURT: Okay.  
 21 Go ahead.  
 22 MR. TIDWELL: And, Your Honor, I'm going  
 23 to just briefly --  
 24  
 25 CHARLENE BEAUCHAMP,

1 several?  
 2 A. It was on several occasions, but the one that I  
 3 remember the date on was around April 30th of 2008.  
 4 Q. Okay. And what was the statement?  
 04:45PM 5 A. It was -- what had happened is my daughter had  
 6 fell and busted her lip, and I had taken her to Monahans  
 7 to have her lip stitched.  
 8 And I had talked to Mr. Wiley concerning  
 9 why that the ER nurse said that they could not stitch  
 04:45PM 10 her lip there in Winkler County. And Dr. Arafiles had  
 11 told me that he was -- had -- was a surgeon and he could  
 12 have stitched her lip fine, that there wouldn't have  
 13 been no issue on why that I had to take her to a  
 14 different hospital.  
 04:45PM 15 And it was after that that had been said  
 16 that Anne had told me to be careful about taking my  
 17 children to Dr. Arafiles because that he was not a  
 18 reliable doctor.  
 19 Q. Okay. Do you remember, did she ever use the  
 04:46PM 20 phrase Dr. Arafiles is a nut?  
 21 A. Yes.  
 22 Q. Did she use the phrase Dr. Arafiles wouldn't  
 23 last a year?  
 24 A. Yes.  
 04:46PM 25 Q. Did she use the phrase Dr. Arafiles is an

1 having been first duly sworn, testified as follows:  
 2 DIRECT EXAMINATION  
 3 BY MR. TIDWELL:  
 4 Q. You're Charlene Beauchamp, you're the  
 04:46PM 5 information technology officer at the hospital as well  
 6 as the HIPAA compliance officer; is that correct?  
 7 A. Yes.  
 8 Q. I'm going to skip through the items that were  
 9 retrieved off the computer, let's just forget that for a  
 04:46PM 10 moment.  
 11 Are you familiar with Anne Mitchell?  
 12 A. Yes.  
 13 Q. Are you familiar with Dr. Arafiles?  
 14 A. Yes.  
 04:46PM 15 Q. Is the Anne Mitchell you know the same Anne  
 16 Mitchell that's seated at counsel table to my right?  
 17 A. Yes.  
 18 Q. Have you ever had a conversation with Anne  
 19 Mitchell about Dr. Arafiles?  
 04:45PM 20 A. Yes.  
 21 Q. Did Anne Mitchell ever directly to you make  
 22 statements that were critical of Dr. Arafiles?  
 23 A. Yes.  
 24 Q. And what were those, as best you can remember  
 04:45PM 25 the exact words, what were -- was it one statement or

1 alternative voodoo doctor?  
 2 A. I don't know if she used the word voodoo  
 3 doctor, but I do know that she did say that he uses a  
 4 lot of alternative herbs and medicines.  
 04:46PM 5 Q. Did she say I will make sure he doesn't last a  
 6 year?  
 7 A. Yes.  
 8 Q. And these are statements all directly out of  
 9 her mouth?  
 04:46PM 10 A. Yes.  
 11 MR. TIDWELL: And that's all I have on  
 12 this issue, Your Honor.  
 13  
 14 CROSS-EXAMINATION  
 04:47PM 15 BY MR. CARNEY:  
 16 Q. Ms. Beauchamp, when were all these statements  
 17 made?  
 18 A. It was -- the reason why that I remember the  
 19 date is because that I had taken a picture of Ashley's  
 04:47PM 20 mouth when she fell, and I took the picture on  
 21 April 29th. And it was the day after that happened, so  
 22 it was April 30, 2008.  
 23 Q. And all those statements that you just talked  
 24 about with Mr. Tidwell were made during the same  
 04:47PM 25 conversation?

1 THE COURT: Well, you get with them first.  
2 And there may be testimony that they don't have any  
3 problem with or objection, don't think that their motion  
4 in limine applies.

04:57PM 5 MR. TIDWELL: Okay. Let me make him a  
6 list then.

7 THE COURT: In fact, we'll just be in  
8 recess. When y'all are ready, let me know.

9 (A recess was taken from 4:58 to 5:28.)

05:28PM 10 THE COURT: Were you sworn earlier?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. This is a hearing  
13 outside the presence of the jury on the Defendant's  
14 motion concerning extraneous offense and other bad acts.

05:28PM 15 Go ahead.

17 ROBERT L. ROBERTS,  
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

05:28PM 20 BY MR. TIDWELL:

21 Q. Tell the judge your name please, sir.

22 A. **Robert L. Roberts.**

23 Q. And just -- all we're going to talk about is a  
24 real limited issue here for just a moment.

05:28PM 25 Sometime during April of 2008, did you

1 have occasion to hear Ms. Mitchell directly make any  
2 disparaging comments toward Dr. Arafiles?  
3 A. **I believe it was sometime in April, yes, sir, I**  
4 **did.**

05:28PM 5 Q. Okay. And what, as best you can remember,  
6 specifically what comments did she make?

7 A. **Would you like me to tell you the story?**

8 Q. Sure.

9 A. **As I remember it?**

05:28PM 10 **We were in the commissioners' office. I**  
11 **was talking to the commissioners and -- or a couple of**  
12 **the commissioners.**

13 **And the day before, I had played golf with**  
14 **Dr. Arafiles. I had met him for the first time and**  
05:29PM 15 **played golf with him.**

16 **And Anne Mitchell came into the office to**  
17 **speak to one of the commissioners concerning a grant**  
18 **that they were working on. And in conversation I said I**  
19 **met our new doctor yesterday, I had a really good time**  
05:29PM 20 **with him, he's a really nice guy.**

21 **And she began to tell me that he's not a**  
22 **doctor, he's a witch doctor, I don't know how we got him**  
23 **here, he shouldn't be here, our administrator messed up,**  
24 **he's going to get our county sued, and just ranted about**  
05:29PM 25 **it.**

1 Q. Okay. Is that, as best you can remember, what  
2 the conversation was?

3 A. **Yes, sir.**

4 Q. Okay.

05:29PM 5 MR. TIDWELL: That's all I have, Your  
6 Honor.

7

8

CROSS-EXAMINATION

9 BY MR. CARNEY:

05:29PM 10 Q. When did this take place, sheriff?

11 A. **I believe it was towards the end of April.**

12 Q. Of which year?

13 A. **Of '08.**

14 Q. And --

05:30PM 15 A. **It was right after Dr. Arafiles first got here.**

16 Q. Okay. And where did it take place?

17 A. **In the courthouse, in the commissioners'**  
18 **office.**

19 Q. That's on the second floor?

05:30PM 20 A. **Yes, sir.**

21 Q. Okay. That's the Winkler County courthouse?

22 A. **Yes, sir.**

23 Q. And who was present?

05:30PM 24 A. **I was present, Commissioner Tommy Smith,**  
25 **Commissioner Robbie Wolf, and I believe Probation**

1 **Officer Ron Cook.**

2 Q. And tell me how everybody was arranged.

3 A. **Anne Mitchell was standing next to Commissioner**  
4 **Wolf, who was sitting at his desk at the computer. To**  
05:30PM 5 **their left was Ron Cook. To Ron Cook's left was**  
6 **Commissioner Smith. And then I was left of Commissioner**  
7 **Smith.**

8 Q. Y'all are at a table or --

9 A. **No. Everybody had their own desk. And I was**  
05:31PM 10 **sitting in a chair next to Commissioner Smith.**

11 Q. So it's just an office with several desks in  
12 it?

13 A. **Yes, sir.**

14 Q. And --

05:31PM 15 A. **There were two desks. Commissioner Smith had a**  
16 **desk and Commissioner Wolf had a desk.**

17 Q. And so everybody was speaking together?

18 A. **Well, I was speaking to Anne.**

19 Q. Okay.

05:31PM 20 A. **And Anne was speaking to me.**

21 Q. All right. And Mr. Smith was there. Was he  
22 speaking to y'all as well?

23 A. **I don't believe Mr. Smith said anything.**

24 Q. Okay. Well, was he sitting right there?

05:31PM 25 A. **I don't -- nobody said anything. Anne was**

1 talking.  
 2 Q. Right, that was my question.  
 3 A. Right.  
 4 Q. I mean, she was speaking, and the whole -- it's  
 05:31PM 5 not like there was multiple conversations going on in  
 6 the room?  
 7 I mean, you've got one, two, three, four,  
 8 four of y'all there, and Anne walks in?  
 9 A. I can't testify to what the other people were  
 05:32PM 10 doing. I know I was talking to Anne, I was listening to  
 11 Anne.  
 12 Q. All right. And there were four of you there  
 13 present?  
 14 A. Yes, sir.  
 05:32PM 15 Q. And Anne walked in?  
 16 A. Yes, sir.  
 17 Q. Okay. Not a big office?  
 18 A. No.  
 19 Q. So is it -- it's a common like morning  
 05:32PM 20 discussion --  
 21 A. Right.  
 22 Q. -- is that what y'all have there; is that  
 23 right?  
 24 A. Right.  
 05:32PM 25 Q. And everybody has a cup of coffee and talks

1 about the day events?  
 2 A. Right.  
 3 Q. So everybody chimes into other people's  
 4 conversations?  
 05:32PM 5 A. Yes, sir.  
 6 Q. Okay. And there is nothing mentioned in your  
 7 reports or investigation that you did of this offense  
 8 about this conversation, is there?  
 9 A. No, sir.  
 05:32PM 10 Q. And there is nothing in the search warrant  
 11 about that, is there?  
 12 A. No, sir.  
 13 Q. And there is no statement that you made,  
 14 supplement statement, to your report about that, is  
 05:32PM 15 there?  
 16 A. No, sir.  
 17 Q. And when was the first time that you told  
 18 Mr. Tidwell about this?  
 19 A. I -- I don't recall. It had to be sometime  
 05:33PM 20 during the course of our investigation, I don't remember  
 21 when.  
 22 Q. Well, when was that investigation, do you  
 23 remember?  
 24 A. It started in April of '09.  
 05:33PM 25 Q. And so from April '09 until May of '09 is when

1 you got a search warrant, correct?  
 2 A. Yes, sir.  
 3 Q. Nothing in there, reports or anything, to  
 4 supplement that that you had heard this statement or  
 05:33PM 5 used it to establish what Ms. Mitchell had meant to do?  
 6 A. No, sir.  
 7 MR. CARNEY: I'll pass the witness, judge.  
 8 MR. TIDWELL: Nothing further, Your Honor.  
 9 THE COURT: You can step down. Thank you.  
 05:33PM 10 Anybody else?  
 11 MR. TIDWELL: Nobody that's here, Your  
 12 Honor, I'm sorry.  
 13 I'll be glad to resume as early as you  
 14 would like for us to in the morning. I will have the  
 05:34PM 15 people here, and we can do them back to back.  
 16 THE COURT: Okay. Have them here at 8:30.  
 17 MR. TIDWELL: Yes, sir.  
 18 THE COURT: Is that all right?  
 19 MR. CARNEY: Yes, sir, we'll be here.  
 05:34PM 20 THE COURT: There are eight more?  
 21 MR. TIDWELL: Yes, sir.  
 22 THE COURT: We'll see you in the morning  
 23 then unless there is something else we need to do.  
 24 MR. CARNEY: No, sir.  
 25 (COURT ADJOURNED)

1 REPORTER'S CERTIFICATE  
 2 THE STATE OF TEXAS )  
 3  
 4 COUNTY OF ANDREWS )  
 5  
 6 I, Kelly Allen, Official Court Reporter in  
 7 and for the 109th District Court of Andrews County,  
 8 State of Texas, do hereby certify that the above and  
 9 foregoing contains a true and correct transcription of  
 10 all portions of evidence and other proceedings requested  
 11 in writing by counsel for the parties to be included in  
 12 this volume of the Reporter's Record in the above-styled  
 13 and numbered cause, all of which occurred in open court  
 14 or in chambers and were reported by me.  
 15 I further certify that this Reporter's  
 16 Record of the proceedings truly and correctly reflects  
 17 the exhibits, if any, offered by the respective parties.  
 18 I further certify that the total cost for  
 19 the preparation of this Reporter's Record is \$  
 20 and will be paid by Mr. Brian Carney, Attorney for  
 21 Defendant.  
 22 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day  
 23 of \_\_\_\_\_, 2010.  
 24  
 25 Kelly Allen, CSR  
 Official Court Reporter  
 109th District Court  
 Andrews County, Texas  
 Andrews County Courthouse, Room 201  
 Andrews, Texas 79714  
 Phone: (432) 524-1480  
 CSR No. 1618  
 Expiration: 12/31/10

