

Guilt Innocence Phase
August 22, 2017

1 Defense, call your next witness.

2 MR. SECREST: Defense calls Eric Devlin.

3 THE BAILIFF: Your Honor, this witness has
4 not been sworn.

5 **ERIC DEVLIN,**
6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 THE COURT: Defense, you may proceed.

9 MR. SECREST: Thank you, Your Honor.

10 **BY MR. SECREST:**

11 Q. For the record, Eric, will you please state
12 your name and spell it?

13 A. Yes, sir. My name is Eric, and my last name
14 Devlin; D-e-v-l-i-n.

15 Q. Eric, how long have you lived in town.

16 A. I've lived in town for 41 years.

17 Q. Are you married?

18 A. I am.

19 Q. Do you have any children?

20 A. I do, I have two daughters; 12 and 7.

21 Q. Tell us a little bit about your educational
22 background?

23 A. I grew up here in Houston. I went to Kincaid
24 High School. I went to Southern University and
25 Southwest College of Law in Houston.

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1 Q. When did you graduate from law school?

2 A. 2001.

3 Q. Upon graduating from law school, did you get a
4 job?

5 A. I did.

6 Q. Who hired you?

7 A. Harris County Sheriff's Office.

8 Q. And how long did you work at the Harris County
9 Sheriff's District Attorney's Office?

10 A. I started there as an intern in consumer fraud
11 in January of 2000, and I left the office in December of
12 2012.

13 Q. What do you do currently?

14 A. I own a company called the Lonestar Forensic
15 Group.

16 Q. And what is the Lonestar Forensic Group?

17 A. We're a licensed company in the State of Texas
18 specializing in digital forensic, computer, cell phones
19 and tablets, social media, anything that you can power
20 up with electricity and store electronic information, we
21 look at.

22 Q. While I got you under oath, under oath are you
23 a computer nerd?

24 A. I'm incredibly a computer geek. I've tried to
25 hide it for a long time. Eventually, it just caught up

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1 with me.

2 Q. When you were with the District Attorney's
3 Office, did you have an interest in the forensic-type
4 legal issues?

5 A. Yes. I started up a group called the Internet
6 Crime Against Children Task Force. I started up the
7 Houston group on it, and I supervised the Child
8 Exploitation Task Force. We specialized in combating
9 child exploitation on the internet and other cyber-type
10 situations.

11 Q. And have I asked you to perform any analysis of
12 anything in this case?

13 A. Yes, sir.

14 Q. And what is it that I asked you to do?

15 A. You asked me to coordinate with the Harris
16 County Sheriff's Department to pick up several harddrive
17 images, and examine those harddrive images for activities
18 specifically focusing on activity on December 22, 2012.

19 Q. And what was it that you -- did you actually
20 pick up anything from the Harris County Sheriff's
21 Department that you later was able to examine?

22 A. Yes, sir. I picked up from Harris County
23 Sheriff's Deputy Russell Aculei {phonetic}, three
24 computer images that are exact copies of computer hard
25 drives from devices seized in the case. They were given

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1 to me on a hard drive. I transported back to my lab
2 where I did the investigation.

3 Q. And before you came into the possession of the
4 the forensic data, my word, was it your understanding
5 that in fact the Harris County Sheriff's Department had
6 attempted to analyze the contents of the Melgars' cell
7 phones and their computers?

8 A. Yes, sir.

9 Q. And why -- just from a technical viewpoint, why
10 would you analyze cell phones and computers from a
11 quote/unquote crime scene? Why would you do that?

12 A. Your cell phones and computers nowadays have an
13 absolute wealth of information. People think you can
14 delete things or remove things off there. It's very,
15 very difficult to do that without leaving evidence of
16 that. Anything you search, anything you visit, any
17 activity you do on these devices are kept and logged,
18 and they can be recovered, deleted for incredible
19 amounts of time.

20 I had one detective, you know, when asked,
21 would you rather have some fingerprints at a murder
22 scene, or would you rather have a cell phone. He said,
23 I would rather have the cell phone. Fingerprint can
24 tell me that he was there, the cell phone can tell me
25 why.

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1 Q. What is the Greater Houston Regional Forensic
2 Laboratory?

3 A. They are a cooperative laboratory with a
4 variety of law enforcement agencies headed up by the
5 FBI. They perform variety of computer forensics for all
6 kind fo agencies. Some agencies have their own
7 forensics labs, like the Harris County District
8 Attorney's Office. It's very, very expensive to start
9 up. A lot of smaller agencies don't. Other agencies
10 join because you get a great cooperative effort and a
11 lot funding, a lot of great training. So I think very
12 highly of it.

13 Q. And is it your understanding that those folks
14 that you think very highly of scrutinize the hard drives
15 from the cell phones and computers in this case?

16 A. Yes, sir. The computers were examined by a
17 sheriff's detectives named John Husky, who I've worked
18 with for many, many, many years doing the ICAT. I
19 thought he was a very good examiner. And he is retired
20 now and living the good life, I think. But I know he
21 examined the computers. Cell phones are usually -- at
22 that time were usually done by the initial detectives.
23 I disagree with that policy. Cell phones, while they
24 look simple to be examined, can be very complicated to
25 analyze. It's better to have someone trained in that

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1 specific in that area. They do that now. I don't
2 recall who did it back then.

3 Q. Well, I going to say I don't want you to, but
4 maybe I do. Can you grade the paper of the examination
5 that was done by law enforcement on the computers
6 compared to the examination you have done?

7 A. I have some -- I have some additional tools. I
8 know John Husky very well. I think he's very, very
9 good. I think he did a good thorough investigation of
10 the computer.

11 Q. In any event, after you have gained access to
12 exactly what it was that those folks had looked at, did
13 you then do a complete forensic analysis of all that
14 data?

15 A. Yes, sir.

16 Q. Okay. And after you did that, did you prepare
17 a report indicating what your findings were?

18 A. Yes, sir.

19 MR. SECREST: Can I approach the witness?

20 THE COURT: You may.

21 MR. SECREST: I'm going to show you
22 hopefully what's been marked as Defendant Exhibit 41,
23 Judge, does that sound about right?

24 THE COURT: Let's see here; that is
25 correct.

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1 MR. SECREST: Thank you.

2 Q. (BY MR. SECREST) Eric, look at Defense Exhibit
3 41. Do you recognize what that is?

4 A. Yes, sir.

5 Q. What is it?

6 A. It's a copy of my written report.

7 MR. SECREST: Your Honor, at this time I
8 would offer into evidence Defense Exhibit 41 and tender
9 to counsel.

10 MS. BARNETT: May I ask the witness a
11 couple of questions?

12 THE COURT: Sure. You may proceed.

13 **VOIR DIRE EXAMINATION**

14 **BY MS. BARNETT:**

15 Q. When did you prepare this report?

16 A. Shortly after completing my examination.

17 Q. Which was?

18 A. Which would have been in 2015.

19 MS. BARNETT: No objection.

20 THE COURT: Defense Exhibit 41 is
21 admitted, and you may publish it to the jury.

22 Q. (BY MR. SECREST) Mr. Devlin, walk us through
23 basically the steps that would be involved in such an
24 examination. What is it that you're doing, what is it
25 that you're looking for?

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1 A. In this case I traveled to the Greater Houston
2 RCFL Regional Computer Forensic Lab. Met with Detective
3 Aculei, and picked up several hard drives that contained
4 the forensic images. These are bit for bit copies, the
5 hard drive in those computers. One of the neat things
6 about these things is when the forensic image is
7 created, it's created in what's called a Incase Evidence
8 Format. So it's right locked, it's not supposed to be
9 able to be changed or adjust it in any way.

10 Once the image is created, the image is
11 hashed. That's kind of like an electronic fingerprint
12 of that file. When I receive it, I'm able to then
13 rehash the image and make sure that I get the same hash
14 value as they did originally, ensuring that the data I
15 have has not been changed since they created that
16 forensic evidence.

17 From there I then load it and process it.
18 There's a variety of forensic tools out there. Some of
19 them are very popular, some of them are not so popular.
20 You honestly pay for what you get when you're talking
21 about forensic tools.

22 I use Access Data's forensic tool kit. My
23 first tool, this the same tool that the FBI uses, that
24 local law enforcement uses, same tool that John Husky
25 used in his primary examination.

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1 From there I'm able to sort everything
2 from activity, registry files, mail, Internet searches,
3 photographs, images, all kind of activity.

4 I then did do the secondary examination
5 using another tool called Internet Evidence Finder. In
6 your modern computers much of your storage space on
7 those devices are done through browser-based formats.
8 So everything that somebody has searched every page they
9 visited, even if you clear your history, is recoverable.
10 So in that case I went through and did a complete
11 examination using that secondary tool. And one of the
12 unique things is I can also create a timeline regarding
13 activity on a device. If you tell me on a particular
14 date, and time, and second, this is what was happening
15 on the device based upon log files, registry files all
16 the other files on the device.

17 Q. Let's start with that as far as use of the
18 various computers. What did your analysis show in that
19 regard?

20 A. I found three devices. Neither device had any
21 significant activity, any significant user activity
22 between the hours of about 7:40 p.m. on December 22nd
23 and December 23rd around 4:00 p.m.

24 There were occasional activity within that
25 period, but they're called Windows Pre-fetched Files,

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1 other Windows log files. If you are sitting at your
2 computer and operating it and manipulating it and going
3 to different types of websites or e-mail, all of that
4 stuff is tracked. If you are not sitting at the
5 computer, that doesn't mean that the computer is just
6 sitting there not doing anything. Modern computers are
7 all the time communicating with itself, making sure that
8 certain things are running correctly, and it log
9 everything. So you see a lot of files that are
10 constantly being used that are not evidence of actual
11 user activity.

12 Q. So bottom line, based upon your experience,
13 were you convinced that those devices were not in use by
14 a human being during the hours you just mentioned?

15 A. Correct.

16 Q. Okay. Did you see any indication of any kind
17 of quote/unquote boyfriend, girlfriend, kind of extra
18 marital relationships based upon anything you saw on the
19 computer?

20 A. No, sir.

21 Q. In law enforcement some kind of a protocol that
22 you especially use in murder cases?

23 A. Protocol?

24 Q. Again, my word is there certain words searches
25 that in experience are useful in using while

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1 investigating a case of a murder?

2 A. Most examiners create what they call Search
3 Term List. And these are basically you can apply the
4 search to the entire device. And it's everything from
5 documents created within there, to Internet searches, to
6 registry files, to even stuff like deleted items. And
7 you find common terms, search terms that you often apply
8 in those cases. And it depends upon different cases.

9 On divorce cases, I quite often search for
10 all type of dating sites. I search for money transfers,
11 that kind of thing. In a homicide case, a lot of it
12 depends on the type of homicide. If it's done by a
13 firearm, or a knife, or done with that type of thing.
14 In addition on a normal homicide case, we look for
15 motive, money, infidelity, those kinds of things. So we
16 search for life insurance, you know, bank transfers,
17 financial transfers, that kind of thing.

18 Q. And did you, in fact, do that in this case?

19 A. I have a homicide search term list that is
20 actually from a prosecution perspective because of work
21 that I do in other cases. So I did apply that to this
22 case.

23 Q. And you said it's from a prosecution
24 perspective. I take it then there might be other
25 experts that would apply a group of different word

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1 searches?

2 A. I hope not. The thing about computer forensic
3 analysis, if you've got a good one or a real one, they
4 should be just presenting whatever information they
5 have. I know very little about the actual case, and
6 that's by intent. I don't want to be biased or
7 influenced. I will be given some certain information,
8 but that's about it.

9 Q. What specific terms did you apply in this case
10 that you thought would be useful in conducting a
11 transparent review of the computers?

12 A. I received information that some sort of knot
13 tying was important. I am a boy scout, so I was pretty
14 good at knot tying and everything else. I'm also a
15 sailor with my father-in-law, but I don't know all the
16 names for knots. But I did do a very extensive search
17 for any type of knot tying web sites, that type of
18 thing.

19 I also did an extensive search on
20 insurance. And I did receive a lot of hits on
21 insurance. They turned out to be hits regarding health
22 insurance.

23 Q. Okay. Did you see anything at all in your
24 examination of the computers that cause you any pause?

25 A. No, sir.

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1 MR. SECREST: Pass the witness.

2 THE COURT: Cross-examination, you may
3 proceed.

4 MS. BARNETT: May I approach the witness?

5 THE COURT: You may.

6 **CROSS-EXAMINATION**

7 **BY MS. BARNETT:**

8 Q. Mr. Devlin, I'm showing you 570. Does that
9 look like a professional knot?

10 A. I have no idea what it looks like. It could
11 be. But I've got to be honest, I don't know what it is.
12 I would have to have a name or a word. It doesn't look
13 like any sailing knot I'm used to.

14 Q. Does it look like an expert tied that knot?

15 A. I don't know.

16 Q. Does it look like a knot?

17 A. It does look like a knot.

18 Q. Does it look like it's working as a knot?

19 A. I don't know. Can I see it?

20 Q. Please.

21 A. Doesn't seem very tight.

22 Q. But it is a knot?

23 A. Yes, ma'am.

24 Q. And by not seeming very tight, does that seem
25 to indicate that somebody might be able to loosen it very

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1 easily?

2 A. I don't know what state it was when it was
3 found.

4 Q. Showing you 571 and 572. Does that look like a
5 professional knot to you?

6 A. I don't know.

7 Q. Does it look like a knot?

8 A. It does.

9 Q. Do you have an opinion about that knot?

10 A. No.

11 Q. You said that -- well, certainly can you agree
12 that someone doesn't have to be a sailer a Boy Scout or
13 Girl Scout or having to go to the Houston School of
14 Knots, if there is one, to tie a knot?

15 A. Absolutely correct.

16 Q. And you can tie a knot, and it can an
17 enforceable knot, right?

18 A. Absolutely correct.

19 Q. And you don't have to have school hours to tie
20 a knot?

21 A. I don't think so.

22 Q. And also as to this timeframe of December 22nd
23 from 7:40 p.m. to December 23rd, 4:00 p.m., you said
24 there was no computer usage, right?

25 A. There was no user usage.

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1 Q. What is that?

2 A. There was computer activity, but they were
3 Windows log files, activity that the computer will
4 normally log and create without any user input.

5 Q. And I'm not really interested in that. I think
6 you're testifying that no one logged on or off of the
7 computer during that time; is that right?

8 A. Correct.

9 Q. And that could be that that person is busy
10 cleaning up blood, right?

11 A. There could be a million reasons.

12 Q. Could be busy tieing them up?

13 A. Could be.

14 Q. Could be they're busy stabbing their husband?

15 A. Could be.

16 Q. And you don't know why the person is not logged
17 on, if there's somebody there, right?

18 A. That's very much individual users. Some people
19 log on all the time, some people don't use it very often
20 at all.

21 Q. And it could be because they're committing a
22 crime?

23 A. I have no knowledge whatsoever.

24 Q. And you have no opinion, and I'm taking it
25 because you don't know anything about the case, whether

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1 or not Sandra Melgar is guilty of the crime committed,
2 right?

3 A. No.

4 Q. And you don't have an opinion?

5 A. No, ma'am.

6 MS. BARNETT: Pass the witness.

7 THE COURT: Any redirect?

8 MR. SECREST: Just a few questions. I'll
9 be brief.

10 THE COURT: Okay.

11 **REDIRECT EXAMINATION**

12 **BY MR. SECREST:**

13 Q. Counsel showed you those knots, which about
14 every other witness gets to see. So let me ask you
15 this: Do you have any idea, any personal knowledge,
16 Eric, what the condition of those ligatures or those
17 pieces of cloth were in at the time they were found?

18 A. I was not at the crime scene, so I didn't see
19 it. I don't know.

20 Q. Are you aware that in fact two individuals
21 attempted to untie those knots, and ultimately were not
22 able to do so, so they had to be cut off of her; did you
23 know that?

24 MS. BARNETT: That's a misstatement of the
25 evidence, and I would object to that.

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1 MR. SECREST: It's a fair statement.

2 THE COURT: Re-ask your question.

3 Q. (BY MR. SECREST) Are you aware that Herman
4 Melgar and his wife, maria Melgar, came to the Melgar
5 home on the afternoon of December 23rd, finding Sandy in
6 the closet, locked in --

7 MS. BARNETT: I object to leadign and
8 testifying for the witness.

9 MR. SECREST: I'm asking if he's aware of
10 something. Let me get it out and finish my question.

11 THE COURT: All right. Finish your
12 question. Overruled.

13 MR. SECREST: Thank you.

14 Q. (BY MR. SECREST) That she was found in the
15 closet, and that both Herman Melgar and Maria Melgar
16 tried to untie Sandy, but they could not do so because
17 she was tied so tightly. Are you aware of that?

18 A. I wasn't present, I don't have any personal
19 knowledge.

20 Q. Fair enough.

21 Let me ask you, word searches, do you have
22 your report in front of you?

23 A. Yes, sir.

24 Q. I can save everybody some time. You have page
25 after page of knots. Page 59, of your report, sir.

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1 A. Yes, sir.

2 Q. Read for me -- actually read for me the search
3 terms you used up to the point you get to all the knots,
4 the different type of sailor knots and Boy Scout knots,

5 A. Yes, sir.

6 Murder, homicide, hitman, hired killer,
7 hired gun, insurance, coverup, murder, get away with
8 murder, clean a murder, knot tieing, chair.

9 Q. And the next page?

10 A. Closet, robbery, home invasion, kill, battered
11 spouse, assault, staged, autopsy, crime scene, staged
12 crime scene, stage a crime scene, adjustable grip hitch.
13 That's where I started get into the knots.

14 And I don't have any personal knowledge of
15 these knots. I literally found a website with every
16 conceivable knot made in the world that I could find.

17 Q. Okay. But based upon these words you just read
18 into the record, nothing came up that bothered you at
19 all?

20 A. Correct. The first set are within my normal
21 homicide search list.

22 Q. Any kind of communication, as far as text
23 messages or e-mails, that you looked that caused you any
24 kind of concern?

25 A. No concern.

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1 MR. SECREST: Pass the witness.

2 THE COURT: Any re-cross?

3 MS. BARNETT: No, Judge.

4 THE COURT: May this witness be excused?

5 MS. BARNETT: Yes.

6 Defense, call your next witness.

7 MR. SECREST: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. SECREST: Your Honor, the Defense
11 rest.

12 THE COURT: Defense rest.

13 What says State?

14 MS. BARNETT: State rest and closes.

15 THE COURT: Both sides rest and close.

16 Now comes time for the Court to prepare
17 the Court's charge that I will read to you and it
18 contains all law in this case for you to apply.

19 So with that, we're going to retire the
20 jury while we prepare the Court charge.

21 You are going out today, so maybe I can
22 talk Barry into taking you out a little bit earlier.

23 And when you get back, we'll be ready to go.

24 THE BAILIFF: All rise for the jury.

25 THE COURT: State, you want to offer which