

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEMAR MATTHEWS, vs. THE STATE OF NEVADA, 	Appellant, Respondent,	Supreme Court No. 62241 APPELLANT'S APPENDIX VOLUME V	Electronically Filed Aug 14 2013 01:52 p.m. Tracie K. Lindeman Clerk of Supreme Court
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APPELLANT'S INDEX VOLUME V

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I hereby certify that on the 12th day of August, 2013, a true and copy of above and foregoing APPELANTS APPENDIX VOL. V was served on all counsel via the Court's electronic filing system to all counsel of record listed below:

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1 anybody or were you working alone?

2 A. I was working with a team of crime scene
3 analysts.

4 Q. And who else was on the team with you that
5 evening?

6 A. I was working with senior crime scene analyst
7 Bill Speas and crime scene analyst supervisor
8 Randall McGlaughlin (phonetic).

9 Q. And working in conjunction with these other crime
10 analysts, did you have duties that were divided amongst
11 yourselves?

12 A. Yes. My duties on that evening were to collect
13 any and all physical evidence, and I also completed
14 crime scene diagrams.

15 Q. Okay. And you responded to a vehicle that was
16 crashed in the vicinity of Lexington and Doolittle; is
17 that correct?

18 A. Correct.

19 Q. Is that the first location you went to?

20 A. No. We responded to the J Street address first.

21 Q. Okay. And when you responded to the J Street,
22 what was the first thing that you did there?

23 A. Once we arrived at the scene, we received a
24 briefing from the detectives that had initially
25 responded on the scene as well as from homicide

1 detectives.

2 Q. Okay. And why is it important to have that
3 briefing?

4 A. We need the briefing to understand what
5 information has been gathered up to that point so we
6 know what we're looking for, what areas we need to focus
7 on for our search and also what areas maybe we need to
8 focus on that haven't been searched or looked at, and
9 it's also to -- just to gather the basic story of what
10 happened.

11 Q. Okay. And after you received that briefing, what
12 did you do as a result?

13 A. Once we received our briefing, we then walked
14 through the crime scene. As a crime scene unit we
15 decided what we were going to do, how we were going to
16 proceed next, what evidence we were going to collect,
17 where we were going to start photography, things of that
18 nature.

19 Q. Okay. And so where did you start first?

20 A. We focus our attention first on the set of
21 dumpsters inside the parking lot area at 1701 J Street.
22 We also focused our attention on some vehicles that were
23 parked in there as well.

24 Q. Okay. And did you take the photographs or did
25 William Speas take those?

1 A. He took the photographs.

2 Q. But were you with him when he did those?

3 A. Yes.

4 Q. So you're familiar with the scene and the areas
5 that he photographed?

6 A. Yes.

7 Q. Okay. And did you collect any evidence from that
8 location there on J Street?

9 A. Yes, I did. I recovered a .45 caliber Glock
10 handgun which contained a magazine in the grips as well
11 as a cartridge, numerous cartridges, inside the weapon.
12 I also recovered a pair of black gloves, baseball
13 or like batting type gloves.

14 I also recovered a watch, a set of teeth
15 covering, just miscellaneous items that we found on top
16 of the vehicle that was parked adjacent to the dumpster
17 area.

18 Q. Okay. So when you arrived there, the Glock
19 firearm that you just referenced, that was on top of a
20 vehicle?

21 A. No. That was actually inside the south dumpster.
22 There were a set of two dumpsters in the parking lot
23 area where we responded. Inside the southern most
24 dumpster we recovered the Glock firearm.

25 Q. Okay. And what else did you recover from the

1 dumpster besides the firearm?

2 A. We also or I also recovered a set -- the set of
3 baseball gloves that I mentioned before.

4 Q. Besides the gloves and the gun, did you recover
5 anything else from that dumpster?

6 A. No.

7 Q. And were those items photographed the way they
8 were found in the dumpster that evening?

9 A. Yes.

10 MS. LEWIS: May I approach?

11 THE COURT: You may.

12 BY MS. LEWIS:

13 Q. Showing you what's been marked as (indiscernible)
14 State's Proposed Exhibits 111 through 118. Take a look
15 at those to yourself and tell us if you recognize them.

16 A. I do.

17 Q. And do those photographs fairly and accurately
18 depict the area around that dumpster as you saw it that
19 evening on September 30th, 2006?

20 A. Yes.

21 MS. LEWIS: Judge, I'd move for the
22 admission of State's Proposed 111 through 118,
23 inclusive.

24 THE COURT: Any objection?

25 MR. BUNIN: No.

1 MR. FIGLER: Submit it, Your Honor.

2 THE COURT: They're admitted.

3 (Plaintiff's Exhibit Nos. 111-118 admitted)

4 BY MS. LEWIS:

5 Q. I'm showing you what's been marked as State's
6 Proposed Exhibit 10 and 12. Do you recognize these
7 items?

8 A. Yes.

9 Q. And how do you recognize them?

10 A. These items have my signature on the front label
11 as well as my P number which is also my identification
12 number with the department as well as my initials and
13 date that I placed on the seals.

14 Q. Both 10 and 12 do?

15 A. Yes.

16 Q. And are those items that you recovered the
17 evening of September 30th, 2006, from the dumpster?

18 A. Yes.

19 MS. LEWIS: Judge, I'd move for the
20 admission of State's Proposed 10 and 12.

21 THE COURT: Any objection?

22 MR. FIGLER: Submit it, Your Honor.

23 MR. SINGER: Judge, can we have a side bar?

24 THE COURT: Yes.

25 (Off-record bench conference)

1 THE COURT: Any objection?

2 MR. SINGER: None, Judge.

3 THE COURT: They'll be admitted.

4 (Plaintiff's Exhibit Nos. 10 and 12 admitted)

5 THE CLERK: 110 and 11 or --

6 MS. LEWIS: 10 and 12.

7 THE CLERK: 10 and 12.

8 MS. LEWIS: Permission to publish some
9 items, Judge.

10 THE COURT: Yes.

11 BY MS. LEWIS:

12 Q. I'm showing you State's 112. Are those the
13 dumpsters that you responded to on J Street?

14 A. Yes.

15 Q. And which dumpster is it that you recovered the
16 items from? You can mark on that screen and it will
17 show up. You can use your finger to make marks.

18 A. Okay. I believe it's going to be the
19 southern-most dumpster here which would be located in
20 this area. North would be this -- pointing this way.

21 Q. Okay. So the one that's further in the picture?

22 A. I believe so, yes.

23 Q. Okay. Would you have documented that in a
24 report?

25 A. Yes.

1 Q. Would it refresh your recollection to review your
2 report to make sure?

3 A. Yes.

4 Q. It sounds like you're not sure.

5 A. I just want to double-check before I -- yes, I
6 have it as the south dumpster which would be the one on
7 the left here in the photograph.

8 Q. Okay. And showing you State's 113, is that the
9 interior of the dumpster?

10 A. Yes.

11 Q. And this is how the dumpster appeared with the
12 trash as we see it here? And you didn't do anything to
13 move this around?

14 A. This is how it appeared when we arrived.

15 Q. Okay. And can you see the items in that picture
16 that you retrieved?

17 A. You can partially see the gloves in this area
18 here, and the firearm is in that same area as well.

19 Q. Okay. So the black items that you circled there,
20 you're saying those were gloves?

21 A. Yes.

22 Q. And, in fact, 114, is that a close-up of that?

23 A. Yes, it is.

24 Q. And where is the gun that you were referencing?
25 Can you see it in that picture?

1 A. You can see partially from maybe the top view
2 here, right next to that garbage bag.

3 Q. Okay. Is 115 a close-up of that?

4 A. Yes.

5 Q. How did you retrieve the gun from the trash and
6 the gloves?

7 A. Once those items were photographed and placed, I
8 then wearing my gloves in order to preserve any evidence
9 that may have been present on those items, I then
10 removed them from the garbage can.

11 Q. Okay. And State's 116, what is that a photograph
12 of?

13 A. This is a picture of the Glock .45 firearm that
14 we recovered from the dumpster. This is the condition
15 that we found it in once we removed it want. It hasn't
16 been manipulated. It's simply just been removed from
17 the garbage can and placed on that bag to be
18 photographed.

19 Q. Okay. So at the bottom here on top of that
20 roller, is that the magazine?

21 A. Yes.

22 Q. And that's how -- the condition it was? Is that
23 hanging out?

24 A. It is fully in place inside the grips. It's just
25 a longer magazine, so it extends further out.

1 Q. Okay. And State's 118, is that the same firearm
2 but with the magazine removed?

3 A. This is a photograph showing that same firearm
4 with the magazine removed. Also, you can see on the top
5 there's a cartridge right above the weapon. That was
6 the cartridge that was removed from the chamber, and all
7 we simply did was just remove it to show that we did
8 find one in the chamber.

9 Q. Okay. And the two items in front of you that you
10 identified as State's Exhibit 10 and 12, 10 being the
11 box and 12 being the envelope, which is -- what's what
12 in those two items?

13 A. The box marked as item number 10 or Exhibit No.
14 10 is the Glock handgun that we just mentioned. State's
15 Exhibit No. 12 is the gloves that we removed from the
16 dumpster.

17 Q. Okay. And can you tell if those items that you
18 placed in there were handled by anybody else after you
19 would have placed them in there?

20 A. Yes.

21 Q. And how can you tell that?

22 A. The seals that is I placed on the package when I
23 originally sealed everything up and submitted it for
24 secure holding would be the red seals. The blue seals
25 indicates the package has been opened by somebody else

1 and resealed, and there's initials and dates are on
2 those as well.

3 Q. Okay. And can you tell us who is the somebody
4 else that you're referring to with the blue seal?

5 A. On the package containing the gloves, State's
6 Exhibit 12, I believe it's going to be -- I can't read
7 the writing on the bottom. It's going to be the person
8 assigned with personnel number 8691 from 4/5 of '07 is
9 when the package was opened.

10 And the State's Exhibit No. 10 which is the Glock
11 firearm was opened by a firearms examiner James Krylo on
12 October 25th of '06.

13 Q. Okay. The numbers that you read off of the
14 package which is Exhibit 12 -- I'm sorry. Where were
15 you reading from?

16 A. I was referring here to the chain of custody
17 which has the name and personnel number of the person
18 who handled the item.

19 Q. Okay. And does everybody have a personnel number
20 that's unique to that specific person?

21 A. Yes.

22 Q. Okay. And you just don't know whose personnel
23 number this is?

24 A. I -- no. I can't read the writing.

25 Q. Okay. What about the seal at the bottom of this

1 envelope that is not red or blue?

2 A. This seal here? This is -- states it's from the
3 Bexar County Crime Laboratory.

4 Q. Okay. You don't --

5 A. That's not something that I recognize from our
6 department.

7 Q. Would that be indicative that somebody from that
8 agency also opened that package?

9 A. Yes.

10 Q. Okay. So you've got multiple people opening that
11 package after you placed those items in there?

12 A. Yes.

13 Q. Okay. Did you do anything else at the J Street
14 location besides the items that you've just described
15 for us that you impounded and the photographs that were
16 taken there?

17 A. I recovered miscellaneous items from the hood of
18 the red vehicle that was parked in front of the dumpster
19 area that was in that photograph. There were several
20 items that were on top of the hood that I recovered. If
21 I can refer to my report for specifics.

22 Q. I think you told us --

23 A. I recovered a cell phone, a do-rag and a set of
24 keys, as well as a quarter, U.S. coin currency, as well
25 as a set of teeth covering with -- it has -- it was

1 yellow metal. They were teeth coverings. And then on
2 the pavement right next to the dumpster area, there was
3 also a watch that I recovered, a wrist watch.

4 Q. Where did you go after the area at J Street?

5 A. Once we completed our investigation at J Street,
6 we then responded to the corner of Lexington and
7 Doolittle.

8 Q. Okay. And what was at the corner of Lexington
9 and Doolittle?

10 A. We had a vehicle that was involved in an
11 accident. It was in contact with a fire hydrant up on a
12 sidewalk area in front of a church.

13 We also had a rifle on the -- in the grass area
14 that was just north of the vehicle as well as a plastic
15 cup holder was right next to the rifle, so we had those
16 two items.

17 We also had some cartridge cases that were on the
18 pavement in the scene as well.

19 Q. Showing you what's been marked as State's
20 Proposed Exhibit 149, do you recognize that vehicle?

21 A. Yes, I do.

22 Q. And is that the vehicle that you responded to
23 that evening at Lexington and Doolittle?

24 A. Yes.

25 Q. Is that a fair and accurate depiction of how it

1 looked that evening?

2 A. Yes, it is.

3 MS. LEWIS: Judge, I'd move for the
4 admission of State's 149.

5 THE COURT: Any objection?

6 MR. FIGLER: Submitted, Your Honor.

7 MR. SINGER: No, Judge.

8 THE COURT: It's admitted.

9 (Plaintiff's Exhibit No. 149 admitted)

10 BY MS. LEWIS:

11 Q. And again, who took these photographs of the
12 vehicle at that scene?

13 A. William Speas did the photography on the scene as
14 well.

15 Q. Inside and out?

16 A. Yes.

17 Q. And you were present for that?

18 A. Yes, I was.

19 Q. Okay. Showing you 152, the interior portion of
20 that vehicle, do you recognize the item there depicted
21 there on the floor?

22 A. Yes. That's a .45 Colt semiautomatic handgun
23 that was on the front right passenger floor board of
24 that vehicle.

25 Q. Okay. And State's 153, is that a close-up of

1 that as well?

2 A. Yes, it is.

3 Q. And what is that black item that appears to be
4 sitting next to that?

5 A. I'm -- which specifically -- which item are you
6 referring to specifically?

7 Q. In front of the gun.

8 A. This right here?

9 Q. Yep. Do you know what that is? Here, let me
10 show you the picture close-up.

11 A. Okay. I don't think I can see it.

12 Q. If you know.

13 A. I can't tell specifically what that is just from
14 the photo.

15 Q. It's not part of the gun, though, is it?

16 A. No.

17 Q. Is that how you found the gun when you arrived?

18 A. Yes.

19 Q. And what did you do after it was photographed?

20 A. Once it was photographed, I then, as I had done
21 before with the items in the dumpster and the other
22 items at the J Street address, I then placed gloves onto
23 protect the firearm and any evidence that was present on
24 the firearm and we removed it from the vehicle.

25 Q. Okay. Showing you State's Proposed Exhibit

1 No. 8, do you recognize that box?

2 A. Yes, I do.

3 Q. And how do you recognize that?

4 A. Again, this has my signature on the front label
5 as well as my name and personnel number. It also has
6 the seals that I placed on there with my initials with a
7 date.

8 Q. Okay. And is that the item that you encountered
9 that evening?

10 A. Yes, it is.

11 MS. LEWIS: Judge, I'd move for the
12 admission of State's Proposed 8.

13 THE COURT: Any objection?

14 MR. FIGLER: Submitted.

15 MR. SINGER: No objection.

16 THE COURT: It's admitted.

17 (Plaintiff's Exhibit No. 8 admitted)

18 MS. LEWIS: Thank you.

19 BY MS. LEWIS:

20 Q. Can you tell if State's Proposed Exhibit 8 has
21 been altered in any way since you impounded it?

22 A. It has.

23 Q. And what can you tell that was done to it?

24 A. It has been opened and the front chain of custody
25 labels signed with James Krylo's name and P number as

1 well as it has his seals with his initials and the date
2 on it as well.

3 Q. Okay. Showing you what's marked as State's
4 Proposed No. 5, do you recognize that item?

5 A. Yes, I do.

6 Q. And how do you recognize that?

7 A. This also has my signature, initials and
8 personnel number on the front label as well as my labels
9 with the -- my initials and date on them.

10 Q. Okay. And is that an item that you impounded
11 that evening as well?

12 A. Yes.

13 Q. And is that -- can you tell if that has been
14 altered in any way since you impounded it?

15 A. Yes. This has also been opened and resealed by
16 firearms examiner James Krylo.

17 Q. And other than that, is it in the same condition
18 as when you impounded it?

19 A. Yes.

20 MS. LEWIS: Judge, I'd move for the
21 admission of State's Proposed 5.

22 THE COURT: Any objection?

23 MR. FIGLER: Submitted.

24 MR. SINGER: No, Judge.

25 THE COURT: It's admitted.

1 (Plaintiff's Exhibit No. 5 admitted)

2 BY MS. LEWIS:

3 Q. Was that item also photographed as well before it
4 was impounded?

5 A. Yes, it was.

6 MS. LEWIS: Court's indulgence.

7 BY MS. LEWIS:

8 Q. Showing you State's Exhibit 157, do you recognize
9 what?

10 A. Yes.

11 Q. What is that?

12 A. That's the grass area in front of the church.
13 That's just located north of where that vehicle was
14 crashed into the fire hydrant.

15 Q. And 158, is what a close-up of that item in 157?

16 A. Yes, it is.

17 Q. And is that the item that you impounded?

18 A. Yes.

19 Q. And is that the same item that's in that box in
20 front of you, State's Exhibit 5?

21 A. Yes.

22 Q. I forgot to ask you, the firearm in the box,
23 State's Exhibit No. 8, the Colt firearm, did that one
24 have any bullets in the chamber?

25 A. Yes.

1 Q. And how many did it have?

2 A. It had one cartridge inside the chamber.

3 However, it was jammed inside the chamber.

4 Q. Okay. So it had that long -- extra long
5 magazine?

6 A. The Colt firearm from the vehicle?

7 Q. Right.

8 A. It had a -- I believe it was just a --

9 Q. Just a regular magazine?

10 A. -- just a regular size magazine, yes.

11 Q. Did the magazine have any bullets in it?

12 A. I believe so. The magazine of the .45 caliber
13 Colt firearm --

14 MR. FIGLER: And I'll just note for the
15 record, Judge, that the witness needed to look at the
16 report to refresh her recollection.

17 THE COURT: The record should -- will so
18 note.

19 You can answer the question.

20 THE WITNESS: Okay. The magazine that was
21 inside the grips, it contained six cartridges.

22 BY MS. LEWIS:

23 Q. Okay. So inside the magazine were cartridges,
24 unspent cartridges?

25 A. Correct.

1 Q. Correct? And then there was a bullet in the
2 chamber that was jammed.

3 A. There was a jammed cartridge inside the chamber.
4 Yes.

5 Q. Okay. Showing you State's Proposed Exhibit 6, do
6 you recognize that item?

7 A. Yes.

8 Q. And how do you recognize that?

9 A. The label on the front has my signature, my name
10 and personnel number, as well as my initials with the
11 date on the back seal.

12 Q. And did you impound that item?

13 A. Yes, I did.

14 Q. And can you tell if that item has been handled in
15 any way since you impounded it?

16 A. This item has also been opened and resealed by
17 firearm examiners James Krylo.

18 Q. Other than that, is it in the same condition as
19 when you impounded it?

20 A. Yes.

21 MS. LEWIS: Judge, I'd move for the
22 admission of State's Proposed Exhibit 6.

23 THE COURT: Any objection?

24 MR. FIGLER: Submitted.

25 MR. SINGER: No, Judge.

1 THE COURT: It's admitted.

2 (Plaintiff's Exhibit No. 6 admitted)

3 BY MS. LEWIS:

4 Q. And showing you State's Proposed Exhibit 9, do
5 you recognize that?

6 A. Yes.

7 Q. (Indiscernible).

8 A. This package also has my signature, name and
9 personnel number on the front label, as well as my
10 initials with the date on the evidence seal label.

11 Q. And can you tell if that package has been handled
12 in any way since you impounded it?

13 A. Yes. This package has also been opened and
14 resealed by firearms examiner James Krylo.

15 Q. And other than that, is it in the same condition
16 as when you impounded it?

17 A. It is.

18 MS. LEWIS: I move for the admission of
19 State's Proposed Exhibit 9.

20 THE COURT: Any objection?

21 MR. FIGLER: Submitted, Judge.

22 MR. SINGER: No, Judge.

23 THE COURT: It's admitted.

24 (Plaintiff's Exhibit No. 9 admitted)

25 //

1 BY MS. LEWIS:

2 Q. What is State's Proposed 9?

3 A. This package contains the cartridge, the magazine
4 and the cartridges that were inside the magazine that
5 were recovered from the Colt .45 handgun from inside the
6 vehicle.

7 Q. And I forgot to ask you what was inside No. 6.

8 A. No. 6 contains the plastic magazine and the -- a
9 cartridge that were recovered from the -- this rifle
10 here that was on the grass area.

11 Q. Okay. And showing you State's Proposed
12 Exhibit 11, do you recognize that item?

13 A. Yes, I do.

14 Q. And how do you recognize that?

15 A. The label has my signature, my name and personnel
16 number on the front, as well as my initials with the
17 date on the evidence seal.

18 Q. Okay. And can you tell if that item has been
19 handled by anybody else since you impounded it?

20 A. This item has also been opened and resealed by
21 firearms examiner James Krylo.

22 Q. Other than that, is it in the same company as
23 when you impounded it?

24 A. Yes.

25 MS. LEWIS: Judge, I move for the admission

1 of State's Proposed Exhibit -- I lost the number.

2 THE WITNESS: 11.

3 MS. LEWIS: 11.

4 THE COURT: Any objection?

5 MR. FIGLER: Submitted.

6 MR. SINGER: No, Judge.

7 THE COURT: It's admitted.

8 (Plaintiff's Exhibit No. 11 admitted)

9 BY MS. LEWIS:

10 Q. And what is inside State's Exhibit 11?

11 A. This package contains the cartridges and the
12 magazine that were removed from the Glock .45 caliber
13 firearm recovered from the dumpster.

14 Q. And showing you State's Proposed Exhibit No. 4,
15 do you recognize that?

16 A. Yes, I do.

17 Q. And how do you recognize that?

18 A. This has my signature with my name and personnel
19 number on the front label, as well as my initials with
20 the date on the evidence seal.

21 Q. And can you tell if that package has been handled
22 in any way since you impounded it?

23 A. It has been opened by firearms examiner
24 James Krylo and resealed.

25 Q. Okay. Other than that, is it in the same

1 condition as when you impounded it?

2 A. Yes, it is.

3 MS. LEWIS: I'd move for the admission of
4 State's Proposed Exhibit 4.

5 THE COURT: Any objection?

6 MR. FIGLER: Submitted.

7 MR. SINGER: No, Judge.

8 THE COURT: It's admitted.

9 (Plaintiff's Exhibit No. 4 admitted)

10 BY MS. LEWIS:

11 Q. And what is inside State's Exhibit 4?

12 A. Inside this package are three expended cartridge
13 cases that were recovered from the street area at
14 Doolittle and Lexington.

15 Q. Okay. And were those items also photographed
16 before they were recovered?

17 A. Yes, they were.

18 Q. Showing you State's Proposed Exhibit 138 through
19 142, take a look at those and let me know if you
20 recognize them.

21 A. I do.

22 Q. And do those fairly and accurately depict the
23 scene out at Lexington and Doolittle as they were
24 photographed by William Speas when you were there on the
25 evening of September 30th?

1 A. Yes.

2 MS. LEWIS: Judge, I'd move for the
3 admission of State's 138 to 142, inclusive.

4 THE COURT: Any objection?

5 MR. FIGLER: I don't know if I've seen that
6 set, Judge, I'm sorry. I just usually submit, but I
7 need to see what it is. We'd submit, Judge.

8 THE COURT: They're admitted.

9 (Plaintiff's Exhibit Nos. 138-142 admitted)

10 BY MS. LEWIS:

11 Q. And showing you 138, what's depicted in that
12 photograph?

13 A. In this photograph you can see there are three
14 tent markers labelled 1, 2, and 3. Each individual
15 marker is designating where we found a cartridge case.
16 That would be three cartridge cases. This is right on
17 Doolittle Street.

18 Q. Okay. And are those placards 1, 2 and 3, were
19 those photographed up close as well?

20 A. Yes. We did individual identification shots of
21 each cartridge case with a placard in place.

22 Q. Okay. So State's Exhibit 139 is an up-close
23 shot, for example, of placard 1?

24 A. Correct.

25 Q. And you said those were found in the street on

1 Doolittle?

2 A. Those were on Doolittle just east of Lexington.

3 Q. And are those the same items that were in package
4 No. 4, State's Exhibit 4, that you just referred to?

5 A. Yes.

6 Q. The .45 caliber?

7 A. Yes, they are.

8 Q. Did you recover any other items from the scene at
9 Lexington and Doolittle where that car crash was?

10 A. I recovered the firearms that we listed above,
11 the cartridge cases, as well as the plastic cup holder
12 that I mentioned before that was in the grass area next
13 to the rifle.

14 Q. Okay. Other than that, did you recover any other
15 items at that scene?

16 A. No.

17 Q. Did you go to a different scene after that?

18 A. No.

19 Q. Did you -- I'm showing you what's been marked as
20 State's Proposed Exhibit 132. Do you recognize that
21 item?

22 A. That's a -- yes, I do.

23 Q. And does that fairly and accurately depict the
24 item as you saw it the evening of September 30th?

25 A. Yes.

1 MS. LEWIS: I'd move for the admission of
2 132.

3 THE COURT: Objection?

4 MR. FIGLER: Submitted, Judge.

5 MR. SINGER: No, Judge.

6 THE COURT: It's admitted.

7 (Plaintiff's Exhibit No. 132 admitted)

8 BY MS. LEWIS:

9 Q. Showing you State's Proposed Exhibit No. 7, do
10 you recognize that envelope?

11 A. Yes, I do.

12 Q. And how do you recognize that?

13 A. This item or this envelope has my signature, my
14 name and personnel number on the front label, as well as
15 my initials and date on the evidence seal label.

16 Q. And can you tell if that item has been handled by
17 anybody else since you impounded it?

18 A. Yes.

19 Q. And who is that?

20 A. There are seals from Metro's crime forensics
21 laboratory as well as seals from Bexar County Crime
22 Laboratory.

23 Q. And other than that, is it in the same condition
24 as when you impounded it?

25 A. Yes.

1 MS. LEWIS: Judge, I'd move for the
2 admission of State's Proposed 7.

3 THE COURT: Any objection?

4 MR. FIGLER: Submitted.

5 MR. SINGER: None, Judge.

6 THE COURT: It's admitted.

7 MS. LEWIS: And permission to publish.

8 (Plaintiff's Exhibit No. 7 admitted)

9 THE COURT: Yes.

10 BY MS. LEWIS:

11 Q. What's inside that package, Exhibit 7?

12 A. It contains one red knit glove with a hole.

13 Q. And is that the same glove that's in State's
14 Exhibit 132?

15 A. Yes, it is.

16 Q. Okay. Can you tell us where in that vicinity of
17 Lexington and Doolittle that was -- you recovered that
18 from?

19 A. Yes. This glove was recovered on the sidewalk
20 area in front of a residence on Eleanor Avenue. Eleanor
21 Avenue is located just north of Doolittle, and it
22 intersects with Lexington.

23 Q. Okay. And I have a quick question. I think I
24 forgot to ask you. That -- the firearm, the long rifle
25 that's here, State's Exhibit 5, did you take a

1 measurement of that?

2 A. I did measure it. Yes.

3 Q. And do you know what that measurement was?

4 A. I measured a barrel length of approximately
5 ten-and-three-quarter inches. It had an overall length
6 of approximately 20 inches.

7 (Off-record colloquy)

8 BY MS. LEWIS:

9 Q. Okay. Showing you State's Exhibit 131, it's
10 already been admitted. Do you recognize that
11 photograph?

12 A. Yes, I do.

13 Q. And how do you recognize that?

14 A. This photograph was taken at the Eleanor address
15 where we recovered the red knit glove.

16 Q. Okay. And is that the same glove that's in
17 photograph 132 that's in the package, State's Exhibit
18 (indiscernible)?

19 A. Yes.

20 MS. LEWIS: Court's indulgence.

21 BY MS. LEWIS:

22 Q. Did you do any fingerprint processing that
23 evening?

24 A. We did not perform any fingerprint processing on
25 the crime scene itself. However, we did respond to the

1 crime lab where a vehicle was towed there. We processed
2 that vehicle at the crime lab.

3 Q. And which vehicle was that? Was that that same
4 gray vehicle?

5 A. That would be -- I believe we processed the
6 vehicle that was in the original scene where the
7 dumpster was at as well as the Town Car that was on the
8 Lexington Street address.

9 Q. Okay. The Town Car's the gray vehicle, correct?

10 A. Yes, it is.

11 Q. Okay. The one that was crashed into the fire
12 hydrant?

13 A. Yes.

14 Q. So that one after it was -- it left that scene
15 you said it was towed to a lab?

16 A. It was towed from the crime scene to our
17 criminalistics bureau garage where we'd performed our
18 further processing.

19 Q. Okay. And was that done at the request of crime
20 scene analysts, the towing to the garage --

21 A. Yes, it --

22 Q. -- to the lab?

23 A. Yes, it was.

24 Q. Okay. Is there anything that's done or any
25 safeguards that are in place to make sure that nobody

1 goes in or out of the vehicle when that's done?

2 A. Yes. Before we tow a vehicle, we place seals on
3 all the doors, the trunk, as well as the hood area.
4 Those seals are signed with the date, and we place those
5 on all -- basically anything that can be opened on the
6 vehicle.

7 It's then placed on the tow truck. A crime scene
8 analyst then follows the tow truck with the vehicle on
9 the tow truck back to the crime lab to ensure that it
10 has arrived there without any tampering or anything done
11 of that nature.

12 Q. And do you know who the crime scene analyst was
13 that followed the gray Town Car?

14 A. I don't know specifically. I don't remember.

15 Q. Okay. But it wasn't you?

16 A. It was not me.

17 Q. When you examined the gray Town Car at the lab,
18 were those seals intact as they had been placed out at
19 the scene?

20 A. Yes.

21 Q. Okay. And what areas of that Town Car were you
22 focusing on when you dusted for prints?

23 A. On a vehicle when we process we look specifically
24 towards areas that are conducive toward latent prints
25 which would be the exterior of the vehicle, the windows,

1 the interior of the vehicle including the windows, the
2 door handled, steering wheel, mirror, things of that
3 nature.

4 Q. Okay. And do you know how many prints you were
5 able to process from that particular vehicle, if any?

6 A. I don't recall how many we specifically
7 recovered. I do recall that both myself and CSA Speas
8 did recover prints.

9 Q. Okay. And what would have been done with any
10 prints that were recovered?

11 A. Once we recover the prints, they're then
12 submitted into our secure latent print depository
13 through our supervisor.

14 Q. Okay. I guess you should explain. When you're
15 talking about recovering prints, how is it that you're
16 able to lift the print and recover it if it's on the
17 car?

18 A. Once -- well, we apply the powder using a brush
19 to the surface which then visualizes the print using the
20 powder. We then, in order to recover the print, place a
21 piece of tape over the top of it. It's then
22 photographed in place.

23 We then pull the tape off, place it onto your
24 latent print card which is a white card which also has a
25 place for labelling so we can label where we got it

1 from. It has our information as well as the information
2 related specifically to the incident.

3 It's then placed inside a latent print envelope,
4 and it is submitted to our supervisor who then reviews
5 it. It is then placed into a secure repository for our
6 lay incident print examiners.

7 Q. And did you -- you said you also processed the
8 vehicle that was over at the dumpster, right -- correct?

9 A. Correct.

10 Q. Was that a maroon Chrysler belonging to
11 Officer Cupp?

12 A. Yes.

13 Q. And what area -- areas were you focused on on
14 that particular vehicle when you processed for prints?

15 A. We focus mainly on the exterior front end of the
16 vehicle.

17 Q. And were you able to recover any prints from that
18 location of that vehicle?

19 A. Yes.

20 Q. And did you do the same thing with those prints
21 that you recovered that you just described you did with
22 the prints from the Lincoln Town Car?

23 A. Yes.

24 Q. And all of the items that you impounded
25 associated with this case, including the lift cards from

1 the prints that you recovered, are all of those labelled
2 in the same fashion or in some fashion so that they can
3 be readily identified?

4 A. Yes.

5 Q. And is there some sort of number or code or some
6 kind of system that's used so that they can be kept
7 track of in some way so that you know that they're all
8 related to this particular event?

9 A. Yes. Every event that we generate is assigned a
10 specific event number that is unique for that specific
11 event, so everything that is done under this event that
12 would include all evidence impounded, all reports
13 written, diagrams generated, photographs taken, those
14 are all filed underneath that specific event number.

15 Q. Including the fingerprints that you might have
16 lifted?

17 A. Correct.

18 Q. Okay. And do you know what the event number is
19 that was used associated with all of the items that you
20 impounded relating to this case?

21 A. Yes. That would be 060930 dash 3216.

22 MS. LEWIS: I'd pass the witness.

23 THE COURT: Cross.

24 MR. FIGLER: Thank you, very briefly.

25 //

CROSS-EXAMINATION

BY MR. FIGLER:

Q. Ms. Smith, let me ask you a question. You indicated during direct that you wear gloves to handle the items?

A. Yes.

Q. Okay. You don't change gloves for each item, do you?

A. Not necessarily.

Q. Okay. Do you have a log of how many times you did or didn't change your gloves for that evening?

A. No.

Q. Okay. So as you sit here today you don't have independent recollection of how many times you did or didn't. You just know that whenever you handled items, you most likely had gloves on your hands, correct?

A. Whenever I handle evidence, I always have gloves on. Yes.

Q. Okay. But between handling different items of evidence you may not have taken your gloves on and off. You just don't recall at this point.

A. I can't recall specifically. No.

Q. Okay. During your gathering of various evidence are there a lot of Metropolitan police officers around the scene, the area, or are they gone already?

1 A. There's officers in and around the scene. Yes.

2 Q. In the vicinity?

3 A. In the vicinity.

4 Q. Okay. And there's other CSAs that are roaming
5 around doing their various tasks?

6 A. Correct.

7 Q. Some are wearing firearm, some aren't; is that
8 correct?

9 A. Correct.

10 Q. Okay. Were you wearing a firearm or not?

11 A. Yes, I was.

12 Q. Okay, thank you.

13 THE COURT: Mr. Singer.

14 MR. SINGER: Thanks, Judge.

15 (Off-record colloquy)

16 CROSS-EXAMINATION

17 BY MR. SINGER:

18 Q. Does that dumpster look like it's full of trash
19 to you?

20 A. It's partially full of trash. I was -- I don't
21 -- it has trash in it.

22 Q. Okay. I don't mean to nitpick, but the black
23 garbage bag goes almost up to the top, doesn't it? This
24 trash all over. It's not really a trick question. I'm
25 just trying --

1 A. Well, I mean, it has --

2 Q. -- (indiscernible).

3 A. -- in it. I don't -- it has trash in it. Yes.

4 Q. How many -- a couple feet of trash?

5 A. It could be.

6 MR. SINGER: I'm sorry. I'm referring to
7 Exhibit 113 in evidence.

8 BY MR. SINGER:

9 Q. And that's how it appeared that night, right?

10 A. Correct.

11 Q. And when you first looked at it, this is what it
12 looked like?

13 A. Yes.

14 (Off-record colloquy)

15 BY MR. SINGER:

16 Q. Showing you what's been marked or what's in
17 evidence as State's 12, can you just look at the bottom
18 part where it says the Bexar County Crime Lab. Do you
19 see anywhere where there's a signature on there that's
20 foreign to you, that's not like a P number or a
21 signature of somebody you might know from Metro?

22 A. I don't see any signature on the label, no.

23 Q. Okay. Now, let's just say after you seal it
24 somebody from Metro opened it which is indicative of,
25 what, the blue tape? Did somebody from Metro do

1 something to show who it was that did put the blue tape
2 on after you sealed it?

3 A. There should be initials with a P number as well
4 as the date.

5 Q. Is there?

6 A. On the back.

7 Q. Right here?

8 A. Yes. That's correct.

9 Q. But not -- that doesn't exist on the -- on the
10 other tape on the bottom, does it?

11 A. Not that I can see. No.

12 Q. Okay. Can you open this for me?

13 A. I need some gloves as well.

14 MS. LEWIS: Counsel, what exhibit number is
15 that?

16 MR. SINGER: I'm sorry?

17 MS. LEWIS: What exhibit number is that?

18 THE WITNESS: 12.

19 MR. SINGER: State's 12.

20 MS. LEWIS: I would ask to have the contents
21 marked as A and --

22 THE COURT: Which would be normally the
23 appropriate --

24 MS. LEWIS: I don't know what's being
25 removed --

1 THE COURT: -- procedure.

2 MR. FIGLER: -- but --

3 THE COURT: So why don't we have it marked
4 before your handling, Mr. Singer.

5 MR. SINGER: Okay.

6 (Off-record colloquy)

7 THE COURT: Counsel approach.

8 (Off-record colloquy)

9 BY MR. SINGER:

10 Q. Can you now open what's been marked --
11 subsequently marked as State's 12A?

12 MR. SINGER: Judge, may I have a minute?
13 I've never seen this before.

14 MS. LEWIS: Judge, the -- I'm sorry, for the
15 record, 12A is a package of gloves. The gloves have now
16 been opened and removed, and I'm just concerned about
17 them moving around without being in some sort of -- you
18 know, not being confined in some kind of plastic.

19 MR. SINGER: Well, Judge --

20 MS. LEWIS: I mean, I think they need to be
21 contained in something.

22 MR. SINGER: I have a plastic bag, but I
23 need to look at the evidence.

24 THE COURT: We can put them in a larger
25 plastic bag, if that's what you want? Do you want to

1 physically handle them?

2 MR. SINGER: I want to handle.

3 BY MR. SINGER:

4 Q. The night in --

5 MR. SINGER: May I inquire?

6 THE COURT: Yes.

7 BY MR. SINGER:

8 Q. The night in question, was it you that placed
9 these two gloves in one package?

10 A. Yes.

11 Q. Did you note in your report that the gloves had
12 initials on them?

13 A. An initial? I'm not clear on what you mean.

14 Q. Initials, like in initial, like a name initials.
15 Two initials that -- on the gloves like an A and G,
16 maybe?

17 A. No, I did not.

18 Q. Did that have any significance to you?

19 A. I wrote -- I noted the name brand and what color
20 they were. They were photographed and impounded, so as
21 far as that goes, no.

22 Q. Well, if the initial matters -- the initials of
23 one of the suspect -- wouldn't that be pretty good
24 direct evidence of that person ownership?

25 MS. LEWIS: Judge, I'd object as so

1 speculation.

2 THE COURT: Sustained.

3 BY MR. SINGER:

4 Q. So you didn't think the initials on the glove
5 were relevant?

6 A. I wouldn't say they weren't relevant. Being that
7 we had the actual physical gloves in our possession and
8 impounded as evidence and they were photographed, I
9 simply put down what the name brand of the gloves were
10 as well as the color. I don't believe I made any
11 judgment as to what was relevant or not at that point.

12 Q. Well, you wrote down the name brand of the glove
13 and the color, right?

14 A. Correct.

15 Q. So that was important.

16 A. Correct.

17 Q. And the initials weren't important?

18 A. I don't believe that I -- I didn't write
19 everything that was on the gloves. I didn't write down
20 that there was -- it says "keys" one side on it as well.
21 I just wrote down the information designating
22 specifically what the glove as being, that the name
23 brand was present.

24 Q. What about packaging the gloves separately, did
25 that cross your mind?

1 A. The gloves were recovered together in the
2 dumpster; therefore, I packaged them together as one
3 item.

4 Q. The items on the front of the Seabring, the
5 Chrysler Seabring at the J Street address, you talked
6 about teeth coverings, a cell phone and a quarter.

7 A. Correct.

8 Q. Do you know where those were found?

9 A. No, not specifically.

10 Q. So you just photographed them on the vehicle?

11 A. Correct.

12 Q. And you have no -- you don't have any idea how
13 they tie to the case or how they are relevant to the
14 case?

15 A. I was told by an officer on scene that they were
16 recovered from people that they were -- that were taken
17 into custody from the dumpster. Other than that, I
18 don't know specifically.

19 Q. So the teeth, the cell phone and the quarter
20 could have been taken from inside the dumpster?

21 A. I -- they could have been taken from anywhere. I
22 don't know. I just know what I was told on the scene by
23 the officers.

24 Q. Now, the gun that was found inside the dumpster,
25 that was a policeman 's gun, wasn't it?

1 A. Correct.

2 Q. In fact, that gun belonged to Police Officer
3 John Carpenter (phonetic), P number 5003.

4 A. Yes.

5 MR. SINGER: Nothing further.

6 THE COURT: Any redirect?

7 MS. LEWIS: Yes.

8 REDIRECT EXAMINATION

9 BY MS. LEWIS:

10 Q. How do you know who the owner was of any of the
11 guns that you impounded that night?

12 A. For the handguns that we recover on these types
13 of scene we do a records check once we impound them. We
14 ran a records check on the Glock .45 that was recovered
15 from inside the dumpster. It did come back stolen, and
16 it was registered to Police Officer Carpenter.

17 Q. Okay. Did you also run a similar records check
18 for the firearm from inside the Town Car and then the
19 rifle from outside in the grass area?

20 A. I ran a records check on the Colt .45 recovered
21 from the Town Car. I did not run a records check on the
22 rifle. That is not in our policy to do so.

23 Q. When you handled all of the items of evidence
24 that you showed us today that you impounded, how did you
25 handle those items?

1 A. Whenever we handle items of evidence we use the
2 upmost care to handle them with the least amount of
3 disturbance, so that we do not damage or remove any
4 potential items of evidence or trace evidence present on
5 the item.

6 Q. Okay. So does that mean you wear gloves?

7 A. We wear gloves and we do handle the items as
8 least as possible.

9 Q. And so all of the items that you impounded that
10 we've talked about today, the firearms, the gloves, you
11 wore gloves handling all of those?

12 A. I did.

13 Q. Do you wear the same gloves for all of the items
14 that you handle or do you take gloves off and change
15 gloves or how does that work?

16 A. Periodically throughout my processing time over
17 several hours I do change gloves. I don't know
18 specifically when I do change my gloves. I don't wear
19 gloves for hours on end, the same pair of gloves. I
20 will periodically change out my gloves.

21 Q. Okay. So referring specifically to the black
22 gloves found in the dumpster, you retrieved those from
23 the dumpster yourself?

24 A. I did.

25 Q. Those weren't taken out and left on a patrol

1 vehicle or anything like that?

2 A. No. I recovered the gloves and then placed them
3 in a packaging item for -- so I could impound them.

4 Q. Okay. And had you fired -- were you carrying
5 your service revolver that evening?

6 A. Yes, I was.

7 Q. Had you fired it at any point that evening while
8 you were on duty?

9 A. No.

10 Q. Had you been at any scenes where shots were fired
11 or there was any shooting?

12 A. No. This was my first call of the evening.

13 Q. Okay. What about the red glove? Did you handle
14 that with gloves as with well?

15 A. Yes.

16 Q. Do you know whether you had changed gloves being
17 that you had gone to a different scene?

18 A. Yes.

19 MR. FIGLER: Asked and answered. I mean --
20 well, that's fine. I didn't hear the last part.

21 THE COURT: Overruled.

22 MR. FIGLER: Thanks. I withdraw.

23 BY MS. LEWIS:

24 Q. Do you know whether you had changed gloves in
25 between going to the dumpster scene and going to the

1 Lexington and Doolittle location?

2 A. Yes.

3 Q. Okay. And do you know whether anybody else had
4 handled the items prior to you arriving there?

5 A. I don't know specifically if anyone did or not.
6 I do know that once I arrived, the scene was rendered
7 secure when I was there.

8 Q. What is the protocol for collecting evidence? I
9 mean, obviously you're not there when the evidence is
10 found. Somebody else finds, correct?

11 A. Yes.

12 Q. So is there some kind of standard procedure
13 that's used to keep an item secure prior to a crime
14 scene analyst arriving such as yourself?

15 A. Yes. Once officers arrive, their first order of
16 business is, obviously, to render aid or anything of
17 that nature. They're next duty is to secure the crime
18 scene.

19 They typically do that using yellow crime scene
20 tape to block anyone entering or exiting the area that
21 they need to keep in or out, and they also stand post at
22 those areas as well.

23 Q. So with regards to the two locations you
24 responded to, the dumpster location and the Lexington
25 and Doolittle location, were both of those locations

1 secure per normal procedure?

2 A. Yes.

3 Q. There wasn't anything out of the ordinary in
4 either of those locations?

5 A. No.

6 MS. LEWIS: Judge, I'd move for the
7 admission of what was marked as the A, B, and C that
8 came out of that package.

9 THE COURT: Good. Was opened? Yes. Any
10 objection?

11 MR. SINGER: No.

12 THE COURT: Those items will be admitted.

13 (Plaintiff's Exhibit Nos. 12A-12C admitted)

14 MS. LEWIS: And I would pass the witness.

15 THE COURT: Cross?

16 MR. FIGLER: Again, very briefly.

17 RECROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q. Ms. Smith, the -- you were at the dumpster scene,
20 and you had a pair of gloves on handling that evidence,
21 correct?

22 A. Correct.

23 Q. Okay. And then you do recall changing those
24 gloves going over to the Lexington/Doolittle/Eleanor
25 scene, correct?

1 A. Correct.

2 Q. Okay. Did you go to any scenes after that?

3 A. No.

4 Q. Okay. So your last scene -- so you went from
5 dumpster to Lexington, you changed your gloves once, you
6 did all that work there, then you were done with this
7 investigation and likely you took off your gloves,
8 right?

9 A. Correct.

10 Q. Okay. And you were inside the vehicle that you
11 testified to, that Lincoln Town Car, getting that
12 evidence out of there as well?

13 A. Yes.

14 Q. Okay. Thank you.

15 MR. FIGLER: Pass the witness.

16 THE COURT: Cross.

17 MR. SINGER: Pass the witness.

18 THE COURT: Anything else from this witness?

19 MS. LEWIS: No.

20 THE COURT: May she be excused?

21 MS. LEWIS: Yes.

22 THE COURT: Thank you for your testimony.

23 You're excused.

24 Call your next witness.

25 MS. LEWIS: The State would call

1 Crystina Vachon.

2 MR. BATEMAN: I think (indiscernible) Ms.
3 Vachon making some coffee, so why don't we call another
4 officer, and we'll track her down.

5 THE COURT: Okay.

6 MS. LEWIS: State would call Mike Calarco.

7 (Off-record colloquy)

8 THE CLERK: I'll swear you in, sir.

9 MICHAEL CALARCO, PLAINTIFF'S WITNESS, SWORN

10 THE WITNESS: I do.

11 THE CLERK: (Indiscernible). Please state
12 your name loudly for us and spell the first and last
13 name for me.

14 THE WITNESS: First name is Michael, last
15 name is Calarco. First name's spelled M-i-c-h-a-e-l,
16 last name is spelled C-a-l-a-r-c-o.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LEWIS:

20 Q. Sir, how are you employed?

21 A. I'm employed as a police officer with the
22 Las Vegas Metropolitan Police Department.

23 Q. How long have you been so employed?

24 A. Approximately, three years.

25 Q. All right. I want to direct your attention to

1 the evening hours of September 30th of last year, 2006.

2 Would you have been working on that date in the evening?

3 A. I was.

4 Q. And what was your assignment at that time?

5 A. We were actually working a saturation effort in
6 Boldin area command.

7 Q. Okay. And you say we. Were there other officers
8 that you were working with or a partner?

9 A. Officer Baker.

10 Q. Okay.

11 A. I was a partner with him.

12 Q. And is that Chad Baker?

13 A. Yes, ma'am.

14 Q. Okay. And are you part of a team?

15 A. I am now, yes.

16 Q. At that time?

17 A. At that time it was only the two of us.

18 Q. Okay. And you said that there were other
19 officers that you were working in conjunction with in
20 the Bolden area?

21 A. Our Problem Solving Unit.

22 Q. Okay. And you're familiar with some of the other
23 officers of the Problem Solving Unit that were on duty
24 that night?

25 A. Yes.

1 Q. Who were some of the officers that you were
2 working with?

3 A. Officer Todd Conn, Officer Brad Cupp,
4 Officer Brian Walter.

5 Q. Officer Ken Rios?

6 A. Kenny Rios.

7 Q. Okay.

8 MR. BUNIN: I'm going to object. I mean,
9 she was trying to get him to -- she literally told him
10 the answer to the question, and it's happened so many
11 times in this trial that he said yes. Let's move on.
12 So it's leading.

13 MS. LEWIS: I withdraw.

14 BY MS. LEWIS:

15 Q. Showing you State's 154 up close. Take a look at
16 that map and examine it for a moment.

17 A. Okay.

18 Q. Do you recognize some of the areas depicted on
19 this map?

20 A. I do.

21 Q. And is that within the Bolden area that you would
22 have been patrolling that evening?

23 A. Yes, it is.

24 Q. Did there come a point in time when you were
25 alerted or heard something unusual?

1 A. There was.

2 Q. And what was that?

3 A. We heard -- well, I heard the initial radio call
4 of shots being heard in the area of right around
5 Balzar/Martin Luther King.

6 Q. Where were you at that time with Officer Baker
7 when you heard that radio call?

8 A. We were approximately in the area of like
9 Washington and Martin Luther King.

10 Q. Okay. Would that have been north of that area?

11 A. It's south of that area.

12 Q. South of that area, okay.

13 A. Yes.

14 Q. And as a result of that, did you come to assist
15 officers who were in that area where the shots were
16 fired?

17 A. We did. We started driving up into that general
18 area.

19 Q. So you were coming from the south heading north?

20 A. That's correct.

21 Q. And where did you go to or where did that take
22 you to? What streets were you driving?

23 A. We were driving I believe northbound on Martin
24 Luther King, and then some other radio traffic happened
25 and we started going in a different direction.

1 Q. Okay. And where did you go into as a result of
2 the other radio traffic you heard?

3 A. We heard some radio traffic about a vehicle
4 leaving the area at a high rate of speed, and they were
5 headed eastbound, so we started heading in that general
6 area. We were still a little ways away, so we were just
7 kind of making our way in that direction.

8 Q. Okay. And where were you at, then, when you saw
9 anything else after that?

10 A. It was really a short time period. Shortly after
11 that, we heard that the vehicle -- something -- some
12 type of radio traffic about the vehicle getting into an
13 accident and people are bailing out of the vehicle.

14 Q. Did you know the location of where that vehicle
15 accident had happened?

16 A. We heard something about J and Jimmy, in the area
17 over there.

18 Q. Okay.

19 A. That's the original radio traffic I heard.

20 Q. So where did you go to?

21 A. We started driving in that general direction, and
22 then shortly after that, we heard that there were -- one
23 of our officers, he was called out the radio traffic --

24 MR. BUNIN: I'm going to object to what he
25 heard as hearsay.

1 MS. LEWIS: Well, Judge, I'm not offering it
2 for the truth of the matter. I'm offering it to show
3 where this officer went and what he did as a result of
4 what he heard.

5 THE COURT: Overruled.

6 BY MS. LEWIS:

7 Q. I'm sorry. Go ahead, Officer.

8 A. We started heading towards where the shots were
9 being fired at. An officer said shots were fired, so we
10 obviously started going towards that general area which
11 he said was J and Jimmy. We figured that it was right
12 after the vehicle accident, so we started going into
13 that -- in that area.

14 Q. Okay. And were you on J Street, specifically, or
15 were you on Jimmy?

16 A. We never went to Jimmy.

17 Q. Okay. Where did you go to?

18 A. I believe we came from Doolittle when we heard
19 that radio traffic, and then we were heading westbound
20 on Doolittle from the area of like H Street.

21 Q. Okay.

22 A. So from that area, and then shortly after we
23 heard that, we heard one of the officers saying we have
24 a possible -- or we have a suspect going into the area
25 of 1701 J Street which is just south of J and Doolittle.

1 Q. Okay. And so did you go towards that location of
2 1701 J Street?

3 A. We did.

4 Q. Okay. Were you coming from the south still
5 heading north?

6 A. At this point I believe we were coming from the
7 west on Doolittle, and then we started going south on J
8 Street --

9 Q. Okay.

10 A. -- because they said they were going into 1701
11 J.

12 Q. On that screen in front of you, you can use your
13 finger to touch the screen and make marks. Can you show
14 us the direction that you went when you went west and
15 then headed south towards those apartments.

16 A. We were heading -- this is going to be heading to
17 west right here. This is going to be Doolittle right
18 here. And then we went south, and then right here is 17
19 -- it's the entrance gates for 1701 and 1801 J Street.

20 Q. Okay. And is there only the one entrance gates
21 for that apartment for vehicles to enter?

22 A. For vehicles, yes, ma'am.

23 Q. Okay. And what happened as you came towards
24 those apartments?

25 A. As we came towards those apartments there was one

1 of the Problem Solving Unit, the van that they were
2 driving, was turning into that -- into the 1701 J Street
3 as we were rounding the corner. So we saw them, and
4 they were the ones giving out the radio traffic that
5 they saw the suspect running into 1701 J.

6 Q. Okay. And the van was already entering the
7 complex at the time or waiting to enter?

8 A. It was at the gate waiting for the gate to open
9 up.

10 Q. And do you know who the officers were that were
11 in that van?

12 A. It would be Officer Todd Conn and Officer
13 Ken Rios.

14 Q. Okay. And so you were still rounding that corner
15 then when you saw the van?

16 A. When we saw the van, we were on J Street.

17 Q. Okay. And so at some point did you see the van
18 enter?

19 A. We got right behind it. Right when it was -- it
20 was a very short distance from Doolittle down to the
21 entrance of the apartment complex. So when they were
22 waiting for the gate to open, we pretty much pulled the
23 patrol car right behind the van.

24 Q. Okay. And you were in a marked black-and-white
25 patrol vehicle?

1 A. Yes, ma'am.

2 Q. And what happened when you pulled into that
3 apartment complex?

4 A. When we pulled into the apartment complex, the
5 van made an immediate right turn which would be facing
6 south, stopped right there. Both Officer Rios and
7 Officer Todd Conn got out. We pulled to the left of
8 them which would be to the east, and we both got out of
9 the patrol car.

10 Q. Yourself and Officer Baker both --

11 A. Myself --

12 Q. -- got out?

13 A. -- and Officer Baker, yes, ma'am.

14 Q. What is immediately to the right when you turn
15 into that complex?

16 A. Immediately to the right is going to be -- it's
17 1701 J. It's -- to the north is 1801 J, to the right is
18 1701 J.

19 Q. So are they the actual buildings or apartments?

20 A. The whole entire south side of the complex is
21 called -- is -- the address is 1701 J, and then it has
22 separate buildings and apartment numbers.

23 Q. Okay. So when you got out of the car, where did
24 you go towards, if anywhere?

25 A. I actually went towards the van, and I was the

1 passenger in the patrol car. Officer Rios was the
2 passenger in the van.

3 I went towards where -- we communicated that we
4 were going to separate. We went -- I went with
5 Officer Rios. He was the passenger of the van, and we
6 went towards the far west side of the complex which
7 would be to the right of the van.

8 Officer Baker and Officer Todd Conn went towards
9 the right where the patrol car was. There's an opening
10 between the buildings. They started going to the -- in
11 a southern direction.

12 Q. Okay. And so when you and Officer Rios went in
13 that direction, what, if anything, did you see or hear?

14 A. We began running towards the -- their area where
15 they last saw him turning in or last saw the suspect
16 turning in. As Officer Rios was going past one of --
17 there was two separate dumpsters -- the further -- the
18 north dumpster he said wait, I saw a -- I see movement
19 inside of that dumpster.

20 So we both stopped at the dumpster and looked
21 inside. And when I looked inside, I saw a black
22 T-shirt, and there was some trash and newspaper and that
23 sort of thing on top of the person that was laying in
24 the trash can.

25 Q. And what, if anything, happened with that person?

1 A. We began giving verbal commands, let me see your
2 hands, let me see your hands. There was no response for
3 the first couple times that we gave those commands, and
4 then it was either the third or the fourth time slowly a
5 hand started coming up from -- from the trash, and then
6 as the hand was coming up directly beneath where the
7 hand was at, I saw a handgun.

8 Q. And were you standing over the dumpster looking
9 in at that time?

10 A. Yes, I was.

11 Q. And was Officer Rios also doing the same?

12 A. He was.

13 Q. Okay. And the gun that you saw, could you tell
14 what kind or anything about the gun?

15 A. To me it looked like a Glock. I didn't know what
16 Glock, and it looked like it had an extended magazine on
17 it.

18 Q. Okay. And so was it just the one hand that came
19 up or did both hands --

20 A. It was both hands. Both hands slowly came up,
21 but the gun was laying towards the left hand.

22 Q. Okay. And how did the person appear to you? You
23 know, was what the person's demeanor if you remember.

24 A. The person wasn't saying anything, just putting
25 his hands slowly up, and at this point Officer Conn and

1 Officer Baker came around the corner and then we got him
2 out of the dumpster.

3 Q. Okay. And did you have to assist him to get out
4 of that dumpster?

5 A. I think we all pretty much helped get him out of
6 the dumpster.

7 Q. And besides the black -- you said it was a black
8 T-shirt that you saw he was wearing?

9 A. It was a black T-shirt.

10 Q. Do you remember anything else about the clothing?

11 A. No. I really don't remember anything else --

12 Q. Okay.

13 A. -- on the -- that he was wearing.

14 Q. And did you, subsequently, look back inside the
15 dumpster to see if there was anyone else or anything
16 else in there?

17 A. Yeah. We cleared it. We looked over and moved
18 some of the trash out of the way, made sure nobody else
19 was in there, and then we saw the handgun that was
20 laying there, and then there looked like there was a
21 pair of like baseball gloves laying in the dumpster,
22 also.

23 Q. Okay. Do you see the person in court today who
24 you saw in that dumpster?

25 A. I do.

1 Q. Can you please point to that person and tell us
2 something that the person is wearing today so we know
3 who you're talking about.

4 A. He's going to be sitting right there to right of
5 that table. He's got a white it looks like button-up
6 shirt and a tie on. I can't tell what color, a gray
7 tie, maybe.

8 Q. You're going to have to be a little more
9 specific. Like where at the table are you talking about
10 because there's numerous people there, correct?

11 A. Correct. To the far right there's a gentleman,
12 white gentleman, with a suit. Directly to the left of
13 him there's a black gentleman, medium size Afro, white
14 -- he's got a white button-up shirt.

15 MS. LEWIS: Judge, would the record reflect
16 the witness has identified the defendant,
17 Pierre Joshlin?

18 THE COURT: It shall.

19 BY MS. LEWIS:

20 Q. Showing you State's Exhibit 112, do you recognize
21 what's depicted in that photograph?

22 A. I do.

23 Q. And are those the dumpsters that you were talking
24 about?

25 A. Yes. That's both of them to the right of the

1 picture.

2 Q. I'm sorry?

3 A. That's the dumpster we pulled him out right
4 there.

5 Q. Okay. And showing you Exhibit 114, do you
6 recognize the items in that photograph?

7 A. I do.

8 Q. And are those items you saw inside the dumpster
9 along with the trash --

10 A. Yes.

11 Q. -- that you referred to? Okay. And you called
12 those -- what kind of gloves did you call those?

13 A. They were black like baseball type gloves.

14 Q. And do you see how the gun appears to be kind of
15 on the side in between the trash can I guess and a bag
16 of trash?

17 A. That's correct.

18 Q. Is that how it was when you saw it or -- I mean,
19 you said it was --

20 A. It looks like the trash bag might have moved over
21 after we pulled him out because I don't remember that
22 trash bag being there. I distinctively remember the gun
23 laying pretty much almost up against the side of the
24 dumpster.

25 Q. Okay. So you think maybe in this photograph the

1 gun got shifted around?

2 A. I think that the blue trash bag right here might
3 have -- after we pulled him out might have fell over
4 closer to where the gun's at.

5 Q. Okay. And State's Exhibit 106, is that how the
6 defendant appeared when you took him out of the trash
7 can?

8 A. Yes.

9 Q. Do you know whether you noticed any dirt or
10 debris on the defendant, either on his head or face or
11 hands or anything like that?

12 A. I don't remember that.

13 MS. LEWIS: I'll pass the witness.

14 THE COURT: Cross.

15 MR. BUNIN: No questions, Your Honor.

16 MR. SINGER: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. SINGER:

19 Q. When he came out -- when Pierre got out of the
20 dumpster, he was compliant?

21 A. Yeah.

22 Q. And did you -- how many officers did it take to
23 get him out of the dumpster?

24 A. I believe there was the four of us that were
25 there, so we all, just to make sure that nobody was

1 grabbing for any type of firearms. I believe we all
2 pulled him out because there wasn't -- we couldn't just
3 stand him straight up.

4 Q. And did he resist in any way?

5 A. Not that I recall.

6 Q. Did you make any reports in association with what
7 you -- your activities that night?

8 A. No.

9 Q. Did you get interviewed by the homicide
10 detectives?

11 A. No.

12 Q. What's your assignment currently as -- today,
13 what's your assignment?

14 A. I'm working part of the -- with the Problem
15 Solving Unit at Bolden area command.

16 Q. Same as on that date?

17 A. I was working with part of the saturation team,
18 and now I'm working with the Problem Solving Unit.

19 Q. And as a member of the Problem Solving Unit, how
20 do you dress when you go out to work?

21 A. It depends upon what we're doing. Sometimes
22 we'll go out in plain clothes with a hang badge.
23 Sometimes, if we're doing any type of enforcement or
24 riding around, we'll wear our tactical vest that have
25 police on the front and back.

1 Q. And today in court you have a pair of slacks and
2 a button-down shirt on --

3 A. Um-h'm.

4 Q. -- and a tie?

5 A. Yes, sir.

6 Q. But you're not wearing a suit today, are you?

7 A. No.

8 Q. Did you know it was against police policy to come
9 to court without your uniform or a suit on? Do you
10 believe that to be true?

11 A. One more time, the question.

12 Q. Do you think that it's part of police policy that
13 you either have -- when you testify you have to have a
14 suit on or a uniform or can you come to court just in a
15 nice shirt and pants?

16 A. The policy I read said as long as it's
17 presentable you could either wear a uniform or something
18 presentable as long as it's --

19 Q. That's fine. Thank you. The dumpster that you
20 just saw that picture of, that had a lot of garbage if
21 it, didn't it?

22 A. It did.

23 Q. And that's a high-crime area, that J Street
24 address?

25 A. The exact address --

1 Q. No, no, just the neighborhood.

2 A. Yeah.

3 MR. SINGER: Pass the witness.

4 THE COURT: Redirect.

5 MS. LEWIS: No, no redirect.

6 THE COURT: Is this witness excused?

7 MS. LEWIS: Yes, Judge.

8 THE COURT: Thank you for testifying.

9 THE WITNESS: Thank you.

10 THE COURT: Call your next witness.

11 MR. BATEMAN: Officer Rios, Ken Rios.

12 THE CLERK: Remain standing, please. Raise
13 your right hand. I'll swear you in.

14 KENNETH RIOS, PLAINTIFF'S WITNESS, SWORN

15 THE WITNESS: Yes, I do.

16 THE CLERK: Thank you. You may be seated.
17 Please state your name loudly for us and spell the first
18 and last name for me.

19 THE WITNESS: Kenneth Rios, K-e-n-n-e-t-h,
20 R-i-o-s.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. BATEMAN:

24 Q. Sir, are you an officer with the Las Vegas
25 Metropolitan Police Department?

1 A. Yes, I am.

2 Q. What's your current assignment?

3 A. Bolden area command, patrol division, Problem
4 Solving Unit.

5 Q. Who's your current partner?

6 A. Todd Conn.

7 Q. Okay. How long have you been a police officer?

8 A. Two-and-a-half years.

9 Q. I'm going to direct your attention back to
10 September 30th of 2006. Were you working that evening?

11 A. Yes, I was.

12 Q. Okay. Who was your partner back then?

13 A. Todd Conn.

14 Q. All right. Were you working this particular
15 area, that is the Bolden area?

16 A. Yes, I was.

17 Q. Okay. On that evening at roughly 9:50 in the
18 evening, did you have occasion to be essentially
19 dispatched to an area relating to a shooting?

20 A. Yes, I was.

21 Q. Okay. Where is it that you initiated -- where
22 were you initially when you heard the call-out for the
23 shooting?

24 A. We were just south of Circle Park.

25 Q. What kind of vehicle were you driving?

1 A. I was in an unmarked mini van.

2 Q. Okay. Who was in the van with you? Do you
3 remember?

4 A. Todd Conn, my partner, and Sergeant Gary Dale.

5 Q. Okay. Do you know -- did you actually hear the
6 shots?

7 A. Yes, I did.

8 Q. Okay. Could you approximate where you believe
9 the shots occurred or were fired from?

10 A. The area of 1271 Balzar.

11 Q. Okay. And did you head in that direction?

12 A. Yes, we did.

13 Q. Okay. When you -- did you actually, eventually,
14 arrive at 1271 Balzar?

15 A. Yes, we did.

16 Q. How long after hearing the shots did you arrive
17 at 1271 Balzar?

18 A. I'd say about 30 seconds. It was fairly short.

19 Q. Showing you 154 on the overhead, do you recognize
20 that overhead map?

21 A. Yes, I do.

22 Q. Is that 1271 Balzar up here?

23 A. Correct.

24 Q. Is that Circle Park as well --

25 A. Yes --

1 Q. -- (indiscernible)?

2 A. -- that circle in the upper center.

3 Q. What point did -- when you got to 1271, did
4 anyone exit the vehicle?

5 A. Yes. All three of us did.

6 Q. Okay. Why did you exit the vehicle?

7 A. There was a lot of people outside. There was
8 commotion going on. There's a black female laying on
9 the floor.

10 Q. While you were there, did you receive any sort of
11 information to cause you to go someplace else?

12 A. Yes, we did.

13 Q. What was that?

14 A. Our partners gave out information that a vehicle
15 was fleeing the scene of the area.

16 Q. All right. And based upon that information,
17 where did you go?

18 A. We went back down J Street.

19 Q. Could you mark J Street. If you touch the
20 screen, can you mark J Street on there for me.

21 A. This is Martin Luther King. J Street's here.

22 Q. Okay. And --

23 A. There's two marks.

24 Q. -- I think you marked twice.

25 A. Oh, did I?

1 Q. The first mark you put on there is where?

2 A. Okay. This is Martin Luther King, correct? Or
3 this street?

4 Q. Yeah.

5 A. And this is J Street.

6 Q. Are you touching the screen?

7 A. I was.

8 Q. Okay. Do you see the black marks on there?

9 A. Yes.

10 Q. All right. So you headed down J Street
11 southbound?

12 A. Yes.

13 Q. Who was in the vehicle with you?

14 A. Todd Conn was with me.

15 Q. Okay. So was it Sergeant Gary --

16 A. Dale.

17 Q. -- Dale? Was he still there?

18 A. We left him at the scene --

19 Q. Okay.

20 A. -- at 1271 Balzar.

21 Q. How long do you believe you were at the 1271
22 Balzar scene before you took off down J Street?

23 A. About 30 seconds, enough time to get out of the
24 vehicle, come over to the corner of the house and come
25 back and get into the vehicle.

1 Q. Okay. And, generally, where is it that you were
2 heading down J Street?

3 A. Towards Jimmy Street which is south of where we
4 were.

5 Q. Is that based upon information you'd received
6 over the radio?

7 A. Yes.

8 Q. At some point while you're on J Street do you
9 observe someone running?

10 A. I do.

11 Q. Okay. Tell me what you see.

12 A. I see a black male run across J Street from west
13 to east and head into 1701 North J Street, the apartment
14 complex.

15 Q. Okay. Can you mark that on the map where it is
16 you saw the individual running across the street and
17 I'll see if I can't (indiscernible). Is it up?

18 A. It's right here.

19 Q. Okay. Make it a little bigger for me, if you
20 would, and I'll show you a different map here in a
21 second.

22 A. Like that?

23 Q. That's approximately where you saw the
24 individual?

25 A. Yes.

1 Q. Okay. You said he ran into some other area?

2 A. Correct. He ran from west to east across J
3 Street.

4 Q. Okay. And is there a particular apartment
5 complex or some sort of building in that area that that
6 individual had run to?

7 A. Yes. That's the -- there's two apartment
8 complex, 1701 and 1801 J Street.

9 Q. Okay. And to your knowledge, how many entrances
10 are there into this apartment complex along J Street?

11 A. I believe there's two or, I guess, three. You
12 got two main gates, then there's a person gate a little
13 farther south of the main gates where the cars are.

14 Q. But they're gated?

15 A. Correct.

16 Q. Okay.

17 MR. BATEMAN: May I approach, Judge?

18 THE COURT: Yes.

19 BY MR. BATEMAN:

20 Q. Showing you 162 up close because the monitor's a
21 little hard to see, do you recognize that overhead map?

22 A. Yes, I do.

23 Q. And what is that a map of?

24 A. 1701 J Street.

25 Q. Okay. Is this where the area that you saw this

1 individual running into?

2 A. Yes.

3 Q. And could you describe at the time you first saw
4 the individual, could you describe a little bit more --
5 in any more detail than you've given us already about
6 maybe what that individual's wearing?

7 A. It's a black male wearing a black T-shirt and
8 dark clothing. I don't know if they were jeans or not,
9 but it was dark pants.

10 Q. Okay. You can't tell at this point?

11 A. No, I could not.

12 Q. Now, this is the map of 1701; is that correct?

13 A. Yes.

14 Q. Okay.

15 MR. BATEMAN: I'd publish, Your Honor, with
16 the Court's permission 162.

17 THE COURT: Is it in?

18 MR. BATEMAN: It is.

19 THE COURT: Go ahead.

20 BY MR. BATEMAN:

21 Q. Can you tell me -- mark on this map where it is
22 you saw this individual entering into the apartment
23 complex.

24 A. Through here.

25 Q. Okay. Is that a gated area?

1 A. Yes, it is.

2 Q. Okay. How is it that this individual got in
3 through the gate?

4 A. He squeezed through the gates. He had to
5 partially pry them open to get his body through.

6 Q. All right. And were you observing this as it was
7 taking place?

8 A. Yes, I was.

9 Q. How about how far away were you?

10 A. In between the street you see here and Doolittle
11 Street. It's maybe 50 yards when we first saw him cut
12 across. As he went into the gates, we were turning in
13 behind the gates behind him which is about me to you.

14 MR. BATEMAN: And for the record, Judge, 20
15 feet.

16 THE COURT: That's your estimation.

17 BY MR. BATEMAN:

18 Q. Were you -- was your car equipped with some
19 device that allow you had to get through the get?

20 A. Yes, it was. It's a gate-opening device.

21 Q. And you have those for various gates?

22 A. Yes. They're pre-programmed for all the gates.

23 Q. Okay. So was there a period of time that it took
24 you to get through the gate?

25 A. It was about five seconds from us pulling up to

1 the gate for the gate to read it and for it to actually
2 open. It's a slow-moving gate.

3 Q. Could you still observe the individual as he was
4 running?

5 A. Yes, until he broke the corner there.

6 Q. You can draw on that map where the path of this
7 individual took that you observe.

8 A. Let's see. He came across the street into the
9 gates and then around the corner and went down.

10 Q. Okay. See if you can do it a little bit darker
11 because it's not coming up on that screen. Okay. And
12 then -- and for the record, you've drawn inside and then
13 to the right?

14 A. Correct, south.

15 Q. Okay. So it would be southbound. When the
16 individual went southbound, where were you in the
17 vehicle?

18 A. We were right in front of the gates that open
19 right here.

20 Q. How long after the individual went right did it
21 take you before you got through the gates?

22 A. It was probably about 30 seconds. It was about
23 five seconds to where the gates open, so probably about
24 three seconds around that corner.

25 Q. Three seconds?

1 A. Yes.

2 Q. And then did you continue to drive in?

3 A. We did.

4 Q. Okay. And what did you do once you got into the
5 apartment complex?

6 A. I pulled into the apartment complex and parked my
7 car about here.

8 Q. Okay. Draw it a little bigger for me, okay?

9 A. Is that --

10 Q. Were there anybody -- any other officers with you
11 in the parking lot?

12 A. Officer Conn was in the vehicle with me, then
13 other units were pulling in behind us.

14 Q. Okay. And what happened once all of the other
15 units and yourself were in the parking lot? What did
16 you do?

17 A. I exited the vehicle. I went kind of in the
18 southwest direction this way over here, and Conn went
19 this way.

20 Q. All right. I'm going to show you what's already
21 in evidence as State's 111. Do you recognize what's
22 depicted in that photograph?

23 A. Yes.

24 Q. What is that a photograph of?

25 A. It's a picture of my mini van and some dumpsters

1 and the building of 1701 J Street.

2 Q. Is this the area that we've been talking about?

3 A. Yes.

4 Q. Is that how it looked on September 30th?

5 A. Yes.

6 MR. BATEMAN: May I publish, Judge?

7 THE COURT: Yes.

8 BY MR. BATEMAN:

9 Q. When you entered into this area, did you hear
10 anything that kind of caught your attention?

11 A. Immediately, no. Me and Todd broke apart to
12 search the area of the parking lot since there's -- you
13 can see like the little building that's in the center,
14 the dumpsters and there's a few vehicles.

15 Q. Okay. And then what, if anything, did you hear
16 at that point?

17 A. I approached up to the first dumpster, and I
18 heard rustling, movement in the dumpster.

19 Q. Okay. And what did you do when you heard that
20 movement?

21 A. I pointed my gun into the dumpster and said Metro
22 Police, show me your hands, show me your hands, show me
23 your hands.

24 Q. And did you see anyone?

25 A. I did.

1 Q. Okay. Did you call out for any of your other
2 officers for help?

3 A. I was just yelling show me your hands in which
4 everyone responded to.

5 Q. Okay.

6 A. Officer Calarco was with me at that point
7 which --

8 Q. About how long after you located this individual
9 in the dumpster was it from the time you entered through
10 the gates?

11 A. Probably about 10 seconds.

12 Q. So it was relatively quickly?

13 A. Yes.

14 Q. Okay. This individual that you pulled out, do
15 you see him in the courtroom today?

16 A. I do.

17 Q. And if you can point to this individual and
18 describe what they're wearing today.

19 A. The gentleman sitting here with the tie and white
20 shirt.

21 Q. You pointed at someone in this direction. Can
22 you tell me maybe a little bit more description about,
23 for instance, their hair.

24 A. He has a small Afro.

25 Q. And then there's one -- five individuals sitting

1 to my left. Where along this table -- I guess, you're
2 in the opposite direction.

3 A. It would be my fourth.

4 Q. Fourth from your left?

5 A. Yes.

6 Q. Okay.

7 MR. BATEMAN: May the record reflect the
8 identification of Pierre Joshlin?

9 THE COURT: Yes.

10 BY MR. BATEMAN:

11 Q. Do you remember anything about the demeanor of
12 Mr. Joshlin when you pulled him out of the trash can?

13 A. Once he was taken into custody he appeared just
14 discouraged, defeated.

15 MR. BATEMAN: Pass the witness.

16 THE COURT: Cross.

17 MR. BUNIN: I have no questions for him,
18 Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SINGER:

21 Q. What does someone look like when they look like
22 -- when they're discouraged and defeated? Can you show
23 me a discouraged face?

24 MR. BATEMAN: For the record, I think he's
25 showing a discouraged face, Judge.

1 THE COURT: Was that your discouraged face,
2 Officer?

3 THE WITNESS: Yes, sir.

4 BY MR. SINGER:

5 Q. That could have been a multitude of other
6 emotions, right? You're just kind of speculating,
7 aren't you?

8 A. Based on me, if I were to show you a discouraged
9 look, that would be my look of discouragement.

10 Q. And when you said put your hands and you put the
11 gun in there, he didn't resist you in any way, did he?

12 A. No. He just -- he put his hands up fairly slowly
13 as they came up towards the top of the dumpster.

14 Q. And that was a good thing, right, because he
15 wouldn't --

16 A. Showing me his hands, yes.

17 Q. Slowly, right?

18 A. Yes.

19 Q. Before you saw him crossing J Street, you had no
20 idea where he had come from, do you?

21 A. The area of Jimmy and J Street, yes.

22 Q. Okay. Before you saw him on Jimmy and J Street,
23 you had no idea where he came, right?

24 A. Previous to the vehicle pursuit?

25 Q. You had -- I didn't hear you say anything about a

1 vehicle pursuit. Did you have vehicle pursuit that
2 night?

3 A. I did not, no. That information was given out by
4 the other officers who were chasing the vehicle.

5 Q. And you heard information about other officers
6 chasing the vehicle that Pierre Joshlin was in the
7 vehicle and in the vehicle pursuit?

8 A. As far as where the person originated from and
9 was coming from, yes.

10 Q. And before you saw him, though, you had no idea
11 where he had been.

12 A. No.

13 Q. So you pretty much your involvement in the case
14 was from the time you saw Pierre going into the 1701
15 until the time he was taken into custody in the
16 dumpster.

17 A. Correct.

18 Q. And the person you saw running had dark pants,
19 right?

20 A. Yes.

21 Q. Did you say in the beginning of your direct that
22 you arrived at the Balzar address about 30 seconds after
23 the shots, after you heard the shots?

24 A. Yes.

25 Q. And 30 seconds after you heard the shots, what

1 did you see there?

2 A. I saw a woman lying on the floor bleeding from
3 her head, another woman bleeding from her arm or her
4 hand area.

5 Q. How many people did you see running from the
6 scene?

7 A. I did not see anybody running from the scene.

8 MR. SINGER: I'll pass the witness.

9 THE COURT: Redirect?

10 MR. BATEMAN: Nothing else.

11 THE COURT: Is this witness excused?

12 MR. BATEMAN: Yes, Your Honor.

13 THE COURT: Thank you for your testimony.

14 THE WITNESS: Thank you, Judge.

15 THE COURT: Please step down.

16 Call your next witness.

17 MR. BATEMAN: Crystina Vachon, and we plan
18 on this being the last witness of the day, Your Honor.

19 (Off-record colloquy)

20 MS. LEWIS: Judge, can we approach with
21 scheduling issues while we're waiting?

22 THE COURT: Yes.

23 MR. SINGER: Your Honor, there's a question
24 from the jury.

25 THE COURT: Question from the jury. Do you

1 have a question from the jury.

2 THE BAILIFF: Put him back on the stand?

3 (Off-record colloquy)

4 THE COURT: Let's get the question.

5 Counsel, approach.

6 THE BAILIFF: Who's got the question? Front
7 and center. Did you write it down?

8 (Off-record colloquy)

9 THE COURT: Move on, move on, move on.

10 During this recess, you're admonished not to talk to or
11 converse among yourselves or with anyone else on any
12 subject connected with this trial or read, watch or
13 listen to any report of or commentary on this trial or
14 listen to any person -- talk to any person connected
15 with this trial by any medium of information including,
16 without limitation, newspaper, television or radio or
17 form or express any opinion on any subject connected
18 with this trial until the case is finally submitted to
19 you.

20 We'll be on a quick break, five minutes.

21 Everybody should take advantage. Court's in recess.

22 MS. LEWIS: Judge --

23 THE COURT: Yes.

24 MS. LEWIS: -- can we talk about scheduling
25 issues?

1 THE COURT: Yes.

2 (Off-record colloquy)

3 (Court recessed at 4:52 p.m. until 5:05 p.m.)

4 (Jury present)

5 THE BAILIFF: Panel's present, Your Honor.

6 THE COURT: Thank you. We're back on the
7 record in C228460, State of Nevada, plaintiff, versus
8 Jamar Matthews and Pierre Joshlin.

9 Record should reflect presence of the jury,
10 all counsel and clients.

11 Do both parties stipulate to the presence of
12 the jury?

13 MR. BATEMAN: Yes, Your Honor.

14 THE COURT: Defense stipulate to the
15 presence of the jury?

16 MR. FIGLER: Yes, Your Honor.

17 MR. SINGER: Yes, Your Honor.

18 THE COURT: Call your next witness.

19 MR. BATEMAN: Crystina Vachon.

20 THE COURT: This will be the last witness of
21 the day, ladies and gentlemen.

22 (Off-record colloquy)

23 CRYSTINA VACHON, PLAINTIFF'S WITNESS, SWORN

24 THE WITNESS: Yes, I do.

25 THE CLERK: Thank you. You may be seated,

1 and please state your full name for the record, loudly,
2 and spell first and last name.

3 THE WITNESS: My name is Crystina Vachon.
4 The first name is spelled C-r-y-s-t-i-n-a, and Vachon is
5 spelled V-a-c-h-o-n.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. BATEMAN:

9 Q. Ma'am, what do you do for a living?

10 A. I am a forensic scientist at the Bexar County
11 Criminal Investigation Laboratory in San Antonio, Texas.

12 Q. Okay. What kind of training and experience do
13 you have to do or to do your job with Bexar County?

14 A. I work in the trace evidence section, and I have
15 a bachelors degree in biochemistry and in addition to
16 that formal education, I have training in areas such as
17 specialized microscope, paint analysis, hair and fiber
18 analysis and the use of the scanning electron microscope
19 which is what we use for our gunshot-residue detection.

20 Q. Okay. Trace evidence, what does that mean?

21 A. Trace evidence is where we look for any
22 particulate matter that's not biological, so we will
23 examine hairs and fibers, paint, glass, duct tape,
24 gunshot residue, as well as many other things.

25 Q. Using the microscope and the equipment you have?

1 A. Yes.

2 Q. Okay. I'm sorry. Where did you say you got your
3 bachelors degree?

4 A. At Louisiana State University in Shreveport.

5 Q. Okay. How long have you been a forensic
6 scientist with Bexar County?

7 A. For almost three years.

8 Q. Okay. And during the course of that three years
9 were you doing the same duties, essentially?

10 A. Yes, I have been.

11 Q. Okay. What kind of continuing training and
12 education have you received since you've been with Bexar
13 County?

14 A. I attended training at the McCrone Research
15 Institute in Chicago, Illinois, for the use of
16 specialized microscope called the polarized light
17 microscope. I have also been to the FBI academy where I
18 learned hair and fiber analysis.

19 I also did some local training given by the Texas
20 Department of Public Safety Crime Lab on tape analysis
21 and lamp filaments, and I attended the Lehigh University
22 School of Microscopy for the use of the scanning
23 electron microscope with the energy dispersive x-ray
24 detector or what we often call SEM/EDS.

25 Q. What exactly is that?

1 A. The SEM is a high-powered electron microscope
2 that shoots down a beam of electrons through a column,
3 and it scans across the surface of the sampling device,
4 and it picks any particles that are on that surface and
5 takes a photograph of the particle, and it also
6 determines the elemental composition of the particle.

7 Q. Okay. And have you received training specific to
8 that device?

9 A. Yes, I have.

10 Q. And what does that include or did you already
11 say?

12 A. Yes. I said at Lehigh University School of
13 Microscopy in Pennsylvania.

14 Q. Okay. Have you had any continuing training on
15 that particular device or has it pretty much been the
16 same device and once you receive the training, that's
17 all you need?

18 A. It's the same device, but, in addition, I
19 received in-house training on the microscope.

20 Q. Okay. Today what are you -- are you here to
21 testify today with regard to gunshot-residue testing?

22 A. Yes, I am.

23 Q. Okay. What specific training and education have
24 you received specific to gunshot-residue testing?

25 A. I received a training session by the company that

1 makes the software that analyzes for gunshot residue for
2 the computers and the equipment that we have, and I also
3 received in-house training which consisted of six months
4 of supervised casework, in addition to reading books and
5 articles on gunshot residue, and then I had to take oral
6 and written tests before I was released to work cases on
7 my own.

8 Q. Okay. How long have you been doing
9 gunshot-residue testing?

10 A. For about two-and-a-half years.

11 Q. Okay. So did you start the training immediately
12 upon your employment with Bexar County?

13 A. Yes.

14 Q. Okay. Have you testified in your capacity as a
15 forensic scientist in any courts in the country with
16 regard to gunshot-residue testing?

17 A. Yes, I have.

18 Q. Okay. How many times in total?

19 A. I believe this is number 16.

20 Q. Okay. And what jurisdictions?

21 A. I have testified here in Clark County. I have
22 also testified in federal court in Nevada. I have
23 testified in state courts in Texas and also Minnesota.

24 Q. Okay.

25 MR. BATEMAN: Your Honor, I request to

1 continue my questioning with -- or I would ask that
2 Ms. Vachon be allowed to testify regarding
3 gunshot-residue testing at this time.

4 MR. FIGLER: You know, Your Honor, usually I
5 would take a witness on voir dire, but if it's at all
6 acceptable, I would like to do that on cross-examination
7 with regard to qualifications. I don't mind if the
8 witness testifies as any other witness would testify.

9 THE COURT: At this point she'll be
10 permitted to testify.

11 MR. BATEMAN: Thank you.

12 BY MR. BATEMAN:

13 Q. Gunshot-residue testing, what does that mean?
14 What do you do?

15 A. Can I first explain what gunshot residue is?

16 Q. Absolutely.

17 A. Okay. I have a visual aid. May I use it?

18 THE COURT: Any objection?

19 MR. FIGLER: It hasn't been presented to
20 defense, so I really don't know what it is.

21 THE COURT: You need to show it to the
22 defense.

23 THE WITNESS: Okay.

24 MR. FIGLER: All right. That's fine, Judge.

25 //

1 BY MR. BATEMAN:

2 Q. Is it a fake cartridge that you're holding in
3 your right hand?

4 MR. FIGLER: I hope that's what that is. It
5 could be a thermos. It could be a lot of things.

6 THE WITNESS: This is a simulated round of
7 ammunition, and what this is is the primer cap of the
8 ammunition. And what happens when a weapon is fired is
9 that the firing pin strikes this primer cap and starts a
10 small explosion in it which burns through inside -- to
11 inside the cartridge where gunpowder is. And whenever
12 the gunpowder is ignited, it pushes the bullet out of
13 the cartridge and down the barrel of the weapon.

14 So what we are looking for in our testing is
15 only residues that come from the primer cap of the
16 ammunition, and inside this primer cap are compounds
17 that contain lead, barium and antimony. And whenever we
18 find lead, barium and antimony or any combination of the
19 two in a certain morphology, which is the shape or size
20 of the particle, then we -- we can identify that as
21 primer gunshot residue.

22 BY MR. BATEMAN:

23 Q. So you're actually looking for those particular
24 particles?

25 A. Yes.

1 Q. Okay. And included in the particle you said
2 there are essentially three elements; is that right?

3 A. Yes.

4 Q. Okay. And morphology you said means just
5 basically you're looking for a particular shape, size?

6 A. Yes.

7 Q. Okay. When these elements are dispelled out of
8 the firearm, generally -- obviously, they're very small?

9 A. Yes.

10 Q. Is that why you have to use the microscope?

11 A. Yes. They're microscopic. They're generally
12 between .5 and 10 microns in size. And to put that in
13 perspective, a piece of paper is about 100 microns
14 thick.

15 Q. Okay. The elements and the particles that are
16 dispelled from the firearm, when you're looking for
17 those based on what, evidence that's provided to you; is
18 that correct?

19 A. Yes. We are sent samples in the form of kits or
20 sometimes we will receive clothing or objects that the
21 officers believe have been in contact or in close
22 proximity to a firearm, and we will take samples from
23 that and test it.

24 Q. So these particles can basically come to rest on
25 certain items, either people or clothing?

1 A. Yes.

2 Q. Okay. And then you use your microscope to look
3 at these samples and try to find these particles?

4 A. Yes.

5 Q. Okay. If you find a particle, are you looking
6 again for these three elements of the particle?

7 A. Yes. The three elements or any combination of
8 two of those elements.

9 Q. So a minimum of two?

10 A. Yes.

11 Q. Okay. If you find these elements and a minimum
12 of two -- I'm sorry, these particles and a minimum of
13 two of elements, what can you, in your opinion,
14 determine about the fact that that particular particle
15 is on that particular item of evidence or that
16 particular kit?

17 A. If I find at least two of the elements in
18 combination with the shape and size that I am looking
19 for, I can identify that as gunshot residue which tells
20 me that the item -- the surface that was sampled was in
21 contact with a discharged firearm or was in close
22 proximity to a discharged firearm.

23 Q. Generally, what is the -- what do you mean by
24 close proximity? Is there a limit to this test,
25 essentially?

1 A. Well, it really depends on many conditions. The
2 wind could blow it. If there -- if you're in an
3 enclosed space, it may make the particles a little more
4 concentrated and they may not go quite as far. So
5 really, it's not something that can be reproduced. It
6 just depends on the situation.

7 Q. Okay. If two or more of the elements of the
8 particles are located, what makes that essentially a
9 positive result for specifically the gunshot primer or
10 being in contact with shooting or being in close
11 vicinity to a discharged firearm?

12 A. Because the particles of primer gunshot residue
13 can only come from the discharging of a firearm.

14 Q. Now, by themselves the elements of the particles,
15 lead, barium and antimony, can they be found
16 specifically by themselves kind of just generally out in
17 the environment?

18 A. Yes. They are all natural elements that can be
19 found out in the environment.

20 Q. Generally, out in the environment do they have a
21 different morphology or shape than the elements that you
22 find relating to the discharge of a firearm?

23 A. Yes. They -- well, I'm not sure. I haven't
24 studied them separately, so I'm not sure what type of
25 morphology they would have separately. But to find them

1 in this combination with the shape that is found with
2 gunshot residue, it can only be identified as primer
3 gunshot residue.

4 Q. Okay. Now, did you receive some items of
5 evidence from the Las Vegas Metropolitan Police
6 Department, and was there a request for you to conduct a
7 gunshot-residue analysis on these particular items
8 regarding this case?

9 A. Yes.

10 Q. Okay. When did you receive those items, do you
11 know? And I noticed you just grabbed what looked to be
12 a report.

13 A. Yes, I did.

14 Q. Okay. Would it refresh your recollection to look
15 at your report?

16 A. Yes.

17 Q. Take a look at it. Let me know when you've had
18 your recollection refreshed.

19 A. Okay.

20 Q. Okay. When did you receive the items?

21 A. I received the evidence by Federal Express on
22 January 11th of 2007.

23 Q. Okay. And, specifically, did you receive,
24 essentially, two packages? One -- well, two packages
25 of, essentially, clothing?

1 A. Yes.

2 Q. Okay.

3 MR. BATEMAN: May I approach, Your Honor?
4 Show it to counsel.

5 THE COURT: Yes.

6 BY MR. BATEMAN:

7 Q. I'm first going to show you what's in evidence as
8 State's Exhibit 7. See if you recognize this envelope.

9 A. Yes, I do.

10 Q. Okay. How do you recognize it?

11 A. By our unique Bexar County Criminal Investigation
12 Laboratory number and my initials.

13 Q. Okay. And where is that lab number? Is it right
14 actually on the package?

15 A. Yes, it is.

16 Q. Okay. Now when you received it, whether -- there
17 appears to be two seals, a red seal and a blue seal; is
18 that correct?

19 A. Yes.

20 Q. Okay. When you received it, were there just the
21 red seal?

22 A. I'm not sure.

23 Q. Okay.

24 A. I didn't write it down, and I'm not sure whenever
25 the blue seal was added, but this is my seal at the

1 bottom.

2 Q. Okay. So you recognize your seal?

3 A. Yes.

4 Q. Okay. When you received it, did you actually
5 open up that package?

6 A. Yes, did I.

7 Q. And what is it that you found in that particular
8 package?

9 A. Inside this package I found one red knit glove.

10 Q. Okay. And at this time I'm going to ask you to
11 open the package. Do you remember whether it was in a
12 plastic baggy?

13 A. Yes. I have it written down.

14 MR. FIGLER: And I'll just note for the
15 record that it's nonresponsive because he --

16 MR. BATEMAN: Well, I'm trying to avoid
17 having to use gloves, so --

18 MR. FIGLER: I think the question was did
19 she remember, and then she went to her notes, so just
20 technical point. It's what I do.

21 THE COURT: It's noted for the record.

22 MR. FIGLER: Thanks, Judge.

23 THE WITNESS: I have in my notes that inside
24 the tape sealed manila envelope was one resealable
25 plastic bag containing one red knit glove.

1 BY MR. BATEMAN:

2 Q. Okay. I'm going to ask you to open up this bag,
3 if you could maybe just on the side, so you don't tamper
4 with any of the existing seals (indiscernible).

5 A. This may take awhile.

6 Q. Okay. I noticed you actually pulled, for the
7 record, two items out of State's Exhibit 7; is that
8 correct?

9 A. Yes, I did.

10 Q. Okay. I'm going to show a plastic baggy that
11 appears to contain some seals and writing. Do you
12 recognize this plastic baggy?

13 A. Yes, I do.

14 Q. And what's included in that plastic bag?

15 A. One red knit glove.

16 Q. Okay. Is that basically the plastic baggy or the
17 glove that you conducted testing on in this case?

18 A. Yes, it is.

19 Q. Do you know when you did the testing on this
20 particular glove?

21 A. I took the samples on January 29th of 2007.

22 Q. Okay.

23 MR. BATEMAN: And, Judge, for the record I'm
24 putting the plastic bag into another zip lock bag that
25 's marked State's Exhibit -- Proposed Exhibit 7A. I'm

1 going to move for its admission.

2 THE COURT: Show it to counsel.

3 Your motion for admission is granted.

4 (Plaintiff's Exhibit No. 7A admitted)

5 BY MR. BATEMAN:

6 Q. There also was another package that came out of
7 this particular bag, State's Exhibit 7. Do you
8 recognize this particular package?

9 A. Yes I do.

10 Q. How do you recognize it?

11 A. By my initials and the criminal investigation
12 laboratory number.

13 Q. Okay. And what's in this particular bag?

14 A. Those are the sampling devices that I used to
15 collect the sample from the gloves.

16 Q. Okay. So there's a separate twice that you take
17 from the glove and then you use the microscope?

18 A. Yes.

19 Q. Okay. And that would be -- this would contain
20 that particular sample that's specific to this red
21 glove?

22 A. Yes.

23 Q. Okay.

24 MR. BATEMAN: If I might approach to just
25 have it marked as 7B, and at this time I'd move its

1 admission unless counsel wants to look at it.

2 MR. FIGLER: I'll submit it at this time.

3 MR. SINGER: No opposition, Judge.

4 THE COURT: Admitted.

5 (Plaintiff's Exhibit No. 7B admitted)

6 BY MR. BATEMAN:

7 Q. Now I'm also going to show you what is at this
8 point a large zip lock bag marked 12 and contains --
9 Exhibit 12 contains 12A, B, and C.

10 MR. BATEMAN: For the record, I'll open this
11 bag, Your Honor.

12 First I'll show you what's been marked as 12
13 which is also the evidence bag that is included.

14 So the actual zip lock bag, for the record,
15 I don't believe is actually in the exhibit, Your Honor.

16 BY MR. BATEMAN:

17 Q. 12, do you recognize that bag?

18 A. Yes, I do.

19 Q. Okay. Is this another piece of evidence that was
20 sent to you from the Las Vegas Metropolitan Police
21 Department reference this case?

22 A. Yes, it is.

23 Q. Okay. And do you recognize your seal on this bag
24 as well?

25 A. Yes, I do.

1 Q. Okay. What did this particular bag contain as an
2 item of evidence for your review?

3 A. It contained one black right-hand glove and one
4 black left-hand glove.

5 Q. Okay. I'm going to show you what's in evidence
6 as State's 12A. It's also a zip lock bag that appears
7 to contain some evidence. Do you recognize that?

8 A. Yes, I do.

9 Q. Are those the gloves that you processed for
10 gunshot residue?

11 A. Yes. I believe they are.

12 Q. Okay. And is your seal also on that particular
13 zip lock bag?

14 A. Yes, it is.

15 Q. Okay. I'm also going to show you State's --
16 what's already in evidence State's 12B and C. Are these
17 also the samples that you were talking about earlier
18 that you used to conduct your analysis on the two gloves
19 that are in 12A?

20 A. Yes, they are.

21 Q. Okay. And do you know that by the label -- your
22 evidence label?

23 A. Yes.

24 MR. BATEMAN: I believe these are already in
25 evidence, Your Honor.

1 THE CLERK: 12 --

2 THE COURT: 12. Contents should be --

3 THE CLERK: -- and 12A, B, and C are all in
4 evidence. Yes.

5 MR. BATEMAN: Thank you.

6 BY MR. BATEMAN:

7 Q. Now, again, do you know when you did the
8 analysis? I think I might have already asked you that
9 question.

10 A. I picked the case up from evidence receiving on
11 January 26th of 2007, and my report is dated February 6,
12 2007, so in between that time I sampled and ran the
13 samples on the scanning electron microscope.

14 Q. Okay. And with regard to let's first talk about
15 the red glove which I believe was marked 7A, could you
16 tell me whether in your opinion -- well, tell me whether
17 there was a positive result as coming from your tests of
18 that particular glove.

19 A. Six microscopic particles containing lead, barium
20 and antimony, and one microscopic particle containing
21 barium and antimony were detected on the GSR sampling
22 device collected from the front and back area of the red
23 knit glove.

24 Q. Okay. And specific to the two black gloves that
25 were marked as 12A I believe, did you also -- you also

1 conducted the test on those gloves?

2 A. Yes, I did.

3 Q. And were you able to return a positive result for
4 gunshot residue?

5 A. Yes. I did find gunshot residue.

6 Q. Okay. And in what amount?

7 A. Ten microscopic particles containing lead, barium
8 and antimony were detected on the GSR sampling device
9 collected from the right back area of the black right
10 glove. Ten microscopic particles containing lead,
11 barium and antimony were detected on the GSR sampling
12 device collected from the right palm area of the black
13 right glove.

14 Q. Okay. And I note for the record that you were
15 kind of reading from your report. You wouldn't have
16 those results memorized at this point, would you?

17 A. No, I would not.

18 Q. Since doing this particular test, how many tests
19 -- GSR tests have you done?

20 A. I would guess at least 100.

21 Q. Okay. So when you're looking at your report, do
22 you create this report shortly after the time that you
23 conduct your testing of the evidence?

24 A. Yes, I do.

25 Q. Okay. So that would have an accurate reporting

1 of your results in your report?

2 A. Yes. I also keep bench notes so that I can refer
3 back to them if necessary.

4 Q. Okay. And based upon finding these particles and
5 a minimum of two of the elements we talked about on both
6 the red glove and the black gloves, did you form an
7 opinion as to whether those gloves had been in contact
8 with or near a discharged firearm?

9 A. Yes. Based on the morphology and elemental
10 composition of the particles, the red knit glove and
11 both of the black gloves may have been in close
12 proximity to a discharged firearm or in contact with a
13 discharged firearm.

14 Q. Okay.

15 MR. BATEMAN: Pass the witness, Judge.

16 THE COURT: Cross.

17 MR. FIGLER: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. FIGLER:

20 Q. Ms. Vachon?

21 A. Yes.

22 Q. I just have a few questions I need to ask you
23 about your background, and then we can talk about the
24 testimony that you just gave regarding those particles,
25 okay?

1 A. Okay.

2 Q. I note here on your resume that you have a
3 bachelor of science degree in biochemistry from
4 Louisiana State; that's correct?

5 A. Yes. Louisiana State University in Shreveport.

6 Q. Okay. And to date, you have no advanced degrees
7 beyond that; is that correct?

8 A. No. I have not earned any advanced degrees.

9 Q. Okay. And you started working for the Bexar
10 County Criminal Investigation Laboratory in June of
11 2004, correct?

12 A. Yes.

13 Q. Okay. And there's obviously some training and
14 things like that that they did inside before you really
15 got going on doing this SEM type of analysis; is that
16 correct?

17 A. Yes.

18 Q. In fact, first time you ever professionally dealt
19 with SEM, this microscope or this x-ray particle stuff,
20 was when you went to work for Bexar County Criminal
21 Investigation Laboratory, correct?

22 A. Bexar County, yes.

23 Q. Bexar. I know. I thought I was going to get it
24 right the whole way through, but I forgot how to
25 pronounce it. Bexar County spelled B-e-x-a-r, right?

1 A. Yes.

2 Q. Okay. So just reiterate the question, the first
3 time you ever dealt with this technology on any level
4 was when you went to work for Bexar County Criminal
5 Investigation Laboratory in '04, correct?

6 A. Yes.

7 Q. Okay. Now prior to that, you had worked a number
8 of different jobs, but nothing like this before,
9 correct?

10 A. I worked in the pharmaceutical industry and in
11 research --

12 Q. Okay.

13 A. -- doing several different things.

14 Q. And at one point you were working for Pepsi Cola,
15 and you were doing something with syrups there, right?

16 A. Yes.

17 Q. Okay. Assembling sample kits for bottlers and
18 that sort of thing?

19 A. Yes.

20 Q. Okay. And prior to that you were working over at
21 the LSU Health Sciences Center doing small animal inner
22 cranial and in-dwelling catheter surgeries; is that
23 about right?

24 A. Yes.

25 Q. What is that about?

1 A. We would put probes into the brains of rats and
2 then inject them with cocaine to determine if marijuana
3 was a gateway drug or alcohol was a gateway drug to
4 addition.

5 Q. Oh, okay. Now, it says that you have some
6 professional affiliations. You're a regular member of
7 the International Association For Microanalysis; is that
8 right?

9 A. Yes.

10 Q. Okay. And you've been that all the way -- well,
11 that's recent. 2007.

12 A. Yes.

13 Q. Okay. And you were in the Southwestern
14 Association of Forensic Scientists. You're an associate
15 member there. That's from last year, right? '06?

16 A. I'm a regular member now.

17 Q. Oh, okay. All right. And then you indicated
18 that you had some specialized training on direct
19 examination. I just want to focus on your specialized
20 training in scanning electron microscopy and x-ray
21 microanalysis, the SEM and the EDS, okay?

22 A. Okay.

23 Q. All right. You said you went to Lehigh
24 University School, and that was basically a seminar of
25 sorts?

1 A. Well, it was a week-long training where we had
2 hands-on experience with the instruments as well as
3 lectures.

4 Q. Okay. And that was like over a 50-hour period?

5 A. Yes.

6 Q. Okay. And in that week-long seminar, you didn't
7 just focus on gun residue. You talked about mostly the
8 machinery, right?

9 A. There were a couple of sessions that focused on
10 trace evidence and gunshot residue, but, in general, it
11 was on the operation of the scanning electron
12 microscope.

13 Q. Okay. So the answer would be yes, that you did a
14 lot of different things.

15 A. Correct.

16 Q. Okay. And this scanning electron microscope does
17 a lot of different things, correct?

18 A. Yes. You can analyze any sample for heavy
19 elements such as metals and things --

20 Q. Okay.

21 A. -- like that.

22 Q. And then also you can use it for hair fibers and
23 things? I mean, it's a really cool microscope, right?

24 A. Um-h'm. I think so.

25 Q. All right. And so that happened in June of '05

1 you got that training, right?

2 A. I think so. I don't have my --

3 Q. Take my --

4 A. -- CV in front of me.

5 Q. -- word that on your CV it says June '05?

6 A. Okay.

7 Q. All right. Thanks. And then I'm looking on
8 here, and the other thing that you did you got the --
9 you got a 24-hour course from the company that has
10 software for that microscope, right?

11 A. Yes.

12 Q. Okay. And that was in December of the previous
13 year, and then you indicated to me that you did some
14 in-house training, some sort of -- in the company that
15 you worked for, they trained you on how to do stuff,
16 correct?

17 A. Yes.

18 Q. Okay. And you basically work in a laboratory.
19 You're not a boss. You're a worker. You work on the
20 actual machine itself, right?

21 A. Yes.

22 Q. Okay. You don't have people necessarily
23 underneath you who do the work for you. You do the work
24 yourself, right?

25 A. Right.

1 Q. Okay. And in the area of forensics you -- there
2 are scientists out there with masters degrees and Ph.D.s
3 and all that, right?

4 A. Sure.

5 Q. Sure. And they write articles and journals about
6 findings and techniques and all that stuff, correct?

7 A. Correct.

8 Q. Okay. And you've never published a scholarly
9 article on any of this stuff, correct?

10 A. Correct.

11 Q. Okay. And then you did indicate to me that you
12 try to keep up with current developments of what's going
13 on in the field; is that correct?

14 A. Yes.

15 Q. Okay. And you said the primary source for that,
16 when we talked briefly before, was the Internet, Yahoo;
17 is that correct?

18 A. No. I referenced a Yahoo group that is only by
19 invitation only for scanning electron microscope users
20 so -- where we can exchange information and discuss
21 cases and discuss new articles that have come out.

22 Q. Okay. And that's on the site www.Yahoo.com?

23 A. No. I don't think it is.

24 Q. Okay.

25 A. I'm not sure of the exact website --

1 Q. Okay.

2 A. -- but it's in the Yahoo.com.

3 Q. Okay. And let's talk about the science a little
4 bit. You are familiar with the FBI Laboratory Gunshot
5 Residue Symposium that was held May 31st to June 3rd,
6 2005; is that correct?

7 A. Yes, I am.

8 Q. Okay. You didn't attend that symposium, did you?

9 A. No. I did not, but my supervisor did.

10 Q. Okay. And there's a lot of scientists and
11 experts who went to that particular thing, and we're
12 talking about the various concerns and developments and
13 things like that dealing with gun-residue testing; is
14 that correct?

15 A. Yes.

16 Q. Okay. And that was at the request of the FBI at
17 the time, correct?

18 A. I believe so.

19 Q. Okay. And you know it to be true, yes or no,
20 that the FBI doesn't even do gun-residue testing
21 anymore; is that correct?

22 A. Yes, it is.

23 Q. Okay. And I won't go through the whole report,
24 but would you agree with me that they at this symposium
25 were talking about the different particles and the

1 different morphology and composition and hand sampling
2 and contamination issues, and this was all being
3 discussed at that symposium. Would you agree with that
4 generally speaking?

5 A. Yes.

6 Q. Okay. And there was some discussion at that
7 seminar about two component particles versus three
8 component particles. Would you agree with that as well?

9 A. Yes.

10 Q. Okay. And there was some discussion that you
11 shouldn't say that two component particles should be
12 described as gunshot residue but commonly associated
13 with gunshot residue or indicative of gunshot residue or
14 characteristic of gunshot residue, that sort of
15 language, sort of qualifying language. Would you agree
16 that that was discussed at the FBI Laboratory Gunshot
17 Residue Symposium?

18 A. Yes. It was discussed.

19 Q. Okay. And you'd also agree that they were
20 talking at that symposium with regard to composition and
21 morphology of items as they're comparing it to brake
22 studies because cars sometimes put out various elements
23 like barium and things like, one of the component
24 elements of gunshot residue. You'd agree that that was
25 discussed at the symposium as well, correct?

1 A. Yes. I would agree that it was discussed.

2 Q. Okay. Thanks. And there was various tests that
3 they talked about done this Germany, one done even at
4 the Texas Department of Public Safety, is that -- do you
5 recall that sort of thing being in that report?

6 A. I don't recall specifics.

7 Q. Okay.

8 A. May I look at my report?

9 Q. Yeah. Sure. Page 3 of that.

10 MS. LEWIS: Which report are you --

11 MR. FIGLER: Oh, it's FBI Laboratory Gunshot
12 Residue Symposium.

13 MR. BATEMAN: Does Ms. Vachon have that
14 report?

15 MR. FIGLER: She does.

16 MR. BATEMAN: Okay.

17 BY MR. FIGLER:

18 Q. At the bottom of page 3 it references tests done
19 in Germany, and then below that there's a test that was
20 done over in the Texas Department of Safety and that
21 sort of thing; is that correct?

22 And then there's one on the next page, tests done
23 in Virginia, and then there was a paper they talked
24 about called the further studies to discriminate primer
25 discharge residues from particles of environmental

1 origin, that sort of thing. That was all discussed at
2 that symposium, correct?

3 A. Yes. It was discussed.

4 Q. Okay. These are all important issues to the
5 scientific field of gunshot-residue analysis. You'd
6 agree with that?

7 A. Yes, I would.

8 Q. Okay. Now let's talk about hand sampling and
9 contamination. Just before you -- actually, just after
10 you walked up I was handed approximately 183 pages of
11 your notes from the testing of this -- of these gloves,
12 and, essentially, I want to ask you this. In there it
13 shows a very precise and careful analysis; is that
14 correct?

15 A. Yes.

16 Q. Okay. And it's important to be precise and
17 careful with your analysis in this field because you
18 don't want things like contamination interfering
19 potentially with the results that you find; isn't that
20 correct?

21 A. Yes, it is.

22 Q. And as a result, you have like little checklists.
23 Questions are asked and you answer on here. For
24 example, it says was the work area and the hand tools
25 clean prior to opening the evidence, and you would check

1 yes or no, and I believe you said yes on all of these.

2 I mean, you made sure you had a clean environment,

3 correct?

4 A. Yes, I do.

5 Q. And that's important to have a clean environment,

6 correct?

7 A. Yes.

8 Q. Okay. And then it said something was the samples

9 carbon coded because that's one of your protocols, and

10 you need to make sure that happens, and you said yes on

11 all of them because that's an important thing to have as

12 well, correct?

13 A. Yes.

14 Q. Okay. So you would agree with me that in

15 science, especially, protocols are vitally important to

16 make sure that you can verify just in case you come to

17 court sometime later and some attorney's going to ask

18 you all these questions, right?

19 A. Yes.

20 Q. Okay. And I also want to note in your

21 gunshot-residue training, the 24 hours you did over in

22 San Antonio, Texas, at the Oxford thing --

23 A. Yes.

24 Q. -- you also noted that one of the things that you

25 were taught in that 24-hour course was how to prepare

1 court-appropriate reports, right?

2 A. Yes. Yes.

3 Q. Okay. So basically helping you help us when you
4 come to court to make sure that you give the -- a good
5 presentation that is appropriate, correct?

6 A. To make sure that we get across the information
7 as it's needed by the attorneys.

8 Q. Right. So they're training you for your
9 courtroom time which is what you're doing here right
10 now, correct? Okay.

11 A. Yes.

12 Q. Okay. And you have appeared in Las Vegas not so
13 long ago, a couple months ago in a case, correct?

14 A. Correct.

15 Q. And that was a case with this prosecutor,
16 Mr. Bateman; is that correct?

17 A. Yes.

18 Q. Okay. Now, when we are talking about
19 contamination -- well, first let me ask you this
20 question. When someone fires a gun or when a gun is
21 fired, how many of these microparticles that are only
22 seen under the microscope are emitted?

23 A. That's based on many different factors such as
24 the type of ammunition, the type of weapon, how long
25 it's been since the weapon was cleaned. There's really

1 no way to put a specific number on how many particles
2 are expelled from the weapon.

3 Q. Okay. And you would agree with me that sometimes
4 the number of particles can be in the thousands
5 depending on the conditions, correct?

6 A. I'm sure they can.

7 Q. Okay. And so in an area where guns are fired
8 multiple times, that would just exponentially,
9 potentially, increase the number of particles that are
10 in the "environment", if we could use that term; is that
11 accurate?

12 A. That's possible.

13 Q. And when I talk about "environment", that's a
14 term of art in your field in scientific determination
15 because you're talking about the environment in which
16 the particles are contained, correct?

17 A. Correct.

18 Q. And, of course, particles like the law of physics
19 go from an area of high concentration dispersing to
20 areas of lower concentration. After all, they're just
21 small particles, correct?

22 A. Okay.

23 Q. Is that fair to say?

24 A. I'm not a physics expert, but --

25 Q. Okay. That's fair.

1 A. -- I would say I guess so.

2 Q. Well, let me try to just simplify a little bit
3 more. This whole room is filled with particles of
4 different sorts, correct?

5 A. Yes.

6 Q. And if you were to take a sample of my book or --
7 I'm sorry, I'm taking it back -- my book or my pen or
8 this thing that says defendant or whatever, and you
9 looked under this SEM, this microscope, you'd find all
10 sorts of particles, correct --

11 A. Yes.

12 Q. -- things that aren't visible to the human eye.

13 A. Yes.

14 Q. Okay. So we're not talking about when we're
15 talking about gunshot residue necessarily a noticeable
16 powder. We're talking about the very, very tiniest
17 microbes, very, very small items, correct?

18 A. Correct.

19 Q. Okay. Now, these items have the ability to be
20 transferred all over the place; isn't that correct?

21 A. They can be transferred.

22 Q. Okay. It's not like they have the equivalent of
23 micro glue on them. They can move from party to party
24 or person to person just depending if somebody picks it
25 up.

1 If I have a particle on my pen and I hand you the
2 pen, and you touch the pen, you can have a particle on
3 you. If you then shake hands with the judge, you could
4 have the particle on him. I mean, that's how
5 transference of particles works in a very simplistic
6 sense; is that correct?

7 A. It's unlikely that one particle could be
8 transferred that many times over that far a distance --

9 Q. Okay.

10 A. -- but it's possible. The particle's just
11 sitting on the surface, so just movement could knock it
12 off onto the floor.

13 Q. (Indiscernible).

14 A. Yes.

15 Q. Okay.

16 A. Yeah. Anything's possible.

17 Q. Okay. Great. Well, anything's possible, but
18 it's documented that particles can transfer from one
19 person to another. So if there are, in fact, protocols
20 in place to try to prevent that; would you agree with
21 that?

22 A. Yes. But what you're talking about is like a
23 five-fold transfer, and I have never seen a study that
24 has shown a transfer that could go that far.

25 Q. Okay. And with regard to the particle transfer,

1 someone who is in the environment can pick up particles.
2 They go to a new environment, then the new environment
3 could have those particles. That's basically what I'm
4 getting at, and that's possible, isn't it, correct?

5 A. It's a possibility, but, like I said, these
6 particles can be lost very easily because they're just
7 sitting on the surface.

8 Q. Okay. And so if they get lost so easily,
9 anywhere outside of the scene where gunshots have been
10 fired diminishes in reliability as far as gunshot
11 residue being present. Wouldn't you agree with that?

12 A. Yes. It is suggested --

13 Q. Okay. And let me ask you this. With regard to
14 the contamination, different agencies that collect
15 gunshot residue are supposed to follow the same kind of
16 things that you follow as for as making sure you have as
17 clean an environment as possible. Would you agree with
18 that?

19 A. Yes.

20 Q. Okay. And so out in the street or out in the
21 field, it's not the same as laboratory conditions where
22 you're making sure that there's no contamination. You
23 would agree with that statement, correct?

24 A. No. I can't agree with that because I don't know
25 what happened in the field. If they put on sterile

1 gloves, then the same conditions that are in the
2 laboratory can be created in the field.

3 Q. Okay. And if the gloves touch gun particles,
4 then those gloves are no longer sterile; is that
5 correct?

6 A. Yes.

7 Q. Okay. So there could be any number -- thousands
8 for every gunshot of these particles that exist, and
9 exactly how long do they exist in nature? How long can
10 the longest particle last?

11 A. I'm not aware of any studies that have been done
12 on the degradation of primer gunshot-residue particles.
13 But because they're heavy metals, I would assume that
14 they would last for a very long time.

15 Q. A very long time. Now, you said that you don't
16 really read the specific journals on a common basis, but
17 would you agree that some people have found that gunshot
18 residue under some conditions can be over a year?

19 A. Sure. If the surface that is being sampled has
20 been protected from the environment.

21 Q. But then again, it also depends on chance and
22 nature, and you just don't know because it's a heavy
23 lead particle, and you just don't know. Is that
24 probably right to say?

25 A. I guess if you went around sampling the sidewalk

1 all over Las Vegas, you would find somewhere where
2 there's gunshot residue, but I would say that that would
3 be very highly unlikely to just find gunshot residue on
4 a random surface.

5 Q. Okay. And with regard to the types of -- the
6 morphology and the composition of gunshot residue, you
7 would agree with me that when a morphology is done, that
8 it could be helpful to have the morphology or the
9 composition of the actual ammunition fired. Would you
10 agree that that's a true statement, yes or no, that it
11 could help?

12 A. If there is something abnormal whatever I do my
13 primer gunshot residue analysis, then I would want to
14 look at the ammunition to determine if that ammunition
15 gave off the same sort of abnormalities, but, otherwise,
16 there is no specific reason for analyzing the ammunition
17 in the weapon.

18 Q. Okay. But that is a tool available to forensic
19 scientists such as the ones that are in your office;
20 isn't that correct?

21 A. Yes, it's available.

22 Q. Okay. So if the guns and the ammunition were
23 retrieved, you could replicate the morphology and the
24 composition of that ammunition, correct? That's
25 possible to do.

1 A. Yes.

2 Q. And it's also possible to compare that with the
3 guns with that which are tested on things like these
4 gloves; is that correct? You could compare those two.
5 You have the ability to do that?

6 A. Yes, but --

7 Q. Okay. And last part of that question is did that
8 get done in this particular case?

9 A. No, it didn't.

10 Q. Okay. And with any specificity can you tell me
11 when the gunshot residue that you noted on those gloves
12 was deposited on those gloves?

13 A. No, I cannot.

14 (Off-record colloquy)

15 MR. FIGLER: I'll pass the witness.

16 THE COURT: Mr. Singer.

17 MR. SINGER: Thank you.

18 CROSS-EXAMINATION

19 BY MR. SINGER:

20 Q. The substance of your, what was it called, bench
21 notes?

22 A. Yes.

23 Q. -- 186 pages, yes?

24 A. Yes, it is.

25 Q. And when did you give this to the prosecutor?

1 A. Today.

2 Q. And when was it ready?

3 A. I completed my report on February 6th of 2007.

4 Q. And between February 6th and today you never
5 received any kind of request from the prosecution to see
6 your body of work?

7 A. No, I did not.

8 Q. And you made some copies of these today, right?

9 A. Yes, I did.

10 Q. And you know what happened -- you know where the
11 copies went?

12 A. I made the copies, and the prosecutor retrieved
13 the copies from me whenever I set them up here on the
14 bench.

15 Q. How many copies did you make?

16 A. Two.

17 MR. FIGLER: I have one.

18 (Off-record colloquy)

19 BY MR. SINGER:

20 Q. So to the best of your knowledge, before today
21 you never gave anybody related to this case the 186
22 pages?

23 A. I know that I did not.

24 Q. Is it possible to transfer the particles from
25 hand to hand?

1 A. Yes, that is possible.

2 Q. Or from article of clothing to article of
3 clothing?

4 A. Not as likely, but possible.

5 Q. And what about wind? Like if there's a large
6 amount of gunfire, 40 rounds or something like that, and
7 there's wind or to whatever degree, these particles blow
8 around, right? They're not so heavy that they don't --
9 they just drop to the ground, correct?

10 A. Yes. They will blow around.

11 Q. And have you ever looked at any studies that show
12 what kind of distance they can go?

13 A. The problem is that a certain scene cannot be
14 replicated exactly. So even if we tried to replicate a
15 crime scene, we wouldn't be able to get all of factors
16 exactly right so --

17 Q. But to the best of your knowledge, it's kind of
18 unlimited. You don't know how far those gunshot --
19 these particles can go.

20 A. Well, they are heavier than air, so at some point
21 they will drop to the ground, but --

22 Q. But we don't know if that's quarter mile, half
23 mile, eighth of a mile. You don't know that?

24 A. No, I don't know.

25 MR. SINGER: Nothing. Further. Thank you.

1 I'll pass the witness.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. BATEMAN:

5 Q. 186 pages, do you reduce that down to a report?

6 A. Yes, I do.

7 Q. Okay. And that's what you did in this case,
8 right?

9 A. Yes.

10 Q. Okay. And I think Mr. Singer just asked you
11 about the -- the particles are generally in the air,
12 correct?

13 A. Yes.

14 Q. Okay. And did they disperse after the gun is
15 fired?

16 A. Yes, they do. When a weapon is fired, there's a
17 cloud that is formed around the weapon. If you saw it
18 in slow motion you could see a cloud form where the
19 gunpowder and the primer-gunshot residue and all of the
20 metallic particles from inside the gun and from the
21 bullet are expelled through open areas in the weapon
22 such as the end of the barrel and maybe any breached
23 areas where the cartridge is ejected or in a revolver,
24 the areas where the ammunition is placed inside the
25 weapon.

1 So it creates a cloud that will eventually
2 disperse because, you know, you don't walk around seeing
3 clouds of gunshot residue, so, obviously, it's going to
4 disperse at some point.

5 Q. Okay. And the cloud that you were saying that's
6 kind of the highest concentration of the elements?

7 A. Yes.

8 Q. Okay. Is that why you say it's most likely that
9 the items that you tested that had the gunshot residue
10 on them were either in contact with a discharged firearm
11 or in close proximity to a discharged firearm?

12 A. Sure. The highest concentration of particles
13 would have to be close to the weapon whenever it's
14 discharged.

15 Q. Are you saying it's more likely that you would
16 receive those particles on the items as opposed to
17 picking them up through some sort of transference?

18 A. Yes.

19 MR. FIGLER: Well, I was going to object to
20 leading, but I'll withdraw.

21 MR. BATEMAN: Well, I can rephrase.

22 MR. FIGLER: I said I withdraw.

23 MR. BATEMAN: Okay.

24 BY MR. BATEMAN:

25 Q. With regard to testing any of the firearms that

1 may have been collected in a case or any of the
2 ammunition, I think you were saying there was a specific
3 reason that you would do that?

4 A. The most common reason that we would ask for the
5 ammunition in the weapon in a case is if we didn't find
6 any gunshot residue because there are some primers that
7 are lead-free and they don't contain lead, barium and
8 antimony. So we would not detect gunshot-residue
9 particles if that was used. So in a case where we don't
10 find any gunshot residue, we will request the ammunition
11 and the weapon so that we can test it.

12 Q. And was that the case here?

13 A. No, it was not.

14 Q. Okay.

15 MR. BATEMAN: I have nothing else, Judge.

16 THE COURT: Recross.

17 MR. FIGLER: Thanks.

18 RE CROSS-EXAMINATION

19 BY MR. FIGLER:

20 Q. But a test like that where you could test the
21 ammunition and the gun and compare under the microscope
22 or the SEM, those particles to the other one, that
23 could, indeed, verify. I mean, that would be something
24 you would be able to verify. Yes, those are the same
25 molecules, molecule structure that could do that,

1 correct?

2 A. No, because particle formation is so random
3 they're all different shapes and sizes and they have
4 different elements in them.

5 Some of them only contain two of elements, like
6 they'll have lead and antimony or barium and antimony,
7 and then some of them contain all three of the elements.

8 Q. So you're saying that if someone had the actual
9 gun and the actual ammunition and was able to capture
10 the gun residue that comes off of that unique weapon and
11 ammunition, that there's no verification value of being
12 able to observe those molecules against something that
13 you're sampling?

14 A. That's what I'm saying.

15 Q. Really? Okay. And can you give me any
16 literature citation that the molecules to compare have
17 no relevance to the -- or can have no relevance to a
18 sample of the same molecules that are alleged to have
19 come from the same source?

20 A. The Aerospace report that was issued in 1977 by
21 Bolton and some other authors, they explained that they
22 tested several different types of ammunition with
23 several different weapons and determined that you cannot
24 link a particle of gunshot residue back to a specific
25 weapon and specific ammunition.

1 Q. And so that wasn't discussed at all during the
2 FBI symposium about the ability to retest the ammunition
3 and the source if available just to verify it? That
4 wasn't discussed?

5 A. I'm not sure. Do you have a page number?

6 Q. Let me ask you this. With regard to the
7 particles that were found --

8 MR. FIGLER: Court's indulgence. There it
9 is.

10 BY MR. FIGLER:

11 Q. When someone has just handled a firearm that was
12 discharged moments before and then they handle another
13 item right after that, almost directly after that, the
14 new item runs the risk of contamination. Would you
15 agree with that?

16 A. Yes.

17 MR. FIGLER: I have no further questions.

18 THE COURT: Mr. Singer?

19 MR. SINGER: No thank you.

20 MR. BATEMAN: I just have one follow-up.

21 THE COURT: One more question.

22 REDIRECT EXAMINATION

23 BY MR. BATEMAN:

24 Q. Do you know why the FBI isn't doing the
25 gunshot-residue testing?

1 A. Yes. They were only getting a few samples a year
2 to test because their field agents generally use local
3 testing facilities for their gunshot residue, so they
4 decided that they could make better use of their
5 equipment and their time on such things as terrorism.

6 Q. Thank you.

7 MR. FIGLER: I have one follow-up to that.

8 RE CROSS-EXAMINATION

9 BY MR. FIGLER:

10 Q. So you're telling me that the FBI has the
11 greatest gun-residue testing available to them, but
12 because it's too expensive and they have other better
13 things to do that they would completely disregard that
14 aspect of investigation after coincidentally a symposium
15 that talks about all the issues involved in the problems
16 with gunshot residue? Is that your testimony today?

17 A. No.

18 Q. Oh, okay.

19 MR. FIGLER: I'll pass the witness.

20 THE COURT: Mr. Singer any follow-up?

21 Anything else for this witness?

22 MR. BATEMAN: No, Your Honor.

23 THE COURT: Is this witness excused?

24 MR. BATEMAN: Yes, Your Honor.

25 THE COURT: Thank you, ma'am, for your

1 testimony. I appreciate your time.

2 Ladies and gentlemen, you're admonished not
3 to converse among yourselves or with anyone else on any
4 subject connected with this trial or read, watch or
5 listen to any report of or commentary on the trial by
6 any person connected with this case or by any medium of
7 information including, without limitation, newspaper,
8 television, the Internet or radio.

9 You are further admonished not to form or
10 express any opinion on any subject connected with this
11 trial until this case is finally submitted to you.

12 I'm directing you to report back to Rickert
13 tomorrow morning at -- we're going to do a 9:30. We're
14 going to break at 2:00, so your afternoon's going to be
15 your own, but in the morning we're going to work.

16 Does that work for everybody? Is that okay?
17 All right. Thank you.

18 We're going to have the bailiff take you out
19 just as we had before, and thank you.

20 (Off-record colloquy)

21 (Jury not present)

22 THE COURT: Hang on.

23 MR. FIGLER: If you're waiting for the
24 click, it's not going to happen.

25 MR. BUNIN: The door's open.

1 MR. SINGER: The door's ajar.

2 THE COURT: Still on the record. Record
3 should reflect we're outside the presence of the jury.

4 Is there anything else to come before the
5 Court before we take an evening recess?

6 Mr. Singer.

7 MR. SINGER: On the last break I got a text
8 message from my office that Mary Kay Holthus has put a
9 case on with me tomorrow morning in front of
10 Judge Adair who starts her calendar at 9:30.

11 THE COURT: Oh, you just gave me a headache.

12 MR. SINGER: I mean, I'll get early, and
13 I'll wait, and I'll be first on.

14 THE COURT: Okay.

15 MR. FIGLER: Luckily, I was in front of
16 Judge Barker this morning, so it all worked out.

17 THE COURT: Yeah. It worked out. Do --

18 MR. BATEMAN: We'll be all right.

19 THE COURT: -- your best.

20 MR. BATEMAN: We'll be all right.

21 THE COURT: We'll make it work.

22 MS. LEWIS: Judge --

23 THE COURT: Anything else?

24 MS. LEWIS: -- just for scheduling tomorrow.

25 The State only anticipates calling three witnesses, and

1 they're going to be relatively quick, so we expect to
2 rest very early tomorrow. I'm thinking like by about
3 11:00 o'clock.

4 THE COURT: Then I'll be --

5 MR. FIGLER: And I'll tell you this, Judge.
6 Based on the nature of the evidence that's gone through,
7 I think there's a couple of things that we need to tie
8 up. I was going to do it through some State witnesses,
9 but they're not coming in, so I think I'm put in an
10 awkward position of either calling State witnesses or to
11 expedite things I noticed this afternoon my
12 investigator.

13 Now, the State knew that I had an
14 investigator because it was public Blackstone document.
15 It was appointed, and so it was known.

16 That would be the only person I would
17 introduce, and it would just be to maybe cover some
18 stuff that I would have gotten through their other
19 witnesses, and it would be very brief.

20 THE COURT: So one witness?

21 MR. FIGLER: One witness, if any, and that
22 would be my investigator --

23 THE COURT: Mr. Singer.

24 MR. FIGLER: -- and no one else. =

25 MR. SINGER: I'm going to go tonight to

1 discuss possible testimony (indiscernible).

2 THE COURT: I understand. And then we'll
3 take a --

4 MR. BATEMAN: Did the investigator do a
5 report?

6 MR. FIGLER: Did not do a report.

7 MR. BATEMAN: No report.

8 MS. LEWIS: No report? Maybe we should make
9 a big deal.

10 MR. BUNIN: It's 187 pages.

11 MR. SINGER: No. You're right. What you
12 did was no big deal.

13 MS. LEWIS: We don't have any objections --

14 THE COURT: Hang on. Stay on task here.

15 Now, I know you guys have talked about your
16 jury instructions. You guys are playing nice so far.
17 I'm sure that's going to stop tomorrow, but I do want
18 you to get together, settle the instructions.

19 MR. FIGLER: Mr. Bateman and I are doing
20 that this evening --

21 THE COURT: Perfect.

22 MR. FIGLER: -- over dinner.

23 THE COURT: Yeah. You did actually tell me.

24 MR. FIGLER: That's why I wanted to get some
25 food.

1 (Off-record colloquy)

2 THE COURT: Okay. Good. Do that over
3 dinner. Let's hope that we can settle the instructions
4 tomorrow afternoon or after we break, and then
5 anticipate argument on Friday morning?

6 UNIDENTIFIED SPEAKER: Closing on Friday.

7 (Off-record colloquy)

8 THE COURT: Closing on Friday. That work?

9 MR. BUNIN: That's perfect.

10 THE COURT: All right.

11 MR. BUNIN: Thank you.

12 THE COURT: Have a good evening, everybody.

13 MR. FIGLER: Thank you, Judge.

14 (Court recessed at 6:01 p.m. until Thursday,
15 May 10, 2007, at 9:30 a.m.)
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CERTIFICATION

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THE STATE OF NEVADA,

Plaintiff

vs.

PIERRE JOSH LIN

JEMAR D. MATTHEWS,

Defendants

CASE NO. C-228460

DEPT. NO. XVIII

Transcript of
Proceedings

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 10, 2007

APPEARANCES:

FOR THE PLAINTIFF:

LINDA Y. LEWIS
SAMUEL G. BATEMAN
Deputy District Attorneys

FOR DEFENDANT JOSH LIN:

PHILLIP SINGER, ESQ.

FOR DEFENDANT MATTHEWS:

DANIEL M. BUNIN, ESQ.
DAYVID J. FIGLER, ESQ.

COURT RECORDER:

RICHARD KANGAS
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

AA0001098

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,

Plaintiff,

vs.

PIERRE JOSHLIN and

JAMAR MATTHEWS,

Defendants.

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CASE NO. C228460

DEPT. NO. XVIII

Transcript of

Proceedings

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

Jury Trial - Day 4

Thursday, May 10, 2007

APPEARANCES:

FOR THE PLAINTIFF:

LINDA LEWIS, ESQ.

SAMUEL G. BATEMAN, ESQ.

FOR MR. JOSHLIN:

PHILIP SINGER, ESQ.

FOR MR. MATTHEWS:

DAYVID J. FIGLER, ESQ.

DANIEL M. BUNIN, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

RACHELLE HAMILTON

District Court

VERBATIM DIGITAL REPORTING, LLC

Littleton, Co 80120

(303) 798-0890

Proceedings recorded by audio-visual recording;
transcript produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, MAY 10, 2007, 9:55 A.M.

2 (Jury not present)

3 THE COURT: -- versus Pierre Joshlin and
4 Jamar Matthews. Record should reflect presence of
5 counsel, Mr. Matthews and Mr. Joshlin.

6 Is there anything to come before the Court
7 outside the presence of the jury, State?

8 MR. BATEMAN: I don't believe so.

9 MS. LEWIS: (Indiscernible).

10 THE COURT: Defense.

11 MR. BATEMAN: Oh, the one thing I guess --
12 that's true. Stipulation, Your Honor, on the chain of
13 custody from the head of the victim in this case,
14 Mercy Williams to Jim Krylo for testing. That's State's
15 Proposed Exhibit Nos. 165. So I guess I would ask
16 pursuant to the stipulation that it be admitted as
17 State's 160 --

18 THE COURT: Are you going to -- first of
19 all, is there a stipulation to that chain of custody?

20 MR. FIGLER: That's correct, Your Honor.
21 We're not going to challenge the chain of custody on
22 that one item.

23 THE COURT: Are we going to make a
24 stipulation in front of the jury pursuant to that?

25 MR. BATEMAN: I don't think it's necessary.

1 MR. FIGLER: I don't think we need to, and I
2 can't speak for Mr. Singer.

3 THE COURT: Mr. Singer.

4 MR. SINGER: I'm sorry, Judge. Say that
5 again.

6 THE COURT: Normally, a stipulation would be
7 either read or orally stated in the front of the jury so
8 that --

9 MR. FIGLER: Well, it's just really, Judge,
10 our promise to not challenge the chain of custody, so I
11 don't know if it's --

12 MR. BATEMAN: We can do it in front of the
13 jury. I mean, I don't care.

14 THE COURT: It's up to you. I mean --

15 MR. SINGER: I don't (indiscernible). I
16 don't -- I'll submit it for waive it. I don't
17 (indiscernible).

18 MS. LEWIS: Judge, I guess what we could do
19 is for the jury's sake is we can just say we have
20 State's Exhibit 165 which has been admitted by way of
21 stipulation.

22 THE COURT: If all parties are acceptable --

23 MR. FIGLER: That's fine.

24 MS. LEWIS: We can refer to it --

25 MR. FIGLER: That's great.

1 MS. LEWIS: -- that way.

2 THE COURT: -- with that procedure, then
3 fine.

4 MS. LEWIS: Okay.

5 THE COURT: Anything else?

6 (Off-record colloquy)

7 MS. LEWIS: And I'm just going to work with
8 Sharon and go over this and get the contents which is
9 one item in a file marked --

10 THE COURT: Very good.

11 MS. LEWIS: -- 165A, so I'd move for the
12 admission of 165 and 165A.

13 THE COURT: Any objection to 165 and 165A,
14 the bullet, the projectile and the bag that it's
15 contained in?

16 MR. FIGLER: On behalf of Mr. Matthews, no
17 objection.

18 MR. SINGER: No objection.

19 THE COURT: It'd be admitted.

20 (Plaintiff's Exhibit Nos. 165 and 165A admitted)

21 THE COURT: Let's bring them in.

22 (Off-record colloquy)

23 MR. SINGER: When are we going to be
24 arguing?

25 THE COURT: Tomorrow.

1 MR. FIGLER: Oh, we're not even arguing
2 instructions until tomorrow?

3 MS. LEWIS: No. We're going to settle --

4 THE COURT: We're arguing --

5 MS. LEWIS: -- them today.

6 THE COURT: -- instructions today.

7 MR. FIGLER: Oh, okay. That's what I
8 thought.

9 THE COURT: Okay. Well, I hope that you're
10 doing closing arguments tomorrow.

11 MR. FIGLER: Right.

12 THE COURT: We're giving this case --

13 MR. FIGLER: That's the game plan.

14 THE COURT: -- to the jury tomorrow.

15 (Off-record colloquy)

16 THE COURT: You also have to admonish your
17 clients we have a lot of work to do that way and --

18 MR. BUNIN: So 1:00 o'clock seems reasonable
19 with --

20 THE COURT: Well, I want to push. I mean,
21 I'm --

22 MR. BUNIN: I mean for my witness if we do
23 it. I'm just saying --

24 THE COURT: Right. Right.

25 MS. LEWIS: Do you want to admonish them

1 now, because once we rest -- oh, there's the jury.

2 (Jury present)

3 THE BAILIFF: Jury's present. Panel's
4 present, Your Honor.

5 THE COURT: Thank you. Record will reflect
6 we're back on the record on C228460, State of Nevada,
7 plaintiff, versus Pierre Joshlin and Jamar Matthews.
8 Record should also reflect presence of all counsel,
9 clients.

10 Will the State stipulate to the presence of
11 the entire panel?

12 MR. BATEMAN: Yes, Your Honor.

13 THE COURT: Defense?

14 (No audible response)

15 THE COURT: State, you prepared to call your
16 next witness?

17 MR. BATEMAN: Yes, Your Honor. State calls
18 James Krylo.

19 THE CLERK: Please remain standing. I'll
20 swear you in.

21 JAMES KRYLO, PLAINTIFF'S WITNESS, SWORN

22 THE WITNESS: I do.

23 THE CLERK: Thank you. You may be seated.
24 Once you get settled there, please state your name
25 loudly for us and spell (indiscernible) spell your last

1 name for us.

2 THE WITNESS: James Krylo, K-r-y-l-o.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. BATEMAN:

6 Q. Sir, you work for the Las Vegas Metropolitan
7 Police Department?

8 A. Yes, I do.

9 Q. And what do you do for Metro?

10 A. I'm a forensic scientist working in the firearms
11 unit of the forensic laboratory.

12 Q. First, how long have you been working in that
13 capacity?

14 A. With Metro over eight-and-a-half years now.

15 Q. And prior to Metro did you work in law
16 enforcement?

17 A. Yes. I've been employed in the forensic side of
18 law enforcement for over 25 years now. I spent about 16
19 of those years doing firearms and tool-mark
20 examinations.

21 Q. Okay. What specific training and education do
22 you have to do the firearms examinations that you do?

23 A. Well, I received my initial training with
24 firearms and tool-mark identification at the sheriff's
25 department in Orange County, California.

1 Since that initial training period I've also
2 attended a little over 600 hours of related training
3 from different forensic associations, law enforcement
4 agencies and firearms manufacturers.

5 Q. Have you had continuing training and education as
6 you've been with Metro over the last eight years?

7 A. Yes.

8 MR. BATEMAN: Judge, I'd just ask at this
9 time to be able to question this witness as to the
10 firearms examination.

11 MR. FIGLER: I'm quite familiar with
12 Mr. Krylo, and no objection to that.

13 THE COURT: Mr. Singer.

14 MR. SINGER: No objection, Judge.

15 THE COURT: You may continue.

16 MR. BATEMAN: Thank you.

17 BY MR. BATEMAN:

18 Q. Specifically when you talk about firearms
19 examination, what -- can you give us a general overview
20 of what it is you do.

21 A. Basically what we do in the firearms unit is we
22 take firearms, we examine them, make sure they're safe
23 to fire, actually test fire them, and then we compare
24 the components of ammunition that we test fired to
25 evidence components of ammunition.

1 Q. Okay. What is it you're looking for -- well, let
2 me back up. Some of the items of evidence that you're
3 comparing to firearms I think you referred to the term
4 "ammunition". What does ammunition include?

5 A. Well, one basic round, one single unit of
6 ammunition is called a cartridge, so that's one round of
7 ammunition that hasn't been fired yet.

8 It's composed of four basic parts. It has the
9 cartridge case which is the container for all the parts.
10 At one end of the cartridge case you have the primer
11 which is kind of spark plug that gets everything going.
12 Inside the cartridge case you have gunpowder, and then
13 seated in the mouth of the cartridge case is the bullet,
14 so all that together is one cartridge.

15 Once you fired a gun, what you have left over is
16 the cartridge case which will either be still in the gun
17 or have been ejected from the gun, so it would be near
18 the gun, and then the bullet which is the projectile
19 that has gone out the barrel of the gun and gone down
20 range.

21 Q. What items included in the full cartridge can you
22 test against the actual firearms that may have or may
23 not have fired them?

24 A. I can look at markings left both on the cartridge
25 case and on the bullet itself during the firing process

1 to make a comparison back to the gun to determine if
2 that cartridge case and bullet had been fired from a
3 specific gun.

4 Q. And you do that by actually firing the gun with
5 another round and then looking at -- or comparing what
6 is fired when you did it as opposed to what evidence you
7 received?

8 A. Exactly. I take the components that I test
9 fired, the cartridge case and the bullet, and I use
10 what's called a comparison microscope. It's two
11 compound microscopes joined together with an optical
12 bridge.

13 What that allows me to do is look at the two
14 objects side by side at the same time. So I'll take the
15 cartridge cases and bullets that I fired, I look them at
16 the comparison microscope, and I'm looking for the marks
17 that were left on them during the firing process.

18 And then I do a direct comparison of a test
19 component, either a bullet or a cartridge case, to the
20 evidence to see if those same marks reproduced on the
21 evidence. And by doing that, then I can make a
22 determination as to whether or not that evidence had
23 been fired in that particular firearm.

24 Q. Okay. Now, generally, are there different sizes
25 to ammunition depending on the firearms?

1 A. Yes.

2 Q. Okay. And how are those sizes generally
3 described?

4 A. The general term that's used is "caliber", and
5 caliper is used -- for us it's used two different ways.
6 One, the very basic definition, is that it's the
7 diameter of the inside of the barrel of the firearm, and
8 it can be either in inches or a metric designation.

9 And the other way that caliber is used is it's
10 used to denote the name of the cartridge, the actual
11 ammunition, that a specific firearm is designed to fire.
12 So, in other words, can you have different calibers,
13 different widths of barrels, diameters, but the gun is
14 chambered for a different cartridge.

15 Q. In this particular case, were you asked by the
16 Las Vegas Metropolitan Police Department to conduct some
17 testing of ammunition and of firearms?

18 A. Yes.

19 Q. Okay. And do you know when it is you received
20 these items of evidence?

21 A. Yes, I do.

22 Q. When was that?

23 A. I'll have to go back and check my notes.

24 Q. Let me stop you there. You said you did -- did
25 you, in fact, do some testing of evidence in this case?

1 A. Yes, I did.

2 Q. Okay. And when you do testing of evidence, do
3 you generally create a report soon after doing the
4 testing?

5 A. Yes.

6 Q. Okay. And what is the reason for creating that
7 report?

8 A. That's to give a synopsis of the results of my
9 examination.

10 Q. Okay. So looking at your report would refresh
11 your recollection as to when you actually did the -- or
12 received the evidence; is that correct?

13 A. Both my report and my notes.

14 Q. Okay. Why don't you take a look at those if you
15 have them there with you, and let me know when you're
16 done reviewing them.

17 A. I'm done.

18 Q. Okay. Do you know when you received the
19 evidence?

20 A. Yes. I received the evidence on October 11th of
21 2006.

22 Q. Okay. And do you know based upon reviewing that
23 report or do you know independently when you actually
24 conducted the tests?

25 A. Again, want me to go back and check when I opened

1 the packages?

2 Q. Please.

3 A. Okay. Well, I began my examinations on October
4 16th of 2006 and completed them by October 25th of 2006.

5 Q. Since that time have you done more testing on
6 other cases and other items of evidence?

7 A. Yes, I have.

8 Q. Okay. Have you done a lot or -- well, strike
9 that. Can you estimate how many different items of
10 evidence you tested since that date?

11 A. It would -- it's probably -- individual items is
12 probably going up into the hundreds since then.

13 Q. Okay. So, generally, do you have independent
14 recollection of the testing and the items that you did
15 in this case or is it, generally, going to be helpful
16 for you to review your report as we go forward?

17 A. Well, it's really helpful for me to be able to
18 review.

19 Q. Okay. I'm going to specifically ask you about
20 whether you received some actual firearms in this case
21 in conjunction with whatever testing you did.

22 A. Okay.

23 Q. Did you, in fact, receive actual firearms?

24 A. Yes, I did.

25 Q. Okay. I'm going to cover those first.

1 MR. BATEMAN: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. BATEMAN:

5 Q. First, I'm going to show you what's in evidence
6 as State's Exhibit No. 5. Do you recognize this
7 package?

8 A. Yes, I do.

9 Q. How do you recognize it?

10 A. Well, to begin with, the Metro event number
11 0609303216 which is on the label, and then on the main
12 label under the chain of custody you can see my
13 signature, personnel number, and my package designator
14 and the date and time that I sealed it.

15 Then, also, when you look on the side of the box,
16 you can see the blue-and-white tape that I used to seal
17 it, and, again, that has my initials, personnel number,
18 and the date that I sealed it.

19 Q. So when you received this evidence package, were
20 there any other seals on the package?

21 A. The red seals were on the package.

22 Q. Was that the only seals?

23 A. Yes.

24 Q. Okay. And so it was substantially in the same
25 condition when you received it to do your testing as it

1 is today, other than the fact that it's been open?

2 A. Correct.

3 Q. Okay.

4 MR. BATEMAN: And, just for the record,
5 Judge, we opened these boxes before with counsel before
6 coming into court today, and I think counsel will
7 stipulate to that.

8 MR. FIGLER: That's correct, Judge.

9 THE COURT: All right.

10 BY MR. BATEMAN:

11 Q. Within this box I'm going to ask you if you
12 recognize what's been marked as State's Proposed Exhibit

13 5A. Do you recognize this item of evidence?

14 A. Yes, I do.

15 Q. Okay. And is this an item of evidence that came
16 from this particular box?

17 A. Yes.

18 Q. Okay. What is that?

19 A. This is a Ruger. It's a model 10/22. The
20 caliber is .22 long rifle. It's a semiautomatic rifle.

21 Q. Okay. When you say semiautomatic, what do you
22 mean by that?

23 A. Semiautomatic basically means that you get one
24 shot with each pull of the trigger. When you do fire
25 the gun, it goes through a process of extracting and

1 ejecting the fired cartridge case and automatically
2 loading another cartridge in the chamber.

3 So each time you fire, a bullet goes down
4 (indiscernible), the action cycles, and you release the
5 trigger and fire it again as long as there's ammunition
6 remaining in the mags.

7 Q. Okay. With this particular gun, where does the
8 ammunition feed into the chamber?

9 A. Well, there's a magazine well here in the bottom
10 of the receiver. The magazine goes into the well, and
11 then there's a bolt here, and the bolt -- as the bolt
12 goes forward, it pushes the top cartridge from the
13 magazine into the chamber, and then the rifle is ready
14 to fire.

15 Q. Okay. Based upon your review of that particular
16 item or that particular firearm, can you say anything
17 about or do you have any opinions about the length of
18 the barrel of the weapon?

19 A. I measured the barrel.

20 Q. Okay. Is that a standard length barrel on that
21 particular .22?

22 MR. FIGLER: Object, Your Honor. Just the
23 term "standard" hasn't been established yet.
24 Foundation.

25 THE COURT: Foundation.

1 MR. BATEMAN: (Indiscernible).

2 BY MR. BATEMAN:

3 Q. Are you familiar, generally, with .22 rifles?

4 A. Yes.

5 Q. Okay. Is there anything different about this
6 particular rifle than, generally, what you see with .22
7 caliber rifles?

8 A. Well, with the Ruger 10/22 models, yes.

9 Q. Okay. And what is that?

10 A. This is not a standard stock or a factory stock
11 for this rifle, and the barrel is shorter than it would
12 normally come from the factory.

13 Q. Okay. How do you make a barrel shorter than what
14 would normally come from the factory?

15 A. Typically, you would cut it off.

16 Q. Does it appear that that would have been the case
17 with this gun?

18 A. Yes.

19 Q. Okay. Now, you said that there's, generally, a
20 magazine that goes in the bottom of this, and that's
21 what feeds the ammunition into it; is that correct?

22 A. Yes.

23 Q. Okay. Did you have an opportunity to review or
24 to actually receive evidence relating to the magazine
25 that actually was used with this rifle?

1 A. I did receive a magazine that fits this rifle,
2 yes.

3 Q. So based upon your familiarity with this brand
4 and this type of gun, can you tell me what is normally
5 considered a standard magazine for this gun?

6 A. The factory magazine has a capacity of ten
7 cartridges.

8 Q. That's ten -- creates an ability to fire ten
9 separate times?

10 A. Yes.

11 Q. I'm going to show you, first, what's been marked
12 and in evidence as State's Exhibit No. 6. Ask you
13 whether you identify that evidence bag or can identify
14 it.

15 A. Yes, I can.

16 Q. Have you seen that bag before?

17 A. Yes, I have.

18 Q. Okay. How do you know that you've seen that bag
19 before?

20 A. Again, same as before, my signature, personnel
21 number, date and time, package designator, on the chain
22 of custody line on the label itself, and then also the
23 blue-and-white tape that I sealed the package with my
24 initials, personnel number, and the date that I sealed
25 it.

1 Q. Okay. Let me have you open up that bag there.
2 It's already again open, and it appears you're taking
3 out, for the record, two -- two items.

4 And I'm going to show you what's been marked as
5 State's Proposed Exhibit A, one of the items that you've
6 taken from that bag. Do you recognize this particular
7 item?

8 A. Yes, I do.

9 Q. How do you recognize it?

10 A. Well, on the outside of the package my initials,
11 package number and item designator, and then on the item
12 itself I've written the event number, I mean my
13 initials, package number and item designator.

14 Q. Okay. What is this actual item of evidence?

15 A. This is a magazine that fits and functions in
16 this Ruger rifle.

17 Q. Okay.

18 MR. BATEMAN: Your Honor, I'd move for
19 State's -- move admission -- excuse me -- of State's
20 Proposed Exhibit 6A.

21 THE COURT: Any objection?

22 MR. BUNIN: No objection.

23 THE COURT: Admitted.

24 (Plaintiff's Exhibit No. 6A admitted)

25 //

1 BY MR. BATEMAN:

2 Q. So this particular magazine, if it's in the
3 bottom of State's Exhibit 5A, the Ruger?

4 A. Yes.

5 Q. Okay. And how does it fit in without necessarily
6 taking it out (indiscernible).

7 A. Well, basically it just fits in. If the rifle is
8 in this orientation, the magazine fits in like this.

9 Q. Okay. How many rounds of ammunition does that
10 particular magazine that you have in your hand there
11 contain?

12 A. This will --

13 Q. Or would it contain?

14 A. This will hold 30 cartridges.

15 Q. Okay. Do you have a term for that type of a
16 magazine?

17 A. Kind of a generic term. It's just an
18 extended-length magazine.

19 Q. Okay. I think you said earlier that, generally,
20 the factory magazine contains ten rounds?

21 A. Correct.

22 Q. So this is three times as many rounds?

23 A. Correct.

24 Q. And then, finally, I think you also pulled out
25 item what I think is marked as 6C. Do you recognize

1 that item?

2 A. Yes, I do.

3 Q. How do you recognize it?

4 A. Again, on the container itself I've written the
5 event number, my initials, package number and item
6 designator.

7 Q. And what is 6C?

8 A. This is a .22 long rifle cartridge.

9 Q. Actually, I'm sorry, 6B; is that correct? Is
10 that what I have marked there?

11 A. 6B.

12 Q. Correct. It's a full intact cartridge?

13 A. Correct.

14 Q. So that cartridge wouldn't have been fired?

15 A. Correct.

16 Q. Okay.

17 MR. BATEMAN: Move admission of 6B, Your
18 Honor.

19 MR. FIGLER: Submitted, Judge.

20 MR. SINGER: No objection.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit No. 6B admitted)

23 BY MR. BATEMAN:

24 Q. All right. I'm going to show you what's in
25 evidence as State's Exhibit 8, see if you recognize that

1 package.

2 A. Yes, I do.

3 Q. Okay. How do you recognize it?

4 A. Again, the same way, on the label where I've
5 signed the chain of custody line, and the blue-and-white
6 evidence tape with my initials and personnel number.

7 Q. Okay. So when you received this box, it was
8 intact with the red seals, and then you opened it up; is
9 that correct?

10 A. Correct.

11 Q. Okay. And were you asked to do testing on this
12 particular item?

13 A. Yes, I was.

14 Q. Okay. What do we expect to find in this
15 particular item?

16 A. We should find a Colt semiautomatic pistol and
17 caliber .45 auto.

18 Q. Okay. Now, I noticed on the back of this box
19 here there seems to be an orange kind of -- I don't know
20 what that is, band of some sort.

21 A. It's a cable tie.

22 Q. Okay. And why is that on there?

23 A. When I repackaged the pistol in the box, I just
24 use a cable tie to secure it in the box so it doesn't
25 slide around as much.

1 Q. Okay. And has this been made safe, this
2 particular gun in this box?

3 A. Yes.

4 Q. Okay. I'm going to ask you to open it up.

5 MR. BATEMAN: Your Honor, with the Court's
6 permission. I don't know if this is --

7 BY MR. BATEMAN:

8 Q. I'll give you some scissors for the record.

9 THE COURT: Any objection?

10 MR. BUNIN: No.

11 MR. SINGER: No.

12 THE WITNESS: (Indiscernible) this other
13 one? Take it out?

14 BY MR. BATEMAN:

15 Q. If you can get through it with the scissors.

16 A. All right.

17 Q. And for the record, you've taken from item number
18 8 what appears to be a firearm?

19 A. Yes.

20 Q. Okay. Is this firearm that you've seen before?

21 A. Yes, it is.

22 Q. Okay. And have you done testing on this
23 particular firearm?

24 A. Yes, I have.

25 Q. Tell me again what -- describe this gun for me if

1 you could.

2 A. Well, it's -- the brand Colt. The model is
3 officers ACP. The caliber is .45 auto, and it's a
4 semiautomatic pistol.

5 Q. (Indiscernible). What, generally, is -- when you
6 say semiautomatic, again, that's the same type of
7 functioning as the Ruger; is that correct?

8 A. Yes.

9 Q. Okay. How many rounds would this -- would a
10 factory -- well, does this contain a magazine much like
11 the Ruger?

12 A. It's a similar type magazine. The Ruger's a
13 little bit different in the way it functions, but
14 they're basically kind of a box. It has a spring in it
15 and a little plate at the top of the spring called a
16 follower that's always pushing the ammunition up to the
17 top of the magazine.

18 Q. Okay. What would the factory magazine that would
19 come with this gun hold in terms of the number of
20 ammunition?

21 A. It should be six or seven cartridges.

22 Q. Okay.

23 MR. BATEMAN: May I approach and have this
24 marked as 8A, Your Honor?

25 THE COURT: Sure.

1 (Off-record colloquy)

2 MR. BATEMAN: And I'd move its admission at
3 this point as 8A.

4 THE COURT: Any objection?

5 MR. FIGLER: None, Judge.

6 MR. SINGER: None, Judge.

7 THE COURT: It's in.

8 (Plaintiff's Exhibit No. 8A admitted)

9 BY MR. BATEMAN:

10 Q. Both this gun and the Ruger that you tested, were
11 they functioning when you tested them?

12 A. Yes.

13 Q. Okay. All right. I'm going to also show you
14 what's been marked as State's Exhibit 9 and in evidence,
15 see if you recognize that particular item. Do you
16 recognize the actual evidence bag?

17 A. The bag, yes, I do.

18 Q. Okay. How do you recognize it?

19 A. Again, as before, my signature, P number, date
20 and time on the chain of custody line and then also the
21 blue-and-white tape that I sealed the package with.

22 Q. So you've actually opened this bag previously; is
23 that correct?

24 A. Yes.

25 Q. Okay. And it is open here as I hand it to you?

1 A. Yes.

2 Q. Okay. May I ask you to pull the items out of
3 evidence that are inside the bag out of the bag. Pull
4 all of them out if you would.

5 A. Okay.

6 Q. Is there one more item in there? Okay. So in
7 total have you pulled out, essentially, what are three
8 separate -- well, separated items?

9 A. Yes.

10 Q. Okay. I'm going to show you, first, what's been
11 marked as State's Proposed Exhibit A, and ask you if you
12 recognize what is included in the package of State's
13 Proposed Exhibit 9A.

14 A. This is a single .45 auto cartridge.

15 Q. Okay. So that, again, hasn't been fired?

16 A. Correct.

17 Q. Okay. And when you say .45, that's the caliber
18 of the cartridge?

19 A. Right. Well, .45 is basically the diameter of
20 the bullet, that means it's .45 inches across, and then
21 .45 auto is the name of this particular cartridge.

22 Q. Okay. Would that particular cartridge operate in
23 the Colt .45 marked State's A?

24 A. Yes.

25 Q. Okay.

1 MR. BATEMAN: Okay, I'd move admission,
2 Your Honor of State's 9A.

3 THE COURT: Objection?

4 MR. FIGLER: Submit it, Judge.

5 THE COURT: It's admitted.

6 (Plaintiff's Exhibit No. 9A admitted)

7 BY MR. BATEMAN:

8 Q. If you look now at State's Proposed Exhibit 9B
9 which you also pulled from that evidence bag and tell me
10 if you recognize that item.

11 A. Yes, I do.

12 Q. You've seen that before?

13 A. Yes.

14 Q. When you opened this bag previously?

15 A. Yes.

16 Q. Okay. What are we looking at in 9B?

17 A. This is a pistol magazine, and it fits and
18 functions in this Colt pistol.

19 Q. Okay. How many rounds of ammunition would that
20 particular magazine be designed to contain?

21 A. This magazine holds ten cartridges.

22 Q. So is there something similar with this cartridge
23 -- I'm sorry, this magazine as the Ruger magazine?

24 A. Again, this is another extended-length magazine.

25 Q. This wouldn't be what comes from the factory with

1 this gun?

2 A. Correct.

3 Q. Okay.

4 MR. BATEMAN: Your Honor, I'd move State's
5 Proposed 9B.

6 THE COURT: Objection?

7 MR. BUNIN: Submit it.

8 MR. SINGER: No, Judge.

9 THE COURT: It's admitted.

10 (Plaintiff's Exhibit No. 9B admitted)

11 BY MR. BATEMAN:

12 Q. Finally, I'm going to show you what you also
13 pulled from the bag as State's Proposed 9C, see if you
14 recognize what's contained in that zip lock bag.

15 A. These are six .45 auto cartridges.

16 Q. All right. And again, those would fit in 8A, the
17 Colt .45; is that correct?

18 A. Correct.

19 Q. Okay.

20 MR. BATEMAN: And I would move admission of
21 9C.

22 THE COURT: Objection.

23 MR. FIGLER: Submit it.

24 MR. SINGER: No.

25 THE COURT: It's admitted.

1 (Plaintiff's Exhibit No. 9C admitted)

2 BY MR. BATEMAN:

3 Q. All right. I'm going to show you what's been
4 marked and in evidence as State's Exhibit No. 10. See
5 if you recognize this package.

6 A. Yes, I do.

7 Q. Okay. Same way you recognize the previous
8 packages?

9 A. Yes.

10 Q. Okay. What do you believe is contained in this
11 particular package?

12 A. A Glock model 21, semiautomatic pistol and
13 caliber .45 auto.

14 Q. Okay. I'm going to ask you to open that box if
15 you could. Does it also have the tie on the back of it?

16 A. Yes.

17 Q. I'd ask for you to open it in the same way you
18 opened the last one.

19 MR. BATEMAN: (Indiscernible).

20 THE COURT: Yes.

21 BY MR. BATEMAN:

22 Q. And for the record, you pulled out another
23 firearm?

24 A. Yes.

25 Q. Okay. What is this firearm?

1 A. This is a Glock, model 21, .45 auto,
2 semiautomatic pistol.

3 Q. And have you done testing on this particular gun
4 with reference to this case?

5 A. Yes, I have.

6 Q. Is it similar testing to what you did on the
7 Ruger or the Colt?

8 A. Yes.

9 Q. Okay.

10 MR. BATEMAN: Your Honor, I'd move admission
11 of -- actually, I'd ask to have it marked as 10A and
12 move its admission.

13 THE COURT: Any objection?

14 MR. FIGLER: Submit it.

15 MR. SINGER: No, Judge.

16 THE COURT: It's admitted.

17 (Plaintiff's Exhibit No. 10A admitted)

18 BY MR. BATEMAN:

19 Q. Now does this, as a semiautomatic, this
20 particular gun also contain or would be used with a
21 magazine in order to (indiscernible)?

22 A. Yes.

23 Q. Okay. And what would the factory size magazine
24 (indiscernible) contain in terms of the number of
25 (indiscernible)?

1 A. 13 cartridges.

2 Q. And was this gun functioning when you tested it
3 as against whatever other items of evidence you've done
4 in this case?

5 A. Yes.

6 Q. Okay. I'm going to show you State's Exhibit
7 No. 11. See if you recognize that evidence bag that's
8 already in evidence as 11.

9 A. Yes, I do.

10 Q. Okay. Same way you basically recognize all of
11 these evidence bags; is that correct?

12 A. Yes.

13 Q. Okay. I'm going to ask you to open it up and
14 pull out all items that are contained in that evidence
15 bag. It appears you again pulled out essentially what
16 are separated as three groups of evidence; is that
17 correct?

18 A. Correct.

19 Q. I'm going to show you what's been marked as
20 State's Proposed Exhibit 11A. See if you recognize
21 what's contained in that particular package.

22 A. Yes, I do.

23 Q. And what is that?

24 A. This is a single .45 auto cartridge.

25 Q. Okay. And would that cartridge then be used or

1 could be used in State's Exhibit 10A, the Glock?

2 A. Yes.

3 Q. Okay. And have you seen that item before?

4 A. Yes, I have.

5 Q. Okay.

6 MR. BATEMAN: Move the admission of State's
7 11A, Your Honor.

8 THE COURT: Any objection?

9 MR. FIGLER: No, Your Honor.

10 MR. SINGER: No, Your Honor.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit No. 11A admitted)

13 MR. BATEMAN: Okay.

14 BY MR. BATEMAN:

15 Q. Showing you what's been marked as 11B in a zip
16 lock baggy, see if you recognize the item that's
17 contained in that zip lock bag.

18 A. Yes, I do.

19 Q. How do you recognize it?

20 A. My initials, package designator and item number
21 on the zip lock bag itself, then also on the magazine
22 itself.

23 Q. Okay. So you reference magazine. What actually
24 is this item?

25 A. This is a pistol magazine that fits and functions

1 in the Glock pistol.

2 Q. Okay. And how many rounds of ammunition does
3 that particular magazine hold?

4 A. Well, it's marked 28, but 28 is very tight, hard
5 to get in.

6 Q. Okay. So up to 28?

7 A. Yes.

8 Q. Okay. And again, I think -- what do you say it
9 was? The factory design or standard magazine for this
10 particular Glock.

11 A. 13.

12 Q. Okay.

13 MR. BATEMAN: Your Honor, I'd move admission
14 of State's Proposed 11B.

15 THE COURT: Objection?

16 MR. FIGLER: No.

17 MR. SINGER: No.

18 THE COURT: It's in.

19 (Plaintiff's Exhibit No. 11B admitted)

20 BY MR. BATEMAN:

21 Q. All right. And then finally showing you a zip
22 lock baggy containing various items of evidence marked
23 11C. Do you recognize the evidence that I'm handing
24 you?

25 A. Yes, I do.

1 Q. And how do you recognize it?

2 A. Again, my initials, package designator and item
3 number on the bag itself and then on each of the vials
4 inside the bag.

5 Q. And what do each of those vials contain?

6 A. Each vial contains a single .45 auto cartridge,
7 and there are a total of 15.

8 Q. Okay.

9 MR. BATEMAN: Move admission of 11C and its
10 contents, Your Honor.

11 THE COURT: Objection?

12 MR. FIGLER: Submit it.

13 MR. SINGER: No.

14 THE COURT: It's admitted.

15 (Plaintiff's Exhibit No. 11C admitted)

16 BY MR. BATEMAN:

17 Q. Now, with regard to these three firearms, did you
18 actually test fire all of these firearms in relation to
19 your testing in total?

20 A. Yes, I did.

21 Q. I'm going to show you now what's in evidence as
22 State's Exhibit No. 1. Can you tell me if you recognize
23 that evidence bag?

24 A. Yes, I do.

25 Q. Okay. Recognize it the same way you recognize

1 all the other bags?

2 A. Yes.

3 Q. Okay. Does this bag contain items of evidence
4 that you basically tested as against any one of these
5 particular firearms that we talked about?

6 A. Yes.

7 Q. Okay. I'll ask you -- the bag's open. I'll ask
8 you to remove its contents if you could. All right.
9 There should be an item there that's marked -- and I
10 noticed that you've taken out what appears to be four
11 separate items separately --

12 A. Yes.

13 Q. -- marked items. Is there 1A? Thank you. It
14 appears to be a zip lock bag containing two individual
15 items in the bag. Do you recognize the items in State's
16 Proposed Exhibit 1A?

17 A. Yes, I do.

18 Q. And what are those items?

19 A. These are two fired 9mm Ruger cartridge cases.

20 Q. Okay. Now, we just talked about three firearms
21 that I brought up here. I think you said two are
22 .45 calibers, one was a Glock, one was a Colt, and then
23 there was a Ruger that was a .22 caliber?

24 A. Correct.

25 Q. Okay. Was there ever a gun that you were given

1 to test as against these particular cartridge cases?

2 A. No.

3 Q. Okay. Would either of these two particular --
4 were they fully intact as cartridges be used in any of
5 the guns we've just shown you?

6 A. No. They're the wrong caliber to fire in these
7 guns.

8 Q. Okay.

9 MR. BATEMAN: Your Honor, I'd move State's
10 Proposed Exhibit 1A.

11 THE COURT: Any objection?

12 MR. FIGLER: I'm sorry if I didn't follow.
13 Those were found but had no evidentiary value? Is
14 that --

15 MR. BATEMAN: They were found -- I believe
16 the testimony of Amy Nemcic was that they were found at
17 the Balzar address in the Balzar Street.

18 MR. FIGLER: Oh, but they weren't typed to
19 these guns?

20 MR. BATEMAN: That's correct.

21 MR. FIGLER: Okay. No objection.

22 MR. SINGER: No objection.

23 THE COURT: They're in.

24 (Plaintiff's Exhibit No. 1A admitted)

25 MR. BATEMAN: All right.

1 BY MR. BATEMAN:

2 Q. I'm going to show you now what's been marked as
3 State's Proposed Exhibit 1B. See if you recognize
4 what's in that particular package.

5 A. Yes, I do.

6 Q. Okay. And what is that?

7 A. This is a fired .45 auto cartridge case.

8 Q. Okay. This particular item, did you do any sort
9 of testing on this item with reference to any of the
10 firearms?

11 A. Yes, I did.

12 Q. Okay. And what were the results -- again,
13 testing using the microscope you were talking about
14 earlier?

15 A. Correct.

16 Q. Okay. And how is it that you did the testing on
17 this particular item?

18 A. Well, after I test fired the pistols and did a
19 comparison of test to test, then I did a direct
20 comparison of a test cartridge case to the evidence
21 cartridge case.

22 Q. Okay. And what was your conclusions with regard
23 to this particular item of evidence?

24 MR. SINGER: Judge, I'm going to object at
25 this time.

1 THE COURT: What's the basis for the
2 objection?

3 MR. SINGER: At the preliminary hearing it
4 was brought out that none of the bullets that were
5 tested had -- or, excuse me. Bullets that were tested
6 including this bullet lacked conclusive evidentiary
7 value. It was asked and he --

8 THE COURT: What's the basis of the
9 objection is what, foundation?

10 MR. SINGER: Foundation and, well, it's
11 going to be more prejudicial than probative if he's
12 going to tie this bullet to any of the guns that were
13 found. Then he already said that it lacked specifically
14 conclusive evidentiary value, so there would be no
15 ability for him to tie this gun to -- tie this bullet to
16 the gun.

17 MR. BATEMAN: Is this a voir dire question?

18 THE COURT: I'm not sure if it's a voir dire
19 question or not.

20 So your objection is foundation, correct?

21 MR. SINGER: It is.

22 THE COURT: And --

23 MR. BATEMAN: I think the foundation's been
24 laid about where it was collected using the previous
25 crime scene analyst, and then I'm asking --

1 MR. SINGER: That's fine. I don't care
2 about that, but if he's -- the next question that he's
3 asking right now which I objected to -- I didn't object
4 to that last question, but this question is is it based
5 on his microscopic analysis this -- he's going to try to
6 tie this bullet to a specific gun, and he already said
7 he can't do that. So rather than put it in front of the
8 jury and then have to strike it from their minds, I'd
9 ask that you not allow it.

10 MR. BATEMAN: I mean, it sounds like a
11 cross-examination question.

12 THE COURT: I'll going to let it in. You
13 can cross on it. Overruled.

14 MR. BATEMAN: Okay.

15 BY MR. BATEMAN:

16 Q. What were your conclusions as a result of your
17 testing of this particular item and any of the other
18 guns that could have fired it?

19 A. Well, I was able to eliminate the Colt pistol as
20 having fired this, so this was not fired by the Colt.
21 When I compared it to the Glock, my results were
22 inconclusive.

23 The area of marks that I looked at is damaged on
24 this particular cartridge case, so the markings that I
25 would use for comparison were obscured, so I couldn't

1 conclusively say that it was fired from the Glock.

2 Q. Okay. But you could say that it was the same
3 caliber that could be used in a Glock?

4 A. In this particular Glock, yes.

5 Q. Okay.

6 MR. BATEMAN: Move admission, if I haven't
7 already, of State's 1B, Your Honor.

8 THE COURT: Objection is noted for the
9 record.

10 MR. SINGER: Thank you, Judge.

11 THE COURT: It is admitted.

12 (Plaintiff's Exhibit No. 1B admitted)

13 MR. BATEMAN: Okay.

14 BY MR. BATEMAN:

15 Q. I'm going to show you now what's been marked in a
16 zip lock baggy as State's Exhibit 1C which contains a
17 number of items. See if you recognize those particular
18 items.

19 A. Can I take these out?

20 Q. If that would be help you in reviewing
21 (indiscernible).

22 A. Okay.

23 Q. Do you recognize those items?

24 A. Yes, I do.

25 Q. How do you recognize them?

1 A. If you look on each vial, again, the event
2 number, my initials, package number and item designator,
3 and then also my initials, package number and item
4 designator on the cartridge case itself inside.

5 Q. How many vials do you have there?

6 A. Ten.

7 Q. Okay. And what's contained in each one of these
8 ten vials?

9 A. Each vial contains one fired .45 auto cartridge
10 case.

11 Q. Okay. Now, did you do any testing on these
12 particular items with reference to any of the three
13 firearms that we've already talked about here today?

14 A. Yes.

15 MR. SINGER: Objection. Same as last time.

16 THE COURT: Noted for the record.

17 BY MR. BATEMAN:

18 Q. And what were your conclusions?

19 A. I was able to identify all ten as having been
20 fired in the Glock pistol.

21 Q. Okay.

22 MR. BATEMAN: Move admission, Your Honor of
23 10 -- let me see that evidence bag if I could. I
24 believe it's -- excuse me, 1C and contents.

25 THE COURT: With your objections noted for

1 the record, the exhibit will be admitted.

2 (Plaintiff's Exhibit No. 1C admitted)

3 BY MR. BATEMAN:

4 Q. Put those back in there. Thank you.

5 Finally, showing you what's been marked as
6 State's Proposed Exhibit 1D, see if you recognize what's
7 contained in that zip lock bag. Again, if you need to
8 take them out if that helps.

9 A. Yes, I do.

10 Q. You recognize them?

11 A. Yes.

12 Q. Okay. What does that bag contain?

13 A. This bag contains two vials. Each vial contains
14 one unfired .45 auto cartridge.

15 Q. Okay. Did you actually do any testing with
16 regard to those cartridges?

17 A. No, I did not.

18 Q. Okay.

19 MR. BATEMAN: Move admission of State's 1D.

20 THE COURT: Objection?

21 MR. SINGER: No.

22 MR. FIGLER: Submit it.

23 THE COURT: Admitted.

24 (Plaintiff's Exhibit No. 1D admitted)

25 //

1 BY MR. BATEMAN:

2 Q. I'm going to show you what's been marked as
3 State's already in evidence, State's Exhibit No. 2. See
4 if you recognize that evidence bag.

5 A. Yes, I do.

6 Q. How do you recognize it?

7 A. Again, my signature, information on the chain of
8 custody line on the label, and then also my initials,
9 personnel number and date on the blue-and-white tape
10 that I sealed it with.

11 Q. All right. I'm going to ask you to take out the
12 contents of that bag. And showing you what you pulled
13 out as a zip lock baggy, again, with what appears to be
14 a number of vials marked State's Proposed Exhibit 2A.
15 Would it help you to identify those items if you took
16 them out of the zip lock bag?

17 A. Yes.

18 Q. Okay, please do.

19 THE COURT: Bailiff, we have a question.
20 Approach.

21 (Off-record bench conference)

22 THE COURT: For the record, I'm going to
23 have this marked as Court 's Exhibit first -- 1, and
24 we'll proceed with questioning and take up the question
25 at the end if necessary.

1 BY MR. BATEMAN:

2 Q. Have you now taken all the items from that
3 evidence bag, zip lock bag?

4 A. Yes, I have.

5 Q. What did that zip lock bag contain?

6 A. It contained items 16 through 29, which are fired
7 .22 long or long rifle cartridge cases.

8 Q. And you've seen those casings before or --

9 A. Yes, I have.

10 Q. -- cartridge cases before?

11 A. Yes, I have.

12 Q. Okay. And have you conducted any of your testing
13 with regard to any of the firearms that we've previously
14 talked about as to those particular items?

15 A. Yes.

16 Q. Okay. And what were your conclusions?

17 A. I was able to identify all these cartridge cases
18 as having been fired by the Ruger rifle.

19 Q. Okay.

20 MR. BATEMAN: Your Honor, at this time I'd
21 more for State's Proposed Exhibit 2A.

22 MR. FIGLER: Submit it.

23 THE COURT: Objection?

24 MR. SINGER: None.

25 THE COURT: Admitted.

1 (Plaintiff's Exhibit No. 2A admitted)

2 BY MR. BATEMAN:

3 Q. Showing you what's been marked as and in evidence
4 as State's Exhibit No. 3. You recognize that item
5 evidence bag?

6 A. Yes, I do.

7 Q. And how do you recognize it?

8 A. Again, same as before. My signature on the chain
9 of custody line on the label, and then my initials and
10 personnel number and date on the blue-and-white tape
11 that I sealed the package with.

12 Q. And pursuant to Metro's request, did you do
13 testing on the contents of that bag?

14 A. Yes, I did.

15 Q. Okay. I'm going to ask you to pull the contents
16 of that bag out. All right. And it appears that you
17 have four separate sets of items; is that correct?

18 A. Yes.

19 Q. Okay. First going to show what's been marked as
20 State's Proposed Exhibit 3A. It appears to be a zip
21 lock baggy with some items contained in it. Can you
22 take a look at that baggy and tell me whether you
23 recognize it.

24 A. The bag, I do.

25 Q. Okay. And how do you recognize it?

1 A. Again, my initials and a package designator on
2 the bag itself.

3 Q. And do you recognize the contents of that bag?
4 And, again, if it would help to you remove the contents
5 from the bag, please do so.

6 A. Okay. Okay.

7 Q. Okay. Have you removed all contents and reviewed
8 those contents?

9 A. Yes, I have.

10 Q. Okay. And do you recognize the contents?

11 A. Yes, I do.

12 Q. What are the contents of that bag?

13 A. There are 11 vials. Each vial contains a single
14 fired .22 long or long rifled cartridge case.

15 Q. Okay. And have you had -- again, I already asked
16 you. You conducted testing on these particular items?

17 A. Yes, I have.

18 Q. And what were your conclusions based upon your
19 testing?

20 A. I was able to identify all 11 of these cartridge
21 cases as having been fired by the Ruger rifle.

22 Q. Okay. That's the .22?

23 A. Yes.

24 Q. Okay.

25 MR. BATEMAN: I'd move admission of 3A and

1 its contents.

2 BY MR. BATEMAN:

3 Q. Ask you to put the contents (indiscernible).

4 THE COURT: Objection?

5 MR. FIGLER: We submit it, Judge.

6 MR. SINGER: No, Judge.

7 THE COURT: It's admitted.

8 (Plaintiff's Exhibit No. 3A admitted)

9 BY MR. BATEMAN:

10 Q. All right. Now I'm going to hand you what's been
11 marked as State's Proposed Exhibit 3B, also a zip lock
12 bag containing an item. Do you recognize the bag and
13 the item contained therein?

14 A. Yes, I do.

15 Q. And have you seen those items before?

16 A. Yes, I have.

17 Q. Okay. What are those items?

18 A. This is a -- the bag contains a vial, and the
19 vial contains one fired .45 auto cartridge case.

20 Q. Did you conduct testing on this particular item?

21 A. Yes, I did.

22 Q. Okay. And were you able to make any sort of
23 conclusions after your testing of this item?

24 A. Yes. I was able to identify this particular
25 cartridge case as having been fired by the Colt pistol.

1 MR. BATEMAN: Move admission, Your Honor, of
2 State's Proposed Exhibit 3B.

3 THE COURT: Objection?

4 MR. BUNIN: Submit it.

5 MR. SINGER: No, Judge.

6 THE COURT: It's in.

7 (Plaintiff's Exhibit No. 3B admitted)

8 BY MR. BATEMAN:

9 Q. Now showing you what's been marked as State's
10 Proposed Exhibit 3C, a zip lock bag and contents, do you
11 recognize the bag and the contents?

12 A. Well, I recognize the contents. Yes.

13 Q. Okay. None of your writing's on the bag?

14 A. No.

15 Q. Okay. How do you recognize the contents?

16 A. Again, on each vial the event number, my
17 initials, package designator and item number.

18 Q. And what is included in those two vials?

19 A. There's two vials. Each vial contains a single
20 bullet fragment.

21 Q. Okay. You say bullet fragment. What do you
22 mean?

23 A. It's just a portion, a damaged portion of a fired
24 bullet.

25 Q. How do bullets end up getting damaged, sir?

1 A. Typically, what I see is upon impact with some
2 type of target.

3 MR. BATEMAN: (Indiscernible).

4 THE COURT: Yes.

5 THE CLERK: This will be 166.

6 BY MR. BATEMAN:

7 Q. Before I show you this item, did you conduct any
8 tests, any testing on those particular items in 3C?

9 A. Yes, I did.

10 Q. Okay. And what was the process you went through
11 with regard to those items?

12 A. With bullet and bullet fragments, the process is
13 basically a visual examination using low power stereo
14 microscopy. I weigh the bullet. If possible, I measure
15 it.

16 Q. Okay. And did you make any conclusions based
17 upon your testing of those items?

18 A. As -- as far as to what type of firearm fired
19 them or which firearm fired them, no. The -- when I'm
20 looking at bullets to try and determine what type of gun
21 or what gun they'd been fired from, what I'm looking for
22 are the rifling impressions that are on the sides of the
23 bullet. The rifling is the spiraling grooves inside the
24 barrel of a firearm, and it's impressioned on the bullet
25 as the bullet passes down the barrel.

1 In this particular case, these two fragments are
2 too small and badly damaged. There's no rifling
3 impressions on these fragments to actually use for
4 comparison.

5 Q. Can you even tell what caliber of ammunition
6 those bullets would have come from?

7 A. No.

8 Q. Okay.

9 MR. BATEMAN: I'd move admission,
10 Your Honor, of State's 3C.

11 THE COURT: Objection?

12 MR. BUNIN: None.

13 MR. SINGER: No.

14 THE COURT: They're in.

15 (Plaintiff's Exhibit No. 3C admitted)

16 BY MR. BATEMAN:

17 Q. Lastly, on this package, State's Proposed
18 Exhibits 3 -- Exhibit 3D which contains a zip lock bag
19 and some items, if you could tell me if you recognize
20 the bag and/or the items?

21 A. Can I take them out?

22 Q. If that would help you out.

23 A. Okay.

24 Q. And do you recognize first the bag?

25 A. Yes.

1 Q. How do you recognize it?

2 A. Again, my initials and package designator.

3 Q. Okay. Do you recognize the contents?

4 A. Yes, I do.

5 Q. What are the contents?

6 A. Four vials, each containing -- well, three
7 contain bullets. One contains a bullet fragment.

8 Q. Okay. What's the difference between a bullet and
9 a bullet fragment?

10 A. It basically when I talk about a bullet I can
11 associate that as one single part -- one -- the main
12 part of a fired bullet. A bullet fragment would
13 indicate that there's more -- quite a bit more to that
14 that I don't have represented.

15 Q. Okay. Did you do testing on these four vials or
16 the contents of the four vials?

17 A. Yes, I did.

18 Q. Okay. Could you come to any conclusions as a
19 result of your testing?

20 A. Well, for items 43, 45 and 47, those are the item
21 numbers, these are consistent with the Ruger rifle, but
22 they're too badly damaged for a conclusive
23 identification. I can eliminate the Colt and the Glock
24 as having fired those.

25 Item 46 is the core of a bullet. It's the inner

1 part of a bullet. It's not marked with any rifling
2 impressions, so there's nothing there that I could use
3 for microscopic comparison. As for as the firearms
4 here, all I can say is that it wasn't fired from the
5 Ruger .22. It's too big a fragment to have been fired
6 from the .22.

7 MR. BATEMAN: I'd move admission of 3D and
8 contents, Your Honor.

9 THE COURT: Objection?

10 MR. FIGLER: Submit it.

11 MR. SINGER: No.

12 THE COURT: They're in.

13 (Plaintiff's Exhibit No. 3D admitted)

14 BY MR. BATEMAN:

15 Q. Put those items back in the zip lock bag. Now
16 before we move on, did you create a photograph,
17 essentially, of the bullet and/or bullet fragments that
18 you provided?

19 A. Yes.

20 Q. Okay. I'm going to show you what's been marked
21 as State's Proposed Exhibit 166 and see if you recognize
22 that document.

23 A. Yes, I do.

24 Q. Okay. And how do you recognize it?

25 A. If you look at each it's -- actually, it's eight

1 photographs and each photograph has my initials in it,
2 the package number and the item designator.

3 Q. Okay. And what is the photos of or what are the
4 photos of?

5 A. These are the photos of the bullets and bullet
6 fragments that I examined.

7 Q. Okay.

8 MR. BATEMAN: Move admission of 166.
9 Briefly ask to publish, Your Honor.

10 THE COURT: Any objection?

11 MR. BUNIN: Submit it, Judge.

12 MR. SINGER: No, Judge.

13 THE COURT: Granted.

14 (Plaintiff's Exhibit No. 166 admitted)

15 BY MR. BATEMAN:

16 Q. Just, briefly, if you can kind of explain. Are
17 these all bullet fragments? How do you define them?

18 A. Well, again, I defined, if we start at the top,
19 the JJK3 dash 42, and we'll just go with the last two
20 digits for each one.

21 So 42 was a fragment that had no visible rifling
22 impressions on it, so, again, it wasn't of any value for
23 microscopic comparison.

24 43 I defined as a bullet because it had rifling
25 impressions on it.

1 44 was a fragment, again, no rifling impressions
2 visible on it.

3 45 a bullet, had rifling impressions.

4 46 was the core, the inner part of the bullet.
5 It didn't have any rifling impressions.

6 47 a bullet, it had rifling impressions visible
7 on it.

8 Q. Okay.

9 A. And I don't think we've talked about 12 yet.

10 Q. Next I'm going to show you what's been marked and
11 in evidence as State's Exhibit No. 4. It's an evidence
12 bag. Do you recognize that evidence bag?

13 A. Yes, I do.

14 Q. Okay. And how do you recognize it?

15 A. Again, same as before going all the way down to
16 the -- my signature, date and time on the chain of
17 custody line, and then also my initials, personnel
18 number, and then date on the blue-and-white tape that I
19 sealed the package with.

20 Q. Okay. And what's contained in that particular
21 evidence bag?

22 A. Three fired .45 auto cartridge cases.

23 Q. Okay. Now, in the course of doing your testing
24 in this case, were you also or at any time did you have
25 a firearm that was a Kimber firearm?

1 A. Yes, I did.

2 Q. Okay. And do you know where that Kimber firearm
3 came from?

4 A. I believe it came from one of Metro's officers.

5 Q. Okay. Did you do any testing with regard to that
6 firearm and the contents of State's 4 that's currently
7 in your hand?

8 A. Yes, I did.

9 Q. Okay. And what did you ultimately determine?

10 A. I identified these three cartridge cases as
11 having been fired from the Kimber pistol.

12 Q. Okay. And you haven't actually seen the Kimber
13 pistol here today; is that correct?

14 A. Correct.

15 Q. Okay. Finally, I'm going to show you what's in
16 evidence as State's Exhibit 65.

17 MR. BATEMAN: Your Honor, I believe there
18 was a stipulation between the parties as to this
19 particular exhibit.

20 MR. FIGLER: Yeah, Judge. We have no
21 objection to its admission.

22 THE COURT: Mr. Singer.

23 THE CLERK: I'm sorry. What's that number
24 again?

25 MR. SINGER: Yes. No objection, Judge.

1 MR. BATEMAN: It was State's Exhibit 65.
2 I'm sorry, 165.

3 THE COURT: 165 is in. State -- have you
4 stated the stipulation?

5 MR. BATEMAN: The stipulation basically is
6 that we admitted this particular item when it came from
7 the Clark County Coroner's Office.

8 THE COURT: Is that the stipulation,
9 gentlemen?

10 MR. FIGLER: Yes, Your Honor, we stipulate
11 to any defect in chain of custody.

12 THE COURT: The document's -- or the
13 exhibit's admitted.

14 BY MR. BATEMAN:

15 Q. All right. I'm going to show you what appears
16 also be an evidence bag marked State's 165, ask you if
17 you recognize that particular bag.

18 A. Yes, I do.

19 Q. Okay. How do you recognize it?

20 A. Again, same as before, my signature, information
21 on the chain of custody line on the label, and then my
22 initials, personnel number and then date on the
23 blue-and-white tape that I sealed the package with.

24 Q. Okay. And then there's some items on here about
25 location on your seal; is that correct?

1 A. On -- well, the location is on the label itself.

2 That's there when I --

3 Q. On the label.

4 A. -- when I received the package.

5 Q. And what's that say as far as the label of
6 location?

7 A. Clark County Coroner's Office.

8 Q. Okay. And now I'm going to ask you to open --
9 it's actually already opened -- and remove the contents
10 of that exhibit and ask you if you recognize the
11 contents.

12 A. Yes, I do.

13 Q. Okay.

14 MR. BATEMAN: And, for the record,
15 Your Honor, it's also in evidence as, pursuant to that
16 stipulation, as 165A.

17 THE COURT: Is that correct?

18 MR. SINGER: Yes, Judge.

19 MR. FIGLER: That's correct.

20 THE COURT: 165A is in.

21 BY MR. BATEMAN:

22 Q. It appears to be a vial. What's contained in
23 this particular vial?

24 A. One fired bullet.

25 Q. Okay. And have you had an opportunity to do

1 testing on this particular firearm?

2 A. Yes.

3 Q. Okay. And what were your conclusions if any as
4 to this bullet?

5 A. This is a .22 caliber bullet. It's consistent
6 with having been fired from the Ruger rifle. Again, the
7 microscopic detail here is not sufficient for a
8 conclusive ID to that rifle, but I can eliminate both
9 the Glock and the Colt pistols. Their -- the caliber
10 difference is too great.

11 Q. Okay.

12 (Off-record colloquy)

13 MR. BATEMAN: If I could just have the
14 Court's indulgence just one moment.

15 BY MR. BATEMAN:

16 Q. Okay. And I think you did mention -- I still
17 have this Exhibit 166 in front of you. The item which
18 is identified as 160, I believe 5A, is that also
19 included on this particular Exhibit 166?

20 A. Yes. That's -- the two bottom photos that are
21 marked JJK13 dash 12.

22 MR. BATEMAN: Your Honor, I'll pass the
23 witness.

24 MR. FIGLER: May we approach, Your Honor?

25 THE COURT: Yes.

1 (Off-record bench conference)

2 CROSS-EXAMINATION

3 BY MR. FIGLER:

4 Q. Mr. Krylo, I never keep you up there too long, so
5 I'll make it brief. With regard to your testimony on
6 that last bullet, your testimony then is that you have
7 less of a degree of certainty with regard to the source
8 of that than you did some of the other bullets that you
9 testified to; is that correct?

10 A. The cartridge cases, yes.

11 Q. Right. Okay. And with regard to your testimony,
12 Mr. Krylo, your focus is matching bullets and cartridges
13 to weapons, correct?

14 A. Correct.

15 Q. Okay. You don't have anything to do with
16 matching bullets or cartridges or weapons to people,
17 correct?

18 A. Correct.

19 Q. Okay. So none of your testimony today can in any
20 way suggest that Jamar Matthews touched any of those
21 guns, bullets, cartridges, was near any of those guns,
22 bullets, cartridges, was anywhere in the vicinity of
23 those guns, bullets or cartridges, correct?

24 A. Correct. That's beyond the scope of my exam.

25 Q. Okay, thank you.

1 MR. FIGLER: No further questions.

2 THE COURT: Mr. Singer.

3 MR. SINGER: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. SINGER:

6 Q. You remember coming before a different court on
7 this case at a prior proceeding?

8 A. Yes.

9 Q. And you swore to tell the truth like you did here
10 today, right?

11 A. Yes.

12 Q. So you were telling the truth at that hearing and
13 you're telling the truth today, right?

14 A. Yes.

15 Q. At that hearing do you remember being asked about
16 -- do you remember being asked by defense counsel about
17 bullets lacking conclusive evidentiary value?

18 A. Yes, I do.

19 Q. Did you tell the -- did you answer to the defense
20 counsel that -- that there was not -- on the bullets
21 tests, there was not enough detail for conclusive
22 identification?

23 A. Yes.

24 Q. And you were specifically asked any of the
25 bullets you tested, did they have more than the value

1 you just stated, and you said no.

2 A. I don't have a copy of that. If I could see my
3 transcripts. I didn't --

4 Q. Well, I'm just asking you if you remember.

5 A. That I don't remember.

6 Q. Did you tell defense counsel when you were asked
7 about this specific topic that none of the bullets
8 tested had enough -- that none of the bullets tested had
9 any conclusive evidentiary value?

10 A. My recollection is a little different. I think
11 we went beyond that. If we have the -- if I have my
12 whole transcript so I might be able to see it to show
13 you.

14 Q. You can look at whatever you need to.

15 A. I don't have --

16 THE COURT: Do you have a page you're
17 referring to?

18 MR. SINGER: I'm referring to the
19 preliminary hearing transcript of the micro one at page
20 161 and 162.

21 THE WITNESS: I don't have those.

22 MR. SINGER: Judge, with your permission,
23 can I show him my copy?

24 THE COURT: Yes.

25 //

1 BY MR. SINGER:

2 Q. Directing your attention to the top box of the
3 mini transcript where it says voir dire examination by
4 counsel.

5 A. Well, the first question, let me ask you --

6 Q. Don't read from that. I'm not going to have you
7 read. (Indiscernible).

8 THE COURT: Is there a question pending?

9 MR. SINGER: Yeah.

10 BY MR. SINGER:

11 Q. Do you remember telling defense counsel upon
12 being asked about the bullets lacking evidentiary value,
13 and you said none -- in sum and substance you said none
14 of the bullets had any evidentiary value or they all
15 lacked evidentiary value.

16 A. No. See my recollection as went on through this
17 hearing is a little different, and that's why I
18 (indiscernible) --

19 Q. What about that point in the hearing that I
20 showed you?

21 A. Well, that point we were talking about
22 identification, for conclusive identification, and
23 you're right. None of these bullets had sufficient
24 microscopic detail for identification.

25 Q. And then later on in the hearing you said, well,

1 I could exclude some of the guns, but I couldn't
2 conclusively say specifically that any of the bullets
3 could come from -- you couldn't say that they had any
4 evidentiary value as coming from any of the guns.

5 A. No. I believe "evidentiary value" was your
6 terminology. I didn't use evidentiary value.

7 Q. And then -- okay. You did say that. You
8 corrected counsel and you said, well, there is not
9 enough detail for conclusive identification.

10 A. Correct.

11 Q. And then the court on its own asked you some more
12 questions, and you said there are certain things I can
13 say. I can certainly exclude some of the firearms.

14 A. Yes.

15 Q. So you could exclude some of the firearms, but
16 you couldn't conclusively say that some of the firearms
17 definitely are conclusively fired to the fullest?

18 A. It would be the one firearm, the two I can
19 exclude, and the one I can't say conclusively one way or
20 the other.

21 Q. Let me ask you. You talked briefly about a
22 Kimber pistol?

23 A. Yes.

24 Q. And that was a police pistol?

25 A. I believe so. Yes.

1 Q. And what did you do in regard to that?

2 A. I --

3 Q. Did you look at the gun and the ammunition?

4 A. I did the same exam with the Kimber as I did with
5 the other firearms. I examined it, test fired it, and
6 then compared it to the fired components of ammunition
7 that had been submitted.

8 Q. And can you describe for the jury what type of a
9 pistol the Kimber was.

10 A. The Kimber is another .45 auto, semiautomatic
11 pistol.

12 Q. And do you know anything about the accuracy of
13 the Kimber?

14 A. That's -- its accuracy with this pistol is kind
15 of two things. One is the actual accuracy of the gun,
16 if it's like clamped in a machine rest, and the other is
17 the accuracy of the shooter.

18 Q. Okay. And does it have a range? Like the
19 specifically the Kimber, does it have a firing range or
20 a range of accuracy or range that it should be fired
21 within, anything like that?

22 A. Well, again, that would -- a lot of that would
23 depend on the skills of the shooter.

24 Q. Okay. Is there any reason that you know of that
25 a Kimber is a police-issue weapon?

1 A. Well, it meets the criteria for department
2 weapons.

3 Q. Nothing more specific or further than that?

4 A. I mean, the department --

5 Q. A more accurate weapon than a Glock, for example?

6 A. Again, that would -- I would probably say within
7 the realm shooter's abilities, no.

8 Q. Okay. What date did you do your ballistics
9 testing?

10 A. I began my testing on October 16th and concluded
11 it on October 25th of 2006.

12 Q. Also, you used the term "same general rifling
13 characteristics". Did you remember using that term?

14 A. That would be a term that I would use. Yes.

15 Q. Okay. Now, general -- when you do an analysis on
16 a bullet, do you use that term as to a casing or as to a
17 bullet?

18 A. Typically I apply that to a bullet.

19 Q. Okay. And general would mean it's not a -- is
20 that conclusive or not?

21 A. Well, again, it depends on how you use
22 conclusive, and you can use general rifling
23 characteristics which are a class characteristics, a
24 manufactured characteristic. You can use those to
25 exclude, but you can't use those for identification.

1 Q. Thank you. That's what I was asking you. Thank
2 you.

3 And certain of the items that you reviewed in
4 this case lacks -- lacked microscopic detail, correct?

5 A. Yeah, sufficient microscopic detail for
6 identification, yes.

7 Q. And some of the ammunition that you looked at was
8 too badly damaged to determine anything about it or
9 compare it or even exclude weapons, right?

10 A. Correct.

11 MR. SINGER: Thank you. I'll pass the
12 witness.

13 THE COURT: Pursuant to Supreme Court rule,
14 now I'm going to read the question from Juror No. 4.

15 Sir, what is the difference, automatic
16 weapon which you explained, semiautomatic weapon, which
17 was not explained?

18 THE WITNESS: Well, the firearms that we
19 have here are semiautomatic. What that means is you get
20 one shot with each pull of the trigger and to fire a
21 second shot you have to release the trigger and pull it
22 again. That's semiautomatic.

23 Automatic or fully automatic is like a
24 machine gun. That's where you pull the trigger and the
25 firearm keeps firing until you release the trigger.

1 THE COURT: Redirect examination.

2 MR. BATEMAN: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. BATEMAN:

5 Q. You were being asked questions about the term
6 "evidentiary value". Do you make any determination as
7 to what does or doesn't have evidentiary value?

8 A. No.

9 Q. Okay. What determines are you asked to make with
10 regard to the evidence that you test?

11 A. The basic determinations are whether or not that
12 component was fired from a specific gun.

13 Q. Okay. So when the evidence comes to you, do you
14 have any idea necessarily where the evidence was or
15 anything about the case that the evidence had came from?

16 A. Basically, all I know is typically is what's on
17 the label on the package.

18 Q. And again, just to be very specific, when
19 Mr. Singer was asking you questions about the bullets,
20 what specifically is a bullet?

21 A. The bullet is the projectile that comes out of
22 the gun.

23 Q. Okay. And you can test the bullet; is that
24 correct?

25 A. Yes.

1 Q. Okay. What specifically is a cartridge?

2 A. A cartridge is a single unfired round of
3 ammunition.

4 Q. Does that contain the bullet and a cartridge
5 case?

6 A. Yes.

7 Q. Okay. Did you test any -- well, and then
8 specifically after the bullet comes out, what are you
9 left with?

10 A. Well, again, the bullet has gone out the end of
11 the barrel and the cartridge case, depending on the type
12 of firearm, is either still in the firearm or it's
13 ejected near the firearm.

14 Q. Okay. And did you do some additional testing on
15 the cartridge casings?

16 A. Yes, I did.

17 Q. Okay. And is that when you used the term
18 "microscopic detail"?

19 A. I probably could have. Yes.

20 Q. Okay. Is that what you're looking for in making
21 your determinations as to whether you can identify a
22 particular casing to a particular firearm?

23 A. Yes.

24 Q. Okay. So it's important to be clear about terms;
25 is that right?

1 A. Yes.

2 Q. Okay. And then, finally, you said that some
3 firearms eject the cartridge case and some do not; is
4 that correct?

5 A. Correct.

6 Q. Okay. And which type of weapons eject the
7 cartridge case? Which types of weapons don't?

8 A. Well, there's a whole broad spectrum, but,
9 generally, the ones that we see in casework are the
10 semiautomatics which automatically eject the cartridge
11 case and firearms like revolvers where the fired
12 cartridge cases stay in the gun until they're manually
13 removed.

14 Q. The three guns that we talked about here today,
15 the Ruger, the Colt and the Glock, what happens to the
16 cartridge cases after they're fired?

17 A. Those are all semiautomatics, so when they're
18 functioning normally, the cartridge case is ejected from
19 the firearm.

20 Q. Okay. Now, you fired all three of those guns.
21 Can you tell me generally what is the distance that
22 cartridge cases are fired from these firearms or
23 actually travel after the firearm is fired?

24 A. I didn't measure the distance here, but,
25 typically, it's going to be anywhere from right --

1 almost right next to the firearm with guns of this type
2 out maybe six to ten feet.

3 Q. Okay. And when these cartridge cases are ejected
4 from the firearm, are they -- what are their general
5 temperature at that time is it -- or can you say?

6 A. They're hot, but I don't know what the
7 temperature is.

8 Q. Well, and that -- okay. Let me ask the question
9 a little better. Are they cold or are they hot?

10 A. They're hot.

11 Q. Okay.

12 MR. BATEMAN: Pass the witness.

13 THE COURT: Recross?

14 MR. FIGLER: Just want to follow up just
15 because Mr. Bateman asked a question about terms.

16 RECROSS-EXAMINATION

17 BY MR. FIGLER:

18 Q. You talked about --

19 THE COURT: We have a question? Approach.

20 (Off-record bench conference)

21 THE COURT: Question from Juror 6.

22 MR. SINGER: Judge, can I ask that you --

23 THE COURT: We're going to mark it as
24 Court's exhibit.

25 MR. SINGER: Right. And then State's going

1 to be read in a different manner.

2 THE COURT: In a different manner.

3 MR. SINGER: I mean, I don't want the jury
4 to believe that it's being read as written.

5 THE COURT: Understood.

6 MR. SINGER: Okay.

7 THE COURT: Because the jury should
8 understand that.

9 How many cartridge cases did you identify as
10 being fired from the Glock?

11 THE WITNESS: A total of ten.

12 THE COURT: Are there any follow-up
13 questions as a consequence of the question from the
14 juror?

15 MR. BATEMAN: No, Your Honor.

16 THE COURT: State?

17 MR. BATEMAN: No.

18 THE COURT: Defense?

19 MR. FIGLER: I just have my one --

20 THE COURT: Are we still on cross?

21 MR. FIGLER: Yeah, it's recross.

22 THE COURT: It's recross.

23 MR. FIGLER: It's just one question.

24 //

25 //

1 RECROSS-EXAMINATION (Cont.)

2 BY MR. FIGLER:

3 Q. When Mr. Bateman there asked you a question about
4 terms, I just want to get the term right. There's
5 general rifling characteristics, correct?

6 A. Yes.

7 Q. And then there's specific or identical rifling
8 characteristics, correct?

9 A. What I would call individual.

10 Q. Individual, okay. And individual ones are
11 obviously more accurate than a general one, correct, as
12 you're going up the chart of comparison? If you have
13 something that's individualized, that obviously gives
14 you a greater degree of certainty than something that
15 has general, just comparing those two terms.

16 A. For identification purposes.

17 Q. Identification purposes --

18 A. Yes.

19 Q. -- that's what I'm asking.

20 A. Yes.

21 Q. Okay. I just want to make those terms clear. I
22 think I might have not done that by that question, but
23 thank you very much for your answer.

24 THE COURT: Mr. Singer.

25 //

1 RECROSS-EXAMINATION

2 BY MR. SINGER:

3 Q. Mr. Krylo, you never went out to any crime
4 scenes, did you?

5 A. No, I did not.

6 Q. All of your work is done at a crime lab.

7 A. Yes.

8 Q. And --

9 MR. SINGER: Nothing further. Thank you.

10 MR. BATEMAN: Nothing else, Your Honor.

11 THE COURT: Anything else for this witness?

12 Mr. Krylo, thank you.

13 You may step down. Call your next witness.

14 MS. LEWIS: State calls Fred Boyd.

15 THE CLERK: Please remain standing. I'll
16 swear you in.

17 FRED BOYD, PLAINTIFF'S WITNESS, SWORN

18 THE WITNESS: Yes, ma'am, I do.

19 THE CLERK: Thank you. You may be seated.

20 THE WITNESS: Thank you.

21 THE CLERK: Please state your name for us
22 and spell your first and last name.

23 THE WITNESS: My name is Fred Boyd, B-o-y-d.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. LEWIS:

3 Q. Sir, how are you employed?

4 A. I'm employed as a forensic scientist specializing
5 in latent-print identification with the Las Vegas
6 Metropolitan Police Department assigned to the crime
7 laboratory.8 Q. And how long have you practiced in the area of
9 forensic sciences with regards to fingerprint
10 identification?11 A. I've been associated with the discipline a little
12 over 35 years. Been working full-time duty as a
13 latent-print examiner for 28 years, 10 years here at
14 Metro.15 Q. Okay. And what are some of the training that
16 you've received that allows you to perform those job
17 duties?18 A. I had my police science degree prior to entering
19 the service. I entered the military, Army CID. I was a
20 ten years as a CID agent specializing in working cases,
21 processing crime scene, and it was with that I became
22 interested in latent prints because of the crime scenes
23 that we processed throughout the military.24 After ten years, I went into the career field
25 within the CID program, and as a warrant officer I was

1 able to do that and went through the Army two-year
2 resident training program at the Army crime laboratory,
3 and upon my completion started working full-time cases
4 as a latent-print examiner with the United States Army.

5 I retired in 1988 as a CW4 specializing in latent
6 print identification and chief of the latent-print
7 division of the Army crime lab at that time. From there
8 I went to Broward County Sheriff's Office,
9 Fort Lauderdale, Florida, where I worked as a
10 latent-print examiner for eight-and-a-half years
11 full-time duty and then here at Metro for ten years.

12 During the -- my tenure I attended numerous FBI
13 schools, members of professional organizations, the
14 International Association For Identification which I'm a
15 life member. I'm on the certification committee for the
16 State of Nevada for latent-print identification, and
17 just accumulation of all this time and various training
18 seminars.

19 MS. LEWIS: Judge, at this time I'd ask to
20 be able to further examine this witness with regards to
21 this area.

22 THE COURT: Any questions of Mr. Boyd?

23 MR. FIGLER: No. I'm familiar with Mr. Boyd
24 as well, Judge.

25 THE COURT: Mr. Singer?

1 MR. SINGER: No, thank you, Judge.

2 THE COURT: You may proceed.

3 MS. LEWIS: Thank you.

4 BY MS. LEWIS:

5 Q. Sir, during the course and scope of your duties,
6 did you have occasion to review evidence that was
7 associated with a crime scene involving a particular
8 event number 0609303216?

9 A. Yes, ma'am.

10 Q. And who was the crime scene analyst that
11 recovered that evidence that you had occasion to review?

12 A. Crime Screen Analyst Smith.

13 Q. Is that Stephanie Smith?

14 A. Yes, it is.

15 Q. Okay. And, specifically, you reviewed
16 fingerprint lift cards that were recovered from two
17 separate vehicles, correct?

18 A. Yes, ma'am.

19 Q. And what is a fingerprint lift card?

20 A. A fingerprint lift card is nothing more than a
21 taped fingerprint lift that is obtained at a crime
22 scene. It basically is where you have a print on a hard
23 surface which is a nonpore surface where the print
24 residue remains on top.

25 You apply fingerprint powder to it, apply the

1 clear tape, you lift it and then put it on the clear
2 card. And that card we refer to that as a taped
3 fingerprint lift and is usually what is taken at the
4 crime scene by the crime scene analyst.

5 Q. Okay. So in this case, you had occasion to
6 review some taped fingerprint lift cards that
7 Stephanie Smith had recovered from different vehicles at
8 different crime scenes; is that correct?

9 A. Yes, ma'am.

10 Q. Okay. And all of the items that you reviewed,
11 were they all marked with the same item event number,
12 the 0609303216 number?

13 A. Yes, ma'am.

14 Q. And when you begin your work in any case and when
15 you begin your work in this case, how did you go about
16 retrieving those specific items?

17 A. Well, the items are -- they're retrieved by us
18 receiving a fingerprint request to do the work, and
19 those latent prints are submitted to us by the crime
20 scene section upon their finishing with them.

21 We retain the latent prints over at the crime
22 laboratory. When the crime scene's finished with them,
23 they give them to us at the crime laboratory.

24 There's is a certain procedure that we have.
25 They go into a secured box, they're signed for, they're

1 inventoried, and then they go into a secured area at the
2 crime lab.

3 We get a request in to do a certain job, and they
4 we go to our secured area which is a big circular
5 carousel filing storage area, and then we retain those
6 -- we get the latent prints, and we do a comparison
7 based on the request that we have.

8 Q. Okay. And while we're talking about this, can
9 you explain for us what a latent print is.

10 A. Latent print is nothing more than a fingerprint
11 which you would find on a piece of evidence. It's
12 usually referred to as a chance or an unintentional
13 impression that is found on an item.

14 Q. And are there certain surfaces from which a
15 latent print can be more visible or better lifted?

16 A. Well, you have two different types of surfaces.
17 You have a pore surface which is a piece of paper where
18 fingerprint residue might absorb down the side of it.
19 You cannot see that visibly.

20 You have a nonporous which is like a flat surface
21 as I just mentioned a minute ago where the residue might
22 remain on top. Sometimes you can see it if you have
23 side lighting and what not. Usually you can't. It has
24 to be recovered maybe with fingerprint powder or some
25 technique.

1 Q. And are there factors that can contribute to the
2 fingerprint? For example, factors in the environment
3 that will affect the fingerprint and the way it's left
4 on the item that it's lifted from?

5 A. Yes, ma'am.

6 Q. And what are some of those factors?

7 A. Well, some of the factors are if you don't have
8 any -- if the surface is not a good surface for a
9 fingerprint, example, maybe the carpet, you cannot leave
10 fingerprints on this carpet. It's just not a good
11 surface.

12 If you're -- if it was a good surface such as
13 this counter top, if your hands were completely dry, if
14 you did not have any residue or anything on there -- if
15 I go like that, there may not be a fingerprint there.
16 So one of factors is the surface that it's touching.

17 Another factor is the residue, the medium on your
18 hand, that is going to leave this impression. And even
19 if there is an impression left there, is there going to
20 be enough of that impression for us to do a comparison
21 with?

22 First thing we do is evaluate that impression to
23 determine whether there was a sufficient amount of
24 detail there to do a comparison. If there's not, an
25 example would be maybe if that print is smudged. You

1 know, there's an impression there, but it's smudged.
2 There's no ridge detail. You cannot do anything with it
3 at all. Maybe there's not enough ridge detail.

4 If a person is let's say wearing gloves, of
5 course, they're not going to have prints. There may be
6 a smudge print that may be a mark was left there, but
7 there's no ridge detail for us as latent examiners to do
8 a comparison.

9 Q. All right. So in this particular case, when you
10 evaluated the lift cards that Stephanie Smith had
11 retrieved from those two separate vehicles, did you have
12 occasion to compare the prints on those lift cards to
13 the known fingerprints of Pierre Joshlin and
14 Jamar Matthews?

15 A. Yes, ma'am, I did.

16 Q. Okay. And were you able to identify any of those
17 lift cards taken from those two vehicles recovered by
18 Stephanie Smith to the known prints of Pierre Joshlin or
19 Jamar Matthews?

20 A. No, ma'am, I was not.

21 Q. Were you able to identify any of those prints to
22 any other individuals?

23 A. Yes, ma'am.

24 Q. And who -- what other individuals were you able
25 to identify prints to taken from the vehicle?

1 A. I identified latent prints from a Lincoln Town
2 Car to a Betty -- may I look at the last name?

3 Q. Did you prepare a report in conjunction with the
4 work that you performed in this case?

5 A. Yes, ma'am.

6 Q. And would it refresh your recollection to review
7 that report for the last name of Betty?

8 A. Yes, ma'am.

9 Q. Please go ahead and review that.

10 A. Betty Beutley. Identified Betty Beutley to four
11 latent-print lifts that was taken by crime scene analyst
12 Smith to 1991 Lincoln Town Car.

13 Q. You didn't identify any prints to a person named
14 Melvin Boldin, did you?

15 A. No, ma'am.

16 Q. And how about a person named Geishe Orduno?

17 A. No, ma'am.

18 Q. Okay. And were you able to identify any prints
19 from a person named Bradley Cupp?

20 A. No, ma'am.

21 Q. Or Stephanie Smith even?

22 A. No, ma'am.

23 Q. And you looked to see if Stephanie Smith's prints
24 were on the prints recovered from the vehicle as well;
25 is that right?

1 A. Yes. Stephanie Smith, she submitted her prints
2 voluntarily with a little note in the packet indicating
3 that she may have touched an area. She wasn't sure, but
4 just to be on the safe side she went ahead and she did
5 submit her prints, and this is pretty standard procedure
6 if you think maybe you might have touched something at
7 the crime scene to do that.

8 Q. Okay.

9 MS. LEWIS: Thank you. I'll pass the
10 witness.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY MR. FIGLER:

14 Q. Okay. So Ms. Smith was concerned she might have
15 accidentally contaminated some of the evidence, and she
16 just wanted to give you a heads-up on that? Is that
17 basically right?

18 A. Yes. This is --

19 Q. Okay.

20 A. -- correct.

21 Q. Let me ask you, Mr. Boyd. With regard to your
22 analysis, essentially what you're saying is that you
23 were called here today to say that there was no evidence
24 from your perspective that (indiscernible) any of the
25 stuff given to you to Mr. Matthews; is that correct?

1 A. As for as latent-print examination that I did,
2 that is correct.

3 Q. Okay. Now I'm showing --

4 MR. FIGLER: May I approach? I'm sorry.

5 THE COURT: Yes.

6 BY MR. FIGLER:

7 Q. I'm showing you what's been marked as Exhibit 5A.
8 Now I'm holding this weapon. Have you seen this weapon
9 before?

10 A. No, I have not.

11 Q. Okay. Now, as I take my hands off of this
12 weapon, is it possible that I've just left fingerprints
13 on it?

14 A. Yes.

15 Q. Okay. The surface can be analyzed for my
16 fingerprints, correct? There appears to actually be a
17 little smudge on there that I left. That could be my
18 fingerprint? Could be a smudge?

19 A. Yes.

20 Q. Okay. And I remember once we had a case, and you
21 were telling me about something really cool called the
22 Super Glue test?

23 A. Yes.

24 Q. Can you tell me what that was? That has
25 something to do with getting fingerprints off of

1 bullets, too, right?

2 A. Super Glue is a technique, is one of the many
3 techniques that we use to process an item for latent
4 fingerprints. The (indiscernible) acrylic adhesive
5 esters in the Super Glue.

6 And the Super Glue, it's the same stuff you see
7 on TV that can hold cars off of bridges. It's the same
8 stuff just to let you know.

9 The water buildup in the perspiration, it reacts
10 to the fumes, and it will turn a surface white if
11 there's a sufficient amount of residue on the item that
12 you're processing.

13 And then it's very durable print, and you can go
14 back with fingerprint powder. You can go back with
15 various dye stains to use on the item.

16 Q. Okay. So it's possible Metro has the technology
17 to do that test, correct?

18 A. Yes. We do have that.

19 Q. Okay. So you could actually -- if someone were
20 to load bullets into a magazine and then you have some
21 of those bullets or whatever, you can actually do that
22 Super Glue test to see if any of their latents show up
23 on the bullets?

24 A. That is correct.

25 Q. Okay. And you don't have anything like that in

1 this case, any prints that showed up like that or you
2 don't know if that testing was done here, do you?

3 A. I was asked to process weapons. Upon calling the
4 weapon or preparing to do that, it was noted the -- that
5 all the weapons that were requested for me to process
6 was already -- it had already gone through the firearms
7 section for analysis.

8 Q. And that would have been Mr. Krylo?

9 A. That is correct.

10 Q. Okay.

11 A. And as a result of that, they were not processed,
12 and that is usually our standard, one of our standard
13 procedures once it's already been examined because they
14 handle it quite a bit and everything there and --

15 Q. So basically what you're telling me is that
16 possible contamination --

17 A. Exactly.

18 Q. -- (indiscernible)?

19 A. Right. Right.

20 Q. Okay. Finally, Mr. Boyd, let me ask you about
21 your report. I noted that you did see some fingerprints
22 from Ms. Beutley and that Mr. Matthews was not
23 identified as being the source of any fingerprints that
24 you were examining.

25 Did you have any fingerprints, any latent prints,

1 given you that were unknown that didn't match up to
2 anyone that you did have?

3 A. Yes.

4 Q. How many of those did you have?

5 A. We have -- if I may refresh my memory by the
6 notes.

7 Q. That's fine. If you could just let all sides
8 know what document you're referring to.

9 A. Okay. I'm referring to my notes. There were
10 some fingerprint lifts that were unidentified from the
11 Lincoln Town Car.

12 Q. Okay. And those were unidentified?

13 A. They were unidentified.

14 Q. Okay. Last question. I noticed on your report
15 that next to Jamar Matthews' name, this report that was
16 given to me --

17 MR. FIGLER: I'm sorry. I'm approaching
18 without asking.

19 BY MR. FIGLER:

20 Q. Okay. We're looking at the same report here,
21 right?

22 A. Okay. Yes.

23 Q. Okay. And next to Jamar Matthews' name there's a
24 letter?

25 A. Yes.

1 Q. And it's the letter S; is that correct?

2 A. Yes.

3 Q. And what's that S stand for?

4 A. That's a letter which stands for a subject.

5 Q. Subject?

6 A. Yes. Such as you see the one above that --

7 Q. Right. That's a V?

8 A. V for victim.

9 Q. Oh, okay. And you got someone else there named
10 Myniece Cook. She's also an S, a subject?

11 A. Yes.

12 Q. Okay. Do you know if Myniece Cook is a subject
13 in this case or investigation?

14 A. I'm sorry, sir?

15 Q. Do you know if a woman named Myniece Cook is a
16 subject in this investigation?

17 A. The names that come in from the requests from the
18 detectives is how we put them down on our list, and
19 these names were on the requests from the detective to
20 do a comparison, and everybody who you look at
21 technically is a subject.

22 Q. Um-h'm.

23 A. There's a difference in where we don't confuse
24 that where you have the S meaning subject. We don't use
25 it meaning suspect.


1 Q. Okay.

2 A. We mean subject. Everybody's a subject who we
3 are comparing.

4 Q. And what's AFIS mean?

5 A. That is AFIS.

6 Q. Oh, that's from a known sample somewhere?

7 A. AFIS is an Automated Fingerprint Identification
8 System. 

9 Q. Okay. All right. Do you have anything else that
10 with regard to your fingerprint analysis that is of
11 evidentiary value or you've testified to everything?

12 A. As far as what I've been asked to answer.

13 Q. Okay. So there's no outstanding fingerprints of
14 Jamar Matthews out there that we don't know about,
15 anything like that?

16 A. That's correct.

17 Q. Okay. Thank you.

18 THE COURT: Mr. Singer.

19 MR. SINGER: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. SINGER:

22 Q. Mr. Boyd, in addition to the report that you
23 provided, you were just referring to some notes, right?

24 A. Yes.

25 Q. That's additionally -- in addition to the report?

1 A. Yes.

2 Q. Can I see the notes?

3 A. They're right here if you'd like to look at --

4 Q. Thanks.

5 A. I have them right here.

6 MR. SINGER: Judge, may approach?

7 THE COURT: Yes.

8 MR. SINGER: Judge, for the record, I'm
9 looking at four pages stapled together that have never
10 previously been provided to myself.

11 THE COURT: Okay.

12 BY MR. SINGER:

13 Q. Did the prosecution, either of the prosecution
14 members or anybody else from the DA's Office, know that
15 you had extra notes?

16 A. Well, these are notes -- this -- they get the
17 report --

18 Q. Uh-huh.

19 A. -- and they -- I'm sure they're aware that we
20 get notes.

21 Q. Right. Because in the report -- the report's
22 like a summary or a summation, a total conclusion,
23 right?

24 A. Yes.

25 Q. And these notes are things that you do are like a

1 working -- working notes --

2 A. Right.

3 Q. -- during the -- you're doing your job.

4 A. Right.

5 Q. You never found Mr. Joshlin's fingerprints

6 anywhere on that car, did you?

7 A. That is correct. I did not.

8 Q. And on your summation report, you found prints of

9 somebody by the name of Betty Beutley, right?

10 A. Yes.

11 Q. And you identify her by an ID number, right?

12 A. Yes.

13 Q. So all of the Ss or -- well, the victim and the

14 subjects all have ID numbers, right?

15 A. Yes.

16 Q. And then the two Officers Smith, CSA Smith and

17 Cupp, have P numbers like police identification number,

18 right?

19 A. Yes.

20 Q. And you don't know how Betty Beutley relates to

21 this case, do you?

22 A. Yes, I do.

23 Q. How does she relate to the case?

24 A. Upon doing my examination and when I found that

25 the requested individuals were not, well, identified or

1 even if they were identified, if we had unidentified
2 prints that were AFIS quality --

3 Q. Uh-huh.

4 A. -- meaning that we could put these prints into
5 the computer, we would put those in, and that's what I
6 did here. And upon putting a search -- entering AFIS
7 quality print into the computer, it came back with an
8 AFIS hit to Betty Beutley, and this is how I obtained
9 Betty Beutley's name.

10 Q. Okay. And so Betty Beutley's prints were in this
11 AFIS computer system?

12 A. Yes.

13 Q. And on the door you did a pretty -- I mean, on
14 the car -- excuse me -- the Lincoln, you did a pretty
15 extensive investigation as to your part?

16 A. I feel that I did.

17 Q. You did the door handles, all of them, and the
18 edge of the driver's door, behind the window and the
19 interior handle, right?

20 A. Well, I examined the fingerprint lift cards that
21 were taken from these areas by the crime scene analyst.
22 I did not --

23 Q. So the --

24 A. -- process the car --

25 Q. I understand.

1 A. -- or did I go to the scene or have I seen the
2 car.

3 Q. So it would be more correct to say that the crime
4 scene analyst who lifted the prints did a good job? You
5 got a lot of prints?

6 A. I was not there, don't know, can't judge what she
7 did.

8 Q. Okay.

9 A. Hopefully, she did do a -- a decent job.

10 Q. You examined print cards from the seat belt latch
11 on the rear left seat?

12 A. There were latent prints from that area that were
13 submitted.

14 Q. How about the interior handle of the rear left
15 door?

16 A. Is that what it says there that you're reading?
17 If it is --

18 Q. Yeah.

19 A. -- then that's what I did.

20 Q. Okay. And the exterior door handle from --
21 everything that says here you did, right? The
22 exterior --

23 A. Yes.

24 Q. -- door handle from the rear left --

25 A. Yes. Those were the -- the latent-print lift

1 cards, if that is what the wording was on the card as
2 far as the areas.

3 MR. SINGER: I'm going to just
4 (indiscernible). I don't have copies. I'm going to
5 share it with him a little bit.

6 THE COURT: Okay.

7 BY MR. SINGER:

8 Q. And you did prints from the interior leading edge
9 of the right front door?

10 A. Right.

11 Q. And the right front quarter panel?

12 A. Yes.

13 Q. And the interior rear right door --

14 A. Right.

15 Q. -- window? Three different cards?

16 A. Okay. We're talking about different cars, okay.

17 The ones with the asterisk here --

18 Q. Right.

19 A. -- okay, they were from the 2000 Chrysler

20 Seabring.

21 Q. Okay. Let's -- we don't -- let's not look at
22 those. Let's just talk about the Lincoln.

23 A. Okay.

24 Q. So these -- this three with the dittos, the
25 interior right -- interior rear right door window?

1 A. Right.

2 Q. Print card. Three different --

3 A. Yes.

4 Q. -- print cards?

5 A. Yes. Are you talking about all of them or do you
6 want the ones that were unidentified?

7 Q. All of them.

8 A. Okay. Okay. The --

9 Q. (Indiscernible) asterisk ones.

10 A. Okay. The fingerprint lift cards that I received
11 from Crime Scene Analyst Smith pertaining to the Lincoln
12 Town Car, okay, was from the interior leading edge of
13 the right -- of the front right door.

14 And the wording I'm mentioning is the wording
15 that was on the actual taped fingerprint lift, okay.
16 The interior rear right door window. There were --

17 Q. And then --

18 A. -- three of --

19 Q. Three of those.

20 A. There were three of those, one of those being
21 insufficient for identification. They had smudges.

22 Then the exterior rear right door. That was one
23 that I did not initially identify anybody. That was
24 AFIS quality. I put it in, and that was one that I
25 identified to Betty Beutley. There were two of those

1 cards.

2 There was exterior rear window behind the right
3 here door. There was two of them. Both of those were
4 identified to Betty Beutley.

5 There was an exterior front right door which had
6 three prints on it, and that was not identified.

7 Q. So the exterior right front door, where do you --
8 how do you know it had three prints on it? Where does
9 it say that?

10 A. A, B, and C.

11 Q. Oh, right here in this box?

12 A. Yes.

13 Q. It says A, B, and C, so that means three prints.
14 So up here on the interior right -- interior rear right
15 door window, there's also three prints, an A, B, and a
16 C?

17 A. A, B, and C. I have it listed in my notes as you
18 see. A is insufficient for identification. B and C,
19 they were not identified.

20 Q. Okay. Thank you.

21 (Off-record colloquy)

22 BY MR. SINGER:

23 Q. I'm showing you what's been marked as Exhibit --
24 or in evidence as Exhibit 10A, State's 10A. This has a
25 lot of flat surfaces on it, doesn't it, this gun I'm

1 showing you? Or let me just rephrase. Surfaces that
2 are capable of taking latent prints off of?

3 A. Well, the handle is not a good surface for
4 prints.

5 Q. Okay. What about the slide on top?

6 A. Where you have your thumb right -- where you just
7 had your thumb before you moved it is not -- this area
8 back here. The slide area is an area, it's a flat
9 surface and it is a surface that is capable of
10 latent-print residue retaining on top.

11 Q. Uh-huh.

12 A. One problem with slides that you have is that
13 when the slide is -- when a weapon is found, it's
14 usually secured for safety, and when that slides open,
15 even though you try to be careful, sometimes you're not.

16 Q. Okay. Now let me --

17 A. But it is a nonporous surface, and it is a
18 surface that could be conducive for latent-print
19 residue.

20 Q. So like if I were to look right here and I'm
21 holding it like this, pull it back, and I see that like
22 greasy mark there, that could be capable of taking a
23 latent print off that, right?

24 A. There's possibilities of that. Yes.

25 Q. And you would agree that on that -- on this gun

1 that I just showed you, the Glock, it was already sent
2 to the ballistics expert, so you weren't even asked to
3 test it, were you?

4 A. That's correct.

5 MR. SINGER: No more questions. Thank you,
6 Judge.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. LEWIS:

10 Q. Mr. Boyd, you, when you pulled out your notes and
11 when Mr. Singer was going through the different areas of
12 the car with the lift prints, did you examine numerous
13 lift cards?

14 A. Yes, I did.

15 Q. And did every single lift card that you examined
16 have a print that was of good comparison value for you
17 to examine?

18 A. No.

19 Q. So even though a crime scene analyst lifts many
20 different prints on those lift cards, they're not always
21 prints that you can compare or evaluate to known prints?

22 A. That's correct.

23 Q. Okay. You referenced some unidentified prints
24 from that Town Car as well. If you don't have a known
25 person's prints are you able to compare unidentified

1 prints?

2 A. If we don't have a known -- no.

3 Q. Okay. And Mr. Figler handled a firearm here, and
4 he put his hands on it and showed it to you and said
5 would his prints be on there, and you said it was
6 possible; is that right?

7 A. That's correct.

8 Q. It's also possible his print wouldn't be on
9 there; isn't that right?

10 A. That's correct.

11 Q. What about in the example that Mr. Figler did
12 where he handled it and put his hands on it and then
13 let's say he put gloves on and then handled it, what
14 might happen to any prints on that firearm in that case?

15 A. Well, the -- there wouldn't be any prints left if
16 he was wearing gloves because he had the gloves, and
17 then if he did have gloves on the weapon, that could
18 possibly wipe off any prints that may be on there.

19 Q. Okay. And I want to ask you about one other
20 element that might affect the value of a print, and we
21 didn't talk about the weather or temperature, but how
22 does heat affect a print?

23 A. Heat will affect a print in as much as that your
24 fingerprint component's made of about 99 percent water
25 as I mentioned, reference to the Super Glue processing.

1 Heat will dry that print out and have a tremendous
2 affect on a latent print that might be on a surface.

3 If you have a print that -- if I lay a print here
4 today and process it right now, if it's a fresh print,
5 might get something really good. If I leave it on
6 there, if it heats up and if you come back maybe
7 tomorrow or the next day to try to process that, you may
8 get something, you may not get something.

9 If you get something, it may be a lot lighter or
10 not as outstanding features in as far as the contrast as
11 it would be if it was a fresh print, so it does have a
12 factor on it.

13 Q. So as an example, cartridges that are -- that
14 might be loaded into a firearm and then the cartridge
15 cases that might eject out of a firearm, how would the
16 heat of the combustion of the elements of the bullet
17 affect a particular cartridge case?

18 A. It does have -- the heat does have an affect on
19 cartridges that have been fired.

20 Q. And does it have such an affect that it would
21 make it easy to evaluate prints on that type of a
22 surface?

23 A. Well, when heat -- heat does two things to a
24 latent print. If the print is a print that has a lot of
25 perspiration residue with a lot of water buildup, it may

1 dry that out. However, there are prints that have been
2 fired from weapons, too. The heat may etch a print into
3 the surface also.

4 MS. LEWIS: I have no further questions.

5 THE COURT: Recross?

6 MR. FIGLER: Briefly.

7 RECROSS-EXAMINATION

8 BY MR. FIGLER:

9 Q. Two points. Number one, we're talking about the
10 weather and heat. Do you know how high it normally is
11 in late September at like 10:00 o'clock at night? Is
12 that the kind of heat you're talking about or are you
13 talking about over a period of days, hot, sort of thing?

14 A. Usually hot weather. Hot.

15 Q. Okay.

16 A. Warm, hot.

17 Q. More so if it's gone through a day cycle type
18 thing?

19 A. Right.

20 Q. Okay. Also, there's a question that was asked to
21 you about gloves. I handled that weapon. We saw
22 something on there that appeared to be at least an area
23 that would be suitable for possible latent lifting. If
24 I now put on gloves and I held that gun, does that
25 automatically somehow mean that that print is wiped

1 away?

2 A. Not necessarily.

3 Q. Okay. So it just really depends --

4 A. It depends.

5 Q. -- how hard I put it, where I put my hands,
6 et cetera?

7 A. Exactly.

8 Q. So fingerprints, no matter if I handled the gun
9 without gloves and then later handled the gun with
10 gloves, fingerprints may still be on that weapon. You
11 would agree with that statement?

12 A. But not necessarily yours. You would not leave
13 -- they would not be your prints.

14 Q. Oh, let me rephrase. I didn't want to mislead
15 you. If someone handled the weapon without gloves --

16 A. Right.

17 Q. -- okay, then later someone else put gloves on
18 and handled the same weapon, the original somebody's
19 fingerprints could still be on there, correct?

20 A. That is possible.

21 Q. Okay. And if it was the same person, in other
22 words, now the example is me, I handled the gun without
23 gloves, then I put it down, then later I put gloves on
24 and I handled gun again, my fingerprints may still stay
25 on and still be on that gun, correct?

1 A. That's possible.

2 Q. Okay. That's all I want to know. Thank you.

3 THE COURT: Mr. Singer.

4 MR. SINGER: No, thank you, Judge.

5 THE COURT: Anything else for this witness?

6 MS. LEWIS: No, Judge.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Thank you for your testimony.

10 Call your next witness.

11 MS. LEWIS: The State calls Dr. Olson.

12 MR. FIGLER: And, Your Honor, that's the --

13 THE COURT: Perhaps, we should -- just a
14 second. Approach.

15 (Off-record bench conference)

16 THE COURT: Does anybody need a break? Yes.
17 We're going to take a break before your testimony.
18 Sorry.

19 It is your duty not to converse among
20 yourselves or with anyone else on any subject connected
21 with this trial.

22 Further, you may not read, watch or listen
23 to any report of or commentary on this trial from any
24 medium of information including, without limitation,
25 newspaper, television or radio.