

In the Supreme Court of the State of Nevada

Jemar Demon Matthews,

Appellant,

v.

The State of Nevada,

Respondent.

Electronically Filed
Supreme Court Case No.: 77751
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Elizabeth A. Brown
Appeal from Judgment of Conviction
Clerk of Supreme Court
of Eighth Judicial District Court, Clark
County, in Case No.: 06C288460-2

**Appellant's Appendix
Volume 3**

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Appellant's Appendix
Volume 3 of 4, PP.0501 to 0750

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CERTIFICATE OF SERVICE

The undersigned, an employee of Leventhal and Associates, hereby certifies that she served the foregoing on the State by delivering a true and correct copy of it on July 29, 2019, to the following persons via electronic service through the Nevada Supreme Court electronic filing system.

Steven S. Owens
Chief Deputy District Attorney

Adam Paul Laxalt
Attorney General / Carson City

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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/s/ Maribel Godinez
An Employee of Leventhal and Associates

1 Q And then one in the chamber?

2 A That's correct.

3 Q When you -- just so there's no confusion, when you load a
4 firearm can you have the magazine full, meaning seven, and then also
5 one in the chamber giving a total of eight?

6 A Yes, that's correct.

7 Q And we refer to that in our world as seven plus one; right?

8 A Yes.

9 Q Is that common for an officer to carry seven plus one or one in
10 the chamber?

11 A It can be, yes.

12 Q Okay. Before Ms. Lexis yells at me I'm going to go back to
13 State's 333. Does this appear to be where that red glove was located?

14 A Yes, this is a front view of the sidewalk area in front of 1200
15 Eleanor.

16 Q Okay. And you'd indicated previously that glove had been
17 kind of marked and watched over until your arrival; State's 334?

18 A That's correct, yes.

19 Q If you haven't mentioned already, ma'am, were you working
20 alongside other crime scene analysts?

21 A Yeah.

22 Q Specifically, a Louise Renhard?

23 A I was not working with Louise --

24 Q Okay.

25 A -- on this particular scene. She was assigned to a different

1 area.

2 MR. GIORDANI: Okay. May I approach the witness with a
3 bunch of physicals?

4 THE COURT: You may.

5 BY MR. GIORDANI:

6 Q I'm going to start with State's, already admitted, 11. You
7 probably want to put your gloves on.

8 A Okay.

9 Q So, it's really 11, 11A, 11B, and 11C, for the record. Tell me
10 what we're looking at here, and if you could show the jury what you're
11 referring to as you do it.

12 A Sure. So, this is the package of evidence that I packaged up,
13 which contains a round of Winchester .45 auto ammunition. It contains
14 a magazine, a .45 caliber magazine that goes inside a firearm, and it
15 contains 15 additional cartridge cases that were removed from that
16 magazine. And I recognize this package because it bears the event
17 number, the 0609303216 that everything was impounded under, the
18 address from which I recovered it, and it also has my signature on the
19 front.

20 Q Okay. So, this particular item includes evidence from which
21 scene? What are we exactly looking at? So, the Winchester --

22 A These items were the ammunition and the magazine that were
23 recovered from inside the Glock firearm that was inside the dumpster.

24 Q Okay. So, this would all be associated with that Glock
25 firearm?

1 A That's correct.

2 Q .45 caliber?

3 A Yes.

4 Q I'm going to take out 11C, for the record, and -- I don't think
5 that's stapled. Just want -- going into 11C I'm just going to pull out one
6 of these multiple vials in here. Can you show the ladies and gentlemen
7 of the jury what we're looking at and, kind of, why it's packaged the way
8 it's packaged?

9 A So, each vial will contain a single round of ammunition, so
10 inside of here is one round of ammunition that was recovered. I don't
11 know if it was recovered from the chamber or the magazine.

12 Q Okay.

13 A Let me think. I can double check here. This is going to be
14 one of the rounds that was recovered from inside the magazine of the
15 Glock.

16 MR. GIORDANI: And I'm just going to make sure this all stays
17 together, but I want the jury to see the size. Can I just approach? Can I
18 just approach the jury and show them like this?

19 THE COURT: If you want to publish, the Court Marshal will.

20 MR. GIORDANI: Oh, okay.

21 THE COURT: Do you want them to actually pass it around?

22 MR. GIORDANI: Well, I think he can just -- as long as they
23 can see the size.

24 THE COURT: You just want him to publish in front? Okay.

25 MR. GIORDANI: Yes, if he wouldn't mind. Thank you.

1 BY MR. GIORDANI:

2 Q So, that's a typical .45 caliber round; that's the size?

3 A Yes, it is.

4 MR. GIORDANI: Make sure that gets back in the bag.

5 THE COURT CLERK: Thank you.

6 MR. GIORDANI: Sure.

7 BY MR. GIORDANI:

8 Q All right. Just very briefly, State's, already admitted, 4, what
9 are we looking at there?

10 A This is an envelope that, again, bears the event number, the
11 location, and my signature, and it contains the three cartridge cases that
12 I recovered from the intersection that were fired by Officer Cupp.

13 Q Okay. Oh, I grabbed that one.

14 A Mm-hmm.

15 Q State's 6, what are we looking at here?

16 A This bag contains a .22 caliber rifle magazine, as well as one
17 .22 caliber cartridge, and this is what was recovered from the rifle that
18 was in the grass area next to the church.

19 MR. GIORDANI: I have two firearms, so if I --

20 THE COURT: Sure.

21 MR. GIORDANI: -- could clear it through Officer Hawkes.

22 THE COURT: The officer will clear them.

23 MR. GIORDANI: They're on the corner right there.

24 BY MR. GIORDANI:

25 Q So, showing you now State's 9. What are we looking at

1 there?

2 A So, this is the magazine and the cartridges or the unfired
3 rounds of ammunition that were recovered from the Colt pistol from
4 inside the Lincoln Town Car that was on the sidewalk near the church.

5 Q Did you already talk about State's 6?

6 A I did.

7 Q Okay.

8 THE COURT: Do you want the other one?

9 I'll bet he's going to want the other one.

10 THE COURT CLERK: Yes, Your Honor.

11 MR. GIORDANI: Can I keep going with these while --

12 THE COURT: Absolutely, absolutely.

13 MR. GIORDANI: Thank you, Your Honor.

14 And are these clear, Officer?

15 THE COURT MARSHAL: Yes.

16 BY MR. GIORDANI:

17 Q Okay. Showing you now State's 10. What are we looking at
18 there, ma'am?

19 A This is a box containing the Glock 21 .45 caliber handgun that
20 was recovered from inside the dumpster.

21 Q All right. That's -- should be secured to the box; right?

22 A No.

23 Q Okay. Not secured to the box, so I'll just briefly hold it up.

24 And is that -- the slide on this firearm pulled back during the course of
25 processing?

1 A Yes.

2 Q So, that's not the condition it would have been in at the time it
3 was impounded?

4 A No.

5 Q Okay. State's 8, what are we looking at there?

6 A This box contains the .45 caliber Colt pistol that was
7 recovered from inside the Town Car, which was up on the sidewalk near
8 the church.

9 Q If you could hold that up for the jurors just so they can see it
10 briefly.

11 MR. GIORDANI: Can you all see that?

12 All right. Just one more.

13 Thank you, sir.

14 BY MR. GIORDANI:

15 Q Showing you now State's 5, which is a four foot, or something,
16 long box?

17 A Yes.

18 Q Okay. Do you recognize that?

19 A Yes, I do.

20 Q What is that?

21 A This is the box that contains the .22 caliber rifle that was
22 recovered from the grass area near the church.

23 Q Okay. And that is not secured to the box, so I'm not going to
24 mess with it. Let me spin this around. I'm not going to take it out, but
25 just hold that up.

1 MR. GIORDANI: Can everyone see that? Okay.

2 All right, ma'am. Thank you very much.

3 I will pass the witness, Your Honor.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 Cross-examination?

7 MR. TANASI: Very briefly. Thank you.

8 THE COURT: Sure.

9 **CROSS-EXAMINATION**

10 BY MR. TANASI:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q I'm Rich Tanasi, I represent Mr. Matthews. I just have a few
14 questions for you.

15 A Sure.

16 Q So, you processed two vehicles we went over on your direct
17 examination; correct?

18 A Correct.

19 Q All right. The Sebring; right?

20 A Yes.

21 Q And the Lincoln; correct?

22 A Yes, that's correct.

23 Q And in processing those two vehicles you want to be very
24 thorough; correct?

25 A Correct.

1 Q Ideally, looking in every place you could find, or where you
2 could possibly find, fingerprints that would be relevant or important to
3 your investigation; fair?

4 A Correct.

5 Q Again, you want to be as thorough as possible; fair?

6 A Yes.

7 Q That's how you're trained; right?

8 A Correct.

9 Q All right. Thank you.

10 MR. TANASI: Pass the witness.

11 THE COURT: Any redirect?

12 MR. GIORDANI: No, Your Honor. Thank you.

13 THE COURT: Okay. Thank you very much -- okay. It looks
14 like we may have a question.

15 THE WITNESS: Oh, okay.

16 [Bench conference -- begins]

17 THE COURT: I don't think she can answer any of them.

18 MR. GIORDANI: Can't answer number one. Can't answer
19 number two. Can't answer number -- can't answer --

20 MR. LEVENTHAL: Yeah.

21 MR. GIORDANI: -- anything.

22 MR. LEVENTHAL: We object to all three.

23 MR. TANASI: Yeah, she can't answer them.

24 THE COURT: So --

25 MR. TANASI: So, objection -- three.

1 THE COURT: And I think she'd be the appropriate witness
2 even --

3 MR. TANASI: Right.

4 THE COURT: -- for this type of question.

5 MR. TANASI: Agreed.

6 MR. LEVENTHAL: Are you going to ask them and then have
7 her not answer or are you going to just not --

8 THE COURT: I'm sorry, what?

9 MR. LEVENTHAL: Are you going to ask her and then have
10 her say I can't answer that or just not ask it?

11 THE COURT: Oh, no.

12 MR. LEVENTHAL: Okay.

13 THE COURT: Yeah. I'm not going to --

14 MR. LEVENTHAL: Okay.

15 THE COURT: -- ask her.

16 MR. TANASI: Okay. Thanks.

17 [Bench conference -- concludes]

18 THE COURT: At this time the question will be marked as
19 Court's Exhibit number 9, and the Court is not going to ask the question.
20 Anything else before I excuse the witness?

21 Thank you very much for --

22 THE WITNESS: Thank you.

23 THE COURT: -- being here. Thank you for your testimony.
24 You may step down. You are excused from your subpoena.

25 THE WITNESS: All right. Thank you.

1 THE COURT: And the State may call their next witness.

2 MR. GIORDANI: The State would call Martin Wildemann.

3 **MARTIN WILDEMAN**

4 [having been called as a witness and being first duly sworn,
5 testified as follows:]

6 THE COURT CLERK: Thank you. Please be seated. And
7 could you please state and spell your name for the record?

8 THE WITNESS: Marty Wildemann, W-I-L-D-E-M-A-N-N.

9 THE COURT CLERK: Thank you, sir.

10 MR. GIORDANI: May I, Judge?

11 THE COURT: You may.

12 **DIRECT EXAMINATION**

13 BY MR. GIORDANI:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q What do you do for a living?

17 A I am a retired homicide detective with the Las Vegas
18 Metropolitan Police Department.

19 Q How long have you been retired from Metro?

20 A Two years.

21 Q How long were you with Metro before you retired?

22 A Twenty-nine years.

23 Q And what unit did you retire from, sir?

24 A Homicide.

25 Q And how long were you with homicide?

1 A Fifteen years.

2 Q Can you estimate how many homicide scenes you responded
3 to in the course of your 15 years with homicide?

4 A Three hundred at least.

5 Q Okay. I want to bring you back to September 30th of 2006.

6 On that particular evening did you respond to a homicide call at 1271
7 Balzar?

8 A Yes, I did.

9 Q Did you respond with other homicide detectives?

10 A I did.

11 Q And just for the record, State's 21. Do you see Balzar?

12 A I do.

13 Q And that's flagged on the map?

14 A Yes.

15 Q What type of information did you have going into this scene?

16 A At the beginning, I mean, it was -- the call was a homicide that
17 we were called to. I was one of the up-team detectives and we -- I was
18 the next in line to catch a homicide; myself and Detective Vaccaro, who
19 was my partner at the time. And as we progressed, as I was actually
20 making my way there, I learned it was all involved with a officer-involved
21 shooting that had taken place close by there.

22 Q Okay. Fair to say that this was a large scene when taking into
23 account the murder, the carjacking, and the OIS?

24 A Absolutely.

25 Q Did you say -- I'm sorry, sir, did you say who you responded

1 with?

2 A Well, Detective Vaccaro was my partner at the time, yes; him
3 and other detectives. I think two other detectives were actually
4 responding to the scene of the murder.

5 Q Okay. Did you have any information going in as to how many
6 suspects there were in the entirety of the case?

7 A Well, I knew that they -- there was two people in custody and I
8 had learned there was possibly four to five suspects total.

9 Q Okay. Did you learn that these numerous events, being a
10 homicide, a carjacking, and the OIS, and a foot pursuit, all happened
11 within minutes of each other?

12 A Yes.

13 Q I mean a few minutes of each other.

14 A Yes.

15 Q Where was it that you initially responded with all that
16 information coming in?

17 A I initially responded to 1271 Balzar. My responsibilities were
18 the scene of the homicide itself.

19 Q Okay. So, you -- obviously, you're a homicide detective at the
20 time; your focus was the homicide itself?

21 A Yes.

22 Q When you responded to the scene had it already been
23 perimetered [sic] off and taped off and secure at that time?

24 A Yes.

25 Q And had crime scene analysts responded as well?

1 A Absolutely.

2 Q Would the crime scene analysts in this case have waited for
3 homicide, yourself, and others to respond before going in and doing
4 things?

5 A No, they get there, they will take general outside photographs
6 and things like that. Once we respond we hold an initial briefing with
7 everybody included and we figure out a course of action.

8 Q I've gone through the scene a lot with crime scene analysts
9 already, so I'm going to be very brief when it comes to that.

10 A Okay.

11 Q 179, did you observe what we're looking at in this
12 photograph?

13 A Yes.

14 Q Okay. And what does it appear that we're looking at in that
15 photograph?

16 A That is a window on the west side of 1271 Balzar, so that
17 window would be facing Lexington Avenue.

18 Q All right. And based upon the information you had at the time,
19 had the suspects approached from Lexington on this side of the home?

20 A Yes.

21 Q Was there also -- State's 91 -- several cartridge cases
22 grouped in that area?

23 A Yes.

24 Q Describe for this jury -- well, let me ask you this way. If a
25 cartridge case is sitting on the ground where it's flagged, does that

1 necessarily mean the shooter was standing there or would it mean
2 something else?

3 A Sorry. No, my experience in the guns involved in this
4 particular shooting, they eject -- all the semiautomatic, they eject
5 cartridge cases to the right. So, cartridge cases -- also, it's -- they're
6 dynamic. I mean in a scene they can bounce off of rocks, they can
7 bounce off of other people. So, my guestimate would be that the actual
8 shooter was most likely to the left of that particular cartridge case.

9 Q Okay. And I'm going to show you State's 97. This shows the
10 majority of the cartridge cases and the window as well; correct?

11 A Yes.

12 Q Based upon your training and experience in your multiple
13 years with homicide did it appear that there was an apparent target of
14 this home, sir?

15 MR. LEVENTHAL: I'm going to object as to speculation.

16 MR. GIORDANI: I'm asking based upon his experience.

17 THE COURT: You can answer.

18 BY MR. GIORDANI:

19 A Well, yeah, I mean, we had a homicide victim. There was
20 actually three people standing there at the time. The other two
21 described shots ringing out. In fact, one of the other persons was hit. I
22 would say they were absolutely a target, and judging by the amount of
23 holes going through that window, the home or the occupants of the
24 home itself were a target.

25 Q Okay. Based upon your duties at the scene, I should say,

1 were you responsible mainly for that scene and processing the scene
2 along with the crime scene analysts?

3 A Yes.

4 Q But did you observe or were you aware of victims having been
5 interviewed upon the scene?

6 A Yes.

7 Q How many witnesses total were on the scene of the homicide?

8 A Four.

9 Q Okay. And who were they?

10 A You had -- I think it was Shauna Williams -- was inside the
11 house who made the 911 call.

12 Q Okay.

13 A You had Myniece Cook. Am I right there? Sorry.

14 Q Yes.

15 A Myniece Cook, who was a victim of the shooting also but
16 survived, Maurice Hickman, who was a male that the girls were there
17 visiting, and a young lady named Michel'le Tolefree.

18 Q Okay. You indicated that Shauna Williams was inside the
19 home calling 911; is that right?

20 A Yes.

21 Q Okay. So, can I presume that she had no -- nothing of
22 evidentiary value for you when you interviewed her or other homicide
23 detectives interviewed her?

24 A No.

25 Q She didn't see anything?

1 A No.

2 Q Myniece and Michel'le, did they give statements and were
3 they cooperative with you?

4 A Yes, they were.

5 Q How about Maurice Hickman?

6 A He refused to give a statement.

7 Q Okay. Can you describe his -- say his demeanor?

8 MR. LEVENTHAL: Objection.

9 MR. GIORDANI: I don't hear a legal basis for the objection.

10 THE COURT: What's the objection?

11 MR. LEVENTHAL: It's speculation. He hasn't laid a
12 foundation that he knew Maurice had meant to describe how his
13 demeanor was on that night. And, you know, we just had a shooting
14 there. How is this officer going to determine what -- I mean what
15 emotions --

16 THE COURT: Okay.

17 MR. LEVENTHAL: -- he was going through? I don't know.

18 THE COURT: All right. You can --

19 MR. LEVENTHAL: Speculation.

20 THE COURT: -- testify about your observations.

21 BY MR. GIORDANI:

22 A To me, when asked to contribute to the investigation, he
23 seemed hostile and unwilling to.

24 Q Fair enough. Did you have some relation or responsibility with
25 the carjacking scene as well?

1 A Yes.

2 Q At 1284 Lawry?

3 A Yes.

4 Q Were there four victims or witnesses on that scene as well?

5 A Yes, there were.

6 Q And did all those folks cooperate with you and give

7 statements?

8 A Yes, they gave statements to detectives.

9 Q Okay. And there was also the car crash on the OIS; correct?

10 A Correct.

11 Q Were there two witness officers or victim officers there as

12 well?

13 A Yes.

14 Q Did both Brad Cupp and Brian Walter give statements?

15 A Yes, they did.

16 Q And I want to take a step back for a moment, sir, and ask you,

17 generally, how many, if you could estimate, show-up identification

18 procedures have you done as an officer?

19 A Numerous.

20 Q Okay.

21 A Numerous.

22 Q If there was testimony from an expert saying that there's no

23 instructions given to a witness during a show-up, would that be true or

24 would that be false?

25 A That would be false.

1 Q Okay. There are actually instructions associated with a
2 show-up?

3 A Correct.

4 Q And those actually come on an instruction sheet?

5 A Yes.

6 Q Do you know those off the top of your head as you sit here?

7 A I haven't done them in a while.

8 Q Okay.

9 A I don't know them off the top of my head.

10 Q If I showed you a sample of that sheet would it refresh your
11 memory?

12 A Absolutely.

13 Q And if I were to show you that sample could you tell me if that
14 was the instructions that is included in the normal, typical setting?

15 A Yes.

16 MR. GIORDANI: May I approach the witness?

17 THE COURT: You may.

18 BY MR. GIORDANI:

19 Q And just for the record, I'm not asking you to look at the
20 names or the writing on this, just the instruction paragraph.

21 A Okay. And you want me to read it?

22 Q Well, in a moment.

23 A Okay.

24 Q Does that look familiar to you as the typical show-up witness
25 instruction sheet?

1 A Yes, it does.

2 MR. GIORDANI: Okay. Your Honor, at this time I'd ask
3 permission for the detective, retired detective to read this instruction
4 sheet into the record; just the --

5 MR. LEVENTHAL: I would --

6 MR. GIORDANI: -- instruction portion.

7 THE COURT: -- just object as to foundation. I haven't heard
8 when this instruction sheet was created. We're in 2018 now.

9 THE COURT: Right.

10 You should probably lay some foundation as to time.

11 BY MR. GIORDANI:

12 Q Okay. Back in 2006, to your knowledge, was this instruction --
13 were the show-up witness instructions exactly the same as they are
14 depicted on this sample instruction sheet?

15 A I believe so, yes.

16 Q Okay. So, back in 2006, this would have been standard
17 procedure for a show-up identification?

18 A Correct.

19 MR. GIORDANI: Okay. Permission now?

20 THE COURT: Any objection?

21 MR. LEVENTHAL: Other than it's hearsay.

22 THE COURT: Okay. You may proceed.

23 MR. GIORDANI: Thank you.

24 BY MR. GIORDANI:

25 Q Go ahead and just read that into the records.

1 A In a moment I'm going to show you a person who is being
2 detained. This person may or may not be a person who committed the
3 crime now being investigated. The fact that this person is detained
4 should not cause you to believe or guess that he/she is guilty. You do
5 not have to identify anyone. It is just as important to free innocent
6 persons from suspicion as it is to identify those who are guilty.

7 Please keep in mind that clothing can be easily changed.
8 Please do not talk to anyone other than police officers while viewing this
9 person. You must make up your own mind and not be influenced by
10 other witnesses, if any.

11 When you have viewed the person please tell me whether or
12 not you can make an identification. If you can, tell me in your own words
13 how sure you are of your identification. Please do not indicate in any
14 way to other witnesses that you have or have not made an identification.
15 Thank you.

16 Q Thank you, sir. So, I was just talking briefly about the OIS.
17 Were there several firearms that were impounded associated with the
18 OIS?

19 A Yes.

20 Q What were those firearms and where were they generally
21 located?

22 A Well, there was a .22 caliber Ruger semiautomatic rifle, which
23 had been altered for the butt and -- of the -- or the stock, the shoulder
24 stock portion, and the barrel had been cut. That was located within feet
25 of the crash site where the pursuit terminated with the suspects. There

1 was a Glock, and I'm not positive of the model, but it's a .45 caliber
2 semiautomatic handgun which had an extended magazine, which was
3 found in a dumpster right next to where the suspect was hiding, Pierre
4 Joshlin, at 1701 J Street.

5 Q Okay.

6 A And there was a Colt .45 semiautomatic pistol, which was
7 found in the passenger front floorboard of the Lincoln Town Car that was
8 crashed.

9 Q Okay. Were -- ultimately, were those weapons counted down
10 by crime scene analysts during the course of this?

11 A Yes.

12 Q And did you observe the make -- or I should say the
13 manufacturer and caliber of the cartridges that were still in the guns?

14 A Yes.

15 Q And did those coincide with the cartridge cases from the
16 scene?

17 A Yes.

18 Q Can you give a little more detail? For example, the .22 caliber
19 rifle.

20 A The .22 caliber rifle had one -- it had an extended magazine
21 that was a capacity of 30 rounds. It had one cartridge. So, a cartridge,
22 if I refer to that, is going to be an unfired bullet. It's a bullet with the
23 powder and everything intact. So, it had one cartridge that was in the
24 actual rifle itself, so in the -- we call it in the tube or in the barrel ready to
25 fire. The magazine of that rifle was empty.

1 The Glock, which had a 28-round extended magazine, had 15
2 rounds in that magazine. And I believe it had one in the tube ready to
3 fire.

4 What I didn't mention was the cartridge cases at our scene
5 were headstamped. So, if I say a headstamp it means the -- where the
6 primer of the bullet cartridge is. And it was headstamped with a C. The
7 cartridge that was taken out of the rifle, the semiautomatic .22 rifle, was
8 headstamped with a C.

9 Q Let me stop you.

10 A Okay.

11 Q Just to clarify. So, when it comes to the long gun or the
12 shortened long gun, I should say --

13 A Okay.

14 Q -- that had one cartridge in it with a headstamp C, the letter C?

15 A Correct.

16 Q All of those .22 caliber cartridge cases on the homicide scene,
17 did all of those have the headstamp C as well?

18 A Yes, they did.

19 Q Is that common, uncommon, that type of headstamp and how
20 it was loaded?

21 A Yeah, I mean, that's a common -- that's a -- it's a common
22 way for that ammunition -- it's a popular brand. Is it common that it --
23 that all those were loaded --

24 Q Right.

25 A -- into that gun with that gun being altered the way it is? It --

1 that's not very common in my experience.

2 Q Okay. And you indicated that the Glock pistol found in the
3 dumpster with Mr. Joshlin was -- had a 28-round extended mag?

4 A Correct.

5 Q So, we have the banana magazine, which is obviously
6 extended, and now we have an extended magazine on the Glock?

7 A Correct.

8 Q Did you talk about the Colt yet?

9 A I had not talked about the Colt.

10 Q Can you go ahead and do that?

11 A The Colt -- and I'm not positive on -- the Colt was still loaded
12 but not functioning condition. And I'm not positive of the amount of
13 rounds that were in the Colt, but the Colt was -- had an obvious jam to it.
14 There was a cartridge that was half inserted into the tube, and the slide
15 was cocked back not able to fully put the cartridge into the tube.

16 Q What is a misfeed?

17 A Well, a misfeed would be -- I'm not a huge gun guy, but a
18 misfeed would be where if you fire a handgun -- the way the
19 semiautomatic works, the top slide portion pulls back, you know, due to
20 the explosion. It ejects the expended cartridge case, and then as it
21 slides forward it picks up a new cartridge from the magazine and puts it
22 into the tube ready to fire. A misfeed could be that that cartridge that it
23 goes in might pop up and it doesn't load properly in the tube. It might
24 get cocked and just not load properly in the tube, so the gun becomes
25 inoperable.

1 Q Okay. Did the -- so, you said that was a .45 as well. So, the
2 Glock and the Colt are both .45s?

3 A Yes.

4 Q Were they both loaded with the same general type of brand of
5 ammunition?

6 A Yes.

7 Q What was that?

8 A Winchester .45 ACP, I believe.

9 Q Okay. And would that be headstamped on the rounds just like
10 the other ones?

11 A Yes.

12 Q Were the .45 caliber cartridge cases that were found at the
13 homicide scene also Winchester .45 ACP or auto?

14 A They were, yes.

15 Q Were there also .45 cartridges, .45 caliber cartridges found at
16 the scene?

17 A Yes.

18 Q Is that relevant to you with regard to the jam?

19 A Well, when you look at the gun and the condition that it's in it
20 is relevant to me because it looks like a shot took place, and upon, you
21 know, feeding the new cartridge to shoot again, it jammed, the gun
22 jammed. A lot of times people will try to manipulate it, they might drop
23 the magazine. It might have had a stovepipe, I mean, that's the one
24 where the cartridge sticks up, and that was cleared out. And so if a jam
25 occurs, frequently you find a cartridge, meaning an unshot or unfired

1 bullet, at the scene.

2 Q Understood. I want to move on now to about 11 days later.
3 Did you have reason to go back to that scene, that 1271 Balzar?

4 A Yes.

5 Q And what was the general purpose of going back to that
6 scene?

7 A My partner and I went back to the scene just to get another
8 look, to take another look at it. While we were there -- do you want me
9 to go into what we did while we were there?

10 Q Sure, go.

11 A While we were there we were able to locate two additional .22
12 caliber cartridges, which were still on the west side of the house to the
13 south.

14 Q Cartridges or cartridge cases?

15 A Cartridge cases. If I misspoke I apologize.

16 Q That's okay. And during -- while you were there that day did
17 you also reinterview or have contact with Myniece Cook?

18 A We did. Not at that location, but just prior to that we had
19 spoke with Myniece.

20 Q Okay. And did -- without saying exactly what she told you, did
21 her statement to you about the direction the shooters ran impact you
22 going back to look through that path of where they could have run?

23 A Yes, she believed that they ran to the south, so we went --

24 MR. LEVENTHAL: I'm going to object as to hearsay, Judge.

25 THE WITNESS: Sorry.

1 THE COURT: Yeah, sustained.

2 MR. GIORDANI: It's okay. That's okay.

3 I'm sorry.

4 THE WITNESS: Yes, it did.

5 MR. GIORDANI: Okay. Thank you.

6 MR. LEVENTHAL: Well, I just objected. I move to strike --

7 THE COURT: Okay.

8 MR. LEVENTHAL: -- the next statement.

9 THE COURT: I'm not sure what that yes was in response to.

10 MR. GIORDANI: Okay. Let me reask --

11 THE COURT: Because I sustained the objection why don't

12 you ask the question again?

13 MR. GIORDANI: Right.

14 BY MR. GIORDANI:

15 Q Without saying what she said, you had a conversation with

16 Myniece; correct?

17 A Yes.

18 Q As a result of that conversation did you go back and walk the

19 path towards the carjackings?

20 A Yes.

21 Q And did you discover two additional .22 caliber cartridge cases

22 that way?

23 A Yes.

24 Q I want to talk to you briefly about 1 October of 2006. On that

25 date did you attend the autopsy of Mersey Williams?

1 A Yes.

2 Q Without going into too much detail, was it apparent to you
3 what her cause of death was?

4 A Yes.

5 Q And what was that?

6 A A gunshot wound to the forehead over the left eye.

7 Q Based upon your extensive training when it comes to
8 homicides and your experience, could you tell whether that was small
9 caliber or large caliber or what?

10 A It was a small caliber.

11 Q And was there actually a small caliber bullet taken from the
12 inside of her?

13 A Yes.

14 Q And I want to ask you a couple questions generally.
15 Obviously, Jemar Matthews and Pierre Joshlin were apprehended that
16 night and taken into custody; right?

17 A Yes.

18 Q Did you have an opportunity to observe -- or do you know the
19 height of Jemar Matthews and Pierre Joshlin?

20 A Jemar is approximately 5 foot 8, 5 foot 9, I believe, weighing,
21 at the time, this is years ago, approximately 170 pounds. And Pierre
22 was shorter. If my recollection's right, 5 foot 4 maybe, 140 pounds.

23 Q Okay. And did you do research as to where they lived at the
24 time?

25 A Yes.

1 Q Being they -- where they lived that night they were
2 apprehended?

3 A Yes.

4 Q And did Jemar Matthews live at 1801 J Street, #217?

5 A Yes.

6 Q And did Pierre Joshlin live at 911 Silverman Way?

7 A Yes.

8 Q Okay. I want to briefly talk to you about investigative follow-up
9 and I'll sit down.

10 A Okay.

11 Q As a homicide detective were you and your partners
12 responsible for doing any follow-up on the case?

13 A Yes.

14 Q Were several items of evidence submitted for forensic
15 examination?

16 A Yes.

17 Q Were there basically four types of forensic examination
18 associated with this case?

19 A Yes.

20 Q I want to first refer you to DNA generally. Were several items
21 submitted to the DNA lab for testing?

22 A Yes.

23 Q Was two different items associated with Pierre Joshlin?

24 A Yes.

25 Q Okay. Anything of evidentiary value, when it comes to DNA,

1 that came back to Jemar Matthews?

2 A No.

3 Q Okay. Prints, fingerprints. Were fingerprints submitted in this
4 case?

5 A Yes.

6 Q And were some of those prints from the hood of Officer
7 Cupp's unmarked vehicle and then some from the stolen Lincoln, the
8 one taken during the carjacking?

9 A Yes.

10 Q And were there any prints of evidentiary value that came back
11 on that?

12 A No.

13 Q Other than prints from the victims who owned the vehicle or
14 were associated with them?

15 A No, that's -- those were the -- well, those were the prints that
16 were recovered were owners'.

17 Q Right, and they're -- those wouldn't be of evidentiary value;
18 right?

19 A No.

20 Q Was there ballistics or firearms examination conducted in this
21 case?

22 A Yes.

23 Q Were all of those cartridge cases, cartridges, and weapons all
24 submitted to the lab for testing?

25 A Yes.

1 Q In comparison amongst themselves?

2 A Yes.

3 Q And that -- would that have been James Krylo who conducted
4 those -- that testing?

5 A Yes.

6 Q To your knowledge is James Krylo now retired as well?

7 A Yes.

8 Q Okay. Finally, was there -- were there gunshot residue kits
9 taken from three individuals?

10 A Yes.

11 Q And were those all submitted to a lab out in Bexar County,
12 Texas for testing?

13 A Yes.

14 MR. GIORDANI: Court's brief indulgence.

15 All right. Thank you very much, sir.

16 I'll pass the witness, Your Honor.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. Cross-examination?

19 **CROSS-EXAMINATION**

20 BY MR. LEVENTHAL:

21 Q Good afternoon, Detective.

22 A Good afternoon.

23 Q How are you today?

24 A Good, I'm good. Thank you.

25 Q My name's Todd Leventhal. I represent Jemar Matthews, and

1 I've just got a few questions for you.

2 A Yes, sir.

3 Q You were asked specifically about show-ups; right?

4 A Yes.

5 Q Okay. And you understand that there are three types of
6 different ways that Metro conducts eyewitness identifications; right?

7 A Yes.

8 Q And that would be a photo array, right, like a six-pack?

9 A Yes.

10 Q There'd be a lineup; correct?

11 A An actual physical lineup?

12 Q A live lineup. I apologize.

13 A Yes.

14 Q Yes.

15 A That's okay.

16 Q Okay. And then the show-up?

17 A Yes.

18 Q Okay. And you read -- I believe you read -- do you still have
19 that up there?

20 A No, sir.

21 Q You read a statement that you indicated was a show-up
22 witness instruction?

23 A Yes.

24 Q And there were instructions on there?

25 A Correct.

1 Q Okay. And you read those into the record; right?

2 A Yes.

3 Q Okay. Was -- did you know whether or not -- did -- Detective
4 Walker [sic] was given that statement that evening?

5 MR. GIORDANI: I'm sorry, objection. Detective Walker?

6 MR. LEVENTHAL: Walters [sic].

7 MR. GIORDANI: Oh, I'm sorry.

8 THE WITNESS: Okay. I was --

9 THE COURT: Okay.

10 MR. GIORDANI: I'm sorry.

11 THE COURT: So, does he --

12 MR. LEVENTHAL: Walters [sic].

13 THE COURT: -- know whether --

14 MR. LEVENTHAL: Right.

15 THE COURT: Whether --

16 MR. LEVENTHAL: Whether or not that -- okay. Let me back
17 up.

18 BY MR. LEVENTHAL:

19 Q Did you know that Detective Walters [sic] did a show-up that
20 night?

21 A I don't know, sir.

22 Q You don't?

23 A No.

24 Q Oh. Okay. So, you were only questioned regarding the
25 instructions on the show-up instruction sheet?

1 A Correct.

2 Q Okay. And you're saying that when you retired this was the
3 instructions on the show-up sheet; right?

4 A Yes.

5 Q And this was the instructions on the show-up sheet back in
6 2006, 12 years ago?

7 A I believe.

8 Q You believe? You're not sure.

9 A I'm not positive.

10 Q Okay. You've testified that you were sure when you read it
11 in -- just prior to --

12 MR. GIORDANI: Objection, that --

13 MR. LEVENTHAL: You read it into --

14 THE COURT: Right.

15 MR. LEVENTHAL: -- the --

16 THE COURT: I'm not sure he was asked if he was sure.

17 MR. GIORDANI: No, in fact, he said the opposite. He said he
18 thinks.

19 MR. LEVENTHAL: No. Your Honor, I asked for a foundation
20 as to time and whether or not --

21 THE COURT: Right.

22 MR. LEVENTHAL: -- this instruction sheet was in place in
23 2006, and he said yes. That's the foundation.

24 THE COURT: I agree, but now you're asking him are you
25 sure, and he -- it seems like the witness is not as sure, and so I think

1 that's okay for you to bring that out.

2 MR. LEVENTHAL: Oh, thank you.

3 BY MR. LEVENTHAL:

4 Q So, you're not sure whether this was the instruction sheet that
5 was --

6 A I believe that it was. I can tell you that frequently -- or not
7 frequently -- but occasionally Metro updates or changes forms, so I'm
8 not positive that that's the exact form or those are the exact instructions,
9 but I'm sure they're very close.

10 Q They're very close?

11 A Yes.

12 Q Are -- you're not an expert in any way, shape, or form as to
13 lineups or show-ups or eyewitness identifications; right?

14 A I've done many of them, but I guess I'm not an expert, no.

15 Q You're not an expert. Okay. So, you -- and you can't talk
16 about the progress that we've made or that the psychological field has
17 come from, from '06 to now; can you?

18 A No.

19 Q Okay. You were asked about the four types of forensic that
20 was submitted, and you were asked about DNA; correct?

21 A Correct.

22 Q And I heard that you said there was nothing that came back
23 evidentiary value regarding DNA value on anything that was collected
24 with Jemar Matthews; correct?

25 A I believe so, yes.

1 Q Okay. And you were asked about fingerprints, and, I believe,
2 your answer to that -- that everything that was fingerprinted, nothing
3 came back on Jemar Matthews; correct?

4 A Correct.

5 Q Okay. And you were asked about ballistics and firearms, but
6 I'm not sure if you -- what was the question regarding the ballistics and
7 the firearms. Were you asked about fingerprints on the firearms and
8 ballistics?

9 A No.

10 Q Were you asked about DNA on the --

11 A No.

12 Q Okay. Did anything come back regarding firearms and
13 ballistics regarding Jemar Matthews?

14 A Well, ballistics, yes.

15 Q Ballistics?

16 A Yes.

17 Q Okay. We haven't gotten to the GSR.

18 A Well, I'm sorry. Ask that question again because it --

19 Q Yeah, okay. Regarding the ballistic and firearms, no testing
20 that you sent into labs, nothing came back regarding Jemar Matthews;
21 right?

22 A No, what ballistics that came back, came back to the .22 rifle
23 and the Colt .45 and the Glock.

24 Q Okay. But there's no connection to Jemar Matthews
25 regarding those ballistics or firearms; right?

1 A Yeah, sure there is.

2 Q There is?

3 A Yes.

4 Q Okay. Is -- were there fingerprints that you found on those?

5 A No.

6 Q Was there DNA that you found on those?

7 A No.

8 Q Okay. So, you didn't find any scientific evidence that links

9 Jemar Matthews to those ballistics or firearms; correct?

10 A No scientific.

11 Q No scientific. So, what are you referring to? Are you referring

12 to an eyewitness?

13 A Yes.

14 Q Okay. That's what -- so, you're referring to this show-up.

15 We're going to go back to the show-up.

16 A No, I'm not referring to the show-up. I'm referring to Officer

17 Walter's statements regarding that. I'm referring to the fact that that

18 firearm was found within feet of the crashed vehicle, and I'm referring to

19 the fact that Pierre Joshlin was in a dumpster with a gun directly next to

20 him.

21 Q I appreciate that, but Pierre Johnson's [sic] not here today; is

22 he?

23 A No.

24 Q Okay. You were asked about Jemar's height; correct?

25 A Correct.

1 Q And you sort of looked up and said my recollection is. Now,
2 did you independently review your records before coming here today?
3 A I looked at my report and --
4 Q Okay.
5 A Yes.
6 Q You did?
7 A Yes.
8 Q Okay. So, you -- when you said my recollection and looked
9 up it really wasn't an independent recollection of height because it was
10 12 years ago; right?
11 A Correct.
12 Q Okay. So, it was really you reading some report indicating
13 that the -- he might have been 5'8, 5'9; right?
14 A Correct.
15 Q And the same with Pierre Johnson [sic]; right?
16 A Correct.
17 Q Okay. So, that wasn't something that you actually recollected,
18 it was something you read to come to court today; right?
19 A It's my recollection of what I read, yes.
20 Q It's your recollection of what you just read recently?
21 A Yes.
22 Q Yes. Okay. Thank you.
23 MR. LEVENTHAL: I have nothing further.
24 THE COURT: Any redirect?
25 MR. GIORDANI: Just briefly.

1 **REDIRECT EXAMINATION**

2 BY MR. GIORDANI:

3 Q You didn't get a chance to answer when Mr. Leventhal asked
4 you was there anything linking Jemar Matthews to the gun, and I believe
5 you said well, sure there was, and then he moved on. Do you want to
6 answer that question now?

7 MR. LEVENTHAL: Well, he did. Sorry.

8 BY MR. GIORDANI:

9 Q What is -- what was that?

10 A There was the fact that Officer Walter saw Mr. Matthews point
11 the firearm twice, the fact that that firearm, which was connected to the
12 murder scene, was now within feet of the crashed car that Mr. Matthews
13 got out of, and the fact that -- I had something else on my mind, but I just
14 lost it.

15 Q It's okay. Let me ask you this. Mr. Leventhal asked you
16 several questions about was there any forensics linked to -- linking
17 Jemar to anything. Do you remember that line of questioning?

18 A Yes.

19 Q Everything you've had at the time, all the witnesses --

20 A Right.

21 Q -- had they indicated to you whether or not the suspects in
22 both the homicide and the OIS were wearing gloves?

23 A Yes.

24 Q Is it surprising to you if someone's wearing gloves they may
25 not put their DNA on a gun?

1 A No, that's not surprising.

2 Q Is it surprising to you their prints might not be on the gun?

3 A No.

4 MR. GIORDANI: I'll pass the witness. Thank you, Your
5 Honor.

6 THE COURT: Any recross?

7 MR. LEVENTHAL: Yes.

8 **RECROSS EXAMINATION**

9 BY MR. LEVENTHAL:

10 Q Were you aware that there were fingerprints taken off of the
11 hood of -- I believe it's a maroon Seabreeze [sic]?

12 A I saw pictures of prints taken, yes.

13 Q Okay. And, obviously, you can't get prints on a car hood,
14 right, if you're wearing gloves; right?

15 A Correct.

16 Q Okay. And you reviewed it. You saw that there were a
17 number of different identifications of Jemar Matthews, correct, one being
18 Mr. Bolden?

19 A I'm not aware of that, sir.

20 Q You weren't aware that he indicated the person who hijacked
21 the car was 5'7 or shorter?

22 A I don't know that, sir.

23 Q You don't know that?

24 A No.

25 Q That wasn't in your report?

1 A I don't recall that.

2 Q Okay. And so, just to be clear, scientific evidence, there's
3 nothing here that links Jemar Matthews to any of these crime scenes, all
4 three of them, scientifically; right?

5 A Correct.

6 Q It's just based on one officer's very instantaneous
7 identification or what he thought he saw; correct?

8 A Correct.

9 Q Correct. Thank you.

10 THE COURT: Okay. Anything else?

11 **FURTHER REDIRECT EXAMINATION**

12 BY MR. GIORDANI:

13 Q He had gunshot residue on his hands; didn't he?

14 A Yes.

15 MR. GIORDANI: Nothing else.

16 **FURTHER RECROSS EXAMINATION**

17 BY MR. LEVENTHAL:

18 Q Did the gunshot residue on his hands link to any of the guns?
19 Can you link that to a gun?

20 A You can't link it to a specific gun, no.

21 Q Okay. So, just by virtue of having gunshot residue on your
22 hands doesn't mean that you just shot a firearm. It may have -- or
23 there's something called transfer. Have you heard of that?

24 MR. GIORDANI: Objection, argumentative.

25 THE COURT: Right, I mean, that's a little argumentative, so

1 it's sustained.

2 BY MR. LEVENTHAL:

3 Q Okay. Have you ever heard of transfer?

4 A Yes.

5 MR. GIORDANI: Objection.

6 MR. LEVENTHAL: Okay.

7 THE COURT: What would --

8 MR. LEVENTHAL: Thank you. I'm done. I'm good. Thanks.

9 MR. GIORDANI: Nothing further.

10 THE COURT: Okay. Time for -- okay. We have a question.

11 Don't leave, Detective.

12 THE WITNESS: I won't.

13 [Bench conference -- begins]

14 THE COURT CLERK: Number 10, 10.

15 THE COURT: Juror number 13 is busy over there.

16 MR. GIORDANI: Yeah.

17 MS. LEXIS: Yeah.

18 THE COURT: Thank you.

19 Oh, great. I'm wondering --

20 MR. LEVENTHAL: It's that same one.

21 MR. GIORDANI: Well, there's a big word in there that's a
22 definite no.

23 THE COURT: Yeah, we'll mark it as --

24 MR. TANASI: No, but --

25 MS. LEXIS: We did it.

1 MR. TANASI: We did it.
2 MS. LEXIS: I think --
3 MR. GIORDANI: Well, wait, wait, wait, wait, wait, wait.
4 MS. LEXIS: I think --
5 MR. GIORDANI: Wait.
6 MS. LEXIS: Yes.
7 MR. GIORDANI: I need to take the gangs out; what year.
8 THE COURT: What?
9 MR. LEVENTHAL: Wait, I can't hear.
10 MR. GIORDANI: If you take the gangs out --
11 THE COURT: I can't modify the --
12 MR. GIORDANI: Oh, okay.
13 THE COURT: -- question. So, if you want to ask both --
14 MS. LEXIS: Yes.
15 MR. LEVENTHAL: No.
16 THE COURT: You know? Yeah, I've said you could ask both,
17 but I can't ask --
18 MS. LEXIS: Prejudicial.
19 THE COURT: I --I'm not going to -- this is --
20 MS. LEXIS: Yeah.
21 MR. GIORDANI: Ask --
22 THE COURT: -- way too prejudicial.
23 MR. LEVENTHAL: Yeah, I know. That's why I'm saying no, I
24 don't want her --
25 THE COURT: Yeah.

1 MR. LEVENTHAL: -- to ask.
2 THE COURT: I can't ask it.
3 MS. LEXIS: Oh, yeah, we're agreeing.
4 THE COURT: But if the parties wanted to ask a modified
5 follow-up question --
6 MR. LEVENTHAL: No.
7 THE COURT: -- that would be fine.
8 MR. LEVENTHAL: I don't think it's relevant.
9 MS. LEXIS: I -- they're charged under a conspiracy.
10 THE COURT: I'm not going to ask this.
11 MS. LEXIS: Yeah. No, that's --
12 THE COURT: But either side can have an opportunity --
13 MS. LEXIS: Okay.
14 THE COURT: -- for follow-up.
15 MR. LEVENTHAL: For follow-up regarding what?
16 MS. LEXIS: Follow-up, yes.
17 MR. TANASI: That conflict earlier [indiscernible].
18 [Bench conference -- concludes]
19 THE COURT: All right. At this time the Court has marked the
20 question as Court's Exhibit number 10. I'm not inclined to ask the
21 question.
22 Does the State have any follow-up?
23 MR. GIORDANI: I'm sorry. Court's brief indulgence.
24 THE COURT: That's fine.
25 MR. GIORDANI: Can we approach?

1 THE COURT: Sure.

2 MR. GIORDANI: I just --

3 [Bench conference -- begins]

4 MR. GIORDANI: Just -- that's why I'm approaching. I want to

5 ask --

6 MR. LEVENTHAL: No, I know.

7 MR. GIORDANI: -- so it doesn't get --

8 MR. LEVENTHAL: No, I'm not --

9 MR. GIORDANI: -- screwed up.

10 MR. LEVENTHAL: I'm not --

11 MR. GIORDANI: If I were to refer -- if I -- I was basically going

12 to just ask were Jemar Matthews and Pierre Joshlin associates at the

13 time.

14 MR. LEVENTHAL: Well, it's just --

15 MR. GIORDANI: I know the answer is yes, but I don't -- is

16 that -- I don't want to get down -- has he been involved --

17 MR. TANASI: Understood. I need a raise.

18 MR. GIORDANI: Oh, yeah, he's been admonished --

19 MS. LEXIS: Yeah.

20 MR. GIORDANI: -- nothing about gangs.

21 MS. LEXIS: Yes.

22 MR. LEVENTHAL: I don't know. I --

23 THE COURT: Why don't you just say friends?

24 MS. LEXIS: That's what we want.

25 THE COURT: I mean, I'm already going to say associates.

1 MS. LEXIS: But we need to --
2 MR. GIORDANI: That's the problem is, is --
3 MR. TANASI: I mean, any connection to it --
4 MR. GIORDANI: If you just go and commit crimes together
5 you're not necessarily friends, so the only -- the most neutral way to say
6 it is associates. And I don't want him to go well, I don't know that they
7 were friends, but I know they were --
8 THE COURT: Oh.
9 MR. TANASI: I think associates, that's a lot more --
10 MS. LEXIS: They belonged to the same gangs, yeah.
11 MR. TANASI: -- like a co-conspirator --
12 THE COURT: So, they might know things.
13 MR. TANASI: -- or something like that.
14 MR. LEVENTHAL: It's not even probative.
15 MS. LEXIS: Yeah.
16 MR. GIORDANI: What?
17 MR. LEVENTHAL: See how it's --
18 THE COURT: If --
19 MS. LEXIS: Well, it's --
20 MR. GIORDANI: Your opening was the State's never going to
21 be able to link the two.
22 THE COURT: Yeah.
23 MR. GIORDANI: So --
24 MR. LEVENTHAL: Link the two?
25 MR. GIORDANI: Jemar and Pierre.

1 MS. LEXIS: Yeah.

2 THE COURT: It's kind of probative. So, you want to --

3 MR. LEVENTHAL: I didn't open with that.

4 MR. GIORDANI: Didn't you open with that?

5 MR. TANASI: I did? He did? It's lousy.

6 MS. LEXIS: Maybe -- can -- yeah, he did.

7 THE COURT: It's a good thing Mr. Tanasi's here. So, you

8 want to ask was there any link between his Defendant and Mr. Pierre?

9 MS. LEXIS: We want to be more leading because the link is

10 everything that we've admonished him --

11 MR. LEVENTHAL: So --

12 MS. LEXIS: -- not to talk about.

13 THE COURT: Oh, okay. So, you want to say --

14 MR. TANASI: Yeah, but --

15 THE COURT: -- were they associates --

16 MS. LEXIS: Associates.

17 THE COURT: -- at the time.

18 MS. LEXIS: Yeah.

19 MR. TANASI: Your Honor, I would just object to the use --

20 THE COURT: They've always --

21 MR. TANASI: -- of the word associates though.

22 MR. LEVENTHAL: Me too.

23 MR. TANASI: That has a criminal --

24 THE COURT: Well, that was my -- that -- okay. What other

25 word can you think of?

1 MR. GIORDANI: If you have a better --
2 MR. TANASI: Friendship, I think, also implies --
3 THE COURT: Well, that's what I said. I mean --
4 MR. GIORDANI: But friendship isn't --
5 MR. LEVENTHAL: But --
6 MR. TANASI: I think --
7 THE COURT: But friendship might not be the same.
8 MR. TANASI: That's the same; right?
9 THE COURT: They might not --
10 MS. LEXIS: Okay.
11 THE COURT: The police -- my thought is --
12 MR. TANASI: Any evidence that they knew each other?
13 THE COURT: That's probably better. Yeah, I probably will
14 object to that.
15 MS. LEXIS: I --
16 THE COURT: Is there any evidence that these two --
17 MR. LEVENTHAL: You know what he's going to say?
18 MR. TANASI: Yeah, they were in a gang together.
19 MS. LEXIS: No, he's not going to say that.
20 THE COURT: No, he's not going to say that.
21 MR. LEVENTHAL: And he's going to say why --
22 THE COURT: He should answer yes or no.
23 MS. LEXIS: And just admonish him.
24 THE COURT: And you should tell your witness to just answer
25 yes or no.

1 MS. LEXIS: And --
2 MR. TANASI: Do you want to talk to him and then --
3 MS. LEXIS: -- if --
4 MR. TANASI: Before we ask on that one?
5 MS. LEXIS: Yeah, if we could talk to our witness. If the Court
6 is okay with us -- instead of saying associates, if we can tell our witness
7 that in an effort to sanitize the word associates we would like to say that
8 they were friends.
9 MR. TANASI: Friends, great.
10 MS. LEXIS: I think he would be okay with that.
11 MR. GIORDANI: You're supposed to tell him if that's what
12 you want; friends.
13 MR. TANASI: I don't want friends. I think friends --
14 MR. GIORDANI: Oh.
15 MR. TANASI: -- is a problem too.
16 THE COURT: Again, I don't like you going over and talking to
17 witnesses.
18 MS. LEXIS: Oh, that's --
19 MR. GIORDANI: Oh, no, we'd like to clear it because --
20 MS. LEXIS: No, we're not going to do it right now.
21 MR. GIORDANI: -- we only have one --
22 THE COURT: All right. So, you can just take a break.
23 MR. GIORDANI: They need to break, probably, anyway.
24 THE COURT: Okay.
25 MS. LEXIS: Please, Your Honor. Thank you.

1 THE COURT: All right. Thank you.

2 [Bench conference -- concludes]

3 THE COURT: Okay. At this time, ladies and gentlemen,
4 we're going to take a recess. During this recess you're admonished not
5 to talk or converse amongst yourselves or with anyone else on any
6 subject connected with this trial, or read, watch or listen to any report of
7 or commentary on the trial or any person connected with this trial by any
8 medium of information, including, without limitation, newspapers,
9 television, the Internet or radio, or form or express an opinion on any
10 subject connected with this trial till the case is finally submitted to you.
11 We'll be in recess for 15 minutes. Thank you.

12 THE COURT MARSHAL: Thank you. All rise for the exiting
13 jury, please.

14 Jurors?

15 [Outside the presence of the jury]

16 THE COURT: Okay the record will reflect that the hearing's
17 taking place outside the presence of the jury panel.

18 You can talk to your witness.

19 MR. GIORDANI: Okay. Great.

20 MR. LEVENTHAL: Can I go?

21 MR. GIORDANI: Yeah.

22 THE COURT: Yeah, I just --

23 So, we'll break till 3:15.

24 THE COURT CLERK: Okay. Thank you.

25 [Recess taken at 2:59 p.m.]

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[Proceedings resumed at 3:27 p.m.]

[In the presence of the jury]

THE COURT MARSHAL: Thank you everyone. Please be seated. Please come to order. Court is now back in session.

THE COURT: Does the State stipulate to the presence of the jury panel?

MR. GIORDANI: Yes, Your Honor.

THE COURT: The Defense?

MR. LEVENTHAL: Yes, Your Honor. Thank you.

THE COURT: Go ahead.

MR. GIORDANI: We have no further questions at this time.

THE COURT: Okay.

THE WITNESS: Thank you.

THE COURT: Sorry.

THE WITNESS: That's okay.

THE COURT: Thank you very much for your --

THE WITNESS: Thank you.

THE COURT: -- testimony here today. You may step down.

THE WITNESS: Thank you.

THE COURT: And you are excused.

And you may call your next witness. Are -- we're going to read --

MS. LEXIS: Yes.

THE COURT: -- the next witness?

MS. LEXIS: Yes.

1 THE COURT: Okay.

2 MR. LEVENTHAL: I've got my glasses too.

3 THE COURT: Yeah.

4 At this time the State is going to call their next witness. They

5 are going to -- this is testimony that was given in a prior proceeding

6 under oath and so, I think --

7 Mr. Portz, are you going to read it for us?

8 MR. PORTZ: Yes, Your Honor.

9 THE COURT: Okay. And it is James Krylo; correct?

10 MS. LEXIS: Yes, Your Honor.

11 THE COURT: Okay. So, this is the testimony of James Krylo,

12 and Mr. Portz is going to read the part of Mr. Krylo.

13 MS. LEXIS: And, Your Honor, it was on May 10th of 2007.

14 THE COURT: Okay. And it was May 10th, 2007.

15 THE COURT CLERK: Please raise your right hand, Mr. Portz.

16 **TESTIMONY OF JAMES KRYLO**

17 [James Krylo's testimony read into the record by District Attorney

18 Kenneth N. Portz after oath given and affirmed]

19 THE COURT CLERK: Thank you. Please be seated.

20 THE COURT: Okay. If you -- you can just start on the top

21 where it -- you say his name, James Krylo.

22 MR. PORTZ: Yes, Your Honor.

23 THE COURT: Do these not -- oh, it's page seven. Sorry. I

24 was going to say there's no page numbers.

25 MR. PORTZ: It is James Krylo, K-R-Y-L-O.

1 **DIRECT EXAMINATION READ BY MS. LEXIS FOR PROSECUTION**

2 Question: Sir, you work for the Las Vegas Metropolitan
3 Police Department?

4 Answer: Yes, I do.

5 Question: And what do you do for Metro?

6 Answer: I'm a forensic scientist working in the firearms
7 unit of the forensic laboratory.

8 Question: First, how long have you been working in
9 that capacity?

10 Answer: With Metro over eight and a half years now.

11 Question: And prior to Metro did you work in law
12 enforcement?

13 Answer: Yes, I've been employed in the forensic side of
14 law enforcement for over 25 years now. I spent about 16 of those years
15 doing firearms and tool mark examinations.

16 Question: Okay. What specific training and education
17 do you have to do the firearms examinations that you do?

18 Answer: Well, I received my initial training with firearms
19 and tool mark identification at the sheriff's department in Orange County,
20 California. Since that initial training period I've also attended a little over
21 600 hours of related training from different forensic associations, law
22 enforcement agencies, and firearms manufacturers.

23 Question: Have you had continuing training and
24 education as you've been with Metro over the last eight years?

25 Answer: Yes.

1 THE PROSECUTOR: Judge, I'd just ask at this time to
2 be able to question this witness as to the firearms examination.

3 THE DEFENSE ATTORNEY: I'm quite familiar with Mr.
4 Krylo, and no objection to that.

5 THE COURT: You may continue.

6 THE PROSECUTOR: Thank you.

7 BY THE PROSECUTOR:

8 Question: Specifically when you talk about firearms
9 examination, what -- can you give us a general overview of what it is you
10 do?

11 Answer: Basically, what we do in the firearms unit is we
12 take firearms, we examine them, make sure they're safe to fire, actually
13 test fire them, and then we compare the components of ammunition that
14 we test fired to evidence components of ammunition.

15 Question: Okay. What is it that you're looking for?
16 Well, let me back up. Some of the items of evidence that you're
17 comparing to firearms, I think, you referred to the term ammunition.
18 What does ammunition include?

19 Answer: Well, one basic round, one single unit of
20 ammunition is called a cartridge, so that's one round of ammunition that
21 hasn't been fired yet. It's composed of four basic parts. It has the
22 cartridge case, which is the container for all of the parts. At one end of
23 the cartridge case you have the primer, which is kind of the spark plug
24 that gets everything going. Inside the cartridge case you have gun
25 powder, and then seated in the mouth of the cartridge case is the bullet.

1 So, all that together is one cartridge.

2 Once you've fired a gun, what you have left over is the
3 cartridge case, which will either be still in the gun or have been ejected
4 from the gun, so it would be near the gun, and then the bullet, which is
5 the projectile that has gone out of the barrel of the gun and gone down
6 range.

7 Question: What items included in the full cartridge can
8 you test against the actual firearms that may have or may not have fired
9 that way?

10 Answer: I can look at markings left both on the
11 cartridge case and on the bullet itself during the firing process to make
12 comparisons back to the gun to determine if the cartridge case and the
13 bullet had been fired from a specific gun.

14 Question: And what do -- and you do that by actually
15 firing the gun with another round and then looking at or comparing what
16 is fired when you did it, as opposed to what evidence you received?

17 Answer: Exactly. I take the components that I test
18 fired, the cartridge case and the bullet, and I use what's called a
19 comparison microscope. It's two compound microscopes joined
20 together with an optical bridge. What that allows me to do is to look at
21 the two objects side by side at the same time. So, I'll take the cartridge
22 case and the bullet that I fired, I look at them in the comparison
23 microscope, and I'm looking for the marks that were left on them during
24 the firing process.

25 And then I do a direct comparison of a test component,

1 either a bullet or a cartridge case, to the evidence to see if those same
2 marks are reproduced on the evidence. And by doing that, then I can
3 make a determination as to whether or not that evidence had been fired
4 by a particular firearm.

5 Question: Okay. Now, generally, are there different
6 sizes to ammunition depending on the firearms?

7 Answer: Yes.

8 Question: Okay. And how are those sizes generally
9 described?

10 Answer: The general term that's used is caliber, and
11 caliber is used -- for us it's used in two different ways. One, the very
12 basic definition is that it's the diameter of the inside of the barrel of the
13 firearm, and it can either be in inches or metric designation. And the
14 other way the caliber is used is it's used to denote the name of the
15 cartridge, the actual ammunition, that a specific firearm is designed to
16 fire. So, in other words, you can have different calibers, different widths
17 of barrels, diameters, but the gun is chambered for a different cartridge.

18 Question: In this particular case, were you asked by the
19 Las Vegas Metropolitan Police Department to conduct some testing of
20 ammunition and of firearms?

21 Answer: Yes.

22 Question: Okay. And do you know when it is that you
23 received these items of evidence?

24 Answer: Yes, I do.

25 Question: When was that?

1 Answer: I'll have to go back and check my notes.

2 Question: Let me stop you there. You said you did --
3 did you, in fact, do some testing of evidence in this case?

4 Answer: Yes, I did.

5 Question: Okay. And when you do testing of evidence
6 do you generally create a report soon after doing the testing?

7 Answer: Yes.

8 Question: Okay. And what is the reason for creating
9 that report?

10 Answer: That's to give a synopsis of the results of my
11 examination.

12 Question: Okay. So, looking at your report would
13 refresh your recollection as to when you actually did the -- or received
14 the evidence; is that correct?

15 Answer: Both my reports and my notes.

16 Question: Okay. Why don't you take a look at those, if
17 you have them there with you, and let me know when you're done
18 reviewing them?

19 Answer: I'm done.

20 Question: Okay. Do you know when you received the
21 evidence?

22 Answer: Yes, I received the evidence on October 11th
23 of 2006.

24 Question: Okay. And do you know based upon
25 receiving that report or do you know independently when you actually

1 conducted the tests?

2 Answer: Again, you want me to go back and check
3 when I opened the packages?

4 Question: Please.

5 Answer: Okay. Well, I began my examination on
6 October 16th of 2006, and completed them by October 25th of 2006.

7 Question: Since that time have you done more testing
8 on the -- on other cases and other items of evidence?

9 Answer: Yes, I have.

10 Question: Okay. Have you done a lot or -- well, strike
11 that. Can you estimate how many different items of evidence you've
12 tested since that date?

13 Answer: It would -- it's probably -- individual items is
14 probably going to be up in the hundreds since then.

15 Question: Okay. So, generally, do you have
16 independent recollection of the testing and the items that you did in this
17 case or is it, generally, going to be helpful for you to review your report
18 as we go forward?

19 Answer: Well, it's really helpful for me to be able to
20 review.

21 Question: Okay. I'm going to specifically ask you about
22 whether you received some actual firearms in this case in conjunction
23 with whatever testing you did.

24 Answer: Okay.

25 Question: Did you, in fact, receive actual firearms?

1 Answer: Yes, I did.

2 Question: Okay. I'm going to cover those first.

3 THE PROSECUTOR: May I approach the witness,

4 Your Honor?

5 THE COURT: You may.

6 BY THE PROSECUTOR:

7 Question: First I'm going to show you what's in

8 evidence as State's Exhibit number 5.

9 THE COURT: You're going to get Exhibit 5 out?

10 MS. LEXIS: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. LEXIS: I have it.

13 THE COURT CLERK: Ms. Lexis?

14 MS. LEXIS: Yes?

15 THE COURT CLERK: It's the rifle.

16 MS. LEXIS: Oh.

17 THE COURT CLERK: I'll have to get it for you.

18 MS. LEXIS: Please.

19 THE COURT: Okay. Sorry. She's telling me, but I'm thinking

20 it must be over there.

21 MS. LEXIS: I thought so too.

22 THE COURT: Okay.

23 THE COURT CLERK: Sorry.

24 MS. LEXIS: Thank you.

25 BY THE PROSECUTOR:

1 Question: Do you recognize this package?

2 Answer: Yes, I do.

3 Question: How do you recognize it?

4 Answer: Well, to begin with, the Metro event number
5 0609303216, which is on the label. And then on the main label, under
6 the chain of custody, you can see my signature, personnel number, and
7 my package designator, and the date and time that I sealed it. Then,
8 also, when you look on the side of the box you can see the blue and
9 white tape that I used to seal it and, again, that has my initials,
10 personnel number, and the date that I sealed it.

11 Question: So, when you received this evidence
12 package were there any other seals on the package?

13 Answer: The red seals were on the package.

14 Question: Was that the only seal?

15 Answer: Yes.

16 Question: Okay. And so it was substantially in the
17 same condition when you received it to do your testing as it is today,
18 other than the fact that it's been opened?

19 Answer: Correct.

20 Question: Okay.

21 THE PROSECUTOR: And just for the record, Judge,
22 we opened these boxes before with counsel before coming into court
23 today, and I think counsel will stipulate to that.

24 THE DEFENSE ATTORNEY: That's correct, Judge.

25 THE COURT: All right.

1 BY THE PROSECUTOR:

2 Question: Within this box I'm going to ask you if you
3 recognize what's been marked as State's proposed Exhibit 5A. Do you
4 recognize this item of evidence?

5 Answer: Yes, I do.

6 Question: Okay. And is this an item of evidence that
7 came from this particular box?

8 Answer: Yes.

9 Question: Okay. What is that?

10 Answer: This is a Ruger. It's a model 10/22. The
11 caliber is .22 long rifle. It is a semiautomatic rifle.

12 Question: Okay. When you say semiautomatic, what
13 do you mean by that?

14 Answer: Semiautomatic basically means that you get
15 one shot with each pull of the trigger. When you do fire the gun it goes
16 through a process of extracting and ejecting the fired cartridge case and
17 automatically loading another cartridge in the chamber. So, each time
18 you fire, a bullet goes down, the action cycles, and you release the
19 trigger and fire it again as long as there's ammunition remaining in the
20 mags.

21 Question: Okay. With this particular gun where does
22 the ammunition feed into the chamber?

23 Answer: Well, there's a magazine well here in the
24 bottom of the receiver. The magazine goes into the well, and there's a
25 bolt here, and the bolt -- as the bolt goes forward it pushes the top

1 cartridge from the magazine into the chamber, and then the rifle is ready
2 to fire.

3 Question: Okay. Based upon your review of that
4 particular item or that particular firearm, can you say anything about or
5 do you have any opinions about the length of the barrel of the weapon?

6 Answer: I measured the barrel.

7 Question: Okay. Is that a standard length barrel on
8 that particular .22?

9 THE DEFENSE ATTORNEY: Object, Your Honor. Just
10 the term standard hasn't been established yet; foundation.

11 THE COURT: Foundation?

12 BY THE PROSECUTOR:

13 Question: Are you familiar, generally, with .22 rifles?

14 Answer: Yes.

15 Question: Okay. Is there anything different about this
16 particular rifle than, generally, what you see with .22 caliber rifles?

17 Answer: Well, with the Ruger 10/22 models, yes.

18 Question: Okay. And what is that?

19 Answer: This is not a standard stock or factory stock for
20 this rifle, and the barrel is shorter than it would normally come from the
21 factory.

22 Question: Okay. How do you make a barrel shorter
23 than what would normally come from the factory?

24 Answer: Typically, you would cut it off.

25 Question: Does it appear that that would have been the

1 case with this gun?

2 Answer: Yes.

3 Question: Okay. Now, you said that there's, generally,
4 a magazine that goes in the bottom of this, and that's what feeds the
5 ammunition into it; is that correct?

6 Answer: Yes.

7 Question: Okay. Do you have an opportunity to review
8 or to actually receive evidence relating to the magazine that actually was
9 used with this rifle?

10 Answer: I did receive a magazine that fits this rifle, yes.

11 Question: So, based upon your familiarity with this
12 brand and this type of gun, can you tell me what is normally considered
13 a standard magazine for this gun?

14 Answer: The factory magazine has a capacity of ten
15 cartridges.

16 Question: That's -- ten creates an ability to fire ten
17 separate times?

18 Answer: Yes.

19 Question: I'm going to show you, first, what's been
20 marked in evidence as State's Exhibit number 6. Are you -- ask you
21 whether you identify that evidence bag or can identify it.

22 THE COURT CLERK: I'm going to put that gun back.

23 THE COURT: Thank you.

24 Thanks, Susan.

25 BY THE PROSECUTOR:

1 Answer: Yes, I can.

2 Question: Have you seen that bag before?

3 Answer: Yes, I have.

4 Question: Okay. How do you know that you've seen
5 that bag before?

6 Answer: Again, same as before, my signature,
7 personnel number, and date and time, package designator on the chain
8 of custody line on the label itself, and then also with the blue and white
9 tape that I sealed the package with, my initials, personnel number, and
10 the date that I sealed it.

11 Question: Okay. Let me have you open up that bag
12 there. It's already again open, and it appears they're taking out, for the
13 record, two or three -- two items. And I'm going to show you what's
14 been marked as State's proposed Exhibit A. Do you -- one of the items
15 that you've been -- that you've taken from that bag, do you recognize
16 this particular item?

17 Answer: Yes, I do.

18 Question: How do you recognize it?

19 Answer: Well, on the outside of the package my initials,
20 package number, and item designator, and then on the item itself I've
21 written the event number, I mean, my initials, package number, and item
22 designator.

23 Question: And what is this actual piece of evidence?

24 Answer: This is a magazine that fits and functions in
25 the Ruger -- this Ruger rifle.

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Question: Okay.

THE PROSECUTOR: Your Honor, I'd move for
State's -- move admission -- excuse me -- of State's proposed Exhibit
6A.

THE COURT: Any objection?

THE DEFENSE ATTORNEY: No objection.

THE COURT: It's admitted.

BY THE PROSECUTOR:

Question: So, this particular magazine, it fits in the
bottom of State's Exhibit 5A, the Ruger?

Answer: Yes.

Question: Okay. And how does it fit in without
necessarily taking it out?

Answer: Well, basically it just fits in. If the rifle is in this
orientation, the magazine fits in like this.

Question: Okay. How many rounds of ammunition
does that particular magazine that you have in your hand there contain?

Answer: This will --

Question: Or would it contain?

Answer: This will hold 30 cartridges.

Question: Okay. Do you have a term for that type of a
magazine?

Answer: Kind of a generic term. It's just an extended
length magazine.

Question: Okay. I think you said earlier that, generally,

1 the factory magazine contains ten rounds?

2 Answer: Correct.

3 Question: So, this is three times as many rounds?

4 Answer: Correct.

5 Question: And then, finally, I think you also pulled out

6 item what I think is marked as 6C. Do you recognize that item?

7 Answer: Yes, I do.

8 Question: How do you recognize it?

9 Answer: Again, on the container itself I've written the

10 event number, my initials, package number, and item designator.

11 Question: And what is 6C?

12 Answer: This is a .22 long rifle cartridge.

13 Question: Actually, I'm sorry, 6B; is that correct? Is

14 that what I have marked there?

15 Answer: 6B.

16 Question: Correct. It's a full intact cartridge?

17 Answer: Correct.

18 Question: So, that cartridge wouldn't have been fired?

19 Answer: Correct.

20 Question: Okay.

21 THE PROSECUTOR: Move for admission of 6B, Your

22 Honor.

23 THE DEFENSE ATTORNEY: Submitted, Judge, and

24 no objection.

25 THE COURT: It's admitted.

1 BY THE PROSECUTOR:

2 Question: All right. I'm going to show you what's in
3 evidence as State's Exhibit 8. See if you recognize this package.

4 Answer: Yes, I do.

5 Question: How do you recognize it?

6 Answer: Again, the same way, on the label where I've
7 signed the chain of custody line, and the blue and white evidence tape
8 with my initials and personnel number.

9 Question: Okay. So, when you received this box, it
10 was intact with the red labels, and then you opened it up; is that correct?

11 Answer: Correct.

12 Question: Okay. And when you were asked to do
13 testing on this particular item?

14 Answer: Yes, I was.

15 Question: Okay. What do we expect to find in this
16 particular item?

17 Answer: We should find a Colt semiautomatic pistol
18 and caliber .45 auto.

19 Question: Okay. Now, I noticed on the back of this box
20 here there seems to be an orange kind of, I don't know what that is,
21 band of some sort.

22 Answer: It's a cable tie.

23 Question: Okay. And why is that on there?

24 Answer: When I repackaged the pistol in the box, I just
25 use a cable tie to secure it in the box so it doesn't slide around as much.

1 Question: Okay. And has this been made safe, this
2 particular gun in the box?

3 Answer: Yes.

4 Question: Okay. I'm going to ask you to open it up.

5 THE PROSECUTOR: Your Honor, with the Court's
6 permission. I don't know if this is --

7 BY THE PROSECUTOR:

8 Question: I'll give you some scissors for the record.

9 THE COURT: Any objection?

10 THE DEFENSE ATTORNEY: No.

11 THE DEFENSE ATTORNEY: No.

12 BY THE PROSECUTOR:

13 Answer: This other one? Take it out?

14 Question: If you can get through it with the scissors.

15 Answer: All right.

16 Question: And, for the record, you've taken from an
17 item -- you've taken from item number 8 what appeared to be a firearm?

18 Answer: Yes.

19 Question: Okay. Is this firearm that you've seen
20 before?

21 Answer: Yes, it is.

22 Question: Okay. And have you done testing on this
23 particular firearm?

24 Answer: Yes, I have.

25 Question: Tell me again what -- describe this gun for

1 me if you could.

2 Answer: Well, it's the brand Colt. The model is
3 Officer's ACP. The caliber is .45 auto, and it's a semiautomatic pistol.

4 Question: What, generally, is -- when you say
5 semiautomatic, again, that's the same type of functioning as the Ruger;
6 is that correct?

7 Answer: Yes.

8 Question: Okay. How many rounds was this -- would a
9 factory -- well, does this contain a magazine much like the Ruger?

10 Answer: It's a similar type magazine. The Ruger's a
11 little bit different in the way it functions, but they're basically kind of a
12 box. It has a spring in it and a little plate at the top of the spring called a
13 follower that's always pushing the ammunition up to the top of the
14 magazine.

15 Question: Okay. And what would the factory magazine
16 that would come with this gun hold in terms of the number of
17 ammunition?

18 Answer: It should be six or seven cartridges.

19 Question: Okay.

20 THE PROSECUTOR: May I approach and have this
21 marked as 8A, Your Honor?

22 THE COURT: Sure.

23 THE PROSECUTOR: And I'd move for its admission at
24 this point as 8A.

25 THE COURT: Any objection?

1 THE DEFENSE ATTORNEY: None, Judge.

2 THE DEFENSE ATTORNEY: None, Judge.

3 THE COURT: It's in.

4 BY THE PROSECUTOR:

5 Question: Both this gun and the Ruger that you tested,
6 were they functioning when you tested them?

7 Answer: Yes.

8 Question: Okay. All right. I'm going to also show you
9 what's been marked as State's Exhibit 9 and in evidence, so see if you
10 recognize that particular item. Do you recognize the actual evidence
11 bag?

12 Answer: The bag, yes, I do.

13 Question: Okay. How do you recognize it?

14 Answer: Again, as before, my signature, P number,
15 date and time on the chain of custody line, and then also with the blue
16 and white tape that I sealed the package with.

17 Question: So, you actually opened this bag previously;
18 is that correct?

19 Answer: Yes.

20 Question: Okay. And it is open here as I hand it to
21 you?

22 Answer: Yes.

23 Question: Okay. May I ask you to pull the items out of
24 the -- evidence that are inside the bag out of the bag? Pull all of them
25 out if you would.

1 Answer: Okay.

2 Question: Is there one more item in there? Okay. So,
3 in total have you pulled out, essentially, what are three separate -- well,
4 separated items?

5 Answer: Yes.

6 Question: Okay. I'm going to show you, first, what's
7 been marked as State's proposed Exhibit A, and ask you if you
8 recognize what is included in the package of State's proposed Exhibit
9 9A.

10 Answer: This is a single .45 auto cartridge.

11 Question: Okay. So, that, again, hasn't been fired?

12 Answer: Correct.

13 Question: Okay. And when you say .45, that's the
14 caliber of the cartridge?

15 Answer: Right. Well, .45 is basically the diameter of
16 the bullet. That means it's .45 inches across, and the .45 auto is the
17 name of this particular cartridge.

18 Question: Okay. Would that particular cartridge
19 operate in the Colt .45 marked as State's A?

20 Answer: Yes.

21 Question: Okay.

22 THE PROSECUTOR: Okay. I'd move admission, Your
23 Honor, of State's 9A.

24 THE COURT: Objection?

25 THE DEFENSE ATTORNEY: Submit it, Judge.

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THE COURT: It's admitted.

BY THE PROSECUTOR:

Question: If you look now at State's proposed Exhibit 9B, which you also pulled from that evidence bag -- and tell me if you recognize that item.

Answer: Yes, I do.

Question: You've seen that before?

Answer: Yes.

Question: When you opened this bag previously?

Answer: Yes.

Question: Okay. What are we looking at in 9B?

Answer: This is a pistol magazine, and it fits the -- and it fits and functions in this Colt pistol.

Question: Okay. How many rounds of ammunition would that particular magazine be designed to contain?

Answer: This magazine holds ten cartridges.

Question: So, is there something similar with this cartridge -- I'm sorry -- this magazine as the Ruger magazine?

Answer: Again, this is another extended length magazine.

Question: This wouldn't be what comes from the factory with this gun?

Answer: Correct.

Question: Okay.

THE PROSECUTOR: Your Honor, I'd move State's

1 proposed 9B.

2 THE COURT: Any objection?

3 THE DEFENSE ATTORNEY: Submit it, Judge.

4 THE DEFENSE ATTORNEY: No, Judge.

5 THE COURT: It's admitted.

6 BY THE PROSECUTOR:

7 Question: Finally, I'm going to show you what you also
8 pulled from the evidence bag as State's proposed 9C. See if you
9 recognize what's contained in that zip lock bag.

10 Answer: There are six .45 auto cartridges.

11 Question: All right. Again, those would fit in 8A, the
12 Colt .45; is that correct?

13 Answer: Correct.

14 Question: Okay.

15 THE PROSECUTOR: And I would move admission of
16 9C.

17 THE COURT: Any objection?

18 THE DEFENSE ATTORNEY: Submit it.

19 THE DEFENSE ATTORNEY: No.

20 THE COURT: It's admitted.

21 BY THE PROSECUTOR:

22 Question: All right. I'm going to show you what's been
23 marked and in evidence as State's Exhibit number 10. See if you
24 recognize this package.

25 Answer: Yes, I do.

1 Question: Okay. Same way you recognize the
2 previous packages?
3 Answer: Yes.
4 Question: What do you believe is contained in this
5 particular package?
6 Answer: A Glock 21 semiautomatic pistol and caliber
7 .45 auto.
8 Question: Okay. I'm going to ask you to open the box if
9 you could. Does it also have the tie on the back of it?
10 Answer: Yes.
11 Question: I'd ask for you to open it in the same way you
12 opened the last one. And, for the record, you pulled out another
13 firearm?
14 Answer: Yes.
15 Question: Okay. What is the firearm?
16 Answer: This is a Glock model 21 .45 auto
17 semiautomatic pistol.
18 Question: And have you done testing on this particular
19 gun with reference to this case?
20 Answer: Yes, I have.
21 Question: Is this similar testing to what you did on the
22 Ruger or the Colt?
23 Answer: Yes.
24 Question: Okay.
25 THE PROSECUTOR: Your Honor, I'd move admission

1 of -- actually, I'd ask to have it marked as 10A and move its admission.

2 THE COURT: Any objection?

3 THE DEFENSE ATTORNEY: Submit it.

4 THE DEFENSE ATTORNEY: No, Judge.

5 THE COURT: It's admitted.

6 BY THE PROSECUTOR:

7 Question: Now, does this, as a semiautomatic -- this
8 particular gun also contain or would be used with a magazine in order
9 to --

10 Answer: Yes.

11 Question: Okay. And what would the factory size
12 magazine contain in terms of the number of --

13 Answer: Thirteen cartridges.

14 Question: And was this gun functioning when you
15 tested it as against whatever other items of evidence you've done in this
16 case?

17 Answer: Yes.

18 Question: Okay. I'm going to show you State's Exhibit
19 number 11. Oh, see if you recognize that evidence bag that's already in
20 evidence as 11.

21 Answer: Yes, I do.

22 Question: Okay. Same way you basically recognize all
23 of these evidence bags?

24 Answer: Yes.

25 Question: Is that correct?

1 Answer: Yes.

2 Question: Okay. I'm going to ask you to open it up and
3 pull out all items that are contained in that evidence bag. It appears you
4 again pulled out essentially what are separated as three groups of
5 evidence; is that correct?

6 Answer: Correct.

7 Question: I'm going to show you what's been marked
8 as State's proposed Exhibit 11A. See if you recognize what's contained
9 in that particular package.

10 Answer: Yes, I do.

11 Question: What -- and what is that?

12 Answer: This is a single .45 auto cartridge.

13 Question: Okay. And would that cartridge then be used
14 or could be used in State's Exhibit 10A, the Glock?

15 Answer: Yes.

16 Question: Okay. And have you seen that item before?

17 Answer: Yes, I have.

18 Question: Okay.

19 THE PROSECUTOR: Move the admission of State's
20 11A, Your Honor.

21 THE COURT: Any objection?

22 THE DEFENSE ATTORNEY: No, Your Honor.

23 THE DEFENSE ATTORNEY: No, Your Honor.

24 THE COURT: It's admitted.

25 BY THE PROSECUTOR:

1 Question: Okay. Showing you what's been marked as
2 11A in a zip lock baggie, see if you recognize the item that's contained
3 in that zip lock bag.

4 Answer: I do.

5 Question: How do you recognize it?

6 Answer: My initials, package designator, and item
7 number on the zip lock bag itself, then also on the magazine itself.

8 Question: Okay. So, you reference magazine. What
9 actually is this item?

10 Answer: This is a pistol magazine that fits and functions
11 in the Glock pistol.

12 Question: Okay. And how many rounds of ammunition
13 does that particular magazine hold?

14 Answer: Well, it's marked 28, but 28 is very tight and
15 hard to get in.

16 Question: Okay. So, up to 28?

17 Answer: Yes.

18 Question: Okay. And, again, I think -- what do you say
19 it was the factory design or standard magazine for this particular Glock?

20 Answer: Thirteen.

21 Question: Okay.

22 THE PROSECUTOR: Your Honor, I'd move admission
23 of State's proposed 11B.

24 THE COURT: Any objection?

25 THE DEFENSE ATTORNEY: No.

1 THE DEFENSE ATTORNEY: No.

2 THE COURT: It's in.

3 BY THE PROSECUTOR:

4 Question: All right. And then, finally, showing you a zip
5 lock baggie containing various items of evidence marked 11C. Do you
6 recognize the evidence that I'm handing you?

7 Answer: Yes, I do.

8 Question: And how do you recognize it?

9 Answer: Again, my initials, package designator, and
10 item number on the bag itself, and then on each of the vials inside the
11 bag.

12 Question: And what do each of those vials contain?

13 Answer: Each vial contains a single .45 auto cartridge,
14 and there are a total of 15.

15 Question: Okay.

16 THE PROSECUTOR: Move admission of 11C and its
17 contents, Your Honor.

18 THE COURT: Objection?

19 THE DEFENSE ATTORNEY: Submit it.

20 THE DEFENSE ATTORNEY: No.

21 THE COURT: It's admitted.

22 BY THE PROSECUTOR:

23 Question: Now, with regard to these three firearms, did
24 you actually test fire all of these firearms in relation to your testing in
25 total?

1 Answer: Yes, I did.

2 Question: I'm going to show you what's -- show you
3 now what's in evidence as State's Exhibit number 1. Can you tell me if
4 you recognize that evidence bag?

5 Answer: Yes, I do.

6 Question: Okay. Recognize it the same way you
7 recognize all the other bags?

8 Answer: Yes.

9 Question: Okay. Does this bag contain items of
10 evidence that you basically tested as against any one of these particular
11 firearms that we talked about?

12 Answer: Yes.

13 Question: Okay. I'll ask you -- the bag's open. I'll ask
14 you to remove its contents if you could. All right. There should be an
15 item there that's marked -- and I noticed that you've taken out what
16 appears to be four separate items -- separately marked items.

17 Answer: Yes.

18 Question: Is there 1A? Thank you. It appears to be a
19 zip lock bag containing two individual items in the bag. Do you
20 recognize the items in State's proposed Exhibit 1A?

21 Answer: Yes, I do.

22 Question: And what are those items?

23 Answer: These are two fired 9 mm Ruger cartridge
24 cases.

25 Question: Okay. Now, we just talked about three

1 firearms that I brought up here. I think you said two are .45 calibers, one
2 one was a Glock, one was a Colt, and then there was a Ruger that was
3 a .22 caliber?

4 Answer: Correct.

5 Question: Okay. Was there ever a gun that you were
6 given to test as against these particular cartridge cases?

7 Answer: No.

8 Question: Okay. Would either of these two particular --
9 were they fully intact as cartridges to be used in any of the guns we've
10 just shown you?

11 Answer: No, they're the wrong caliber to fire in these
12 guns.

13 Question: Okay.

14 THE PROSECUTOR: Your Honor, I'd move State's
15 proposed Exhibit 1A.

16 THE COURT: Any objection?

17 THE DEFENSE ATTORNEY: I'm sorry if I didn't follow.
18 Those were found, but had no evidentiary value; is that --

19 THE PROSECUTOR: They were found -- I believe the
20 testimony of Any Nemcik was that they were found at the Balzar address
21 in the Balzar Street.

22 THE DEFENSE ATTORNEY: Oh, but they weren't
23 typed to these guns?

24 THE PROSECUTOR: That's correct.

25 THE DEFENSE ATTORNEY: Okay. No objection.

1 THE DEFENSE ATTORNEY: No objection.

2 THE COURT: They're in.

3 THE PROSECUTOR: All right.

4 BY THE PROSECUTOR:

5 Question: I'm going to show you now what's been
6 marked as State's proposed Exhibit 1B. See if you recognize what's in
7 that particular package.

8 Answer: Yes, I do.

9 Question: And what is that?

10 Answer: This is a fired .45 auto cartridge case.

11 Question: Okay. This particular item, did you do any
12 sort of testing on this item with reference to any of the firearms?

13 Answer: Yes, I did.

14 Question: Okay. And what were the results -- again,
15 testing using the microscope you were talking about earlier?

16 Answer: Correct.

17 Question: Okay. And how is it that you did the testing
18 on this particular item?

19 Answer: Well, after I test fired the pistols and did a
20 comparison of test to test, then I did a direct comparison of a test
21 cartridge case to the evidence cartridge case.

22 Question: Okay. And what was your conclusions with
23 regard to this particular item of evidence?

24 THE DEFENSE ATTORNEY: Judge, I'm going to
25 object at this time.

1 THE COURT: What's the basis for the objection?

2 THE DEFENSE ATTORNEY: At the preliminary
3 hearing it was brought out that none of the bullets that were tested
4 had -- or -- excuse me -- bullets that were tested, including this bullet,
5 lacked conclusive evidentiary value. It was asked and he --

6 THE COURT: What's -- the basis of the objection is
7 what, foundation?

8 THE DEFENSE ATTORNEY: Foundation and, well, it's
9 going to be more prejudicial than probative if he's going to tie this bullet
10 to any of the guns that were found. Then he already said that it lacked
11 specifically conclusive evidentiary value, so there would be no ability for
12 him to tie this gun to -- tie this bullet to the gun.

13 THE PROSECUTOR: Is this a voir dire question?

14 THE COURT: I'm not sure if it's a voir dire question or
15 not.

16 So, your objection is foundation; correct?

17 THE DEFENSE ATTORNEY: It is.

18 THE PROSECUTOR: I think --

19 THE COURT: And --

20 THE PROSECUTOR: Oh. I think the foundation's been
21 laid about where it was collected using the previous crime scene
22 analyst, and then I'm asking --

23 THE DEFENSE ATTORNEY: That's fine. I don't care
24 about that, but if he's -- the next question that he's asking right now,
25 which I objected to -- I didn't object to the last question, but this question

1 is, is it based on the microscopic analysis this -- he's going to try to tie
2 this bullet to a specific gun, and he already said he can't do that.

3 THE PROSECUTOR: I mean, it sounds like a cross-
4 examination question.

5 THE COURT: I'll -- going to let it in. You can cross on
6 it. Overruled.

7 THE PROSECUTOR: Okay.

8 BY THE PROSECUTOR:

9 Question: What were your conclusions as a result of
10 your testing of this particular item and any of the other guns that could
11 have fired it?

12 Answer: Well, I was able to eliminate the Colt pistol as
13 having fired this, so this was not fired by the Colt. When I compared it to
14 the Glock, my results were inconclusive. The area of marks that I
15 looked at is damaged on this particular cartridge case, so the markings
16 that I would use for comparison were obscured, so I couldn't
17 conclusively say that it was fired from the Glock.

18 Question: Okay. But you could say that it was the
19 same caliber that could be used in a Glock?

20 Answer: In this particular Glock, yes.

21 Question: Okay.

22 THE PROSECUTOR: Move admission, if I haven't
23 already, of State's 1B, Your Honor.

24 THE COURT: Objection is noted for the record.

25 THE DEFENSE ATTORNEY: Thank you, Judge.

1 THE COURT: And it is admitted.

2 THE PROSECUTOR: Okay.

3 BY THE PROSECUTOR:

4 Question: I'm going to show you now what's been
5 marked in a zip lock baggie as State's Exhibit 1C, which contains a
6 number of items. See if you recognize those particular items.

7 Answer: Can I take these out?

8 Question: If that would be -- help you in reviewing --

9 Answer: Okay.

10 Question: Do you recognize those items?

11 Answer: Yes, I do.

12 Question: How do you recognize them?

13 Answer: If you look on each vial, again, the event
14 number, my initials, package number, and item designator, and then
15 also my initials, package number, and item designator on the cartridge
16 case itself inside.

17 Question: How many vials do you have there?

18 Answer: Ten.

19 Question: Okay. And what's contained in each of these
20 ten vials?

21 Answer: Each vial contains one fired .45 auto cartridge
22 case.

23 Question: Okay. Now, did you do any testing on these
24 particular items with reference to any of the three firearms that we've
25 already talked about here today?

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Answer: Yes.

THE DEFENSE ATTORNEY: Objection, same as last time.

THE COURT: Noted for the record.

BY THE PROSECUTOR:

Question: And what were your conclusions?

Answer: I was able to identify all ten as having been fired in the Glock pistol.

Question: Okay.

THE PROSECUTOR: Move admission, Your Honor, of 10 -- let me see that evidence bag if I could. I believe it's -- excuse me -- 1C and contents.

THE COURT: With your objections noted for the record, the exhibit will be admitted.

BY THE PROSECUTOR:

Question: Let's put those back in there. Thank you. Finally, showing you what's been marked as State's proposed Exhibit 1D. Even if you recognize what's contained -- see if you recognize what's contained in that zip lock bag. Again, if you need to take them out -- if that helps.

Answer: Yes, I do.

Question: Do you recognize them?

Answer: Yes.

Question: Okay. What does that bag contain?

Answer: This bag contains two vials. Each vial

1 contains one unfired .45 auto cartridge.

2 Question: Okay. Did you actually do any testing with
3 regard to those cartridges?

4 Answer: No, I did not.

5 Question: Okay.

6 THE PROSECUTOR: Move admission of State's 1D.

7 THE COURT: Objection?

8 THE DEFENSE ATTORNEY: No.

9 THE DEFENSE ATTORNEY: Submit it.

10 THE COURT: Admitted.

11 BY THE PROSECUTOR:

12 Question: I'm going to show you what's been marked
13 as State's -- already in evidence State's Exhibit number 2. See if you
14 recognize that evidence bag.

15 Answer: Yes, I do.

16 Question: How do you recognize it?

17 Answer: Again, my signatures, information on the chain
18 of custody line on the label, and then also my initials, personnel number
19 and date on the blue and white tape that I sealed it with.

20 Question: All right. I'm going to ask you to take out the
21 contents of that bag. And showing you what you pulled out as a zip lock
22 baggie, again, with what appears to be a number of vials marked State's
23 proposed Exhibit 2A. Would it help you to identify these items if you
24 took them out of the zip lock bag?

25 Answer: Yes.

1 Question: Okay. Please do.

2 THE COURT: We have a question. For the record, I'm
3 going to have this marked as Court's Exhibit first -- 1, and we'll proceed
4 with questioning and take up the questions at the end if necessary.

5 BY THE PROSECUTOR:

6 Question: Have you now taken all the items from that
7 evidence bag, zip lock bag?

8 Answer: Yes, I have.

9 Question: What did that zip lock bag contain?

10 Answer: It contained items 16 through 29, which are
11 fired .22 long or long rifle cartridge cases.

12 Question: And you've seen those casings before -- or --

13 Answer: Yes, I have.

14 Question: -- cartridge cases before?

15 Answer: Yes, I have.

16 Question: Okay. And have you conducted any of your
17 testing with regard to any of the firearms that we've previously talked
18 about as to those particular items?

19 Answer: Yes.

20 Question: Okay. And what were your conclusions?

21 Answer: I was able to identify all these cartridge cases
22 as having been fired by the Ruger rifle.

23 THE PROSECUTOR: Your Honor, at this time I'd move
24 for State's proposed Exhibit 2A.

25 THE DEFENSE ATTORNEY: Submit it.

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THE COURT: Objection?

THE DEFENSE ATTORNEY: None.

THE COURT: Admitted.

BY THE PROSECUTOR:

Question: Showing you what's been marked and in evidence as State's Exhibit number 3. Do you recognize that item evidence bag?

Answer: Yes, I do.

Question: And how do you recognize it?

Answer: Again, same as before, my signature on the chain of custody line on the label, and then my initials and personnel number and date on the blue and white tape that I sealed the package with.

Question: And pursuant to Metro's request, did you do testing on the contents of that bag?

Answer: Yes, I did.

Question: Okay. I'm going to ask you to pull the contents of the bag out. All right. And it appears that you have four separate sets of items; is that correct?

MR. PORTZ: Can I have an extra glove?

MS. LEXIS: Your Honor --

THE COURT: You need a new glove?

MR. PORTZ: Yes, Your Honor.

MS. LEXIS: Yes, please.

THE COURT: Yeah, I need a new glove. Thank you.

1 THE COURT CLERK: Mm-hmm.

2 MR. PORTZ: Thank you.

3 BY THE PROSECUTOR:

4 Question: Okay. I'm going to ask you to pull the
5 contents of that bag out. All right. And it appears to you that you have
6 four separate sets of items; is that correct?

7 Answer: Yes.

8 Question: Okay. First going to show what's been
9 marked as State's proposed Exhibit 3A. It appears to be a zip lock
10 baggie with some items contained in it. Can you take a look at that
11 baggie and tell me whether you recognize it?

12 Answer: The bag, I do.

13 Question: And how do you recognize it?

14 Answer: Again, my initials and a package designator on
15 the bag itself.

16 Question: And do you recognize the contents of that
17 bag? And, again, if it would help you to remove the contents from the
18 bag, please do so.

19 Answer: Okay. Okay.

20 Question: Okay. Have you removed all contents and
21 reviewed those contents?

22 Answer: Yes, I have.

23 Question: Okay. And do you recognize the contents?

24 Answer: Yes, I do.

25 Question: And what are the contents of that bag?

1 Answer: There are 11 vials. Each vial contains a single
2 fired .22 long or long rifle cartridge case.

3 Question: Okay. And have you had -- again, I already
4 asked you. You conducted testing on these particular items?

5 Answer: Yes, I have.

6 Question: And what were your conclusions based upon
7 your testing?

8 Answer: I was able to identify all 11 of these cartridge
9 cases as having been fired by the Ruger rifle.

10 Question: Okay. That's the .22?

11 Answer: Yes.

12 Question: Okay.

13 THE PROSECUTOR: I'd move admission of 3A and its
14 contents.

15 Ask you to put the contents --

16 THE COURT: Objection?

17 THE DEFENSE ATTORNEY: We submit it, Judge.

18 THE DEFENSE ATTORNEY: No, Judge.

19 THE COURT: It's admitted.

20 BY THE PROSECUTOR:

21 Question: All right. Now I'm going to hand you what's
22 been marked as State's proposed Exhibit 3B, also a zip lock bag
23 containing an item. Do you recognize the bag and the item contained
24 therein?

25 Answer: Yes, I do.

1 Question: And have you seen those items before?
2 Answer: Yes, I have.
3 Question: Okay. What are those items?
4 Answer: This is a -- the bag contains a vial, and the vial
5 contains one fired .45 auto cartridge case.
6 Question: Did you conduct testing on this particular
7 item?
8 Answer: Yes, I did.
9 Question: Okay. And were you able to make any sort
10 of conclusions after your testing of this item?
11 Answer: Yes, I was able to identify this particular
12 cartridge case as having been fired by the Colt pistol.
13 THE PROSECUTOR: Move admission, Your Honor, of
14 State's proposed Exhibit 3B.
15 THE COURT: Objection?
16 THE DEFENSE ATTORNEY: Submit it.
17 THE DEFENSE ATTORNEY: No, Judge.
18 THE COURT: It's in.
19 BY THE PROSECUTOR:
20 Question: Now showing you what's been marked as
21 State's proposed Exhibit 3C, a zip lock bag and contents. Do you
22 recognize the bag and the contents?
23 Answer: Well, I recognize the contents, yes.
24 Question: Okay. None of your writing's on the bag?
25 Answer: No.

1 Question: Okay. How do you recognize the contents?

2 Answer: Again, on each vial the event number, my
3 initials, package designator, and item number.

4 Question: And what is included in those two vials?

5 Answer: Each vial contains a single bullet fragment.

6 Question: Okay. You say bullet fragment. What do
7 you mean?

8 Answer: It's just a portion -- a damaged portion of a
9 fired bullet.

10 Question: How do bullets end up getting damaged, sir?

11 Answer: Typically, what I see is upon impact with some
12 type of target.

13 THE COURT: Yes. Then this will be 166.

14 BY THE PROSECUTOR:

15 Question: Before I show you this item, did you conduct
16 any tests, any testing on those particular items in 3C?

17 Answer: Yes, I did.

18 Question: Okay. And what was the process you went
19 through with regard to those items?

20 Answer: With bullets and bullet fragments, the process
21 is basically a visual examination using low power stereo microscopy. I
22 weigh the bullet. If possible, I measure it.

23 Question: Okay. And did you make any conclusions
24 based upon your testing of those items?

25 Answer: As far as to what type of firearm fired them or

1 which firearm fired them, no. The -- when I'm looking at bullets to try to
2 determine what type of gun or what gun they'd been fired from, what I'm
3 looking for are the rifling impressions that are on the sides of the bullet.
4 The rifling is the spiraling grooves inside the barrel of the firearm, and it
5 is impressed on the bullet as the bullet passes down the barrel.

6 In this particular case, these two fragments are too
7 small and badly damaged. There's no rifling impressions on these
8 fragments to actually use for comparison.

9 Question: Can you even tell what caliber of ammunition
10 those bullets would have come from?

11 Answer: No.

12 Question: Okay.

13 THE PROSECUTOR: I'd move admission, Your Honor,
14 of State's 3C.

15 THE COURT: Any objection?

16 THE DEFENSE ATTORNEY: None.

17 THE COURT: They're in.

18 BY THE PROSECUTOR:

19 Question: Lastly, on this package, State's proposed
20 Exhibits 3 -- Exhibit 3D, which contains a zip lock bag and some items, if
21 you could tell me if you recognize the bag and/or items?

22 Answer: Can I take them out?

23 Question: If that would help you, but --

24 Answer: Okay.

25 Question: And do you recognize, first, the bag?

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Answer: Yes.

Question: How do you recognize it?

Answer: Again, my initials and package designator.

Question: Okay. Do you recognize the contents?

Answer: Yes, I do.

Question: What are the contents?

Answer: Four vials each containing -- well, three contain bullets, one contains a bullet fragment.

Question: Okay. What's the difference between a bullet and a bullet fragment?

Answer: It basically -- when I talk about a bullet I can associate that as one single part -- one -- the main part of the bullet fired -- of -- the main part of a fired bullet. A bullet fragment would indicate that there's more -- quite a bit more to that that I don't have represented.

Question: Okay. Did you do testing on these four vials or the contents of the four vials?

Answer: Yes, I did.

Question: Okay. Could you come to any conclusions as to the result of your testing?

Answer: Well, for items 43, 45, and 47, those are the item numbers, these are consistent with the Ruger rifle, but they're too badly damaged for a conclusive identification. I can eliminate the Colt and the Glock as having fired those.

Item 46 is the core of a bullet. It's the inner part of a

1 bullet. It's not marked with any rifling impressions, so there's nothing
2 there that I could use for microscopic comparison. As for as the firearms
3 here, all I can say is that it wasn't fired from the Ruger .22. It's too big a
4 fragment to have been fired from the .22.

5 THE PROSECUTOR: I'd move admission of 3D and
6 contents, Your Honor.

7 THE COURT: Objection?

8 THE DEFENSE ATTORNEY: Submit it.

9 THE COURT: They're in.

10 BY THE PROSECUTOR:

11 Question: Put those items back in the zip lock bag.
12 Now, before we move on, did you create a photograph, essentially, of
13 the bullet and/or bullet fragments that you provided?

14 Answer: Yes.

15 Question: Okay. I'm going to show you what's been
16 marked as State's proposed Exhibit 166 and see if you recognize that
17 document.

18 Answer: Yes, I do.

19 Question: Okay. And how do you recognize it?

20 Answer: If you look at it, it's -- actually, it's eight
21 photographs and each photograph has my initials in it, the package
22 number, and the item designator.

23 Question: And what is the photos of or what are the
24 photos of?

25 Answer: These are the photos of the bullets and bullet

1 fragments that I examined.

2 Question: Okay.

3 THE PROSECUTOR: Move admission of 166. Briefly
4 ask to publish, Your Honor.

5 THE COURT: Any objection?

6 THE DEFENSE ATTORNEY: Submit it, Judge.

7 THE COURT: Granted.

8 MS. LEXIS: And, Your Honor, for the record, we will be
9 moving to have this marked as the next State's exhibit, the next in line.

10 THE COURT CLERK: 463.

11 THE COURT: Okay. So, 463?

12 MS. LEXIS: Yes.

13 THE COURT: And you want to publish?

14 MS. LEXIS: Yes.

15 THE COURT: Okay. You may.

16 BY THE PROSECUTOR:

17 Question: Just, briefly, if you can kind of explain. Are
18 these all bullet fragments? How do you define them?

19 Answer: Well, again, I defined, if we start at the top, the
20 JJK3-42, and we'll just go with the last two digits for each one. So, 42
21 was a fragment that had no visible rifling impressions on it, so, again, it
22 wasn't of any value for microscopic comparison. 43 I defined as a bullet
23 because it had rifling impressions on it. 44 was a fragment, again, no
24 rifling impressions on it. 45, a bullet, had rifling impressions. 46 was the
25 core, the inner part of the bullet. It didn't have any rifling impressions.

1 47, a bullet, it had rifling impressions visible on it.

2 Question: Okay.

3 Answer: And I don't think we've talked about 12 yet.

4 Question: Next I'm going to show you what's been
5 marked and in evidence as State's Exhibit number 4. It's an evidence
6 bag. Do you recognize that evidence bag?

7 Answer: Yes, I do.

8 Question: Okay. And how do you recognize it?

9 Answer: Again, same as before, going all the way down
10 to the -- my signature, date and time on the chain of custody line, and
11 then also my initials, personnel number, and then date on the blue and
12 white tape that I sealed the package with.

13 Question: Okay. And what's contained in that
14 particular evidence bag?

15 Answer: Three fired .45 auto cartridge cases.

16 Question: Okay. Now, in the course of doing your
17 testing in this case, were you also -- or at any time did you have a
18 firearm that was a Kimber firearm?

19 Answer: Yes, I did.

20 Question: Okay. And do you know where that Kimber
21 firearm came from?

22 Answer: I believe it came from one of Metro's officers.

23 Question: Okay. Did you do any testing with regard to
24 that firearm and the contents of State's 4 that's currently in your hand?

25 Answer: Yes, I did.

1 Question: Okay. And what did you ultimately
2 determine?

3 Answer: I identified these three cartridge cases as
4 having been fired from the Kimber pistol.

5 Question: Okay. And do you -- and you haven't
6 actually seen the Kimber pistol here today; is that correct?

7 Answer: Correct.

8 Question: Okay. Finally, I'm going to show you what's
9 in evidence as State's Exhibit 65.

10 THE PROSECUTOR: Your Honor, I believe there was
11 a stipulation between the parties as to this particular exhibit.

12 THE DEFENSE ATTORNEY: Yes, Judge. We have no
13 objection to its admission.

14 THE COURT: Okay.

15 THE DEFENSE ATTORNEY: Yes. No objection,
16 Judge.

17 THE COURT: 165 is in. State, have you stated the
18 stipulation?

19 THE PROSECUTOR: The stipulation basically is that
20 we admitted this particular item when it came from the Clark County
21 Coroner's Office.

22 THE COURT: Is that the stipulation?

23 THE DEFENSE ATTORNEY: Yes, Your Honor, we
24 stipulate to any defect in chain of custody.

25 THE COURT: The document's -- or -- the exhibit's

1 admitted.

2 BY THE PROSECUTOR:

3 Question: All right. I'm going to show you what
4 appears to be an evidence -- what -- an evidence bag marked State's
5 165, ask you if you recognize that particular bag.

6 Answer: Yes, I do.

7 Question: Okay. How do you recognize it?

8 Answer: Again, same as before, my signature,
9 information on the chain of custody line on the label, and then my
10 initials, personnel number, and date on the blue and white tape that I
11 sealed the package with.

12 Question: Okay. And then there's some items on here
13 about location on the seal; is that correct?

14 Answer: On -- well, the location is on the label itself.
15 That's where -- that's there when I --

16 Question: On the label?

17 Answer: When I received the package.

18 Question: And what's that say as far as the label of
19 location?

20 Answer: Clark County Coroner's Office.

21 Question: Okay. Now I'm going to ask you to
22 open -- it's actually already opened -- and remove the content of that
23 exhibit and ask you if you recognize the contents.

24 Answer: Yes, I do.

25 Question: Okay.

1 THE PROSECUTOR: And, for the record, Your Honor,
2 it's also in evidence as -- pursuant to stipulation as 165A.

3 THE COURT: Is that correct?

4 THE DEFENSE ATTORNEY: Yes, Judge.

5 THE COURT: 165A is in.

6 BY THE PROSECUTOR:

7 Question: It appears to be in a vial. What's contained
8 in that particular vial?

9 Answer: One fired bullet.

10 Question: Okay. And have you had an opportunity to
11 do testing on this particular firearm?

12 Answer: Yes.

13 Question: Okay. And what were your conclusions, if
14 any, as to this bullet?

15 Answer: This is a .22 caliber bullet. It's consistent with
16 having been fired from the Ruger rifle. Again, the microscopic detail
17 here is not sufficient for a conclusive ID to that rifle, but I can eliminate
18 both the Glock and the Colt pistols. Their -- the caliber difference is too
19 great.

20 Question: Okay.

21 THE PROSECUTOR: If I could just have the Court's
22 indulgence just one moment.

23 BY THE PROSECUTOR:

24 Question: Okay. And I think you did mention -- I still
25 have this Exhibit 166 in front of you. The item contained is identified as

1 160, I believe, 5A, is that also included in this particular Exhibit 166?

2 Answer: Yes, that's the two bottom photos that are
3 marked JJK13-12.

4 MS. LEXIS: Publishing again State's 463.

5 THE COURT: You may.

6 THE WITNESS: Yes, that's the two bottom photos that are
7 marked JJK13-12.

8 THE PROSECUTOR: Your Honor, I'll pass the witness.

9 THE COURT: Thank you.

10 Cross-examination?

11 **CROSS-EXAMINATION READ BY MR. LEVENTHAL FOR DEFENSE**

12 Question: Mr. Krylo, I never keep you up there too long,
13 so I'll make it brief. With regard to your testimony on that last bullet,
14 your testimony then is that you have less of a degree of certainty with
15 regard to the source of that than you did some of the other bullets that
16 you testified to; is that correct?

17 Answer: The cartridge cases, yes.

18 Question: Right. Okay. And with regard to your
19 testimony, Mr. Krylo, your focus is matching bullets and cartridges to
20 weapons; correct?

21 Answer: Correct.

22 Question: Okay. You don't have anything to do with
23 matching bullets or cartridges or weapons to people; correct?

24 Answer: Correct.

25 Question: Okay. So, none of your testimony today can

1 in any way suggest that Jemar Matthews touched any of those guns,
2 bullets, cartridges, was near any of those guns, bullets, cartridges, was
3 anywhere in the vicinity of those guns, bullets or cartridges; correct?

4 Answer: Correct. That's beyond the scope of my
5 exam.

6 Question: Okay. Thank you.

7 THE DEFENSE ATTORNEY: No further questions.

8 THE COURT: Are you going to continue with the cross?

9 MR. LEVENTHAL: Yes, Judge.

10 THE COURT: Okay.

11 THE DEFENSE ATTORNEY: Thank you, Judge.

12 BY THE DEFENSE ATTORNEY:

13 Question: You remember coming before a different
14 court on this case at a prior proceeding?

15 Answer: Yes.

16 Question: And you swore to tell the truth like you did
17 here today; right?

18 Answer: Yes.

19 Question: So, you were telling the truth at that hearing,
20 and you're telling the truth today; right?

21 Answer: Yes.

22 Question: At that hearing do you remember being
23 asked about -- do you remember being asked by defense counsel about
24 bullets lacking conclusive evidentiary value?

25 Answer: Yes, I do.

1 Question: Did you tell -- did you answer to the defense
2 counsel that there was not -- on the bullet test, there was not enough
3 detail for conclusive identification?

4 Answer: Yes.

5 Question: And you were specifically asked any of the
6 bullets you tested, did they have more than the value you just stated,
7 and you said no?

8 Answer: I don't have a copy of that. If I could see my
9 transcripts. I didn't --

10 Question: Well, I'm just asking if you remember.

11 Answer: That I don't remember.

12 Question: Did you tell defense counsel when you were
13 asked about this specific topic that none of the bullets tested had
14 enough -- or that none of the bullets tested had any conclusive
15 evidentiary value?

16 Answer: My recollection is a little different. I think we
17 went beyond that. If we have the -- if I have my whole transcript -- so I
18 might be able to see it to show you.

19 Question: You can look at whatever you need to.

20 Answer: I don't have the --

21 THE COURT: Do you have a page you're referring to?

22 THE DEFENSE ATTORNEY: I'm referring to the
23 preliminary hearing transcript of the micro one at page 161 and 162.

24 THE WITNESS: I don't have those.

25 THE DEFENSE ATTORNEY: Judge, with your

1 permission, can I show him my copy?

2 THE COURT: Yes.

3 BY THE DEFENSE ATTORNEY:

4 Question: Directing your attention to the top box of the
5 mini transcript where it says voir dire examination by counsel.

6 Answer: Well, the first question, let me ask you --

7 Question: Don't read from that. I'm not going to have
8 you read.

9 THE COURT: Is there a question pending?

10 THE DEFENSE ATTORNEY: Yeah.

11 BY THE DEFENSE ATTORNEY:

12 Question: Do you remember telling defense counsel
13 upon being asked about the bullets lacking evidentiary value -- and you
14 said none -- in sum and substance you said none of the bullets had any
15 evidentiary value or they all lacked evidentiary value?

16 Answer: No. See, my recollection as went on through
17 this hearing is a little different, and that's why I --

18 Question: What about that point in the hearing that I
19 showed you?

20 Answer: Well, that point we were talking about
21 identification for conclusive identification, and you're right; none of these
22 bullets had sufficient microscopic detail for identification.

23 Question: And then later on in the hearing you said
24 well, I could exclude some of the guns, but I couldn't conclusively say
25 specifically that any of the bullets could come from -- you couldn't say

1 that they had any evidentiary value as coming from any of the guns.

2 Answer: No. I believe evidentiary value was your
3 terminology. I didn't use evidentiary value.

4 Question: And then -- okay. You did say that. You
5 corrected counsel and you said well, there is not enough detail for
6 conclusive identification.

7 Answer: Correct.

8 Question: And then the Court on its own asked you
9 some more questions, and you said there are certain things I can say, I
10 can certainly exclude some of the firearms.

11 Answer: Yes.

12 Question: So, you could exclude some of the firearms,
13 but you couldn't conclusively say that some of the firearms definitively --
14 definitely are conclusively fired to the fullest?

15 Answer: It would be the one firearm. The two I can
16 exclude, and the one I can say conclusively -- the one -- excuse me --
17 and the one I can't say conclusively one way or the other.

18 Question: Let me ask you this. You talked briefly about
19 a Kimber pistol?

20 Answer: Yes.

21 Question: And that was a police pistol?

22 Answer: I believe so, yes.

23 Question: And what did you do in regard to that?

24 Answer: I --

25 Question: Did you look at the gun and the ammunition?

1 Answer: I did the same exam with the Kimber as I did
2 with the other firearms. I examined it, test fired it, and then compared it
3 to the fired components of ammunition that had been submitted.

4 Question: And can you describe what type of a pistol
5 the Kimber was?

6 Answer: The Kimber is another .45 auto semiautomatic
7 pistol.

8 Question: And do you know anything about the
9 accuracy of the Kimber?

10 Answer: That's -- its accuracy with this pistol is kind of
11 two things. One is the actual accuracy of the gun, if it's like clamped in a
12 machine rest, and the other is the accuracy of the shooter.

13 Question: Okay. And does it have a range? Like the --
14 specifically the Kimber, does it have a firing range or a range of
15 accuracy or range it should be fired within, anything like that?

16 Answer: Well, again, that would -- a lot would depend
17 on the skills of the shooter.

18 Question: Okay. Is there any reason that you would
19 know of a -- that a Kimber is a police-issue weapon?

20 Answer: Well, it meets the criteria for department
21 weapons.

22 Question: Nothing more specific or further than that?

23 Answer: I mean, the department --

24 Question: A more accurate weapon than a Glock, for
25 example?

1 Answer: Again, that would -- I would probably say
2 within the realm of the shooter's abilities, no.

3 Question: Okay. What date did you do your ballistic
4 testing?

5 Answer: I began my testing on October 16th and
6 concluded it on October 25th of 2006.

7 Question: Also, you used the term same general rifling
8 characteristics. Did you remember using that term?

9 Answer: That would be a term that I would use, yes.

10 Question: Okay. Now, general -- when you do an
11 analysis on a bullet, do you use that term as to a casing or as to a
12 bullet?

13 Answer: Typically, I apply that to a bullet.

14 Question: Okay. And general would mean it's not a --
15 is that conclusive or not?

16 Answer: Well, again, it depends on how you use
17 conclusive, and you can use general rifling characteristics which are a
18 class characteristic, a manufactured characteristic. You can use those
19 to exclude, but you can't use those for identification.

20 Question: Thank you. And that's what I was asking
21 you. Thank you. And certain of the items that you reviewed in this case
22 lacks -- lacked microscopic detail; correct?

23 Answer: Yeah, sufficient microscopic detail for
24 identification, yes.

25 Question: And some of the ammunition that you looked

1 at was too badly damaged to determine anything about it or compare it
2 or even exclude weapons; right?

3 Answer: Correct.

4 THE DEFENSE ATTORNEY: Thank you. I will pass
5 the witness.

6 **JUROR QUESTION**

7 THE COURT: Okay. Sir, what is the difference,
8 automatic weapon, which you explained, semiautomatic weapon, which
9 was not explained?

10 THE WITNESS: Well, the firearms that we have here
11 are semiautomatic. What that means is you get one shot with each pull
12 of the trigger, and to fire a second shot you have to release the trigger
13 and pull it again. That's semiautomatic.

14 Automatic or fully automatic is like a machine gun.
15 That's where you pull the trigger and the firearm keeps firing until you
16 release the trigger.

17 THE COURT: Redirect examination?

18 THE PROSECUTOR: Thank you.

19 **REDIRECT EXAMINATION READ BY MS. LEXIS FOR PROSECUTION**

20 Question: You were being asked questions about the
21 term evidentiary value. Do you make any determination as to what does
22 or doesn't have evidentiary value?

23 Answer: No.

24 Question: Okay. What determines -- are you asked to
25 make with regard to the evidence that you test?

1 Answer: The basic determinations are whether or not
2 that component was fired from a specific gun.

3 Question: Okay. So, when the evidence comes to you,
4 do you have any idea necessarily where the evidence was or anything
5 about the case that the evidence had come from?

6 Answer: Basically, all I know is typically is what's on the
7 label on the package.

8 Question: And, again, just to be very specific, when he
9 was asking you questions about the bullets, what specifically is a bullet?

10 Answer: The bullet is the projectile that comes out of
11 the gun.

12 Question: Okay. And you can test the bullet; is that
13 correct?

14 Answer: Yes.

15 Question: Okay. What specifically is a cartridge?

16 Answer: A cartridge is a single unfired round of
17 ammunition.

18 Question: Does that contain the bullet and a cartridge
19 case?

20 Answer: Yes.

21 Question: Okay. Did you test any -- well, and then
22 specifically after the bullet comes out, what are you left with?

23 Answer: Well, again, the bullet has gone out the end of
24 the barrel, and the cartridge case, depending on the type of firearm, is
25 either still in the firearm or it's ejected near the firearm.

1 Question: Okay. And did you do some additional
2 testing on the cartridge casings?

3 Answer: Yes, I did.

4 Question: Okay. And is that when you used the term
5 microscopic detail?

6 Answer: I probably could have, yes.

7 Question: Okay. Is that what you're looking for in
8 making your determination as to whether you can identify a particular
9 casing to a particular firearm?

10 Answer: Yes.

11 Question: Okay. So, it's important to be clear about
12 terms; is that right?

13 Answer: Yes.

14 Question: Okay. And then, finally, you said that some
15 firearms eject the cartridge case and some do not; is that correct?

16 Answer: Correct.

17 Question: Okay. And which type of weapons eject the
18 cartridge case? What types of weapons don't?

19 Answer: Well, there's a whole broad spectrum, but
20 generally the ones that we see in casework are the semiautomatics,
21 which automatically eject the cartridge case, and firearms like revolvers
22 where the fired cartridge case stays in the gun until they're manually
23 removed.

24 Question: The three guns that we talked about here
25 today, the Ruger, the Colt, and the Glock, what happens to the cartridge

1 cases after they're fired?

2 Answer: Those are all semiautomatics, so when they're
3 functioning normally the cartridge case is ejected from the firearm.

4 Question: Okay. Now, you fired all three of those guns.
5 Can you tell me, generally, what is the distance that cartridge cases are
6 fired from these firearms or actually travel after the firearm is fired?

7 Answer: I didn't measure the distance here, but,
8 typically, it's going to be anywhere from right -- almost right next to the
9 firearm with guns of this type out maybe six to ten feet.

10 Question: Okay. And when these cartridge cases are
11 ejecting to -- from the firearm, are they -- what are their general
12 temperature at that time? Is it -- or can you say?

13 Answer: They're hot, but I don't know what the
14 temperature is.

15 Question: Well, and that -- okay. Let me ask you the
16 question a little better. Are they cold or are they hot?

17 Answer: They're hot.

18 Question: Okay.

19 THE PROSECUTOR: Pass the witness.

20 THE DEFENSE ATTORNEY: I just want to follow up
21 just because she asked a question about terms.

22 **RECROSS EXAMINATION READ BY MR. LEVENTHAL FOR DEFENSE**

23 Question: How many cartridge cases did you identify
24 as being fired from the Glock?

25 Answer: A total of ten.

1 THE COURT: State?

2 THE PROSECUTOR: No.

3 THE COURT: Defense?

4 THE DEFENSE ATTORNEY: I just have one.

5 THE COURT: Are we still on cross?

6 THE DEFENSE ATTORNEY: Yeah, it's recross.

7 THE COURT: It's recross.

8 THE DEFENSE ATTORNEY: Just one question.

9 BY THE DEFENSE ATTORNEY:

10 Question: When the District Attorney there asked you a

11 question about terms -- I just want to get the term right. There's general

12 rifling characteristic; correct?

13 Answer: Yes.

14 Question: And then there's specific or identical rifling

15 characteristics; correct?

16 Answer: What I would call individual.

17 Question: Individual. Okay. And individual ones are

18 obviously more accurate than a general one, correct, as you're going up

19 the chart of comparison? If you have something that's individualized,

20 that obviously gives you a greater degree of certainty than something

21 that has general, just comparing those two terms.

22 Answer: For identification purposes.

23 Question: Identification purposes.

24 Answer: Yes.

25 Question: That's what I'm asking.

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Answer: Yes.

Question: Okay. I just want to make sure those terms -- clear. I think I might have not done that by that question, but thank you very much for your answer.

Mr. Krylo, you never went out to any crime scenes; did you?

Answer: No, I did not.

Question: All of your work is done in a crime lab?

Answer: Yes.

THE DEFENSE ATTORNEY: Nothing further. Thank you.

THE PROSECUTOR: Nothing else, Your Honor.

THE COURT: Okay. Thank you.

Mr. Portz, thank you very much for reading --

MR. PORTZ: Thank you, Your Honor.

THE COURT: -- that testimony for us.

Does the State have any further witnesses today?

MR. GIORDANI: Not for today, Your Honor.

THE COURT: Okay. What time Monday morning?

MR. LEVENTHAL: 10:30?

[Colloquy between counsel]

MR. LEVENTHAL: Eleven o'clock? We just -- we've got sentencing. I've got court in the morning as well.

THE COURT: Okay. Okay.

MR. GIORDANI: We have a bunch of stuff on.

1 THE COURT: All right. Okay.

2 MS. LEXIS: Thank you, Your Honor.

3 THE COURT: At this time --

4 MR. LEVENTHAL: Thank you.

5 THE COURT: You bet.

6 We're going to conclude for the day. During this recess you're
7 admonished not to talk or converse amongst yourselves or with anyone
8 else on any subject connected with this trial, or read, watch or listen to
9 any report of or commentary on the trial or any person connected with
10 this trial by any medium of information, including, without limitation,
11 newspapers, television, the Internet or radio, or form or express any
12 opinion on any subject connected with this trial till the case is finally
13 submitted to you. We'll start tomorrow morning at 11:00 a.m.

14 MR. GIORDANI: Monday?

15 MR. LEVENTHAL: Monday?

16 THE COURT: Did I say tomorrow? I'm thinking Monday. You
17 guys are thinking I'm crazy. She's going to make us come here on
18 Saturday. I apologize. Monday morning at 11:00 a.m. Thank you very
19 much. I hope you have a great weekend.

20 THE COURT MARSHAL: Thank you. All rise for the exiting
21 jury, please.

22 Jurors?

23 [Outside the presence of the jury]

24 THE COURT: Good night.

25 MR. GIORDANI: Oh, we do have one thing.

1 THE COURT: Oh, sure.

2 MR. GIORDANI: Sorry.

3 THE COURT: No, no problem.

4 The hearing is taking place outside the presence of the jury

5 panel.

6 MR. GIORDANI: I was just suggesting to Mr. Leventhal, as

7 opposed to sending a clean copy of the transcript back, we'd ask to

8 send this back. He's just -- we were just in that --

9 THE COURT: What is it?

10 MR. GIORDANI: It's Krylo's report.

11 MR. LEVENTHAL: Rather than the transcript --

12 THE COURT: Oh, okay.

13 MR. LEVENTHAL: -- going back.

14 MR. GIORDANI: Because the transcript, where I redacted the

15 word jury and juror and stuff --

16 THE COURT: Uh-huh.

17 MR. GIORDANI: -- you can still see it, so even just -- this is

18 easier to send anyways.

19 THE COURT: Okay. So, has it been marked?

20 MR. GIORDANI: Not yet. Sorry.

21 THE COURT CLERK: No, I --

22 MR. GIORDANI: We just --

23 THE COURT: Okay.

24 MR. LEVENTHAL: And we agree. We stipulate to that, Your

25 Honor.

1 MR. GIORDANI: Oh, yeah --
2 THE COURT: Okay.
3 MR. GIORDANI: -- and for the record, previously we have
4 withdrawn 459 and 460.
5 THE COURT: Okay.
6 MR. GIORDANI: And then I forgot to put these in through --
7 [Colloquy between counsel]
8 MR. GIORDANI: So, the parties would stipulate to 461 and
9 462.
10 THE COURT: Okay. So, 461 and 462 are admitted by
11 stipulation.
12 MR. GIORDANI: And then 463 was just put in through Krylo,
13 so the --
14 THE COURT: Yeah, that's the one.
15 MR. GIORDANI: This would be 464.
16 THE COURT: Okay.
17 THE COURT CLERK: Correct.
18 MR. GIORDANI: Okay.
19 THE COURT: Okay.
20 MR. GIORDANI: Thank you.
21 THE COURT: Thank you. Have a good weekend.
22 MR. LEVENTHAL: Thank you, Judge. Have a good one.
23 MR. TANASI: Thank you, Judge, you too.
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THE COURT: Thanks.

[Jury Trial, Day 5 concluded at 4:38 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Trisha Garcia
Court Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JEMAR D. MATTHEWS, aka
JEMAR MATTHEWS AKA JEMAR
DEMON MATTHEWS,

Defendant.

CASE#: 06C228460-2

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE
MONDAY, OCTOBER 01, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL, DAY 6**

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.
Chief Deputy District Attorney

JOHN L. GIORDANI, III., ESQ.
Chief Deputy District Attorney

For the Defendant:

TODD M. LEVENTHAL ESQ.
RICHARD TANASI, ESQ.

RECORDED BY: KRISTINE, SANTI, COURT RECORDER

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RONALD R. SCOTT

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1 MONDAY, OCTOBER 1, 2018 AT 11:07 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT MARSHAL: Court is now in session. The
5 Defense has one thing outside the presence, ma'am.

6 THE COURT: Okay. The record will reflect that the hearing is
7 taking place outside the presence of the jury panel.

8 MR. GIORDANI: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. LEVENTHAL: Good morning. Your Honor --

11 THE COURT: Good morning.

12 MR. LEVENTHAL: So, this weekend I notified Jemar's
13 mother --

14 THE COURT: Okay.

15 MR. LEVENTHAL: -- and asked her what she remembers
16 about all -- because we've talked to her on many occasions but not
17 necessarily on this. She indicated that Jemar was living with her sister --
18 his sister, Tasha, and his girlfriend Jomeesha [phonetic] at the time,
19 September 30th, 2006.

20 THE COURT: Okay.

21 MR. LEVENTHAL: And if you put it in perspective -- and the
22 first iPhone came out in '07. So, everybody sort of took off. So, finding
23 these people is a -- I've had an investigator look for his ex-girlfriends or
24 his ex-girlfriend as well as baby's mother because he did have the TPO.
25 He couldn't find either of them. They've all moved out of state.

1 I spoke -- when I spoke to Tasha, his sister, last night she
2 said, well, let me see what I can do, let me see if I can get on Instagram
3 -- and I don't know all these things, Instagram, Facebook, I don't use any
4 of that social media, but apparently she was able to find Jomeesha, the
5 girlfriend, that lived with Jemar September 30th, 2006.

6 So, I actually talked to her last night and she remembers --
7 and she remembers obviously because that was the last night she saw
8 Jemar. So, I said do you remember where he was going that night and
9 she said yes. She was -- he was on his way over to see his baby,
10 Jemar, over to where the baby's mama was at -- mother, the baby's
11 mother was at, and she didn't necessarily remember whether there was
12 a TPO in violation at the time. I asked her that. I asked her what she
13 remembered about him dressing. She obviously didn't remember
14 particulars, but said that, you know, everybody in the area sort of
15 dressed with blue, you know, baggy jeans and tee shirts. That's what
16 every -- all the kids, teenagers wore. So, she didn't specifically say that.
17 But she did remember him going over and him saying I'm going to go
18 see my baby's mother and my baby right now.

19 Now, I understand and, you know, before we even get there --
20 she lives in California now and she indicated to me she's just had a baby
21 and she's breastfeeding and it would be very difficult for her to get out
22 here. I mean, I can facilitate at this -- I mean, you know, it's a last
23 minute, I have to make a record just like everybody -- like anything else
24 just for the appeal or for whatever. We did try, my investigator did try to
25 locate both of them and was unable to, but now we are in contact with

1 her and I can facilitate her coming in. I would have maybe her fly out of
2 Sacramento or there's a flight out of Fresno into Vegas maybe just for
3 the day. But she is breastfeeding and she was a little reluctant to come
4 out because she just had a baby. I also can tell the Court that since I've
5 spoken to her, I texted her twice and I've gotten no response from her.
6 So, I don't know how willing she is to come in. So, there's that.

7 Now, in speaking to the State and I'll let the State speak in a
8 minute, but I understand that the State said, well, before we even get
9 there, Todd, it's a hearsay statement and I understand it could be a
10 hearsay statement. But my argument against that would be, one, it
11 would be the -- I would ask that it come under a non hearsay statement
12 as the then existing state of mind of the Defendant and what he was
13 going to do next, instead of going to a murder he was going to his -- to
14 see his baby or in the alternative the exception is -- would come under
15 the statement against his interest, and why do I say that. Because he
16 said it knowing that he was going to violate a TPO.

17 So, it would be against his interest to tell his girlfriend that he's
18 going to -- where he goes he's got a TPO out against him because that
19 would be a crime and that would be a crime punishable by an arrest so
20 that would be a statement against interest under 51.345. Under either of
21 those two theories I would ask that that statement comes in before. And
22 I understand we have to cross that hurdle before we even get to whether
23 or not she's going to be able to testify. So, I'll submit it on that.

24 THE COURT: Okay. So, you're telling me that you may have
25 this witness that you want to bring in. We don't know whether she's

1 going to come or not because clearly we have jurisdictional over her.
2 But if she does this would be what you want her to testify to.

3 MR. LEVENTHAL: Correct.

4 THE COURT: Okay.

5 MR. GIORDANI: So, a couple things. First, this is obviously
6 the first time I'm hearing of it. It sounds like this is something that came
7 up over the weekend with the Defense. I don't think this person is no --
8 that's issue number one. So, I think it's a moot issue to talk about
9 potentially bringing her in at this point. This is not a noticed witness and
10 it would be unfair to the State at this point to just drop a witness on us on
11 the sixth day of trial.

12 Number two, from what I understand, as Mr. Leventhal stated,
13 the statement would be from Jemar's mouth to a girlfriend who was a
14 current girlfriend at the time, I believe. So, this idea of it being a
15 statement against interest is not accurate, and that statement would
16 somehow reflect that he was going to the place where there was a TPO
17 against him.

18 So, first off, I have no idea when the statement was made,
19 when he says he's going over there, when, you know, potentially he's
20 heading in the same direction as the murder. So -- and there are a
21 whole lot of issues with the statement itself, but I think the biggest issue
22 and the starting point is this is trial by ambush. I mean, this is the sixth
23 day of trial. We're ready to close. We're wrapping our State -- State's
24 case in chief after one witness this morning, and it's just a little
25 surprising to the State that this person somehow has a recollection all

1 the sudden.

2 So, I'll leave it at that. I'll let the Court make its decision or
3 ruling or whatever it may --

4 THE COURT: Well, I don't know if I'm being asked to do
5 anything because I have somebody who -- a witness that hasn't been
6 noticed that may or may not be here. I don't know if you're looking for a
7 ruling from the Court.

8 MR. LEVENTHAL: I guess we'll see how it plays out today
9 because I wanted to be fully obviously honest with the Court that I have
10 not had contact with her since I spoke to her. So, other than some weird
11 texts that I got last night so I put a call into Jemar's sister to see if she
12 can reach out to her again, the ex-girlfriend. Today she doesn't get off
13 work till one.

14 So, I -- you're right. I have not asked for anything at this point
15 because in full honesty and full disclosure, I've just spoken to this girl
16 and I'm just letting the Court know what I've heard from her, but that's all
17 I've heard. I may never hear from her again because she didn't seem
18 like she was ready, willing and able to jump on a plane and come here
19 when I spoke to her, to be honest with you. But I just wanted to notify
20 the Court that in fact I do get her, then it's going to be an issue that we
21 maybe discuss at a later date and it may not be. I don't know because I
22 can't go -- I haven't noticed her and I'm not going to pull her from
23 California to come over here. So, I'm just putting on the record that
24 there is potentially -- it may be an issue.

25 THE COURT: Okay.

1 MR. LEVENTHAL: Thank you.

2 THE COURT: Thank you.

3 MR. GIORDANI: With that said just real briefly. I sent the jury
4 instructions over --

5 THE COURT: Yes.

6 MR. GIORDANI: -- and included Defense counsel. I didn't
7 have a chance to print them. I was kind of rushing over here so I
8 apologize. What the State intends to do is rest after our witness this
9 morning.

10 THE COURT: Oh, okay.

11 MR. GIORDANI: And then the Defense has, I believe, their
12 expert ready for like for the afternoon --

13 MR. LEVENTHAL: That's correct, Your Honor.

14 MR. GIORDANI: -- at 1 o'clock. So, if that is their only
15 witness maybe we can just get instructions settled this afternoon and
16 close tomorrow if it's okay.

17 THE COURT: It's your only witness?

18 MR. LEVENTHAL: Well, no, we had two. We have --
19 remember we took one out of order.

20 THE COURT: Right. We have Dr. Chambers.

21 MR. LEVENTHAL: Correct. And then we've got an expert on
22 gunshot residue.

23 THE COURT: Okay. So, you only have one witness left --

24 MR. LEVENTHAL: Well, we have --

25 THE COURT: -- potentially, right.

1 MR. LEVENTHAL: -- spoken, yeah, Jemar may not and then
2 depending on if I get a hold of LaShondra [sic] today then potentially that
3 could be it.

4 THE COURT: Okay. So, we --

5 MR. GIORDANI: So, I guess logistic --

6 THE COURT: We could be done today.

7 MR. GIORDANI: Yeah, I guess we could just hold off on the
8 Defense resting if we need to, but we can settle instructions in the
9 meantime, right? That's all I'm asking is that we can get that done.

10 THE COURT: Sure, sure.

11 MR. GIORDANI: Okay.

12 THE COURT: Okay. Now, who's the witness being called
13 this morning?

14 MR. GIORDANI: Brad Cupp.

15 THE COURT: I'm sorry?

16 MR. GIORDANI: Bradley Cupp.

17 THE COURT: Oh, okay. All right. Let's bring them in.

18 MR. GIORDANI: While the jury's coming in, this witness has
19 been admonished just like the rest of the witness regarding all the
20 statements.

21 [Inside the presence of the jury]

22 THE COURT: Good morning, Ladies and Gentlemen. Does
23 the State stipulate to the presence of the jury panel?

24 MR. GIORDANI: Yes, Your Honor.

25 MR. LEVENTHAL: Yes, Your Honor.

1 THE COURT: Thank you. You may call your next witness.

2 MR. GIORDANI: The State would call Bradley Cupp.

3 **BRADLEY CUPP**

4 [having been called as a witness and being first duly sworn,
5 testified as follows:]

6 THE COURT CLERK: Thank you. Please be seated. Could
7 you please state and spell your name for the record.

8 THE WITNESS: Yes. My name is Bradley B-R-A-D-L-E-Y
9 CUPP C-U-P-P.

10 THE COURT CLERK: Thank you, sir.

11 MR. GIORDANI: May I?

12 THE COURT: You may.

13 MR. GIORDANI: Thank you.

14 **DIRECT EXAMINATION**

15 BY MR. GIORDANI:

16 Q Good morning, sir.

17 A Good morning.

18 Q How are you currently employed?

19 A I am a police sergeant with the Las Vegas Metropolitan Police
20 Department.

21 Q How long have you been with Metro?

22 A About 15 years.

23 Q When did you promote to sergeant?

24 A I believe it was March 28th, 2015.

25 Q Prior to 2015, what did you do with Metro?

1 A I had a variety of different assignments. I spent about two and
2 a half years at Bolden Area Command as a patrol officer before I
3 transferred to their Problem Solving Unit. I did a TY with robbery as part
4 of a undercover decoy operation. I spent about five years as a financial
5 crime detective and on the FBI organized crime task force before
6 heading to SWAT for four years where I served as an infantryman and a
7 sniper before promoting.

8 Q So, just prior to promoting to sergeant, you were with SWAT
9 for approximately four years?

10 A Yes, sir.

11 Q I want to bring you back to 2006 --

12 A Okay.

13 Q -- specifically September 30th. At that point in time where
14 were you in your career? What were you doing?

15 A I was assigned to Bolden Area Command in the Problem
16 Solving Unit.

17 Q Okay. And we've had prior testimony so I'll just kind of get to
18 the point. With the Problem Solving Unit, you were in a plain clothes
19 capacity, sir?

20 A Yes, sir.

21 Q MR. GIORDANI: I want to show you now -- sorry about that.
22 Your Honor, we'd move to admit 465 by stipulation.

23 THE COURT: Any objection?

24 MR. LEVENTHAL: No, Your Honor. Thank you.

25 THE COURT: It's admitted.

1 MR. GIORDANI: Thank you.

2 BY MR. GIORDANI:

3 Q I'm showing you now 465, sir. Are you oriented and are you
4 familiar with this aerial map?

5 A Yes, sir, I am.

6 Q Okay. You indicated that on the night of September 30th,
7 2006 you were working in the Problem Solving Unit; is that right?

8 A Yes, sir.

9 Q You also indicated that you had worked in the Bolden Area
10 Command for a couple years prior to that; is that right?

11 A Yes, that's correct.

12 Q Were you familiar with this general area that's depicted in the
13 map?

14 A Yes, sir.

15 Q As an officer of the Bolden Area Command, did you come into
16 contact with various members of the community on various occasions?

17 A Yes, sir.

18 Q Okay. And I want to talk to you specifically about the night of
19 September 30th. Were you in the area of 1271 Balzar with a partner?

20 A Yes, sir, I was.

21 Q Who was your partner?

22 A It was Officer Bryan Walter.

23 Q Okay. Was there other members of your PSU team in the
24 area as well?

25 A Yes. All six members of my PSU squad as well as my

1 sergeant and a couple of other black and white patrol units were in the
2 area as well.

3 Q Okay. So, fair to say there was a significant police presence
4 in the area before the shooting even occurred?

5 A Yes, sir, there was.

6 Q Tell us what happens when you first hear shots go off?

7 A My partner Brian and I were at -- actually at Bartlett and
8 Concord.

9 Q Okay.

10 A We were on foot at an apartment complex that was on the
11 northwest corner of that intersection. It's just north of the Circle Park
12 area. It's kind of on the top of the map there.

13 Q Okay.

14 A We heard what sounded like five or six shots southwest of our
15 location. So, we got back in our car and drove to the area to investigate.
16 We came down the west side of the -- of Circle Park onto Balzar and
17 then headed westbound on Balzar and then made a southbound turn on
18 Lexington before coming to a stop at a stop sign at Lawry and Lexington
19 there.

20 Q Okay. And just so we're clear. Lexington is the north south
21 street just to the left at 1271 Balzar and 1284 Lawry on this particular
22 map?

23 A Yes, that is correct.

24 Q So, as you come down Lexington towards Lawry, did you slow
25 down or did something bring your attention to 1284 Lawry?

1 A Yes. What first kind of drew our attention was how quiet it
2 was. We didn't see anybody out on the street. Then I heard some
3 commotion off to -- it would have been the left side of the vehicle I was
4 driving. So, it was basically in front of the residence there on the
5 northeast corner of Lawry and Lexington, I observed what appeared to
6 be four BMAs and another BFA in some kind of verbal argument, and I
7 also saw a -- I described it as a blue or silver Lincoln or Buick type
8 vehicle that was parked facing westbound on Lawry.

9 Q Okay. And for the record, when you say BMA and BFA, are
10 those kind of police codes for black male adult and black female adult?

11 A Yes, that is correct.

12 Q So, four black male adults, one black female adult, and they
13 were -- were they all around that vehicle you just described?

14 A Yes, sir. They were kind of on the sidewalk standing next to
15 the vehicle or in the front yard of a residence.

16 Q And were you still in your vehicle?

17 A Yes, sir, I was.

18 Q What were you driving that evening?

19 A I was driving a maroon Chrysler Sebring.

20 Q Was that -- go ahead.

21 A It was an unmarked patrol vehicle. It was equipped with
22 emergency lights and sirens. They were just hidden in the dash and in
23 the front and rear headlights of the vehicle.

24 Q Okay. Tell the jury what it is that brings your attention to these
25 -- to this group of people. What do you see? What do you observe?

1 A So, basically it appeared to me that they were in some type of
2 argument. I couldn't make out exactly what they were saying, but the
3 female was visibly upset and seemed to directing most of her attention
4 and conversation to the group of three or four of the BMAs.

5 Q Okay. As a result of that did you slow down and actually start
6 to observe what was going on?

7 A Yes. My partner and I stopped at a complete stop in the
8 intersection. We actually rolled down our window so that we could get a
9 better view because our windows were tinted to get a better view and try
10 to make out what the conversation exactly was.

11 Q Okay. And were you able to make out what was going on?

12 A No. All I could tell was that just based on their body language,
13 I could see and the volume of the conversation, it seemed like some
14 kind of altercation.

15 Q Okay. Did you observe anything go on with the vehicle shortly
16 thereafter?

17 A It was around the time that we were stopped at the stop sign
18 there that other members of my team started arriving at 1271 Balzar.
19 They started getting on the radio and they were saying that they had
20 several people that were shot, they had a female down in the front yard,
21 and they had gone through the process of trying to lock down the crime
22 scene as well as get information out for other officers in the area.

23 Q And did you or -- I'm sorry -- Officer Walter, did you two
24 basically come to the conclusion this carjacking may have some -- or
25 this altercation may have something to do with the suspects in question?

1 MR. LEVENTHAL: Objection; calls for speculation especially
2 given that the question referred to another officer and what he thought
3 and his impression.

4 THE COURT: The speculation objection is going to be
5 sustained. You can just rephrase your question.

6 MR. GIORDANI: Will do, Your Honor.

7 BY MR. GIORDANI:

8 Q Based upon what you had heard, being the gun shots, and the
9 things coming in over the radio, did you yourself pay more attention to
10 the altercation you were seeing at 1284?

11 A Yes, sir, I did. Based on the close proximity to the call and
12 when we heard the shots and our distance to the area where we thought
13 the shots were coming from and the fact that was nobody else that we
14 could see out in the street or any signs of commotion, that's what drew
15 my attention to this crowd. I thought it was suspicious based on the
16 totality of the circumstances that we were looking at.

17 Q Understood. As you observed this group, does the vehicle
18 begin to move?

19 A Yes, sir, it does.

20 Q What happens?

21 A It actually takes off at a pretty high rate of speed. It actually
22 screeched it tires as it pulled away from the curb heading westbound on
23 Lawry. It failed to yield at the stop sign at Lawry and Lexington and
24 continued westbound on Lawry toward MLK at which point my partner
25 and I, I was driving, pulled behind the vehicle.

1 Q You indicated the tires screeched and it didn't stop at the stop
2 sign. Would that be here at Lawry and Lexington?

3 A Yes, sir.

4 Q And then did it continue this way to -- what street is this?

5 A That is Martin Luther King is that north south street there.

6 Q Okay. Did you then engage in a pursuit of that vehicle?

7 A Yes, sir. When the -- when the Buick got to Martin Luther
8 King, it failed to yield at the stop sign again. It crossed the -- about three
9 lanes of northbound traffic before turning southbound on Martin Luther
10 King, at which point I activated my emergency equipment, my lights and
11 sirens. I had to wait for some traffic to clear coming northbound so I
12 wouldn't get in a collision with any of the citizens that were driving on the
13 road, and then I got my vehicle and chased the suspect vehicle
14 southbound on MLK.

15 Q Okay. Let me step back a moment. I forgot to ask you, sir.
16 Back at the 1284 Lawry address before the vehicle pulled off --

17 A Mm-hmm.

18 Q -- did you observe all four of the BMAs you had initially seen
19 get into the vehicle?

20 A That's negative. I saw three of the males get into the car.
21 The fourth male, it looked to me, was headed back to the yard of the
22 residence.

23 Q Okay. So, now we have what you believe to be three black
24 male adults in the vehicle and now we're heading southbound. What is
25 this major cross street here?

1 A That would Lake Mead, sir.

2 Q Did you pursue the vehicle through Lake Mead?

3 A Yes, sir, I did.

4 Q Before we move on, describe what you can to this jury the
5 dynamics of what's going on at this point.

6 A While we are pursuing the vehicle I can hear a whole bunch of
7 other radio traffic from the officers that are arriving at 1271 Balzar.
8 They're putting out information. They put out the fact that they had
9 multiple people that had been shot. They were trying to get medical
10 units into the scene. They were trying to set up a perimeter to lock down
11 the crime scene. And all of this was going on while my partner and I
12 were trying to get on the radio to get information out to let them know
13 that we possibly have the suspects in a vehicle that we were chasing.

14 Q As a result of all this radio traffic and the dynamics, were you
15 able to get onto the radio to broadcast what you needed to broadcast?

16 A Yes, sir. Because my primary focus was driving, Officer
17 Walter was operating the radio. We were able to get some radio traffic
18 through as we made the eastbound turn onto Jimmy Avenue from Martin
19 Luther King.

20 Q Okay. So, we passed through -- what is this, Lake Mead?

21 A Yes, sir.

22 Q Now we're down to Jimmy?

23 A Yes, sir.

24 Q All right. Let me zoom in there. So, do you follow the vehicle
25 from MLK onto Jimmy Avenue?

1 A Yes, sir, I do.

2 Q Tell us what happens then.

3 A As the vehicle is making the turn, I observed that the vehicle
4 seemed to carry too much speed into the turn onto Jimmy, and the
5 vehicle ran up on the sidewalk on the southeast corner of Jimmy and
6 Martin Luther King and about collided with a fence or a wall that was on
7 that corner.

8 Q Okay.

9 A The suspect was able to right the vehicle and pulled the
10 vehicle back into the street.

11 Q And where did it proceed from there?

12 A The vehicle continued eastbound onto Lexington Street.

13 Q Okay.

14 A Or eastbound onto Jimmy and then turned southbound on
15 Lexington.

16 Q Okay. So, east on Jimmy south on Lexington?

17 A Yes, sir.

18 Q And is this, with the red flag on it, if I can find it, is this a
19 church here?

20 A Yes, sir, it is.

21 Q All right. As your -- as that vehicle is making the turn onto
22 Lexington, do you observe anything about the occupants of that vehicle?

23 A Yes, sir. After the vehicle ran up on the sidewalk, the driver
24 drastically reduced its speed from what it was doing on Martin Luther
25 King. It was around this time that I saw the driver first open the driver's

1 side door and I could see a red glove holding the door open. I couldn't
2 see the driver's other hand, and I could see the driver's head sticking
3 out, and I could see that it was a black male adult that was driving.

4 Q Okay.

5 A It appeared that the driver was holding something in his right
6 hand in the area of his chest but I couldn't make out what it was.

7 Q Okay. So, at this point is the driver's door open and he's
8 holding it with his hand?

9 A Yes, sir. It's -- the door was actually flopping open and closed
10 several times going through this area.

11 Q Okay.

12 A You know, obviously, if he's holding the door with one hand
13 and has something else in the other hand, I couldn't figure out what he
14 was doing to control the car. It was my impression that he was paying
15 most of his attention on my partner and to myself.

16 Q Okay. Describe then what goes on from there, sir.

17 A At this time Officer Walter got on the radio. He broadcast that
18 he thought that he was going to bail. I was in agreement with that based
19 on the actions of the driver. I was also concerned with the fact that, you
20 know, this was a possibly a suspect vehicle involved in a shooting that
21 occurred just minutes ago and I was afraid that the reason the driver
22 was trying to look at us was to be able to get a shot at my partner and
23 myself as were pursuing the vehicle.

24 MR. LEVENTHAL: I'm going to object as to hearsay, I mean
25 speculation.

1 THE COURT: Sustained.

2 MR. LEVENTHAL: Move to strike.

3 THE COURT: Sustained. It's granted.

4 MR. GIORDANI: Okay.

5 BY MR. GIORDANI:

6 Q Based upon the observations, your visual observations of the
7 way the driver was pointing and facing, et cetera, did you feel fear?

8 A Yes, sir, I did.

9 Q Okay. What is it that you observed as the vehicle approaches
10 that church?

11 A Okay. As the vehicle approaches the church and continued to
12 slow down, at some point the driver jumped out of the vehicle and I
13 could clearly see when the driver stood up that he had some type of
14 firearm in his hand and was holding it kind of at a low ready position
15 across the chest. I would have described it -- it had a pistol grip but it
16 was longer than a pistol. So, I wouldn't have classified it as a pistol.

17 Q Okay. And at that point in time where are you exactly once he
18 bails from the vehicle?

19 A We're about one car length behind him.

20 Q Okay.

21 A And I'm trying to stop to keep with colliding with the suspect
22 vehicle when the driver got out of the car and presented himself with a
23 firearm.

24 Q When he presented himself with a firearm, was he facing you?

25 A Yes, he was.

1 Q And were you still in the road, not up on the sidewalk or
2 anything like that?

3 A Correct; yes, I was still in the road.

4 Q Did you have an opportunity to observe him from head to toe?

5 A Yes, sir, I did.

6 Q Okay. Tell us what happens once he jumps out of the
7 vehicle?

8 A When he jumped out of the vehicle and I recognized that he
9 did in fact have a firearm in his hand, my concern was is that my partner
10 and I were pretty much defenseless at that point. We were both seat
11 belted in the vehicle. We were unable to draw our firearm. So, I made
12 the decision to steer my vehicle back into the suspect that had the
13 firearm.

14 Q Okay. What portion of the vehicle did you drive into the
15 individual?

16 A So, the suspect struck the right front passenger side of my
17 hood. He laid across the hood for a brief second, he was facing me, and
18 then rolled off onto the passenger side of the vehicle where my partner
19 was sitting.

20 Q All right. Before we move on, you described the suspect,
21 you've seen him at least from head to toe and then from across the
22 hood?

23 A Mm-hmm.

24 Q Who was that person?

25 A The suspect was later identified as Jemar Matthews.

1 Q Okay. Do you see that person in Court today?

2 A Yes, sir, I do.

3 Q Can you please point to that person and describe an article of
4 clothing?

5 A Yes, sir. He's sitting here to the right wearing a checkered
6 shirt, light blue tie, and he's got longer dreadlocks. His hair is actually
7 longer than the night in question.

8 MR. GIORDANI: Will the record reflect identification of Jemar
9 Matthews?

10 THE COURT: So reflected.

11 MR. GIORDANI: Thank you.

12 BY MR. GIORDANI:

13 Q Were you familiar with or did you recognize Jemar Matthews
14 as Jemar Matthews?

15 A Not by name but by face, yes.

16 Q Okay. So the jury understands. When you saw him you
17 recognized him as someone who you were aware of but not -- you didn't
18 know his name?

19 A Yes, sir, that's correct.

20 Q Like, hey, that's Jemar Matthews?

21 A Yes, sir, that's correct.

22 Q But you knew who it was?

23 A Yes.

24 Q Okay. When he came across your hood, did you have an
25 opportunity to look at his face from there, meaning was he -- was his

1 face facing you on the hood?

2 A Yes, sir, it was for a brief second.

3 Q Okay. And just for the record is the hood -- how many feet
4 away was his face from you, if you can estimate?

5 A Probably three feet.

6 Q Okay. Did you observe when he got hit by the vehicle if he
7 went down?

8 A Yes, sir, because I lost visual of him for a brief second. I
9 directed my attention back to the other two suspects that were in the
10 vehicle and tried to bring my vehicle to a complete stop. It was at this
11 time that I noticed that my partner, Officer Walter, was trying to get out
12 of the vehicle and I observed that he had difficulty opening the door like
13 it was being blocked.

14 The last thing I remember seeing before Officer Walter took
15 out of the car was I saw the suspect jump up and take off in -- take off
16 running northbound. I did a quick look at his hands and realized that I
17 didn't see the firearm in his hand anymore, and Officer Walter tried to
18 grab the suspect as he was trying to get out the door but then continued
19 in foot pursuit northbound up Lexington.

20 Q Okay. Now, you just indicated that you took a look at the
21 other suspects. Before we move on and talk about that, did you observe
22 if the vehicle came to rest at any point and where?

23 A So, while all of this was going on, the vehicle continued to roll
24 at a slow speed. I saw it jump up onto the sidewalk just outside of the
25 church. I saw the -- the front passenger and rear passenger door open

1 and I observed two more black male adults jump face first out into the
2 grass in the lawn in front of the church.

3 Q Okay. Did you observe whether those two individuals stayed
4 at the scene or not?

5 A So, both males as soon as they recovered from the ground,
6 they both took off running. The male that was positioned in the back
7 passenger seat, took off running westbound across the lot. I took a
8 glance at him. I didn't see any firearms in his hand. The passenger or
9 passenger that jumped out of the front passenger seat, I noticed that he
10 had a black semi-automatic handgun in his hand as he exited the
11 vehicle and took off running south -- in an southeasterly direction from
12 where the vehicle crashed.

13 Q As a result of seeing a firearm in his hand and you said that
14 was the front passenger?

15 A Yes, sir.

16 Q Officer Walter chases Jemar Matthews; you do what?

17 A I decided to chase the other subject who is later identified as
18 Pierre Joshlin.

19 Q Okay.

20 A My concern was is that he had every opportunity to leave the
21 gun at the scene but he decided to take off and run with it. We were in a
22 residential neighborhood. It was in close proximity to a shooting that
23 occurred and I knew that we had other officers that were coming into the
24 area to assist. So, I made the decision to try to apprehend the suspect
25 with a gun for officer safety and to keep him from circling back on my

1 partner who was in foot pursuit with another suspect.

2 Q Okay. Can you see on this map where you pursued Mr.
3 Joshlin on foot?

4 A Can you zoom out real quick so I can get my bearing?

5 Q Sure.

6 A Okay. So, where the church is is kind of on the -- the
7 southeast corner of the church is where the vehicle came to rest. I got
8 into a foot pursuit with Mr. Joshlin running in a southeasterly direction
9 and then we continued eastbound onto Doolittle.

10 Q Okay. And just so the record's clear. Southeast would be
11 down Lexington -- I mean, a couple steps, I guess, and then down
12 Doolittle this way?

13 A Correct.

14 Q Okay. I want to now show you State's 271. Can you see the
15 suspect vehicle in the far left of this photograph?

16 A Vaguely. I do recall that sign there. That sign was really
17 bright.

18 MR. LEVENTHAL: I'm going to object. He's answering a
19 question that wasn't asked.

20 THE COURT: There's not a question pending.

21 MR. GIORDANI: There was but it wasn't that question. It was
22 just --

23 THE COURT: Right. He started to -- I guess it was non-
24 responsive.

25 BY MR. GIORDANI:

1 Q Okay. Do you see the vehicle, the suspect vehicle on the left
2 hand side?

3 A Yes, I do.

4 Q Okay. And is this the street here in the foreground of the
5 photograph that you pursued him down?

6 A Yes, that's correct.

7 Q That would be Doolittle?

8 A Yes, sir.

9 Q Okay. And according to what you saying earlier, did you go
10 basically pursue Mr. Joshlin in a different direction than Officer Walter
11 pursued Mr. Matthews?

12 A Yes, sir, that's correct. Officer Walter, I last saw him running
13 northbound on Lexington while I chased -- the suspect I was chasing in
14 a southeasterly direction from the crash.

15 Q Southeast. Okay. And do you proceed to follow him down
16 Doolittle?

17 A Yes, sir, I do.

18 Q Can you describe, I guess, the pursuit from there?

19 A Yes, sir. As I was giving chase to the suspect, I identify
20 myself as a police officer. I tell the suspect to stop or I'm going to shoot,
21 stop or I'm going to shoot. I believe I advised it twice. During the course
22 of the foot pursuit, the suspect took the firearm in his right hand and
23 reached around his left shoulder pointing the firearm back in my
24 direction. I believe at the time that he was going to take some shots at
25 me at which point I discharged my firearm three times and took cover

1 behind a vehicle that was parked on the north side of Doolittle.

2 Q Okay. I'm going to show you now State's 309. Does that
3 appear to be looking down Doolittle in the direction where you ultimately
4 discharged your duty weapon?

5 A Yes, sir.

6 Q And let me just get a little closer, 312. Does that look familiar
7 to you?

8 A Yes, sir. That's looking west -- west on Doolittle toward
9 Lexington.

10 Q Okay. And you indicated that you discharged your weapon
11 after he pointed his weapon over his shoulder and then you said you
12 took cover. What do you mean? Can you show the jurors on this
13 photo?

14 A Yeah. As you can see the cones, I believe, are marking
15 where my shell casings ended up, and I ended up taking cover behind
16 this car that was parked there.

17 Q Okay. The red vehicle on the right of the exhibit?

18 A Yes, sir.

19 Q Did -- once you took cover, I presume you stopped?

20 A Yes.

21 Q Did Mr. Joshlin keep running?

22 A Yes, sir.

23 Q Where did you see him last go?

24 A I saw him continuing eastbound and then he turned
25 southbound toward a church that's in the area of J Street and Doolittle.

1 I saw him jump the wall into a residential street just south of the church
2 and parking lot.

3 Q Okay. At that point in time were you able to call things out
4 over the radio as well?

5 A Yes, sir, I was.

6 Q Okay. And once -- when you saw him jump the wall or
7 whatever it was, you say wall?

8 A Yes, sir, it was a wall.

9 Q When you saw him jump the wall, did you continue to pursue
10 or did you stop? What happened next?

11 A I continued to keep a visual on him for a second. I saw him
12 make the wall. I put that radio traffic out for arriving units. At this time I
13 could hear all the police sirens coming to assist me. I started walking
14 back toward my car to check on Officer Walter's welfare when I noticed
15 that the vehicle that I was driving, the maroon Sebring, was driving
16 toward me on Doolittle.

17 Q Okay. And who was in your vehicle?

18 A I looked into the windshield and I recognized it was Officer
19 Petrucci who was a field training officer of Bolden Area Command. He
20 asked me if I was all right. I said yes. I got in the front seat and he said,
21 where to, and I said, I think he's going to 1701 J. So, we drove to that
22 apartment complex.

23 Q Okay. And you said I think he is going to. Do you mean
24 Joshlin, the guy you were pursuing?

25 A Yes, sir.

1 Q Okay. Did you then proceed with Officer Petrucci to that 1701
2 J location?

3 A Yes, sir, I did.

4 Q And let me zoom in and show the jurors. Were you very
5 familiar with the 1701 J Street complex?

6 A Yes, sir, I am.

7 Q And back at that time what was it referred to as or did it have
8 a name?

9 A That I don't recall. I've always referred to 1701 [indiscernible].

10 Q Is 1701 connected to 1801?

11 A Yes, sir, it is.

12 Q Okay. Is there like essentially one way in, one way out?

13 A As far as vehicles go, that's correct.

14 Q Okay.

15 A There's an entrance off of J Street. It's the only access for
16 vehicles. There's security bars around the rest of the property.

17 However, due to my experience in the area I know that there's spots
18 where people can fit through the bars because some of the kids and
19 residents of the apartment complex had removed the security bars that
20 allow somebody to get through.

21 Q Okay. Did you then proceed into that complex?

22 A Yes, sir, I did, in the Sebring and Officer Petrucci was driving.

23 Q Okay. And what did you come upon, if anything, when you
24 entered that complex?

25 A As we -- if I could just draw your attention to the map so that

1 the parking lot --

2 MR. GIORDANI: I'm sorry. May I approach?

3 THE COURT: You may.

4 MR. GIORDANI: There is a new system, Sergeant, that you
5 can't write on the screen with your finger anymore.

6 THE WITNESS: Okay.

7 MR. GIORDANI: You should be able to do with this.

8 THE WITNESS: Okay.

9 MR. GIORDANI: Hold it down and drag to right. And it's not
10 very responsive. Sorry. It works better on the desk.

11 THE WITNESS: Okay. So, the area that I lost sight of Joshlin
12 was this area here, and I believe he jumped into this residential area
13 here and would have come out on --

14 MR. LEVENTHAL: I'm going to object as to speculation.

15 MR. GIORDANI: Well --

16 THE COURT: I'm sorry, what's the objection?

17 MR. LEVENTHAL: Speculation. He lost sight of him at this
18 time. He's speculating on where he would have gone in and then out.

19 THE COURT: You just need to testify as to what your
20 personal observations were.

21 THE WITNESS: Okay.

22 MR. GIORDANI: Can I ask --

23 THE COURT: Sure.

24 BY MR. GIORDANI:

25 Q -- what direction was he heading when you lost sight of him?

1 A He was heading south.

2 Q Okay.

3 A Officer Pertrucci and I in the maroon Sebring came down J
4 Street and we were, I believe, the second or third vehicle coming into
5 the vehicle gate. We fell in directly behind another black and white
6 patrol unit entering the apartment complex.

7 Q Okay. And I forgot to ask you. I apologize. When you
8 observed both Joshlin during the foot pursuit and when you very last lost
9 sight of him, what was he wearing, what was his clothing?

10 A So, he was wearing a black long sleeved shirt, blue jeans, and
11 he had black or charcoal gray gloves at the time.

12 Q Okay. And did he have that firearm that he pointed at you?

13 A Yes, sir, he did.

14 Q When you last observed him?

15 A Yes, sir, he did.

16 Q Okay. Go ahead and describe as you pull into the gate what
17 do you observe.

18 A As I pulled into the gate, I saw several other officers that were
19 starting a search of the area looking for the suspect. I heard a
20 commotion in the area which drew my attention. Officer Petrucci and I
21 responded to an area where there's were some dumpsters, and I
22 observed several officers giving verbal commands to a male -- a black
23 male suspect that had emerged from the dumpster.

24 Q Okay. Was the person who emerged from the dumpster the
25 same person that you had been chasing previously?

1 A Yes, sir, it was, with the exception that he had removed the
2 gloves.

3 Q Okay. And obviously you didn't come out with a firearm or
4 anything; right?

5 A Yes, sir, that's correct.

6 Q Okay. Ultimately he's identified as Pierre Joshlin?

7 A Yes, sir.

8 Q Yes or no. Were you familiar with who Pierre Joshlin was at
9 the time?

10 A Yes, sir, I was.

11 Q Okay. Did you know his name?

12 A Yes, sir, I knew his name.

13 Q Okay. So, you actually knew Pierre Joshlin?

14 A Yes.

15 Q And you previously indicated you were aware of Jemar
16 Matthews at the time but you did not know his name; correct?

17 A Yes, sir, that's correct.

18 Q Did you know Jemar Matthews and Pierre Joshlin, the two
19 men you saw that night, to be friends?

20 A Yes.

21 MR. LEVENTHAL: Objection, Judge. Can we approach?

22 THE COURT: Are you going to -- sure.

23 [Bench conference -- begins]

24 MR. LEVENTHAL: We went through this yesterday with the
25 detective or last Friday, sorry, with the detective on associations, friends,

1 and all that. If you remember --

2 THE COURT: Yeah.

3 MR. LEVENTHAL: -- we went through that objection and
4 we've all agreed that that was not going to be relevant to this case I
5 thought.

6 MR. GIORDANI: No. I was told to ask friends.

7 THE COURT: No. I specifically said ask him if they're friends.

8 MR. GIORDANI: Friends. I didn't say associates.

9 THE COURT: I thought it would be -- I thought associates
10 would be, you know, a green light.

11 MS. LEXIS: Agreed.

12 MR. LEVENTHAL: He goes into a lot of stuff that shouldn't -- I
13 mean, how does he have that knowledge, and then it's going to go into
14 the gang thing, and it goes down the road.

15 THE COURT: We're not going to.

16 MR. LEVENTHAL: But I'm not allowed to ask him. I'm not
17 allowed to question him on how he would know that, and that's my
18 problem because he's not going to be able to say well I know they're
19 best friends because they were in a gang.

20 THE COURT: Well, you could ask that.

21 MR. LEVENTHAL: Why would I want to do that.

22 THE COURT: I'm just saying I wouldn't prevent you from
23 asking that. I'm going to prevent the State from asking that. I know. If I
24 were you I wouldn't do it either. I mean --

25 MR. LEVENTHAL: It just opens up so much that I'm not

1 allowed, but I should be getting into and it's not -- that's my objection,
2 Your Honor. I think it's --

3 MS. LEXIS: We wouldn't want to get into that.

4 THE COURT: It's not going -- I'm not going to allow the State
5 to go into it. I assume you're not going to go into it. But last week I said
6 I wanted them to specifically use that term friend instead of associates
7 or --

8 MR. LEVENTHAL: Right.

9 THE COURT: You know.

10 MR. LEVENTHAL: It just puts me in a bind on delving into on
11 cross how he would have that information without him going into the
12 gang association or the gang relationship. So, I can't get into it, I'm
13 precluded, because he's not going to be able to talk about why or how or
14 so I've got to just go with they're friends.

15 MS. LEXIS: Agnes Lexis for the State. You can't leave a
16 false impression on the jury either to say that on opening that they --
17 there's no way that the two can be linked or that there's no relationship
18 between the two. We're allowed to, as a sanitized version, get out their
19 relationship. It's up to you whether you want to go into it, but we know
20 the answer's going to be they FI'd together and stopped together
21 because they belong to the same gang, a rival gang from Maurice
22 Hickman who we allege they killed or tried to kill.

23 MR. TANASI: Your Honor, Rich Tanasi. With respect to my
24 opening, my recollection of it was tying it forensically. There'd be no
25 forensic relationship between Mr. Matthews, my client, not any other

1 broad or other kind of relationship. It was right after my forensic
2 discussion in the case.

3 THE COURT: I don't any problem with him asking this officer
4 whether they were friends.

5 MR. TANASI: Okay.

6 THE COURT: They can't go any further. I understand it puts
7 you in a position. I mean, I can't imagine you would open that up.

8 MR. TANASI: No.

9 THE COURT: I think the jurors are entitled to know that they
10 knew each other.

11 MR. TANASI: Okay. Thank you.

12 MR. LEVENTHAL: Thank you.

13 [Bench conference -- concluded]

14 MR. GIORDANI: Was that overruled then?

15 THE COURT: Overruled.

16 BY MR. GIORDANI:

17 Q I'm going to ask you again, Sergeant. Yes or no. Were Jemar
18 Matthews and Pierre Joshlin friends?

19 A Yes.

20 MR. GIORDANI: Pass the witness.

21 THE COURT: Cross-examination.

22 MR. LEVENTHAL: Thank you.

23 **CROSS-EXAMINATION**

24 BY MR. LEVENTHAL:

25 Q Good morning.

1 A Good morning, sir.

2 Q Detective. It's not detective -- not detective, you're a sergeant
3 now?

4 A Yes, sir.

5 Q Okay. And back in 2003 you were on what's called a PSU
6 unit within Metro; right?

7 A Yes, sir.

8 Q And then 2003 you were -- had been on the job or with Metro
9 for approximately, I believe, three years then, correct, 2006?

10 A Yes, sir, about three years.

11 Q You would have been for about three years; right?

12 A Three years to the day, sir.

13 Q To the day. Okay. And on this Problem Solving Unit within
14 Metro, you'd been on that unit for approximately a few months?

15 A Approximately six months, sir.

16 Q Six months. Okay. Now, you on direct examination you
17 testified that you first gunshots -- and I'm showing you what's been
18 already marked as 465, a map of the area, and you indicated that you
19 recognized the 1271 Balzar as well as the 1284 Lawry Street; correct?

20 A Yes, sir.

21 Q Okay. And you heard gunshots and then you proceeded
22 down Balzar, correct, towards Martin Luther King?

23 A No, sir.

24 Q Okay. At some point you got to the intersection of Balzar and
25 Lexington: correct?

1 A Yes.

2 Q Okay. And then you turned left on Lexington and you got to
3 the intersection of Lawry and Lexington; correct?

4 A Yes, sir.

5 Q Okay. And it was at that intersection that you heard a
6 commotion?

7 A Yes, sir.

8 Q And it was at that intersection that you saw four African-
9 American males and one African-American female?

10 A Yes, sir.

11 Q And you indicated that you heard some kind of commotion;
12 right?

13 A Yes, sir.

14 Q Okay. And then you noticed that three of the males got into
15 the vehicle, that vehicle there?

16 A Yes, sir.

17 Q And when the black -- the Africa-American male and female
18 then went and left somewhere else; right?

19 A Yes, sir. I lost sight of them.

20 Q Lost sight of them. Okay. And you weren't able to identify
21 anybody at that point; correct?

22 A Correct.

23 Q Okay. But you could make out sort of silhouettes, I guess, if
24 you will, or the fact that you could make out the race?

25 A Yes, sir. There was enough light that I could identify what

1 race they were.

2 Q Okay. But at that point you couldn't recognize anybody?

3 A Correct.

4 Q Okay. Now, the vehicle then and what caught your eyes, you
5 indicated, the vehicle then took off at a high rate of speed; right?

6 A Yes, sir.

7 Q Okay. Blew a stop sign; correct?

8 A Yes.

9 Q Got to Martin Luther King and there's another stop sign on
10 Martin Luther King; correct?

11 A Yes, sir.

12 Q Blew that one; right?

13 A Mm-hmm.

14 Q Turned left, correct, off of Martin Luther King?

15 A Onto Martin Luther, yes.

16 Q Onto Martin Luther King going down. Okay. And you're
17 chasing this vehicle not knowing whether this vehicle had anything to do
18 with the shooting, but because of the fact there was a commotion and
19 they took off at high rate of speed, you decided that you were going to
20 follow it; correct?

21 A In addition to the close proximity to the shooting that occurred.

22 Q Okay. But you at that point didn't know where the shooting
23 exactly had occurred; right?

24 A That's not correct, sir.

25 Q You knew exactly where it occurred?

1 A Yes, sir.

2 Q You knew exactly because -- at what point did you know
3 exactly where it occurred?

4 A As we were on Martin Luther King, like I testified to you
5 earlier, other units -- other officers from my team were arriving at 1271
6 Balzar and they indicated that they had multiple people that had been
7 shot at that address.

8 Q Okay. Sergeant, let's back up. You didn't know where the
9 shootings occurred when you were at that intersection of Lawry and
10 Lexington; right?

11 A Correct.

12 Q Okay. And maybe I missed -- my question was not specific
13 enough. But when you got to Lexington and Lawry, you did not know
14 exactly where those shootings occurred; right?

15 A Correct.

16 Q Okay. And then you saw the commotion but you decided to
17 chase that vehicle or follow that vehicle; right?

18 A Yes, sir.

19 Q Okay. It wasn't until you learned where the shootings
20 occurred until you were on Martin Luther King Boulevard; right?

21 A Yes, sir.

22 Q Okay. And then you got down to Jimmy Street and the vehicle
23 that you were chasing turned left on to Jimmy Street; right?

24 A Yes, sir.

25 Q And you indicated on direct examination that vehicle then got

1 up on to the curb?

2 A Yes, sir.

3 Q And then it straightened itself out; right?

4 A Yes.

5 Q And it was slowing down at this point?

6 A It slowed down after it came off the curb, yes.

7 Q Okay. How fast were you going, maybe, what, 15 miles, ten,
8 15 miles an hour?

9 A I would have guessed a little faster than that, maybe 20
10 somewhere.

11 Q Twenty miles an hour? Okay. Fair enough. That vehicle that
12 you're now chasing goes up the curb going 20 miles -- corrects itself and
13 then turns right onto Lexington; correct?

14 A Correct.

15 Q Okay. And as it's turning right onto Lexington, you're right
16 behind it; right?

17 A I'm actually weaving back and forth, left to right, behind the
18 wheel.

19 Q You're weaving now?

20 A Yes, sir.

21 Q Okay. You didn't indicate that on direct that you were
22 weaving?

23 A They didn't ask, sir.

24 Q Okay. So, you're weaving back and forth?

25 A Yes, sir.

1 Q Okay. So, you're not directly behind this vehicle?

2 A Correct.

3 Q And now I'm going to take you onto Lexington, you with me,

4 from Jimmy.

5 A Mm-hmm; yep.

6 Q So, I just want to -- I want to slow this down. So, you're going

7 out -- if by my left hand is your -- is the suspect vehicle, my right hand

8 now and I'm putting out my hand, is your vehicle, on Lexington Street

9 the car's starting to slow down; correct?

10 A Yes, sir.

11 Q Okay. And you're weaving; right?

12 A Yes, sir.

13 Q Okay. And you're noticing now that in fact the door opens

14 about halfway between the intersection and the church; is that fair to

15 say?

16 A It actually opened up several times between the time it got

17 onto Jimmy and Lexington.

18 Q Okay. And then closed. But you -- at some point you thought

19 there was going to be a bail, right, someone was going to bail?

20 A Correct.

21 Q Okay. And that's when you saw somebody put their left foot

22 out?

23 A No, sir.

24 Q Open up their -- open up the door.

25 A It was their left hand, sir.

1 Q Left hand?

2 A It was the driver.

3 Q Okay. How about left foot. Did you see a foot go out?

4 A No, sir.

5 Q No, sir? Okay. You shot your weapon a few times that night

6 you indicated, right, three times?

7 A Yes, sir.

8 Q Okay. And so whenever you shoot your weapon there's a

9 homicide investigation or a officer involved shooting investigation that

10 occurs that evening; correct?

11 A Yes, sir, that time was handled by homicide.

12 Q It was what?

13 A It was handled by homicide. The procedure has changes

14 since then but, yes, at that time it was.

15 Q Back then it was handled by homicide; right?

16 A Yes, sir.

17 Q And they conduct an interview on you; right?

18 A Yes.

19 Q Okay. And that interview was conducted within hours after

20 this event occurred; right?

21 A Yes, sir.

22 Q And you would agree with me that your memory hours after

23 this event had occurred was better than your memory 12 years later as

24 you sit here today; right?

25 A Not necessarily, sir.

1 Q Not necessarily. Your memory is spot on?

2 A Yes, sir.

3 Q Same. You would testify to exactly the same thing hours after
4 this occurrence as you would today 12 years later?

5 A Yes, sir.

6 Q Okay. So, you've indicated now that you never saw any foot
7 come out or hit the car; correct --

8 A Yes.

9 Q -- or hit the door; right? Okay. In that interview you wanted to
10 be as truthful and honest as you possible could; correct?

11 A Yes.

12 Q Okay. Would it refresh your recollection if I showed you a
13 report where you testified differently or you said a different statement?
14 Yes? Okay. I'm going to show page 15. May I approach?

15 THE COURT: You may.

16 THE WITNESS: I'm sorry what were -- you're talking about
17 the highlighted part here?

18 THE COURT: Just read the page. Do you want him to read
19 the whole thing, counsel?

20 MR. LEVENTHAL: Read the whole thing. Correct. Just put it
21 in perspective.

22 THE WITNESS: Okay. So, --

23 THE COURT: To yourself.

24 THE WITNESS: Okay. Okay.

25 BY MR. LEVENTHAL:

1 Q Okay. Does that refresh your recollection as to what you said
2 just hours after this occurrence had occurred?

3 A Yes.

4 Q Okay. And you indicated or you told the detectives that night
5 that in fact you saw a leg and an arm; correct?

6 A No, sir. It said foot.

7 Q Foot?

8 A Yes, sir.

9 Q Okay. So, you're differentiating to me so difference between a
10 foot and a leg; right?

11 A Yes, sir. They're different parts of the body.

12 Q They are. Okay. And so let's get this straight. You saw a
13 foot?

14 A Yes, sir.

15 Q Okay. You saw an arm or a hand?

16 A Yes.

17 Q Okay. And so if you saw a foot, where would have the foot
18 been? It would have been out, stretched out, or would it have been just
19 inside? Where did you see the foot hold the car door?

20 A Sir, at this point in time I don't recall the foot, but obviously I
21 recalled it at the time of that testimony. It was an additional detail that I
22 had at the time.

23 Q Okay. When I asked you if your memory was as clear today
24 as it was then and you agreed that it wasn't, it really isn't; correct?

25 A Correct.

1 Q Okay. Now, as you see this foot, leg, foot, hand opening the
2 door, you also indicated that you also saw the person driving hold
3 something to his chest?

4 A Yes, sir.

5 Q Okay. I want to go back to my left hand and my right hand,
6 left hand being suspect vehicle, my right hand being your vehicle,
7 you're now weaving in the street. Do you ever at any point get to the left
8 of the suspect vehicle?

9 A Yes, sir, that's why I was weaving.

10 Q Okay. Do you ever get to the right, far away from the right?

11 A Not as far to the right. My concern was mainly on the driver's
12 side of the vehicle because that's where I saw all of the action.

13 Q Okay.

14 A The purpose of me weaving was so I could get a visual on
15 what the driver was doing.

16 Q Did you ever lose visual of the suspect? Did you ever go so
17 far that you lost the visual of the suspect -- the driver?

18 A Not enough to where anybody would have got out of the car
19 without me knowing it.

20 Q Would it refresh your recollection if I showed you a copy of
21 your report, again, that evening just hours after that you said something
22 different?

23 A Sure.

24 MR. LEVENTHAL: Okay. May I approach and it's going to be
25 two pages, please, page 14 and page 8.

1 THE COURT: You may.

2 MR. LEVENTHAL: May I approach?

3 THE COURT: You may.

4 MR. LEVENTHAL: Thank you. Go ahead and read that.

5 THE WITNESS: What page again, sir? Okay.

6 MR. LEVENTHAL: And then page 14.

7 THE WITNESS: Okay.

8 BY MR. LEVENTHAL:

9 Q Okay. Now, does that refresh your recollection as to what you
10 told detectives on whether or not you were able to swerve to the right
11 that evening?

12 A Yes, sir.

13 Q Okay. So, you -- in fact, the detectives asked you what
14 happened and you said, well, I thought -- if I'm wrong correct me -- I
15 thought that he had a weapon so I need to get out of his visual sight;
16 correct?

17 A Correct.

18 Q And that's what you told them; right?

19 A Yes, sir.

20 Q So, you were far over your vehicle -- you were far over to the
21 right of the suspect vehicle; right?

22 A No, sir. It was more directly behind it.

23 Q Okay. But you lost complete visual or at least you indicated
24 that you wanted the suspect driver to lose visual with you; correct?

25 A Correct.

1 Q That's what you said; right?

2 A Yes.

3 Q And so by definition if the driver is losing visual of you as
4 you're swerving to the right over here, you're losing sight of the driver or
5 visual of the driver; correct?

6 A For a brief moment before I swerved back.

7 Q Fair enough. But you lost sight of the driver, you move over;
8 correct?

9 A Yes.

10 Q Yes. Okay. And that car had heavy tinted windows on it. You
11 couldn't see exactly what was going on inside; is that correct?

12 A That's correct.

13 Q Okay. So, you didn't know who was -- well, how many people
14 you saw -- you didn't know if there were four or five, you didn't know
15 what was going on in that vehicle; correct?

16 A That's not correct, sir.

17 Q Okay. It had heavy tinted windows on it?

18 A Yes, sir.

19 Q Okay.

20 A But I believed there were three people that got in the vehicle
21 when I first observed it.

22 Q Okay. When you first observed it though, you didn't know if
23 there was already one person in it, two people in it, three people in it.
24 You saw three people get in it; right?

25 A Correct.

1 Q Okay. So, at this point you still don't know how many people
2 are in it; correct?

3 A At least three.

4 Q Okay. At least three. Could be more; right? Okay. So, now
5 you see -- and, again, you indicated that you both you and detective -- or
6 the detective now, Walter, were both seat belted?

7 A Yes, sir.

8 Q Okay. And that's what got you ever more nervous; right?

9 A Yes.

10 Q And your nerves are building up because you're not sure
11 what's going to happen next, someone's going to bail, and then you
12 indicated that at some point before the car came to a stop Walter gets
13 on the radio and says bail, someone -- a black male is going to bail;
14 correct?

15 A No, sir.

16 Q No?

17 A It was our assessment based on what was going on with the
18 vehicle that they were looking to bail.

19 Q Right. And so it was on Lexington when Walters [sic] gets on
20 the -- you testified earlier that was on Lexington when Detective Walter
21 got on and indicated that someone was going to bail?

22 A It was while we were eastbound on Jimmy making the turn
23 onto Lexington, somewhere in that vicinity.

24 Q Okay. You don't know exactly when; right?

25 A Sir, it's within probably 15 or 20 feet of that intersection.

1 Q Okay. All right. Now, as this person -- and you see a red
2 glove; right?

3 A Yes, sir.

4 Q And you see a foot, correct, holding the door?

5 A Yes.

6 Q And you see something -- that he's holding his chest; right?

7 A Yes.

8 Q Okay. So, -- and he's -- you indicated he's looking behind him
9 or trying to look at you -- you guys behind; right?

10 A Yes.

11 Q Okay. And you're moving in and out swerving like this;
12 correct?

13 A Yes.

14 Q Okay. At some point that suspect jumps out?

15 A Yes, sir.

16 Q Okay. And you were to the right of that suspect when he
17 jumped out --

18 A No.

19 Q -- you were to the right of the vehicle?

20 A No, sir, I was to the left of the vehicle.

21 Q You were to the left of the vehicle?

22 A Yes, sir.

23 Q Okay. Do I need to show you your statement from that
24 evening again? Do you want me to refresh your recollection --

25 A Sure.

1 Q -- if I showed you that?

2 MR. LEVENTHAL: May I approach?

3 THE COURT: You may, you may.

4 MR. LEVENTHAL: Thank you. The bottom of page 14.

5 THE WITNESS: Yes, sir.

6 BY MR. LEVENTHAL:

7 Q That refreshes your recollection --

8 A Yes.

9 Q -- you were to the right of that vehicle; correct?

10 A No, sir.

11 Q No?

12 A It says I swung out to the left. I was directly behind the vehicle
13 at that point and swung back out to the left because as it says in the
14 statement my intent was to pursue him in the vehicle if he continued
15 running.

16 Q Okay. So, the suspect got out. Did he -- the vehicle was still
17 -- his vehicle was still going about 15 miles an hour? It was less than --
18 it was 20 before and now it's come down approximately?

19 A It was I would have guessed probably the ten to 15 mile an
20 hour range at that point.

21 Q And the suspect then jumps out of the vehicle?

22 A Yes, sir.

23 Q Okay. And do you remember if the suspect rolls or does the
24 suspect land right on his feet like that?

25 A He went to the ground briefly but then stood up.

1 Q Okay. So, he went to the ground, he jumped out of a moving
2 vehicle that's going approximately 15 miles an hour, he hit the ground,
3 he may or may not have rolled, but he jumped out; right?

4 A Yes, sir.

5 Q Okay. And, again, this is all happening and I understand
6 simultaneously, it's going on very fast; correct? Lots of things are
7 happening; right?

8 A Yes, sir.

9 Q Okay. He jumps out and that's when you sort of see him and
10 then you cut to the left and you indicated that now your vehicle struck
11 this person; correct?

12 A No, sir. I swerved to the left to get a better visual of him even
13 though it would have exposed me to any threat that was there, but I
14 needed to be able to see what the suspect was doing.

15 Q Okay.

16 A At the point where the suspect stood up with the firearm is at
17 which time I veered back to the right striking him with the vehicle.

18 Q Did you veer back to the right or veer to the left?

19 A I was left to see the suspect. When the suspect got out the
20 car, when the suspect stood up with the gun, I veered back to the right
21 to knock him down.

22 MR. LEVENTHAL: Court's brief indulgence.

23 BY MR. LEVENTHAL:

24 Q So, your testimony is that you were to the left and you struck--
25 you moved to the right? And I guess sort of --

1 A Sir, at the time -- at the time Mr. Matthews jumped out of the
2 vehicle, I was to the left so I could observe what he was doing. My
3 original plan was if he took off running I was going to chase him in the
4 vehicle.

5 Q Okay.

6 A Because that's to my advantage.

7 Q Sure. You were to the left of this -- the suspect,

8 A Of the suspect's vehicle --

9 Q -- yeah, okay.

10 A -- with the door open.

11 Q Okay.

12 A When the suspect stood up with a firearm in his hand, I made
13 the decision to knock him down, because my partner and I were sitting
14 ducks at this point, to strike him with the right side of my vehicle.

15 Q Okay. Do you know which way he --

16 A So, I swerved back to the right.

17 Q You swerve back to the right?

18 A Yes, sir.

19 Q Okay.

20 A Which is why he hit the right front part of the passenger side.

21 Q Okay. I'm going to show you what, again, your statement that
22 evening -- may I approach?

23 THE COURT: You may.

24 BY MR. LEVENTHAL:

25 Q Would it refresh your recollection if I showed you a statement

1 that you said countered what you just said?

2 A Sure.

3 Q Thank you.

4 A Yes, sir, that's exactly what I said.

5 Q Okay. It's not what you said. You said you swerved to the
6 right in order to hit him; correct?

7 A Sir, the statement said when I observed him jump out of the
8 vehicle I moved my vehicle to the left.

9 Q Okay. It says when I -- okay. You swung the vehicle out to
10 the left so you were to the right of the vehicle?

11 A I was directly behind the vehicle, sir.

12 Q Okay. Well, when you hit this person, do you know where you
13 hit them if they were standing straight up it would have probably hit him
14 in the leg? How tall?

15 A Yes, sir? I believe I struck him the leg because he folded over
16 onto the hood and then rolled off onto the passenger side of the vehicle.

17 Q Okay. And so when he landed on the hood you had indicated
18 that you got a really view of him right there; right?

19 A For a brief second while he was on the hood, yes.

20 Q Okay. And so he gets on your hood and you're still traveling
21 at 15 trying to slow down; correct?

22 A I was well below that speed at that point when I struck him
23 because I was also trying to avoid colliding with the suspect vehicle.

24 Q And so he was directly, I guess, directly in front of you then?

25 A Yes, sir.

1 Q Okay. But you hit him on the right passenger side: right?

2 A Yes, sir.

3 Q Okay. So, you're -- the right --

4 A Because --

5 Q Hold on one second. I'm going to show you. The right
6 passenger side you hit him, he falls on the hood, but he's directly in front
7 of you; is that what your testimony was?

8 A No, sir. Then I swerved back to the right and I hit him on the
9 right because I was out to the left, I swung back to the right, struck him
10 in the legs, and he fell on top of the hood and then rolled off the -- onto
11 the passenger side of the vehicle.

12 Q Again, happening very quickly; right? He's not sitting there on
13 the hood for a long period of time; right?

14 A Yes.

15 Q And then he rolls off and so you lose sight of him when he's
16 down; correct?

17 A Yes, sir.

18 Q Now, at this point you indicated that you were still seat belted
19 in?

20 A Yes, sir.

21 Q And you indicated your partner was still seat belted in?

22 A Yes.

23 Q Okay. So, then you have to unseat your seat belt. Detective
24 -- Detective Walters [sic] unseats his seat belt, and you indicated you
25 saw that Walters was having some kind of struggle to get out of his door;

1 right?

2 A Yes, sir.

3 Q Okay. So, meanwhile the suspect is on the ground not in
4 visual; right?

5 A Yes, sir.

6 Q Okay. And Walters [sic] is struggling to get out and all of the
7 sudden, you know, you look -- I guess you're no longer paying attention
8 to the vehicle anymore, right, because now your focused over here on
9 what's going on with Detective Walters [sic]; right?

10 A I briefly glanced over, yes.

11 Q You briefly glanced over here, you're briefly glanced over
12 there; right?

13 A Yes, sir.

14 Q And you see the officer then or the suspect then takes off;
15 right?

16 A Yes.

17 Q Okay. And now if you're watching the vehicle in front of you
18 that you had to know that there is at least two more people in the car;
19 right?

20 A Yes.

21 Q And then you indicated to this jury on direct that you then
22 turned around to see which way that suspect was going and you saw
23 that he two -- the gloves on, red gloves on; right?

24 A No, sir.

25 Q You didn't say that on direct that you turned around and you

1 watched that --

2 A I observed the gloves before that occurred.

3 Q And you observed two gloves?

4 A I only saw the one glove on his left hand.

5 Q That's it. You never saw when he got up he had other
6 gloves?

7 A I didn't see that, sir.

8 Q Now, Mr. Giordani asked you earlier about how whether or not
9 you were familiar with these two individuals; remember that?

10 A Yes, sir.

11 Q Okay. Do you remember telling the detectives during that
12 interview that night that you were familiar with Mr. -- Jemar, that you
13 were familiar with him, the suspect?

14 A No, sir, they never asked.

15 Q Okay. Oh, they didn't ask?

16 A No, sir.

17 Q Do you remember telling the detectives during that interview
18 that you could identify Jemar?

19 A Sir, I did have a chance to identify him after the fact.

20 Q Okay. Did you tell the detectives that -- anything specifically
21 about Jemar that -- that -- during that interview that would have helped
22 in their investigation?

23 A Sir, most of the interview questions --

24 Q It's a yes or no question. Did you tell the detectives that
25 evening anything specific about Jemar that you had that would have

1 helped in their investigation?

2 A Yes, sir, I did.

3 THE COURT: Just a minute. Can you answer that yes or no?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 BY MR. LEVENTHAL:

7 Q And when you say -- and I know you are very specific person
8 [indiscernible] -- when you say and I want to get this straight -- when you
9 say that they didn't ask you, are you narrowing that question to they
10 didn't ask you if you were familiar with Jemar; is that what you answered
11 and responded to the mitigator?

12 A Yes, sir. All of the questions they asked me had to do with the
13 events of that night.

14 Q Okay. And the events of that night included a description of
15 the suspects?

16 A Yes, sir.

17 Q It included what did the suspects look like?

18 A Yes, sir.

19 Q That would by necessarily include would you familiar with the
20 suspect?

21 MR. GIORDANI: Objection.

22 THE COURT: Yeah, sustained.

23 BY MR. LEVENTHAL:

24 Q Okay. Would -- when they asked you what the suspects
25 looked like, would that have been an opportunity for you to say, yeah,

1 I'm familiar with Jemar? It would have been your opportunity to say that;
2 right? Correct? Yes or no.

3 A Sure.

4 Q Okay. But you didn't; did you?

5 A No.

6 Q Okay. You never gave any indication that you were familiar,
7 that you knew, if you had anything specific about Jemar that evening
8 when you gave that statement; correct?

9 A No, because he was in custody.

10 Q As a matter of fact, the only thing you indicated that you saw
11 was a black male, a juvenile maybe, in jeans and a tee shirt and the
12 gloves. That's all you said; correct?

13 A No, sir. I provided the color of the shirt as well as the color of
14 the glove.

15 Q You provided the color of his shirt and the color of the glove?

16 A Yes, sir.

17 Q Okay. You didn't indicate jeans? You just --

18 A My suspect was wearing jeans. I didn't see what Mr.
19 Matthews was wearing. I know he [indiscernible] pants.

20 Q Fair to say that after the suspect -- after Detective Walters
21 [sic] took off, that's the last time that you had any contact. You didn't
22 follow another suspect; right?

23 A Yes, sir.

24 Q So, you can't comment or you have no recollection of what --
25 obviously what happened on the other side where Detective Walters

1 [sic] was going to?

2 A That is correct.

3 Q Okay. When was the last time you spoke to Detective
4 Walters, by the way?

5 A Probably three weeks ago.

6 Q Three weeks ago?

7 A Yes, sir.

8 Q And you didn't talk about this, this case?

9 A No, sir. It was on a different case.

10 Q Would you agree with me as you -- in your training and
11 experience, would you agree with me that there's sort of a hierarchy of
12 evidence; do you know what I'm talking about?

13 MR. GIORDANI: Objection.

14 THE COURT: Well, I don't know. Do you know what he's
15 talking about?

16 THE WITNESS: If he can be more specific, Your Honor. I
17 don't. I can't say.

18 THE COURT: Okay.

19 MR. GIORDANI: And I would object to what he's probably
20 going to ask next which is just going to be argument. A hierarchy of
21 evidence. He's asking [indiscernible].

22 THE COURT: Well, I don't know what he's going to ask next.

23 BY MR. LEVENTHAL:

24 Q I'm just going to ask would you agree that scientific evidence
25 is the most important thing that you can in having your -- under your --

1 MR. GIORDANI: Objection.

2 THE COURT: The objection's sustained.

3 BY MR. LEVENTHAL:

4 Q Okay. Sir, you indicated that when you hit the subject in the
5 leg they came -- that person came down on your hood; right?

6 A Yes, sir.

7 Q And both hands came down; correct?

8 A Sorry, I couldn't tell you that.

9 Q You couldn't say that? Okay.

10 MR. LEVENTHAL: Your Honor, I'll pass the witness. Thank
11 you.

12 THE COURT: Thank you. Any redirect?

13 MR. GIORDANI: Yes, please.

14 **REDIRECT EXAMINATION**

15 BY MR. GIORDANI:

16 Q Mr. Leventhal asked you a whole bunch of questions about
17 your memory of the event and your opportunity to observe Mr.
18 Matthews; do you remember that line of questioning?

19 A Yes, sir.

20 Q And at some point during your questioning, you were asked
21 about your recollection being better than as opposing to now, et cetera;
22 do you remember that line of questioning?

23 A Yes, sir.

24 Q Let me ask you. Was this is a significant event in your life?

25 A Yes, sir, it was.

1 Q Okay. Is it every day that you get involved in a foot pursuit
2 and have to discharge your firearm in the line of duty?

3 MR. LEVENTHAL: Your Honor, I'm going to object to leading.
4 He can ask him why it is but he's leading him --

5 THE COURT: You are --

6 MR. LEVENTHAL: -- right through it.

7 THE COURT: -- you are leading.

8 MR. GIORDANI: Okay.

9 BY MR. GIORDANI:

10 Q Do you things like this happen every day?

11 A No, sir, they don't.

12 Q Okay. As you sit here you understand you're under oath?

13 A Yes, sir.

14 Q Is there any doubt in your mind whatsoever --

15 MR. LEVENTHAL: Objection, bolstering, Judge.

16 MR. GIORDANI: Boldering?

17 THE COURT: I'm sorry? Bolstering?

18 MR. LEVENTHAL: Yeah. He's already asked him that
19 question.

20 THE COURT: Overruled. You may proceed.

21 MR. LEVENTHAL: He's asked him [indiscernible].

22 BY MR. GIORDANI:

23 Q Is there any doubt in your mind that Jemar Matthews was the
24 driver?

25 A No, sir.

1 Q Okay. At the time where Mr. Leventhal was asking you about
2 whether or not you gave anything to describe Mr. Matthews during your
3 interview; you remember that line of questioning?

4 A Yes, sir.

5 Q You indicated he's already in custody?

6 A Yes, sir.

7 Q And he would be Jemar Matthews?

8 A Yes, sir.

9 Q So, when they have the suspect in custody, you indicated you
10 were asked more questions to describe the events that had occurred?

11 A Yes, sir. Nothing was historical in nature.

12 Q Okay.

13 MR. LEVENTHAL: I'm sorry. I didn't hear that. Nothing was

14 --

15 THE WITNESS: Nothing was historical in nature outside of
16 the events that happened that night.

17 BY MR. GIORDANI:

18 Q Okay. After this event -- well, let me ask you this. After
19 discharging the weapon in the line of duty, there is an investigation into
20 your use of force?

21 A Yes, sir.

22 Q That -- I mean, that's a serious thing, right, that Metro
23 investigates that in it of itself?

24 A Yes, sir.

25 Q As a result of that investigation, did you do what's referred to

1 as a drive through?

2 A Yes, sir, I did.

3 Q Or a walk through? And for the jury so they understand, is
4 that an effort for you to reproduce to the best of your memory the events
5 as they occurred?

6 A Yes, sir, it is.

7 Q Okay. And did you do that in this case?

8 A Yes, did.

9 MR. GIORDANI: And, Your Honor, I'd move to publish
10 already admitted State's 13. And we would just need to switch over to
11 the computer.

12 BY MR. GIORDANI:

13 Q So, after this event the hours or -- do you remember when you
14 did that drive through?

15 A I believe it was the same night of the shooting if not the day
16 after.

17 Q Okay. If it was either -- in any event, whether it was the night
18 of the shooting or the night -- the next night, is it done at the same time
19 of day in order to kind of reproduce the light?

20 A Yes, sir.

21 Q Okay.

22 MR. GIORDANI: Can we publish?

23 THE COURT: You may.

24 [State's Exhibit #13 -- playing]

25 BY MR. GIORDANI:

1 Q Does that appear to be your unmarked vehicle that you were
2 driving that night?

3 A Yes.

4 Q And as you're doing this, are you equipped with a camera?

5 A Me personally, no. I was just directing the homicide
6 detectives where we needed to go.

7 Q Okay. Is that the Circle Park we just saw?

8 A Yes, sir, it is, or heading around the west side.

9 Q Did we just pass Balzar?

10 A Yes. We passed 1271 Balzar and we're stopped right there at
11 the corner of Lawry and Lexington.

12 Q Now, as you're stopped here is that when the vehicle passes
13 in front of you?

14 A Yes, sir, it is. The residence where I saw the commotion was
15 off to the driver's side, immediately to the driver's side of the vehicle.

16 Q What street are we coming up on now?

17 A This is Martin Luther King.

18 Q Obviously you can't reproduce traffic exactly as it was?

19 A No, sir.

20 Q To your knowledge, sir, was the radio traffic overlaid on this
21 vehicle as close in time as it was possible to reproduce basically your
22 drive?

23 A I'm not familiar with the method they --

24 Q Okay.

25 A -- use to do that, but I'm guessing that's what their intent was.

1 Q Okay. Did that sound like what we just heard, radio traffic
2 from the unit [indiscernible] --

3 A It's pretty close to the approximate area.

4 Q Okay. Go ahead. You can see here that the vehicle is no
5 longer crashed into the fire hydrant; right?

6 A Correct. It was actually up on the sidewalk there.

7 Q So, we can presume this is probably the next night or not the
8 night of?

9 A Correct.

10 Q Okay. When you say armed with a 415, what does that
11 mean?

12 A It was 413, sir. It means handgun or firearm.

13 Q Okay. Was that you calling out after you had discharged
14 rounds at Mr. Joshlin?

15 A Correct. I wanted to make sure all the other officers coming
16 knew that the suspect was still armed and it was just a run.

17 Q As you see this here, is this your vehicle sitting with the
18 headlights pointing in our direction?

19 A Yes, sir.

20 Q And then the sign here to the left, is that how it appeared that
21 evening?

22 A Yes.

23 Q All right. Just a few more questions, sir. Mr. Leventhal had
24 asked you about essentially the time when you hit Jemar with your car
25 and you indicated he said 15 miles and you said well below that at that

1 time?

2 A Yes, sir.

3 Q If you can, can you estimate how fast or slow you were going
4 when you hit Mr. Matthews with your vehicle?

5 A I would have guessed that it was probably somewhere in the
6 neighborhood of five or ten miles an hour at that point.

7 Q Okay. And you slowed down significantly once you saw him
8 bail?

9 A Yes, sir, because I was trying to keep from colliding with the
10 suspect vehicle as well.

11 Q Okay.

12 MR. GIORDANI: May I have the Court's brief indulgence?

13 THE COURT: You may.

14 MR. GIORDANI: I have no further questions for the witness at
15 this time. Thank you. Thank you, sir.

16 THE COURT: Any recross?

17 MR. LEVENTHAL: Yes.

18 **RECROSS EXAMINATION**

19 BY MR. LEVENTHAL:

20 Q You had been an officer in this area for three years in 2006
21 you indicated; right?

22 A Yes, sir.

23 Q Okay. In this area, is it Summerlin? It's not Summerlin; is it?

24 A No, sir, it's West Las Vegas.

25 Q West Las Vegas. A lot of shootings going on over there?

1 A It has its fair share.

2 Q Okay. You were asked why this was so traumatic. Is this
3 your first time you've ever been to a homicide or was this your first
4 experience with a shooting in that area?

5 A There was a couple of questions there, sir.

6 Q Let me break it down.

7 MR. GIORDANI: Judge --

8 BY MR. LEVENTHAL:

9 Q Was this the first time that you --

10 MR. GIORDANI: Should we approach?

11 THE COURT: Do you all want to approach?

12 [Bench conference -- begins]

13 MR. GIORDANI: I'm furious is that he's been told --

14 THE COURT: I know. You've been talking why you were
15 there.

16 MR. GIORDANI: -- do not talk about the [indiscernible].

17 MR. LEVENTHAL: My understanding -- that's not my
18 question. He's remembering this because it's so traumatic. It's like it's
19 the only time he's ever been in a homicide or whether he -- that's why he
20 can remember any details. And I'm -- this was a common occurrence
21 not that it was gang related, but there was common occurrence of guns
22 and [indiscernible] and shootings in there. But to say that he remembers
23 this specifically because this was so traumatic on his experiences as an
24 officer it was -- I won go in there but --

25 MR. GIORDANI: For the record, I've asked him that specific

1 question if this was the first time he ever had to discharge his weapon in
2 the line of duty. So, that's what his response is going to be.

3 THE COURT: I mean, you can ask him that. I'd would just --

4 MR. LEVENTHAL: Okay.

5 THE COURT: -- back away from what was played.

6 MR. LEVENTHAL: No, I agree.

7 MR. GIORDANI: Because I did tell him, just so we're clear, I
8 did tell him I'm not allowed to ask X, Y, Z and the Defense has said he's
9 going kind of look to the Court --

10 MR. LEVENTHAL: Okay.

11 MR. GIORDANI: -- because we don't want a mistrial at the
12 last minute so --

13 THE COURT: Sure.

14 MR. LEVENTHAL: I'll stay away from it. Okay. Thanks.

15 [Bench conference -- concludes]

16 THE COURT: You may proceed.

17 MR. LEVENTHAL: Thank you.

18 BY MR. LEVENTHAL:

19 Q Okay. You were asked if you had any doubt that that was
20 Jemar; correct?

21 A Yes, sir.

22 Q Okay. You were also asked about the identification and you
23 indicated that -- I think your words were that interview that you did with
24 homicide that night had nothing to do with the past, I think? I'm not sure
25 what you meant by that. Did you mean the past events or identification?

1 A Previous contacts --

2 Q Okay.

3 A -- with the people involved.

4 Q Okay. But you were asked to identify or asked what the
5 subject suspects looked like during that identification -- during that
6 interview; correct?

7 A Yes, sir.

8 Q Okay. And at that time you gave a very generic answer that
9 you thought that they were just that, juveniles, late teens early 20s. That
10 was your answer; correct?

11 A No, sir. I was more specific than that.

12 Q That was not you? Okay. Well, you also indicated that the
13 driver had gloves on; correct?

14 A Yes, sir.

15 Q Okay. But other than that you were no more -- there was no
16 more specificity to other than black males, juveniles, late teens, and you
17 knew that the driver had gloves on?

18 A Red gloves, sir, and I believe I testified to a black shirt as well.

19 Q Okay. So, other than that you gave no other description other
20 than, again, the black or gray tee shirts; correct?

21 MR. GIORDANI: Objection. Asked and answered three
22 times.

23 MR. LEVENTHAL: I'm just trying to -- I'm just trying to figure
24 out --

25 THE COURT: Overruled. He can answer.

1 THE WITNESS: Yes.

2 BY MR. LEVENTHAL:

3 Q Okay. You were asked about how fast you thought you were
4 going and you indicated more to like five miles an hour when you hit the
5 suspect that jumped out of the vehicle?

6 A Yes, sir. I said five to ten.

7 Q Five to ten? Okay. Would it refresh your recollection that you
8 said ten to 15 in that statement if I showed you that statement?

9 A Sure.

10 Q Okay.

11 MR. LEVENTHAL: Page eight I'm showing the State. May I
12 approach?

13 THE COURT: You may.

14 MR. LEVENTHAL: Thank you. If you could just read.

15 THE WITNESS: I was estimating we were probably going ten
16 or 15 miles per hour.

17 MR. LEVENTHAL: No, I'm sorry, read it to yourself.

18 THE WITNESS: I'm sorry.

19 MR. LEVENTHAL: I apologize.

20 THE WITNESS: Okay.

21 BY MR. LEVENTHAL:

22 Q Does that refresh your recollection that on the evening that
23 you did an interview you told the detectives that you were going ten to
24 15 miles an hour when you decided to strike the suspect in the legs;
25 correct?

1 A Yes.

2 Q Thank you.

3 A It's in the same range.

4 MR. LEVENTHAL: Thank you very much. I pass the witness.

5 THE COURT: Anything else from this witness?

6 MR. GIORDANI: No, Your Honor. Thank you.

7 THE COURT: Okay. All right. We have a question. Number

8 11.

9 [Bench conference -- begins]

10 THE COURT: You may approach. He can't answer this and
11 I'm not going to allow it and it's completely irrelevant.

12 MR. TENASI: If he knows.

13 MS. LEXIS: I don't think it's proper.

14 MR. TENASI: I don't think he knows either.

15 THE COURT: Yeah.

16 MR. LEXIS: I don't think so.

17 THE COURT: How would he know?

18 MR. TENASI: Yeah.

19 MS. LEXIS: Agreed.

20 [Bench conference -- concluded]

21 THE COURT: At this time the Court is going to mark the
22 question as Court's Exhibit number 11 and the Court's not going to ask
23 it. Anything else in this follow-up?

24 MR. GIORDANI: No, Your Honor.

25 MR. LEVENTHAL: No, Your Honor. Thank you.

1 THE COURT: Okay. Thank you very much for being here.
2 You may step down and you are excused from your subpoena.

3 THE WITNESS: Thank you very much.

4 THE COURT: All right. Thank you. Can I just have the
5 attorneys for a moment so I can give the jury a time to come back?

6 [Bench conference -- begins]

7 THE COURT: Wait time do you have your witness?

8 MR. TANASI: He's ready to go at 1 o'clock. We can power
9 through or --

10 THE COURT: Okay.

11 MR. TANASI: -- we can maybe have a lunch break.

12 THE COURT: Is your witness -- well, no, I've got to let
13 everybody go to lunch.

14 MR. TANASI: That's what I was thinking so --

15 THE COURT: Yeah.

16 MR. TANASI: He's ready for one but -- so any time after that.

17 MS. LEXIS: We can do 1:30 if you want.

18 THE COURT: And then --

19 MR. TANASI: Okay.

20 THE COURT: -- yeah, but then we're done so we have to
21 settle instructions.

22 MR. TANASI: Settle instructions and we'll come in knowing
23 after the break whether Mr. Matthews is going to testify or not.

24 MS. LEXIS: That's right.

25 THE COURT: Okay.

1 MR. TANASI: We'll cover that as well and then I thought we
2 can cover jury instructions.

3 THE COURT: Okay.

4 MS. LEXIS: That's right.

5 MR. GIORDANI: You want to rest now or just rest
6 afterwards?

7 MS. LEXIS: We'll rest now.

8 MR. GIORDANI: Okay.

9 THE COURT: So, I'm going to say 1:45 so I have a little -- an
10 hour and a few minutes.

11 MR. GIORDANI: Say we'll rest after lunch if that's okay.
12 We're going to check exhibits --

13 THE COURT: Sure, sure.

14 MS. LEXIS: Exhibits and things.

15 THE COURT: Sure. No problem.

16 MR. GIORDANI: Thank you.

17 [Bench conference -- concludes]

18 THE COURT: Okay. At this time, Ladies and Gentlemen,
19 we're going to recess for lunch. During the recess, you're admonished
20 not to talk to converse among yourselves or with anyone else on any
21 subject connected with this trial or read, watch or listen to any report of
22 or commentary on the trial or any person connected with this trial by any
23 medium of information, including without limitation, newspapers,
24 television, the internet or radio or form or express any opinion on any
25 subject connected with this trial until the case is finally submitted to you.

1 We'll be in recess till 1:45. Thank you. Yeah 1:45.

2 [Recess taken at 12:40 p.m.]

3 [Proceedings resumed at 1:46 p.m.]

4 [Outside the presence of the jury]

5 THE COURT: Okay. The record will reflect that the hearing is
6 taking place outside the presence of the jury panel. Mr. Matthews is
7 present. Do you want me to canvass your client now? I mean, he has
8 heard all of the evidence being introduced against him because the
9 State is going to rest; correct?

10 MR. LEVENTHAL: Correct. The State's going to rest. Okay.
11 Go ahead. We can canvass him now as soon as he gets his tie on and
12 he can pay attention.

13 MR. GIORDANI: And before you start, Your Honor, in that
14 packet of instructions I did include a *Carter* instruction for the Defense.

15 THE COURT: Okay. All right. Mr. Matthews, you understand
16 that you have heard all of the evidence that would be introduced against
17 you by the State of Nevada?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And you understand under the Constitution of
20 the United States and the Constitution of the state of Nevada you may
21 not be compelled to testify in this case; do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. You may, at your own request, give up
24 this right and take the witness stand and testify. If you do, you'll be
25 subject to cross-examination by the Deputy District Attorney and

1 anything that you may say, be it on direct or cross-examination, will be
2 the subject of fair comment when the Deputy District Attorney speaks to
3 the jury in his or her final argument; do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. If you choose not to testify, I will not
6 permit the Deputy District Attorney to make any comments to the jury
7 because you have not testified; do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. And if you elect not to testify I will
10 instruct the jury but only if your attorney specifically requests as follows.
11 The law does not compel a Defendant in a criminal case to take the
12 stand and testify and no presumption may be raised and no inference of
13 any kind may be drawn from a failure of a Defendant to testify; do you
14 understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you have any questions about these rights?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. You also are further advised if you have
19 a felony conviction and more than ten years have not elapsed from the
20 date you've been convicted or discharged from prison, parole or
21 probation, whichever is later, and the Defense has not sought to
22 preclude that from coming before the jury and you elect to take the stand
23 and testify, the Deputy District Attorney in the presence of the jury will be
24 permitted to ask you the following. Have you been convicted of a felony,
25 what was it, when did it happen, however no details may be gone into;

1 do you understand that?

2 THE DEFENDANT: Does it mean like -- well I know I have it
3 but does it mean like my [indiscernible] --

4 THE COURT: Well, let me ask you this. Does the State have
5 any prior felonies --

6 MR. GIORDANI: No.

7 THE COURT: -- that would -- okay so no. If you took the
8 stand and testified they do not have any prior felonies that you'd be
9 subject to cross-examination; do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you understand the decision as to whether
12 to testify or not is a decision that should be made after consulting with
13 your attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And I'm assuming you've had the opportunity
16 to do that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And you understand regardless of what your
19 attorneys say, it is your decision and your decision alone as to whether
20 or not you will testify; do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And have they answered all your questions?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have a -- do you have any questions
25 for the Court?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you made the determination as to
3 whether you're going to testify?

4 THE DEFENDANT: I choose not to testify.

5 THE COURT: Okay. If you change your mind because your
6 attorneys are going to call a witness, you just have to let me know.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. When the jury comes back in the
9 State's going to rest their case and then you can call your next witness.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: How long will this witness take?

12 MR. TANASI: Your Honor, direct I would anticipate no longer
13 than a half hour and that's probably --

14 THE COURT: Okay. So, maybe another hour and then we'll
15 have to break for instruction -- okay.

16 MR. GIORDANI: I'm sorry. Did I inquire? Are all the State's
17 proposed exhibits admitted at this point?

18 THE COURT CLERK: Yes.

19 MR. GIORDANI: Okay. So, we will rest as soon as they
20 come.

21 THE COURT: Okay.

22 MR. TANASI: And there are stipulations, Your Honor, with
23 respect to the Defense exhibits. You want to cover those now or --

24 THE COURT: Sure, go ahead.

25 MR. TANASI: Okay. And I apologize. I don't have them in

1 front of me. If I can just approach the clerk.

2 MR. TANASI: Okay, Your Honor. Let me make sure we're
3 on the same page. All right, Your Honor. So, we'll be admitting Defense
4 Exhibit E. That's the entire exhibit --

5 THE COURT: Okay.

6 MR. TANASI: -- in this case and it's a Temporary Order for
7 Protection against Domestic Violence and it's dated 4/7/06 to 4/25/06.
8 There is one caveat, Your Honor, that we have on that and it's only --
9 actually, I apologize. That would be the -- Court's indulgence. This is
10 the entire document, Your Honor. I apologize. This will be entered in its
11 entirety.

12 THE COURT: Okay. Exhibit E.

13 MR. TANASI: Exhibit E, yes, ma'am.

14 THE COURT: Any objection?

15 MR. GIORDANI: No, Your Honor.

16 THE COURT: Exhibit E is admitted.

17 **[DEFENSE EXHIBIT E ADMITTED]**

18 MR. GIORDANI: Well, the only thing is though that A through
19 -- all the exhibits before aren't going to be admitted. So, it might need to
20 be re-lettered; right?

21 THE COURT: No, it can be E.

22 MR. GIORDANI: Oh, okay.

23 THE COURT: Yeah, who cares, yeah.

24 MR. TANASI: And then, Your Honor, just the first page --

25 THE COURT: Right?

1 MR. TANASI: -- as Exhibit -- I guess we'll call this F.

2 THE COURT: Okay.

3 MR. TANASI: -- for now, Your Honor. This is also another
4 version of the TPO with a different date range. This has 4/25/06 to
5 4/25/07. So, that's an extension on it.

6 THE COURT: Okay. So, I just want to make sure so the
7 record's clear.

8 MR. TANASI: Yeah.

9 THE COURT: Are you referring to the exhibit letter that it is
10 currently marked?

11 MR. TANASI: I am, Your Honor.

12 THE COURT: Okay. I just wanted to make sure. So, F, any
13 objection to F?

14 MR. GIORDANI: Well, there's --

15 MR. TANASI: That will just be the first page. The one page --
16 it's a five page document, but the only admission will be the first page of
17 it because the remainder of the document has prejudicial information in
18 it.

19 THE COURT: Okay. So, why don't you come and mark
20 whatever it is you want to admit.

21 MR. TANASI: Okay.

22 MR. GIORDANI: And just for the record the State -- just for
23 the record the State and Defense met and conferred on both of these
24 that we [indiscernible].

25 THE COURT: Okay.

1 MR. TANASI: All right, Your Honor. So, Exhibit F is just the
2 one page.

3 THE COURT: Okay.

4 MR. TANASI: And that is dated 4/25/06 to 4/25/07. That
5 extends the TPO.

6 THE COURT: Okay.

7 MR. TANASI: There's also, and I guess we can just raise it
8 now, a verbal stipulation by the parties that we'd ask to be read in, and
9 that's that the stipulation or the restraining orders cover the address at
10 1301 Jimmy Avenue. That's the object of the temporary restraining
11 orders.

12 MR. GIORDANI: That's accurate.

13 THE COURT: Okay. So, do -- you can read -- when do you
14 want that stipulation read?

15 MR. TANASI: I think, Your Honor, when just before Defense
16 rests at the very end, I think, yeah.

17 THE COURT: Okay. No problem.

18 MR. TANASI: All right.

19 THE COURT: Just don't forget.

20 MR. TANASI: I won't. And that covers it, Your Honor. Thank
21 you.

22 THE COURT: Okay. So, E and F.

23 MR. TANASI: And the remainder are withdrawn, Your Honor.
24 I apologize.

25 THE COURT: Okay.

1 MR. TANASI: When I say remainder it's from the prior trial so
2 I'm not referencing it.

3 THE COURT: Okay. No problem.

4 MR. TANASI: All right. Thank you.

5 THE COURT: Okay. Do we have a full panel.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Can we bring them in? Are you ready?

8 MR. TANASI: Yes, we are. Thank you, Your Honor.

9 MR. GIORDANI: Yes.

10 THE COURT: Okay. You can bring them in. And you
11 checked your witness is here; correct?

12 MR. TANASI: He's here. I just met with him a minute ago.

13 [Inside the presence of the jury]

14 THE COURT: Okay. Does the State stipulate to the presence
15 of the jury panel?

16 MR. GIORDANI: Yes, Your Honor.

17 THE COURT: The Defense?

18 MR. TANASI: Yes, Your Honor.

19 THE COURT: Okay. Does the State have any further
20 witnesses that they intend to call in this matter?

21 MR. GIORDANI: No, Your Honor. At this time the State
22 would rest.

23 THE COURT: Okay. At this time, Ladies and Gentlemen, you
24 have heard all of the evidence that will be introduced by the State of
25 Nevada. The Defense may call their next witness.

1 MR. TANASI: Thank you, Your Honor. Court's indulgence.
2 The Defense calls Ronald Scott.

3 **RONALD SCOTT**

4 [having been called as a witness and being first duly sworn,
5 testified as follows:]

6 THE COURT CLERK: Thank you. Please be seated. Could
7 you please state and spell your name for the record.

8 THE WITNESS: My first name is Ronald, R-O-N-A-L-D
9 middle initial is R, and my last name is Scott S-C-O-T-T.

10 THE COURT CLERK: Thank you, sir.

11 MR. TANASI: May I, Your Honor?

12 THE COURT: You may.

13 MR. TANASI: Thank you.

14 **DIRECT EXAMINATION**

15 BY MR. TANASI:

16 Q Good afternoon, Mr. Scott, how are you?

17 A Good afternoon.

18 Q Could you please tell the jury what you do for a living?

19 A Well, I'm retired from Massachusetts State Police and I am
20 now an independent forensic consultant. I specialize in firearms,
21 ballistics, and shooting reconstruction and all the categories that fall
22 under those.

23 Q Okay. What training and schooling do you have related to
24 forensic firearms and ballistics?

25 A Well, I have about 55 years in total with firearms. It goes back

1 to my military service beginning in 1963. I actually specialized in
2 firearms, explosives, and repair of small arms, and went to a number of
3 schools, and I served at the Aberdeen Proving Ground in Maryland.
4 And then I spent time overseas working in the same area.

5 In 1979, I had already been a member of the state police for
6 about six years at that time. I was informed that there was an opening in
7 the crime lab, specifically in the ballistic section of the state police, and I
8 was asked if I would be interested in going into the forensic aspect of it.
9 So, it was at that time in 1979 that I went into the crime lab. I stayed
10 there for 13 years. I actually became the commanding officer at the
11 firearms section. I had other assignments in the interim. I was stationed
12 at a barracks for the first six years. I did investigations. I was in a rural
13 state police barracks. So, we were actually the police department for
14 some cities and towns in the area.

15 And then after I had left the firearms section in 1992 because
16 of my rank, I became the commanding officer of a shift for what we
17 called the troop, and that would have been six barracks. So, I had about
18 250 officers, male and female, under my command. I then requested
19 and became the commanding officer of a state police station on Revere
20 Beach in Massachusetts. I had about 65 officers at that time.

21 I then went back to the troop level after a couple years, and I
22 ended up my career in -- what is called the staff inspector. I went
23 around unannounced to various divisions of the state police and I would
24 just show up at 7 o'clock in the morning and I was going to conduct
25 inspections of drug rooms, inventory contraband, inspect the offices, and

1 just -- it's actually a position that I worked directly for the colonel and we
2 more or less kept all of our organizational entities on their toes and in
3 compliance with the policy of the department.

4 Q So, how many years in total did you work in law enforcement?

5 A Twenty-five and a half years.

6 Q Okay. And what rank did you reach?

7 A I reached the rank of lieutenant. It's a little bit different from
8 the local police. The rank of lieutenant is actually a five branch up. So,
9 it would have been equal to the -- to a local police promotion -- for
10 promotion. My rank was equal to that of a deputy chief in a local police
11 department.

12 Q And have you ever testified in state court before as an expert?

13 A In this court or any court?

14 Q Any state court here in Nevada, Clark County?

15 A I've testified in every state -- state courts except for Hawaii,
16 and I've testified here in Clark County here in this court and I believe
17 before this judge 15 or 20 times, and I've testified at the federal level
18 throughout the country, the Virgin Islands, Canada, Great Britain, Haiti,
19 and the federal court here in Las Vegas right over here.

20 Q All right. And of those times, the 15 to 20 times that you
21 testified here in Nevada state court, Clark County state court, how many
22 times did you at the request of the Defense?

23 A For the Defense?

24 Q Yeah.

25 A In Clark County?

1 Q Yes, sir.

2 A All of them.

3 Q Okay.

4 A All of them.

5 Q How about over in federal court?

6 A Federal court, I testified for the United States Attorney.

7 Q Okay. That's the prosecutor over there in federal court?

8 A Yes.

9 Q Okay. All right. Are you familiar, sir, with gunshot residue?

10 A I am.

11 Q Okay. What specific training and experience do you have with
12 respect to gunshot residue?

13 Q Pertaining to -- well, first of all part of the training when I went
14 into the crime laboratory was to pick up on the forensic aspects of
15 firearms as opposed to the operational and design functions which I was
16 already familiar with. So, the forensic aspects were how to interpret
17 evidence resulting from gunshot such as trajectories, et cetera.

18 But as far as the gunshot residue, I underwent a two year
19 apprenticeship in the crime lab with other senior ballisticians that were
20 there before me. During that two years, I attended a number of training
21 courses given by the Department of Justice by the Massachusetts
22 Criminal Justice Training Council. And I did go down to the FBI
23 laboratory approximately five times where I undertook some gunshot
24 residue testing and actually watched how it was done. And then of
25 course there was learning how to actually collect it and how to interpret it

1 in relation to crimes.

2 Q So, fair to say you're not a scientist as you sit here; right?

3 A I don't consider myself a true scientist.

4 Q But fair to say you're an expert on the source of gunshot
5 residue?

6 A I would agree with that.

7 Q Okay. So, we talked around it a little bit, but what is gunshot
8 residue?

9 A There's actually two categories of gunshot residue. One is the
10 gunshot residue which is utilized to determine the distance at which a
11 gun was fired, and that just includes what is called stippling, in other
12 words, propellant particles that are propelled by the muzzle of a gun and
13 can land on a victim and creates small pot marks at a certain distance.
14 And then there's the -- there's the soot and the heat of a muzzle blast
15 which can tell us how close a gun was to a person if they have
16 indications of gas wounds or searing or burning of the clothing.

17 The second type of gunshot residue is the non-visible. It's the
18 microscopic portion and that is the elements that are contained in the
19 primer of a cartridge case that when the firing pin strikes the primer it
20 creates a spark, and it's that spark that makes the propellant. So, if the
21 spark is created by the combination of barium lead and antimony and
22 when the primer cup is crushed, this causes a spark or heat and then it
23 makes the propellant. So, gunshot residue, as we're talking about in this
24 case, is barium lead and antimony from the primer of the cartridge case.

25 Q What happens with those three elements?

1 A Those three elements come out of the muzzle which is the
2 end of the barrel of the gun and they come out in what we call the
3 muzzle blast; it's a vaporous plume. It's usually not visible to the naked
4 eye, usually it's not. It comes out a short distance, very hot. It's on the
5 order of a couple thousand degrees, and it cools very quickly. As it
6 cools, the elements of barium lead and antimony may or may not fuse
7 together. So, it's this -- these elements in that plume of vaporous cloud
8 -- vaporous plume that we're interested in when we're looking at gun
9 shot residue that's tested for and eventually placed into an instrument
10 for analysis.

11 Q Is there any significance to residue with only one or two of
12 those elements fused versus all three?

13 A There is significance to the -- what is called the gun -- to
14 abbreviate it -- gunshot residue I'll refer to as GSR.

15 Q Okay.

16 A So, the answer to your question is when we're talking about
17 the elements, we're talking about the population of GSR particles.

18 Q What's that?

19 A As I mentioned, we have barium, we have lead and antimony
20 and they can fuse together. Now, sometimes all three elements will fuse
21 together. Sometimes we'll only see one element or we may only see
22 two of the elements. It might be barium and antimony, barium and lead,
23 antimony and lead. So, it can be a combination of all three, one or two.

24 Q In preparing for today's testimony, did you have an opportunity
25 to review the file in this case, different transcripts from prior proceedings,

1 reports prepared by different officers and specifically Ms. Vachon's
2 report?

3 A I did.

4 Q Okay. And did you review that report, if you recall, with
5 respect to the opinions that she rendered related to Mr. Matthews?

6 A Yes.

7 Q Okay. And also with respect to those opinions related to the
8 red glove? Do you recall those opinions?

9 A Yes, I did.

10 Q Okay. Do you agree or disagree with the opinions reached by
11 Ms. Vachon?

12 A I disagree.

13 Q Why is that?

14 A The opinions that were given do not meet the standards that
15 are published by the FBI to express the opinions that I read which she
16 gave in the report.

17 Q So, how so, if we could kind of unpack that a little bit, and let's
18 talk maybe specifically about the opinions related to the palm of the right
19 hand on Mr. Matthews; do you recall that in those opinions?

20 A I recall that, yes. Well, I mentioned that the GSR more than
21 covers our population. The GSR population, in other words would be, if
22 I test this manila folder, what the population of particles on this surface
23 that are either made up of barium, lead or antimony or all three or only
24 two of them. So, what would the population be on this specific item as
25 opposed to everything in this room.

1 The FBI has stated that there has to be a minimum of three
2 particles that contain all three of the elements. In other words, in order
3 for -- if there was gunshot -- purported gunshot residue on this folder, I
4 would have to have at least three particles found that have all three
5 elements, barium, lead and antimony. If there's less than three even
6 though there would be other particles with two, I would not be able to
7 conclude, according to the FBI standards, that that was the result only of
8 gunshot residue to the exclusion of anything else.

9 Q What are general -- what are the sources of gunshot residue?

10 A Gunshot residue as it -- in other words, as it's on a surface --

11 Q Yes, sir.

12 A -- anything. A person who has fired a weapon so the weapon
13 itself would be a source. If you're in the vicinity of a person who has
14 fired a weapon, in this courtroom a person fired a weapon, gunshot
15 residue was -- it is so fine it is finer than talcum powder. It just -- it
16 floats, it's an air borne. So, if you're in the vicinity, a closed vicinity, it
17 would be even more likely.

18 And then there is the handling of a gun which has been fired
19 and the time frame could be going to the firing range today and picking
20 that gun up a month from now. That gunshot residue is going to be on
21 my hands when I pick that gun up. The fourth is the transfer whether it
22 be intentional or inadvertent. It's the transfer of GSR particles from any
23 surface, that includes from another person's hands; it includes the most
24 abundant places that have been found in the studies that were published
25 back as far as, I believe in 2005, the most abundance places are law

1 enforcement environments such as police cruisers, police stations,
2 police holding rooms, like cells, and military environments where guns
3 and evidence are usually found that would have GSR.

4 Q Okay. So, of those four is there is a hierarchy of significance
5 between them? In other words, of those four is anyone more likely than
6 the other?

7 A Not without scientific proof. And by that I mean if you had a
8 videotape of a person shooting a firearm and then you tested them for it,
9 the videotape would show that he was shooting the firearm so you'd be
10 able to show scientifically that that person was both shooting a firearm
11 and in the vicinity of one. However, when you don't have that scientific
12 proof then the subsequent source is equal, it's an equal spectrum. You
13 just can't tell where it came from.

14 Q So, again, going back to this case in particular having
15 reviewed the file, we'll call it, have you had an opportunity to identify
16 different sources of transfer?

17 A Yes, I have.

18 Q Okay. And what are those potential sources of transfer in this
19 case?

20 A Well, Mr. Matthews, from the police reports I read, was
21 handcuffed. So, that's one source. It's a possibility that if any of the
22 officers had handled their weapons that night, police holsters are
23 notoriously packed with GSR particles. Police officers don't clean their
24 holsters. It's just a fact of life. I never did in twenty-five and half years.

25 So, if any officer took their firearm out of their holster, handled

1 their weapon in any manner, and then handled Mr. Matthews, there
2 could be a transfer. As I mentioned before, the studies have shown that
3 police vehicles -- and police vehicles because police vehicles just aren't
4 sanitized after each shift. It's -- it can't be done. It's not realistic. So,
5 you might have other suspects at other times that have been in the area
6 where a prisoner or suspect has been placed that are being transported,
7 and then the handling, further handling by police officers when they're
8 guiding a suspect out of -- in and out of a vehicle. The police station
9 itself, interview rooms. The actual laboratories themselves have been
10 found to be contaminated with airborne -- this very light talcum powder
11 type particles.

12 Q So, you said the laboratories themselves have been found to
13 have contaminations that are airborne; where did that come from?

14 A Well, actually I conducted a study with the state police back
15 on -- I didn't conduct the study. I was a member of the ballistics section
16 for the state police in 1979 on to 1992. Just prior to about 1984 I believe
17 or '85, one of the officers in the section indicated that he was concerned
18 about the air, the quality of the air in our crime lab. And so the
19 commanding officer at the time, Lieutenant McGinness [phonetic]
20 initiated a study through the Massachusetts environmental agency. We
21 had the air quality tested and we found out that it was just loaded with
22 gunshot residue, mostly with lead because we tested the guns, but there
23 was also found to be the barium lead and antimony. [Indiscernible] we
24 had the shooting tank in a separate room, but it did float out. That was
25 my first exposure to the contamination that occurs in the lab.

1 In the years since there has been a number of studies done
2 and one I just received last week on September 25th. I'm a member of
3 a committee, a national committee, that's working on setting the
4 standards in how gunshot residues and any type of firearms conclusions
5 will be expressed both in writing and in testimony. And one of the
6 studies we received just last week talked about contamination in crime
7 labs. It was done by the National Institute of Science and Technology
8 which is part of the United States government, and it was done in
9 conjunction with the Maryland State Police and there are some articles
10 that were incorporated into this study, and I have the study with me. I
11 could list all the references if need be. What it found was it was related
12 mostly to drugs and once this study was published it came to our
13 committee and we realized that this was an important finding in relation
14 to gunshot residue because gunshot is a talcum like powder.

15 What the study showed was they did an unscheduled
16 sampling of the Maryland State Police crime lab and what they did is
17 they tested surfaces, they tested door handles, they even tested the
18 evidence room that was outside of the laboratory, and they found out
19 that the laboratory was contaminated with traces of cocaine, fentanyl,
20 methamphetamine, and others. And, again, I have the study with me. I
21 could list them all.

22 And so crime labs themselves are now going to be under
23 scrutiny to set in place protocols to ensure that these airborne
24 substances, whether they be drugs, gunshot residue or airborne
25 pathogens from blood, there's going to be new standards put in place to

1 prevent contamination, but right now it's a problem.

2 Q Fair to say those standards didn't exist in 2006?

3 A They did not exist in 2006.

4 Q Okay. Coming back just to Mr. Matthews particularly and
5 what you've reviewed in the case preparing for today's testimony, did
6 you see any evidence of Mr. Matthews' hands being in a bag or
7 protected in any way by his -- the gunshot residue tests in our sampling?

8 A His hands were not bagged.

9 Q Okay. In your review of the file prior to today's testimony, did
10 you happen to see which -- what time exactly Mr. Matthews' hands were
11 sampled?

12 A It's a bit confusing. But one of the forms indicates that -- I
13 think the gentleman's name is Mr. McPhail -- took samples at 3 o'clock
14 of the following morning after the shooting.

15 Q In reviewing Mr. McPhail's reports and testimony in a prior
16 proceeding, did you get any other indications as to kind of a chronology
17 of events leading up to the sample?

18 A I did.

19 Q Could you tell us about that?

20 A I read that Mr. Matthews was arrested in -- in I don't know the
21 name of the apartments, but it was a location somewhere here in Las
22 Vegas. He was transported, I believe, to the University Medical Center
23 due to some bites by the police dog. I don't have an indication how long
24 he was there or what he was in contact with. He was then transported
25 back, I believe, to the general area of the -- where the shooting took

1 place, and he was -- the handcuffs were removed by an unknown officer
2 and it was at that point that Mr. McPhail either took the first sampling or
3 took a second sampling. It's unclear. And then he was transported
4 again down to the -- at this time to the, I guess, the Metropolitan -- Las
5 Vegas Metropolitan Police station, and I don't know whether he was in a
6 holding cell or eventually into an interview room and then eventually -- I
7 believe he was arrested.

8 Q Let's talk a little bit about rounds that are fired and let's --

9 A I'm sorry?

10 Q Let's talk a little bit about rounds that are fired from a gun --

11 A Okay.

12 Q -- and its correlation, if any, to the amount of gunshot residue
13 on a person. Is there a correlation between those two things?

14 A Yes.

15 Q Okay. How so?

16 A Well, gunshot residue is -- the source of gunshot residue --
17 one of the sources of gunshot residue is firing a gun. That would be one
18 source.

19 Q So, fair to say that more rounds that are fired the more
20 gunshot residue you would expect on a suspect?

21 A Yes.

22 Q Okay.

23 A Depending upon the, you know, like I say an enclosed
24 environment. I would expect there to be a lot more particles --

25 Q Okay.

1 A -- in an open environment be less.

2 Q And if there were a lot of rounds that were being fired, would
3 you expect to find gunshot residue on the individual and places other
4 than their hands?

5 A Yes.

6 Q Where?

7 A All over his body, her body. It would be in the hair, face,
8 hands, on clothing, pants, shoes.

9 Q Anything?

10 A Anything, anything. If a gunshot was fired in this room,
11 several gunshots, it would be all over the surfaces, it would be all over
12 the jurors, it would be on you, me, the judge.

13 Q And stating the obvious. The only way you would find that if
14 you tested those areas of the person's body or clothing; correct?

15 A You have to actually take samples.

16 Q And then --

17 A And then test it.

18 Q And in this case what samples did you see in your review of
19 the file as it relates to Mr. Matthews?

20 A Well, they tested -- they sampled Mr. Matthews' hands. That's
21 all they sampled with Mr. Matthews.

22 Q Okay. And did you see any sampling of any of Mr. Matthews'
23 clothing in this case?

24 A None has been reported.

25 Q Any sampling of his shirt?

1 A No.

2 Q Any sampling of his pants?

3 A No.

4 Q Any sampling of his arms?

5 A None that I'm aware of.

6 Q Any sampling of his face?

7 A No.

8 Q His hair?

9 A No.

10 Q Are you aware or familiar with whether or not law enforcement

11 nationwide is utilizing gunshot residue testing as we sit here today?

12 A I'm aware of the historical nature of it and what its present

13 state is today.

14 Q And what's its present state, sir?

15 A The present state today is that gunshot residue analysis -- and

16 we're talking again only about the barium lead and antimony aspect of it

17 --

18 Q Okay.

19 A -- is it is becoming less -- is being done less by most police

20 departments.

21 Q And why is that?

22 A The issue of reliability as I mentioned about contamination is

23 the main issue. We don't know where gunshot residue comes from,

24 can't say came only from a firearm, and there is another study out in

25 2002. A gentleman by the name of Torre actually found that barium lead

1 and antimony can come from brake linings of motor vehicles and trucks.
2 So, that was a sort of watershed study that put into motion the issue of --
3 for defense attorneys to challenge the presence of gunshot residue in
4 Court because if you don't know what a suspect or a Defendant has
5 done prior to an incident occurring, then you can't say that gunshot
6 residue occurred only from a gunshot. There's just no way of knowing
7 that unless, like the example I gave you where you have a videotape of
8 the person that you arrest and it shows him shooting a gun.

9 So, as time has gone on and with the latest study that just
10 came out last week most police departments, and I know in Arizona The
11 Department of Public Safety stopped it several years ago. The only
12 police department in Arizona that does it is the Phoenix police. All the
13 other police departments have stopped doing it. So, it has gone down in
14 reliability over the years because of the challenges put to it and because
15 the main thing is the contamination and transfer issue.

16 Q Sir, is there any way to connect gunshot residue to a particular
17 gun?

18 A No. You cannot. Even if you have a gun that is found on a
19 Defendant and you can match the bullets to the victim, you cannot
20 match gunshot residue to that gun. That's -- that has not been
21 developed scientifically yet.

22 Q So, I want to jump back for a second.

23 A Okay.

24 Q You talked about bagging.

25 A Okay.

1 Q Why is that important?

2 A Bagging, preferably by bagging, we're talking about paper
3 bags not plastic because plastic causes sweating and moisture which
4 can cause more contamination. So, bagging. Paper bags are for
5 breathing of any area you want to eventually sample. Because gunshot
6 residue can fall off, movement -- if your hands are in a bag you test the
7 hands then you test the bag. You get inside of that bag and you dab the
8 bag because something's falling off those hands it's in the bag. So,
9 bagging preserves evidence and it prevents, the second part of this, is it
10 prevents that person who has gunshot residue on them from getting in
11 the police car and as they're sitting with their hands behind their back
12 and doing whatever they're doing now that police car is becoming
13 contaminated, as I mentioned earlier. So, it protects -- it prevents
14 contamination and it preserves evidence, two aspects to that.

15 Q Based on your training in law enforcement and your
16 experience in law enforcement and you would call it dynamic, a dynamic
17 situation or environment, is it unreasonable to expect bagging to occur in
18 that scenario?

19 A Not at all. It's very common now.

20 Q So, your -- how are you being compensated for your testimony
21 here today?

22 A The county -- Clark County -- it's called the Office of
23 Appointed Counsel --

24 MR. GIORDANI: I would object at this point.

25 THE COURT: The objection's sustained. If you want to

1 approach.

2 MR. GIORDANI: Sure.

3 [Bench conference -- begins]

4 MR. TANASI: I have no problem with [indiscernible].

5 MR. TANASI: Because I don't know what the objection is.
6 Can I respond? Oh, sorry.

7 THE COURT: So, I think -- yeah, I stopped him as I just
8 wanted to make sure that he didn't testify that he's being paid by the
9 County because you guys are appointed counsel.

10 MR. GIORDANI: He was going to say Office of Appointed
11 Counsel.

12 MR. TANASI: He did say Office of Appointed Counsel.

13 THE COURT: Yeah, he -- parts --

14 MR. TANASI: He did say Office of Appointed Counsel.

15 MR. GIORDANI: He can't say that.

16 THE COURT: He did.

17 MR. TANASI: [Indiscernible] of the objection.

18 THE COURT: He can't. Hey, listen, listen. You don't have
19 any objection then fine.

20 MR. TANASI: I have no objection.

21 THE COURT: Sometimes I don't think it's proper for the jury
22 to know that.

23 MR. TANASI: I mean, the strategy behind it, Your Honor, is
24 that I know Mr. Giordani has even referenced in the last cross-
25 examination, you know, of our expert. It's cross 101 to talk about how

1 it's paid which I get so --

2 THE COURT: Yeah. If you --

3 MR. TANASI: We'll let it go, we'll let it go.

4 THE COURT: If you want to ask that then I'm okay.

5 MR. TANASI: Yeah, thank you.

6 MR. LEVENTHAL: Thank you.

7 [Bench conference -- concludes]

8 THE COURT: Do you have anything further?

9 MR. TANASI: Yes, we do.

10 BY MR. TANASI:

11 Q Sir, just real briefly. Prior to this case have we ever met
12 before?

13 A No, I've never worked with you before.

14 Q Okay. Have you ever met Jemar Matthews before?

15 A I met him today about an hour ago.

16 Q Okay. Have you ever met Mr. Leventhal before?

17 A That's the prosecutor?

18 Q No. Mr. Leventhal.

19 A Oh, I'm sorry.

20 Q That's the gentleman right here.

21 A I'm sorry. You asked me if I met the Defendant; is that what it
22 was?

23 Q Mr. Leventhal.

24 A I just met him about an hour ago.

25 MR. TANASI: Okay. Thank you. I'll pass the witness.

1 THE COURT: Thank you.

2 BY MR. TANASI:

3 Q To be clear. You've never met Mr. Matthews before today?

4 A The first time I saw him was today.

5 MR. TANASI: Thank you.

6 THE COURT: Thank you. Cross.

7 MS. LEXIS: Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. LEXIS:

10 Q Hi, Mr. Scott.

11 A Hello; good afternoon.

12 Q Now, you and I have met before?

13 A I don't recall you. I recall the other prosecutor though.

14 Q Okay. Keonis Davis, the Keonis Davis trial.

15 A Oh, yes, I do, sure.

16 Q But we haven't talked concerning this particular case; have
17 we?

18 A We have not.

19 Q Okay. Nice to see you, sir, and thank you for your service.

20 A Thank you.

21 Q I know you made reference to your military service.

22 A Thank you.

23 Q Sir, you in conjunction with, you know, testifying today you
24 gave Defense counsel a copy of our CV, your curriculum vitae; did you?

25 A I did.

1 Q Okay. And that in turn to your knowledge was turned over to
2 the State; is that right?

3 A I don't know but I would assume.

4 Q Okay. I'm just going to approach briefly with your CV so that
5 you can acknowledge; does that appear to be your CV?

6 A It's not the current one I know that.

7 Q Oh, okay. Is there one that's more current?

8 A There's one a little more current. I added on a couple of
9 training issues and a presentation that I recently did. That's all.

10 Q Oh, okay, okay. So -- okay. But in terms of substance, this
11 should -- this should have most of the majority at least of the substance
12 concerning gunshot residue and things like that?

13 A Anything added to it wouldn't have changed the substance of
14 what you have.

15 Q Okay. All right. And so you initially told us and the Ladies and
16 Gentlemen of the jury that you are basically an expert in firearms and
17 ballistics and also shooting reconstruction; is that right?

18 A And I mentioned all the subtopics that fall underneath that is a
19 lengthy list.

20 Q Okay. And so on page -- I believe it's page two of your CV --
21 you noted a bunch of different topics wherein, you know, in that
22 paragraph where you say expertise?

23 A Oh, okay, yes.

24 Q Okay. So, you say you're an expert in police shootings?

25 A Yes, I am.

1 Q Crime scenes?
2 A Crime scenes.
3 Q Tool marks and micros --
4 A Microscopy.
5 Q Microscopy. Reaction time?
6 A Reaction time.
7 Q Gunshot wounds?
8 A Yes.
9 Q Distance determination testing?
10 A Yes.
11 Q Chamber pressure?
12 A Chamber pressure, yes.
13 Q Defective design?
14 A Yes.
15 Q Catastrophic failures?
16 A Yes.
17 Q Gyroscopic stability?
18 A Yes.
19 Q Photomicrographs?
20 A I'm sorry?
21 Q Photomicrographs?
22 A Photomicrographs, yes.
23 Q Bullet Drop, Path, and Lead?
24 A And lead.
25 Q Lead. Okay.

1 A Yes.

2 Q Wind deflection and diagramming?

3 A Yes.

4 Q Discharged cartridge case patterns?

5 A Yes.

6 Q Departmental review evaluation?

7 A Yes.

8 Q Prison made firearms?

9 A Yes.

10 Q And for shooting reconstruction?

11 A Yes.

12 Q Daubert and Frye?

13 A Daubert and Frye consultation.

14 Q Okay. Shooting dynamics?

15 A Yes.

16 Q Firearms safety?

17 A Yes.

18 Q Theory of identification?

19 A Yes. That actually falls in with tool mark microscopy.

20 Q Okay. I'm sorry. I don't even know what that is though. Drag

21 model analysis?

22 A Yes.

23 Q Hunting protocol?

24 A Yes.

25 Q Time, speed, and distance?

1 A That falls under shooting dynamics.

2 Q Kinetic energy calculations?

3 A Yes.

4 Q Macro measuring digital mechanical instrumentation?

5 A Yes.

6 Q Training?

7 A Yes.

8 Q Smartdraw and/or PowerPoint?

9 A Yes.

10 Q Modified, improvised, full-auto conversion?

11 A Yes. And that would fall in with prison made and homemade

12 firearms.

13 Q Okay. Gunshot distance determination testing?

14 A Yes.

15 Q Angle of incidence?

16 A Yes.

17 Q And velocity training?

18 A Yes.

19 Q And that's what you noted on your CV as your expertise?

20 A Yes.

21 Q Okay. Now, I noticed, yes or no, gunshot residue isn't exactly

22 on this list; is it?

23 A It's incorporated into a couple of those areas --

24 Q Okay.

25 A -- where we have the gunshot distance testing --

1 Q Mm-hmm.

2 A -- and gunshot wounds.

3 Q Mm-hmm.

4 A So, those would incorporate where I was originally talking
5 about stippling, soot and the heat and gas damage that is done from a
6 close -- a close gunshot. And so that would include the gunshot residue
7 aspect of it. I didn't include specifically in that barium, lead and
8 antimony, but I know that -- that's what it was meant to interpret.

9 Q Right. And I recall your direct examination where you talked
10 about the two types of gunshot residue and you made specific mention
11 of distance testing where you mentioned stippling and things like that.
12 That's the one type of gunshot residue; right?

13 A Yes.

14 Q And that's what -- that's a type of gunshot residue at least
15 expertise that you noted in your CV; right?

16 A I don't know if I note -- did it separately. Did I do it separate?

17 Q Gunshot wounds and gunshot distance determination testing.
18 Now, gunshot distance determination testing, that's for stippling and of
19 course distance as the name says; right?

20 A Yes.

21 Q And gunshot wounds, is that concerning what could have
22 caused or what type of weapon could have caused a particular wound?

23 A There's a gray area with gunshot wounds with -- I rely on a
24 forensic pathologist. But there is an area, an overlapping area and that
25 would be what we're looking at a gunshot wound or clothing that might

1 show signs of a -- and that's when we get into the distance
2 determination. So, contact wound where a firearm has been placed up
3 against a person. There's a lot of gas and heat and it creates a certain
4 type of wound, and the further out the distances goes from the person or
5 from the clothing, you get less of the gas damage but you get more of
6 the stippling and you get the soot, and then finally you get to a point of
7 about three to four feet where there's no evidence at all of what the
8 distance could be.

9 Q Okay. So, you really did answer my question. So, the two
10 types of expertise that you noted in your CV had to do with gunshot
11 wounds as you explained right now and also gunshot distance
12 determination testing; is that correct?

13 A Correct.

14 Q Okay. So, fair to say there's no mention here directly of
15 gunshot residue, testing or analysis or anything like that as it pertains to
16 primer gunshot residue?

17 A It's not listed in -- specifically listed, correct.

18 Q Okay. It's not specifically listed in your area of expertise?

19 A That and many other things are not specifically listed.

20 Q Okay. But you mentioned 32 areas in your CV?

21 A I'm not going to disagree if you counted them.

22 Q Okay. You just tend to leave some things out?

23 A Some things I left out. but I know that when I'm talking about
24 them that they would have been included within --

25 Q Okay. Let's just talk to you briefly about primer gunshot

1 residue specifically; right?

2 A Okay.

3 Q You testified on direct examination that by all means you're
4 not a scientist; correct?

5 A Not what we call a true scientist.

6 Q Okay.

7 A In the sense that --

8 Q Either a fake scientist or not -- is that false scientist?

9 A Like a -- I'm not a physics scientist. I'm not a atomic scientist
10 in that aspect of it.

11 Q Okay. And you mentioned you read the reports provided by
12 an individual by the name of Crystina Vachon; right?

13 A Yes.

14 Q And she is actually a forensic scientist with Bexar County; is
15 that right?

16 A I don't know what she is. I mean, I don't disagree.

17 Q Okay, okay. I mean, do you need to see her report where she
18 signs her name and then it says forensic scientist?

19 A I agree.

20 Q Okay.

21 A No issues.

22 Q So, she would be -- would she be a true scientist in your
23 opinion?

24 A Well, that's debatable.

25 Q Uh-huh.

1 A And not Crystina herself.

2 When people apply for jobs at a crime lab they start out as a
3 forensic scientist 1. I personally am aware of people who have come
4 out of college with a degree in zoology and they're working at a crime
5 lab and they're classified as a forensic scientist. So, I think that there's a
6 -- it's questionable as to what a true scientist is as opposed to someone
7 who might be an expert of what I prefer to call myself a forensic
8 consultant. But I'm certainly not going to argue that that's what most
9 crime labs now tend to call people whether they be there one day or
10 they be there 30 years. They start as a forensic scientist and then
11 forensic scientist 1, 2, 3 and 4.

12 Q Well, how about if I were to tell you that Ms. Vachon has been
13 employed with Bexar County and conducting gunshot residue testing
14 and analysis for the last 15 years and has actually conducted thousands
15 of these tests?

16 A I think she's been employed longer than 15 years.

17 Q Okay. At least 15 years?

18 A Yes.

19 Q Okay. In the trace evidence section which specifically
20 concentrates also on gunshot residue?

21 A Yes.

22 Q Okay. And she uses those micro -- you know, the SEM, the
23 scanning electron microscope, to actually conduct the test
24 [indiscernible]?

25 A That's actually the instrument that you place samples in. You

1 calibrate it and turn it on. It does it automatically and it gives you a
2 printout of graphs and you can actually take images.

3 Q Okay. And have you worked with this scanning electron
4 microscope?

5 A I don't do the actual testing. That's done usually by -- a
6 comparison I would make is a doctor doesn't do the testing of blood. He
7 takes the blood and he gives it to a laboratory. The laboratory analyzes
8 the blood and gets the results back. So, I'm the end user. I have
9 collected gunshot residue and put it into the specimen bag.

10 Q How many times?

11 A I don't know if I could give you a good answer, but I'd say at
12 least a couple hundred times.

13 Q Okay. And how many times have you used the scanning
14 electron microscope to actually look at it?

15 A I don't -- I myself do not use that instrument.

16 Q Okay, okay. So, you don't have any certification such that you
17 could do that?

18 A Just knowledge and I've seen it used, but I am not qualified to
19 talk about how it even operates.

20 Q Okay. So, are you familiar with the shape and morphology?
21 And that's the reason I ask about the microscope. Are you familiar with
22 the shape and morphology of what's considered primer gunshot
23 residue?

24 A Yes.

25 Q Okay. So, what shape is it supposed to have and does it have

1 a distinct shape?

2 A I mentioned the test by this gentleman by the name of Torre in
3 2002. Torre found that particles that contain the three elements of
4 barium lead and antimony, they should be spherical in nature. He found
5 that those came from -- that you can also get that same -- the
6 morphology, which is the shape, come -- can come from brake linings,
7 but also gunshot -- true gunshot residue has the same shape. And then
8 when you only have two of the elements, there's -- the shape is not
9 spherical, it's more of a jagged type uneven sharpened edged particle
10 shown.

11 Q Do you agree or disagree with this? It has -- primer gunshot
12 residue has a certain shape and morphology that's separate and apart
13 from other combinations?

14 A Yes, I do.

15 Q Okay. And would you agree or disagree with the fact that as
16 far as primer gunshot residue, you need up to ten microns inside for it to
17 be clarified; you know, that's what you would see in the microscope?

18 A I believe you're right on the ten microns.

19 Q Okay. All right. Now, you keep referencing to this brake
20 study, this brake pad study, and who did you say it was done by?

21 A A gentleman by the name of Torre. Actually it was three
22 authors. I can give you the --

23 Q Was it -- oh, was there also a AJ "Skip" Schwoeble who
24 provided that same study?

25 A I believe it is.

1 Q Okay. All right. So, let's just talk about that a little bit, that
2 brake pad study.

3 A I'm sorry, it wasn't.

4 Q Okay.

5 A It was Torre Mattutino, Vasino and Robina.

6 Q Okay. Did you because of your gunshot residue and your
7 experience with gunshot residue testing and analysis, did you attend the
8 Forensic Science Symposium held by the FBI in 2006?

9 A I did not attend it.

10 Q Okay.

11 A I have read the -- read the report, the --

12 Q Okay. So, you're familiar with a study not by Torre but by an
13 individual named AJ "Skip" Schwoeble who provided data from 20
14 Volkswagen brake discs?

15 A Actually --

16 Q Are you familiar with that one?

17 A Actually, I know that name. I've seen it. I know I've got it here
18 some place. I know that name, yes.

19 Q Okay. Let me know if this rings a bell. He observed that all
20 potential GSR particles also contained MG-SI/FE constituents thereby
21 disallowing a conclusion of positive firearm related residues; do you
22 remember that?

23 A I don't recall that.

24 Q Okay. How about a holding that says John Giacalone study of
25 brake pads supported his work in concluding that GSR like particles

1 could be produced from brake pads, but the exclusion based on non-
2 allowed elements and the morphology specially associated with GSR
3 make it possible to distinguish between brake dust and firearm GSR?

4 A I've read something similar to it. I don't know if this --

5 Q But I'm asking about this one in particular; do you recall this?
6 I mean, it was published --

7 A I don't recall --

8 Q -- pursuant to the 2006 FBI symposium on gunshot residue
9 which you indicated you read?

10 A I don't know if I read. I know I've read that symposium report.
11 I have that.

12 Q Okay. So, fair to say that there is a certain morphology in
13 shape with primer gunshot residue such that it is possible to distinguish
14 between brake dust and firearm gunshot residue?

15 A That was reported in 2006. There have been changes --

16 Q My question is --

17 A -- there have been changes since then.

18 Q Okay. My question is are you familiar with that holding or with
19 that conclusion based on this similar brake study or brake pad study
20 conducted by Giacalone from the 2006 FBI symposium?

21 A From 2006, correct.

22 Q Okay. So, morphology and shape is important?

23 A It is a aspect of it, correct.

24 Q Okay. And I'm sorry. You indicated on direct examination
25 that you did a two year apprenticeship concerning gunshot residue;

1 when was that?

2 A Not just gunshot residue. That would have been of the
3 aspects of it, 1979 to about 1981.

4 Q Okay. So, like 38 years ago?

5 A Yes.

6 Q Okay. And so that particular two year apprenticeship, that
7 didn't just focus on gunshot residue as you just stated; is that correct?

8 A That would have been one part of it.

9 Q Like a general, what, forensic?

10 A Well, you went into it just by virtue of investigating shootings,
11 collecting evidence, and then you give the evidence to various experts.
12 In our department we had gunshot residue testing done by chemists.

13 Q Okay. But so it -- it didn't just focus on gunshot residue?

14 A No. It was the entire spectrum of -- all those 32 areas that you
15 had mentioned earlier.

16 Q And since then what types of, you know, what's your most
17 recent training or experience concerning the area, gunshot residue?

18 A Well, I'm a member of some scientific organizations. The
19 most important one is the one which I'm actually on the committee. I
20 mentioned before that we're currently setting the standards and
21 reviewing the current standards regarding firearms and ballistics, the
22 American Academy of Forensic Sciences, and I'm a voting member of
23 the Academy Standards Board which is the consensus committee for
24 firearms and tool marks. That includes bi-monthly meetings
25 telephonically and on screen, like go to meeting and that type of thing.

1 Q Fair to say you read and kind of discuss this issue with others
2 and you don't have any real direct training or experience concerning this
3 area?

4 A Well, I just did some testing out here about two years ago --

5 Q Okay.

6 A -- for Clark County.

7 Q Okay.

8 A A case with attorney Nadine Morton.

9 Q Okay.

10 A But I don't get into it as often as I used to when I was with the
11 police.

12 Q Right. Okay. And when you say testing you're talking about
13 using that swab?

14 A The little adhesive stop.

15 Q Yeah.

16 A It's called a stop.

17 Q Yeah. So, not actually analyzing again pursuant to a
18 microscope or things like that?

19 A Yeah. As far as the analysis of it that's usually given to a
20 technician who does that in a laboratory using a specific machine. That
21 wouldn't be something I would do.

22 Q Okay. What were you given to review for this particular case?

23 A I can tell you that there was some information in a prior
24 proceeding I read about. There are a number of police reports. There
25 was the report by Crystina Vachon from Bexar County. There was the

1 arrest reports.

2 Q Okay. And --

3 A I know that whatever -- I didn't receive any photographs or
4 anything.

5 Q Okay.

6 A I did receive a crime scene diagram.

7 Q Okay. And so your opinion and also your testimony is based
8 on reading those reports, transcripts, and also the report from the Bexar
9 County forensic scientist; correct?

10 A That in conjunction with what the current status is and all the
11 studies that have been done --

12 Q Mm-hmm.

13 A -- since the date of that incident right up through the study that
14 I received last week.

15 Q Okay. You relied on the police reports and prior proceedings
16 as well; correct?

17 A Yes.

18 Q Okay. And so -- I mean, it's very, very important for you to
19 review those and try to -- try to really understand the dynamic scene that
20 was going on in this particular case so that you could render a fair and
21 just conclusion; would you agree with me?

22 A As best I can.

23 Q Okay.

24 A Yes.

25 Q Okay. I mean and this being from memory as well; would you

1 agree?

2 A I agree.

3 Q Okay. Now you indicated on direct examination that Mr.
4 Matthews to your recollection was found in an apartment complex?

5 A I'm sorry?

6 Q That he was found in an apartment complex?

7 A Yes.

8 Q Okay. 1701 North J Street?

9 A That sounds familiar.

10 Q Okay. And you based your conclusions and your analysis on
11 that information, part of it anyway?

12 A Not really. I was more interested in the aspects of the
13 possible issue of contamination --

14 Q Okay. We'll talk about that in a minute.

15 A -- not the location but, you know, the dynamics, the movement
16 from the scene to a hospital and --

17 Q Right. Well, how he was found and the condition he was
18 found would bear on your conclusion, would you not agree, and where
19 he was transported from afterward, where he was transported from
20 there? I mean, you went through a whole scenario of where you
21 believed Mr. Matthews was taken from the scene, 17 -- or the apartment
22 complex on 1701 North J Street. He was handcuffed, transported to
23 UMC, back to the shooting scene; you think handcuffed again and taken
24 to the police station, placed in a holding cell, and subsequently arrested;
25 is that not what you said?

1 A Yeah. I gave you the wrong impression. It's not so much the
2 locations that he was transferred to or from, but the environment he was
3 in while he was being transported.

4 Q Oh.

5 A In other words, the back of a police car or any surfaces of
6 cells or holding rooms that he would have been in.

7 Q Okay.

8 A Not the actual location.

9 Q Okay. But it's still your testimony that Mr. Matthews was
10 found in an apartment complex, 1701 North J Street?

11 A Well, that's what the reports indicated that I read.

12 Q Okay. Do you recall where the other individual, Pierre Joshlin,
13 was found?

14 A I recall there was a dumpster involved.

15 Q Okay. Thank you.

16 Now, you indicated earlier on direct examination that gunshot
17 residue it's essentially buildable; would you agree with that? The more
18 it's fired or the more a weapon is fired the more potential for gunshot
19 residue to end up on whatever surface whether it be bare skin, things
20 like that?

21 A Did you based upon the number of gunshots?

22 Q Yeah.

23 A Yes.

24 Q The number of -- buildable. For instance, if I were to fire one,
25 I'd expect a certain amount of gunshot residue. If I fire again then it

1 would kind of build on that?

2 A Yes. That would be -- that's what the studies show.

3 Q Okay. And were you ever shown -- actually, let me talk to you
4 about -- you talked during your direct examination with Mr. Tanasi about
5 transfer and contamination, things like that; do you remember that topic?

6 A Yes.

7 Q Okay. Would you agree that the primary transfer of gunshot
8 residue is, you know, when it's actually first fired from the weapon onto
9 whatever object it lands on?

10 A That would be the greatest potential.

11 Q Okay.

12 A Sure.

13 Q So, primary meaning first, like first level of transfer?

14 A Correct.

15 Q Would you agree?

16 A Correct.

17 Q All right. Would you agree or disagree with the simple holding
18 or notion seems to be adopted by in general in the gunshot residue
19 community that while transference is likely it's not so probable?

20 A Once again, please.

21 Q Mm-hmm. Transference.

22 A Transfer.

23 Q Transference past the primary transfer, okay.

24 A Okay.

25 Q Possible but unlikely?

1 A I don't agree with that.

2 Q Okay. Would you agree or disagree with the assumption or,
3 you know, the commonly held belief that with each transference or with
4 each, you know, potential contamination as you like to call it, transfer
5 transfer, that becomes more and more unlikely?

6 A I would agree with that.

7 Q Okay. And would you agree or disagree with, you know, the
8 commonly held belief concerning gunshot residue that really the three --
9 there are three possible more likely scenarios when you find primer
10 gunshot residue in the shape and morphology, you know, indicative of
11 primer gunshot residue which would explain the presence of gunshot
12 residue on that particular person or item?

13 A And those three --

14 Q Those three may have discharged a firearm, handled a
15 firearm, or was in close proximity to a discharged firearm, just with the
16 assumption that these are the more likely scenarios?

17 A Not unless you include in transferability and contamination.

18 Q Okay. So, you disagree with, you know, the forensic scientists
19 who would have testified to that?

20 A Well, I agree with what the studies show.

21 Q Mm-hmm.

22 A The studies -- the most recent studies show that that is as
23 likely as the first three.

24 Q Oh, okay. How about -- I mean, you reviewed whole text of
25 the forensic scientist, Crystina Vachon, you reviewed her entire report;

1 right?

2 A I have.

3 Q Okay. And so your testimony is transference is just as likely;
4 right?

5 A I'm sorry.

6 Q Transference is just as likely in those three scenarios that we
7 just named off?

8 A Unless we have a scientific basis to exclude transfer.

9 Q Okay. And when we're talking transference, we're talking
10 about like, in this case, you know, as it relates to Mr. Matthews, the right
11 palm or what was it that was tested, his right and left palm. We're
12 talking about transference to his bare skin; correct?

13 A I'm sorry to ask you to repeat that.

14 Q When you testified on direct examination, were you talking
15 about the gunshot residue found on Mr. Matthews' hands?

16 A Yes, I was.

17 Q Okay.

18 A Yes.

19 Q And you said transference is very likely there because he was
20 handcuffed, he was placed in a patrol car; he was, I mean, the officers
21 who arrested him weren't using gloves, things like that?

22 A I didn't say it was most likely.

23 Q Oh, okay.

24 A What I gave was the three sources that are commonly been
25 referred to, and then I said but most crime labs don't do is they don't

1 include the fourth source which is the contamination and transfer which
2 has become an issue since about 2008.

3 Q Okay.

4 A That's been the fourth source.

5 Q But so you're saying that they just kind of like didn't mention
6 the fourth, the transference or the contamination that you wanted or that
7 you believed should be included in their report?

8 A Well, it's not that I think it should be included.

9 Q Mm-hmm.

10 A -- it's what the scientific community puts out in peer review
11 published studies says --

12 Q Uh-huh.

13 A -- and that's what I'm referring to, not me personally.

14 Q Okay, okay. But so according to you the four most likely
15 scenarios for finding gunshot residue on someone's hands, okay, would
16 be the three that's included in the report from this particular analyst's
17 report which would have been discharging a firearm?

18 A Correct.

19 Q Okay. Handling a discharged firearm?

20 A Correct.

21 Q Or being in close proximity to a discharged firearm?

22 A Correct.

23 Q Or transferred possible though unlikely from various places?

24 A Well, any --

25 MR. TANASI: Objection; misstates his testimony.

1 THE COURT: Well, I don't know. Does that accurately reflect
2 your testimony?

3 THE WITNESS: I'm sorry?

4 THE COURT: Does that accurately reflect your testimony?

5 THE WITNESS: I was going to clarify it.

6 THE COURT: Okay. Why don't you go --

7 THE WITNESS: It's for any source which could be a transfer.
8 It could be shaking hands or brushing up against something; touching a
9 surface, the inside of a police car.

10 MS. LEXIS: Okay.

11 THE WITNESS: So, it does to an extent, but that's the
12 clarification.

13 BY MS. LEXIS:

14 Q Okay. So, yes, to an extent?

15 A Yes.

16 Q Okay. Transference in that particular case it is possible
17 because, I mean, the scenes are very dynamic; correct?

18 A Correct.

19 Q Okay. And, I mean, you -- police officers -- let's say you were
20 a cop beforehand. You're in hot pursuit of a suspect, armed, you know,
21 you're in hot pursuit. You don't necessarily have a chance to put on
22 some gloves or bag a suspect's hands before placing this individual into
23 custody or in handcuffs; would you agree?

24 A Unfortunately, that's the reality sometimes of the situation and
25 that's why contamination can occur inadvertently.

1 Q Okay. And then you testified that had someone fired a gun
2 you would expect to find gunshot residue all over someone's body, hair,
3 face. You mentioned all kinds of other places?

4 A Yeah. And of course there's going to be some issues there.
5 The more confined the space such as you go to an interior firing range
6 where you don't have a good filtration system as opposing to firing a gun
7 somewhere outside in the environment, and certainly an enclosed area
8 is going to keep -- there's gunshot powder of course flowing about as
9 opposing to just being out in the middle of a field.

10 Q Okay. So, that does matter where the firearm is actually
11 fired?

12 A Yes.

13 Q Okay. So, when you gave an example on direct examination
14 that was about firearm that was discharged here in this courtroom; right?

15 A Yes.

16 Q Okay. Now, you know from reading the reports and all these
17 things that you've mentioned that the shooting in question here occurred
18 outside?

19 A Yes.

20 Q Okay. Wide open?

21 A That's where the shooting occurred.

22 Q Outdoors?

23 A Correct.

24 Q Okay. And then there was a little bit of time between the
25 actual shooting and the apprehension of Mr. Matthews?

1 A Well, there was a vehicle involved --

2 Q Uh-huh.

3 A -- and I'm -- I don't know whether Mr. Matthews is in that
4 vehicle or not, but if the person was in that enclosed space. Even after
5 having fired a gun, if other people -- depending on how many people
6 were involved, the windows were up or closed, if they get into a motor
7 vehicle and their gunshot residue falls -- and it can be brushed off and it
8 just falls off, if they were in an enclosed space, yes, that could float. It's
9 airborne, like I said, talcum powder consistency, it could float, and
10 certainly the ability to have a transfer there through contamination.

11 Q Okay. But what I asked you was were you aware that in this
12 particular case the shooting occurred outdoors?

13 A Yes.

14 Q And there was a considerable amount of time between the
15 shooting and when Mr. Matthews was apprehended?

16 A I'm not sure of the time when he was apprehended.

17 Q That wasn't in the report?

18 A So, I don't know. I'm going to say a considerable amount of
19 time. I don't know the exact amount of time.

20 Q Okay, okay. That's fair. Were you aware that there were 39
21 total cartridges casings found in this particular scene?

22 A I'm not sure of the exact. I knew it was in excess of 40.

23 Q Okay. And one of the cartridge casings from the scene was
24 linked to a .45 caliber firearm?

25 A Yes.

1 Q Okay. Another one was linked to or actually 11 were linked to
2 yet another .45 caliber firearm?

3 A Yes.

4 Q And 27 of those cartridge cases were linked to a .22 caliber
5 short barrel rifle?

6 A Yes, I believe that's correct.

7 Q Okay. Now, I mean, does this -- I know you're an expert in
8 shooting reconstruction, would this indicate to you multiple shooters?

9 A It would be unusual for someone to have two guns.

10 Q Okay.

11 A I'm just saying that without any scientific basis of it, but it can
12 happen.

13 Q Right. I mean, you're not going to fire one gun, drop it, take
14 the .22 and start firing 27 times, drop that, and finish off with a .45.
15 I mean, that's just unlikely; would you agree?

16 A I'd say probably not logical.

17 Q Okay, okay. So, while gunshot residue doesn't necessarily tell
18 you -- the amount of gunshot residue found on an individual doesn't
19 necessarily tell you who shot which type of firearm; would you agree?

20 A I agree.

21 Q Okay. I'm glad we agree. You also have work or you've seen
22 and testified concerning the crime scene analyst and the preservation of
23 evidence and things like that; have you not?

24 A Yes. As a matter of fact you mentioned the Davis case.

25 Q And so fair to say that, you know, once -- I'm not talking now

1 about gunshot residue on someone's hands -- once a particular item of
2 evidence is located and connected to a particular scene, typically a
3 police officer who finds it will put a cone down; right?

4 A That's one thing they can do, yes.

5 Q Okay. And then crime scene analysts are dispatched once
6 the scene becomes more static?

7 A Correct.

8 Q Okay. And then crime scene analysts presumably wear
9 gloves; right?

10 A I would hope so, yes.

11 Q Okay. To follow with protocol?

12 A Correct.

13 Q Okay. And then certain pieces of items or items of evidence
14 are then selected and impounded in such in a way, you know, to
15 preserve the integrity typically?

16 A If it's done properly, correct.

17 Q Okay. And so kind of a different scenario from, you know
18 gunshot residue taken from a fleeing suspect? It's a little less -- it's a
19 little more static of an environment; would you agree?

20 A It's -- it's quite different. It's documented and measured and
21 photographed, et cetera.

22 Q Okay. Now, I noticed that you were an expert as I noted a
23 couple minutes ago on gunshot wounds. Are you able to determine
24 whether a particular gunshot wound was caused by either a large caliber
25 or a small caliber firearm based on looking at a wound?

1 A You can to a certain point. In other words, a .45 caliber say
2 gunshot wound --

3 Q Right. And let's operate on the assumption that it's to a
4 forehead.

5 A That it's what?

6 Q That the wound is to a forehead.

7 A To the forehead, okay. Most of this we rely on the -- of course
8 on the forensic pathologist. But especially with a gunshot wound to the
9 forehead, we'd be interested in the bony structure of the skull and the
10 size of the perforation made in what is called the beveling made in the
11 skull. Hopefully there's a projectile recovered that would be a critical
12 piece of evidence. Absent a projectile being recovered in the body
13 where we could look at it and we -- sometimes we can just look at its
14 shape, design, and appearance and we can make a determination of
15 whether the [indiscernible] are from a .45 or .38 caliber. But I wouldn't
16 expect a .22 caliber to make a gunshot the size of a .45. So --

17 Q Okay.

18 A -- some of it is a medical issue and some of it is that gray area
19 where we know what ammunition does, but then we have to take into
20 account the skin --

21 Q Right.

22 A -- and then that really falls more with the medical pathologist.

23 Q Okay. I'm going to show you what's been marked and
24 admitted as State's Exhibit number 453.

25 MR. TANASI: Your Honor, I'm going to object. This is way

1 outside of the scope of the direct examination talking now about
2 projectiles and types of bullets and --

3 MS. LEXIS: It's cross-examination. He's listed this as an
4 area of expertise.

5 MR. TANASI: It's not the case, Your Honor. He's been
6 noticed as a gunshot residue expert not a coroner and not a ballistics
7 expert.

8 THE COURT: Yeah, I think you're going outside the scope.

9 MS. LEXIS: Okay.

10 BY MS. LEXIS:

11 Q But typically you'll defer to a forensic pathologist?

12 A Unless he hands me the bullet that he recovers.

13 Q Okay. So, you're an expert also on firearms, correct, and
14 ballistics?

15 A I've been qualified in that aspect of it, yes.

16 Q Okay.

17 MS. LEXIS: May I approach with what's been marked and
18 admitted as State's Exhibit 165A?

19 MR. TANASI: Your Honor, I'm going to lodge the same
20 objection. I think we're getting into projectile analysis and that's far from
21 what he's been noticed to testify about and what he's testified about,
22 what he's prepared to testify about, what the scope of the direct was.

23 THE COURT: What is this going to be about?

24 MS. LEXIS: Your Honor, it's -- I mean, he is, again listed as
25 an expert in -- he's already testified before Your Honor that he could -- if

1 he looked at the actual bullet he could give an opinion as to the caliber
2 of what may have caused that particular wound. I mean, he's been --

3 THE COURT: Okay. But that's not what he was noticed
4 today for.

5 MS. LEXIS: Okay. And just to correct, Your Honor, it was
6 State's Exhibit 15A that I was referring to.

7 THE COURT: Thank you.

8 BY MS. LEXIS:

9 Q Sir, you talked about the threshold when you were talking
10 about the gunshot residue tested or found on Mr. Matthews' hands; do
11 you remember that?

12 A Yes.

13 Q And you testified that you disagreed with that finding because
14 it didn't meet the threshold; do you remember that?

15 A I do.

16 Q And that's by FBI standards; right?

17 A Actually it was mentioned in that FBI symposium --

18 Q Right.

19 A -- that you had previously asked me if I had reviewed.

20 Q Right. Okay. So, your testimony on direct was you disagreed
21 with this forensic scientist because it didn't meet the standards by the
22 FBI?

23 A The standard of what is called the GSR population.

24 Q Okay. And with the FBI you needed like three of those
25 particular particles, is that right, or a combination of the three?

1 A Yes. The FBI threshold was a minimum of three particles
2 containing all three elements.

3 Q Okay. Minimum of three containing all three particles?

4 A Correct.

5 Q Okay.

6 A No. A minimum of three particles --

7 Q Yes.

8 A -- containing all three elements of barium, lead and antimony.

9 Q Okay, okay. And so three on three; would you agree?

10 A Right, right.

11 Q So, three particles containing all three of those; right?

12 A Yes.

13 Q Okay. Now, in this particular case you're aware of some
14 testing that were done on a red knit glove; correct?

15 A I am.

16 Q Okay. And are you aware of how many particles were found
17 to have contained all three, lead, barium and antimony?

18 A The number 10 seems to be in my memory for one of them.

19 Q Mm-hmm.

20 A But beyond that I don't recall without looking at the actual
21 report.

22 Q Okay. Do you have the report with you?

23 A I don't have -- I don't think I -- I have it digitally. I don't have a
24 hard copy of it.

25 MS. LEXIS: May I approach, Your Honor?

1 THE COURT: You may.

2 MS. LEXIS: Page two.

3 BY MS. LEXIS:

4 Q Okay. So, did that refresh your memory?

5 A It did.

6 Q Okay. So, concerning the red knit glove that was tested by
7 Crystina Vachon, there were six microscopic particles; correct?

8 A Yes.

9 Q Containing lead, barium and antimony?

10 A Yes.

11 Q Okay. So, three -- or excuse me -- six containing all three as
12 you indicated?

13 A Yes.

14 Q Okay. And the FBI threshold was three particles with three;
15 correct?

16 A Three particles and I used my manila folder as a example.
17 So, six on the glove, on one part of the glove --

18 Q Okay.

19 A -- that would have been above the threshold.

20 Q Okay.

21 A It would have met the threshold and exceeded it.

22 Q Exceeded --

23 A Exceeded it.

24 Q -- the threshold actually required by the FBI?

25 A Yes.

1 Q Or the standard set by the FBI?

2 A Correct.

3 Q Okay.

4 MS. LEXIS: I have no more questions. Thank you.

5 THE WITNESS: Thank you very much.

6 THE COURT: Any redirect?

7 MR. TANASI: Briefly. Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. TANASI:

10 Q Mr. Scott, Ms. Lexis talked to you on cross about the locations
11 involved and maybe you're mistaken understanding of the locations. I'll
12 represent to you that Mr. Matthews was found on 1116 Jimmy Avenue.
13 Okay.

14 A Okay. I'm sorry but that seems to -- I read that some place.

15 Q Sure. And then moved by law enforcement and sampled his
16 hands -- sampled at the Villa Capris Apartments?

17 A Yes.

18 Q Okay. Understanding those two locations and the movement
19 in between the two, does it change your opinions in any way in this case
20 with --

21 MS. LEXIS: Objection, Your Honor, leading.

22 THE COURT: Overruled. I'm going to allow you to answer.

23 THE WITNESS: It doesn't change my opinion.

24 BY MR. TANANSI:

25 Q Again, there's been some testimony concerning sometimes